

**EXCLUSIVE NEGOTIATING AGREEMENT
(TUSTIN LEGACY PORTION OF DISPOSITION AREAS 2B, 2C AND 8)**

THIS EXCLUSIVE NEGOTIATING AGREEMENT (TUSTIN LEGACY PORTION OF DISPOSITION AREAS 2B, 2C AND 8) (“ENA”) is made as of May 21, 2024 (“**Effective Date**”) by and between the **CITY OF TUSTIN** (the “**City**”) and The Irvine Company LLC, a Delaware limited liability company (“**Developer**”), with respect to certain land referred to herein as the “**Development Parcels**” (defined below). The City and Developer hereby agree as follows:

1. Introduction.

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 determined to close the Marine Corps Air Station-Tustin (“**MCAS Tustin**”) located substantially in the City of Tustin. In 1992, the City was designated as the Lead Agency or Local Redevelopment Authority for preparation of a reuse plan for MCAS Tustin in order 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 (the “**City Council**”) on October 17, 1996 and amended in September, 1998 (the “**Reuse Plan**”).

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, the “**Final EIS/EIR**”).

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, approximately 977 acres, including the Development Parcels which are the subject of this ENA, were conveyed by the Navy to the City by quitclaim deeds, 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**” or “**MOA**”). Additional acreage is currently under ground lease by the City from the Navy and portions thereof have subsequently 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 ENA as “**Tustin Legacy**”.

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 ENA to the “**Specific Plan**” shall be deemed to refer to the Tustin Legacy 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.

1.5 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 City requirements, including, without limitation, the Reuse Plan and the Specific Plan.

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 multi-family mixed use 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, as depicted on the site map attached as Exhibit A to this ENA. The land depicted on Exhibit A is referred to herein as the "**Development Parcels**".

1.7 Developer submitted a proposal for purchase and development of the Development Parcels in response to the RFP process. After consideration of the various responses to the RFP, and negotiations with a selected respondent that were unsuccessful, the City has reevaluated the proposals received and desires to enter into this ENA with Developer for a multi-family residential community with respect to the Development Parcels.

1.8 Consistent with the requirements of Govt. Code Sections 54220-54234 ("**Surplus Land Act**") and the California Department of Housing and Community Development ("**HCD**"), issued Surplus Land Act Guidelines ("**Guidelines**", and collectively and as the same may be amended from time to time with the Surplus Land Act, the "**SLA Regulations**"), twenty five percent (25%) of the total number of units must be reserved for lower income households, as defined in California Health and Safety Code Section 50079.5 at an affordable rent pursuant to California Health and Safety Code Section 50053 ("**Affordable Housing Units**"). Developer recognizes that the timing of construction of the market rate units and Affordable Housing Units may be subject to regulation under the SLA Regulations.

1.9 The City is required by law to comply with the SLA Regulations with respect to the Project, including by determining that the Project meets the requirements of the Surplus Land Act exemption granted to local agencies in Govt. Code Section 54221(f)(1)(H). Developer acknowledges that it is responsible to investigate the requirements of the SLA Regulations, including but not limited to the requirement in the Surplus Land Act that the City cause recording at the initial close of escrow pursuant to the DDA of a restrictive covenant requiring that twenty five percent (25%) of the total number of units on the Development Parcels shall be Affordable Housing Units ("**SLA Covenant**") that shall run with the Development Parcels for fifty-five (55) years and shall be enforceable against any owner who violates the SLA Covenant (and each successor in interest who continues the violation) by the entities authorized to bring action under the SLA Regulations.

1.10 Consistent with the SLA Regulations, Developer proposed purchase and development on the Development Parcels as a residential development containing approximately 1,208 multi-family residential units, including 302 Affordable Housing Units, together with

required on-site infrastructure and a complete accompanying set of high quality amenities to be constructed by Developer, including common open space, with a portion of such open space to be made accessible to the public pursuant to a recorded easement. The proposed development of the Development Parcels described above and as further described in this ENA is referred to herein as the “**Project**”.

1.11 The Development Parcels comprise a portion of the land conveyed by the Navy to the City in Navy Quitclaim Deed D dated May 13, 2002 and recorded in the Orange County Clerk Recorder Office on May 14, 2002 as Instrument No. 20020404594 (“**Navy Quitclaim Deed**”). The Development Parcels are 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. The Development Parcels are bounded by Warner Avenue, Legacy Road, Compass Avenue and Tustin Ranch Road.

1.12 Developer intends to assign the development of the Affordable Housing Units to an entity that constructs and operates affordable housing in the State of California and approved by the City in accordance with this ENA (“**Affordable Housing Developer**”) to facilitate the negotiations, to assure that only one applicant requests the density bonus and to provide a single point of contact for negotiation of the DDA and the DA, Developer shall be the sole party conducting negotiations with the City and no Affordable Housing Developer shall have rights under this ENA.

1.13 The City and Developer desire, for the ENA Negotiating Period (as defined below), to negotiate diligently and in good faith, the terms and conditions of a disposition and development agreement (“**DDA**”) and development agreement (“**DA**”) which if agreed upon and executed will specify the rights and obligations of the City and Developer with respect to the sale of the development Parcels and the design and development of the Project by Developer.

1.14 Nothing herein shall preclude the City from negotiating with other entities for other developments on other portions of Tustin Legacy or other City owned properties that are not the subject of this ENA.

2. Agreement to Negotiate.

2.1 **Good Faith Negotiations.** The City and Developer agree for the ENA Negotiating Period to exclusively negotiate with one another diligently and in good faith to prepare the DDA, DA and other Transaction Documents to be entered into between the City and Developer with respect to the purchase and sale of the Development Parcels and development of the Project on the terms set forth in this ENA.

2.2 **Rights and Responsibilities of Developer.** The City and Developer each desire to negotiate a DDA and DA which if agreed upon and executed, shall set forth the terms and conditions pursuant to which the Development Parcels shall be conveyed by the City to Developer and developed by Developer. It is the intent of the parties with respect to negotiation of the DDA and DA that Developer (a) bear responsibility for design, development, construction and operation of the Project as a whole and that it cause guaranties for such development as may be required by the City in the Transaction Documents to be provided, and (b) be the “Developer” (as such term

will be defined in the DDA and DA) for the Project with the right to contract with or delegate to Affordable Housing Developer the financing, design, construction and operation of the Affordable Housing Units (but retaining the right and duty to enforce such assigned or delegated duties) and (c) if applicable, upon satisfaction of the conditions precedent thereto in the DDA and DA, to convey the real property required for construction of the Affordable Housing Units to an Affordable Housing Developer approved by the City. Developer shall have the right and the obligation to assign its right to acquire and to carry out the vertical construction of the Affordable Housing Units to an Affordable Housing Developer approved by the City in its sole discretion. If Developer intends to have the Affordable Housing Units constructed by an Affordable Housing Developer, Developer shall identify the Affordable Housing Developer and its controlling person within sixty (60) days following the Effective Date and shall concurrently with identification of the Affordable Housing Developer provide the City with the information described in Sections 6.2.2 and 6.3.1 with respect to the proposed entity.

2.3 **DDA and DA.** Notwithstanding that the terms of the purchase and sale and development of the Development Parcels are to be negotiated, Developer and the City have agreed that the transactional documents to be negotiated to describe the transaction shall be in the form of a DDA and DA.

2.4 **ENA Not a Final Agreement.** This Agreement (including all exhibits hereto) is solely an exclusive right to negotiate and is not a final agreement. The City and Developer do not intend this agreement to be a purchase, option or similar contract or to be bound in any way by this ENA other than to facilitate negotiation of the transaction and to establish a period of exclusive negotiations during which time each of the City and Developer shall negotiate with the other in good faith. The City shall not market the Development Parcels to other interested parties and Developer hereby agrees that it shall not withdraw any offer made by it pursuant to Section 4.2.5.

2.5 **Essential Terms Not Agreed.** City and Developer acknowledge that although the parties have set forth a framework for negotiation of essential terms of any transaction they have not herein agreed upon essential and material terms of a transaction, including, e.g., price, terms, timing of transfer of the Development Parcels, the conditions precedent to conveyance or the requirements related to development of the Project (collectively, the “**Essential Terms**”), each of which are an essential component of the transaction and shall be the subject matter of their further negotiations. This ENA is merely an agreement to enter into the ENA Negotiating Period according to the concepts presented herein, reserving final discretion and approval of any of the DDA and DA by the City to the City Council and by Developer to its authorized representatives. The Essential Terms shall be set forth, if at all, in a DDA and DA, in each case, approved and executed by each of the City and Developer and with additional agreements, if any, between Developer and an Affordable Housing Developer, required and approved by the City in its sole discretion, governing the rights and responsibilities of the Affordable Housing Developer with respect to acquisition and vertical construction of the Affordable Housing Units (collectively, “**Transaction Documents**”).

2.6 **Effectiveness of Subsequent Agreements.** The DDA and the DA shall not exist and shall not be binding unless and until each is fully executed by Developer and the City, approved by counsel to each of the City and Developer as to form and approved by the City Council of the City and by the managing members of Developer. The DDA and DA shall become effective

only after and if the agreements have been considered and approved by the legislative body of the City and the City Council of the City after noticed public hearing. Nothing in this Agreement shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City pursuant to the municipal code of the City (“**City Code**”) or the provisions of any applicable State or Federal law or regulation.

2.7 **Public Hearings and Compliance.** If the negotiations hereunder culminate in Developer and the City’s negotiations concurring on the terms and provisions of a DDA and DA, such DDA and DA will be considered for approval by the City only after all required public hearings have been held and after compliance with all applicable laws and ordinances. The concurrence of the City negotiators with the terms and provisions of a proposed DDA and DA under any provisions of this ENA shall not be construed or interpreted as the City approving or accepting such terms. Such concurrence shall be viewed as nothing more than the willingness of the City negotiators to recommend to the legislative body of the City and the City Council that they approve such terms.

2.8 **Assumption of Risk.** City and Developer each assume the risk that, notwithstanding this Agreement and good faith negotiations, the City and Developer may not enter into any agreement due to their failure to agree upon Essential Terms. Accordingly, neither party will have any liability to the other in the event that the parties are unable to reach such a definitive agreement with respect to the proposed transaction for any reason or no reason.

3. **Developer’s Representations, Warranties and Agreements.**

Developer represents, warrants and agrees as follows:

3.1 **Expertise and Financial Qualifications.** Developer has the necessary expertise, experience and financial capability to undertake development of the Project at the Development Parcels as contemplated by this ENA and, in the event of an assignment of the obligations with respect to development of the Affordable Housing Units, 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 vertical development of the Affordable Housing Units as contemplated by this ENA.

3.2 **No Speculation in Land Holding.** Developer’s intended acquisition of the Development Parcels and its other intended undertakings pursuant to this ENA shall be used for the timely development of the Project upon the Development Parcels and accompanying infrastructure and amenities and not for speculation in land holding.

3.3 **Experience.** Developer is experienced in development and understands the process and requirements required to design, construct, develop and otherwise implement development projects such as the Project described herein.

3.4 **Project Financing.** Except as set forth below with respect to financing for the Affordable Housing Units, Developer is capable of acquiring the Development Parcels and developing the Project without a capital partner or third party financing and intends to fund development of the Project without a mortgage and without utilizing the Development Parcels as collateral. With respect to the Affordable Housing Units only, Developer or Affordable Housing

Developer intends to commit to the provision of long-term development financing for the Affordable Housing Units from a potential reputable, institutional lender reasonably approved by the City. At the initial close of escrow pursuant to the DDA, Developer shall cause one or more guarantor(s) approved by the City in its sole discretion to provide the City with a performance and completion guaranty for the Project.

3.5 **Release.** Except as specifically set forth in Section 4.4, Developer, on behalf of itself and its successors and assigns, hereby waives the right to recover from and fully and irrevocably releases the City, the Successor Agency to the Tustin Community Redevelopment Agency, the Tustin Housing Authority, the Tustin Finance Authority, and their respective elected and appointed officials, employees, agents, representatives, attorneys, affiliates, consultants, contractors, successors and assigns (“**City Parties**”) with respect to any and all (a) claims, actions, causes of action, demands, orders, or other means of seeking or recovering losses, damages, liabilities, costs, expenses (including, without limitation, attorneys’ fees, consultant fees and court, arbitration and litigation costs) or any other type of compensation that Developer may have or incur (“**Claims**”): (a) pursuant to the process by which Developer was selected, the RFP selection process, the RFP or any modification or defect thereto, or any information set forth in the RFP or provided as part of the selection process or negotiation period; (b) with respect to the terms of this ENA including, without limitation, the terms of this ENA or the termination of this ENA; (c) any disputes, claims, actions, causes of action, demands or orders arising between Developer and any affordable housing developer or any other third party; (d) 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; (e) the failure of the Parties or any of them to agree upon the Essential Terms of the transaction contemplated by this ENA or the Transaction Documents; (f) the failure of the City to approve an Affordable Housing Developer or any Transaction Document; (g) any condition of the Development Parcels, or any current or future improvement thereon, known or unknown, including, without limitation, the environmental condition of the Development Parcels or the extent or effect of any grading of the Development Parcels; (h) economic or legal conditions on or affecting the Project, the Development Parcels or the improvements thereon; and/or (i) any actions of the City or the City Parties in connection with any of the foregoing (including, without limitation, the exercise by the City of its discretion, decision, or judgment with respect to the foregoing). This waiver and release includes without limitation, a waiver and release with respect to (x) any and all damages and/or monetary relief (whether based in contract or in tort), including, without limitation, 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 without limitation, for conveyance of or to claim any right of title or interest in the Development Parcels or any portion thereof; (y) the right to protest the RFP and/or the terms or selection process pursuant to the RFP, and (z) the failure of the City to negotiate in good faith pursuant to this Agreement or to enter into a DDA and/or DA.

3.6 **Survival of Provisions.** The provisions of this Section 3 shall survive the termination of this ENA.

4. **Negotiations.**

4.1 **Initial ENA Negotiating Period; Due Diligence.**

4.1.1 **ENA Negotiating Period.** The initial period of negotiations pursuant to this ENA shall commence on the Effective Date and terminate upon the date that is one hundred and fifty (150) calendar days from the Effective Date (“**Initial ENA Negotiating Period**”), subject to extensions as provided in Section 4.2. The Initial ENA Negotiating Period, as the same may be extended pursuant to Section 4.2.2 or earlier terminated pursuant to Section 4.2.6 is referred to herein as the “**ENA Negotiating Period**”. If at the expiration of the ENA Negotiating Period (or within any extension of time mutually approved by the City and Developer in accordance with the terms of this ENA), Developer has not, in accordance with Section 4.2.5, signed Transaction Documents in form and substance prepared and approved by City staff, in its sole discretion, for submittal to the City Council, then this ENA shall automatically terminate. During the Initial ENA Negotiating Period, the City will prepare a draft of the DDA and DA and submit the draft documents to Developer for review and comment.

4.1.2 **Due Diligence Review.** During the ENA Negotiating Period, Developer shall have the right to undertake inspections and investigations to evaluate the physical characteristics of the Development Parcels, the feasibility and advisability of its proposed acquisition and development 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 the use of the Development Parcels for development of the Project; provided that any physical inspection of the Development Parcels shall be subject to the provisions of Section 4.5 of this ENA, including, without limitation, the License, insurance and indemnity provisions set forth therein and the insurance requirements set forth in Exhibit B to this ENA. Developer shall have the right during the ENA Negotiating Period and prior to its execution of the DDA and DA pursuant to Section 4.2.5 to terminate this ENA at any time in Developer’s sole discretion, for any reason arising from the results of such inspection, examination and other due diligence pursuant to Section 4.2.6(b) of this ENA. Developer acknowledges and agrees that the ENA Negotiating Period provides it with adequate time to complete its due diligence investigations. The determination by Developer to submit the DDA and DA to the City for consideration pursuant to Section 4.2.5 shall constitute Developer’s agreement that it has completed its physical and environmental site inspections, title and survey, entitlements, and all other inspections and investigations with respect to the Development Parcel, the Project and the Transaction and that the DDA and DA shall provide no additional due diligence period.

4.2 **Extensions of ENA Negotiating Period; Offer Period; Termination of ENA.**

4.2.1 **Extensions in Writing.** No extension of the ENA Negotiating Period shall be effective unless it is in writing.

4.2.2 **Request for Extension.** The Initial ENA Negotiating Period may be extended by the mutual consent of the City and Developer for up to two (2) additional periods of thirty (30) days each. Developer may request each such extension by providing written notice to the City no later than twenty (20) business days prior to the expiration of the then-applicable ENA Negotiating Period. The City will determine whether Developer has negotiated diligently and in

good faith and, whether reasonable and sufficient progress has been made toward fulfillment of the requirements of this ENA in its consideration of any extension request.

4.2.3 Authority to Extend. The City hereby delegates to the City Manager the authority to agree to grant the extensions specified in Section 4.2.2 upon determination by the City Manager or his or her designee in their sole and absolute discretion that Developer has negotiated diligently and in good faith and that reasonable and sufficient progress has been made toward fulfillment of the requirements of this Agreement. No such extension of time shall be effective unless it is in writing. All extensions other than the two extensions of thirty (30) calendar days for which the City Manager has authority under Section 4.2.3 shall require approval by the City Council, which approval shall be at the sole discretion of the City Council.

4.2.4 HCD Documentation. Upon conclusion of negotiation of the Transaction Documents and during the Offer Period, provided there is agreement by Developer and the Transaction Documents are considered acceptable by City staff for submittal to the City Council, the City shall submit to HCD the required documents (anticipated to comprise the surplus property resolution and the RFP) (“**HCD Submittal**”) to ensure compliance with the SLA Regulations. HCD will have the statutorily authorized time period following its receipt of the HCD Submittal to inform the City whether or not the HCD Submittal violates the SLA Regulations. If HCD concludes that the HCD Submittal is not in compliance with the SLA Regulations, then the Parties shall meet in a good faith effort to resolve any alleged non-compliance identified by HCD.

4.2.5 Offer to Purchase. The execution by Developer of a form DDA and DA each in form and substance considered acceptable by City staff, and submittal by Developer of same to the City shall constitute an offer to purchase the Development Parcels on the terms set forth therein. If Developer has not submitted an executed form of DDA and DA to the City prior to the termination of the ENA Negotiating Period, this ENA shall automatically terminate. If Developer does submit executed versions of each of the foregoing agreements, then Developer hereby agrees that it shall not withdraw such offer to purchase for a period of ninety (90) days following submittal of the executed DDA and DA to the City. Such offer shall remain in effect for an additional period of ninety (90) calendar days following the submittal of the last of the executed DDA and DA to the City (“**Offer Period**”) to enable the City to (a) consider the environmental impacts of the proposed Transaction Documents as evaluated in an environmental document prepared by the City during the ENA Negotiating Period in accordance with the California Environmental Quality Act; (b) determine whether it desires to enter into such a DDA and DA; (c) submit the appropriate documentation to HCD as required pursuant to Section 4.2.4; (d) take the actions necessary to authorize the City to sign the DDA and DA if the City desires to do so, and (e) sign the DDA and DA. If the City has not considered and approved the DDA and DA by such 90th day or, at the end of any extension mutually agreed upon by the City and Developer in writing, then this Agreement shall automatically terminate. In the event an offer is timely submitted, this ENA shall remain in full force and effect during the Offer Period.

4.2.6 Rights of the Parties to Earlier Terminate ENA for Breach. Unless earlier terminated pursuant to the terms of this Section 4.2.6, the ENA shall remain in effect for the ENA Negotiating Period and, if applicable, the Offer Period.

(a) Termination Due to Breach. Developer may terminate this ENA and the ENA Negotiating Period upon provision of seven (7) calendar days' prior written notice to the City alleging breach of Section 4.4 by the City, and the City may terminate this ENA upon provision of seven (7) calendar days' prior written notice to Developer alleging breach by Developer of any provision of this ENA, including, without limitation, Section 2.1.

(b) Developer Right to Terminate. Developer may terminate this Agreement in the event that during the course of the investigations and evaluation of the Development Parcels and the Project, it determines in good faith that the Project is not feasible or financeable. The City shall return the deposit (less any costs of the City associated with negotiation of the DDA from the Effective Date together, with any interest accrued thereon) to Developer upon termination of the Agreement in the event Developer has negotiated in good faith hereunder and materially complied with the terms hereof.

(c) Termination Following Determination of City Council Not to Approve DDA or DA. The effectiveness of the DA and DDA are conditioned on approval, execution and effectiveness of both agreements. Therefore, notwithstanding any other provision of this ENA, if the DDA and DA are executed and presented by Developer to the City pursuant to Section 4.2.5, and the City Council disapproves (affirmatively or by failure to consider) either the DDA or DA or the City Council approves either the DDA or the DA but does not approve (affirmatively or by failure to consider) the second such document, then, upon the earlier of (i) the termination of the Offer Period or (ii) the affirmative determination of the City Council not to approve either the DA or DDA, this ENA and all rights of the Parties in and to the first document approved, if any, shall automatically terminate. The determination of the City to approve or disapprove the DDA and/or the DA, any other Transaction Documents or any entitlements related to the Project shall be made in the sole discretion of the City Council and the City Council's determination to disapprove or not to take action on the DDA, the DA, any other Transaction Document or any Project entitlements shall not be a breach of the City's obligation to negotiate diligently, in good faith or exclusively under this ENA.

4.2.7 Cooperation Following Termination. Upon any termination of the ENA pursuant to this Section 4.2, the parties will cooperate and execute such instruments as may be reasonably requested by the City to effect such termination. The provisions of this Section will survive termination of this ENA.

4.3 Deposits and Costs.

4.3.1 Good Faith Deposit. Prior to the execution of this Agreement by the City, Developer has submitted to the City a good faith deposit in the sum of One Hundred and Fifty Thousand Dollars (\$150,000) (the "**ENA Deposit**") in the form of a check or wire transfer to the City to ensure that Developer will proceed diligently and in good faith to negotiate and perform all of Developer's obligations under this ENA and to also be applied to cover any City Transaction Expenses (defined below) incurred by the City arising after the Effective Date of this ENA and with respect to preparation of this ENA. The ENA Deposit shall be deposited in an account in a bank or trust company selected by the City. Interest, if any, shall accrue to any balances in the account for the benefit of Developer and as additional security for Developer's obligations hereunder. The ENA Deposit will be expended to cover the City Transaction Expenses, as further

described in Section 4.3.2 and the ENA Deposit will be depleted accordingly. Each time the amount of funds in the ENA Deposit account is depleted below Fifty Thousand Dollars (\$50,000), Developer shall be required to submit an additional Fifty Thousand Dollars (\$50,000) to City which shall be credited by the City to the ENA Deposit account. Amounts due to the City on account of City Transaction Expenses and deducted by the City from the ENA Deposit are referred to herein as “**City Expense Payments**”.

4.3.2 City Transaction Expenses. From and after the Effective Date, the ENA Deposit may be used by the City to pay the City's third party predevelopment costs including, without limitation, costs and expenses of the City with respect to City staff, and fees and expenses of third party consultants, the City Attorney's office and outside legal counsel, and all other expenditures required in connection with the drafting, negotiation and execution of this ENA, the Transaction Documents or termination of this ENA, including any and all City third party fees and costs incurred by legal counsel, financial and other consultants (“**City Transaction Expenses**”). City Transaction Expenses do not include any fees or deposits required of Developer for processing entitlement applications or complying with provisions of the California Environmental Quality Act (“**CEQA**”) or its State CEQA implementing regulations. Determination of costs, expenses, and fees constituting City Transaction Expenses shall be made by the City in its sole discretion and Developer shall upon request be entitled to receive summary notices from the City setting forth amounts constituting City Transaction Expenses to be retained by City.

4.3.3 Return of Deposit Under Specified Conditions. If the Parties enter into a DDA and DA within the time period identified in Section 4.2 of this ENA, the City shall return any remaining unused funds in the ENA Deposit account to Developer or Developer can apply it to any additional deposit required as security for the performance under the DDA. The City may retain any remaining unused portions of the ENA Deposit only if Developer has not negotiated diligently or in good faith or has not carried out its obligations under this ENA and the City has negotiated diligently and in good faith and has carried out its obligations under this Agreement. The Developer's failure to submit to the City plans, reports, studies, investigations, applications and materials specified in Section 6 of this ENA within the time periods specified therein, shall be deemed to demonstrate Developer's failure to negotiate diligently and in good faith and its failure to carry out its obligations hereunder. If Developer has failed to do so, inasmuch as the actual damages which would result from a breach by Developer of its obligations under this Agreement are uncertain and would be impractical or extremely difficult to determine, the City shall be entitled to retain any remaining unused portions of the original \$150,000 ENA Deposit plus interest, if any, which has accrued thereon, as liquidated and agreed damages.

4.3.4 Not Sole Remedy of City. Subject to Section 10.6 of this ENA, by the initials of their respective signatories hereunder, the City and Developer acknowledge and agree that forfeiture of the original amount of the ENA Deposit (together with any interest earned and accrued thereon) is not in lieu of any other relief, right or remedy to which the City might be

entitled by reason of Developer's default (other than a default in any obligation to negotiate in good faith which shall be governed by the preceding paragraph).

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DEVELOPER'S INITIALS

4.3.5 Additional DDA Deposit. Developer acknowledges that it is currently anticipated that the DDA shall require an additional deposit in an amount to be determined as security for the performance of Developer's obligations under the DDA.

4.3.6 Costs and Expenses Borne by Developer. Developer acknowledges and agrees that the City shall have no responsibility to pay or reimburse Developer for costs and expenses incurred by Developer in connection with this ENA or the compliance by Developer with its obligations under this ENA unless the City assumes any specific responsibilities in the fully executed DDA. Costs and expenses for which Developer shall be responsible include all pre-contractual expenses described in the RFP, all City Transaction Expenses and all costs and expenses incurred by Developer with respect to compliance with the terms of this ENA.

4.3.7 Payment of Outstanding Amounts. Upon a termination of this ENA other than as set forth in Section 4.4, to the extent that the funds provided by Developer to pay the City Transaction Expenses are not sufficient to pay all City Transaction Expenses, Developer shall promptly fund the amount remaining unpaid to the City.

4.3.8 Survival of Provisions. The provisions of this Section 4.3 shall survive the termination of this Agreement.

4.4 Exclusivity; Good Faith. During the period of exclusive negotiation, the City covenants and agrees to negotiate exclusively with Developer and shall not solicit another party for the Project or enter into any agreement with any other party regarding the development of the Development Parcels or any portion thereof. The City acknowledges and agrees that but for this exclusivity, Developer would not have entered into this ENA. In the event a court of competent jurisdiction determines in a final decision that the City has breached this exclusivity covenant, the City shall be deemed to have failed to negotiate in good faith. For any breach of the covenant of good faith by the City, provided a DDA has not been entered into pursuant to this ENA, Developer's sole remedy shall be the termination of this ENA and the return of the ENA Deposit (together with interest accrued thereon) and any other deposits made by Developer pursuant to this ENA.

4.5 Inspection; License.

4.5.1 Access License. The City hereby grants to Developer, for use by the Developer and its employees, representatives, agents, contractors and consultants (collectively, the "Developer Parties"), a license ("License") during the ENA Negotiating Period to enter upon the Development Parcels for purposes of conducting a due diligence inspection, provided that Developer shall and shall cause the Developer Parties to: (a) deliver to the City written evidence

that Developer has procured the insurance required under Section 4.5.2; (b) give the City twenty-four (24) hours telephonic or written notice of any intended access which involves work on or may result in any impairment of the use of the Development Parcels; (c) access the Development Parcels in a safe manner; (d) conduct no invasive testing or boring without the written consent of the City; (e) allow no dangerous or hazardous condition created by Developer and/or the Developer Parties to continue beyond the completion of such access; (f) comply with all laws and obtain all permits required in connection with such access, and (g) 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). The limited license granted herein is revocable by the City during the continuation of any breach of this Agreement by Developer and shall be automatically revoked and terminated, without further action of the City, upon the termination of the ENA Negotiating Period.

4.5.2 Insurance. Prior to commencement of any access or investigative activities on the Development Parcels, Developer, at its sole cost and expense, shall obtain or cause the Developer Parties, with respect to their access and investigative activities, to obtain, such types and amounts of insurance coverage as set forth in Exhibit B.

4.5.3 Indemnity. Developer hereby agrees to indemnify, defend protect and hold the City and the City Parties free and harmless from and against any and all Claims arising in connection with or resulting from or related to: (a) Developer's or the Developer Parties' exercise of the License, including, without limitation, entry onto or access to the Development Parcel, or breach by Developer or any Developer Parties of the terms and conditions of the License; (b) Developer's or Developer Parties' exercise of any rights under the License with respect to the Development Parcel or the Project including, without limitation, any inspections, surveys, tests or studies performed by Developer or the Developer Parties; (c) Developer's or Developer Parties' presence, activities or work on or related to use of the Development Parcel and any mechanics' or materialmen's liens arising with respect thereto; (d) bodily injury to or death of any person (including, without limitation, any of the City Parties), or (e) damage to or loss of use of property resulting from any of the foregoing, save and except to the extent such claims result from the gross negligence or willful misconduct of the City or its agents, employees or representatives. Developer shall keep the Development Parcels free and clear of any mechanics' liens or materialmen's liens related to Developer's inspection of the Development Parcels.

4.5.4 Survival of Provisions. The insurance obligations in Section 4.5.2 and Exhibit B and the indemnification by Developer set forth in Section 4.5.3 shall survive the termination of this Agreement and the execution of the DDA and shall survive and not merge into any deed granted pursuant to the DDA.

5. Proposed Development Concept.

5.1 Compliance with Existing Land Use and Zoning Requirements. The proposed Project to be negotiated hereunder shall include the development and use of the Development Parcels consistent with the MCAS Tustin Reuse Plan, the General Plan, and the Specific Plan and any approved Density Bonuses granted under State and City density bonus provisions.

5.2 **Terms of DDA and DA to be Negotiated.** Developer and the City agree that it is their intent during the ENA Negotiating Period to negotiate a DDA and DA which are anticipated to address the following terms and conditions and such other terms and conditions as they may agree, and which will be binding upon City and Developer and, to the extent provided thereby, their respective successors and assigns. The following terms and conditions shall not be binding upon the Parties during the term of this ENA and are provided in this ENA only to provide general guidance for negotiation of the DDA and DA:

5.2.1 **Essential Terms.** The DDA shall contain terms and conditions for conveyance by the City to Developer of the Development Parcels including but not limited to the manner of conveyances, the conditions precedent to conveyance and the amount of the purchase price, shall be determined as part of the negotiation of and detailed in the DDA.

5.2.2 **As-Is Conveyance.** While Developer should undertake its own investigation to determine the presence of hazardous materials and suitability of the Development Parcels for development, Developer acknowledges and agrees that if the Development Parcels is conveyed by the City pursuant to a DDA, the Development Parcels shall be conveyed on and “AS-IS, WHERE-IS AND WITH ALL FAULTS” basis, and Developer shall be obligated to release, defend, indemnify and hold harmless the City with respect to its acquisition and development of the Development Parcels and the condition of the Development Parcels, including any and all land use, soil and environmental conditions of the Development Parcels.

5.2.3 **Development.** The Developer shall design and construct the Project on the Development Parcels at its own cost and expense in accordance with the scope of development and a schedule of performance to be negotiated as part of the DDA and in accordance with plans and specifications prepared by Developer and approved by the City in accordance with such schedule of performance and in compliance with all requirements and regulations of the City including, without limitation, the Specific Plan and applicable zoning.

5.2.4 **Product Mix and Density Bonus.** Developer understands and acknowledges that the product mix proposed for the Project will be subject to approval by the City, in its governmental capacity, of a density bonus, and any necessary City entitlement approvals requested. The actual number of units and the level of affordability will be based on compliance with development standards in the Specific Plan and any requirements contained in the DDA and any approved density bonuses granted under the City Code, including any incentives and/or development standard modifications granted under the City’s Density Bonus Ordinance. The Project will include construction and maintenance for rental for a period of 55 years (pursuant to affordable housing covenant approved by the City in its sole discretion) of the Affordable Housing Units. Developer has agreed to negotiate with the City the actual location by product type of the affordable housing units. Developer acknowledges that the Project shall require grant of a density bonus from the City and agrees that in requesting a density bonus, it will not request any financial incentives from the City.

5.2.5 **Tustin Legacy Backbone Infrastructure Program Costs.** In connection with development of the Development Parcel, Developer shall make a fair share contribution to the Tustin Legacy Backbone Infrastructure Program based on the allocations to the Development Parcels in the City’s Tustin Legacy Backbone Infrastructure Financing Program-2017 Update

adopted October 17, 2017 as the same may be amended from time to time (“**Tustin Legacy Backbone Infrastructure Program**”). Pursuant to the Tustin Legacy Backbone Infrastructure Program, a fair share contribution shall be allocated to the Development Parcels (“**Project Fair Share Contribution**”). The DDA shall address the timing of payment of the Project Fair Share Contribution by Developer to the City. Developer acknowledges that an amendment to the Tustin Legacy Backbone Infrastructure Program is underway at the City.

5.2.6 Local Infrastructure. The Developer will also be responsible for all costs of any necessary local infrastructure improvements and in-tract improvements as required for the development of the Project.

5.2.7 Applications. Developer shall prepare and process applications for and obtain from the City and other federal, state and local jurisdictions, all applicable land use, planning and zoning approvals for the proposed development with the support of the City. These entitlements will be required to be consistent with the Specific Plan, unless as part of approval of any density bonus application under the City Code incentives and/or modifications to development standards are granted by the City.

5.2.8 Project Costs. Project costs and revenues will be separately analyzed and funding of all project costs will be the responsibility of Developer.

5.2.9 No City Funding. Developer anticipates implementation of the Project including, without limitation, the Affordable Housing Units without the need for any expenditure by or loans from the City.

5.2.10 Development Fees. In connection with its development of the Development Parcels, Developer acknowledges that the Development Parcels will be subject to applicable development fees, including but not limited to those required by the City of Tustin, or other jurisdictions including without limitation (a) the Transportation Corridor Agencies’ Foothill/Eastern Corridor Fee, (b) state-mandated school impact fees and assessments by TUSD, (c) Orange County School Facility Bonds (Measure G and Measure L), and (d) utility meter and connection fees, including from Irvine Ranch Water District. Developer acknowledges that TUSD has imposed CFD 15-02 (“**TUSD CFD**”) upon portions of Tustin Legacy which may be applicable the Development Parcels.

5.2.11 Transfer and Assignment Restrictions. Developer acknowledges that the DDA shall contain limitations on transfer and assignment of the rights of Developer including the right of the City to approve in its sole discretion all assignments and transfers by Developer of interests in Developer or in the DDA.

5.2.12 Mortgagee Limitations and Subordination. Developer acknowledges that the DDA shall impose limitations on mortgages and mortgagees and shall require subordination of any mortgage to the DDA and DA and other transaction documents as applicable.

5.2.13 Remedies and Termination Rights. Developer acknowledges that the DDA shall contain remedies and termination rights in favor of the City for breach of the DDA, which shall include without limitation, rights of reverter in conveyed land.

6. **Developer's Responsibilities.**

6.1 **Status Reports.** Developer agrees to make bi-weekly oral and/or written reports advising the City and/or its staff of all matters and studies being made, including Developer's progress in analyzing the feasibility of the Project as may be requested by the City or its staff.

6.2 **Development Team.**

6.2.1 **Developer Team.** Within ten (10) days following the Effective Date, Developer shall submit in writing to the City full disclosure of the names of Developer's agents, authorized negotiators, professional employees and other associates of Developer who may be participants in development of the Project and other relevant information concerning the above, such as addresses, telephone numbers and employers. Developer shall also designate and submit in writing to the City the names of all Developer's lead negotiators who shall have authority to make decisions on behalf of Developer.

6.2.2 **Affordable Housing Developer.** If Developer intends to select an affordable housing developer for development of the Affordable Housing Units, then within sixty (60) days following the Effective Date, Developer shall submit in writing to the City the name of the for-profit or non-profit developer with experience in development of affordable housing in the State of California proposed by Developer, together with the following information regarding that entity:

(a) the names and biographies of the proposed affordable housing developer, its controlling person and its proposed organization structure;

(b) a description of the experience of the proposed affordable housing developer and its controlling person within the prior ten (10) years in securing financing for construction of affordable housing projects in California and negotiating with a government agency over land conveyance, and litigation with any public agency during that ten (10) year period;

(c) the proposed affordable housing developer's authorized negotiators, professional employees, consultants (including architect, general contractor, civil engineer and legal) and other associates of Developer who may be participants in development of the Affordable Housing Units and other relevant information concerning the above, such as addresses and telephone numbers;

(d) the names and biographies of the proposed equity investor(s) and their financial capacity, if different than Developer;

(e) a description of other similar affordable housing projects developed and leased by, or sold by, the proposed affordable housing developer in California over the preceding five (5) year period together with the dates of involvement and the success of the projects and highlighting market innovation;

(f) the experience of the proposed affordable housing developer managing similarly sized multifamily communities with affordable units, and

(g) current audited financial statements of the proposed affordable housing developer or financial statements certified by the chief financial officer or other appropriate authorized officer or authorized representative of the proposed affordable housing developer, if it does not have current audited financial statements, together with the same information for its proposed equity investors if different from the proposed affordable housing developer or Developer.

The City shall have thirty (30) calendar days following submission by Developer of all of the foregoing information to review and approve or disapprove the proposed affordable housing developer. Developer's selection of an affordable housing developer shall be subject to the approval of the City in its sole discretion. Developer has advised the City that it is in discussions with USA Properties and Meta Housing as Affordable Housing Developers which have been selected by Developer based on Developer's understanding of their track record of developing high-quality affordable housing communities in California.

6.3 **Financial Status.**

6.3.1 **Financial Capacity.** Developer shall continue to be responsible for demonstrating to the City Developer's financial capacity and capability to perform its obligations under this ENA and the proposed DDA. Subject to the provisions of Section 6.43.2 (the "**Confidentiality Protocols**"), Developer shall submit any additional financial information required to demonstrate Developer's, and if applicable, Affordable Housing Developer's financial capacity and capability to perform its obligations under this Agreement and the proposed DDA as requested by the City within thirty (30) days of a request. Developer intends to form a single purpose limited liability company to enter into the DDA and DA and acquire title to the Development Parcels. The single purpose entity will be 100% owned within Developer's corporate structure without any third party investment. Supporting documents with respect to that structure will be provided to the City upon formation of the entity. Developer shall identify with specificity the documents which 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 of the State of California (Govt. Code Section 6250 et seq.) ("**CPRA**"). If confidentiality is requested and if nondisclosure under the CPRA is allowed, the documents shall be delivered to and maintained by the City and copies shall not be disseminated and shall be handled by the City in accordance with Section 10.13 of this ENA. The City's agents, negotiators and consultants may review the statements as necessary as long as such parties agree to maintain the confidentiality of such statements.

6.3.2 **Confidentiality Protocols.** Developer acknowledges that documents or other "records" (as that term is defined in the California Public Records Act ("**CPRA**")) related to the Project may be required to be made public upon request. California Government Code Section 6253(a) 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 CPRA, Developer shall state in writing the legal basis for Developer's belief that such documents or other records are exempt from the CPRA, 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, Developer shall conspicuously mark the documents and other

records “Confidential” and shall submit them to City, and City will not make the records public except as otherwise required by law or by court order. City's failure to correctly determine the applicability or inapplicability of an exemption to the CPRA shall not constitute a breach of this ENA or the Transaction Documents. City will endeavor to notify Developer of any request made for records related to the Project when the request for the records allows adequate time to provide such notice. 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. City shall promptly notify Developer of any claim made against City of an alleged breach of CPRA 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 in connection with its public filings.

6.4 **Assignment; Transfer.** If Developer determines to joint venture or partner development with an Affordable Housing Developer or if Developer determines to form a new legal entity to develop the Development Parcels, Developer shall promptly inform the City of such determination and submit to the City the joint venture’s or partner’s most recent financial statements and the financial statements of its key principals. The assignment of Developer’s rights under this Agreement to any new entity, partnership or joint venture may be approved in writing by the City, provided that the City is satisfied in its sole discretion, that the new entity, partnership, or joint venture has the financial capability to perform under this Agreement and the proposed DA. Identification of an Affordable Housing Developer shall be in accordance with the provisions of Section 6.2.2.

6.5 **Design Review/Entitlements.** It is understood and agreed by Developer that the quality, character and uses proposed for the Project are of particular importance to the City and that planning and design review approval and other entitlements by the City will be required for the development of the Development Parcels. Developer and the proposed architects for the project shall meet with representatives of the City to review and come to a clear understanding of the planning and design criteria required by the City. Within 20 days after the Effective Date, Developer shall submit a schedule for entitlement processing. Within sixty (60) days after the Effective Date, Developer shall submit for approval of the City preliminary revised design drawings and related documents containing the overall plan for development of Developer’s Project including the following: preliminary site plan showing building layout and dimensions, parking, landscaping and access on or related to each individual parcel, floor plans, preliminary materials call-outs and conceptual building renderings and a development schedule.

6.6 **Project Financial Pro Forma.** Within sixty (60) days after the Effective Date, Developer shall submit revised overall cost and revenue estimates, project cost and revenue data including information on Project’s financial return adequate to enable the City to evaluate Developer’s Business offer and economic feasibility of the proposed development of the Project, as proposed, on the Development Parcels for the entirety of the Project, including without limitation the Affordable Housing Units. The information submitted shall be in the same Business Plan format required in the RFP. The financial pro forma(s) for the Project shall reflect any comments the City provides to Developer on the preliminary site plan.

6.7 **Additional Information.** Developer understands and agrees that the City's negotiating team reserves the right at any time to reasonably request from Developer additional information, including data and commitments to ascertain the depth of Developer's capability and desire to develop the Development Parcels expeditiously. The City's negotiating team will provide a reasonable time in which Developer may obtain and submit to the City such additional information.

6.8 **Contacts During Negotiation.** Developer shall only negotiate with the City's negotiating team (as defined in writing by the City Manager or his or her designated representative) and with no other persons unless expressly authorized to do so by the City's negotiating team. During the period of negotiations, Developer shall make no statements to the media about the proposed Project without the approval of the City Manager. The Developer's failure to comply with the provisions of this Section shall be conclusive evidence that Developer has not "negotiated in good faith."

6.9 **Environmental and Other Studies.**

6.9.1 **Environmental Requirements.** Compliance with CEQA is a legal precondition to any final City action to approve and execute a DDA and DA for the Project. Developer shall cooperate with the City and abide by the City's environmental compliance procedures and fee requirements, which include, but are not limited to, the obligation to deposit funds to pay all of the City's costs of preparing any additional required environmental studies as may be determined.

6.9.2 **Plans, Reports, Studies and Investigations.** Developer shall provide the City, without cost or expense to the City, copies of all plans, reports, studies or investigations (collectively, "**Plans**") prepared by or on behalf of Developer for development of the Project. All Plans shall be prepared at Developer's sole cost and expense. If this Agreement is terminated for any reason other than a material breach or default hereunder by the City, Developer shall, at City request, transfer Developer's rights to any or all Plans identified by the City, but in no event shall the cost to the City exceed five hundred dollars (\$500.00). Upon such request, Developer shall deliver to the City copies of all Plans requested by the City together with a bill of sale therefore, provided that Developer makes no representations, warrantee or guarantee regarding the completeness or accuracy of the Plans, and Developer does not covenant to convey the copyright or other ownership rights of third parties thereto. Such Plans 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 Plans, the City shall be permitted to use, grant, license or otherwise dispose of such Plans to any person or entity for development of the Development Parcels or any other purpose; provided, however, that Developer shall have no liability whatsoever to the City or any transferee of title to the Plans in connection with the use of the Plans.

6.9.3 **Hazardous Materials Assessment.** Developer acknowledges that pursuant to the Navy Quitclaim Deed, the Navy found and determined that there was no contamination on the Development Parcels and issued a Finding of Suitability for Transfer for Southern Parcels 4-8, 10-12, 14, and 42 and Parcels 25, 26, 30-33, 37, and Portions of 40 and 41 dated September 28, 2001 ("**FOST**"). The City would intend upon approval of a DDA to sell and convey by quitclaim in the same manner as the parcels were conveyed to the City to include the

covenants and warranties as identified in the Navy Quitclaim Deed.

6.9.4 **Insurance.** The Developer, and any permitted assignee(s), will be responsible in conjunction with any DDA to provide commercial general liability, workers compensation, builder's risk property insurance, and environmental insurance.

7. **The Developer.**

7.1 **Nature of Developer.** Developer will be The Irvine Company LLC or such other affiliated business entity (such as another limited liability corporation) as the City may approve. Concurrently with its execution of the DDA and DA, Developer shall submit a copy of the applicable formation documents relating to Developer and any corporate members of Developer (i.e., as applicable, articles of incorporation, partnership agreement, and/or limited liability corporation and articles of incorporation, statement of information and operating agreement).

7.2 **Offices of Developer.** The principal offices of Developer are located at 550 Newport Center Dr., Newport Beach, California | 92660-7011. The principals of Developer are as follows: (a) Todd Keller, President, Irvine Company Apartment Development, and (b) Scott Frick, Senior Vice President, Irvine Company Apartment Development.

7.3 **The Developer's Consultants and Professionals.** Developer is required to make full disclosure to the City of any changes to its principals, officers, stockholders, partners, joint venturers, Project employees, and other associates and all other pertinent information concerning Developer and its associates. Developer agrees to substitute or supplement any of its consultants and professionals as reasonably requested by the City.

8. **The Developer's Financial Capacity.**

8.1 **Financial Capacity.** Any additional financial information required to demonstrate financial capacity and capability to perform the obligations under this Agreement of Developer shall be submitted to the City or its consultant as requested by the City for the purposes of this Agreement. Developer intends to form a single purpose limited liability company to enter into the transaction documents and acquire title to the Development Parcels. The single purpose entity will be 100% owned within Developer's corporate structure without third party investment. Supporting documents with respect to that structure will be provided to the City upon formation of the entity. In the event that Developer desires to assign any of rights, duties or obligations under this ENA to another person, Developer acknowledges that the City may condition its consent to such assignment as required under Sections 6.4 and 10.10 hereof upon the delivery of financial information to demonstrate the financial capacity and capability of such proposed assignee to perform the obligations under this ENA of Developer.

8.2 **Equity.** Except as may otherwise be agreed by the City and Developer with respect to the Affordable Housing Units, Developer proposes to obtain its equity capital for development of the Project from in-house financing. The Affordable Housing Units may be financed by an Affordable Housing Developer with a variety of funding sources including tax-exempt housing revenue bonds proposed to be issued by the California Statewide Communities Development Authority ("CSCDA"), and private funding sources. Developer understands that the closing and conveyance of property will not be contingent on receipt of any outside funding from either

CSCDA or other sources.

8.3 **Construction Financing.** Developer proposes to finance project costs with 100% equity for all portions of the Project other than the Affordable Housing Units. With respect to construction of the Affordable Housing Units, construction financing may be obtained from CSCDA bond proceeds for the development and from a reputable, institutional lender as may be approved by the City.

8.4 **Long-Term Development Financing.** Developer is capable of providing financing for the development of the Project other than the Affordable Housing Units without the necessity of third party financing. An Affordable Housing Developer may commit to the provision of long-term development financing for the Affordable Housing Units from a potential reputable, institutional lender, as may be approved by the City.

8.5 **Bank and Other Financial References.** Developer shall provide the City with Developer's bank and other financial references as requested by the City from time to time.

8.6 **Full Disclosure.** Developer will be required to make and maintain full disclosure to the City of the methods of financing and the financing documents to be used in the development.

9. **City's Responsibilities.**

9.1 **Environmental Requirements.** Developer agrees to finance and supply information and otherwise assist the City as requested to enable the City to determine the environmental impact of the proposed development of the Project as described by the DDA and DA and to prepare such addenda or supplements to the Final EIS/EIR, if any, as may be needed to be completed for the development.

9.2 **Assistance and Cooperation.** The City shall cooperate with Developer by providing appropriate information and assistance as reasonably requested by Developer.

9.3 **Plans and Studies.** To the extent not previously provided, the City shall, within ten (10) business days following the Effective Date and at no cost to Developer, provide Developer with copies of all plans, reports, studies, investigations and other materials the City may have pertinent to disposition of the Development Parcels and/or development of the Project on the Development Parcels provided, however, that the City makes no representations, warranty or guarantee regarding the completeness or accuracy of any plans, reports, studies, investigations and other materials (whether delivered by the City before or after the Effective Date) and the City shall have no liability whatsoever to Developer or any transferee of Developer in connection with such plans and studies or the use thereof for any purposes. Without limiting the generality of the foregoing or the release by Developer in this ENA, Developer acknowledges receipt of the environmental documents listed on Exhibit C ("**Environmental Documents**").

10. **Miscellaneous.**

10.1 **Assistance and Cooperation.** Developer and the City shall reasonably cooperate with one another to achieve the objectives and purposes of this ENA.

10.2 **Real Estate Commissions.** The City has retained CBRE pursuant to a separate agreement which stated that Developer will be responsible for payment of amounts due to CBRE thereunder in connection with the Transaction described in this ENA. 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 any broker, agent, or finder regarding this ENA or the sale or development of the Development Parcels or any portion thereof. The provisions of this Section 10.2 shall survive the termination of this ENA. If, and only if, the closing under the DDA occurs, Developer will pay a commission to CBRE at such closing in the amount of one percent (1%) of the purchase price set forth in the DDA. City represents that it has not engaged any broker, agent, or finder in connection with this ENA other than CBRE.

10.3 **No City Duty.** Except as expressly provided above in Section 4.4, the City shall have no obligations or duties hereunder and no liability whatsoever in the event the City and Developer fail to agree upon or to execute a DDA and a DA.

10.4 **Non-Liability of City Officials and Employees.** No elected or appointed official, officer, representative, director, staff member, attorney or employee of the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Developer or to its successor, or on any obligations under the terms of this ENA.

10.5 **Entire Agreement.** This ENA represents the entire agreement of the City and Developer with respect to the matters set forth herein and supersedes any prior negotiations or contemporaneous writings or statements. This ENA may not be amended except in writing signed by each of the City and Developer hereunder.

10.6 **Attorneys' Fees.** If either the City or Developer brings an action or files a proceeding in connection with the enforcement of its respective rights or as a consequence of any breach by any party of its obligations hereunder, then the Prevailing Party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and out-of-pocket expenditures paid by the losing party, provided that the prevailing party's fees shall be payable at the actual contractual hourly rate for City's litigation counsel at the time the fees were incurred, but in no event more than \$400 per hour. "**Prevailing Party**" within the meaning of this Section 10.6 includes a party who agrees to dismiss an action or proceeding in consideration for the other party's payment of the amounts allegedly due or performance of the covenants allegedly breached or obtains substantially the relief sought by such party.

10.7 **Covenant Against Discrimination.** Developer shall not discriminate against nor segregate, any person or group of persons on account of sex, race, color, age, marital status, religion, handicaps, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development Parcels, nor shall Developer establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Development Parcels.

10.8 **Notices/Submittals.** All notices, demands, consents, requests and other communications required or permitted to be given under this ENA shall be in writing and shall be

deemed conclusively to have been duly given (a) when hand delivered to the other party; (b) 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; (c) the next business day after such notice has been deposited 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 (d) when transmitted if sent by email to the email address set forth below; provided, however, that notices given by email shall not be effective unless either (i) a duplicate copy of such notice is promptly sent by any method permitted under this Section other than by email (provided that the recipient party need not receive such duplicate copy prior to any deadline set forth herein) or (ii) 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. (recipient's time) or on a non-business day. Unless otherwise provided in writing, all notices hereunder shall be addressed as follows:

City:

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

With a copy to:

Director of Economic Development
City of Tustin
300 Centennial Way
Tustin, CA 92780
Email: director.ed@tustinca.org

And with a copy to:

City Attorney
Woodruff & Smart
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.
afreilich@HepnerMyers.com

Developer:

Scott Frick
Senior Vice President, Forward Planning
Irvine Company Apartment Development
550 Newport Center Drive
Newport Beach, CA 92660
sfrick@irvinecompany.com

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

And with a copy to:

Latham & Watkins LLP
12670 High Bluff Drive
San Diego, CA 92130
Attention: Stephanie L. Fontanes
stephanie.fontanes@lw.com

10.9 **Action Taken.** Following its approval by the City, this ENA shall be administered by the City Manager or the City Manager's designee. Except where the terms of this ENA 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 the City Manager's designee). The City Manager or the City Manager's designee shall have the authority to issue interpretations, clarifications and confirmations with respect to this ENA and to determine whether any action requires the approval of the City Council. All waivers of terms and conditions, amendments and modifications of this ENA shall require the approval of the City Council.

10.10 **Prohibition Against Assignments.** This Agreement shall not be assigned by Developer without the consent of the City in its sole discretion. Any attempted or purported assignment by Developer of this ENA without the consent of the City as aforesaid shall be void and a breach by Developer of its obligation to negotiate in good faith under this ENA.

10.11 **No Third Party Beneficiaries.** Execution of this ENA is not intended to create or confirm any third-party beneficiary rights in or create any liability on the part of either the City or Developer to any third parties this ENA.

10.12 **Effect of Disposition and Development Agreement.** Following mutual execution by the City and Developer of a DDA and DA, this ENA shall be of no further force or effect, except that, unless otherwise agreed in writing by Developer and the City, the releases set forth in Section 3.5, the indemnities set forth in Section 4.5.3 and Section 10.2, the insurance requirements set forth in Section 4.5.2 and Exhibit B and the confidentiality provisions of Sections 6.3 and 10.13 this ENA shall remain in effect with respect to claims arising during the term of this ENA. In the

event of any conflict between the provisions of this ENA and any DDA or DA approved by the City and Developer, the provisions of the DDA and DA shall for all purposes prevail.

10.13 **Confidentiality**. The City and Developer represent and warrant that each shall keep this ENA and all information and/or reports obtained from the other, or related to or connected with the Development Parcels, the other party, this ENA, and until presentation to the City for approval, the DDA and DA or any other documents negotiated by the City and Developer, confidential and will not disclose any such information to any person or entity without obtaining the prior written consent of the other party, except that the City shall have the right to disclose any information contained in any third party reports obtained by Developer and Developer shall have the right to make disclosures to its employees and independent contractors, including but not limited to consultants, financial planners, outside counsel, and experts as necessary in order to determine if the Project is feasible and financeable provided such entities and persons are made aware the information is confidential. Notwithstanding the foregoing, this ENA, the draft DDA and DA and all other material relating to this Agreement are subject to the provisions of the CPRA. The City's use and disclosure of its agreements and records are governed by the CPRA and nothing herein limits the City's right and obligation to comply with the CPRA or with laws mandating public notice or disclosure of public records, including without limitation, agendas, public hearings, staff reports and minutes produced in connection therewith, including, without limitation, the Ralph M. Brown Act. The City makes no representation or warranty that writings and materials provided to or generated by the City during negotiations will be exempt from the CPRA. The provisions of this Section shall survive the termination of this ENA for a period of one (1) year with respect to matters provided or disclosed during the term of this ENA if any.

10.14 **Governing Law; Exclusive Venue**. This ENA shall be interpreted in accordance with California law. The parties agree that in the event of litigation, exclusive venue shall be in Orange County, California.

10.15 **Counterparts**. This ENA may be signed in one or more counterparts each of which, when so executed, shall be deemed to be an original, and with the signatures delivered by submission of materials by electronic means, which may include using either DocuSign or similar program or email attachment, each of which shall constitute an original and all of which together shall constitute one and the same agreement. This ENA shall not be effective until the execution and delivery by the parties of at least one set of counterparts.

10.16 **Business Day Defined; Performance of Acts on Business Days**. All references to "business days" in this ENA shall mean and refer to days on which the City of Tustin City Hall is open for business. In the event that the final date for payment of any amount or performance of any act under this ENA falls on a day on which the City of Tustin City Hall is closed, such payment may be made or act performed on the next succeeding day upon which the City of Tustin City Hall is open.

(remainder of page is blank; signatures commence on following page)

IN WITNESS WHEREOF, authorized signatories of the City and Developer hereto have executed this ENA as of the date set opposite their signatures.

“CITY”

City of Tustin

Dated: 05/23/24

DocuSigned by:
Nicole Bernard
By: _____
Nicole Bernard
Acting City Manager

APPROVED AS TO FORM

DocuSigned by:
David Kendig
By: _____
David Kendig
City Attorney

Hepner & Myers LLP
Special Real Estate Counsel to the City

DocuSigned by:
Amy E. French
By: _____
Amy E. French, Partner

“DEVELOPER”

The Irvine Company LLC,
a Delaware limited liability company

Dated: MAY 14, 2024

By: *Todd Keller*

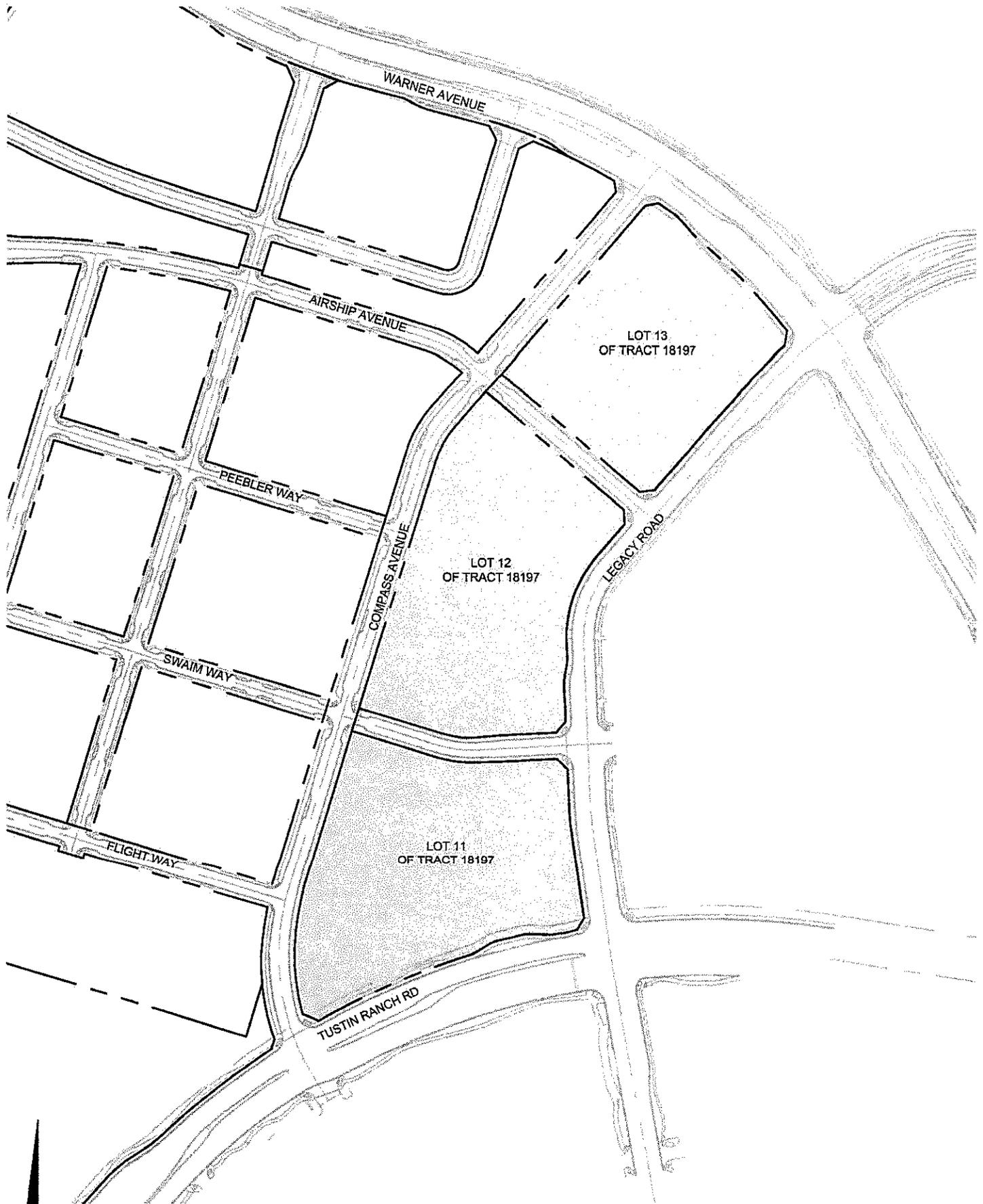
Todd Keller
Division President, Apartment Development

By: *Scott Frick*

Scott Frick
Senior Vice President, Forward Planning

Exhibit A
Depiction of Development Parcels
(Site Map)

{See Attached}



SCALE 1" = 300'

EXHIBIT A

LEGEND

-  RIGHT OF WAY
-  CENTERLINE
-  DEVELOPMENT PARCELS

Exhibit B **Insurance Requirements**

This Exhibit B is attached to and forms part of the ENA to which it is attached. Unless otherwise indicated, Section references in this Exhibit B are to Sections in this Exhibit B. Initially capitalized terms used and not defined in this Exhibit B shall be defined as set forth in the ENA.

1. **Insurance.**

1.1. **Required Insurance.**

Without limiting the City's rights to indemnification, Developer shall procure and maintain, or cause to be procured and maintained, at no expense to the City, 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 as insured with respect to the coverage required by Sections 1.1.1 and 1.1.2 below, and, with respect to the commercial general liability and business automobile liability required pursuant to Section 1.1.1, naming the City Parties as additional insureds. With respect to the environmental liability insurance required pursuant to Section 1.1.3 below, Developer shall cause its subcontractor or its consultants to procure, maintain and evidence such insurance at no expense to the City and name the City Parties as additional insured. All insurance required below shall be obtained by the times set forth below and kept in force until termination of the ENA, or for such longer period as is described below. Claims asserted after termination of the ENA for incidents and occurrences during the term of the ENA shall be covered as provided herein.

1.1.1. Commercial General and Business Automobile Liability Insurance. Prior to entry by Developer onto the Development Parcels (which entry shall be solely pursuant to the terms of the License), Developer shall maintain or cause to be maintained commercial general liability insurance and business automobile liability, to protect against 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 Development Parcels, the Project and/or the improvements and the business of Developer on the Development Parcels, and in connection with the entry, access, inspection and/or investigative activity pursuant to the ENA and 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 Development Parcels in connection with the entry, access, inspection and/or investigative activity pursuant to the ENA, 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 in defending Claims for alleged loss, with defense counsel approved by Developers' or Developers' contractors' insurer(s), which approval may not be unreasonably withheld.

1.1.1.1. Minimum Requirements. Developer's policies of commercial general liability and business automobile liability insurance shall be "occurrence" based policies and shall be maintained in full force and effect at all times until termination of the ENA. The amount of insurance required under commercial general liability is limits of Ten Million

Dollars (\$10,000,000.00) each occurrence and in the aggregate, and business automobile liability with limits of Four Million Dollars (\$4,000,000.00) combined single limit each accident. Developer's subcontractors and consultants shall maintain policies of commercial general liability and business automobile liability insurance "occurrence" based policies that shall be in full force and effect at all times when subcontractor and consultant is performing any work or inspections on or about the Development Parcels with commercial general liability limits of One Million Dollars (\$1,000,000.00) each occurrence and Two Million Dollars (\$2,000,000.00) aggregate limit and business automobile liability with limits of One Hundred Thousand (\$100,000.00) combined single limit each accident. The commercial general liability and business automotive liability insurance shall be issued by a company permitted by the Insurance Department of the State and rated A-/VII or better, by the latest edition of AM Best's Key Rating Guide. Such insurance may be provided by a combination of underlying commercial general liability and business automobile liability, self-insurance, and an umbrella or excess liability insurance policy otherwise meeting the requirements of this Section 1. Developer will provide to the City a copy of Developer's umbrella policy's schedule of underlying insurance showing Developer's commercial general liability and automobile liability policies (all other information will be redacted).

1.1.1.2. Evidence of Insurance and Required Endorsements. An ACORD certificate evidencing the foregoing and providing the following endorsements approved by the authorized representative of the underwriter and reasonably approved by the City shall be delivered prior to entry by Developer and annually (upon request from the City) evidencing renewals of each policy until termination of the ENA. The underlying commercial general liability and business automobile liability policies shall be endorsed as follows: (a) include the City Parties as additional insureds; (b) the insurance coverage shall be primary, and not require contribution of any insurance or self-insurance maintained by the City, and (c) a waiver of subrogation for the benefit of the City Parties. The procuring of such insurance and the delivery of certificates and omnibus or blanket additional insured endorsements evidencing the same shall not be construed as a limitation of Developer's obligation to indemnify the City Parties as set forth in the ENA. No umbrella or excess endorsements will be required as long as Developer provided to the City a copy of Developer's umbrella policy's schedule of underlying insurance showing Developer's commercial general liability and automobile liability policies (all other information will be redacted).

1.1.2. Workers' Compensation Insurance. Prior to entry by Developer onto the Development Parcels (which entry shall be solely pursuant to the terms of the License), Developer shall obtain, and thereafter maintain or cause to be maintained, workers' compensation insurance issued by a responsible carrier authorized under the laws of the State 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 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 Person employed by Developer incurring or suffering injury or death in connection with the Project or the operation thereof by Developer. Notwithstanding the foregoing, Developer may, in compliance with the laws of the State 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. Each such insurance policy, and each

renewal or replacement thereof, by endorsement approved by an authorized representative of the underwriter, shall contain a waiver of rights of subrogation against the City Parties.

1.1.2.1. Contractor and Subcontractor Worker's Compensation Insurance. Prior to entry on to the Development Parcels or otherwise pursuant to the ENA by each contractor and subcontractor, Developer shall cause to be furnished to the City evidence satisfactory to the City that such contractor and subcontractor involved in performance of work on the Development Parcels or otherwise pursuant to the ENA maintains workers' compensation insurance in compliance with all applicable State laws. Each such insurance policy, and each renewal or replacement thereof, by endorsement approved by an authorized representative of the underwriter, shall contain a waiver of rights of subrogation against the City Parties.

1.1.2.2. The insurance required by Sections 1.1.2 and 1.1.2.1 shall be issued by a company rated A-/VII or better by the latest edition of AM Best's Key Rating Guide, or by the State Compensation Fund.

1.1.3. Environmental Insurance. Prior to any invasive testing by Developer upon the Development Parcels (which shall be solely pursuant to the terms of the License), Developer shall obtain, or cause Developer's environmental consultant or contractor to obtain, and shall thereafter maintain or cause to be maintained environmental and pollution legal liability insurance coverage in connection with the investigative activity of Developer on the Development Parcels pursuant to the ENA and, including coverage for loss, remediation expense and legal defense expenses, and naming each of Developer and City Parties as additional insureds to address pollution risks at the Development Parcels. Such policy shall include coverage for pollution legal liability conditions to the extent that the conditions are created or exacerbated by the activities or work of environmental consultant or contractor on or about the Development Parcels.

Such policy shall comply with the following requirements:

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

(b) The policy shall provide Five Million Dollars (\$5,000,000) in coverage each occurrence or claim and in the aggregate, subject to a maximum Seven Hundred Fifty Thousand Dollars (\$750,000.00) deductible or such other deductible amount approved by the City and include a claim reporting period of not less than three (3) years from the initial date of access to the Development Parcels pursuant to the License granted in Section 4.5.1 of the ENA. Such claim reporting period requirement can be met either (a) by renewing the policy annually up to three (3) years if the policy is occurrence based or (b) by obtaining an extended reporting period. Such claim reporting period shall survive expiration or termination of the ENA;

(c) The policy shall be paid for in full or financed under a payment plan. The policy shall contain a waiver of right of subrogation against the City and shall contain a notice of cancellation endorsement in favor of the City Parties which shall require written notice to the City by the insurer at least seven (7) days prior to the effective date of cancellation. An endorsement that provides the insurer "will endeavor to" provide the required notice, or similar

non-committal language, is not sufficient. As such, Developer's (or Developer's environmental consultant or contractor's) obligation to maintain or cause the maintenance of the environmental insurance pursuant to this Section 1.1.3 shall survive the termination of the ENA for the term required for such insurance policy pursuant to Section 1.1.3(b), and

The DDA will further address the requirements for indemnity and insurance coverage for environmental and pollution legal liability. The provisions of this Section 1.1.3 shall survive the termination of the ENA for the period set forth in Section 1.1.3(b).

1.2. General Insurance Requirements.

1.2.1. For all policies or certificates, the insurer endorsements (or a copy of the policy binder, if applicable) shall identify the ENA in the description section and shall provide evidence that either (a) the primary insured has paid for its premium in full for any policy that is currently in place, or (b) that said insurance shall not be cancelled except if the City is given thirty (30) calendar days advance written notice of any cancellation, except ten (10) day notice shall be provided for cancellation or termination due to non-payment of premium.

1.2.2. All insurance provided under this Section 1 shall be for the benefit of the City Parties and any additional parties that Developer may require. Developer agrees to timely pay, or cause to be paid, all premiums for such Developer's insurance and, at no cost or expense to the City, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Developer agrees to submit all required certificates and endorsements evidencing the insurance required under this Exhibit B to the City prior to its entry onto the Development Parcels. Except as provided in Section 1.2.2.1 below, between seven (7) to thirty (3) calendar days before the expiration of any such policy, certificates and endorsements evidencing renewal policies shall be submitted to the City.

1.2.2.1. In the event that endorsements are not available at the time of initial renewal, the City will accept written confirmation of coverage ordered on behalf of Developer by their agent/broker on agent/broker letterhead, followed by carrier-issued endorsements within ninety (90) calendar days.

1.2.3. If Developer or its contractors or subcontractors or consultants fail or refuse to procure and maintain insurance as required by the ENA, the City shall have the right, at the City's election, to suspend Developer's License to access the Development Parcels.

Exhibit C
Environmental Documents

1. Department of Navy “Final Environmental Baseline Survey” dated March 2001
2. Finding of Suitability to Transfer for Southern Parcels 4-8, 10-12, 14, and 42 and Parcels 25, 26, 30-33, 37, and Portions of 40 and 41 Marine Corps Air Station Tustin, California dated September 28, 2001.
3. Agreement Between The United States of America and The City of Tustin, California for the Conveyance of a Portion of the Former Marine Corps Air Station Tustin dated May 13, 2002
4. Quitclaim Deed D and Environmental Restriction Pursuant to Civil Code Section 1471 dated May 13, 2002
5. Geotechnical Report of Observation and Testing during Rough Grading, “Neighborhood D” Phases I and II, Disposition Area 8, 2C and a Portion of 2B, Tustin Legacy, City of Tustin, California dated September 26, 2014.
6. Final Site Assessment and Soil Removal Action Report Tustin Neighborhood D-South, Areas 1 and 2 Total Petroleum Hydrocarbon Impacts Former Marine Corps Air Station Tustin, Tustin, California dated September 2018.
7. Determination of No Further Action for Petroleum Release at Neighborhood D South at Former Marine Corps Air Station Tustin, Orange County, California dated September 10, 2018.
8. Final Summary Report for Per- and Polyfluoroalkyl Substances Presence/Absence Sampling in Groundwater in Carve-Outs 5 and 6 dated November 2018.
9. Per- and Polyfluoroalkyl Substances (PFAS) Investigation Report Neighborhood D South Former Marine Corps Air Station Tustin dated August 30, 2019.
10. Final Summary Report Additional Assessment of Per and Polyfluoroalkyl Substances in Groundwater in Carve-Outs 2, 5, 6, and 9, and Groundwater and Surface Water Near Operable Unit 3 (Phase 1) Former Marine Corps Air Station Tustin dated June 2020.
11. Final Summary Report Additional Assessment of Per and Polyfluoroalkyl Substances in Groundwater in Carve-Outs 2, 5, 6, and 9, and Groundwater and Surface Water Near Operable Unit 3 (Phase 2) Former Marine Corps Air Station Tustin dated October 2020.
12. Final Fourth CERCLA Five Year Review Report, Operable Units 1A, 1B North, 1B South, 3, and 4B Former Marine Corps Air Station Tustin dated October 2021.
13. Final Preliminary Assessment/Site Inspection Report, Basewide Investigation of Per- and Polyfluoroalkyl Substances, Former Marine Corps Air Station Tustin dated December 2021.
14. Revised Final Preliminary Assessment/Site Inspection Report Basewide Investigation of Per- and Polyfluoroalkyl Substances dated August 2022.

15. Navy North Hangar Fire that began on November 7, 2023. Information and resources can be found at <https://www.tustinca.org/1457/North-Hangar-Fire-Resource-Pag>
16. Final Work Plan Remedial Investigation of Per- and Polyfluoroalkyl Substances dated January 2024.