EXCLUSIVE AGREEMENT TO NEGOTIATE
TUSTIN LEGACY (DISPOSITION PACKAGE 6B)

THIS EXCLUSIVE AGREEMENT TO NEGOTIATE TUSTIN LEGACY (DISPOSITION PACKAGE 6B) ("**Agreement**") is made as of February 21, 2017 (the "**Effective Date**") by and between the **CITY OF TUSTIN** (the "City") and **CALATLANTIC GROUP, INC.**, a Delaware corporation, d/b/a CalAtlantic Homes ("**Developer**"), with respect to certain land referred to herein as the "Property" (defined below). The City and Developer, each sometimes referred to herein as a "**Party**" and collectively as the "**Parties,**" 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 (the "**Final EIS/EIR**") 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. Subsequently, a Supplement to the Final EIR/EIS and an Addendum to the Final EIS/EIR were approved by the City.

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

1.4 On February 3, 2003, the City adopted an ordinance approving the MCAS Tustin Specific Plan/Reuse Plan setting forth the zoning and entitlement framework for future development of Tustin Legacy. Since its initial adoption, the City has approved numerous Specific

Plan Amendments. All references in this Agreement to the "**Specific Plan**" shall be deemed to refer to the MCAS Tustin Specific Plan/Reuse Plan, as the same may be amended from time to time. 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 portions of Tustin Legacy in accordance with applicable federal and local requirements and the City has previously adopted a disposition strategy to address sale, lease and redevelopment of land within Tustin Legacy consistent with all City requirements, including, without limitation, and the Specific Plan.

1.6 Pursuant to its disposition strategy, the City and Developer, formerly known as Standard Pacific Corp., entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Package 1B & 6A dated as of March 11, 2014 as amended, for the purpose of developing a residential for-sale community at Tustin Legacy and pursuant to such agreement, the City previously conveyed approximately 74 acres of land comprised of portions of Disposition Packages 1 and 6, which property is currently being developed as "Greenwood".

1.7 Consistent with the disposition strategy, the City desires to negotiate with Developer for the sale of certain additional property comprising a portion of Disposition Package 6, referred to herein as Disposition Package 6B, located adjacent to the Greenwood community, which is legally described and depicted on the Site Map attached as Exhibit "A" (the "**Property**") and development thereon of the Project (defined below). The Property, which is approximately 14.45 acres, comprises a portion of the land conveyed by the Navy to the City as Parcel I-H-1 in Navy Quitclaim Deed H and a portion of Parcel II-H-9 in Navy Quitclaim Deed II-G-5 and II-H-9, as subsequently reparcelized. The Property is located in Specific Plan Neighborhood G, Planning Area 15 and is referred to in the Navy Reuse Plan as a portion of Parcel 27 and a portion of Carve-Out 8.

1.8 Developer has proposed to develop the Property with approximately 218 for-sale residential units comprised of three products at an average density of approximately 16 dwelling units per gross acre, and with a complete accompanying set of amenities to be constructed by Developer, including approximately two acres of common open space with a portion of such open space to be made accessible to the public pursuant to recorded easement. The proposed development of the Property described above and as further described in this Agreement is referred to herein as the "**Project**".

1.9 The City and Developer desire, for the ENA Negotiating Period (as defined below) set forth herein, 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 and executed will specify the rights, obligations and method of participation of the City and Developer with respect to the sale and development of the Property and the development thereon of the Project.

2. Agreement to Negotiate.

2.1 **Terms and Conditions**. 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 Property shall be conveyed by the City to Developer and developed by Developer.

2.2 **DDA and DA**. Notwithstanding that the terms of the purchase and sale and development of the Property 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.

2.3 **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 Agreement, other than 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 hereby agrees, for the Initial ENA Negotiating Period (as defined in Section 4.2.1), as the same may be extended pursuant to Section 4.2.2 or 4.2.4 or earlier terminated pursuant to Section 4.2.5 or 4.2.6 (the Initial ENA Negotiating Period, as so extended or earlier terminated, the "**ENA Negotiating Period**"), that the City shall not market the Property to other interested parties. Developer hereby agrees that it shall negotiate in good faith with respect to acquisition of the Property during the ENA Negotiating Period and that it shall not withdraw any offer made by it pursuant to Section 4.2.4 during the Offer Period.

2.4 **Essential Terms Not Agreed.** The City and Developer acknowledge that although the Parties have set forth a framework for negotiation of essential terms of any transaction: (a) they have not herein agreed upon essential terms of a transaction, including, e.g., price, terms and timing of transfer of the Property; (b) they do not intend this Agreement to be a statement of essential terms of the transaction, which shall be the subject matter of their further negotiations; and (c) the essential terms of the transaction, if agreed to by the City and Developer, shall be set forth, if at all, in a DDA and DA approved and executed by authorized representatives of each of the City and Developer

2.5 **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 authorized representatives 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 Tustin City Code or the provisions of any applicable State or Federal law or regulation.

2.6 **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 Agreement 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.

2.7 **Assumption of Risk.** The 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 of the transaction. 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 Property as contemplated by this Agreement;

3.2 **No Speculation in Land Holding**. Developer's intended acquisition of the Property and acquisition and its other intended undertakings pursuant to this Agreement shall be used for the timely development of the Property, 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 make development projects such as the Project described herein; and

3.4 **Long-Term Development Financing**. Developer is capable of providing financing for the development of the Property without the necessity of third party financing.

3.5 **Release**. Except as specifically set forth in Section 4.4, Developer hereby waives the right to recover from and fully and irrevocably releases the City and its elected and appointed officials, employees, agents, representatives, attorneys, affiliates, consultants, contractors, successors and assigns (the "**City Parties**") with respect to any and all Claims that Developer or its officers, directors, employees, agents, representatives, tenants, prospective tenants, consultants or contractors may now or hereafter have or incur relating to or arising from: (a) the process by which Developer was selected or any modification or defect thereto, or any information set forth therein, (b) the terms of this Agreement including, without limitation, the information set forth herein or the termination hereof in accordance with the provisions herein, (c) the breach by the City of its obligations under this Agreement, (d) the failure of the Parties or either of them to agree upon the Essential Terms or the terms of the DDA or the DA or any other document, (e) any disputes, Claims, actions, causes of action, demands or orders arising between Developer and any third parties, and/or (f) 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, judgment with respect to the foregoing). This waiver and release includes, without limitation, a waiver and release with respect to (1) 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, (2) any right to payment or reimbursement from the City except as expressly set forth in this Agreement, (3) the right to protest the terms of this ENA or the selection, or revocation of the selection of Developer for exclusive negotiations with respect to the Property, including by termination of the ENA, and (4) except as set forth in Section 4.4, the failure of the City to negotiate in good faith pursuant to this Agreement or to enter into a DDA and/or DA.

The term "**Claim**" or "**Claims**" as used in this Agreement shall mean any and all claims, actions, causes of action, demands, orders, or other means of seeking or recovering losses, damages, liabilities, costs, expenses (including, without limitation, attorneys' fees, fees of expert witnesses, consultant fees and court, arbitration and litigation costs), costs and expenses attributable to compliance with judicial and regulatory orders and requirements, fines, penalties, liens, taxes or any other type of compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen.

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

4. Negotiations.

4.1 **Good Faith Negotiations**. The City will prepare a draft of the DDA and DA and submit the draft documents to Developer for review and comment. The City and Developer agree for the ENA Negotiating Period to exclusively negotiate with one another diligently and in good faith to prepare a DDA and a DA and related documents to be entered into between the City and Developer with respect to the purchase and sale and development of the Property.

4.2 **Period of Negotiations; Offer Period; Termination of Agreement**.

4.2.1 Initial Period. The Parties agree to negotiate for a period of eight (8) months from the Effective Date (the "**Initial ENA Negotiating Period**"), subject to extensions as further provided in this Section 4.2. If at the expiration of the Initial ENA Negotiating Period (or within any extension of time mutually approved by the City and Developer in accordance with the terms of the Agreement), Developer has not signed a DDA and DA in form and substance prepared and approved by the City in its sole discretion, then this Agreement shall automatically terminate.

4.2.2 Request for Extension. Developer may request from the City an extension of the ENA Negotiating Period. The City will determine whether reasonable and sufficient progress has been made toward fulfillment of the requirements of this Agreement in its consideration of any 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 sixty (60) days each. Any further consent of the City to extend the ENA shall require the approval of the City Council.

4.2.3 Authority to Extend. The City hereby delegates to the City Manager, or his or her designated representative, the authority to agree to grant the extensions specified in Section 4.2.2 upon determination by the City Manager or his or her designated representative 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.

4.2.4 Offer to Purchase. The execution by Developer of a form DDA and DA and submittal of same to the City shall constitute an offer to purchase the Property. Developer hereby agrees that it shall not withdraw such offer to purchase for a period of sixty (60) days following submittal of the executed DDA and DA to the City. Such offer shall remain in effect for a period of sixty (60) days to enable the City to (a) determine whether it desires to enter into such a DDA and DA; (b) take the actions necessary to authorize the City to sign the DDA and DA if the City desires to do so; and (c) sign the DDA and DA. If the City has not considered and approved the DDA and DA by such 60th day or, at the end of any extension mutually agreed upon by the City and Developer in writing, then this Agreement shall automatically terminate.

4.2.5 Rights of the Parties to Earlier Terminate Agreement for Breach. Developer may terminate this Agreement and the ENA Negotiating Period upon provision of seven (7) days' prior written notice to the City alleging breach of Section 4.4 by the City, and the City may terminate this Agreement upon provision of seven (7) days' prior written notice to Developer alleging breach by Developer of any provision of this Agreement.

4.2.6 Rights of the Parties to Earlier Terminate Due to Infeasibility or Non-Economic Transaction. Either Party may terminate this Agreement and the ENA Negotiating Period upon provision of seven (7) days' prior written notice to the other Party if during the course of negotiations, either Party determines in good faith that based on the terms offered by the other, that it is unlikely to reach agreement on the terms of the DDA and/or the DA or determines that the terms offered by the other Party do not meet its economic requirements.

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 Twenty Five Thousand Dollars ($125,000) (the "**ENA Deposit**") in the form of a check to the City to ensure that Developer will proceed diligently and in good faith to negotiate and perform all of Developer obligations under this Agreement and to also be applied to cover any City Transaction Expenses (defined below) incurred by the City after the Effective Date of this Agreement. The ENA Deposit shall be deposited in an account in a bank or trust company selected by the City. Interest shall accrue to any balances in the account for the benefit of Developer and as additional security for Developer's obligations hereunder. The City shall have the right to expend the ENA Deposit to pay the City Transaction Expenses, 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 the City which shall be credited by the City to the ENA Deposit account.

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, third party consultants, outside counsel, and any other expenditures incurred by the City in connection with the drafting, negotiation and execution of this Agreement, the DDA and the DA and all other documents required thereby or related thereto, compliance with the terms

of this Agreement and/or the termination of this Agreement, including any and all third party fees and costs incurred by the City for legal counsel, financial, appraisal 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, which shall be paid by Developer to the City in accordance with the City's normal processing fee requirements. 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 the City.

4.3.3 Return of Deposit Under Specified Conditions.

(a) If the Parties enter into a DDA within the ENA Negotiating Period, 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.

(b) If the Parties fail to enter into the DDA within the ENA Negotiating Period or this Agreement is earlier terminated as provided herein, the City may retain any remaining unused portions of the ENA Deposit (after deducting therefrom the City Transaction Expenses incurred by the City to the date of termination of this Agreement) only if Developer has not negotiated diligently or in good faith or has not carried out its obligations under this Agreement and the City has negotiated diligently and in good faith as described in Section 4.4. Developer's failure to submit to the City plans, reports, studies, investigations, applications and materials specified in Section 5 and Section 6 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 ENA Deposit plus interest, if any, which has accrued thereon, as liquidated and agreed damages.

(c) If this Agreement terminates and Developer has negotiated in good faith and materially complied with the terms of this Agreement and no breach by Developer is alleged, the City shall return the ENA Deposit to Developer, provided that the City shall be entitled to retain from the ENA Deposit all City Transaction Expenses incurred by the City to the termination date of this ENA.

4.3.4 Not Sole Remedy of City. Subject to Section 10.6, by the initials of their respective signatories hereunder, the City and Developer acknowledge and agree that forfeiture of the amount of the ENA Deposit by Developer (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).

CITY'S INITIALS 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 Agreement, the compliance by Developer with its obligations under this Agreement, the termination of this Agreement or any other matters unless the City assumes any specific responsibilities in the fully executed DDA. Costs and expenses for which Developer shall be responsible include, without limitation, all City Transaction Expenses and all costs and expenses incurred by Developer prior to or following execution of this Agreement with respect to the Project, the Property, compliance with the terms of this Agreement, the drafting, negotiation and execution of the DDA and the DA and all other documents required thereby or related thereto and any and all third party fees and costs incurred by Developer for legal counsel, financial, appraisal and other consultants in connection therewith and all fees or deposits required of Developer for processing entitlement applications, pursuing entitlements and complying with provisions of the CEQA implementing regulations.

4.3.7 Payment of Outstanding Amounts. To the extent that the ENA Deposit or other funds provided by Developer to pay City Transaction Expenses are not sufficient to pay all City Transaction Expenses, Developer shall promptly upon termination of this Agreement fund the amount remaining unpaid to the City, which amounts shall be refunded by the City to Developer only upon a determination pursuant to Section 4.4 that the City has failed to negotiate in good faith with respect to this Agreement.

4.3.8 Staff Costs Deposit. In addition to the ENA Deposit, Developer shall deposit with the City the amount of Twenty Five Thousand Dollars ($25,000) (the "**Staff Costs Deposit**") to offset City staff costs related to Project activities during the Initial ENA Negotiating Period ("**Staff Costs**"). The City shall keep a separate accounting of amounts expended for Staff Costs. The Staff Costs Deposit will be expended to cover the City's Staff Costs during the Initial ENA Negotiating Period, and the Staff Costs Deposit will be depleted accordingly. The Staff Costs Deposit is not required to be replenished by Developer unless otherwise agreed in writing by the City and Developer, each in its sole discretion; provided however, that City reserves the right not to extend the ENA Negotiating Period unless there is sufficient funding in the existing Staff Cost Deposit and/or an additional Staff Cost Deposit made by Developer to pay anticipated Staff Costs during the period of any extension. If the Parties fail to enter into a DDA and DA within the ENA Negotiating Period, funds remaining and not allocated by the City to Staff Costs during the term of this Agreement shall be returned to the Developer upon termination of this Agreement. If the

Parties enter into a DDA within the ENA Negotiating Period, funds remaining and not allocated by the City to Staff Costs during the term of this Agreement and the DDA shall, at the discretion of the City, be applied to Staff Costs during the term of the DDA. The Staff Costs Deposit shall be deposited in an account in a bank or trust account selected by the City. Interest shall accrue to any balances in the account for the benefit of Developer and as additional security for Developer's obligations hereunder.

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

4.4 **Exclusivity; Good Faith Negotiations**. During the ENA Negotiating Period, 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 Property or any portion thereof. The City acknowledges and agrees that but for this exclusivity, Developer would not have entered into this Agreement. 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 Agreement, Developer's sole remedy shall be the termination of this Agreement and the return of the good faith deposit (together with interest accrued thereon) and any other deposits made by Developer pursuant to this Agreement.

4.5 **Inspection; License**.

4.5.1 Access License. The City hereby grants to Developer, for use by Developer and its employees, representatives, agents, contractors and consultants (collectively, the "**Developer Parties**"), a license during the term of this Agreement to enter upon the Property 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 Property; (c) access the Property in a safe manner; (d) conduct invasive testing or boring only after obtaining the written consent of the City to a work plan for such testing, which consent shall not be unreasonably withheld; (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 Property, 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 this Agreement or the ENA Negotiating Period.

4.5.2 Insurance. Developer shall obtain, or cause the Developer Parties, with respect to their access and investigative activities, to obtain, at Developer's sole cost and expense (a) prior to commencement of any investigative activities on the Property, a policy of commercial

general liability insurance covering any and all liability of Developer and the City, the Tustin Finance Authority and the Successor Agency to the Tustin Community Redevelopment Agency, arising out of Developer's investigative activities, in an amount of $2,000,000 per claim and in the aggregate and issued by a company authorized by the Insurance Department of the State of California and rated A, VII or better (if an admitted carrier) or A-, X (if offered, by a surplus line broker), by the latest edition of Best's Key Rating Guide and (b) prior to commencement of any invasive testing or boring on the Property, shall cause each of the Developer Parties carrying out such testing and/or boring to obtain a policy of professional liability insurance and a pollution legal liability (PLL) policy, in each case in an amount of $2,000,0000 per claim and in the aggregate. Such policy of insurance shall name "the City of Tustin, the Tustin Finance Authority and the Successor Agency to the Tustin Community Redevelopment Agency, and their respective elected and appointed officials, agents, representatives and employees" as additional insureds on the policy. Developer shall provide certificates of insurance and insurer endorsements (or a copy of the signed policy binder, if applicable), signed by a representative of the carrier evidencing the required insurance. In addition, Developer shall cause its consultants entering onto the Property to maintain commercial general liability insurance in an amount of at least $1,000,000. Such policies of insurance shall be kept and maintained in force during the term of this Agreement and so long thereafter as necessary to cover any Claims or damages by persons or property resulting from any acts or omissions of Developer and/or the Developer Parties.

4.5.3 Indemnity. Developer hereby agrees to indemnify, defend protect and hold the City and its elected officials, employees, agents, representatives, consultants and contractors free and harmless from and against any and all Claims arising in connection with or resulting from Developer's or the Developer Parties' access to the Property or its exercise of its rights hereunder, including, without limitation, any inspections, surveys, tests or studies performed by Developer or the Developer Parties, 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 Property free and clear of any mechanics' liens or materialmen's liens related to Developer's inspection of the Property. The indemnification by Developer set forth in this Section 4.5.3 shall survive the termination of this Agreement and the execution of the DDA and the closing and transfer to Developer and shall 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 Property consistent with the MCAS Tustin Reuse Plan, the General Plan, and the Specific Plan.

5.2 **Terms of DDA to be Negotiated**. Developer and the City agree that it is their intent, upon entry into this Agreement, to negotiate a DDA which is anticipated to address the following terms and conditions and such other terms and conditions as they may agree, and which will be binding upon the City and Developer and, to the extent provided therein, their successors and assigns.

5.2.1 Essential Terms. Developer shall acquire the Property from the City in one phase unless otherwise agreed by the Parties in the DDA. The terms and conditions of the conveyances, including, but not limited to, the manner of the conveyance, 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, provided that Developer acknowledges and agrees that the purchase price for the Property shall be consistent with the overall site plan attached to the Agreement as Exhibit "B" and with the Project proforma to be submitted by Developer to the City in accordance with the requirements of Section 6.6.2.

5.2.2 As-Is Conveyance. While Developer should undertake its own investigation to determine the presence of hazardous materials and suitability of the Property for development, Developer acknowledges and agrees that if the Property is conveyed by the City pursuant to a DDA, the Property shall be conveyed on an "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 Property and the condition of the Property, including any and all land use, soil and environmental conditions of the Property.

5.2.3 Development. Developer shall design and construct the Project on the Property 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. Developer understands and acknowledges that the product mix proposed for the Project will be subject to approval by the City, in its governmental capacity, and any necessary City entitlement approvals requested to carry out development of the Project on the Property. The actual number of units will be based on compliance with development standards in the Specific Plan and any requirements contained in the DDA.

5.2.5 Tustin Legacy Backbone Infrastructure Program Costs. In connection with development of the Property, Developer shall make a Fair Share Contribution to the Tustin Legacy Backbone Infrastructure Program based on the allocations to the Property in the City's Tustin Legacy Backbone Financing Program – 2011, as the same may be amended from time to time ("**Program**"). The City is in the process of amending the Specific Plan and following adoption of the amendments to the Specific Plan, if any, intends to update the Program to conform it to the amended Specific Plan. Pursuant to the current Program, the fair share contribution allocated to the Property is Thirteen Million Three Hundred Ten Thousand Nine Hundred and Sixty Four Dollars ($13,310,964), but that amount is likely to change upward or downward with the update of the Program by the City ("**Project Fair Share Contribution**"). The DDA shall address the timing of payment of the Project Fair Share Contribution by Developer to the City.

5.2.6 Community Facilities District (CFD). The DDA shall provide for imposition of a CFD for the Tax A approach used within the Tustin Legacy Project, with CFD proceeds flowing solely to the City. Developer acknowledges and agrees (a) that the DDA shall provide for creation and imposition of the CFD, (b) that its development plan will not require use of CFD proceeds, and (c) that CFD proceeds will not be used to reimburse Developer for its Fair Share Obligation or Project specific infrastructure costs. Developer acknowledges that a CFD, including Tax B, has been adopted and affects the Property and further, Developer agrees that it

shall affirmatively support and shall cooperate with the City in formation by the City of a CFD imposing Tax A upon the Property.

5.2.7 Construction of In-Tract and Off-Site Infrastructure. Other than as provided in the DDA, Developer will be responsible for all costs of any necessary in-tract improvements and other off-site improvements identified by the City in the DDA, the DA or the Project entitlements. The off-site infrastructure work may include modifications to sidewalks, curb and parking on perimeter streets and will be further defined and described as the planning effort for the Project evolves.

5.2.8 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 application under the Tustin City Code modifications to development standards are granted by the City.

5.2.9 Project Costs. Project costs and revenues will be separately analyzed and funding of all Project costs will be the responsibility of Developer, as applicable.

5.2.10 Development Fees. In connection with its development of the Property, Developer acknowledges that the Property will be subject to applicable development fees, including, but not limited to, those required by the City or other jurisdictions such as the Foothill/Eastern Corridor Fee, the Santa Ana/Tustin Transportation System Improvement Area (TSIA) fee, school impact fees and school facility bonds by the Tustin Unified School District ("**TUSD**"), utility meter and connection fees.

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.

5.2.14 Channel Improvements. The City is a party to that certain Joint Cooperation Agreement with OCFCD dated March 11, 2003, as amended, relating to improvements to Peters Canyon Channel, which provides that no more than 1,200 residential units within the former master developer footprint of Tustin Legacy that drains to Peter's Canyon Channel may be occupied prior to commencement of additional improvements to Peter's Canyon Channel. Developer acknowledges and agrees that the DDA, the DA and/or the entitlements shall provide that from and after issuance of the 67th building permit for residential units at the Property, the City shall have issued 1,200 residential permits and, accordingly, the City shall be unable to issue

building permits for further residential units until the following has occurred: (a) a contract has been let by the City for the Channel Improvements, and (b) construction of the Channel Improvements have commenced (collectively, the "**Initial Channel Condition**"). Developer acknowledges that the City has previously granted rights to develop 1,133 residential units to other developers within Tustin Legacy that are not restricted by this requirement and nothing herein shall restrict the rights of developers under agreements previously entered into by the City, from constructing residential units.

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**. Developer shall, within ten (10) days following the Effective Date, submit in writing to the City full disclosure of the names of Developer's agents, authorized negotiators, professional employees or 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.

6.3 **Financial Status**. Developer shall continue to be responsible for demonstrating to the City Developer's financial capacity and capability to perform its obligations under this Agreement and the proposed DDA. Developer shall submit any additional financial information required to demonstrate Developer's, and any guarantor's, financial capacity and capability to perform its obligations under this Agreement and the proposed DDA as requested by the City within fifteen (15) days of a request. 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. If confidentiality is requested and if nondisclosure under the Public Records Act is allowed, the documents shall be delivered to and maintained by the City and copies shall not be disseminated. To the extent permitted by law, the City shall not make public disclosure of the documents. 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. 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**. If Developer determines to joint venture or partner development of the Property, or if Developer determines to form a new legal entity to develop the Property, 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 necessary expertise, experience and financial capability to undertake development of the Property as contemplated by this Agreement, to perform under this Agreement and the proposed DA and that

the proposed Developer has identified a guarantor that will have the financial capacity to guaranty Developer's obligations under the DDA and the DA.

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 Property. Developer has conceptually proposed to develop the Property in accordance with the Site Plan attached as Exhibit B. Developer and the proposed architect and engineer 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 twenty (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 and Other Required Deliverables**. Within sixty (60) days after the Effective Date, Developer shall submit the following in the business plan format and schedule format requested by the City:

(a) revised overall cost and revenue estimates;

(b) 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 Property;

(c) an updated comprehensive Project proforma demonstrating the feasibility of the Project, including a Static Analysis and a Cash Flow Analysis by quarter, that shall reflect any comments the City provides to Developer on the preliminary site plan;

(d) a Project schedule for land takedown and construction.

The financial proformas 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 Property 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 ENA Negotiating Period, Developer shall make no statements to the media about the proposed Project without the approval of the City Manager or his or her designated representative. 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 Property. 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 on the Property. All Plans shall be prepared at Developer's sole cost and expense. Plans prepared by Developer's surveyor, geotechnical consultant(s) and hazardous materials consultant(s) shall be certified in favor of the City and Developer. If this Agreement is terminated for any reason other than a material breach or default hereunder by the City, the City may request that Developer, for consideration to be mutually agreed, transfer Developer's rights to any or all Plans identified by the City (provided that Developer will not be required to assign its contracts with its consultants), but in no event shall the cost to the City exceed five hundred dollars ($500.00). Developer has informed the City that Developer's contracts with its engineers and consultants are master consulting agreements that apply to more than one project and therefore, such contracts are not assignable to the City. Therefore, in order to assure that the City shall be able to acquire Developer's interest in the Plans, the City and Developer agree as follows:

(a) All agreements with consultants and/or engineers shall state that either (i) such work product is assignable, to the extent such work product is owned by the applicable consultant or engineer (ii) Developer is the owner of the work product.

(b) Upon request from the City in connection with or following termination of this Agreement, Developer shall deliver to the City copies of all Plans requested by the City together with a bill of sale executed by Developer pursuant to which Developer shall convey to the City all right, title and interest of Developer in and to the Plans requested by the City, and such Plans shall be free of all claims or interests of Developer or any liens or encumbrances, provided that Developer makes no representations, warrantee or guarantee regarding the right to use such Plans or the completeness or accuracy of the Plans, and Developer does not covenant to convey the copyright or other ownership rights of third parties thereto.

(c) 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 Property only; provided, however, that (i) if the City desires to re-use the Plans, such Plans shall not identify Developer or, unless the City has separately contracted with the consultant or engineer preparing the Plans, the preparing consultant or engineer, as the source of the Plans, (ii) Developer shall have no liability whatsoever to the City or any transferee of the City holding title to the Plans in connection with the use of the Plans, and (iii) except with respect to Plans that are certified to the City, the City shall indemnify, defend and

hold Developer and its consultants harmless from any and all Claims arising or resulting from the City's re-use of the Plans or any revision or alteration of the Plans.

6.9.3 Hazardous Materials Assessment. Developer acknowledges that, in accordance with the City of Tustin's acquisition of the Property from the Department of the Navy by quitclaim, the Navy found and determined that (a) there was no contamination on the portion of the Property comprised of a portion of Navy Reuse Parcel 27, later conveyed as a portion of Parcel I-H-1 under Navy Quitclaim Deed H, and issued a Finding of Suitability for Transfer ("**FOST**") dated April 22, 2002, and (b) there was no contamination on the portion of the Property comprised of a portion of Carve-Out 8, later conveyed as a portion of Parcel II-H-9 under Navy Quitclaim Deed II-G-5 and II-H-9, and issued a FOST dated December 17, 2002 (collectively, the "**FOSTs**"). 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's quitclaim deeds.

6.9.4 Insurance. 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 as identified in Exhibit C attached hereto.

7. Developer.

7.1 **Nature of Developer**. Developer will be CalAtlantic Group, Inc. or such other business entity (such as a limited liability corporation) as the City may approve for this transaction in its sole discretion, upon such terms and conditions as the City may request and the City and Developer may agree, as specified in the DDA and DA. Should another business entity be desired by Developer, subject to approval of the City, 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 articles of incorporation, statement of information and operating agreement). Should the business entity desired by Developer be an entity other than CalAtlantic Group, Inc., Developer acknowledges and agrees that the financial capacity of such entity shall be of critical importance to the City. Accordingly, the City shall have the right (a) to review and approve the entity and its owners, including the financial capacity of each of the foregoing and (b) to require, as a condition to execution of the DDA and to close of escrow for the Property, security for performance of the obligations of such entity to be provided by CalAtlantic Group, Inc. or another entity with assets meeting the requirements of the City and sufficient, in the determination of the City in its sole discretion, to secure the development, construction and maintenance obligations of Developer under the DDA and the DA. The foregoing security shall be provided by a completion guaranty provided by such approved entity in a form acceptable to the City in its sole discretion or by other instrument approved by the City in its sole discretion, as further described in the DDA. In no event shall Developer propose as Developer a business entity that is not Controlled by or under common Control with CalAtlantic Group, Inc. For purposes of this Agreement the term "**Control**" "**Controlled**" or "**Controlling**", as used with respect to any person or entity, shall mean the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies of such Person, including through the

direct or cause the direction of the management and policies of such Person, including through the ownership or control of voting securities, partnership interests, membership interests, or other equity interests, acting as the manager of a limited liability company, or otherwise.

7.2 **Offices of Developer.** The principal offices of Developer are located at 15360 Barranca Parkway, Irvine, California, 92618. The principals of Developer are as follows:

Elliot Mann, President, Southern California Coastal
Michael C. Battaglia, Vice President Project Development
Gary Jones, Vice President, Land Acquisition

7.3 **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, as may be requested by the City from time to time. Developer agrees to substitute or supplement any of its consultants and professionals as reasonably requested by the City.

8. 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, if requested, shall be submitted to the City or its consultant as requested by the City for the purposes of this Agreement.

8.2 **Equity**. Developer proposes to obtain its equity capital for development of the Property from in-house financing.

8.3 **Construction Financing**. Developer proposes to finance Project costs for development of the Property with 100% equity.

8.4 **Long-Term Development Financing**. Developer is capable of providing financing for the development of the Property without the necessity of third party financing.

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**. A final Environmental Impact Statement/Environmental Impact Report ("**EIS/EIR**") has been prepared and certified for the MCAS Tustin Reuse Plan. 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 additional environmental documents, 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**. 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 Property and/or development of the Project on the Property; provided, however, that the City makes no representations, warrantee or guarantee regarding the completeness or accuracy of such plans, reports, studies, investigations and other materials.

9.4 **FOSTs**. The City agrees to provide a copy of the FOSTs to Developer within ten (10) days following the Effective Date.

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 Agreement

10.2 **Real Estate Commissions**. The City shall not be liable for any real estate commission, finder's fee or any broker's fees which may arise from this Agreement. Developer represents that it has not engaged any broker, agent, or finder in connection with this Agreement and Developer agrees to hold the City and its representatives harmless from any and all Claims arising from or in any way related to any claim by any broker, agent, or finder retained by Developer regarding this Agreement or the sale or development of the Property or any portion thereof. The provisions of this Section 10.2 shall survive the termination of this Agreement.

10.3 **No City Duty**. Except as expressly provided above in Sections 4.3.3 and 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 member, official, 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 Agreement.

10.5 **Entire Agreement**. This Agreement 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 Agreement 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.

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 Property, 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 Property.

10.8 **Notices/Submittals**. All notices or submittals required or permitted hereunder shall be delivered in person, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested to such party at its address shown below, or to any other place designated in writing by such party.

City:

John Buchanan,
Director of Economic Development
City of Tustin
300 Centennial Way
Tustin, CA 92780

Jeffrey C. Parker, City Manager
City of Tustin
300 Centennial Way
Tustin, CA 92780

Developer:

Elliot Mann
President, Southern California Coastal Division
CalAtlantic Group, Inc.
15360 Barranca Parkway
Irvine, CA 92618

Any such notice or submittal shall be deemed received upon delivery, if delivered personally; one (1) day after delivery to the courier, if delivered by courier; and three (3) days after deposit into the United States mail if delivered by registered or certified mail.

10.9 **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 Agreement 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 Agreement.

10.10 **No Third Party Beneficiaries**. Execution of this Agreement 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.

10.11 **Effect of Disposition and Development Agreement**. Following mutual execution by the City and Developer of a DDA and DA, this Agreement 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 Sections 3.5, the indemnities set forth in Section 4.5.3 and Section 10.2, and the confidentiality provisions of and Section 10.13 shall remain in effect with respect to Claims arising or accruing during the term of this Agreement. In the event of any conflict between the provisions of this Agreement and any DDA or DA approved by the City and Developer, the provisions of the DDA and DA shall for all purposes prevail.

10.12 **Confidentiality**. The City and Developer represent and warrant that each shall keep this Agreement and all information and/or reports obtained from the other, or related to or connected with the Property, the other parties, this Agreement, 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 parties, 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 Developer's 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. Notwithstanding the foregoing, (i) information which is or becomes in the public domain, or which is required by any law, rule or regulation to be disclosed shall not be considered confidential, and (ii) this Agreement, the draft DDA and DA and all other material relating to this Agreement are subject to the provisions of the California Public Records Act (Government Code Section 6250 et seq.). The City's use and disclosure of its agreements and records are governed by this Act. The provisions of this Section shall survive the termination of this Agreement.

10.13 **Governing Law/Exclusive Venue**. The Agreement 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.

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

10.15 **Days; Performance of Acts on Business Days**. Unless otherwise specifically set forth herein, all references to "days" in this Agreement shall mean and refer to calendar days, provided that, in the event that the final date for payment of any amount or performance of any act

under this Agreement 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 City Hall is open.

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

"CITY"

CITY OF TUSTIN

Dated: 2/21/17

By: _____
Jeffrey C. Parker
City Manager

APPROVED AS TO FORM

By: _____
David Kendig
City Attorney

Dated: 2/21/17

"DEVELOPER"

CALATLANTIC GROUP, INC,
a Delaware corporation

Dated: 2/21/17

By: _____
Ted McKibbin
Regional President

By: _____
Elliot Mann,
President, Southern California Coastal Division

Exhibit A

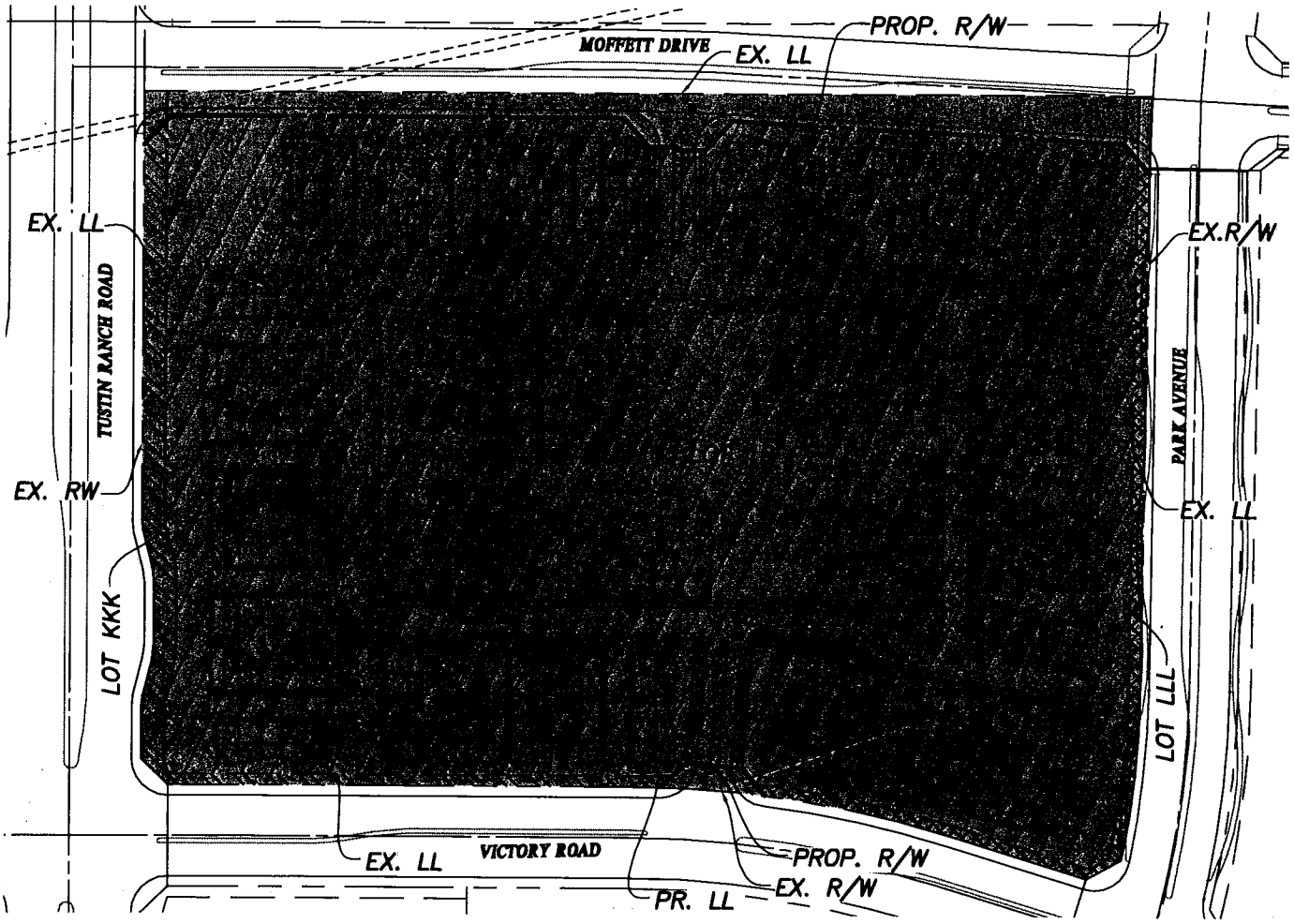
Property Legal Description and Site Map

A portion of lots 19, KKK, and LLL of Tract No. 17404 in the City of Tustin, County of Orange, as per map filed in Book 907, Pages 6 through 42, inclusive, of Miscellaneous Maps, in the office of the County Recorder of said county.

Exhibit "A"

TR 17404

Portions of Lot 19, Lot "KKK" and Lot "LLL"



LEGEND

- EXISTING LOT LINE
- PROPOSED LOT LINE
- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- EXISTING IRWD EASEMENT

NOTE:
THIS DEPICTION IS FOR ILLUSTRATION PURPOSES ONLY AND ACTUAL AS-BUILT CONDITION WILL CONTROL.

GROSS ACREAGE		
	LOT	ACREAGE
	19	14.477
	"LLL"	0.298
	"KKK"	0.437
	TOTAL:	15.212

NET ACREAGE		
	LOT	ACREAGE
	19	13.754
	"LLL"	0.276
	"KKK"	0.422
	TOTAL:	14.452

NOT TO SCALE

PREPARED BY:

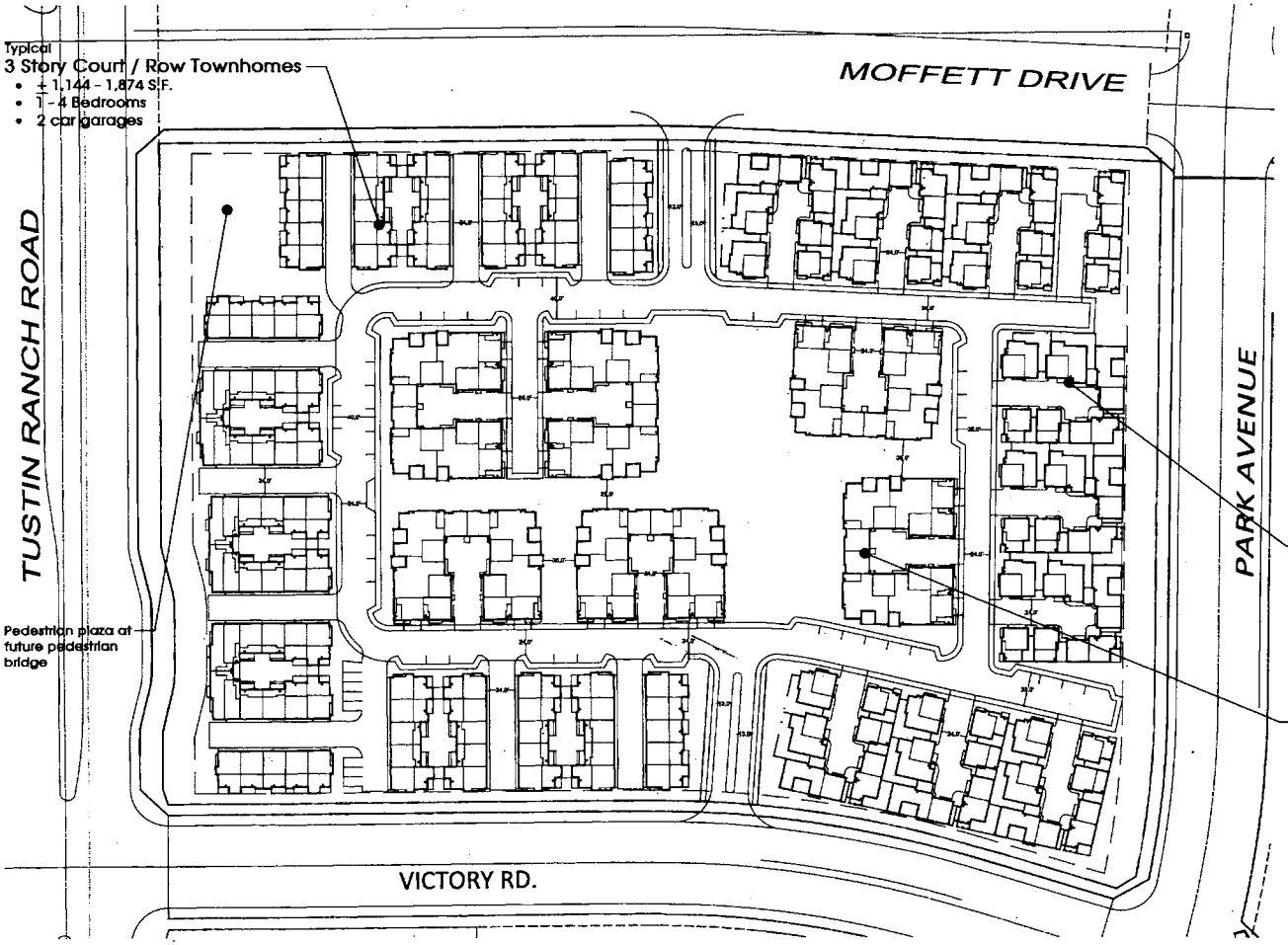
HUNSAKER & ASSOCIATES
IRVINE, INC.
PLANNING • ENGINEERING • SURVEYING
Three Hughes • Irvine, CA 92618 • PH: (949) 583-1010 • FX: (949) 583-0759

F:\0022\Engineering\Tr_17404\Exh_General\Exh_Lot 19 Acreage Depiction.dwg

Exhibit B

Site Plan Attached

EXHIBIT B



Project Summary

Gross Site Area: ± 14.5 Acres
Net Site Area: ± 13.65 Acres

Total Units: 218 Homes
- (57) 2/3 Story SFD Cluster
- (101) 3 Story Court / Row Townhomes
- (60) 3 Story Motorcourt Flats

Net Density: 15.97 Homes per Acre

Parking:
Required: 491 Spaces (2.25 spaces per home)
- (218) 2+ Bedroom x 2.0 = 436 Spaces
- (218) Guest x 0.25 = 54.5 Spaces

Provided: 491 Spaces (2.25 spaces per home)
- Garage: 436 Spaces
- Head In: 8 Spaces (9' x 18')
- Parallel: 47 Spaces (9' x 22')

Common Open Space:
Required: 87,200 S.F. Total
- (218) Homes x 400 S.F. = 87,200 S.F.

Provided: ± 88,482 S.F. Total

Typical
2/3 Story SFD Cluster
- ± 1,520 - 2,328 S.F.
- 2 - 4 Bedrooms
- 2 car garages

Typical
3 Story Motorcourt Flats
- ± 1,481 - 2,494 S.F.
- 2 - 3 Bedrooms
- 2 car garages

Notes:

1. Site plan is for conceptual purposes only.
2. Site plan must be reviewed by planning, building, and fire departments for code compliance.
3. Base information per civil engineer.
4. Civil engineer to verify all setbacks and grading information.
5. Building footprints might change due to the final design elevation style.
6. Open space area is subject to change due to the balcony design of the elevation.
7. Building setbacks are measured from property lines to building foundation lines.

Conceptual Site Plan

0 25 50 100

Lot 19

Tustin, CA

CalAtlantic

WILLIAM HEZMALHALCH
ARCHITECTS INC.
2850 REDHILL AVENUE SUITE 200 SANTA ANA, CA 92705-5665
949 250 0607 www.whainc.com fax 949 250 1525

2015290 January 9, 2017

Exhibit C
DDA Insurance Requirements

1. **Insurance**.

1.1. Required Insurance.

Without limiting the City's rights to indemnification, Developer shall procure and maintain, at its own cost and expense, and furnish or cause to be furnished to the City, evidence of the following policies of insurance (complying with the requirements set forth below) naming Developer as insured and, with respect to the general liability and environmental liability insurance required pursuant to Sections 1.1.1 and 1.1.4 only, the City and the Successor Agency to the Tustin Community Redevelopment Agency as additional insured. All insurance required below shall be kept in force with respect to each such component of the Property, the Project and/or the improvements until issuance of a final Certificate of Compliance by the City with respect thereto or for such longer period as is described below.

1.1.1. **Liability Insurance**. Commencing upon the effective date of the DDA, Developer shall maintain or cause to be maintained commercial general liability insurance, 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 Property, the Project and/or the improvements and the business of Developer on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Developer or anyone directly or indirectly employed or contracted with or acting for Developer, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any Person occurring on or about the Property, the Project and/or the improvements or related to the Project and the business of Developer on the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Developer or any Person acting for Developer, or under its control or direction. Such insurance shall also provide for and protect the City against incurring any legal cost in defending Claims for alleged loss. Such insurance shall be maintained in full force and effect until issuance of the Certificate of Compliance and so long thereafter as necessary to cover any Claims of damages suffered by persons or property prior to issuance of the Certificate of Compliance, resulting from any acts or omissions of Developer, Developer's employees, agents, contractors, suppliers, consultants or other related parties. The amount of insurance required hereunder shall include comprehensive general liability and personal injury with limits of at least Five Million Dollars ($5,000,000.00) and automobile liability with limits of at least Two Million Dollars ($2,000,000.00) combined single limit per occurrence. The insurance shall be issued by a company permitted by the Insurance Department of the State and rated A-/VII or better (if an admitted carrier) or A-/X (if offered by a surplus line broker), by the latest edition of Best's Key Rating Guide. Such insurance may be provided by an umbrella insurance policy otherwise meeting the requirements of this Section 1.

An Accord certificate evidencing the foregoing and providing the following endorsements signed by the authorized representative of the underwriter and approved by the City shall be delivered within seven (7) Business Days following the Effective Date and annually (upon request from the City) evidencing renewals of each policy until issuance of a Certificate of Compliance for the

Project. The endorsements shall provide as follows: (a) designate "the City of Tustin, the Tustin Finance Authority and the Successor Agency to the Tustin Community Redevelopment Agency, and their respective elected and appointed officials, agents, representatives and employees" as additional insureds on the commercial general liability policies; (b) the commercial general liability insurance coverage shall be primary, and not contribute with any insurance or self-insurance maintained by the City; and (c) a waiver of subrogation for the benefit of the City. The procuring of such insurance and the delivery of policies, certificates or endorsements evidencing the same shall not be construed as a limitation of Developer's obligation to indemnify the City Indemnified Parties as set forth herein.

1.1.2. **Workers' Compensation Insurance**. Commencing upon the effective date of the DDA, 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 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. Developer shall also furnish (or cause to be furnished) to the City evidence satisfactory to the City that any contractor with whom it has contracted for performance of work on the Property or otherwise pursuant to the DDA carries workers' compensation insurance required by law. The insurance policy, and each renewal or replacement thereof, by endorsement approved by an authorized representative of the underwriter, shall contain a waiver of subrogation against the City, and its council members, officers, employees, attorneys and agents. The insurance provided for under this Section 1.1.2 shall be issued by a company rated B-/VIII or better or by the State Compensation Fund.

1.1.3. **Builder's Risk Insurance**. Commencing upon the commencement of construction by Developer of any improvements and continuing until such time as the City delivers a final Certificate of Compliance, Developer shall obtain, or shall cause its contractor to obtain, and thereafter maintain a builder's risk policy with respect to such improvements or maintain comparable coverage through a property policy. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Building(s) and improvements. The insurance provided for under this Section 1.1.3 shall be provided by insurer(s) permitted to do business in the State and with a Best's rating of B/NR or better.

1.1.4. **Environmental Insurance**. From and after the Close of Escrow, Developer shall obtain and shall thereafter maintain environmental and pollution legal liability insurance coverage for the Property, including coverage for loss, remediation expense and legal defense expenses, and naming the City as a named insured to address pollution risks at the Property. The terms, policy amount and deductible for environmental insurance will be determined by the Parties in the DDA. Such policy shall include coverage relating to known pre-

existing conditions and/or conditions that are discovered during development on the Property. Such policy shall comply with the following requirements:

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

(b) The policy shall provide not less than Five Million Dollars ($5,000,000) in coverage, subject to a maximum One Million Dollar ($1,000,000) deductible per claim, to protect against Claims from liability relating to known and unknown conditions on the Property for a period of not less than 10 years; and

(c) The policy shall be paid for in full at the time of issuance and shall be endorsed as non-cancelable by Developer without the written consent of the City in its sole discretion to such cancellation and shall contain a waiver of subrogation for the benefit of the City and its council members, officers, employees, attorneys and agents. As such, Developer's obligation to maintain environmental insurance pursuant to this Section 1.1.4 shall survive the termination of the DDA following the Close of Escrow for the term required for such insurance policy pursuant to Section 1.1.4(b).

(d) Developer's insurance policies shall name the City as an additional insured with respect to any additional environmental and pollution legal liability insurance coverage Developer acquires for the Project, the Property or any portion thereof.

The provisions of this Section 1.1.4 shall survive the termination of the DDA.

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 specifically identify the DDA and shall provide evidence that either (a) Developer 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 at least thirty (30) days advance written notice of any cancellation or termination of insurance by the insurer.

1.2.2. The term "**full insurable value**" as used in this Section 1 shall mean the cost determined by mutual agreement of the Parties (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of providing similar improvements of equal size and providing the same habitability as the improvements immediately before such casualty or other loss, but using readily-available contemporary components, including the cost of construction, architectural and engineering fees, and inspection and supervision.

1.2.3. All insurance provided under this Section 1 shall be for the benefit of the Parties. Developer agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Developer agrees to submit certificates evidencing the insurance required by Sections 1.1.1 and 1.1.2 to the City on an ACORD form within seven (7) business days, following the effective date of the DDA, the insurance required by Section 1.1.3 on or before commencement of construction, and the insurance required by Section 1.1.4, at the Close of

Escrow. Within seven (7) days, after expiration of any such policy, certificates and endorsements evidencing renewal policies shall be submitted to the City, together with evidence of payment of premiums.

1.2.4. If Developer fails or refuses to procure and maintain insurance as required by the DDA, the City shall have the right, at the City's election, and upon ten (10) days' prior notice to Developer, to procure and maintain such insurance. The premiums paid by the City shall be treated as a loan, due from Developer, to be paid on the first calendar day of the month following the date on which the premiums were paid. The City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insurer(s).

1.2.5. Since the insurance policies required by Section 1.1.4 will not be effective until after the Close of Escrow, the evidence of insurance to be delivered by Developer to the City at the Close of Escrow shall be limited to a binder evidencing that the insurance required by Section 1.1.4 will become effective following the Close of Escrow.

2. Initially capitalized terms used in this Exhibit "A" and not otherwise defined in the ENA shall have the meanings set forth below:

2.1. "**Certificate of Compliance**" shall mean a certificate to be issued with respect to the Property by the City upon completion by Developer of all of the Buildings and improvements and satisfaction of all additional conditions precedent thereto with respect to the Property or Phase, as the case may be, as described in the DDA.

2.2. "**Close of Escrow**" shall mean the close of escrow for the Property and the transfer of fee title to the Property by the City to Developer.

2.3. "**Governmental Authority**" shall mean any and all federal, State, county, municipal and local governmental and quasi-governmental bodies and authorities (including the United States of America, the State of California and any political subdivision, public corporation, district, joint powers authority or other political or public entity) or departments thereof having or exercising jurisdiction over the Parties, the Project, the Property or such portions of the foregoing as the context indicates.

2.4. "**Person**" shall mean an individual, partnership, limited partnership, trust, estate, association, corporation, Limited Liability Company, joint venture, firm, joint stock company, unincorporated association, Governmental Authority, governmental agency or other entity, domestic or foreign.

2.5. "**State**" shall mean the State of California.