

**DISPOSITION AND DEVELOPMENT AGREEMENT
FOR PORTIONS OF DISPOSITION AREAS 2B, 2C AND 8
(TUSTIN LEGACY)**

BY AND BETWEEN

THE CITY OF TUSTIN

AND

TUSTIN LEGACY ACQUISITION LLC,

A DELAWARE LIMITED LIABILITY COMPANY

DATED: March 18, 2025

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**DISPOSITION AND DEVELOPMENT AGREEMENT
FOR PORTIONS OF DISPOSITION AREAS 2B, 2C AND 8
(TUSTIN LEGACY)**

This **DISPOSITION AND DEVELOPMENT AGREEMENT FOR PORTIONS OF DISPOSITION AREAS 2B, 2C AND 8 (TUSTIN LEGACY)** (“Agreement”) is entered into as of March 18, 2025 (“Effective Date”) by and between the CITY OF TUSTIN (as more fully defined in Section 1.4.1, “City”) and TUSTIN LEGACY ACQUISITION LLC, a Delaware limited liability company (as more fully defined in Section 1.4.2, “Developer”). The City and Developer are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties”. The Parties agree as follows:

1. Subject and Purpose of Agreement; Parties; Applicable Requirements.

1.1 Background Regarding MCAS Tustin.

1.1.1 Pursuant to the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXXIX of Public Law 101-510; 10 U.S.C. Section 2687 Note), as amended, the Federal Government (see Section 1.9 and Attachment 1 for definitions of initially capitalized terms in this Agreement) determined to close the Marine Corps Air Station-Tustin (“MCAS Tustin”) located substantially in the City of Tustin, California. In 1992, the City was designated as the Lead Agency or Local Redevelopment Authority for preparation of a reuse plan for MCAS Tustin to facilitate the closure of MCAS Tustin and its reuse in furtherance of the economic development of the City and surrounding region. The MCAS Tustin Reuse Plan developed in accordance with this procedure was adopted by the City Council of the City of Tustin (“City Council”) on October 17, 1996 and amended in September 1998 (“Reuse Plan”).

1.1.2 A Final Joint Environmental Impact Statement/Environmental Impact Report for the Disposal and Reuse of MCAS Tustin and Mitigation Monitoring and Reporting Program for the Final EIS/EIR were adopted by the City on January 16, 2001. In March 2001, a record of decision was issued by the Department of the Navy (hereinafter, “Navy”) approving the Final EIS/EIR and the Reuse Plan with several subsequent supplements and addenda approved by the City (the original EIS/EIR, as so amended, “Final EIS/EIR”).

1.1.3 In May 2002, the Navy approved an “**Economic Development Conveyance of Property at MCAS Tustin**” and agreed to convey approximately 1,153 acres of MCAS Tustin to the City. On May 13, 2002, a total of approximately 977 acres, including the Development Parcels which are the subject of this Agreement were conveyed by the Navy to the City by quitclaim deed, as further described below, in accordance with the provisions of that certain Memorandum of Agreement by and between The United States of America (through the Secretary of the Army or designee) and the City dated May 13, 2002 (“**Memorandum of Agreement**”). The additional approximately 177 acres were made subject to a ground lease by the City from the Navy and portions thereof have subsequently been conveyed by the Navy to the City pursuant to subsequent quitclaim deeds. The approximately 1,153 acres of MCAS Tustin located within the City of Tustin and either conveyed by the Navy to the City or subject to ground lease between the Navy and the City are referred to in this Agreement as “**Tustin Legacy**”.

1.1.4 On February 3, 2003, the City adopted an ordinance approving the MCAS Tustin Specific Plan/Reuse Plan setting forth the zoning and entitlement framework for future development of Tustin Legacy. Since its initial adoption, the City has approved numerous Specific Plan amendments. All references in this Agreement to the “**Specific Plan**” shall be deemed to refer to the MCAS Tustin Specific Plan/Reuse Plan, as the same may have been previously or may be subsequently amended. The Specific Plan conforms to and implements the Reuse Plan and the City’s General Plan.

1.1.5 The City desires to effectuate development of Tustin Legacy through the sale and development of property in accordance with applicable federal and local requirements. Tustin Legacy shall be developed in accordance with all applicable City requirements, including the Specific Plan.

1.1.6 On September 15, 2021, the City initiated a competitive RFP process through a solicitation requesting proposals from residential developers and all entities identified in California Govt. Code (“**Govt. Code**”) Section 54222(a) seeking development of a mixed use commercial and multi-family residential community with respect to approximately 19.4 acres of land located within portions of Disposition Areas 2B, 2C and 8 and bounded by Compass Avenue, Warner Avenue, Tustin Ranch Road and Legacy Road referred to in this Agreement as the Development Parcels (defined below). The Irvine Company LLC, a Delaware limited liability company (“**The Irvine Company**”), which is under common ownership with Initial Developer, submitted a proposal for purchase and development of the Development Parcels in response to the RFP process.

1.1.7 After consideration of the various responses to the RFP, and negotiations with a selected respondent that were unsuccessful, the City reevaluated the proposals received and determined to enter into the ENA and this Agreement with Developer for a multi-family residential community with respect to the Development Parcels, as the SLA Regulations do not require mixed use development.

1.1.8 Following the selection of The Irvine Company, the City and The Irvine Company entered into that certain Exclusive Negotiating Agreement (Tustin Legacy Portion of Disposition Areas 2B, 2C and 8) dated as of May 21, 2024 as amended by that certain First Amendment to Exclusive Negotiating Agreement (Tustin Legacy Portion of Disposition Areas 2B, 2C and 8) dated as of October 1, 2024 (as thereafter amended pursuant thereto, the “**ENA**”). This Agreement is entered into by the Parties pursuant to the ENA.

1.1.9 Consistent with the requirements of Govt. Code Sections 54220-54234 (“**Surplus Land Act**”), the California Department of Housing and Community Development (“**HCD**”), issued Updated Surplus Land Act Guidelines on August 1, 2024 (“**SLA Guidelines**”, and collectively with the Surplus Land Act, and as each may be amended from time to time the “**SLA Regulations**”), twenty five percent (25%) of the total number of units must be Lower Income Units (defined below). To ensure compliance with the SLA Regulations, prior to approval of this Agreement, the City submitted to HCD: (i) a description of the entities invited to participate in the competitive developer solicitation as described in the ENA and (ii) Resolution 24-59 adopted

by the City Council on August 20, 2024, declaring the Development Parcels to be exempt surplus land under Govt. Code Section 54221(f)(1)(H); and HCD, by letter dated August 27, 2024, confirmed that the Development Parcels are exempt surplus land under such Govt. Code provision.

1.2 Description of Development Parcels and Real Property.

1.2.1 **Definition of Development Parcels.** The City is the owner of approximately 19.4 acres of land located in the City of Tustin, County of Orange, California, legally described and depicted on Attachment 2A and depicted on Attachment 2B (“**Development Parcels**”). As of the Effective Date, the Development Parcels are owned in fee by the City. The Development Parcels comprise a portion of the land conveyed by the Navy to the City in Navy Quitclaim Deed D and Environmental Restriction Pursuant to Civil Code Section 1471 dated May 13, 2002, and Recorded in the Orange County Clerk Recorder Office on May 14, 2002 as Instrument No. 20020404594 (“**Federal Deed**”). The Development Parcels are located in Specific Plan Neighborhood D, Planning Areas 13 and 14 and are referred to in the Navy Reuse Plan as portions of Parcels 8, 14, and 40 and in the Navy Quitclaim Deed as portions of Parcels I-D-3 and I-D-4. Prior to the transaction described in this Agreement, the City has Recorded pursuant to the Subdivision Map Act and the City Code, Final Tract Map No. 18197 (“**City Final Map**”), subdividing the Development Parcels. The Development Parcels are bounded by Warner Avenue, Legacy Road, Compass Avenue and Tustin Ranch Road. The City Final Map includes the following parcels of land as further legally described on Attachment 2A and depicted on Attachment 2B and as further depicted on the site plan attached as Attachment 3, as the same may be modified from time to time in accordance with this Agreement (“**Site Plan**”):

(i) Lot 11 of the City Final Map, also referred to as “**Lot 11**”, comprised of approximately 7.04 acres;

(ii) Lot 12 of the City Final Map, also referred to as “**Lot 12**”, comprised of approximately 6.93 acres; and

(iii) Lot 13 of the City Final Map, also referred to as “**Lot 13**”, comprised of approximately 5.45 acres.

1.2.2 **Definition of Real Property.** The term “**Real Property**” as used in this Agreement is the real property component of the Property to be conveyed to Developer pursuant to this Agreement and is comprised of the Market Rate Real Property and the Lot 13 Real Property (each defined below) and more specifically comprised of the Development Parcels excluding the following rights and interests of the City which shall be reserved to the City in the Quitclaim Deed:

1.2.2.1 Any and all oil, oil rights, minerals, mineral rights, natural gas, natural gas rights and other hydrocarbons by whatsoever name known, geothermal steam and all products derived from any of the foregoing, that may be within or under the Development Parcels together with the perpetual right of drilling, mining, exploring for and storing in and removing the same from the Development Parcels or any other land, including the right to whipstock or directionally drill and mine from lands other than the Development Parcels, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Development Parcels

and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to re-drill, re-tunnel, equip, maintain, repair, deepen and operate any such well or mines; but without, however, the right to enter upon or use the surface of the Development Parcels in the exercise of such rights or otherwise adversely affect the use or operation of the Development Parcels as anticipated by this Agreement or the structural integrity of any improvements on the Development Parcels; and

1.2.2.2 Any and all water, water rights or interests therein appurtenant or relating to the Development Parcels or owned or used by the City in connection with or with respect to the Development Parcels no matter how acquired by the City, whether such water rights shall be riparian, overlying, appropriative, littoral, percolating, prescriptive, adjudicated, statutory or contractual, together with the perpetual right and power to explore, drill, re-drill and remove the same from or in the Development Parcels, to store the same beneath the surface of the Development Parcels and to divert or otherwise utilize such water, rights or interests on any other property owned or leased by the City; but without, however, the right to enter upon or use the surface of the Development Parcels in the exercise of such rights or otherwise adversely affect the use or operation of the Development Parcels as anticipated by this Agreement or the structural integrity of any improvements on the Development Parcels.

1.2.2.3 Those excess development rights reserved to the City as described in Section 4.1.2.

Reservation by the City of the rights and interests in Sections 1.2.2.1 and 1.2.2.2 shall not be deemed to limit Developer's right to construct foundations, utilities and other subsurface improvements for the purpose of constructing the Project and otherwise engage in subsurface construction activity in order to construct the Project.

1.2.3 **Mapping**. The City has approved vesting tentative tract map (Tract Map No. 19353) for the Development Parcels pursuant to the Subdivision Map Act and the City Code (as approved by the City Council as part of the Applicable Approvals, "**Vesting Tentative Tract Map**") and shall, when submitted by the Developer, process in its Governmental Capacity and upon approval by it and the Orange County Surveyor's office cause the Recording of the final map based upon the Vesting Tentative Tract Map ("**Developer Final Tract Map**"). Developer shall enter into the Subdivision Improvement Agreement with the City prior and as a condition to Recording of the Developer Final Tract Map. Phasing of the Project as described in Section 1.3.4 is conditioned on Recording of the Developer Final Tract Map. Developer shall cause the Developer Final Tract Map to be Recorded no later than when required by the Schedule of Performance.

1.3 Description of the Market Rate Project and the Affordable Project.

1.3.1 **Purpose**. The purpose of this Agreement is to (i) effectuate the Specific Plan (including the Reuse Plan incorporated therein), in accordance with the terms and conditions set forth therein and in the Memorandum of Agreement and the Federal Deed, through disposition and development of portions of Tustin Legacy as further described in this Agreement and (ii) to provide for the sale and conveyance of the Property, for the maintenance and use of the Property

and certain related improvements by Developer and for the construction of the Market Rate Project by Developer and the Ground Lease of the Lot 13 Property to an Affordable Housing Developer for construction of the Affordable Project on the Lot 13 Property in accordance with the terms and conditions of this Agreement. The Market Rate Project and the Affordable Project are referred to in this Agreement collectively as the “Project”.

1.3.2 Market Rate Project and Market Rate Project Improvements

Definitions. This Agreement provides for development by Developer of the Market Rate Real Property with the Market Rate Project Horizontal Improvements, the Market Rate Project Vertical Improvements (each defined below), all required on-site infrastructure and a complete accompanying set of high-quality tenant amenities (e.g., swimming pools, fitness facility and Developer managed café (with café open to public)), including Common Area Improvements on identified common open space, with a portion of such open space to be made accessible to the public pursuant to a Recorded Public Access Covenant (defined below) which shall be designed and constructed as further set forth in Article 8 and the Scope of Development attached hereto as Attachment 8. The Market Rate Project Horizontal Improvements, the Market Rate Project Vertical Improvements, including the Market Rate Units, the Common Area Improvements are referred to in this Agreement as the “**Market Rate Project Improvements**” and the development, construction, maintenance, leasing and use of the Market Rate Project Improvements within the boundaries of and/or relating to the Market Rate Real Property is referred to in this Agreement as the “**Market Rate Project**”.

1.3.3 Affordable Project and Affordable Project Improvements

Definitions. This Agreement further provides for development by Developer of the Lot 13 Real Property with the Affordable Project Horizontal Improvements, the Affordable Project Vertical Improvements (each defined below), all required on-site infrastructure and a complete accompanying set of high-quality amenities, including common open space, with a portion of such open space, including the public paseos, to be made accessible to the public pursuant to a Recorded Public Access Covenant, which shall be designed and constructed as further set forth in Article 8 and the Scope of Development attached hereto as Attachment 8. The Affordable Project Horizontal Improvements, the Affordable Project Vertical Improvements including the Lower Income Units and four (4) market rate units for managers/staff, with at least one (1) in each Building constructed on the Lot 13 Real Property, and associated Common Area Improvements are collectively referred to in this Agreement as the “**Affordable Project Improvements**” and the development, construction, maintenance, leasing and use of the Affordable Project Improvements on the Lot 13 Real Property is referred to in this Agreement as the “**Affordable Project**”.

1.3.4 **Phasing of Project.** The Project may be constructed in the following phases (each a “**Phase**” and collectively, “**Phases**”), as depicted on the Phasing Plan attached hereto as Attachment 6 which Phases may be commenced and constructed in the following order or concurrently:

1.3.4.1 **“Phase 1”** is comprised of Building 1 and Building 2 (each as shown on the Phasing Plan) on Lot 11, to contain a maximum of 464 Market Rate Units (the final number of such Market Rate Units to be determined by the Approved Plans), and Building 5 (as

shown on the Phasing Plan) on Lot 13, to contain a maximum of 178 Lower Income Units but in no event less than twenty five percent (25%) of the total units within Phase 1 (the final number of such Lower Income Units to be determined by the Approved Plans) and between one (1) and three (3) manager/staff units (provided that the total number of manager/staff units on Lot 13 shall not exceed four (4) units) as contemplated by the Scope of Development and as further depicted on the Site Plan; and

1.3.4.2 **“Phase 2”** is comprised of Building 3 and Building 4 (each as shown on the Phasing Plan) on Lot 12, to contain a maximum of 534 Market Rate Units (the final number of such Market Rate Units to be determined by the Approved Plans), and Building 6 (as shown on the Phasing Plan) on Lot 13, to contain a maximum of 156 Lower Income Units but in no event shall the total amount of Lower Income Units constructed in both Phase 1 and Phase 2 be less than twenty five percent (25%) of the total Residential Units constructed on the Real Property (the final number of such Lower Income Units to be determined by the Approved Plans) and between one (1) and three (3) manager/staff units (provided that the total number of manager/staff units on Lot 13 shall not exceed four (4) units) as contemplated by the Scope of Development and as further depicted on the Site Plan.

Notwithstanding any provision in this Agreement to the contrary, (i) the final number of Residential Units in any particular Building shall be as set forth in the Approved Plans and the number of Residential Units actually constructed on each Parcel shall be established in the Certificate of Compliance for such Parcel, (ii) the Market Rate Units and/or Lower Income Units in a Building in any Phase may be opened and leased to tenants at any time from and after the issuance by the City of a final certificate of occupancy or temporary certificate of occupancy (if issued in the City’s Governmental Capacity) for such Building, and (iii) for purposes of calculating the number of Lower Income Units required to be constructed on Lot 13, the number of Market Rate Units on Lot 11 and Lot 12 collectively shall not exceed nine hundred ninety eight (998) Residential Units.

1.3.5 **Other Agreements.** At the Close of Escrow, the City intends to convey the Property to Developer, in accordance with the terms and conditions of this Agreement. As further set forth in this Agreement, at or prior to the Close of Escrow the City intends to establish Special Restrictions and an Affordable Housing Declaration and to record certain additional covenants, conditions and restrictions with respect to the Property as further described in this Agreement and the Attachments.

1.4 **Parties to the Agreement; Lot 13 PDA.**

1.4.1 **City.** The City is a municipal corporation of the State. The City has been recognized as the Local Redevelopment Authority by the Office of the Secretary of Defense for the former Marine Corps Air Station, Tustin, for purposes of the Base Closure Law. The term “City” as used in this Agreement shall mean the City of Tustin and each assignee or successor to the City’s rights, powers and responsibilities, provided that when in this Agreement the term “City and its Governmental Successors” is used, the term “City” shall be deemed to mean solely the City of Tustin. The City Council shall have the right, in its sole discretion, to assign its rights and

obligations to any agency or instrumentality of the City. The principal office of the City and mailing address is 300 Centennial Way, Tustin, California 92780.

1.4.2 **Developer; Initial Developer.** The Developer as of the Effective Date is Tustin Legacy Acquisition LLC, a Delaware limited liability company, and is wholly owned by TIC Acquisition and Development LLC, a Delaware limited liability company (“**TICAD**”) and is under common ownership with The Irvine Company. Tustin Legacy Acquisition LLC is also referred to in this Agreement as the “**Initial Developer**”. The principal office of Developer and its mailing address is c/o The Irvine Company LLC, 550 Newport Center Drive, Newport Beach, CA 92660-7011, attention Todd Keller and Kevin Roberts. Developer shall have the right, solely in accordance with the provisions of Article 2 and the other terms and conditions set forth in this Agreement, to assign its rights and obligations under this Agreement and the Other Agreements and in such event, Initial Developer and each Transferee that is a Successor Owner with respect to all of a Transferor’s interest in the Transferable Interests shall thereafter (and may concurrently with the Transferor) be “**Developer**” under the terms of this Agreement.

1.4.3 **Responsibilities of Developer; Delegation of Affordable Project Provisions to Affordable Housing Developer.** Developer shall be responsible to cause the design, development, construction and Completion of the Market Rate Project and the Affordable Project (and to cause the operation of the same to the extent required by this Agreement), but Developer may delegate its obligations with respect to the Affordable Project Provisions to an Affordable Housing Developer in accordance with the provisions of this Agreement. The City has approved (i) USA Properties Fund, Inc., a California corporation (“**USA Properties**”), or (ii) an assignee of USA Properties that is a limited partnership Controlled by USA Properties (or a corporation wholly owned by USA Properties), and such entities, and each Person to whom the interests of such Person under the Lot 13 PDA, if then in effect, and the interests of Ground Lessee under the Ground Lease, if then in effect, are assigned in accordance with this Agreement and an Approved Ground Lease are referred to in this Agreement as “**Affordable Housing Developer**”. Nothing in this Agreement requires City consent to the identity of the managing general partner or limited partner of the Affordable Housing Developer or any future transfer or assignment thereof so long as USA Properties, Developer, Equity Investor or a wholly-owned affiliate of any of the foregoing or any other City-approved developer remains in Control of such Affordable Housing Developer. As of the Effective Date, Initial Developer and the City shall have approved a form of Property Development Agreement (the “**Lot 13 PDA**”) for the purposes of this Agreement pursuant to which Developer, subject to the closing conditions contained therein and subject to the Lot 13 Transfer Conditions contained in this Agreement, would require an Affordable Housing Developer to Complete the Affordable Project and pursuant to which Developer would delegate to the Affordable Housing Developer the Affordable Project Provisions. It is anticipated that USA and Developer will execute the Lot 13 PDA and the Ground Lease Option prior to the Effective Date, however, Developer may at any time, replace USA Properties with another Affordable Housing Developer authorized by this Agreement, either (A) by directly taking responsibility for performance of the Affordable Project Provisions in accordance with the requirements of Section 4.8, referred to in this Agreement as an “**Alternative Affordable Project Development Plan**”, (B) with an Approved Alternate Affordable Housing Developer, pursuant to Lot 13 Transfer (or following a Lot 13 Transfer, by assignment of the Affordable Housing Developer’s interest in an

Approved Ground Lease in accordance with Section 13.3.3), or (C) with another developer (or assignee that is a limited partnership Controlled by such entity) that constructs and operates affordable housing in California and approved in writing by the City in its sole discretion as Affordable Housing Developer. Under the terms of the Lot 13 PDA, Developer intends to grant to an Affordable Housing Developer an option (the “**Ground Lease Option**”) to enter into a ground lease substantially in the form and substance of the ground lease attached to the Lot 13 PDA (the “**Approved Ground Lease Form**”). The Lot 13 PDA, the Ground Lease Option and the Approved Ground Lease Form shall have been approved by the City in its sole discretion prior and as a condition to the execution by the City of this Agreement. Notwithstanding the delegation of Developer’s obligations to the Affordable Housing Developer related to the Affordable Project contained in the foregoing instruments, the Parties agree that Initial Developer and its successors and assigns that are designated as Developer pursuant to this Agreement shall not be released from the Affordable Project Obligations until issuance of the Certificate of Compliance for the applicable Parcel within the Affordable Project, whereupon, and notwithstanding any provision in this Agreement to the contrary, Developer shall be automatically released from the Affordable Project Obligations applicable to that Parcel for which the Affordable Project Certificate of Compliance has been issued. For avoidance of doubt, the City does not have any approval rights over the selection of any contractors or consultants utilized by Developer or Affordable Housing Developer to Complete the construction of the Improvements.

1.4.4 **Relationship of City and Developer.** The Parties acknowledge and agree that the relationship of the City and Developer is neither that of a partnership nor that of a joint venture. Notwithstanding any other provision of this Agreement, Developer is not, and shall not be deemed to be, the agent of the City for any purpose, and shall not have the power or the authority to bind the City to any contractual or other obligation. Prior to the Close of Escrow, Developer may only characterize itself to third parties as the prospective purchaser and/or developer of the Property. Developer shall not at any time hold itself out to the City or to any other third party as an agent of the City, and shall not, by any act or omission, mislead any third party into believing, or allow any third party to continue in the mistaken belief that Developer is an agent of the City or has the power or authority to bind the City to any contractual or other obligation.

1.5 **Federal Requirements Applicable to Tustin Legacy.**

1.5.1 **Federal Economic Development Conveyance.** The Parties acknowledge and agree that this Agreement is entered into as part of an economic development conveyance of Tustin Legacy to the City pursuant to the Base Closure Law, the Memorandum of Agreement and the terms and conditions of the Federal Deed, including the environmental restriction pursuant to California Civil Code Section 1471 contained therein.

1.5.2 **Memorandum of Agreement and Federal Deed.** This Agreement is and shall be subject to the terms and conditions of the Memorandum of Agreement and the Federal Deed and the rights, obligations and remedies of the Federal Government under the Federal Deed, and nothing contained in this Agreement shall be construed in a manner that is inconsistent with the rights, obligations and remedies of the Federal Government under the Federal Deed. Accordingly, if any provision of this Agreement contradicts, modifies or in any way changes the

terms of the Memorandum of Agreement or the Federal Deed, the terms of the Memorandum of Agreement and Federal Deed shall prevail and govern.

1.6 Governmental Requirements Applicable to Tustin Legacy.

1.6.1 **Compliance with SLA Regulations.** The City is required by law to comply with the SLA Regulations with respect to the development of the Real Property, including by determining that the proposed development described by this Agreement is consistent with the requirements of the Surplus Land Act exemption granted to local agencies in Govt. Code Section 54221(f)(1)(H). Developer acknowledges that for the benefit of the City as a condition to the Close of Escrow, the City shall Record an Affordable Housing Declaration substantially in the form and substance of the instrument attached as Attachment 25 to this Agreement (“**Affordable Housing Declaration**”) requiring that twenty five percent (25%) of the total number of units on the Development Parcels (in the aggregate) shall be restricted as Lower Income Units. The Affordable Housing Declaration shall comply with Govt. Code Sections 54220-54234 and 65915. The Affordable Housing Declaration shall be enforceable in accordance with its terms by the City against Developer and as those terms are defined therein any “Owner”, which includes a “Successor Owner” as defined therein, and, as further set forth therein, with respect to any Ground Lessee of any portion of the Lot 13 Real Property. Nothing in this Agreement or in the Affordable Housing Declaration relieves the Parties from third party liability under the SLA Regulations. Development of the Affordable Project on Lot 13 as described in this Agreement is and shall be structured to comply with the Affordable Housing Declaration.

1.6.2 **Compliance with Other Governmental Requirements.** This Agreement is subject to all Governmental Requirements, including the General Plan, the Specific Plan, the City Code, the SLA Regulations and applicable to the Real Property, provided, however, that the City acknowledges and agrees that, substantially concurrently with the execution of this Agreement, the City and Developer are entering into a statutory development agreement pursuant to Govt. Code Section 65864 et seq. (“**Development Agreement**” or “**DA**”) relating to the Property and the Project and that any provisions of this Agreement with respect to the rights and obligations of Developer under any Governmental Requirements imposed by the City relating to entitlements or development of the Real Property shall be subject to the provisions of the Development Agreement and in the event of any inconsistency between such provisions under this Agreement and the DA, the Governmental Requirements required to be imposed pursuant to the DA shall control.

1.6.3 **Not a Development Agreement.** This Agreement is not a development agreement as provided in Govt. Code Section 65864 and, as further set forth in Section 8.4.4, is not a grant of any entitlement, permit, land use approval, or vested right in favor of Developer, the Market Rate Project, the Affordable Project or the Property. The City shall use good faith efforts, within applicable legal constraints and consistent with applicable City policies, to take such actions as may be necessary or appropriate to effectuate and carry out this Agreement in a timely and commercially reasonable manner.

1.7 Benefits.

The disposition of the Property, the development and Completion of the Market Rate Project and the Affordable Project pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the citizens of the City and the health, safety and welfare of its residents, and are in accord with the public purposes and provisions of applicable federal, State, and local laws and requirements.

1.8 DDA Transaction Expenses and Independent Contract Consideration.

1.8.1 **ENA Deposits and Transaction Expenses.** Pursuant to the ENA, Developer has paid to the City deposits totaling Three Hundred Twenty Thousand Dollars (\$320,000.00) (“**ENA Deposit**”) to be used by the City to pay “City Transaction Expenses” as defined in the ENA.

1.8.2 **City Costs Deposit; Independent Consideration.** Upon the execution of this Agreement by the Parties, the funds remaining in the ENA Deposit shall be the “City Costs Deposit”, provided that Developer shall, not later than three (3) Business Days following the Effective Date, deliver to the City additional funds sufficient to bring the City Costs Deposit to \$50,000.00 (the “**City Costs Deposit**”). The City Costs Deposit shall be deposited by the City in an account in a bank or trust company selected by the City. If any interest is paid on such account, such interest shall accrue to any balances in the account for the benefit of Developer and as additional security for Developer obligations under this Section 1.8. One Hundred Dollars (\$100.00) of the City Costs Deposit shall be retained by the City as “**Independent Contract Consideration**”. The City Costs Deposit may be used by the City to pay the City’s DDA Transaction Expenses and the City Costs Deposit will be depleted accordingly. Until the earliest to occur of (i) Recording by the City of the Final Certificate of Compliance or (ii) termination of this Agreement, if at any time the amount of funds in the City Costs Deposit account (including interest accrued thereon) is depleted below Twenty Five Thousand Dollars (\$25,000), Developer shall be required to pay to the City each time an additional amount, as specified by the City in writing, to replenish the City Costs Deposit to Fifty Thousand Dollars (\$50,000). Each such payment shall be deposited by the City into the City Costs Deposit account to be applied to DDA Transaction Expenses in accordance with the provisions of Section 1.8.3.

1.8.3 **Payment of DDA Transaction Expenses.** Developer shall pay all DDA Transaction Expenses incurred by the City during the Term, whether arising with respect to matters or incurred by the City prior to or following Close of Escrow until the Recording by the City of the Final Certificate of Compliance or the earlier termination of this Agreement. The City Costs Deposit has been established to fund the DDA Transaction Expenses and may be used by the City for such purpose and shall be depleted accordingly. Immediately upon incurring any DDA Transaction Expenses or receipt of an invoice from third parties for same, the City shall have the right to deduct the amounts due it on account thereof from the City Costs Deposit. In addition, at the Close of Escrow, the City shall be entitled to deduct from the City Costs Deposit the payment of all DDA Transaction Expenses then unpaid and if such amounts are insufficient to cover all DDA Transaction Expenses incurred by the City to the Close of Escrow, Developer shall, as a

condition to the Close of Escrow, pay the full amount of DDA Transaction Expenses incurred by the City to and including the Closing Date and then remaining unpaid and such additional amount as is required to maintain a City Costs Deposit held by the City of Fifty Thousand Dollars (\$50,000.00). If following Recording by the City of the Final Certificate of Compliance, there is any City Costs Deposit amount held by the City after application of such funds by the City to reduce the DDA Transaction Expenses arising or incurred by the City to such date, the City shall refund such amount to Developer. If the amount of the City Costs Deposit is not sufficient to fund all DDA Transaction Expenses arising or incurred prior to such date, Developer shall pay the outstanding amounts due with respect to DDA Transaction Expenses to the City within thirty (30) Business Days following receipt of an invoice from the City therefore, provided that the City shall first apply the amount of the City Costs Deposit, if any, then held by it in satisfaction of such invoice, and shall reflect the amount of such credit on the invoice.

1.8.4 **Payment of DDA Transaction Expenses.** Absent manifest error, the determination of costs, expenses, and fees constituting City Transaction Expenses shall be made by the City in its sole discretion and City shall provide to Developer, on a quarterly basis during the Term, summary written notices, including non-confidential summary invoices of third party consultants from the City setting forth the identity of the provider or cost and the amounts attributable and/or paid to each that constitute City Transaction Expenses and related non-confidential documents evidencing such expenses. Developer shall have the right to reasonably object to any City Transaction Expenses upon written notice thereof delivered to the City within fifteen (15) calendar days following Developer's receipt of such notice specifying the grounds for such objection and to request in writing to the City reasonable further non-confidential information supporting any City Transaction Expenses.

1.8.5 **Exclusions from DDA Transaction Expenses.** The City and Developer hereby acknowledge and agree that the DDA Transaction Expenses do not include: (i) any fees or deposits required of Developer for processing Entitlements applications; (ii) any fees or costs for complying with provisions of CEQA or its State CEQA implementing regulations or other matters identified in Section 8.4; (iii) any costs to review or approve any applications or submittals by Developer to the City in connection with the Market Rate Project and/or the Affordable Project; (iv) the Development Costs, Project Fair Share Contribution or any other development impact fees, exactions or other costs imposed as conditions of approval or pursuant to the Development Agreement or mitigation measures with respect to the Entitlements or pursuant to the Other Agreements; (v) the marketing fees set forth in Section 8.7.4; or (vi) any other matters in this Agreement that expressly require Developer to pay, at its sole cost, for expenses incurred in connection with this Agreement that are not otherwise duplicative of other fees to be paid to the City in connection with the Market Rate Project and/or the Affordable Project. The obligation of Developer to pay for the DDA Transaction Expenses pursuant to this Section 1.8 shall not diminish or limit Developer's obligation to pay for any of the costs in the preceding sentence.

1.8.6 The provisions of this Section 1.8 shall survive the termination of this Agreement until all DDA Transaction Expenses due are paid.

1.9 **Definitions; Attachments.**

1.9.1 **Definitions.** Capitalized terms used in this Agreement, including in the Attachments attached hereto, unless otherwise defined in this Agreement, shall have the respective meanings specified in the Glossary of Defined Terms attached hereto as Attachment 1. Unless otherwise indicated, references in this Agreement to articles, sections, paragraphs, subsections, clauses, exhibits, attachments and schedules are to the same contained in or attached to this Agreement and all attachments and schedules referenced in this Agreement are incorporated in this Agreement by this reference as though fully set forth in this Section.

1.9.2 **“Substantially in the Form and Substance.”** Wherever used in this Agreement, the term “substantially in the form and substance” shall mean that the referenced document, when compared to the applicable Attachment or previously approved form of document, (i) is consistent in all material respects, and none of the modifications in the referenced document materially diminish a Party’s rights or materially increase such Party’s obligations under this Agreement, as determined by the Party for whose benefit the condition is written, in its sole discretion (unless another standard is provided with respect to the Affordable Project for the referenced documents) or (ii) is otherwise in such form and substance mutually agreed upon by the Parties in their sole discretion. In the event the Parties disagree whether or not a particular document is substantially in the form and substance of the applicable Attachment or previously approved form of document, the Parties shall promptly meet and confer in good faith to seek to resolve such disagreement.

1.9.3 **Includes and Including.** As used in this Agreement the words “include” and “including” mean, respectively, “include, without limitation” and “including, without limitation”.

1.9.4 **“Shall”; “Shall Not”; “May”.** When stated in connection with performance by a Party, the word “shall” imposes a mandatory requirement on that Party to perform the stated act or requirement (and shall be synonymous with “must”) and the term “shall not” imposes a mandatory requirement on that Party not to perform the stated act or requirement (and shall be synonymous with “must not”). The word “may” is permissive and does not impose any mandatory requirement on a Party to perform the stated act.

1.9.5 **“Sole”.** When stated in connection with the discretion of any Party (i.e., in the “sole discretion” of such Party, the word “sole” means “sole and absolute”.

1.9.6 **“Binding Upon Each and Every Person Claiming By, Through or Under Developer or any Successor Owner”.** When stated in this Agreement, the term “binding upon each and every Person claiming by, through or under Developer or any Successor Owner” shall mean and include with respect to the Affordable Project Provisions, Affordable Project, Affordable Project Improvements and Affordable Property only, each Person that is Affordable Housing Developer during any period in which such Person is the Ground Lessee under a Ground Lease and, for avoidance of doubt, includes each Successor Ground Lessee during any period in which it is the Ground Lessee under a Ground Lease.

2. Prohibition Against Transfers and Transfer of Control.

2.1 Importance of Developer Qualifications.

Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of development of the Market Rate Project and the Affordable Project and not for speculation in land holding. Developer recognizes and agrees that the qualifications and identity of Initial Developer, its Key Employees and its Controlling Person and the fact that TICAD, an entity wholly-owned indirectly by Initial Developer's Controlling Person, will act as Guarantor and Equity Investor, as well as the restrictions on Mortgages set forth in this Agreement are of particular concern to the City and community. Developer further acknowledges the importance of the development of the Property and Tustin Legacy to the general welfare of the community and to provide affordable housing in the City and that a Transfer of Control is for practical purposes a transfer of rights and obligations under this Agreement or the Property and for the foregoing reasons, agrees to the following restrictions on Transfer and Transfer of Control during the Term. Transfers and Transfers of Control.

2.2 Restrictions on Transfers and Transfers of Control and Releases Following Transfer.

2.2.1 For the reasons set forth in Section 2.1, Developer, on behalf of itself, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner (but specifically excluding any End Users), acknowledges and agrees that, prior to Recording by the City of the applicable Certificate of Compliance for the Parcel at issue, the restrictions on Transfer and Transfer of Control set forth in this Article 2 shall apply to Developer, the Property, the Market Rate Project Improvements, Developer's interest in the Affordable Project Improvements and any portion thereof or interest therein or in this Agreement, Developer's interest in the Lot 13 PDA, and, if then in effect, Developer's interest in the Ground Lease Option, the Approved Ground Lease and the Other Agreements ("**Transferable Interests**"), provided that following the Recording by the City of a Certificate of Compliance for any Parcel, the term "**Transferable Interests**" shall exclude Developer's interest in such Parcel and the Improvements constructed thereon and the restrictions on Transfer and Transfer of Control set forth in this Article 2 shall be of no force or effect with respect to such Parcel.

2.2.1.1 Except for Permitted Transfers described in Sections 2.2.2.2 through 2.2.2.6, a Lot 13 Transfer pursuant to Section 4.7, one or more Leasehold Mortgages securing Construction Loans for the construction of the Affordable Project Improvements secured by leasehold interests in Lot 13 or any Parcel thereof authorized pursuant to Article 17, until issuance of a Final Certificate of Compliance, Developer shall not Transfer less than the entirety of the Transferable Interests and any Transfer resulting in a division of ownership with respect to the Transferable Interests shall be void and of no force or effect.

2.2.1.2 For avoidance of doubt, nothing in Sections 2.2.2 through 2.2.5 shall govern or apply to the Lot 13 Transfer (which shall be governed exclusively by the provisions of Section 4.7) or to Transfers or Transfer of Control by Affordable Housing Developer of Affordable Housing Developer or Affordable Housing Developer's interests in the Lot 13 PDA,

the Ground Lease Option or the Approved Ground Lease, which shall be governed by Sections 1.4.3, 4.7 and 1.2.3 and Article 17, the provisions of the Lot 13 PDA, the Ground Lease Option and the Approved Ground Lease, and with respect to Mortgages, Article 17. Subject to the limitations set forth in Sections 1.4.3, 4.7 and 13.2.3 and Article 17, no Transfer of any portion of Affordable Housing Developer's interest in the Lot 13 Property, the Lot 13 PDA, the Ground Lease Option or the Approved Ground Lease that is permitted pursuant to the Lot 13 PDA, the Ground Lease Option or the Approved Ground Lease shall be prohibited by this Agreement.

2.2.2 **Permitted Transfers**. The following Transfers are "Permitted Transfers" and shall not be subject to the City's prior written consent or otherwise subject to the requirements of Section 2.2.3:

2.2.2.1 A Transfer by Responsible Developer to a Developer Affiliate of the entirety of Developer's interest in the Transferable Interests; provided that:

(i) unless and until Responsible Developer is released from such obligations pursuant to Article 9 or Section 16.6, the City shall be entitled to look to both the Transferee and the Responsible Developer notwithstanding such Transfer, and the Responsible Developer shall remain fully liable under and shall not be released from this Agreement and shall cause its Developer Affiliate to fully comply with this Agreement as though there had not been a Transfer;

(ii) there shall be no Transfer of Control and the Controlling Person of the Responsible Developer shall be, directly or indirectly, the Controlling Person of the Developer Affiliate that is the Transferee;

(iii) neither Transferor nor the then Responsible Developer shall be in Potential Default or Material Default under this Agreement at the Transfer Date;

(iv) the Responsible Developer or the Responsible Developer's Controlling Person shall provide the City with written notice of such transaction not less than thirty (30) Business Days prior to the proposed Transfer; and

(v) no later than the Transfer Date, all of the applicable conditions set forth in Sections 2.2.4, 4.6 and 8.9 shall have been satisfied.

2.2.2.2 Any Transfer by Developer of portions of the Property to the City and/or grants of easements affecting the Real Property to the City, to any public or quasi-public entity or to any utility, or to any Successor Owner or Affordable Housing Developer for the benefit of any portion of the Property, as necessary or desirable for the development or operation thereof.

2.2.2.3 Any temporary license or other temporary grant of access rights by Developer to any portion of the Property to the City and/or to any other third party or to

any Successor Owner or Affordable Housing Developer, as necessary or desirable for the development or operation thereof.

2.2.2.4 Any lease of Residential Unit within the Market Rate Project and/or the Affordable Project.

2.2.2.5 Any property management agreement for the management of the Buildings and Improvements on a Parcel comprising a portion of the Market Rate Project and/or the Affordable Project; provided any such property management agreement is subject to the requirements of the Other Agreements.

2.2.3 Provisions Applicable to Transfers and Transfers of Control Other than Permitted Transfers. Except as set forth in Section 2.2.2, Article 13 or Article 17, prior to Recording by the City of the Final Certificate of Compliance, Developer shall comply with the requirements of this Section 2.2.3 and Sections 2.2.4, 4.6 and 8.9 as a condition to each Transfer or Transfer of Control of the Property and shall obtain the prior written consent of the City thereto, which consent shall be granted or denied in the City's sole discretion. The City's right of consent shall include the right of the City to approve the Transferee and the Controlling Person of Transferee with respect to a Transfer, and the Controlling Person of Developer, in the case of a Transfer of Control of Developer, and the right to approve any proposed replacement Guarantor as further described in Section 8.9.2 and any replacement Equity Investor as further described in Section 8.10. In order to provide the City with information necessary to inform its right to consent as described in this Section 2.2.3, Developer shall provide to the City at least thirty (30) Business Days prior to the date of any proposed Transfer or Transfer of Control:

2.2.3.1 the name(s) of the proposed Transferee and its Key Employees and principals and the new Controlling Person, if applicable; the biographies of the principals and Key Employees of the proposed Transferee and the names and biographies of any proposed equity investor or guarantor;

2.2.3.2 all of the material proposed terms of the Transfer or Transfer of Control and draft documents in substantially the form and substance of the final forms of the documents described in Section 2.2.4 and, if applicable, red-lined to show changes from any prior drafts reviewed by the City;

2.2.3.3 if the Guaranty is not then in effect or will be replaced, current audited financial statements to the extent available without any additional cost to such Transferee or Person and current Certified Financial Statements of the proposed Transferee and new Controlling Person for each Transfer and of the new Controlling Person for each Transfer of Control;

2.2.3.4 a certificate of the proposed Transferee and new Controlling Person for each Transfer and of the new Controlling Person for each Transfer of Control describing other similar residential real estate projects developed and leased by, or sold by the proposed Transferee in California over the preceding five (5) year period, the dates of involvement by the proposed Transferee and new Controlling Person with such projects and the success of the projects,

such certificate to be made by the manager, president or other Person with appropriate authority from the proposed Transferee and/or Controlling Person, as applicable, to do so;

2.2.3.5 an Updated Market Rate Project Financing Plan and, if prior to Lot 13 Transfers of all of Lot 13, an Updated Affordable Project Financing Plan, in each case meeting the requirements of Section 4.6.1 prepared by Transferee (provided that approval by the City of any Transfer shall not negate the right of the City to review and approve an Updated Market Rate Project Financing Plan and Updated Affordable Project Financing Plan as a condition to Close of Escrow).

2.2.3.6 with respect to each Transfer of Control, provide evidence to the City that no Mortgage other than a Leasehold Mortgage will be required with respect to the Property or the Project and either (i) (A) each previously approved Evidence of Equity, Equity Commitment and Guaranty remains in full force and effect (in which case the City's rights of review shall be as set forth in Section 4.6.1.4), (B) there are no defaults thereunder, (C) there have been no modifications thereto other than modifications that have been consented to by the City in its sole discretion, or if modified that the modifications have been reviewed and approved by the City in accordance with Section 4.6.1.4, and (D) that the same will remain in full force and effect following such Transfer of Control, or (ii) if the Evidence of Equity will be replaced, if the Equity Investor is proposed to be replaced, information required for the City to approve the Equity Investor as set forth in Section 8.10 and if the Guarantor is proposed to be replaced, the information required for the City to approve the proposed Guarantor as set forth in Section 8.9.2 and such modifications to the form of the Equity Commitment and/or Evidence of Equity and Guaranty as may be required by the City in its sole discretion;

2.2.3.7 if City has not elected the TUSD Prepayment Alternative and an assignment of the TUSD Assignment is then in effect, an assignment of the same to the Transferee, or if an assignment of such TUSD Assignment is not authorized by Tustin Unified School District ("TUSD") and a new assignment of the TUSD Agreement is required, a new TUSD Assignment executed by TUSD, Transferee and Transferor, which shall be identical (other than as to names of the parties and dates) to the TUSD Assignment unless otherwise agreed by the City and Transferee, each in its sole discretion.

2.2.3.8 such other relevant information as the City may request in its reasonable discretion in connection with its consent rights under this Agreement and, following the Close of Escrow, Section 8.6, including evidence of the financial capacity of Transferee to indemnify the City Indemnified Parties as set forth in this Agreement which may include evidence that the proposed Transferee, proposed new Controlling Person, proposed Equity Investor and proposed Guarantor each has sufficient financial capacity to perform, fund or guaranty, as applicable the obligations of Developer under this Agreement and the Other Agreements, without utilizing a Mortgage (except as permitted by Article 17) and to meet the other requirements of this Agreement and the Other Agreements.

2.2.4 **Transfer Date Deliverables.** No later than the Transfer Date:

2.2.4.1 With respect to each Transfer, Transferor and Transferee shall execute and deliver to each other and the City and shall have acknowledged and Recorded, an assignment and assumption agreement in substantially the form and substance of the instrument for the Transferable Interests attached hereto as Attachment 17A (“**Assignment Agreement**”).

2.2.4.2 Developer shall deliver to the City a certificate executed by the chief financial officer or other appropriate authorized officer of (i) if a Transfer or Control, in substantially the form and substance of the Developer Date Down and Reaffirmation Certificate attached as Attachment 19B (“**Developer Date Down and Reaffirmation Certificate**”) or (ii) if a Transfer, substantially in the form and substance of the certificate attached as Attachment 17B (“**Transferee Certificate**”), in either case dated as of the Transfer Date;

2.2.4.3 If the Equity Commitment will remain in effect and Transferee is utilizing an Approved Equity Investor that has previously delivered an Equity Investor Original Certificate, a certificate in substantially the form and substance of the Equity Investor Date Down Certificate attached as Attachment 15B (“**Equity Investor Date Down Certificate**”) otherwise, an Equity Investor Original Certificate by an Approved Equity Investor (provided that the Equity Investor is approved by the City prior to the Transfer pursuant to Section 8.10), in each case certified by the chief financial officer or other appropriate authorized officer of such Approved Equity Investor, and, if revised, Evidence of Equity and/or Equity Commitment, in either case dated as of the Closing Date;

2.2.4.4 For Transfer following the Close of Escrow, if the existing Guaranty remains in effect, Developer shall cause delivery from the Guarantor of executed originals of a Reaffirmation of Guaranty, a Guarantor Date Down Certificate in substantially the form and substance of the Guarantor Date Down Certificate attached as Attachment 14C (“**Guarantor Date Down Certificate**”) and a Reaffirmation Legal Opinion or, if a new Guarantor is proposed, Developer shall cause such new Guarantor (provided that the proposed Guarantor and form of replacement Guaranty is approved by the City prior to the Transfer pursuant to Section 8.9.2) to deliver to the City a Guaranty executed by Guarantor, a declaration certified by the chief financial officer or other appropriate authorized officer of the applicable Guarantor substantially in the form and substance of the certificate attached as Attachment 14B (“**Guarantor Original Certificate**”); and a legal opinion substantially in the form and substance of the Guaranty Legal Opinion attached hereto as Attachment 14D executed by legal counsel to the Guarantor as the same may be required to be modified to reflect the state of formation of Guarantor (“**Guaranty Legal Opinion**”); and

2.2.4.5 all of the applicable conditions set forth in Sections 2.2.2 or 2.2.3 as applicable shall have been satisfied.

2.2.5 **Effect of Transfer; Release of Transferor.**

2.2.5.1 Notwithstanding any Transfer or Transfer of Control, unless specifically released by the City in writing as set forth in Section 2.2.5.2 or otherwise released by

the City (in its sole discretion) in writing, Initial Developer and each subsequent Developer shall remain fully liable for the obligations of Developer under this Agreement and the Other Agreements following a Transfer, subject to the effects of Recording by the City of a Certificate of Compliance as provided in Article 9.

2.2.5.2 Upon a Transfer (other than a Permitted Transfer) of all of the Transferable Interests to a Transferee approved by the City pursuant to Section 2.2.3 and with the satisfaction of all of the conditions to such Transfer set forth in Sections 2.2.3 and 2.2.4 and the assumption in writing by Transferee of all obligations under this Agreement and the Other Agreements pursuant to an Assignment Agreement executed and acknowledged by Transferor and Transferee, the City shall execute a consent to assignment and release of Transferor substantially in the form and substance of the consent attached to the Assignment Agreement and, thereupon, Transferor shall be released from the obligations of Developer under this Agreement and the Other Agreements arising after the date of such Transfer; provided, however, that Transferor shall not be released with respect to (w) matters or circumstances (including any payment obligations) which relate to or Accrued during the period that such Transferor was the Developer hereunder (or during such longer period for which such Transferor is liable hereunder), (x) the releases set forth in Section 4.5.3 or in the Other Agreements, and (y) Developer's indemnity obligations under this Agreement or the Other Agreements as and to the extent set forth in this Agreement.

2.2.6 **Restrictions on Mortgages, Sale Leasebacks and Mezzanine Financing.** Except as set forth in Article 17 with respect to certain Mortgages secured by the leasehold interest of Affordable Housing Developer in the Affordable Project, neither Developer nor Affordable Developer shall encumber the Property with any Mortgage without the prior written consent of the City as set forth in Section 2.2.1, which approval may be granted or withheld in the sole discretion of the City. In addition, Developer shall not enter into nor permit Affordable Housing Developer to enter into or convey or otherwise assign the Property or any portion thereof to a third party for purposes of a sale-leaseback transaction or utilize Mezzanine Financing. The City shall have no right to approve or disapprove a Mortgage for any Parcel and/or, with respect to Lot 13, a Mortgage secured by the leasehold interest of Affordable Housing Developer in the Affordable Project after the Recording by the City of a Certificate of Compliance for such Parcel.

2.2.7 **Bankruptcy.** The following shall be considered Transfers or Transfers of Control which are prohibited without consent from the City, which may be granted or withheld in the City's sole discretion (herein, a "**Developer Insolvency Event**"):

2.2.7.1 If Developer is or becomes bankrupt or insolvent or if any involuntary proceeding is brought against Developer (unless, in the case of a petition filed against Developer, the same is dismissed within ninety (90) calendar days), or Developer makes an assignment for the benefit of creditors, or institutes a proceeding under or otherwise seeks the protection of federal or State bankruptcy or insolvency laws, including the filing of a petition for voluntary bankruptcy or instituting a proceeding for reorganization or arrangement;

2.2.7.2 If a writ of attachment or execution is levied on this Agreement or on the Development Parcels, or on any portion thereof, where such writ is not discharged within ninety (90) calendar days; or

2.2.7.3 If, in any proceeding or action in which Developer is a party, a receiver is appointed with authority to take possession of the Development Parcels, or any portion thereof, where possession is not restored to Developer within ninety (90) calendar days.

2.2.8 **Restrictions on Sale of Units or Condominium Development; Rental of Residential Units.** The Real Property is being developed with the purpose of renting Residential Units and not with the intent to sell individual residential units or with the intent to Transfer the Common Area or the Common Area Improvements to a property management association for the management of a common area development on the Real Property and the general prohibition against Transfer outlined in this Agreement shall be applicable to the sale of individual Units and the Transfer to any entity of the Common Area and Common Area Improvements separately.

2.2.9 **City Estoppel.** From time to time (but in no event more often than semi-annually or in connection with a Transfer or Transfer of Control proposed to or consented to by the City in accordance with this Agreement or a Lot 13 Transfer) and within twenty (20) calendar days of the City's receipt of a written request therefor, the City shall execute and deliver to Developer and any proposed or actual Transferee (and in connection with the Lot 13 Transfer or at the inception of a Permitted Leasehold Mortgage, to the Affordable Housing Developer, Bond Issuer, TCAC, CDLAC, Qualified Tax Credit Investor and any other Permitted Leasehold Mortgage), a City Estoppel, which for a Transfer or Transfer of Control other than a Lot 13 Transfer shall be substantially in the form and substance of the City Estoppel attached hereto as Attachment 5A and for a Lot 13 Transfer shall be substantially in the form and substance of the City Estoppel attached hereto as Attachment 5B (each a "City Estoppel") but with such factual modifications thereto as necessary to ensure the accurateness of the statements made therein at such time.

2.2.10 **City Costs.** Developer shall promptly pay to the City all of the City's actual out of pocket third party expenses, including legal fees, and staff costs incurred with respect to the review, consideration, analysis and response to any of the matters required to be reviewed or consented to by the City pursuant to Sections 2.2, 4.6, 4.7 and Article 17 including with respect to (i) any request for consent or approval of a Guarantor, Equity Investor, Affordable Housing Developer, Transferee, Transfer or Transfer of Control, and (ii) review, consideration, preparation and delivery of each City Estoppel.

2.3 Effect of and Remedies for Improper Transfers or Transfers of Control.

Without limiting the generality of the foregoing, a failure (i) by Developer to comply with the requirements of this Article 2 with respect to any Transfer or Transfer of Control or (ii) by any Transferee to execute the Assignment Agreement required by Section 2.2.2.1 or 2.2.4.1, as the case may be, or to execute and deliver, or cause a Transferee, its Approved Equity Investor, if applicable, and its Guarantor to execute and deliver each of the certificates and other documents required in connection with such Transfer, shall in each case be a Material Default under this

Agreement, subject to the provisions of Section 14.2.3, but with no extension on account of Force Majeure Delay and, in such event, the City shall have all remedies available to it at law and in equity, including those specified in this Agreement and specifically including the right to terminate this Agreement or following Close of Escrow, to exercise the Right of Repurchase and/or the Right of Reversion, as applicable, in accordance with Article 16.

2.4 Changes.

Developer shall promptly notify the City in the event that any of the following Persons cease to be involved with the development of the Market Rate Project or the Affordable Project, as applicable: (i) any of the Key Employees, (ii) AO-Architects Orange, the architect for the Market Rate Project and the Affordable Project, (iii) EPTDESIGN, the landscape architect for the Market Rate Project and Affordable Project, or (iv) Fuscoe Engineering, the engineer for the Market Rate Project and Affordable Project. Following any Transfer or Transfer of Control, Transferee shall provide the City with a list of its Key Employees and the City shall have the right to notify Developer if it considers any of such individuals unsatisfactory, in which event such individual(s) shall be removed as Key Employees.

2.5 Affordable Housing Credits.

Any affordable housing credits issued or made available, attributable to or arising from the DDA, the DA or the Entitlements shall remain with the Project and the Real Property and shall not be Transferred to any other property or development. This Section is not meant to address any matters related to the allocation and receipt of federal and/or state low income housing tax credits and/or solar energy credits.

3. Representations and Warranties.

3.1 Developer's Representations and Warranties.

As an inducement to the City to enter into to enter into and perform its obligations under this Agreement, Developer represents and warrants to the City as follows as of the Effective Date:

3.1.1 Developer has the necessary expertise, experience, financial experience, financial capacity, qualifications and legal status necessary to perform as Developer pursuant to this Agreement and to construct and Complete the Market Rate Project as contemplated by this Agreement, and, in the event of a Transfer of the obligations with respect to development of the Affordable Project, to oversee the development of such units and to assure that the Affordable Housing Developer has the necessary expertise, experience and financial capacity to undertake development of the Affordable Project. Without limiting the foregoing, Developer (i) is and has determined that Affordable Housing Developer is experienced in the development, management, and sale of multifamily residential rental projects of the size and type described in this Agreement and (ii) understand the process and requirements associated with projects such as the Market Rate Project and the Affordable Project.

3.1.2 Except as set forth in this Agreement with respect to financing for construction of the Affordable Project, Developer's purchase and development of the Property is subject to no financing contingency whatsoever with respect to either private or public financing and that its acquisition of third-party financing for the Market Rate Project and/or the Affordable Project is not a condition precedent to Developer's obligation to purchase the Property or of its ability to fund construction of the Market Rate Project and/or the Affordable Project.

3.1.3 The acquisition of the Property and other undertakings of Developer pursuant to this Agreement are for the purpose of timely development of the Market Rate Project and the Affordable Project upon the Development Parcels in accordance with the Schedule of Performance attached to this Agreement and not for speculation or land holding.

3.1.4 Developer is a limited liability company duly organized, and validly existing and in good standing under the laws of the State of Delaware, is duly qualified to do business and in good standing in California and in each other jurisdiction where the operation of its business or its ownership of property or the performance of Developer's obligations under this Agreement make such qualification necessary.

3.1.5 Subject to all of the conditions set forth in this Agreement for the benefit of Developer, Developer has (or will have prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Agreement or any Other Agreements) all requisite power and authority required to enter into this Agreement and the instruments referenced in this Agreement, to consummate the transaction contemplated hereby and to take any steps contemplated thereby or hereby, and to perform its obligations under this Agreement or the other instruments referenced in this Agreement, to which Developer is or shall be a party and the consummation of the transactions contemplated in this Agreement.

3.1.6 Developer has obtained (or will have obtained prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Agreement or any Other Agreements) all required consents in connection with entering into this Agreement and the instruments and documents referenced in this Agreement to which Developer is or shall be a party and the consummation of the transactions contemplated hereby.

3.1.7 The individuals executing this Agreement and the individuals that will execute the instruments referenced in this Agreement on behalf of Developer have, or will have upon execution thereof, the legal power, right and actual authority to bind Developer to the terms and conditions hereof and thereof.

3.1.8 This Agreement has been duly authorized, executed and delivered by Developer and all documents required in this Agreement to be executed by Developer pursuant to this Agreement shall be, at such time as they are required to be executed by Developer, duly authorized, executed and delivered by Developer and are or shall be, at such time as the same are required to be executed pursuant to this Agreement, valid, legally binding obligations of and

enforceable against Developer in accordance with their terms, except as enforceability may be limited by bankruptcy laws or other similar laws affecting creditors' rights.

3.1.9 Neither the execution nor delivery of this Agreement or the documents referenced in this Agreement, nor the incurring of the obligations set forth in this Agreement and the certificates, declarations and other documents referenced in this Agreement, nor the consummation of the transactions contemplated in this Agreement, nor compliance with the terms of this Agreement and the documents referenced in this Agreement, will violate any provision of law or any order of any court or Governmental Authority to which Developer is subject or conflict with or result in the breach of any terms, conditions, or provisions of, or constitute a default under any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Developer, one of its owners, members or partners are a party and which affect the Property or the transactions contemplated by this Agreement.

3.1.10 No attachments, execution proceedings, assignments of benefit to creditors, bankruptcy, reorganization or other insolvency proceedings are pending or, to the best of Developer's Knowledge, threatened against Developer, or any of its owners, members or partners.

3.1.11 Except for those representations and warranties of the City expressly set forth in Sections 3.3 and 18.12.2, Developer is relying solely upon its own inspections and investigations in proceeding with this Agreement and the transactions contemplated in this Agreement, and is not relying on the accuracy or reliability of any information provided to it by the City, on any oral or written representation or on any facts or conclusions of law made by the City, or any of its elected and appointed officials, officials, employees, agents, attorneys or representatives made in connection with this Agreement. In making such investigation and assessment, Developer has been provided access to any persons, records or other sources of information which it has deemed appropriate to review and it has thereafter completed such investigation and assessment. Without limiting the generality of the foregoing, Developer acknowledges that the City has not made and will not make any representations or warranties concerning the condition of the Development Parcels, the compliance or non-compliance of the Development Parcels or any portion thereof with Environmental Laws or the existence or non-existence of Hazardous Materials in relation to the Development Parcels or any portion thereof or otherwise, except for those representations and warranties of the City set forth in Sections 3.3 and 18.12.2.

3.1.12 Except as described on Attachment 4, there are no adverse conditions or circumstances existing and no litigation or governmental action either pending or, to the knowledge of any of the Developer Representatives, threatened, to which Developer or any Controlling Person of Developer is or may be a party or to which the Development Parcels are or may become subject, which would reasonably be expected to prevent or materially impair Developer's ability to carry out its obligations under this Agreement or to develop the Development Parcels and the Market Rate Project and the Affordable Project or carry out its other

obligations under this Agreement, and upon Close of Escrow, the Other Agreements as contemplated by the terms of this Agreement.

3.1.13 Except as set forth in this Agreement, the Development Agreement and the ENA, Developer has not paid or given, and will not pay or give, any third Person any money or other consideration for obtaining this Agreement, other than the normal cost of conducting business and cost of professional services such as architects, engineers and attorneys.

3.1.14 All reports, documents, instruments, information and forms of evidence delivered by Developer to the City concerning or related to this Agreement and the transactions contemplated hereby are, to Developer's Knowledge, accurate and correct and sufficiently complete at the time of submission to give the City true and accurate knowledge of the subject matter, and do not contain any material misrepresentation or omission.

3.1.15 As of the Close of Escrow, Developer will have the equity capital and financial capacity required for Completion of the Market Rate Project without requirement of third-party financing.

3.1.16 Developer does not have any contingent obligations or any other contracts the performance or nonperformance of which could adversely affect the ability of Developer to fund the Market Rate Project or the Affordable Project or to carry out its obligations under this Agreement. Developer has not and shall not undertake such additional projects as could reasonably be expected to jeopardize the sufficiency of such equity, capital and firm and binding commitments for the purposes expressed in the preceding sentence.

3.1.17 Developer is capable of acquiring the Property and developing the Market Rate Project and the Affordable Project without a capital partner or financing from a bank group or other institutional lender, and without utilizing the Development Parcels and/or the Market Rate Project and/or the Affordable Project or the Real Property as collateral, other than as set forth in this Agreement with respect to financing for the Affordable Project.

Subject to Section 7.2.2.2(xii), Developer's representations and warranties set forth in this Section 3.1 shall be deemed to be restated at the Close of Escrow and shall survive the Close of Escrow until the earlier to occur of the following: (i) termination of this Agreement or (ii) Recording by the City of a Final Certificate of Compliance. As used in Sections 3.1 and 3.2, "**Developer's Knowledge**" and similar phrases means the actual present knowledge of the Developer Knowledge Parties as of the Effective Date, in each case without any duty of inquiry; provided, however, that in the event any of the Developer Knowledge Parties are unavailable at the time these representations and warranties set forth in this Section 3.1 are restated at the Close of Escrow, Developer may specifically identify different Developer's Knowledge Parties, subject to the City's reasonable approval. Notwithstanding anything to the contrary contained in this Agreement, (A) none of the Developer Knowledge Parties shall be personally liable for any inaccuracy or breach by Developer of the representations and warranties contained in this Section 3.1 or elsewhere in this Agreement and/or any of the Other Agreements, and (B) the City shall not be entitled to make a claim for a breach of Developer's representations and warranties if Developer had provided written notice to the City indicating that the applicable representation and warranty

was incorrect prior to (1) the execution of this Agreement and the City proceeded with the execution of this Agreement, or (2) the Close of Escrow and the City proceeded to Closing in spite of such inaccuracy.

3.2 Developer Covenants Regarding Representations and Warranties.

Developer shall promptly advise the City in writing if any of the Developer Knowledge Parties becomes aware (without any duty of inquiry) that any representation or warranty made by Developer in Section 3.1 or in any Assignment Agreement is or becomes untrue in any material respect prior to the Close of Escrow.

3.3 City Representations and Warranties.

As an inducement to Developer to enter into and perform its obligations under this Agreement, the City represents and warrants to Developer as follows:

3.3.1 The City is a municipal corporation incorporated within and existing pursuant to the laws of the State.

3.3.2 Subject to all of the conditions set forth in this Agreement for the benefit of the City, the City has (or will have prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Agreement or any Other Agreements) all requisite power and authority required to enter into this Agreement and the instruments referenced in this Agreement, to consummate the transaction contemplated hereby and to take any steps contemplated thereby or hereby, and to perform its obligations under this Agreement and the instruments referenced in this Agreement.

3.3.3 The City has obtained (or will have obtained prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Agreement or any Other Agreements) all required consents in connection with entering into this Agreement and the instruments and documents referenced in this Agreement to which the City is or shall be a party and the consummation of the transactions contemplated in this Agreement.

3.3.4 The individuals executing this Agreement and the individuals that will execute the instruments referenced in this Agreement on behalf of the City have, or will have upon execution thereof, the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

3.3.5 This Agreement has been duly authorized, executed and delivered by the City and all documents required in this Agreement to be executed by the City pursuant to this Agreement shall be, at such time as they are required to be executed by the City, duly authorized, executed and delivered by the City and are or shall be, at such time as the same are required to be executed under this Agreement, valid, legally binding obligations of and enforceable against the City in accordance with their terms, except as enforceability may be limited by bankruptcy laws or other similar laws affecting creditors' rights.

3.3.6 Neither the execution or delivery of this Agreement or the documents referenced in this Agreement, nor the incurring of the obligations set forth in this Agreement, and the certificates, declarations and other documents referenced in this Agreement, nor the consummation of the transactions contemplated in this Agreement, nor compliance with the terms of this Agreement and the documents referenced in this Agreement, will violate any provision of law, any order of any court or Governmental Authority to which the City is subject or conflict with or result in the breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which the City is a party and which affect the Property, the ability of Developer to develop the Property, the Market Rate Project or the Affordable Project or to carry out the transactions contemplated by this Agreement. Notwithstanding the foregoing, development of the Property is subject to and may be limited based upon the encumbrances listed on Attachment 4.

3.3.7 Except as described in Attachment 4, there is no litigation or governmental action either pending or, to the knowledge of the City Representatives, threatened, to which the City is or may be made a party, or to which the Development Parcels are or may become subject, which has not been disclosed in the documents submitted to Developer and which would reasonably be expected to prevent or materially impair Developer's ability to develop the Property, the Market Rate Project and the Affordable Project, or to carry out its obligations under this Agreement or, and upon the Close of Escrow, the Other Agreements, as contemplated by the terms of this Agreement.

Subject to Section 7.2.1.1(xi), the City's representations and warranties set forth in this Section 3.3 shall be deemed to be restated at the Close of Escrow and shall survive the Close of Escrow until the earlier to occur of the following: (i) termination of this Agreement or (ii) Recording by the City of the Final Certificate of Compliance. As used in Sections 3.3 and 3.4, "**City's Knowledge**" and similar phrases means the actual present knowledge of Aldo E. Schindler (or, if he is not then City Manager, the then-current City Manager), David Kendig (or, if he is not then City Attorney, the then-current City Attorney) and the then-current Deputy City Manager – Real Property, and if then working on the Project for the City, Ryan Swiontek, Ken Piguee, Jerry Craig and Minoo Ashabi (the "**City Representatives**") without any duty of inquiry. Notwithstanding anything to the contrary contained in this Agreement, (A) none of the City Representatives shall be personally liable for any inaccuracy or breach by the City of the representations and warranties contained in Section 3.3 or elsewhere in this Agreement or in any of the Other Agreements, and (B) neither Developer nor any other Person shall be entitled to make a claim for a breach of the City's representations and warranties if the City had disclosed in writing facts to Developer indicating that the applicable representation and warranty was incorrect prior to (1) the execution of this Agreement and Developer proceeded with the execution of this Agreement, or (2) the Close of Escrow and Developer proceeded with the Close of Escrow, in either case in spite of such inaccuracy.

3.4 City Covenants Regarding Representations and Warranties.

City shall promptly advise Developer in writing if any of the City Representatives becomes aware (without any duty of inquiry) that any representation or warranty made by the City in Section 3.3 is or becomes untrue in any material respect prior to the Close of Escrow.

4. Conveyance of Property from City to Developer.

4.1 Conveyance of Property.

4.1.1 **Definition of Property.** Subject to the terms and conditions set forth in this Agreement, including the satisfaction of the Closing Conditions set forth in Article 7 in this Agreement, the City agrees to sell to Developer and Developer agrees to purchase the Real Property from the City, together with (i) all existing improvements, if any, located on the Real Property as of the Effective Date; (ii) all appurtenances pertaining to the Real Property or such improvements; (iii) all permits, licenses, approvals and authorizations issued prior to the Close of Escrow by any Governmental Authority for development of the Project; and (iv) the right to construct a maximum of 1,336 Residential Units (consisting of 708 base units and 628 density bonus units) on the Real Property as further described in Section 4.1.2, and (v) all of City's right, title and interest in, to and arising out of the Intangible Property (excluding the matters described in Section 4.1.2, collectively, "**Property**"), subject to all Permitted Exceptions; provided, however that City's assignment of its rights to enforce the Navy Responsibilities against the Navy shall be made to Developer on a non-exclusive basis and the City and Developer may each enforce the Navy Responsibilities as their interests may appear. Notwithstanding the foregoing, nothing set forth in this Agreement shall preclude the City or any insurer, on a non-exclusive basis, from enforcing the Navy Responsibilities against the Navy with respect to Tustin Legacy other than the Property or, with respect to the Property for matters Accruing prior to Close of Escrow. At the Close of Escrow, the City shall convey to Developer by Quitclaim Deed fee title to the Property.

4.1.2 **Reservation of Development Rights by City.** The City hereby reserves from the definition of Property and shall reserve from the conveyance of the Property in the Quitclaim Deed all those excess development rights remaining within Specific Plan Neighborhood D, Planning Areas 8, 13 and 14 after deducting from the number of Residential Units authorized by the Specific Plan the lesser of (i) 1,336 Residential Units or (ii) the number of Residential Units authorized by the Approved Plans and actually constructed by Developer on the Real Property prior to Recording by the City of the Final Certificate of Compliance provided that the total number of Lower Income Units constructed on the Lot 13 portion of the Real Property shall not be less than twenty five percent (25%) of the total number of Residential Units constructed on the Real Property so long as the Affordable Housing Declaration remains in effect. For avoidance of doubt, except to the extent any of such rights were conveyed by the City to third parties prior to the Quitclaim Deed Effective Date, the City shall retain all Residential Units and development rights associated with Specific Plan Neighborhood D, Planning Areas 8, 13 and 14 in excess of the number of Residential Units shown on the Approved Plans for the Project and constructed prior to Recording by the City of the Final Certificate of Compliance, and the units and development rights retained by the City shall be freely transferable by the City throughout Tustin Legacy.

4.2 Purchase Price and Project Fair Share Contribution.

4.2.1 **Purchase Price and Project Fair Share Contribution.** As consideration for the sale of the Property by the City to Developer, Developer shall pay to the City a total purchase price in the sum of Forty-Two Million One Hundred Thousand and 00/100 Dollars (\$42,100,000.00) (“**Purchase Price**”). The City and Developer acknowledge that the Purchase Price is equal to or greater than the fair market value of the Development Parcels taking into account the various factors affecting the same, including the Project Fair Share Contribution, and those items described in Sections 6.2, 8.7.3 and 8.7.5.

4.2.2 **Project Fair Share Contribution.** In addition to and separate from the Purchase Price, at the Close of Escrow Developer shall pay to the City the Project’s fair share of the costs of the Tustin Legacy Backbone Infrastructure Program in effect at the Closing Date (“**Project Fair Share Contribution**”). The Project Fair Share Contribution to be paid by Developer shall be in the total amount of Nine Million Five Hundred Eighty Four Thousand Seven Hundred Fourteen Dollars and Fifty-Three Cents (\$9,584,714.53) which is equal to a rate of Four Hundred Ninety-Three Thousand Four Hundred Forty-Seven Dollars (\$493,447.00) per acre of the Real Property.

4.3 Payment of Purchase Price.

4.3.1 **Purchase Price Deposit.** As a condition to execution of this Agreement by the City, (i) Developer shall deliver an earnest money deposit, of Five Million Dollars (\$5,000,000.00) “**Original Purchase Price Deposit**” and as the same may be increased by addition of the Additional Purchase Price Deposit, the “**Purchase Price Deposit**”) to Escrow Holder not later than five (5) Business Days after approval by the City Council of this Agreement and (ii) Developer and the City shall have agreed upon and memorialized in a written agreement executed by each of them, the Approved Ground Lease Form, and the form of Lot 13 PDA and Ground Lease Option. The Original Purchase Price Deposit shall be held by Escrow Holder in Escrow. Developer may elect to extend the Closing Date for the period described in Section 7.1.2 by delivering to Escrow, for the benefit of the City, concurrently with its extension notice, an additional earnest money deposit of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (“**Additional Purchase Price Deposit**”). The extension shall not be deemed to have been granted until the Additional Purchase Price Deposit is received by Escrow Holder. The Purchase Price Deposit shall constitute security to the City for the Close of Escrow and shall be credited against the Purchase Price at the Close of Escrow. If the Close of Escrow does not occur, the Purchase Price Deposit shall be disbursed in accordance with Article 15.

4.3.2 **Application of Purchase Price Deposit.** The Purchase Price Deposit shall be nonrefundable except as otherwise expressly provided in Article 15 and shall be applied to the applicable Purchase Price as set forth in Section 4.3.3. The Original Purchase Price Deposit shall be returned to Developer in the event of a Deposit Return Event or shall be liquidated damages to the City in the event of certain Defaults by Developer as further set forth in Article 15. The Additional Purchase Price Deposit, when deposited in Escrow, shall be retained by the City in all events other than as provided in Section 15.3.1(iv)(B) and shall be applicable to the Purchase

Price.

4.3.3 **Payment of the Balance of Purchase Price and Other Amounts Due at the Close of Escrow.** No later than one (1) Business Day prior to the Close of Escrow, Developer shall deposit the following amounts with Escrow Holder the “Closing Payment”, which shall be equal to (i) the Purchase Price *less* the Purchase Price Deposit (*plus* accrued interest, if any on such deposit), *plus* (ii) the Project Fair Share Contribution, *plus* (iii) if the City elects, in its sole discretion the TUSD Prepayment Alternative pursuant to Section 8.7.5.3, the Developer TUSD Lien Release Payment, *plus* (iv) such additional amount as is necessary to cover all outstanding DDA Transaction Expenses incurred by the City through the Close of Escrow and all closing costs to be paid by Developer pursuant to Sections 7.4.1.2 and 7.4.1.3 and Section 7.4.4, as adjusted for any net credits or debits to the City for closing costs and/or prorations in accordance with Sections 7.4.1.1, 7.4.1.3 and 7.4.4.

4.3.4 **Payments in Immediately Available Funds.** Funds delivered to the City or Escrow Holder under this Agreement shall be in the form of cash, wire transfer (to such account of the City or Escrow Holder as Escrow Holder notifies Developer in writing), or by cashier’s check drawn on good and sufficient funds on a federally chartered bank and made payable to the order of City or Escrow Holder, as the case may be.

4.4 Escrow and Joint Escrow Instructions.

Developer shall have delivered to the City, prior to the City Council hearing at which this Agreement is considered for adoption, three (3) fully executed counterparts of this Agreement. Within five (5) Business Days following City Council approval of this Agreement, Developer shall: (i) deliver the Original Purchase Price Deposit to Escrow Holder, and (ii) deliver to the City (A) the declarations and information required by Section 4.6.2.1 and such other information as City may reasonably request as further described in Section 4.6, (B) the City Costs Deposit and (C) the insurance binder(s) required by Section 11.2.3 with respect to coverage required by Sections 11.1.1 and 11.1.2. Upon delivery by Developer of the items described in clauses (i) and (ii)(A) through (C) of this Section 4.4, the City shall deliver to Escrow Holder three (3) originals of this Agreement which have been executed in counterparts by the City and Developer and the “Opening of Escrow” shall be the date that Escrow Holder receives such executed originals from the City. Escrow Holder shall promptly sign the joinders and transmit one (1) original of this Agreement to City and one (1) original to Developer. Upon the written acceptance of the executed Agreement by Escrow Holder, this Agreement shall constitute the joint escrow instructions of Developer and the City to Escrow Holder to open an escrow (“Escrow”) and Escrow Holder is thereafter authorized to act in accordance with the terms of this Agreement. Developer and the City shall execute Escrow Holder’s general escrow instructions upon request, with such modifications thereto as Developer and the City may reasonably require; provided, however, if there is any conflict or inconsistency between such general escrow instructions and this Agreement, this Agreement shall control. Escrow Holder shall not prepare any further escrow instruction restating or amending this Agreement unless specifically so instructed by the City and Developer in writing. Any supplemental escrow instructions must be in writing and signed by the City and Developer and accepted by the Escrow Holder to be effective.

4.5 Property Conveyed “As-Is”.

4.5.1 Investigation.

4.5.1.1 Prior Due Diligence Review. Developer acknowledges that it had the right during the term of the ENA to conduct its own investigation of the Property and that Developer has satisfied itself that all matters related to the Development Parcels, the Market Rate Project and the Affordable Project are acceptable to Developer, including the state of title (subject only to the Permitted Exceptions), the physical condition thereof, the physical condition of structures, if any, located upon the Development Parcels and, as applicable, the accessibility and location of utilities, and all mechanical, plumbing, sewage, and electrical systems located therein, suitability of soils, environmental and other investigations regarding the Development Parcels and Developer that it is willing to consummate the transactions described by this Agreement.

4.5.1.2 Opportunity to Evaluate. Developer acknowledges and agrees that, as of the Close of Escrow:

(i) Its determination to enter into this Agreement constitutes Developer’s agreement that Developer, in consummating the transactions described in this Agreement: (A) has been given the opportunity to inspect the Development Parcels and to review the information and documentation provided by the City to Developer and affecting the Development Parcels, including the environmental condition of the Development Parcels, or otherwise obtained by Developer in connection with its due diligence of the Development Parcels, and is relying solely on its own investigation of the Development Parcels, including such investigation prior to execution of this Agreement, and review of such information and documentation in determining the physical, environmental, economic and legal condition of the Development Parcels, and except as provided in Sections 3.3 and 18.12.2, not on any information, representation or warranty provided by the City or any agents or representatives of the City; (B) has performed its own assessment of the Development Parcels, including the physical and environmental condition of the Development Parcels, the presence of Hazardous Materials on the Development Parcels, the suitability of the soil for improvements to be constructed, the implications of land use restrictions on the development plan for the Market Rate Project, the Affordable Project and the Development Parcels and the consequences of any subsequently discovered contamination on or adjacent to the Development Parcels, and (C) has been provided with access to all information in the possession of the City which it has requested.

(ii) Information provided to Developer by or on behalf of the City with respect to the Development Parcels was obtained from a variety of sources and that the City has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information; and Developer is satisfied with the nature and extent of its permissible investigation of the physical and environmental condition

and other matters relating to the Development Parcels and is willing to consummate the transactions described by this Agreement.

(iii) Without limiting the generality of the foregoing, Developer acknowledges and agrees that:

(A) in addition to use, Investigation and Remediation of the Development Parcels the Navy, there has been grading, other uses, Investigation and Remediation of the Development Parcels subsequent to the date of the Federal Deed, and that the AS-IS conveyance of the Property and the waivers, releases, and indemnities provided by Developer in this Agreement with respect to the Development Parcels apply to the current condition of the Property, the Development Parcels taking into account the grading, other uses, Investigation and Remediation at Tustin Legacy, including at the Development Parcels, whether occurring before or following conveyance to the City pursuant to the Federal Deed;

(B) Developer has been provided with access to all environmental reports and statements listed on Attachment 10 and all reports either attached to or referenced in the Memorandum of Agreement and Federal Deed;

(C) it shall perform its own assessment of the environmental condition of the Development Parcels, the presence of Hazardous Materials on the Development Parcels, the suitability of the soil for improvements to be constructed, the implications of the land use restrictions on the development plan for the Market Rate Project, the Affordable Project and the Development Parcels and the consequences of any subsequently discovered contamination on the Development Parcels; and

(D) it shall review the City and Navy produced or identified documentation, including that listed on Attachment 10, reflecting the Navy's and the City's knowledge of the environmental condition of the Development Parcels.

4.5.2 **AS-IS; WHERE-IS.**

4.5.2.1 **No Representations or Warranties.** Developer recognizes that the City would not sell the Property except on an "AS, IS, WHERE IS, WITH ALL FAULTS" basis, and Developer acknowledges that the City has made no representations or warranties of any kind whatsoever (excepting only those representations and warranties of the City expressly set forth in Sections 3.3 and 18.12.2), either express or implied in connection with any matters with respect to the Development Parcels or any portion thereof.

4.5.2.2 **Acknowledgement.** Developer's determination to enter into this Agreement constitutes Developer's agreement that Developer, in consummating the transactions described in this Agreement is buying the Property in an "AS IS, WHERE IS, WITH ALL FAULTS" condition, in its present state and condition and with all faults, if any. Without limiting the generality of the foregoing, Developer further acknowledges and agrees that, except as otherwise specifically provided in Sections 3.3 and 18.12.2, the City makes no representations,

warranties, assurances or guaranties of any kind or character in connection with the transaction contemplated by this Agreement, whether express or implied, oral or written, past, present or future, whether by the City or any of its agents, elected or appointed officials, representatives or employees, of concerning or with respect to:

(i) the value of the Property or the income to be derived from the Property;

(ii) the existence or non-existence of any liens, easements, covenants, conditions, restrictions, claims or encumbrances affecting the Development Parcels (including any of the foregoing arising from or related to the Entitlements or any of the Other Agreements);

(iii) the suitability of the Development Parcels for any and all future development of the Market Rate Project Improvements and the Affordable Project Improvements and the other uses and activities which Developer may conduct upon the Real Property, including the development of the Market Rate Project, the Affordable Project and the Property as described in this Agreement and the Other Agreements;

(iv) the ability of the City or any third party to complete, or likelihood of the completion of, any of the improvements and infrastructure described by the General Plan, the Specific Plan, the Tustin Legacy Backbone Infrastructure Program or any other plan or policy of the City or any other Governmental Authority;

(v) the compliance with or enforcement by the City or any third party of the General Plan, the Specific Plan, the Special Restrictions applicable to the Development Parcels or the special restrictions or other covenants and agreements applicable to other property at Tustin Legacy, any covenants, conditions and restrictions, the Tustin Legacy Backbone Infrastructure Program or any other agreement or governmental restriction or plan affecting Tustin Legacy;

(vi) the habitability, merchantability or fitness for a particular purpose of the Development Parcels;

(vii) the manner, quality, state of repair or lack of repair of the Development Parcels;

(viii) the nature, quality or condition of the Development Parcels including water, soil and geology;

(ix) the compliance of or by the Development Parcels and/or its operation in accordance with any of the Entitlements or any Governmental Requirements, including the National Environmental Policy Act, CEQA and the Americans with Disabilities Act of 1990;

(x) the manner or quality of the construction or materials, if any, incorporated into the Development Parcels;

(xi) the presence or absence of Hazardous Materials, including asbestos or lead paint at, on, under, or adjacent to the Development Parcels or in other locations at Tustin Legacy;

(xii) the content, completeness or accuracy of the information, documentation, studies, reports, surveys and other materials delivered to Developer in connection with the review of the Development Parcels and the transactions contemplated in this Agreement and the Other Agreements;

(xiii) the conformity of the existing improvements on the Development Parcels and/or at Tustin Legacy, if any, to any plans or specifications therefor;

(xiv) compliance of the Development Parcels with past, current or future Governmental Requirements relating to zoning, subdivision, planning, building, fire, safety, health or Environmental Matters and/or covenants, conditions, restrictions or deed restrictions;

(xv) the deficiency of any undershoring or of any drainage to on or from the Development Parcels or any other portion of Tustin Legacy;

(xvi) the condition of any adjoining land owned by the City, including any property and improvements covered by the Landscape Installation and Maintenance Agreement;

(xvii) the fact that all or a portion of the Development Parcels may be located on or near an earthquake fault line or falls within an earthquake fault zone established under the Alquist-Priolo Earthquake Zone Act, California Public Resources Code Sections 2621-2630 or within a seismic hazard zone established under the Seismic Hazards Mapping Act, California Public Resources Code Sections 2690-2699.6 and Sections 3720-3725;

(xviii) the existence or lack of vested land use, zoning or building entitlements, permits or approvals affecting the Development Parcels;

(xix) the construction or lack of construction of Tustin Legacy or if constructed, the construction of Tustin Legacy in accordance with design guidelines, plans and specifications previously or to be prepared therefor;

(xx) the conditions, covenants and restrictions imposed or to be imposed upon the Development Parcels or any portion thereof under this Agreement, the Other Agreements or the Entitlements;

(xxi) the contents of the Memorandum of Agreement, the Federal Deed, the Base Closure Law and the FOST; and

(xxii) any other matters.

4.5.2.3 **Environmental Condition of the Development Parcels;**

Restrictions. Without limiting the generality of the foregoing, the City makes no representation or warranty as to the environmental condition of the Development Parcels or any portion thereof, the Navy's obligations with respect to the environmental condition of the Development Parcels or the adequacy or accuracy of any environmental report that has been rendered. Developer acknowledges and agrees that (i) there may be some residual contamination on the Development Parcels as a result of Navy historic activities; (ii) the Navy has agreed to accept certain limited responsibility for any contamination it caused, including any contamination discovered after transfer from the Navy, in accordance with existing Governmental Requirements including the National Defense Authorization Act For Fiscal Year 1993 as amended (Public Law No. 102-434) Section 330 and Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9620(h) ("Navy Responsibilities"); and (iii) the deed restrictions contained in the Federal Deed are binding upon the City and its successor and assigns (and therefore, shall be binding upon Developer with respect to the Property upon its acquisition of the Property).

4.5.2.4 **Federal Deed and Memorandum of Agreement.** Developer

acknowledges and agrees that the purchase of the Property is subject to the terms and conditions expressly set forth in the Memorandum of Agreement, the Federal Deed and the Permitted Exceptions. From and after the Close of Escrow, Developer agrees to assume and faithfully perform any covenants running with the land acquired and all obligations set forth in the Federal Deed as obligations to be performed by "Grantee or its successors or assigns" with respect to the Property acquired by Developer.

4.5.2.5 **No Unauthorized Representations.** No Person acting on

behalf of the City is authorized to make, and by execution hereof, Developer acknowledges that no Person has made, any representation, agreement, statement, warranty, guarantee or promise regarding the Development Parcels, the Market Rate Project, the Affordable Project or the transactions contemplated in this Agreement or the past, present or future zoning, land use entitlements or approvals, including the Entitlements or the Development Permits, construction, physical condition, presence or extent of Hazardous Materials or other status of the Development Parcels except as may be expressly set forth in this Agreement or in any of the Other Agreements. No representation, warranty, agreement, statement, guarantee or promise, if any, made by any Person acting on behalf of the City that is not contained in this Agreement or in any of the Other Agreements will be valid or binding on the City. Nothing in this Section 4.5.2 is intended to limit or affect in any manner (i) the validity or provisions of the Entitlements and Development Permits obtained by Developer with respect to the Development Parcels or (ii) any provisions of this Agreement or the Other Agreements when this Agreement and the Other Agreements are approved by the City Council and executed by the City.

The provisions of this Section 4.5.2 shall be included in the Special Restrictions, shall run with the land, shall remain in effect in perpetuity and shall survive termination of this Agreement, the Close of Escrow, and the execution and Recording by the City of each Certificate of Compliance, shall not merge with any deed and shall be binding upon Developer, its successors and assigns, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner including all End Users, for the benefit of the City and its Governmental Successors, and from and after the Close of Escrow, shall be binding upon and burden the Real Property.

4.5.3 **Release.** Developer, on behalf of itself, and its successors and assigns, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner and including each End User (each, including Developer, a “**Developer Releasing Party**”), hereby waives, as of the Effective Date, and agrees to waive, as of the Close of Escrow, the right of each Developer Releasing Party to recover from, and fully and irrevocably releases, the City Released Parties from any and all Claims that any Developer Releasing Party may now have or hereafter have, suffer, acquire or incur arising from or related to: (i) any Due Diligence Information, (ii) any condition of the Development Parcels or any current or future improvement thereon, known or unknown by any Developer Releasing Party or any City Released Party, including the extent or effect of any grading of the Development Parcels; (iii) the extent or effect of any of the matters identified in Section 4.5.2; (iv) any construction defects, errors, omissions or other conditions, latent or otherwise; (v) economic and legal conditions on or affecting the Development Parcels or any improvements thereon; (vi) Environmental Matters, including the existence, Release, threatened Release, presence, storage, treatment, transportation or disposal of any Hazardous Materials at any time on, in, under, or from, the Development Parcels or any current or future improvement thereon or any portion thereof; (vii) Claims of or acts or omissions to act of any Governmental Authority or any other third party arising from or related to any actual, threatened, or suspected Release of a Hazardous Material on, in, under, or from about, or adjacent to the Development Parcels or any current or future improvement thereon, including any Investigation or Remediation at or about the Development Parcels or any current or future improvement thereon; and/or (viii) arising from the Tustin Legacy Backbone Infrastructure Program, any community facilities district, service district or assessment district the cost or extent thereof, or the amount of the Project Fair Share Contribution or any community facilities district, service district or assessment district assessment against the Development Parcels described in this Agreement or the Development Agreement; (ix) the actions or inaction of the Navy with respect to any agreements between the City and the Navy; (x) the ability of the City or any third party to complete, or the likelihood of the completion or actual completion of, any of the improvements and infrastructure related to the Market Rate Project and the Affordable Project described by the General Plan, the Specific Plan, the Tustin Legacy Backbone Infrastructure Program, the agreements, environmental reports and statements listed on Attachment 10 or any other plan or policy of the City or any other governmental entity; (xii) the compliance or non-compliance by the City or any third party, including the Navy, with the City's General Plan, the Specific Plan, the Federal Deed and the Environmental Documents, or any special restrictions or other covenants and agreements applicable to other property at Tustin Legacy, or any other agreement or governmental restriction or plan affecting Tustin Legacy; (xiii) any disputes, claims, actions, causes of action, demands or orders arising between Initial Developer, any future Developer or

Affordable Housing Developer or between them or any other third party; (xiv) a potential or declared violation of or other requirements or proceedings under the SLA Regulations affecting or prohibiting the disposition of the Development Parcels or a determination by the City not to proceed with the transaction based on the foregoing; and/or (xv) any action or inaction of the City or the City Parties in connection with any of the foregoing (including the exercise by the City of its discretion, decision or judgment with respect to the foregoing) or the failure of the City to approve an Affordable Housing Developer; provided that the foregoing release by the Developer Releasing Parties shall not extend to the extent of (x) any uncured Material Default by the City provided that the Material Default is directly related to the Claim, or (y) any Claim that is the result of the gross negligence or willful misconduct or fraud of the City Released Parties. This release includes (1) Claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer's release of the City Released Parties and (2) any and all damages and/or monetary relief (whether based in contract or in tort), including any right to claim direct, compensatory, reliance, special, indirect, consequential, expectation, anticipation, exemplary or punitive damages or losses any right to specific performance or other injunctive relief, including for conveyance of or to claim any right of title or interest in the Development Parcels or any portion thereof. Developer specifically waives the provision of California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

In this connection and to the extent permitted by law, Developer on behalf of itself, and the other Developer Releasing Parties hereby agrees that (A) it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to Claims or controversies which are presently unknown, unanticipated and unsuspected; (B) the waivers and releases in this Section 4.5.3 have been negotiated and agreed upon in light of that realization and (C) Developer, on behalf of itself and the other Developer Releasing Parties, nevertheless hereby intends to release, discharge and acquit the City Released Parties from any such unknown Claims and controversies to the extent set forth above.

BY INITIALING BELOW, DEVELOPER ACKNOWLEDGES THAT (A) IT HAS READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS SECTION, (B) IT HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT ITS MEANING AND SIGNIFICANCE, AND (C) IT HAS

ACCEPTED AND AGREED TO THE TERMS SET FORTH IN THIS SECTION.


DEVELOPER'S INITIALS

From and after the acquisition of the Property by Developer, this release shall be an equitable servitude and a covenant running with the land for the benefit of the City and its Governmental Successors and burdening the Real Property and Developer, its successors and assigns, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner including all End Users. To further evidence its effectiveness with respect to each such Person, this release shall be included in its entirety in the Special Restrictions; provided that nothing herein limits or releases Claims by Developer against the Federal Government, including the Department of the Navy, regarding the environmental condition of the Real Property. The provisions of this Section 4.5.3 shall be included in the Special Restrictions, shall run with the land, shall remain in effect in perpetuity and shall survive termination of this Agreement, the Close of Escrow, and the execution and Recording by the City of each Certificate of Compliance, shall not merge with any deed and shall be binding upon Developer, its successors and assigns, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner of the Property or portion thereof including all End Users, for the benefit of the City and its Governmental Successors, and from and after the Close of Escrow, and shall be binding upon and burden the Real Property.

4.5.4 **No Additional Due Diligence Period.** Developer acknowledges that, while the City has been negotiating this Agreement with Developer, Developer has had extensive access to the Development Parcels within which to undertake such physical inspections and other investigations of, and inquiries concerning, the Development Parcels as may be necessary to allow Developer to evaluate the environmental and physical characteristics of the Development Parcels, as well as such other matters as may be deemed by Developer to be reasonably necessary to generally evaluate the Development Parcels and determine the feasibility and advisability of Developer's purchase of the Property and development of the Development Parcels with the Market Rate Project and the Affordable Project, including performance of the Grading Work and construction of the Market Rate Project Improvements and the Affordable Project Improvements on the Real Property, and acknowledges that, Developer shall have the right to conduct additional due diligence prior to Close of Escrow pursuant to Section 5.1. Nothing in this Section 4.5.4 shall or shall be deemed to limit or modify Developer's Closing Conditions pursuant to Section 7.2.1 or Developer's termination rights and other rights and remedies under Section 15.3.

4.6 Developer Covenants; Preconditions to Close of Escrow.

The provisions of this Section 4.6 are covenants of Developer for the benefit of the City, are conditions precedent to Transfers, Transfers of Control and to the Close of Escrow as further

described in this Section 4.6 and Sections 2.2 and 7.2.2 and shall, for the benefit of the City, be satisfied by Developer not later than the times specified for such conditions below.

4.6.1 **Financing Plan.**

4.6.1.1 **Generally.** As of the Effective Date, Developer has provided the City with, and City has approved, the pro forma financing plan and Budget Statement for development of the Market Rate Project ("**Market Rate Project Financing Plan**"), and has caused USA Properties to provide the City with the preliminary financing plan and Budget Statement for the Affordable Project that has been approved by the City ("**Affordable Project Financing Plan**"), demonstrating the financial feasibility of both the Market Rate Project and the Affordable Project.

4.6.1.2 **Affordable Project Financing Plan and Updates.** When required by this Section, Developer shall or shall cause Affordable Housing Developer to provide to Developer and the City an updated financing plan for the Affordable Project in substantially the form and with the same categories of information contained in the Affordable Project Financing Plan approved by the City in accordance with Section 4.6.1.4 and identifying the revisions to the information previously provided ("**Updated Affordable Project Financing Plan**") and additionally containing the following items:

- (i) a cash flow projection for operation of the Affordable Project;
- (ii) a true copy of any letters of interest for the Construction Loans for the Affordable Project to be submitted with the TCAC Application (to the extent available at the time of submission of the Updated Affordable Project Financing Plan);
- (iii) a cost breakdown for the estimated Development Costs to be incurred for the development of the Affordable Project;
- (iv) a true copy of any letter of interest for other financing from external sources to be submitted with the TCAC Application in the amounts necessary to provide debt and equity proceeds for the Affordable Project as may be required to pay for all Development Costs to be incurred consistent with the projected costs set forth in the TCAC Application (to the extent available at the time of submission of the Updated Affordable Project Financing Plan);
- (v) a true copy of the syndication letter provided by the Qualified Tax Credit Investor to be submitted with the TCAC Application (to the extent available at the time of submission of the Updated Affordable Project Financing Plan); and

(vi) the identity of the Tax Credit Investor and confirmation that the Tax Credit Investor is a Qualified Tax Credit Investor (to the extent available at the time of submission of the Updated Affordable Project Financing Plan).

Prior to the Lot 13 Transfer and until such time as financing for the entirety the Affordable Housing Developer's leasehold interest in the Affordable Project is secured, Developer shall cause Affordable Housing Developer to provide Developer and City periodic updates upon request of the City no less frequent than quarterly as to the implementation of the Updated Affordable Project Financing Plan and the status of any applications or submittals made in connection therewith and shall, at least thirty (30) calendar days prior to any Lot 13 Transfer and additionally when required by Sections 4.6.1.2 or 8.6.1, update the most recent Financing Plan for the Affordable Project then-approved by the City, if revisions are required to permit Affordable Housing Developer to make the certifications required by this Section 4.6.1 which shall be subject to review by the City in accordance with Section 4.6.1.4. It is anticipated that Affordable Housing Developer may utilize a combination of equity financing, financing from an institutional lender, subordinated secured loans from Developer (or a Developer Affiliate) and Affordable Housing Developer and federal and/or state tax credits, and that Affordable Housing Developer may support such financing with bank and tax credit investor guaranties and indemnities. The Updated Affordable Project Financing Plan shall establish the sources of funding that will be utilized by the Affordable Housing Developer to fund the design and construction of the Affordable Project. With each Updated Affordable Project Financing Plan submitted to the City, Developer shall represent and warrant in a writing in favor of the City (1) if the Guarantor remains TICAD or would become The Irvine Company, that Guarantor continues to satisfy the Minimum Asset Standards previously in effect or as modified consistent with Section 4.6.1.4 and that Guarantor remains TICAD or will become The Irvine Company or (2) if the Guarantor would be other than TICAD or The Irvine Company, that Guarantor satisfies the Minimum Asset Standards in such other amounts as are approved by the City in its sole discretion. In addition, Developer shall cause Affordable Housing Developer to certify, in a certificate dated as of the delivery date and executed by its president or other appropriate authorized officer on behalf of the Affordable Housing Developer for the benefit of the City as to the accuracy of the Updated Affordable Project Financing Plan and the truth and completeness of each of the following: (i) such funding is sufficient to pay through the Recording by the City of the Affordable Project Certificate of Compliance all anticipated Development Costs for the Affordable Project (or component thereof subject to the Lot 13 Transfer) and provides sufficient capital to design, construct and Complete the Affordable Project Improvements and to bring the Affordable Project to stabilization; (ii) there has been no material adverse change in the financial capacity or condition of Affordable Housing Developer or its financial or organizational relationships from that described in the Affordable Project Financing Plan previously approved; and (iii) the Budget Statement set forth in the most current Financing Plan for the Affordable Project remains a reasonable budget. For avoidance of doubt, the City hereby approves of Developer, The Irvine Company, TICAD, or another entity wholly owned by The Irvine Company or TICAD financing all or any portion of the Affordable Project with its own funds as required by either Sections 4.6.2.2 or 4.6.2.3.

4.6.1.3 Developer Closing, Transfer and Transfer of Control Requirements. At least thirty (30) Business Days prior to the Close of Escrow, and as a condition

precedent for the benefit of the City to the Close of Escrow and any Transfer and Transfer of Control, Developer shall provide an update to the previously approved Market Rate Project Financing Plan including the same categories of information contained therein and identifying revisions to the information previously provided (“**Updated Market Rate Project Financing Plan**”) for the purposes of confirming that Developer has the financial capacity and capability to perform its obligations under this Agreement and shall certify for the benefit of the City as to the accuracy of the Updated Market Rate Project Financing Plan and the truth and completeness of each of the following (and shall deliver to the City reasonable evidence demonstrating that): (i) either the most recent Market Rate Project Financing Plan approved by the City remains in full force and effect and, or as modified by the most recent Updated Market Rate Project Financing Plan, demonstrates funding is sufficient to pay through the Final Certificate of Compliance all Development Costs for the Market Rate Project and provides sufficient capital to design, construct and Complete the Market Rate Project Improvements and to bring the Market Rate Project to stabilization, (ii) there has been no material adverse change in the financial capacity or condition of Developer, any Approved Equity Investor, or its financial or organizational relationships from that described in the Market Rate Project Financing Plan previously approved and that Guarantor continues to satisfy the Minimum Asset Standards; (iii) the Budget Statement for the Market Rate Project Improvements and the Affordable Project Improvements remains a reasonable budget, and (iv) Developer has available funds, without third-party financing or Mortgage of any kind, sufficient to pay all Development Costs, including sufficient equity capital to design and construct the Market Rate Project Improvements and to bring the Market Rate Project to stabilization consistent with the terms of this Agreement. In addition, prior and as a condition to Close of Escrow, Developer shall have caused Affordable Housing Developer to have delivered an Updated Affordable Project Financing Plan meeting the requirements of Section 4.6.1.2 which shall have been approved by the City as set forth in Section 4.6.1.4.

4.6.1.4 **City Review.** The City shall have the right to reasonably approve or disapprove any immaterial modifications between a Financing Plan previously approved by the City and a proposed updated Financing Plan (or any material modifications between a Financing Plan for the Affordable Project previously approved by the City and a proposed updated Financing Plan for the Affordable Project) and to approve in its sole discretion any material modifications between a Financing Plan for the Market Rate Project previously approved by the City and a proposed updated Financing Plan for the Market Rate Project. For avoidance of doubt, any modification to the Financing Plan for the Market Rate Project that does not include any third-party financing or Mortgage of any kind, a sale-leaseback transaction or Mezzanine Financing is deemed to be an immaterial modification, but remains subject to City’s reasonable approval. In addition, the City shall have the right to review and approve the Guaranty in accordance with Sections 8.9.1 and 8.9.2 and the right to review each instrument evidencing Evidence of Equity and Equity Commitment in its sole discretion, provided that if TICAD or The Irvine Company are and are intended to remain following the Close of Escrow or Transfer or Transfer of Control the Equity Investor and Guarantor and there is no outside investor, then the City’s review of the instruments evidencing Evidence of Equity and the Equity Commitment shall be for purposes of determining if there are material modifications that adversely impact the City as determined by the City in its reasonable discretion and otherwise shall be in the City’s sole discretion as to all such modifications. It shall be reasonable for the City to increase the Minimum

Asset Standards by a comparable amount if the total amount set forth in the Budget Statement or any proposed updated Financing Plan for the Market Rate Project increases by five percent (5%) or more. The City's review of modifications set forth in each updated Financing Plan and of each instrument evidencing Evidence of Equity and Equity Commitment (and the documentation for any Construction Loan) shall be for the purposes of determining (i) the availability of the contemplated financing pursuant to the Construction Loans with respect to the Affordable Project only, (ii) the availability of funds to Developer including equity capital from sources approved by the City in accordance with this Agreement, being sufficient funds to pay all Development Costs and to satisfy all requirements of Developer or Affordable Housing Developer, as applicable, as set forth in this Agreement; (iii) that the contemplated funding meets the budget requirements for the Project as set forth in the applicable Budget Statement; and (iv) that the contemplated funding is being provided on terms consistent with the terms and conditions of this Agreement.

If Developer determines at any of the dates upon which an updated Financing Plan is due to the City that there is no required change to the Financing Plan then in effect, Developer shall, or shall cause Affordable Housing Developer (with respect to the Affordable Project Financing Plan) to, provide written notice to the City of the same and shall or shall cause Affordable Housing Developer (with respect to the Affordable Project Financing Plan) to certify as to the accuracy, truth and completeness of the previously delivered Financing Plan and shall submit to the City such documents as may be requested by the City to allow the City to confirm, in its reasonable discretion, that the Updated Financing Plan and the documents delivered in connection therewith remain sufficient to satisfy all applicable requirements hereunder. Except to the extent already approved in the last sentence of Section 4.6.1.2, if there are modifications to any previously approved Financing Plan, the City shall have the right to reasonably approve or disapprove such modifications including any modifications to the Evidence of Equity, Equity Commitment, and/or Construction Loan documentation and evidence that the Guarantor meets the Minimum Asset Standards. If the City is not reasonably satisfied with the financial status of Developer, the Equity Investor, the Guarantor, the financial feasibility of the Project or any portion thereof or any of the other contents of the Updated Affordable Project Financing Plan or the Updated Market Rate Project Financing Plan following review of the certification and the above materials, the City shall be entitled to obtain such other information and assurances from Developer and such other financial information as the City may reasonably request of Developer and its members, owners and/or partners, if any, and their respective members, partners, shareholders and/or other owners at each tier until substantial assets acceptable to the City in its reasonable discretion are identified. Such information shall be subject to the confidentiality provisions of Section 18.24.

4.6.2 Additional Assurances.

4.6.2.1 Declaration of Ownership; Documentation at Effective Date. Prior to or concurrently with the Effective Date, Developer shall deliver to the City a declaration, dated as of or prior to the Effective Date, certified by the chief financial officer or other appropriate authorized officer of Initial Developer, substantially in the form and substance of the Developer Original Certificate attached to this Agreement as Attachment 19A (“**Developer Original Certificate**”).

4.6.2.2 **Evidence of Equity.** If Developer or any Transferee intends to fund the Development Costs in whole or in part without an Equity Investor, Developer or Transferee, as applicable, shall, prior to or concurrently with the Effective Date and when required by Sections 2.2.2 through 2.2.4, Section 7.2 or Section 8.10, provide reasonable evidence and written assurances to the City to demonstrate that it has the financial capacity, Liquid Assets and Net Worth in each case satisfactory to the City in its sole discretion (but if the Developer is and shall remain after any then contemplated Transfer, The Irvine Company or TICAD, in the City's reasonable discretion), to provide sufficient equity, when combined with the other sources and uses set forth in the Financing Plans to fund the Development Costs, including by provision to the City of resolutions or other documentation to evidence the availability and authorizing the expenditure of such funds ("**Evidence of Equity**"). The Evidence of Equity shall be subject to the approval of the City in its sole discretion, provided that if the Equity Investor is The Irvine Company or TICAD, such review shall be in the City's reasonable discretion, and shall be and remain in full force and effect as to each of the Market Rate Project and the Affordable Project through the Recording by the City of the Certificate of Compliance for the Project. The provisions of this Section 4.6.2.2 are not and shall not be deemed under any circumstances to constitute Affordable Project Provisions and shall not apply, or be deemed under any circumstances to apply, to Affordable Housing Developer.

4.6.2.3 **Equity Commitment.** If Developer or Transferee has identified an Equity Investor approved by the City (provided, however that City has heretofore approved TICAD as the Equity Investor in Initial Developer and as the Equity Investor in any other Developer or Transferee) which has the financial capacity, Liquid Assets and Net Worth, as determined by the City in its sole discretion, sufficient when combined with the other sources and uses set forth in the Financing Plans to fund the Development Costs, provided that if the Equity Investor is The Irvine Company or TICAD, then no additional Liquid Assets and Net Worth review is required if The Irvine Company or TICAD continues to satisfy the Minimum Asset Standards (The Irvine Company, TICAD or such other Equity Investor approved by the City being referred to in this Agreement as an "**Approved Equity Investor**"), Developer or Transferee, as applicable, shall deliver to the City when required by Sections 2.2.2 through 2.2.4 or Section 8.10:

(i) evidence of an executed, binding and effective contractual commitment made by Approved Equity Investor in favor of Developer or Transferee, as applicable, dated as of the Effective Date and each Transfer Date, as applicable, to fund the required equity for the Market Rate Project and the Affordable Project substantially in the form and substance of the agreement attached to this Agreement as Attachment 15C ("**Equity Commitment**"). The Equity Commitment shall remain in full force and effect as to a Parcel through the Recording by the City of a Certificate of Compliance for such Parcel; and

(ii) a declaration in favor of the City at each of the Effective Date and each Transfer Date certified by the chief financial officer or other appropriate authorized officer of the Approved Equity Investor in substantially the form and substance of the Equity Investor Original Certificate attached as Attachment 15A ("**Equity Investor Original Certificate**") and dated as of the Effective Date and

each Transfer Date. The provisions of this Section 4.6.2.3 are not and shall not be deemed under any circumstances to constitute Affordable Project Provisions and shall not apply, or be deemed under any circumstances to apply, to Affordable Housing Developer. Developer shall from time to time demand from the Equity Investor under the Equity Commitment, as capital contributions to Developer, such amounts as may be necessary for Developer to satisfy the “DDA Obligations” (as that term is defined in the Equity Commitment). Developer’s obligations under this Agreement are not conditioned on the Equity Investor’s performance of its obligations under the Equity Commitment.

4.7 Lot 13 Transfer.

4.7.1 **Requirements Prior to Affordable Project Outside Date.** Developer shall have the right, but not the obligation, prior to the outside date for the Affordable Project Closing set forth in the Schedule of Performance which date shall not be extended for Force Majeure Delay (“**Affordable Project Outside Date**”) to enter into an Approved Ground Lease with an Affordable Housing Developer approved by the City pursuant to Section 1.4.3 for the entirety of the Lot 13 Property or, if authorized by Section 4.7.2, for any Parcel comprising a portion of Lot 13 (a “**Lot 13 Transfer**”) pursuant to the terms of the Lot 13 PDA and provided that the Lot 13 Transfer Conditions are satisfied. If the Lot 13 Transfer Conditions and the additional, non-conflicting requirements of the Lot 13 PDA are satisfied, Developer shall cause the Lot 13 Transfer to take place, provided that if the Lot 13 Transfer does not take place due solely to action or inaction by Affordable Housing Developer, including default under the Lot 13 PDA, Developer shall not be in default with respect to the Affordable Project Provisions if it is timely performing the Affordable Project Enforcement Obligations in accordance with the requirements of this Agreement. For avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, Developer is not obligated to complete the Lot 13 Transfer, and Developer may cause the construction of the Affordable Project Improvements to be Completed without a Lot 13 Transfer; however, on or before the Affordable Project Outside Date, Developer shall have caused one of the following to occur: (i) the entirety of Lot 13, whether pursuant to one or two Lot 13 Transfers shall have been leased to an Affordable Housing Developer meeting the requirements of Section 1.4.3 under one (1) or two (2) Approved Ground Lease(s) or (ii) Developer shall have satisfied the Alternative Affordable Project Development Plan Conditions Precedent set forth in Section 4.8 and thereby agreed to undertake the Affordable Project Provisions directly. If Developer satisfies the Alternative Affordable Project Development Plan Conditions Precedent set forth in Section 4.8 and agrees to undertake the Affordable Project Provisions directly, Developer may thereafter proceed with a Lot 13 Transfer after the Affordable Project Outside Date, but otherwise pursuant to all of the other terms and conditions under this Section 4.7, only upon receipt of the prior written consent of the City Manager or his or her designee, which consent shall not be unreasonably withheld, delayed or conditioned, provided any such Lot 13 Transfer does not adjust any of the applicable outside dates for the commencement or Completion of any of the Affordable Project Improvements as set forth in the Schedule of Performance, and provided further that the extensions and cure rights in Section 13.5 shall not apply to extend the outside dates for performance in the Schedule of Performance.

4.7.2 **No More than Two (2) Lot 13 Transfers.** Provided that Developer provides prior written notice to the City not later than ninety (90) calendar days prior to the first Lot 13 Transfer of its intent to carry out two Lot 13 Transfers and the Final Tract Map has then been Recorded and divides Lot 13 into not more than two (2) Parcels, Developer shall have the right, but not the obligation, to separately lease each such Parcel pursuant to an Approved Ground Lease at one or two (2) Lot 13 Transfers at each of which the entirety of one of the two Parcels comprising Lot 13 is ground leased to Affordable Housing Developer; provided that (i) the Lot 13 Transfer for the portion of Lot 13 to be developed in Phase 1 shall be the first Lot 13 Transfer and in all cases the first Parcel to be developed and (ii) any Leasehold Mortgage shall encumber the entirety of the ground lease interest of Affordable Housing Developer pursuant to each such Lot 13 Transfer.

4.7.3 **Conditions Precedent to Lot 13 Transfer.** Prior to the anticipated date of the Lot 13 Transfer, Developer shall provide to the City completed versions of all documents required to be delivered as conditions to the Lot 13 Transfer (other than documents related to any Leasehold Mortgage, which are subject to the requirements of Section 17.2.3), with initial drafts of the contemplated documents (other than evidence of insurance) to be delivered at least thirty (30) Business Days prior to the proposed date of the Affordable Project Closing, substantially final versions and the evidence of insurance described in Section 4.7.3.10 to be delivered at least five (5) Business Days prior to the date of the Affordable Project Closing, which shall be red-lined to show changes from the drafts reviewed by the City, and executed copies to be delivered within three (3) Business Days after the date of the Affordable Project Closing, and either indicating no change in the previously submitted forms or providing documents red-lined to show changes from the versions previously delivered to the City. Any Lot 13 Transfer shall be subject to the following conditions precedent, for the benefit of the City (unless expressly waived or modified by the City in writing in its sole discretion) ("**Lot 13 Transfer Conditions**"):

4.7.3.1 **Close of Escrow.** The Close of Escrow shall have occurred.

4.7.3.2 **Lot 13 PDA and Ground Lease Conditions.** All conditions precedent set forth in the Lot 13 PDA and Ground Lease Option and not inconsistent with the terms of this Agreement shall have been satisfied (or if waived by Developer, with such waiver approved by the City in its reasonable discretion if such waived condition would modify any of the Affordable Project Provisions and provided the same shall not constitute a waiver by the City of the other Lot 13 Transfer Conditions).

4.7.3.3 **Affordable Project Financing Plan.** Developer shall cause Affordable Housing Developer to provide the City with the Affordable Project Financing Plan or Updated Affordable Project Financing Plan meeting the applicable requirements of Section 4.6.1 with respect to the applicable component of the Affordable Project concurrently with the filing of each application for Tax Credits with TCAC ("**TCAC Application**"). The City will accept (i) any financing provided by a Leasehold Mortgagee procured by Affordable Housing Developer which is on terms not materially different than the financing terms set forth on the then approved Financing Plan for the Affordable Project; (ii) as a Permitted Leasehold Mortgagee any lender or credit enhancer that is a Qualified Institutional Lender, or any lender that is not a Qualified

Institutional Lender so long as such lender is specifically identified in the most recent Affordable Project Financing Plan then approved by the City or as otherwise agreed by the City pursuant to Sections 4.6.1.2 and 4.6.1.4, and (iii) as a tax credit investor, any Person that is a Qualified Tax Credit Investor or as otherwise agreed by the City in its reasonable discretion. Affordable Housing Developer may identify with specificity any submitted documents that Affordable Housing Developer wants the City to maintain as confidential documents and a statement as to why the request is consistent and complies with the provisions of the Public Records Act. The City shall evaluate and treat such information as confidential to the extent described in Section 18.24.1 and 18.24.2.

4.7.3.4 **Joint Use Agreement**. If Lot 13 is comprised of more than one Parcel, and the Lot 13 Transfer is applicable to only one such Parcel, then Developer and Affordable Housing Developer shall enter into and record in the Official Records against Lot 13, a joint use and easement agreement (“**Joint Use Agreement**”) that provides for the shared use and related services required for the Parcels within Lot 13 to be operated in accordance with the Affordable Housing Declaration.

4.7.3.5 **Evidence of Financing; Affordable Project Closing Documents**. Not later than three (3) Business Days prior to each Lot 13 Transfer, Developer shall have caused Affordable Housing Developer to submit to the City the following evidence of financing with respect to the applicable Lot 13 Transfer and applicable component of the Affordable Project:

(i) **Funding Sources and Uses; Guarantor Financial Capacity**. Demonstration to the reasonable satisfaction of the Deputy City Manager – Real Property or designee that (A) each of the Persons providing equity or debt proceeds in accordance with the most recent Financing Plan for the Affordable Project approved by the City pursuant to Section 4.6.1.4 continues to be ready to provide such debt and equity financing at the Affordable Project Closing and the equity and debt proceeds to be provided are consistent with the most recent Financing Plan for the Affordable Project previously approved; and (B) there has been no material adverse increase in the estimated Development Costs for the completion of the applicable component of the Affordable Project as set forth in the most recent City approved Financing Plan for the Affordable Project, which increase is not covered by an identified estimated source of proceeds and (C) compliance with Section 6.2 of the Guaranty.

(ii) **Reservation Letter**. A tax-exempt bond allocation and/or a reservation letter for Tax Credits from the California Tax Credit Allocation Committee in an amount contemplated by Affordable Housing Developer to develop the Affordable Project in an amount not less than that provided for on the as set forth in the most recent City approved Financing Plan for the Affordable Project and such reservation letter shall continue in full force and effect through the Affordable Project Closing.

(iii) Mortgage Documents. With respect to each Construction Loan as set forth in the most recent City approved Financing Plan for the Affordable Project, substantially final drafts of loan documents evidencing the Construction Loan, which loan documents shall be consistent with such Financing Plan and shall meet the requirements of Section 17.2.3.

4.7.3.6 Document Delivery. Not later than three (3) calendar days prior and as a condition in favor of City to any Lot 13 Transfer, Developer shall have submitted and shall have caused Affordable Housing Developer to submit to Escrow (or directly to City) the following executed instruments in Recordable form (if applicable) and in each case consistent with the requirements of this Agreement and the Other Agreements:

(i) an Approved Ground Lease executed by Developer and Affordable Housing Developer for the Lot 13 Property;

(ii) an acknowledgement and consent to the Affordable Housing Declaration executed by Affordable Housing Developer, acknowledged and in recordable form;

(iii) an Affordable Project Reaffirmation of Guaranty executed by Guarantor or if the Guarantor is replaced with a new Guarantor approved by the City prior to the Lot 13 Transfer, in accordance with Section 8.9.2, a new Guaranty substantially in the form and substance of Attachment 14A.

(iv) a Guarantor Date Down Certificate executed by the chief financial officer or other appropriate authorized officer of Guarantor or, if the Guarantor is replaced with a new Guarantor approved by the City prior to the Lot 13 Transfer in accordance with Section 8.9.2, a Guarantor Original Certificate, in either case certified by the chief financial officer or other appropriate authorized officer of the Guarantor and dated as of the Affordable Project Closing date;

(v) a Reaffirmation Legal Opinion executed by legal counsel to Guarantor or if the Guarantor is replaced by a new Guarantor approved by the City prior to the Lot 13 Transfer, a Guaranty Legal Opinion;

(vi) documents evidencing the obligation to provide the equity contribution described in Section 4.7.3.9;

(vii) Construction Loan documents meeting the requirements of Article 17 secured by the ground lease interest of Affordable Housing Developer, in substantially final form consistent with the provisions of Section 17.2.3;

(viii) a Subordination Agreement acknowledged and executed by each Leasehold Mortgagee, in Recordable Form; and

(ix) such proof of Developer's and Affordable Housing Developer's authority and authorization to the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Developer to act for and/or bind Developer as may be reasonably required by Title Company and such other documents or instruments as Escrow Holder may reasonably request to consummate the transaction contemplated in this Agreement.

4.7.3.7 **Construction Loan Closing.** Each Leasehold Mortgagee for a Construction Loan, and Affordable Housing Developer shall be prepared to close the corresponding Construction Loan for the Affordable Project concurrently with the Affordable Project Closing for such Parcel, and Affordable Housing Developer shall have provided to Developer and the City written verification from Escrow confirming that the deed of trust to be Recorded in conjunction with the closing of such Construction Loan has been fully executed and acknowledged and in Recordable form and deposited into Escrow by the Leasehold Mortgagee for the Construction Loan, substantially in the amount set forth in the most recent Financing Plan for the Affordable Project approved by the City pursuant to Section 4.6.1.4.

4.7.3.8 **Financial Capability and Other Conditions.** Affordable Housing Developer shall have satisfied the applicable conditions set forth in Section 4.6.1, including delivery to the City of evidence of financing as required by such provisions.

4.7.3.9 **Qualified Tax Credit Investor.** The Qualified Tax Credit Investor shall be prepared to contribute to Affordable Housing Developer the equity funds that are required to be contributed to Affordable Housing Developer at the Affordable Project Closing, substantially in the amount set forth in the most recent Financing Plan for the Affordable Project approved by the City.

4.7.3.10 **Insurance.** Developer shall cause Affordable Housing Developer to submit to the City evidence that the insurance policies required to be obtained by Affordable Housing Developer pursuant to Article 11 will be effective as to the Property being Transferred as of the close of escrow for such Property.

4.7.3.11 **Entitlements.** Developer shall have timely applied for and shall have been granted all Pre-Closing Entitlements required for development of the Affordable Project on Lot 13 or Parcel thereof for which the Approved Ground Lease is to be executed and all such Pre-Closing Entitlements shall be Finally Approved.

4.7.3.12 **Basic Concept Plan.** If Developer or Affordable Housing Developer seeks any modification to the previously approved Basic Concept Plan for the Affordable Project prior to the Lot 13 Transfer, Developer and Affordable Developer shall have timely applied for and the City shall have approved any modifications to the same in accordance with Sections 8.5.5 and 8.5.6.

4.7.3.13 **Building Permits.** The City shall be prepared to issue all parking structure and building permits for the Building(s) to be constructed on the Lot 13 Real

Property or Parcel thereof for which the Approved Ground Lease is to be executed, which issuance shall only be conditioned upon payment of fees required as a precondition to issuance.

4.7.3.14 **Horizontal Improvements**. The City shall be prepared to issue the grading permit for the Grading Work on the Lot 13 Real Property and permits for all of the Affordable Project Horizontal Improvements required for development of the Lot 13 Real Property or Parcel thereof for which the Approved Ground Lease is to be executed.

4.7.3.15 **Default**. Developer shall not be in Potential Default or Material Default of any covenant or agreement to be performed by Developer under this Agreement or the Other Agreements and neither Developer nor Affordable Housing Developer shall be in default under the Lot 13 PDA.

4.7.4 **Assistance with TCAC and CDLAC**. The City agrees to use commercially reasonable efforts to support the Affordable Project as local reviewing agency for Affordable Housing Developer's application for Tax Credits submitted to the California Tax Credit Allocation Committee ("TCAC") and, if applicable, for Affordable Housing Developer's application for volume cap submitted to the California Debt Limit Allocation Committee ("CDLAC"). If requested by Affordable Housing Developer, the City agrees to hold or participate in (as applicable) a TEFRA Hearing in connection with Affordable Housing Developer's application submitted to the California Debt Limit Allocation Committee in a timely manner and to support the Affordable Project at any such TEFRA Hearing. Provided the issuance requested is consistent with the most recent City-approved Financing Plan for the Affordable Project, the City further agrees to provide a letter of support in connection with the issuance of bonds for the Affordable Project by the California Statewide Community Development Authority, California Municipal Finance Authority and/or the California Housing Finance Authority as requested by Affordable Housing Developer (either, a "Bond Issuer"). Developer and the City will agree to consider in good faith and promptly review requested modifications to this Agreement required in order to comply with the requirements of Bond Issuer, TCAC or CDLAC or a Qualified Tax Credit Investor or a Permitted Leasehold Mortgagee, and if approved to effectuate such changes in order to be in compliance with the requirements. The City Manager is authorized, without further approval of the City, to make changes to this Agreement as required to satisfy the requirements described in this Section.

4.8 Developer Election to Develop Affordable Project Pursuant to an Alternative Affordable Project Development Plan.

The determination by Developer to use an Alternative Affordable Project Development Plan to satisfy the Affordable Project Provisions shall be Developer's agreement to carry out the Affordable Project Provisions directly and, whether or not any Affordable Housing Developer is or is not then in default under its agreements (including a Lot 13 PDA), provided that the election of Developer to use an Alternative Affordable Project Development Plan shall not be subject to the cure rights or any schedule extensions set forth in Section 13.5. If Developer elects to develop the Affordable Project pursuant to an Alternative Affordable Project Development Plan, then no later than ninety (90) calendar days prior to the Affordable Project Outside Date and in all

events no later than thirty (30) Business Days prior to the date upon which it anticipates satisfaction of the Alternative Affordable Project Development Plan Conditions Precedent (as defined below), Developer shall provide written notice to the City of Developer's intent to utilize an Alternative Affordable Project Development Plan, and on or before the Affordable Project Outside Date (and without extension pursuant to Section 13.5 or for Force Majeure Delay), Developer shall have satisfied the following conditions precedent for the benefit of the City (unless expressly waived or modified by the City in writing in its sole discretion) ("**Alternative Affordable Project Development Plan Conditions Precedent**"):

4.8.1 **No Lot 13 Transfer Shall Have Occurred and Lot 13 PDA Is Terminated With Respect to the Affected Parcel.** The Close of Escrow shall have occurred, there shall have been no Lot 13 Transfer associated with the Parcel for which Developer seeks to perform the Affordable Project Provisions and the Lot 13 PDA and other agreements between Developer and any Affordable Housing Developer shall have been terminated with respect to such Parcel;

4.8.2 **Affordable Project Financing Plan.** Developer shall provide the City with an Affordable Project Financing Plan or Updated Affordable Project Financing Plan meeting the applicable requirements of Section 4.6.1.

4.8.3 **Affordable Project Development Plan Certificate.** Developer shall have delivered a certificate substantially in the form and substance of the instrument attached as Attachment 9 ("**Alternative Affordable Project Development Plan Certificate**"). Delivery by Developer of the Alternative Affordable Project Development Plan Certificate shall be deemed conclusive evidence that Developer has agreed to undertake the Affordable Project Provisions directly, subject to the last sentence of Section 4.7.1.

4.8.4 **No Mortgages.** There shall be no Mortgages, and no Tax Credit financing that would require a Mortgage, with respect to Developer's fee interest in Lot 13, and no sale leaseback transactions or Mezzanine Financing.

4.8.5 **Document Deliveries.** Developer shall have submitted directly to City the following executed instruments in Recordable form (if applicable) and in each case consistent with the requirements of this Agreement and the Other Agreements:

(i) an Affordable Project Reaffirmation of Guaranty executed by Guarantor or if the Guarantor is replaced with a new Guarantor approved by the City, in accordance with Section 8.9.2, a new Guaranty substantially in the form and substance of Attachment 14A.

(ii) a Guarantor Date Down Certificate executed by the chief financial officer or other appropriate authorized officer of Guarantor or, if the Guarantor is replaced with a new Guarantor approved by the City prior to the Lot 13 Transfer in accordance with Section 8.9.2, a Guarantor Original Certificate, in either case certified by the chief financial officer or other appropriate authorized

officer of the Guarantor and dated as of the date of the Alternative Affordable Project Development Plan Certificate;

(iii) a Reaffirmation Legal Opinion executed by legal counsel to Guarantor or if the Guarantor is replaced by a new Guarantor approved by the City, a Guaranty Legal Opinion; and

(iv) documents evidencing the obligation to provide the Evidence of Equity and/or Equity Commitment described in Section 4.6.2.

4.8.6 **Insurance.** Developer shall submit to the City evidence that the insurance policies required to be obtained by Developer or Affordable Housing Developer pursuant to Article 11 are then effective as to Lot 13.

4.8.7 **Basic Concept Plan.** If Developer seeks any modification to the previously approved Basic Concept Plan for the Affordable Project, Developer shall have timely applied for and the City shall have approved any modifications to the same in accordance with Sections 8.5.5 and 8.5.6.

4.8.8 **Building Permits.** The City shall be prepared to issue all parking structure and building permits for the Building(s) to be constructed on the Lot 13 Real Property, which issuance shall only be conditioned upon payment of fees required as a precondition to issuance.

4.8.9 **Horizontal Improvements.** The City shall be prepared to issue the grading permit for the Grading Work on the Lot 13 Real Property and permits for all of the Affordable Project Horizontal Improvements required for development of the Lot 13 Real Property.

4.8.10 **Default.** Developer shall not be in Potential Default or Material Default of any covenant or agreement to be performed by Developer under this Agreement or the Other Agreements.

5. Developer's License, Access to Records and Communications.

5.1 Limited License.

The City grants to Developer, for use by Developer and its officers, directors, employees, agents, representatives, consultants, contractors, and other Persons accessing the Development Parcels by, through or with the permission or under the direction or auspices of Developer or Affordable Housing Developer (“**Developer Representatives**”) a limited and revocable license to enter upon the Development Parcels at any time prior to Close of Escrow for purposes of obtaining data and making surveys and tests necessary to carry out this Agreement, provided that, prior to the effectiveness of such license, Developer shall: (i) prior to entry on the Development Parcels, deliver to the City written evidence that Developer has procured and then maintains the insurance required under Sections 11.1 and 11.2; (ii) give the City twenty-four (24) hours telephonic,

electronic mail or written notice of any intended access which involves work on the Development Parcels or may result in any impairment of the use of the Development Parcels or any portion thereof or any adjacent property by any then-current owners, occupants, or contractors; (iii) access the Development Parcels in a safe manner; (iv) conduct no environmental testing, sampling, invasive testing, or boring without the written consent of the City (and, in all cases, Developer shall not carry out any environmental testing, sampling, invasive testing, or boring on the Development Parcels prior to the effective date of the environmental insurance policy required by Section 1.1.3 of Exhibit B to the ENA); (v) allow no dangerous or hazardous condition to be created or caused on the Development Parcels to continue beyond the completion) of such access, (vi) comply with all Governmental Requirements and obtain all permits required in connection with such access; (vii) conduct inspections and testing, subject to the rights of any existing tenants or contractors doing work on the Development Parcels, if any (which inspections and testing, if conducted at times other than normal business hours, shall be conducted only after obtaining the City's consent, which shall not be unreasonably withheld); (viii) keep the Development Parcels free and clear of any and all liens of any kind caused by Developer or the Developer Parties, including mechanics' liens or materialmen's liens related to Developer's or any Developer Parties' access to or inspection of the Development Parcels; (ix) cause the portion of the Development Parcels subject to such inspection to be restored to the condition existing immediately prior to such inspection promptly upon completion of each inspection; and (x) provide City, at no additional charge, with copies of the results of each inspection made by or for Developer after Developer's receipt of such results. The City shall have the right to have a City representative present on the Development Parcels during any testing under clause (iv) of this Section 5.1. This limited license shall commence on the Effective Date, may be revoked by the City during the continuation of any Default by Developer, or upon termination of this Agreement by any Party, and shall be automatically revoked and terminated upon occurrence of the Close of Escrow.

5.2 Indemnity.

Prior to the Close of Escrow, Developer, on behalf of itself and its successors and assigns, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner but excluding End Users, hereby agrees to protect, indemnify, defend and hold harmless the City Indemnified Parties from and against any and all Claims arising in connection with or resulting from or related to Developer's or the Developer Representatives': (i) exercise of the license provided in Section 5.1, including entry onto or access to the Development Parcels, or breach by Developer or any Developer Parties of the terms and conditions of the grant of license; (ii) exercise of any rights under such license, including, any inspections, surveys, tests or studies performed by Developer or the Developer Representatives with respect to the Development Parcels, the Market Rate Project or the Affordable Project; (iii) presence, activities or work on or related to use of the Development Parcels by Developer or the Developer Representatives and any Construction Liens or mechanics' or materialmen's liens arising with respect thereto; (iv) bodily injury to or death of any person (including any of the City Indemnified Parties or any employee or contractor of the City Indemnified Parties) or damage to or loss of use of property resulting from any of the foregoing, (v) a Release of Hazardous Materials on the Development Parcels caused by the acts of Developer or any Developer Representatives and (vi) Recording of any Construction Liens related to Developer's inspection and/or Investigation of the Development Parcels, in each

case whether occurring prior to or following the Effective Date; save and except to the extent such Claims result from the gross negligence, willful misconduct or fraud of City or any City Indemnified Party. Developer shall keep the Development Parcels free and clear of any and all Construction Liens related to Developer's inspection and/or Investigation of the Development Parcels. The indemnification by Developer set forth in this Section 5.2 shall survive termination of this Agreement, Close of Escrow, shall not merge with any deed and shall be binding upon Developer, its successors and assigns, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner of the Property or portion thereof including all End Users, for the benefit of the City and its Governmental Successors, but only with respect to Claims Accrued prior to the earlier of Close of Escrow or the earlier termination of this Agreement.

5.3 Communications with City and Third Parties.

From and after the Effective Date, communications with the City by Developer and the Developer Representatives shall be directly with the City Manager or designee, who shall be the administrator of this Agreement on behalf of the City (and, subject to Section 18.11, shall have the authority, power and right to grant all approvals and consents on behalf of the City as required hereunder), and such other employees, consultants, and attorneys of the City from time to time as the City Manager may designate. In addition, Developer shall have the right to communicate with staff of other public agencies; and with third parties to all agreements affecting the Development Parcels in connection with Developer's proposed purchase of the Property and development of the Market Rate Project and the Affordable Project, as applicable. The City staff shall have the right, but not the obligation, to attend and participate in any and all meetings with other public agencies, with regard to the Market Rate Project and the Affordable Project, as applicable. Upon request of the City, Developer shall promptly provide the City with a copy of each material item of correspondence (including emails, letters, facsimiles, and any enclosures and attachments) sent to or received by Developer from third parties in connection with entitlements or approval required for the Market Rate Project and the Affordable Project, as applicable, or with respect to community or governmental approval of the Market Rate Project and the Affordable Project, as applicable, provided, however, that Developer shall not be obligated to deliver any such materials that based upon advice of counsel are determined to be subject to attorney-client or other privilege or exception from disclosure.

6. Title; Survey.

6.1 Survey by Developer.

During the term of the ENA, Developer obtained and provided to the City at Developer's sole cost and expense the ALTA/NSPS Land Title Survey for the Real Property prepared by Fuscoe Engineering (such surveyor or other licensed surveyor subsequently designated by Developer during the Term of this Agreement being referred to in this Agreement as "**Surveyor**"), dated January 16, 2025, certified by the Surveyor to the City and the Title Company and acceptable

to each (“Survey”).

6.2 Permitted Exceptions.

Developer, at Developer’s sole cost and expense, has caused the Title Company to prepare and deliver to Developer and the City with respect to the Property the Preliminary Report attached as Attachment 4 (the “**Preliminary Report**”) based upon which the Title Company may issue an extended American Land Title Association Owner’s Policy for the Property (collectively “**ALTA Policy**”). An ALTA Policy shall be issued at the Close of Escrow to Developer with respect to the Property in the amount of the Purchase Price and such additional amounts as Developer may request of Title Company. Prior to the Effective Date, Developer has reviewed the Preliminary Report and the other relevant documents referenced below and has approved the matters set forth in the Preliminary Report. “**Permitted Exceptions**” to title shall mean the following: (i) all matters set forth on the Preliminary Report attached as Attachment 4, or set forth on the Survey, (provided that if the Real Property is annexed to the District as CFD 18-01 Zone 3 as required hereunder, CFD 13-01 shall not be a Permitted Exception); (ii) the Other Agreements that are to be executed, and if applicable, Recorded pursuant to Article 7; (iii) the lien of special taxes in CFD 18-01 Zone 3; (iv) the Federal Deed; (v) the Memorandum of Agreement; and (vi) all covenants, restrictions and encumbrances, liens, exceptions, leases, restrictions, deed restrictions and qualifications expressly set forth in or permitted or contemplated by this Agreement or the Other Agreements. Notwithstanding anything to the contrary in this Agreement, the City shall deliver the Property to Developer free and clear of all monetary liens other than (A) liens for real property taxes that are not yet delinquent, (B) assessments and special taxes imposed upon the Property by the City (including the CFD 18-01 Zone 3 Special Tax) and by other governmental entities, including unless there is a TUSD Lien Release at Close of Escrow with TUSD Lien Release Documentation Recorded, Community Facilities District No. 15-2 of the Tustin Unified School District (“**TUSD CFD**”), and (C) Construction Liens and/or other liens or costs caused by or arising from or in connection with the limited license granted pursuant to the ENA or Section 5.1.

6.3 Supplemental Title Reports.

If prior to the Close of Escrow the Title Company discloses additional matters that affect title to the Property not disclosed on the Preliminary Report, then within ten (10) Business Days after Developer’s receipt of any report issued by the Title Company concerning the Property (a “**Supplemental Title Report**”), Developer shall cause to be provided to the City a copy of such Supplemental Title Report and shall specify in writing Developer’s disapproval of any item or exception shown on such Supplemental Title Report not previously included in the Preliminary Report and that is not acceptable to Developer (each a “**Disapproved Exception**”) together with Developer’s suggested cure thereof (to the extent capable of being cured); provided, however, that Developer shall not have the right to disapprove any item or exception specifically consented to by Developer, including all exceptions arising pursuant to this Agreement and all Permitted Exceptions approved or deemed approved pursuant to Section 6.2. Failure of Developer to disapprove any item or exception shown on any such Supplemental Title Report on or before the expiration of such ten (10) Business Day period shall be deemed to be an approval of the matters set forth in such Supplemental Title Report. If Developer designates a Disapproved Exception,

Developer shall specify in writing its reason for such disapproval, and the City shall have the right, but not the obligation, to (i) remove or cure the Disapproved Exception to the reasonable satisfaction of Developer, or (ii) subject to the last sentence of Section 6.2, elect not to cure such Disapproved Exception. If the City fails to notify Developer of the City's election to remove or cure such Disapproved Exception within ten (10) Business Days after the City's receipt of Developer's notice of disapproval, the City shall be deemed to have elected not to cure such Disapproved Exception. If the City elects or is deemed to have elected not to cure any such Disapproved Exception then Developer's exclusive remedy shall be: (A) to accept such Disapproved Exception and proceed to take title to the Property in the manner set forth in this Agreement and without either deduction or offset to the Purchase Price, and waive such Disapproved Exception without cause of action under this Agreement against the City, or (B) to provide written notice to the City of Developer's election to terminate the Escrow, within five (5) Business Days after the City's election or deemed election, provided that Developer's failure to provide the City within said five (5) Business Days period with written notice of either Developer's acceptance of such Disapproved Exception or Developer's election to terminate shall constitute Developer's election to terminate Escrow. If Developer elects (or is deemed to have elected) to terminate Escrow prior to the Close of Escrow as set forth in this Section 6.3, then a Deposit Return Event shall be deemed to have occurred and the provisions of the third sentence of Section 15.1.3 shall apply. In the event Developer shall not have terminated or been deemed to have terminated this Agreement as set forth in this Section 6.3, then all matters and exclusions or exceptions from title insurance coverage shown in such Supplemental Title Report which Developer shall have accepted pursuant to this Section 6.3 (other than those which the City has agreed to cure as provided in this Section 6.3), together with all Permitted Exceptions described in Section 6.2 shall be deemed "**Permitted Exceptions**".

6.4 ALTA Policy; Endorsements; Close of Escrow.

It shall be a condition precedent to Developer's obligation to close each Escrow that the Title Company issue the ALTA Policy with a policy amount equal to the Purchase Price plus the Project Fair Share Contribution and subject only to the Permitted Exceptions ("**Original ALTA Coverage**"). The City shall only be obligated to deliver to the Title Company an owner's affidavit regarding title in a form acceptable to the City in its reasonable discretion. Developer shall have the right, at its sole expense, to request and obtain additional ALTA coverage for the value of the development cost of the Market Rate Project and the Affordable Project ("**Additional ALTA Coverage**") and any title endorsements as Developer deems necessary ("**Developer Title Endorsements**"); provided that the issuance of such Additional ALTA Coverage and the Developer Title Endorsements shall not delay the applicable Close of Escrow and shall not be a condition precedent to the Close of Escrow. At the Close of Escrow, the City shall pay the City Premium applicable thereto and Developer shall pay all other costs associated with issuance of the

ALTA Policy applicable thereto, including costs of the ALTA Policy and Developer Title Endorsements.

6.5 City Title Policy.

It shall be a condition precedent to the City's obligation to close Escrow that the Title Company issue the City Title Policy subject only to the Permitted Exceptions and with any title endorsements the City deems necessary and free and clear of all monetary liens, including Construction Liens, other than liens for real property taxes that are not yet delinquent. Developer shall only be obligated to deliver to the Title Company an owner's affidavit regarding title in a form acceptable to Developer in its reasonable discretion. At the Close of Escrow, Developer shall pay the premium for the City Title Policy and for all endorsements deemed necessary by the City. The ALTA Owners Policy issued to the City shall insure the City with respect to its ownership interest in the Public Access Covenant, and all other easements made, and all other insurable interests contained in the applicable Public Access Covenant.

7. Closing.

7.1 Time and Place of Closing.

7.1.1 Close of Escrow. The Close of Escrow shall take place on that date which is twenty (20) Business Days following the last to occur of the satisfaction, or the waiver thereof by the Party for whose benefit the condition applies, of the Developer Closing Conditions set forth in Sections 7.2.1.4 through 7.2.1.8 and Section 7.2.1.10 and the City Closing Conditions set forth in Sections 7.2.2.3 through 7.2.2.13 and Section 7.2.2.15 ("**Closing Date**"); provided that (i) in no event shall either City or Developer be obligated to close Escrow unless each has received at least five (5) Business Days' advance written notice from the other party of the anticipated date for satisfaction of their respective City Closing Conditions and Developer Closing Conditions, (ii) the Close of Escrow shall in no event be later than the Outside Closing Date set forth in the Schedule of Performance, which date shall be not be subject to extension for Force Majeure Delay but shall be subject to the extensions contemplated by Section 7.1.2 and 7.1.3 ("**Outside Closing Date**") and (iii) in the event that an allocation of private activity bond cap is made by CDLAC and a tax credit allocation by TCAC is made to the Affordable Project or any phase thereof prior to the Close of Escrow, the City and Developer shall use good faith efforts to advance the satisfaction of any then unsatisfied Closing Conditions in order to allow the Closing Date to take place within a time period that would not result in a failure of clause (ii) of the Allocation Acceptance Conditions set forth in Section 2.2.2 of the Lot 13 PDA; provided that failure of the Close of Escrow to occur prior to such date shall not be a default by either Party under this Agreement. The Close of Escrow shall be subject to the satisfaction (or waiver by the Party benefited by such condition) of all of the conditions set forth in Section 7.2 and shall take place at the offices of Escrow Holder, or at such other place that the City selects. In the event that the Close of Escrow does not occur on or prior to the Outside Closing Date, then, subject to the provisions of Sections 7.1.2 or 7.1.3, this Agreement shall terminate at the end of the Business Day on the Outside Closing Date.

7.1.2 **Right to Extend Closing Dates.** Notwithstanding any other provision of this Agreement:

7.1.2.1 The City shall have the right to extend the Closing Date and the Outside Closing Date one time for a period not more than ninety (90) calendar days at no cost to the City if on or before the Outside Closing Date the City has not formed a new improvement area of the District (to be denominated CFD 18-01 Zone 3 and referred to as “**CFD 18-01 Zone 3**”) with respect to the Real Property and to adopt a rate and method of apportionment for CFD 18-01 Zone 3 (“**RMA**”) and de-annex the Real Property from City of Tustin Community Facilities District No. 13-01 with such formation, annexation and de-annexation Finally Approved.

7.1.2.2 Developer shall have the right to extend the Closing Date and the Outside Closing Date to July 31, 2026 upon provision of written notice to the City and payment to the City of the Additional Purchase Price Deposit in each case, on or before March 31, 2026.

7.1.3 **Other Closing Date Extensions By Mutual Agreement.** In addition to the extension periods provided to the City pursuant to Section 7.1.2 and the additional extensions contemplated by Article 15, each Closing Date and each Outside Closing Date may be extended upon mutual written agreement of the Parties.

7.2 Conditions Precedent to Close of Escrow.

7.2.1 **Developer Closing Conditions.** Developer’s obligation to purchase the Property and to complete all requirements for the Close of Escrow is subject to and conditioned upon the satisfaction of, or Developer’s express written waiver of, each of the following conditions to the Close of Escrow (“**Developer Closing Conditions**”):

7.2.1.1 **Document Deliveries.** Not later than two (2) Business Days prior to the Close of Escrow, the City shall have executed and delivered to Escrow Holder the following documents, in each case (where applicable) substantially in the form and substance of the instruments attached as Attachments to this Agreement:

- (i) if not previously executed and Recorded, the Memorandum of DDA, acknowledged and in Recordable form;
- (ii) if not previously executed and Recorded, the Development Agreement (and provided it is then effective as a matter of law), acknowledged and in Recordable form;
- (iii) the Affordable Housing Declaration, acknowledged and in Recordable form;
- (iv) the Public Access Covenant, acknowledged and in Recordable form;
- (v) the Special Restrictions, acknowledged and in Recordable form;
- (vi) the Quitclaim Deed, acknowledged and in Recordable form;

(vii) the Landscape Installation and Maintenance Agreement in substantially the form and substance of the Landscape Installation and Maintenance Agreement attached as Attachment 21 to this Agreement (“**Landscape Installation and Maintenance Agreement**”), acknowledged and in Recordable form;

(viii) federal FIRPTA Affidavit;

(ix) California’s Real Estate Withholding Exemption Certificate Form 593-C;

(x) a bill of sale and assignment by the City to Developer of Intangible Property substantially in the form and substance of the instrument attached to this Agreement as Attachment 22 (“**Bill of Sale**”);

(xi) a reaffirmation of the City’s representations and warranties set forth in Sections 3.3 and 18.12.2 (as the same may be modified pursuant to Section 3.4) in substantially the form and substance of the certificate attached hereto as Attachment 18;

(xii) such proof of the City’s authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of the City to act for and/or bind the City as may be reasonably required by Title Company and/or Developer (usually in the form of City Council meeting minutes);

(xiii) if the TUSD Lien Release does not occur at Close of Escrow pursuant to an election by the City of the TUSD Prepayment Alternative pursuant to Section 8.7.5.3, the TUSD Assignment executed by the City as assignor and acknowledged thereon by TUSD; and

(xiv) such other documents or instruments as Escrow Holder may reasonably request to consummate the transaction contemplated in this Agreement.

7.2.1.2 Title Policy. The Title Company shall be in a position to issue the ALTA Policy to Developer for the Property in the amount of the Purchase Price plus the Project Fair Share Contribution and subject only to the Permitted Exceptions.

7.2.1.3 Pre-Existing Obligations; CFD 18-01 Zone 3. Except as approved by Developer in writing or constituting a Permitted Exception, there shall exist no leases, contracts or rights of occupancy or other agreements or contracts with respect to the Property that shall survive the Close of Escrow. The City shall have annexed the Real Property to the District as new CFD 18-01 Zone 3, approved the RMA and de-annexed the Real Property from City of Tustin Community Facilities District No. 13-01 as required by and in accordance with Sections 7.1.2, 7.2.2.10 and 8.7.3.

7.2.1.4 Pre-Closing Entitlements. Developer shall have timely applied for all Pre-Closing Entitlements required for development of the Market Rate Project and the Affordable Project and all such Pre-Closing Entitlements shall have been Finally Approved.

7.2.1.5 Basic Concept Plan. If Developer or Affordable Housing Developer seeks any modification to the previously approved Basic Concept Plan for the Project prior to the Close of Escrow, Developer and Affordable Developer shall have timely applied for and the City shall have approved any modifications to the same in accordance with Sections 8.5.5 and 8.5.6.

7.2.1.6 No Casualty or Condemnation. There shall not have occurred any material casualty or condemnation with respect to the Property and no material condemnation shall be threatened with respect to the Property.

7.2.1.7 No Litigation. No litigation shall be threatened or pending which seeks to prevent the development or operation of the Market Rate Project, the Affordable Project or any part thereof according to the terms of this Agreement and the Other Agreements.

7.2.1.8 TUSD Assignment Agreement. If the City elects in its sole discretion the TUSD Prepayment Alternative, then the City and TUSD shall have entered into the TUSD Lien Release Documentation in form and substance acceptable to the City in its sole discretion provided that the requirements of Section 8.7.5.3 shall have been satisfied. Otherwise, with reference to that certain School Facilities Implementation Funding and Mitigation Agreement between TUSD, Community Facilities District 06-01 of TUSD, the City of Tustin, and Community Facilities District 14-01 of the City of Tustin dated August 25, 2015 (as previously amended) ("**TUSD Agreement**"), the City (as the assignor) and Developer (as the assignee) shall have entered into, and acknowledged and TUSD shall have acknowledged thereon, an assignment and assumption agreement, in form and substance agreed to by the Parties each in its reasonable discretion pursuant to which the City shall have assigned to Developer and Developer shall have assumed all of the City's rights and obligations under the TUSD Agreement pertaining to the Real Property ("**TUSD Assignment**"); provided that Developer shall not be obligated to agree to any TUSD Assignment that includes direct financial obligations on its part beyond the payment to TUSD of statutory school fees and the payment of special taxes imposed by the TUSD CFD pursuant to the TUSD Agreement unless otherwise agreed by Developer in its sole discretion.

7.2.1.9 Representations and Warranties. The City's representations and warranties set forth in in Sections 3.3 and 18.12.2 shall be true and correct as of the Close of Escrow, provided, in no event shall the City be liable to Developer for, or be deemed to be in Default under this Agreement by reason of, breach of any such representation or warranty which results from a change that (i) occurs between the Effective Date and the date of the Close of Escrow, and (ii) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of the City to prevent. The occurrence of a change in a representation and warranty shall, if materially adverse to Developer or the Property, as determined by Developer in Developer's reasonable business judgment, constitute the non-fulfillment of the condition set forth in this Section 7.2.1.9, unless such matter is cured at least one (1) Business Day prior to the Close

of Escrow. If, despite changes or other matters described in the City's reaffirmation certificate, the Close of Escrow occurs, the City's representations and warranties set forth in Sections 3.3 and 18.12.2 shall be deemed to have been modified by all statements made in such certificate.

7.2.1.10 Default. The City shall not be in Default of any covenant or agreement to be performed by the City under this Agreement.

7.2.2 City Closing Conditions. The City's obligation to deliver the Quitclaim Deed and to complete all requirements for the Close of Escrow is subject to and conditioned upon the satisfaction of, or the City's express written waiver of, each of the following conditions to the Close of Escrow ("City Closing Conditions") on or before the Closing Date:

7.2.2.1 Closing Payment. Not later than one (1) Business Day prior to the Close of Escrow, Developer shall deliver to Escrow (i) the Developer Closing Payment and (ii) any other costs explicitly set forth in this Agreement as costs to be paid by Developer at the Close of Escrow, including the City Costs Deposit amounts described in Section 1.8.3 and the master marketing program fee described in Section 8.7.4.

7.2.2.2 Document Deliveries. Not later than two (2) Business Days prior to the Close of Escrow, Developer shall have executed and delivered to Escrow Holder the following documents, in each case (where applicable) substantially in the form and substance of the instruments attached as Attachments to this Agreement:

(i) if not previously executed and Recorded, the Memorandum of DDA, each acknowledged and in Recordable form;

(ii) if not previously executed and Recorded, the Development Agreement (and provided it is then effective as a matter of law), acknowledged and in Recordable form;

(iii) a consent and agreement to the terms of the Affordable Housing Declaration, in form attached to such Declaration, acknowledged and in Recordable form;

(iv) a consent and agreement to the terms of the Public Access Covenant, in form attached to such Covenant, acknowledged and in Recordable form;

(v) a consent and agreement to the terms of the Special Restrictions, in form attached to such Special Restrictions, acknowledged and in Recordable form;

(vi) a consent and agreement to the terms of the Quitclaim Deed, acknowledged and in Recordable form;

(vii) the Landscape Installation and Maintenance Agreement, acknowledged and in Recordable form;

(viii) a Bill of Sale;

(ix) a Guaranty executed by the chief financial officer or other appropriate authorized officer of Guarantor;

(x) a Guarantor Original Certificate;

(xi) a Guaranty Legal Opinion;

(xii) a certificate dated as of the Closing Date dating down the Developer Original Certificate or Transferee Certificate, if one was previously provided, a Developer Date Down and Reaffirmation Certificate with such certificate certified for the benefit of the City by the chief financial officer or other appropriate authorized officer of Developer;

(xiii) if Developer is utilizing an Equity Investor that has previously delivered an Equity Investor Original Certificate, an Equity Investor Date Down Certificate, otherwise, an Equity Investor Original Certificate by an Approved Equity Investor (approved by the City pursuant to Section 8.10), in either case certified by the chief financial officer or other appropriate authorized officer of the Approved Equity Investor, and, if not previously delivered, Evidence of Equity and/or Equity Commitment, in each case dated as of the Closing Date;

(xiv) such proof of Developer's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Developer to act for and/or bind Developer as may be reasonably required by Title Company and/or the City; and

(xv) Endorsements and certificates of insurance of the PLL Policy required by Section 11.1.4 pursuant to the requirements of Section 11.2.3;

(xvi) if the TUSD Lien Release does not occur at Close of Escrow pursuant to an election by the City of the TUSD Prepayment Alternative pursuant to Section 8.7.5.3, the TUSD Assignment executed by Developer as assignee and acknowledged thereon by TUSD; and

(xvii) such other documents or instruments as Escrow Holder may reasonably request to consummate the transaction contemplated in this Agreement.

7.2.2.3 Pre-Closing Entitlements. Developer shall have timely applied for all Pre-Closing Entitlements required for development of the Market Rate Project and

the Affordable Project and all such Pre-Closing Entitlements shall have been Finally Approved and to the extent that Developer has applied for any amendment to the Pre-Closing Entitlements, the same shall have been Finally Approved.

7.2.2.4 Basic Concept Plan. If Developer seeks any modification to the previously approved Basic Concept Plan, Developer shall have timely applied for and the City shall have approved any modifications to the same in accordance with Sections 8.5.5 and 8.5.6.

7.2.2.5 Horizontal Improvements. The City shall be prepared to issue: (i) the grading permit for the Grading Work on the Market Rate Real Property and the Lot 13 Real Property; and (ii) permits (other than landscaping permits) for all of the Market Rate Project Horizontal Improvements required for development of the Market Rate Real Property.

7.2.2.6 Bonds to Secure Certain Construction Work. Developer shall have provided to the City those labor and material bonds and payment bonds in favor of the City as obligee securing Developer's obligations to perform and construct the Grading Work and for necessary encroachments into City-owned property, if any.

7.2.2.7 Building Permits. The City shall be prepared to issue parking structure permits for the first Building in which a parking structure will be constructed on the Market Rate Real Property which issuance shall only be conditioned upon payment of fees required as a precondition to issuance and Developer shall have submitted for plan check the final plans and specifications for the remaining Buildings to be constructed on the Market Rate Real Property and shall have submitted or caused Affordable Housing Developer to submit for plan check the final plans and specifications for the Buildings to be constructed on the Lot 13 Real Property.

7.2.2.8 Insurance. Developer shall have provided to the City evidence of insurance as and to the extent required by Article 11.

7.2.2.9 Financial Capability; Guaranty. Developer shall have satisfied the conditions precedent to the Close of Escrow set forth in Section 4.6.1.2 through 4.6.1.4 and Sections 4.6.2.2, 4.6.2.3 and 8.9.1, and, if applicable Sections 8.9.2 and 8.10.

7.2.2.10 Formation of Improvement Area, Adoption of RMA and Annexation of Property into District. The City shall have formed the new CFD 18-01 Zone 3, approved the RMA and caused the Property to be annexed into the District and de-annexed the Real Property from City of Tustin Community Facilities District No. 13-01 in accordance with Section 8.7.3, and such formation, annexation, adoption and de-annexation shall each be Finally Approved.

7.2.2.11 City Title Policy. The Title Company shall be in a position to issue the City Title Policy to the City subject only to the Permitted Exceptions and without exception for liens, including Construction Liens.

7.2.2.12 Developer shall have satisfied the conditions precedent to the Close of Escrow set forth in Sections 4.6.1 and 4.6.2.

7.2.2.13 TUSD Assignment. If the City elects in its sole discretion the TUSD Prepayment Alternative, then the City and TUSD shall have entered into the TUSD Lien Release Documentation in form and substance acceptable to the City in its sole discretion provided that the requirements of Section 8.7.5.3 shall have been satisfied. Otherwise, the City and Developer shall have entered into, and TUSD shall have acknowledged thereon, the TUSD Assignment.

7.2.2.14 Representations and Warranties. Developer's representations and warranties set forth in Sections 3.1 and 18.12.1 shall be true and correct as of the Close of Escrow (or in the case where any Transfer occurs prior to the Close of Escrow, the representations and warranties made by the Transferee in an Assignment Agreement, as applicable), shall be true and correct as of the Close of Escrow, provided, in no event shall Developer be liable to the City for, or be deemed to be in Default under this Agreement by reason of, breach of any such representation or warranty which results from a change that (i) occurs between the Effective Date and the date of the Close of Escrow, and (ii) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of Developer to prevent. The occurrence of a change in a representation and warranty shall, if materially adverse to City, as determined by the City in City's reasonable business judgment, constitute the non-fulfillment of the condition set forth in this Section 7.2.2.14, unless such matter is cured at least one (1) Business Day prior to the Close of Escrow. If, despite changes or other matters described in Developer's reaffirmation certificate, the Close of Escrow occurs, Developer's representations and warranties set forth in Sections 3.1 and 18.12.1 (or in the case where a Transfer occurs prior to the Close of Escrow, the representations and warranties made by the Transferee in the Assignment Agreement) shall be deemed to have been modified by all statements made in such certificate.

7.2.2.15 Default. Developer shall not be in Default of any covenant or agreement to be performed by Developer under this Agreement.

7.3 Additional Close of Escrow Conditions.

In addition to the provisions of Section 7.2, the Close of Escrow shall be conditioned upon the following Closing Conditions, which shall be for the benefit of each Party: (i) Escrow Holder shall have delivered at least seven (7) Business Days prior to the Close of Escrow a statement of costs to each Party and at least two (2) Business Days prior to the Close of Escrow each of the Parties shall have approved such statement as being consistent with the provisions of Section 7.4 and (ii) each Party shall confirm in writing to Escrow Holder that all Closing Conditions for its benefit have been satisfied or waived.

7.4 Procedures for Conveyance.

7.4.1 Costs and Expenses. The costs and expenses of the Close of Escrow shall be allocated as follows:

7.4.1.1 City's Costs. The City shall pay (i) the City Premium; (ii) one-half (1/2) of all Escrow fees and costs; (iii) all documentary transfer taxes, if any; and (iv) the City's share of prorations, if any.

7.4.1.2 Developer's Costs. Developer shall pay (i) the entire cost of the applicable ALTA Policy, along with the cost of any other title insurance coverage, in excess of the City Premium and all other costs associated with issuance of the ALTA Policy, Developer Title Endorsements and the cost of the City Title Policy; (ii) the entire cost of the Survey and any additional land surveys obtained by Developer in connection with the foregoing; (iii) document recording charges for the documents to be Recorded per Section 7.4.6(ii); (iv) one-half (1/2) of all Escrow fees and costs; (v) Developer's share of prorations and (vi) the cost of any outstanding DDA Transaction Expenses as described in Section 1.8.3. Developer shall pay the fees of all consultants and employees (including legal fees and fees of environmental, engineering and land use consultants) engaged by it.

7.4.1.3 Other Costs. All costs and expenses related to the Close of Escrow and the transfer of the Property to Developer not otherwise allocated in this Agreement shall be allocated between the Parties in accordance with the customary practice in Orange County, California.

7.4.2 Possession. The City shall deliver exclusive possession of the Property at the Close of Escrow subject to any Permitted Exceptions and to any other matters disclosed on the ALTA Policy.

7.4.3 Deliveries to Developer Upon Close of Escrow. The City agrees to deliver to Developer, on or prior to the Close of Escrow, outside of Escrow, the following items with respect to the Property:

7.4.3.1 Records and Plans. To the extent in the City's possession, originals or copies of records and plans that will affect the Property after the Close of Escrow.

7.4.3.2 Licenses and Permits. To the extent in the City's possession, originals or copies of all licenses and permits affecting the Property.

7.4.4 Prorations.

7.4.4.1 General. Rentals, revenues and other income, if any, from the Property conveyed shall be prorated on a cash basis as of 11:59 P.M. Pacific Time on the day preceding the Close of Escrow. Tax payments shall be prorated in accordance with Section 7.4.4.2.

7.4.4.2 Taxes. Developer shall be responsible for all taxes, assessments, fees and charges imposed by any Governmental Authority with respect to the Property and all existing and future improvements thereon accruing from and after the Close of Escrow. If, after the Close of Escrow, any real estate taxes or possessory interest taxes are assessed against any portion of the Real Property pertaining to the period prior to the Close of Escrow, the City agrees to contact the applicable taxing authority and seek recognition and enforcement of its

tax exemption.

7.4.5 **Method of Proration**. All prorations shall be made in accordance with customary practice in Orange County, except as otherwise expressly provided in this Agreement. Developer and the City agree to cause a schedule of prorations to be prepared prior to the Close of Escrow. Such prorations, if and to the extent known and agreed upon as of the Close of Escrow, shall be paid by Developer to the City (if the prorations result in a net credit to the City) or by the City to Developer (if the prorations result in a net credit to Developer) by increasing or reducing the cash to be paid by Developer at the Close of Escrow. Any such prorations not determined or not agreed upon as of the Close of Escrow shall be paid by Developer to the City, or by the City to Developer, as the case may be, in cash as soon as practicable following the Close of Escrow, but in no event later than sixty (60) calendar days after the Close of Escrow. A copy of the schedule of prorations as agreed upon by Developer and the City shall be delivered to Escrow Holder at least three (3) Business Days prior to the Close of Escrow. All prorations provided for in Section 7.4.4 and this Section 7.4.5 shall be on an “actual day” basis and a three hundred sixty-five (365) day year.

7.4.6 **Disbursements and Other Actions by Escrow Holder**. At the Close of Escrow, and subject to the satisfaction or waiver by the benefited party of the conditions to the Close of Escrow described in Section 7.2, Escrow Holder shall promptly undertake all of the following in the manner indicated below:

(i) **Funds**. Debit or credit all matters addressed in Section 7.4.1 and prorate all matters addressed in Section 7.4.4 and disburse to the City the Purchase Price (as adjusted by the foregoing debits, credits and prorations) and the Project Fair Share Contribution.

(ii) **Recording**. At the Close of Escrow, cause the following instruments to be Recorded against the Real Property in the following order: (1) if not previously Recorded, the Memorandum of DDA and the Development Agreement, and (2) the Affordable Housing Declaration, (3) the Special Restrictions, (4) the Quitclaim Deed, (5) the Public Access Covenant, and (6) the Landscape Installation and Maintenance Agreement, and thereafter, such other documents that Developer and the City may mutually direct, or that may be required by the terms of this Agreement to be Recorded, obtain conformed copies thereof and distribute same to Developer and the City.

(iii) **Title Policies**. At the Close of Escrow direct the Title Company to issue (A) the ALTA Policy to Developer in the amount set forth in Section 6.4 and subject only to the applicable Permitted Exceptions and (B) to the City an ALTA owner’s extended coverage policy to the City in the amount of One Million Dollars (\$1,000,000.00) insuring the City’s interest in the Public Access Covenant and easement established by the Landscape Installation and Maintenance Agreement (“**City Title Policy**”) and subject only to the applicable Permitted Exceptions. Concurrently with the issuance of the ALTA Policy, the Title Company

shall provide the Developer Title Endorsements, provided that the issuance of such Developer Title Endorsements shall not be a condition to the Close of Escrow, except for those endorsements that the City agreed to obtain in order to cure any disapproved title exceptions or survey matters. Concurrently with the issuance of the City Title Policy, the Title Company shall provide to the City the endorsements requested by the City.

(iv) Delivery of Documents to Developer and City. Deliver to each Party original counterparts (and conformed copies, if applicable) of the Development Agreement (if not previously Recorded), the Memorandum of DDA (if not previously Recorded), the Affordable Housing Declaration and the applicable Quitclaim Deed, Special Restrictions, Landscape Installation and Maintenance Agreement, Bill of Sale, the FIRPTA Affidavit, the California Form 593-W, and any other documents (or copies thereof) deposited into Escrow by Developer or the City at the applicable Close of Escrow pursuant hereto, and deliver to the Parties a certified copy of their respective Escrow closing statements.

(v) Other Actions. Take such other actions as the Parties direct pursuant to mutually executed supplemental Escrow instructions.

7.4.7 Notice. All communications from the Escrow Holder shall be directed to the addresses and in the manner established in Section 18.6 for notices, demands and communications between the Parties.

8. Development of the Property and Additional Covenants of Developer and City.

8.1 Scope of Development.

8.1.1 Requirement to Develop the Market Rate Project and the Affordable Project. The Scope of Development attached to this Agreement as Attachment 8 sets forth the overall conceptual plan for the Market Rate Project and the Affordable Project and development of the Real Property, including design, development, and construction of the Market Rate Project Improvements and the Affordable Project Improvements as may be required by the Entitlements and Development Permits. The Market Rate Project and the Affordable Project shall each be designed and constructed to Completion in a manner consistent with the Site Plan and Phasing Plan and in compliance with the Scope of Development, the Approved Plans, the Design Guidelines, the Entitlements and Entitlements conditions, Development Permits and any other Governmental Requirements as well as all requirements of private utility purveyors.

8.1.2 Control of Site Development. Developer shall have control over the design and layout of the Market Rate Project Improvements and the Affordable Project Improvements (including height, shape and location of the Vertical Improvements and special landscaping and art features) and over the special uses to be incorporated therein, subject to (i) the Approved Plans, the Design Guidelines, Development Permits, Entitlements and Governmental Requirements including any conditional use permit necessitated by particular proposed uses or design features and (ii) the design approval provisions set forth in Sections 8.5.3, 8.5.5 and 8.5.6

for the benefit of the City, which are undertaken by the City in its Proprietary Capacity.

8.1.3 **Compliance with Governmental Requirements and Other Requirements.** Developer shall develop the Real Property with the Market Rate Project, and, subject to its right to delegate such construction pursuant to the Lot 13 PDA and the Approved Ground Lease, the Affordable Project in the manner described in and consistent with the Scope of Development, the Site Plan, and the Phasing Plan and in accordance with the Schedule of Performance, the Approved Plans and all Governmental Requirements, including the Specific Plan, the Entitlements, the Development Permits, the Memorandum of Agreement and the Federal Deed.

8.2 **Development Costs.**

Within the time set forth in the Schedule of Performance, Developer shall design and construct the Market Rate Project at Developer's sole cost and expense and without public subsidy of any kind, unless otherwise agreed in writing by the City in its sole discretion and shall cause Affordable Housing Developer to design and construct the Affordable Project upon Lot 13 subject to the financing authorized by this Agreement and the terms of the Lot 13 PDA and Approved Ground Lease. Nothing in this Agreement or in any Other Agreement shall in any way limit the ability of the Affordable Housing Developer from applying for and/or obtaining a property tax abatement for the Affordable Project and/or Lot 13. Without limiting the generality of the foregoing, Developer hereby agrees that the following costs and expenses (collectively "Development Costs") incurred by Developer during the Term and until the Recording by the City of the Final Certificate of Compliance, shall be the responsibility of Developer and Affordable Housing Developer, as applicable, without any cost or liability to the City:

(i) all costs and expenses to perform and satisfy all the covenants of Developer with respect to the Real Property contained in this Agreement and the Other Agreements;

(ii) all costs and expenses associated with planning, designing, developing and constructing the Market Rate Project and the Affordable Project, as applicable, preparing the Real Property and constructing all Market Rate Project Improvements and Affordable Project Improvements (whether on-site or off-site) required in connection with the Market Rate Project and the Affordable Project, as applicable, including all hard costs, soft costs, the cost of services, fees, exactions, dedications, cost overruns, profit, overhead, Entitlements costs (including costs to perform conditions of approval and mitigation measures thereunder), warranties, consultants' fees, legal fees;

(iii) all costs and expenses of marketing and rental of Residential Units as further described in the Scope of Development, including marketing fees, sales incentives, insurance, overhead, and brokerage fees incurred in the rental of Residential Units;

(iv) all costs and expenses costs and expenses necessary to obtain the Entitlements and Development Permits and to comply with the other obligations of Developer under this Agreement required to be satisfied prior to the Close of Escrow;

(v) subject to Sections 7.4.1, 7.4.4 and 18.12.1, all costs and expenses associated with acquisition of the Property, payment of the applicable Purchase Price and brokerage fees incurred in the acquisition of the Property and, if applicable, sale of the Property, the Market Rate Project and the Affordable Project, by Developer and Affordable Housing Developer as applicable;

(vi) all costs and expenses comprising DDA Transaction Expenses of the City;

(vii) all wages and benefits required to be paid to any person employed by Developer, and by persons employed by the Developer Representatives;

(viii) the costs of the Project Fair Share Contribution; and

(ix) the CFD 18-01 Zone 3 Special Tax (it being acknowledged and agreed by Developer that the CFD 18-01 Zone 3 Special Tax shall be perpetual and shall be the obligation of the Owner of each Parcel following the issuance of a Certificate of Compliance therefor).

8.3 Schedule of Performance; Completion of Project.

The Schedule of Performance sets forth the schedule for closings under this Agreement and for submissions, approvals and actions related to design and development of the Market Rate Project and the Affordable Project and construction and Completion of the Market Rate Project Improvements and the Affordable Project Improvements during the Term. Following the Effective Date, Developer shall promptly begin and thereafter diligently prosecute to Completion the construction of the Market Rate Project Improvements and after the Affordable Project Closing, and within the time period provided by the Schedule of Performance, shall cause Affordable Housing Developer to begin and thereafter diligently prosecute to Completion the construction of the Affordable Project Improvements. Where time periods for performance are specified in the Schedule of Performance or in this Agreement, Developer shall and shall cause Affordable Housing Developer to perform such matters no later than the time specified in the Schedule of Performance or in this Agreement, as applicable, provided that the dates set forth in the Schedule of Performance and this Agreement may be extended by Force Majeure Delay in accordance with Section 18.7, subject to the limitations set forth in Section 18.7.6 or may be otherwise extended by the City in accordance with Section 18.3. To be effective, any extensions pursuant to this Section or Section 18.3 shall be requested in writing by Developer and approved by and evidenced by written notice from the City Manager or designee and any requested Force Majeure Delay extension shall be requested pursuant to Section 18.7.

8.4 Land Use Matters.

8.4.1 **CEQA Requirements.** The Parties acknowledge and agree that CEQA is applicable to discretionary actions associated with the development of the Market Rate Project and the Affordable Project. Developer acknowledges that the City shall prepare any supplemental environmental information, if any, as may need to be completed in order to effect compliance with CEQA, as determined by the City in its sole discretion, and Developer shall be responsible to pay all costs incurred by the City to prepare or to cause to its consultants to prepare such environmental documents and shall enter into such agreements to pay such costs as the City shall require. Developer agrees to cooperate with the City in obtaining information to determine the environmental impact of the Market Rate Project and the Affordable Project, if any.

8.4.2 **Required Entitlements.** Developer shall, at its sole cost and expense, process, obtain, and maintain all Entitlements to assure that the design, construction, use, operation, maintenance, repair and replacement of the Market Rate Project Improvements and the Affordable Project Improvements is carried out in accordance with the provisions of this Agreement, and is permitted by the Entitlements and all other Governmental Requirements. Development of the Market Rate Project and the Affordable Project shall be subject to the following Entitlements review processes of the City: (i) Design Review approval (Design Review application 2024-0013); (ii) Vesting Tentative Tract Map approval (Subdivision Application 2024-0004); (iii) Development Agreement approval (DA 2024-0003) and (iv) the density bonus application, density bonus exception and related concessions and incentives authorized under Tustin City Code Section 9123 related to the provision of affordable housing units in compliance with Govt. Code Section 54220-54234 and 65915, and any other approvals to the extent required by the City Code to permit the uses contemplated in the Site Plan or Approved Plans. Without limiting the foregoing, in developing and constructing the Market Rate Project and the Affordable Project, Developer shall ensure that the Market Rate Project and the Affordable Project each comply with all applicable development standards in the Specific Plan, the City Code and with all building codes, landscaping, signage and parking requirements, except as may be permitted through variances and modifications or the Development Agreement.

8.4.3 **Development Permits.** Developer, at its sole cost and expense shall process, obtain, and maintain all Development Permits required for the construction, use, operation, maintenance, repair and replacement of the Market Rate Project Improvements and the Affordable Project Improvements.

8.4.4 **Agreement Does Not Grant Entitlements.** Nothing in this Agreement shall be construed or interpreted as committing the City to approve or undertake any action or review process or activities that require the independent exercise of discretion by the City in its Governmental Capacity, including any approval of any of the Entitlements or Development Permits for which Developer applies whether prior to or following the Effective Date. This Agreement does not (i) grant any land use entitlement or approval to Developer, (ii) supersede, nullify or amend any condition which may be imposed by the City in its Governmental Capacity in connection with approval of the Market Rate Project and the Affordable Project, (iii) guarantee to Developer or any other party any profits from the development of the Property, or (iv) amend

any Governmental Requirements of the City. The issuance or approval of any of the Entitlements or any Development Permit described in this Agreement shall be done by the City in its Governmental Capacity and the failure of the City to issue or approve any such matters shall not be a Default. Nothing contained in this Agreement shall be deemed to waive the right of the City to act in its Governmental Capacity with respect to the consideration and approval of the Entitlements, Development Permits and all other permits, licenses and approvals requested by Developer from time to time in connection with the Market Rate Project or the Affordable Project nor shall it entitle Developer to any of the Entitlements, Development Permits or other City approvals necessary for the development of the Market Rate Project or the Affordable Project, or to the waiver of any applicable City requirements relating thereto, and the failure of the City to issue or approve any of the Entitlements described in this Agreement, including to certify or approve any CEQA document, to approve any tentative (or vesting tentative) tract map, design review, conditional use permit or other entitlements or approvals, including the Entitlements or Development Permits, shall not be a Default of the City under this Agreement.

8.4.5 **Cooperation of City.** Consistent with this Agreement, the City agrees, without cost or other liability to the City or any commitment of the City to approve or conditionally approve any Entitlements required for the full implementation of the Market Rate Project, the Affordable Project or this Agreement, to assist and cooperate with Developer in its efforts to process the Entitlements and Development Permits. The City will use good faith efforts to expedite review of applications for the Entitlements and the Development Permits that are to be issued by the City and other submissions made by Developer where reasonably appropriate in order that Developer is able to meet the deadlines set forth in the Schedule of Performance and will assist and cooperate with Developer in its efforts to process such Development Permits, Entitlements and other submissions. At no cost to the City, the City shall also assist and cooperate with Developer to obtain from other Persons (including IRWD, Environmental Agencies and the City of Irvine) any licenses or entry permits necessary or reasonably desirable in connection with development of the Improvements.

8.4.6 **Entitlements Conditions.** Developer acknowledges and agrees that the City in its Governmental Capacity may require satisfaction of certain conditions and dedication of certain property in connection with approval of any Entitlements.

8.4.7 **Payment of Processing Fees.** The DA provides for payment by Developer of City Processing Fees and Plan Check and Inspection Fees (as each is defined in the Development Agreement). If the DA shall terminate during the Term of this Agreement, then Developer shall, commencing upon termination of the DA, pay to the City pursuant to this Agreement all charges imposed by the City under the then-current regulations for processing applications and requests for permits and entitlement approvals, including (i) all fees, costs and deposits normally charged by the City or other Governmental Authority in connection with application for and review and approval of Entitlements and Development Permits, (ii) any fees or costs incurred by the City or any other Governmental Authority in complying with CEQA or the CEQA implementing regulations; (iii) any costs to review or approve any of the Entitlements or Development Permits applications or submittals by Developer to the City or any other Governmental Authority in connection with the Market Rate Project and the Affordable Project,

provided that in no event shall Developer be obligated to pay again any fee previously paid pursuant to the DA.

8.5 Design Approval.

8.5.1 **Design Review.** It is understood and agreed to by Developer that the quality, character and uses proposed for the Market Rate Project and the Affordable Project are of particular importance to the City. In furtherance of the development of the Market Rate Project and the Affordable Project and the foregoing, Design Review approval is required as part of the Entitlements. In addition, the City will require review and approval of any modifications to the Basic Concept Plan for the Market Rate Project and the Affordable Project and the Landscape Improvements upon the Landscape Areas as further set forth in this Section 8.5.

8.5.2 **Plan Development and Cost.** All plans and specifications for the Market Rate Project and the Affordable Project shall be prepared by Developer at Developer's sole cost and expense and subject to the requirements set forth in this Article 8. The foregoing sentence shall not prohibit Developer from delegating such responsibility to Affordable Housing Developer pursuant to the Lot 13 PDA but shall not relieve Developer from the obligation to prepare such plans and specifications.

8.5.3 **Process for Governmental Review.** The Parties acknowledge that the City shall have the right to review all plans, specifications and submissions, including any changes therein, through its normal plan review and Entitlements process and that the City may exercise its governmental discretion in review of any of the plans, specifications and submissions. Developer has previously submitted to the City, and the City has previously reviewed and approved, the Entitlements in its Governmental Capacity. Within the timeframe shown in the Schedule of Performance (or prior to Affordable Project Closing if the same are required to be submitted prior thereto to satisfy a City Closing Condition or Lot 13 Transfer Condition), Developer shall, and shall cause Affordable Housing Developer to, submit for approval by the City in its Governmental Capacity, final construction design drawings and related documents conforming to the requirements of the City Code, the Specific Plan and all other Entitlements and conditions of approval and mitigation measures within the time period set forth in the Schedule of Performance. The Community Development Department is authorized pursuant to City Code to approve minor changes to building plans after approval by the City provided such changes do not significantly reduce the character of the development concept or the design and materials to be used in enhancing the architecture and aesthetics of the Market Rate Project Improvements and the Affordable Project Improvements. Nothing in this Agreement shall relieve Developer from the obligation to submit modified final design drawings and related documents conforming to the requirements of the City Code, the Specific Plan and all other Entitlements for further review and approval by the City, if any modification to the previously approved plan or Entitlements is required.

8.5.4 **Coordination.** Developer and the architect for the Market Rate Project and the architect for the Affordable Project, as applicable, shall meet with representatives of the City to review and come to a clear understanding of the applicable planning and design criteria

required by the City. During the preparation of all plans and specifications for the Market Rate Project and the Affordable Project, staff of the City and Developer shall hold regular progress meetings to coordinate the preparation, submission and review of such plans. The staff of the City and Developer shall communicate and consult as frequently as necessary to facilitate prompt and speedy consideration of Developer's submittals.

8.5.5 Real Property Division Review. Review of any modifications to the previously approved Basic Concept Plan for the Market Rate Project and the Affordable Project shall also be carried out by the City's Real Property Division as further described in this Section and Section 8.5.6. Prior to the Effective Date, Developer has caused the Basic Concept Plan to be prepared and submitted to the City for approval and the City has previously reviewed and approved the Basic Concept Plan. Developer acknowledges and agrees that the City's Community Development Department is responsible for reviewing the working drawings and issuing recommendations with respect to the appropriate Entitlements. In addition to its submittal of same to the Community Development Department, Developer shall submit any modifications to the previously approved Basic Concept Plan to the Deputy City Manager – Real Property for its approval in accordance with this Section and Section 8.5.6. The exercise by the Deputy City Manager – Real Property of the right to inspect or review the concept plans, drawings and related documents for development of the Market Rate Project and the Affordable Project are actions in the Proprietary Capacity of the City and: (i) shall not constitute an approval by the City of any Entitlements; (ii) shall not constitute a determination by the City of the engineering or structural design, sufficiency or integrity of the improvements contemplated by such plans, drawings and related documents, and (iii) shall not constitute a determination by the City of the compliance of such plans, drawings and related documents with any applicable building codes, safety features and standards. Any inspection or approval of plans and drawings made or granted pursuant to this Agreement shall not constitute an inspection or approval of the quality, adequacy or suitability of such plans, specifications or drawings, nor of the labor, materials, services or equipment to be furnished or supplied in connection therewith. The Parties acknowledge and agree that the City's approval in its Proprietary Capacity of modifications to the Basic Concept Plan shall be carried out only in accordance with the provisions of this Section 8.5. Developer shall not be entitled to damages or compensation as a result of the City's disapproval, conditional approval, or failure to approve or disapprove any modification to the Basic Concept Plan in accordance with the provisions of this Section 8.5. Field modifications are not subject to review by the Deputy City Manager – Real Property.

8.5.6 Process for Real Property Division Review. If Developer desires to modify the previously approved Basic Concept Plan, Developer shall submit to the City two sets of the modifications to the Basic Concept Plan for the proposed revised Improvements with proposed revisions marked for review and approval by the City (and in such case the City's review period shall be fifteen (15) Business Days after City's receipt of the requested modification). Sets of the Basic Concept Plan shall be submitted in writing over the signature of Developer or a representative duly authorized by Developer in writing. Approval by the Deputy City Manager – Real Property shall not be unreasonably withheld, conditioned or delayed if such modifications are Minor Modifications but shall be in the sole discretion of the Deputy City Manager – Real Property if he or she determines they are Major Modifications. If approved, the Deputy City

Manager –Real Property or designee shall endorse its approval on one set of such modified Basic Concept Plan and return it to Developer. Subject to the preceding provisions of this Section 8.5.6, Developer shall make changes in response to the City’s notice of disapproval and resubmit such Basic Concept Plan to the City for review and approval in accordance with the provisions of this Section 8.5.6 (and in such case the City’s review period shall be ten (10) Business Days). Provided the documents are submitted substantially concurrently to the Real Property Department and the Community Development Department, such reviews shall take place substantially concurrently.

8.5.7 **Approved Plans.** Upon approval by the City of each of the matters described in the definition of Approved Plans, the Approved Plans shall govern development of the Market Rate Project Improvements and the Affordable Project Improvements. In addition to any other rights to approve or disapprove the construction level drawings in its Governmental Capacity, the City may, in its Proprietary Capacity and without limiting the rights of the City in its Governmental Capacity, disapprove any construction level drawings that represent Major Modifications to the Entitlements or previously approved Basic Concept Plan. Developer shall not construct any Market Rate Project Improvements or Affordable Project Improvements on the Real Property unless the same are shown in the Approved Plans or unless the prior written consent of the City is obtained to any modification thereof. To the extent of any inconsistencies between the plans identified in the Scope of Development or the Site Plan and the Approved Plans, the Approved Plans shall govern and control as to the development of the Real Property.

8.6 **Financial Capability and Budget Statement.**

8.6.1 **Financial Capability.** Developer understands and agrees that following the Close of Escrow, the City reserves the right to request in writing from Developer and Affordable Housing Developer reasonable additional financial information which shall be comprised of current audited financial statements to the extent then available without any additional cost to Developer or Affordable Housing Developer and current Certified Financial Statements, including information, data and commitments, to ascertain the depth of the financial capability of Developer, Affordable Housing Developer, or other equity participants, to meet the financial obligations required by this Agreement. After the Close of Escrow, and thereafter until issuance of the Final Certificate of Compliance, Developer shall maintain adequate financial capacity to perform its obligations under this Agreement and the Other Agreements, and following each Lot 13 Transfer, shall maintain or shall cause Affordable Housing Developer to maintain with respect to the Affordable Project, adequate financial capacity to perform under the Lot 13 PDA and Approved Ground Lease. If the Equity Investor is The Irvine Company or TICAD, then no additional financial information or evidence of financial capacity is required from Developer or the Equity Investor, so long as The Irvine Company or TICAD continues to satisfy the Minimum Asset Standards pursuant to Section 4.6.2.3. In addition:

8.6.1.1 Until such time as financing for the Affordable Project is secured, Developer shall cause Affordable Housing Developer to provide a written report annually to Developer and the City, on a date certain set forth in the Lot 13 PDA, disclosing the financing that Affordable Housing Developer sought during the preceding year and the outcome of such applications, together with information concerning the financing Affordable Housing Developer

will seek in the upcoming year and a schedule for the required applications associated with those financing sources.

8.6.1.2 If the City is not reasonably satisfied with any written report or proposed Updated Affordable Project Financing Plan, the City shall be entitled to obtain further information from Developer with respect to the Affordable Housing Developer and its financial condition (excluding audited financial statements except to the extent then available without any additional cost to Developer or the Affordable Housing Developer) as may be necessary to establish that the financial resource available to the Affordable Housing Developer are sufficient to satisfy the requirements of the proposed Updated Affordable Project Financing Plan.

8.6.2 **Budget Statement.** From the Close of Escrow until Recording by the City of the Final Certificate of Compliance, if requested by the City, Developer shall with respect to the Market Rate Project and following any Lot 13 Transfer, shall cause Affordable Housing Developer with respect to the Affordable Project, to provide a Budget Statement in the format required by the applicable Financing Plan. The Budget Statement shall be delivered to the City by Developer within thirty (30) calendar days following the later of receipt by Developer of the City's written request therefor and the expiration of the applicable quarter; provided that the City shall make such request no more than once annually. Notwithstanding the foregoing, the delivery of such Budget Statement shall be for informational purposes only and in no event shall the City be entitled to declare a Potential Default or Material Default, or exercise any of its remedies pursuant to this Agreement, based on the contents of such Budget Statement absent an actual Potential Default or Material Default under one of the other covenants or obligations of Developer or Affordable Housing Developer set forth in this Agreement. In addition, prior to the Lot 13 Transfer, no later than thirty (30) calendar days following the end of each funding cycle in which Affordable Housing Developer participates to seek funding or tax credits for the Affordable Project, Developer shall cause Affordable Housing Developer to provide a written report to the City regarding the outcome of its application for the prior funding cycle and the financing it intends to apply for in the next funding cycle. All Budget Statements submitted in response to request by the City shall be subject to the confidentiality provisions set forth in Sections 4.6.1, 4.7.3.3 and 18.24.

8.7 District Fees and Other Fees and Exactions.

8.7.1 **Developer Acknowledgements.** Developer acknowledges and agrees that: (i) the development of the Market Rate Project and the Affordable Project, together with the development of the remainder of Tustin Legacy, will contribute to the need for Tustin Legacy backbone infrastructure located off of the Development Parcels, including Tustin Legacy roadway improvements; traffic and circulation mitigation to support the Tustin Legacy project; domestic and reclaimed water; sewer; telemetry; storm drains and flood control channels; utilities backbone (electricity, gas, telephone, cable, telecommunications, etc.) based on the allocations to the Development Parcels in the City's Tustin Legacy Backbone Infrastructure Financing Program-2024 Update adopted January 21, 2025 as the same may be amended from time to time ("**Tustin Legacy Backbone Infrastructure Program**"); (ii) Developer has had an opportunity to review the budgets, plans and projections developed by the City in connection with the Tustin Legacy

Backbone Infrastructure Program and the studies prepared by the City in connection therewith; (iii) there is an essential nexus between the imposition on the Market Rate Project and the Affordable Project of the Project Fair Share Contribution and a legitimate governmental interest; and (iv) the Project Fair Share Contribution is roughly proportional to and reasonably and rationally related to the impacts that will be caused by development of the Market Rate Project and the Affordable Project.

8.7.2 **Project Fair Share Contribution.** Developer is responsible to pay the Project Fair Share Contribution which shall be in addition to the Purchase Price and paid by Developer at Close of Escrow pursuant to Section 4.2.2. Developer waives its right to fund all or any portion of such contribution pursuant to a community facilities district, including pursuant to any special tax for the development of facilities within the Tustin Legacy Backbone Infrastructure Program or pursuant to other community facilities district. For avoidance of doubt, the City acknowledges and agrees that, notwithstanding the provisions of Section 8.7.1, the preceding provisions of this Section 8.7.2 or any provision elsewhere in this Agreement to the contrary, the amount of the Project Fair Share Contribution payable by Developer at the Close of Escrow represents and constitutes the full amount of costs of the Tustin Legacy backbone infrastructure allocated to the Development Parcels as described in Section 8.7.1 pursuant to the Tustin Legacy Backbone Infrastructure Program and such payment of the Project Fair Share Contribution by Developer constitutes full, complete and final satisfaction of the Project Fair Share Contribution under the Tustin Legacy Backbone Infrastructure Program with respect to the Property and the Project and no further payment shall be owed or payable thereunder with respect thereto.

8.7.3 **Community Facilities District.**

8.7.3.1 The City has previously established Community Facilities District No. 18-01 (“**District**”). The City, by action of the City Council, intends to annex the Real Property into the District as CFD 18-01 Zone 3 prior and as a condition to the Close of Escrow and to adopt an RMA for CFD 18-01 Zone 3, provided that for the period in which any Units are designated as Lower Income Units, such Units shall be excluded from any obligation under the RMA. When CFD 18-01 Zone 3 is created, the District shall impose a special tax and lien upon the Real Property in accordance with the terms of the instruments governing CFD 18-01 Zone 3, the RMA and the requirements of this Agreement. At the time of annexation into the District, the Real Property will be de-annexed from City of Tustin Community Facilities District No. 13-01.

8.7.3.2 Subject to the annexation documents and RMA for CFD 18-01 Zone 3 being consistent with Attachment 23 and the other terms of this Agreement related to CFD 18-01 Zone 3, including all of the terms in this Section 8.7.3, Developer, on behalf of itself and its Successor Owners, and, as to Lot 13, Affordable Housing Developer and each Successor Ground Lessee, agrees to the imposition of the special tax lien of CFD 18-01 Zone 3, as described in Section 8.7.3.1, the RMA and the new CFD 18-01 Zone 3 Special Tax, the proceeds of which shall be used by the City to fund a portion of City essential services, including but not limited to police protection services, fire protection services, ambulance and paramedic services, recreation program services, maintenance of City-owned parks, parkways and open space, flood and storm protection and street and sidewalk maintenance at Tustin Legacy. Unless otherwise agreed by the

City and Developer, each in its sole discretion, the following shall apply to CFD 18-01 Zone 3 formed by the City:

8.7.3.3 The term of the CFD 18-01 Zone 3 Special Tax component imposed upon the Real Property shall not be time limited in any manner unless determined by the City in its sole discretion.

8.7.3.4 At the Closing Date, the RMA shall establish the annual tax burden on each Parcel within the Real Property shall not exceed the amount shown on the Maximum Tax Burden Schedule attached as Attachment 23. Thereafter, the special taxes in the RMA for CFD 18-01 Zone 3 may escalate annually at a rate equal to the greater of (i) the change in the Consumer Price Index during the twelve (12) months prior to December of the previous Fiscal Year not to exceed three percent (3.00%) and (ii) two percent (2.00%), subject to and as further described in the RMA.

8.7.3.5 The CFD 18-01 Zone 3 Special Tax shall be levied only against Developed Property (i.e., property that has received a building permit for new construction, as defined in the RMA). The term "Commercial Property" shall be defined in the RMA to exclude any resident amenities operated or managed by Developer (or a Developer Affiliate) so that they are not subject to the CFD 18-01 Zone 3 Special Tax.

8.7.3.6 The City will provide Developer with the opportunity to review and provide input on all documents and budgets relating to the formation of CFD 18-01 Zone 3, annexation of the Real Property into CFD 18-01 Zone 3 and adoption of the RMA at least thirty (30) Business Days prior to the date on which the formation, annexation and RMA documents are expected to be submitted for the agenda package related to the annexation of the Real Property to CFD 18-01 Zone 3 and adoption of the RMA by the City Council.

8.7.3.7 Developer acknowledges and agrees that its development plan for the Market Rate Project and the Affordable Project will not require the formation of any community facilities district for the financing of public facilities and that neither assessment district nor community facilities district proceeds will be used to reimburse Developer for its Development Costs, including the Project Fair Share Contribution or specific infrastructure costs for the Market Rate Project or the Affordable Project, as applicable. Developer, on behalf of itself, each Successor Owner and each Affordable Housing Developer and each Successor Ground Lessee, waives its right to fund all or any portion of the development of the Market Rate Project or the Affordable Project pursuant to a community facilities district. Developer will not oppose a determination by the City to annex the Real Property into CFD 18-01 Zone 3, provided that the City, the District and the special taxes levied by CFD 18-01 Zone 3 comply with this Agreement. If due to a Default by the City, the Close of Escrow takes place pursuant to Section 15.3.2 prior to annexation of the Real Property into CFD 18-01 Zone 3 by the City or prior to Final District Approval, then the City shall nonetheless have the right to annex the Real Property into the CFD 18-01 Zone 3 (or, if challenged to form a new district) and Developer hereby agrees that it shall support the annexation of the Real Property into such CFD 18-01 Zone 3 or new district provided the same comports with the terms of this Section 8.7.3.

8.7.3.8 The City shall not be prohibited by the terms of this Agreement from subjecting the Real Property and/or the Market Rate Project Improvements and the Affordable Project Improvements thereon, as applicable, to any increase in ad valorem real property tax pursuant to a City of Tustin-wide election, provided that nothing in this Agreement shall be construed to constitute a waiver by Developer of its right or ability to dispute or oppose passage of a City of Tustin-wide bond, the proposed formation of any special district or taxing authority in connection therewith, or the imposition of any such tax, or its right to dispute any portion of the Real Property's assessed value.

8.7.3.9 With respect to the Real Property, the CFD 18-01 Zone 3 Special Tax shall be levied only against Developed Property (as referenced in Attachment 23), i.e., the Real Property that has received a building permit for new construction. In calculating the CFD 18-01 Zone 3 Special Tax for Apartments (as referenced in Attachment 23), CFD 18-01 Zone 3 Special Tax shall be calculated and levied only on Market Rate Units, all Lower Income Units, (i.e., Affordable Apartments as referenced in Attachment 23) shall be exempt from payment of the CFD 18-01 Zone 3 Special Tax, and there shall never be a special tax levied on Lower Income Units (i.e., Apartments) in CFD 18-01 Zone 3. In light of the different terminology used in Attachment 23 and elsewhere in this Agreement, and in order to avoid any potential confusion in the future, the term "Apartments" as used in Attachment 23 shall mean and refer to Market Rate Units as defined in this Agreement, and the term "Affordable Apartments" as used in Attachment 23 shall mean and refer to Lower Income Units as defined in this Agreement. The term "Commercial Property" (as referenced in Attachment 23) as used in the RMA shall exclude any resident amenities operated or managed by Developer (or a Developer Affiliate) so that they are not subject to the CFD 18-01 Zone 3 Special Tax. The RMA shall contain definitions for the terms set forth in Attachment 23 that are consistent with the provisions of this Section 8.7.3.9.

8.7.4 **Master Marketing Program Fees.** Developer acknowledges that the City (in its Proprietary Capacity) requires that all builders within Tustin Legacy contribute a master marketing program fee towards the marketing of Tustin Legacy by the City. In complete satisfaction of such obligation by Developer, Developer shall pay to the City through Escrow Holder at the Close of Escrow only a one-time master marketing program fee of Fifty Thousand Dollars (\$50,000.00). The City acknowledges and agrees that this payment shall satisfy all obligations of Developer to contribute to the master marketing program or any future master marketing program for the Market Rate Project and the Affordable Project and that Developer shall have no additional obligations on account thereof after the payment of such fee at the Close of Escrow.

8.7.5 **Other Fees and Assessments; TUSD.**

8.7.5.1 Developer acknowledges and agrees that in addition to applicable City fees, fees may be imposed by other Governmental Authorities with jurisdiction over the Project and/or the Property and that payment of any such fees and assessments shall be at Developer's sole cost, including (i) the Transportation Corridor Agencies' Foothill/Eastern Corridor Fee, (ii) state-mandated school impact fees and assessments by TUSD, (iii) Orange County School Facility Bonds (Measure G and Measure L), and (iv) utility meter and connection

fees, including from IRWD.

8.7.5.2 The Parties have structured the transaction to account for the current status of the TUSD Agreement, but as the TUSD Agreement contemplates various payment structures with alternatives, the Parties have agreed to the following so that all payment structures under the TUSD Agreement result in a net neutral effect on the Parties:

(i) TUSD has informed the City that TUSD will accept an advance payment from the proceeds of the sale of the Property to allow early payoff of the sums due for the Property pursuant to the existing TUSD CFD 15-02 (“**TUSD CFD**”). City shall use good faith efforts to obtain from TUSD the TUSD Lien Release Documentation and if such TUSD Lien Release Documentation is received, the City shall use good faith efforts to cause TUSD to either remove the lien of the TUSD CFD at the Close of Escrow or to otherwise demonstrate that the TUSD CFD is paid in full as to the Property, as further discussed in Section 8.7.5.3. The City shall have the right in its sole discretion to elect the early payoff of the TUSD CFD at Close of Escrow (“**TUSD Prepayment Alternative**”). If the City elects the TUSD Prepayment Alternative, then the provisions of Section 8.7.5.3 shall apply and the provisions of clauses (ii) through (vii) below shall be of no further force or effect; provided that if the City makes such election but is unable by the Closing Date to obtain the TUSD Lien Release Documentation, then the City shall not be in default under this Agreement, but the provisions of clauses (ii) through (vii) below shall continue to apply.

(ii) TUSD has formed the TUSD CFD that includes portions of Tustin Legacy including the Development Parcels, and the property within the TUSD CFD are subject to the payment of the TUSD CFD Special Tax. When levied against the Development Parcels by TUSD CFD, Developer shall pay the TUSD CFD Special Tax as and when due.

(iii) In addition, pursuant to Section 7 of the TUSD Agreement, Contractual Mitigation Payments are required to be paid for the Development Parcels prior to the issuance of a TUSD Certificate of Compliance for such Development Parcels, and Developer shall pay such Contractual Mitigation Payments on the Development Parcels as and when due.

(iv) If TUSD requires the payment of a City/COC Deposit as a condition for the issuance of a TUSD Certificate of Compliance for any product type of the Development Parcels, the City shall pay such City/COC Deposit directly to TUSD within thirty (30) days after the request by the Developer.

(v) Developer has not contemplated any payment of a Supplemental DU Mitigation Payment should the current residential dwelling unit threshold of 2,835 units be exceeded pursuant to the terms of the TUSD Agreement. If Developer is subject to and has made payment of a Supplemental DU Mitigation Payment, City will provide reimbursement to Developer of such payment(s) subject

to any Off-Sets. The term “**Off-Sets**” means the sum of the reduction, if any, in the Contractual Mitigation Payments and the TUSD CFD Special Tax that results from the imposition of the Supplemental DU Mitigation Payment. For example, if as the result of imposing a Supplemental DU Mitigation Payment, the Contractual Mitigation Payment is reduced by \$1,000 per unit, then the “Off-Sets” will be \$1,000 per unit. For purposes of clarity, if the imposition of the Supplemental DU Mitigation Payment does not alter the amount of the Contractual Mitigation Payment or the TUSD CFD Special Tax required to be paid by the Developer, there shall be no Off-Sets.

(vi) The City represents and warrants to Developer that 618 total non-Senior Units (as that term is defined in the TUSD Agreement), inclusive of the Project, have been constructed or approved for construction within the City Property (as described in the TUSD Agreement) as of the Effective Date, and the City will update Developer in writing, upon Developer’s request, of (a) any additional non-Senior Units for which the City has approved an application for entitlement or has received a completed application for entitlement within any portion of the City Property or (b) the City enters into an agreement to sell any portion of the City Property for residential use.

(vii) Developer acknowledges and agrees that if Developer receives any TUSD Bond Proceeds for any reason (including but not limited to reimbursement of any Contractual Mitigation Payments paid by Developer), such TUSD Bond Proceeds received by the Developer shall accrue to the benefit of the City, and Developer agrees to promptly notify the City and to pay all TUSD Bond Proceeds that Developer receives to the City within sixty (60) days of Developer’s receipt thereof.

8.7.5.3 TUSD Prepayment Alternative. On or before the date that is six (6) months following the Effective Date, the City shall have the right, in its sole discretion, to elect the TUSD Prepayment Alternative. If it makes such election, then the City shall use good faith efforts to obtain from TUSD documentation pursuant to which TUSD has agreed, upon receipt of payment in full of an agreed-upon sum from the City at the Close of Escrow (“**TUSD Lien Release Amount**”), to either release the lien of the TUSD CFD or to provide other evidence demonstrating payment in full of the TUSD CFD as to the Property (“**TUSD Lien Release**”) at Close of Escrow (“**TUSD Lien Release Documentation**”). In the event City elects the TUSD Prepayment Alternative, and notwithstanding the payment of the TUSD Lien Release Amount, Developer and its Successor Owners, Ground Lessee and Successor Ground Lessees shall have the obligation to pay the Contractual Mitigation Payments (or the statutory school fees that are generally collected in connection with issuance of building permits, but not both) on the Development Parcels as and when due, the City shall be responsible for the remaining obligations under the TUSD Agreement (if any) in connection with the Property, and no TUSD Assignment shall be required by this Agreement (which obligations shall survive the Close of Escrow). If the TUSD Lien Release Documentation is received in Escrow prior to the Closing Date, as the same may be extended by the City pursuant to Section 7.1.2, the lien of the TUSD CFD shall be paid as

follows:

(i) Developer shall pay to Escrow Holder as part of the Closing Payment (and the Closing Payment shall be increased by the same) the amount of Twenty One Million Nine Hundred Thousand Dollars (\$21,900,000.00) (“**Developer TUSD Lien Release Payment**”) which shall be applied to and reduce the TUSD Lien Release Amount; and

(ii) The City shall be responsible to pay to TUSD from the Purchase Price the TUSD Lien Release Amount less the Developer TUSD Release Payment applied pursuant to Section 8.7.5.3(i) and the City shall be entitled to retain any excess amount from the Developer TUSD Lien Release Payment, if any, after payment of the TUSD Lien Release Amount to TUSD.

(iii) Escrow Holder shall, upon the Close of Escrow and pursuant to Escrow instructions provided by City and TUSD and confirmed by Developer, pay the TUSD Lien Release Amount to TUSD and cause the TUSD Lien Release Documentation to be Recorded and the TUSD Lien Release to occur.

8.7.6 **Assignment of TUSD Agreement.** Promptly following the Effective Date, the Parties shall meet and confer in good faith with TUSD in order to seek agreement on the final form of TUSD Assignment to be entered into pursuant to Sections 7.2.1.8 and 7.2.2.13. The Parties shall use good faith efforts to complete negotiations with TUSD no later than six (6) months following the Effective Date.

8.7.7 **No Quimby Act Fees or Park Fees.** Except as set forth in the Development Agreement, all fees and/or dedications required in connection with the Market Rate Project and the Affordable Project pursuant to the Quimby Act, Govt. Code Section 66477, are included within the Project Fair Share Contribution and Developer shall not have any additional liability on account thereof.

8.8 Grading Work; Design and Construction of Improvements.

8.8.1 **Grading Work.** Following the Close of Escrow, Developer shall cause the Grading Work upon Lot 11 and Lot 12 to be performed. In addition, following the Lot 13 Transfer, if not previously performed by Developer, Developer shall cause Affordable Housing Developer to perform the Grading Work upon the Lot 13 Real Property. Grading Work shall be performed in accordance with the Approved Plans and the requirements of this Agreement within the time period set forth in the Schedule of Performance. The Grading Work will be performed separately on each Parcel.

8.8.2 **Horizontal Improvements.** Developer shall, or with respect to Lot 13 shall cause Affordable Housing Developer to (i) submit plans for Horizontal Improvements (other than Landscape Improvements) for approval by the City within the time periods set forth in the Schedule of Performance, (ii) promptly obtain permits for the Horizontal Improvements following City approval of the Approved Plans and (iii) when authorized by this Agreement or the Other

Agreements, to commence construction of and diligently prosecute construction of the Horizontal Improvements in accordance with and subject to this Agreement, with the Market Rate Horizontal Improvements work to commence promptly following the Close of Escrow and Affordable Project Horizontal Improvements to commence promptly after the Affordable Project Closing.

8.8.3 **Vertical Improvements.** Developer shall promptly obtain permits for the Market Rate Vertical Improvements following City approval of the Approved Plans and shall commence construction of and diligently prosecute construction of the Market Rate Vertical Improvements to Completion in accordance with the Schedule of Performance. Developer shall cause Affordable Housing Developer (i) to promptly obtain permits for the Affordable Project Vertical Improvements following City approval of the Approved Plans and with such permits being ready to issue as a condition to the Lot 13 Transfer and (ii) to commence construction of and diligently prosecute construction of the Affordable Project Vertical Improvements in accordance with the Schedule of Performance following the Lot 13 Transfer.

8.9 **Guaranty and Guarantor.**

8.9.1 **Deliverables at Close of Escrow.** At the Close of Escrow, Developer shall deliver a Guaranty from a Guarantor approved by the City in its sole discretion (subject to the following sentence). As of the Effective Date, the City has reviewed and approved TICAD as the Guarantor. At the Close of Escrow, Developer shall cause the Guarantor to provide to the City (i) evidence and written assurances that Guarantor has Liquid Assets and Net Worth that meet the Minimum Asset Standards set forth in the Guaranty, (ii) a Guarantor Original Certificate and (iii) a Guaranty Legal Opinion.

8.9.2 **Replacement of Guarantor.** If Developer or any Transferee desires to replace its existing Guaranty or the approved Guarantor, as a condition to the City's review and approval, in its sole discretion, of the proposed guarantors and the form and substance of the Guaranty (with such modifications from the form of Attachment 14A as the City may require in its sole discretion), Developer shall cause the proposed guarantors to deliver evidence of the financial capacity of the proposed guarantors, authority of the proposed guarantors to provide the Guaranty, and copies of all documents evidencing formation, good standing and authority requested by the City, including providing information regarding Guarantor's then-current Liquid Assets and Net Worth to assure that the Guarantor meets the Minimum Asset Standards (provided that if any Transfer is proposed to take place prior to the Close of Escrow, Developer or Transferee shall provide information regarding the Liquid Assets and Net Worth of the proposed guarantor anticipated at the time at which the Guaranty would be given, and the City's review of such information shall not be deemed to be City's approval of Guarantor, which shall be provided if at all, as a condition for the benefit of the City at the Close of Escrow and Transfer). The proposed guarantor shall have Liquid Assets and Net Worth that meet the Minimum Asset Standards and such amounts shall be sufficient, in the determination of the City in its sole discretion, to secure the obligations of Developer and Affordable Housing Developer under this Agreement and the Other Agreements. The City shall have the right to approve or disapprove the proposed guarantor in its sole discretion.

8.9.3 **Guarantor Illiquidity Event; Developer Default.** The Guaranty requires Guarantor to maintain Liquids Assets and Net Worth meeting the Minimum Asset Standards and to comply with certain related covenants, and the failure of Guarantor to do so is referred to in the Guaranty as a Guarantor Illiquidity Event. If a Guarantor Illiquidity Event occurs, the City's notice to Developer of the existence of the Guarantor Illiquidity Event, if given by the City, shall constitute a declaration by the City of a Material Default by Developer pursuant to Section 14.2.1 unless the cure of such Guarantor Illiquidity Event occurs during the applicable cure period set forth in the Guaranty. To cure such Material Default, Developer shall be required to provide the City with additional security satisfactory to the City by (i) providing the City with a Guaranty from a replacement or supplemental guarantor or guarantors acceptable to the City in its sole discretion (and with such modifications from the form of Attachment 14A as the City may require in its sole discretion), or (ii) furnishing the City with another form of security such as a pledge of specified assets or completion bond, in each case in a manner meeting the requirements of the City in its sole discretion.

8.9.4 **Guaranty Effective Until Final Certificate of Compliance.** Developer, on behalf of itself and each Successor Owner, and the City on behalf of itself and its successors and assigns, hereby agree that notwithstanding any other term of this Agreement, the Guaranty provided at the Close of Escrow (or, if applicable, any replacement Guaranty provided to and approved by the City pursuant to this Agreement) shall remain in effect until Recording by the City of the Final Certificate of Compliance and the Guarantor shall not be released therefrom, except as otherwise expressly provided in the Guaranty unless the Guaranty is replaced by an executed new Guaranty from a Guarantor approved by the City in accordance with Section 8.9.2.

8.10 Replacement of Equity Investor.

If as a result of a Transfer or for any other reason Developer has identified a new Equity Investor which has not previously delivered an Equity Investor Original Certificate or entered into an Equity Commitment, the City shall have the right to approve such Equity Investor in its sole discretion and to confirm in its sole discretion that such proposed Equity Investor has sufficient Liquid Assets and Net Worth, as determined by the City in its sole discretion, to fund all Development Costs for the Market Rate Project and the Affordable Project as described in the Market Rate Project Financing Plan or Updated Market Rate Project Financing Plan as applicable and in connection with such approval Developer shall cause the Equity Investor to deliver to the City those items set forth in Section 4.6.2.3 and the form of Equity Commitment, which shall be subject to approval of the City in its sole discretion (and only upon City approval in its sole discretion of each of the foregoing shall the proposed Equity Investor be deemed an Approved Equity Investor). Notwithstanding the foregoing, the City hereby approves The Irvine Company as an Approved Equity Investor.

8.11 Development Covenants.

With respect to construction of the Market Rate Project, the Market Rate Project Improvements, the Affordable Project and the Affordable Project Improvements, Developer, on behalf of itself and each Successor Owner, and as to the Affordable Project and the Affordable

Project Improvements only, Affordable Housing Developer and each Successor Ground Lessee, hereby covenants and agrees as follows and wherever Developer undertakes an obligation in this Section, the same shall be Affordable Project Provisions and obligations of each Affordable Housing Developer as to the Affordable Project (to the extent not retained by Developer) and the Affordable Project Improvements whether or not Affordable Housing Developer is specifically identified below; provided that nothing contained in this Section shall preclude Affordable Housing Developer or any Successor Ground Lessee from obtaining one or more Construction Loans for purposes of construction of the Affordable Project in accordance with Article 17:

8.11.1 Developer shall maintain throughout the Term, sufficient equity, capital and firm binding commitments for financing necessary to (i) pay through Completion, all costs of development, construction, marketing, sale and/or leasing, operation and management of all the Market Rate Project Improvements and the Affordable Project Improvements as defined in the Scope of Development; and (ii) enable Developer to perform and satisfy all the covenants of Developer contained in this Agreement, the Quitclaim Deed, the Special Restrictions, the Affordable Housing Declaration, the Public Access Covenant and the Landscape and Installation and Maintenance Agreement. Developer shall not undertake any additional project if it could reasonably be expected to jeopardize the sufficiency of any equity, capital and firm and binding commitments for the purposes expressed in the preceding sentence.

8.11.2 The development of the Market Rate Project and the Affordable Project shall be done in a professional and competent manner. Developer shall, and shall cause Affordable Housing Developer (with respect to the Affordable Project) and all other Persons carrying out work on the Development Parcels to, perform all work required to construct and Complete the Market Rate Project Improvements, the Affordable Project Improvements, the Market Rate Project, the Affordable Project and related work in accordance with the Approved Plans, the Entitlements, the Development Permits, the Design Guidelines and all Governmental Requirements and at the level of quality set forth in the Scope of Development.

8.11.3 Developer shall be responsible for the timeliness and quality of all work performed and materials and equipment furnished in connection with the Market Rate Project and the Affordable Project, whether the work, materials and equipment are performed and furnished by Developer or through contractors, subcontractors (of all tiers) and suppliers.

8.11.4 Developer shall not place, or allow to be placed, on its interests in the Property, the Market Rate Project Improvements or the Affordable Project Improvements, or any portion thereof, any Mortgage, except as provided in this Agreement with respect to the Affordable Project.

8.11.5 Developer shall not place, or allow to be placed, on its interests in the Property, the Market Rate Project Improvements or the Affordable Project Improvements, or any portion thereof any encumbrance or lien, including any Construction Lien, other than pursuant to a Leasehold Mortgage with respect to the Affordable Project.

8.11.6 Developer shall, within thirty (30) Business Days following receipt of notice thereof, cause to be removed or bonded against (such bonding to be by the provision of

bonds satisfying California statutory requirements) any and all mechanic's liens, stop notices and/or bonded stop notices that are Recorded and/or served by contractors, subcontractors (of all tiers) and suppliers in connection with the Market Rate Project and the Affordable Project including construction of Market Rate Project Improvements and the Affordable Project Improvements on the Development Parcels or performance of other work by Developer, Affordable Housing Developer or any of the Developer Representatives in connection therewith, including conducting investigations or causing the foregoing to be carried out ("**Construction Liens**"). Notwithstanding the foregoing, Developer may contest the amount, validity or application, in whole or in part, of any Construction Liens; subject, however, to the further requirement that neither the Property nor any Market Rate Project Improvements nor any Affordable Project Improvements nor any part or interest in either thereof would be in any danger of being sold, forfeited, attached or lost pending the outcome of such proceedings. If any such contest is finally resolved against Developer, the same shall promptly pay the amount required to be paid, together with all interest and penalties accrued thereon. Developer on behalf of itself, each Successor Owner, and as to liens arising from work performed by Affordable Housing Developer or its Developer Representatives only, the Lot 13 Property, the Affordable Project and Affordable Project Improvements only, each Affordable Housing Developer and Successor Ground Lessee, hereby agrees to indemnify, defend and hold the City Indemnified Parties free and harmless from and against any and all Claims arising from or related to failure to pay for construction of the Market Rate Project Improvements, the Affordable Project Improvements or other work related to the Market Rate Project Improvements, the Affordable Project Improvements, the Market Rate Project or the Affordable Project, including costs to remove or bond any Construction Liens for work performed on a Parcel to the extent (A) Accrued during its respective period of ownership thereof, and (B) with respect to Developer only, Accrued during such longer period between the Effective Date and the date of issuance of a Certificate of Compliance for the applicable Parcel if Developer is not released pursuant to Article 2; provided, however, that neither Developer, Affordable Housing Developer nor any Successor Owner nor any Successor Ground Lessee shall have liability or responsibility for such Claims for work performed by the City or any contractor of the City that is claiming a right to a Construction Lien on any portion of the Real Property. For the avoidance of doubt, "any contractor of the City" does not mean (x) Developer, each Successor Owner or any Person claiming by, through or under Developer or any Successor Owner or (y) for any period in which such Person is the Ground Lessee under a Ground Lease and with respect to the Affordable Project Provisions, Affordable Project, Affordable Project Improvements and Lot 13 Real Property only, Affordable Housing Developer or any Successor Ground Lessee.

8.12 City Rights of Access.

In addition to any rights it may have in its Governmental Capacity, representatives of the City shall have the reasonable right of access to the Property, the Market Rate Project Improvements and the Affordable Project Improvements, upon not less than two (2) Business Days prior written notice to Developer or, with respect to the Affordable Project Improvements, to Affordable Housing Developer (except in the event of an emergency, in which case no such prior notice shall be required), without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including the inspection of the work being performed in constructing the Market Rate Project Improvements and the Affordable Project

Improvements.

8.13 Disclaimer of Responsibility by City and Exculpation.

8.13.1 **Disclaimer of Responsibility.** The City neither undertakes nor assumes nor will have any responsibility or duty to Developer, any Successor Owner, any Affordable Housing Developer, nor any Successor Ground Lessee any Developer Representatives, any End User or any other Person to review, inspect, supervise, pass judgment upon or inform Developer, any Successor Owner, any Affordable Housing Developer, any Successor Ground Lessee, any End User or any other Person of any matter in connection with the development or construction of the Market Rate Project Improvements and/or the Affordable Project Improvements or the approval of any maps, including the Horizontal Improvements, the Vertical Improvements or the Approved Plans, any Basic Concept Plan or component thereof and grading plans with respect to the foregoing, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished for development of the Market Rate Project and the Affordable Project or other work related to the Market Rate Project Improvements or the Affordable Project Improvements, any Person furnishing same, or otherwise. Developer, any Successor Owner, any Affordable Housing Developer, any Successor Ground Lessee, any End User and all other Persons shall each rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to it by the City in connection with such matter is for the public purpose of developing the Market Rate Project and the Affordable Project, and none of the foregoing is entitled to rely upon information supplied by the City.

8.13.2 **Exculpation.** The City shall not be liable in damages to Developer or to any Successor Owner, any Affordable Housing Developer, any Successor Ground Lessee, any Developer Representatives, any End User or any other Person, on account of (i) any approval or disapproval by the City, including by the City Manager or designee, made in the Governmental Capacity and/or Proprietary Capacity of the City of any Entitlements, Development Permits, design documents or maps, in connection with the Market Rate Project, the Affordable Project, the Project Improvements or the Approved Plans, any Basic Concept Plan or component thereof and grading plans with respect to the foregoing, whether or not defective or whether or not in compliance with applicable laws or ordinances; (ii) any construction, performance or nonperformance by Developer, Affordable Housing Developer or any Successor Owner, Successor Ground Lessee, lessee, licensee or other Person of any work on the Development Parcels, the Market Rate Project Improvements or the Affordable Project Improvements, whether or not pursuant to Approved Plans or whether or not in compliance with applicable laws or ordinances; (iii) any mistake in judgment, negligence, action or omission in exercising its rights, powers and responsibilities under this Agreement or any other agreement between City and Developer in connection with Sections 8.13.1 and 8.13.2(i) and (ii); and/or (iv) the enforcement or failure to enforce any of the provisions of this Agreement. Each and every Person who makes design submittals for approval agrees by reason of such submittal, and Developer, on behalf of itself, each Successor Owner and all Persons claiming by, through or under Developer or each Successor Owner agrees by acquiring an interest in the Property, the Market Rate Project Improvements, the Affordable Project Improvements or any portion thereof or interest therein, not to bring any suit or action against the City seeking to recover any such damages and expressly waives any such

claim or cause of action for such damages which it would otherwise be entitled to assert. The review of any design submittals shall not constitute the assumption of any responsibility by, or impose any liability upon, the City as to the accuracy, efficacy, sufficiency or legality thereof nor decrease or diminish any liability, duties, responsibilities, or obligations of Developer, any Successor Owner, or, as to the Lot 13 Property, the Affordable Project Provisions and the Affordable Project Improvements only, Affordable Housing Developer or any Successor Ground Lessee under this Agreement or otherwise.

8.13.3 **City Responsibility.** Nothing in this Section 8.13 shall limit or be deemed to limit the City's express representations, warranties, covenants and obligations set forth in this Agreement and the Other Agreements.

8.13.4 **No Supervision or Control.** The City (whether acting in the Governmental Capacity and/or Proprietary Capacity of the City) does not have any right, and hereby expressly disclaims any right, of supervision or control over the architects, designers, engineers or persons responsible for drafting or formulating of the plans, drawings and related documents of Developer and/or Affordable Housing Developer.

8.13.5 **Graded Condition of the Development Parcels.** The City has previously caused its contractor to rough grade the Development Parcels and such Development Parcels have been certified by Fabio Escobar on April 10, 2014 (Permit No 2013-0010) and by Jessica Leyva on January 27, 2021 (CIP 70246 and 70250). Developer acknowledges that the City is delivering the Property as-is and does not certify in any manner the grading or condition of the Development Parcels. Developer, Affordable Housing Developer each Successor Owner and each Successor Ground Lessee shall look solely to the engineers, consultants and contractors and their respective certifications and not to the City for all purposes related to the Grading Work performed, including the adequacy of the work and the certification(s).

8.13.6 **Survival.** The provisions of this Section 8.13 shall be included in the Special Restrictions, shall run with the land, shall remain in effect in perpetuity and shall survive termination of this Agreement, the Close of Escrow, and the execution and Recording by the City of each Certificate of Compliance, shall not merge with any deed and shall be binding upon Developer, its successors and assigns, each Successor Owner and each and every Person claiming by, through or under Developer, including all End Users, for the benefit of the City and its Governmental Successors, and from and after the Close of Escrow, and shall be binding upon and burden the Real Property.

8.14 Local, State and Federal Laws.

Developer shall carry out the construction of the Market Rate Project including all Market Rate Project Improvements and shall carry out or cause Affordable Housing Developer to carry out the Affordable Project and the Affordable Project Improvements, subject to Sections 8.1.3 and in conformity with all Governmental Requirements including all applicable federal and State labor laws and regulations and shall, if and to the extent required by applicable federal or State labor laws or regulations, pay prevailing wages meeting the requirements of such laws and regulations; provided that Developer on behalf of itself, Affordable Housing Developer, each Successor Owner

and each Successor Ground Lessee reserves the right to reasonably contest such laws and regulations. Developer, Affordable Housing Developer and each Successor Ground Lessee (as to the Affordable Project and Affordable Project Improvements only) and each Successor Owner shall carry out construction of the Project Improvements in compliance with the requirements of this Section and each shall be fully responsible for determining whether the foregoing wage requirements are applicable to the Market Rate Project and Affordable Project. Developer hereby agrees on behalf of itself, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner, but excluding End Users, to indemnify, defend and hold the City and the City Indemnified Parties free and harmless from and against any and all Claims arising from or related to applicability of the prevailing wage requirements imposed by any federal and State labor laws and/or the compliance by Developer or Developer's officers, directors, employees, agents, representatives, consultants and/or contractors (at every tier) in construction of the Project Improvements with the prevailing wage requirements imposed by any applicable federal and State labor laws. For avoidance of doubt, Developer, Affordable Housing Developer, each Successor Owner and each Successor Ground Lessee shall be liable pursuant to this Section only with respect to work performed on a Parcel (A) during its respective period of ownership (or as to Affordable Housing Developer and each Successor Ground Lessee, during any period in which it has an interest in the Lot 13 Property pursuant to a Ground Lease) of such Parcel, and (B) with respect to Developer only, during such longer period between the Effective Date and the date of issuance of a Certificate of Compliance for the applicable Parcel until it is released pursuant to Article 2 provided, however, that neither Developer, Affordable Housing Developer nor any Successor Owner nor any Successor Ground Lessee shall have liability or responsibility for prevailing wage requirements for public improvements performed by the City or any contractor of the City on any portion of the Property, and provided further that the foregoing shall not relieve Developer, Affordable Housing Developer or any Successor Owner or Successor Ground Lessee of liability should the City work trigger a determination that the Project or any Project Improvement is subject to prevailing wage requirements. The City makes no representations nor warranties regarding the applicability of prevailing wage laws. For the avoidance of doubt, "any contractor of the City" does not mean (x) Developer, each Successor Owner or any Person claiming by, through or under Developer or any Successor Owner or (y) or for any period in which such Person is the Ground Lessee under a Ground Lease and with respect to the Affordable Project Provisions, Affordable Project, Affordable Project Improvements and Lot 13 Real Property only, Affordable Housing Developer or any Successor Ground Lessee.

8.15 Liens, Taxes and Assessments.

Developer and each Successor Owner shall pay prior to delinquency all real estate taxes and assessments assessed and levied on or against all portions of the Property, the Market Rate Project Improvements, and the Affordable Project Improvements during the period of ownership thereof by such Developer or Successor Owner and Affordable Housing Developer and each Successor Ground Lessee, if any, shall be responsible to pay prior to delinquency all real estate taxes, possessory interest taxes, if any, and assessments assessed and levied on or against all portions of the Affordable Project Improvements owned by it during the term of its Ground Lease; provided that the foregoing shall not prohibit application by Developer, any Successor Owner, Affordable Housing Developer or any Successor Ground Lessee for a property tax welfare

exemption with respect to the Affordable Project. Developer shall not place, or allow to be placed, on its interests in the Property, or any Parcel, Building or Residential Unit, or any portion thereof, any Mortgage or encumbrance or lien not authorized by this Agreement. Developer shall remove, or shall have removed, any levy or attachment made on its interests in the Property, the Market Rate Project Improvements or the Affordable Project Improvements (or any portion thereof) or shall assure the satisfaction thereof within thirty (30) Business Days following receipt of notice thereof. Except as set forth in Sections 8.7.2 and 8.7.3, nothing contained in this Agreement shall be deemed to prohibit Developer, Affordable Housing Developer, any Successor Owner or any Successor Ground Lessee from contesting the validity or amount of any tax or assessment or to limit the remedies available to Developer, Affordable Housing Developer, such Successor Owner or such Successor Ground Lessee in respect thereto. Developer on behalf of itself, Affordable Housing Developer, each Successor Owner and each Successor Ground Lessee hereby agrees to indemnify, defend and hold the City Indemnified Parties free and harmless from and against any and all Claims arising from or related to failure to pay liens, taxes and assessments assessed, levied to the extent (A) Accrued during its respective period of ownership (or as to Affordable Housing Developer or Successor Ground Lessee, Ground Lease) of a Parcel, and (B) with respect to Developer only, Accrued during such longer period between the Effective Date and the date of issuance of a Certificate of Compliance for the applicable Parcel until it is released pursuant to Article 2.

8.16 Duration of Article 8 Indemnities; Post-Certificate of Compliance Affiliate Responsibilities.

The provisions, including the indemnities, set forth in Sections 8.11.6, 8.14 and 8.15 shall survive the termination of this Agreement, the Close of Escrow and the execution and Recording by the City of each Certificate of Compliance, shall not merge with any deed and shall remain in effect for the Term of this Agreement and, upon Recording of the Special Restrictions each shall run with the land for the term of the Special Restrictions in accordance with the specific terms of Sections 8.11.6, 8.14 and 8.15. Following issuance of a Certificate of Compliance for each Parcel, and notwithstanding the limitations in Sections 8.11.6, 8.14 and 8.15 of liability of each Owner during its respective period of ownership of such Parcel, upon any Transfer of fee title or a Ground Lease interest to a Parcel by an Owner (Transferor) to an Owner Affiliate (Transferee) occurring following issuance of a Certificate of Compliance for such Parcel, the Transferee shall be deemed to have assumed and be liable for the obligations of the Transferor and each consecutive prior Owner Affiliate Transferee as though such Transferee had held joint ownership with Transferor and each consecutive prior Owner Affiliate Transferee during their respective prior consecutive periods of ownership of such Parcel.

9. Certificate of Compliance.

9.1 Completion; Schedule of Performance.

Subject to Section 18.7, following the Close of Escrow, Developer shall construct or cause to be constructed the components of the Market Rate Project and the Affordable Project, as applicable, upon the Real Property conveyed and shall satisfy all Conditions Precedent relating to

issuance of the Certificates of Compliance for such components of the Market Rate Project and the Affordable Project when and as required by this Agreement in accordance with the Schedule of Performance.

9.2 Certificates of Compliance Defined.

After Completion of all construction and development required to be undertaken by Developer in conformity with this Agreement and in accordance with the Schedule of Performance and the satisfaction by Developer of, as applicable, Conditions Precedent set forth in Section 9.3 as to the Market Rate Property and the Conditions Precedent set forth in Section 9.4 as to the Lot 13 Property, the City shall deliver to Developer or Successor Owner owning fee title a “**Certificate of Compliance**” for the associated portion of the Real Property and Market Rate Project or the Affordable Project, as applicable. For avoidance of doubt, and subject to the preceding sentence, the City shall deliver a separate Certificate of Compliance with respect to each Parcel within the Market Rate Real Property and for each Parcel within Lot 13. The Certificate of Compliance for the Market Rate Project shall be substantially in the form and substance of the Certificate of Compliance set forth on Attachment 16A and the Certificate of Compliance for the Affordable Project shall be substantially in the form and substance of the Certificate of Compliance set forth on Attachment 16B. Developer, on behalf of itself, each Successor Owner, and each and every Person claiming by, through or under Developer or any Successor Owner, including each End User, hereby consents to Recording by the City of the Final Certificate of Compliance against the entirety of the Real Property, notwithstanding that portions or all of the Real Property may have been transferred prior thereto to Successor Owners or End Users or by Ground Lease and notwithstanding that a Certificate of Compliance may have previously been Recorded against a portion of the Real Property, and confirms that no further acknowledgement or consent by the then-Owners or Ground Lessees of the Real Property shall be required in connection with such Recording. Each Certificate of Compliance shall state the actual number of units (and whether Market Rate Units or Lower Income Units) constructed on the applicable Parcel(s) as of the date of issuance thereof, and such unit count shall establish the actual number of units allocated to Developer by the City pursuant to Section 4.1.2 and the Quitclaim Deed. The provisions of this Section with respect to Recording by the City of the Certificate of Compliance shall terminate if this Agreement terminates prior to Close of Escrow but shall survive any subsequent termination of this Agreement, to preserve the right of the City and each subsequent Developer to cause Recording by the City of the Final Certificate of Compliance against the entirety of the Real Property.

9.3 Market Rate Project Certificate of Compliance Conditions Precedent.

The City shall not be obligated to execute and Record the Certificate of Compliance for the Market Rate Project or any Parcel comprising a portion thereof, as applicable (each, a “**Market Rate Project Certificate of Compliance**”), unless and until each of the following has occurred with respect to the Market Rate Project or such Parcel, as applicable:

- 9.3.1 The Developer Final Tract Map shall have been Recorded.

9.3.2 With respect to each of Building 1, Building 2, Building 3, and Building 4 (as shown on the Phasing Plan), Completion of the Market Rate Project Improvements for such Building with the number of Market Rate Units to be constructed on the Parcel on which such Building is located as depicted on the Approved Plans and all accompanying amenities, Common Area Improvements, abutting Publicly Accessible Common Area Improvements (except to the extent set forth in Sections 9.3.2.1(iii) and 9.3.2.3(iii)) and Landscape Improvements associated with such Parcel and the following shall have occurred:

9.3.2.1 Building 1 (as shown on the Phasing Plan):

- (i) the Public Park in Lot A as shown on the Developer Final Tract Map shall have been Completed;
- (ii) framing of Building 5 within the Affordable Project (as shown on the Phasing Plan) shall have commenced;
- (iii) the publicly accessible paseo area adjacent to Building 1 shall have been Completed in a manner sufficient to provide Tustin Building Code required access; and
- (iv) the Café within Building 1 is open to the public.

9.3.2.2 Building 2 (as shown on the Phasing Plan):

- (i) a Certificate of Compliance for Building 5 shall have been issued by the City;
- (ii) a certificate of occupancy for Building 1 shall have been issued by the City;
- (iii) the Public Park in Lot A as shown on the Developer Final Tract Map shall have been Completed; and
- (iv) the publicly accessible paseo areas adjacent to Building 1, Building 2 and Building 5 shall have been Completed.

9.3.2.3 Building 3 (Market Rate):

- (i) a Certificate of Compliance for Building 5 shall have been issued by the City;
- (ii) framing of Building 6 within the Affordable Project (as shown on the Phasing Plan) shall have commenced; and
- (iii) the publicly accessible paseo areas adjacent to Building 3 shall have been Completed in a manner sufficient to provide Tustin Building Code required access.

9.3.2.4 Building 4 (Market Rate):

(i) A Certificate of Compliance for Building 5 and for Building 6 shall have been issued by the City;

(ii) A certificate of occupancy for Building 3 shall have been issued by the City; and

(iii) the publicly accessible paseo areas adjacent to Building 3, Building 4 and Building 6 shall have been Completed.

9.3.3 Final inspection by or on behalf of the City of the Market Rate Real Property or the Parcel for which a Certificate of Compliance is sought and the Market Rate Project Improvements constructed thereon and determination by the City that such Market Rate Project Improvements have been Completed on the relevant Parcel in conformance with this Agreement, the Approved Plans and all Governmental Requirements;

9.3.4 For each Parcel for which a Certificate of Compliance is sought, issuance of a certificate of occupancy by the City for Buildings upon such Parcel containing the number of Residential Units to be constructed within such Building as depicted on the Approved Plans;

9.3.5 Written release or bonding for the applicable Parcel of the Market Rate Real Property in accordance with California law of all Construction Liens or rights to record liens from the general contractor and all subcontractors (at all tiers) having served valid preliminary 20-day notices, or, if none are filed, the statutory period for filing liens having expired without any Construction Liens being filed against or with respect to the Real Property or applicable Parcel thereof;

9.3.6 Payment by Developer to the City of all funds then owing to the City under this Agreement and, the Other Agreements; and

9.3.7 No Potential Default or Material Default by Developer under this Agreement or default under the Other Agreements or default by Guarantor under the Guaranty shall have occurred and be continuing.

9.4 Affordable Project Conditions Precedent.

Upon satisfaction of the Conditions Precedent set forth in this Section 9.4 with respect to the Affordable Project or any Parcel comprising a portion thereof, as applicable, the City shall execute and Record a Certificate of Compliance with respect to the Lot 13 Real Property or such Parcel, as applicable (each, an “**Affordable Project Certificate of Compliance**”):

9.4.1 The Developer Final Tract Map shall have been Recorded.

9.4.2 With respect to each of Building 5 and Building 6 (as shown on the Phasing Plan), Completion of (i) the Affordable Project Improvements, including the number of Residential Units and the number of Lower Income Units, required to be constructed on the Parcel on which such Building is located all as depicted on the Approved Plans, and (ii) all accompanying amenities, Common Area Improvements, abutting Publicly Accessible Common Area Improvements (except to the extent set forth in Section 9.4.2.1) and Landscape Improvements associated with the Lot 13 Real Property or such Parcel, as applicable and the following shall have occurred:

9.4.2.1 for Building 5 (as shown on the Phasing Plan), the publicly accessible paseo area adjacent to Building 5 shall have been Completed, provided that if the Vertical Improvements for Building 6 are then under construction, the requirement for Completion shall only require construction in a manner sufficient to provide Tustin Building Code required access for residents, invitees and guests of Building 5; and

9.4.2.2 for Building 6 (as shown on the Phasing Plan):

(i) a Certificate of Compliance for Building 5 shall have been issued by the City; and

(ii) the publicly accessible paseo areas adjacent to Building 5 and Building 6 shall have been Completed;

9.4.3 Final inspection by or on behalf of the City of the Lot 13 Real Property or the Parcel for which a Certificate of Compliance is sought and the Affordable Project Improvements constructed thereon and determination by the City that such Affordable Project Improvements have been Completed on the relevant Parcel in conformance with this Agreement, the Approved Plans and all Governmental Requirements;

9.4.4 For each Parcel for which a Certificate of Compliance is sought, issuance of a certificate of occupancy by the City for Buildings upon such Parcel containing the number of Residential Units and Lower Income Units to be constructed within such Building as depicted on the Approved Plans;

9.4.5 Written release or bonding in accordance with California law of all Construction Liens or rights to record liens from the general contractor and all subcontractors (at all tiers) having served valid preliminary 20-day notices, or if none are filed, the statutory period for filing liens having expired without any Construction Liens being filed against or with respect to the Lot 13 Real Property or applicable Parcel thereof;

9.4.6 Payment to the City of all funds then owing to the City under this Agreement and the Other Agreements with respect to the Affordable Project Provisions and/or the Affordable Project; and

9.4.7 No default by the Affordable Housing Developer with respect to the Affordable Project Provisions or under the Other Agreements and no default by Affordable

Housing Developer under the Lot 13 PDA or the Approved Ground Lease shall have occurred and be continuing.

9.5 Conclusive Presumption.

Each Certificate of Compliance shall be, and shall so state, conclusive determination of satisfactory completion of the obligations of Developer pursuant to this Agreement with respect to the relevant Parcel and shall be evidence of termination of this Agreement, subject only to the provisions referenced in Section 9.8 and the Other Agreements affecting such Parcel, each of which shall survive in accordance with its respective terms.

9.6 Not Evidence.

Issuance by the City of any Certificate of Compliance is not notice of completion as referred to in Section 8182 of the California Civil Code.

9.7 City Obligations.

The City shall not unreasonably withhold, condition, or delay issuance of a Certificate of Compliance for the Market Rate Property or Lot 13 Property when all the Conditions Precedent thereto are satisfied. Developer shall provide, or shall cause Affordable Housing Developer to provide evidence of satisfaction of the foregoing conditions. If the City refuses or fails to execute and Record such Certificate of Compliance after written certification from Developer and with respect to the Lot 13 Real Property or any portion thereof, Affordable Housing Developer, which shall include evidence of satisfaction of each of the applicable Conditions Precedent to such issuance set forth in this Article 9, provided each of the applicable conditions established in Section 9.3 and/or Section 9.4 have been satisfied, the City shall, within fifteen (15) Business Days of the written request, provide a written statement which details the reasons the City refused or failed to execute and Record such Certificate of Compliance. The statement shall also contain a statement of the actions that Developer and, with respect to the Lot 13 Real Property or any Parcel thereof, Affordable Housing Developer must take to obtain such Certificate of Compliance. The City shall cause each Certificate of Compliance to be Recorded within five (5) Business Days after issuance.

9.8 Effect of Certificate of Compliance; Termination of Agreement.

9.8.1 **Termination of Portions of Agreement Upon Recording.** Each Certificate of Compliance shall be in such form as to permit it to be Recorded. After Recording by the City of each Certificate of Compliance this Agreement shall terminate as to the Parcel(s) to which such Certificate of Compliance applies and as to the provisions of this Agreement applicable to such Parcel; provided, however, such termination of this Agreement with respect to a Parcel shall not affect the continued applicability of any provisions in the Other Agreements that survive any such Recording of a Certificate of Compliance or the applicability of this Agreement and the Other Agreements to the Parcels for which no Certificate of Compliance has then been issued.

9.8.2 **Survival of Certain DDA Provisions.** In addition to the matters set forth in the Special Restrictions, the following shall survive the issuance of the Certificate of

Compliance as to each Parcel and remain in full force and effect for the period set forth in each, and shall be binding upon Developer, its successors and assigns, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner of the Property or portion thereof including all End Users, for the benefit of the City and its Governmental Successors, and from and after the Close of Escrow, and shall be binding upon and burden the Real Property, provided that upon sale or transfer to an End User, the obligations set forth in Sections 9.8.2.1 and 9.8.2.3 shall not survive with respect to or bind any End User or any of their respective successors and assigns:

9.8.2.1 The provisions of Section 11.1.4 shall survive until the expiration of the time period for provision of the environmental insurance policy described thereby; and the obligation to provide such insurance policy shall remain in effect as to each Parcel for the applicable period specified in Section 11.1.4 and no Developer, Affordable Housing Developer nor any successor or assign, Successor Owner or Successor Ground Lessee shall modify or terminate any prepaid environmental insurance policy in effect as of the issuance of any Certificate of Compliance;

9.8.2.2 Any and all obligations contained in the Federal Deed shall survive in perpetuity or for such lesser time period as may be expressly set forth therein, unless such obligations are released by the Federal Government; and

9.8.2.3 The provisions of Section 11.1.1 requiring liability insurance shall be maintained in full force and effect as to each Parcel until issuance of the Certificate of Compliance for such Parcel and, subject to the provisions of Section 11.1.1, so long thereafter as necessary to cover any Claims of damages suffered by persons or property prior to Recording by the City of the applicable Certificate of Compliance, resulting from any acts or omissions of Developer, Developer's employees, agents, contractors, suppliers, consultants or other related parties.

9.8.3 **Effect of Recording.** Upon Recording by the City of any of the aforesaid Certificates of Compliance, any Person then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Real Property released by the applicable Certificate of Compliance shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to such interests, except that the terms in the Quitclaim Deed, Special Restrictions, Landscape Installation and Maintenance Agreement, Public Access Covenant, the Affordable Housing Declaration, the Development Agreement and the TUSD Assignment which shall each remain in effect for the term specified therein. Issuance of a Certificate of Compliance shall not waive any rights or claims that the City may have against any Person for latent or patent defects in design, construction or similar matters under any applicable law, nor shall it be evidence of satisfaction of any of Developer's obligations to others not a party to this Agreement.

9.8.4 **Effect on Guaranty.** The Guaranty, as the same may be reaffirmed at each Transfer by a Reaffirmation of Guaranty or at each Lot 13 Transfer by an Affordable Project Reaffirmation of Guaranty, or, if applicable, any alternative security provided by Developer and

approved by the City in its sole discretion, shall remain in full force and effect until the Recording by the City of the Final Certificate of Compliance or for such longer period specified in the Guaranty or any reaffirmation thereof.

9.8.5 **Survival.** Notwithstanding anything to the contrary set forth in this Agreement, the provisions of this Section 9.8 shall survive the termination of this Agreement until the execution and Recording by the City of each Certificate of Compliance and for such longer period as set forth in the Certificate of Compliance.

10. **Indemnification and Environmental Provisions.**

10.1 **Developer's Indemnification for Non-Environmental Matters.**

As a material part of the consideration for this Agreement and to the maximum extent permitted by law, and subject to the limitations set forth in this Section, Developer on behalf of itself and its successors and assigns, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner, but excluding any End Users, hereby agrees to indemnify, protect, defend, assume all responsibility for and hold harmless the City Indemnified Parties from and against any and all Non-Environmental Claims, to the extent (a) caused by the following, or (b) resulting or arising from the following, provided that this Section 10.1 shall not during the period prior to Close of Escrow apply to the matters addressed by Section 5.2:

(i) Developer's or Affordable Housing Developer's marketing, sale or use of the Property or construction on the Real Property;

(ii) all acts and omissions of Developer and Affordable Housing Developer in connection with the Property, the Market Rate Project, the Affordable Project, the Market Rate Project Improvements, the Affordable Project Improvements and/or any portion of any of the foregoing;

(iii) any plans or designs for the Market Rate Project Improvements and/or the Affordable Project Improvements, prepared by or on behalf of Developer or Affordable Housing Developer, including any errors or omissions with respect to such plans or designs;

(iv) any loss or damage to the City resulting from any inaccuracy in or breach of any representation or warranty of Developer, or resulting from any Potential Default or Material Default by Developer, under this Agreement, including any such loss or damage resulting from the exercise or breach of the license provided in Section 5.1 or the breach of the obligations of Developer under Section 8.11;

(v) the non-performance or breach by Developer, Affordable Housing Developer or the Developer Representatives, of any term or condition of this Agreement or the Other Agreements;

(vi) any development or construction of the Market Rate Project Improvements, the Affordable Project Improvements and/or other structures or facilities by Developer, any Developer Affiliate, the Developer Representatives, or Affordable Housing Developer, whether regarding the quality, adequacy or suitability of any labor, service, equipment or material furnished to the Real Property, any Person furnishing the same, or otherwise; or

(vii) Any Claims in any lawsuits and writ proceedings seeking to make records public that Developer requests the City to protect as confidential pursuant to Section 18.24.3.

(viii) Any Claim for penalties for violation of SLA Regulations section 103(c)(7)(C), as such penalties are described in Govt. Code Section 54230.5, arising from an action that occurs after Close of Escrow.

Notwithstanding the foregoing, Developer shall not be obligated to indemnify any of the City Indemnified Parties to the extent caused by or arising or resulting directly or indirectly from (A) the gross negligence or willful misconduct or fraud of the City Indemnified Parties, (B) any uncured Material Default by the City with respect to any of the representations or warranties of the City set forth in Sections 3.3 or 18.12.2 or any of the covenants or obligations set forth in this Agreement, in either case provided that the Material Default is directly related to the Claim, or (C) any uncured material default by the City with respect to any of the covenants or obligations set forth in any Other Agreement that is directly related to the Claim. The indemnification provisions in this Section 10.1 shall not apply to Environmental Claims. Developer's indemnification obligations to the City regarding any Environmental Claims are exclusively addressed in Section 10.2.

Developer's indemnity obligations under clauses (i), (iii), (iv), (v), (vii) and (viii) of this Section 10.1 shall apply from and after the Effective Date, and Developer's obligations under clauses (ii) and (vi) of this Section 10.1, shall apply from and after the Close of Escrow. The indemnity obligations in this Section 10.1 shall remain in effect and shall be binding upon the Real Property and each Developer and each Successor Owner (and Affordable Housing Developer and each Successor Ground Lessee with respect to the Affordable Project, Affordable Project Improvements, and the Lot 13 Property) only during the period of each such Person's ownership of any portion of the Real Property (or in the case of Affordable Housing Developer or any Successor Ground Lessee, only during the period it owns a leasehold interest) to the extent of such Person's ownership therein (or in the case of Affordable Housing Developer or any Successor Ground Lessee, its Ground Lease) and for Claims Accruing only during such period, provided that upon any Transfer, if the Transferor is not released pursuant to Section 2.2.5.2, it shall be jointly and severally liable with the Transferee and each Successor Owner thereafter (or transferee Affordable Housing Developer, if applicable) until it is released by the City. Notwithstanding the foregoing, (A) upon issuance of a Certificate of Compliance for a Parcel, the indemnity obligations set forth in this Section 10.1 shall terminate as to any prior unreleased Person that has Transferred the Property other than for matters Accruing during the period in which it was jointly and severally liable pursuant to the preceding sentence and (B) any Person acquiring an interest in a Parcel after

Recording by the City of a Certificate of Compliance for such Parcel shall be liable under this Section 10.1 for Non-Environmental Claims Accruing during its period of ownership (or in the case of Affordable Housing Developer, its lease) of such Parcel or portion thereof. Notwithstanding the foregoing or any other provision of this Agreement, following Recording by the City of the Final Certificate of Compliance (a) the indemnity, defense and hold harmless provisions of Section 10.1(viii) shall remain in full force and effect until termination of the Special Restrictions as to the whole of the Real Property, but shall not run with the land and shall instead continue as a personal and ongoing obligation of the Person that is the Developer under this Agreement at the time of Recording of the Final Certificate of Compliance and (b) shall be Guaranteed by the Guarantor under the Guaranty until termination of the Special Restrictions as to the whole of the Real Property.

The provisions of this Section 10.1 and Sections 10.3 through 10.9 as they pertain to non-Environmental Claims shall be included in the Special Restrictions, shall run with the land as set forth in this Agreement and the Special Restrictions in accordance with their terms, and shall survive termination of this Agreement, the Close of Escrow, and the execution and Recording by the City of each Certificate of Compliance, shall not merge with any deed and shall be binding upon Developer, each Affordable Housing Developer, each Successor Owner and each Successor Ground Lessee of the Property or portion thereof, for the benefit of the City and its Governmental Successors, and from and after the Close of Escrow, and shall be binding upon and burden the Real Property provided, however, that upon sale or transfer of the fee interest in the Real Property or any portion thereof to an End User, the provisions of such Section terminate automatically as to such End User and shall cease to run with the land acquired in fee by such End User or any of its respective successors and assigns.

10.2 Environmental Indemnity.

As a material part of the consideration for this Agreement, and effective as of the Close of Escrow and subject to the limitations set forth below in this Section 10.2, Developer on behalf of itself and its successors and assigns, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner, but excluding any End Users, hereby agrees that Developer, Affordable Housing Developer (as and to the extent of Affordable Housing Developer's interests as described below) and each Successor Owner shall, to the maximum extent permitted by law, indemnify, protect, defend, assume all responsibility for and hold harmless the City Indemnified Parties from and against any and all Claims to the extent caused by, or arising or resulting directly or indirectly from or in any way connected with the existence, Release, threatened Release, presence, storage, treatment, transportation and/or disposal of any Hazardous Materials on, in or under the Development Parcels, or migrating from the Development Parcels to adjacent properties (until the applicable Environmental Agency or court or arbiter having jurisdiction has determined that it is more likely than not that the Hazardous Materials at issue were not sourced from the Development Parcels) regardless of whether any such condition is known or unknown now or upon acquisition and, except as set forth below in this Section 10.2, regardless of whether any such condition pre-exists acquisition or is subsequently caused, created or occurring ("**Environmental Claims**"); provided that neither Developer, nor Affordable Housing Developer nor any Successor Owner shall be responsible (and such indemnity shall not

apply) to the extent caused by or arising or resulting directly or indirectly from (i) any uncured Material Default by the City with respect to any of the representations or warranties of the City set forth in Sections 3.3 or 18.12.2 or any of the covenants or obligations set forth in this Agreement, in either case provided that the Material Default is directly related to the Claim, or (ii) the Active Negligence, willful misconduct or fraud of the City or any City Indemnified Party with respect to Hazardous Materials Releases occurring prior to the Close of Escrow with respect to work performed by such Persons on the Development Parcels.

This indemnity shall not be deemed to limit in any manner the rights and/or remedies that City, Developer or Successor Owners may have against the Federal Government as described in Section 4.1 or other non-City Indemnified Parties, provided that under no circumstances may such Claims be pursued (and all such Claims are waived and released) against any City Indemnified Parties, and each of them.

Subject to the limitations set forth below in this Section, the indemnity set forth in this Section 10.2 and the requirements of Sections 10.4 through 10.9 as they pertain to Environmental Claims shall be included in the Special Restrictions in accordance with its terms and shall run with the land as set forth in this Agreement and in the Special Restrictions and shall survive termination of this Agreement, the Close of Escrow, and the execution and Recording by the City of each Certificate of Compliance, shall not merge with any deed and shall, for the benefit of the City and its Governmental Successors, be binding upon the Real Property and each Developer and each Successor Owner (and Affordable Housing Developer and each transferee of Affordable Housing Developer with respect to the Affordable Project, Affordable Project Improvements, and the Lot 13 Property), unless such Person is released by the City in writing pursuant to Section 2.2.5.2 or is released pursuant to the terms set forth below in this Section 10.2. Developer, with respect to the entirety of the Real Property, each of its Successor Owners with respect to each Parcel owned by it, and, Affordable Housing Developer with respect to the Affordable Project, Affordable Project Improvements, and the Lot 13 Property only, shall be jointly and severally liable with respect to Environmental Claims affecting such Parcel(s) notwithstanding any Transfer of such Parcel(s) or the issuance of a Certificate of Compliance with respect thereto, except that each shall be released for Environmental Matters related to a Parcel arising subsequent to its ownership of such Parcel:

(x) if prior to Recording of a Certificate of Compliance for any Parcel, Developer or Successor Owner is released pursuant to Section 2.2.5 (and for avoidance of doubt, if not so released, remains jointly and severally liable with each Successor Owner of such Parcel); or

(y) following Recording of a Certificate of Compliance for such Parcel, other than for Environmental Claims related to Releases caused by its own acts or omissions for which each shall remain liable.

Notwithstanding the foregoing, upon Transfer of the fee interest in the Real Property or any portion thereof to an End User, such indemnities shall terminate automatically as to such End User and shall cease to run with the land acquired in fee by such End User or any of its respective successors and assigns. Upon assignment by any Affordable Housing Developer of its remaining

leasehold interest in a Ground Lease (in accordance with the terms of this Agreement when such terms of this Agreement are in effect as to the applicable Parcel, and in all instances in accordance with such Ground Lease), such Affordable Housing Developer shall be released for Environmental Matters arising subsequent to its assignment (A) if prior to issuance of the applicable Affordable Project Certificate of Compliance, if it is released pursuant to the assignment provisions of the Approved Ground Lease (for avoidance of doubt, if it is not released, it remains jointly and severally liable with each successor Ground Lessee) or (B) following Certificate of Compliance, with the exception of Environmental Claims related to Releases caused by its own acts or omissions for which each shall remain liable.

10.3 Effect of Recording of Special Restrictions.

The provisions of Sections 10.1 through 10.9 shall be included in the Special Restrictions and shall remain in effect in accordance with their terms; provided, however, that following Recording of the Special Restrictions, the provisions in each such Section of this Agreement shall not be interpreted more broadly than, nor be applied in addition to, nor be deemed to increase the obligations of Developer in the counterpart provisions in the Special Restrictions. Without limiting the foregoing, in the event any conflict arises during the Term of this Agreement between the provisions in each such Section of this Agreement and the counterpart provisions in the Special Restrictions, the provisions in each such Section of this Agreement shall control. Wherever the term "Developer" is used in this Article 10, and whether or not expressly stated in any Section of this Article 10, it shall mean and include Affordable Housing Developer with respect to the Affordable Project Provisions during any period in which such Affordable Housing Developer is a Ground Lessee under a Ground Lease and shall apply with respect to the portion of the Lot 13 Property leased pursuant to such Ground Lease and shall apply to each Successor Ground Lessee and where conveyance by Developer is described, the same shall include assignment by Affordable Housing Developer of its leasehold interest in any Ground Lease. Nothing herein shall be deemed to create any liability of Affordable Housing Developer, Ground Lessee or any Successor Ground Lessee with respect to the Market Rate Property and/or the Market Rate Project unless it shall become the Owner thereof or hold another interest therein.

10.4 Claim Response.

In the event that following Close of Escrow, any Environmental Agency or other third party brings, makes, alleges, or asserts a Claim, arising or resulting directly or indirectly from or related to any actual, threatened, or suspected presence or Release of Hazardous Materials on or about the Real Property (and regardless of whether there has been a further conveyance by Developer), including any Claim for Investigation or Remediation on the Development Parcels, or such Environmental Agency or other third party orders, demands, or otherwise requires that any Investigation or Remediation be conducted on the Development Parcels, Developer, Affordable Housing Developer (or Successor Owner or Successor Ground Lessee at the time such Claim is asserted) shall promptly upon its receipt of notice thereof, notify the City in writing and thereafter shall promptly and responsibly evaluate and respond to such Claim as provided in Section 10.5. Further, upon receipt of such Claim, order, demand or requirement, Developer, Affordable Housing Developer (or Successor Owner or Successor Ground Lessee at the time such Claim is

asserted) shall take such reasonable measures, as necessary or appropriate, to reasonably attempt to dissuade such Environmental Agency or other third party from bringing, making, alleging, or asserting any Claim against the City arising from or resulting directly or indirectly from or related to the presence or any actual, threatened, or suspected Release of Hazardous Material on or about the Development Parcels, including any Claim for Investigation or Remediation on the Development Parcels, the Market Rate Project Improvements or the Affordable Project Improvements, provided, however, that Developer, Affordable Housing Developer (or Successor Owner or Successor Ground Lessee at the time such Claim is asserted) shall have no obligation pursuant to this sentence with respect to any Claim, order, demand or requirement arising from or resulting directly or indirectly from or related to any actual, threatened or suspected Release of Hazardous Material to the extent caused by the Active Negligence, willful misconduct or fraud of the City Indemnified Parties, and further provided that any environmental response action approved by the applicable Environmental Agency or Environmental Agencies with jurisdiction shall be deemed acceptable and binding upon Developer, Affordable Housing Developer and each Successor Owner or Successor Ground Lessee and the City without modification or amendment, and such Environmental Agency or Environmental Agencies shall be the sole and exclusive Government Authority with jurisdiction over the Investigation and Remediation of any such Release and any Hazardous Material involved therewith. For avoidance of doubt, the obligations under this Section 10.4 apply only to the extent an obligation arises under either Section 10.1 or Section 10.2.

10.5 Release Notification and Remedial Actions.

If, after Close of Escrow, any Release of a Hazardous Material is discovered on the Development Parcels, Developer, Affordable Housing Developer (or Successor Owner or Successor Ground Lessee at the time of discovery of such Release) shall promptly provide written notice (or in the event of emergency, telephonic notice, followed by written notice) of any such Release to the City. To the extent that any Environmental Agency (other than the City) is requiring that the City Remediate such Release and Developer, Affordable Housing Developer or Successor Owner or Successor Ground Lessee (as applicable) acknowledges that it is obligated to assume responsibility or indemnify the City with respect to such Release pursuant to Section 10.2 or there is a good faith dispute between the City and Developer, Affordable Housing Developer, Successor Owner or Successor Ground Lessee (as applicable) as to whether Developer, Affordable Housing Developer, Successor Owner or Successor Ground Lessee (as applicable) is obligated to assume responsibility or indemnify the City with respect to such Release pursuant to Section 10.2, then Developer or Successor Owner (as applicable) shall (i) Remediate the Release in compliance with and to the extent required by Environmental Laws and such Environmental Agency, or if such removal is prohibited by any Environmental Laws, take whatever action is required by any Environmental Law and such Environmental Agency; provided, however, that any environmental response action approved by the applicable Environmental Agency or Environmental Agencies with jurisdiction shall be deemed acceptable and binding upon Developer, Affordable Housing Developer (or Successor Owner or Successor Ground Lessee at the time such Claim is asserted) and the City without modification or amendment, and such Environmental Agency or Environmental Agencies shall be the sole and exclusive Government Authority with jurisdiction over the Investigation and Remediation of any such Release and any Hazardous Material involved

therewith; (ii) take such other reasonable action as is necessary to have the full use and benefit of the Development Parcels as contemplated by this Agreement; and (c) provide the City with satisfactory evidence of the actions taken as required in this Section 10.5. To the extent that any Environmental Agency (other than the City) is requiring that the City Remediate such Release and the City acknowledges that Developer, Affordable Housing Developer, any Successor Owner and any Successor Ground Lessee are not obligated to assume responsibility or indemnify the City with respect to such Release pursuant to Section 10.2 or no Environmental Agency (other than the City) is requiring that the City Remediate such Release, then (as between Developer, Affordable Housing Developer, such Successor Owner or such Successor Ground Lessee as applicable and the City under this Agreement) Developer, Affordable Housing Developer, Successor Owner or Successor Ground Lessee (as applicable) may elect in its sole discretion whether to Remediate such Release and/or pursue any rights that it has against any Person with respect to such Release. The foregoing shall be without prejudice to Developer's, Affordable Housing Developer's (or any Successor Owner's or Successor Ground Lessee's, as applicable) or the City's rights against any responsible party or against the Federal Government pursuant to the Navy Responsibilities and without compromising the applicability of any insurance coverage in regard to such Release. The City and Developer, Affordable Housing Developer (or any Successor Owner or Successor Ground Lessee, as applicable) will coordinate any action required under this Section 10.5 with appropriate environmental insurance carriers so as not to compromise coverage for the costs of such actions. Nothing set forth in this Agreement requires Developer, Affordable Housing Developer, any Successor Owner or any Successor Ground Lessee to perform any obligation of the Federal Government or shall be deemed to limit or impair (or require any action that might limit or impair) in any manner the rights and/or remedies that Developer, Affordable Housing Developer (or any Successor Owner or any Successor Ground Lessee, as applicable) or the City may have against the Federal Government or any other third party. The provisions of Sections 10.4 and 10.5 shall not apply to any Repurchase Property after the close of escrow pursuant to Section 16.3 or to any Reversion Property following a Reversion Event. For avoidance of doubt, the obligations under this Section 10.5 apply to the Person (i.e., Developer, Affordable Housing Developer, Successor Owner or Successor Ground Lessee) that is the Owner or Ground Lessee of the applicable Parcel when the Release occurs and only to the extent an obligation arises under either Section 10.1 or Section 10.2.

10.6 Conflict with Section 330 and Other Federal Government Obligations.

Notwithstanding anything to the contrary contained in this Article 10, in the event that any actions required to be taken by Developer pursuant to this Article 10 could potentially result in Developer losing rights, or are contrary to any rights, which it otherwise would have pursuant to the Navy Responsibilities or otherwise against the Federal Government, then the City and Developer shall meet in order to determine the proper course of action to be taken by Developer. The course of action to be agreed upon shall protect the City's interest in the Market Rate Project, the Affordable Project and Tustin Legacy, while retaining for Developer its rights pursuant to the Navy Responsibilities or otherwise against the Federal Government to the extent reasonable under the circumstances. Notwithstanding the foregoing, nothing set forth in this Section 10.6 relieves Developer, Affordable Housing Developer or any Successor Owner with respect to the

environmental responsibilities and obligations to, and/or environmental indemnification of the City in this Agreement.

10.7 Insurance and Indemnification.

Notwithstanding anything contained in and without limiting or relieving Developer, Affordable Housing Developer, any Successor Owner or any Successor Ground Lessee of its obligations under this Agreement, the City agrees that with respect to any Claims tendered by any one or more of the City Indemnified Parties under this Agreement for which Developer, Affordable Housing Developer, any Successor Owner or any Successor Ground Lessee has the obligation to indemnify the City pursuant to the terms of this Agreement, the City Indemnified Parties shall seek recourse for such Claims under Developer's or Affordable Housing Developer's or such Successor Owner's or Successor Ground Lessee's, if applicable, insurance coverage required by Article 11, in each case only to the extent such insurance could reasonably be determined to be applicable to the type, extent, value and location of the Claim being made. The City shall thereafter use reasonable commercial efforts to prosecute its Claim for coverage with such insurer(s) and shall notify Developer (and may, but shall not be obligated to notify Affordable Housing Developer or any Successor Ground Lessee) of the City's tender of its Claim to such insurer(s). Developer, Affordable Housing Developer, or Successor Owner or Successor Ground Lessee, if applicable, shall reimburse the City for its reasonable costs incurred in complying with this Section 10.7, including reasonable out-of-pocket consultant costs and reasonable attorney fees. To the extent that insurance is determined by the City not to be applicable to the Claim or, if after six (6) months from tender of the Claim to the insurer, despite such efforts, insurance proceeds are not available to cover all or a portion of the Claim or if such Claim is earlier denied by the insurance carrier, then Developer or Successor Owner, if applicable, shall or shall cause Affordable Housing Developer or Successor Ground Lessee, if applicable (if and to the extent Affordable Housing Developer or Successor Ground Lessee has such obligation pursuant to the requirements of this Article 10) to defend and indemnify the City Indemnified Parties for the full amount of the Claim not covered by the insurance, including but not limited to sums theretofore expended by the City Indemnified Parties defending such Claim, but only to the extent Developer has such obligations in this Agreement or Affordable Housing Developer has such obligations pursuant to the requirements of this Article 10. If an insurer(s) to which a Claim is tendered declines to defend, or fails to timely defend, the Claim within the six (6) month period described above, then Developer shall and shall cause Affordable Housing Developer to defend and indemnify the City Indemnified Parties for the full amount of the Claim not covered by the insurance, including but not limited to sums theretofore expended by the City Indemnified Parties defending such Claim, but only to the extent Developer has such obligations in this Agreement or Affordable Housing Developer has such obligations pursuant to the requirements of this Article 10. At any time after six (6) months have passed since the original tender of a Claim to an insurer by the City as described herein if the insurer has not paid out on all or part of the insurance claim, Developer or Affordable Housing Developer in its sole discretion may decide to pay for the legal fees and expenses associated with filing and prosecuting litigation against such insurance carrier. If Developer or Affordable Housing Developer decides to pay such legal fees and expenses, the City shall proceed with such litigation at Developer's or Affordable Housing Developer's expense as further set forth below. Any fees and expenses of such litigation will be borne by Developer or Affordable Housing Developer (if

and to the extent Affordable Housing Developer has such obligation pursuant to the requirements of this Article 10). For avoidance of doubt, the obligations under this Section 10.7 apply only to the extent an obligation arises under either Section 10.1 or Section 10.2.

10.8 Selection of Counsel and Defense Obligations.

A Person being defended pursuant to this Article 10 (“**Defended Party**”) shall select legal counsel of its choice and reasonably acceptable to the Person with the obligation to defend (“**Defending Party**”) and shall cooperate in the defense of any such action. Failure of the Defended Party to notify the Defending Party promptly of the filing of any Claim or Action shall offset the indemnification obligations of the Defending Party only to the extent of any prejudice to the Defended Party caused by such failure to notify.

10.9 Settlement Procedures.

No Defending Party or Defended Party shall settle any Claim or Action that is the subject of an indemnity or obligation to defend under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed.

11. Insurance.

11.1 Required Insurance.

Without limiting the City’s rights to indemnification, Developer (with respect to the Market Rate Real Property, and with respect to the entire Real Property prior to the Lot 13 Transfer) or Affordable Housing Developer (with respect to the Lot 13 Real Property upon the Lot 13 Transfer) shall procure and maintain or cause to be procured and maintained, at its own cost and expense, and furnish or cause to be furnished to the City, evidence of the following policies of insurance (complying with the requirements set forth below) naming Developer or Affordable Housing Developer (as applicable) as insured and, with respect to the general liability and environmental liability insurance required pursuant to Sections 11.1.1 and 11.1.4 only, including as additional insureds the City and the City’s additional insureds specified below. All endorsements to the policies required to be procured by Developer in this Article 11 shall also be procured by Affordable Housing Developer with respect to the policies required to be provided by Affordable Housing Developer with respect to the Lot 13 Real Property upon the Lot 13 Transfer. Unless otherwise specified below, all insurance required below shall be in place or obtained by Developer (as to the Market Rate Property, and with respect to the entire Real Property prior to the Lot 13 Transfer) and Affordable Housing Developer (as to the Lot 13 Real Property upon the Lot 13 Transfer) upon the date specified below and shall be kept in force with respect to each such component of the applicable Development Parcels, the Market Rate Project, the Affordable Project, the Market Rate Project Improvements and/or the Affordable Project Improvements until issuance of the Certificate of Compliance with respect thereto or for such longer period to the extent described below. Subject to the provisions of this Article 11, the insurance obligations under this Agreement shall be the minimum insurance coverage requirements and/or limits shown in this Article 11. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Developer or Affordable Housing Developer, as

applicable, under this Agreement.

11.1.1 **Liability Insurance.** Commencing upon the Effective Date, Developer shall maintain or cause to be maintained commercial general liability insurance and automobile liability insurance, to protect against insurable loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any Person or Persons whomsoever on or about the Real Property, the Market Rate Project, the Affordable Project, Market Rate Project Improvements and/or the Affordable Project Improvements and the business of Developer on the Real Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Developer or anyone directly or indirectly employed or contracted with or acting for Developer, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any Person occurring on or about the Real Property, the Market Rate Project, the Affordable Project, the Market Rate Project Improvements and/or the Affordable Project Improvements or related to the Market Rate Project, the Affordable Project and/or the business of Developer on the Real Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Developer or any Person acting for Developer, or under its control or direction. Such insurance shall also provide for and protect the City against incurring any legal cost (of legal counsel acceptable to Developer's or Affordable Housing Developer's insurer(s)) in defending Claims for alleged loss. Such insurance shall be maintained in full force and effect with respect to each of the Market Rate Project and the Affordable Project until issuance of a Certificate of Compliance therefor, and for so long thereafter as necessary to cover any claims of damages suffered by persons or property prior to issuance of the applicable Certificate of Compliance, resulting from any acts or omissions of Developer, Developer's employees, agents, contractors, suppliers, consultants or other related parties, as further set forth in Section 9.8 and Article 10. The amount of insurance required shall include comprehensive general liability and personal injury with limits of at least Ten Million Dollars (\$10,000,000.00) each occurrence and annual policy aggregate and automobile liability with limits of at least Five Million Dollars (\$5,000,000.00) combined single limit per occurrence. The insurance shall be issued by a company authorized by the Insurance Department of the state of California to do business in California and rated A-/VII or better by the latest edition of Best's Key Rating Guide ("Best's"). Such insurance may be provided in part by an umbrella or excess insurance policy meeting the requirements of this Article 11, including the endorsements set forth in the following paragraph.

ACORD certificates and endorsements signed by authorized representative(s) of the underwriter (or copies of the applicable pages from the policy if the applicable endorsement coverage is part of the policy rather than provided by separate endorsement) and reasonably approved by the City shall be delivered as soon as reasonably possible but in no event later than within thirty (30) Business Days following the Effective Date and in all events prior to access by Developer or Developer Representatives upon the Real Property pursuant to Section 5.1 and annually thereafter evidencing renewals of each policy until issuance of the Final Certificate of Compliance. The endorsements shall provide as follows: (i) designate "the City of Tustin and the Successor Agency to the Tustin Community Redevelopment Agency and their respective elected and appointed officials, agents, representatives and employees", as additional insureds on the commercial general liability policies and automobile liability policies; (ii) the commercial general

liability and automobile liability insurance coverages shall be primary, and not contribute with any insurance maintained by the City; and (iii) a waiver of subrogation for the benefit of “the City of Tustin and the Successor Agency to the Tustin Community Redevelopment Agency and their respective elected and appointed officials, agents, representatives and employees”. “Blanket” endorsements (or coverage within the policy itself) providing the same protection as required by written contract shall be acceptable to the City. The procuring of such insurance and the delivery of policies, certificates or endorsements evidencing the same shall not be construed as a limitation of Developer’s obligation to indemnify the City Indemnified Parties as set forth in this Agreement.

11.1.2 **Workers’ Compensation Insurance.** Commencing upon the Effective Date, in the event the Developer entity has employees, Developer shall obtain, and thereafter maintain or cause to be maintained, workers’ compensation insurance issued by a responsible carrier authorized under the laws of California to insure employers against liability for compensation under the workers’ compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers’ compensation insurance shall cover all Persons employed by Developer in connection with the Market Rate Project and the Affordable Project and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any employee of Developer incurring or suffering injury or death in connection with the Market Rate Project and the Affordable Project or the construction and operation thereof by Developer. Notwithstanding the foregoing, Developer may, in compliance with the laws of California and in lieu of maintaining such insurance, self-insure for workers’ compensation in which event Developer shall deliver to the City evidence that such self-insurance has been approved by the appropriate State authorities. Developer shall also furnish (or cause to be furnished) to the City evidence satisfactory to the City that any contractor with whom it has contracted for performance of work on the Real Property or otherwise pursuant to this Agreement carries workers’ compensation insurance required by law. Policies or an ACORD certificate of insurance may be provided as evidence of the existence of insurance policies and their limits, but actual endorsements (or copies of the applicable pages from the policy if the coverage is part of the policy) are required to be provided to the City to evidence that each endorsement requirement has been satisfied. The insurance policy(ies), by endorsement signed by an authorized representative of the underwriter(s), shall contain a waiver of subrogation for the benefit of the following additional insureds: “the City of Tustin and the Successor Agency to the Tustin Community Redevelopment Agency, and their respective elected and appointed officials, agents, representatives and employees”. A “blanket” endorsement providing the same protection as required by written contract shall be acceptable to the City. The insurance provided for under this Section 11.1.2 shall be issued by a company rated B-/VIII or better by Best’s or from the state of California Compensation Fund.

11.1.3 **Builder’s Risk Insurance.** Commencing upon the commencement of construction of Vertical Improvements by Developer of any Market Rate Project Improvements, or by Affordable Housing Developer of any Affordable Project Improvements, and continuing until the issuance of a final certificate of occupancy therefor and for such longer period as work on the Project Improvements is continuing on the Parcel, Developer or Affordable Housing Developer, as applicable, shall obtain, or shall cause its contractor to obtain, and thereafter

maintain a builder's risk policy with respect to Vertical Improvements constructed on the applicable Parcels, or maintain comparable coverage through a property policy. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Market Rate Project Improvements and the Affordable Project Improvements, as applicable, to be constructed on the Real Property or in connection with developing the Market Rate Project and/or the Affordable Project. The insurance provided for under this Section 11.1.3 shall be provided by insurer(s) authorized to do business in California and with a Best's rating of A-/VII or better.

11.1.4 **Environmental Insurance.** On or before the Close of Escrow, Developer (as to the entire Real Property) shall obtain, or shall require its Contractor to obtain, and shall thereafter maintain environmental and pollution legal liability insurance coverage for the applicable Development Parcels, including coverage for loss, remediation expense and legal defense expenses, and including "the City of Tustin and the Successor Agency to the Tustin Community Redevelopment Agency and their respective elected and appointed officials, agents, representatives and employees" as additional insureds to address pollution risks at the Development Parcels ("**PLL Policy**"). As used in this Agreement, "**PLL Policy**" shall mean the individual or multiple policies that, taken together, meet the requirements set forth below. The PLL Policy shall comply with the following minimum requirements, subject to the provisions of the last paragraph of this Section 11.1.4:

(i) The PLL Policy shall be written by the insurance company selected by Developer and approved by the City, which approval shall not be unreasonably withheld, and which insurer(s) shall have a Best's rating of A-/VII or better;

(ii) The PLL Policy shall not exclude coverage for activities of the Affordable Housing Developer;

(iii) The PLL Policy shall provide at least (A) limits of Ten Million Dollars (\$10,000,000.00) in aggregate coverage for and with at least Ten Million Dollars (\$10,000,000.00) per claim, subject to a maximum One Million Dollars (\$1,000,000.00) deductible per claim, (B) coverage to protect against Claims and loss from insured liability relating to known and unknown conditions on the Development Parcels, and (C) for a term commencing upon the earlier of (1) commencement of any invasive testing or grading or construction work upon the Real Property or (2) the Close of Escrow and continuing in effect for a period of ten (10) years;

(iv) The full policy premium for the PLL Policy shall be paid for in full at the time of issuance and shall contain a waiver of subrogation for the benefit of the City of Tustin and the Successor Agency to the Tustin Community Redevelopment Agency and their respective elected and appointed officials, agents, representatives and employees. The unwillingness of an insurance company to provide a waiver of subrogation for the benefit of the City Indemnified Parties shall

be a reasonable basis for the City to withhold approval of the insurance company under Section 11.1.4(i);

(v) The obligation of Developer to maintain the PLL Policy pursuant to this Section 11.1.4 shall survive the termination of this Agreement following the Close of Escrow for the term required for the PLL Policy pursuant to Section 11.1.4(iii);

(vi) The PLL Policy shall include “the City and the Successor Agency to the Tustin Community Redevelopment Agency and their respective elected and appointed officials, agents, representatives and employees” as additional insureds with respect to the PLL Policy Developer acquires for the Development Parcels or any portion thereof and to the extent the PLL Policy is prepaid, shall not modify or terminate the PLL Policy following the termination of this Agreement;

(vii) Subject to insurer consent, the PLL Policy shall permit (by the terms of the policy or by endorsement) transfer of the policy to Successor Owners and successors and assigns of Developer or Affordable Housing Developer, as applicable, (but excluding any End Users) and/or to the City, and if the City should reacquire the Real Property or any portion thereof following the Close of Escrow, Developer shall transfer the PLL policy to the City with respect to the portion of the Real Property acquired by the City.

It is the mutual intent and agreement of the Parties that the PLL Policy shall be substantially in the form and substance of the specimen policy set forth in Attachment 26 and with the addition of the insertion of this Agreement and the Other Agreements as insured agreements in the Schedule of Insured Contracts therein (the “**Specimen PLL Policy**”) If the draft PLL Policy does not meet the minimum requirements set forth above and is different from the Specimen PLL Policy, and, if the draft PLL Policy is approved by the City in its sole discretion, then such approved PLL Policy shall control and be the PLL Policy for purposes of this Section even if it does not meet the minimum requirements set forth above. Subject to the foregoing, in the event a PLL Policy substantially in the form and substance of the Specimen PLL Policy is not commercially available at the time required to be obtained or maintained by Developer hereunder, the Parties shall promptly meet and confer pursuant to Section 11.2.5. Except as approved by the City in writing, neither Developer nor Affordable Housing Developer shall carry out any environmental testing, sampling, invasive testing, or boring on the Development Parcels prior to the effective date of the PLL Policy applicable to such Development Parcel. The provisions of this Section 11.1.4 shall survive the termination of this Agreement.

11.2 General Insurance Requirements.

11.2.1 For all policies or certificates, the insurer endorsements (or a copy of the policy binder, if applicable) shall specifically identify the Market Rate Project or the Affordable Project address, as applicable, and shall provide evidence that Developer has paid for its premium in full for any policy that is currently in place. Developer’s and Affordable Housing

Developer's insurance broker shall confirm in writing that premium payments are in compliance with the insurance policy(ies) payment terms.

11.2.2 The term "full insurable value" as used in this Article 11 shall mean the cost determined by Developer or Affordable Housing Developer (excluding the cost of excavation, foundation, underground utilities, and footings below the lowest floor and without deduction for depreciation) of providing similar Market Rate Project Improvements and Affordable Project Improvements of equal size and providing the same habitability as the Market Rate Project Improvements and the Affordable Project Improvements, as applicable, immediately before such casualty or other loss, but using readily-available contemporary components, including the cost of construction, architectural and engineering fees, and inspection and supervision, but in no event less than the value set forth in the Updated Financing Plan for the Market Rate Project and Affordable Project, as applicable.

11.2.3 All insurance provided under this Article 11 shall be for the benefit of the Parties. Developer shall, and shall cause each Insured Party, (A) to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance, and (B) with respect to coverage required by Sections 11.1.1 and 11.1.2, to submit certificates evidencing such insurance to the City on an ACORD form following City Council approval of this Agreement or, with respect to coverage required by Section 11.1.4, upon the Close of Escrow and with respect to coverage required by Section 11.1.3, upon commencement of construction. Within seven (7) Business Days, if practicable, after expiration of any such policy, certificates evidencing renewal policies (and all required endorsements) shall be submitted to the City, together with evidence of compliance with insurance policy(ies) premium payment terms.

11.2.4 Subject to Section 11.2.5, if Developer fails to procure or to cause any Insured Party to procure and maintain insurance as required by this Agreement, the City shall have the right, at the City's election, and upon ten (10) Business Days' prior written notice to Developer, to procure and maintain such insurance. The premiums paid by the City shall be treated as a loan, due from Developer, to be paid on the first calendar day of the month following the date on which the premiums were paid and such cost, until paid, shall constitute a City Lien on the Real Property and improvements thereon, including the Market Rate Project Improvements and Affordable Project Improvements, as applicable. The City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

11.2.5 In the event the PLL Policy or any other policy of insurance required hereunder is not then commercially available, the Parties shall promptly meet and confer in good faith to seek to resolve such issue and to facilitate the securing by Developer of a mutually acceptable policy.

12. **Covenants and Restrictions.**

12.1 Covenants Run With the Land.

This Agreement and all other obligations, agreements, covenants, representations, warranties, and indemnities set forth in this Agreement shall run with the land and shall be binding upon each Developer, its successors and assigns, each Successor Owner and each Person claiming by, through or under Developer or such Successor Owner, but excluding any End Users, to which such obligations, agreements, covenants, representations, warranties, and indemnities apply to the extent set forth in this Agreement and shall be enforceable as equitable servitudes against the Real Property for the benefit of the City and its successors and assigns for the applicable term with respect to each Parcel thereof, subject to the effects of Recording by the City of a Certificate of Compliance as provided in Article 9 and subject to any other limitations set forth in this Agreement or in any of the Other Agreements. After the Recording by the City of a Certificate of Compliance with respect to a Parcel, the allocation of responsibility and liability between the applicable Owner and any Ground Lessee on such Parcel for obligations under the Other Agreements shall be as set forth in the applicable Other Agreement.

12.2 Obligation to Refrain from Discrimination.

Developer covenants and agrees on behalf of itself, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner, including each End User, that there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or in development of the Market Rate Project or the Affordable Project, nor shall Developer or any Person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or in development of the Market Rate Project or the Affordable Project or any part thereof.

12.3 Use Covenant.

Developer shall cause the Real Property to be developed only for lawful residential uses and ancillary commercial amenity uses in accordance with this Agreement and the Other Agreements.

12.4 Public Access Covenant.

At the Close of Escrow there shall be Recorded against the Property a non-exclusive perpetual easement in gross for public access in, over, along, through, upon and across the Publicly Accessible Common Area located within the Real Property as depicted on Attachment 13A and the related Publicly Accessible Common Area Improvements, and to and from the adjoining public streets and sidewalks in substantially the form and substance of the Public Access Covenant attached as Attachment 13C. For all purposes under this Agreement, the Owner of "Lot 1" as shown on the Tentative Tract Map, which is a portion of Lot 11, shall be deemed to be the Owner

of “Lot A” as shown on the Tentative Tract Map, as such lots may be modified by the Developer Final Tract Map, and the “Parcel” owned by such Owner of “Lot 1” shall be deemed to include “Lot A”.

13. **Affordable Project Requirements.**

13.1 Lot 13 PDA, Ground Lease Option, Approved Ground Lease Form and Approved Ground Lease.

13.1.1 **Approved Ground Lease.** This Agreement contemplates that development of Lot 13 with the Affordable Project Improvements will be carried out by an Affordable Housing Developer approved by the City pursuant to Section 1.4.3 following an Affordable Project Closing at which Developer shall, among other things, ground lease the Lot 13 Property to Affordable Housing Developer by as many as two instruments in substantially the form and substance of the Approved Ground Lease Form (each such instrument is referred to as an “**Approved Ground Lease**”), with such modifications as may be approved by the City pursuant to Section 13.2.2. Developer shall have the right to replace USA Properties with an Approved Alternate Affordable Housing Developer or another Affordable Housing Developer approved by the City in its sole discretion or, in lieu of a Lot 13 Transfer, to pursue an Alternative Affordable Project Development Plan in accordance with Sections 4.7.1 and 4.8.

13.1.2 **Affordable Project Provisions.** The Lot 13 PDA and the Approved Ground Lease shall establish the Affordable Project Provisions to be performed by Affordable Housing Developer and shall require performance within the time periods specified in the Schedule of Performance and this Agreement and otherwise in accordance with the terms of this Agreement and the Other Agreements.

13.1.3 **Affordable Housing Declaration; Lower Income Unit Obligations.** The Affordable Project shall be constructed consistent with the Affordable Housing Declaration and upon Completion of each Building on Lot 13, all Residential Units constructed thereon, excluding the authorized number of manager/staff units in each Building as shown on the Approved Plans, shall be Lower Income Units and shall be made available for rental only to Lower Income Households, for the term set forth in, and otherwise in accordance with, the Affordable Housing Declaration.

13.2 Lot 13 PDA, Ground Lease Option and Approved Ground Lease.

13.2.1 **No Release; Affordable Project Enforcement Obligations.** Under the terms of the Lot 13 PDA, and upon execution thereof, the Approved Ground Lease, Developer has delegated and will further delegate the Affordable Project Provisions to Affordable Housing Developer. Neither the delegation of the Affordable Project Provisions to the Affordable Housing Developer nor entering into the Lot 13 PDA, the Ground Lease Option or the Approved Ground Lease, constitutes a release by the City of Developer and its successors and assigns that are designated as Developer pursuant to this Agreement from timely performance of (i) the Affordable Project Obligations, including the Affordable Project Provisions if not timely performed by Affordable Housing Developer, and (ii) the Affordable Project Enforcement Obligations in

accordance with the requirements of this Agreement. Developer hereby agrees for the benefit of the City that Developer shall (x) enforce all duties delegated to the Affordable Housing Developer pursuant to the Lot 13 PDA and, when in effect, the Approved Ground Lease and the Other Agreements, as they pertain to the Affordable Project Provisions, (y) if Affordable Housing Developer is not timely performing the Affordable Project Provisions, to promptly and diligently perform the Affordable Project Enforcement Obligations and (z) continue to perform all Affordable Project Obligations that are not delegated to Affordable Housing Developer as Affordable Project Provisions, with such enforcement and performance under the foregoing clauses (x) through (z) to be accomplished in a manner that will cause the Affordable Project Provisions to be fully and timely performed in accordance with the requirements of this Agreement and the Other Agreements. Except as otherwise set forth in Section 9.8 or the Other Agreements, the Affordable Project Obligations shall terminate as to each Parcel within Lot 13 upon the issuance of an Affordable Project Certificate of Compliance for such Parcel. For avoidance of doubt, and notwithstanding anything in this Agreement to the contrary, the City and Developer hereby agree, that except (A) for the satisfaction of the Alternative Affordable Project Development Plan Conditions Precedent set forth in Section 4.8 in connection with an Alternative Affordable Project Development Plan, (B) City review of any proposed updated Financing Plans for the Affordable Project in accordance with Sections 4.6.1.2, 4.6.1.3 and 4.6.1.4, or (C) City rights to approve a replacement Affordable Housing Developer other than an Approved Alternative Affordable Housing Developer, Developer may proceed with any and all of its Affordable Project Enforcement Obligations (including, without limitation, termination of the Lot 13 PDA and the Approved Ground Lease) without first having to obtain any consent or approval from the City provided that Developer shall provide advance written notice to the City of its intent to exercise of the Affordable Project Enforcement Obligations together with general steps it intends to take prior to exercise thereof. In addition, Developer may elect to use an Alternative Affordable Project Development Plan, provided that the same shall not be subject to the cure rights or any schedule extensions set forth in Section 13.5.

13.2.2 No Amendment, Modification, Termination of Lot 13 PDA, the Ground Lease Option, or Approved Ground Lease. Without the prior written consent of the City Manager or his or her designee, which consent shall not be unreasonably withheld, delayed or conditioned, subject to the following: (i) Developer shall not take any other steps or actions that would affect the Affordable Housing Developer's ability to perform Affordable Project Provisions or Developer's ability to perform the Affordable Project Enforcement Obligations and the Affordable Project Obligations not delegated as Affordable Project Provisions to Affordable Housing Developer and (ii) Developer shall not and shall not permit Affordable Housing Developer to, amend, modify, or terminate, the Lot 13 PDA, the Ground Lease Option, or any Approved Ground Lease, provided that it shall not be unreasonable for the City to withhold its consent to any such amendment, modification, or termination, if among other things, the effect thereof is a termination of the Lot 13 PDA or any Approved Ground Lease (except a termination resulting from Developer performing its Affordable Project Enforcement Obligations) or any amendment or modification therein of: (A) any disclaimer by Affordable Housing Developer of any rights in this Agreement or remedies for any alleged breach of this Agreement, (B) any requirement that notice of or information about any matter be provided to the City, (C) any provision providing that the fee interest in Lot 13 not be merged with the leasehold estate created

under any Approved Ground Lease, (D) any restrictions on assignment of the Lot 13 PDA or the leasehold estate created under any Approved Ground Lease, (E) any requirement that the Affordable Housing Developer provide insurance for the benefit of the City, (F) any cure period provided to Affordable Housing Developer that results or would result in a failure of Affordable Housing Developer to achieve the dates set forth in the Schedule of Performance or in the applicable Subordination Agreement, (G) the Affordable Project Provisions set out as obligations of the Affordable Housing Developer in any Approved Ground Lease that would result in neither Developer nor the Affordable Housing Developer having responsibility for any such Affordable Project Provisions (provided that Developer affirms its direct responsibility for such provisions in writing to the City), (H) any requirement that conflicts with the express requirements of this Agreement or the Other Agreements or (I) in the event the Affordable Housing Developer is an Approved Alternative Affordable Housing Developer that is The Irvine Company, TICAD or any wholly-owned affiliate of any such entity or any limited partnership which any such entity Controls, the amendment or modification is not considered an arms' length transaction. Notwithstanding any other provision of this Section to the contrary, initial drafts of the contemplated modifications shall be delivered to the City at least thirty (30) Business Days prior to any proposed Lot 13 Transfer or any proposed assignment of the Ground Lease, with substantially final versions to be delivered at least five (5) Business Days prior to the assignment date, and executed copies to be delivered within three (3) Business Days after the assignment date and the City shall be provided an equivalent period of time to review other proposed substantial revisions. Additionally, Developer shall not waive any provisions in the Lot 13 PDA, the Ground Lease Option or any Approved Ground Lease in any of the matters identified in clauses (A) through (I) above without the prior written consent of the City Manager or his or her designee, in his or her sole discretion.

13.2.3 No Assignment Without City Consent. Developer shall not assign the Lot 13 PDA, the Ground Lease Option or an Approved Ground Lease to any Person other than in connection with a Transfer pursuant to Section 2.2.2.1 or 2.2.3 or permit Affordable Housing Developer to assign the Lot 13 PDA the Ground Lease Option or an Approved Ground Lease to any Person, or permit any Transfer of Control of the Affordable Housing Developer to any Person without the prior written consent of the City in its sole discretion, the intent of the Parties being that Developer shall be in a position to ensure for the benefit of the City that the Affordable Housing Developer will perform the obligations under this Agreement and the Other Agreements that have been delegated to Affordable Housing Developer under the Lot 13 PDA and, following a Lot 13 Transfer, any Approved Ground Lease; provided that if the proposed transferee is an Approved Alternate Affordable Housing Developer such transferee shall be pre-approved as Affordable Housing Developer and if the proposed transferee is not an Approved Alternate Affordable Housing Developer, such transferee shall require the prior written consent of the City in its sole discretion. For the foregoing reasons, Developer shall cause the Guarantor for the Affordable Project to be the same as for the Market Rate Project unless otherwise agreed by the City in its sole discretion. To allow the City to exercise its consent rights, Developer shall provide to the City not less than thirty (30) Business Days prior to the date of any assignment or Transfer of Control that is the subject of this Section 13.2.3:

13.2.3.1 information analogous to the information to be provided for a Transfer or Transfer of Control pursuant to Section 2.2.3.1 through 2.2.3.7;

13.2.3.2 an Updated Affordable Project Financing Plan meeting the requirements of Section 4.6.1;

13.2.3.3 completed versions of all documents required to be delivered as conditions to a Lot 13 Transfer by Sections 4.6.1.2 and 4.7 (with initial drafts of the contemplated documents to be delivered at least thirty (30) Business Days prior to the proposed assignment date, substantially final versions to be delivered at least five (5) Business Days prior to the assignment date, and executed copies to be delivered within three (3) Business Days after the assignment date); and

13.2.3.4 such other relevant information as the City may request in its reasonable discretion in connection with its consent rights, which may include evidence that the proposed assignee, and its Controlling Person, and that Guarantor has sufficient financial capacity to perform, fund or guaranty, as applicable, the obligations of Affordable Housing Developer, and to meet the other requirements of the Lot 13 PDA and the Approved Ground Lease.

13.2.4 **No Additional Agreements.** Developer represents that there are no oral or written agreements, understandings or other communications and it shall not create or enter into any of the foregoing which in any way (i) cancel, abrogate, terminate, modify or interpret the words or the meaning of the Lot 13 PDA, the Ground Lease Option or the Approved Ground Lease or any other documents made available to the City in a manner that could adversely affect the interests of the City under this Agreement or the Other Agreements, or (ii) modify or affect the obligation of Affordable Housing Developer to perform any of the Affordable Project Provisions or the terms upon which Affordable Housing Developer is committed to do so.

13.3 Affordable Project Obligations of Developer.

13.3.1 **Developer Representations Regarding Affordable Project.** Developer hereby represents and warrants to the City as of the Effective Date, which representation and warranty shall be true and correct as of the Close of Escrow (unless Developer has terminated the Lot 13 PDA) and upon each Lot 13 Transfer that:

(i) the Lot 13 PDA is in full force and effect in the form and substance reasonably approved by the City (without modification from such form or subject only to modifications approved by the City) and is enforceable in accordance with its terms;

(ii) to Developer's Knowledge, except as disclosed by Developer to the City in writing, as of the date on which this representation is made, neither party is in default under the Lot 13 PDA nor is there any circumstance that, with the giving of notice, the passage of time, or both, could constitute or result in a default by either party to the Lot 13 PDA;

(iii) Developer is a party to and has the right under the Lot 13 PDA (A) to require Affordable Housing Developer to comply with and perform the applicable Affordable Project Provisions set forth therein, (B) to enforce, and pursuant to Section 13.3.3 and the terms of the Lot 13 PDA, to terminate the Lot 13 PDA and (C) to ensure that the Lot 13 PDA will not be amended, modified or terminated in a manner adversely affecting Developer's ability to enforce the obligation of Affordable Housing Developer to carry out the Affordable Project Provisions; and

(iv) Other than completion of all conditions required for the completion of the Lot 13 Transfer, to Developer's Knowledge there is no legal requirement, contractual obligation, fact, information or event that could have the effect of limiting, prohibiting or restricting the ability of Developer to complete the Lot 13 Transfer or the ability of the Affordable Housing Developer to obtain financing (subject to and except for the requirements applicable to Affordable Housing Developer's ability to secure bond and tax credit allocations and financing for the Affordable Project pursuant to the approved Affordable Project Financing Plan) for the development, construction, or lease of the Affordable Project or leasing of the Lower Income Units.

13.3.2 **Developer Affordable Project Obligations.** Notwithstanding the delegation of the Affordable Project Provisions to Affordable Housing Developer, Developer is responsible for Completion of the Affordable Project Improvements and therefore agrees that it shall (i) perform all Affordable Project Obligations not delegated to Affordable Housing Developer as Affordable Project Provisions, and (ii) cause the Affordable Housing Developer to comply with the Affordable Project Provisions, provided that if Developer elects to use an Alternative Affordable Project Development Plan, Developer shall perform all Affordable Project Provisions directly. In furtherance of this obligation, in the event of a default by Affordable Housing Developer under the Lot 13 PDA (whether occurring prior to or following Lot 13 Transfer), a default by the Affordable Housing Developer under the Approved Ground Lease, or a default under the Other Agreements, Developer shall perform the Affordable Project Enforcement Obligations (which may include use of an Alternative Affordable Project Development Plan) and the Affordable Project Provisions in accordance with the requirements of this Agreement and within the time periods set forth in Section 13.5.

13.3.3 **Obligation to Enforce or Terminate Lot 13 PDA.** If Developer terminates the Lot 13 PDA and a Lot 13 Transfer has not then occurred, Developer shall terminate the Ground Lease Option. Within twenty (20) Business Days following termination of the Lot 13 PDA, Developer shall either (i) identify an Approved Alternate Affordable Housing Developer or other alternate Affordable Housing Developer satisfactory to the City in its sole discretion with which to enter into a new Lot 13 PDA and shall promptly enter into a Lot 13 PDA and Ground Lease Option with such entity or, if the Lot 13 Transfer Conditions are satisfied, an Approved Ground Lease with such entity, or (ii) shall notify the City of its intent to act as Affordable Housing Developer pursuant to an Alternative Affordable Project Development Plan. If Developer terminates the Lot 13 PDA after a Lot 13 Transfer has occurred, Developer shall either (x)

terminate the Approved Ground Lease subject to the terms and provisions of the Approved Ground Lease and any Leasehold Mortgagee protections set forth therein or in any applicable Subordination Agreement, or (y) keep the Approved Ground Lease in place provided that Developer replaces USA Properties' interest in the Affordable Housing Developer with, or USA Properties assigns its interest as Ground Lessee to, an Affordable Housing Developer, an Approved Alternative Affordable Housing Developer or another Affordable Housing Developer approved by the City in accordance with Section 1.4.3. The City hereby approves of TICAD, The Irvine Company, Bridge Housing, Meta Housing and Jamboree Housing (or any wholly-owned affiliate of any such entity or any limited partnership which any such entity Controls) as an alternate Affordable Housing Developer ("**Approved Alternate Affordable Housing Developer**").

13.3.4 **Obligation to Provide Notice of Default**. Developer shall notify the City in writing within five (5) Business Days from its delivery to or receipt from Affordable Housing Developer of a notice of default under the Lot 13 PDA or the Approved Ground Lease or from such earlier date as Developer has actual knowledge that a material default by either party has occurred or with the giving of written notice to the Affordable Housing Developer and the passage of time will occur. The mere obligation to provide the City with written notice of a default or potential default of the Affordable Housing Developer does not trigger any Affordable Project Enforcement Obligations. The occurrence of a default by Developer under the Lot 13 PDA or the Approved Ground Lease or the failure by Developer to provide required notice to the City pursuant to this Section shall be a Potential Default under this Agreement which shall be deemed to commence upon the earlier of the date of delivery of the notice or if no notice by Affordable Housing Developer is provided by Developer, the date upon which the required notice was to have been provided by Developer to comply with the foregoing.

13.4 **No Cross-Default With Market Rate Project**.

Notwithstanding anything in this Agreement to the contrary, unless Affordable Housing Developer (or any other Person that Controls, is Controlled by, or is under common Control with the Affordable Housing Developer) is the Owner of any portion of the land that comprises the Real Property, from and after the Lot 13 Transfer and, subject to the limitations set forth in clauses (A) through (D) below, no act or omission of Developer, Guarantor or any Successor Owner of the Property shall: (i) constitute a Default that gives rise to or constitutes a City Lien as to the leasehold interest of Affordable Housing Developer or otherwise adversely affect any rights or benefits afforded to Affordable Housing Developer or any Leasehold Mortgagee with respect to the leasehold interest of Affordable Housing Developer pursuant to this Agreement, any Subordination Agreement entered into by the City and a Leasehold Mortgagee with respect to Lot 13 or any Parcel thereof, or any of the Other Agreements (including the right to obtain an Affordable Project Certificate of Compliance as set forth in Article 9); (ii) constitute a condition or requirement affecting the ground lease interest of Affordable Housing Developer or the Affordable Project to be constructed on Lot 13; or (iii) subject the Affordable Housing Developer or any Permitted Leasehold Mortgagee to any obligations, liability or responsibility (including any indemnity obligations) relating to Lot 11, Lot 12 or the fee interest of Developer in Lot 13; provided that the foregoing provisions of this Section 13.4 do not relieve (A) Developer of its obligations and liabilities to the City under this Agreement and the Other Agreements, (B)

Guarantor of its obligations under the Guaranty, (C) Affordable Housing Developer from the obligations imposed on Affordable Housing Developer under the Lot 13 PDA, the Approved Ground Lease and/or the Other Agreements, or (D) the Affordable Housing Developer from any liability arising in connection with a Lot 13 Transfer that is not in compliance with the requirements of Section 4.7, whether such failure to comply with the requirements is caused by or results from acts or omissions to act of Developer that is the transferor or Affordable Housing Developer that is the transferee, or any other Person. The provisions of this Section 13.4 shall not apply until a Lot 13 Transfer has taken place. For the purposes of this Section 13.4, the Affordable Housing Developer shall not be deemed to be under common Control with any other persons or entity solely by virtue of the fact that Developer and/or certain affiliates of Developer serve as a limited partner of Affordable Housing Developer.

13.5 Exercise by Developer of Affordable Project Enforcement Obligations.

Upon delivery by Developer to Affordable Housing Developer of a notice of default under the Lot 13 PDA or the Approved Ground Lease (any of the foregoing, an “**Affordable Project Default**”) and commencing on the first date after the expiration of any applicable cure periods for the foregoing set forth in the Approved Ground Lease and/or Lot 13 PDA (the “**Affordable Project Default Commencement Date**”), Developer shall diligently prosecute its Affordable Project Enforcement Obligations to completion within ninety (90) calendar days from the Affordable Project Default Commencement Date such that the Affordable Project Default shall be cured within such time period, provided that if such enforcement is of a nature that it cannot be reasonably accomplished within such ninety (90) calendar day period then Developer shall be afforded such longer period as is reasonably required and approved by the City in its reasonable discretion to pursue its Affordable Project Enforcement Obligations, but only if the Affordable Housing Developer has commenced to cure the Affordable Project Default prior to the Affordable Project Default Commencement Date pursuant to the terms of the Lot 13 PDA and/or the Approved Ground Lease as applicable and diligently pursues such cure to completion; or, if Affordable Housing Developer has failed to commence and diligently prosecute such cure within the cure period provided by the Lot 13 PDA and/or the Approved Ground Lease as applicable, Developer shall have promptly commenced and be diligently prosecuting to completion its remedies under the Lot 13 PDA and Approved Ground Lease, as applicable, provided that in no event shall the time period for exercise of the Affordable Project Enforcement Obligations extend more than two (2) years from the Affordable Project Default Commencement Date nor shall it cause Developer or Affordable Housing Developer to fail to achieve the dates set forth in the Schedule of Performance for Lot 13 Transfer/Affordable Project Closing. If, following a Lot 13 Transfer, Developer is afforded a longer period than ninety (90) calendar days (as set forth above) to pursue its Affordable Project Enforcement Obligations, the time periods in the Schedule of Performance for commencement and Completion of the Affordable Project Improvements on the applicable Parcel shall be extended for a commensurate period with the period of extension approved by the City for the exercise by Developer of the Affordable Housing Enforcement Obligations. For avoidance of doubt, the provisions in the Lot 13 PDA or Approved Ground Lease governing notice, cure, and Leasehold Mortgagee protections in the event of an Affordable Project Default shall apply with respect to the declaration by Developer of an Affordable Project Default and Affordable Housing Developer or any Permitted Leasehold Mortgagee’s rights to cure the same.

13.6 Notice of Affordable Project Default; Quarterly Reporting.

Developer shall deliver any Affordable Project Default notice to the City concurrently with delivery of the same to Affordable Housing Developer. In addition, within ten (10) calendar days following the end of each calendar quarter, commencing with the calendar quarter in which the Closing Date occurs and ending with the calendar quarter in which the second Affordable Project Certificate of Compliance is issued by the City, Developer shall deliver to the City a report executed by a senior officer of Developer certifying that, to the knowledge of the officer executing the report, no circumstance exists that, with the giving of notice and, if applicable, passage of time without cure, would entitle Developer to take remedial action under the Lot 13 PDA or any Approved Ground Lease, or, if to the knowledge of such officer such a circumstance exists, describing such circumstance in reasonable detail and describing the general actions that Developer intends to take regarding such circumstance. In the event of an Affordable Project Default, the report shall identify the relevant cure period for such default and the steps Affordable Housing Developer is taking, or intends to take, to cure the same, and any Affordable Project Enforcement Obligations undertaken or proposed to be undertaken by Developer with respect to such default. Nothing in this Section 13.6 shall restrict the right of the City to seek or to obtain more frequent updates from Developer regarding the status of the Affordable Project or any Affordable Project Default.

14. Potential Defaults and Material Defaults.

14.1 Potential Defaults.

Except as otherwise provided in this Agreement, in the event either Party (“**Defaulting Party**”) fails to perform, or delays in the performance of, any obligation, in whole or in part, required to be performed by the Defaulting Party as provided in this Agreement (a “**Potential Default**”), the other Party (“**Injured Party**”) may give written notice of such Potential Default to the Defaulting Party (“**Default Notice**”), which Default Notice shall state the particulars of the Potential Default. For avoidance of doubt, and notwithstanding any provision in this Agreement to the contrary, no Potential Default shall be deemed to exist hereunder unless and until the Injured Party shall have provided to the Defaulting Party a Default Notice. In the event the Defaulting Party contests in writing to the Injured Party the Potential Default subject of a Default Notice, or in the event of any other disagreement between the Parties regarding this Agreement or the implementation thereof, the Parties shall promptly meet and confer in good faith to seek to resolve such Potential Default or other disagreement, provided that in no event shall the obligation to meet and confer or the discussions of the Parties pursuant to this Section 14.1 modify the time periods for cure set forth in Section 14.2, Article 15 or Article 16.

14.2 Material Defaults.

14.2.1 Monetary Defaults. Notwithstanding any other provision of this Agreement, if a Party fails to pay the other Party any sum as and when required to be paid pursuant to this Agreement or to make any deposit as and when required pursuant to this Agreement the Defaulting Party shall have a period of fifteen (15) Business Days after the date a Default Notice is received, or deemed to have been received, within which to cure the Potential Default by making

the required payment; provided that with respect to a Potential Default pursuant to Section 8.9.3, the period for cure shall be thirty (30) calendar days. The period to cure any Potential Default described in Section 8.9.3 or this Section 14.2.1 shall not be extended by Force Majeure Delay. In the event a Potential Default for nonpayment or failure to make a deposit is not cured within the applicable time period, the Potential Default shall become a “**Material Default**” that shall be deemed to have occurred upon the expiration of the cure period.

14.2.2 **Non-Monetary Defaults.** With respect to non-monetary defaults under this Agreement, a Potential Default shall become a “**Material Default**” in the event the Potential Default is not cured, at the Defaulting Party’s expense, (i) within thirty (30) Business Days after the date the Default Notice is received, or deemed to have been received by the Defaulting Party; (ii) if such cure cannot be reasonably accomplished within such thirty (30) Business Day period, within ninety (90) Business Days (or if an Approved Ground Lease is then in effect, within one hundred fifty (150) calendar days as to the Lot 13 Property only) after the date the Default Notice is received, or deemed to have been received by the Defaulting Party, but only if the Defaulting Party has commenced such cure within such thirty (30) Business Day period and diligently pursues such cure to completion; or (iii) within such longer period of time as may be expressly provided in this Agreement or as mutually agreed to in writing between the Parties with respect to the Potential Default. Following written notice and failure to cure within the time periods set forth above, each Potential Default shall become a Material Default that shall be deemed to have occurred upon the expiration of the applicable cure period. Notwithstanding anything in the foregoing to the contrary, the Defaulting Party may cure a Material Default at any time prior to the date the Injured Party exercises its remedy for the Material Default. Except as set forth in Sections 2.3, 4.7, 7.1, 14.2.3, and 16.4.1, the time periods set forth in this Section 14.2.2 to cure a Potential Default shall be extended by Force Majeure Delay.

14.2.3 **Transfer Defaults.** Notwithstanding the foregoing, any Transfer or any Transfer of Control in violation of the provisions of Article 2, Section 4.7 or the requirements of the Lot 13 PDA, Ground Lease Option and/or Approved Ground Lease, as applicable (including consent of the City thereto to the extent required by each such instrument), shall be null and void and, if related to a Transfer by Developer or a Transfer of Control in Developer, shall in all events be a Material Default under this Agreement as of the date of the Transfer or Transfer of Control by the violating party, without notice or cure period and shall not be subject to extension for Force Majeure Delay, except that with respect to involuntary Construction Liens the notice and cure periods set forth in Section 14.2.2 shall apply, in order to enable Developer to comply with the provisions of Section 8.11.5.

14.2.4 **Affordable Project Obligations and Affordable Project Enforcement Obligation Defaults.** It shall be a Material Default under this Agreement if Developer shall fail (i) prior to the Affordable Project Outside Date to have caused one of the following to occur as further described in Section 4.7.1: (A) enter into Approved Ground Lease(s) for the entirety of Lot 13, whether pursuant to one or two Lot 13 Transfers or (B) satisfied the Alternative Affordable Project Development Plan Conditions Precedent; (ii) upon the occurrence of an Affordable Project Default to perform the Affordable Project Obligations, including the Affordable Project Enforcement Obligations, in a manner that results in the Affordable Project

being performed (including commencement and Completion) within the time period set forth in the Schedule of Performance (as the same may be extended in certain circumstances pursuant to Section 13.5 or Force Majeure Delay) or (iii) to perform the remaining Affordable Project Provisions as and when required by this Agreement.

14.2.5 **Interest.** If a monetary Material Default occurs under this Agreement, then in addition to any other remedies conferred upon the Injured Party pursuant to this Agreement, the Defaulting Party shall pay to the Injured Party, in addition to all principal amounts due, interest on such principal amounts at the Default Rate, for the period from the date such payment or part thereof was due until the date the same is paid.

14.2.6 **No Waiver.** Failure or delay by an Injured Party to deliver a Default Notice shall not constitute a waiver of any Default, nor shall it change the time of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies. Delays by either Party in asserting any of its rights and remedies shall not deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

14.3 Due Diligence Information; Products.

14.3.1 **Return of Due Diligence Information.** Within five (5) Business Days following a termination of this Agreement occurring prior to the Close of Escrow, Developer shall use commercially reasonable efforts to return to the City all written Due Diligence Information in Developer's possession. Developer's obligation to return Due Diligence Information to the City is without representation or warranty of any kind by Developer.

14.3.2 **Surrender of Transferable Products.** In connection with the proposed Market Rate Project and the Affordable Project, Developer shall be preparing or causing to be prepared architectural and other products, surveys, plans, reports, tests, studies and investigations with respect to the Development Parcels and the proposed Market Rate Project and Affordable Project, as applicable, (collectively, "**Products**"). All Products shall be prepared at Developer's sole cost and expense. If this Agreement is terminated for any reason other than a Material Default by the City prior to or following the Close of Escrow or if the Right of Repurchase or Right of Reversion is exercised, then, with respect to all Products other than financial or economic estimates, projections and evaluations; studies and information related to potential tenants, lenders and investors; any confidential or proprietary information of Developer or its equity partner(s), or attorney-client or other privilege (the Products not subject to such exclusions are collectively "**Transferable Products**"), the City may request that Developer transfer Developer's rights to any or all of the Transferable Products identified by the City but in no event shall the cost to the City exceed Five Thousand Dollars (\$5,000.00). Upon such request and payment of such consideration, Developer shall deliver to the City copies of all Transferable Products requested by the City together with a bill of sale therefor, provided that such transfer is made AS-IS and Developer makes no representation, warranty or guaranty regarding the completeness or accuracy or any other aspect of the Transferable Products, and Developer does not covenant to convey the copyright or

other ownership rights of third parties thereto. Such Transferable Products shall thereupon be free of all claims or interests of Developer or any liens or encumbrances. Upon the City's acquiring Developer's rights to any or all of the Transferable Products, the City shall be permitted to use, grant, license or otherwise dispose of such Transferable Products to any Person for development of the Market Rate Project or the Affordable Project or any other purpose; provided, however, that Developer shall have no liability whatsoever to the City or any transferee of title to the Transferable Products in connection with the use of the Transferable Products. Notwithstanding anything to the contrary in this Section 14.3.2, Developer shall only be obligated to transfer any Transferable Products to the extent that Developer owns the rights to the same pursuant to its contract with the preparer thereof.

14.3.3 **Survival.** The provisions of this Section 14.3 shall survive the termination of this Agreement in its entirety or as to any portion of the Property except that it shall terminate with respect to any Parcel upon the Recording by the City of a Certificate of Compliance applicable to that Parcel, or if no such Certificate of Compliance has been Recorded, upon the Recording by the City of the Final Certificate of Compliance.

15. **Remedies Prior to Close of Escrow.**

15.1 **Failure of a Condition Absent a Default.**

15.1.1 If the Close of Escrow does not occur by reason of the failure of any of the Closing Conditions (other than by reason of a Default by either Party) or any of the following conditions, each of which shall be an additional Closing Condition for the benefit of each Party, either Party shall have the right to terminate this Agreement as hereinafter provided:

15.1.1.1 If a final non-appealable decision in any litigation brought by a third party or approval of a referendum or initiative results in the inability of the City to convey all or any portion of the Property to Developer, or prohibits Developer from performing any of its obligations under this Agreement that are not waived by the City, either Party shall have the right, upon thirty (30) Business Days' prior written notice to the other Party and the Escrow Holder, to terminate this Agreement.

15.1.1.2 If any litigation, referendum, or initiative brought by a third party remains pending on the Outside Closing Date and (i) such ongoing challenge prevents the City from conveying all or any portion of the Property to Developer, or (ii) such ongoing challenge prohibits Developer from performing any of its obligations under this Agreement that are not waived by the City, either Party shall have the right, upon thirty (30) Business Days' written notice to the other Party and the Escrow Holder, to terminate this Agreement.

15.1.1.3 If the City identifies the presence or Release of Hazardous Materials that require the City to make more than one claim against its policy of environmental insurance.

15.1.2 If the circumstances creating the right of termination in Sections 15.1.1.1 or 15.1.1.2 have been cured during the thirty (30) Business Day period described in each

such section, the right to terminate with respect to such circumstances shall likewise be extinguished.

15.1.3 If the Close of Escrow does not occur on or before 5:00 p.m., Pacific Time, on or before the Outside Closing Date because of the failure to occur of a Closing Condition for reasons other than a Default by either Party, then the Party for whose benefit the applicable Closing Condition was intended may, by delivery of written notice to the other Party and to the Escrow Holder, terminate this Agreement. In the event either Developer or the City is in Default as of the Closing Date, the Party in Default shall not have the right to terminate this Agreement pursuant to this Section 15.1.3 until and unless the Default is cured. Upon termination of this Agreement prior to the Close of Escrow in accordance with Section 15.1.1 or this Section 15.1.3, each Party shall pay one-half (1/2) of Escrow Holder's normal cancellation charges and the Original Purchase Price Deposit then held by Escrow Holder shall be paid to and retained in full by the City unless a Deposit Return Event occurred and the Additional Purchase Price Deposit then held by Escrow Holder shall be paid to and retained in full by the City notwithstanding the occurrence of a Deposit Return Event. The termination of this Agreement pursuant to Section 15.1.1 or this Section 15.1.3 prior to the Close of Escrow shall constitute a waiver of any rights or Claims either Party may have against the other or against the Property, the Market Rate Project Improvements or the Affordable Project Improvements, or any portion thereof, but shall not terminate or release any liability or obligations of either Party to comply with any obligations under this Agreement which are expressly stated to survive a termination of this Agreement. In the event of a termination as provided in Section 15.1.1 or this Section 15.1.3, under no circumstances shall Developer have any right or claim to, or against, the Market Rate Project, the Affordable Project or the Property or any portion thereof.

15.1.4 For purposes of clarity, the failure of a Closing Condition for the benefit of either Party to be satisfied at or prior to the Close of Escrow shall not, on its own, constitute a Default by either Party hereunto absent a Default under a separate covenant, obligation, representation or warranty set forth in this Agreement or any Other Agreement.

15.2 Failure of Close of Escrow; Developer Default.

15.2.1 **CLOSE OF ESCROW.** IF THE CLOSE OF ESCROW DOES NOT TAKE PLACE ON OR BEFORE 5:00 P.M., PACIFIC TIME, ON THE OUTSIDE CLOSING DATE AS A RESULT OF A DEFAULT BY DEVELOPER IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND DEVELOPER THEREAFTER FAILS TO CURE THE SAME WITHIN THE APPLICABLE NOTICE AND CURE PERIOD SET FORTH IN ARTICLE 14, THEN THE PARTIES ACKNOWLEDGE AND AGREE BY INITIALING THIS AGREEMENT IN THE SPACE PROVIDED BELOW THAT:

15.2.1.1 THE CITY SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT AND THE ESCROW BY DELIVERING WRITTEN NOTICE TO DEVELOPER AND TO ESCROW HOLDER, WHEREUPON THIS AGREEMENT SHALL TERMINATE AND DEVELOPER AND CITY SHALL BE RELEASED FROM THEIR OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING THE CITY'S OBLIGATION TO

SELL THE PROPERTY TO DEVELOPER, BUT EXCLUDING THEREFROM ANY OBLIGATIONS WHICH EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT. IN SUCH EVENT, ESCROW HOLDER SHALL DISBURSE TO THE CITY THE ORIGINAL PURCHASE PRICE DEPOSIT PREVIOUSLY PAID BY DEVELOPER TO ESCROW HOLDER, AND THE CITY SHALL RETAIN THE ADDITIONAL PURCHASE PRICE DEPOSIT, IF ANY, PAID TO THE CITY, AND ALL ACCRUED INTEREST ON THE PURCHASE PRICE DEPOSIT, AS LIQUIDATED DAMAGES, WHICH DAMAGES SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY FOR DEVELOPER'S FAILURE TO CLOSE ESCROW, EXCEPT FOR THE CITY'S OTHER RIGHTS AND REMEDIES WITH RESPECT TO ANY OBLIGATIONS OF DEVELOPER THAT EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT. THE CITY'S RIGHTS AND REMEDIES DESCRIBED IN THE IMMEDIATELY PRECEDING SENTENCE SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

15.2.1.2 THE PURCHASE PRICE DEPOSIT BEARS A REASONABLE RELATIONSHIP TO THE DAMAGES WHICH THE PARTIES ESTIMATE MAY BE SUFFERED BY THE CITY AS THE RESULT OF DEVELOPER'S FAILURE TO CLOSE ESCROW UNDER THIS AGREEMENT, WHICH DAMAGES WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO QUANTIFY. THE PURCHASE PRICE DEPOSIT CONSTITUTES A REASONABLE ESTIMATE OF THE CITY'S DAMAGES IN SUCH EVENT. THE REMEDY PROVIDED FOR IN THIS SECTION 15.2.1 IS NOT A PENALTY OR FORFEITURE AND IS A REASONABLE LIMITATION ON DEVELOPER'S POTENTIAL LIABILITY AS A RESULT OF SUCH FAILURE TO CLOSE ESCROW. NOTHING IN THIS AGREEMENT, HOWEVER, SHALL PRECLUDE THE CITY FROM RETAINING ALL REIMBURSEMENTS IT HAS PREVIOUSLY RECEIVED FROM DEVELOPER FOR THE DDA TRANSACTION EXPENSES AND RETAINING AND COLLECTING FROM DEVELOPER ANY ADDITIONAL AMOUNTS THEN DUE TO THE CITY ON ACCOUNT OF DDA TRANSACTION EXPENSES INCURRED BY THE CITY TO THE DATE OF TERMINATION OF THIS AGREEMENT.

15.2.1.3 DEVELOPER SHALL PAY THE FULL AMOUNT OF ESCROW HOLDER'S CHARGES AS A RESULT OF SUCH DEFAULT AND TERMINATION.

15.2.1.4 DEVELOPER SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 14.3 AND SHALL INDEMNIFY THE CITY AS PROVIDED IN SECTION 5.2 AND COMPLY WITH ALL OTHER PROVISIONS OF THIS AGREEMENT THAT EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT.

Initials of City



Initials of Developer

SELL THE PROPERTY TO DEVELOPER, BUT EXCLUDING THEREFROM ANY OBLIGATIONS WHICH EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT. IN SUCH EVENT, ESCROW HOLDER SHALL DISBURSE TO THE CITY THE ORIGINAL PURCHASE PRICE DEPOSIT PREVIOUSLY PAID BY DEVELOPER TO ESCROW HOLDER, AND THE CITY SHALL RETAIN THE ADDITIONAL PURCHASE PRICE DEPOSIT, IF ANY, PAID TO THE CITY, AND ALL ACCRUED INTEREST ON THE PURCHASE PRICE DEPOSIT, AS LIQUIDATED DAMAGES, WHICH DAMAGES SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY FOR DEVELOPER'S FAILURE TO CLOSE ESCROW, EXCEPT FOR THE CITY'S OTHER RIGHTS AND REMEDIES WITH RESPECT TO ANY OBLIGATIONS OF DEVELOPER THAT EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT. THE CITY'S RIGHTS AND REMEDIES DESCRIBED IN THE IMMEDIATELY PRECEDING SENTENCE SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

15.2.1.2 THE PURCHASE PRICE DEPOSIT BEARS A REASONABLE RELATIONSHIP TO THE DAMAGES WHICH THE PARTIES ESTIMATE MAY BE SUFFERED BY THE CITY AS THE RESULT OF DEVELOPER'S FAILURE TO CLOSE ESCROW UNDER THIS AGREEMENT, WHICH DAMAGES WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO QUANTIFY. THE PURCHASE PRICE DEPOSIT CONSTITUTES A REASONABLE ESTIMATE OF THE CITY'S DAMAGES IN SUCH EVENT. THE REMEDY PROVIDED FOR IN THIS SECTION 15.2.1 IS NOT A PENALTY OR FORFEITURE AND IS A REASONABLE LIMITATION ON DEVELOPER'S POTENTIAL LIABILITY AS A RESULT OF SUCH FAILURE TO CLOSE ESCROW. NOTHING IN THIS AGREEMENT, HOWEVER, SHALL PRECLUDE THE CITY FROM RETAINING ALL REIMBURSEMENTS IT HAS PREVIOUSLY RECEIVED FROM DEVELOPER FOR THE DDA TRANSACTION EXPENSES AND RETAINING AND COLLECTING FROM DEVELOPER ANY ADDITIONAL AMOUNTS THEN DUE TO THE CITY ON ACCOUNT OF DDA TRANSACTION EXPENSES INCURRED BY THE CITY TO THE DATE OF TERMINATION OF THIS AGREEMENT.

15.2.1.3 DEVELOPER SHALL PAY THE FULL AMOUNT OF ESCROW HOLDER'S CHARGES AS A RESULT OF SUCH DEFAULT AND TERMINATION.

15.2.1.4 DEVELOPER SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 14.3 AND SHALL INDEMNIFY THE CITY AS PROVIDED IN SECTION 5.2 AND COMPLY WITH ALL OTHER PROVISIONS OF THIS AGREEMENT THAT EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT.



Initials of City

Initials of Developer

15.3 Failure to Close; Default of City.

15.3.1 **Developer Remedies.** If the Close of Escrow does not occur on or before 5:00 p.m., Pacific Time, on or before the Outside Closing Date, solely as a result of a Default by the City in the performance of its obligations under this Agreement with respect to the Close of Escrow, and the City thereafter fails to cure the same within the applicable notice and cure period set forth in Section 14.2 (the “**City Cure Period**”), then, as the sole remedy of Developer with respect to such Default by the City, and provided that Developer is not then in Default under this Agreement, Developer shall have the right, by providing written notice to the City, within twenty (20) Business Days after the last day of the City Cure Period, to elect one of the following remedies, it being agreed by the Parties that in the event Developer fails to deliver such notice within such twenty (20) Business Day period, Developer shall be deemed to have elected to terminate this Agreement in accordance with clause (iii) below:

(i) to purchase the Property pursuant to this Agreement notwithstanding such Default by the City and subject to its agreement to waive all of Developer’s rights with respect to any such City Default, whereupon such Default (other than Defaults with respect to City’s failure to deliver the documents and instruments required under Section 7.2.1.1) shall be deemed waived as against the City;

(ii) to elect to extend the Closing Date for a period of up to ninety (90) Business Days (without any obligation to pay the Additional Purchase Price Deposit) in order to provide the City with additional time to cure such Default (and in such event the City shall use commercially reasonable efforts to cure the same during such extension period) and, if despite such efforts the City is not able to cure the same by such extended Closing Date, Developer shall have the right by providing written notice to the City within twenty (20) Business Days after the extended Closing Date to elect the remedies set forth in clauses (i), (iii) or (iv) of this Section 15.3.1, in each case only if then applicable;

(iii) to terminate this Agreement and cancel the Escrow as more particularly set forth in Section 15.3.3; or

(iv) if all applicable City Closing Conditions have been waived by the City in writing or satisfied (except with respect to any applicable City Closing Condition which is not satisfied as a result of a Default by the City), and the City fails to deliver any of the materials described in Section 7.2.1.1 or otherwise fails to proceed with the Close of Escrow in breach of this Agreement after Developer has delivered into Escrow all of its required deliveries pursuant to Section 7.2.2 other than the Closing Payment, and Developer has provided the notice and City has failed to cure pursuant to Section 14.2 or Section 15.3.1(ii), Developer shall have the right to (A) bring an action in mandamus or at equity or otherwise against the City or subsequent owners, lessors or sublessors of the Property for specific performance of the City’s obligation to close Escrow in

accordance with Article 7 and (B) Developer shall be entitled to a full refund of the Purchase Price Deposit to the extent paid by Developer.

15.3.2 **Closing Pursuant to Section 15.3.1.** In the event the City receives timely notice of Developer's election to purchase the Property pursuant to Section 15.3.1 notwithstanding the Default by the City, Developer shall deliver the Closing Payment and all other deliverables required by Section 7.2.2.2 into Escrow no later than ten (10) Business Days after the City's receipt of said notice, and, provided that the City Closing Conditions have been satisfied, (i) the Close of Escrow shall occur on that date which is eleven (11) Business Days after the City's receipt of such notice and (ii) Developer shall be deemed to have waived the Default as of the Close of Escrow.

15.3.3 **Developer Termination of Agreement Pursuant to Section 15.3.1.**

15.3.3.1 In the event that the Developer elects or is deemed to have elected to terminate this Agreement pursuant to Section 15.3.1, then Developer's election (or deemed election) shall terminate the entirety of this Agreement, the City shall pay the full amount of Escrow Holder's charges and Developer shall be entitled, as its exclusive remedy, to a full refund of the Purchase Price Deposit then held by Escrow Holder.

15.3.3.2 **City Right to Terminate Agreement.** In the event Developer has elected to purchase the Property pursuant to Section 15.3.1 but fails to deliver the Closing Payment into Escrow and to satisfy the other City Closing Conditions no later than ten (10) Business Days after the City's receipt of said notice in accordance with Section 15.3.2, then the City shall have the right to terminate this Agreement by providing written notice of its election to terminate to Developer, such termination to be in accordance with the provisions of Section 15.3.3.1.

15.3.4 **Effect of Termination.** The termination of this Agreement pursuant to Section 15.3 shall not terminate or release any liability or obligations of Developer to indemnify the City as provided in Section 5.2 or to comply with Section 14.3 or of either Party to comply with all other provisions of this Agreement that expressly survive the termination of this Agreement. In the event that Developer does not elect its remedy of specific performance within the time period set forth in Section 15.3, Developer shall have no further right or claim to or against such Property or any portion thereof following the termination of this Agreement. The termination of this Agreement pursuant to this Section 15.3 shall constitute a waiver of any and all rights and Claims either Party may have against the other, except as expressly provided in this Section 15.3.

15.4 Remedies Exclusive.

The remedies provided in Sections 15.1 through 15.3 (and Section 18.2 as applicable) for the failure of a Closing to occur are the exclusive remedies of the Parties for such failure. Without limiting the generality of the immediately preceding sentence, (i) neither Party shall have any remedy in monetary damages against the other (other than the liquidated damages specifically provided for in Section 15.2) for the failure of the Close of Escrow to occur, whether or not the failure of the Closing to occur is due to the Default or other fault of the other Party, and (ii)

following the Close of Escrow, no such Default on the part of the City shall entitle Developer to a claim for the recovery of any portion of the Purchase Price or the Project Fair Share Contribution.

15.5 Survival.

The provisions of this Article 15 shall survive the termination of this Agreement.

16. Remedies for Defaults After The Close of Escrow.

16.1 General Remedies.

In the event Developer is in Material Default following the Close of Escrow, in addition to whatever other rights the City may have in law or at equity, or as otherwise provided in this Agreement, the City may do any one or more of the following:

- (i) record a lien against the Property then owned by Developer, in accordance with Section 16.2;
- (ii) subject to Section 18.5.1, sue for damages it may have incurred;
- (iii) seek to specifically enforce the obligations of Developer.
- (iv) exercise its Right of Repurchase with respect to the Property pursuant to Section 16.3;
- (v) in the event of a Reversion Action Trigger only, exercise its Right of Reversion with respect to the Property pursuant to Section 16.4.
- (vi) terminate this Agreement and/or the Other Agreements, or any of them, with respect to all or any portion of the Property.

16.2 Lien Rights.

Developer, on behalf of itself, its successors and assigns and each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner (but specifically excluding any End Users) for the benefit of the City and its successors and assigns hereby agrees that the delinquent amount of any payments due under this Agreement, including any liquidated damages under this Agreement, together with any late charges or interest due on any such delinquent payment, reasonable attorneys' fees, experts' fees and consultants' fees and collection costs and the cost of in-house staff time (including City overhead and administrative costs) related to such delinquent payment shall, to the greatest extent permitted by applicable law, be a lien and charge in favor of the City relating back to the Recording of the Memorandum of DDA upon all portions of the Property and the Project Improvements for which no Certificate of Compliance is then Recorded by the City in the Official Records, provided that following Recording by the City of a Certificate of Compliance for a Parcel, the City Lien shall apply to the

Parcel for which such Certificate of Compliance has been Recorded only if the default arises from or is related to such Parcel or if the City Lien is imposed in connection with default by the Owner thereof (“**City Lien**”), which lien and charge shall be paramount to the lien and charge of each and every Mortgage, Construction Lien and/or other lien upon or affecting the Real Property or any Improvements thereon, and, subject to the terms of any applicable Subordination Agreement, the City shall have the right to foreclose the City Lien with respect to any property so encumbered by the City Lien. Upon conveyance of any portion of the Real Property to an End User unless otherwise provided in the Landscape Installation and Maintenance Agreement, the City Lien shall automatically terminate as to such conveyed portions, provided however, that the termination of such City Lien shall not terminate the obligations of Developer and its successors and assigns to City with respect to amounts due and secured by such lien, which shall remain an ongoing obligation of Developer. No breach or violation of this Agreement, nor any foreclosure of any City Lien, shall permit the City to terminate any Ground Lease, nor defeat or render invalid Affordable Housing Developer’s interest as Ground Lessee in any portion of the Lot 13 Property unless the City or its designee shall first have acquired fee title to the land then subject to a Ground Lease and shall have terminated the Ground Lease pursuant to its terms.

16.3 Right of Repurchase.

16.3.1 **Property Subject to Repurchase.** Following the Close of Escrow and prior to commencement of Horizontal Improvements other than Grading Work on any Parcel within a Phase (for each Phase, such date is referred to as the “**Repurchase Expiration Date**”), the City shall have the right (“**Right of Repurchase**”) on the terms and subject to the conditions set forth in this Section 16.3 to purchase the applicable portion of the Real Property as set forth in Section 16.3.10, and all applicable Entitlements, Development Permits and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any Governmental Authority, the Transferable Products, the Intangible Property and all other appurtenant rights applicable thereto (“**Repurchase Property**”).

16.3.2 **Repurchase Default.** The City shall have the right from time to time, at any time prior to the applicable Repurchase Expiration Date to give notice to Developer of its intent to acquire the Repurchase Property for the Repurchase Price in accordance with this Section 16.3.

16.3.3 **Exercise of Right of Repurchase.** The City may exercise its Right of Repurchase by delivering written notice to Developer stating that the City is exercising its Right of Repurchase; provided that such notice is delivered at least ninety (90) Business Days prior to the date on which the City requires Developer to convey the Repurchase Property to the City pursuant to the Right of Repurchase and otherwise in accordance with this Section 16.3. Prior to the applicable Repurchase Expiration Date, the City’s Right of Repurchase shall constitute a lien and encumbrance on the applicable portions of the Real Property and Project Improvements then subject to the Right of Repurchase which lien shall be paramount to the lien and charge of any Mortgage, Construction Lien and/or other lien upon or affecting the Real Property or any Improvements thereon, but subject to the provisions of Section 16.6.2.

16.3.4 **Access, Inspection, Further Obligations.** The provisions of Section 16.5 shall apply with respect to access to and inspection of the Repurchase Property. The provisions of Section 16.6 shall apply in accordance with their terms upon close of escrow with respect to any Repurchase Property.

16.3.5 **Process.** If the City is entitled to and elects to repurchase the Repurchase Property: (i) the Parties shall, within five (5) Business Days after the date of the City's notice of election to exercise the Right of Repurchase, open an escrow with an escrow agent designated by the City for the purchase and sale, and shall execute an escrow agreement that shall provide that Developer shall pay all costs of the escrow and shall include such usual and ordinary terms as are reasonably required by the escrow agent and by the transaction; (ii) Developer shall, no later than five (5) Business Days after the opening of escrow, place into the escrow the appropriate quitclaim deed and bill of sale conveying fee title to the Repurchase Property; and (iii) the City shall, no later than eighty-five (85) calendar days after the opening of the escrow, deposit into the escrow an amount equal to (A) the Repurchase Price *minus* (B) the Lien Release Amounts, if any, *minus* (C) any other amounts then owed to the City by Developer and/or any Successor Owner arising or resulting directly or indirectly from or related to this Agreement with respect to the Repurchase Property, *minus* (D) the actual costs incurred by the City to acquire environmental and pollution legal liability insurance coverage for the Repurchase Property, including coverage for loss, remediation expense and legal defense expenses. The escrow shall close, and title to the Repurchase Property shall be conveyed to the City, and the Repurchase Price paid to Developer no later than five (5) Business Days after the City has deposited into escrow the Repurchase Price. Concurrently with the close of escrow for the Repurchase Property, Developer shall comply with its obligations under Section 14.3 with respect to the Repurchase Property. Nothing in this Section 16.3 shall restrict the right of the City to terminate its exercise of the Right of Repurchase at any time prior to the close of escrow and such termination shall not be a default by the City. At the close of escrow, real property taxes and assessments with respect to the Repurchase Property shall be prorated between Developer and the City as of the date of the close of escrow. All proration shall be based upon a 365-day year and actual days elapsed. All closing costs, including the cost of an ALTA policy of title insurance in favor of the City with respect to the Repurchase Property shall be borne by Developer and deducted from the Repurchase Price. The Parties agree that the amount of reduction in the Repurchase Price as compared with the applicable Purchase Price is justified in that it bears a reasonable relationship to the damages which the Parties estimate may be suffered by the City as the result of Developer's Material Default in the performance of its obligations under this Agreement, which damages would be impractical or extremely difficult to quantify, and that the remedy provided in this Section 16.3 is not a penalty or forfeiture, and is a reasonable limitation on Developer's potential liability as a result of Developer's default.

16.3.6 **Cooperation and Grant of Easements.** The Parties shall cooperate with respect to and concurrently with the close of escrow for the Repurchase Property, shall each reserve and/or grant to the other such roadway, utility, access and other easement rights as may be required by the other Party and its successors in interest to develop the portions of the Real Property owned by it as a unified development and as contemplated by the applicable Entitlements, this Agreement and the Other Agreements.

16.3.7 **Termination of Right of Repurchase.** In the event that prior to delivery by the City of written notice to Developer of its exercise of the Right of Repurchase pursuant to Section 16.3.2, Developer or any Person on behalf of Developer cures the Repurchase Default which is the basis for the City's exercise of its Right of Repurchase, but excluding any Transfer or Transfer of Control in violation of this Agreement, such Right of Repurchase shall cease and terminate with respect to such Repurchase Property only; provided that the provisions of this sentence shall not be applicable to any subsequent notice by the City of its election to exercise the Right of Repurchase. In the event the City has declared a Repurchase Default, Developer shall not have the right to apply for permits for Horizontal Improvements or to commence construction thereof in a manner that affects or thwarts the ability of the City to exercise its Right of Repurchase.

16.3.8 **Effect of Repurchase.** The provisions of Section 16.6 shall apply with respect to the Repurchase Property following close of escrow for the repurchase. Following close of escrow, under no circumstances shall Developer or any lienholder (other than a Leasehold Mortgage to the extent of its interest in the Ground Lease estate only) have any right or claim to, or against, the Repurchase Property. Notwithstanding the purchase of the Repurchase Property by the City as provided in this Section 16.3, this Agreement shall remain in full force and effect with respect to the portions of the Property, the Market Rate Project Improvements and the Affordable Project Improvements not purchased by the City.

16.3.9 **Rights of Third Parties.** The Right of Repurchase shall not defeat or render invalid or limit any rights or interests provided in easements, covenants, conditions or restrictions in favor of third parties (i.e., Persons other than Developer or its Developer Affiliates) granted pursuant to Transfers approved by the City (or constituting Permitted Transfers) and Recorded on the portion of the Real Property for which the City exercises its rights under this Section 16.3. The Repurchase Property acquired by the City shall be delivered to the City at close of escrow free and clear of all liens, including Construction Liens (other than Lien Release Amounts that are actually deducted from the Repurchase Price paid by the City), but subject to the provisions of Section 16.6.2 and (v) the Permitted Exceptions in effect at the time of the original Close of Escrow for such Property, (w) the Developer Final Tract Map, if then Recorded, (x) utility easements and/or roadway easements, (y) other matters affecting title consented to or requested by any Governmental Authority with respect to the Repurchase Property in connection with development or operation of the Repurchase Property, or consented to or requested by the City, and any covenants to comply with the Entitlements, and (z) the Other Agreements then in effect.

16.3.10 **Additional Terms Applicable To Right of Repurchase.** From the Close of Escrow until the Repurchase Expiration Date for Phase 1, the City shall have the right, but not the obligation, to exercise the Right of Repurchase on the entirety of the Real Property only. Following the Repurchase Expiration Date for Phase 1 until the Repurchase Expiration Date for Phase 2, the City shall have the right but not the obligation to exercise the Right of Repurchase on the entirety of the Real Property within Phase 2 only, including all of Lot 13 if the Developer Final Tract Map has not Recorded.

16.3.11 **Survival of Provisions.** The provisions of this Section 16.3 shall survive the termination of this Agreement.

16.4 The Right of Reversion.

Following Close of Escrow and prior to the applicable Reversion Expiration Date, in the event of the occurrence of any Reversion Action Trigger (defined in Section 16.4.1), and in addition to its other rights or remedies as a result of the occurrence of any such Reversion Action Trigger, the City shall have the right on the terms and subject to the conditions set forth in this Section 16.4 to re-enter and take possession of the applicable Reversion Property or any portion thereof and to revest title thereto in the City ("**Right of Reversion**") notwithstanding that the Reversion Property may be encumbered by liens, including Construction Liens and Mortgages. The revesting of any Reversion Property by the City is referred to in this Agreement as a "**Reversion Event**", whether based on voluntary action of Developer or otherwise after notice by the City of its intent to exercise the Right of Reversion. The City shall be entitled to exercise the Right of Reversion at any time on or after the occurrence of any of any one or more of the Reversion Action Triggers and prior to the applicable Reversion Expiration Date; provided that the City has complied with the conditions to exercise of the Right of Reversion set forth in Section 16.4.2. Prior to the City's exercise of the Right of Reversion, if exercised prior to the applicable Reversion Expiration Date, the Right of Reversion shall constitute a lien and encumbrance on the portions of the Real Property, and Project Improvements thereon then subject to the Right of Reversion, which lien and encumbrance shall have priority over the lien and charge of any Mortgage, Construction Lien and/or other lien upon the Real Property and any improvements thereon, but subject to the provisions of Section 16.6.2.

16.4.1 **Certain Defaults Triggering the Right of Reversion.** Following the Close of Escrow and prior to the applicable Reversion Expiration Date, the City may exercise the Right of Reversion if it elects to do so with respect to the applicable portion of the Real Property as set forth in Section 16.4.7, and all applicable Entitlements, Development Permits and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any Governmental Authority, the Transferable Products, the Intangible Property and all other appurtenant rights applicable thereto (collectively, "**Reversion Property**") upon the occurrence of any one of the following (each, a "**Reversion Action Trigger**", and the date on which the Reversion Action Trigger occurs is referred to in this Agreement as the "**Reversion Action Trigger Date**").

16.4.1.1 Developer fails prior to the Affordable Project Outside Date to have caused one of the following to occur as further described in Section 4.7.1: (A) enter into Approved Ground Lease(s) for the entirety of Lot 13, whether pursuant to one or two Lot 13 Transfers or (B) satisfied the Alternative Affordable Project Development Plan Conditions Precedent;

16.4.1.2 Developer fails to commence in accordance with the Approved Plans and all Governmental Requirements: (i) the Market Rate Project Horizontal Improvements on the Market Rate Real Property within the applicable time periods for each Phase

set forth in the Schedule of Performance; or (ii) the Affordable Project Horizontal Improvements on the Lot 13 Real Property within the applicable time periods for each Phase set forth in the Schedule of Performance;

16.4.1.3 Developer fails to commence or Complete in accordance with the Approved Plans and all Governmental Requirements: (i) construction of the Vertical Improvements for any Building comprising the Market Rate Project Improvements within the applicable time period set forth in the Schedule of Performance; or (ii) construction of the Vertical Improvements of each Building comprising Affordable Project Improvements within the applicable time period set forth in the Schedule of Performance;

16.4.1.4 Developer abandons or, substantially suspends for reasons other than for Force Majeure Delay, for a period of six (6) consecutive months construction of the Market Rate Project or the Affordable Project following commencement of such construction;

16.4.1.5 The occurrence of a Developer Insolvency Event;

16.4.1.6 With respect to any Guarantor which has provided a Guaranty to the City, the occurrence of a Guarantor Illiquidity Event, unless Developer shall, within the time period required thereby, provide substitute security meeting the requirements of Section 8.9.3;

16.4.1.7 Except to the extent performed by Developer directly in its exercise of the Affordable Project Enforcement Obligations or Affordable Project Obligations, Developer or any Person acting under the direction of Developer pulls a grading or building permit for Lot 13 or commences any construction on the Lot 13 Real Property prior to a Lot 13 Transfer that satisfies all the requirements for such Lot 13 Transfer pursuant to this Agreement.

16.4.2 **Conditions to Exercise of the Right of Reversion.** The City shall be entitled to exercise the Right of Reversion as to a Phase at any time on or after the applicable Reversion Action Trigger Date and prior to the applicable Reversion Expiration Date, without regard to any notice and cure periods except as expressly provided in Section 16.4.1; provided that the City has provided written notice to Developer that the City elects to exercise its Right of Reversion and such notice states the date for the Reversion Event. The provisions of Section 16.5 shall be applicable to exercise of the Right of Reversion. The date for the Reversion Event shall not occur before the later of (i) the date that is ninety (90) Business Days after the date of such notice of exercise; and (ii) the date that is five (5) Business Days after Developer has had the opportunity to address the City Council at a public meeting regarding the Reversion Action Trigger. In the event that, following the first notice by the City of its election to exercise the Right of Reversion and prior to the Reversion Event, Developer or any Person on behalf of Developer cures the Reversion Action Trigger which is the basis for the City's exercise of its Right of Reversion, such Right of Reversion shall cease and terminate with respect to such Reversion Action Trigger only; provided that the provisions of this sentence shall not be applicable to any subsequent notice by the City of its election to exercise the Right of Reversion.

16.4.3 **Exercise and Effect of Right of Reversion.**

16.4.3.1 **Cooperation.** If the City exercises its Right of Reversion in accordance with the provisions of this Agreement, Developer shall, and shall cause each Mortgagee (if any) to use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable law to consummate the reversioning of the Reversion Property in the name of the City, including the execution and delivery of such other documents, certificates, agreements, deeds and other writings and the taking of such other actions as may be reasonably necessary to consummate such reversioning and the other provisions of this Section 16.4.

16.4.3.2 **Effect on Mortgages.** Subject to the provisions of Section 16.6.2, a Reversion Event shall foreclose, defeat and render invalid each and every Construction Lien and Mortgage.

16.4.4 **Sale of Reversion Property.** Upon the reversioning in the City of title to the Reversion Property, the City shall use reasonable efforts to resell the Reversion Property as soon and in such manner as the City shall find feasible, in accordance with applicable law and consistent with the objectives of this Agreement, to a qualified and responsible Person or Persons as determined by the City in its sole discretion who will assume the obligation of making or completing the Market Rate Project Improvements and the Affordable Project Improvements. Concurrently with such resale of the Reversion Property, and each part thereof, the proceeds thereof shall be applied in the following order and amounts to the extent of funds available and the City shall have no liability to Developer or any Person to the extent the balance is insufficient to pay any or all of the following amounts nor shall the City have any obligation to make payments to any Person except in accordance with the priorities and obligations set forth below:

16.4.4.1 **Delinquencies.** First, to repayment in full of all delinquent tax and delinquent assessment liens with respect to the portion of the Reversion Property sold.

16.4.4.2 **Reimbursement to the City.** Second, to repayment in full of City Liens and to reimburse the City on its own behalf for all costs and expenses incurred by the City, in connection with the recapture, management, maintenance, repair, and resale of the Reversion Property, or any part thereof and the enforcement of City's rights under this Agreement and the Other Agreements including City's exercise of the Right of Reversion, taxes, assessments, and other delinquent liens, if any, whether arising before or after the acquisition by the City of: a pro-rata share of the salaries of personnel engaged in such action (based on the amount of time spent by such personnel on such matters relating to the Reversion Property as compared to the aggregate amount of time worked by such personnel; all taxes, assessments and utility charges with respect to the Reversion Property; any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, Defaults or acts of Developer or any Successor Owner or each and every Person claiming by, through or under Developer or any Successor Owner (but specifically excluding any End Users); any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Reversion Property; all costs of sale and marketing,

including reasonable brokers' fees and costs incurred in the marketing and sale of the Reversion Property; all legal fees and expenses; all escrow and title fees and costs; all survey and due diligence fees and costs; all the Lien Release Amounts, if any, paid by the City to third parties; and any amounts otherwise owing to the City by Developer and/or any Successor Owner under this Agreement or the Other Agreements, including any City Liens and the actual cost incurred by the City to acquire environmental and pollution legal liability insurance coverage for the Reversion Property, including coverage for loss, remediation expense and legal defense expenses.

16.4.4.3 **Release of Claims.** Third, at the election of the City in its sole discretion, (i) to release any Claims affecting the Reversion Property (other than with respect to any Leasehold Mortgage with respect to a Ground Lease then remaining in effect and for which there is no pending default) in such amounts as may be determined by the City in its sole discretion to be required to satisfy such Claims or to reinstate service or work on the Reversion Property or to pay utility charges with respect to the Reversion Property; (ii) to make any payments necessary to be made to discharge or prevent from attaching or being made any subsequent Claims, encumbrances or liens due to obligations, Defaults or acts of Developer or any Successor Owner or each and every Person claiming by, through or under Developer or any Successor Owner; (iii) to make any expenditures or incur any obligations with respect to completion of the agreed improvements or any part thereof on the Reversion Property, including the construction to Completion of the Project Improvements; (iv) to pay all costs of sale and marketing, including reasonable brokers' fees and costs incurred in the marketing and sale of the Reversion Property; (v) to cure any defaults in Developer's obligations under any Ground Lease and/or the Lot 13 PDA, and (vi) to pay all legal fees and expenses, escrow and title fees and costs, survey and due diligence fees and costs; and any amounts otherwise owing to any other Person whether by Developer, Ground Lessee and/or any Successor Owner or otherwise with respect to the Project or any of the foregoing whether arising prior to or following the acquisition by the City of the Reversion Property and only to the extent that any Claim is not fully foreclosed or otherwise terminated by or as a result of the exercise by the City of the Right of Reversion.

16.4.4.4 **Reimbursement to Developer.** Fourth, to reimburse Developer up to the amount equal to the Repurchase Price attributable to the portion of the Reversion Property sold.

16.4.4.5 **Balance Retained by the City.** Any balance remaining after such reimbursements shall be retained by the City as its property.

16.4.5 **Effect of Exercise of Right of Reversion.** The provisions of Section 16.6 shall apply with respect to the Reversion Property following the reversion of title thereto in the City. Following the reversion of title pursuant to this Section 16.4, under no circumstances shall Developer or any lienholder have any right or claim to, or against, the Reversion Property, provided that any Leasehold Mortgage may remain a lien on the Affordable Housing Developer's leasehold interest in an Approved Ground Lease in accordance with the provisions of the applicable Subordination Agreement. Notwithstanding the acquisition of the Reversion Property by the City as provided in this Section 16.4, this Agreement shall remain in full force and effect with respect to the portions of the Property, the Market Rate Project Improvements and the

Affordable Project Improvements not acquired by the City. The City's Right of Reversion shall not defeat or render invalid or limit any rights or interests provided in easements, covenants, conditions or restrictions in favor of third parties who are not Developer Affiliates that are approved by the City (or constituting a Permitted Transfer) and Recorded on the portion of the Property for which the City exercises its rights under this Section 16.4.

16.4.6 **Cooperation and Grant of Easements.** Concurrently with close of escrow for the Reversion Property, the Parties shall each reserve and/or grant to the other such roadway, utility, access and other easement rights as may be required by the other Party and its successors in interest to develop the Property as a unified development and as contemplated by the Entitlements, this Agreement and the Other Agreements. In the event the City has declared a Repurchase Default, Developer shall not have the right to apply for building permits for Vertical Improvements or to commence construction thereof in a manner that affects or thwarts the ability of the City to exercise its Right of Repurchase.

16.4.7 **Additional Terms Applicable To Right of Reversion.**

16.4.7.1 In the event the City exercises its Right of Repurchase as to the Repurchase Property as provided in Section 16.3, its Right of Reversion as to the Reversion Property as provided in Section 16.4 shall terminate with respect to the Repurchase Property as of the date of the close of escrow conveying to the City title to the Repurchase Property. If the Right of Reversion is exercised it shall be subject during the periods listed below to the following additional terms:

16.4.7.2 From the Close of Escrow until the Reversion Expiration Date for Phase 1, the City shall have the right, but not the obligation, to exercise the Right of Reversion on the entirety of the Real Property. Following the Reversion Expiration Date for Phase 1 until the Reversion Expiration Date for Phase 2, the City shall have the right but not the obligation to exercise the Right of Reversion on the Real Property within Phase 2 only; provided that if Lot 13 is subject to one Ground Lease for all Parcels comprising a portion thereof, the Right of Reversion shall apply only to the Market Rate Parcels within Phase 2 and shall not apply to the portion of Lot 13 within Phase 2 (i.e., Building 6 as shown on the Phasing Plan).

16.4.8 **Survival of Provisions.** The provisions of this Section 16.4 shall survive the termination of this Agreement.

16.5 Access and Inspection.

From and after the occurrence of any Repurchase Default or Reversion Action Trigger, the City and its appointed and elected officials, agents, attorneys, employees, contractors, consultants and representatives shall have the non-exclusive right, exercising such right in the Proprietary Capacity of the City, to enter upon at any reasonable time, at its own cost and expense entirely and upon not less than forty-eight (48) hours prior telephonic or email notice to Developer, the Potential Returned Property for the purpose of making such feasibility and other studies, inspections, appraisals, audits, tests, evaluations, investigations, surveys and reports of the Potential Returned Property (including engineering and environmental audits, evaluations and

tests relative to the presence of any Hazardous Material within, under or upon the Potential Returned Property) (collectively, “City Inspections”) as City may elect to make or obtain in connection with its exercise of its Right of Repurchase or Right of Reversion; provided that during such City Inspections, the City shall use commercially reasonable efforts to minimize its interference with Developer’s activities on the Property. The City shall indemnify, protect and defend Developer against any and all Claims which Developer may incur or suffer by reason of any acts or omissions to act of the City or its appointed and elected officials, agents, attorneys, employees, contractors, consultants and representatives in the conduct of any City Inspections on the Potential Returned Property, provided that the foregoing indemnity shall not apply to the extent of (i) the gross negligence, willful misconduct or fraud of Developer or any of the Developer Representatives, or (ii) Hazardous Materials conditions unless such condition is exacerbated by, or any Release caused by, negligent acts of City or its employees, consultants or contractors, or (iii) the acts or the negligence, gross negligence, or willful misconduct of Developer or any of the Developer Representatives in performance of work on the Development Parcels Accruing prior to the close of escrow pursuant to this Article 16; provided that in no event shall the foregoing apply with respect to inspections conducted by the City in its Governmental Capacity.

16.6 Obligations and Release Following Repurchase or Reversion.

16.6.1 **Developer, City and Ground Lessee Obligations.** Except as set forth in Sections 16.3 and 16.4, if the City exercises the Right of Repurchase or the Right of Reversion, the obligations of Developer under this Agreement and the Other Agreements, and Guarantor under the Guaranty and the Equity Investor under the Equity Commitment and the obligations of the City under this Agreement and the Other Agreements shall be released and terminated as to the Returned Property as of the close of escrow associated with such repurchase or as of the Reversion Event, as applicable, provided that the foregoing does not release Developer, Equity Investor, Guarantor or the Guaranty or the City with respect to matters Accruing prior to the date of such termination nor does it release any Ground Lessee from the obligations under any Ground Lease or under the Other Agreements with respect to such Returned Property.

16.6.2 **City Assumption of Ground Lease Obligations.** Upon the City’s acquisition of Returned Property that includes a portion of the Lot 13 Real Property (i) any Approved Ground Lease and any Leasehold Mortgage then in effect with respect to a Parcel comprising a portion of the Lot 13 Real Property shall remain in effect and (ii) the City shall assume the obligations of ground lessor under any Approved Ground Lease then in effect with respect to such Parcel, in each case described in the foregoing clauses (i) and (ii) subject to the provisions of any applicable Subordination Agreement and the terms of any direct agreement between the City and the Ground Lessee.

16.7 Cooperation of Developer.

If the City exercises its Right of Repurchase or Right of Reversion in accordance with the provisions of this Agreement, Developer shall use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary or desirable under applicable law to consummate the repurchase of the Repurchase Property or reversion of the

Reversion Property, as the case may be, including the execution and delivery of such other documents, certificates, agreements, deeds and other writings and the taking of such other actions as may be reasonably necessary to consummate such transactions.

17. **Mortgages and Mortgage Protection for Affordable Project.**

17.1 **Restrictions On Mortgage.**

17.1.1 **Generally.** Until issuance of a Certificate of Compliance with respect to a Parcel, Developer shall not encumber such Parcel or the Market Rate Project Improvements, the Publicly Accessible Common Area, Publicly Accessible Common Area Improvements or the Boundary Landscape Area associated with such Parcel with any Mortgage. Notwithstanding the foregoing, an Affordable Housing Developer may during the term of an Approved Ground Lease (i) enter into Construction Loans each of which is secured by a Permitted Leasehold Mortgage encumbering the leasehold interest of Affordable Housing Developer in the Lot 13 Property and Affordable Project Improvements under such Approved Ground Lease and consistent with the requirements set forth in this Article 17, and (ii) enter into Construction Loans, each of which is secured by a Mortgage in favor of an Affiliate Leasehold Mortgagee and encumbering the leasehold interest of Affordable Housing Developer in the Lot 13 Property and Affordable Project Improvements under such Approved Ground Lease and consistent with the requirements set forth in this Article 17 (any such Mortgage in favor of an Affiliate Leasehold Mortgagee being referred to as an “**Affiliate Leasehold Mortgage**”; an Affiliate Leasehold Mortgage or a Permitted Leasehold Mortgage is referred to as a “**Leasehold Mortgage**”). With respect to any Leasehold Mortgage, it shall be the obligation of Developer to review and confirm that all conditions to entering into a Leasehold Mortgage have been satisfied, and Developer and Affordable Housing Developer shall certify the same to the City in writing prior and as a condition to entering into a Leasehold Mortgage. Any Mortgage or other encumbrance of any Parcel in violation of this Article 17 shall be a prohibited Transfer and a Material Default by Developer.

17.1.2 **Permitted Leasehold Mortgage and Permitted Leasehold Mortgagee Definitions; Affiliate Leasehold Mortgage.** A Mortgage shall be a Permitted Leasehold Mortgage and a Mortgagee shall be a Permitted Leasehold Mortgagee if: (i) such Mortgagee is a Qualified Institutional Lender or other lender identified in the last Financing Plan approved by the City in accordance with Section 4.6; (ii) the terms of its Mortgage and all of the loan documents executed in connection with the corresponding Construction Loan are materially consistent with the portion of the Financing Plan approved by the City in Section 4.6 and the requirements of Section 4.7 and this Article 17; (iii) complete copies of the loan documents have been provided to the City in accordance with Section 17.2.3 and the City has not identified that such loan documents fail to materially comply with the requirements of Sections 17.1 through 17.3; (iv) the loan proceeds will be used to finance the entitlement, development and the construction of the Lower Income Units and other Affordable Project Improvements thereon and for associated costs and expenses (including financing costs) and for no other purpose; and (v) the fee interest of Developer in Lot 13, including the fee interest of Developer to the Publicly Accessible Common Areas and the fee interest of Developer (if any) to the Publicly Accessible Common Area Improvements on Lot 13 (as opposed to the Affordable Housing Developer’s

ground lease interest in Lot 13, the Publicly Accessible Common Areas and the Publicly Accessible Common Area Improvements) is not encumbered by the Mortgage and is subordinated to this Agreement, the Other Agreements and the fee interest of Developer in Lot 13 pursuant to the terms and conditions of the applicable Subordination Agreement. A Mortgage shall be an Affiliate Leasehold Mortgage if it is in favor of an Affiliate Leasehold Mortgagee, if it is by its terms in all respects subordinated in lien and right of repayment to each Permitted Leasehold Mortgage and the Construction Loan secured by each Permitted Leasehold Mortgage, and if it otherwise complies with the requirements of clauses (ii) through (v) of the immediately preceding sentence.

17.2 Restrictions on Transfer to Mortgagee.

In addition to the other restrictions on Mortgages set forth in this Agreement, the following requirements shall apply to the Real Property and each Parcel thereof and all Improvements thereon:

17.2.1 Neither this Agreement, nor the Property, nor any portion thereof (including the Lot 13 Property) or all or any portion of the Market Rate Project Improvements or the Affordable Project Improvements shall be cross collateralized with any other contract or real or personal property, nor shall this Agreement or the Property (or any portion thereof) or all or any portion of the Market Rate Project Improvements or the Affordable Project Improvements serve as additional security for any other loan by a Mortgagee, nor any debt other than a Construction Loan. In addition, no Leasehold Mortgage shall serve as additional security for any loan other than a Construction Loan, or any other debt of Developer or Affordable Housing Developer and shall not be cross collateralized or cross defaulted with any other indenture of mortgage or deed of trust, hypothecation, pledge, assignment for security purposes, bond, grant of taxable or tax-exempt funds from a governmental agency or other security interest.

17.2.2 Developer shall not transfer the Property or any portion thereof (including the Lot 13 Property) or any interest therein or all or any portion of the Market Rate Project Improvements or the Affordable Project Improvements or any interest therein to a third party for purposes of a sale-leaseback transaction or permit Affordable Housing Developer to do so.

17.2.3 Developer shall deliver to the City loan documents for each proposed Leasehold Mortgage, including all documents and guaranties securing the interest of the proposed Leasehold Mortgagee, with initial drafts of the core documents (i.e., the Loan Agreement, Deed of Trust, Assignment of Rent (if applicable), Environmental Indemnity and any Guaranty Agreement) to be delivered at least thirty (30) Business Days prior to the proposed date of entry into the Leasehold Mortgage, and substantially final versions, which shall be red-lined to show changes from the drafts reviewed by the City, to be delivered at least five (5) Business Days prior to the date of entry into the Leasehold Mortgage, and executed copies to be delivered within three (3) Business Days after the date of entry into the Leasehold Mortgage, and either indicating no change in the previously submitted forms or providing documents red-lined to show changes from the versions previously delivered to the City), and such other information as may be reasonably

requested by the City to confirm the matters that require the City's determinations described in Section 17.1 and this Section 17.2, provided that all initial drafts of the documents related to any Leasehold Mortgage that are not loan agreements, trust indentures, deeds of trust, indemnities and guaranties (or documents performing similar functions) may be provided thereafter, but in any event no later than the earlier of one (1) Business Day after receipt by Developer and ten (10) calendar days prior to entering into the Leasehold Mortgage. The City shall determine, in its reasonable discretion, whether the loan documents for a proposed Leasehold Mortgage comply with the requirements of this Agreement, including:

17.2.3.1 With respect to any Permitted Leasehold Mortgage, whether the proposed Permitted Leasehold Mortgagee is a Qualified Institutional Lender or, if the proposed Permitted Leasehold Mortgagee is not a Qualified Institutional Lender, whether the proposed Permitted Leasehold Mortgagee was identified in the Affordable Project Financing Plan or Updated Affordable Project Financing Plan approved by the City. With respect to any Affiliate Leasehold Mortgage, whether the proposed Mortgagee is an Affiliate Leasehold Mortgagee.

17.2.3.2 The loan documents shall include a subordination agreement in substantially the form and substance of the subordination agreement attached as Attachment 24A (in the case of a Permitted Leasehold Mortgage) or Attachment 24B (in the case of an Affiliate Leasehold Mortgage) or if there are modifications proposed thereto, in such other form and substance as shall be approved by the City, Developer and the applicable Mortgagee, each in its reasonable discretion (each referred to as a "**Subordination Agreement**"), provided that it shall not be unreasonable for the City to withhold its approval to any form of Subordination Agreement that, in the case of any Subordination Agreement with respect to an Affiliate Leasehold Mortgage, differs in any substantive respect from the form of Attachment 24B, or that, in the case of any other Subordination Agreement, would have the effect, among other things, when compared to the terms reflected in Attachment 24A, of (i) imposing on the City any additional cost, liability, or obligation that is more than administrative or transactional in nature, (ii) altering the extent or priority of the interests described in Attachment 24A, or (iii) creating a conflict with an express requirement of this Agreement or the Other Agreements. The Subordination Agreement shall be Recorded by the City at the Affordable Project Closing, immediately after the Mortgage to which it relates is Recorded.

17.2.3.3 Developer shall not obtain or utilize Mezzanine Financing or permit Affordable Housing Developer to do so without the prior consent of the City in its sole discretion.

17.2.3.4 Subject to the terms set forth in the applicable Subordination Agreement, all Mortgages and all loan documents for any loan secured thereby shall be subject and subordinate to City Liens. In addition, and without limiting the applicability of the foregoing, Mortgages of the fee interest in all or any portion of the Real Property, if any, shall also be subject and subordinate to this Agreement, any Joint Use Agreement and the Other Agreements.

17.3 Acknowledgment by City of Permitted Leasehold Mortgagee.

Within fifteen (15) Business Days following Developer's delivery of the first set of loan documents and information required under Section 17.2.3 and within ten (10) Business Days following delivery of a set of modified documents and information that are substantively responsive to City's initial comments to the same, (i) the City shall acknowledge receipt of the same and (ii) in its response, if not previously addressed, the City shall confirm in writing to Developer whether the proposed Leasehold Mortgagee is a Permitted Leasehold Mortgagee or Affiliate Leasehold Mortgage, or explain why the City reasonably considers the proposed Mortgagee not to be a Permitted Leasehold Mortgagee or Affiliate Leasehold Mortgagee, and (iii) the City shall confirm in writing to Developer whether it has determined, in its reasonable discretion, if the loan documents comply with the requirements of Sections 17.1 and 17.2, or explain why the City reasonably considers the loan documents not to comply. If the loan documents are determined by the City, in its reasonable discretion, not to comply, then Developer shall promptly cause revisions in the loan documents and resubmit the same to the City for further consideration pursuant to this Section 17.3 and, if requested by Developer, the City shall agree to meet and confer with Developer and such other Persons as Developer may request with respect to open issues pertaining to the loan documents.

17.4 Change in Loan Documents, Special Restrictions and/or Landscape Installation and Maintenance Agreement.

17.4.1 Following approval by the City of loan documents and the Subordination Agreement pursuant to Section 17.3 (and subject to the terms and conditions of the Subordination Agreements), Developer shall not modify or permit Affordable Housing Developer to modify those loan documents without the prior written approval of the City provided that the City shall provide specific, detailed responses should it object to any terms and conditions and its approval shall not be unreasonably withheld, conditioned or delayed, and provided further that it shall not be unreasonable for the City, among other things, to withhold its consent to any modification of the loan documents if the modifications would render the loan documents inconsistent with the provisions of this Article 17 or with the most recent Updated Affordable Project Financing Plan for the Affordable Project. Nothing in this Agreement shall require the City's consent for any Leasehold Mortgage to modify any performance or other date set forth in any loan document and/or to waive any provision of any loan document.

17.4.2 City and Developer hereby agree that neither City nor Developer shall unreasonably withhold its consent to approval of any requested modifications to either the Special Restrictions or the Landscape Installation and Maintenance Agreement made by any Permitted Leasehold Mortgagee in connection with and prior to the funding of the related financing associated with a Lot 13 Transfer; provided that it shall not be unreasonable for the City to withhold its approval of any proposed modification that would have the effect, among other things, when compared to the terms of the particular instrument then in effect (or if not then in effect, in the form attached to this Agreement) of (i) removing or reducing the extent of an obligation of the Lot 13 Ground Lessee under such agreement, unless Developer agrees to assume such obligation within that document, (ii) removing or reducing the extent of an obligation of any Owner to the

City thereunder, (iii) imposing on the City any additional cost, liability, or obligation that is more than administrative or transactional in nature, (iv) altering the priority of the interests described in such instrument or the obligations of any Mortgagee or successor Ground Lessee to comply with the terms of such instruments or to cure prior defaults in accordance with the terms as currently stated, or (v) creating a conflict with an express requirement of this Agreement.

17.5 Condemnation or Insurance Proceeds.

Except as might be otherwise expressly set forth in an Approved Ground Lease, the rights of any Permitted Leasehold Mortgagee pursuant to its Permitted Leasehold Mortgage to receive condemnation or insurance proceeds which are otherwise payable to such Permitted Leasehold Mortgagee or to a Party which is its mortgagor shall not be impaired.

17.6 Constructive Notice and Acceptance.

Until such time as the applicable Certificate of Compliance as to a Parcel is Recorded and subject to the provisions of Article 2 or this Article 17 and the terms of any applicable Subordination Agreement, all of the provisions contained in this Agreement shall be binding upon and benefit any Person who acquires fee title to a portion of the Property.

17.7 Bankruptcy Affecting Developer.

Developer and City hereby agree that this Agreement (including the Right of Repurchase and Right of Reversion), the Quitclaim Deed and the Other Agreements shall contain and consist of covenants running with the land and that neither this Agreement, the Quitclaim Deed or the Other Agreements shall be subject to rejection in bankruptcy, and Developer hereby waives its rights to reject this Agreement, Quitclaim Deed and the Other Agreements in bankruptcy.

18. General Provisions.

18.1 Applicable Law; Consent to Jurisdiction; Service of Process.

This Agreement shall be governed by, interpreted under, construed and enforced in accordance with the laws of the State, irrespective of California's choice-of-law principles. Developer and the City agree that any disputes arising between them in connection with this Agreement or in connection with or under any instrument, agreement or document provided for or contemplated by this Agreement, including in connection with the execution of this Agreement, the Close of Escrow or any other matter arising under, related to or in connection with this Agreement (including a determination of any and all issues in such dispute, whether of fact or of law) shall be tried and litigated exclusively in the Superior Court of the County of Orange in the State, in any other appropriate court of that county, or in the United States District Court for the Central District of California. This choice of venue is intended by Developer and the City to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between or among Developer and the City with respect to or arising out of or related to this Agreement in any jurisdiction other than that specified in this Section 18.1. Each Party hereby waives any right that it may have to assert forum non conveniens or similar doctrine or to object to venue with respect

to any proceeding brought in accordance with this Section 18.1 and stipulates that the state of California and federal courts located in the County of Orange, in the State, shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy or proceeding arising out of or related to this Agreement. Each Party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section 18.1 by means of registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement, or in the manner set forth in Section 18.6(i) or (iii) of this Agreement pertaining to notice. Any final judgment rendered against a Party in any Action shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

18.2 Legal Fees and Costs.

If any Party to this Agreement institutes any action, suit, proceeding, counterclaim or other proceeding for any relief against another Party, declaratory or otherwise (collectively an “**Action**”), to enforce the terms hereof or to declare rights under this Agreement or with respect to any inaccuracies or material omissions in connection with any of the covenants, representations, warranties or obligations on the part of the other Party to this Agreement, then the Prevailing Party (defined below) in such Action shall be entitled to have and recover of and from the other Party all costs and expenses of the Action, including (i) the Prevailing Party's reasonable attorneys' fees (which shall be payable at the contractual hourly rate for City's litigation counsel at the time the fees were incurred, but in no event more than \$400.00 per hour with this rate being used to calculate the attorneys' fees to be recovered by the Prevailing Party regardless of whether the City or another Person is the Prevailing Party), and (ii) costs actually incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling or award (collectively, a “**Decision**”) granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including reasonable attorneys' fees and expert fees and costs (collectively “**Costs**”) incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include in addition to Costs incurred in prosecution or defense of the underlying action, reasonable attorneys' fees, costs, expenses and expert fees and costs incurred in the following: (A) post judgment motions and collection actions; (B) contempt proceedings; (C) garnishment, levy, debtor and third-party examinations; (D) discovery; (E) bankruptcy litigation; and (F) appeals of any order or judgment. “**Prevailing Party**” within the meaning of this Section 18.2 includes a Party who agrees to dismiss an Action in consideration for the other Party's payment of the amounts allegedly due or performance of the covenants allegedly breached or obtains from a court of competent jurisdiction substantially the relief sought by such Party.

18.3 Memorandum of DDA; Modifications or Amendments.

The Parties shall cause the Memorandum of DDA to be Recorded concurrently with the Close of Escrow. No amendment, change, modification or supplement to this Agreement shall be valid and binding on any of the Parties unless it is represented in writing and signed by each of the Parties hereto. Except with respect to changes to Attachments 1, 2A, 2B and 13A, and/or changes

to Attachment 7 that extend the date of Completion of the Market Rate Project Improvements and/or the Affordable Project Improvements, as applicable, by more than six (6) months (exclusive of any extensions resulting from any Force Majeure Delay which shall be subject to the limitations set forth in Section 18.7), each of which shall require consent of the City Council, the Parties (with the City Manager or his or her designee having delegated authority to act on behalf of the City) may by mutual written agreement (in the Parties' respective sole discretion) update and substitute any updated Attachment for the Attachment attached hereto as of the Effective Date, and such substitution shall be deemed an administrative amendment of this Agreement and shall not require Recording of an amendment of the Memorandum of DDA. In addition, the City Manager is authorized, without further approval of the City, to waive or modify any City Closing Conditions or to make them conditions subsequent to the close of escrow under this Agreement. The provisions of this Section do not modify or supersede the retention of authority set forth in Section 18.11.3.

18.4 Further Assurances.

Each of the Parties hereto shall execute and deliver at their own cost and expense, any and all additional papers, documents, or instruments, and shall do any and all acts and things reasonably necessary or appropriate in connection with the performance of its obligations under this Agreement in order to carry out the intent and purposes of this Agreement.

18.5 Rights and Remedies Are Cumulative; Limitation on Damages.

18.5.1 **Cumulative Remedies.** Except with respect to the rights and remedies expressly declared to be exclusive in this Agreement or the Other Agreements, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Material Default or any other Material Default by the other Party. Except as otherwise specifically set forth in this Agreement, and subject to Section 18.5.2, wherever a Party has a right to damages for the Material Default of another Party (i) such damages shall be limited to direct (actual) damages for the Material Default of the other Party, and (ii) each of the Parties, on behalf of itself and its successors and assigns, hereby expressly waives, releases and relinquishes any and all right to any lost profits, incidental, special, collateral, expectation, anticipation, indirect, consequential, exemplary or punitive damages or losses (it being understood that consequential or punitive damages owed by such Party to a third party shall constitute direct actual damages or losses of such Party).

18.5.2 **Limitation on Damages Payable by the City.** Developer acknowledges that the City would not have entered into this Agreement if the City could become liable for significant damages under or with respect to this Agreement and the Other Agreements. Consequently, and notwithstanding any other provision of this Agreement, except for (i) the monetary damages that may arise from the City's obligations referenced in Section 18.5.3, and (ii) the payment of attorneys' fees in accordance with Section 18.2 and court costs, the City shall not be liable in damages under this Agreement or any Other Agreement to Developer or to any Successor Owner and Developer, on behalf of itself, each Successor Owner and each and every

Person claiming by, through or under Developer or any Successor Owner hereby waives any and all rights to claim damages of any kind or nature from the City except as set forth in Section 18.5.3.

18.5.3 Special Circumstances Where Damages may be Payable by the City. Subject to Section 18.5.1, the limitations on damages set forth in Section 18.5.2 shall not preclude Developer from seeking (i) payment of amounts, if any, which the City is obligated to pay to Developer or Escrow Holder pursuant to Sections 1.8.3, 7.4.1, 7.4.4, 14.2.5, 14.3.2 or 18.2, or Article 15 provided that (A) the provisions of Section 18.5.1 shall apply to such claims and payments, and (B) Developer shall not be entitled to any damages in addition to the actual amounts owed by the City to Developer pursuant to this Agreement or the Other Agreements, or (ii) damages which arise out of a breach of the City's representations and warranties contained in Sections 3.3 or 18.12.2, provided that the amount of any damages payable pursuant to this clause (ii) shall be the lesser of (x) actual damages, or (y) Five Hundred Thousand Dollars (\$500,000.00) or (z) the value of any of the rights reserved to the City pursuant to Section 1.2.2.1 through 1.2.2.3 and as the same shall be included in the Quitclaim Deed.

18.5.4 Right to Specific Performance. In the event the City is in Material Default following the Close of Escrow, Developer shall be entitled to seek mandamus or special writs, specific performance, or injunctive relief in order to enforce the rights expressly granted to Developer pursuant to this Agreement. For purposes of clarity, in the event that the City is obligated to pay any amounts to Developer pursuant to this Agreement, and the City fails to pay such amounts to Developer as and when required by this Agreement, Developer shall be entitled to seek specific performance of such obligation, notwithstanding the other provisions of this Section 18.5.

18.6 Notices, Demands and Communications between the Parties.

All notices, demands, consents, requests and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed conclusively to have been duly given (i) when hand delivered to the other Party; (ii) three (3) Business Days after such notice has been sent by U.S. Postal Service via certified mail, return receipt requested, postage prepaid, and addressed to the other Party as set forth below; (iii) the next Business Day after such notice has been deposited for overnight delivery with an overnight delivery service reasonably approved by the Parties (Federal Express, Overnite Express, United Parcel Service and U.S. Postal Service are deemed approved by the Parties), postage prepaid, addressed to the Party to whom notice is being sent as set forth below with next-business-day delivery guaranteed, provided that the sending Party receives a confirmation of delivery from the delivery service provider; or (iv) when transmitted if sent by email (referencing "TUSTIN LEGACY DDA" in the subject matter line) to the email address set forth below; provided that notices given by email shall not be effective unless either (A) a duplicate copy of such notice is promptly sent by any method permitted under this Section 18.6 other than by email (provided that the recipient Party need not receive such duplicate copy prior to any deadline set forth in this Section); or (B) the receiving Party delivers a written confirmation of receipt for such notice either by email or any other method permitted under this Section. Any notice given by email shall be deemed received on the next Business Day if such notice is received after 5:00 p.m. Pacific Time or on a non-Business Day. Unless otherwise

provided in writing, all notices with respect to this Agreement shall be addressed as follows:

City: City Manager
City of Tustin
300 Centennial Way
Tustin, CA 92780
Attention: Aldo E. Schindler
Email: citymanager@tustinca.org

With a copy to: Deputy City Manager – Real Property
City of Tustin
300 Centennial Way
Tustin, CA 92780
Attention: Brian Moncrief
Email: DCM-RP@tustinca.org

And with a copy to: City Attorney
Woodruff & Smart, APC
555 Anton Blvd., Suite 1200
Costa Mesa, CA 92626
Attention: David Kendig, Esq.
Email: dkendig@woodruff.law

And with a copy to: Hepner & Myers LLP
1241 Johnson Avenue, Suite 360
San Luis Obispo, CA 93401
Attention: Amy E. Freilich, Esq.
Email: afreilich@HepnerMyers.com

Developer: Kevin Roberts
Senior Vice President
Irvine Company Apartment Development
550 Newport Center Drive
Newport Beach, CA 92660
Email: kmroberts@irvinecompany.com

Jay D'Elia
Vice President and Assistant General Counsel
The Irvine Company
550 Newport Center Drive
Newport Beach, CA 92660
Email: jadelia@irvinecompany.com

And with a copy to:

Holland & Knight LLP
560 Mission Street, Suite 1900
San Francisco, CA 94105
Attention: David L. Preiss
Email: david.preiss@hkllaw.com

In addition, the City agrees that, if any Approved Ground Lease is in effect, contemporaneously with the City giving any Default Notice to Developer, the City will provide a copy of the Default Notice, in the manner otherwise specified for giving notice to a Party, to the following: (a) the Affordable Housing Developer, at the address provided for the Affordable Housing Developer in the Approved Ground Lease or in any assignment of Affordable Housing Developer's interest therein Recorded against the Lot 13 Real Property; and (b) if requested by the Affordable Housing Developer in a writing delivered to the City in accordance with this Section 18.6, to counsel for the Affordable Housing Developer and to the Tax Credit Investor, at their most recent addresses for notices provided to the City in such request. No failure by the City to provide any Default Notice to or at the request of the Affordable Housing Developer shall affect the validity or effect of such Default Notice. Any Party may by written notice to the other Party in the manner specified in this Agreement change the address to which notices to such Party shall be delivered.

18.7 Delay.

18.7.1 **Definition of Force Majeure Delay.** "Force Majeure Delay" shall mean the occurrence of any of the following events when such event is beyond the control of the First Party and such Party's officers, directors, employees, contractors, consultants, agents and representatives and is not due to an act or omission of such Party or its officers, directors, employees, contractors, consultants, agents or representatives or other Person for whom such Party may be contractually or legally responsible, which directly, materially and adversely affects the ability of the First Party to meet its non-monetary obligations under this Agreement, including the deadlines imposed by the Schedule of Performance, or the ability of Developer to Complete the Market Rate Project or the Affordable Project, as applicable, and which events (or the effect of which events) could not have been avoided by use of commercially reasonable efforts by the Party claiming Force Majeure Delay:

18.7.1.1 **Civil Unrest.** An epidemic, pandemic, widespread disease, blockade, quarantine, rebellion, war, insurrection, act of terrorism, strike or lock-out, riot, act of sabotage, civil commotion, act of a public enemy, freight embargo, or lack of transportation;

18.7.1.2 **Unforeseeable Conditions.** Reasonably unforeseeable physical condition of the Real Property including the presence of Hazardous Materials;

18.7.1.3 **Casualty.** Fire, earthquake or other casualty, including liquefaction resulting from an earthquake, in each case only if causing material physical destruction or damage on the Real Property;

18.7.1.4 **Litigation**. Any lawsuit seeking to restrain, enjoin, challenge or delay any issuance of any of the Entitlements or seeking to restrain, enjoin, challenge, or delay construction of the Market Rate Project or the Affordable Project, as applicable, which is defended by the First Party;

18.7.1.5 **Change of Law**. The passage of a referendum or initiative that results in the inability of such Party to perform its material obligations under this Agreement or any change in law by Governmental Authorities other than the City; provided that the foregoing shall not apply to a Party's performance regarding the Close of Escrow, which are governed by Articles 7 and 15;

18.7.1.6 **Weather**. Unusually severe weather conditions not reasonably anticipatable for the City of Tustin, based upon U.S. Weather Bureau climatological reports for the months included plus a report indicating average precipitation, temperature, etc. for the last ten (10) years from the nearest reporting station;

18.7.1.7 **Materials Shortage**. Inability to secure adequate supplies or types of materials necessary to prosecute construction of the Project hereunder (but not an increase in material costs); and/or

18.7.1.8 **Delays Caused by Governmental Authorities other than City**. Delay in time to obtain, and comply with, any permits issued or to be issued by any state or federal governmental entities and which are required for construction of the Project.

18.7.2 **Limitation**. The term "Force Majeure Delay" shall be limited to the matters listed in Section 18.7.1 and specifically excludes from its definition the following matters which might otherwise be considered Force Majeure Delay:

18.7.2.1 **Entitlements**. The suspension, termination, interruption, denial or failure to obtain or nonrenewal of any of the Entitlements, permits, including Development Permits, license, consent, authorization or approval which is necessary for the development of the Market Rate Project or the Affordable Project, as applicable, except for any such matter resulting from a lawsuit or referendum as described in Section 18.7.1.4 or 18.7.1.5;

18.7.2.2 **Foreseeable Changes in Governmental Requirements**. Any change in Governmental Requirements by the City or any such change by any Governmental Authority other than the City which was formally proposed or was otherwise reasonably foreseeable at the Effective Date;

18.7.2.3 **Failure to Perform Obligations**. Failure of Developer, Affordable Housing Developer or any Successor Owner or other Person to perform any obligation to be performed by Developer or any Successor Owner or such other Person under this Agreement as the result of adverse changes in the financial condition of Developer or such Successor Owner or other Person, as applicable;

18.7.2.4 **Failure to Provide Financial Security.** Failure of Developer or any Successor Owner to provide financial security required by this Agreement when due or to submit evidence of financing of the Market Rate Project or the Affordable Project, as applicable, or failure to perform any obligation to be performed by Developer or any Successor Owner or other Person under this Agreement as the result of adverse changes in market conditions;

18.7.2.5 **Failure to Submit Required Documentation.** Failure of the First Party to submit documentation as and when required by this Agreement;

18.7.2.6 **Failure to Submit Basic Concept Plan or Other Plans and Entitlements.** Failure of Developer, Affordable Housing Developer or a Successor Owner, as applicable, to submit a modification of the Basic Concept Plan, and/or applications for Entitlements or Development Permits required for construction of the Market Rate Project Improvements or the Affordable Project Improvements, and/or development of the Market Rate Project or the Affordable Project, as applicable;

18.7.2.7 **Failure to Maintain Required Insurance.** Failure to acquire, maintain and submit evidence of insurance policies as required by Article 11;

18.7.2.8 **Failure to Execute Documents.** Failure of the First Party to execute documents; and

18.7.2.9 **Other Matters.** All other matters not caused by the Second Party and not listed in Section 18.7.1.1 through 18.7.1.8.

18.7.3 **Procedure.** If any Party (“**First Party**”) believes that it is entitled to an extension of time due to Force Majeure Delay, it shall notify the other Party (“**Second Party**”) in writing within ninety (90) calendar days from the date upon which the First Party becomes aware of such Force Majeure Delay, generally describing the Force Majeure Delay and its date of commencement. Upon written request from the Second Party, the First Party shall promptly provide the following information with respect to such Force Majeure Delay: a more detailed description of the Force Majeure Delay, when and how the First Party obtained knowledge thereof, the date the First Party understands the event commenced, the steps the First Party anticipates taking to respond to such Force Majeure Delay, and the estimated delay resulting from such Force Majeure Delay and such other information as the Second Party may reasonably request. The extension for Force Majeure Delay shall be granted or denied in writing by the Second Party in its reasonable discretion in compliance with this Section 18.7. If the First Party fails to notify the Second Party in writing of its request for a given Force Majeure Delay within the ninety (90) calendar days specified above, there shall be no extension for such Force Majeure Delay.

18.7.4 **Extension of Time Periods.** Except as otherwise specifically set forth in this Agreement, all time periods under this Agreement, including the Schedule of Performance and the dates provided in Section 16.4 relating to non-monetary obligations under this Agreement shall be extended for Force Majeure Delay in accordance with this Section 18.7, such that the First Party shall not be in default for an excused Force Majeure Delay; provided that the limitations set forth on the maximum period for Force Majeure Delay in this Agreement shall in all cases apply.

18.7.5 **Not Applicable to Reversion Action Trigger Dates.** Except as specifically provided in this Agreement, the Reversion Action Trigger Dates shall not be extended for Force Majeure Delay.

18.7.6 **Limitations on Force Majeure Delay.** The outside dates in the Schedule of Performance for commencement and/or Completion of the Market Rate Improvements or the Affordable Project Improvements may be extended individually, provided that the aggregate of Force Majeure Delay with respect to such commencement and/or Completion dates shall not exceed twelve (12) months for each Phase of the Project.

18.8 Conflict of Interest.

No appointed or elected official or employee of the City shall have any personal interest, direct or indirect, in this Agreement nor shall any official or employee participate in any decision relating to this Agreement which affects his interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested.

18.9 Non-liability of City Officials and City or Developer Employees.

No elected or appointed official, representative, employee, agent, consultant, legal counsel or employee of the City shall be personally liable to Developer, any successor or assign of Developer, Affordable Housing Developer or any Successor Owner or Successor Ground Lessee in the event of any Default or breach by the City for any amount which may become due to any of the foregoing Persons or on any obligation under the terms of this Agreement or any direct agreement between the City and Affordable Housing Developer. No natural person serving as an officer, director, member, shareholder, partner in, representative, agent, consultant, legal counsel or employee of Developer or Affordable Housing Developer shall be personally liable to the City or any Successor Owner of the City in the event of any Default or breach by Developer or Affordable Housing Developer for any amount which may become due to the City or any Successor Owner of the City or on any obligation under the terms of this Agreement.

18.10 Inspection of Books and Records.

The City shall have the right at all reasonable times, upon ten (10) Business Days prior written notice but, unless Developer or Affordable Housing Developer is then in Default, not more than one time per twelve (12) month period during the Term, to inspect the books and records of Developer pertaining to the Market Rate Project, the Affordable Project, the Property, the Market Rate Project Improvements and/or the Affordable Project Improvements and the areas subject to any encroachment permit, only as pertinent to the purposes of this Agreement.

18.11 Consents and Approvals.

18.11.1 **Consent.** In any instance in which a Party's has a right to approve or disapprove of any matter with respect to which such Party's approval is required by any of the provisions of this Agreement, such approval shall only be effective if given in writing and except as otherwise provided in this Agreement (e.g., where reasonable discretion review and approval is

expressly indicated) shall be in the sole discretion of the Party whose approval is required and shall not be unreasonably delayed; provided that nothing in this Agreement shall modify the City's regulatory authority.

18.11.2 **Deemed Submitted**. Any matter required by this Agreement to be submitted by Developer to the City shall be deemed submitted upon the submittal to the Deputy City Manager – Real Property or designee, provided that the provisions of this Section shall not amend or modify the requirement to deliver notice pursuant to Section 18.6 whenever notice is provided for in this Agreement.

18.11.3 **Action Taken**. Following its approval by the City, this Agreement shall be administered by the Deputy City Manager – Real Property or any designee. Except where the terms of this Agreement expressly require the approval of a matter or the taking of any action by the City Council, any matter to be approved by the City shall be deemed approved, and any action to be taken by the City shall be deemed taken, upon the written approval by the City Manager (or designee). The City Manager or designee shall have the authority to issue interpretations with respect to this Agreement and to determine whether any action requires the approval of the City Council. All amendments or modifications of this Agreement shall require the approval of the City Council. All waivers and extensions of time for performance under this Agreement shall be approved by the City Manager (or designee) unless in the City Attorney's opinion such action requires a waiver to be approved by the City Council under applicable law.

18.12 **Real Estate Commissions**.

18.12.1 **Developer Representation and Indemnity**. The City shall not be liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Agreement or the Lot 13 Transfer. The City has retained CBRE pursuant to a separate agreement which provides that Developer will be responsible for payment of a brokerage commission to CBRE thereunder in connection with the conveyance of the Property by the City to Developer in an amount equal to one percent (1%) of the Purchase Price ("**Developer Commission Payment**"). For avoidance of doubt, the Developer Commission Payment is not based upon nor does it include any commission payment with respect to all or any portion of the Project Fair Share Contribution. Developer agrees to indemnify and hold the City and the City Parties harmless from any and all Claims arising from or in any way related to any claim by CBRE for the Developer Commission Payment or by any other broker, agent, or finder retained by Developer or any Affordable Housing Developer regarding this Agreement or the sale, lease or development of the Development Parcels or any portion thereof. The City represents that it has not engaged any broker, agent, or finder in connection with this Agreement other than CBRE. Developer represents that it has engaged no broker, agent or finder in connection with this Agreement or the transactions identified in this Agreement or the Other Agreements. Developer, on behalf of itself, and its successors and assigns, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner (but only with respect to such Person's acquisition or disposition of the Parcel owned by such Person or a leasehold interest in such Parcel) but excluding End Users hereby agrees to indemnify and hold the City and the City Parties harmless from any and all Claims arising from or in any way related to any claim by CBRE for the Developer Commission Payment or by

any other broker, agent, or finder retained by Developer regarding this Agreement or the Other Agreements or for the sale or lease of the Real Property or any portion thereof or development of the Market Rate Project, the Affordable Project, as applicable, or the transactions identified in this Agreement or the Other Agreements. The provisions of this Section 18.12.1 shall survive the termination of this Agreement.

18.12.2 **City Representation.** The City represents that except as disclosed in Section 18.12.1, it has engaged no broker, agent, or finder in connection with this Agreement or the transactions identified in this Agreement or the Other Agreements.

18.12.3 **Survival.** The indemnity set forth in Section 18.12.1 shall survive the termination of this Agreement.

18.13 Date and Delivery of Agreement; Term of Agreement.

Notwithstanding anything to the contrary contained in this Agreement, the Parties intend that this Agreement shall be deemed effective, executed and delivered for all purposes under this Agreement and for the calculation of any statutory time periods based on the date an agreement between the Parties is effective, executed and/or delivered, as of the Effective Date. Subject to the foregoing and the provisions of Article 9, the term of this Agreement (“**Term**”) shall commence as of the Effective Date and shall terminate as of the date of City’s issuance of a Final Certificate of Compliance for the Project, unless earlier terminated as provided in this Agreement.

18.14 Constructive Notice and Acceptance.

Every Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner, including Affordable Housing Developer and each Successor Ground Lessee, is and shall be conclusively deemed to have consented and agreed to every provision contained in this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such Person acquired an interest in the Market Rate Project, the Affordable Project or Property.

18.15 Survival of Covenants, Representation and Warranties.

18.15.1 **Runs with the Land.** The covenants, representations, warranties, and indemnities specified in this Agreement shall survive any investigation made by any Party hereto and the closing of the transactions contemplated hereby until the termination of this Agreement and for such additional period as is set forth herein. This Agreement and the covenants, representations, warranties, releases and indemnities specified herein shall run with the Real Property and any interest therein (including any leasehold created under a Ground Lease), and except as provided herein, be binding upon Developer, each Successor Owner, Affordable Housing Developer and each Successor Ground Lessee, unless and until terminated in accordance with the terms of this Agreement, any Recorded Certificate of Compliance or the Other Agreements. Notwithstanding anything contained in this Agreement to the contrary, except for the express provisions contained in the Affordable Housing Declaration, the Quitclaim Deed, the Memorandum of DDA, the Special Restrictions, the Public Access Covenant and the Landscape

Installation and Maintenance Agreement and other matters Recorded against the Property or any portion thereof, the obligations, covenants, conditions and restrictions set forth herein shall not run with that portion of the Real Property Transferred to an End User, and each End User shall take title to that portion of the Real Property conveyed to it free and clear of the lien or charge of this Agreement or any of the obligations, covenants, conditions and restrictions set forth herein.

18.15.2 **Rights of the City to Enforce.** The City is the beneficiary of the terms and provisions of this Agreement and of the covenants running with the Property and any interest therein (including any leasehold created under an Approved Ground Lease), for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether the City has been, remains or is an owner of any land or interest in the Property, the Development Parcels, the Market Rate Project and/or the Affordable Project. The City shall have the right, if this Agreement or any covenants herein are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and any covenants may be entitled.

18.16 Construction and Interpretation of Agreement.

18.16.1 **Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that this Agreement has been prepared jointly by the Parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each Party has been given the opportunity to independently review this Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the Party preparing it. The provisions of California Civil Code Section 1654 are specifically waived by each Party hereto.

18.16.2 **Effect of Invalidity or Unenforceability.** If any term or provision of this Agreement, the deletion of which would not modify or affect the Backbone Infrastructure Program, the annexation of the Real Property to City of 18-01 CFD Zone 3, the de-annexation of the Real Property from City of Tustin Community Facilities District No. 13-01, and/or the amount payable under this Agreement as Purchase Price or as Project Fair Share Contribution shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or

unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

18.16.3 **Captions.** The captions of the articles, sections and clauses in this Agreement are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

18.16.4 **Gender, Singular and Plural.** As used in this Agreement and as the context may require, the singular includes the plural and vice versa and the masculine gender includes the feminine and vice versa.

18.16.5 **No Merger.** Any provision of this Agreement stated to survive the Close of Escrow (or with respect to the Returned Property, the close of escrow) shall be interpreted to mean that such provision shall not merge with any deed conveying the Property or any portion thereof, including the Quitclaim Deed.

18.17 Time of Essence.

Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided that the foregoing shall not be construed to limit or deprive a Party of the benefits of any cure period or Force Majeure Delay expressly provided for in this Agreement.

18.18 Fees and Other Expenses.

Except as otherwise provided in this Agreement, each of the Parties hereto shall pay its own fees and expenses, including attorneys' fees, experts' fees and consultants' fees and costs, in connection with negotiation and preparation of this Agreement and compliance with its terms.

18.19 No Partnership.

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or any other relationship between the Parties hereto other than purchaser/developer and seller/municipality according to the provisions contained in this Agreement or cause the City to be responsible in any way for the debts or obligations of Developer.

18.20 Binding Effect.

This Agreement and terms, provisions, promises, covenants, conditions and restrictions contained herein shall be binding upon and shall inure to the benefit of the Parties hereto and their

respective heirs, legal representatives, successors and assigns in accordance with and subject to the provisions of this Agreement.

18.21 No Third-Party Beneficiaries.

This Agreement has been made and entered into solely for the benefit of the Parties to this Agreement and their respective successors and permitted assigns. Nothing in this Agreement confers any rights or remedies on any other Person. Nothing in this Agreement relieves or discharges the obligation or liability of any third Persons to any Parties to this Agreement.

18.22 Counterparts.

This Agreement may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and shall be one and the same instrument. This Agreement shall not be effective until the execution and delivery by the Parties of at least one set of counterparts. The Parties agree to recognize execution of this Agreement by email or other electronically transmitted signatures; provided that such execution by email or other electronic transmission shall not be effective unless a manually executed copy of the signature page is promptly sent by U.S. Postal Service, postage prepaid or overnight delivery service or is hand delivered to the Parties or Escrow Holder, as applicable, pursuant to Section 4.4. The Parties hereby authorize each other (and Escrow Holder) to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

18.23 Duplicate Originals, Entire Agreement and Waivers.

18.23.1 **Duplicate Originals.** This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

18.23.2 **Entire Agreement.** This Agreement, including the Attachments hereto, together with the Other Agreements, constitute the entire agreement between the Parties with respect to the subject matter hereof. Except as set forth in the last sentence of this Section 18.23.2, this Agreement and the Other Agreements supersede and replace any and all prior agreements, proposed agreements, negotiations and communications, oral or written, relating to the subject matter hereof and contain the entire agreement between the Parties as to the subject matter hereof and any and all prior agreements, understandings or representations between the Parties and/or any Developer Affiliate are hereby terminated and canceled in their entirety. Each Party hereby acknowledges that no other Party hereto, nor its agents or attorneys, have made any promises, representations or warranties whatsoever, expressed or implied, not contained in this Agreement or the Other Agreements, to induce such Party to execute this Agreement, and each Party acknowledges that it has not executed this Agreement in reliance on any such promise, representation or warranty not contained in this Agreement or any Other Agreements. For the avoidance of doubt, this Agreement shall terminate and supersede the ENA, except that this Agreement does not supersede Sections 10.4, Section 10.6 or 10.12 (and the provisions referenced therein) of the ENA which shall remain in effect with respect to claims arising during or related to the term of the ENA and the provisions of 4.5.2, 4.5.3 and Exhibit B thereof (including Section

1.1.3 of Exhibit B) which shall remain in effect and shall not merge with any deed.

18.23.3 **No Waiver.** No waiver of any provision or consent to any action under this Agreement shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a Party to provide a waiver in the future except to the extent specifically set forth in writing. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities for the City and Developer and all amendments hereto must be in writing and signed by the appropriate authorities of the City and Developer.

18.24 Confidentiality.

18.24.1 **Public Records Act; Confidentiality Exceptions.** Subject to the provisions of the Public Records Act, which governs the City's use and disclosure of its agreements and records, the City and Developer hereby agree that each shall keep confidential information provided by the other and denominated as confidential and will not disclose any such information to any Person without obtaining the prior written consent of the other Party, except that (i) the City shall have the right to disclose any information contained in any third party reports produced or obtained by Developer and required to be disclosed by it pursuant to law, (ii) Developer shall have the right to disclose any Developer Excluded Information, (iii) the City shall have the right to disclose any City Excluded Information, (iv) Developer shall have the right to disclose to its consultants, members, and their respective consultants and members, any information to the extent necessary or desirable in connection with Developer's due diligence on the Development Parcels and performance of its obligations under this Agreement and the Other Agreements, (v) City shall have the right to disclose to its officials, employees and the City retained consultants, attorneys and representatives all information received by it from Developer as required to perform its obligations under this Agreement and the Other Agreements and (vi) either Party shall have the right to disclose any information to the extent that it is legally required or compelled to do so provided that (to the extent permitted) it provides the other Party with prior notice of such disclosure obligation and cooperates with such other Party (at no cost or liability to the cooperating Party) in any attempts to obtain confidential treatment of such disclosed information. The Parties' obligations pursuant to this Section 18.24 shall terminate upon the earlier of the termination of this Agreement or the Recording of the Final Certificate of Compliance.

18.24.2 **Financial Information.** Developer shall identify with specificity any submitted financial documents (including equity financing documents and Guarantor information) which Developer wants the City to maintain as confidential documents and a statement as to why the request is consistent and complies with specific provisions of the Public Records Act. The City's staff, agents, negotiators and consultants may review the statements as necessary as long as such parties agree to maintain the confidentiality of such statements. Developer acknowledges that documents or other "records" (as that term is defined in the Public Records Act) related to the Project may be required to be made public upon request. Govt. Code Section 7922.525 provides that "[p]ublic records are open to inspection at all times during the office hours" of the City. If Developer believes that any documents or other records provided to the City are exempt from the Public Records Act, Developer shall state in writing at the time of submittal of the documents or

records the legal basis for Developer's belief that such documents or other records are exempt from the Public Records Act, Developer and City shall meet and confer about exemption of such documents or other records, and City shall evaluate the asserted basis for the exemption(s) in good faith. If City determines that the requested documents or other records qualify for an exemption, the City shall conspicuously mark the documents and other records "Confidential" and the City will not make the records public except as otherwise required by law or by court order. The City's failure to correctly determine the applicability or inapplicability of an exemption to the Public Records Act shall not constitute a breach of this Agreement. In addition, during the period in which The Irvine Company or TICAD is Guarantor, with respect to any financial information specifically required to be made available for review by representatives of the City under the terms of the Guarantor Original Certificate, any Guarantor Date Down Certificate, or any "Quarterly Certificate" required to be delivered under the terms of the Guaranty (collectively, "**Guaranty Certificates**") or under the terms of the Guaranty, Developer shall make such financial information available to City's representatives in Developer's offices in Orange County, California, on one or more occasions as City's representatives may request, during normal business hours, and the City shall have the right to review such financial information in Developer's offices, but the City representatives shall not be entitled to make copies of such financial information or remove it from Developer's offices. For the purposes of the immediately preceding sentence, the term "financial information" includes documentation specifically required to be made available to the City under the terms of the Guaranty or Guaranty Certificates but does not include the Guaranty Certificates or any information disclosed by the text of the Guaranty or any of the Guaranty Certificates.

18.24.3 **Cooperation.** In the event that the City obtains a request pursuant to the provisions of the Public Records Act to disclose any of Developer's information which the City is required to keep confidential pursuant to the terms of this Agreement, the City shall provide Developer with prompt written notice thereof and the City and Developer shall cooperate at Developer's sole cost and expense to seek to avoid disclosure of such matters to the extent legally permissible pursuant to the provisions of the Public Records Act. Developer agrees to defend, indemnify and hold harmless the City and the City Parties from any claims for damages, costs, court costs, awards of attorney fees, or related claims in all lawsuits and writ proceedings seeking to make records public that Developer has marked "Confidential" hereunder and requests the City to protect as confidential. The City shall promptly notify Developer of any claim made against City of an alleged breach of the Public Records Act resulting from document(s) that Developer elected to mark as "Confidential" so that Developer may evaluate such claim and its determination of the confidentiality of such document(s). In no event shall the City be required to maintain as confidential any materials required by law to be disclosed by Developer, or otherwise disclosed by Developer as part of its public filings.

18.25 Proprietary and Governmental Roles; Actions by Parties.

Except where expressly provided otherwise in this Agreement, the capacity of the City in this Agreement shall be as owner, lessor, assembler, redeveloper and/or seller of property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Agreement on the City, shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or

otherwise limit or affect the exercise by the City of its governmental authority with respect to any matter related to this Agreement which shall include the regulation and entitlement of the Development Parcels pursuant to the Entitlements, Development Permits and/or Governmental Requirements, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions of each pursuant to federal, State or local law (“**Governmental Capacity**”). In addition, nothing in this Agreement shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City in its Governmental Capacity under applicable Governmental Requirements.

18.26 Performance of Acts on Business Days.

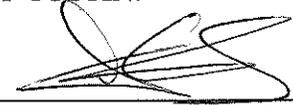
In the event that the final date for payment of any amount or performance of any act under this Agreement falls on a day other than a Business Day, such payment may be made or act performed on the next succeeding Business Day.

[Signature page follows]

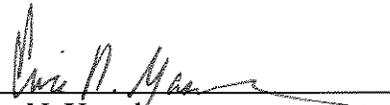
IN WITNESS WHEREOF, the City and Developer have signed this Agreement as of the date first set forth above.

CITY OF TUSTIN:

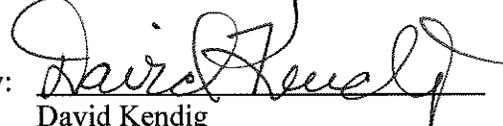
Dated: March 20, 2015

By: 
Aldo E. Schindler
City Manager

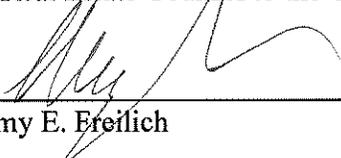
ATTEST:

By: 
Erica N. Yasuda
City Clerk

APPROVED AS TO FORM

By: 
David Kendig
City Attorney

Hepner & Myers LLP
Special Real Estate Counsel to the City

By: 
Amy E. Freilich

DEVELOPER:

TUSTIN LEGACY ACQUISITION LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the City and Developer have signed this Agreement as of the date first set forth above.

CITY OF TUSTIN:

Dated: _____

By: _____,

Aldo E. Schindler
City Manager

ATTEST:

By: _____

Erica N. Yasuda
City Clerk

APPROVED AS TO FORM

By: _____

David Kendig
City Attorney

Hepner & Myers LLP
Special Real Estate Counsel to the City

By: _____

Amy E. Freilich

DEVELOPER:

TUSTIN LEGACY ACQUISITION LLC,
a Delaware limited liability company

By:  _____

Name: Kevin Roberts

Title: Senior Vice President

By:  _____

Name: Todd Keller

Title: Division President

JOINDER OF ESCROW HOLDER

The undersigned is joining this Agreement to evidence its agreement to receive, hold and disburse the Original Purchase Price Deposit in accordance with the terms of this Agreement and otherwise to comply with the escrow instructions set forth in this Agreement.

FIRST AMERICAN TITLE INSURANCE
COMPANY

By: _____
Name: RYAN HAIN
Title: ESCROW OFFICER