

**TUSTIN LEGACY
DISPOSITION AND DEVELOPMENT AGREEMENT
FOR DISPOSITION PARCEL 6B**

by and between

CITY OF TUSTIN

and

**CALATLANTIC GROUP, INC.,
A DELAWARE CORPORATION**

DATED: Feb. 6, 2018

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DISPOSITION AND DEVELOPMENT AGREEMENT

FOR PARCEL 6B

THIS DISPOSITION AND DEVELOPMENT AGREEMENT FOR PARCEL 6B (the “**Agreement**”) is entered into as of February _____, 2018 (the “**Effective Date**”) by and between the CITY OF TUSTIN (as more fully defined in Section 1.4.1, “**City**”) and CALATLANTIC GROUP, INC., a Delaware corporation (as more fully defined in Section 1.4.2, the “**Developer**”). The City and Developer are sometimes referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**”. The Parties agree as follows:

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

1.1. **Background Regarding MCAS Tustin.**

1.1.1. Pursuant to the Defense Base Closure and Realignment Act of 1990, (Part A of Title XXIX of Public Law 101-510; 10 U.S.C. Section 2687 Note), as amended (the “**Base Closure Law**”) the Federal Government (defined below) 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 on October 17, 1996 and amended in September 1998 (the “**Reuse Plan**”).

1.1.2. A Final Environmental Impact Statement/Final 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 United States 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.

1.1.3. In May 2002, the Navy and the City entered into that certain 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 as of May 13, 2002 (the “**Memorandum of Agreement**”), pursuant to which the Navy agreed to convey 1,153 acres of MCAS Tustin to the City. On May 13, 2002, a total of 977 acres, including the Development Parcels (as defined below) which are the subject of this Agreement, were conveyed by the Navy to the City by quitclaim deed in accordance with the provisions of the Memorandum of Agreement. The additional acreage was made subject to a ground lease by the City from the Navy. The 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 is referred to in this Agreement as “**Tustin Legacy**”.

1.1.4. On February 3, 2003, the City adopted an ordinance approving the MCAS Tustin Specific Plan/Reuse Plan setting forth the zoning and entitlement framework for future development of Tustin Legacy. Since its initial adoption, the City has approved numerous Specific Plan Amendments. The Specific Plan conforms to and implements the Reuse Plan and the City's General Plan.

1.1.5. The City desires to effectuate development of Tustin Legacy through the sale and development of such property in accordance with applicable federal and local requirements and the City Council has previously adopted a Disposition Strategy for the Master Development Footprint ("**Disposition Strategy**") to address sale and redevelopment of land within Tustin Legacy consistent with all City requirements, including the Specific Plan. 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 Packages 1B & 6A dated as of March 11, 2014 as amended, for the purpose of developing a residential community at Tustin Legacy, and pursuant to such agreement, the City conveyed approximately 74 acres of land comprised of portions of Disposition Packages 1 and 6, which property is currently being developed as "Greenwood".

1.1.6. Consistent with the Disposition Strategy, the City and Developer entered into that certain Exclusive Agreement to Negotiate (Disposition Package 6B) ("**ENA**") contemplating the sale of certain additional property comprising an additional portion of Disposition Package 6, referred to herein as Disposition Package 6B, located adjacent to the Greenwood community, and development thereon of the Project (defined below).

1.2. **Description of Development Parcels**

1.2.1. The real property that is the subject of this Agreement consists of approximately 14.45 gross acres of land located in the City of Tustin, County of Orange, California, as depicted on Attachment 2 (collectively the "**Development Parcels**"). As of the Effective Date, the Development Parcels are owned in fee by the City. The Development Parcels comprise the land described in Disposition Package 6B consisting of 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.

1.2.2. As part of the transactions contemplated herein, prior to the Close of Escrow, Developer shall process a Tentative Tract Map and a Final Map for the Development Parcels pursuant to the Subdivision Map Act and the City Code as generally depicted on the Site Plan attached as Attachment 3, which shall provide for the division of the Development Parcels into eight (8) numbered Lots (as defined below) for the development of two hundred and eighteen (218) Homes (as defined below) and two (2) lettered Lots for Common Area.

1.3. Purpose of Agreement.

1.3.1. The purpose of this Agreement is (a) to effectuate the Reuse Plan and the Specific Plan, in accordance with the terms and conditions set forth therein and in the Memorandum of Agreement and the Federal Deed, through disposition and development of portions of Tustin Legacy as further described in this Agreement and (b) to provide for the sale and conveyance of the Property (as defined below) and its maintenance and use in accordance with the requirements of this Agreement.

1.3.2. This Agreement further provides for development by Developer on the Development Parcels of the following Improvements: (a) the Horizontal Improvements, as further described on Attachment 8 and depicted on Attachment 9; (b) the Phase Improvements; and (c) the Vertical Improvements, generally consisting of a residential condominium project and containing on the Development Parcels approximately two hundred and eighteen (218) Homes for sale to Homebuyers in three product types at an average density of approximately fifteen (15) dwelling units per gross acre, and a complete accompanying set of amenities, all as further described in the Scope of Development attached hereto as Attachment 8. The Homes shall consist of approximately one hundred and one (101) row townhomes in sixteen (16) Buildings, approximately sixty (60) motor court flats in six (6) Buildings and approximately fifty-seven (57) detached single family residences developed in approximately ten (10) clusters. The proposed development of the Property described above and as further described in this Agreement is referred to herein as the "**Project**".

1.3.3. The Vertical Improvements, the Horizontal Improvements and the Phase Improvements (collectively, the "**Improvements**") shall be designed and constructed by Developer in a manner consistent with the Specific Plan, the Reuse Plan, the Approved Plans, the Entitlements and all applicable Governmental Requirements.

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

1.4. Parties to the Agreement.

1.4.1. **City.** The City is a municipal corporation of the State. The City has been recognized as the Local Redevelopment Authority by the Office of the Secretary of Defense for the former Marine Corps Air Station, Tustin, for purposes of the Base Closure Law. "**City**" as used in this Agreement shall mean the City of Tustin and each assignee or successor to the City's rights, powers and responsibilities, provided, however, that in the event the City exercises such right to assign any of its proprietary obligations, such assignment shall not relieve the City of any responsibility for its obligations, if any, under this Agreement. The City Council shall have the right, in its sole and absolute discretion, to assign its rights and obligations to any agency or instrumentality of the City. The principal office of the City and mailing address is 300 Centennial Way, Tustin, California 92780.

1.4.2. **Developer**. Developer is CalAtlantic Group, Inc., a Delaware corporation. Whenever the term “**Developer**” is used in this Agreement, such term shall have the meaning set forth in Attachment 1. The principal office of CalAtlantic Group, Inc. and its mailing address is 15360 Barranca Parkway, Irvine, California 92618.

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

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

1.5.1. The Parties acknowledge and agree that this Agreement is entered into as part of an economic development conveyance of Tustin Legacy to the City pursuant to the Base Closure Law, the Memorandum of Agreement and the terms and conditions of the Federal Deeds, including the Environmental Restriction pursuant to California Civil Code Section 1471 contained therein. Notwithstanding any provision to the contrary contained in this Agreement, this Agreement is and shall be subject to the terms and conditions of the Memorandum of Agreement and the Federal Deeds and the rights, obligations and remedies of the Federal Government thereunder, and nothing contained in this Agreement shall be construed in a manner that is inconsistent with the rights, obligations and remedies of the Federal Government thereunder.

1.5.2. Notwithstanding anything in this Agreement to the contrary, if any provision of this Agreement contradicts, modifies or in any way changes the terms of the Memorandum of Agreement or the Federal Deeds, the terms of the Memorandum of Agreement and Federal Deeds shall prevail and govern.

1.6. **Local Requirements Applicable to Tustin Legacy**.

This Agreement is subject to all Governmental Requirements, including the General Plan, the Specific Plan, the City Code, the Reuse Plan and any redevelopment plan applicable to the Property, provided, however, that the City acknowledges that, prior to the Closing, City and Developer shall enter into a Development Agreement pursuant to Government Code Section 65864 *et seq.* (the “**DA**”) relating to the Property and that any provisions of this Agreement requiring Developer or the Property to comply with any Governmental Requirements imposed by the City relating to entitlements or development of the Property shall be subject to the terms of the DA and in the event of any inconsistency between such Governmental Requirements and the DA, the Governmental Requirements required to be imposed pursuant to the DA shall control.

1.7. **Not a Development Agreement**

This Agreement is not a development agreement as provided in Government Code Section 65864 and, as further set forth in Section 8.3.3, is not a grant of any entitlement, permit, land use approval, or vested right in favor of Developer, the Project or the Property. The City shall use good faith efforts, within applicable legal constraints and consistent with applicable City policies, to take such actions as may be necessary or appropriate to effectuate and carry out this Agreement in a timely and commercially reasonable manner.

1.8. **City Transaction Expenses and Independent Contract Consideration**

1.8.1. **ENA Transaction Expenses**. Pursuant to the ENA, Developer has paid to the City (a) a deposit of One Hundred Twenty Five Thousand Dollars (\$125,000) as supplemented from time to time pursuant to the terms of the ENA (the “**ENA Deposit**”), to be used by the City to pay the City’s third party predevelopment costs, including third party consultants, outside counsel and other expenditures required in connection with the drafting, negotiation and execution of this Agreement or the termination of the ENA, including any and all City third party fees and costs incurred by legal counsel, financial and other consultants (the “**ENA Transaction Expenses**”) and (b) a deposit of Twenty Five Thousand Dollars (\$25,000) (“**Staff Costs Deposit**”) to offset City staff costs related to Project activities during the term of the ENA (“**Staff Costs**”). After deducting from the ENA Deposit all ENA Transaction Expenses and after deducting from the Staff Costs Deposit all Staff Costs incurred by the City with respect to the period ending on the Effective Date, the City shall return the remaining ENA Deposit and the remaining Staff Cost Deposit to Developer. Notwithstanding the termination of the ENA pursuant to Section 17.23.2, if the amount of ENA Transaction Expenses to the Effective Date exceeds the amount of the ENA Deposit, Developer shall pay the City such outstanding amounts due within thirty (30) calendar days following receipt of an invoice from the City therefor.

1.8.2. **City Costs Deposit**. Upon the Effective Date and as a condition precedent to the effectiveness of this Agreement, Developer shall deliver to the City a new deposit of \$50,000 (the “**City Costs Deposit**”). The City Costs Deposit shall be deposited by the City in an account in a bank or trust company selected by the City. If any interest is paid on such account, such interest shall accrue to any balances in the account for the benefit of Developer and as additional security for Developer obligations hereunder. One Hundred Dollars (\$100) of the City Costs Deposit shall be retained by the City as “independent contract consideration”. From and after the Effective Date, the remainder of the City Costs Deposit shall only be used by the City to pay the City’s staff costs and third party out-of-pocket costs incurred by the City including third party fees and costs incurred for legal counsel, financial, engineering and other consultants and any other expenditures required in connection with the implementation of this Agreement or the termination thereof, commencing with the Effective Date through the earlier of the conclusion of the transaction associated with the Close of Escrow or termination of this Agreement (collectively, the “**City Transaction Expenses**”) and for the purposes set forth in Section 1.8.3, and the City Costs Deposit will be depleted accordingly. If at any time the amount of funds in the City Costs Deposit account is depleted below Twenty-Five Thousand Dollars (\$25,000), Developer shall be required to pay to the City each time an additional Twenty-Five Thousand Dollars (\$25,000) which shall be credited to the City Costs Deposit. Each such payment shall be deposited by the City into the

City Costs Deposit account and shall be applied to City Transaction Expenses in accordance with the provisions of this Section 1.8.2. Following the Close of Escrow or earlier termination of this Agreement, the City shall be entitled to deduct from the City Costs Deposit the payment of all City Transaction Expenses incurred with respect to the transactions described by this Agreement, and any remaining City Costs Deposit shall be promptly returned by the City to Developer. In the event that the City Costs Deposit is insufficient to cover the City Transaction Expenses, Developer shall promptly pay to the City the outstanding amounts due.

1.8.3. Payment of City Transaction Expenses; Exclusions from City Transaction Expenses. From and after the Effective Date, the City Costs Deposit may be used by the City to pay the City Transaction Expenses and any ENA Transaction Expenses remaining unpaid after the time period established for payment thereof in the last sentence of Section 1.8.1. Determination of costs, expenses, and fees constituting ENA Transaction Expenses and/or City Transaction Expenses shall be made by the City in its reasonable discretion and Developer shall upon request be entitled to receive summary notices from the City setting forth amounts constituting ENA Transaction Expenses and/or City Transaction Expenses and related non-confidential documents evidencing such expenses. Notwithstanding anything to the contrary in this Agreement, the City and Developer hereby acknowledge and agree that neither the ENA Transaction Expenses nor the City Transaction Expenses include: (a) any fees or deposits required of Developer for processing entitlement applications; (b) any fees or costs for complying with provisions of CEQA or its State CEQA implementing regulations; (c) any costs to review or approve any applications or submittals by Developer to the City in connection with the Project; (d) the Project Fair Share Contribution or any other development impact fees, exactions or other costs imposed as conditions of approval with respect to the Entitlements or pursuant to the Other Agreements or (e) any other matters in this Agreement that expressly require Developer to pay, at its sole cost, for the expenses in connection with such matters, other than as expressly set forth in this Section 1.8. The obligation of Developer to pay for the ENA Transaction Expenses and the City Transaction Expenses pursuant to this Section 1.8 shall not diminish or limit Developer's obligation to pay for any of the costs in the preceding sentence.

1.9. Definitions; Attachments.

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

1.9.2. Wherever used in this Agreement, the term "substantially in the form and substance of" shall mean that the referenced document, when compared to the previously approved form of document, is consistent in all material respects, and none of the modifications in the referenced document diminish a Party's rights or increase such Party's obligations thereunder, as determined by the Party for whose benefit the condition is written, in its sole discretion.

2. **Prohibition against Transfers and Transfer of Control.**

2.1. **Importance of Developer Qualifications.**

Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of development of the Project and not for speculation in land holding. The Parties further recognize and agree that the qualifications and identity of CalAtlantic Group, Inc. which is a publicly traded company listed on the New York Stock Exchange (CalAtlantic Group, Inc. and specifically excluding any Transferee, successor or assign thereof, is referred to herein as the "Initial Developer"), and Initial Developer's agreement (a) that it has the financial capacity to construct the Project without encumbering the Property with a Mortgage and (b) to remain fully liable under this Agreement and the Other Agreements unless specifically released by the City pursuant to Section 2.2.3(c), Section 9 or Section 16.6 of this Agreement are of particular concern to the City and community and in light of the following:

(i) The importance of the development of the Development Parcels and Tustin Legacy to the general welfare of the community;

(ii) The fact that a Transfer of Control is for practical purposes a transfer of rights and obligations under this Agreement or the Property; and

(iii) That it is because of the qualifications and identity of Initial Developer and its Key Employees that the City is entering into the Agreement with Developer.

2.2. **Transfers and Transfers of Control.**

2.2.1. **Restrictions on Transfers and Transfers and Control.**

(a) For the reasons set forth in Section 2.1, Developer, on behalf of itself each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner (but specifically excluding any End Users), acknowledges and agrees that, prior to the execution and Recording by the City of the Certificate of Compliance:

(i) Any Transfer or Transfer of Control in contravention of this Section 2 shall be a Material Default under this Agreement in accordance with Section 14.2.3.

(ii) Except as set forth in Section 2.2.2, no Transfer or Transfer of Control shall be valid or have any force or effect unless the City shall have provided its prior written consent thereto in the City's sole discretion.

(iii) No Person shall acquire any rights or powers under this Agreement except as set forth in this Section 2.

(b) Notwithstanding any Transfers and/or Transfers of Control, Initial Developer on behalf of itself, each Successor Owner and each and every Person claiming

by, through or under Developer or any Successor Owner (but specifically excluding any End Users) agrees that: (i) Developer shall not be released with respect to matters for which it remains liable pursuant to Section 2.2.2(a), (b) and (c), and (ii) unless it is released by the City as set forth in Section 2.2.3(c), Section 16.6 or otherwise by the City in writing, each Developer shall remain fully liable for the obligations of Developer under this Agreement and the Other Agreements for such period as it is Developer under this Agreement and for such longer period as may be applicable to it during the Additional Liability Period and that Developer shall remain liable with respect to terms of this Agreement surviving such termination for the period described herein.

(c) In no event shall a Transfer or Transfer of Control be a Permitted Transfer under this Agreement if it would have the result that Five Point Holdings, LLC, or its wholly or partially owned subsidiaries or other entities under its Control or its key management personnel (individually and collectively, "**Five Point**") would have any ownership, management rights or management responsibilities with respect to the Project or the Property, or that Five Point would be the Controlling Person or exercise Control over Developer.

(d) Notwithstanding any other provision of this Agreement to the contrary, with respect to any Transfer occurring following the Close of Escrow, the Transferee shall assume the obligation to pay all sums due under the Profit Participation Agreement not yet paid and accordingly shall include in the calculation of Gross Sales Price (as defined in the Profit Participation Agreement) all consideration received by any Developer or any Transferee for sale of Homes to members of the home-buyer public, including any Premiums and prices for Options and Upgrades (each as defined in the Profit Participation Agreement), whether such consideration was received by Developer or any Transferee prior to or following the date of the Transfer.

2.2.2. Permitted Transfers and Transfers of Control. The following Transfers and Transfers of Control are "**Permitted Transfers**" and shall not be subject to the City's prior written consent or otherwise subject to the requirements of Section 2.2.3, provided that in the case of clauses (a) or (b) below, the Responsible Developer, Responsible Person or the Responsible Developer's or Responsible Person's Controlling Person, as applicable, shall provide the City with notice of such transaction within ten (10) calendar days after its occurrence, which notice shall include a certification that all of the applicable conditions set forth in the applicable portion of this Section 2.2.2 have been satisfied and where applicable, shall affirm the ongoing obligations of the Responsible Developer or Responsible Person, as applicable, under this Agreement notwithstanding such Permitted Transfer:

(a) Except as set forth in Section 2.2.1(c), (x) following the Merger (but not including a Transfer pursuant to a Merger, which is governed by Section 2.2.2(b)), any Transfer by the Responsible Person to a Developer Affiliate or (y) following Cancellation of the Merger, any Transfer by a Responsible Developer to a Developer Affiliate, in each case of the entirety of Developer's interest in the Project; provided that:

(i) the City shall be entitled to look to the Responsible Person, following the Merger, or to the Responsible Developer, following Cancellation of the Merger, as applicable, prior to such Transfer to fully comply with this Agreement, and to cause the Developer Affiliate to comply with this Agreement, as though there had not been a Transfer; and such Responsible Person, following the Merger, or Responsible Developer, following Cancellation of the Merger, as applicable, shall remain fully liable under this Agreement and shall not be released from its obligations under the Agreement;

(ii) Responsible Person, following the Merger, or Responsible Developer, following Cancellation of the Merger, as applicable, is the Controlling Person of the Developer Affiliate that is the Transferee;

(iii) Responsible Person, following the Merger, or Responsible Developer, following Cancellation of the Merger, as applicable, shall not be in Potential Default or Material Default under this Agreement at the time of such Transfer;

(iv) Transferee at the time of the Transfer shall have expressly assumed for itself and its Successor Owners, successors and assigns, and for the benefit of the City, by Assignment Agreement substantially in the form and substance of the instrument attached hereto as Attachment 16 or otherwise in a form acceptable to the City in its sole discretion, acknowledged and Recorded, all the rights and obligations of Developer under this Agreement and the Other Agreements arising from and after the date of such Transfer, and the Transferee shall agree to assume and to be subject to all the conditions and restrictions to which Developer is subject by reason of this Agreement and the Other Agreements;

(v) Transferee shall, as further set forth in the Assignment Agreement, certify in writing for the benefit of the City as to the truth and correctness, as of the effective date of the assignment, of the representations and warranties set forth in the Assignment Agreement to the knowledge of its specified Developer Knowledge Parties and shall provide a certificate meeting the requirements of Section 4.6.6;

(vi) Transferee shall provide information to the City concerning its proposed Guarantor and the then-current Net Worth and Liquid Assets and the Net Worth and Liquid Assets anticipated at the time at which the Guaranty would be given to assure that the Guarantor meets the Minimum Liquidity Standards (and City's review of such information shall not be deemed to be City's approval of Guarantor, which approval shall be provided, if at all, at and as a condition to the Close of Escrow); and

(vii) With respect to the Guaranty or Equity Funding Certificate,

provide the documents required by clause (A) below, as applicable, unless the existing Guaranty shall remain in effect as described in clause (B):

(A) Prior to or concurrently with the Transfer, (1) if such Transfer occurs following the Close of Escrow, Developer shall cause the Guarantor approved by the City to deliver to the City fully executed originals of: (x) a Guaranty, and (y) a legal opinion in the form and substance of the Legal Opinion attached hereto as Attachment 28 as the same may be required to be modified to reflect the state of formation of Guarantor ("**Legal Opinion**") and (2) if such Transfer occurs prior to the Close of Escrow, Transferee shall cause its equity investor to deliver to the City a fully executed original certificate in the form and substance of the certificate attached to this Agreement as Attachment 32 (the "**Equity Funding Certificate**") executed by its chief financial officer or other appropriate authorized officer. Transferee shall cause the Guaranty or the Equity Funding Certificate, as applicable, to be executed by a Person with assets meeting the requirements of the City and sufficient, in the determination of the City in its sole discretion (but only to the extent the Guarantor is different than Lennar Corporation), to secure the development, construction and maintenance obligations of Developer under this Agreement, which shall be in the form and substance of the instrument attached hereto as Attachment 27 or Attachment 32, as applicable, or otherwise in a form acceptable to the City in its sole discretion and meeting the requirements of Sections 4.6.7, 4.6.8, 4.6.9 and 4.7.1, as applicable; provided that Transferee shall not be obligated to provide a Guaranty at the time of the Transfer unless the Guaranty would otherwise then be required to be provided pursuant to this Agreement, or

(B) If previously executed, the Guaranty shall remain in full force and effect following such Transfer without any defaults thereunder and without any modifications thereto other than modifications that have been consented to by the City in its sole discretion.

(b) A Transfer of Control by or with respect to Initial Developer pursuant to the Merger provided that:

(i) Lennar Corporation, a publicly traded company on the New York Stock Exchange, at the time of the Transfer of Control, is the sole (100%) owner of the New Entity into which Initial Developer is merged, and thereafter remains the Controlling Person;

(ii) the New Entity, substantially concurrently with the Merger, shall certify in writing for the benefit of the City as to the truth and correctness, as of the effective date of the Merger, of the representations and warranties set forth in the Assignment Agreement to the knowledge of the specified Developer Knowledge Parties of the New Entity;

(iii) prior to or concurrently with the Merger, (1) if such Merger occurs following the Close of Escrow, or at the Close of Escrow if such Merger occurs prior to the Close of Escrow, Lennar Corporation, as Guarantor, shall deliver to the City fully executed originals of: (A) a Guaranty, and (B) a Legal Opinion and (2) if such Merger occurs prior to the Close of Escrow, Lennar Corporation shall deliver to the City an Equity Funding Certificate executed by its chief financial officer or other appropriate authorized officer of Lennar Corporation.

(iv) the New Entity shall have expressly assumed for itself and its Successor Owners and successors and assigns, and for the benefit of the City, by instrument substantially in the form and substance of the Assignment Agreement attached hereto as Attachment 16 or otherwise in a form acceptable to the City in its sole discretion, acknowledged and Recorded, all the rights and obligations of Developer under this Agreement and the Other Agreements regardless of the date they arise, and the New Entity shall agree to assume and to be subject to all the conditions and restrictions to which Developer is subject by reason of this Agreement and the Other Agreements and shall provide a certificate meeting the requirements of Section 4.6.6;

(v) and provided further that (A) if clause (i) of this Section is not true and correct as of the date of the Merger, the Transfer and/or Transfer of Control shall not be a Permitted Transfer hereunder and shall instead be subject to the review and approval of the City in its sole discretion pursuant to Section 2.2.3 and (B) if (1) delivery of either the Equity Funding Certificate or the Guaranty is required prior to or concurrently with the Merger pursuant to this Section 2.2.2 and are not timely delivered by Lennar Corporation (and, if the Guaranty, with the Legal Opinion delivered by Guarantor's counsel), or (2) Five Point would have any ownership, management rights or management responsibilities with respect to the Project or the Property, or would be the Controlling Person or exercise Control over Developer, the Project or the Property, then the Transfer and/or Transfer of Control shall be a Material Default under this Agreement and City shall have the right, in its sole discretion, to terminate this Agreement and retain the Purchase Price Deposit in full;

(vi) and provided further that the City shall be provided with each and every item of documentation required by Section 4.6 with respect to the New Entity; Guarantor and Persons providing the Equity Funding Certificate.

(c) Any Transfer described by Section 2.2.7 to a Homebuyer or a Homeowners' Association;

(d) Any transfer of portions of the Property to the City and/or grants of easements affecting the Development Parcels to the City, to any public or quasi-public entity or to any utility, as necessary or desirable for the development thereof, or to a homeowners' association in accordance with the CC&Rs, except that the CC&Rs shall be subject to review and approval by the City as set forth in Section 13; and

(e) Any temporary license or other temporary grant of access rights to the Development Parcels to the City and/or to any other third party, as necessary or desirable for the development of the Property.

2.2.3. Provisions Applicable to Transfers and Transfers of Control Other than Permitted Transfers. Prior to Recording of a Certificate of Compliance, with respect and as a condition precedent to every Transfer or Transfer of Control that is not a Permitted Transfer pursuant to Section 2.2.2, Developer shall comply with the requirements of this Section 2.2.3 and any Transfer (including any Transfer of Control) pursuant to this Section 2.2.3 shall require the prior written consent of the City in its sole discretion. The following shall apply with respect to Transfers of the entirety of the Developer's interest in this Agreement, the Project and the Property and to Transfers of Control by Developer (it being acknowledged and agreed by Developer that, except for Permitted Transfers described in Section 2.2.2, Developer shall have no right to Transfer partial interests in the Property, the Project, this Agreement or Developer's rights and obligations under this Agreement without the prior written approval of the City in its sole discretion):

(a) In order to provide the City with information necessary to inform its right to consent to a Transfer or Transfer of Control pursuant to this Section, Developer shall provide to the City at least twenty (20) Business Days prior to the date of any proposed Transfer or Transfer of Control: (i) the name(s) of the proposed Transferee and its Key Employees, principals and new Controlling Person, as applicable; (ii) all of the material proposed terms of the Transfer or Transfer of Control; (iii) in the case of a Transfer, current audited financial statements of the proposed Transferee (or financial statements certified by an officer or authorized representative of the proposed Transferee, if the proposed Transferee does not have audited financial statements); (iv) in the case of a Transfer of Control, current audited financial statements of the proposed new Controlling Person (or financial statements certified by an officer or authorized representative of the proposed new Controlling Person, if the proposed new Controlling Person does not have audited financial statements); (v) the names of all Persons who Control the proposed Transferee or the new Controlling Person, as applicable; (vi) in the case of Transfer, a certificate of the proposed Transferee describing other real estate projects developed by, leased by, or sold by the proposed Transferee in California over the preceding five (5) year period, the dates of involvement by the proposed Transferee with such projects and the success of the projects, such certificate to be made by the manager, president or other Person with appropriate authority from the proposed Transferee to do so; (vii) in the case of a Transfer of Control, a certificate by the proposed new Controlling Person describing other real estate projects developed by, leased by, or sold by the proposed new Controlling Person in California over the preceding five (5) year period, the dates of involvement by the proposed new Controlling Person with such projects and the success of the projects, such certificates to be made by the manager, president or other Person with appropriate authority from the proposed new

Controlling Person to do so; and (viii) such other relevant information as the City may request in its sole discretion in connection with its consent rights under this Agreement (including as described in Sections 4.6.1, 4.6.2, 8.5.1, 8.5.2, 8.5.3 and 8.6 of this Agreement), which may include evidence that the proposed Transferee or proposed new Controlling Person has sufficient financial capacity to perform the obligations of Developer under this Agreement, without utilizing a Mortgage.

(b) Upon a Transfer of all of Developer's interests in the Property and in this Agreement, the proposed Transferee at the time of the Transfer shall have expressly assumed for itself and its Successor Owners, and prior to Close of Escrow, its successors and assigns, and for the benefit of the City, by instrument substantially in the form and substance of the Assignment Agreement attached hereto as Attachment 16, or otherwise in a form acceptable to the City in its sole discretion, acknowledged and Recorded, all the rights and obligations of Developer under this Agreement and the Other Agreements arising from and after the date of such Transfer and the proposed Transferee shall agree to be subject to all the conditions and restrictions to which Developer is subject by reason of this Agreement and the Other Agreements and shall provide a certificate meeting the requirements of Section 4.6.6 and a Guaranty or Equity Funding Certificate, as applicable, meeting the requirements of Section 2.2.3(c)(B) below;

(c) Upon a Transfer of all of Developer's interests in the Property and in this Agreement pursuant to this Section 2.2.3, and subject to the provision by the Transferee of the items listed in clauses (A) and (B) of this subsection, Developer shall be released from any of its obligations under this Agreement and the Other Agreements arising from and after the date of such Transfer; provided that, in the event of the Merger, such release shall not apply, it being the intent of the Parties that the Initial Developer not be released in order that such release not extend to the New Entity into which the Initial Developer is merged (such that the New Entity shall assume all rights, obligations and liabilities of the Initial Developer as though such New Entity had been the Initial Developer ab initio) and provided further that such release shall not extend to the following: (i) matters or circumstances (including any payment obligations) which relate to or arose during the period that such transferor was Developer hereunder and for the Additional Liability Period as applicable; (ii) the releases set forth in Section 4.5.2(f) or in the Other Agreements or the indemnities set forth in Sections 5.5, 8.12(e), 8.15, 8.16, 10.1, 10.2 and 17.12.1 for matters Accruing during the period that such transferor was Developer hereunder and for the Additional Liability Period as applicable, and (iii) any of Developer's obligations under this Agreement or the Other Agreements to the extent that the same arise prior to the transfer date or subsequently if arising due to the acts or omissions of Developer and/or any Developer Affiliate or Developer Representative; and further, the Transfer of any Home to a Homebuyer shall not release Developer from any of its obligations under this Agreement:

(A) the assumption in writing by a Transferee of all obligations under this Agreement and the Other Agreements in accordance with Section 2.2.3(b), and

(B) A Guaranty made by a Person meeting the

requirements to be a Guarantor under this Agreement and with such Guaranty sufficient, in the determination of the City in its sole discretion, to secure the development, construction and maintenance obligations of Developer under this Agreement, which shall be in the form and substance of the instrument attached hereto as Attachment 27 or otherwise in a form acceptable to the City in its sole discretion and meeting the requirements of Sections 4.6 and 4.7.1; or if such Transfer occurs prior to the Close of Escrow, an Equity Funding Certificate in the form and substance of the certificate attached as Attachment 32 as further described in Section 4.6.9.

2.2.4. **No Mortgages or Sale Leasebacks without Consent.** Prior to the Recording by the City of the Certificate of Compliance, neither Developer nor the Homeowner's Association shall encumber the Property with any Mortgage without the prior written consent of the City as set forth in Section 2.2.1 which approval may be granted or withheld in the sole and absolute discretion of the City. Any encumbrance of the Development Parcels, or any portion thereof, in violation of this Section 2 shall be a prohibited Transfer or Transfer of Control and a Material Default by Developer, subject to the provisions of Section 14.2.3. The City shall have no right to approve or disapprove a Mortgage after the issuance of the Certificate of Compliance. Developer shall not assign the Development Parcels or any portion thereof to a third party for purposes of a sale-leaseback transaction. The provisions of this Section shall not apply with respect to any Home that has been sold by Developer to a Homebuyer.

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

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

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

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

2.2.6. **City Estoppel.** From time to time (but in no event more often than annually or in connection with a Permitted Transfer, or a Transfer or Transfer of Control consented to by the City in accordance with this Agreement) within twenty (20) calendar days of the City's receipt of a written request therefor, the City shall execute and deliver to Developer and any Transferee,

a City Estoppel, substantially in the form and substance of the City Estoppel attached hereto as Attachment 5 but with such modifications as are necessary in the City's sole discretion to ensure the accurateness of the statements made therein.

2.2.7. **Restrictions and Permitted Sale of Homes and Transfer of Property to Homebuyers and Homeowners' Association.** Notwithstanding anything to the contrary set forth in this Agreement, recognizing that the Development Parcels will be developed with the intent to sell individual residential Homes to Homebuyers and to Transfer the Common Area and the Common Area Improvements to a homeowners' association or to a sub-association created pursuant to Section 13.2 established pursuant to the laws and regulations of the State for the management of a common area development ("**Homeowners' Association**"), the general prohibition against Transfer outlined herein shall not be applicable to (a) the sale of individual Homes to Homebuyers, or (b) the transfer to the Homeowners' Association of the Common Area and Common Area Improvements; provided, however, that sale or transfer of any Home to a Homebuyer or the conveyance of any Common Area to a Homeowner's Association shall not be permitted unless and until such Home is authorized for sale or such Lot and/or portion thereof is authorized for transfer pursuant to State law, including regulations promulgated by the California Bureau of Real Estate ("**BRE**") and the Transfer of any Lot or any other portion of the Property, including any Common Area to a Homeowners' Association, shall not be permitted unless and until the Improvements proposed to be constructed thereon pursuant to the Scope of Development, the Approved Plans and the CC&Rs have been Completed.

2.2.8. **City Costs.** Developer shall promptly pay to the City all of the City's actual out of pocket third party expenses, including legal fees, and staff costs incurred with respect to the review, consideration, analysis and response to any of the matters required to be reviewed or consented to by the City pursuant to this Section 2.2 or Section 2.4, including with respect to (a) any request for consent or approval of a Guarantor, Transferee, Transfer or Transfer of Control and (b) review, consideration, preparation and delivery of each City Estoppel; provided that with respect to this clause (b) only, such expenses, fees and costs shall not exceed \$5,000 with respect to any single City Estoppel.

2.3. **Remedies for Improper Transfers or Transfers of Control.**

Without limiting the generality of the foregoing, a failure (a) by Developer to comply with the requirements of this Section 2 with respect to any Transfer or Transfer of Control or (b) by any Transferee to execute the Assignment Agreement required by Section 2.2, if applicable, shall in each case be a Material Default under this Agreement, subject to the provisions of Section 14.2.3, but with no extension on account of Force Majeure Delay and, in such event, the City shall have all remedies available to it at law and in equity, including those specified in this Agreement and specifically including the right to exercise the Right of Purchase and/or the Right of Reversion, as applicable, in accordance with Section 16 of this Agreement.

2.4. **Changes.**

Developer shall promptly notify the City in the event that any of the following Persons cease to be involved with the development of the Project: (a) any of the Key Employees,

(b) William Hezmalhalch Architects, the Project Architect, (c) BrightView Design Group, the landscape architect, or (d) Hunsaker and Associates, the Project engineer. Following any Transfer, Transfer or Control or Merger, Transferee or New Entity, as the case may be, shall provide the City with a list of its Key Employees and City shall have the right to notify Developer if it considers any of such individuals unsatisfactory, in which event such individual(s) shall be removed as Key Employees. In the event of a Merger, the New Entity shall retain at least one (1) of the Key Employees of the Initial Developer listed in Attachment 1.

3. **Representations and Warranties.**

3.1. **Developer's Representations and Warranties.**

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

3.1.1. Developer has the necessary expertise, experience, financial experience, financial capacity and qualifications and legal status necessary to perform as Developer pursuant to this Agreement and to construct and Complete the Project as contemplated by this Agreement, and, without limiting the foregoing, Developer is experienced in the development, management, and sale of residential condominium projects of the size and type described in this Agreement and understands the process and requirements associated with projects such as the Project described herein.

3.1.2. Developer's acquisition of the Property, development of the Project and its other undertakings pursuant to this Agreement are for the purpose of timely development of the Project upon the Property in accordance with the Schedule of Performance attached to this Agreement and not for speculation or land holding.

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

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

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

this Agreement to which Developer is or shall be a party and the consummation of the transactions contemplated hereby.

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

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

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

3.1.9. No attachments, execution proceedings, assignments of benefit to creditors, bankruptcy, reorganization or other proceedings are pending or, to the best of Developer's knowledge, threatened against Developer, or to the extent applicable to any non-publicly traded Transferee, one of its owners, members or partners.

3.1.10. Except for those representations and warranties of the City expressly set forth in in Sections 3.3 and 17.12.2, Developer is relying solely upon its own inspections and investigations in proceeding with this Agreement and the transactions contemplated hereby, and is not relying on the accuracy or reliability of any information provided to it by the City, on any oral or written representation or on any facts or conclusions of law made by the City, or any of its elected and appointed officials, officials, employees, agents, attorneys or representatives made in connection with this Agreement. In making such investigation and assessment, Developer has been provided access to any persons, records or other sources of information which it has deemed appropriate to review and it has thereafter completed such investigation and assessment. Without limiting the generality of the foregoing provisions, Developer acknowledges that the City has not made and will not make any representations or warranties concerning the condition of the Property, the compliance or non-compliance of the Property or any portion thereof with Environmental Laws

or the existence or non-existence of Hazardous Materials in relation to the Property or any portion thereof or otherwise (except for those representations and warranties of the City set forth in Sections 3.3 and 17.12.2).

3.1.11. To Developer's knowledge, except as described on Attachment 4, there are no adverse conditions or circumstances, no pending or threatened legal proceedings or litigation against Developer, no governmental action, and no other condition which could prevent or materially impair Developer's ability to carry out its obligations hereunder or to develop the Property and the Project as contemplated by the terms of this Agreement.

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

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

3.1.14. As of the Close of Escrow, Developer will have the equity capital and financial capacity required for Completion of the Development without requirement of third party financing.

3.1.15. Developer does not have any contingent obligations or any other contracts the performance or nonperformance of which could adversely affect the ability of Developer to carry out its obligations hereunder.

Developer's representations and warranties set forth in this Section 3.1 (or in the case where the Merger or any other Transfer occurs prior to the Close of Escrow, the representations and warranties made by the New Entity or Transferee, as applicable, in the applicable Assignment Agreement) shall be deemed to be restated at the Close of Escrow, and shall survive the Close of Escrow until the earlier to occur of the following (a) termination of this Agreement or (b) issuance of the Certificate of Compliance, and shall not be merged with the Quitclaim Deed. As used in Section 3.1 and 3.2, "**to Developer's knowledge**" and similar phrases means the actual present knowledge of the Developer Knowledge Parties as of the Effective Date, in each case without any duty of inquiry; provided, however, that in the event any of the Developer Knowledge Parties are unavailable at the time these representations and warranties set forth in this Section 3.1 are restated at the Close of Escrow, Developer may specifically identify different Developer's Knowledge Parties, subject to the City's reasonable approval. Notwithstanding anything to the contrary contained herein, (i) none of the Developer Knowledge Parties shall be personally liable for any inaccuracy or breach by Developer of the representations and warranties contained in Section 3.1 or elsewhere in this Agreement and/or any of the Other Agreements, and (ii) the City shall not be entitled to make a claim for a breach of Developer's representations and warranties if Developer had disclosed in writing facts to the City indicating that the applicable representation and warranty

was incorrect prior to (A) the execution of this Agreement and the City proceeded with the execution of this Agreement, or (B) the Close of Escrow and the City proceeded with the Close of Escrow, in either case in spite of such inaccuracy.

3.2. **Developer Covenants Regarding Representations and Warranties.**

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

3.3. **City Representations and Warranties.**

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

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

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

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

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

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

3.3.6. Neither the execution or delivery of this Agreement or the documents referenced in this Agreement, nor the incurring of the obligations set forth in this Agreement, and the certificates, declarations and other documents referenced in this Agreement, nor the consummation of the transactions contemplated in this Agreement, nor compliance with the terms of this Agreement and the documents referenced in this Agreement, will violate any provision of law, any order of any court or Governmental Authority to which the City is subject or conflict with or result in the breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which the City is a party and which affect any of the Property or the transactions contemplated by this Agreement, except as set forth on Attachment 4.

3.3.7. There are no legal proceedings either pending or, to the knowledge of the City Representatives, threatened, to which the City is or may be made a party, or to which the Property, is or may become subject, which has not been disclosed in the documents submitted to Developer and that could materially affect the ability of the City to carry out its obligations hereunder or that would affect the Property after the Close of Escrow.

The City's representations and warranties set forth in this Section 3.3 shall be deemed to be restated at the Close of Escrow, and shall survive the Close of Escrow until the earlier to occur of the following: (a) termination of this Agreement or (b) issuance of the Certificate of Compliance and shall not be merged with the Quitclaim Deed. As used in Section 3.3 and 3.4, "**to the City's knowledge**" and similar phrases means the actual present knowledge of Jeffrey Parker, David Kendig, John Buchanan and Ryan Swiontek (the "**City Representatives**") without any duty of inquiry. Notwithstanding anything to the contrary contained herein, (i) none of the City Representatives shall be personally liable for any inaccuracy or breach by the City of the representations and warranties contained in Section 3.3 or elsewhere in this Agreement, any of the Other Agreements, and (ii) Developer shall not be entitled to make a claim for a breach of the City's representations and warranties if the City had disclosed in writing facts to Developer indicating that the applicable representation and warranty was incorrect prior to (a) the execution of this Agreement and Developer proceeded with the execution of this Agreement, or (b) Close of Escrow and Developer proceeded with the Close of Escrow, in either case in spite of such inaccuracy.

3.4. City Covenants Regarding Representations and Warranties.

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

4. Conveyance of Property from City to Developer.

4.1. Conveyance of Property.

Subject to the terms and conditions set forth in this Agreement, including the satisfaction of the Closing Conditions set forth in Section 7 or elsewhere in this Agreement, the City agrees to

sell to Developer and Developer agrees to purchase from the City the Development Parcels, together with all existing improvements, if any, presently located on the Development Parcels, all appurtenances pertaining to the Development Parcels, all permits, licenses, approvals and authorizations issued by any Governmental Authority relating to the Development Parcels for development of the Improvements and the right to construct up to two hundred and eighteen (218) Homes, as further described in Section 4.1(a)(iii), and all of City's right, title and interest in, to and arising out of the Intangible Property (subject to the exclusions and modifications to the definition thereof described in clauses (a) and (b) below, collectively referred to in this Agreement as the "**Property**"), subject to all Permitted Exceptions; provided, however that City's assignment of its rights to enforce the Navy Responsibilities against the Navy shall be made to Developer on a non-exclusive basis and the City and Developer may each enforce the Navy Responsibilities as their interests may appear. Notwithstanding the foregoing, nothing set forth in this Agreement shall preclude the City or any insurer, on a non-exclusive basis, from enforcing the Navy Responsibilities against the Navy with respect to Tustin Legacy other than the Property or, with respect to the Property for matters Accruing prior to Close of Escrow. At the Close of Escrow, the City shall convey to Developer by Quitclaim Deed fee title to the Property. Notwithstanding the foregoing:

(a) the term "**Property**" shall exclude the following rights and interest which shall be explicitly reserved to the City:

(i) Any and all oil, oil rights, minerals, mineral rights, natural gas, natural gas rights and other hydrocarbon by whatsoever name known, geothermal steam and all products derived from any of the foregoing, that may be within or under the Development Parcels together with the perpetual right of drilling, mining, exploring for and storing in and removing the same from the Development Parcels or any other land, including the right to whipstock or directionally drill and mine from lands other than the Development Parcels, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Development Parcels and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to re-drill, re-tunnel, equip, maintain, repair, deepen and operate any such well or mines; but without, however, the right to enter upon or use the surface of the Development Parcels in the exercise of such rights or otherwise adversely affect the use or operation of the Development Parcels as anticipated by this Agreement or the structural integrity of any improvements on the Development Parcels; and

(ii) Any and all water, water rights or interests therein appurtenant or relating to the Development Parcels or owned or used by the City in connection with or with respect to the Development Parcels no matter how acquired by the City, whether such water rights shall be riparian, overlying, appropriative, littoral, percolating, prescriptive, adjudicated, statutory or contractual, together with the perpetual right and power to explore, drill, re-drill and remove the same from or in the Development

Parcels, to store the same beneath the surface of the Development Parcels and to divert or otherwise utilize such water, rights or interests on any other property owned or leased by the City; but without, however, the right to enter upon or use the surface of the Development Parcels in the exercise of such rights or otherwise adversely affect the use or operation of the Development Parcels as anticipated by this Agreement or the structural integrity of any improvements on the Development Parcels; and

(iii) Those excess development rights remaining within Specific Plan Neighborhood G, Planning Area 15 after deducting the number of residential units allocated to the Development Parcels (anticipated to be two hundred and eighteen (218) residential units) or such lesser number of units as are described on the Recorded Condominium Plan and actually constructed by Developer prior to Recording of the Certificate of Compliance, and, except to the extent any of such rights were conveyed by the City to third parties prior to the Effective Date, the City shall retain all residential units and all development rights associated with Specific Plan Neighborhood G, Planning Area 15 in excess of the units shown on the Recorded Condominium Plan and constructed prior to the Recording of the Certificate of Compliance, and the units and development rights retained by the City shall be freely transferable by the City throughout Tustin Legacy; and

(b) The reservation by the City of the rights and interests in this Section 4.1 shall not be deemed to limit Developer's right to construct foundations and other subsurface improvements for the purpose of constructing the Project, and otherwise engage in subsurface construction activity in order to construct the Project.

4.2. Purchase Price.

4.2.1. Base Purchase Price and Project Fair Share Contribution. As consideration for the sale of the Development Parcels by the City to Developer, Developer shall pay to the City at the Close of Escrow for the Development Parcels, the sum of Thirty Five Million, Five Hundred Forty Three Thousand, Eight Hundred and Fifty Five Dollars (\$35,543,855) comprised of (a) Thirty Four Million Two Hundred Two Thousand Seven Hundred and Twelve Dollars (\$34,202,712) (the "**Base Purchase Price**") as the initial purchase price in consideration for the Property, and (b) in payment of the fees applicable to the Development Parcels under the Tustin Legacy Backbone Infrastructure Program, the Project Fair Share Contribution in the amount of One Million Three Hundred Forty-One Thousand One Hundred Forty-Three Dollars (\$1,341,143) payable at the Close of Escrow.

4.2.2. Profit Participation Price. As additional consideration for the sale of the Property by the City to Developer, in addition to the Base Purchase Price, Developer shall pay a percentage of the profits from the sale of the Homes within the Property (the "**Profit Participation Price**") upon the terms and conditions as set forth in that certain Profit Participation Agreement attached hereto as Attachment 14 (the "**Profit Participation Agreement**"). Unless otherwise

agreed by the City in its sole discretion, the Profit Participation Price shall be secured by the City Deed of Trust to be Recorded at Close of Escrow against Lots 6 and 7 as depicted on the Tentative Tract Map (which Lots shall be reflected with the same lot numbers on the Final Map) as further described in the Profit Participation Agreement; provided that if the Final Map is not recorded prior to or concurrently with the Close of Escrow, the City Deed of Trust shall be recorded against the Development Parcels.

4.3. **Payment of Base Purchase Price.**

4.3.1. **Deposit.** As a condition to execution of this Agreement by the City, Developer shall deliver an earnest money deposit (as the same may be increased as set forth below, the “**Purchase Price Deposit**”) of One Million Dollars (\$1,000,000) to Escrow Holder not later than five (5) Business Days after the later of (a) approval by the City Council of this Agreement or (b) approval by the City Council of the DA. The Purchase Price Deposit plus accrued interest shall constitute security to the City for the Close of Escrow and shall be credited against the Base Purchase Price at the Close of Escrow. The Purchase Price Deposit shall be held by Escrow Holder in Escrow in an interest-bearing account approved by the City and Developer and disposed of in accordance with the terms of this Agreement. As a condition precedent to execution by the City of the License Agreement, the Purchase Price Deposit shall be increased to a total of Five Million Dollars (\$5,000,000) and Developer shall deliver an additional earnest money deposit of Four Million Dollars (\$4,000,000) to Escrow Holder, which shall upon delivery become part of the Purchase Price Deposit. The City shall have no obligation to execute the License Agreement until the additional funds are received by Escrow Holder.

4.3.2. **Application of Purchase Price Deposit.** Unless Developer has timely provided a Diligence Termination Notice in accordance with Section 5.1, after expiration of the Due Diligence Period, the Purchase Price Deposit shall be nonrefundable except as otherwise expressly provided in this Agreement and shall be applied to the Base Purchase Price as set forth in Section 4.3.3, or shall be liquidated damages to the City in the event of certain Defaults by Developer as further set forth in Sections 14 and 15 of this Agreement.

4.3.3. **Payment of the Balance of the Base Purchase Price and Other Amounts Due at Close of Escrow.** No later than one (1) Business Day prior to the Close of Escrow, Developer shall deposit with Escrow Holder an amount (the “**Developer Closing Payment**”) which shall, be equal to: (a) the Base Purchase Price less the Purchase Price Deposit (*plus* accrued interest) *plus* (b) the Project Fair Share Contribution, *plus* (c) such additional amount as is necessary to cover all outstanding ENA Transaction Expenses and City Transaction Expenses and all closing costs to be paid by Developer pursuant to Section 7.4.1(b) and (c) and Section 7.4.4 for the Close of Escrow, as adjusted for any net credits or debits to the City for closing costs and/or prorations in accordance with Section 7.4.1(a) and (c) and Section 7.4.4 for the Close of Escrow.

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

4.4. Escrow and Joint Escrow Instructions.

Upon payment of the Purchase Price Deposit, delivery of the Developer certification providing the information required by Section 4.6.6(a) through (e) and such other information as City may reasonably request, and delivery by Developer of the insurance binder(s) required by Section 4.6.3, each of which is a condition precedent to execution of this Agreement by the City, the City and Developer shall each deliver three executed original counterparts of this Agreement to Escrow Holder within the time period specified in the Pre-Closing Schedule. For purposes of this Agreement, the “**Opening of Escrow**” shall be the date that Escrow Holder receives executed original counterparts to this Agreement signed by Developer and the City. Upon the written acceptance of this Agreement by Escrow Holder, this Agreement shall constitute the joint escrow instructions of Developer and the City to Escrow Holder to open an escrow (the “**Escrow**”). Upon Escrow Holder’s receipt of the Purchase Price Deposit and Escrow Holder’s written acceptance of this Agreement, Escrow Holder is authorized to act in accordance with the terms of this Agreement. Developer and the City shall execute Escrow Holder’s general escrow instructions upon request, with such modifications thereto as Developer and the City may reasonably require; provided, however, if there is any conflict or inconsistency between such general escrow instructions and this Agreement, this Agreement shall control. Escrow Holder shall not prepare any further escrow instruction restating or amending this Agreement unless specifically so instructed by the City and Developer in writing. Any supplemental escrow instructions must be in writing and signed by the City and Developer and accepted by the Escrow Holder to be effective.

4.5. Investigation; Property Conveyed “As-Is”.

4.5.1. Investigation.

(a) Developer shall have the right to conduct Developer’s own investigation of the Property pursuant to Section 5.1 of this Agreement. If Developer proceeds to the Close of Escrow, Developer represents and warrants to the City that Developer will have satisfied itself that it has determined that all matters related to the Property and the Project are acceptable to Developer, including the state of title (subject only to the Permitted Exceptions), the physical condition thereof, the physical condition of structures, if any, located upon the Development Parcels and, as applicable, the accessibility and location of utilities, and all mechanical, plumbing, sewage, and electrical systems located therein, suitability of soils, environmental and other investigations regarding the Property. Prior to the expiration of the Due Diligence Period, Developer will have reviewed all items that in Developer’s sole judgment affect or influence Developer’s purchase and use of the Property and Developer’s willingness to consummate the transactions described by this Agreement.

(b) Developer acknowledges and agrees that, as of the Close of Escrow:

(i) Its determination to enter into this Agreement constitutes Developer’s agreement that Developer, in consummating the transactions described in this Agreement: (A) has been given the opportunity to inspect the Property and to review the information and documentation provided by

the City to Developer and affecting the Property, including the environmental condition of the Property, or otherwise obtained by Developer in connection with its due diligence of the Property, and is relying solely on its own investigation of the Property, including such investigation prior to execution of this Agreement, and review of such information and documentation in determining the physical, economic and legal condition of the Property, and not on any information, representation or warranty provided by the City or any agents or representatives of the City; (B) has performed its own assessment of the Property, including the environmental condition of the Property, the presence of Hazardous Materials on the Property, the suitability of the soil for improvements to be constructed, the implications of land use restrictions on the development plan for the Project and the Property and the consequences of any subsequently discovered contamination on or adjacent to the Property, and (C) has been provided with access to all information in the possession of the City which it has requested.

(ii) Information provided to Developer by or on behalf of the City with respect to the Property was obtained from a variety of sources and that the City has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information; and Developer is satisfied with the nature and extent of its permissible investigation of the physical condition and other matters relating to the Property and is willing to consummate the transactions described by this Agreement.

(iii) Without limiting the generality of the foregoing, Developer acknowledges and agrees that (A) it has been provided with access to (x) all environmental reports and statements listed on Attachment 10A and all reports either attached to or referenced in the Memorandum of Agreement and Federal Deeds, (y) the FOST and (z) the Environmental Baseline Survey (the "EBS") which is incorporated into the FOST by reference; (B) it shall perform its own assessment of the environmental condition of the Property, the presence of Hazardous Materials on the Property, the suitability of the soil for improvements to be constructed, the implications of the land use restrictions on the development plan for the Project and the Property and the consequences of any subsequently discovered contamination on the Property; (C) it shall review the Navy produced or identified documentation, including that listed on Attachment 10A, reflecting the Navy's knowledge of the environmental condition of the Property and (D) Developer has previously entered into the license agreements related to construction of Greenwood described on Attachment 10B and pursuant to such license agreements has undertaken the work described therein and on Attachment 10B.

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

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

(b) **Acknowledgement.** Developer's determination to enter into this Agreement constitutes Developer's agreement that Developer, in consummating the transactions described in this Agreement is buying the Property in an "AS IS, WHERE IS, WITH ALL FAULTS" condition, in its present state and condition and with all faults, if any. Without limiting the generality of the foregoing provisions, Developer further acknowledges and agrees that, except as otherwise specifically provided in Sections 3.3, 8.10 and 17.12.2 of this Agreement, City makes no representations, warranties, assurances or guaranties of any kind or character in connection with the transaction contemplated by this Agreement, whether express or implied, oral or written, past, present or future, whether by the City or any of its agents, elected or appointed officials, representatives or employees, of concerning or with respect to:

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

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

(iii) the suitability of the Property for any and all future development, uses and activities which Developer or any Homebuyer or Homeowners' Association may conduct thereon, including the development of the Project described in this Agreement and the Other Agreements;

(iv) except as set forth in Section 8.10, the ability of the City or any third party to complete, or likelihood of the completion of, any of the improvements and infrastructure described by the General Plan, the Reuse Plan, the Specific Plan, the Tustin Legacy Backbone Infrastructure Program or any other plan or policy of the City or any other Governmental Authority;

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

the City or any third party;

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

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

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

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

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

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

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

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

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

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

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

(xvii) the fact that all or a portion of the Property may be located on or near an earthquake fault line or falls within an earthquake fault zone established under the Alquist-Priolo Earthquake Zone Act, California Public Resources Code Sections 2621-2630 or within a seismic hazard zone

established under the Seismic Hazards Mapping Act, California Public Resources Code, Sections 2690-2699.6 and Sections 3720-3725;

(xviii) the existence or lack of vested land use, zoning or building entitlements affecting the Property;

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

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

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

(xxii) any other matters.

(c) **Environmental Condition of the Property; Restrictions.** Without limiting the generality of the foregoing provisions, the City makes no representation or warranty as to the environmental condition of the Property or any portion thereof, the Navy's obligations with respect to the environmental condition of the Property or the adequacy or accuracy of any environmental report that has been rendered. Developer acknowledges and agrees that (i) there may be some residual contamination on the Property as a result of Navy historic activities; (ii) the Navy has agreed to accept certain limited responsibility for any contamination it caused, including any contamination discovered after transfer from the Navy, in accordance with existing Governmental Requirements including the National Defense Authorization Act For Fiscal Year 1993 as amended (Public Law No. 102-434) Section 330 and Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9620(h) ("**Navy Responsibilities**"); and (iii) based on that certain Covenant to Restrict Use of Property Environmental Restriction between the Navy, DTSC and the California Regional Water Quality Control Board, Santa Ana Region, Recorded on July 20, 2006, as Instrument Number 2006000483641, the deed restrictions contained in the Federal Deeds are binding upon Successor Owners of the City (and therefore, shall be binding upon Developer with respect to the Property upon its acquisition of the Property) and are enforceable by DTSC pursuant to a conveyed property right from the Navy to DTSC.

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

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

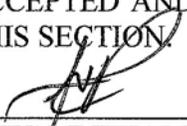
(f) **Release.** Developer, on behalf of itself, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner and including, without limitation, each End User (each, including Developer, a "**Developer Releasing Party**"), hereby waives, as of the Effective Date, and agrees to waive, as of the Close of Escrow, the right of each Developer Releasing Party to recover from, and fully and irrevocably releases, the City Released Parties from any and all Claims that any Developer Releasing Party may now have or hereafter suffer or acquire arising from or related to: (i) any Due Diligence Information, (ii) any condition of the Property or any current or future improvement thereon, known or unknown by any Developer Releasing Party or any City Released Party, including as to the extent or effect of any grading of the Development Parcels; (iii) any construction defects, errors, omissions or other conditions, latent or otherwise; (iv) economic and legal conditions on or affecting the Property or any improvements thereon; (v) Environmental Matters, including the existence, Release, threatened Release, presence, storage, treatment, transportation or disposal of any Hazardous Materials at any time on, in, under, or from, the Property or any current or future improvement thereon or any portion thereof; (vi) Claims of or acts or omissions to act of any Governmental Authority or any other third party arising from or related to any actual, threatened, or suspected Release of a Hazardous Material on, in, under, or from or about the Property or any current or future improvement thereon, including any Investigation or Remediation at or about the Property or any current or future improvement thereon; and/or (vii) arising from the Tustin Legacy Backbone Infrastructure Program, any community facilities district, service district or assessment district the cost or extent thereof, or the amount of the Project Fair Share Contribution or any community facilities district, service district or assessment district assessment against the Development Parcels described in this Agreement or the DA; provided that the foregoing release by the Developer Releasing Parties shall not extend to the extent of (A) any breach by the City of any of the representations or warranties of the City set forth in Sections 3.3 or 17.12.2 of this Agreement, (B) any breach by the City of any of the covenants or obligations set forth in this Agreement or any Other Agreement, (C) any Claim that is the result of the gross negligence, willful misconduct or fraud of the City Released Parties, (D) any actions of the City Released Parties which occur following the Close of Escrow with respect to the Property, or (E) any other Claims against City relating to or arising out of tort Claims brought by third parties against Developer, to the extent such claims are based upon the

matter for which the City is indemnified pursuant to Section 5.5 or Section 10.2. This release includes Claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer's release of the City Released Parties. Developer specifically waives the provision of California Civil Code Section 1542, which provides as follows:

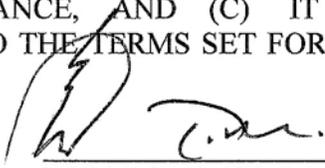
"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

In this connection and to the extent permitted by law, Developer on behalf of itself, and the other Developer Releasing Parties hereby agrees that (x) it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to Claims or controversies which are presently unknown, unanticipated and unsuspected; (y) the waivers and releases in this Section 4.5.2(f) have been negotiated and agreed upon in light of that realization and (z) Developer, on behalf of itself and the other Developer Releasing Parties, nevertheless hereby intends to release, discharge and acquit the City Released Parties from any such unknown Claims and controversies to the extent set forth above.

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



CITY'S INITIALS



DEVELOPER'S INITIALS

From and after the acquisition of the Development Parcels by Developer, this release shall run with the land for the benefit of the City and its Governmental Successors and burdening the Development Parcels and Developer and the Successor Owners owning all or any portion of the Development Parcels and all Persons claiming by, through or under Developer or any Successor Owner of the Development Parcels or such portion thereof, including each End User, and to further evidence its effectiveness with respect to Developer and the Successor Owners of the Development Parcels, shall be included in its entirety in the Quitclaim Deed.

The provisions of this Section 4.5.2 shall survive the Close of Escrow and the termination of this Agreement and shall not be merged with the Quitclaim Deed.

4.6. **Covenants; Preconditions to Close of Escrow.**

4.6. **Covenants; Preconditions to Close of Escrow.**

The following are covenants of Developer and conditions precedent to the Close of Escrow for the benefit of the City as further described in this Section and in Section 7.2.2(k), and shall be satisfied by Developer not later than the times specified for such conditions in the Pre-Closing Schedule. Only the City has the right to waive any of the conditions in this Section 4.6.

4.6.1. **Financing Plan.** On or before the Effective Date, Developer shall provide the City with a financing plan demonstrating the financial feasibility of the Project that includes: 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; (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 City comments to the preliminary site plan; (d) a sources and uses table identifying the proposed use of each source of funding for the Project; and (e) evidence reasonably satisfactory to the City that Developer has sufficient additional funds available and is able to commit such funds to cover the difference, if any, between costs of development of the Project and the amount available to Developer from external sources ("**Financing Plan**").

4.6.2. **Additional Assurances.** At least thirty (30) calendar days prior to Close of Escrow, Developer shall submit an update of the Financing Plan to the City, for the purposes of confirming that Developer has sufficient funds for construction of the Project and for its operation consistent with the terms of this Agreement and without a Mortgage. If the City is not reasonably satisfied with the financial status of Developer following review of the Financing Plan, the City shall be entitled to obtain such other financial information as the City may request to demonstrate Developer's financial capacity and capability to perform its obligations under this Agreement. Such information shall be subject to the confidentiality provisions of Section 17.24. If Developer is not a publicly traded company, and if the City is not reasonably satisfied with the financial status of Developer following review of the updated Financing Plan, the City shall be entitled to obtain the financial information of other members, owners and/or partners of the proposed development entity, if any, and their respective members, partners, shareholders and/or other owners at each tier until substantial assets acceptable to the City in its sole discretion are identified.

4.6.3. **City Approvals.** Developer shall have applied for and obtained all Entitlements. Developer's application for the Entitlements shall be consistent with the Scope of Development and the terms and conditions of this Agreement.

4.6.4. **Insurance.** Within the time period required by Section 11.2.3, Developer shall have obtained and delivered to the City a binder or certificate evidencing the insurance required by Section 11, which insurance shall be effective upon the mutual execution of this Agreement by Developer and the City.

4.6.5. **Declaration of Ownership; Additional Documentation.** Prior to or concurrently with the execution of this Agreement by Developer, Developer shall have delivered to the City a declaration certified by the general counsel of Developer, that the following

documentation submitted by Developer to the City prior to the Effective Date is true and correct: copies of (a) a certificate of incorporation, California foreign entity registration, and a fully executed bylaws (including any amendments thereto) of Developer; (b) copies of all resolutions or other necessary actions taken by such entity to authorize the execution of this Agreement and any other documents or instruments required by this Agreement; (c) certificates of good standing issued by the Delaware Secretary of State and by the California Secretary of State within thirty (30) calendar days of the Effective Date; and (d) a copy of any Fictitious Business Name Statement if any, as published and filed with the Clerk of Orange County.

4.6.6. **Transferee.** When required by this Agreement, Transferee (including the New Entity) shall deliver a certification in favor of the City from the chief financial officer or other appropriate authorized officer of the Transferee in the form and substance of the certificate attached as Attachment 29 ("**Transferee/New Entity Certificate**") confirming Transferee has sufficient funds to fund the development of the Project, including all Developer Costs and certifying as to the accuracy and correctness of and attaching the following:

(a) A certificate of formation and California foreign entity registration (if applicable) for Transferee;

(b) Evidence of authority of the individual(s) executing the Certificate to bind Transferee and to execute the Assignment Agreement;

(c) Copies of all resolutions or other necessary actions, if any, taken by Transferee to authorize the execution of the Assignment Agreement; and

(d) Certificates of good standing issued within thirty (30) calendar days of the date of delivery of the Assignment Agreement to the City, by the Secretary of State of the state in which Transferee is formed and by the California Secretary of State (if registration is required by applicable law).

4.6.7. **Guaranty of Developer Obligations.** Unless Developer is a publicly traded company, it shall be a requirement prior and as a condition precedent to the Close of Escrow for the benefit of the City, and upon each subsequent Transfer, that Developer shall identify a Guarantor acceptable to the City in its sole discretion and shall cause such Guarantor to deliver in accordance with and meeting the requirements of this Section 4.6.7 and Section 4.7.1:

(a) a fully executed and effective Guaranty which shall remain in effect until the Recording by the City of the Certificate of Compliance and shall guarantee, among other things, (i) payment of all Development Costs for the Completion of the Improvements for such Phase, including, for avoidance of doubt, (A) Completion of the Horizontal Improvements and the Vertical Improvements, (B) the indemnities, releases and other obligations of Developer pursuant to Sections 4.5.2(f), 5.5, 8.8, 8.9, 8.11, 8.12, 10.1, 10.2, 11.1 (including payment of all deductible amounts), and Section 17.12.1 of this Agreement; and (C) the indemnities and obligations arising during the Additional Liability Period for which Developer remains liable under this Agreement; (ii) the costs and expenses incurred by the City, if any, in enforcement by the City of its rights and/or remedies under this

Agreement with respect to non-performance by Developer of its obligations of Developer under this Agreement and the Other Agreements, including the exercise by the City of the Right of Purchase or Right of Reversion with respect thereto, but excluding the Repurchase Price applicable to any Reacquired Property actually acquired by the City pursuant to the Right of Purchase; provided that the City shall be entitled to retain the Reacquired Property so acquired in its entirety, notwithstanding any contribution or payment made by Developer, or by any Guarantor; and (iii) attorneys' fees and costs incurred by the City in connection with the enforcement of the Guaranty; and

(b) A declaration certified by the chief financial officer or other appropriate authorized officer of the applicable Guarantor in the form and substance of the certificate attached as Attachment 30 (the "**Guarantor Certificate**") certifying as to the authority of such Guarantor's authorized officer to bind Guarantor and authorization to execute the Guaranty and to the accuracy and correctness of and attaching the following for the applicable Phase and Guaranty and attaching copies of the following: (i) a certificate of formation and California foreign entity registration (if required by applicable law) for Guarantor; (ii) evidence of authority of the individual(s) executing the Guaranty to bind Guarantor and to execute the Guaranty, (iii) copies of resolutions or other necessary actions taken by Guarantor to authorize the execution of the Guaranty, if any; and (iv) certificates of good standing issued by the Secretary of State of the state in which Guarantor is formed and by the California Secretary of State (if required by applicable law), within thirty (30) calendar days of the applicable Close of Escrow.

4.6.8. **Guaranty in Transfer Context.** In the event of a Transfer by Developer of all of its interests in this Agreement, the obligations imposed upon any Guarantor hereunder under any Guaranty shall, as a condition to such Transfer, be either retained in full by such Guarantor or be assumed by a replacement Guarantor approved by the City in its sole discretion. Upon each subsequent Transfer to a Developer prior to the issuance of a Certificate of Compliance for which a Guaranty is required or for which Developer desires to replace its existing Guaranty or Guarantor as permitted by this Agreement, and as a condition to the City's review and approval, in its sole discretion, of the proposed guarantors and proposed Guaranty, Developer shall cause the proposed guarantors to deliver evidence of the financial capacity of the proposed guarantors, authority of the proposed guarantors to provide the Guaranty, and copies of all documents evidencing formation, good standing and authority requested by the City. If the City is not satisfied with the financial status of the proposed guarantor, then the City shall be entitled to obtain the financial information of other members and/or partners of the proposed development entity (and their respective members, partners, shareholders and/or other owners at each tier until substantial assets are identified) and such other financial information as the City may request to demonstrate such guarantor's and Developer's financial capacity and capability to perform its obligations under this Agreement.

4.6.9. **Pre-Close of Escrow Assurances of Equity Funding.** In the event of a Transfer by Developer of all of its interests in this Agreement prior to the Close of Escrow, the Transferee shall provide or shall cause its equity investors to provide an Equity Funding Certificate in the form and substance of the certificate attached as Attachment 32 or as otherwise approved by the City in its sole discretion which shall be executed by the chief financial officer or other

authorized officer of the Person providing equity funding for the Project and shall provide assurances to the City of the capacity of Transferee, acting on its own behalf or through such equity investors, to fully fund the development of the Project and all Development Costs.

4.7. **Guarantor Illiquidity Event.**

4.7.1. **Net Worth and Liquid Assets.** Developer shall cause each Guarantor, as may be required by this Agreement, to maintain sufficient Net Worth and Liquid Assets to fully discharge its obligations under the Guaranty executed by such Guarantor and to provide replacement financial assurances in the event Guarantor's liquid reserves fall below an amount adequate to fully discharge its obligations under such Guaranty. Without limiting the foregoing, Developer shall cause Guarantor to agree, in writing, to the following Net Worth and Liquid Assets standards for the benefit of the City:

(a) Unless otherwise agreed by the City in its sole discretion, Guarantor shall maintain, until execution and Recording by the City of the Certificate of Compliance, a Net Worth of not less than Two Hundred Fifty Million Dollars (\$250,000,000) and Liquid Assets of (i) with respect to Lennar Corporation, not less than Fifty Million Dollars (\$50,000,000) at the Close of Escrow and Twenty-Five Million Dollars (\$25,000,000) thereafter, and (ii) in all other cases, unless otherwise agreed by the City in its sole discretion, not less than Seventy-Five Million Dollars (\$75,000,000) ("**Minimum Liquidity Standards**") and

(b) Developer, Guarantor and the City shall enter into a written agreement upon terms approved by City, in its reasonable discretion, establishing the procedures by which Guarantor shall furnish specified financial reports to the City on a regular basis, but not more often than quarterly, to assure that the Minimum Liquidity Standards are met and that none of the events or actions described in Section 2.2.5 with respect to the Guarantor have occurred (the failure of any such standard being, a "**Guarantor Illiquidity Event**"); and

(c) In the event of a Guarantor Illiquidity Event, within thirty (30) calendar days following the notice from the City of a Guarantor Illiquidity Event to Developer and Guarantor, Guarantor shall supplement its Net Worth and Liquid Assets to meet the Minimum Liquidity Standards or Developer shall be required to provide the City with additional security satisfactory to the City by (i) providing the City with a Guaranty from a replacement or supplemental guarantor or guarantors acceptable to the City in its sole discretion, or (ii) furnishing the City with another form of security such as a pledge of specified assets or completion bond, in each case in a manner meeting the requirements of the City in its sole discretion.

4.7.2. **Default.** The failure of Developer to deliver or cause others to timely deliver the financial reporting information to the City as required by Section 4.7.1(b) when due shall be a Potential Default of Developer under this Agreement. Notwithstanding any other provision of this Agreement, the failure of Developer to provide (a) evidence of meeting the Minimum Liquidity Standards; (b) a Guaranty from a replacement or supplemental Guarantor or

Guarantors approved by the City in its sole discretion, or (c) substitute security for the Guaranty within the time period set forth in Section 4.7.1(c), without extension for Force Majeure Delay, shall constitute a Material Default under this Agreement.

5. **Developer's Due Diligence Investigation.**

5.1. **Due Diligence Period.**

Developer acknowledges that while the City has been negotiating this Agreement with Developer, Developer has had extensive access to the Property within which to undertake such physical inspections and other investigations of, and inquiries concerning, the Property as may be necessary to allow Developer to evaluate the physical characteristics of the Property, as well as such other matters as may be deemed by Developer to be reasonably necessary to generally evaluate the Property and determine the feasibility and advisability of Developer's purchase and redevelopment of the Property with the Project. In addition to the due diligence investigation previously conducted by Developer, Developer shall have an additional period of time as identified herein to undertake specific additional inspections and investigations as are necessary and specifically permitted herein to allow Developer to continue to evaluate the feasibility and advisability of Developer's purchase of the Property. Developer's obligation to consummate this transaction shall be contingent upon Developer's satisfaction, in Developer's sole discretion, of the results of such inspection, examination and other due diligence with regard to the Property and its suitability for construction of the Project as Developer may elect to conduct during the period commencing on the Effective Date and ending on the date which is sixty (60) calendar days following the Effective Date at 4:00 P.M. Pacific Time (the "**Due Diligence Period**"). Developer acknowledges and agrees that the Due Diligence Period is adequate time to complete such investigation. As further described in Section 5.3 of this Agreement, Developer may give City written notice (the "**Diligence Termination Notice**") on or before the end of the Due Diligence Period stating whether Developer elects to terminate this Agreement or waive its due diligence contingency and proceed to the Close of Escrow, subject to the other terms and conditions set forth in this Agreement.

5.2. **No Financing Contingency.**

Developer represents and warrants that it has examined its ability to purchase the Property and to develop the Project, including Developer's ability to finance such construction without the requirement for any Mortgage. Accordingly, Developer acknowledges and agrees that Developer's purchase of the Property is subject to no financing contingency whatsoever with respect to either private or public financing and that its acquisition of third party financing for the Project is not a condition precedent to Developer's obligation to purchase the Property or of its ability to fund construction of the Project.

5.3. **Termination of Agreement.**

If Developer fails to give the Diligence Termination Notice on or before the end of the Due Diligence Period, then Developer will be deemed to have disapproved the Due Diligence matters and shall be deemed to have elected to terminate this Agreement pursuant to Section 5.1. If

Developer elects to terminate this Agreement on or before the end of the Due Diligence Period (or is deemed to have elected to terminate this Agreement upon the expiration of the Due Diligence Period) pursuant to its termination rights set forth in Sections 5.1 or 6.3, this Agreement shall automatically terminate on the date of such election or deemed election, as applicable, and thereafter, and in accordance with Section 15.1.3, neither Party shall have any further obligations under this Agreement (subject to the provisions that expressly survive the termination of this Agreement); provided that Escrow Holder shall return the Purchase Price Deposit to Developer, less Developer's share of any title and escrow cancellation fees of Escrow Holder and outstanding ENA Transaction Costs and City Transaction Costs to the extent not covered by the City Costs Deposit, if any.

5.4. Limited License.

The City grants to Developer for use by Developer and its officers, directors, employees, agents, representatives, contractors, and other Persons accessing the Development Parcels by, through or with the permission or under the direction or auspices of Developer (the "**Developer Representatives**") a limited and revocable license to enter upon the Development Parcels for purposes of (a) conducting Developer's due diligence inspection and/or (b) obtaining data and making surveys and tests necessary to carry out this Agreement, provided that, prior to the effectiveness of such license, Developer shall: (i) deliver to the City written evidence that Developer has procured the insurance required under Section 11.1; (ii) give the City twenty-four (24) hours telephonic, electronic mail or written notice of any intended access which involves work on the Development Parcels or may result in any impairment of the use of the Property or any portion thereof or any adjacent property by any then-current owners, occupants, or contractors; (iii) access the Property in a safe manner; (iv) conduct no environmental testing, sampling, invasive testing, or boring without the written consent of the City (and, in all cases, Developer shall not carry out any environmental testing, sampling, invasive testing, or boring on the Development Parcels prior to the effective date of the environmental insurance policy described in Section 11.1.4); (v) allow no dangerous or hazardous condition to be created or caused on the Property; (vi) comply with all Governmental Requirements and obtain all permits required in connection with such access; (vii) conduct inspections and testing during normal business hours and only after obtaining the City's prior consent, which shall not be unreasonably withheld. This limited license shall commence on the Effective Date, may be revoked by the City during the continuation of any Default by Developer, or upon termination of this Agreement by any Party, and shall be automatically revoked and terminated upon the earlier to occur of a delivery by Developer of a Diligence Termination Notice or the Close of Escrow.

5.5. Indemnity.

Developer hereby agrees to protect, indemnify, defend and hold harmless the City Indemnified Parties from and against any and all Claims to the extent arising from or related to (a) the acts or omissions to act of Developer or the Developer Representatives arising from the presence, activities or work on or use of the Development Parcels or from the exercise of the license provided in Section 5.4 by Developer or the Developer Representatives, including with respect to any inspections, surveys, tests, Investigations and studies carried out by Developer or the Developer Representatives on the Development Parcels prior to the Close of Escrow, (b) entry

onto the Development Parcels by Developer or the Developer Representatives in connection with this Agreement, and (c) bodily injury to or death of any person (including any employee or contractor of the City Indemnified Parties) or damage to or loss of use of property resulting from such acts or omissions of Developer or any Developer's Representative, and in each case whether occurring prior to or following the Effective Date; provided that the foregoing indemnity shall not apply to the extent of (i) the gross negligence, willful misconduct or fraud of City or any City Indemnified Party, (ii) Hazardous Materials existing on the Development Parcels prior to Close of Escrow unless such Hazardous Materials condition is exacerbated by, or any Release caused by, negligent acts of Developer or any Developer's Representative, or (iii) the Active Negligence of the City or the City's employees, contractors or consultants arising from the presence, activities or work on or use of the Development Parcels prior to the Close of Escrow. Developer shall keep the Development Parcels free and clear of any and all Construction Liens related to Developer's inspection and/or Investigation of the Property. Subject to Section 9.7 of this Agreement, the indemnification by Developer set forth in this Section 5.5 shall survive (A) the Close of Escrow and shall not be merged into the Quitclaim Deed, and (B) any termination of this Agreement prior to Close of Escrow.

5.6. Review of Certain Records and Materials.

The City shall, within ten (10) Business Days of the Effective Date, provide Developer with copies of all City-produced plans, reports, studies, investigations and other materials the City may have in its possession that are pertinent to the Property and/or development of the Project and not previously delivered; provided that the City makes no representation, warranty or guaranty regarding the completeness or accuracy of such plans, reports, studies, investigations and other materials. Developer shall also have the right to enter the City's offices to review files and materials, including the right to examine those books, records and files of the City relating to the environmental and other condition of the Property which the City determines in its sole discretion are not subject to attorney-client privilege or other privilege or disclosure rules. The City agrees to make all such books, records, and files available to Developer and Developer's attorneys, accountants, and other representatives at City Hall any time during business hours on Business Days upon reasonable notice from Developer.

5.7. Communications with City and Third Parties.

From and after the Effective Date, communications with the City by Developer and the Developer Representatives shall be directly with the City Manager, who shall be the administrator of this Agreement on behalf of the City, and such other employees, consultants, and attorneys of the City from time to time as the City Manager may designate. In addition, Developer shall have the right to communicate with staff of other public agencies; and with third parties to all agreements affecting the Property in connection with Developer's proposed purchase of the Property and development of the Project. The City staff shall have the right, but not the obligation, to attend and participate in any and all meetings with other public agencies, with regard to the Project. Upon request of the City, Developer shall promptly provide the City with a copy of each material item of correspondence (including emails, letters, facsimiles, and any enclosures and attachments) sent to or received by Developer from third parties in connection with entitlement, community, or governmental approval of the Project, provided, however, that Developer shall not

be obligated to deliver any such materials that based upon advice of counsel are determined to be subject to attorney-client or other privilege.

6. **Title; Survey.**

6.1. **Survey by Developer.**

Developer, prior to the end of the Due Diligence Period and at Developer's sole expense, shall have obtained a survey for the Property ("**Survey**") prepared by a licensed surveyor ("**Surveyor**"), which Survey shall be certified by the Surveyor to the City, Developer and the Title Company. The Survey shall depict: (a) the boundaries of each of the proposed Development Parcels, (b) the location of all existing improvements (if any), existing perimeter improvements (if any), and easements, roads, rights-of-way and encroachments located within twenty (20) feet of the boundary of the Development Parcels, (c) all other Permitted Exceptions susceptible to depiction on a map or survey identified by reference to the recording information applicable to the documents creating them, and (d) any portion of the Development Parcels lying within a flood hazard area.

6.2. **Permitted Exceptions.**

Developer, at Developer's sole cost and expense, has caused the Title Company to prepare and deliver to Developer and the City with respect to the Development Parcels the preliminary title report attached as Attachment 4 and may cause the Title Company to issue additional preliminary title reports (collectively, the "**Preliminary Title Reports**") based upon which the Title Company may issue an extended American Land Title Association Owner's Policy for the Development Parcels (collectively the "**ALTA Policy**") to Developer in the amount of the Base Purchase Price and such additional amounts as Developer may request of Title Company. During the Due Diligence Period, Developer shall review the Preliminary Title Reports and the other relevant documents referenced below, and may object to matters set forth in the Preliminary Title Reports and request that the Title Company remove from the ALTA Policy those exceptions to title disapproved by Developer in the Preliminary Title Reports. The "**Permitted Exceptions**" to title shall include the following: (a) as of the last day of the Due Diligence Period, all matters set forth on the Preliminary Title Reports, set forth on the Survey, and not otherwise deleted from the Preliminary Title Reports nor endorsed over by the Title Company; (b) the Other Agreements that are to be recorded pursuant to Section 7.4.6(b); (c) the District, and (d) all covenants, restrictions and encumbrances, liens, exceptions, leases, restrictions, deed restrictions and qualifications expressly set forth in or permitted or contemplated by this Agreement or the Other Agreements. Notwithstanding anything to the contrary in this Agreement, the City shall deliver the Property to Developer free and clear of all monetary liens other than (i) liens for real property taxes that are not yet delinquent and (ii) Construction Liens and/or other liens or costs arising from or in connection with (A) the limited license granted pursuant to Section 5.4; (B) the License Agreement and/or (C) the acts or omissions to act of Developer or the Developer Representatives with respect to work on or use of the Property or adjoining property owned by the City pursuant to the License Agreement prior to the Close of Escrow.

6.3. Supplemental Title Reports.

If, after the end of the Due Diligence Period, the Title Company discloses additional matters that affect title to the Development Parcels, then within ten (10) calendar days after Developer's receipt of any report issued by the Title Company concerning the Property (a "**Supplemental Title Report**"), Developer shall provide the City a copy of such Supplemental Title Report and shall specify in writing Developer's disapproval of any item or exception shown on such Supplemental Title Report not previously included in the Preliminary Title Reports and that is not acceptable to Developer ("**Disapproved Exception**"), together with Developer's suggested cure thereof; provided, that Developer shall not have the right to disapprove any item or exception specifically consented to by Developer, including all exceptions arising pursuant to this Agreement and all matters appearing on the Preliminary Title Report. Failure of Developer to disapprove any item or exception shown on any such Supplemental Title Report on or before the expiration of such ten (10) calendar day period shall be deemed to be an approval of the matters set forth in such Supplemental Title Report. If Developer designates a Disapproved Exception, Developer shall specify in writing its reason for such disapproval, and the City shall have the right, but not the obligation, to (a) remove or cure the Disapproved Exception to the reasonable satisfaction of Developer, or (b) subject to the last sentence of Section 6.2, elect not to cure such Disapproved Exception. If the City fails to notify Developer of the City's election to remove or cure such Disapproved Exception within ten (10) calendar days after the City's receipt of Developer's notice of disapproval, the City shall be deemed to have elected not to cure such Disapproved Exception. If the City elects or is deemed to have elected not to cure any such Disapproved Exception then Developer's exclusive remedy shall be: (i) to accept such Disapproved Exception and proceed to take title to the Property in the manner set forth in this Agreement and without either deduction or offset to the Base Purchase Price or the Profit Participation Price, and waive such Disapproved Exception without cause of action hereunder against the City, or (ii) to provide written notice to the City within five (5) calendar days after the City's election or deemed election, of Developer's election to terminate this Agreement and the Escrow, in which case the Purchase Price Deposit, to the extent previously paid by Developer, shall be refunded to Developer in accordance with Section 5.3. Developer's failure to provide the City within said five (5) calendar day period with written notice of either Developer's acceptance of such Disapproved Exception or Developer's election to terminate this Agreement shall constitute Developer's acceptance of such Disapproved Exception and its election not to terminate this Agreement under the foregoing clause (ii). In the event Developer shall not have terminated this Agreement under clause (ii) of the preceding sentence, then all matters and exclusions or exceptions from title insurance coverage shown in such Supplemental Title Report which Developer shall have accepted (or been deemed to have accepted) pursuant to this Section 6.3 (other than those which the City has agreed to cure as provided in this Section 6.3), together with all Permitted Exceptions described in Section 6.2 shall be deemed "**Permitted Exceptions**".

6.4. ALTA Policy; Endorsements.

It shall be a condition precedent to Developer's obligation to close Escrow that the Title Company issue the ALTA Policy with policy amount equal to the Base Purchase Price and subject only to the Permitted Exceptions ("**Original ALTA Coverage**"). The City shall only be obligated to deliver to the Title Company an owner's affidavit regarding title in a form acceptable to the City

in its reasonable discretion. Developer shall have the right, at its sole expense, to request and obtain additional ALTA coverage for the value of the development cost of the Project (“**Additional ALTA Coverage**”) and any title endorsements as Developer deems necessary (the “**Developer Title Endorsements**”); provided that the issuance of such Additional ALTA Coverage and the Developer Title Endorsements shall not delay the Close of Escrow and shall not be a condition precedent to the Close of Escrow. At the Close of Escrow, the City shall pay the City Premium and the Developer shall pay all other costs associated with issuance of the ALTA Policy, including costs of the ALTA Policy, Developer Title Endorsements and the cost of a lender’s policy of title insurance, if any.

6.5. **City Title Policy.**

It shall be a condition precedent to the City’s obligation to close Escrow that the Title Company issue the City Title Policy subject only to the Permitted Exceptions. Developer shall only be obligated to deliver to the Title Company an owner’s affidavit regarding title in a form acceptable to Developer in its reasonable discretion. At the Close of Escrow, Developer shall pay the premium for the City Title Policy.

7. **Closing.**

7.1. **Time and Place of Closing.**

7.1.1. **Close of Escrow.** Unless otherwise mutually agreed by the Parties in writing, the Close of Escrow shall take place on that date which is ten (10) Business Days following the last to occur of the satisfaction, or the waiver thereof by the Party for whose benefit the condition applies, of the Developer Closing Conditions set forth in Sections 7.2.1(d), (e), (f), (g) and (l) and the City Closing Conditions set forth in Sections 7.2.2(c), (d), (e), (f), (g), (h), (j), (k) and (n) (the “**Closing Date**”); provided that in no event shall Developer be obligated to close Escrow unless it has received at least five (5) Business Days’ advance written notice from the City of the anticipated date for satisfaction of such City Closing Conditions and provided, further, that the Close of Escrow shall in no event be later than June 28, 2018 (the “**Outside Closing Date**”), and provided further that if the provisions of Section 7.1.3 apply, the Closing Conditions set forth in Sections 7.2.1(g) and 7.2.2(e) shall be deemed to be excluded from the foregoing list of conditions required to be satisfied prior to establishment of the Closing Date. The Close of Escrow shall be subject to the satisfaction of the conditions set forth in Sections 7.2 and 7.3, and shall take place at the offices of Escrow Holder, or at such other place that the City selects. Notwithstanding the foregoing, if on or before the Outside Closing Date either: (a) the City and Tustin Unified School District (“**TUSD**”) have not entered into a TUSD Agreement pursuant to which TUSD has agreed, upon receipt of payment in full of an agreed-upon sum from the City at the Close of Escrow, to either release the lien of the TUSD CFD or to provide other evidence demonstrating payment in full of the TUSD CFD as to the Property at Close of Escrow as described in Section 8.17.4, or (b) the City shall not have formed the District, in accordance with Section 8.7.3, with such formation Finally Approved, then in either case, the City shall have the right, in its sole discretion, but not the obligation, to extend the Outside Closing Date for a period not to exceed three (3) months at no cost to the City in order to continue to achieve the TUSD Agreement and the Final Approval of the District; provided that

the failure of TUSD to remove the lien of the TUSD CFD and the failure of the City to enter into the TUSD Agreement or to approve the District for any reason shall not be a Default by the City under this Agreement.

7.1.2. **Extension of Closing Dates.** The Closing Date (and Outside Closing Date) may be extended upon mutual written agreement of the Parties. In the event that the Close of Escrow does not occur on or prior to the Outside Closing Date (as such date may be automatically extended pursuant to Section 7.1.1), then, subject to the provisions of Section 15 or any agreement by the Parties (in their sole and absolute discretion) to extend the Outside Closing Date, this Agreement shall terminate at the end of the Business Day on the Outside Closing Date.

7.1.3. **Closing on Metes and Bounds Description.** If all Closing Conditions are satisfied other than those set forth in Sections 7.2.1(g) and 7.2.2(e), and the sole reason that the foregoing conditions are not satisfied is that the County has received a form of Final Map approved by the City but the County has not approved the Final Map for Recording and therefore the Final Map is not Recorded, (a) Developer shall cause to be prepared, at its sole cost and expense, a metes and bounds legal description for (i) the Property, (ii) the areas affected by the Public Access Easement, and (iii) all required easement and dedication areas shown on the Tentative Tract Map, which such metes and bounds legal descriptions shall be used as legal descriptions for documents to be Recorded at the Close of Escrow, (b) upon approval thereof by the City and Developer and provision by Developer of all Performance Bonds and such other security for construction of the Improvements in accordance with the Approved Plans and the Entitlements as the City may request in its sole discretion, the Parties shall waive the recording of the Final Map as a condition to Close of Escrow and utilize such metes and bounds description in order to cause the Close of Escrow, and (c) Developer shall promptly pursue the Recording of the Final Map, including making all revisions requested by the County for the authorization of the Recording of the Final Map, and shall cause the Final Map to be Recorded on or before the date set forth for such Recording in the Schedule of Performance.

7.2. **Conditions Precedent to Close of Escrow.**

7.2.1. **Developer Closing Conditions.** Developer's obligation to purchase the Property and to complete all requirements for the Close of Escrow is subject to and conditioned upon the satisfaction of, or Developer's written waiver of, each of the following conditions to the Close of Escrow ("**Developer Closing Conditions**") on or before the Closing Date:

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

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

(ii) the Special Restrictions, acknowledged and in Recordable

form;

(iii) a Quitclaim Deed for the Property, acknowledged and in Recordable form;

(iv) if not previously recorded, the DA, acknowledged and in Recordable form;

(v) the Profit Participation Agreement;

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

(vii) the Public Access Easement, acknowledged and in Recordable form;

(viii) federal "FIRPTA" Affidavit;

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

(x) A bill of sale for of all City-owned utility systems previously owned by the military on the Development Parcels and providing for removal and abandonment of those systems for construction of Improvements, which shall include an assignment by the City to Developer of all Intangible Property ("**Bill of Sale**");

(xi) a reaffirmation of the City's representations and warranties set forth in Sections 3.3 and 17.12.2, in substantially the form and substance of the certificate attached hereto as Attachment 17, which reaffirmation shall identify any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change. In no event shall the City be liable to Developer for, or be deemed to be in Default under this Agreement by reason of, any breach of representation or warranty which results from any change that (A) occurs between the Effective Date and the date of Close of Escrow, and (B) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of the City to prevent;

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

(xiii) if and only if the Final Map is not Recorded prior to or

concurrently with the Close of Escrow, the Request for Partial Reconveyance, in substantially the form and substance of the instrument attached hereto as Attachment 33A, to which shall be attached the Partial Reconveyance in substantially the form and substance of the instrument attached hereto as Attachment 33B;

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

(b) Title Policy. The Title Company shall be in a position to issue the ALTA Policy to Developer for the Development Parcels in the amount of the Base Purchase Price and subject only to the Permitted Exceptions.

(c) Pre-Existing Obligations. Except with respect to the License Agreement or as otherwise approved by Developer in writing or constituting a Permitted Exception, there shall exist no leases, contracts or rights of occupancy or other agreements or contracts with respect to the Property (but excluding the provisions of the Federal Deeds and the Memorandum of Agreement) entered into by the City that shall survive the Close of Escrow.

(d) Entitlements. Developer shall have timely applied for and shall have been granted all Entitlements required for development of the Project and all applicable appeal and statute of limitations periods relating thereto shall have expired without the filing of any appeal or legal challenge or any such appeal or legal challenge shall have been resolved in favor of Developer and the Project.

(e) Design Review. Developer shall have timely applied for and shall have been granted approval of the Basic Concept Plan for the Project, which shall be substantially in conformance with the Site Plan and the Scope of Development.

(f) Permits. Developer shall have timely applied for and the City shall be prepared to issue all grading permits for the Grading Work.

(g) Final Map. Developer shall have timely applied for and processed, and if timely applied for and processed, the City shall have approved the Final Map and the County shall have approved the Final Map and the Final Map shall have been Recorded; provided, however, that, in the event the provisions of Section 7.1.3 apply, the Final Map need not have been approved by the County and Recorded.

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

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

(j) Representations and Warranties. The City's representations and warranties set forth in Sections 3.3 and 17.12.2 shall be true and correct as of the Close of Escrow, provided, in no event shall the City be liable to Developer for, or be deemed to be in Default under this Agreement by reason of, any breach of representation or warranty which results from any change that (i) occurs between the Effective Date and the date of the Close of Escrow, and (ii) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of the City to prevent. The occurrence of a change in a representation and warranty shall, if materially adverse to Developer or the Property, as determined by Developer in Developer's reasonable business judgment, constitute the non-fulfillment of the condition set forth in this Section 7.2.1(j), unless such matter is cured at least one (1) Business Day prior to the Close of Escrow. If, despite changes or other matters described in the City's reaffirmation certificate, the Close of Escrow occurs, the City's representations and warranties set forth in Sections 3.3 and 17.12.2 shall be deemed to have been modified by all statements made in such certificate.

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

(l) TUSD Agreement. The City and TUSD shall have entered into the TUSD Agreement in form acceptable to the City in its sole discretion.

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

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

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

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

(ii) an Acceptance of the Special Restrictions acknowledged and in Recordable form;

(iii) an Acceptance of the Quitclaim Deed, acknowledged and in Recordable form;

(iv) if not previously recorded, the DA, acknowledged and in Recordable form;

(v) the Profit Participation Agreement;

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

(vii) the Bill of Sale;

(viii) the Public Access Easement acknowledged and in Recordable form;

(ix) if required pursuant to this Agreement, a Guaranty executed by Guarantor approved by the City in its sole discretion, which Guaranty shall be in substantially the form and substance of that attached hereto as Attachment 27 or as otherwise agreed by Guarantor and the City each in its sole discretion and a Legal Opinion executed by legal counsel to Guarantor;

(x) a reaffirmation of Developer's representations and warranties set forth in Section 3.1 (as the same may be modified pursuant to Section 3.2) and Section 17.12.1 (or in the case where the Merger or any other Transfer occurs prior to the Close of Escrow, the representations and warranties made by the New Entity or Transferee, as applicable, in the applicable Assignment Agreement) in substantially the form and substance of the certificate attached hereto as Attachment 18, which reaffirmation shall identify any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change;

(xi) a declaration certified by an officer of Developer in the form and substance of the certificate attached hereto as Attachment 18 that the documentation submitted by Developer to the City pursuant to Section 4.6.5 prior to the Effective Date is true and correct as of the Close of Escrow together with certificates of good standing of Developer, issued by the State of Delaware and by the California Secretary of State within thirty (30) calendar days of the Closing Date;

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

(xiii) the City Deed of Trust acknowledged and in recordable form in favor of the City and to be recorded against Lots 6 and 7, or if the Final Map is not then Recorded, to be recorded against the entirety of the

Development Parcels; and

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

(c) Entitlements. Developer shall have timely applied for and shall have been granted all Entitlements required for development of the Project and all applicable appeal and statute of limitations periods relating thereto shall have expired without the filing of any appeal or legal challenge or any such appeal or legal challenge shall have been resolved in favor of Developer and the Project.

(d) Design Review. Developer shall have timely applied for and shall have been granted approval of the Basic Concept Plan for the Project, which shall be substantially in conformance with the Site Plan and the Scope of Development.

(e) Final Map and Performance Bonds. The Final Map shall have been approved by the City and the County shall have approved the Final Map and the Final Map shall have been Recorded, provided, however, that, in the event the provisions of Section 7.1.3 apply, the Final Map need not have been approved by the County and Recorded; if not previously delivered in connection with such Recording or required pursuant to then effective Subdivision Improvement Agreement, Developer shall have provided one or more Performance Bonds in favor of the City as obligee securing Developer's obligations to perform the Horizontal Improvements.

(f) Permits. Developer shall have timely applied for and the City shall be prepared to issue all grading permits for the Grading Work.

(g) District Formation. The City shall have formed the District, in accordance with Section 8.7.3, and such formation shall be Finally Approved.

(h) CC&Rs. Developer shall have submitted for City review a first draft of the CC&Rs as specified in Section 13.1, which shall have been approved by the City pursuant to Section 13.1.

(i) Insurance. Developer shall have provided to the City evidence of insurance as and to the extent required by Section 11.

(j) Financial Capability. Developer shall have satisfied the conditions precedent to Close of Escrow set forth in Section 4.6.1 to the satisfaction of the City in its sole discretion, including delivery to the City of evidence as required by such provisions demonstrating (i) the availability of funds, without third party financing or Mortgage of any kind, sufficient to pay all costs relating to acquisition of the Property and development of the Project on the Property, including sufficient equity capital to design, construct and operate the Project (ii) no material adverse change in the financial capacity or condition of Developer or its financial or organizational relationships from that presented to the City as of the Effective Date, (iii) that the Financing Plan remains in full force and effect, or as

modified, is satisfactory to the City in its sole discretion, and (iv) that the Project budget for the Improvements remains a reasonable budget.

(k) Additional Conditions. Developer shall have satisfied the conditions precedent to Close of Escrow set forth in Sections 4.6.1 through 4.6.5 of this Agreement and shall be in compliance with the requirements of Section 8.5.2.

(l) Representations and Warranties. Developer's representations and warranties set forth in Sections 3.1 and 17.12.1 (or in the case where the Merger or any other Transfer occurs prior to the Close of Escrow, the representations and warranties made by the New Entity or Transferee, as applicable, in the applicable Assignment Agreement) shall be true and correct as of the Close of Escrow, provided, in no event shall Developer be liable to City for, or be deemed to be in Default under this Agreement by reason of, any breach of representation or warranty which results from any change that (i) occurs between the Effective Date and the date of the Close of Escrow, and (ii) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of Developer to prevent. The occurrence of a change in a representation and warranty shall, if materially adverse to City, as determined by City in City's reasonable business judgment, constitute the non-fulfillment of the condition set forth in this Section 7.2.2(l), unless such matter is cured at least one (1) Business Day prior to the Close of Escrow. If, despite changes or other matters described in Developer's reaffirmation certificate, the Close of Escrow occurs, Developer's representations and warranties set forth in Sections 3.1 and 17.12.1 (or in the case where the Merger or any other Transfer occurs prior to the Close of Escrow, the representations and warranties made by the New Entity or Transferee, as applicable, in the applicable Assignment Agreement) shall be deemed to have been modified by all statements made in such certificate.

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

(n) TUSD Agreement. The City and TUSD shall have entered into the TUSD Agreement in form acceptable to the City in its sole discretion.

(o) City Title Policy. The Title Company shall be in a position to issue the City Title Policy to the City for the portions of the Development Parcels securing the City Deed of Trust and subject only to the Permitted Exceptions.

7.3. Additional Close of Escrow Conditions.

In addition to the provisions of Section 7.2, the Close of Escrow shall be conditioned upon the following Closing Conditions, which shall be for the benefit of each Party:

(a) Closing Cost Statement. Escrow Holder shall have delivered at least seven (7) Business Days prior to the Close of Escrow a statement of costs to each Party and at least two (2) Business Days prior to the Close of Escrow each of the Parties shall have approved such statement as being consistent with the provisions of Section 7.4.

(b) Closing Certificate. Each Party shall submit to Escrow Holder a certificate stating that all Closing Conditions for its benefit have been satisfied or waived.

7.4. Procedures for Conveyance.

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

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

(b) Developer's Costs. Developer shall pay (i) the entire cost of the ALTA Policy, along with the cost of any other title insurance coverage, in excess of the City Premium and all other costs associated with issuance of the ALTA Policy, Developer Title Endorsements and the cost of a lender's policy of title insurance, if any, (ii) the entire cost of the Survey and any additional land surveys obtained by Developer in connection with the foregoing; (iii) document recording charges for the Special Restrictions, the Quitclaim Deed, the Memorandum of DDA and all other Recorded documents; (iv) one-half (1/2) of all Escrow fees and costs; and (v) Developer's share of prorations. Developer shall pay the fees of all consultants and employees (including lawyers and environmental, engineering and land use consultants) engaged by it.

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

7.4.2. Possession. The City shall deliver possession of the Property at the Close of Escrow.

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

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

(b) Licenses and Permits. To the extent in the City's possession, originals or copies of all licenses and permits affecting the Property other than the License Agreement.

7.4.4. Prorations.

(a) General. Rentals, revenues and other income, if any, from the Property shall be prorated on a cash basis as of 11:59 P.M. Pacific Time on the day

preceding the Close of Escrow. Tax payments shall be prorated in accordance with Section 7.4.4(b).

(b) Taxes. Except as set forth in Section 7.4.4(c), Developer shall be responsible for all taxes, assessments, fees and charges imposed by any Governmental Authority with respect to the Property conveyed to it and all existing and future improvements thereon from and after the Close of Escrow. If, after the Close of Escrow, any real estate taxes or possessory interest taxes are assessed against any conveyed parcel pertaining to the period prior to the Close of Escrow, the City agrees to contact the applicable taxing authority and seek recognition and enforcement of its tax exemption. The provisions of this clause (b) shall survive the Close of Escrow and shall not merge into the Quitclaim Deed.

(c) TUSD CFD. At the Close of Escrow, and provided that TUSD and City have entered into a TUSD Agreement pursuant to which TUSD has agreed, upon receipt of payment in full of an agreed-upon sum from the City at the Close of Escrow, to either release the lien of the TUSD CFD or to provide other evidence demonstrating payment in full of the TUSD CFD as to the Property at Close of Escrow, City shall be responsible to pay in full the lien of the TUSD CFD upon the Property from the Base Purchase Price

7.4.5. Method of Proration. All prorations shall be made in accordance with customary practice in Orange County, except as otherwise expressly provided in this Agreement. Developer and the City agree to cause a schedule of prorations to be prepared prior to the Close of Escrow. Such prorations, if and to the extent known and agreed upon as of the Close of Escrow, shall be paid by Developer to the City (if the prorations result in a net credit to the City) or by the City to Developer (if the prorations result in a net credit to Developer) by increasing or reducing the cash to be paid by Developer at the Close of Escrow. Any such prorations not determined or not agreed upon as of the Close of Escrow shall be paid by Developer to the City, or by the City to Developer, as the case may be, in cash as soon as practicable following the Close of Escrow. A copy of the schedule of prorations as agreed upon by Developer and the City shall be delivered to Escrow Holder at least three (3) Business Days prior to the Close of Escrow. All prorations provided for in Section 7.4.4 and this Section 7.4.5 shall be on an "actual day" basis and a three hundred sixty-five (365) day year.

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

(a) Funds. Debit or credit all matters addressed in Section 7.4.1 and prorate all matters addressed in Section 7.4.4 and disburse to the City the Base Purchase Price (as adjusted by the foregoing debits, credits and prorations).

(b) Recording. Cause to be Recorded against the Development Parcels, in the following order: the Memorandum of DDA, the Special Restrictions, the Quitclaim

Deed, the Public Access Easement, the Landscape Maintenance Agreement, the City Deed of Trust, and thereafter, other documents that Developer and the City may mutually direct, or that may be required by the terms of this Agreement to be Recorded, obtain conformed copies thereof and distribute same to Developer and the City.

(c) Title Policy. Direct the Title Company to issue the ALTA Policy to Developer in the amount of the Base Purchase Price and subject only to the Permitted Exceptions and to issue the ALTA Lender's policy to the City in the amount of Four Million Dollars (\$4,000,000) ("**City Title Policy**") and subject only the Permitted Exceptions. Concurrently with the issuance of the ALTA Policy, the Title Company shall provide the Developer Title Endorsements, provided that the issuance of such Developer Title Endorsements shall not be a condition to Close of Escrow, except for those endorsements that the City agreed to obtain in order to cure any disapproved title exceptions or survey matters. Concurrently with the issuance of the City Title Policy, the Title Company shall provide to the City the endorsements requested by City; provided, however, that the costs of any such endorsements shall be paid for by the City.

(d) Delivery of Documents to Developer and City. Deliver to each Party original counterparts (and conformed copies, if applicable) of the DA (if not previously recorded), the Special Restrictions, the Memorandum of DDA (if not previously recorded), the Quitclaim Deed, the Profit Participation Agreement, the Public Access Easement, the Landscape Maintenance Agreement, the City Deed of Trust, the Bill of Sale, the FIRPTA Affidavit, the California Form 593-W and any other documents (or copies thereof) deposited into Escrow by Developer or the City pursuant hereto, and deliver to the Parties a certified copy of their respective Escrow closing statements.

(e) City Deed of Trust Partial Reconveyance. If the same is delivered by the City, retain the Request for Partial Reconveyance with respect to the City Deed of Trust until such time as Escrow Holder is instructed by the terms of the Request for Partial Reconveyance and Section 4.4.8 of this Agreement to Record the Partial Reconveyance, and then, and only then, to cause the Title Company to execute the Partial Reconveyance and to cause the Partial Reconveyance to be Recorded.

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

7.4.7. Notice. All communications from the Escrow Holder shall be directed to the addresses and in the manner established in Section 17.6 for notices, demands and communications between the Parties.

7.4.8. Partial Reconveyance. In the event the Final Map is not Recorded prior to or concurrently with the Close of Escrow, the executed Request for Partial Reconveyance delivered to Escrow by the City in accordance with Section 7.2.1(a)(xiii) shall be held by Escrow Holder until such time as the Final Map is Recorded. Immediately following the Recordation of the Final Map, but in no other circumstance, First American Title Insurance Company, as trustee of the City Deed of Trust, shall execute and deliver to Escrow Holder the Partial Reconveyance,

in substantially the form and substance as attached hereto as Attachment 33B, and Escrow Holder shall immediately Record such Partial Reconveyance, without further instruction from the Parties. This provision shall survive the Close of Escrow.

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

8.1. **Scope of Development.**

8.1.1. **Requirement to Develop the Project.** The Scope of Development attached to this Agreement as Attachment 8 sets forth the overall plan for the Project and development of the Development Parcels, including design, development, and construction of the Improvements as may be required by each Entitlement approval. Until the issuance of the Certificate of Compliance and except as otherwise permitted by Section 2.2, no Person shall be permitted or authorized to undertake the construction of any improvements on the Development Parcels or any portion thereof (including the Improvements) unless such Person is Transferee pursuant to a Permitted Transfer or has been approved by the City as a Transferee pursuant to Section 2.2 and in any such case has assumed in writing all obligations of Developer under this Agreement and the Other Agreements, pursuant to an Assignment Agreement. The provisions of this Section shall survive termination of this Agreement.

8.1.2. **Control of Site Development.** Developer shall have control over the design and layout of the Improvements (including height, shape and location of the Vertical Improvements and special landscaping and art features) and over the special uses to be incorporated therein, subject to (a) the Approved Plans, Development Permits and Entitlements, including any conditional use permit necessitated by particular proposed uses or design features and (b) the design approval provisions set forth in Section 8.4 for the benefit of the City, which are undertaken by the City in its Proprietary Capacity.

8.1.3. **Project Development Costs.** Within the time set forth in the Pre-Closing Schedule and the Schedule of Performance, as applicable, Developer shall design and construct the Project upon the Property at Developer's sole cost and expense and without public subsidy of any kind, unless otherwise agreed in writing by the City in its sole discretion. Without limiting the generality of the foregoing, Developer hereby agrees that all costs associated with planning, designing and constructing the Project, preparing the Property and constructing all Improvements (whether on-site or off-site) required in connection with the Project, including all hard costs, soft costs, the cost of services, fees, exactions, dedications, cost overruns, profit, overhead, marketing fees, sales incentives, insurance, overhead, Entitlement costs, warranties, consultants' fees, legal fees, wages required to be paid to any person employed by Developer, any Transferee, contractor or subcontractor, and the costs of the Project Fair Share Contribution (collectively, the "**Development Costs**"), shall be the responsibility of Developer without any cost or liability to the City. Developer will be responsible for all costs of any necessary in-tract improvements, including those identified for the Property on Attachment 9.

8.1.4. **Compliance with Governmental Requirements and Other Requirements.** Developer shall develop the Project and the Development Parcels in the manner described in and consistent with the Scope of Development, the Site Plan attached as Attachment 3,

and in accordance with the Schedule of Performance, the Approved Plans and all Governmental Requirements, as further described below, including the Specific Plan, the Entitlements, the Development Permits, the Memorandum of Agreement and the Federal Deeds.

8.2. Timing and Conditions of Project Development.

8.2.1. Pre-Closing Schedule and Schedule of Performance. The Pre-Closing Schedule sets forth the schedule for the period prior to the Close of Escrow. The Schedule of Performance sets forth the post-closing schedule for submissions, approvals and actions, including the design and development of the Project and construction of the Improvements. The Parties acknowledge and agree that, subject to Section 17.7.4, time is of the essence with respect to the dates set forth in the Pre-Closing Schedule and the Schedule of Performance. Following conveyance of the Property to Developer, Developer shall promptly begin and thereafter diligently prosecute to completion all steps required by the Schedule of Performance including design, construction and development of the Improvements for the Project within the time specified in the Schedule of Performance. Subject to Section 17.7, the City may, in its sole discretion and upon written request from Developer, extend the time specified for any of Developer's obligations in the Schedule of Performance. Any such agreed upon changes shall be within the limitations of the Specific Plan, the Entitlements, the Development Permits and all other Governmental Requirements. To be effective, any extensions shall be requested in writing by Developer and evidenced by written notice from the City Manager or designee.

8.2.2. Completion of Improvements. Immediately after Close of Escrow, Developer shall promptly begin and thereafter diligently prosecute to Completion the Improvements in accordance with the requirements of and within the time periods established by this Agreement, including the Schedule of Performance, the Approved Plans, the Entitlements, the Development Permits, the Specific Plan, and all other Governmental Requirements, as well as all requirements of private utility purveyors. Developer shall Complete the Improvements on or before the date set forth for performance of such work in the Schedule of Performance.

8.2.3. License Agreement for Construction. From and after the Initial Satisfaction Date and provided that (a) all of the representations and warranties of Developer set forth in Sections 3.1 and 17.12.1 (or in the case where the Merger or any other Transfer occurs prior to the Close of Escrow, the representations and warranties made by the New Entity or Transferee, as applicable, in the applicable Assignment Agreement) are true and correct as of such Initial Satisfaction Date and (b) Developer has deposited with Escrow Holder the additional Purchase Price Deposit amount described in Section 4.3.1, Developer shall have the right, at its sole cost and expense, and pursuant to a license agreement to be entered into by and between the City and Developer in substantially the form and substance of the License Agreement attached hereto as Attachment 22 or as otherwise approved by each in its sole discretion (the "**License Agreement**"), to enter upon the Development Parcels prior to the Close of Escrow for purposes of carrying out the Horizontal Improvements. Prior to the effective date of the License Agreement ("**License Agreement Effective Date**"), Developer shall, at its own expense, cause to be procured and maintained the policies of insurance required pursuant to Section 11.1. Specifically, Developer shall obtain insurance meeting the requirements in Sections 11.1.3 and 11.1.4; provided however, that notwithstanding the provisions of Section 11.1.4, the PLL policy may not contain exclusions

from coverage relating to unknown pre-existing conditions and/or conditions that are discovered during the Grading Work or construction of the Horizontal Improvements. Developer shall not rely upon or have rights to claim for reimbursement, payment, or coverage under any pollution legal liability insurance presently maintained by City. In addition, to the extent the contractor performing the Grading Work and/or construction of the other Horizontal Improvements on behalf of the Developer has or obtains a Contractor Pollution Liability policy with respect to the Grading Work and the other Horizontal Improvements, Developer shall use commercially reasonable efforts to have the contractor cause its policy to be primary and the PLL policy to be noncontributory with respect to matters covered by the Contractor Pollution Liability policy. Developer shall be responsible for all self-insured retention or deductible amounts due under the PLL policy.

8.2.4. **Development Flag**. Unless otherwise agreed by the City in its sole discretion, with respect to all Homes developed by Developer or any Successor Owner Controlled by Lennar Corporation, the registered seller shall utilize the d/b/a of "CalAtlantic" or "Standard Pacific".

8.3. **Land Use Matters.**

8.3.1. **Required Entitlements**. Developer shall, at its sole cost and expense, process, obtain, and maintain all Entitlements to assure that the design, construction, use, operation, maintenance, repair and replacement of the Improvements is carried out in accordance with the provisions of this Agreement, and is permitted by the Entitlements and all other Governmental Requirements. Development of the Project shall be subject to the following Entitlement review processes of the City: (a) the Design Review approval (Design Review application 2017-4; (b) Tentative Tract Map approval (Tentative Tract Map No 18125); and (c) Development Agreement approval (application 2017-01) and any other approvals to the extent required by the City Code to permit the uses contemplated in the Site Plan or Approved Plans. Without limiting the foregoing, in developing and constructing the Project, Developer shall ensure that the Project complies with all applicable development standards in the Specific Plan, the City Code and with all building codes, landscaping, signage and parking requirements, except as may be permitted through variances and modifications.

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

8.3.3. **Agreement Does Not Grant Entitlements**. Nothing in this Agreement shall be construed or interpreted as committing the City to approve or undertake any action or review process or activities that require the independent exercise of discretion by the City in its Governmental Capacity, including any approval of any Entitlement or Development Permit application for which Developer applies after the Effective Date. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may be imposed by the City in its Governmental Capacity in connection with approval of the Project, (c) guarantee to Developer or any other party any profits from the development of the Property, or (d) amend any Governmental Requirements of the City. The issuance or approval of

any Entitlement not issued or approved on or prior to the Effective Date or any Development Permit described in this Agreement shall be done by the City in its Governmental Capacity. Nothing contained in this Agreement shall be deemed to waive the right of the City to act in its Governmental Capacity with respect to the consideration and approval of the Entitlements and all other permits, licenses and approvals requested by Developer from time to time in connection with the Project nor shall it entitle Developer to any Entitlement, Development Permit or other City approval necessary for the development of the Project, or to the waiver of any applicable City requirements relating thereto, and the failure of the City to issue or approve any Entitlement described in this Agreement, including to certify or approve any CEQA document, to approve any tentative tract map, design review, conditional use permit or other Entitlement or Development Permit shall not be a default of the City under this Agreement.

8.3.4. **Cooperation of City.** Consistent with this Agreement, the City agrees, without cost or other liability to the City or any commitment of the City to approve or conditionally approve any Entitlements required for the full implementation of this Agreement, to assist and cooperate with Developer in its efforts to process the Entitlements and Development Permits. The City will use good faith efforts to expedite review of applications for the Entitlements and the Development Permits that are to be issued by the City and other submissions made by Developer where reasonably appropriate in order to meet the deadlines set forth in the Schedule of Performance and will assist and cooperate with Developer in its efforts to process such Development Permits, Entitlements and other submissions.

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

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

8.3.7. **Payment of Fees.** Without limiting any other provision of this Agreement, Developer shall pay (a) all fees, costs and deposits normally charged by the City or other Governmental Authority in connection with application for and review and approval of Development Permits and Entitlements, (b) any fees or costs incurred by the City or any other Governmental Authority in complying with CEQA or the State CEQA implementing regulations; (c) any costs to review or approve any Entitlement or Development Permit applications or submittals by Developer to the City or any other Governmental Authority in connection with the Project.

8.4. Design Approval.

8.4.1. Design Review. It is understood and agreed to by Developer that the quality, character and uses proposed for the Project are of particular importance to the City. In furtherance of the development of the Project and the foregoing, the City, acting in its Governmental Capacity, shall require Design Review approval as part of the Entitlements. In addition, in its Proprietary Capacity as the current owner of the real property that is the subject of this Agreement and of substantial portions of Tustin Legacy, the City will require review and approval of the Basic Concept Plan for the Project as further set forth in this Section 8.4. Review of design documents by the City in its Proprietary Capacity only shall be subject to time periods set forth below.

8.4.2. Plan Development and Cost. All plans and specifications for the Project shall be prepared by Developer at Developer's sole cost and expense and subject to the requirements set forth in this Section 8.

8.4.3. Process for Governmental Review. The Parties acknowledge that the City shall have the right to review all plans, specifications and submissions, including any changes therein, through its normal plan review and Entitlement process and that the City may exercise its governmental discretion in its Governmental Capacity in review of any of the plans, specifications and submissions. Within the timeframe shown in the Schedule of Performance, Developer shall submit for approval by the City in its Governmental Capacity, final design drawings and related documents conforming to the requirements of the City Code, the Specific Plan and all other Entitlements and conditions of approval. The Community Development Department is authorized pursuant to City Code to approve minor changes to building plans after approval by the City provided such changes do not significantly reduce the quality of the development concept or the design and materials to be used in enhancing the architecture and aesthetics of the Improvements.

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

8.4.5. Proprietary Review. Prior to the Effective Date, Developer has caused the Basic Concept Plan to be prepared and submitted to the City for approval and the City has reviewed and approved the Basic Concept Plan in its Proprietary Capacity, including with respect to landscape plans, exterior elevations, exterior materials (including selections and colors) and the size, and floor plans for all Homes and Buildings and the product mix. Developer acknowledges and agrees that the City's Community Development Department is responsible for reviewing the working drawings and issuing recommendations with respect to the appropriate Entitlements and has approved the Basic Concept Plan. In addition to its submittal of same to the Community Development Department, Developer shall submit any modifications to the Basic Concept Plan to the City Manager's office for its approval in accordance with this Section. The exercise by the

City Manager's office of its right to inspect or review the concept plans, drawings and related documents for development of the Project: (a) shall be an exercise of the City's Proprietary Capacity and not its Governmental Capacity; (b) shall not constitute an approval by the City of any Entitlements; (c) shall not constitute a determination by the City of the engineering or structural design, sufficiency or integrity of the improvements contemplated by such plans, drawings and related documents, and (d) shall not constitute a determination by the City of the compliance of such plans, drawings and related documents with any applicable building codes, safety features and standards. Any inspection or approval of plans and drawings made or granted pursuant to this Agreement shall not constitute an inspection or approval of the quality, adequacy or suitability of such plans, specifications or drawings, nor of the labor, materials, services or equipment to be furnished or supplied in connection therewith. Developer acknowledges and agrees that the City in its Proprietary Capacity may approve or disapprove the Basic Concept Plan and design review plans and any modifications thereto in order to satisfy the City's obligation to promote the sound development and redevelopment of land, to promote a high level of design that will impact development surrounding the Project, and to provide an environment for the social, economic and psychological growth and well-being of the citizens of the City and that the City is not constrained or limited to act solely within its governmental discretion, authority, or capacity. Developer shall not be entitled to damages or compensation as a result of the City's disapproval, conditional approval, or failure to approve or disapprove the Basic Concept Plan or any modification thereto in its Proprietary Capacity.

8.4.6. **Process for Proprietary Review.** If Developer desires to modify the Basic Concept Plan, Developer shall submit two sets of the modifications to the Basic Concept Plan for the Improvements to the City. Such sets of the Basic Concept Plan shall be submitted in writing over the signature of Developer or a representative duly authorized by Developer in writing. If the City approves such modifications, the City Manager or designee shall endorse its approval on one set of such Basic Concept Plan and return them to Developer. The City, in its Proprietary Capacity only, shall conclusively be deemed to have disapproved such modifications to the Basic Concept Plan unless, within fifteen (15) Business Days after the City's receipt of such modifications, the City gives written notice of approval to Developer. Developer shall make changes in response to the City's notice of disapproval or deemed disapproval and resubmit such Basic Concept Plan to the City for review and approval in accordance with the provisions of this Section 8.4.6 (and in such case the City's review period shall be ten (10) Business Days.) If the City disapproves, or is deemed to have disapproved any proposed modification of the Basic Concept Plan and such delay adversely impacts Developer's compliance with the requirements of the Schedule of Performance, then the dates for Developer's Performance under the Schedule of Performance which are impacted by the City delay shall be extended day for day until the City's approval has been given to such modification.

8.4.7. **Approved Plans.** Upon (a) approval by the City in its Governmental Capacity of the Entitlements as described in this Section 8, (b) approval by the City in its Proprietary Capacity of the Basic Concept Plan under this Section 8.4, and (c) approval of construction level drawings by the City in its Governmental Capacity, then such approved plans and drawings (collectively the "**Approved Plans**") shall govern development of the Improvements on the Property. In addition to any other rights to approve or disapprove the construction level drawings in its Governmental Capacity, the City may disapprove such documents in its Proprietary

Capacity if such documents are not consistent with the Entitlements and the Basic Concept Plan previously approved, do not represent a logical or commercially reasonable implementation thereof, and/or do not provide for construction of the same square footage as set forth therein. Developer shall not construct any Improvements on the Property and shall not conduct any Grading Work on the Property unless the same are shown in the Approved Plans or unless the prior written consent of the City in its Proprietary Capacity and, if necessary, the approval of the City in its Governmental Capacity are obtained to any modification thereof. To the extent of any inconsistencies between the plans identified in the Scope of Development or the Site Plan and the Approved Plans, the Approved Plans shall govern and control as to the development of the Property.

8.5. Financial Status.

8.5.1. Financial Capability. After the Close of Escrow, and thereafter until issuance of the Certificate of Compliance, Developer shall continue to be responsible for demonstrating to the City the financial capacity of Developer and the capability of Developer to perform its obligations under this Agreement. In addition to the requirements set forth in Sections 4.6.1 and 4.6.2, during the period commencing on the Close of Escrow and ending on the issuance of the Certificate of Compliance for the Project, Developer shall submit annually, on the anniversary of the Closing Date, a date-down of the Financing Plan. If Developer is not a publicly traded company, and if the City is not reasonably satisfied with the financial status of Developer following review of the updated Financing Plan, the City shall be entitled to obtain the financial information of other members, owners and/or partners of the proposed development entity, if any, and their respective members, partners, shareholders and/or other owners at each tier until substantial assets acceptable to the City in its sole discretion are identified.

8.5.2. No Mortgage. In light of Developer's representations set forth in Section 3.1 (or, if applicable, any Assignment Agreement executed by Developer as Transferee), Developer hereby waives its rights: (a) to require or utilize third party financing with respect to the acquisition of the Property or development of the Improvements on the Development Parcels or any portion thereof prior to issuance of the Certificate of Compliance for the Project and (b) to Transfer the Property or any portion thereof or to Transfer Control of Developer to a Mortgagee or to record a Mortgage against the Property prior to the issuance of the Certificate of Compliance unless otherwise agreed by the City in its sole discretion. The covenants of Developer pursuant to this Section and the representations in Section 3.1 or any such Assignment Agreement represent material consideration to the City.

8.5.3. Additional Information. Developer understands and agrees that the City reserves the right at any time to reasonably request in writing from Developer additional information, including information, data and commitments, to ascertain the depth of the capability and desire of Developer or other equity participants, to develop the Project expeditiously.

8.5.4. Guaranty. Developer, on behalf of itself and each Successor Owner, hereby agrees that any Guaranty provided pursuant to the requirements of this Agreement (or, if applicable, any replacement Guaranty provided to and approved by the City pursuant to this Agreement) shall not be amended, modified or terminated prior to issuance of a Certificate of

Compliance without the prior written consent of the City in its sole discretion.

8.6. **Project Budget Statement**

Developer understands and agrees that the City reserves the right to reasonably request at any time prior to the issuance of the Certificate of Compliance for the Project (but not more frequently than quarterly) that Developer provide a Project Budget Statement. If requested by the City, Developer shall submit such Project Budget Statement within thirty (30) calendar days following the later of Developer's receipt of the City's written request therefor and the expiration of the applicable quarter. Notwithstanding the foregoing, the delivery of such Project Budget Statement shall be for informational purposes only and in no event shall the City be entitled to declare a Potential Default or Material Default, or exercise any of its remedies pursuant to this Agreement, based on the contents of such Project Budget Statement absent an actual Potential Default or Material Default under one of the other covenants or obligations of Developer set forth in this Agreement. All Project Budget Statements submitted by Developer in response to request by the City shall be subject to the confidentiality provisions set forth in Section 4.6 or Section 17.24.

8.7. **District Fees and Other Fees and Exactions**

8.7.1. **Developer Acknowledgements**. Developer acknowledges and agrees that: (a) the development of the Project, together with the development of the remainder of Tustin Legacy, will contribute to the need for Tustin Legacy backbone infrastructure located off of the Development Parcels, including Tustin Legacy roadway improvements; traffic and circulation mitigation to support the Tustin Legacy project; domestic and reclaimed water; sewer; telemetry; storm drains and flood control channels; utilities backbone (electricity, gas, telephone, cable, telecommunications, etc.) (as such program is in effect as of the Effective Date, the "**Tustin Legacy Backbone Infrastructure Program**"); (b) the Base Purchase Price does not include Developer's fair share contribution to development by the City of the Tustin Legacy Backbone Infrastructure Program on behalf of the Project, as further described below; (c) Developer has had an opportunity to review the budgets, plans and projections developed by the City in connection with the Tustin Legacy Backbone Infrastructure Program and the studies prepared by the City in connection therewith; (d) there is an essential nexus between the imposition on the Project of the Project Fair Share Contribution and a legitimate governmental interest; and (e) the Project Fair Share Contribution is roughly proportional to and reasonably and rationally related to the impacts that will be caused by development of the Project.

8.7.2. **Project Fair Share Contribution**. Developer is responsible to pay its fair share of the costs of the Tustin Legacy Backbone Infrastructure Program. It is acknowledged that the Base Purchase Price does not include the fair share contribution of Developer, which amount due from Developer is agreed by the Parties to be equal to One Million Three Hundred Forty-One Thousand One Hundred Forty-Three Dollars and Zero Cents (\$1,341,143) (the "**Project Fair Share Contribution**"). Except as described above, no further obligation shall be imposed on Developer in connection with the Project Fair Share Contribution or the Tustin Legacy Backbone Infrastructure Program. Developer waives its right to fund all or any portion of such contribution pursuant to a community facilities district, including pursuant to any special tax for the

development of facilities within the Tustin Legacy Backbone Infrastructure Program or pursuant to other community facilities district. Developer acknowledges and agrees that its development plan for the Project will not require use of community facility district proceeds and that neither assessment district nor community facilities district proceeds will be used to reimburse Developer for its Development Costs, including Project Fair Share Contribution or Project specific infrastructure costs. Developer, on behalf of itself and its Successor Owners, waives its right to fund all or any portion of the development of the Project pursuant to a Community Facilities District.

8.7.3. **District Formation.** Developer, on behalf of itself and its Successor Owners, agrees to the imposition of a community facilities district with a "Tax B" component (the "**District**"). If established, the District shall be a tax and lien upon the Property in accordance with the terms of the instruments governing the District and the requirements of this Agreement. The "Tax B" proceeds shall be used by City to fund a portion of City essential services, including police and fire protection, ambulance and paramedic services, recreation programs and services, street sweeping, traffic signal maintenance and the maintenance of City-owned parks, parkways and open spaces, lighting, flood control and storm drain services and other City services and facilities at Tustin Legacy. Unless otherwise agreed by the City and Developer, each in its sole discretion, the following shall apply to any District formed by the City:

(a) The term of the "Tax B" component or any equivalent service assessment District imposed upon the Development Parcels and the Improvements shall be perpetual and shall not be time limited in any manner unless determined by the City in its sole discretion.

(b) At the Closing Date, the annual property tax burden on each Home including all general and special taxes and assessments from any existing assessment district and assessments resulting from the District shall not exceed the amount shown on Attachment 24 attached hereto (the "**Maximum Tax Burden Schedule**"). Thereafter, taxes and assessments imposed pursuant to any District may be adjusted upward at a rate of not less than two percent (2%) per year and not more than four percent (4%) per year, subject to and as further described in the rate and method of apportionment.

(c) Intentionally Omitted.

(d) At the sole discretion of the City, the District may be structured such that assessments shall be due and payable with respect to the Development Parcels without consideration for whether or not Homes have been Completed thereon (i.e., such that all Homes shall be assessed as improved or developed property); provided however, the District assessment on unimproved land or undeveloped portions of the Property shall be at an undeveloped property assessment rate of Zero Dollars until a date established by the City, but in no event earlier than the commencement of the 2018/2019 tax year.

(e) The City will provide Developer with the opportunity to review and provide input on all documents and budgets relating to the formation of the District (including any funding and acquisition agreement and the rate and method of allocating the

District assessments) at least thirty (30) calendar days prior to the date on which the formation documents are expected to be submitted for the agenda package for the first public hearing related to the formation of the District.

(f) The City and Developer agree that any District assessments are imposed by the City in its Proprietary Capacity as seller under this Agreement and not in its Governmental Capacity and that such assessments, shall additionally be a "Public Benefit" (as such term is defined in the DA) under the DA made applicable to the Property and the Improvements thereon and shall be a tax and lien upon the Property in accordance with the terms of the instruments governing the District and the requirements of the DA. The agreement of Developer to imposition of the District on the terms set forth above and the payment of such proceeds to the City constitutes additional and material consideration to the City under this Agreement. In addition to the requirements in this Agreement, the establishment of the District and assessments imposed thereby and the proceeds of any bonds issued in connection therewith shall be payable to the City as Public Benefits under the DA. In addition to the remedies imposed pursuant to this Agreement in favor of the City, nothing herein shall restrict the right of the City to exercise its remedies under the DA and to withhold building permits with respect to the Project pursuant to the DA if Developer fails to timely comply with its obligations with respect to the District.

(g) Developer will not oppose a determination by the City to form the District, including a determination to subject all or any portion of the Development Parcels and the Improvements thereon to such assessment, provided that the City, the District and such assessments comply with clauses (b), (d) and (e) above. For the avoidance of doubt, nothing in the foregoing shall prevent Developer from complying in all material respects with Developer's disclosure obligations under federal securities laws (i.e., Developer shall have the right to require that disclosures be included within offering memorandum or other disclosure documents when such disclosures are intended to comply with federal securities laws).

(h) The City shall not be prohibited by the terms of this Agreement from subjecting the Development Parcels and the Improvements thereon to any increase in ad valorem real property tax pursuant to a City of Tustin-wide election, provided that nothing herein shall be construed to constitute a waiver by Developer of its right or ability to dispute or oppose passage of a City of Tustin-wide bond, the proposed formation of any special district or taxing authority in connection therewith, or the imposition of any such tax, or its right to dispute any portion of the Development Parcels' assessed value.

8.7.4. **Master Marketing Program Fees.** Developer acknowledges that the City (in its Proprietary Capacity) requires that all builders within Tustin Legacy contribute a master marketing fee towards the marketing of Tustin Legacy by the City. In complete satisfaction of such obligation by Developer, Developer shall pay to the City through Escrow Holder at the Close of Escrow a one-time master marketing fee of Fifty Thousand Dollars (\$50,000). The City acknowledges and agrees that this payment shall satisfy all obligations of Developer to contribute to the master marketing program or any future master marketing program for the Project and that

Developer shall have no additional obligations on account thereof after the payment of such fee at the Close of Escrow.

8.7.5. **Other Fees and Assessments.** Developer acknowledges and agrees that in addition to City fees, fees may be imposed by other Governmental Authorities with jurisdiction over the Project and/or the Property and payment of any such fees and assessments shall be at Developer's sole cost, including the Foothill/Eastern Corridor Fee, the Santa Ana/Tustin Transportation System Improvement Area (TSIA) fee, state-mandated school impact fees, community facilities districts and issuance of school facility bonds by TUSD, Orange County School Facility Bonds (Measure G and Measure L), utility meter and connection fees.

8.7.6. **No Quimby Act Fees or Park Fees.** Except as set forth in this Agreement or the Other Agreements, all fees and/or dedications required in connection with the Project pursuant to the Quimby Act, California Government Code Section 66477, are included within the Project Fair Share Contribution and Developer shall not have any additional liability on account thereof.

8.8. **Final Map.**

Prior to, and as a condition to Close of Escrow, City and Developer shall have entered into the Subdivision Improvement Agreement. In addition, the Final Map shall be Recorded as a condition to Close of Escrow unless otherwise permitted by Section 7.1.3; provided that if the Close of Escrow proceeds pursuant to such Section, Developer shall cause the Final Map to be Recorded within six (6) months following the Close of Escrow.

8.9. **Construction of Improvements by Developer.**

8.9.1. **Horizontal Improvements.** Developer acknowledges and agrees that it shall be responsible for design and construction of all local infrastructure to support the development of the Project as further described in the Schedule of Performance and the Scope of Development, including the Horizontal Improvements and the Phase Improvements. Developer shall promptly obtain permits for the Grading Work and additional Horizontal Improvements and begin construction thereof and thereafter shall diligently prosecute such work to Completion in accordance with and subject to this Agreement, including the Schedule of Performance, the Scope of Development, the Approved Plans, the Specific Plan, the Tentative Tract Map and Entitlement conditions, Development Permits and any other Governmental Requirements. The Landscape Improvements shall include vegetation of a type and amount as may reasonably be required to maintain landscaping consistent with High Quality Residential Standards. To secure Developer's performance of the Horizontal Improvements, prior to the Close of Escrow, Developer shall provide one or more Performance Bonds securing its obligations to construct the Horizontal Improvements.

8.9.2. **Phase Improvements.** The Project is currently anticipated to be implemented in twenty-five (25) Phases as depicted on Attachment 26. Developer shall construct the Phase Improvements in accordance with this Agreement, including the Schedule of Performance, the Scope of Development, Approved Plans, the Specific Plan, the Tentative Tract

Map, Entitlement conditions, Development Permits and any other Governmental Requirements. The Phase Improvements, generally comprising those infrastructure improvements and Common Area Improvements to be constructed within the Phase areas depicted on Attachment 26, shall be constructed sequentially by Phase; provided, however, the swimming pool and restrooms and pedestrian access and landscaping related to such facilities, although comprising Phase Improvements for Phase 3B, shall be constructed concurrently with construction of the Horizontal Improvements as further described in the Schedule of Performance. For each Phase, Developer shall commence with the components of the Phase Improvements comprising infrastructure improvements.

8.9.3. **Vertical Improvements**. Developer shall construct the Vertical Improvements for residential purposes in accordance with this Agreement, including the Schedule of Performance, the Scope of Development, the Approved Plans, the Specific Plan, the Tentative Tract Map, Entitlement conditions, Development Permits and any other Governmental Requirements. It is acknowledged that the Vertical Improvements shall be constructed sequentially by Phase. Developer shall also comply with the following requirements with respect to its development of the Vertical Improvements on the Development Parcels (collectively, the “**Inventory Commitment**”):

(a) **Construction of Models**. Commence construction of Models on the Development Parcels within twelve (12) months following the Close of Escrow and Complete construction of and open Models to the public, eighteen (18) months following the Close of Escrow, provided that Force Majeure Delays with respect to the foregoing shall not exceed twelve (12) months in the aggregate. Model Home construction on the Development Parcels to consist of three (3) Model complexes (thirteen (13) Models) consisting of the following: five (5) detached single family residences, five (5) motor court flats and three (3) row townhomes), representative of Homes in each of the three product types proposed to be constructed as part of the Project. The Model complexes shall be constructed and completed prior to completion of Homes within the first area of the Property to be developed. Each Model complex shall open to the public promptly upon completion thereof and shall remain open to the public until such time that Developer has sold ninety-five percent (95%) of the Homes of such product type within the Property;

(b) **Initial Product Inventory**. Subject to extension for Force Majeure Delay, Complete construction of initial production home inventory within nine (9) months following Completion of the Models. Initial product inventory requirement shall consist of completion of framing and exteriors for not less five (5) row townhomes, ten (10) stacked flats and six (6) detached (for a total of twenty-one (21) Homes) available for sale in addition to the Models;

(c) **Ongoing Inventory and Production Phase Requirements**. Construct, obtain valid certificates of occupancy and offer for sale the Homes in production phases which are based upon a reasonable analysis of market conditions and anticipated absorption and which otherwise are in conformance with the Schedule of Performance. Taking into consideration the market conditions and anticipated absorption, use

commercially reasonable efforts to commence construction of each subsequent production phase of Homes not later than the close of escrow on the last Home for sale to the public in the prior production phase.

(d) Marketing. Conduct reasonable marketing efforts in conformance with Developer's master marketing program, to sell all of the Homes;

(e) Maximum Release. Except as may from time to time be specifically agreed in writing by the City, Developer shall not release for sale to the public (i) in any one sales release more than the following number of units by product type: (A) ten (10) Homes comprising stacked flats units; (B) twelve (12) Homes comprising townhome units and (C) twelve (12) detached Homes, provided that each of the Homes described in clauses (A), (B) and (C) above may be released concurrently, and (ii) a second or later sales release of Homes within thirty (30) calendar days of the immediately prior sales release.

8.10. Tustin Legacy Backbone Infrastructure Program.

The City Improvements are generally depicted on Attachment 19 and are anticipated upon completion to provide a northerly access point for the Project. City shall use commercially reasonable efforts, subject to availability of funds, to construct the City Improvements so as to allow construction access to the Property by September 1, 2018. City has approved the plans for the City Improvements and intends to obtain permits and construct and complete the City Improvements consistent with the foregoing schedule. Notwithstanding anything to the contrary set forth in this Agreement, Developer acknowledges that such schedule is an estimate only and failure of the City to commence or carry out the tasks described in this Section, or to complete construction of the City Improvements within the time set forth above or at all or for any reason shall not be a Default by City under this Agreement.

8.11. Outside Date of Completion of Construction.

Notwithstanding any other provision of this Agreement, Developer shall be obligated to Complete the Project (including the Horizontal Improvements, Phase Improvements, Vertical Improvements and all of the Homes) within the earlier of (a) thirty six (36) months following opening of the Models to the public, as such date may be extended for a maximum total of nine (9) months following the thirty six (36) months for Force Majeure Delay or (b) forty six (46) months after Close of Escrow, provided that the foregoing period to Complete may be extended for a maximum total of nine (9) months following the forty six (46) month for Force Majeure Delay.

8.12. Development Covenants.

With respect to construction of the Improvements and the Project, Developer hereby covenants and agrees as follows:

(a) Developer shall maintain throughout the term of this Agreement, sufficient equity, capital and firm binding commitments for financing necessary to (i) pay

through Completion, all costs of development, construction, marketing, sale and/or leasing, operation and management of all the Improvements as defined in the Scope of Development without a Mortgage; and (ii) enable Developer to perform and satisfy all the covenants of Developer contained in this Agreement and the Special Restrictions. No Successor Owner or successor and assign (but excluding any End Users) to Initial Developer shall undertake any additional project if it could reasonably be expected to jeopardize the sufficiency of any equity, capital and firm and binding commitments for the purposes expressed in the preceding sentence.

(b) The development of the Project shall be done in a professional and competent manner. Developer shall perform all work required to construct and Complete the Improvements and the Project and related work in accordance with the Approved Plans, Entitlements, Development Permits and all Governmental Requirements and at the level of quality set forth in the Scope of Development.

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

(d) Developer shall not place, or allow to be placed, on its interests in the Property, Improvements, or any portion thereof, any Mortgage or encumbrance of lien, including any Construction Lien, not authorized by this Agreement.

(e) Developer shall, within thirty (30) calendar days following receipt of notice thereof, cause to be removed or bonded against (such bonding to be by the provision of bonds satisfying California statutory requirements) any and all mechanic's liens, stop notices and/or bonded stop notices that are recorded and/or served by contractors, subcontractors (of all tiers) and suppliers in connection with the Project including construction of Improvements on the Property and on adjoining City-owned property or performance of other work by Developer or Developer's Representatives in connection therewith, including conducting investigations or causing the foregoing to be carried out ("**Construction Liens**"). Notwithstanding the foregoing, Developer may contest the amount, validity or application, in whole or in part, of any Construction Liens; subject to the further requirement that neither the Property nor any Improvements nor any part or interest in either thereof would be in any danger of being sold, forfeited, attached or lost pending the outcome of such proceedings. If any such contest is finally resolved against Developer, Developer shall promptly pay the amount required to be paid, together with all interest and penalties accrued thereon. Developer hereby agrees to indemnify, defend (and hold the City Indemnified Parties free and harmless from and against any and all Claims arising from failure to pay for construction of Improvements or other work related to the Project including costs to remove or bond any Construction Liens. Subject to Section 9.7 of this Agreement, the indemnity set forth in this Section shall survive the termination of this Agreement.

(f) Subject to Sections 8.2.1 and 17.7, Developer shall, following the Close of Escrow, commence the development of the Project promptly and shall diligently pursue to Completion and shall Complete development of the Project and the Improvements in accordance with the time periods in the Schedule of Performance and, in all events, on or before the dates set forth for Completion of the Project set forth in the Schedule of Performance.

(g) Prior to or concurrently with its submittal to BRE of any Condominium Plan and following BRE approval of any such Condominium Plan and prior to Recording thereof, Developer shall submit to the City each such Condominium Plan for approval by the City, provided that the approval of the City shall be limited to confirming that the number of Homes shown for each Phase on the proposed Condominium Plan are consistent with the Approved Plans, as the same may have been amended from time to time with the approval of the City in its Governmental Capacity and its Proprietary Capacity.

8.13. City Rights of Access.

In addition to any rights it may have in its Governmental Capacity, representatives of the City shall have the reasonable right of access to all portions of the Property and the Improvements (other than Improvements owned by Homebuyers), without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including the inspection of the work being performed in constructing the Improvements. The City agrees to indemnify, defend and hold Developer harmless for any and all Claims, arising out of any such non-governmental inspection or other activity on the Property, the Improvements or the Project by the City, or its agents, employees or contractors permitted pursuant to this Section 8.13, except to the extent caused by the gross negligence or willful misconduct of Developer.

8.14. Disclaimer of Responsibility by City and Exculpation.

8.14.1. **Disclaimer of Responsibility.** The City neither undertakes nor assumes nor will have any responsibility or duty to Developer, any Successor Owner, any End User or to any other third party to review, inspect, supervise, pass judgment upon or inform Developer, any Successor Owner, any End User or any third party of any matter in connection with the development or construction of Improvements or the approval of any maps, including Condominium Plan, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished for development of the Project, any Person furnishing same, or otherwise. Developer, any Successor Owner, End User and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer, any Successor Owner, End User or to any third party by the City in connection with such matter is for the public purpose of developing the Project, and neither Developer nor any Successor Owner, End User nor any third party is entitled to rely thereon.

8.14.2. **Exculpation.** The City shall not be liable in damages to Developer or to any owner, lessee, any licensee or other Person, on account of (a) any approvals or disapprovals by the City, including by the City Manager or designee, whether made in the Governmental

Capacity or Proprietary Capacity of the City of any design documents or maps, in connection with the Project, the Horizontal Improvements, the Vertical Improvements, the Phase Improvements or any Condominium Plan, including the Approved Plans, any Basic Concept Plan and grading plans with respect to the foregoing, whether or not defective or whether or not in compliance with applicable laws or ordinances; (b) any construction, performance or nonperformance by Developer or any owner, lessee, licensee or other Person of any work on the Property or the Improvements, whether or not pursuant to Approved Plans or whether or not in compliance with applicable laws or ordinances; (c) any mistake in judgment, negligence, action or omission in exercising its rights, powers and responsibilities hereunder; and/or (d) the enforcement or failure to enforce any of the provisions of this Agreement. Every Person who makes design submittals for approval agrees by reason of such submittal, and Developer and every Successor Owner of the Property or the Improvements or any portion thereof agrees by acquiring title thereto or an interest therein, not to bring any suit or action against the City seeking to recover any such damages and expressly waives any such claim or cause of action for such damages which it would otherwise be entitled to assert. The review of any design submittals shall not constitute the assumption of any responsibility by, or impose any liability upon, the City as to the accuracy, efficacy, sufficiency or legality thereof nor decrease or diminish any liability, duties, responsibilities, or obligations of Developer under this Agreement or otherwise.

8.14.3. **City Responsibility.** Nothing in this Section 8.14 shall limit the City's express representations, warranties, covenants and obligations set forth in this Agreement and the Other Agreements.

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

8.14.5. **Survival.** The provisions of this Section 8.14 shall survive the termination of this Agreement.

8.15. **Local, State and Federal Laws.**

Developer shall carry out the construction of the Project, including all Improvements, subject to Section 8.1.4 and in conformity with all Governmental Requirements (subject to Section 1.6 of this Agreement) including all applicable federal and State labor laws and regulations and shall investigate the applicability of and, if and to the extent applicable, pay prevailing wages meeting the requirements of such laws and regulations; provided that Developer reserves the right to reasonably contest such laws and regulations. Developer hereby agrees that, with respect to the Project, Developer shall be fully responsible for determining whether the foregoing wage requirements are applicable and agrees to indemnify, defend and hold the City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns free and harmless from and against any and all Claims arising from or related to compliance by Developer or Developer's officers, directors, employees, agents, representatives, consultants and/or contractors (at every tier) in construction of the Project with

the prevailing wage requirements imposed by any applicable federal and State labor laws. The indemnity set forth in this Section shall survive the termination of this Agreement.

8.16. **Liens, Taxes and Assessments.**

Developer shall pay prior to delinquency all real estate taxes and assessments assessed and levied on or against all portions of the Property or the Improvements during the period of ownership thereof by Developer. Developer shall not place, or allow to be placed, on its interests in the Property, or any Lot or Home, or any portion thereof, any Mortgage or encumbrance of lien not authorized by this Agreement. Developer shall remove, or shall have removed, any levy or attachment made on its interests in the Property or the Improvements (or any portion thereof), or shall assure the satisfaction thereof within thirty (30) calendar days following receipt of notice thereof. Except as set forth in Section 8.7.2 and Section 8.7.3(g), nothing contained in this Agreement shall be deemed to prohibit Developer from contesting the validity or amount of any tax or assessment or to limit the remedies available to Developer in respect thereto. Developer hereby agrees to indemnify, defend and hold the City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns free and harmless from and against any and all Claims arising with respect to payment of liens, taxes and assessments assessed or levied against the Property and/or the Improvements during the period of ownership thereof by Developer. The indemnity set forth in this Section shall survive the termination of this Agreement.

8.17. **City Additional Covenants.**

8.17.1. **Dedication and Completion of Moffett Drive.** Promptly following completion of construction of Moffett Drive in the vicinity of the Project, the City shall properly dedicate such road as a public roadway.

8.17.2. **Third Party Licenses.** At no cost to the City, the City shall assist and cooperate with Developer to obtain from other Persons (including IRWD and the City of Irvine) any licenses or entry permits necessary or reasonably desirable in connection with Developer's development of the Horizontal Improvements.

8.17.3. **Release Language.** In connection with its sale of property at Tustin Legacy for purposes of construction and sale of Homes, the City shall use commercially reasonable efforts to incorporate in each disposition and development agreement and quitclaim deed or other recorded document, release provisions substantially similar to those set forth in Section 4.5.2(f) and the Quitclaim Deed. The failure of the City to do so shall not relieve Developer or any Successor Owner of its obligations to include the release provisions in future deeds to Homebuyers pursuant to the Quitclaim Deed.

8.17.4. **TUSD Agreement.** TUSD has informed the City that TUSD will accept an advance payment from the proceeds of the sale of the Property to allow early payoff of the sums due for the Property pursuant to the existing TUSD CFD 15-02 ("TUSD CFD"). City shall use good faith efforts to enter into the TUSD Agreement with TUSD and if such TUSD Agreement is entered into, the City shall use good faith efforts to cause TUSD to either remove the lien of the

TUSD CFD at the Close of Escrow or to otherwise demonstrate that the TUSD CFD is paid in full as to the Property, as further discussed in Section 7.1.1.

9. **Certificate of Compliance.**

9.1. **Completion; Schedule of Performance.**

Subject to Section 17.7, following the Close of Escrow, Developer shall construct the Project and shall satisfy all Conditions Precedent relating to issuance of the Certificate of Compliance for the Project when and as required by this Agreement in accordance with the Schedule of Performance.

9.2. **Certificate of Compliance Defined.**

After Completion of all construction and development required to be undertaken by Developer in conformity with this Agreement and in accordance with the Schedule of Performance and the satisfaction by Developer of the Conditions Precedent set forth in Section 9.3, the City shall deliver to Developer or Successor Owner owning fee title to the Development Parcels a "Certificate of Compliance" for the entirety of the Project. The Certificate of Compliance shall be substantially in the form and substance of the Certificate of Compliance set forth on Attachment 15 and in such form as to permit the Certificate of Compliance to be Recorded against the entirety of the Property. Developer, on behalf of itself, each Successor Owner, and each and every Person claiming by, through or under Developer or any Successor Owner, including each End User, hereby consents to the recordation of the Certificate of Compliance against the entirety of the Property, notwithstanding that portions or all of the Property may have been transferred prior thereto to Successor Owners or End Users and confirms that no further acknowledgement or consent by the then-owners of the Property shall be required in connection with such Recordation. The Certificate of Compliance shall state the actual number of units constructed on the Property as of the date of issuance thereof, and such unit count shall establish the actual number of units allocated to the Developer by the City pursuant to Section 4.1(a)(iii).

9.3. **Conditions Precedent for Certificate of Compliance.**

The City shall not be obligated to issue the Certificate of Compliance for the Project, unless and until each of the following has occurred:

(a) Completion of the Improvements and satisfaction of the obligations of Developer under the License Agreement.

(b) Final inspection of the Development Parcels and the Improvements by or on behalf of the City and determination by the City that the Project and all Improvements have been Completed in conformance with this Agreement, including the Approved Plans and all Governmental Requirements;

(c) Issuance of the final certificate of occupancy by the City for all two hundred and eighteen (218) Homes within the Project or such lesser number of Homes as are shown on Approved Plans for the Project;

(d) Written release or bonding in accordance with California law of all Construction Liens or rights to record liens from the general contractor and all subcontractors (at all tiers) having served valid preliminary 20-day notices, and the statutory period for filing liens having expired without any such Construction Liens being filed;

(e) Recordation of the CC&Rs against the Development Parcels and with respect to those Lots or portions thereof owned by Developer or the Homeowners' Association at the time of Developer's request for the issuance of a Certificate of Compliance, confirmation that all liens of record as of the date of the request for the Certificate of Compliance are junior and subordinate to the Recorded CC&Rs;

(f) Payment of the Interim Payment (as defined in the Profit Participation Agreement) required by the Profit Participation Agreement in an amount equal to 75% of the Estimated Total Profit Participation (as defined in the Profit Participation Agreement) and (b) a payment bond in an amount equal to 25% of the Estimated Total Profit Participation from a surety reasonable acceptable to City, and in form reasonably acceptable to City, to secure Developer's obligations to pay the remaining Profit Participation, if any;

(g) Payment by Developer to the City of all funds then owing to the City under this Agreement and, if applicable, the Other Agreements; and

(h) No Potential Default or Material Default by Developer under this Agreement or the Other Agreements shall have occurred and be continuing.

9.4. **Conclusive Presumption.**

The Certificate of Compliance shall be, and shall so state, conclusive determination of satisfactory completion of the obligations of Developer pursuant to this Agreement.

9.5. **Not Evidence.**

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

9.6. **City Obligations.**

The City shall not unreasonably withhold or delay issuance of the Certificate of Compliance. If the City refuses or fails to issue such Certificate of Compliance after written request from Developer, provided each of the conditions established in Section 9.3 have been satisfied, the City shall, within fifteen (15) Business Days of the written request, provide a written statement which details the reasons the City refused or failed to issue the Certificate of Compliance. The statement shall also contain a statement of the actions that Developer must take to obtain the Certificate of Compliance. The City shall cause the Certificate of Compliance to be Recorded within five (5) Business Days after issuance.

9.7. **Effect of Certificate of Compliance; Termination of Agreement.**

After the Recording of the Certificate of Compliance, except as set forth below, the DDA shall terminate and any Person then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Development Parcels subject to the Certificate of Compliance shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to such Improvements, except that the Quitclaim Deed, the Profit Participation Agreement, the Special Restrictions, the CC&Rs, and the Landscape Maintenance Agreement shall each remain in effect for the term specified therein. Issuance of the Certificate of Compliance shall not waive any rights or claims that the City may have against any Person for latent or patent defects in design, construction or similar matters under any applicable law, nor shall it be evidence of satisfaction of any of Developer's obligations to others not a party to this Agreement. The Certificate of Compliance shall be in such form as to permit it to be Recorded. Upon execution and Recording by the City of the Certificate of Compliance, this Agreement shall terminate, except that:

(a) the provisions of Sections 4.5.2 and 8.14, including the releases set forth therein, as and to the extent set forth in the Quitclaim Deed shall survive in perpetuity, shall run with the land and shall be binding upon Developer, its successors and assigns and its Successor Owners, as well as Homebuyers and other End Users;

(b) the provisions of Section 11.1.4 shall survive until the expiration of the time period for provision of the environmental insurance policy described thereby; and the obligation to provide such insurance policy shall remain in effect for a period of ten (10) years from Close of Escrow and shall (i) continue to run with the land owned by Developer, its successors and assigns and Successor Owners, and not then conveyed to any Homebuyer or other End User, and (ii) bind Developer, its successors and assigns and Successor Owners and each and every prior Developer not released by the City pursuant to Section 2.2.3(c), provided that upon sale or transfer to any Homebuyer or any other End User, such obligation shall not run with the land or survive with respect to or bind any such Homebuyer or End User or any of their respective successors and assigns;

(c) the indemnities set forth in Sections 5.5, 8.12(e), 8.15, 8.16, 10.1, 10.2 and 17.12.1 shall remain in effect as and to the extent set forth in Section 10.3 and shall bind the Persons bound as set forth therein;

(d) any and all obligations contained in the Federal Deeds shall survive in perpetuity to the extent set forth therein, unless such obligations are released by the Federal Government;

(e) neither Developer, its successors and assigns (but excluding any End Users) or any Successor Owner shall modify or terminate any prepaid environmental insurance policy in effect as of the issuance of the Certificate of Compliance; and

(f) the provisions of Section 11.1.1 requiring liability insurance to 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, shall (A) continue to run with the land owned by Developer, its successors and assigns (excluding any End Users) and Successor Owners and not then conveyed to any Homebuyer or other End User and (B) bind Developer and its successors and assigns (excluding any End Users) and Successor Owners and each and every prior Developer not released by the City pursuant to Section 2.2.3(c), provided that upon sale or transfer to any Homebuyer or any other End User, such obligation shall not run with the land or survive with respect to or bind any such Homebuyer or any other End User or any of their respective successors and assigns.

Notwithstanding anything to the contrary set forth in this Agreement, the provisions of this Section 9.7 shall survive the termination of this Agreement and the execution and Recording by the City of the Certificate of Compliance and shall be binding upon Developer, its successors and assigns and Successor Owners and each and every prior Developer (unless released by the City pursuant to Section 2.2.3(c) or Section 16.6) and Successor Owner thereof, the Development Parcels and the Improvements for the term set forth above, and each such party shall be jointly and severally liable under such provisions with respect to the entirety of the Project, the Development Parcels and the Improvements for the term set forth above, but except as set forth in clause (a) of this Section or as set forth in the Quitclaim Deed, shall not be binding on any Homebuyer or other End User.

10. **Indemnification and Environmental Provisions.**

10.1. **Developer's Indemnification.**

As a material part of the consideration for this Agreement, effective upon Close of Escrow, and to the maximum extent permitted by law, Developer shall indemnify, protect, defend, assume all responsibility for and hold harmless the City Indemnified Parties, from and against any and all Claims to the extent caused by the following:

- (a) Developer's marketing, sale or use of the Property in any way;
- (b) All acts and omissions of Developer in connection with the Project, the Property, the Improvements or any portion of any of the foregoing;
- (c) Any plans or designs for Improvements prepared by or on behalf of Developer, including any errors or omissions with respect to such plans or designs;
- (d) Any loss or damage to the City resulting from any inaccuracy in or breach of any representation or warranty of Developer, or resulting from any Default, including Material Default, by Developer, under this Agreement;
- (e) the non-performance or breach by Developer or the Developer Representatives, of any term or condition of this Agreement; or

(f) Any development or construction of Improvements or other structures or facilities by Developer or Developer's Representatives, whether regarding the quality, adequacy or suitability of any labor, service, equipment or material furnished to the Property, any Person furnishing the same, or otherwise.

Notwithstanding anything to the contrary set forth in this Section 10.1, the foregoing indemnities shall not apply to and Developer shall not be obligated to indemnify any of the City Indemnified Parties with respect to the foregoing to the extent such Claims are a result of: (i) any breach of any covenant or representation or warranty by City under this Agreement, (ii) the gross negligence, willful misconduct or fraud of City or any City Indemnified Party; or (iii) any other Claims against the City relating to or arising out of tort Claims brought by third parties against Developer, to the extent such claims are based upon the Active Negligence of the City or any City Indemnified Party and Accruing prior to the Close of Escrow. This indemnity shall remain in effect for the period specified in Section 10.3 and shall be subject to the other terms set forth therein.

10.2. Environmental Indemnity.

As a material part of the consideration for this Agreement, and effective as of the Close of Escrow, Developer on behalf of itself and Successor Owners and each and every Person claiming by, through or under Developer or any Successor Owner, hereby agrees that Developer and each Successor Owner shall, to the maximum extent permitted by law, indemnify, protect, defend, assume all responsibility for and hold harmless the City Indemnified Parties from and against any and all Claims resulting or arising from or in any way connected with the existence, Release, threatened Release, presence, storage, treatment, transportation and/or disposal of any Hazardous Materials on, in or under the Property, or migrating from the Property to adjacent properties regardless whether any such condition is known or unknown now or upon acquisition and regardless of whether any such condition pre-exists acquisition or is subsequently caused, created or occurring; provided that neither Developer nor any Successor Owner shall be responsible (and such indemnity shall not apply) to the extent of (a) any breach of any covenant or representation or warranty by City under this Agreement; (b) the gross negligence, willful misconduct or fraud of City or any City Indemnified Party; or (c) to the extent of the Active Negligence or willful misconduct of the City or the City's employees, contractors or consultants with respect to Hazardous Materials occurring prior to the Close of Escrow with respect to work performed by such Persons on the Development Parcels. This indemnity shall remain in effect for the period specified in Section 10.3 and shall be subject to the other terms set forth therein. This indemnity shall not be deemed to limit in any manner the rights and/or remedies that City, Developer or Successor Owners may have against the Federal Government as described in Section 4.1.

10.3. Duration of Indemnities.

The indemnities set forth in Sections 5.5, 8.12(e), 8.15, 8.16, 10.1, 10.2 and 17.12.1 shall run with the land and shall bind Developer, its successor and assigns and each and every Successor Owner, shall survive the Close of Escrow and the execution and Recording by the City of the Certificate of Compliance and shall not merge into the Quitclaim Deed; provided however that upon sale or transfer of the fee interest in the Development Parcels or any portion thereof to an

End User, such indemnities shall terminate as to such End User and shall cease to run with the land acquired by such End User or any of their respective successors and assigns. Notwithstanding the foregoing, the obligations of Developer with respect to each of the indemnities set forth in Sections 5.5, 8.12(e), 8.15, 8.16, 10.1, 10.2 and 17.12.1 shall (a) survive the Close of Escrow and shall not merge into the Quitclaim Deed; (b) survive the sale of land to each End User and the issuance of the Certificate of Compliance; and (c) until the date that is ten (10) years following issuance of the Certificate of Compliance, continue to be binding upon Developer and Developer's successors and assigns and each and every prior Developer not released by the City pursuant to Section 2.2.3(c) and each such party shall be jointly and severally liable under such provisions with respect to the entirety of the Project and the Property, but shall not be binding on any End User. Notwithstanding the foregoing, if any portion of the Property is subject to revesting or repurchase by the City, as to such portion of the Property the foregoing indemnity shall apply only to the extent set forth in Section 16.6. The provisions of Sections 10.1, 10.2 and 10.3 shall survive the termination of this Agreement.

10.4. Claim Response.

In the event that following the Close of Escrow, any Environmental Agency or other third party brings, makes, alleges, or asserts a Claim, arising from or related to any actual, threatened, or suspected Release of Hazardous Materials on or about the Property, including any Claim for Investigation or Remediation on the Property, or such Environmental Agency or other third party orders, demands, or otherwise requires that any Investigation or Remediation be conducted on the Property, Developer shall promptly upon its receipt of notice thereof, notify the City in writing and thereafter shall promptly and responsibly evaluate and respond to such Claim as provided in Section 10.5. Further, upon receipt of such Claim, order, demand or requirement, Developer shall take such reasonable measures, as necessary or appropriate, to reasonably dissuade such Environmental Agency or other third party from bringing, making, alleging, or asserting any Claim against the City arising from or related to any actual, threatened, or suspected Release of Hazardous Material on or about the Property, including any Claim for Investigation or Remediation on the Property; provided that such obligation shall not apply to those excluded Claims set forth as (a) through (c) of Section 10.2.

10.5. Release Notification and Remedial Actions.

If, after Close of Escrow, any Release of a Hazardous Material is discovered on the Property, Developer shall promptly provide written notice (or in the event of emergency, telephonic notice, followed by written notice) of any such Release to the City. To the extent that any Environmental Agency (other than the City) is requiring that the City Remediate such Release and Developer acknowledges that it is obligated to assume responsibility or indemnify the City with respect to such Release pursuant to Section 10.2 or there is a good faith dispute between the City and Developer as to whether Developer is obligated to assume responsibility or indemnify the City with respect to such Release pursuant to Section 10.2, then Developer shall (a) Remediate the Release in compliance with and to the extent required by Environmental Laws and such Environmental Agency, or if such removal is prohibited by any Environmental Laws, take whatever action is required by any Environmental Law and such Environmental Agency; (b) take such other reasonable action as is necessary to have the full use and benefit of the Property as

contemplated by this Agreement; and (c) provide the City with satisfactory evidence of the actions taken as required in this Section. To the extent that any Environmental Agency (other than the City) is requiring that the City Remediate such Release and the City acknowledges that Developer is not obligated to assume responsibility or indemnify the City with respect to such Release pursuant to Section 10.2 or no Environmental Agency (other than the City) is requiring that the City Remediate such Release, then (as between Developer and the City under this Agreement) Developer may elect in its sole and absolute discretion whether to Remediate such Release and/or pursue any rights that Developer has against any Person (including the Federal Government and the City) with respect to such Release. The foregoing shall be without prejudice to Developer's or the City's rights against any responsible party or against the Federal Government pursuant to the Navy Responsibilities and without compromising the applicability of any insurance coverage in regard to such Release. The City and Developer will coordinate any action required under this Section 10.5 with appropriate environmental insurance carriers so as not to compromise coverage for the costs of such actions. Nothing set forth herein requires Developer to perform any obligation of the Federal Government and nothing set forth herein shall be deemed to limit or impair (or take any action that might limit or impair) in any manner the rights and/or remedies that Developer or the City may have against the Federal Government or any other third party. The foregoing shall not apply to the Returned Property after acquisition thereof by the City.

10.6. Conflict with Section 330 and Other Federal Government Obligations.

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

10.7. Insurance and Indemnification.

Notwithstanding anything contained herein and without limiting or relieving Developer of its obligations to indemnify, defend and hold harmless the City Indemnified Parties under this Agreement, the City agrees that with respect to any Claims tendered by any one or more of the City Indemnified Parties under this Agreement for which Developer has the obligation to indemnify the City pursuant to the terms of this Agreement, the City Indemnified Parties shall, to the extent such insurance could reasonably be determined to be applicable to the type, extent, value and/or location of the Claim being made, tender such Claim concurrently with the insurer with respect to the environmental insurance policy required pursuant to Section 11.1.4 of this Agreement and shall thereafter use reasonable commercial efforts to prosecute its Claim for coverage with such insurer. To the extent that insurance is determined by the City not to be reasonably applicable to the Claim or, if after six months, despite such efforts, insurance proceeds

are not available to cover all or a portion of the Claim or if such Claim is earlier denied by the insurance carrier, Developer shall promptly pay to the City Indemnified Parties the Claim amounts not then covered by the environmental insurance policy. Developer shall assist and cooperate with the City in its tender of Claims as required by this Section and shall pay in accordance with the indemnity obligations of Developer, all staff and third-party costs incurred by the City pursuant to this Section.

10.8. **Selection of Counsel and Defense Obligations.**

A Party that has an obligation to defend (“**Defending Party**”) any other Party shall be deemed to satisfy its defense obligations under this Agreement (where applicable) by assigning counsel of its choice and reasonably acceptable to the other Party, including with all the same attorneys, paralegals, consultants, experts, vendors and others who are defending the Defending Party, subject to the right of the indemnified Party, the City, City Indemnified Parties, the Developer or the Developer Representatives entitled to defense, or any of them, as applicable (the “**Defended Party**”), to have separate counsel in the event that such counsel would be provided under cumis counsel standards applicable in the State (collectively “**Counsel**”). If during any action in which Defending Party has defended the Defended Party, any Defended Party determines, in its reasonable discretion, that separate counsel should be provided under cumis counsel standards applicable in the State, Defending Party shall thereafter, at its own expense and through separate counsel designated by Defended Party and reasonably acceptable to the Defending Party, defend such Defended Party in such action, and the original Counsel shall continue to represent Defending Party in that action. Each Defended Party agrees to promptly notify Defending Party of any Claim or Action filed against the Defended Party and to cooperate in the defense of any such action. Failure of the Defended Party to notify the Defending Party promptly of the filing of any Claim or Action shall offset the indemnification obligations of the Defending Party only to the extent of any prejudice to the Defended Party caused by such failure to notify. The City retains the option to select and employ independent defense counsel at its own expense. If both Parties elect to defend, the Parties hereby agree to affirmatively cooperate in defending said action and to execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under applicable law. As part of the cooperation in defending an action, the City and Developer shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information.

10.9. **Settlement Procedures.**

Except as described in this Section, neither Party shall settle any Claim or Action that is the subject of an indemnity or obligation to defend under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Withholding consent to a settlement proposal shall not be deemed to be unreasonable if a settlement proposal results in an adverse impact to the Party withholding consent; provided that if the Defending Party presents a resolution of a whole Action, or of a clearly severable portion of any Action, under which Defended Party has no adverse economic impact and Defended Party declines to approve the settlement, then as to such Actions or portions of Actions only, the Defended Party thereafter shall be required to defend itself in such Action or portion of the Action at its sole cost and the liability of the Defending Party shall be capped at the proposed settlement

amount and attorneys' fees incurred by the Defended Party prior to the date of the settlement offer. Notwithstanding anything to the contrary in this Agreement, a Defending Party shall have no obligation to indemnify any Defended Party for any settlement reached without Defending Party's consent; provided, however, that in the event Defending Party fails to satisfy its defense obligations under this Agreement, any Defended Party shall have the right to settle any indemnified Claims and Defending Party shall be bound by such settlement and obligated to pay all defense and settlement costs associated therewith.

11. Insurance.

11.1. 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 11.1.1 and 11.1.4 only, the City 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 the Certificate of Compliance with respect thereto or for such longer period as is described below.

11.1.1. Liability Insurance. Commencing upon the Effective Date, 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, as further set forth in Sections 9.7 and 10.3. 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) and automobile liability with limits of at least Two Million Dollars (\$2,000,000) 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 ("Best's"). Such insurance may be provided by an umbrella insurance policy otherwise meeting the requirements of this Section 11.

An ACORD 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 the Certificate of Compliance for the Project. The endorsements shall provide as follows: (1) designate "the City of Tustin and the Successor Agency to the Tustin Community Redevelopment Agency, and their respective elected and appointed officials, agents, representatives and employees" as additional insureds on the commercial general liability policies; (2) the commercial general liability insurance coverage shall be primary, and not contribute with any insurance or self-insurance maintained by the City and (3) 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.

11.1.2. **Workers' Compensation Insurance**. Commencing upon the Effective Date, 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 this Agreement carries workers' compensation insurance required by law. The insurance policy, by endorsement signed by an authorized representative of the underwriter, shall contain a waiver of subrogation for the benefit of the following additional insureds: "the City of Tustin and the Successor Agency to the Tustin Community Redevelopment Agency, and their respective elected and appointed officials, agents, representatives and employees". The insurance provided for under this Section 11.1.2 shall be issued by a company rated B-/VIII or better by Best's or from the State Compensation Fund.

11.1.3. **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 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 Improvements. The insurance provided for under this Section 11.1.3 shall be provided by insurer(s) permitted to do business in the State and with a Best's rating of B/NR or better.

11.1.4. **Environmental Insurance.** Commencing upon the earlier of the Close of Escrow or the License Agreement effective date (as established in the License Agreement), 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 of Tustin and the Successor Agency to the Tustin Community Redevelopment Agency, and their respective elected and appointed officials, agents, representatives and employees” as additional insureds to address pollution risks at the Property (“**PLL**”); provided that notwithstanding anything to the contrary set forth herein, the City acknowledges and agrees that such insurance may contain exclusions from coverage relating to conditions that are discovered during development on the Development Parcels. 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 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 and loss from liability relating to known and unknown conditions on the Property for a 10-year term; 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, to the extent available, shall contain a waiver of subrogation for the benefit of the City of Tustin and the Successor Agency to the Tustin Community Redevelopment Agency, and their respective elected and appointed officials, agents, representatives and employees. As such, Developer’s obligation to maintain environmental insurance pursuant to this Section 11.1.4 shall survive the termination of this Agreement following the Close of Escrow for the term required for such insurance policy pursuant to Section 11.1.4(b).

(d) Developer shall name the City as an additional insured with respect to any additional environmental and pollution legal liability insurance coverage Developer acquires for the Property, the Development Parcels or any portion thereof and to the extent such policy is prepaid, shall not modify or terminate such policy following the termination of this Agreement.

(e) The policy shall permit (by the terms of the policy or by endorsement) transfer of the policy to Successor Owners and successors and assigns of Developer (but excluding any End Users) and, if this Agreement terminates and the Close of Escrow does not occur, to the City.

Developer shall not carry out any environmental testing, sampling, invasive testing, or boring on the Development Parcels prior to the effective date of the environmental insurance policy. The provisions of this Section 11.1.4 shall survive the termination of this Agreement.

11.2. **General Insurance Requirements.**

11.2.1. For all policies or certificates, the insurer endorsements (or a copy of the policy binder, if applicable) shall specifically identify this Agreement 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) calendar days advance written notice of any cancellation or termination of insurance by the insurer.

11.2.2. The term “full insurable value” as used in this Section 11 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.

11.2.3. All insurance provided under this Section 11 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 insurance required by Sections 11.1.1 and 11.1.2 to the City on an ACORD form within five (5) Business Days following the Effective Date. Upon request by the City, within seven (7) calendar days, if practicable, after expiration of any such policy, certificates evidencing renewal policies shall be submitted to the City, together with evidence of payment of premiums.

11.2.4. If Developer fails or refuses to procure and maintain insurance as required by this Agreement, the City shall have the right, at the City’s election, and upon ten (10) calendar 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 and such cost, until paid, shall constitute a City Lien on the Property. The City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

11.2.5. If there is no License Agreement entered into by the Parties prior to the Close of Escrow, the insurance policies required by Section 11.1.4 will not be effective until after the Close of Escrow, and accordingly, 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 11.1.4 will become effective following the Close of Escrow.

12. **Covenants and Restrictions.**

Developer, on behalf of itself, and each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner, including, only where specified below, each End User, and where not otherwise specified, excluding any End Users:

12.1. **Use Covenant.**

Developer shall cause the Development Parcels to be developed (a) only for lawful residential uses and such uses as are ancillary or incidental thereto and (b) as a High Quality Residential Project.

12.2. **Maintenance Covenant.**

12.2.1. **Maintenance Standards.** Developer, on behalf of itself and each Successor Owner, hereby covenants and agrees, from and after the Close of Escrow to maintain the Development Parcels, the Improvements, including the Landscape Improvements, thereon consistent with the following requirements:

(a) Prior to commencement of construction, Developer shall be responsible, at its sole cost and expense, (i) to secure and maintain the Development Parcels in a clean, safe and secure condition, in compliance with all applicable laws, (ii) to abate weeds and other hazards and nuisances on the Development Parcels, (iii) to erect and maintain barricades and fencing, and provide security, in each case with respect to the Development Parcels and as reasonably necessary to protect the public and any Improvements already constructed, and (iv) to maintain (in compliance with all Environmental Laws) erosion control on the Development Parcels.

(b) From the date of commencement and during the continuance of construction of any Improvements on the Development Parcels, Developer shall maintain the Development Parcels and the Improvements then under construction consistent with normal and customary construction industry practice. From and after the initial installation of any of the Landscape Improvements, Developer shall maintain all Landscape Improvements then installed in good condition and consistent with the requirements of this Agreement, the Special Restrictions, the CC&Rs and the Landscape Maintenance Agreement, as applicable; provided that with respect to Landscape Improvements located on Common Area, the obligation of Developer under this Section shall terminate with respect thereto upon transfer of the Common Area associated therewith to the Homeowners' Association; provided, however, that in the event that the City accepts the irrevocable offer of dedication provided on the Final Map for Lot A, the Landscape Maintenance Agreement shall terminate as to Lot A, and Developer shall concurrently be released from the performance of all maintenance obligations and all other terms and conditions under this Agreement with respect to Lot A.

(c) From and after the issuance of a certificate of occupancy for any Home, Building or other Improvements on the Development Parcels, and prior to the transfer thereof to an End User, Developer shall maintain all Improvements on such Development Parcels and all Landscape Improvements not then under construction in a clean, sanitary, orderly and attractive condition, and in accordance with High Quality Residential Standards, subject to reasonable wear and tear and to Section 12.2.2 and in accordance with the requirements of the Special Restrictions, the Landscape Maintenance Agreement and the CC&Rs. Developer shall be required to meet the standard for the quality

of maintenance of the Improvements on the Development Parcels required by this Section regardless of whether or not a specific item of maintenance is listed below, except that, in each case, and notwithstanding anything in this Section to the contrary, Developer shall not have any maintenance obligation with respect to (x) any Completed Improvements owned or controlled by (or on property owned or maintained by) any Homebuyer or the Homeowners' Association, or (y) with respect to any Completed Improvements owned by any utility, Governmental Authority, lighting or landscape district or, except as set forth in the Landscape Maintenance Agreement, by the City. Representative items of maintenance shall include: (i) maintenance, repair and replacement on a regular schedule, consistent with High Quality Residential Standards, of all Common Area, Common Area Improvements, Landscape Improvements, Buildings, structures, improvements, Private Streets and Sidewalks and all other roads, drives, bike paths, alleyways, sidewalks, utilities, courtyards, landscaping, hardscaping and fountains; (ii) regular inspection for graffiti or damage or deterioration or failure, and reasonably prompt (or, in the case of graffiti, within 48 hours) repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; (iii) emptying of trash receptacles and removal of litter; (iv) regular sweeping of Private Streets and Sidewalks throughout the Development Parcels; (v) fertilizing, irrigating, trimming and replacing vegetation and other Landscape Improvements as necessary; (vi) cleaning exterior windows on a regular basis; (vii) painting the Buildings and other structures on the Development Parcels on a regular program and prior to the deterioration of the painted surfaces; and (viii) conducting roof inspections on a regular basis and maintaining roofs in a leak-free and weather-tight condition.

12.2.2. **Casualty.** In the event of casualty occurring with respect to portions of the Property still owned by Developer, Developer shall, in its sole discretion, either (i) promptly repair the Improvements and prior to commencement of such repair maintain the portions of the Development Parcels subject to casualty in accordance with Section 12.2.1 (b), or (ii) if Developer determines in its sole discretion not to repair such Improvements, maintain the portions of the Development Parcels subject to casualty in accordance with Section 12.2.1(a). In each case, upon commencement of any construction with respect to the affected portions of the Development Parcels and until completion thereof, Developer shall comply with the requirements set forth in Section 12.2.1(b) and upon completion of the repair work, shall comply with the requirements set forth in Section 12.2.1(c). Notwithstanding the foregoing, the portions of the Development Parcels unaffected by any such casualty shall be maintained as otherwise required by this Agreement and, including pursuant to Section 12.2.1(c), and unless not economically feasible due to cost or physical proximity as demonstrated to the reasonable satisfaction of the City, Developer shall provide landscaping or other barriers to shield the portions of the Development Parcels remaining in use and adjacent public roadways from those subject to casualty and from adjoining streets in order to maintain the portions of the Development Parcels and the Improvements thereon unaffected by such casualty as required pursuant to Section 12.2.1(c). The provisions of this Section shall survive the termination of this Agreement.

12.2.3. **City Rights to Maintain.** If Developer fails to maintain the Improvements or the Development Parcels or any portion thereof in accordance with the standard for the quality of maintenance set forth in this Section 12 and such failure continues after the delivery of notice and the expiration of the cure period under Section 14.2.2, the City or its designee shall have the

right but not the obligation to enter the Property upon reasonable notice to Developer, correct such failure, and hold Developer responsible for the cost thereof, and such cost, until paid, shall constitute a City Lien on the applicable portion of the Property.

12.2.4. **Maintenance Responsibilities**. Except as otherwise provided in this Section, Developer's maintenance responsibilities shall be vested in one entity for the entirety of the Project and all of the Development Parcels; provided however that Developer's obligations under this Section 12.2 shall terminate with respect to any portion of the Development Parcels transferred to an End User and such termination shall be effective automatically upon such transfer. With respect to those portions of the Development Parcels not yet transferred to an End User, Developer shall have the right (a) to assign its maintenance responsibilities under this Agreement pursuant to Transfer to a Homeowners' Association to be created through the CC&Rs, following which assignment Developer shall have no further liability under this Section 12.2, and (b) to subcontract its maintenance responsibilities under this Agreement to such Homeowners' Association or a first class property management company provided that such subcontracting shall not relieve Developer of any liability for its obligations under this Section 12.2; provided, however that such assignment shall not relieve Developer of its maintenance obligations under this Section 12.2.

12.3. **Duration of Covenants**.

The Special Restrictions shall provide that the covenants in Sections 12.1 and 12.2 shall remain in force and effect until the twenty-fifth (25th) anniversary of the Recording of the Special Restrictions, provided that the provisions of Section 12.2.1(c) shall terminate upon the Recordation of the CC&Rs against the Property, unless released at an earlier date by City in writing. In addition, the covenant set forth in Section 12.2.2 shall apply with respect to all portions of the Development Parcels owned by Developer during the term of this Agreement.

12.4. **Profit Participation Price**.

Developer covenants and agrees on behalf of itself and each Successor Owner to pay to the City the Profit Participation Price pursuant to the terms and conditions of the Profit Participation Agreement, which shall be in substantially the form and substance of the Profit Participation Agreement attached to this Agreement as Attachment 14.

12.5. **Obligation to Refrain from Discrimination**.

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

12.6. **Deed Restrictions/Covenants Running with the Land.**

This Agreement and all other obligations, agreements, covenants, representations, warranties, and indemnities set forth herein are hereby agreed by Developer and by the City to be covenants running with the land and enforceable as equitable servitudes against the Development Parcels and are hereby declared to be and shall be binding upon the Development Parcels and Developer and its successors and assigns (who may own all or any portion of the Development Parcels) for the benefit of the City and its successors and assigns, subject to the effects of recordation of a Certificate of Compliance as provided for in Section 9. To the extent set forth therein, the Special Restrictions and the Quitclaim Deed shall be covenants running with the land, shall be binding upon Developer, each Successor Owner and End User, and each and every Person claiming by, through or under Developer or any Successor Owner for the benefit of the City and its Governmental Successors.

12.7. **Priority of DDA and Special Restrictions.**

This Agreement, including the City Lien, the Right of Purchase and the Right of Reversion contained herein, the Memorandum of DDA and the Special Restrictions shall be superior in priority to all Mortgages, provided, however, this Section 12.7 shall not apply to any Mortgages obtained by Homebuyers.

12.8. **Landscape Maintenance Agreement.**

12.8.1. **Landscape Area.** As a condition to the Close of Escrow, Developer and the City shall enter into a landscape maintenance agreement in the form and substance of the Landscape Installation and Maintenance Agreement attached as Attachment 21 to this Agreement (the "**Landscape Maintenance Agreement**"), which shall require that Developer install and maintain Landscape Improvements on the Landscape Area described therein, including vegetation of a type and amount as may reasonably be required to maintain landscaping of the Landscape Area consistent with High Quality Residential Standards. The Landscape Maintenance Agreement or other instrument agreed upon by the City and Developer each in its sole discretion shall grant to the City the right to utilize self-help in the event of non-performance by Developer or its successors and assigns with respect to the obligations of such Persons under the Landscape Maintenance Agreement.

12.8.2. **City Rights to Maintain.** In the event Developer fails to maintain the Landscape Area or any portion thereof in accordance with the standard for the quality of maintenance pursuant to Section 12.8.1, the City or its designee shall have the right but not the obligation following a reasonable notice and cure period, to correct any violation, and hold Developer responsible for the cost thereof, all as more particularly set forth in the Landscape Maintenance Agreement.

12.9. **Public Access Easement.**

Developer shall, pursuant to the Final Map, grant a perpetual easement to the City for the benefit of the public providing public pedestrian and vehicular access in, on, over and across the

Publicly Accessible Common Area in the locations depicted on Attachment 13 in order that the Publicly Accessible Common Area and the Publicly Accessible Common Area Improvements are made available to the public. In addition, as a condition to City Closing Condition, Developer shall execute and deliver to the City and the City shall have executed a formal acceptance of a public access easement in the form and substance of the Public Access Covenant and Declaration of Easement attached to the DA as Exhibit "E" or as otherwise approved by City and Developer, each in its sole discretion (the "**Public Access Easement**"). If the Final Map has not been recorded prior to the Close of Escrow, the Public Access Easement shall include a reservation or grant of easements in favor of the City over all of the easement and dedication areas depicted on the Tentative Tract Map for public access upon the terms and conditions set forth on the Tentative Tract Map.

12.10. **Irrevocable Offer to Dedicate; Pedestrian Bridge**

The Final Map shall contain an irrevocable offer to dedicate in favor of the City of a fee interest in and to Lot A, as shown on Attachment 13, which such property shall comprise a Pedestrian Plaza upon which a pedestrian bridge may be constructed at the sole discretion of the City ("**Pedestrian Bridge**").

13. **CC&Rs and Homeowners' Association**

13.1. **City Approval of CC&Rs**

No later than thirty (30) calendar days following the Effective Date, Developer shall submit to the City for City Manager's approval, a first draft of a set of covenants, conditions and restrictions, as well as design guidelines for development of the Improvements to be constructed as part of the Project, together with other requirements included in the conditions of approval for the Tentative Tract Map for the Project as approved by the City (the "**CC&Rs**"). As a condition precedent to the Close of Escrow for the benefit of the City, the City shall have reviewed and approved the CC&Rs. In order to accommodate the City's right of review and approval, Developer shall respond to any changes requested by the City within ten (10) Business Days following each iteration of comments by the City. In addition, not less than thirty (30) calendar days prior to submission of the CC&Rs to the BRE, Developer shall submit to the City, for the City Manager's Approval, the draft of CC&Rs it proposes to submit to BRE, together with a "redline" comparison of that version to the draft originally reviewed by the City. Thereafter, prior to Recording of the CC&Rs, Developer shall submit to the City, for the City Manager's approval, the version of the CC&Rs approved by BRE together with a "redline" comparison of that version to the draft submitted to BRE and City shall review and approve such final version, within two (2) Business Days from City's receipt of such final version. The City's review and approval of the CC&Rs with respect to compliance with the conditions of approval for the Entitlements and the DA shall be made in the City's Governmental Capacity. The City's right of review with respect to all other aspects of the CC&Rs shall be made in the City's reasonable discretion; provided, that it shall be reasonable for the City to disapprove the terms and conditions of the CC&Rs if, among other things, such terms and conditions conflict with any requirement of this Agreement, the DA or the Special Restrictions, relieve the Homebuyers or the Homeowners' Association of any obligations imposed pursuant to this Agreement, the DA or the Special Restrictions or impose any obligations

upon the City; provided, however that City may not disapprove any of the terms and conditions of the CC&Rs required by the BRE. Among other things, the CC&Rs shall establish (a) creation of only one Homeowners' Association for the Project (except as provided in Section 13.2) which entity shall be responsible for maintenance of the Development Parcels, the Landscape Area, the Common Area and Common Area Improvements, including the Publicly Accessible Common Area and Publicly Accessible Common Area Improvements; (b) a mechanism for sharing costs for maintenance of the Landscape Area and the Common Area and Common Area Improvements, including the Publicly Accessible Common Area and Publicly Accessible Common Area Improvements; (c) a maintenance covenant for the benefit of the City as set forth in Section 12.2 or as otherwise agreed by the City in its sole discretion; (d) regulations governing the use, maintenance and operation of Homes by the Homebuyers thereof and of the Common Area and Common Area Improvements by the Homeowners' Association and (e) all other requirements included in the conditions of approval for the Tentative Tract Map for the Project. The CC&Rs shall be Recorded prior to the issuance of the first certificate of occupancy for a completed Home within the Property. Prior to Recording of the CC&Rs and during any period required by the CC&Rs, Developer shall maintain all Improvements that are the responsibility of Developer or the Homeowners' Association to maintain under this Agreement or the Other Agreements, which maintenance responsibilities shall include the responsibility, at its sole cost, from and after the Close of Escrow, to maintain, repair and replace the landscape improvements within the Boundary Landscape Area installed by the City prior to the Close of Escrow and to maintain, repair, replace and pay the costs of all irrigation and other improvements required to maintain such landscaping.

13.2. Homeowners' Association and Sub-Association.

The Developer shall form a Homeowners' Association as provided in Section 13.1, provided however, Developer may, at its option, form a sub-association in accordance with the requirements of the CC&Rs and the applicable provisions of California law composed of Homebuyers and their successors and assigns within the Development Parcels, for the purpose of administering and enforcing covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, owning and maintaining all Common Area Improvements, if any, collecting and disbursing assessments and charges, and performing such other acts as shall generally benefit the Development Parcels, provided that none of the Homebuyers within the Project are excluded from any Common Area or from use of any Common Area Improvements and the public is provided access in, on over and to the Publicly Accessible Common Area and the Publicly Accessible Common Area Improvements as required by Section 12.9.

14. Potential Defaults and Material Defaults.

14.1. Potential Defaults.

Except as otherwise provided in this Agreement, in the event either Party (the "**Defaulting Party**") fails to perform, or delays in the performance of, any obligation, in whole or in part, required to be performed by the Defaulting Party as provided in this Agreement (a "**Potential Default**"), the other Party (the "**Injured Party**") may give written notice of such Potential Default to the Defaulting Party (the "**Default Notice**"), which Default Notice shall state the particulars of

the Potential Default.

14.2. **Material Defaults.**

14.2.1. **Monetary Defaults.** Notwithstanding any other provision of this Agreement, if a Party fails to pay the other Party any sum required to be paid pursuant to this Agreement, and the Injured Party gives the Defaulting Party a Default Notice of such nonpayment, such nonpayment shall be a Potential Default. The Defaulting Party shall have a period of fifteen (15) calendar days after the date the Default Notice is received, or deemed to have been received, within which to cure the Potential Default by making the required payment; the period to cure such Potential Default shall not be extended by Force Majeure Delays. In the event a Potential Default for nonpayment is not cured within said fifteen (15) calendar day period, the Potential Default shall become a “**Material Default**” that shall be deemed to have occurred upon the expiration of the cure period.

14.2.2. **Non-Monetary Defaults.** With respect to non-monetary defaults under this Agreement, a Potential Default shall become a “**Material Default**” in the event the Potential Default is not cured, at the Defaulting Party’s expense, (a) within thirty (30) calendar days after the date the Default Notice is received, or deemed to have been received by the Defaulting Party; (b) if such cure cannot be reasonably accomplished within such thirty (30) calendar day period, within ninety (90) calendar days after the date the Default Notice is received, or deemed to have been received by the Defaulting Party, but only if the Defaulting Party has commenced such cure within such thirty (30) calendar day period and diligently pursues such cure to completion; or (c) within such longer period of time as may be expressly provided in this Agreement or as mutually agreed to in writing between the Parties with respect to the Potential Default; provided, that clauses (b) and (c) above shall not apply to a Potential Default with respect to Developer’s obligations under Section 8.7.3(g). Following written notice and failure to cure within the time periods set forth above, each Potential Default shall become a Material Default that shall be deemed to have occurred upon the expiration of the applicable cure period. Notwithstanding anything in the foregoing to the contrary, the Defaulting Party may cure a Material Default at any time prior to the date the Injured Party exercises its remedy for the Material Default.

14.2.3. **Transfer Defaults.** Notwithstanding the foregoing, any Transfer or any Transfer of Control in violation of the provisions of Section 2 shall be null and void and shall in all events be a Material Default under this Agreement as of the date of the Transfer or Transfer of Control by the violating party, without notice or cure period and shall not be subject to extension for Force Majeure Delay.

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

14.2.5. **No Waiver.** Failure or delay by an Injured Party to deliver a Default Notice shall not constitute a waiver of any Default, nor shall it change the time of Default. Except as

otherwise expressly provided in this Agreement, any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies. Delays by either Party in asserting any of its rights and remedies shall not deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

14.3. **Due Diligence Information; Products.**

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

14.3.2. **Surrender of Transferable Products.** In connection with the proposed Project, Developer shall be preparing or causing to be prepared architectural and other products, surveys, plans, reports, tests, studies and investigations with respect to the Development Parcels, the Property and the proposed Project (collectively, "**Products**"). All Products shall be prepared at Developer's sole cost and expense. If this Agreement is terminated for any reason other than a Material Default by the City prior to or following the Close of Escrow or if the Right of Purchase or Right of Reversion is exercised, then, with respect to all Products other than financial or economic estimates, projections and evaluations; studies and information related to potential tenants, lenders and investors; any confidential or proprietary information of Developer or its equity partner(s), or attorney-client or other privilege (the Products not subject to such exclusions are collectively the "**Transferable Products**"), the City may request that Developer, for consideration to be mutually agreed, transfer Developer's rights to any or all of the Transferable Products identified by the City, but in no event shall the cost to the City exceed Five Thousand Dollars (\$5,000). Upon such request, Developer shall deliver to the City copies of all Transferable Products requested by the City together with a bill of sale therefor, provided that such transfer is made AS-IS and Developer makes no representation, warranty or guarantee regarding the completeness or accuracy of the Transferable Products, and Developer does not covenant to convey the copyright or other ownership rights of third parties thereto. Such Transferable Products shall thereupon be free of all claims or interests of Developer or any liens or encumbrances. Upon the City's acquiring Developer's rights to any or all of the Transferable Products, the City shall be permitted to use, grant, license or otherwise dispose of such Transferable Products to any person or entity for development of the Project or any other purpose; provided, however, that Developer shall have no liability whatsoever to the City or any transferee in connection with the use of the Transferable Products. Notwithstanding anything to the contrary herein, Developer shall only be obligated to transfer any Transferable Products to the extent that Developer owns the rights to the same pursuant to its contract with the preparer thereof, provided that Developer shall use commercially reasonable efforts to secure ownership of Transferable Products pursuant to such contracts.

14.3.3. **Survival.** The provisions of this Section 14.3 shall survive the termination of this Agreement in its entirety or as to any portion of the Property except that it shall terminate upon the issuance of the Certificate of Compliance.

15. **Nonoccurrence of a Condition at Close of Escrow.**

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

15.1.1. In the event the Close of Escrow is extended for any of the reasons set forth in this Section 15.1 not caused by a Default by either Party, either Party shall have the right to terminate this Agreement as hereinafter provided:

(a) In the event a final decision in any litigation brought by a third party or approval of a referendum or initiative results in the inability of the City to convey all or any portion of the Property to Developer, or results in the inability of Developer to perform its material obligations hereunder despite Developer's commercially reasonable efforts to do so, either Party shall have the right, upon thirty (30) calendar days' prior written notice to the other Party and the Escrow Holder, to terminate this Agreement.

(b) In the event litigation, referendum, or initiative brought by a third party remains pending on the Outside Closing Date and (i) such ongoing challenge prevents the City from conveying all or any portion of the Property to Developer, or (ii) such ongoing challenge is the cause of Developer's inability to perform its material obligations hereunder despite Developer's commercially reasonable efforts to do so, either Party shall have the right, upon thirty (30) calendar days' written notice to the other Party and the Escrow Holder, to terminate this Agreement.

(c) In the event that the circumstances creating the right of termination in Sections 15.1.1(a) or (b) have been cured during such thirty (30) calendar day period, the right to terminate shall likewise be extinguished.

15.1.2. If the Close of Escrow does not occur on or before 5:00 p.m., Pacific Time, on the Outside Closing Date, because of the failure to occur of a Closing Condition for reasons other than a Default by either Party, then the Party for whose benefit the applicable Closing Condition was intended may, by delivery of written notice to the other Party and to the Escrow Holder, terminate this Agreement. In the event either Developer or the City is in Default as of the Closing Date, the Party in Default shall not have the right to terminate the Agreement pursuant to this Section 15.1 until and unless the Default is cured. Unless otherwise set forth in Sections 15.2, 15.3 or 15.4, upon termination of this Agreement each Party shall pay one-half (1/2) of Escrow Holder's normal cancellation charges and the Purchase Price Deposit shall be retained in full by the City. The termination of this Agreement pursuant to this Section 15.1 shall constitute a waiver of any rights or Claims either Party may have against the other or against the Property or the Improvements, or any portion thereof, but shall not terminate or release any liability or obligations of either Party to comply with any obligations under this Agreement which are expressly stated to survive a termination of this Agreement prior to the Close of Escrow. In the event of a termination as provided in this Section 15.1, under no circumstances shall Developer have any right or claim to, or against, the Project or Property or any portion thereof.

15.1.3. For purposes of clarity, the failure of a Closing Condition for the benefit of either Party to be satisfied at or prior to the Close of Escrow shall not, on its own, constitute a

Default by either Party hereunto absent a Default under a separate covenant, obligation, representation or warranty set forth in this Agreement or any Other Agreement.

15.2. **Failure of Close of Escrow For Reasons Other than Deposit Return Event.**

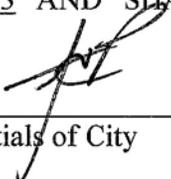
IF THE CLOSE OF ESCROW DOES NOT TAKE PLACE ON OR BEFORE 5:00 P.M., PACIFIC TIME, ON THE CLOSING DATE FOR ANY REASON OTHER THAN SOLELY AS A RESULT OF A DEPOSIT RETURN EVENT, THE PARTIES ACKNOWLEDGE AND AGREE BY INITIALING THIS AGREEMENT IN THE SPACE PROVIDED BELOW THAT:

(a) (i) ESCROW HOLDER SHALL DISBURSE THE ENTIRETY OF THE PURCHASE PRICE DEPOSIT AND ALL ACCRUED INTEREST THEREON TO THE CITY, AS LIQUIDATED DAMAGES, WHICH DAMAGES SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY HEREUNDER FOR DEVELOPER'S FAILURE TO CLOSE ESCROW, EXCEPT FOR THE CITY'S RIGHTS AND REMEDIES FOR A SEPARATE BREACH, IF ANY, OF THE CONFIDENTIALITY AND/OR INDEMNIFICATION PROVISIONS SET FORTH IN SECTIONS 5.5 AND 17.24 OF THIS AGREEMENT AND/OR THE PROVISIONS OF SECTION 14.3, AND (ii) THE CITY SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT AND THE ESCROW BY DELIVERING WRITTEN NOTICE TO THE DEVELOPER AND TO ESCROW HOLDER AND THE CITY SHALL BE RELEASED FROM ITS OBLIGATION HEREUNDER TO SELL THE PROPERTY TO DEVELOPER.

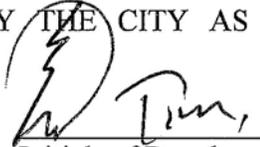
(b) THE PURCHASE PRICE DEPOSIT PROVIDED FOR IN SECTION 4.2.1 OF THIS AGREEMENT BEARS A REASONABLE RELATIONSHIP TO THE DAMAGES WHICH THE PARTIES ESTIMATE MAY BE SUFFERED BY THE CITY AS THE RESULT OF THE DEVELOPER'S FAILURE TO CLOSE ESCROW UNDER THIS AGREEMENT, WHICH DAMAGES WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO QUANTIFY, THAT SUCH PURCHASE PRICE DEPOSIT CONSTITUTES A REASONABLE ESTIMATE OF THE CITY'S DAMAGES IN SUCH EVENT, AND THAT THE REMEDY PROVIDED FOR IN THIS SECTION 15.2 IS NOT A PENALTY OR FORFEITURE AND IS A REASONABLE LIMITATION ON DEVELOPER'S POTENTIAL LIABILITY AS A RESULT OF SUCH FAILURE TO CLOSE ESCROW; AND

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

(d) DEVELOPER SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 14.3 AND SHALL INDEMNIFY THE CITY AS PROVIDED IN SECTION 5.5.



Initials of City



Initials of Developer

15.3. Failure to Close; Default of City.

15.3.1. If the Close of Escrow does not occur on or before 5:00 p.m., Pacific Time, on or before the Closing Date, solely as a result of a Default by the City in the performance of its obligations under this Agreement, then, so long as Developer is not in Default and subject to the requirements of Section 15.3.2, Developer shall have the right, by providing notice to the City, within twenty (20) Business Days after the Closing Date, of its election to do so, either: (a) to purchase the Development Parcels pursuant to this Agreement notwithstanding such Default by the City, whereupon such Default (other than Defaults with respect to City's failure to deliver the documents and instruments required under Section 7.2.1(a) above) shall be deemed waived as against the City; or (b) to terminate this Agreement and cancel the Escrow, in which case the provisions of Section 15.3.3 shall apply. In the event Developer fails to deliver such notice within such 20 Business Day period, Developer shall be deemed to have elected to terminate this Agreement and cancel the Escrow. Notwithstanding the foregoing, in the event the City fails to deliver any of the materials described in Section 7.2.1(a) or otherwise fails to proceed with the Close of Escrow in breach of this Agreement within five (5) Business Days after Developer has delivered into Escrow all of its required deliveries pursuant to Section 7.2.2 (other than the Developer Closing Payment), and provided that all City Closing Conditions have been waived by the City in writing or satisfied (except with respect to any City Closing Condition which is not satisfied as a result of a Default by the City), Developer shall have the right to bring an action in equity or otherwise against the City or subsequent owners, lessors or sublessors of the Property for specific performance of its obligations to Close Escrow in accordance with its obligations under Section 7.

15.3.2. In the event the City receives timely notice of Developer's election to purchase the Property pursuant to Section 15.3.1(a), notwithstanding the Default by the City, Developer shall deliver the Developer Closing Payment into Escrow no later than ten (10) Business Days after the City's receipt of said notice and, upon satisfaction of the other Conditions to Close of Escrow for the benefit of the City, the Close of Escrow shall occur on that date which is eleven (11) Business Days after the City's receipt of such notice, Developer shall be deemed to have waived the Default as of the Close of Escrow.

15.3.3. In the event the City receives timely notice of Developer's election to terminate this Agreement pursuant to Section 15.3.1(b) or Developer is deemed to have elected to terminate this Agreement pursuant to Section 15.3.1, the City shall pay the full amount of Escrow Holder's charges and Developer (a) shall be entitled to a full refund of its Purchase Price Deposit, which refund of its Purchase Price Deposit shall be Developer's sole and exclusive remedy hereunder for the failure of the Close of Escrow and (b) shall not be entitled to pursue an action against the City for damages as a result of the Default by the City.

15.3.4. In the event Developer has elected to purchase the Property but fails to deliver the applicable Developer Closing Payment into Escrow and to satisfy the other Closing Conditions for the benefit of the City no later than ten (10) Business Days after the City's receipt of said notice, then the City shall have the right to terminate this Agreement by providing written notice of its election to terminate to Developer, such termination to be in accordance with the provisions of Section 15.3.3.

15.3.5. The termination of this Agreement pursuant to this Section 15.3 shall not terminate or release any liability or obligations of Developer to indemnify the City as provided in Section 5.5 or to comply with Section 14.3. In the event of a termination as provided in Section 15.3.3, under no circumstances shall Developer have any right or claim to, or against, the Property or any portion thereof. The termination of this Agreement pursuant to this Section 15.3 shall constitute a waiver of any and all rights and Claims either Party may have against the other, except as expressly provided above.

15.4. **Failure to Close Escrow, Deposit Return Event.**

If the Close of Escrow does not occur on or before 5:00 p.m., Pacific Time, on the Outside Closing Date, as may be extended pursuant to Sections 7.1.1 and 7.1.2, because of a failure of any Closing Condition and the failure of such Closing Condition is a Deposit Return Event and occurs for reasons other than a Default by either Party, then upon termination of this Agreement pursuant to Section 15.1, each Party shall pay one-half (1/2) of Escrow Holder's normal cancellation charges and the Purchase Price Deposit shall be paid in full to Developer.

16. **Remedies for Defaults After the Close of Escrow.**

16.1. **General Remedies.**

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

- (a) The City may record a lien against the Property in accordance with Section 16.2.
- (b) Subject to Section 17.5.1, the City may sue for damages it may have incurred.
- (c) The City may seek to specifically enforce the obligations of Developer.
- (d) The City may terminate this Agreement with respect to all, or any portion of the Property.

16.2. **Lien Rights.**

Developer, on behalf of itself, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner (but specifically excluding any End Users) for the benefit of the City and its successors and assigns hereby agrees that the delinquent amount of any payments due hereunder, including any liquidated damages under this Agreement, together with any late charges or interest due on any such delinquent payment, reasonable attorneys' fees, experts' fees and consultants' fees and collection costs related to such delinquent payment shall, to the greatest extent permitted by applicable law, be a lien and charge upon the

Property and shall be a lien upon the Property in favor of the City effective upon Recording of the Memorandum of DDA (the "**City Lien**"), which lien and charge shall be paramount to the lien and charge of any Mortgage, Construction Lien and other lien upon or affecting the Property and the City shall have the right to foreclose the City Lien with respect to any property so encumbered by such lien. Upon conveyance of any portion of the Development Parcels to an End User, the City Lien shall automatically terminate as to such conveyed portions, provided however, that the termination of such City Lien shall not terminate the obligations of Developer to City with respect to amounts due and secured by such lien, which shall remain an ongoing obligation of Developer.

16.3. **Right of Purchase.**

16.3.1. Following the Close of Escrow and prior to the issuance of a Certificate of Compliance with respect to the Property and the Project, in the event of a Repurchase Default (as defined below), the City shall have the right (the "**Right of Purchase**"), from time to time, at any time, to purchase all or a portion of the Development Parcels and all applicable Entitlements and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any governmental or quasi-governmental authority, Transferable Products and all other appurtenant rights applicable thereto (the "**Repurchased Property**"). The Repurchased Property shall exclude (a) those Buildings and the Phases upon which such Buildings are located for which Developer has been issued a building permit prior to the date of the City's delivery of notice of a Repurchase Default which permit has not expired as of the date of the City's exercise of the Right of Purchase; and (b) as to the Buildings and Phases excluded pursuant to clause (a) above, (i) the Common Area and any Improvements located within such Building and/or Phase, as applicable, and (ii) all Entitlements and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any governmental or quasi-governmental authority, and all other appurtenant rights applicable thereto, including those units allocated to development of the Repurchased Property as shown in the Approved Plans or established pursuant to any Recorded Condominium Map approved by the City pursuant to Section 8.12(g).

16.3.2. **Repurchase Default.** Subject to extension for Force Majeure Delay with respect to clauses (a) through (e) below only, the City shall have the right to acquire the Repurchased Property for the Repurchase Price in accordance with this Section 16.3 and upon the occurrence of any one of the following (each, a "**Repurchase Default**"):

(a) Developer fails to comply with the Inventory Commitment and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2;

(b) Developer fails to comply with the Schedule of Performance and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2;

(c) Developer constructs Improvements that are not in substantial conformity with the Approved Plans and the requirements of Sections 8.1.4 and 8.9 and

such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2;

(d) For a period of one hundred eighty (180) consecutive calendar days, Developer is in Material Default of the maintenance obligations set forth in Section 12.2 (including as set forth in the Special Restrictions, the CC&Rs or Landscape Maintenance Agreement), in accordance with the notice and cure provisions of Section 14.2;

(e) Developer commits waste on the Property and such failure becomes a Material Default in accordance with the notice and cure provisions of Section 14.2;

(f) The occurrence of a Developer Insolvency Event;

(g) Developer fails to pay prior to delinquency any property taxes or assessments, including District assessments or to pay to City any other sums due hereunder and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2;

(h) A Material Default arises because of a voluntary or involuntary Transfer or Transfer of Control.

16.3.3. **Exercise of Right of Purchase.** The City may exercise its Right of Purchase by delivering written notice to Developer stating that the City is exercising its Right of Purchase and specifying the Repurchased Property which it intends to purchase; provided that such notice is delivered at least ninety (90) calendar days prior to the date on which the City requires Developer to convey the Property to the City pursuant to the Right of Purchase and otherwise in accordance with this Section 16.3. The Right of Purchase shall be a lien and encumbrance on the Property and Improvements thereon that shall be paramount to the lien and charge of any Mortgage, Construction Lien and/or other lien upon the Property. The Repurchased Property shall be delivered to the City at close of escrow for the Repurchased Property free and clear of all liens and Mortgages and subject only to (x) the Permitted Exceptions at the time of the applicable original Close of Escrow for such portion of the Property, and (y) all other matters created in connection with the Entitlements and the development of the Project pursuant to this Agreement.

16.3.4. **Access and Inspection.** The provisions of Section 16.5 shall apply with respect to the Repurchased Property.

16.3.5. **Process.** If the City is entitled to and elects to repurchase the Repurchased Property, the Parties shall: (a) within five (5) Business Days after the date of the City's notice of election to exercise the Right of Purchase, open an escrow with an escrow agent designated by the City for the purchase and sale, and shall execute an escrow agreement that shall provide that Developer shall pay all costs of the escrow and shall include such usual and ordinary terms as are reasonably required by the escrow agent and by the transaction; (b) no later than five (5) Business Days after the opening of escrow, Developer shall place into the escrow appropriate quitclaim deeds and bill of sale conveying fee title to the Repurchased Property; and (c) no later than eighty-five (85) calendar days after the opening of the escrow, the City shall deposit into the escrow an

amount equal to (i) the Repurchase Price *minus* (ii) the Lien Release Amounts, if any, *minus* (iii) any amounts then owed to the City by Developer and/or any Successor Owner, including any City Liens arising pursuant to this Agreement with respect to the Repurchased Property and *minus* (iv) the actual costs incurred by the City to acquire environmental and pollution legal liability insurance coverage for the Reacquired Property, including coverage for loss, remediation expense and legal defense expenses. The escrow shall close, and title to the Repurchased Property shall be conveyed to the City, no later than five (5) Business Days after the City has deposited into escrow the Repurchase Price, but in no event prior to the City's delivery of the City Repair Acknowledgement with respect to any repairs to the Improvements made pursuant to Section 16.5. Concurrently with the close of escrow, Developer shall comply with its obligations under Section 14.3 only with respect to the Repurchased Property. Nothing herein shall restrict the right of the City to terminate its exercise of the Right of Purchase at any time prior to the close of escrow and such termination shall not be a default by the City. At the close of escrow, real property taxes and assessments with respect to the Repurchased Property shall be prorated between Developer and City as of the date of the close of escrow. All prorations shall be based upon a 365-day year and actual days elapsed. All closing costs, including the cost of an ALTA policy of title insurance in favor of the City with respect to the Repurchased Property shall be borne by Developer and deducted from the Repurchase Price.

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

16.3.7. Termination of Right of Purchase. In the event that prior to delivery by the City of written notice to Developer of its exercise of the Right of Purchase pursuant to Section 16.3.2, Developer or any Person on behalf of Developer either (a) cures the Repurchase Default which is the basis for the City's exercise of its Right of Purchase, but excluding any Transfer or Transfer of Control in violation of this Agreement, or (b) Completes the Improvements upon the Property that is subject to the Right of Purchase, such Right of Purchase shall cease and terminate with respect to such portions of the Repurchased Property for which the Material Default is cured or for which Improvements are so Completed only. In the event the City has declared a Repurchase Default, Developer shall not have the right to apply for building permits for Vertical Improvements in a manner that affects or thwarts the ability of the City to exercise its Right of Purchase. The Right of Purchase shall not apply to the Property after the recordation by the City of the Certificate of Compliance.

16.3.8. Effect of Repurchase. The provisions of Section 16.6 shall apply with respect to the Repurchased Property following close of escrow. Following close of escrow, under no circumstances shall Developer or any lienholder have any right or claim to, or against, the Repurchased Property. Notwithstanding the purchase of the Repurchased Property by the City as provided in this Section 16.3, this Agreement shall remain in full force and effect with respect to the portions of the Property and Improvements not purchased by the City. The Right of Purchase shall not defeat or render invalid or limit any rights or interests provided in easements, covenants,

conditions or restrictions in favor of third parties who are not Developer Affiliates that are approved by the City (or constituting a Permitted Transfer) and recorded on the Repurchased Property purchased hereunder.

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

16.4. **The Right of Reversion.**

Following the Close of Escrow and prior to the recordation of the Certificate of Compliance, in the event of the occurrence of any Reversion Action Trigger (defined in Section 16.4.1), and in addition to its other rights or remedies as a result of the occurrence of any such Reversion Action Trigger, the City shall have the right on the terms and subject to the conditions set forth in this Section 16.4 to re-enter and take possession of the Reacquired Property (as defined below) and to re-vest title thereto in the City (the “**Right of Reversion**”) notwithstanding that the Reacquired Property may be encumbered by liens, including Construction Liens. The re-vesting of any Reacquired Property by the City is referred to herein as a “**Reversion Event**”, whether based on voluntary action of Developer or otherwise after notice by the City of its intent to exercise the Right of Reversion. The City shall be entitled to exercise the Right of Reversion at any time on or after the occurrence of any of any one or more of the Reversion Action Triggers; provided that the City has complied with the conditions to exercise of the Right of Reversion set forth in Section 16.4.2. The Right of Reversion shall be a lien and encumbrance on the Property that shall be paramount to the lien and charge of any Mortgage, Construction Lien and/or other lien upon the Property.

16.4.1. **Certain Defaults Triggering the Right of Reversion.** Following the Close of Escrow and prior to the recordation of the Certificate of Compliance, the City may exercise the Right of Reversion with respect any portion of the Development Parcels and any Improvements thereon and all applicable Entitlements and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any governmental or quasi-governmental authority, the Transferable Products and all other appurtenant rights applicable thereto (collectively, the “**Reacquired Property**”) upon the occurrence of any one of the following (each, a “**Reversion Action Trigger,**” and the date on which the Reversion Action Trigger occurs shall be referred to herein, as the “**Reversion Action Trigger Date**”). The Reacquired Property shall exclude (1) those Buildings and the Phases upon which such Buildings are located for which Developer has been issued a building permit prior to the Reversion Action Trigger Date which permit has not expired as of the date of the City’s exercise of the Right of Reversion; and (2) as to the Buildings and Phases excluded pursuant to clause (1) above, (i) the Common Area and any Improvements located within such Building and/or Phase, as applicable, and (ii) all Entitlements and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any governmental or quasi-governmental authority, and all other appurtenant rights applicable thereto, including those units allocated to development of the Reacquired Property as shown in the Approved Plans or established pursuant to any Recorded Condominium Plan approved by the City pursuant to Section 8.12(g).

(a) Developer fails to commence the Grading Work within three (3) months after the Close of Escrow or to Complete the Horizontal Improvements within thirty-six (36) months after Close of Escrow, subject to extension for Force Majeure Delay for a period not to exceed a total of twelve (12) months;

(b) Developer fails to Complete the Project within thirty-six (36) months following opening of the Models to the public, as such date may be extended for Force Majeure Delay (not to exceed a total of twelve (12) months);

(c) Developer commits waste on the Property and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2, subject to extension for Force Majeure Delay;

(d) For a period of one hundred eighty (180) consecutive calendar days, Developer is in Material Default with respect to the Inventory Commitment set forth in Section 8.9.3;

(e) For a period of one hundred eighty (180) consecutive calendar days, Developer is in Material Default of the maintenance obligations set forth in Section 12.2 (including as set forth in the Special Restrictions, CC&Rs or Landscape Maintenance Agreement), in accordance with the notice and cure provisions of Section 14.2;

(f) The occurrence of a Developer Insolvency Event;

(g) With respect to any Guarantor which has provided a Guaranty to the City, the occurrence of a Guarantor Illiquidity Event, unless Developer shall, within the time period required thereby, provide substitute security meeting the requirements of Section 4.7.1; or

(h) A Material Default arises because of a voluntary or involuntary Transfer or Transfer of Control.

16.4.2. **Conditions to Exercise of the Right of Reversion**. The City shall be entitled to exercise the Right of Reversion at any time on or after the applicable Reversion Action Trigger Date, without regard to any notice and cure periods except as expressly provided in Section 16.4.1; provided that the City has provided written notice to Developer that the City elects to exercise its Right of Reversion and such notice states the date for the Reversion Event. The provisions of Section 16.5 shall be applicable to exercise of the Right of Reversion. The date for the Reversion Event shall not occur before the later of (a) the date that is ninety (90) calendar days after the date of such notice of exercise; (b) the date that is five (5) Business Days after Developer has had the opportunity to address the City Council at a public meeting regarding the Reversion Action Trigger; and (c) the date that is five (5) Business Days following the delivery of the City Repair Acknowledgment with respect to any repairs to the Improvements made pursuant to Section 16.5.2 below. In the event that, following the first notice by City of its election to exercise the Right of Reversion and prior to the Reversion Event, Developer or any Person on behalf of Developer either (a) cures the Reversion Action Trigger which is the basis for the City's exercise

of its Right of Reversion or (b) Completes the Improvements prior to the date of the Reversion Event, such Right of Reversion shall cease and terminate with respect to such Reversion Action Trigger only; provided that the provisions of this sentence shall not be applicable to any subsequent notice by the City of its election to exercise the Right of Reversion.

16.4.3. **Sale of Reacquired Property.** Upon the reversioning in the City of title to the Reacquired Property, the City shall use reasonable efforts to resell the Reacquired Property as soon and in such manner as the City shall find feasible, in accordance with applicable state law, if any, and consistent with the objectives of this Agreement, to a qualified and responsible party or parties (as determined by the City in its sole discretion) who will assume the obligation of making or completing the Improvements. Concurrently with the resale of the entire Reacquired Property, or concurrently with each resale of any portion of the Reacquired Property, the proceeds thereof shall be applied in the following order and amounts:

(a) **Delinquencies.** First, to repayment in full of all delinquent tax, assessment and other liens with respect to the portion of the Reacquired Property sold;

(b) **Reimbursement to the City.** Second, to reimburse the City on its own behalf for all costs and expenses incurred by the City, in connection with the recapture, management and resale of the Reacquired Property, or any part thereof, including: a pro-rata share of the salaries of personnel engaged in such action (based on the amount of time spent by such personnel on such matters relating to the Reacquired Property as compared to the aggregate amount of time worked by such personnel; all taxes, assessments and utility charges with respect to the Reacquired Property; any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, Defaults or acts of Developer or any Successor Owner or each and every Person claiming by, through or under Developer or any Successor Owner (but specifically excluding any End Users); any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Reacquired Property; all costs of sale and marketing, including reasonable brokers' fees and costs incurred in the marketing and sale of the Reacquired Property; all legal fees and expenses; all escrow and title fees and costs; all survey and due diligence fees and costs; all the Lien Release Amounts, if any, paid by the City to third parties; and any amounts otherwise owing to the City by Developer and/or any Successor Owner under this Agreement or the Other Agreements, including any City Liens and the actual cost incurred by the City to acquire environmental and pollution legal liability insurance coverage for the Reacquired Property, including coverage for loss, remediation expense and legal defense expenses.

(c) **Reimbursement to Developer.** Third, to reimburse Developer up to the amount equal to the Repurchase Price attributable to the portion of the Reacquired Property sold; and

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

16.4.4. **Effect of Exercise of Right of Reversion**. The provisions of Section 16.6 shall apply with respect to the Reacquired Property following close of escrow. Following such close of escrow, under no circumstances shall Developer or any lienholder have any right or claim to, or against, the Repurchased Property. Notwithstanding the acquisition of the Reacquired Property by the City as provided in this Section 16.4, this Agreement shall remain in full force and effect with respect to the portions of the Property and Improvements not purchased by the City. The City's Right of Reversion shall not defeat or render invalid or limit any rights or interests provided in easements, covenants, conditions or restrictions in favor of third parties who are not Developer Affiliates that are approved by the City (or constituting a Permitted Transfer) and recorded on the portion of the Property for which the City exercises its rights under this Section 16.4.

16.4.5. **Cooperation and Grant of Easements**. Concurrently with close of escrow for the Reacquired Property, the Parties shall each reserve and/or grant to the other such roadway, utility, access and other easement rights as may be required by the other Party and its successors in interest to develop the Property as a unified development and as contemplated by the Entitlements, the CC&Rs, this Agreement and the Other Agreements.

16.4.6. **Survival of Provisions**. The provisions of Sections 16.4.3 and 16.4.4 and this Section 16.4.6 shall survive the termination of this Agreement.

16.5. **Access and Inspection**.

16.5.1. **Access**. From and after the occurrence of any Repurchase Default, City and its appointed and elected officials, agents, attorneys, employees, contractors, consultants and representatives shall have the non-exclusive right, exercising such right in the Proprietary Capacity of the City, to enter upon at any reasonable time, at its own cost and expense entirely and upon twenty four (24) hours prior telephonic or email notice to Developer, the Potential Returned Property for the purpose of making such feasibility and other studies, inspections, appraisals, audits, tests, evaluations, investigations, surveys and reports of the Potential Returned Property (including engineering and environmental audits, evaluations and tests relative to the presence of any Hazardous Material within, under or upon the Potential Returned Property) (collectively, "**City Inspections**") as City may elect to make or obtain in connection with its exercise of its Right of Purchase or Right of Reversion; provided that during such City Inspections on the Potential Returned Property, City shall use commercially reasonable efforts to minimize its interference with Developer's activities on the Property. City shall indemnify, protect and defend Developer against any and all Claims which Developer may incur or suffer by reason of any acts or omissions to act of the City or its appointed and elected officials, agents, attorneys, employees, contractors, consultants and representatives in conduct of City Inspections on the Potential Returned Property, provided that the foregoing indemnity shall not apply to the extent of (i) the gross negligence, willful misconduct or fraud of Developer or any of the Developer Representatives, (ii) Hazardous Materials conditions unless such condition is exacerbated by, or any Release caused by, negligent acts of City or its employees, consultants or contractors, or (iii) the Active Negligence of the Developer or any of the Developer Representatives in performance of work on the Development Parcels Accruing prior to the close of escrow; provided that in no event shall the foregoing apply with respect to inspections conducted by the City in its Governmental Capacity.

16.5.2. **Inspection and Repair.** At any time following the occurrence of any Repurchase Default or Reversion Action Trigger, the City may inspect the Potential Returned Property, and subsequent to the delivery of written notice by City to Developer of its exercise of the Right of Purchase or the Right of Reversion, as applicable, City shall deliver written notice to Developer identifying any defects in the Potential Returned Property (“**Defect Notice**”). Within thirty (30) calendar days following the delivery by the City of the Defect Notice, Developer shall cause all defects specified in the Defect Notice to be rectified or repaired, and such repair shall be in accordance with the original approved plans with respect thereto, if applicable. All costs and expenses of Developer in repairing, replacing or rectifying any defects identified in a Defect Notice shall be included within the definition of Horizontal Improvement Costs or Vertical and Phase Improvement Costs for purposes of determining the Repurchase Price. Upon completion of the repairs of the Improvements, or rectifying of any physical condition of the Potential Returned Property, including Environmental Matters, Developer and City shall inspect to confirm that such work has been appropriately completed, and City shall execute and deliver to Developer a certificate acknowledging the satisfactory completion of the work (the “**City Repair Acknowledgment**”). City shall have the right at any time, and without consent of Developer, to waive the obligation of Developer to carry out or complete repairs and to proceed to close of escrow; provided that City’s acquisition of the Returned Property shall be subject to the provisions of Sections 16.6.3 and 16.6.4 notwithstanding the waiver.

16.6. **Obligations and Release Following Repurchase or Reversion.**

16.6.1. **Developer Obligations; Guaranty.** In the event the City exercises its Right of Purchase as to the Repurchased Property as provided in Section 16.3 or its Right of Reversion as the Reacquired Property as provided in Section 16.4 of this Agreement shall, unless otherwise determined by the City in its sole discretion, terminate with respect to the Repurchased Property or Reacquired Property, as applicable (each, the “**Returned Property**”), as of the date of the quitclaim deed conveying to the City title to the Returned Property. Except as set forth in Sections 16.4.5 and 16.6, all other obligations of the Parties under this Agreement with respect to each other shall be released and terminated, as to the Returned Property only, at the close of escrow for the Returned Property; provided, however that in no event shall the Guaranty provided at the Close of Escrow (or any Guaranty approved by the City in its sole discretion as a replacement for such original Guaranty) to secure the obligations of Developer under this Agreement and the Other Agreements with respect to the portion of the Property containing the Reacquired Property be released or terminated as a result of the exercise by the City of the Right of Purchase or the Right of Reversion with respect to the obligations set forth in Sections 16.4.5 and 16.6 and with respect to the Enforcement Payment Obligation (as such term is defined in the Guaranty).

16.6.2. **Exceptions to Release.** Regardless of whether or not this Agreement is terminated with respect to the Returned Property by the City, and notwithstanding the provisions of Sections 16.6.3 and 16.6.4, the close of escrow with respect to the Returned Property shall not terminate or release any liability or obligations of Developer or any Responsible Developer or Responsible Person with respect to such Returned Property for the following (and such liability and obligations shall survive the close of escrow and shall not be merged into the quitclaim deed) which in addition shall continue to be “Guaranteed Obligations” as such term is defined in each

Guaranty provided in connection with the acquisition of the Reacquired Property by Developer (“**City Reserved Rights**”):

(i) to release the City Released Parties pursuant to Sections 4.5.2(f), 8.14.1 and 8.14.2;

(ii) to return any written Due Diligence Information with respect to the Returned Property pursuant to Section 14.3;

(iii) to indemnify, defend and hold harmless the City Indemnified Parties as provided in Sections 8.12(e), 8.15, 8.16 and 17.12.1 for matters Accruing during the period of Developer’s ownership of the Returned Property and with respect to any Developer, Responsible Developer or Responsible Person, during the Additional Liability Period;

(iv) to indemnify, defend and hold harmless the City Indemnified Parties as provided in Section 5.5 for matters occurring prior to the Close of Escrow;

(v) to provide environmental insurance as described in Section 11.1.4 for the period required by this Agreement and not to modify or terminate any prepaid environmental insurance policy then in existence for a longer term; and

(vi) to indemnify, defend and hold harmless the City Indemnified Parties as provided in Section 10.1 only with respect to the matters set forth in Section 16.6.3(c), (d) and (e) Accruing during the period of Developer’s ownership of the Returned Property and, with respect to any Developer, Responsible Developer or Responsible Person, during the Additional Liability Period.

16.6.3. **AS-IS Conveyance**. City and Developer acknowledge and agree that prior to the close of escrow City will have the full opportunity to inspect and investigate every aspect of the Returned Property, including all matters related to the legal status thereof or requirements with respect thereto, the zoning, the title condition, the economic conditions affecting the value, expense of operation, or income potential thereof, Environmental Matters and the physical condition and repair of the Returned Property and the Improvements thereon, including the work performed by Developer with respect to construction of the Improvements, and any construction defects, errors or omissions with respect to the Returned Property, but excluding the City Reserved Claims. The “**City Reserved Claims**” shall mean all Claims relating to or arising out of the following: (a) the City Reserved Rights; (b) City Liens and amounts otherwise owed to the City by Developer and/or any Successor Owner (to the extent that Developer is liable therefor under the terms of any agreement between Developer and the City applicable to the Returned Property and not deducted from the Repurchase Price); (c) information with respect to any aspect of the Returned Property contained in written or electronic documents in the possession of Developer or any of the Developer Representatives that are not proprietary or confidential and not otherwise known or

available to the City that the City has specifically requested in writing and that Developer has declined to provide; (d) Claims other than with respect to Environmental Matters brought against the City Indemnified Parties by third parties and Accrued during the period that (x) Developer owned the Returned Property; and (y) with respect to any Developer, Responsible Developer or Responsible Person, for the Additional Liability Period, as applicable; and (e) any Claim that is the result of the willful misconduct or fraud of Developer or any of the Developer Released Parties. City specifically acknowledges and agrees that, except for the City Reserved Claims, the Returned Property, including any Improvements thereon, is conveyed pursuant to Section 16.3 or Section 16.4, as applicable, in an "AS IS" condition and "WITH ALL FAULTS" as of the date of the close of escrow for the transfer of the Returned Property. For purposes of this Section 16.6.3, except as otherwise set forth in Section 16.6, no statements, representations or warranties have been made or are made by Developer and no responsibility has been or is assumed by Developer, or by any partner, officer, employee, member, manager, person, firm, agent or representative acting or purporting to act on behalf of Developer as to the Returned Property or the Improvements thereon, or the value, expense of operation or income potential thereof, and City is not relying upon any such statement, representation or warranty. Further, to the extent that Developer has provided to City information or reports regarding any inspection, engineering or other matters regarding the Returned Property Matters, Developer makes no representations or warranties with respect to the accuracy, completeness, methodology of preparation or otherwise concerning the contents of such reports. City acknowledges that Developer has requested City to inspect fully the Returned Property prior to the close of escrow and investigate all matters relevant thereto and to rely solely upon the results of City's own inspections or other information obtained or otherwise available to City with respect thereto, rather than any information that may have been provided by Developer to City. City's acceptance of the quitclaim deed for the Returned Property shall constitute its irrevocable declaration that it has fully inspected the Returned Property, or has been given a reasonable opportunity to do so, and that it is fully satisfied with every aspect of the Returned Property. Nothing in this Section shall limit the obligations of Developer, Responsible Developer or any Responsible Person pursuant to Section 16.6.2.

16.6.4. **Release.** Effective as of the close of escrow with respect to the Returned Property and except as provided in Section 16.6.2 and the City Reserved Claims, City shall, on behalf of itself and each Successor Owner and every Person claiming by, through or under City or any Successor Owner (each, including the City, a "**City Releasing Party**"), waive the right of each City Releasing Party to recover from, and fully and irrevocably release, the Developer and its employees, agents, attorneys, affiliates, representatives, consultants, contractors, successors and assigns (individually, a "**Developer Released Party**" and collectively, the "**Developer Released Parties**") from any and all Claims that City or any City Releasing Party may now have or hereafter suffer arising from or related to the Returned Property, whether known or unknown by any City Releasing Party or any Developer Released Party, including: (i) any condition of the Returned Property or any existing Improvement or future improvement thereon, known or unknown by any City Releasing Party or any Developer Released Party, including as to the extent or effect of any grading of the Returned Property; (ii) any construction defects, errors, omissions or other conditions, latent or otherwise; (iii) economic and legal conditions on or affecting the Returned Property, or any Improvement thereon; (iv) Environmental Matters, including the existence, Release, threatened Release, presence, storage, treatment, transportation or disposal of any Hazardous Materials at any time on, in, under, or from, the Returned Property or any current or

future improvement thereon or any portion thereof; (v) Claims of or acts or omission to act of any Governmental Authority or any other third party arising from or related to any actual, threatened, or suspected Release of a Hazardous Material on, in, under, or from or about the Returned Property or any current or future improvement thereon, including any Investigation or Remediation at or about the Returned Property or any current or future improvement thereon; and/or (vi) arising from the Tustin Legacy Backbone Infrastructure Program, any District or the cost or extent thereof with respect to the Returned Property, or the amount of the Project Fair Share Contribution or any assessments with respect to District affecting the Returned Property described in this Agreement not owing as of the date of the transfer. The foregoing release shall not extend to any City Reserved Claims. Notwithstanding the foregoing, except as specifically set forth in this sentence, all City Reserved Claims shall automatically be included within the matters released under this Section effective upon the transfer or conveyance of the Returned Property (or a portion thereof), to a third party (as to the portion of the Returned Property conveyed); provided that Developer shall specifically not be released with respect to the City Reserved Claims specified in Section 16.6.2(i) and (iv), and Section 16.6.3(b) and (e). This release includes Claims with respect to the foregoing released matters of which City is presently unaware or which City does not presently suspect to exist (and which at the time of the close of escrow for the Returned Property the City may be unaware or which the City may not then suspect to exist) which, if known by City, would materially affect City's release of the Developer Released Parties. Effective as of the close of escrow for the Returned Property, with respect to the foregoing matters (and specifically excluding the City Reserved Claims), City specifically waives the provision of California Civil Code Section 1542, which provides as follows:

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

In this connection, City, on behalf of itself, and the other City Releasing Parties hereby agrees, that (x) it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to Claims or controversies which are presently unknown, unanticipated and unsuspected; (y) the waivers and releases in this Section 16.6.4 have been negotiated and agreed upon in light of that realization, and (z) City, on behalf of itself and the other City Releasing Parties, nevertheless hereby intends to release, discharge and acquit the Developer Released Parties from any such unknown Claims and controversies to the extent set forth above. To the extent permitted by law, the foregoing provisions of this Section 16.6.4 shall survive the close of escrow for the Returned Property and the termination of this Agreement and shall not be merged with any quitclaim deed.

16.6.5. City Responsibility in Sale to Third Party. City agrees to cause Developer to be included as a benefited party under all release and indemnity provisions with respect to the Returned Property and any Improvements thereon which are contained in any agreement between the City and the third party transferee relating to the conveyance or transfer of

the Returned Property or portion thereof, to the same extent as the City is released and/or indemnified by such third party transferee.

16.7. **Cooperation of Developer.**

If the City exercises its Right of Purchase or Right of Reversion in accordance with the provisions of this Agreement, Developer shall use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable law to consummate the repurchase of the Repurchased Property or reversion of the Reacquired Property, as the case may be, including the execution and delivery of such other documents, certificates, agreements, deeds and other writings and the taking of such other actions as may be reasonably necessary to consummate such transactions.

17. **General Provisions.**

17.1. **Applicable Law; Consent to Jurisdiction; Service of Process.**

This Agreement shall be governed by, interpreted under, construed and enforced in accordance with the laws of the State, irrespective of California's choice-of-law principles. Developer and City agree that any disputes arising between them in connection with this Agreement or in connection with or under any instrument, agreement or document provided for or contemplated by this Agreement, including in connection with the execution of this Agreement, the Close of Escrow or any other matter arising under, related to or in connection with this Agreement (including a determination of any and all issues in such dispute, whether of fact or of law) shall be tried and litigated exclusively in the Superior Court of the County of Orange in the State, in any other appropriate court of that county, or in the United States District Court for the Central District of California. This choice of venue is intended by Developer and the City to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between or among Developer and the City with respect to or arising out of this Agreement in any jurisdiction other than that specified in this Section 17.1. Each Party hereby waives any right that it may have to assert forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section 17.1, and stipulates that the State and federal courts located in the County of Orange, in the State, shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy or proceeding arising out of this Agreement. Each Party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section 17.1 by means of registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement, or in the manner set forth in Section 17.6 (a) or (c) of this Agreement pertaining to notice. Any final judgment rendered against a Party in any Action shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

17.2. **Legal Fees and Costs.**

If any Party to this Agreement institutes any action, suit, proceeding, counterclaim or other proceeding for any relief against another Party, declaratory or otherwise (collectively an

“Action”), to enforce the terms hereof or to declare rights hereunder or with respect to any inaccuracies or material omissions in connection with any of the covenants, representations, warranties or obligations on the part of the other Party to this Agreement, then the Prevailing Party in such Action shall be entitled to have and recover of and from the other Party all costs and expenses of the Action, including (a) reasonable attorneys’ fees which shall be payable at the contractual hourly rate for City’s litigation counsel at the time the fees were incurred, but in no event more than \$200 per hour with this rate being used to calculate the attorneys’ fees to be recovered by the Prevailing Party (as defined below) regardless of whether the City or another Person is the Prevailing Party and (b) costs actually incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling or award (collectively, a “Decision”) granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including reasonable attorneys’ fees and expert fees and costs (collectively “Costs”) incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include in addition to Costs incurred in prosecution or defense of the underlying action, reasonable attorneys’ fees, costs, expenses and expert fees and costs incurred in the following: post judgment motions and collection actions, contempt proceedings, garnishment, levy, debtor and third party examinations, discovery, bankruptcy litigation and appeals of any order or judgment. “Prevailing Party” within the meaning of this Section 17.2 includes a Party who agrees to dismiss an Action in consideration for the other Party’s payment of the amounts allegedly due or performance of the covenants allegedly breached, or obtains substantially the relief sought by such Party.

17.3. **Modifications or Amendments.**

No amendment, change, modification or supplement to this Agreement shall be valid and binding on any of the Parties unless it is represented in writing and signed by each of the Parties hereto.

17.4. **Further Assurances.**

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

17.5. **Rights and Remedies Are Cumulative; Limitation on Damages.**

17.5.1. **Cumulative Remedies.** Except with respect to the rights and remedies expressly declared to be exclusive in this Agreement or the Other Agreements, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Material Default or any other Material Default by the other Party. Except as otherwise specifically set forth in this Agreement, and subject to Section 17.5.2, wherever a Party has a right to damages for the Material Default of another Party: (a) such damages shall be

limited to direct (actual) damages for the Material Default of the other Party, and (b) each of the Parties, on behalf of itself and its successors and assigns, hereby expressly waives, releases and relinquishes any and all right to any expectation, anticipation, indirect, consequential, exemplary or punitive damages.

17.5.2. **Limitation on Damages Payable by the City.** Developer acknowledges that the City would not have entered into this Agreement if the City could become liable for significant damages under or with respect to this Agreement and the Other Agreements. Consequently, and notwithstanding any other provision of this Agreement, except for (a) the monetary damages that may arise from the City's indemnity obligations referenced below in Section 17.5.3, and (b) the payment of attorneys' fees in accordance with Section 17.2 and court costs, the City shall not be liable in damages under this Agreement or any Other Agreement to Developer or to any Successor Owner and Developer, on behalf of itself and each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner hereby waives any and all rights to claim damages of any kind or nature from the City except as set forth in Section 17.5.3. Notwithstanding the foregoing, nothing herein shall be deemed to preclude Developer from seeking payment for amounts which the City is obligated to pay to Developer or Escrow Holder pursuant to Sections 7.4.1, 7.4.4, 14.2.4, 15.1.2 or 15.3.3 of this Agreement, provided that Developer shall not be entitled to any damages in addition to the actual amounts owed by the City to Developer pursuant to this Agreement or the Other Agreements.

17.5.3. **Special Circumstances Where Damages may be Payable by the City.** Subject to Section 17.5.1, the limitations on damages set forth in Section 17.5.2 shall not limit the liability of the City, if any, for damages which arise out of (a) a breach of the City's representations and warranties contained in Sections 3.3 or 17.12.2 of this Agreement, provided that the amount of any damages payable pursuant to this clause (a) shall be the lesser of (i) actual damages, or (ii) Three Hundred Thousand Dollars (\$300,000) or (b) the exercise of any of the rights reserved to the City pursuant to Section 4.1(a)(i) or (ii) and as the same shall be included in the Quitclaim Deed.

17.5.4. **Right to Specific Performance.** In the event the City is in Material Default following the Close of Escrow, Developer shall be entitled to seek specific performance or injunctive relief in order to enforce Developer's rights pursuant to this Agreement. For purposes of clarity, in the event that the City is obligated to pay any amounts to Developer pursuant to this Agreement, and the City fails to pay such amounts to Developer as and when required by this Agreement, Developer shall be entitled to seek specific performance of such obligation, notwithstanding the other provisions of this Section 17.5.

17.6. **Notices, Demands and Communications between the Parties.**

All notices, demands, consents, requests and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed conclusively to have been duly given (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 facsimile transmission or email to the fax number or email address set forth below; provided that notices given by facsimile or email shall not be effective unless either (i) a duplicate copy of such notice is promptly sent by any method permitted under this Section 17.6 other than by facsimile or 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 facsimile, email or any other method permitted under this Section. Any notice given by facsimile or 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 of Tustin
Attn: Jeffrey C. Parker, City Manager
300 Centennial Way
Tustin, CA 92780
Fax: 714-838-1602
Email: jparker@tustinca.org

With a copy to:

Woodruff Spradlin & Smart, APC
Attn: David Kendig, Esq., City Attorney
555 Anton Boulevard, #1200
Costa Mesa, CA 92626
Fax: (714) 415-1183
Email: dkendig@wss-law.com

And with a copy to:

Armbruster Goldsmith & Delvac LLP
Attn: Amy E. Freilich, Esq., Special Counsel
12100 Wilshire Boulevard, Suite 1600
Los Angeles, CA 90025
Fax: (310) 209-8801
Email: amy@agd-landuse.com

Developer:

CalAtlantic Group, Inc.
Attn: Elliot Mann
President, Southern California Coastal Division
15360 Barranca Parkway
Irvine, CA 92618
Fax: (949) 789-1745
Email: Elliot.Mann@calatl.com

With a copy to:

Rutan & Tucker, LLP
Attn: Kevin Brazil, Esq.
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626
Fax: (714) 546-9035
Email: kbrazil@rutan.com

Any Party may by written notice to the other Party in the manner specified in this Agreement change the address to which notices to such Party shall be delivered.

17.7. **Delay.**

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

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

(b) **Unforeseeable Conditions.** Reasonably unforeseeable physical condition of the Property including the presence of Hazardous Materials;

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

(d) **Litigation.** Any lawsuit seeking to restrain, enjoin, challenge or delay any issuance of any Entitlement or seeking to restrain, enjoin, challenge, or delay construction of the Project, which is defended by the First Party;

(e) **Change of Law.** The passage of a referendum or initiative that results in the inability of such Party to perform its material obligations hereunder; provided that the foregoing shall not apply to a Party's performance regarding the Close of Escrow, which are governed by Section 7 and Section 15;

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

17.7.2. **Limitation.** The term “**Force Majeure Delay**” shall be limited to the matters listed Section 17.7.1 and specifically excludes from its definition the following matters which might otherwise be considered Force Majeure Delay:

(a) Entitlements. The suspension, termination, interruption, denial or failure to obtain or nonrenewal of any Entitlement, permit, license, consent, authorization or approval which is necessary for the development of the Project, except for any such matter resulting from a lawsuit or referendum as described in Section 17.7.1(d) or (e);

(b) Foreseeable Changes in Governmental Requirements. Any change in Governmental Requirements which was proposed or was otherwise reasonably foreseeable at the Effective Date;

(c) Failure to Perform Obligations. Failure of Developer to perform any obligation to be performed by Developer hereunder as the result of adverse changes in the financial condition of Developer or its successors and assigns, as applicable;

(d) Failure to Provide Financial Security. Failure of Developer to provide financial security required by this Agreement when due or to submit evidence of financing of the Project or to perform any obligation to be performed by Developer or its successors and assigns as the result of adverse changes in market conditions;

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

(f) Failure to Submit Basic Concept Plan, Other Plans and Entitlements. Failure to submit a Basic Concept Plan, Design Review submittal, and/or submittals for other Entitlements required for construction of the Improvements and/or development of the Project on the Property when required pursuant to the Pre-Closing Schedule or the Schedule of Performance;

(g) Failure to Maintain Required Insurance. Failure to acquire, maintain and submit evidence of insurance policies as required by Section 11;

(h) Failure to Execute Documents. Failure of the First Party to execute documents; and

(i) Other Matters. All other matters not caused by the Second Party and not listed in Section 17.7.1(a) through (f).

17.7.3. **Procedure.** If any Party (the “**First Party**”) believes that it is entitled to an extension of time due to Force Majeure Delay, it shall notify the other Party (the “**Second Party**”) in writing within ninety (90) calendar days from the date upon which the First Party becomes aware of such Force Majeure Delay, generally describing the Force Majeure Delay and its date of commencement. Upon written request from the Second Party, the First Party shall promptly provide the following information with respect to such Force Majeure Delay: a more detailed description of the Force Majeure Delay, when and how the First Party obtained knowledge thereof,

the steps the First Party anticipates taking to respond to such Force Majeure Delay, and the estimated delay resulting from such Force Majeure Delay and response and such other information as the Second Party may reasonable request. The extension for Force Majeure Delay shall be granted or denied in the Second Party's reasonable discretion. If the First Party fails to notify the Second Party in writing of its request for a given Force Majeure Delay within the ninety (90) calendar days specified above, there shall be no extension for such Force Majeure Delay.

17.7.4. **Extension of Time Periods.** Except as otherwise specifically set forth in this Agreement, all time periods under this Agreement, including the Schedule of Performance, relating to non-monetary obligations under this Agreement shall be extended for Force Majeure Delay in accordance with this Section 17.7, such that no Party shall be in default for an excused Force Majeure Delay.

17.7.5. **Not Applicable to Reversion Action Trigger Dates.** Except as set forth in Section 16.4.1, the Reversion Action Trigger Dates shall not be extended for Force Majeure Delay.

17.8. **Conflict of Interest.**

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

17.9. **Non-liability of City Officials and City or Developer Employees.**

No elected or appointed official, representative, employee, agent, consultant, legal counsel or employee of the City shall be personally liable to Developer, any successor or assign of Developer or any Successor Owner of the foregoing in the event of any Default or breach by the City for any amount which may become due to Developer or such successors, assigns or Successor Owners on any obligation under the terms of this Agreement. No representative, agent, consultant, legal counsel or employee of Developer shall be personally liable to the City or any Successor Owner of the City in the event of any Default or breach by Developer for any amount which may become due to the City or any Successor Owner of the City or on any obligation under the terms of this Agreement.

17.10. **Inspection of Books and Records.**

The City shall have the right at all reasonable times, upon ten (10) calendar days written notice, to inspect the books and records of Developer pertaining to the Property as pertinent to the purposes of this Agreement.

17.11. **Consents and Approvals.**

17.11.1. **Consent.** In any instance in which a Party shall be requested to consent to or approve of any matter with respect to which such Party's consent or approval is required by any of the provisions of this Agreement, such consent or approval shall be given in writing. In addition,

whenever not expressly otherwise stated: (a) the City when acting in its Governmental Capacity shall be permitted to utilize its sole discretion with respect to matters requiring its approval except as otherwise specified in any applicable Governmental Requirements; (b) the City when acting in its Proprietary Capacity shall not unreasonably withhold, condition or delay its approvals with respect to matters requiring its approval hereunder; and (c) Developer shall not unreasonably withhold, delay or condition its consent with respect to matters requiring its approval hereunder.

17.11.2. **Deemed Submitted.** Any matter required by this Agreement to be submitted to the City shall be deemed submitted upon the submittal to the City Manager or designee.

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

17.12. **No Real Estate Commissions.**

17.12.1. The City shall not be liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Agreement. Developer represents that it has engaged no broker, agent or finder in connection with this Agreement or the transactions identified in this Agreement, other than disclosed to City in writing prior to the Effective Date. Developer hereby agrees to indemnify and hold the City and its elected and appointed officials, employees and representatives harmless from any losses and liabilities arising from or in any way related to any claim by any broker, agent, or finder retained by Developer regarding this Agreement or development of the Project or the transactions identified in this Agreement.

17.12.2. The City represents that it has engaged no broker, agent, or finder in connection with this Agreement or the transactions identified in this Agreement.

17.12.3. The indemnity set forth in Section 17.12.1 shall survive the termination of this Agreement.

17.13. **Date and Delivery of Agreement.**

Notwithstanding anything to the contrary contained in this Agreement, the Parties intend that this Agreement shall be deemed effective, executed and delivered for all purposes under this Agreement and for the calculation of any statutory time periods based on the date an agreement between the Parties is effective, executed and/or delivered, as of the Effective Date.

17.14. **Constructive Notice and Acceptance.**

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

17.15. **Survival of Covenants, Representation and Warranties.**

17.15.1. **Runs with the Land.** The covenants, representations, warranties, and indemnities specified in this Agreement shall survive any investigation made by any Party hereto and the closing of the transactions contemplated hereby until the termination of this Agreement. This Agreement and the covenants, representations, warranties, releases and indemnities specified herein shall run with the Development Parcels, and except as provided herein, be binding upon all Successor Owners, unless and until terminated in accordance with the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, except for the express provisions contained in the Quitclaim Deed or the Special Restrictions, this Agreement and the obligations, covenants, conditions and restrictions set forth herein shall not run with that portion of the Development Parcels Transferred to an End User, and each End User shall take title to that portion of the Development Parcels conveyed to it free and clear of the lien or charge of this Agreement or any of the obligations, covenants, conditions and restrictions set forth herein.

17.15.2. **Rights of the City to Enforce.** The City is the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether the City has been, remains or is an owner of any land or interest in the Property, the Development Parcels or in the Project. The City shall have the right, if this Agreement or any covenants herein are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and any covenants may be entitled. For avoidance of doubt, the provisions of this Section 17.15 shall be included in the Quitclaim Deed and the Special Restrictions and shall apply with respect to all covenants, representations, warranties, releases and indemnities included therein.

17.16. **Construction and Interpretation of Agreement.**

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

instead other rules of interpretation and construction shall be utilized. The provisions of California Civil Code Section 1654 are specifically waived by each Party hereto.

17.16.2. **Effect of Invalidity or Unenforceability**. If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any Party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

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

17.16.4. **References to Sections, Clauses and Attachments**. Unless otherwise indicated, references in this Agreement to sections, clauses and attachments are to the same contained in or attached to this Agreement and all attachments referenced in this Agreement are incorporated in this Agreement by this reference as though fully set forth in this Section.

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

17.16.6. **Includes and Including**. As used in this Agreement the words "include" and "including" mean, respectively, "include, without limitation" and "including, without limitation".

17.17. **Time of Essence**.

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

17.18. **Fees and Other Expenses**.

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

17.19. **No Partnership**.

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or any other relationship between the Parties hereto other than purchaser and seller

according to the provisions contained in this Agreement, or cause the City to be responsible in any way for the debts or obligations of Developer.

17.20. **Binding Effect.**

This Agreement and terms, provisions, promises, covenants, conditions and restrictions contained herein shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

17.21. **No Third-Party Beneficiaries.**

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

17.22. **Counterparts.**

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

17.23. **Duplicate Originals, Entire Agreement and Waivers.**

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

17.23.2. **Entire Agreement.** This Agreement, including the Attachments hereto, together with the Other Agreements, constitute the entire agreement between the Parties with respect to the subject matter hereof. Except as set forth in the last sentence of this Section 17.23.2, this Agreement and the Other Agreements supersede and replace any and all prior agreements, proposed agreements, negotiations and communications, oral or written, relating to the subject matter hereof and contain the entire agreement between the Parties as to the subject matter hereof and any and all prior agreements, understandings or representations between the Parties and/or any Developer Affiliate are hereby terminated and canceled in their entirety. Each Party hereby acknowledges that no other Party hereto, nor its agents or attorneys, have made any promises, representations or warranties whatsoever, expressed or implied, not contained in this Agreement or the Other Agreements, to induce such Party to execute this Agreement, and each Party acknowledges that it has not executed this Agreement in reliance on any such promise,

representation or warranty not contained in this Agreement or any Other Agreements. For the avoidance of doubt, this Agreement shall terminate and supersede the ENA, except that this Agreement does not supersede Sections 3.5, 3.6, 4.3.6, 4.3.7, 4.3.8, 4.5.3, 6.9.2, 10.2, 10.12, or 10.13 of the ENA which shall remain in effect with respect to claims arising during the term of the ENA.

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

17.24. **Confidentiality.**

17.24.1. **Non-Disclosure and Exceptions.** Subject to the provisions of the California Public Records Act (Government Code Section 6250 *et seq.*) (the “**Public Records Act**”), which governs the City’s use and disclosure of its agreements and records, the City and Developer hereby agree that each shall keep confidential information provided by the other and denominated as confidential and will not disclose any such information to any Person without obtaining the prior written consent of the other Party, except that (a) the City shall have the right to disclose any information contained in any third party reports produced or obtained by Developer and required to be disclosed by it pursuant to law; (b) Developer shall have the right to disclose any Developer Excluded Information; (c) the City shall have the right to disclose any City Excluded Information; (d) Developer shall have the right to disclose to its consultants and attorneys any information to the extent necessary or desirable in connection with Developer’s due diligence on the Property and performance of its obligations under this Agreement and the Other Agreements; (e) City shall have the right to disclose to its officials, employees and City retained consultants, attorneys and representatives all information received by it from Developer as required to perform its obligations under this Agreement and the Other Agreements; and (f) either Party shall have the right to disclose any information to the extent that it is legally required or compelled to do so provided that (to the extent permitted) it provides the other Property with prior notice of such disclosure obligation and cooperates with such other Party (at no cost or liability to the cooperating Party) in any attempts to obtain confidential treatment of such disclosed information. Developer’s obligations pursuant to this Section 17.24 shall terminate upon the Close of Escrow. Except with respect to material described in Section 17.24.2, the City’s obligations pursuant to this Section 17.24 shall terminate upon the Close of Escrow.

17.24.2. **Financial Information.** Developer shall identify with specificity any submitted financial 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. The City shall not disseminate such information and shall take all reasonable steps to maintain such confidentiality, including maintenance of such documents at a non-public location, unless otherwise required by law. The City’s staff, agents, negotiators and

consultants may review the statements as necessary as long as such parties agree to maintain the confidentiality of such statements.

17.24.3. **Cooperation**. In the event that the City obtains a request pursuant to the provisions of the Public Records Act to disclose any of Developer's information which the City is required to keep confidential pursuant to the terms of this Agreement, the City shall provide Developer with prompt written notice thereof and the City and Developer shall cooperate at Developer's sole cost and expense to seek to avoid disclosure of such matters to the extent legally permissible pursuant to the provisions of the Public Records Act.

17.25. **Proprietary and Governmental Roles; Actions by Parties**. Except where clearly and expressly provided otherwise in this Agreement, the capacity of the City in this Agreement shall be as owner, lessor, assembler, redeveloper and/or seller of property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Agreement on the City, shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the exercise by the City of its governmental authority with respect to any matter related to this Agreement which shall include the regulation and entitlement of the Property pursuant to Governmental Requirements, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions of each pursuant to federal, state or local law ("**Governmental Capacity**"). In addition, nothing in this Agreement shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable Governmental Requirements.

17.26. **Performance of Acts on Business Days**. In the event that the final date for payment of any amount or performance of any act under the DDA falls on a day other than a Business Day, such payment may be made or act performed on the next succeeding Business Day.

17.27. **Effectiveness**. This Agreement shall not be binding or effective unless and until it is executed by both (i) a Division President, and (ii) either the Chief Operating Officer, Region President or VP Real Estate Counsel of Developer.

[signature page follows]

IN WITNESS WHEREOF, the City and Developer have signed this Agreement as of the date first set forth above.

CITY OF TUSTIN:

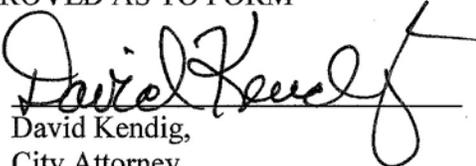
Dated: 2.12.18

By: 
Jeffrey C. Parker,
City Manager

ATTEST:

By: 
Erica Rabe
City Clerk

APPROVED AS TO FORM

By: 
David Kendig,
City Attorney

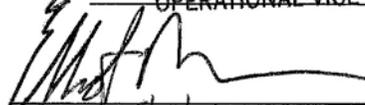
Armbruster Goldsmith & Delvac LLP
Special Real Estate Counsel to the City

By: _____
Amy E. Freilich

DEVELOPER:

CalAtlantic Group, Inc. a Delaware corporation

By: 
Name: TED MCKIBBIN
Title: OPERATIONAL VICE PRESIDENT

By: 
Name: Elliot Mann
Title: President

IN WITNESS WHEREOF, the City and Developer have signed this Agreement as of the date first set forth above.

CITY OF TUSTIN:

Dated: _____

By: _____
Jeffrey C. Parker,
City Manager

ATTEST:

By: _____
Erica Rabe
City Clerk

APPROVED AS TO FORM

By: _____
David Kendig,
City Attorney

Armbruster Goldsmith & Delvac LLP
Special Real Estate Counsel to the City

By:  _____
Amy E. Freilich

DEVELOPER:

CalAtlantic Group, Inc. a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

}

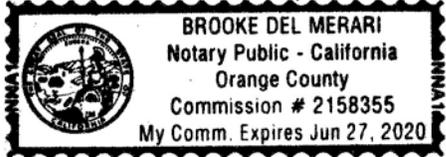
On Feb. 8, 2018 before me, Brooke Del Merari, Notary Public,
Date (Insert Name and Title of the Officer)

personally appeared Jeffrey Parker
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp above

Signature: [Handwritten Signature]
Signature of Notary Public

JOINDER OF ESCROW HOLDER

The undersigned is joining this Agreement to evidence its agreement to receive, hold and disburse the Purchase Price Deposit in accordance with the terms of this Agreement and otherwise to comply with the escrow instructions set forth in this Agreement.

FIRST AMERICAN TITLE INSURANCE
COMPANY

By: _____
Name: _____ **Daisy Howell** _____
Title: _____ *DH* _____

LIST OF ATTACHMENTS

ATTACHMENT 1	GLOSSARY OF DEFINED TERMS
ATTACHMENT 2	DEPICTION OF DEVELOPMENT PARCELS (TENTATIVE TRACT MAP)
ATTACHMENT 3	SITE PLAN
ATTACHMENT 4	PRELIMINARY TITLE REPORT
ATTACHMENT 5	CITY ESTOPPEL
ATTACHMENT 6	PRE-CLOSING SCHEDULE
ATTACHMENT 7	SCHEDULE OF PERFORMANCE
ATTACHMENT 8	SCOPE OF DEVELOPMENT AND CONCEPT PLAN
ATTACHMENT 9	HORIZONTAL IMPROVEMENTS
ATTACHMENT 10A	LIST OF ENVIRONMENTAL REPORTS AND STATEMENTS
ATTACHMENT 10B	ENVIRONMENTAL DISCLOSURES
ATTACHMENT 11	QUITCLAIM DEED
ATTACHMENT 12	MEMORANDUM OF DDA
ATTACHMENT 13	PUBLICLY ACCESSIBLE COMMON AREA AND PEDESTRIAN PLAZA LOCATIONS
ATTACHMENT 14	PROFIT PARTICIPATION AGREEMENT
ATTACHMENT 15	CERTIFICATE OF COMPLIANCE
ATTACHMENT 16	ASSIGNMENT AND ASSUMPTION AGREEMENT
ATTACHMENT 17	CITY DATE DOWN CERTIFICATE
ATTACHMENT 18	DEVELOPER DATE DOWN CERTIFICATE
ATTACHMENT 19	CITY IMPROVEMENTS
ATTACHMENT 20	SPECIAL RESTRICTIONS
ATTACHMENT 21	LANDSCAPE MAINTENANCE AGREEMENT
ATTACHMENT 22	LICENSE AGREEMENT
ATTACHMENT 23	REPURCHASE PRICE LOT VALUES
ATTACHMENT 24	MAXIMUM TAX BURDEN SCHEDULE
ATTACHMENT 25	COMMON AREA PLAN
ATTACHMENT 26	PHASING MAP
ATTACHMENT 27	FORM OF GUARANTY
ATTACHMENT 28	FORM OF GUARANTY LEGAL OPINION
ATTACHMENT 29	TRANSFEREE/NEW ENTITY CERTIFICATE
ATTACHMENT 30	GUARANTOR CERTIFICATE
ATTACHMENT 31	PRIVATE STREETS AND SIDEWALKS
ATTACHMENT 32	EQUITY FUNDING CERTIFICATE
ATTACHMENT 33A	REQUEST FOR PARTIAL RECONVEYANCE
ATTACHMENT 33B	FORM OF PARTIAL RECONVEYANCE

ATTACHMENT 1

GLOSSARY OF DEFINED TERMS

For purposes of this Agreement, the following capitalized terms shall have the following meanings:

“**Accrue**” or “**Accruing**” shall mean the transpiring of an act or occurrence or a failure to act or occur pursuant to which a legally enforceable claim could be asserted by any Person.

“**Action**” shall have the meaning set forth in Section 17.2.

“**Active Negligence**” shall mean an affirmative act performed negligently and not a failure to act.

“**Additional ALTA Coverage**” shall have the meaning set forth in Section 6.4.

“**Additional Liability Period**” shall mean (a) with respect to any Developer, for the period of ownership of its Successor Owners unless Developer has been released with respect to such obligations pursuant to Section 2.2.3(c), and (b) with respect to Responsible Developers and Responsible Persons, for the period of ownership of its Successor Owners acquiring pursuant to Permitted Transfer under Sections 2.2.2(a) or (b).

“**Agreement**” shall mean this Tustin Legacy Disposition and Development Agreement including all Attachments attached hereto.

“**ALTA Policy**” shall mean an ALTA extended coverage owner’s and/or leasehold policy of insurance as such term is used in Section 6.2.

“**Approved Developer**” shall mean (a) prior to the Merger, CalAtlantic Group Inc., and (b) following the Merger the New Entity Controlled by Lennar Corporation, and thereafter, any Transferee that has been approved by the City in accordance with Section 2.2.3, but specifically excluding any Transferee pursuant to a Permitted Transfer under Section 2.2.2.

“**Approved Plans**” shall have the meaning set forth in Section 8.4.7.

“**Assignment Agreement**” shall mean that assignment and assumption agreement between Developer and a proposed Transferee or New Entity, which shall be substantially in the form and substance of the instrument attached hereto as Attachment 16.

“**Base Closure Law**” shall have the meaning set forth in Section 1.1.1.

“**Base Purchase Price**” shall have the meaning set forth in Section 4.2.1.

“**Basic Concept Plan**” shall mean the submittals by Developer to the City for purposes of satisfaction of the Design Review approval and shall include the phasing and proposed product

mix, provided that Basic Concept Plan submittals shall be reviewed by the City in its Proprietary Capacity (as opposed to the Design Review submittal which are reviewed by the City Development Department under the Governmental Capacity of the City.)

“**Best’s**” shall have the meaning set forth in Section 11.1.1.

“**Bill of Sale**” shall have the meaning set forth in Section 7.2.1(a)(x).

“**Boundary Landscape Area**” shall mean that certain property owned by the City and/or Developer between the back of curb on each public street adjoining the Development Parcels and the Buildings or private low walls/patio areas, as depicted on Exhibit “C” to Attachment 21 and shall include the landscaping within such area installed as of the Effective Date.

“**BRE**” shall have the meaning set forth in Section 2.2.7.

“**Building**” shall mean each building and structure on the Development Parcels, including each building containing row townhomes or motor court flats and each single family detached residence.

“**Business Day(s)**” shall mean any day on which City Hall is open for business and shall specifically exclude Fridays when City Hall is officially closed, Saturday, Sunday or a legal holiday.

“**Cancellation of the Merger**” shall mean the termination, prior to the Merger, of that certain Agreement and Plan of Merger dated October 29, 2017 between Initial Developer and Lennar Corporation as disclosed in that certain Form 8-K filing with the Securities and Exchange Commission made on October 29, 2017, as the same may be amended.

“**CC&Rs**” shall have the meaning set forth in Section 13.1.

“**CEQA**” shall mean the California Environmental Quality Act and implementing regulations and guidelines, contained in Cal. Public Resources Code Section 21000 *et seq.*, and Cal. Code of Regulations, Title 14, Section 15000 *et seq.*, respectively.

“**Certificate of Compliance**” shall mean a certificate issued certifying completion of all construction and development required to be undertaken by Developer in accordance with this Agreement as described in Section 9.2.

“**City**” shall mean the City of Tustin and each assignee or successor to the City’s rights, powers and responsibilities as described in Section 1.4.1.

“**City Attorney**” shall mean the individual appointed by the City Council as “City Attorney”.

“**City Closing Conditions**” shall have the meaning set forth in Section 7.2.2.

“**City Code**” shall mean the Tustin City Code for the City of Tustin, California, as the same may be amended from time to time.

“**City Costs Deposit**” shall have the meaning set forth in Section 1.8.2.

“**City Council**” shall mean the City Council of the City of Tustin which serves as the City’s legislative body.

“**City Deed of Trust**” shall mean a deed of trust made by Developer in favor of the City to secure the obligations of Developer under the Profit Participation Agreement, which shall be in the form and substance of the deed of trust and assignment of rents attached to the Profit Participation Agreement as Exhibit “C”, or in such other form as agreed to by the City in its sole discretion.

“**City Estoppel**” shall mean an estoppel certificate substantially in the form and substance of that attached hereto as Attachment 5, to be executed and delivered by the City to a Transferee or to a Successor Owner.

“**City Excluded Information**” shall mean information that is (a) known by the City prior to the disclosure thereof by Developer or its officers, employees, agents, attorneys, affiliates, representatives, contractors, successors or assigns; (b) developed by or on behalf of the City without the use of any confidential information provided by Developer or its officers, employees, agents, attorneys, affiliates, representatives, contractors, successors or assigns; (c) disclosed to the City by a third party other than Developer or any of its officers, employees, agents, attorneys, affiliates, representatives or contractors; or (d) known to the public through no act or fault of the City in violation of this Agreement.

“**City Hall**” shall mean the seat of government for the City of Tustin, presently located at 300 Centennial Way, Tustin, California.

“**City Improvements**” shall mean the construction of Moffett Drive between Park Avenue and Tustin Ranch Road including any and all infrastructure and utilities associated with the foregoing, as further described and depicted on Attachment 19.

“**City Indemnified Parties**” shall mean the City and its appointed and elected officials, agents, attorneys, affiliates, employees, contractors, consultants and representatives.

“**City Inspections**” shall have the meaning set forth in Section 16.5.1.

“**City Lien**” shall have the meaning set forth in Section 16.2.

“**City Manager**” shall mean Mr. Jeffrey Parker, or his successor in such capacity, or other designee as identified in writing by the City Manager.

“**City Premium**” shall mean the premium attributed to the so-called standard coverage or CLTA coverage portion of the ALTA Policy in the face amount of the Base Purchase Price, less One Thousand Dollars (\$1000).

“City Released Parties” shall mean City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, consultants, contractors, successors and assigns, collectively.

“City Releasing Party” shall have the meaning set forth in Section 16.6.4.

“City Representatives” shall have the meaning set forth in Section 3.3.

“City Repair Acknowledgement” shall have the meaning set forth in Section 16.5.2.

“City Reserved Claims” shall have the meaning set forth in Section 16.6.3.

“City Reserved Rights” shall have the meaning set forth in Section 16.6.2.

“City Title Policy” shall have the meaning set forth in Section 7.4.6(c).

“City Transaction Expenses” shall have the meaning set forth in Section 1.8.2.

“Claim” or **“Claims”** 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 attorneys’ fees, fees of expert witnesses, and consultants’ and court and litigation costs), costs and expenses attributable to compliance with judicial and regulatory orders and requirements, fines, penalties, liens, taxes, or any type of compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen.

“Close of Escrow”, “Close Escrow” or **“Closing”** shall mean the close of escrow for the Property and the transfer of fee title to the Property by the City to Developer pursuant to the Quitclaim Deed, and execution and recordation (to the extent that such Other Agreements are to be recorded pursuant to the terms of Section 7.4.6(b)) of the Other Agreements and additional documents associated therewith, as more fully set forth in Section 7, which shall take place on the Closing Date.

“Closing Conditions” shall mean the Developer Closing Conditions and the City Closing Conditions.

“Closing Date” shall have the meaning set forth in Section 7.1.1.

“Common Area Improvements” shall mean the Improvements on the Common Area and shall include the Publicly Accessible Common Area Improvements, Private Streets and Sidewalks, Buildings, structures and improvements, including restrooms, parking lots, swimming pools, Landscape Improvements and other landscaping, roadways, drives, bike paths, alleyways, sidewalks, utilities, courtyards, hardscaping, fountains and other infrastructure and other amenities of the Project to be available for and used in common by the owners of Homes on the Development Parcels as approved in the Approved Plans.

“Common Area” shall mean land proposed to be owned by the Homeowner’s Association pursuant to the CC&Rs for the benefit of all Homebuyers, upon which land the Common Area

Improvements are proposed to be located, which areas are generally depicted on the Common Area Plan attached as Attachment 25.

“Complete”, **“Completed”** and **“Completion”** shall mean: (a) with respect to the Project or the point in time when all of the following shall have occurred with respect to the Project: (i) the Improvements with respect thereto have been completed in accordance with this Agreement; (ii) the issuance of a permanent certificate of occupancy by the City or, to the extent a certificate of occupancy is not required by the City for a particular Improvement, the equivalent final inspection, signoff or other permit activity with respect to such Improvement has been issued by the City and/or any other Governmental Authority with jurisdiction over such Improvement, (iii) the Recording of a Notice of Completion pursuant to California Civil Code Section 8182 by Developer, its Successor Owner or such Party’s contractor with respect to private Improvements, but not public Improvements; and (iv) any Construction Liens that have been recorded or delivered have been paid, settled or otherwise extinguished, discharged, released, waived, bonded around or insured against and (b) with respect to a particular Improvement, (i) the Improvement has been completed in accordance with this Agreement; and (ii) the issuance of a permanent certificate of occupancy by the City or, to the extent a certificate of occupancy is not required by the City for a particular Improvement, the equivalent final inspection, signoff or other permit activity with respect to such Improvement has been issued by the City and/or any other Governmental Authority with jurisdiction over such Improvement.

“Conditions Precedent” shall mean the conditions precedent to issuance of the Certificate of Compliance set forth in Section 9.3.

“Condominium Plan” shall mean the condominium plans creating the individual units on the Condominium Plan approved by BRE and, with respect to conformity with Approved Plans only, approved by the City.

“Construction Liens” shall have the meaning set forth in Section 8.12(e).

“Control” **“Controlled”** or **“Controlling”**, as used with respect to any Person, 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 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.

“Controlling Person” shall mean (a) any Person who Controls Developer and (b) any Person who Controls a Controlling Person; provided that prior to the Merger, Initial Developer shall either be Developer or shall be the Controlling Person of Developer and following the Merger, Lennar Corporation shall be the Controlling Person of Developer, unless a Transfer of Control is approved by the City to another Person approved by the City in accordance with Section 2.2.3.

“Costs” shall have the meaning set forth in Section 17.2.

“Counsel” shall have the meaning set forth in Section 10.8.

“**DA**” shall have the meaning set forth in Section 1.6.

“**Decision**” shall have the meaning set forth in Section 17.2.

“**Default**” shall mean a Potential Default and/or Material Default, as the context requires.

“**Default Notice**” shall have the meaning set forth in Section 14.1.

“**Default Rate**” shall mean an interest rate of eight percent (8%) per annum, compounded annually, but in no event in excess of the maximum legal rate.

“**Defaulting Party**” shall have the meaning set forth in Section 14.1.

“**Defect Notice**” shall have the meaning set forth in Section 16.5.2.

“**Defending Party**” shall have the meaning set forth in Section 10.8.

“**Defended Party**” shall have the meaning set forth in Section 10.8.

“**Deposit Return Event**” shall mean the occurrence of any one of the following:

(a) A failure to close Escrow on the Closing Date solely as a result of a Default by the City in the performance of its obligations under this Agreement prior to the Close of Escrow for which Developer is entitled to and does exercise its remedies set forth in Section 15.3;

(b) issuance by Developer of a Diligence Termination Notice pursuant to Section 5.1;

(c) a failure by the City to deliver closing documents and instruments required under Section 7.2.1(a) on or before the Outside Closing Date if all other City Closing Conditions and Developer Closing Conditions are either satisfied or are waived by the benefited Party; or

(d) a failure to close Escrow on or before the Outside Closing Date, as the same may be extended by the City in its sole discretion pursuant to Section 7.1.1, as a result of the failure by the City to have satisfied or waived Section 7.2.2(g), requiring District formation and Final Approval (provided the same is not caused by a Default by Developer with respect to Section 8.7.3(g)); or

(e) a failure to close Escrow on or before the Outside Closing Date as a result of a failure of any one of the following Developer Closing Conditions:

(i) Section 7.2.1(b), as a result of a City election or deemed election not to cure a Disapproved Exception as set forth in Sections 6.2 or 6.3, or

(ii) Section 7.2.1(c), as a result of the existence of any agreement entered into by the City other than a Permitted Exception that would survive the Close of Escrow

and of which Initial Developer or any subsequent Developer had no knowledge at the time of the expiration or earlier termination of the Due Diligence Period, or

(iii) Sections 7.2.1(h) or (i) prior to the License Agreement Effective Date; or

(iv) Section 7.2.1(i) if the City is unable to make a representation or warranty set forth in Section 3.3 if the occurrence of a change in a representation and warranty is materially adverse to Developer or the Property; or

(v) Section 7.2.1(l) if the City is unable to enter into a TUSD Agreement on or before the Outside Closing Date, as the same may be extended by the City in its sole discretion pursuant to Section 7.1.1.

“Design Review” shall mean the site plan and design review approvals as required by the City Code and the Specific Plan, which shall be part of the Entitlements.

“Developer” shall mean CalAtlantic Group, Inc. as of the Effective Date of the Agreement, and following any Transfer pursuant to a Permitted Transfer or any other Transfer authorized by this Agreement and approved by the City, the Transferee or, following any Merger authorized by this Agreement, the New Entity.

“Developer Affiliate” shall mean, following Cancellation of the Merger, any Person that Controls, is Controlled by or is under common Control with CalAtlantic Group, Inc., or following the Merger, any Person that Controls, is Controlled by or is under common Control with Lennar Corporation.

“Developer Closing Conditions” shall have the meaning set forth in Section 7.2.1.

“Developer Closing Payment” shall have the meaning set forth in Section 4.3.3.

“Developer Excluded Information” shall mean information that is (a) known by Developer prior to the disclosure thereof by the City or its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors or assigns; (b) developed by or on behalf of Developer without the use of any confidential information provided by the City or its officers, employees, agents, attorneys, affiliates, representatives, contractors, successors or assigns; (c) disclosed to Developer by a third party other than the City or any of its elected and appointed officials, employees, agents, attorneys, affiliates, representatives or contractors; or (d) known to the public through no act or fault of Developer in violation of this Agreement.

“Developer Insolvency Event” shall have the meaning set forth in Section 2.2.5.

“Developer Knowledge Parties” shall mean (a) with respect to the Initial Developer, the Key Employees of Initial Developer and Developer’s General Counsel, John Babel, and (b) following any Transfer or Merger, shall mean individuals in positions of responsibility and involvement in the Project at the time any representations and warranties are to be made who hold positions of authority commensurate with the positions held by the Developer Knowledge Parties

of the Initial Developer as of the Effective Date, and with respect to the New Entity, shall include at least one individual who was identified as a Developer Knowledge Parties of the Initial Developer.

“Developer Released Party” and **“Developer Released Parties”** shall have the meaning set forth in Section 16.6.4.

“Developer Releasing Party” shall have the meaning set forth in Section 4.5.2(f).

“Developer Representatives” shall have the meaning set forth in Section 5.4.

“Developer Title Endorsements” shall have the meaning set forth in Section 6.4.

“Development Costs” shall have the meaning set forth in Section 8.1.3.

“Development Parcels” shall have the meanings set forth in Section 1.2.1.

“Development Permits” means all ministerial permits required by the City or any Governmental Authority in connection with construction of the Project and shall include any grading permit, foundation permit, construction permit, building permit or other permit type as may be necessary pursuant to Chapter 4 of the Specific Plan and/or the City Code.

“Diligence Termination Notice” shall have the meaning set forth in Section 5.1.

“Disapproved Exception” shall have the meaning set forth in Section 6.3.

“Disposition Strategy” shall have the meaning set forth in Section 1.1.5.

“District” shall have the meaning set forth in Section 8.7.3.

“DTSC” shall mean the California Department of Toxic and Substance Control.

“Due Diligence Information” shall mean any and all information or documentation relating to the Property furnished to Developer by the City, or its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors or consultants, in connection with Developer’s due diligence pursuant to Section 5.1 of this Agreement.

“Due Diligence Period” shall have the meaning set forth in Section 5.1.

“EBS” shall have the meaning set forth in Section 4.5.1(b)(iii).

“Effective Date” shall have the meaning set forth in the first paragraph of this Agreement.

“ENA” shall have the meaning set forth in Section 1.1.6.

“ENA Deposit” shall have the meaning set forth in Section 1.8.1.

“ENA Transaction Expenses” shall have the meaning set forth in Section 1.8.1.

“End User” shall mean any (a) Homebuyer who purchases a Home; (b) Homeowners’ Association with respect to any Common Area within the Property conveyed to the Homeowners’ Association, (c) utility or Governmental Authority with respect to any transfer of portions of the Property or grants of easements affecting the Development Parcels desirable for the development of the Development Parcels and/or (d) any lighting or landscaping district.

“Entitlements” shall mean all discretionary land use approvals and entitlements legally required by the City or any other Governmental Authority as a condition of subdivision and development of the Property and construction of Improvements and shall include any and all entitlements, licenses, permits, tract maps or other approvals required by the City or any other Governmental Authority as a condition to development of the Property and construction of the Improvements, but excluding Development Permits, including those specific Entitlements described in Section 8.3.1.

“Environmental Agency” shall mean the United States Environmental Protection Agency; the California Environmental Protection Agency and all of its sub-entities, including any Regional Water Quality Control Board, the State Water Resources Control Board, the DTSC, the South Coast Air Quality Management District, and the California Air Resources Board; the City; any Fire Department or Health Department with jurisdiction over the Property; and/or any other federal, State, regional or local governmental agency or entity that has or asserts jurisdiction over Hazardous Substance Releases or the presence, use, storage, transfer, manufacture, licensing, reporting, permitting, analysis, disposal or treatment of Hazardous Materials in, on, under, about, or affecting the Project.

“Environmental Indemnity” shall mean the indemnity provided in favor of the City set forth in Section 10.2.

“Environmental Laws” shall mean any federal, state, regional or local laws, ordinances, rules, regulations, requirements, orders, directives, guidelines, or permit conditions, in existence as of the Effective Date or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Materials, and all applicable judicial, administrative and regulatory decrees, judgments and orders and common law, including those relating to industrial hygiene, public safety, human health, or protection of the environment, or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Materials. Environmental Laws shall include the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, *et seq.*) (“**CERCLA**”); the Resource Conservation and Recovery Act, as amended, (42 U.S.C. Section 6901 *et seq.*) (“**RCRA**”); the federal Water Pollution Control Act, as amended, (33 U.S.C. Section 1251 *et seq.*); the Toxic Substances Control Act, as amended, (15 U.S.C. Section 2601 *et seq.*); the Hazardous Substances Account Act (Chapter 6.8 of the California Health and Safety Code Section 25300 *et seq.*); Chapter 6.5 commencing with Section 25100 (Hazardous Waste Control) and Chapter 6.7 commencing with Section 25280 (Underground Storage of Hazardous Substances) of the California Health and Safety Code; and the California Water Code, Sections 13000 *et seq.*

“Environmental Matters” shall mean (a) the environmental condition of the Property; (b) the compliance of the Property with Environmental Laws; (c) the existence, Release, threatened Release, presence, storage, treatment, transportation or disposal of any Hazardous Materials at any time on, in, under, or from, the Property or any current or future improvement thereon or any portion thereof, and/or (d) Claims of or acts or omission to act of any Governmental Authority or any other third party arising from or related to any actual, threatened, or suspected Release of a Hazardous Material on, in, under, or from, about, or adjacent to the Property or any current or future improvement thereon, including any Investigation or Remediation at or about the Property or any current or future improvement thereon; provided that in each case in which the property in question is the Returned Property, the foregoing shall apply as to the Returned Property only.

“Equity Funding Certificate” shall have the meaning set forth in Section 2.2.2(b).

“Escrow” shall have the meaning set forth in Section 4.4.

“Escrow Holder” shall mean First American Title Insurance Company.

“Federal Deeds” shall mean (a) that certain Quitclaim Deed H and Environmental Restriction Pursuant to Civil Code Section 1471 dated May 13, 2002, that was Recorded on May 14, 2002 as Instrument Number 20020404598, and (b) that certain Quitclaim Deed for Parcels II-G-5 and II-H-9 and Environmental Restriction Pursuant to Civil Code Section 1471 dated March 26, 2003, that was Recorded on May 9, 2003 as Instrument Number 2003000533361.

“Federal Government” shall mean the United States of America (including the Navy), by and through the Secretary of the Navy, or designee.

“Final EIS/EIR” shall have the meaning set forth in Section 1.1.2.

“Final Map” shall mean the final tract map for the Property which shall be substantially in the form and content required by the approved Tentative Tract Map, unless otherwise approved by the City in its Governmental Capacity and by the City in its Proprietary Capacity, in each case in its sole discretion.

“Finally Approved” shall mean, with respect to each District described by this Agreement, that the City Council has approved the formation of such District, that the property owners having a vote shall have voted to approve such formation and all applicable appeal and statute of limitations periods relating thereto shall have expired without the filing of any appeal or legal challenge or any such appeal or legal challenge shall have been resolved in a manner that permits formation of each in a manner acceptable to the City in its sole discretion.

“Financing Plan” shall have the meaning set forth in Section 4.6.1.

“FIRPTA Affidavit” shall mean an affidavit in form reasonably satisfactory to Developer certifying that the City is not a “foreign person” under the federal Foreign Investment in Real Property Act.

“First Party” shall have the meaning set forth in Section 17.7.3.

“Five Point” shall have the meaning set forth in Section 2.2.1(c).

“Force Majeure Delay” shall have the meaning set forth in Section 17.7.1 as limited by Section 17.7.2.

“FOST” shall mean the Department of Navy findings and determinations that the Development Parcels were suitable for transfer to the City, pursuant to the document entitled “Finding of Suitability to Transfer For Parcels 23, 29, 34, 35 and 36, and Portions of 1, 16, 17, 24, 27, 28, 40 and 41 Marine Corps Air Station Tustin, California,” dated April 22, 2002; and Finding of Suitability to Transfer for a Portion of Parcel 1 (CO-11) and Portions of Parcels 16, 27, and 40 (CO-8) Former Marine Corps Air Station Tustin, California dated December 17, 2002.

“General Plan” shall mean the most current general plan for the City of Tustin.

“Governmental Authority” and **“Governmental Authorities”** shall mean, respectively, each and all federal, State, county, municipal and local governmental and quasi-governmental bodies and authorities (including the United States of America, the State 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 over any property owned by the City upon which work is conducted by or on behalf of Developer in connection with construction of the Project or such portions of the foregoing as the context indicates.

“Governmental Capacity” shall have the meaning set forth in Section 17.25.

“Governmental Successors” shall mean each and every Person that is a successor and assign of the City that is a governmental entity or association.

“Governmental Requirements” shall mean all laws, statutes, codes, ordinances, rules, regulations, standards, guidelines and other requirements issued by any Governmental Authority having jurisdiction over, governing, applying to or other affecting the Parties, the Project, the Improvements, the Property or any component thereof or over any property owned by the City upon which work is conducted by or on behalf of Developer in connection with construction of the Project and including the City Code, the Specific Plan, the Entitlements, the Development Permits and the Approved Plans.

“Grading Work” shall mean all of the grading work required to be completed by Developer under the terms of this Agreement and any Subdivision Improvement Agreement entered into in connection with the Tentative Tract Map, which shall include rough and precise grading of the Development Parcels, including grading of all internal streets, access points, the Landscape Area and the Common Area and blue-topping of all Phases and development pads within the Development Parcels, as further depicted on Attachment 9.

“Guarantor” shall mean Lennar Corporation (so long as it is a publicly traded entity) or such other Person(s) 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 or any Transferee under this Agreement.

“**Guarantor Certificate**” shall have the meaning set forth in Section 4.6.7(b).

“**Guarantor Illiquidity Event**” shall have the meaning set forth in Section 4.7.2.

“**Guaranty**” means a guaranty, in substantially the form and substance of the guaranty attached as Attachment 27 or as otherwise approved by the City in its sole discretion in which the City is a named beneficiary, made by the specified Guarantor(s) and guarantying payment for all Development Costs (except as may be specifically excluded by the terms of the Guaranty) the faithful performance and completion (within the respective times provided in this Agreement) of the respective portions of the Project and the Improvements, or components thereof, and the other matters described herein in accordance with this Agreement.

“**Hazardous Materials**” shall mean and include the following:

(a) “**Hazardous Substance**”, “**Hazardous Material**”, “**Hazardous Waste**”, or “**Toxic Substance**” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. subsection 9601, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. subsection 5101, *et seq.*, or the Resource Conservation and Recovery Act, 42 U.S.C. subsection 6901, *et seq.*;

(b) An “**Extremely Hazardous Waste**”, a “**Hazardous Waste**”, or a “**Restricted Hazardous Waste**”, under subsections 25115, 25117, or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to subsection 25140 or 44321 of the California Health and Safety Code;

(c) “**Hazardous Material**”, “**Hazardous Substance**”, “**Hazardous Waste**”, “**Toxic Air Contaminant**”, or “**Medical Waste**” under subsections 25281, 25316, 25501, 25501.1, 117690 or 39655 of the California Health and Safety Code;

(d) “**Oil**” or a “**Hazardous Substance**” listed or identified pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1321, as well as any other hydro carbonic substance or by-product;

(e) Listed or defined as a “**Hazardous Waste**”, “**Extremely Hazardous Waste**”, or an “**Acutely Hazardous Waste**” pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

(f) Listed by the State as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8 of the California Health and Safety Code;

(g) A material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including

remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

(h) Any material whose presence would require remediation pursuant to the guidelines set forth in the State Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;

(i) Pesticides regulated under the Feral Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. subsection 136 *et seq.*;

(j) Asbestos, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. subsection 2601 *et seq.*;

(k) Any radioactive material including any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. subsection 2011 *et seq.*, the Nuclear Waste Policy Act, 42 U.S.C. subsection 10101 *et seq.*, or pursuant to the California Radiation Control Law, California Health and Safety Code Section 114960 *et seq.*;

(l) Regulated under the Occupational Safety and Health Act, 29 U.S.C. subsection 651 *et seq.*, or the California Occupational Safety and Health Act, California Labor Code subsection 6300 *et seq.*; and/or

(m) Regulated under the Clean Air Act, 42 U.S.C. subsection 7401 *et seq.* or pursuant to Division 26 of the California Health and Safety Code.

"High Quality Residential Project" shall mean a neighborhood of either attached or detached individually owned Homes that is of high quality and very well maintained and managed, in each case comparable to other high quality condominium or single-family developments in the City of Tustin and the City of Irvine of similar age.

"High Quality Residential Standards" shall mean, in terms of the quality of maintenance, standards consistent with a High Quality Residential Project.

"Home" or **"Homes"** shall mean each row townhome, motor court flat and single-family home and related improvements that are to be developed on the Development Parcels, as contemplated by the Scope of Development and as further depicted on the Recorded Condominium Plan(s).

"Homebuyer" shall mean a person or persons who will own in fee, an individual detached or attached Home for use as a single-family residence.

"Homeowners' Association" shall have the meaning set forth in Section 2.2.7.

"Horizontal Improvements" shall mean (a) the Grading Work; (b) all local on-site infrastructure improvements and utilities and utility systems required to be constructed or installed

on or in connection with the development of the Property including (i) all Private Streets and Sidewalks, roadways, drives, bike paths, alleyways, sidewalks, courtyards, hardscaping, fountains and parking lots within the Property, and all traffic and circulation mitigation to support the Project; (ii) all utilities and utility systems required for the Project to the boundary of each Phase, including domestic and reclaimed water; sewer; telemetry; utilities (electricity, gas, telephone, cable, telecommunications, etc.) and other infrastructure normally required to service a new, High Quality Residential Project; and (iii) main line utilities for the Project to the boundary of the Property (which mainline utilities shall not be Phased Improvements even though located within property comprising one or more of the Phases of the Development Parcels); (c) installation of all Landscape Improvements within the Boundary Landscape Area and Lot A; and (d) certain grading and improvements to be carried out upon City-owned property adjoining the Development Parcels pursuant to encroachment permit to be obtained by Developer from the City in its Governmental Capacity, including relocation of the Victory Road entry, restoration of existing sidewalks and landscaping within the portion of the Boundary Landscape Area owned by the City and installation of landscaping adjacent to Moffett Drive following completion by the City of the City Improvements, but Horizontal Improvements shall exclude the Phase Improvements.

“**Horizontal Improvement Costs**” shall mean all of the following and for avoidance of doubt shall exclude any Developer overhead, general administration, or financing costs associated with the Horizontal Improvements:

(a) Site Improvement and Entitlement. Improvement costs (hard costs) actually expended for the Horizontal Improvements constructed in accordance with City standards and accepted by the City, including for engineering, consultants, bonds, grading, wet utilities, dry utilities, street improvements, walls and fences, landscaping, and common area and recreational facilities, and all costs to obtain, alter or amend any entitlements for the Project or to record the Final Map, and reasonable costs for the foregoing to the extent contracted for by Developer with any Developer Affiliate.

(b) Indirect Construction. Reasonable indirect construction costs actually expended for Horizontal Improvements, including permits and fees, architecture, engineering, inspections, on-site construction supervision, construction trailer, security, repair and replacement, and other site costs associated with the construction of the Horizontal Improvements.

(c) Direct Construction. The actual costs of construction materials, equipment rental, labor and subcontractors for the construction of the Horizontal Improvements.

(d) Insurance. An agreed amount equal to one half of one percent (.50) of the total costs set forth in clauses (a) through (c) of this definition of Horizontal Improvement Costs to compensate Developer for insurance costs related to the Horizontal Improvements.

(e) Other Allocable Costs. Any other actual costs properly and directly allocable specifically to the development, construction, maintenance and/or repair of the Horizontal Improvements.

“**Improvements**” shall have the meaning set forth in Section 1.3.3.

“Initial Developer” shall have the meaning set forth in Section 2.1.

“Initial Satisfaction Date” shall mean the date upon which: (a)(i) the Due Diligence Period has terminated without delivery by Developer of a Diligence Termination Notice or (ii) if prior to the date upon which the Due Diligence Period has terminated by its terms, Developer has provided a written waiver of the Due Diligence Period and of its right to terminate this Agreement pursuant to Sections 5.1, 5.3 and 6.2; (b) the Developer Closing Conditions in Sections 7.2.1(d), (e) and (f), have been waived by Developer or have been satisfied; (c) the City Closing Conditions in Sections 7.2.2(c), (d), (f), (h), (j) and (k) have either been waived by the City or have been satisfied; (d) fully executed Performance Bonds required to be delivered pursuant to Sections 7.2.2(e) and 8.9.1 shall have been delivered to the City by Developer; (e) the Final Map has been approved by the City Council (such that the only condition to satisfaction of the Developer Closing Condition in Section 7.2.1(g) and to the City Closing Condition in Section 7.2.2(e) is the approval of the Final Map by the County and Recording of same); and (e) as of such date, neither City nor Developer is in Potential Default or Material Default under this Agreement and Developer is not in default under the License Agreement.

“Injured Party” shall have the meaning set forth in Section 14.1.

“Intangible Property” shall mean all rights, claims (other than claims under insurance policies maintained by or for the benefit of the City) and all permits, licenses, approvals and authorizations issued by any Governmental Authorities in connection with the Development Parcels; but with respect to the Navy Responsibilities shall be a non-exclusive assignment of rights and shall not be deemed an assignment or release by the City of its rights against any responsible party or against the Federal Government or any third party with respect to the Navy Responsibilities.

“Investigation(s)” shall mean any observation, inquiry, examination, sampling, monitoring, analysis, exploration, research, inspection, canvassing, questioning, and/or surveying of or concerning the Property, including the air, soil, surface water, and groundwater, and the surrounding population or properties, or any of them, to characterize or evaluate the nature, extent or impact of Hazardous Materials.

“Inventory Commitment” shall have the meaning set forth in Section 8.9.3.

“IRWD” shall mean the Irvine Ranch Water District.

“Key Employees” shall mean the following employees of Initial Developer: Michael Battaglia and Gary Jones; provided that following any Transfer, Transfer of Control or Merger, the Transferee or New Entity shall specify its Key Employees.

“Landscape Area” shall mean (a) the Publicly Accessible Common Area and (b) the Boundary Landscape Area.

“Landscape Improvements” shall mean any and all landscaping, irrigation and/or hardscape improvements required by the Approved Plans to be constructed in connection with the Project upon the Landscape Area.

“Landscape Maintenance Agreement” shall have the meaning set forth in Section 12.8.1.

“Legal Opinion” shall have the meaning set forth in Section 2.2.2(a)(vii).

“License Agreement” shall have the meaning set forth in Section 8.2.3.

“License Agreement Effective Date” shall have the meaning set forth in Section 8.2.3.

“Lien Release Amounts” shall mean the amounts, if any, (a) of any City Lien and (b) required to be paid to third parties by the City to clear all monetary liens (including all Construction Liens) and Mortgages that encumber the Property on the date of a Reversion Event or the date of the close of escrow pursuant to the Right of Purchase and which, with respect to taxes and assessments, are then due and payable.

“Liquid Assets” shall mean assets held in the form of cash, marketable securities and other cash equivalents.

“Liquidity Covenants” shall have the meaning set forth in Section 4.7.1.

“Lot(s)” shall mean the subdivided portions of the Development Parcels following recording of the Final Map and shall include parcels upon which Homes and Buildings are located and parcels designated as Common Area.

“Material Default” shall have the meaning set forth in Sections 14.2.1 and 14.2.2.

“Maximum Tax Burden Schedule” shall have the meaning set forth in Section 8.7.3(b).

“MCAS Tustin” shall have the meaning set forth in Section 1.1.1.

“Merger” shall mean a merger as described in that certain Agreement and Plan of Merger dated October 29, 2017 between Initial Developer and Lennar Corporation as disclosed in that certain Form 8-K filing with the Securities and Exchange Commission made on October 29, 2017, as the same may be amended, pursuant to which Initial Developer shall be merged into New Entity pursuant to the above-referenced Agreement and Plan of Merger.

“Memorandum of Agreement” shall have the meaning set forth in Section 1.1.3.

“Memorandum of DDA” shall mean a memorandum of record of this Agreement recorded against the Property substantially in the form and substance of the memorandum attached to the Agreement as Attachment 12.

“Minimum Liquidity Standards” shall have the meaning set forth in Section 4.7.1.

“Models” shall mean the thirteen (13) model Homes, comprised of three (3) model Homes for the row townhome units, five (5) model Homes for the motor court units for (5) model Homes for the single family units to be constructed by Developer on the Development Parcels in the location shown on Attachment 3.

“Mortgage” shall mean any indenture of mortgage or deed of trust, bond, grant of taxable or tax exempt funds from a governmental agency or other security interest affecting the Development Parcels or any portion thereof and the documents governing a sale-leaseback transaction, together with all loan documents related thereto, but excluding any community facilities districts, service districts, assessment districts, landscape and lighting districts, Homeowners’ Association dues or other assessments created or imposed by any Governmental Authority.

“Mortgagee” shall mean any mortgagee, beneficiary (or any agent for one or more lenders acting in such capacity) under any indenture of mortgage, deed of trust, trustee of bonds, governmental agency which is a grantor of funds, and, with respect to the Property or any portion thereof which is the subject of a sale-leaseback transaction, the Person acquiring fee title.

“Navy” shall mean the United States Department of Navy.

“Navy Responsibilities” shall have the meaning set forth in Section 4.5.2(c).

“Net Worth” shall mean the net worth of Guarantor which shall be determined based on (a) the fair market value of the assets of each of the Persons comprising Guarantor (including the aggregate amount of uncalled capital commitments from such Persons’ direct and/or indirect limited partners, and intangible assets including goodwill, intellectual property, licenses, organizational costs, deferred amounts, covenants not to compete, unearned income, restricted funds, investments in subsidiaries or other Affiliates, intercompany receivables and accumulated depreciation), less (b) all liabilities of the Persons comprising Guarantor (as determined in accordance with GAAP).

“New Entity” shall mean the wholly owned direct or indirect subsidiary of Lennar Corporation which shall continue as the surviving corporation as a result of the Merger

“Notice of Completion” shall mean the notice of completion filed by Developer after the Completion of each Improvement, pursuant to California Civil Code Section 8182.

“Opening of Escrow” shall have the meaning set forth in Section 4.4.

“Original ALTA Coverage” shall have the meaning set forth in Section 6.4.

“Other Agreements” shall mean the Quitclaim Deed, the Special Restrictions, the Memorandum of DDA, the DA, the License Agreement, the Landscape Maintenance Agreement, the Profit Participation Agreement and the City Deed of Trust.

“Outside Closing Date” shall have the meaning set forth in Section 7.1.1.

“Party” shall mean either of the City or Developer, individually, as parties to this Agreement.

“Parties” shall mean the City and Developer, collectively.

“Pedestrian Bridge” shall have the meaning set forth in Section 12.10.

“Pedestrian Plaza” shall mean the portion of Lot A generally in the location depicted as the “Pedestrian Plaza” on Attachment 13.

“Performance Bonds” shall mean the bonds issued by a surety company admitted in the State and regulated by the State Department of Insurance, Best's Rated "A" and otherwise acceptable to the City Manager and City Attorney in their sole discretion, in which the City is a named obligee. The Performance Bonds shall guarantee payment for and faithful performance and Completion within the respective times provided in this Agreement of the Horizontal Improvements in accordance with drawings or plans, as appropriate, that specifically describe the work to be performed in sufficient detail for the issuance of such Performance Bonds.

“Permitted Exceptions” shall have the meaning set forth in Section 6.2 as may be modified by Section 6.3.

“Permitted Transfer” shall have the meaning set forth in Section 2.2.2.

“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.

“Phase” shall mean each development and construction phase within Development Parcels as shown on the Phasing Map attached as Attachment 26.

“Phase Improvements” shall mean dry and wet utility extensions, Private Streets and Sidewalks, drives, walls, fences, from the back of curb to each residential Building to be constructed within a Phase, and shall include capped paving on streets, drives and alleys adjacent to such Building and landscaping, including all Landscape Improvements not included in the Horizontal Improvements and certain Common Area Improvements facilities, including restrooms and swimming pools, to be constructed within a Phase area, but Phase Improvements shall exclude the Horizontal Improvements.

“PLL” shall have the meaning set forth in Section 11.1.4.

“Potential Default” shall have the meaning set forth in Section 14.1.

“Potential Returned Property” shall mean those portions of the Property which are eligible for repurchase under Section 16.3 due to occurrence of a Repurchase Default or reversioning under Section 16.4 due to occurrence of a Reversion Action Trigger, as applicable together with all Improvements constructed by or on behalf of the Developer.

“Pre-Closing Schedule” shall mean schedule attached as Attachment 6 to this Agreement, setting forth the dates and time periods for submissions, approvals and actions in the period prior to the Close of Escrow.

“Preliminary Title Reports” shall have the meaning set forth in Section 6.2.

“Prevailing Party” shall have the meaning set forth in Section 17.2.

“Private Streets and Sidewalks” shall mean those private streets, roadways, sidewalks, pedestrian pathways, and bike ways within the Development Parcels depicted on Attachment 31 to be constructed by Developer on the Development Parcels.

“Products” shall have the meaning set forth in Section 14.3.2.

“Profit Participation Agreement” shall have the meaning set forth in Section 4.2.2.

“Profit Participation Price” shall have the meaning set forth in Section 4.2.2.

“Project” shall have the meaning set forth in Section 1.3.2.

“Project Architect” shall mean William Hezmalhalch Associates.

“Project Budget Statement” shall mean a document delivered by Developer to the City which shows, as of the end of the immediately preceding quarter, (a) the fees paid through the end of such prior quarter and estimated fees to be paid prior to Completion of the Project in connection with the development and construction of the Project, and (b) out-of-pocket costs spent through the end of such prior quarter and estimated out-of-pocket costs to be paid prior to Completion of the Project, in each case for each of the major categories of hard and soft costs for the development and construction of the Project.

“Project Fair Share Contribution” shall have the meaning set forth in Section 8.7.2.

“Property” shall have the meaning set forth in Section 4.1.

“Proprietary Capacity” shall have the meaning set forth in Section 17.25.

“Public Records Act” shall have the meaning set forth in Section 17.24.1.

“Public Access Easement” shall have the meaning set forth in Section 8.9.

“Publicly Accessible Common Area” shall mean the areas depicted as “Publicly Accessible Common Area” on Attachment 13 comprising (a) Lot A, including the portion thereof comprising the Pedestrian Plaza, and (b) a portion of the Private Streets and Sidewalks to be constructed or installed by Developer on the Development Parcels, which areas shall be subject to an access easement in favor of the City for the benefit of the public as shall be more specifically set forth on the Tentative Tract Map and the Final Map and in the Public Access Covenant and which shall provide public access in, on, over, across and through the Publicly Accessible Common Area and rights of the public to use the Publicly Accessible Common Area and the Publicly Accessible Common Area Improvements.

“Publicly Accessible Common Area Improvements” shall mean the Improvements constructed on the Publicly Accessible Common Area.

“Purchase Price” shall mean the Base Purchase Price and the Profit Participation Price, collectively.

“Purchase Price Deposit” shall be an earnest money deposit delivered by Developer to the City upon execution of the Agreement as described in Section 4.3.1.

“Quitclaim Deed” shall mean the quitclaim deed to be executed and delivered by the City at the Close of Escrow to quitclaim all of the City’s interests in the Property (subject to Section 4.1 and the terms of this Agreement) to Developer. The Quitclaim Deed shall be in substantially the form and substance of the deed attached hereto as Attachment 11, acknowledged and in Recordable form.

“Reacquired Property” shall have the meaning set forth in Section 16.4.1 with respect to a City election to revest all or any portion of the Property pursuant to the Right of Reversion.

“Record”, “Recordation”, “Recording” and “Recorded” shall mean to record the specified instrument, or the current or past recording of the specified instrument, in the official records of Orange County California.

“Recordable” shall mean with respect to any document, that such document has been acknowledged and is otherwise in a form that would permit the Recordation thereof.

“Recorded Condominium Plan” shall mean the condominium plans creating the individual units on the Condominium Plan approved by BRE and, with respect to conformity with Approved Plans only, approved by the City, and Recorded against the Development Parcels or any portion thereof.

“Release” (with respect to Hazardous Materials) shall mean any releasing, or threat of releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing, or dumping into the environment.

“Remediate” or “Remediation” shall mean any response or remedial action as defined under Section 101(25) of CERCLA, and similar actions with respect to Hazardous Materials as defined under comparable state and local laws, and any other cleanup, removal, containment, abatement, recycling, transfer, monitoring, storage, treatment, disposal, closure, restoration or other mitigation or remediation of Hazardous Materials or Releases required by any Environmental Agency or within the purview of any Environmental Laws.

“Repurchase Default” shall have the meaning set forth in Section 16.3.1.

“Repurchase Price” “Repurchase Price” shall mean an amount equal to (a) (i) the value ascribed to each unit within a Phase comprising the Repurchased Property or Reacquired Property, as applicable, by product type, set forth on Attachment 23 plus (ii) the actual Horizontal Improvement Costs (including on all lettered Lots on the Final Map and Common Area) of

completed Horizontal Improvements, divided by the total number of units (218) approved within the Property, multiplied by the total number of units within the Phases of the Repurchased Property or the Reacquired Property, as applicable, and (b) with respect to any lettered Lot on the Final Map or Common Area shown on the Final Map, the sum of zero (\$0) shall be attributed to the land value.

“Repurchased Property” shall have the meaning set forth in Section 16.3.

“Responsible Developer” means the Initial Developer, or if Initial Developer has been previously released pursuant to Section 2.2.3(c), the then Approved Developer.

“Responsible Person” shall mean the New Entity or any post-Merger Responsible Developer.

“Returned Property” shall have the meaning set forth in Section 16.6.1.

“Reuse Plan” shall have the meaning set forth in Section 1.1.1.

“Reversion Action Trigger” shall have the meaning set forth in Section 16.4.1.

“Reversion Action Trigger Date” shall have the meaning set forth in Section 16.4.1.

“Reversion Event” shall have the meaning set forth in Section 16.4.

“Right of Purchase” shall have the meaning set forth in Section 16.3.

“Right of Reversion” shall have the meaning set forth in Section 16.4.

“Schedule of Performance” shall mean Schedule of Performance attached as Attachment 7 to this Agreement, setting forth the dates and time periods for submissions, approvals and actions, including the construction of the Improvements.

“Scope of Development” shall mean the description of the Project attached as Attachment 8 to the Agreement.

“Second Party” shall have the meaning set forth in Section 17.7.3.

“Site Plan” shall have the meaning set forth in Section 1.2.2.

“Special Restrictions” shall mean the Declaration of Special Restrictions for Disposition Parcels 6B, substantially in the form and substance of the document attached hereto as Attachment 20, to be executed by the City and acknowledged in Recordable form and Recorded at the Close of Escrow immediately prior to the Recording of the Quitclaim Deed.

“Specific Plan” shall mean the MCAS Tustin Specific Plan/Reuse Plan as the same has been or shall be amended from time to time.

“Staff Costs” shall have the meaning set forth in Section 1.8.1.

“Staff Costs Deposit” shall have the meaning set forth in Section 1.8.1.

“State” shall mean the State of California.

“Subdivision Improvement Agreement” shall mean any subdivision improvement agreement entered into in connection with the Tentative Tract Map.

“Subdivision Map Act” shall mean the laws of the State governing subdivision of lots, codified at Government Code Section 66410 *et seq.*

“Successor Owner” shall mean (a) with respect to the Property, each and every Person owning or acquiring fee title to all or any portion of the Property, but excluding each and every End User, and (b) with respect to the City, its Governmental Successors.

“Supplemental Title Report” shall have the meaning set forth in Section 6.3.

“Survey” shall have the meaning set forth in Section 6.1.

“Surveyor” shall have the meaning set forth in Section 6.1.

“Tax B” shall mean a District tax the proceeds of which shall be used by City to fund a portion of City essential services, including police and fire protection, ambulance and paramedic services, recreation programs and services, street sweeping, traffic signal maintenance and the maintenance of City-owned parks, parkways and open spaces, lighting, flood control and storm drain services and other City services and facilities at Tustin Legacy.

“Tentative Tract Map” shall mean Tentative Tract Map No. 18125 approved by the City in accordance with the Subdivision Map Act and the City Code.

“Title Company” shall mean First American Title Insurance Company.

“Transfer” shall mean (a) the transfer, sale, assignment, lease, license, entry into a property management agreement, gift, hypothecation, mortgage, pledge or encumbrance, or other similar conveyance by Developer of Developer’s interests in this Agreement, all or any portion of the Property, the Improvements thereon, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, or any agreement to do so; (b) the granting by Developer of any Mortgage, easement, license, lien or other encumbrance and/or the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property, the Improvements thereon, or any portion thereof or interest, or any conversion of Developer to an entity form other than that of Developer at the time of execution of this Agreement and (c) the Merger.

“Transfer of Control” shall mean, with respect to Developer or Developer’s Controlling Person, the occurrence, directly or indirectly, in a single transaction or a series of transactions, of any of the following:

(a) the conveyance, sale, assignment, transfer or disposition of all or substantially all of that Person's (or its Controlling Person's) assets, stock, membership or partnership interests or other equity interests;

(b) the dissolution, merger, reorganization, share exchange, recapitalization, restructuring or consolidation of that Person (or its Controlling Person), other than a transaction that would result in all of the voting securities of that Person (or its Controlling Person) outstanding immediately prior thereto to continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least 50.01% of the combined voting power of all of the voting securities of that Person (or its Controlling Person) or such surviving entity outstanding immediately after such transaction; and

(c) the acquisition by any "Person" or "Group" (within the meaning of Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) of an aggregate of 50.01% or more of the beneficial ownership (within the meaning of Rule 13d-3 of the Securities Exchange Act of 1934) of the issued and outstanding voting securities or other equity interests of that Person (or its Controlling Person), where such acquiring "Person" or "Group" did not directly or indirectly (or through an affiliate) already Control or own at least 50.01% of the voting securities or other equity interests of such Person (or its Controlling Person).

"Transferable Products" shall have the meaning set forth in Section 14.3.2.

"Transferee" shall mean any Person to which a Transfer is made, including any Successor Owner, but excluding each and every Homebuyer of a Home.

"Transferee/New Entity Certificate" shall have the meaning set forth in Section 4.6.6.

"TUSD" shall have the meaning set forth in Section 7.1.1.

"TUSD Agreement" shall have the meaning set forth in Section 8.17.4.

"TUSD CFD" shall have the meaning set forth in Section 8.17.4.

Tustin Legacy" shall have the meaning set forth in Section 1.1.3.

"Tustin Legacy Backbone Infrastructure Program" shall have the meaning set forth in Section 8.7.1.

"Vertical and Phase Improvement Costs" shall mean all of the following:

(a) Indirect Construction. Indirect construction costs actually expended for Phase Improvements and Vertical Improvements, including permits and fees, architecture, engineering, consultants, bonds, inspections, on-site construction supervision, construction trailer, security, repair and replacement, and other site costs associated with the construction of the Phase Improvements and Vertical Improvements.

(b) Direct Construction. The actual costs of construction materials, equipment rental,

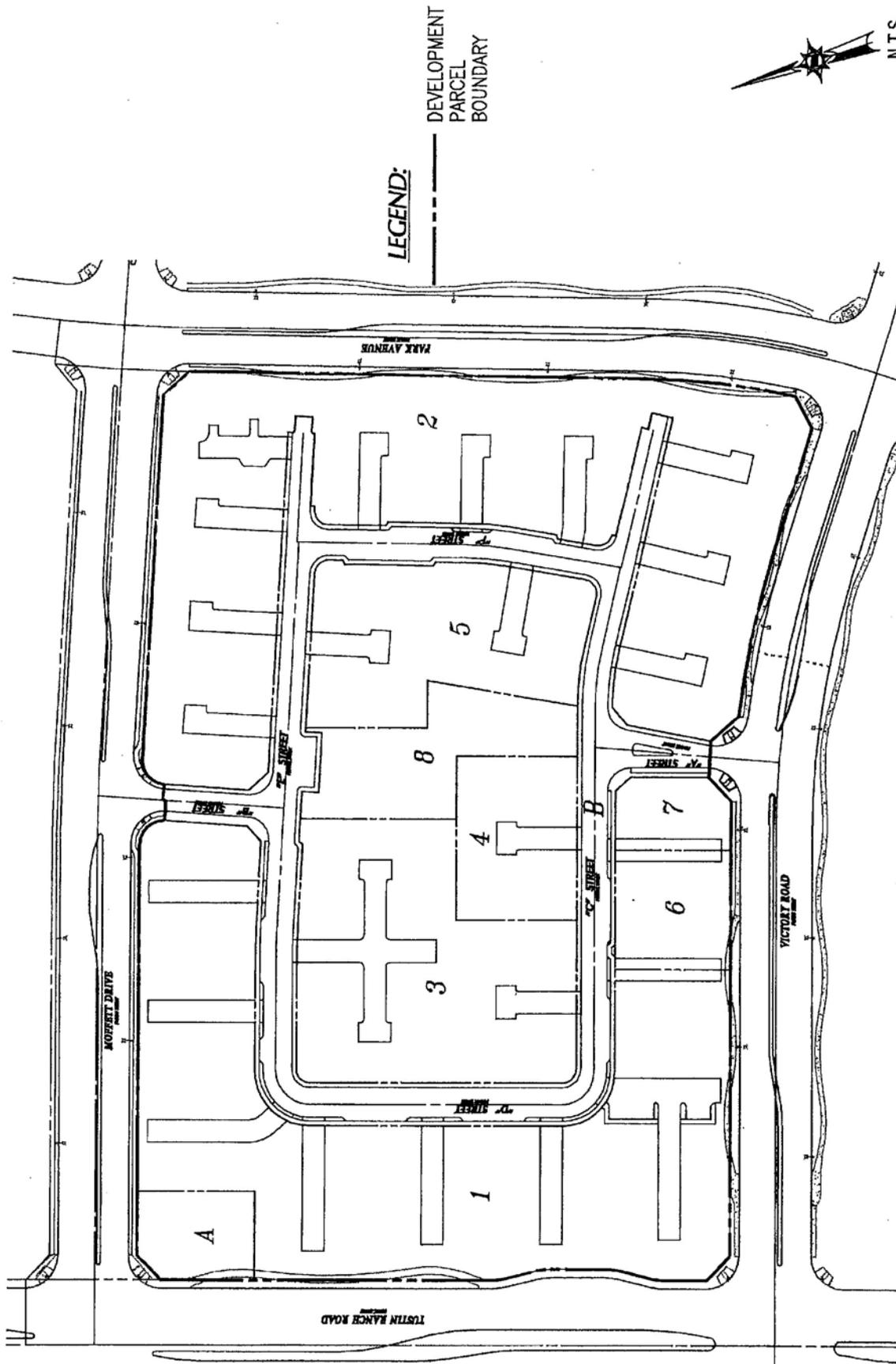
labor and subcontractors for the construction of the Phase Improvements and Vertical Improvements.

(c) Insurance. An agreed amount equal to two percent (2%) of the total costs set forth in clauses (a) and (b) of this definition of Vertical and Phase Improvement Costs to compensate Developer for insurance costs related to the Phase Improvements and Vertical Improvements.

(d) Other Allocable Costs. Any other actual costs properly and directly allocable specifically to the development, construction, maintenance and/or repair of the Phase Improvements and Vertical Improvements.

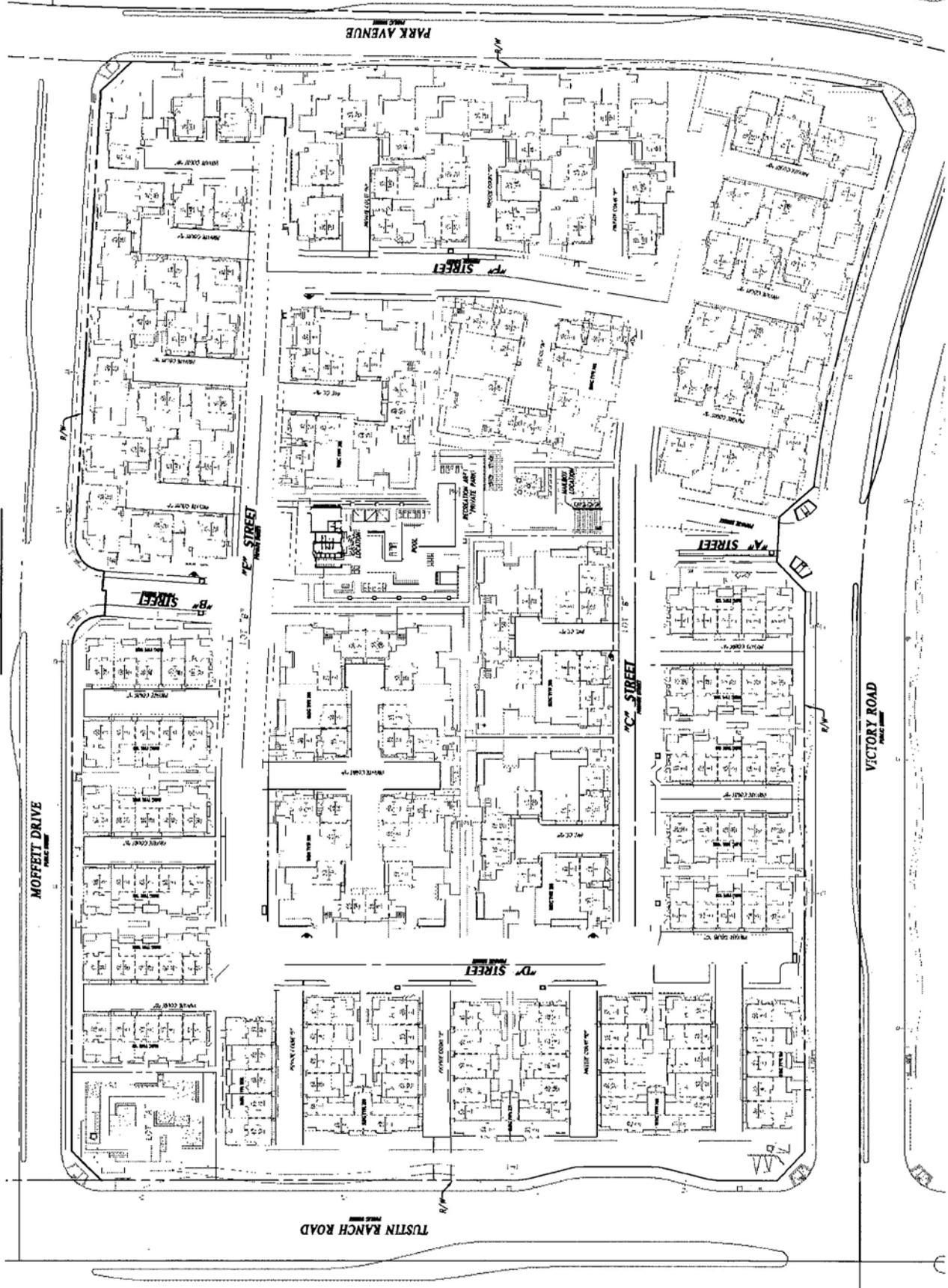
“Vertical Improvements” shall mean all buildings, structures and other improvements, other than the Horizontal Improvements and the Phase Improvements, to be constructed or installed on the Property, consistent with the Specific Plan, the Reuse Plan, the Approved Plans, the Entitlements and the Development Permits.

ATTACHMENT 2 DEPICTION OF DEVELOPMENT PARCELS



ATTACHMENT 3

Levity Site Plan



N.T.S.

01/30/2018

ATTACHMENT 3

EASEMENT NOTES

- 1 EASEMENT TO IRWD FOR SEWER AND WATER PURPOSES.
- 2 EASEMENT TO THE CITY OF TUSTIN FOR EMERGENCY VEHICLES AND EASEMENT TO THE CITY OF TUSTIN FOR PUBLIC PEDESTRIAN AND VEHICULAR ACCESS PURPOSES.
- 3 EASEMENT TO THE CITY OF TUSTIN FOR PUBLIC PEDESTRIAN AND VEHICULAR ACCESS PURPOSES.
- 4 EASEMENT TO THE CITY OF TUSTIN FOR PUBLIC ACCESS PURPOSES.
- 5 EASEMENT TO THE CITY OF TUSTIN FOR PUBLIC STREET PURPOSES FOR ACCESS TO THE RED OIL STORAGE AS INSTRUMENT NO. 20030001802, OF OFFICIAL RECORD.
- 6 FUTURE PUBLIC ACCESS EASEMENT TO BE RECORDED UNDER A SEPARATE INSTRUMENT.
- 7 FUTURE PUBLIC ACCESS EASEMENT FOR PUBLIC SIDEWALK WITHIN THE LANDSCAPE STRIP.

NOTE: PLEASE REFER TO THE SITE PLAN'S TYPICAL DRAINAGE DETAILS FOR DRAINAGE FOR PRODUCT TYPE.



CITY OF TUSTIN

TENTATIVE TRACT MAP 18125
TUSTIN LEGACY - LEVITY

SHEET 3 OF 3

DATE: 11/15/2017

PROJECT NO: 18125

PREPARED FOR: CALTRANS

DATE: 11/15/2017

PROJECT NO: 18125

PROJECT NAME: TUSTIN LEGACY - LEVITY

PROJECT LOCATION: TUSTIN, CA

PROJECT DESCRIPTION: TENTATIVE TRACT MAP 18125

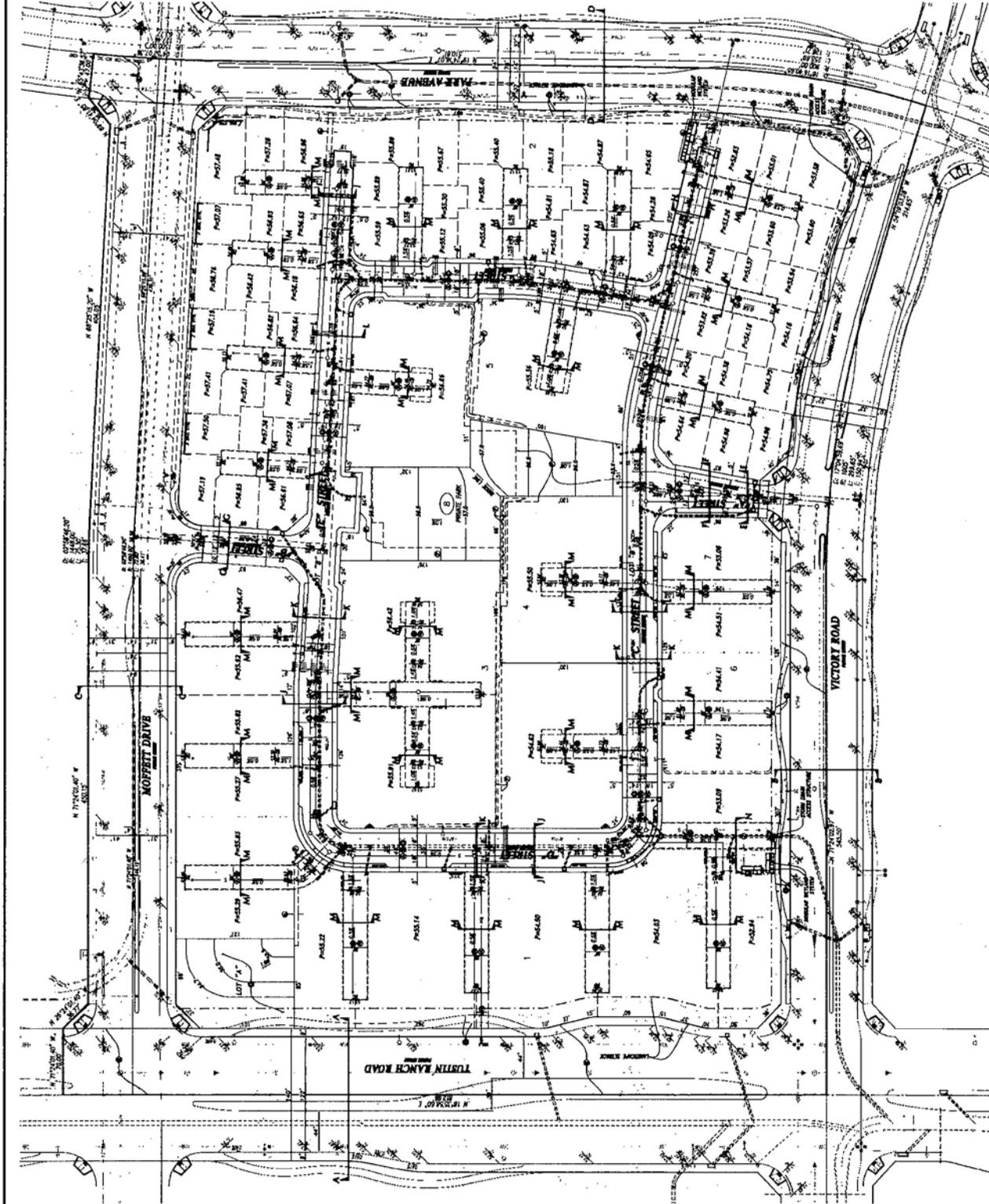
DATE: 11/15/2017

PROJECT NO: 18125

PROJECT NAME: TUSTIN LEGACY - LEVITY

PROJECT LOCATION: TUSTIN, CA

PROJECT DESCRIPTION: TENTATIVE TRACT MAP 18125



DATE	REVISION DESCRIPTION

PROJECT NO: 18125

PROJECT NAME: TUSTIN LEGACY - LEVITY

PROJECT LOCATION: TUSTIN, CA

PROJECT DESCRIPTION: TENTATIVE TRACT MAP 18125

DATE: 11/15/2017

PROJECT NO: 18125

PROJECT NAME: TUSTIN LEGACY - LEVITY

PROJECT LOCATION: TUSTIN, CA

PROJECT DESCRIPTION: TENTATIVE TRACT MAP 18125

Update 3



First American Title

First American Title Company

1250 Corona Pointe Court, Suite 200
Corona, CA 92879

Crystal Burckle
CalAtlantic Homes
15360 Barranca Parkway
Irvine, CA 92618

Customer Reference: TT 18125
Order Number: NHSC-5472514 (29)

Title Officer: Hugo Tello
Phone: (951)256-5883
Fax No.: (866)782-3439
E-Mail: htello@firstam.com
Buyer:

PRELIMINARY REPORT

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Exhibit A attached. *The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.* Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

First American Title

Dated as of January 24, 2018 at 7:30 A.M.

The form of Policy of title insurance contemplated by this report is:

Subdivision Guarantee

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

City of Tustin, California, a municipal corporation

The estate or interest in the land hereinafter described or referred to covered by this Report is:

A fee.

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. General and special taxes and assessments for the fiscal year 2018-2019, a lien not yet due or payable.
2. General and special taxes and assessments for the fiscal year 2017-2018 are exempt.
3. The lien of special tax assessed pursuant to Chapter 2.5 commencing with Section 53311 of the California Government Code for Community Facilities District 15-2, as disclosed by Notice of Special Tax Lien recorded November 18, 2015 as Instrument No. 2015000594036 of Official Records.
4. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
5. An easement for pipelines and incidental purposes, recorded September 1, 1971 as Book 9788, Page 771 of Official Records.
In Favor of: Irvine Ranch Water District
Affects: as described therein
6. The terms and provisions contained in the document entitled "Short Form Notice of Agreement" recorded May 14, 2002 as Instrument No. 20020404589 of Official Records.

7. Easements, Covenants and Conditions contained in the deed from The United States of America, as Grantor, to The City of Tustin, California, as Grantee, recorded May 14, 2002 as Instrument Nos. 20020404597 and 20020404598 of Official Records. Reference being made to the document for full particulars, but deleting any covenant, condition, or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, to the extent such covenants, conditions or restrictions violate 42 U.S.C. §3604(c) or applicable state law. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
8. The Terms, Provisions and Easement(s) contained in the document entitled "Grant of Non-Exclusive Easement for Utility Systems and Access at the Former Marine Corps Air Station Tustin" recorded May 14, 2002 as Instrument No. 20020404599 of Official Records.
9. Easements, Covenants and Conditions contained in the deed from The United States of America, as Grantor, to The City of Tustin, California, as Grantee, recorded May 9, 2003 as Instrument No. 2003000533361 of Official Records. Reference being made to the document for full particulars, but deleting any covenant, condition, or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, to the extent such covenants, conditions or restrictions violate 42 U.S.C. §3604(c) or applicable state law. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
10. The fact that the land lies within the boundaries of the MCAS Tustin Redevelopment Project Area, as disclosed by the document recorded June 18, 2003 as Instrument No. 2003000710836 of Official Records.
11. Covenants and conditions contained in the deed from Tustin Public Financing Authority, a joint powers authority, as Grantor, to City of Tustin, California, a Municipal Corporation of the State of California, as Grantee, recorded October 4, 2006 as Instrument No. 2006000661919 of Official Records. Reference being made to the document for full particulars, but deleting any covenant, condition, or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, to the extent such covenants, conditions or restrictions violate 42 U.S.C. §3604(c) or applicable state law. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
12. An easement for public street and incidental purposes, recorded March 26, 2013 as Instrument No. 2013000181352 of Official Records.
In Favor of: the City of Tustin
Affects: Lot YYY, BBBB and HHHH
13. An easement for underground electrical supply systems, communication systems and incidental purposes, recorded October 2, 2013 as Instrument No. 2013000565280 of Official Records.
In Favor of: Southern California Edison Company, a corporation
Affects: Portion of Lot KKK

Order Number: NHSC-5472514 (29)

Page Number: 4

14. An easement for underground electrical supply systems, communication systems and incidental purposes, recorded October 2, 2013 as Instrument No. 2013000565283 of Official Records.
In Favor of: Southern California Edison Company, a corporation
Affects: Portions of Lots 9 and CCCC

INFORMATIONAL NOTES

Note: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

LEGAL DESCRIPTION

Real property in the City of Tustin, County of Orange, State of California, described as follows:

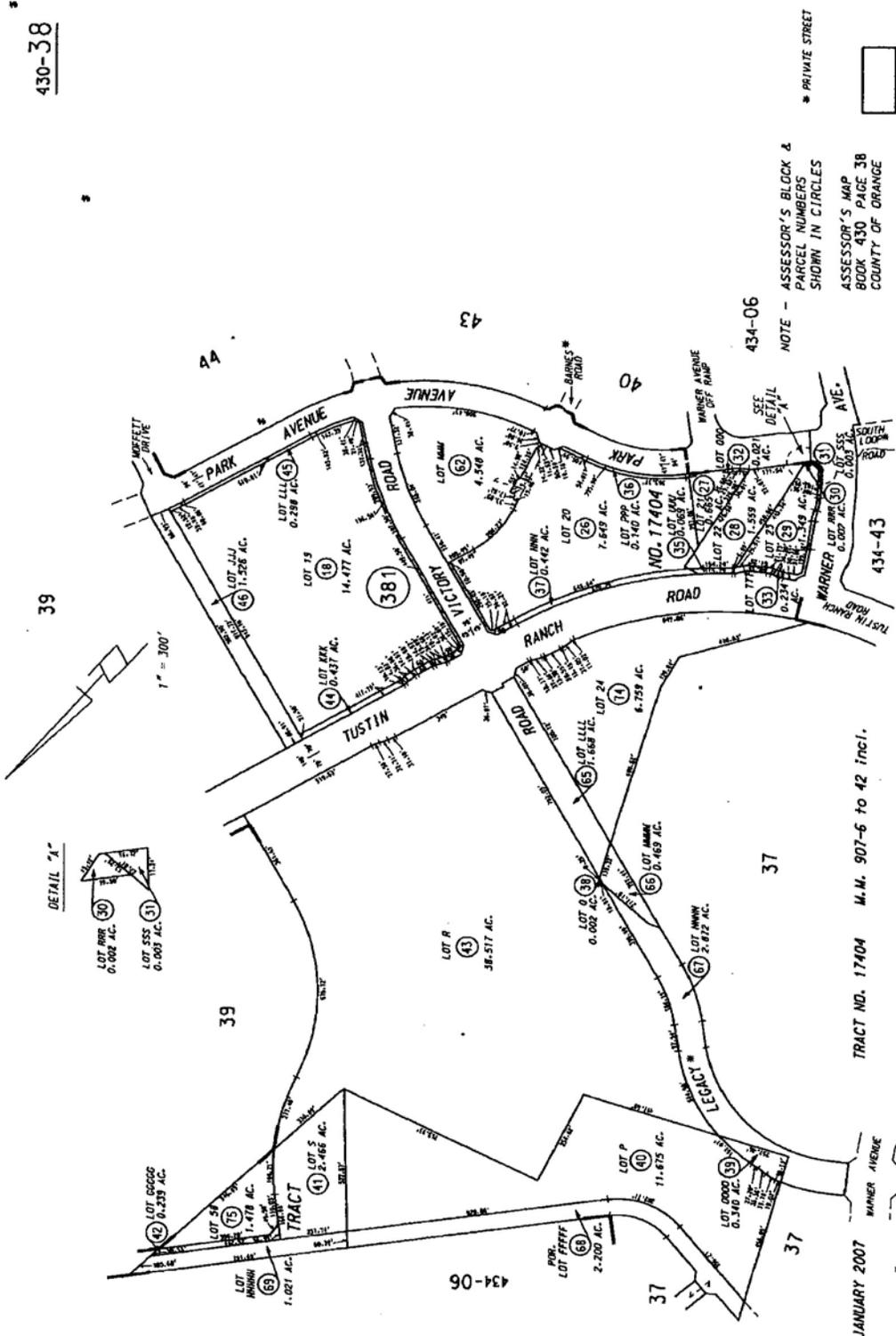
TENTATIVE TRACT NO. 18125, BEING A SUBDIVISION OF:

PORTIONS OF LOTS 19, KKK & LLL, AND PORTIONS OF LOTS III, JJJ, YYY, BBBB, CCCC, DDDD, GGGG, & HHHH OF TRACT NO. 17404, AS SHOWN ON A MAP FILED IN BOOK 907, PAGES 6 THROUGH 42, INCLUSIVE, OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

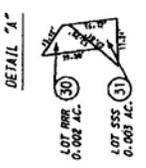
NOTE: THE ABOVE LEGAL DESCRIPTION IS FOR THE SOLE PURPOSE OF THIS REPORT AND MAY NOT BE CONSIDERED FOR USE IN ANY POLICY OF TITLE INSURANCE TO BE ISSUED BY THIS COMPANY, AND IS SUBJECT TO CHANGE AT ANY TIME.

APN: 430-381-18 AND 430-381-44 AND 430-381-45 AND 430-381-46

430-38



NOTE -
 * PRIVATE STREET
 ASSESSOR'S BLOCK &
 PARCEL NUMBERS
 SHOWN IN CIRCLES
 ASSESSOR'S MAP
 BOOK 430 PAGE 38
 COUNTY OF ORANGE



NOTICE

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier's checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier's checks, or certified checks whenever possible.

EXHIBIT A
LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)

CLTA STANDARD COVERAGE POLICY – 1990

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

CLTA/ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (12-02-13)
EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
 - a. building;
 - b. zoning;
 - c. land use;
 - d. improvements on the Land;
 - e. land division; and
 - f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.
8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A. The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 16:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$10,000
Covered Risk 18:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 19:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 21:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$5,000

2006 ALTA LOAN POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

First American Title

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

[Except as provided in Schedule B - Part II, [t]his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

[PART I

[The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.]

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:]

2006 ALTA OWNER'S POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

First American Title

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 or 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

[The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.
7. [Variable exceptions such as taxes, easements, CC&R's, etc. shown here.]

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (12-02-13)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;

First American Title

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.
10. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
11. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.



First American Title

Privacy Information

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet. In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site. There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive. FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

Use We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

Accuracy We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

Security We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

ATTACHMENT 5
CITY ESTOPPEL

_____, 20__

[Transferee]

Attn: _____

Re: *[Developer/Development Name]*

Ladies and Gentlemen:

The undersigned is writing this letter to you (“**Transferee**”) regarding that certain residential development project (the “**Project**”) that [has been] [may be] constructed on the land legally described on Exhibit “A” attached hereto (the “**Development Parcels**”).

The City of Tustin, a municipal corporation of the State of California (the “**City**”), and CalAtlantic Group, Inc., a Delaware corporation d/b/a CalAtlantic Homes (“**Developer**”), entered into that certain Tustin Legacy Disposition and Development Agreement For Disposition Parcel 6B, dated as of _____, _____ (“**DDA**”)¹, relating to the conveyance of the Development Parcels by the City to Developer and the subsequent development of the Development Parcels by Developer, all as more particularly set forth therein. All initially capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the DDA.

The City has executed that certain Declaration of Special Restrictions for Disposition Parcel 6B (the “**Special Restrictions**”), dated _____, 201_, that was recorded in the Office of the County Recorder, Orange County, California (“**Official Records**”), against title to the Development Parcels on _____, 201_ as Instrument No. _____, which includes, among other matters, certain requirements regarding the use and maintenance of the Development Parcels and sets forth those provisions of the DDA which survive the issuance of a Certificate of Compliance with respect to the Project.

The City has executed a Quitclaim Deed (the “**Quitclaim Deed**”) dated _____, 201_ and recorded in the Official Records against title to the Development Parcels on

¹ Add references to amendments if any, with respect to DDA and each document described below.

_____, 201_ as Instrument No. _____, pursuant to which the City conveyed to Developer the fee title to the Development Parcels, subject to certain restrictions and limitations set forth in the Quitclaim Deed.

In addition, Developer and the City executed that certain Memorandum of Tustin Legacy Disposition and Development Agreement For Disposition Parcel 6B ("**Memorandum of DDA**"), dated _____, 201_, which was recorded in the Official Records against title to the Development Parcels on _____, 201_ as Instrument No. _____, and provided record notice of the DDA.

In addition, Developer and the City executed that certain Development Agreement (the "**DA**"), dated _____, 201_, which was recorded in the Official Records against title to the Development Parcels on _____, 201_ as Instrument No. _____.

The DDA, the Memorandum of DDA, the DA, the Special Restrictions, and the Quitclaim Deed are collectively referred to herein as the "**Property Documents**."

You have informed the undersigned City that Developer intends to Transfer its interest in all or a portion of the Development Parcels or a direct or indirect interest therein to Transferee on or around the date of this letter (the "**Transaction**").

By its execution of this letter, the City hereby confirms to Transferee that:

1. Except as set forth on Attachment 1 to this letter, the Property Documents are in full force and effect and have not been modified, supplemented or amended, whether orally or in writing, and have not been assigned or otherwise transferred by the City to any other person or entity.

2. To the best of the City's knowledge, except as set forth on Attachment 2 to this letter: (i) there are no defaults of Developer (including, without limitation, no Potential Defaults and no Material Defaults) under any of the Property Documents nor any facts which now, or after the giving of notice or the passage of time, or both, would constitute a default (including, without limitation, a Potential Default or Material Default) under any of the Property Documents or which would entitle the City to then exercise any of its rights or remedies under any of the Property Documents, including, without limitation, its Right of Reversion or Right of Purchase pursuant to the DDA; and (ii) the City has no current claim of breach, counterclaim, lien or offset presently existing under any of the Property Documents.

As used in this letter, the phrase "to the best of the City's knowledge" and words of like import, mean that the facts in question are actually known (as opposed to imputed, inquiry or constructive knowledge) to the City Manager, based upon such individual's own actual knowledge after a reasonable inquiry of the Director of Economic Development and City Attorney.

The undersigned acknowledges that Transferee may rely upon this letter in entering into the proposed Transaction. This letter is written in connection only with the proposed Transaction and may be relied upon only by Transferee as to the matters addressed herein. This letter may not be relied upon by any other party or for any other purpose without the express written consent of the City. This certificate shall be binding upon the City and its successors and assigns. In no event shall the individual executing this Estoppel on behalf of the City have any personal liability hereunder.

CITY OF TUSTIN

Dated: _____, 20__

By: _____
Name: _____
City Manager

ATTEST:

By: _____
Name: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Name: _____
City Attorney

EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROPERTY

{to be attached}

Attachment 1

Modifications, Supplements or Amendments to Property Documents

1. [*enter "None" if there are no qualifications*]

Attachment 2

Qualifications to Matters Confirmed in Estoppel

1. [*enter "None" if there are no qualifications*]

ATTACHMENT 6
PRE-CLOSING SCHEDULE

	DDA	Item	Action	Responsible Party
1. EXECUTION OF AGREEMENT				
A	1.8.2; 4.3.1; 4.4	Developer executes DDA and delivers to Escrow: three (3) executed originals of DDA and initial Purchase Price Deposit (\$1 million) and to City: City Costs Deposit (\$50,000), Developer certification providing the information required by <u>Section 4.6.6(a) through (e)</u> ; and insurance binders required by <u>Section 4.6.4</u> of DDA.	Within five (5) Business Days after the later of (a) approval by the City Council of the DDA or (b) approval by the City Council of the Development Agreement.	Developer
B	4.4	City executes DDA and delivers three executed original counterpart signatures of DDA to Escrow	Within five (5) Business Days following Developer's submission of executed DDA and delivery to Escrow of Purchase Price Deposit and City Costs Deposit, delivery to the City of (a) the Developer certification providing the information required by <u>Section 4.6.6(a) through (e)</u> of DDA and (b) insurance binders required by <u>Section 4.6.3</u> of DDA.	City
C.	4.4	Opening of Escrow.	Opening of Escrow shall take place upon the date that Escrow Holder receives three executed original counterparts of DDA signed by Developer and the City	Escrow Holder, Developer and City
D		Effective Date of the DDA	Date of City Council approval of DDA (February 6, 2018)	City

	DDA	Item	Action	Responsible Party
E	1.8.1	Outstanding ENA Deposit amounts	If the amount of ENA Transaction Expenses to the Effective Date exceeds the amount of the ENA Deposit, Developer shall pay the City such outstanding amounts due within thirty (30) calendar days following receipt of an invoice from the City therefor.	Developer
F	5.6	Review of Certain Records and Materials	City shall, within ten (10) Business Days of the Effective Date, provide Developer with copies of all City-produced plans, reports, studies, investigations and other materials the City may have in its possession that are pertinent to the Property and/or development of the Project and not previously delivered	City
G	4.6.4; 11.1; 11.2.3	Developer to provide evidence of liability, worker's compensation and automobile insurance	On or before the date specified in Section 4.4, Developer to have obtained and delivered to City binder or certificate providing evidence of insurance, effective upon mutual execution of DDA by City and Developer.	Developer
2. CONVEYANCE OF PROPERTY FROM CITY TO DEVELOPER				
A	4.6.2	Covenants; Preconditions to Close of Escrow - Additional Assurances	At least thirty (30) calendar days prior to Close of Escrow, Developer shall submit an update of the Financing Plan to the City, for the purposes of confirming that Developer has sufficient funds for construction of the Project and for its operation consistent with the terms of this Agreement and without a Mortgage.	Developer
B	6.1	Survey by Developer	Prior to the end of the Due Diligence Period, Developer at Developer's sole expense shall have obtained a survey for the Property ("Survey") prepared by a licensed surveyor ("Surveyor"), which Survey shall be certified by the Surveyor to the City, Developer and the Title Company.	Developer

	DDA	Item	Action	Responsible Party
C	5.1; 5.3	Due Diligence Period; Diligence Termination Notice	Developer may elect to conduct due diligence during the period commencing on the Effective Date and ending on the date which is sixty (60) calendar days following the Effective Date at 4:00 P.M. Pacific Time. If Developer fails to give a Diligence Termination Notice on or before the end of the Due Diligence Period, Developer will be deemed to have disapproved the Due Diligence matters and elected to terminate this Agreement.	Developer
D	11.1.4	Environmental Insurance	Developer to provide environmental insurance policy required by Section 11.1.4 prior to the earlier of the Close of Escrow or the License Agreement effective date (as established in the License Agreement); provided that Developer shall not carry out any environmental testing, sampling, invasive testing, or boring on the Development Parcels prior to the effective date of the environmental insurance policy	
E	6.2	Additional Title Review	Developer may object to certain new exceptions in updated preliminary title report during Due Diligence Period.	Developer
FE	6.3	Supplemental Title Reports	If, after the end of the Due Diligence Period, the Title Company discloses additional matters that affect title to the Development Parcels, then within ten (10) calendar days after Developer's receipt of any report issued by the Title Company concerning the Property (a "Supplemental Title Report"), Developer shall provide the City a copy of such Supplemental Title Report.	Developer

	DDA	Item	Action	Responsible Party
G	7.2.1(a)	City delivery of all document deliveries required for Close of Escrow	<u>Not later than two (2) Business Days prior to the Close of Escrow</u> , the City shall have executed and delivered to Escrow Holder the appropriated documents, substantially in the form and substance of the instruments attached as Attachments to the DDA, unless otherwise agreed by the Parties, each in their sole discretion.	City
H	4.3.3, 7.2.2(a)	Delivery of Developer Closing Payment and other costs	<u>No later than one (1) Business Day prior to the Close of Escrow</u> , Developer shall deposit with Escrow Holder (i) the Developer Closing Payment and (ii) any other costs explicitly set forth in this Agreement as costs to be paid by Developer at the Close of Escrow.	Developer
I	7.2.2(b)	Developer delivery of all document deliveries required for Close of Escrow	<u>Not later than two (2) Business Days prior to the Close of Escrow</u> , the Developer shall have executed and delivered to Escrow Holder the appropriated documents, substantially in the form and substance of the instruments attached as Attachments to the DDA, unless otherwise agreed by the Parties, each in their sole discretion.	Developer
J	7.3; 7.4.5	Additional Close of Escrow Conditions	Escrow Holder shall have delivered at <u>least seven (7) Business Days prior to the Close of Escrow</u> a statement of costs to each Party and at least two (2) Business Days prior to the Close of Escrow each of the Parties shall have approved such statement as being consistent with the provisions of Section 7.4 At least three (3) Business Days prior to the Close of Escrow the Parties shall have delivered a schedule of prorations to Escrow Holder.	Escrow Holder
K	8.4	Basic Concept Plan Modification	Developer shall submit any modifications to the Basic Concept Plan to City in writing. If City	

	DDA	Item	Action	Responsible Party
			approves such modifications, City Manager or designee shall endorse approval on one set of the Basic Concept Plan and return to Developer. City shall be deemed to have disapproved the Basic Concept Plan modification unless City gives written notice of approval to the Developer.	
L	7.1.1; 7.1.2; 7.1.3	Close of Escrow	Close of Escrow shall take place on that date which is <u>ten (10) Business Days following the last to occur of the satisfaction of the Developer Closing Conditions set forth in Sections 7.2.1 (d), (e), (f), (g) and (l) and the City Closing Conditions set forth in Sections 7.2.2 (c), (d), (e), (f), (g),(h), (j), (k) and (n), (except that if the provisions of Section 7.1.3 apply, the Closing Conditions set forth in Sections 7.2.1(g) and 7.2.2(e) shall be deemed excluded from the foregoing list of conditions; and provided that <u>in no event shall Developer be obligated to close unless it has received at least five (5) Business Days' advance written notice</u> from the City of the anticipated date for satisfaction of such City Closing Conditions and provided, further, that except as set forth in Sections 7.1.1 and 7.1.2, the <u>Close of Escrow shall in no event be later than June 28, 2018</u> (the "Outside Closing Date"). The Close of Escrow shall be subject to the satisfaction of the conditions set forth in <u>Sections 7.1, 7.2 and 7.3.</u></u>	Developer and City
M	7.1.1	City right to extend Close of Escrow	The City shall have the right, in its sole discretion, but not the obligation, to extend the Outside Closing Date for a period not to exceed three (3) months at no cost to the City in order	

	DDA	Item	Action	Responsible Party
			to continue to achieve the removal of the lien and the Final Approval of the District;	
N	11.1.4, 11.2.5	Developer to provide a binder evidencing environmental insurance	Environmental insurance described in <u>Section 11.1.4</u> to become effective as of the Effective Date of the DDA, or, if otherwise agreed by the City, if a License Agreement is executed, by the date set forth in the License Agreement or if no License Agreement is executed, prior and as a condition to the Close of Escrow.	Developer
O	8.2.3; 11.13; 11.1.4	License Agreement	After the Initial Satisfaction Date, but prior to Close of Escrow, and provided that (a) all of the representations and warranties of Developer set forth in <u>Sections 3.1 and 17.12</u> are true and correct as of such Initial Satisfaction Date and (b) Developer has deposited with Escrow Holder the additional Purchase Price Deposit amount described in <u>Section 4.3.1</u> (\$4 million), and (c) Developer has obtained the requisite insurance and provided evidence of that insurance to City, Developer shall have the right, at its sole cost and expense, and pursuant to a license agreement to be entered into by and between the City and Developer in substantially the form and substance of the License Agreement attached as <u>Attachment 22</u> or as otherwise approved by each in its sole discretion, to enter upon the Development Parcels prior to the Close of Escrow for purposes of carrying out the Horizontal Improvements.	Developer

	DDA	Item	Action	Responsible Party
P	4.3.1	Increase of Purchase Price Deposit	Prior to City's Execution of License Agreement, Developer shall deliver an additional earnest money deposit to increase Purchase Price Deposit.	Developer
Q	8.7.3(e)	CFD Formation	City will provide Developer with the opportunity to review and provide input on all documents and budgets relating to the formation of the District (including any funding and acquisition agreement and the rate and method of allocating the District assessments) at least thirty (30) calendar days prior to the date on which the formation documents are expected to be submitted for the agenda package for the first public hearing related to the formation of the District	

ATTACHMENT 7
SCHEDULE OF PERFORMANCE

	DDA	Item	Action	Responsible Party
1. MAPPING, GRADING, INFRASTRUCTURE, UTILITIES, BUILDING PERMITS				
A	7.1.3; 7.2.1(g); 7.2.2(g); 8.8; 8.9.1	Final Map Approval and Recording; Subdivision Improvement Agreement; Performance Bonds	Prior to Close of Escrow, the Final Map shall have been Recorded and City and Developer shall have entered into the Subdivision Improvement Agreement; provided, however, that in the event the provisions of <u>Section 7.1.3</u> apply, the Close of Escrow may take place using a metes and bounds conveyance and the Final Map need not have been approved by the County and Recorded prior to Closing, but must be recorded within 6 months after Close of Escrow. In addition, if not previously delivered in connection with such Recording or required pursuant to then effective Subdivision Improvement Agreement, Developer shall have provided one or more Performance Bonds in favor of the City as obligee securing Developer's obligations to perform the Horizontal Improvements.	Developer
B		Developer submits Horizontal Improvements plans for approval	<u>Within 180 calendar days</u> after Effective Date of DDA	Developer
C		City issues Horizontal Improvement permits	<u>The City shall use good faith efforts to issue within ten (10) Business Days</u> following: (a) Community Development Department and Public Works approval of final grading plans; and (b) Developer's (i) payment of all required permit fees, (ii) delivery of associated Performance Bonds, and (iii) satisfaction of all required conditions of approval associated with grading and Horizontal Improvements.	City

	DDA	Item	Action	Responsible Party
D		City issues building permits	With respect to each building permit application, <u>the City shall use good faith efforts to issue within ten (10) Business Days following:</u> (a) building division approval of building plans; (b) Developer's payment of all required fees associated with applicable building permit; (c) satisfaction of all required conditions of approval associated with applicable building permit, and (d) Recording of the Final Map; provided, however, that building permits for Model Homes are exempt from the Recording of the Final Map.	City
2. CONSTRUCTION OF IMPROVEMENTS				
A	8.9.1; 16.4.1(a)	Horizontal Improvements	The Grading Work shall have <u>commenced three (3) months following Close of Escrow</u> and all Horizontal Improvements shall have been <u>completed thirty-six (36) months following Close of Escrow</u> , which may be extended for Force Majeure Delay not to exceed a total of twelve (12) months.	Developer
B	8.9.2	Phase Improvements Constructed with Horizontal Improvements	Swimming pool and restrooms and the pedestrian access and landscaping related to such facilities, although comprising Phase Improvements for Phase 3B, shall be constructed concurrently with construction of the Horizontal Improvements	Developer
C	8.9.2; 8.9.3	Remaining Phase Improvements; Vertical Improvements	Phase Improvements shall be constructed sequentially by Phase and improvements for each Phase shall be completed concurrently with completion of the Units in such Phase. Vertical Improvements shall be commenced and Completed in compliance with the Inventory Commitment.	Developer
D	8.9.3(a)	Construction of Models	Developer <u>commences construction of Models not later than twelve (12) months following the Close of Escrow,</u>	Developer

	DDA	Item	Action	Responsible Party
			<p>which may be extended for Force Majeure Delay.</p> <p><u>Complete construction of Models not later than eighteen (18) months following the Close of Escrow.</u> Model Home construction on the Development Parcels to consist of three (3) Model complexes (13 Models) representative of Homes in each of three product types proposed to be constructed as part of the Project, which may be extended for Force Majeure Delay.</p>	
E	8.9.3(b), 16.4.1(b)	Initial Product inventory	<u>Complete construction of initial production home inventory within nine (9) months following Completion of Models,</u> which may be extended for Force Majeure Delay not to exceed a total of twelve (12) months.	Developer
F	8.9.3(c)	Ongoing Inventory Requirement	Construct, obtain valid certificates of occupancy and offer for sale the Homes in production phases which are based upon a reasonable analysis of market conditions and anticipated absorption and which otherwise are in conformance with the Schedule of Performance. Taking into consideration the market conditions and anticipated absorption, use commercially reasonable efforts to commence construction of each subsequent production phase of Homes <u>not later than the close of escrow on the last Home for sale to the public in the prior production phase.</u>	Developer
G	8.12	Bonding or Removal of Construction Liens	Developer shall, within thirty (30) calendar days following receipt of notice thereof, cause to be removed or bonded against (such bonding to be by the provision of bonds satisfying California statutory requirements) any Construction Liens.	Developer

	DDA	Item	Action	Responsible Party
H	8.11; 16.4.1(b)	Outside Date of Completion of Construction	Notwithstanding any other provision of this Agreement, the Developer shall be obligated to Complete the Project (including Horizontal Improvements, Phase Improvements, Vertical Improvements and all of the Homes) within the earlier of (a) <u>thirty six (36) months following opening of Models to the public</u> , or (b) <u>forty six (46) months after Close of Escrow</u> , each of which may be extended for Force Majeure Delay not to exceed a total of twelve (12) months.	Developer
3. FINANCING				
A	8.5.1	Financial Capability	After the Close of Escrow, and thereafter until issuance of the Certificate of Compliance, Developer shall continue to be responsible for demonstrating to the City the financial capacity of Developer and the capability of Developer to perform its obligations under this Agreement. In addition to the requirements set forth in Sections 4.6.1 and 4.6.2, during the period commencing on the Close of Escrow and ending on the issuance of the Certificate of Compliance for the Project, Developer shall submit annually, on the anniversary of the Closing Date, a date-down of the Financing Plan.	Developer
B	8.6	Project Budget Statement	Prior to the issuance of the Certificate of Compliance for the Project (but not more frequently than quarterly), at City request, Developer shall provide a Project Budget Statement <u>within thirty (30) calendar days following the later of Developer's receipt of the City's written request therefor and the expiration of the applicable quarter.</u>	Developer

	DDA	Item	Action	Responsible Party
4.	DESIGN AND CONDOMINIUM PLAN APPROVAL			
A	8.4	Basic Concept Plan Modification	Developer shall submit any modifications to the Basic Concept Plan to City in writing. <u>The City, in its Proprietary Capacity only, shall conclusively be deemed to have disapproved such modifications to the Basic Concept Plan unless, within fifteen (15) Business Days after the City's receipt of such modifications,</u> the City gives written notice of approval to Developer. Developer shall make changes in response to the City's notice of disapproval or deemed disapproval and resubmit such Basic Concept Plan to the City for review and approval in accordance with the provisions of <u>Section 8.4.6</u> (and in such case the City's review period shall be ten (10) Business Days.)	Developer
B	8.4.3	Submission of Final Design Drawings	Developer shall submit for approval by the City in its Governmental Capacity, <u>not later than six (6) months following the Close of Escrow,</u> final design drawings and related documents conforming to the requirements of the City Code, the Specific Plan and all other Entitlements and conditions of approval.	Developer
C	8.12(g)	Approval by City of Condominium Plan	<u>Prior to or concurrently with its submittal to BRE of any Condominium Plan and following BRE approval of any such Condominium Plan and prior to Recording thereof,</u> Developer shall submit to the City each such Condominium Plan for approval by the City, provided that the approval of the City shall be limited to confirming that the number of Homes shown for each Phase on the proposed Condominium Plan are consistent	Developer

	DDA	Item	Action	Responsible Party
			with the Approved Plans, as the same may have been amended from time to time with the approval of the City in its Governmental Capacity and its Proprietary Capacity.	
5. CERTIFICATE OF COMPLIANCE				
A	8.9.1; 9.1; 9.3	Developer submits request for issuance of the Certificate of Compliance by City	<u>Within thirty (30) days from the date all Conditions Precedent to issuance are satisfied, Developer shall submit a certification of satisfaction of all Conditions Precedent and a request for issuance of Certificate of Compliance.</u>	Developer
B	9.3; 9.6	The City approves or disapproves the request for issuance of the Final Certificate of Compliance	<u>Within fifteen (15) Business Days</u> following submission of request for Final Certificate of Compliance and satisfaction of all conditions precedent set forth in DDA	City
C	9.6	City shall cause the Recording of the Certificate of Compliance	<u>Within five (5) Business Days</u> following issuance of Certificate of Compliance by City	City

ATTACHMENT 8
SCOPE OF DEVELOPMENT

Note: References herein to the "Agreement" and the "DDA" shall mean the Disposition and Development Agreement of which this Attachment is a part; references to "Attachments" mean the Attachments to the Agreement unless otherwise specified. Capitalized terms not otherwise defined in this Attachment have the meaning set forth in the Agreement.

1.0 General Information

The Development Parcels are delineated on Attachment 2. The Development Parcels are subject to easements, obligations and encumbrances, including, but not limited to, the following:

- a) Covenants and conditions contained in the Quitclaim Deeds from the United States of America, as Grantor, to the City of Tustin, California, as Grantee, Recorded May 14, 2002 as Instrument No. 20020404598 and on May 9, 2003 as Instrument No. 2003000533361 of Official Records.

- b) Developer shall improve and provide public access to all private streets, roadway drives, and sidewalks within the Development Parcels ("Private Streets and Sidewalks"), Pedestrian Plaza and to the portions of the Common Area as shown in Attachment 13 of the DDA and, pursuant to the Final Map and subsequent Condominium Plans, shall record an access easement in favor of the City of Tustin for the benefit of the public to ensure public access in, on, over and across the Private Streets and Sidewalks, the paseo walkway areas and the portions of the Common Area to be made available to the public as further shown on Exhibit "A" to this Scope of Development. Developer shall prepare the required legal descriptions and submit to the City for review.

2.0 Developer Improvements

2.1 Definition of Improvements

Developer shall construct on the Development Parcels all of the Horizontal Improvements, Phase Improvements and Vertical Improvements and shall construct or cause to be constructed to serve the Project certain private and public infrastructure as required and approved by the City, including without limitation, the City Planning Commission and City Council. This Attachment presents the Scope of Development and minimal specific design criteria. Additional requirements may be contained in conditions of approval of the entitlements for the Project and in the Approved Plans. The Improvements shall generally consist of the following:

2.1.1 Vertical Improvements. Developer shall complete the development of the Vertical Improvements to consist of construction and installation of a residential condominium community project with design quality and amenities appropriate for the community. The Project will be located within the western portion of Planning Area 15 of Neighborhood G of the Specific Plan

and Lots 1 through 8, Lot B, and Lot A (which has an Irrevocable Offer of Dedication to the City of Tustin) of Tentative Tract Map 18125, and will consist of 218 residential condominium Homes, including the following product mix: (1) 57 single family detached cluster homes "Icon"; (2) 60 motorcourt flats "Velocity"; (3) 101 row & court townhomes "Fleet". Minor non-substantive modifications may occur during the building permit process, subject to prior approval by the City.

Vertical Improvements shall include, but not be limited to, buildings, architectural amenities, security lighting, pedestrian amenities and trash enclosures. Design of all Vertical Improvements shall be consistent with requirements of the Specific Plan, development standards contained in Section 3.0 of this Attachment, and additional requirements contained in any conditions of approval of the entitlements for the Project and the Approved Plans.

2.1.2 Horizontal Improvements and Phase Improvements. Developer shall be responsible for construction of all Horizontal Improvements and Phase Improvements. Such Phase Improvements shall constitute improvements which are located entirely within a development phase as further depicted on Attachment 26 of the DDA. Phase Improvements will generally include utility extensions, private courts and drives, walls and fences, landscape and hardscape, paseo walkway areas, Pedestrian Plaza, swimming pool, spa and restroom facilities, trellises, barbecues and other site amenities and furnishings. Horizontal Improvements and Phase Improvements shall include any necessary private and public infrastructure and utilities including, without limitation:

- a) all Grading Work (including any necessary import and/or export) and completion of the Private Streets and Sidewalks;
- b) all utilities including connection of all utilities, including but not limited to sewer, domestic and reclaimed water, electrical, gas, telephone, cable and telecommunication service connections from their origin or Tustin Legacy Backbone Infrastructure Program locations as shown in the Specific Plan or as modified by private utility purveyors and as approved by the Director of Public Works to the buildings and uses on the Development Parcels;
- c) any drainage improvements needed to convey the drainage from the Development Parcels;
- d) Landscaping Improvements including, with limitation, any common area landscape, irrigation and/or hardscape improvements including the landscape of lots, medians, Common Areas on the Development Parcels and other improvements within the existing and proposed public right-of-way, as may be required and approved by the Planning Commission and City Council, as applicable, with approval of a Development Agreement, Basic Concept Plan approval, Design Review, and any or other required entitlements. Developer shall install and maintain landscaping to the back of curb, and shall enter into a Landscape Maintenance Agreement for maintenance of the Boundary Landscape Areas. Pursuant to the Landscape Maintenance Agreement, the City shall be responsible for maintaining the meandering sidewalk within and outside the public right-of-way and, if the City accepts the dedication of all or any portion thereof, the portion of the Pedestrian Plaza Area for which such dedication is accepted;

- e) The full improvement of paseo walkway areas and other publicly accessible private pathways through and adjacent to the site as depicted on Attachment 13 of the DDA, Common Area facilities inclusive of the swimming pool, spa, associated equipment room and restroom facilities. Site amenities such as outdoor kitchens and barbecues, site furnishings, trellises and mail pavilions, and the Pedestrian Plaza located on Lot A.
- f) Full improvements include, without limitation, all water lines, gas, storm drainage, electricity, sewage and reclaimed water as shown in the Specific Plan and/or Irvine Ranch Water District Sub Area Master Plan for Tustin Legacy, and/or as approved by the City and responsible private utility purveyors. All scope of work for design and construction includes, without limitation, all surveying, rough and precise grading, import and export of dirt as required, asphalt paving, including, without limitation, any necessary overlays, driveways, sidewalks, concrete, curb and gutter, landscaping, irrigation, street lighting, all traffic control, striping and signage and other work to construct improvements in accordance with Tustin City standards.

2.1.3 Compliance with Codes and Conditions. All of the Improvements shall conform to all applicable federal, state, county and city regulations, the regulations of the Specific Plan, the Tustin City Code, the conditions of City resolutions (as and to the extent required by the DA) and all City of Tustin planning, building, electrical, plumbing, mechanical, fire codes, public and private street standards (unless otherwise waived/modified by the City) as well as compliance with all "Conditions of Approval" stipulated by the City of Tustin and any applicable governmental agency having jurisdiction including, but not limited to, Planning Commission and City Council approvals.

As more particularly described and provided in Section 8.4 of the Agreement, all final working drawings, specifications, grading plans, soil reports, landscaping plans, color and finish schedules shall be approved by the City in its Proprietary Capacity and its Governmental Capacity prior to start of the construction.

2.1.4 Compliance with DDA. Developer shall comply with all provisions of the Agreement related to the planning, design, construction, and operation of the Improvements.

2.2 Schedule of Performance

Developer shall commence and complete the Improvements by the respective times established in the Schedule of Performance (Attachment 7).

3.0 Development Standards

The Improvements shall be designed and developed as a planned development in which all construction will have architectural quality and character, both individually and in the context of the surrounding area appropriate and customary for the community. All public spaces, open space, and individual yard areas shall be designed, landscaped and developed with comparable quality.

Particular attention shall be paid to enhancing pedestrian activities, minimizing mass, scale, and bulk and to the selection of color and materials. The City and Developer will cooperate and direct their consultants, architects and/or engineers to cooperate so as to ensure the continuity and coordination necessary for the proper and timely completion of development of Improvements.

Developer acknowledges the responsibility to obtain any approvals required by any governmental agency, utility or other agency, including the City, which has jurisdiction over all of any portion of the Improvements. All "Conditions of Approval" stipulated by an applicable jurisdiction shall be incorporated into the final design and noted in the construction documents by the architects, engineers and other consultants. Developer shall make all necessary applications by such time(s) as will be consistent with the timely commencement and completion of various portions of the Improvements as identified in the Schedule for Performance. In addition, the following development standards shall apply to the Improvements:

3.1 Architecture and Project Design

The Project design shall be of a quality design appropriate and customary for the community and incorporating 4-side architecture on all buildings. The design shall be of a contemporary nature which represents the future of Tustin Legacy. The Project design elements include substantial changes in plane which reduce the building massing, balconies and rooftop decks, extensive fenestrations, accent wall materials both as primary materials and insets, casement and fixed window types, upper level trellises, canopies and shading devices, metal and glass railings, and resort style amenities.

The Project shall reflect the following architectural guidelines:

- Homes and buildings shall define and relate to the perimeter public street edge, with architecture to face the streets.
- Homes and buildings shall frame and define public space with an especially strong relationship between the building and street encouraged. Windows and yard spaces shall engage the streets where possible and promote an open community through the use of pedestrian scale improvements.
- Architecture shall be technically sophisticated in detailing, incorporating a rich palette of materials and textures.
- Visually interesting façade treatments with distinctive architectural elements and design details.
- Varied setbacks, projections, roof lines, windows and reveals, and elements that minimize the impact of the building mass.
- Homes and buildings designed with contemporary forms, accented by unique architectural shapes and details.
- Extensive fenestrations shall be provided on facades which face onto open spaces with window and door detailing appropriate to the architecture.
- Homes and buildings shall incorporate smaller-scale architectural details such as roof decks, balconies, trellises, canopies, shade devices, low walls and entry gates, accent materials, contemporary exterior lighting fixtures, and unique doors and windows.

- Varied building heights are encouraged, but with a predominantly vertical expression.
- Building façade articulation is encouraged.
- Personal outdoor living opportunities are to be provided through the use of expansive upper floor rooftop decks and balconies.

Quality standards will be consistent with the plans approved by the Planning Commission and will include landscaping in accordance with a landscaping palette approved by the City in its Proprietary Capacity and its Governmental Capacity, appropriate front, rear and side architectural building features and roof top screening of equipment, including but not limited to upgraded exterior building materials on buildings visible to the public from Tustin Ranch Road, Victory Road, Park Avenue, and Moffett Drive. Consistent architecture style shall be evident in all elements of design, from all elevations of the structures and treatment of roofs and parapets, down to smaller elements such as community structures and facilities. Particular attention shall also be paid to massing, scale and color. Expression of such quality for the Project shall be true to the Developer's submitted Basic Concept Plan and entitlement plans and as may be further developed by the parties and approved by the City.

In general, the design of the Project shall encourage active participation by pedestrians by providing suitable and attractive amenities in the Project and by reinforcing internal relationships between the uses through streetscape design, pedestrian and bikeway linkages, and site planning techniques. A strong visual identity for the Project shall be created through creative design of community entries, landscape design along roadways, signage and placement of views. Enhanced views into the Project shall be considered from all exterior roadways, including at the formal project entries along Victory Road and Moffett Drive. Creative site planning is encouraged for the Development Parcels due to its prominent location within the Specific Plan. Careful consideration of building site location, attention to views, relationships to surrounding uses and open spaces all need to be incorporated into site plans.

The Project shall also be designed in compliance with all applicable provisions of the Specific Plan.

3.2 Vehicular Access. The placement of vehicular driveways shall be coordinated with the needs of proper street traffic flow. In the interest of minimizing traffic congestion, the City will control the number and location of curb breaks for access to the Development Parcels. Access to the Development Parcels as depicted on the Site Plan attached as Attachment 3 to the DDA will be subject to approval by the City Traffic Engineer. Traffic signals will not be required to be constructed at the Development Parcels entries; however, if Developer determines that traffic signals are necessary to support the development in the future the cost to design and construct the signal(s) will be the responsibility of Developer.

3.3 Signs. Signs shall be designed to contribute positively to the environment. Signs identifying the Project will be permitted, but their height, size, location, color, lighting and design shall be subject to City approval and must conform to provisions of the Specific Plan and/or Tustin City Code, as applicable and shall be at a scale appropriate to the overall design of the Project.

3.4 Screening. All outdoor storage of materials or equipment shall be screened to the extent and manner required by the City of Tustin. Tops of equipment shall be compatibly screened from view from the surrounding streets and from future mid-rise buildings which may be located or constructed in the immediate area to the north or west of the Project.

3.5 Landscaping. Developer shall provide landscaping within the Landscape Areas as defined in the DDA. This shall include Landscape Improvements along all of the Development Parcel street frontages (from back of curb to the perimeter walls of the Project), including Tustin Ranch Road, Park Avenue, Victory Road, and Moffett Drive as required by the Landscape Maintenance Agreement and Landscape Improvements within the Common Areas of the Project as depicted on Exhibit "C" attached to the Landscape Maintenance Agreement. All Landscape Improvements shall comply with the Specific Plan, City Landscape Guidelines, the conditions of approval related to landscaping, plans and drawings approved by the City. Developer shall maintain all such landscaping until responsibility therefor has been assumed by the Homeowners' Association.

3.6 Utilities. All utilities on the Development Parcels shall be undergrounded.

3.7 Maximum Development Thresholds/ Residential Land Use/Trip Budget. Development on the Development Parcels shall not exceed 218 units for the Disposition Parcel 6B.

4.0 Development Parcels Preparation and Demolition. The Development Parcels shall be delivered to Developer in an as-is condition; Developer shall carry out all site preparation (including, without limitation, demolition and relocation of utilities) necessary for the provision of the Horizontal Improvements, Phase Improvements and Vertical Improvements. Site preparation shall include the following, without limitation:

4.1 Demolition. Demolition activities shall include, without limitation:

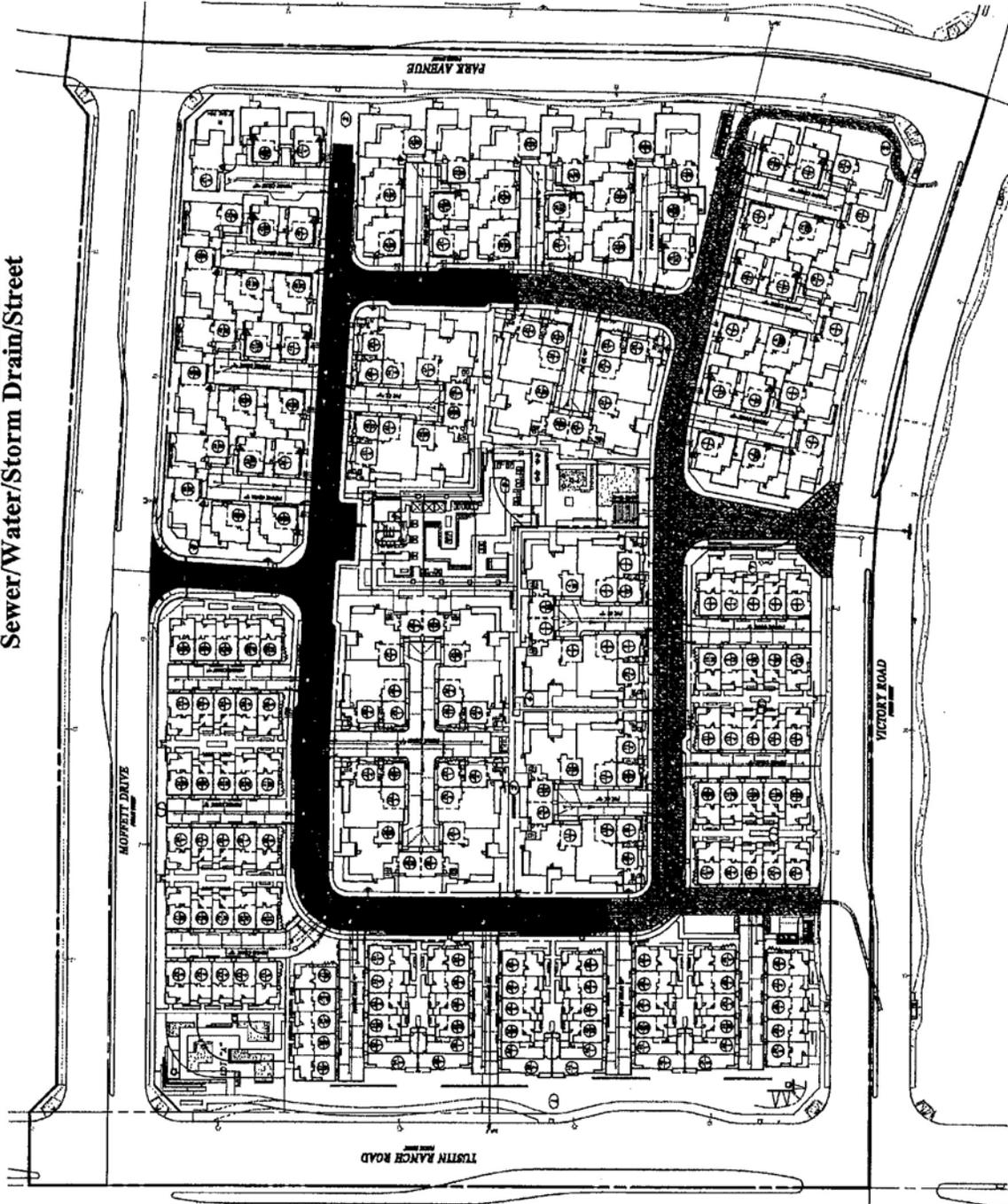
- a) Insofar as necessary to provide the Improvements, the reduction and removal of any structures and improvements from the Development Parcels, including subsurface structures, and the removal of all bricks, lumber, pipes, equipment and other materials and all debris and rubbish resulting from such demolition.
- b) Insofar as necessary to provide the Improvements, the removal of all paving (including catch basins, curbs, gutters, drives and sidewalks) within or on the Development Parcels.
- c) Removal and abandonment by public utility companies of such utility lines, installation, facilities and related equipment within the Development Parcels required to effectuate the purposes of the Project and this Agreement. Developer will also be responsible for accepting a Bill of Sale of all City-owned utility systems previously owned by the military on the Development Parcels and for removal and abandonment of those systems for construction of Improvements.

The City is not responsible in any way for the filling of any excavation, nor for grading or compaction. Soil conditions shall be solely the responsibility of Developer.

4.2 Soil Conditions. Developer assumes responsibility to deal with all portions of the Development Parcels in an "as is", "where is" condition, as more fully set forth in Section 4.5 of the Agreement. It shall be solely the responsibility of Developer to investigate and determine the soil and subsurface conditions of the Development Parcels. Without limiting in any manner the provisions of the DDA, in the event such investigation indicates the conditions are not in all respects entirely suitable for the use or uses to be included in the Project, then the City shall have no responsibility or obligation to take such action as may be necessary to place the Development Parcels and the soil conditions of the Development Parcels in all respects in a condition entirely suitable for the development of the Development Parcels.

ATTACHMENT 9

Horizontal Improvements Sewer/Water/Storm Drain/Street



W01 = TO BE CONSTRUCTED
MARCH-JULY 2018

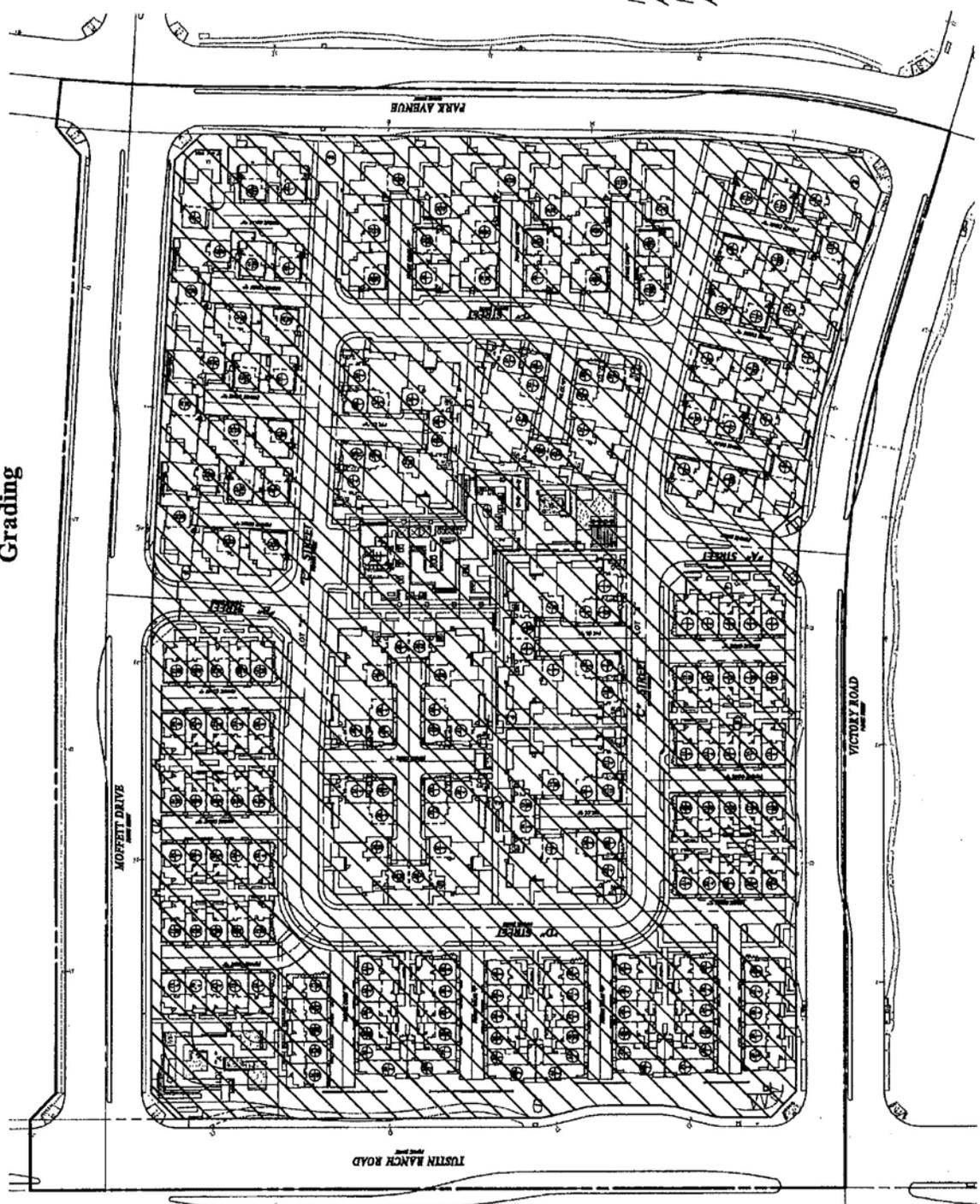
W02 = TO BE CONSTRUCTED
JUNE-DEC 2018

NOTE:
ANY WORK WITHIN PUBLIC
RIGHT-OF-WAY WILL REQUIRE
AN ENCROACHMENT PERMIT.



N.T.S.
1 of 2
01/30/2018

ATTACHMENT 9
Horizontal Improvements
Grading



GRADING

NOTE:
 ANY WORK WITHIN PUBLIC
 RIGHT-OF-WAY WILL REQUIRE
 AN ENCROACHMENT PERMIT.



N.T.S.
 2 of 2
 01/30/2018

ATTACHMENT 10A

LIST OF ENVIRONMENTAL REPORTS AND STATEMENTS

1. Department of Navy "Final Environmental Baseline Survey" dated March 2001
2. Department of Navy findings and determinations that the Development Parcels were suitable for transfer to the City, pursuant to the document entitled "Finding of Suitability to Transfer For Parcels 23, 29, 34, 35, and 36 and Portions of 1, 16, 17, 24, 27, 28, 40 and 41 Marine Corps Air Station Tustin, California" dated April 22, 2002.
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. Lease in Furtherance of Conveyance Between The United States of America and The City of Tustin, California for Portions of Former Marine Corps Air Station Tustin dated May 13, 2002
5. Quitclaim Deed H and Environmental Restriction Pursuant to Civil Code Section 1471 dated May 13, 2002 and Recorded on May 14, 2002 as Instrument Number 20020404598
6. Department of Navy findings and determinations that the Development Parcels were suitable for transfer to the City, pursuant to the document entitled "Finding of Suitability to Transfer For A Portion of Parcel 1 (CO-11) and Portions of Parcels 16, 27, and 40 (CO-8) Former Marine Corps Air Station Tustin, California" dated December 17, 2002.
7. Quitclaim Deed II-G-5 and II-H-9 and Environmental Restriction Pursuant to Civil Code Section 1471 dated March 26, 2003 and Recorded on May 9, 2003 as Instrument Number 2003000533361
8. Background Metals Information for Former MCAS Tustin:
 - a. Draft Final Background Concentrations of Metals Issue Paper Marine Corps Air Station Tustin, California dated October 1996
 - b. Proposed Site Specific Preliminary Remediation Goal for Cadmium Tustin Legacy Community Partners LLC Former Marine Corps Air Station letter from Pacific States Environmental Contractors Inc. dated May 4, 2009
 - c. Background for Acceptable Cadmium Soil Concentration at MCAS Tustin memo from Pacific States Environmental Contractors Inc. dated June 16, 2011.
9. Legacy Road Stained Soil Excavation
 - a. Hydrocarbon Impacted Soil Excavation, Legacy Road Construction at Former MCAS Tustin memo from Pacific States Environmental Contractors Inc. dated May 30, 2012
 - b. DTSC Approval of Legacy Road Stained Soil Remediation Report dated May 31, 2012

ATTACHMENT 10B
CITY ACTIVITIES AFTER MAY 2002

1. 2011
 - a. TPH soil discovery in Legacy (Victory) Road during road grading activities
2. 2015
 - a. Park Avenue/Moffett Drive extension project (KEC)
 - i. July 2015-April 2017
 - b. Rough grading of subject property (KEC)
 - i. September 2015-August 2016
 - c. License 15-005 (Standard Pacific)
 - i. May 2015-June 2015
 - ii. Parking for Greenwood model opening
3. 2017
 - a. License 17-009 (CalAtlantic)
 - i. June 2017-December 2017
 - ii. Storage for Greenwood construction materials
 - b. Legacy/Moffett Extension (Sukut)
 - i. November 2017-TBD

**ATTACHMENT 11
QUITCLAIM DEED**

<p>CITY OF TUSTIN OFFICIAL BUSINESS REQUEST DOCUMENT TO BE RECORDED AND TO BE EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §6103 AND §27383.</p> <p>Recording requested by and when recorded mail to:</p> <p>City Manager The City of Tustin 300 Centennial Way Tustin, CA 92780</p> <p>Mail Tax Statements to:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Attn: _____</p>	
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SPACE ABOVE THIS LINE FOR
RECORDER'S USE

**QUITCLAIM DEED FOR DISPOSITION PARCEL 6B
AND COVENANTS, CONDITIONS AND RESTRICTIONS, INCLUDING
ENVIRONMENTAL RESTRICTION PURSUANT TO CIVIL CODE SECTION 1471**

*[PRIOR TO EXECUTION, CONFORM ALL QUOTED SECTIONS OF DDA
TO THEN CURRENT VERSION OF DDA]*

This Quitclaim Deed For Disposition Parcel 6B and Covenants, Conditions and Restrictions, Including Environmental Restriction Pursuant to Civil Code Section 1471 (this "**Quitclaim Deed**") is made on this ___ day of _____, 201_, by the CITY OF TUSTIN, California, a municipal corporation of the State of California (the "**GRANTOR**"), in favor of _____, a _____ (the "**GRANTEE**").

WHEREAS:

A. The United States of America (the "**Government**") and the GRANTOR entered into that certain Agreement between the United States of America (acting by and through the Secretary of the Navy or designee) and the City of Tustin, California, for the Conveyance of a Portion of the Former Marine Corps Air Station Tustin ("**MCAS Tustin**"), dated May 13, 2002 (the "**Conveyance Agreement**");

B. Pursuant to the Conveyance Agreement, the Government conveyed property at the Marine Corps Air Station Tustin (such property, the "**Grantor Property**") to the GRANTOR pursuant to (1) that certain Quitclaim Deed H and Environmental Restriction Pursuant to Civil Code Section 1471 dated May 13, 2002, that was recorded on May 14, 2002 in the Office of the County Recorder, Orange County, California (the "**Official Records**") as Instrument Number 20020404598 ("**Government Deed I-H**"), and (2) that certain Quitclaim Deed for Parcels II-G-5 and II-H-9 and Environmental Restriction Pursuant to Civil Code Section 1471 dated March 26, 2003, that was Recorded on May 9, 2003 as Instrument Number 2003000533361 ("**Government Deeds II-G and II-H**"); collectively with Government Deed I-H, the "**Government Deeds**";

C. Pursuant to California Civil Code §1471, the Government determined that it is reasonably necessary to impose certain restrictions on the use of the Grantor Property to protect present and future human health or safety or the environment as a result of the presence of hazardous materials on portions of the Grantor Property described hereinafter with particularity;

D. The GRANTOR and the GRANTEE entered into the following: (i) that certain Tustin Legacy Disposition and Development Agreement For Disposition Parcel 6B, dated as of _____, 201_ (the "**DDA**"), providing for the sale and development of a portion of the Grantor Property; and (ii) that certain Memorandum of Tustin Legacy Disposition and Development Agreement For Disposition Parcel 6B (the "**Memorandum of DDA**") to be recorded in the Official Records of even date with and immediately prior to the recording of this Quitclaim Deed;

E. The GRANTOR has executed that certain Declaration of Special Restrictions for Disposition Parcel 6B (the "**Special Restrictions**"), consented to by the GRANTEE, which shall be recorded in the Official Records immediately prior to the recording of this Quitclaim Deed; and

F. The GRANTOR desires to convey and the GRANTEE desires to acquire a portion of the Grantor Property to facilitate economic redevelopment in accordance with that certain MCAS Tustin Reuse Plan adopted by the City Council of the City on October 17, 1996 and amended in September, 1998 (the "**Reuse Plan**") and approved by the Government for MCAS Tustin.

1. NOW THEREFORE, the GRANTOR, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release and forever quitclaim to the GRANTEE, all of the GRANTOR'S right, title and interest in and to that certain real property, comprising approximately 14.45 gross acres of land, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "**Land**"), together with all existing improvements, if any, presently located on the Land, all appurtenances pertaining to the Parcels (as hereinafter defined) or such improvements and all permits, licenses, approvals and authorizations issued by any Governmental Authority in connection with the Parcels. The Land, less and except all of the matters in Section 2 of this Quitclaim Deed, is referred to as the "**Parcels.**"

2. EXCEPTING THEREOUT AND THEREFROM, however, and reserving to the GRANTOR, its successors and assigns, together with the right to grant and transfer all or a portion of the same, the following:

2.1 Any and all oil, oil rights, minerals, mineral rights, natural gas, natural gas rights and other hydrocarbon by whatsoever name known, geothermal steam and all products derived from any of the foregoing, that may be within or under the Land together with the perpetual right of drilling, mining, exploring for and storing in and removing the same from the Land or any other land, including the right to whipstock or directionally drill and mine from lands other than the Land, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Land and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to re-drill, re-tunnel, equip, maintain, repair, deepen and operate any such well or mines; but without, however, the right to enter upon or use the surface of the Land in the exercise of such rights or otherwise adversely affect the use or operation of the Land as anticipated by this Agreement or the structural integrity of any improvements on the Land.

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

2.3 Those excess development rights remaining within Specific Plan Neighborhood G, Planning Area 15 after deducting the number of residential units constructed by GRANTEE prior to Recording of the Certificate of Compliance (which number shall be set forth in and established by the Certificate of Compliance) and, except to the extent any of such rights were conveyed by the GRANTOR to third parties prior to the Effective Date, the GRANTOR shall retain all residential units and all development rights associated with Specific Plan Neighborhood G, Planning Area 15 in excess of the units shown on the Recorded Certificate of Compliance, and the units and development rights retained by the GRANTOR shall be freely transferable by the GRANTOR throughout Tustin Legacy.

Notwithstanding anything to the contrary set forth in this Quitclaim Deed, the reservation by the GRANTOR of the rights and interests in this Section 2 shall not be deemed to limit the GRANTEE'S right to construct foundations and other subsurface improvements for the purpose of constructing the Project, and otherwise engage in subsurface construction activity in order to construct the Project.

3. SUBJECT TO THE FOLLOWING NOTICES, COVENANTS, RESTRICTIONS, AND CONDITIONS, which shall be binding upon and enforceable against the Parcels and the GRANTEE, and its successors and assigns, in perpetuity:

3.1 The GRANTEE agrees to accept conveyance of the Parcels subject to all covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements and encumbrances of record, including, without limitation, the DDA, the Memorandum of DDA, and the Special Restrictions, which are covenants running with the land and are binding upon the GRANTEE and all successors and assigns of the GRANTEE owning all or any portion of Parcels for the benefit of the GRANTOR and its successors and assigns, unless or until such responsibilities and obligations are released pursuant to the provisions of the aforesaid documents, including the release of obligations under the DDA that GRANTEE may obtain pursuant to a Certificate of Compliance (as defined and further provided for in the DDA) executed by the GRANTOR and recorded against the Parcels.

3.2 The Government Deeds conveying the Parcels to the GRANTOR were recorded prior to recordation of this Quitclaim Deed. The GRANTOR has no knowledge regarding the accuracy of information provided by the Government regarding the environmental condition of the Parcels and makes no warranties regarding the environmental conditions of the Parcels. The GRANTOR has no knowledge regarding the accuracy or adequacy of the Government's remediation of the Parcels as provided in the Government Deeds. The foregoing Section 3.2 does not limit or restrict any representations, warranties, covenants or obligations that the GRANTOR may have made solely for the benefit of the GRANTEE (and its permitted transferees) in the DDA or any other agreement.

3.3 Government Deed I-H. The italicized information below is copied verbatim (except as discussed below) from Sections 2.2 through 2.6, and Sections 2.8, 2.9 and 3 of Government Deed I-H conveying a portion of the Grantor Property to the GRANTOR. To the extent applicable to the Parcels conveyed hereunder, by acceptance of this Quitclaim Deed, the GRANTEE, on behalf of itself and its successors and assigns acquiring fee title to all or any portion of the Property, hereby acknowledges and assumes all responsibilities placed upon the GRANTOR under the terms of the aforesaid Government Deed I-H. Within the italicized information contained in this Section 3.3 only, the term "Grantor" shall mean the Government, the term "Grantee" shall mean the City of Tustin and the term "Property" shall mean the Grantor Property, including, without limitation, the Parcels. To avoid confusion, within the italicized information, the word "Government" has been added in brackets after the word "Grantor", and the words "City of Tustin" have been added in brackets after the word "Grantee."

2.2 FOSTs have been completed and an Environmental Baseline Survey ("EBS") report is referenced in the FOSTs. The FOSTs and EBS reference environmental conditions on the Property and on other property not subject to this Deed. GRANTEE ["City of Tustin"] acknowledges that it has received copies of the EBS and the FOSTs and that all documents referenced therein have been made available to GRANTEE ["City of Tustin"] for inspection and copying.

2.3 Except as otherwise provided herein, or as otherwise provided by law, the GRANTEE ["City of Tustin"] acknowledges that it has inspected, is aware of and accepts the condition and state of repair of the Property, and that the Property is conveyed "as is" and "where is" without any representation, promise, agreement, or warranty on the part of the GRANTOR ["Government"] regarding such condition and state of repair, or

regarding the making of any alterations, improvements, repairs or additions. Except for the environmental remediation which may be required to be undertaken by GRANTOR ["Government"] pursuant to paragraph 2.6 below, the GRANTEE ["City of Tustin"] further acknowledges that the GRANTOR ["Government"] shall not be liable for any latent or patent defects in the Property except to the extent required by applicable law.

2.4. Asbestos Containing Material

2.4.1. GRANTEE ["City of Tustin"] is hereby informed and does hereby acknowledge that hazardous materials in the form of asbestos or asbestos-containing materials ("ACM") have been found and are otherwise presumed to exist in [buildings and structures] on the Property. The EBS and FOSTs disclose the presence of known asbestos or ACM hazards in such buildings and structures on the Property.

2.4.2 GRANTEE ["City of Tustin"] covenants, on behalf of itself, its successors and assigns, as a covenant running with the land, that it will prohibit occupancy and use of buildings and structures, or portions thereof, containing known asbestos or ACM hazards prior to abatement of such hazards. In connection with its use and occupancy of the Property, including, but not limited to, demolition of buildings and structures containing asbestos or ACM, it will comply with all applicable federal, state and local laws relating to asbestos and ACM. . . .

2.4.4 The GRANTOR ["Government"] shall provide a Notice of Release, in recordable form, to the GRANTEE ["City of Tustin"] at such time as demolition of the buildings on the Property containing ACM has been completed and the appropriate government regulatory agency(s) have confirmed in writing to the GRANTEE ["City of Tustin"] that ACM has been removed from the buildings and any necessary soil remediation has been conducted in accordance with all applicable federal, state, and local laws and regulations. This Notice of Release shall be deemed to remove all notices and restrictions relating to ACM from the Property. The GRANTOR ["Government"] shall have no obligation under this subparagraph for the demolition of buildings or the removal of ACM or soil remediation related to such demolition or removal action.

2.5. Lead Based Paint (LBP)

2.5.1. The Property may include improvements . . . that are presumed to contain LBP because they are thought to have been constructed prior to 1978. . . . Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Pursuant to 40 CFR Section 745.113 the following notice is provided: "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards

from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

2.5.2 The GRANTEE ["City of Tustin"] hereby acknowledges the required disclosure of the presence of any known LBP and/or LBP hazards in target housing constructed prior to 1978 in accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. Section 4852d (Title X). The GRANTEE ["City of Tustin"] acknowledges the receipt of available records and reports pertaining to LBP and/or LBP hazards and receipt of the Environmental Protection Agency (EPA) approved pamphlet "Protect Your Family from Lead in Your Home" (EPA 747-K-94-001). Furthermore, the GRANTEE ["City of Tustin"] acknowledges that it has read and understood the EPA pamphlet.

2.5.3 The GRANTEE ["City of Tustin"] covenants and agrees that, in any improvements on the Property defined as target housing by Title X and constructed prior to 1978, LBP hazards will be disclosed to potential occupants in accordance with Title X before use of such improvements as a residential dwelling (as defined in Title X). Further, the GRANTEE ["City of Tustin"] covenants and agrees that LBP hazards in target housing will be abated in accordance with Title X before use and occupancy as a residential dwelling. "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six [6] years of age resides, or is expected to reside, in such housing) or any zero-bedroom dwelling.

2.5.4 The GRANTEE ["City of Tustin"] covenants and agrees that in its use and occupancy of the Property, it will comply with Title X and all applicable federal, state, and local laws relating to LBP. The GRANTEE ["City of Tustin"] acknowledges that the GRANTOR ["Government"] assumes no liability for damages for personal injury, illness, disability, or death to the GRANTEE ["City of Tustin"], or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with LBP on the Property, arising after the conveyance of the Property from the GRANTOR ["Government"] to the GRANTEE ["City of Tustin"], whether the GRANTEE ["City of Tustin"] has properly warned, or failed to properly warn, the persons injured.

2.5.5 The GRANTOR ["Government"] shall provide a notice of release, in recordable form, to the GRANTEE ["City of Tustin"] at such time as demolition of the buildings on the Property containing LBP has been completed and the appropriate government regulatory agency(s) have confirmed in writing to the GRANTEE ["City of Tustin"] that LBP has been removed from the buildings and any necessary soil remediation has been conducted in accordance with all applicable federal, state, and local laws and regulations. This Notice of Release shall be deemed to remove all notices and restrictions relating to LBP from the Property. The GRANTOR ["Government"] shall have no obligation under this subparagraph for the demolition of buildings or the removal of LBP or soil remediation related to such demolition or removal action.

2.6 Notices And Covenants.

2.6.1. **Notices: Hazardous Substance Notification.** Pursuant to 42 U.S.C. §9620(h)(3)(A), and the provisions of 40 C.F.R. part 373, the GRANTOR ["Government"] hereby gives notice that hazardous substances were stored for one year or more, released or disposed of on the Property. The information contained in this notice is required by regulations promulgated under Section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund"), 42 U.S.C. Section 9620(h). The GRANTOR ["Government"] has made a complete search of its files and records concerning the Property. Based on that search, the type and quantity of such hazardous substances, the time at which such storage, release or disposal took place, to the extent such information is available, and a description of the remedial action taken, if any, is contained in Exhibit "B", [which is attached to this Quitclaim Deed as Exhibit "B" and incorporated herein by this reference].

2.6.2. **Grant of Covenant [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(ii)(I)].** The GRANTOR ["Government"] covenants and warrants that all remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the Property has been taken before the date of transfer.

2.6.3. **Additional Remediation Obligation [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(ii)(II)].** The GRANTOR ["Government"] covenants and warrants that GRANTOR ["Government"] shall conduct any additional remedial action found to be necessary after the date of transfer for any hazardous substance existing on the Property prior to the date of this Deed. This covenant shall not apply to the extent that the GRANTEE ["City of Tustin"] caused or contributed to any release or threatened release of any hazardous substance, pollutant, or contaminant.

2.6.4. **Access [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(iii)].** In connection with GRANTOR'S ["Government"] covenant in 2.6.3 above and in connection with ongoing remediation on GRANTOR'S ["Government"] property adjacent to the Property, GRANTEE ["City of Tustin"] agrees on behalf of itself, its successors and assigns, as a covenant running with the land, that GRANTOR ["Government"], or its officers, agents, employees, contractors and subcontractors, shall have the right, upon reasonable notice to GRANTEE ["City of Tustin"], to enter upon the Property in any case in which a response or corrective action is found to be necessary at such property after the date of this deed, or such access is necessary to carry out a response action or corrective action on adjoining property. Neither GRANTEE ["City of Tustin"], nor its successors and assigns, shall have any claim on account of such entries against the United States or any of its officers, agents, employees, contractors or subcontractors. The right to enter shall include the right to conduct tests, investigations and surveys, including, where necessary, drilling, test-pitting, boring and other similar activities. Such right shall also include the right to construct, operate, maintain or undertake any other response or corrective action as required or necessary, including, but not limited to monitoring wells, pumping wells, treatment facilities, and the installation of associated utilities. In exercising these rights of access, except in case of imminent and substantial endangerment to human health or the

environment, the GRANTOR ["Government"] (1) shall give the GRANTEE ["City of Tustin"] reasonable notice of any action to be taken related to such remedial or corrective actions on the Property, and (2) make reasonable efforts to minimize interference with the on-going use of the Property. Furthermore, the GRANTOR ["Government"] and GRANTEE ["City of Tustin"] agree to cooperate in good faith to minimize any conflict between the necessary environmental investigation and remediation activities and the GRANTEE's ["City of Tustin"] use of the Property. Any inspection, survey, investigation or other response, corrective or remedial action undertaken by GRANTOR ["Government"] will, to the maximum extent practical, be coordinated with representatives designated by the GRANTEE ["City of Tustin"].

In connection with GRANTOR's ["Government"] remedial actions described above, GRANTEE ["City of Tustin"] agrees on behalf of itself, its successors and assigns, as a covenant running with the land, to comply with the provisions of any health or safety plan in effect during the course of any such action.

2.8 Indemnification Regarding Transferees. *The GRANTOR ["Government"] hereby recognizes its obligations under Section 330 of the National Defense Authorization Act of 1993 (Pub. L. 102-484), as amended, regarding indemnification of transferees of closing Department of Defense property.*

2.9 Non-Discrimination. *GRANTEE ["City of Tustin"] covenants for itself, its successors and assigns, that it will comply with all applicable provisions of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination in Employment Act of 1975 in the use, occupancy, sale or lease of the Property. The foregoing shall not be construed to prohibit the operation of federal or state approved programs focusing on the special needs of the homeless, veterans, victims of domestic violence and other classes of persons at risk; nor shall it be construed to prohibit employment practices not otherwise prohibited by law. The GRANTOR ["Government"] shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.*

3. NO HAZARD TO AIR NAVIGATION: *GRANTEE ["City of Tustin"] covenants for itself, its successors and assigns, that in connection with any construction or alteration on the Property, it will obtain a determination of no hazard to air navigation from the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, part 77, entitled "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.*

3.4 Government Deeds II-G and II-H. *The italicized information below is copied verbatim (except as discussed below) from Sections 3.2 through 3.6, and Sections 3.7, 3.8 and 3.9 of Government Deeds II-G and II-H conveying a portion of the Grantor Property to the GRANTOR. To the extent applicable to the Parcels conveyed hereunder, by acceptance of this Quitclaim Deed, the GRANTEE, on behalf of itself and its successors and assigns acquiring fee title to all or any portion of the Property, hereby acknowledges and assumes all responsibilities*

placed upon the GRANTOR under the terms of the aforesaid Government Deed I-H. Within the italicized information contained in this Section 3.4 only, the term "Grantor" shall mean the Government, the term "Grantee" shall mean the City of Tustin and the term "Property" shall mean the Grantor Property, including, without limitation, the Parcels. To avoid confusion, within the italicized information, the word "Government" has been added in brackets after the word "Grantor", and the words "City of Tustin" have been added in brackets after the word "Grantee."

3.2 A FOST has been completed and an Environmental Baseline Survey ("EBS") report is referenced in the FOST. The FOST and EBS reference environmental conditions on the Property and on other property not subject to this Deed. GRANTEE ["City of Tustin"] acknowledges that it has received copies of the EBS and the FOST and that all documents referenced therein have been made available to GRANTEE ["City of Tustin"] for inspection and copying.

3.3 Except as otherwise provided herein, or as otherwise provided by law, the GRANTEE ["City of Tustin"] acknowledges that it has inspected, is aware of and accepts the condition and state of repair of the Property, and that the Property is conveyed "as is" and "where is" without any representation, promise, agreement, or warranty on the part of the GRANTOR ["Government"] regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs or additions. Except for the environmental remediation which may be required to be undertaken by GRANTOR ["Government"] pursuant to paragraph 3.6 below, the GRANTEE ["City of Tustin"] further acknowledges that the GRANTOR ["Government"] shall not be liable for any latent or patent defects in the Property except to the extent required by applicable law.

3.4. Asbestos Containing Material

3.4.1. GRANTEE ["City of Tustin"] is hereby informed and does hereby acknowledge that hazardous materials in the form of asbestos or asbestos-containing materials ("ACM") have been found and are otherwise presumed to exist in buildings and structures on the Property. The EBS and FOST disclose the presence of known asbestos or ACM hazards in such buildings and structures on the Property.

3.4.2 GRANTEE ["City of Tustin"] covenants, on behalf of itself, its successors and assigns, as a covenant running with the land, that it will prohibit occupancy and use of buildings and structures, or portions thereof, containing known asbestos or ACM hazards prior to abatement of such hazards. In connection with its use and occupancy of the Property, including, but not limited to, demolition of buildings and structures containing asbestos or ACM, it will comply with all applicable federal, state and local laws relating to asbestos and ACM.

3.4.3 The GRANTOR ["Government"] shall provide a Notice of Release, in recordable form, to the GRANTEE ["City of Tustin"] at such time as demolition of the buildings on the Property containing ACM has been completed and the appropriate government regulatory agency(s) have confirmed in writing to the GRANTEE ["City of Tustin"] that ACM has been removed from the buildings and any necessary soil

remediation has been conducted in accordance with all applicable federal, state, and local laws and regulations. This Notice of Release shall be deemed to remove all notices and restrictions relating to ACM from the Property. The GRANTOR ["Government"] shall have no obligation under this subparagraph for the demolition of buildings or the removal of ACM or soil remediation related to such demolition or removal action.

3.5. Lead Based Paint (LBP)

3.5.1. The Property may include improvements that are presumed to contain LBP because they are thought to have been constructed prior to 1978. . . . Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Pursuant to 40 CFR Section 745.113 the following notice is provided: "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

3.5.2 The GRANTEE ["City of Tustin"] hereby acknowledges the required disclosure of the presence of any known LBP and/or LBP hazards in target housing constructed prior to 1978 in accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. Section 4852d (Title X). The GRANTEE ["City of Tustin"] acknowledges the receipt of available records and reports pertaining to LBP and/or LBP hazards and receipt of the Environmental Protection Agency (EPA) approved pamphlet "Protect Your Family from Lead in Your Home" (EPA 747-K-94-001). Furthermore, the GRANTEE ["City of Tustin"] acknowledges that it has read and understood the EPA pamphlet.

3.5.3 The GRANTEE ["City of Tustin"] covenants and agrees that, in any improvements on the Property defined as target housing by Title X and constructed prior to 1978, LBP hazards will be disclosed to potential occupants in accordance with Title X before use of such improvements as a residential dwelling (as defined in Title X). Further, the GRANTEE ["City of Tustin"] covenants and agrees that LBP hazards in target housing will be abated in accordance with Title X before use and occupancy as a residential dwelling. "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six [6] years of age resides, or is expected to reside, in such housing) or any zero-bedroom dwelling.

3.5.4 The GRANTEE ["City of Tustin"] covenants and agrees that in its use and occupancy of the Property, it will comply with Title X and all applicable federal, state, and local laws relating to LBP. The GRANTEE ["City of Tustin"] acknowledges that the

GRANTOR ["Government"] assumes no liability for damages for personal injury, illness, disability, or death to the GRANTEE ["City of Tustin"], or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with LBP on the Property, arising after the conveyance of the Property from the GRANTOR ["Government"] to the GRANTEE ["City of Tustin"], whether the GRANTEE ["City of Tustin"] has properly warned, or failed to properly warn, the persons injured.

3.5.5 The GRANTOR ["Government"] shall provide a Notice of Release, in recordable form, to the GRANTEE ["City of Tustin"] at such time as demolition of the buildings on the Property containing LBP has been completed and the appropriate government regulatory agency(s) have confirmed in writing to the GRANTEE ["City of Tustin"] that LBP has been removed from the buildings and any necessary soil remediation has been conducted in accordance with all applicable federal, state, and local laws and regulations. This Notice of Release shall be deemed to remove all notices and restrictions relating to LBP from the Property. The GRANTOR ["Government"] shall have no obligation under this subparagraph for the demolition of buildings or the removal of LBP or soil remediation related to such demolition or removal action.

3.6 CERCLA Notices And Covenants:

3.6.1. **Notices: Hazardous Substance Notification.** Pursuant to 42 U.S.C. §9620(h)(3)(A), and the provisions of 40 C.F.R. part 373, the Grantor ["Government"] has made a complete search of its files and records concerning the Property and hereby gives notice that based on that research no hazardous substances were stored, released or disposed of on the Property.

3.6.2. **Grant of Covenant [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(ii)(I)].** The GRANTOR ["Government"] covenants and warrants that all remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the Property has been taken before the date of transfer.

3.6.3. **Additional Remediation Obligation [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(ii)(II)].** The GRANTOR ["Government"] covenants and warrants that GRANTOR ["Government"] shall conduct any additional remedial action found to be necessary after the date of transfer for any hazardous substance existing on the Property prior to the date of this Deed. This covenant shall not apply to the extent that the GRANTEE ["City of Tustin"] caused or contributed to any release or threatened release of any hazardous substance, pollutant, or contaminant.

3.6.4. **Access [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(iii)].** In connection with GRANTOR'S ["Government"] covenant in 3.6.3 above and in connection with ongoing remediation on GRANTOR'S ["Government"] property adjacent to the Property, GRANTEE ["City of Tustin"] agrees on behalf of itself, its successors and assigns, as a covenant running with the land, that GRANTOR ["Government"], or its officers, agents,

employees, contractors and subcontractors, shall have the right, upon reasonable notice to GRANTEE ["City of Tustin"], to enter upon the Property in any case in which a response or corrective action is found to be necessary at such property after the date of this deed, or such access is necessary to carry out a response action or corrective action on adjoining property. Neither GRANTEE ["City of Tustin"], nor its successors and assigns, shall have any claim on account of such entries against the United States or any of its officers, agents, employees, contractors or subcontractors. The right to enter shall include the right to conduct tests, investigations and surveys, including, where necessary, drilling, test-pitting, boring and other similar activities. Such right shall also include the right to construct, operate, maintain or undertake any other response or corrective action as required or necessary, including, but not limited to monitoring wells, pumping wells, treatment facilities, and the installation of associated utilities. In exercising these rights of access, except in case of imminent and substantial endangerment to human health or the environment, the GRANTOR ["Government"] (1) shall give the GRANTEE ["City of Tustin"] reasonable notice of any action to be taken related to such remedial or corrective actions on the Property, and (2) make reasonable efforts to minimize interference with the on-going use of the Property. Furthermore, the GRANTOR ["Government"] and GRANTEE ["City of Tustin"] agree to cooperate in good faith to minimize any conflict between the necessary environmental investigation and remediation activities and the GRANTEE's ["City of Tustin"] use of the Property. Any inspection, survey, investigation or other response, corrective or remedial action undertaken by GRANTOR ["Government"] will, to the maximum extent practical, be coordinated with representatives designated by the GRANTEE ["City of Tustin"]. In connection with GRANTOR's ["Government"] remedial actions described above, GRANTEE ["City of Tustin"] agrees on behalf of itself, its successors and assigns, as a covenant running with the land, to comply with the provisions of any health or safety plan in effect during the course of any such action.

3.7 Indemnification Regarding Transferees. The GRANTOR ["Government"] hereby recognizes its obligations under Section 330 of the National Defense Authorization Act of 1993 (Pub. L. 102-484), as amended, regarding indemnification of transferees of closing Department of Defense property.

3.8 Non-Discrimination. GRANTEE ["City of Tustin"] covenants for itself, its successors and assigns, that it will comply with all applicable provisions of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination in Employment Act of 1975 in the use, occupancy, sale or lease of the Property. The foregoing shall not be construed to prohibit the operation of federal or state approved programs focusing on the special needs of the homeless, veterans, victims of domestic violence and other classes of persons at risk; nor shall it be construed to prohibit employment practices not otherwise prohibited by law. The GRANTOR ["Government"] shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

3.9 ***NO HAZARD TO AIR NAVIGATION: GRANTEE*** [*“City of Tustin”*] covenants for itself, its successors and assigns, that in connection with any construction or alteration on the Property, it will obtain a determination of no hazard to air navigation from the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, part 77, entitled *“Objects Affecting Navigable Airspace,”* or under the authority of the Federal Aviation Act of 1958, as amended.

3.5 The responsibilities and obligations placed upon the GRANTOR by the Government shall run with the land and be binding on the GRANTEE and all subsequent owners of the Parcels or any portion thereof, unless and until such responsibilities and obligations are released pursuant to the provisions set forth in the Government Deeds.

3.6 As further set forth in, and subject to the terms and conditions of the DDA, GRANTEE acknowledges that it has examined the Parcels and is buying the Parcels from the GRANTOR in an *“AS IS, WHERE IS, WITH ALL FAULTS”* condition, in its present state and condition and with all faults, which provisions shall survive the close of escrow related to this transaction and do not merge with this Quitclaim Deed.

4. DDA Provisions.

4.1 Definitions. Pursuant to the DDA, the GRANTOR has imposed certain covenants, conditions and restrictions on the Parcels, including the releases contained in Section 4.5.2 of the DDA, which are set forth verbatim below in italics and each of which is hereby declared to be a covenant running with the land in perpetuity. Within the italicized language which follows, section references shall be to sections of the DDA, and where initially capitalized terms are used within the italicized language which follows and otherwise within this Quitclaim Deed, such terms (unless expressly noted otherwise) shall have the meanings set forth in Exhibit *“C”* attached hereto and incorporated herein by this reference. Except for the provisions set forth in Sections 4.2, 4.3 and 4.4 and Exhibit *“C”*, the provisions of the DDA restated in this Quitclaim Deed shall not be binding upon or burden any End User.

4.2 Releases. Section 4.5.2(f) of the Original DDA provides as follows:

*“(f) **Release.** Developer, on behalf of itself, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner and including, without limitation, each End User (each, including Developer, a “Developer Releasing Party”), hereby waives, as of the Effective Date, and agrees to waive, as of the Close of Escrow, the right of each Developer Releasing Party to recover from, and fully and irrevocably releases, the City Released Parties from any and all Claims that any Developer Releasing Party may now have or hereafter suffer or acquire arising from or related to: (i) any Due Diligence Information, (ii) any condition of the Property or any current or future improvement thereon, known or unknown by any Developer Releasing Party or any City Released Party, including as to the extent or effect of any grading of the Development Parcels; (iii) any construction defects, errors, omissions or other conditions, latent or otherwise; (iv) economic and legal conditions on or affecting*

the Property or any improvements thereon; (v) Environmental Matters, including the existence, Release, threatened Release, presence, storage, treatment, transportation or disposal of any Hazardous Materials at any time on, in, under, or from, the Property or any current or future improvement thereon or any portion thereof; (vi) Claims of or acts or omissions to act of any Governmental Authority or any other third party arising from or related to any actual, threatened, or suspected Release of a Hazardous Material on, in, under, or from or about the Property or any current or future improvement thereon, including any Investigation or Remediation at or about the Property or any current or future improvement thereon; and/or (vii) arising from the Tustin Legacy Backbone Infrastructure Program, any community facilities district, service district or assessment district the cost or extent thereof, or the amount of the Project Fair Share Contribution or any community facilities district, service district or assessment district assessment against the Development Parcels described in this Agreement or the DA; provided that the foregoing release by the Developer Releasing Parties shall not extend to the extent of (A) any breach by the City of any of the representations or warranties of the City set forth in Sections 3.3 or 17.12 of this Agreement, (B) any breach by the City of any of the covenants or obligations set forth in this Agreement or any Other Agreement, (C) any Claim that is the result of the gross negligence, willful misconduct or fraud of the City Released Parties, (D) any actions of the City Released Parties which occur following the Close of Escrow with respect to the Property, or (E) any other Claims against City relating to or arising out of tort Claims brought by third parties against Developer, to the extent such claims are based upon the Active Negligence of the City Released Parties and Accruing prior to the Close of Escrow; provided that the exceptions in clauses (C) and (E) above shall not apply with respect to any matter for which the City is indemnified pursuant to Section 5.5 or Section 10.2. This release includes Claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer's release of the City Released Parties. Developer specifically waives the provision of California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

In this connection and to the extent permitted by law, Developer on behalf of itself, and the other Developer Releasing Parties hereby agrees that (x) it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to Claims or controversies which are presently unknown, unanticipated and unsuspected; (y) the waivers and releases in this Section 4.5.2(f) have been negotiated and agreed upon in light of that realization and (z) Developer, on behalf of itself and the other Developer Releasing Parties, nevertheless hereby

intends to release, discharge and acquit the City Released Parties from any such unknown Claims and controversies to the extent set forth above.

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

CITY'S INITIALS

DEVELOPER'S INITIALS

From and after the acquisition of the Development Parcels by Developer, this release shall run with the land for the benefit of the City and its Governmental Successors and burdening the Development Parcels and Developer and the Successor Owners owning all or any portion of the Development Parcels and all Persons claiming by, through or under Developer or any Successor Owner of the Development Parcels or such portion thereof, including each End User, and to further evidence its effectiveness with respect to Developer and the Successor Owners of the Development Parcels, shall be included in its entirety in the Quitclaim Deed. The provisions of this Section 4.5.2 shall survive the Close of Escrow and the termination of this Agreement and shall not be merged with the Quitclaim Deed."

4.3 Disclaimer of Responsibility by City and Exculpation. Section 8.14 of the DDA provides in applicable part as follows:

"8.14.1 Disclaimer of Responsibility. The City neither undertakes nor assumes nor will have any responsibility or duty to Developer, any Successor Owner, any End User or to any other third party to review, inspect, supervise, pass judgment upon or inform Developer, any Successor Owner, any End User or any third party of any matter in connection with the development or construction of Improvements or the approval of any maps, including Condominium Plan, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished for development of the Project, any Person furnishing same, or otherwise. Developer, any Successor Owner, End User and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer, any Successor Owner, End User or to any third party by the City in connection with such matter is for the public purpose of developing the Project, and neither Developer nor any Successor Owner, End User nor any third party is entitled to rely thereon.

8.14.2 Exculpation. The City shall not be liable in damages to Developer or to any owner, lessee, any licensee or other Person, on account of (a) any approvals or disapprovals by the City, including by the City Manager or designee, whether made in the Governmental Capacity or Proprietary Capacity of the City of any design documents or

maps, in connection with the Project, the Horizontal Improvements, the Vertical Improvements, the Phase Improvements or any Condominium Plan, including the Approved Plans, any Basic Concept Plan and grading plans with respect to the foregoing, whether or not defective or whether or not in compliance with applicable laws or ordinances; (b) any construction, performance or nonperformance by Developer or any owner, lessee, licensee or other Person of any work on the Property or the Improvements, whether or not pursuant to Approved Plans or whether or not in compliance with applicable laws or ordinances; (c) any mistake in judgment, negligence, action or omission in exercising its rights, powers and responsibilities hereunder; and/or (d) the enforcement or failure to enforce any of the provisions of this Agreement. Every Person who makes design submittals for approval agrees by reason of such submittal, and Developer and every Successor Owner of the Property or the Improvements or any portion thereof agrees by acquiring title thereto or an interest therein, not to bring any suit or action against the City seeking to recover any such damages and expressly waives any such claim or cause of action for such damages which it would otherwise be entitled to assert. The review of any design submittals shall not constitute the assumption of any responsibility by, or impose any liability upon, the City as to the accuracy, efficacy, sufficiency or legality thereof nor decrease or diminish any liability, duties, responsibilities, or obligations of Developer under this Agreement or otherwise. . . .

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

8.14.5 *Survival.* The provisions of this Section 8.14 shall survive the termination of this Agreement.”

4.4 Rights of the City to Enforce. Section 17.15.2 of the DDA provides as follows:

“17.15.2 Rights of the City to Enforce. The City is the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether the City has been, remains or is an owner of any land or interest in the Property, the Development Parcels or in the Project. The City shall have the right, if this Agreement or any covenants herein are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and any covenants may be entitled. For avoidance of doubt, the provisions of this Section 17.15 shall be included in the Quitclaim Deed and the Special Restrictions and shall apply with respect to all covenants, representations, warranties, releases and indemnities included therein.”

5. This Quitclaim Deed is made and accepted upon (a) the covenants, conditions, restrictions and other matters set forth in the Special Restrictions, which for the term of the Special Restrictions are incorporated herein by reference with the same force and effect as though fully set forth herein, and (b) subject to reservations, covenants and restrictions as set forth in the Government Deeds. Each future transfer or conveyance of the Parcels or any portion thereof shall include those disclosures and environmental covenants contained in the Government Deeds.

6. The terms of this Quitclaim Deed are hereby agreed and declared by the GRANTEE and the GRANTOR to be covenants running with the land and enforceable as restrictions and equitable servitudes against the Parcels, and are hereby declared to be and shall be binding upon and burden the Parcels and the GRANTEE and each and every Successor Owner of GRANTEE owning all or any portion of the Parcels and all Persons claiming by, through or under GRANTEE or any Successor Owner of the Parcels or such portion thereof for the benefit of the GRANTOR and its Governmental Successors, and the GRANTOR and its Governmental Successors shall retain the right to enforce the restrictions and equitable servitudes against the Parcels and the same shall be enforceable solely by the GRANTOR and its Governmental Successors.

{signatures on next page}

IN WITNESS WHEREOF, the GRANTOR, THE CITY OF TUSTIN, has caused this Quitclaim Deed to be executed on the day first above written.

CITY OF TUSTIN:

Dated: _____

By: _____
Jeffrey C. Parker,
City Manager

ATTEST:

By: _____
Erica Rabe
City Clerk

APPROVED AS TO FORM

By: _____
David Kendig,
City Attorney

Armbruster Goldsmith & Delvac LLP
Special Real Estate Counsel to the City

By: _____
Amy E. Freilich

{signatures continued on next page}

ACKNOWLEDGEMENT OF GRANTEE'S COVENANTS

BY EXECUTING THIS QUITCLAIM DEED BELOW, ON AND AS OF THE DATE WRITTEN BELOW, GRANTEE HEREBY (A) ACKNOWLEDGES AND ACCEPTS on behalf of itself and all subsequent owners of the Parcels or any portion thereof: (A) this Quitclaim Deed and the covenants and agreements of the GRANTEE contained in this Quitclaim Deed and (B) ACKNOWLEDGES AND ACCEPTS the Special Restrictions and assumes and agrees to be bound by all of the obligations and liabilities, covenants, conditions, and restrictions in the Special Restrictions which are the responsibility of the "Developer" thereunder.

a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Dated: _____

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

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WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

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State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

EXHIBIT "A"
LEGAL DESCRIPTION OF PARCELS

{to be attached}

EXHIBIT "B"
DESCRIPTION OF THE REMEDIAL ACTION TAKEN BY THE GOVERNMENT

Exhibit B

Hazardous Substances Notification

Deed H

Disposal Parcel*	Legal Descrip. Parcel	AOC Site	Hazardous Substances ^b	CAS No.	Regulatory Synonym	RCRA Waste No.	Reportable Quantity ^c (Pounds)	Quantity	Date(s) of Storage and/or Operation	Stored (S), Released (R), or Disposed (D) of
Parcel 25	I-H-2	--	Pesticides, unknown type					Unknown	Before 1942 to approx. 1996	R
Parcel 26	I-H-2	--	Pesticides, unknown type	NA	NA	NA	NA	Unknown	Before 1942 to approx. 1996	R
Parcel 28	I-H-1	STD-03A	Freon	NA	NA	NA	NA	Unknown	1991-1996	S
Parcel 28	I-H-1	STD-03B	Freon	NA	NA	NA	NA	Unknown	prior to 1991	S
Parcel 29	I-H-1	AS-3A	Munitions	NA	NA	NA	NA	Unknown	1942-present	S
Parcel 29	I-H-1	AS-3B	Munitions	NA	NA	NA	NA	Unknown	1942-present	S
Parcel 29	I-H-1	AS-3C	Munitions	NA	NA	NA	NA	Unknown	1942-present	S
Parcel 29	I-H-1	MAW-08	Destroyed well.	NA	NA	NA	NA	Unknown	TBD	NA
Parcel 29	I-H-1	OCV-01	Agricultural chemicals	NA	NA	NA	NA	Unknown	1983-present	S
Parcel 29	I-H-1	ST-81	Inactive, Temporary storage of hazmats, No current hazmat storage	NA	NA	NA	NA	Unknown	1942-1999	S
Parcel 30	I-H-7	--	Pesticides, unknown type					Unknown	Before 1942 to approx. 1996	R
Parcel 31	I-H-8	--	Pesticides, unknown type	NA	NA	NA	NA	Unknown	Before 1942 to approx. 1996	R
Parcel 32	I-H-2	AMS-5	<u>Aerial photo feature. Addendum to PRVSI indicated no visible/reported releases, no hazardous waste storage.</u>	NA	NA	NA	NA	NA	1953	NA
Parcel 32	I-H-2	--	Pesticides, unknown type	NA	NA	NA	NA	Unknown	1942 to approx.	R

Notes:

*Parcel number corresponds to the MCAS Tustin Range Plan Deposal Site number

^bThis table was prepared in accordance with 40 CFR 373 and 40 CFR 302.4

^cNA - The reported substance is not listed on the 40 CFR 302.4 table and therefore has no corresponding reportable quantity

References: FOST dated 28 September 2001, and FOST dated 22 April 2002

Acronyms/Abbreviations:

AOC - area of concern

AMS - aerial photograph, miscellaneous, stain, possible spill

CAS - Chemical Abstracts Services

CFR - code of federal register

FOST - Finding of Suitability to Transfer

MAW - miscellaneous, abandoned well

MCAS - Marine Corps Air Station

NA - Not available

PRVSI - preliminary review/visual site inspection

RCRA - Resource Conservation and Recovery Act

ST - Storage, temporary

TBD - to be determined

Exhibit B

Hazardous Substances Notification

Deed H

Parcel	Legal Descrip.	Parcel	AOC Site	Hazardous Substances	CAS No.	Regulatory Synonym	RCRA Waste No.	Reportable Quantity (Pounds)	Quantity	Date(s) of Storage and/or Operation	Stored (S), Released (R), or Disposed (D) of
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-14, 1-H-17, 1-H-18		MWA-6	Waste of				NA			
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			Mercury	NA 7439976	NA	U151	1	Unknown	1950s to 1980	D
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			Methylene chloride				1	Unknown	1980 to 1994	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			Acetylphenylene	75982	Dichloromethane	U080	1	Unknown	1980 to 1994	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			Anthracene	209968	NA	NA	1	Unknown	1980 to 1994	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			Benzofuranone	120127 59583	NA Benzofuranone, 1,2-benzofuranone	U015	1	Unknown	1980 to 1994	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			Benzofuranone	59583	NA	U015	1	Unknown	1980 to 1994	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			Benzofuranone	59583	3,4-benzofuranone	U022	1	Unknown	1980 to 1994	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			Benzofuranone	205882	NA	NA	1	Unknown	1980 to 1994	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			Benzofuranone	181242	NA	NA	1	Unknown	1980 to 1994	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			Dibenzofuranone	53760	Dibenzofuranone, 2,6-dibenzofuranone	U063	1	Unknown	1980 to 1994	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			Indeno(1,2,3-cd)pyrene	163385	1,10-(1,2-phenylene)pyrene	U137	1	Unknown	1980 to 1994	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			JP-6	NA	NA	NA	NA	Unknown	1980 to 1994	S
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			Hydraulic fluids	NA	NA	NA	NA	Unknown	1980 to 1994	S
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			Fuel	NA	NA	NA	NA	Unknown	1980 to 1994	S
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-29			Polyurethane	NA	NA	NA	NA	Unknown	1980 to 1994	S

2066

Exhibit B
Hazardous Substances Notification

Deed H

Deed/Parcel	Legal Descr/Parcel	AOC Site	Hazardous Substances	CA# No.	Regulatory Synonym	RCRA Waste No.	Reportable Quantity (Pounds)	Quantity	Date(s) of Storage and/or Operation	Stored (S), Released (R), or Disposed (D) of
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	6T-29	Speedy-Dry solvent	NA	NA	NA	NA	Unknown	1989 to 1994	S
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	ST-30	Total Petroleum Hydrocarbons	NA	NA	NA	NA	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	ST-30	Mercury	748976	NA	U151	1	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	ST-30	4,4'-DDD	72548	DOE, DOE, 1,1'-[2,2-dichloroethylidene]bis(4-chlorobenzene)	U060	1	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	ST-30	4,4'-DDE	72559	DOE	NA	1	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	ST-30	4,4'-DDT	50293	DDT, 1,1'-[2,2-bis(4-chlorophenyl)ethane]bis(4-chlorobenzene)	U061	1,000	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	ST-30	Xylenes	1559207	Dimethylbenzene	U239	1	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	ST-30	Benzole/pyrene	50328	3,4-benzopyrene	U022	1	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	ST-30	Benzofluoranthene	206992	NA	NA	1	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	ST-30	Bis(2-ethylhexyl)phthalate	117817	Diethylhexyl phthalate, Bis(2-ethylhexyl) ester, 1,2-benzenedicarboxylic acid,	U028	1	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	ST-30	Transmission oil	NA	NA	NA	NA	Unknown	1989 to 1995	S
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	ST-30	Grease	NA	NA	NA	NA	Unknown	1989 to 1995	S
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	ST-30	Isocetyl alcohol	NA	NA	NA	NA	Unknown	1989 to 1995	S
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	ST-30	Lubricant oil	NA	NA	NA	NA	Unknown	1989 to 1995	S
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, 1-H-16, 1-H-17, 1-H-18	ST-30	Propellant propane	NA	NA	NA	NA	Unknown	1989 to 1995	S

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Exhibit B

Hazardous Substances Notification

Deed H

Parcel	Legal Descript. Parcel	AOC Site	Hazardous Substances Composition/ventilative of	CAS No.	Regulatory Synonym	RCRA Waste No.	Reportable Quantity (pounds)	Correctly Operation	Date(s) of Storage and/or Operation	Stored (S), Released (R), or Disposed (D) of
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-30 1-H-14, 1-H-17, 1-H-18	ST-30	aircraft cleaning compound	NA	NA	NA	NA	Unknown	1990 to 1995	S
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-32A, B, C 1-H-14, 1-H-17, 1-H-18	ST-32A, B, C	engine gas	NA	NA	NA	NA	Unknown	???? To 1995	S
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-32A, B, C 1-H-14, 1-H-17, 1-H-18	ST-32A, B, C	path cleaner	NA	NA	NA	NA	Unknown	???? To 1995	S
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-32A, B, C 1-H-14, 1-H-17, 1-H-18	ST-32A, B, C	BOVISE (indicated as unstable/boiling, release identified, with toxicity code)	NA	NA	NA	NA	Unknown	???? To 1995	S
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-33 1-H-14, 1-H-17, 1-H-18	ST-33	Total Petroleum Hydrocarbons	NA	NA	NA	NA	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-35 1-H-14, 1-H-17, 1-H-18	ST-35	Mercury	7439978	NA	U151	1	Unknown	1990 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-33 1-H-14, 1-H-17, 1-H-18	ST-33	4,4'-DDE	72659	DDT	NA	1	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-33 1-H-14, 1-H-17, 1-H-18	ST-33	4,4'-DDT	60283	1,1'-(2,2,2-trichloroethylidene)bis(4-chlorobenzene)	U001	1	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-33 1-H-14, 1-H-17, 1-H-18	ST-33	Acenaphthylene	206968	NA	NA	1	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-33 1-H-14, 1-H-17, 1-H-18	ST-33	Anthracene	120127	NA	NA	1	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-33 1-H-14, 1-H-17, 1-H-18	ST-33	Benzo(b)anthracene	56353	Benzo(a)anthracene, 1,2-benzanthracene	U018	1	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-33 1-H-14, 1-H-17, 1-H-18	ST-33	Benzo(b)pyrene	50328	3,4-benzopyrene	U022	1	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-33 1-H-14, 1-H-17, 1-H-18	ST-33	Benzo(b)fluoranthene	205892	NA	NA	1	Unknown	1989 to 1995	R
Parcel 40	1-H-1, 1-H-2, 1-H-3, 1-H-12, ST-33 1-H-14, 1-H-17, 1-H-18	ST-33	Benzo(g,h,i)perylene	181242	NA	NA	1	Unknown	1989 to 1995	R

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Exhibit B

Hazardous Substances Notification

Deed H

Parcel	Legal Descrip.	Parcel	AOC Site	Hazardous Substances	CAS No.	Regulatory Synonym	RCRA Waste No.	Reportable Quantity (Pounds)	Date(s) of Storage and/or Operation	Stored (S), Released (R), or Disposed (D) of
<p>Acronyms/Abbreviations:</p> <p>AD - air photo, possible disposal</p> <p>AOC - area of concern</p> <p>AIB - aerial photograph, miscellaneous, debris, possible spill</p> <p>AST - aboveground storage tank</p> <p>CAS - Chemical Abstracts Service</p> <p>CFR - code of federal register</p> <p>DSD - disposal, storm drain</p> <p>DDO - Dichlorodiphenylchloroethane</p> <p>DDE - Dichlorodiphenyldichloroethane</p> <p>DOT - Dichlorodiphenylchloroethane</p> <p>EBS - Environmental Baseline Survey</p> <p>JP-8 - Jet fuel</p> <p>MAE - miscellaneous, air emission</p> <p>MAW - miscellaneous, abandoned well</p> <p>MCA5 - Marine Corps Air Station</p>										
						<p>MEK - Methyl ethyl ketone</p> <p>MFL - miscellaneous, fuel line</p> <p>MGR - miscellaneous, grease rack</p> <p>MMS - miscellaneous, major spill</p> <p>MTBE - methyl tertiary butyl ether</p> <p>MVA - miscellaneous, wash area</p> <p>NA - Not available</p> <p>PCB - Polychlorinated biphenyls</p> <p>PROBI - preliminary review/initial site inspection</p> <p>RCRA - Resource Conservation and Recovery Act</p> <p>SAT - storage, aboveground tank</p> <p>ST - storage, temporary</p> <p>TOW - treatment, oil/water separator</p> <p>UST - underground storage tank</p>				

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EXHIBIT "C"
(DDA Definitions Applicable to Section 4.1, 4.2 and 6 of the Quitclaim Deed)

"Accrue" or **"Accruing"** shall mean the transpiring of an act or occurrence or a failure to act or occur pursuant to which a legally enforceable claim could be asserted by any Person.

"Active Negligence" shall mean an affirmative act performed negligently and not a failure to act.

"Agreement" shall mean the DDA as defined in this Quitclaim Deed.

"City" shall mean the GRANTOR as defined in this Quitclaim Deed and each assignee or successor to the GRANTOR's rights and powers under this Quitclaim Deed.

"City Released Parties" shall mean GRANTOR and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, consultants, contractors, successors and assigns, individually.

"Claim" or **"Claims"** 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 attorneys' fees, fees of expert witnesses, and consultants' and court and litigation costs), costs and expenses attributable to compliance with judicial and regulatory orders and requirements, fines, penalties, liens, taxes, or any type of compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen.

"Close of Escrow" shall mean the close of escrow for the Property and transfer of fee title to the Property by the GRANTOR to GRANTEE pursuant to this Quitclaim Deed, which occurred concurrently with the Recording of this Quitclaim Deed.

"Developer" shall mean the GRANTEE pursuant to this Quitclaim Deed and all subsequent owners of the Parcels or any portion thereof.

"Developer Releasing Party" shall mean the GRANTEE pursuant to this Quitclaim Deed and each Successor Owner and each and every Person claiming by, through or under GRANTEE or any Successor Owner and including, without limitation, each End User.

"Development Parcels" shall mean the "Land" as defined in this Quitclaim Deed.

"DA" shall mean the Development Agreement by and between GRANTOR and GRANTEE with respect to the Parcels, which agreement was executed prior to or substantially concurrently with the execution of the Quitclaim Deed and Recorded.

"Due Diligence Information" shall mean any and all information or documentation relating to the Property furnished to GRANTEE by GRANTOR, or its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors or consultants, in connection with GRANTEE's due diligence pursuant to the DDA.

“Effective Date” shall mean the date of this Quitclaim Deed.

“End User” shall mean any (a) Homebuyer who purchases a Home; (b) Homeowners’ Association with respect to any Common Area within the Property conveyed to the Homeowners’ Association, (c) utility or Governmental Authority with respect to any transfer of portions of the Property or grants of easements affecting the Development Parcels desirable for the development of the Development Parcels and/or (d) any lighting or landscaping district.

“Environmental Agency” shall mean the United States Environmental Protection Agency; the California Environmental Protection Agency and all of its sub-entities, including any Regional Water Quality Control Board, the State Water Resources Control Board, the DTSC, the South Coast Air Quality Management District, and the California Air Resources Board; the City of Tustin; any Fire Department or Health Department with jurisdiction over the Property; and/or any other federal, State, regional or local governmental agency or entity that has or asserts jurisdiction over Hazardous Substance Releases or the presence, use, storage, transfer, manufacture, licensing, reporting, permitting, analysis, disposal or treatment of Hazardous Materials in, on, under, about, or affecting the Project.

“Environmental Laws” shall mean any federal, state, regional or local laws, ordinances, rules, regulations, requirements, orders, directives, guidelines, or permit conditions, in existence as of the Effective Date or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Materials, and all applicable judicial, administrative and regulatory decrees, judgments and orders and common law, including those relating to industrial hygiene, public safety, human health, or protection of the environment, or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Materials. Environmental Laws shall include the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.) (“**CERCLA**”); the Resource Conservation and Recovery Act, as amended, (42 U.S.C. Section 6901 et seq.) (“**RCRA**”); the federal Water Pollution Control Act, as amended, (33 U.S.C. Section 1251 et seq.); the Toxic Substances Control Act, as amended, (15 U.S.C. Section 2601 et seq.); the Hazardous Substances Account Act (Chapter 6.8 of the California Health and Safety Code Section 25300 et seq.); Chapter 6.5 commencing with Section 25100 (Hazardous Waste Control) and Chapter 6.7 commencing with Section 25280 (Underground Storage of Hazardous Substances) of the California Health and Safety Code; and the California Water Code, Sections 13000 et seq.

“Environmental Matters” shall mean (a) the environmental condition of the Property; (b) the compliance of the Property with Environmental Laws; (c) the existence, Release, threatened Release, presence, storage, treatment, transportation or disposal of any Hazardous Materials at any time on, in, under, or from, the Property or any current or future improvement thereon or any portion thereof, and/or (d) Claims of or acts or omission to act of any Governmental Authority or any other third party arising from or related to any actual, threatened, or suspected Release of a Hazardous Material on, in, under, or from, about, or adjacent to the Property or any current or future improvement thereon, including any Investigation or Remediation at or about the Property or any current or future improvement thereon.

“Governmental Authority” and “Governmental Authorities” shall mean, respectively, each and all federal, State, county, municipal and local governmental and quasi-governmental bodies and authorities (including the United States of America, the State 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 over any property owned by the GRANTOR upon which work is conducted by or on behalf of GRANTEE in connection with construction of the Project or such portions of the foregoing as the context indicates.

“Governmental Successors” shall mean each and every Person that is a successor and assign of the GRANTOR that is a governmental entity or association.

“Hazardous Materials” shall mean and include the following:

(a) **“Hazardous Substance”, “Hazardous Material”, “Hazardous Waste”, or “Toxic Substance”** under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. subsection 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. subsection 5101, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. subsection 6901, et seq.;

(b) An **“Extremely Hazardous Waste”, a “Hazardous Waste”, or a “Restricted Hazardous Waste”**, under subsections 25115, 25117, or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to subsection 25140 or 44321 of the California Health and Safety Code;

(c) **“Hazardous Material”, “Hazardous Substance”, “Hazardous Waste”, “Toxic Air Contaminant”, or “Medical Waste”** under subsections 25281, 25316, 25501, 25501.1, 117690 or 39655 of the California Health and Safety Code;

(d) **“Oil”** or a **“Hazardous Substance”** listed or identified pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1321, as well as any other hydro carbonic substance or by-product;

(e) Listed or defined as a **“Hazardous Waste”, “Extremely Hazardous Waste”, or an “Acutely Hazardous Waste”** pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

(f) Listed by the State as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8 of the California Health and Safety Code;

(g) A material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

(h) Any material whose presence would require remediation pursuant to the guidelines set forth in the State Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;

(i) Pesticides regulated under the Feral Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. subsection 136 et seq.;

(j) Asbestos, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. subsection 2601 et seq.;

(k) Any radioactive material including any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. subsection 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. subsection 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code Section 114960 et seq.;

(l) Regulated under the Occupational Safety and Health Act, 29 U.S.C. subsection 651 et seq., or the California Occupational Safety and Health Act, California Labor Code subsection 6300 et seq.; and/or

(m) Regulated under the Clean Air Act, 42 U.S.C. subsection 7401 et seq. or pursuant to Division 26 of the California Health and Safety Code.

"Home" or **"Homes"** shall mean the approximately 218 residences and related improvements that are to be developed on the Parcels, as row townhomes, motor court flats and single-family residences.

"Homebuyer" shall mean a person or persons who will own in fee and occupy for residential purposes, an individual detached or attached Home for use as a single-family residence.

"Homeowners' Association" shall mean a homeowners' association established pursuant to the laws and regulations of the State for the management of a common area development.

"Intangible Property" shall mean all rights, claims (other than claims under insurance policies maintained by or for the benefit of the GRANTOR) and all permits, licenses, approvals and authorizations issued by any Governmental Authorities in connection with the Parcels and transferred to GRANTEE pursuant to Bill of Sale executed and delivered by GRANTOR concurrently with the execution and delivery of this Quitclaim Deed.

"Investigation(s)" shall mean any observation, inquiry, examination, sampling, monitoring, analysis, exploration, research, inspection, canvassing, questioning, and/or surveying of or concerning the Property, including the air, soil, surface water, and groundwater, and the surrounding population or properties, or any of them, to characterize or evaluate the nature, extent or impact of Hazardous Materials.

“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.

“Project” shall mean the construction and installation on the Development Parcels of a residential condominium project containing approximately 218 Homes for sale to Homebuyers in three product types, accompanying amenities and above and below ground infrastructure improvements, including, without limitation, utilities, utility extensions, utility systems, landscaping, storm drains and detention facilities.

“Project Fair Share Contribution” shall mean the fair share of the Tustin Legacy Backbone Infrastructure Program required to be paid by the GRANTEE pursuant to the DDA.

“Property” shall mean the “Parcels” as defined in this Quitclaim Deed, together with all existing improvements, if any, located thereon as of the Effective Date of this Quitclaim Deed and the Intangible Property.

“Quitclaim Deed” shall mean this Quitclaim Deed.

“Record”, “Recordation”, “Recording” and “Recorded” shall mean to record the specified instrument, or the current or past recording of the specified instrument, in the official records of Orange County California.

“Release” (with respect to Hazardous Materials) shall mean any releasing, or threat of releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing, or dumping into the environment.

“Remediate” or “Remediation” shall mean any response or remedial action as defined under Section 101(25) of CERCLA, and similar actions with respect to Hazardous Materials as defined under comparable state and local laws, and any other cleanup, removal, containment, abatement, recycling, transfer, monitoring, storage, treatment, disposal, closure, restoration or other mitigation or remediation of Hazardous Materials or Releases required by any Environmental Agency or within the purview of any Environmental Laws.

“State” shall mean the State of California.

“Successor Owner” shall mean (a) with respect to the Parcels, each and every Person owning or acquiring fee title to all or any portion of the Parcels, but excluding each and every End User, and (b) with respect to the GRANTOR, its Governmental Successors.

“Tustin Legacy Backbone Infrastructure Program” shall mean the Tustin Legacy Backbone Infrastructure Program in effect as of the Effective Date.

ATTACHMENT 12
MEMORANDUM OF DDA

<p>CITY OF TUSTIN OFFICIAL BUSINESS REQUEST DOCUMENT TO BE RECORDED AND TO BE EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §6103 AND §27383.</p> <p>Recording requested by and when recorded mail to: City Manager The City of Tustin 300 Centennial Way Tustin, CA 92780</p>	
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SPACE ABOVE THIS LINE FOR
RECORDER'S USE

**MEMORANDUM OF
TUSTIN LEGACY
DISPOSITION AND DEVELOPMENT AGREEMENT
FOR DISPOSITION PARCEL 6B**

*[PRIOR TO EXECUTION, CONFORM ALL QUOTED SECTIONS OF DDA
TO THEN CURRENT VERSION OF DDA]*

This MEMORANDUM OF TUSTIN LEGACY DISPOSITION AND DEVELOPMENT AGREEMENT FOR DISPOSITION PARCEL 6B ("**Memorandum of DDA**") is made as of _____, 201__ ("**Memorandum Effective Date**") by and among the CITY OF TUSTIN, a municipal corporation of the State of California ("**City**") and _____ a _____ ("**Developer**") to confirm that the City and CalAtlantic Group, Inc., a Delaware corporation *[if no Assignment or Merger:]* ("**Developer**") / *[if Assignment or Merger:]*, predecessor in interest to Developer ("**Original Developer**") have entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 6B, dated as of _____, 201_ *[if amended:]* (the "**Original DDA**") as amended by that certain Amendment No. __ to Tustin Legacy Disposition and Development Agreement for Disposition Parcel 6B dated as of _____, 201_ (as amended, the "**DDA**") *[if not amended:]* ("**DDA**"). The City and Developer are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**." Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the DDA.

1. Real Property Affected by the DDA.

1.1 The Development Parcels. The property affected by the DDA is the “**Property**,” consisting of (a) the real property legally described and depicted on Exhibit “A” attached hereto and incorporated herein by reference but excepting therefrom the matters set forth in Section 2 of the Quitclaim Deed (as defined below) (taking into account such exceptions, the “**Development Parcels**”), (b) all existing improvements, if any, presently located on the Development Parcels, (c) all appurtenances pertaining to the Development Parcels, (d) all permits, licenses, approvals and authorizations issued by any Governmental Authority relating to the Development Parcels and (e) all of City’s right, title and interest in, to and arising out of the Intangible Property as more fully described in the DDA.

1.2 Quitclaim Deed. Immediately following the recordation of this Memorandum of DDA, the Property shall be conveyed by the City to Developer pursuant to, among other conveyance instruments, that certain Quitclaim Deed For Disposition Parcel 6B and Covenants, Conditions and Restrictions, Including Environmental Restriction Pursuant to Civil Code Section 1472 made by the City in favor of Developer, dated as of _____, 201_ and recorded immediately following the recordation of this Memorandum (“**Quitclaim Deed**”).

1.3 Special Restrictions. This Memorandum of DDA has been executed as of the Memorandum Effective Date and shall be recorded in the Office of the County Recorder, Orange County, California (the “**Official Records**”) immediately prior to the Recording in the Official Records of (i) that certain Declaration of Special Restrictions for Disposition Parcel 6B executed by the City and acknowledged by Developer affecting the Development Parcels (the “**Special Restrictions**”), and (ii) the Quitclaim Deed. The DDA, this Memorandum of DDA, the Special Restrictions and all covenants, conditions, restrictions and obligations set forth in the Special Restrictions and the Quitclaim Deed shall be binding upon the Development Parcels and, unless and until terminated in accordance with their respective terms, shall govern the use and development of the Property, the Development Parcels and the Improvements by Developer.

2. Effect of the DDA. The DDA imposes certain obligations, agreements, covenants, conditions and restrictions with respect to the Development Parcels and with respect to Developer’s acquisition, development, use, operation and ultimate disposition thereof, that run with the Development Parcels, unless and until terminated in accordance with their respective terms, as further set forth in the DDA. Among these obligations are the following:

(a) Certain restrictions on Transfer, conveyance and/or assignment of the DDA and/or the Property and Improvements thereon or any portion thereof or interest therein, whether voluntary or involuntary, and certain restrictions on the Transfer of Control of Developer or Developer’s Controlling Person, each contained in Section 2 of the **{Original}** DDA, that terminate as to all of the Development Parcels upon execution and Recording by the City of a Certificate of Compliance;

(b) Certain restrictions on Mortgages contained in Section 2.2.4 of the **{Original}** DDA, including without limitation, a prohibition on encumbrance of the Development Parcels with any Mortgage, which limitations terminate as to all of the Development Parcels upon execution and Recording by the City of a Certificate of Compliance;

(c) The releases contained in Section 4.5.2 of the *{Original}* DDA that remain in effect in perpetuity and run with the land for the benefit of the City and its Governmental Successors and burden the Development Parcels and Developer and the Successor Owners owning all or any portion of the Development Parcels and all Persons claiming by, through or under Developer or any Successor Owner of the Development Parcels or such portion thereof, including each End User;

(d) Subject to Section 9.7 of the *{Original}* DDA, the indemnities set forth in Sections 5.5, 8.12(e), 8.15, 8.16, 10.1, 10.2 and 17.12.1 which run with the land and bind Developer, its successor and assigns and each and every Successor Owner, which shall survive the Close of Escrow and the execution and Recording by the City of the Certificate of Compliance and shall not merge into the Quitclaim Deed; provided however that upon sale or transfer of the fee interest in the Development Parcels or any portion thereof to an End User, such indemnities shall terminate as to such End User and shall cease to run with the land acquired by such End User or any of their respective successors and assigns;

(e) The Right of Purchase in favor of the City, contained in Section 16.3 of the *{Original}* DDA (copied verbatim below), that terminates as to all Development Parcels upon execution and Recording by the City of a Certificate of Compliance; and

(f) The Right of Reversion in favor of the City contained in Section 16.4 of the *{Original}* DDA (copied verbatim below), that terminates as to all of the Development Parcels upon execution and Recording by the City of a Certificate of Compliance.

3. Effect of DDA on Homebuyers and Other End Users. Notwithstanding anything to the contrary set forth in this Memorandum of DDA, recognizing that the Development Parcels will be subdivided and developed with the intent to sell individual Homes to Homebuyers, the general prohibition against Transfer outlined herein shall not be applicable to (a) the sale of individual Homes to Homebuyers, or (b) the transfer of Common Area or Common Area Improvements to a Homeowners' Association; provided, however, that sale or transfer of any Home shall not be permitted unless and until such Home is authorized for sale pursuant to State law, including regulations promulgated by the California Bureau of Real Estate and the transfer of any Property to a Homeowner's Association shall not be permitted unless and until the Improvements proposed to be constructed thereon pursuant to the Scope of Development, the Approved Plans and the CC&Rs have been Completed. Except for the provisions of the DDA, the Quitclaim Deed, the Special Restrictions, or the Certificate of Compliance expressly stating to the contrary, and the provisions of this Memorandum of DDA, the obligations, covenants, conditions and restrictions set forth therein and in this Memorandum of DDA shall not survive a Transfer to an End User and upon such Transfer to an End User, shall cease to run with the land Transferred to the End User, and each End User shall take title to the property conveyed to it free and clear of the lien or charge of the DDA or this Memorandum of DDA, except to the extent provided in the Quitclaim Deed. For ease of reference only, the following definition of "End User" is copied verbatim from the *{Original}* DDA:

*"End User" shall mean any (a) Homebuyer who purchases a Home;
(b) Homeowners' Association with respect to any Common Area within the*

Property conveyed to the Homeowners' Association, (c) utility or Governmental Authority with respect to any transfer of portions of the Property or grants of easements affecting the Development Parcels desirable for the development of the Development Parcels and/or (d) any lighting or landscaping district.

4. Right of Purchase and Right of Reversion. For ease of reference only, the following italicized Sections 16.3 and 16.4 are copied verbatim from the *{Original}* DDA:

16.3. **Right of Purchase.**

16.3.1. *Following the Close of Escrow and prior to the issuance of a Certificate of Compliance with respect to the Property and the Project, in the event of a Repurchase Default (as defined below), the City shall have the right (the "Right of Purchase"), from time to time, at any time, to purchase all or a portion of the Development Parcels and all applicable Entitlements and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any governmental or quasi-governmental authority, Transferable Products and all other appurtenant rights applicable thereto (the "Repurchased Property"). The Repurchased Property shall exclude (a) those Buildings and the Phases upon which such Buildings are located for which Developer has been issued a building permit prior to the date of the City's delivery of notice of a Repurchase Default which permit has not expired as of the date of the City's exercise of the Right of Purchase; and (b) as to the Buildings and Phases excluded pursuant to clause (a) above, (i) the Common Area and any Improvements located within such Building and/or Phase, as applicable, and (ii) all Entitlements and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any governmental or quasi-governmental authority, and all other appurtenant rights applicable thereto, including those units allocated to development of the Repurchased Property as shown in the Approved Plans or established pursuant to any Recorded Condominium Map approved by the City pursuant to Section 8.12(g).*

16.3.2. **Repurchase Default.** *Subject to extension for Force Majeure Delay with respect to clauses (a) through (e) below only, the City shall have the right to acquire the Repurchased Property for the Repurchase Price in accordance with this Section 16.3 and upon the occurrence of any one of the following (each, a "Repurchase Default"):*

(a) *Developer fails to comply with the Inventory Commitment and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2;*

(b) *Developer fails to comply with the Schedule of Performance and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2;*

(c) *Developer constructs Improvements that are not in substantial conformity with the Approved Plans and the requirements of Sections 8.1.4 and 8.9 and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2;*

(d) For a period of one hundred eighty (180) consecutive calendar days, Developer is in Material Default of the maintenance obligations set forth in Section 12.2 (including as set forth in the Special Restrictions, the CC&Rs or Landscape Maintenance Agreement), in accordance with the notice and cure provisions of Section 14.2;

(e) Developer commits waste on the Property and such failure becomes a Material Default in accordance with the notice and cure provisions of Section 14.2;

(f) The occurrence of a Developer Insolvency Event;

(g) Developer fails to pay prior to delinquency any property taxes or assessments, including District assessments or to pay to City any other sums due hereunder and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2;

(h) A Material Default arises because of a voluntary or involuntary Transfer or Transfer of Control.

16.3.3. Exercise of Right of Purchase. The City may exercise its Right of Purchase by delivering written notice to Developer stating that the City is exercising its Right of Purchase and specifying the Repurchased Property which it intends to purchase; provided that such notice is delivered at least ninety (90) calendar days prior to the date on which the City requires Developer to convey the Property to the City pursuant to the Right of Purchase and otherwise in accordance with this Section 16.3. The Right of Purchase shall be a lien and encumbrance on the Property and Improvements thereon that shall be paramount to the lien and charge of any Mortgage, Construction Lien and/or other lien upon the Property. The Repurchased Property shall be delivered to the City at close of escrow for the Repurchased Property free and clear of all liens and Mortgages and subject only to (x) the Permitted Exceptions at the time of the applicable original Close of Escrow for such portion of the Property, and (y) all other matters created in connection with the Entitlements and the development of the Project pursuant to this Agreement.

16.3.4. Access and Inspection. The provisions of Section 16.5 shall apply with respect to the Repurchased Property.

16.3.5. Process. If the City is entitled to and elects to repurchase the Repurchased Property, the Parties shall: (a) within five (5) Business Days after the date of the City's notice of election to exercise the Right of Purchase, open an escrow with an escrow agent designated by the City for the purchase and sale, and shall execute an escrow agreement that shall provide that Developer shall pay all costs of the escrow and shall include such usual and ordinary terms as are reasonably required by the escrow agent and by the transaction; (b) no later than five (5) Business Days after the opening of escrow, Developer shall place into the escrow appropriate quitclaim deeds and bill of sale conveying fee title to the Repurchased Property; and (c) no later than eighty-five (85) calendar days after the opening of the escrow, the City shall deposit into the escrow an amount equal to (i) the Repurchase Price minus (ii) the Lien Release Amounts, if any, minus (iii) any amounts then owed to the City by Developer and/or any Successor Owner, including any City Liens arising pursuant to this Agreement with respect to the Repurchased Property and minus (iv)

the actual costs incurred by the City to acquire environmental and pollution legal liability insurance coverage for the Reacquired Property, including coverage for loss, remediation expense and legal defense expenses. The escrow shall close, and title to the Repurchased Property shall be conveyed to the City, no later than five (5) Business Days after the City has deposited into escrow the Repurchase Price, but in no event prior to the City's delivery of the City Repair Acknowledgement with respect to any repairs to the Improvements made pursuant to Section 16.5. Concurrently with the close of escrow, Developer shall comply with its obligations under Section 14.3 only with respect to the Repurchased Property. Nothing herein shall restrict the right of the City to terminate its exercise of the Right of Purchase at any time prior to the close of escrow and such termination shall not be a default by the City. At the close of escrow, real property taxes and assessments with respect to the Repurchased Property shall be prorated between Developer and City as of the date of the close of escrow. All proration shall be based upon a 365-day year and actual days elapsed. All closing costs, including the cost of an ALTA policy of title insurance in favor of the City with respect to the Repurchased Property shall be borne by Developer and deducted from the Repurchase Price.

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

16.3.7. Termination of Right of Purchase. In the event that prior to delivery by the City of written notice to Developer of its exercise of the Right of Purchase pursuant to Section 16.3.2, Developer or any Person on behalf of Developer either (a) cures the Repurchase Default which is the basis for the City's exercise of its Right of Purchase, but excluding any Transfer or Transfer of Control in violation of this Agreement, or (b) Completes the Improvements upon the Property that is subject to the Right of Purchase, such Right of Purchase shall cease and terminate with respect to such portions of the Repurchased Property for which the Material Default is cured or for which Improvements are so Completed only. In the event the City has declared a Repurchase Default, Developer shall not have the right to apply for building permits for Vertical Improvements in a manner that affects or thwarts the ability of the City to exercise its Right of Purchase. The Right of Purchase shall not apply to the Property after the recordation by the City of the Certificate of Compliance.

16.3.8. Effect of Repurchase. The provisions of Section 16.6 shall apply with respect to the Repurchased Property following close of escrow. Following close of escrow, under no circumstances shall Developer or any lienholder have any right or claim to, or against, the Repurchased Property. Notwithstanding the purchase of the Repurchased Property by the City as provided in this Section 16.3, this Agreement shall remain in full force and effect with respect to the portions of the Property and Improvements not purchased by the City. The Right of Purchase shall not defeat or render invalid or limit any rights or interests provided in easements, covenants, conditions or restrictions in favor of third parties who are not Developer Affiliates that are approved by the City (or constituting a Permitted Transfer) and recorded on the Repurchased Property purchased hereunder.

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

16.4 The Right of Reversion.

Following the Close of Escrow and prior to the recordation of the Certificate of Compliance, in the event of the occurrence of any Reversion Action Trigger (defined in Section 16.4.1), and in addition to its other rights or remedies as a result of the occurrence of any such Reversion Action Trigger, the City shall have the right on the terms and subject to the conditions set forth in this Section 16.4 to re-enter and take possession of the Reacquired Property (as defined below) and to re-vest title thereto in the City (the "**Right of Reversion**") notwithstanding that the Reacquired Property may be encumbered by liens, including Construction Liens. The re-vesting of any Reacquired Property by the City is referred to herein as a "**Reversion Event**", whether based on voluntary action of Developer or otherwise after notice by the City of its intent to exercise the Right of Reversion. The City shall be entitled to exercise the Right of Reversion at any time on or after the occurrence of any of any one or more of the Reversion Action Triggers; provided that the City has complied with the conditions to exercise of the Right of Reversion set forth in Section 16.4.2. The Right of Reversion shall be a lien and encumbrance on the Property that shall be paramount to the lien and charge of any Mortgage, Construction Lien and/or other lien upon the Property.

16.4.1. Certain Defaults Triggering the Right of Reversion. Following the Close of Escrow and prior to the recordation of the Certificate of Compliance, the City may exercise the Right of Reversion with respect any portion of the Development Parcels and any Improvements thereon and all applicable Entitlements and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any governmental or quasi-governmental authority, the Transferable Products and all other appurtenant rights applicable thereto (collectively, the "Reacquired Property") upon the occurrence of any one of the following (each, a "Reversion Action Trigger," and the date on which the Reversion Action Trigger occurs shall be referred to herein, as the "Reversion Action Trigger Date"). The Reacquired Property shall exclude those Buildings and the Phases upon which such Buildings are located for which Developer has been issued a building permit prior to the Reversion Action Trigger Date which permit has not expired as of the date of the City's exercise of the Right of Reversion; and (b) as to the Buildings and Phases excluded pursuant to clause (a) above, (i) the Common Area and any Improvements located within such Building and/or Phase, as applicable, and (ii) all Entitlements and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any governmental or quasi-governmental authority, and all other appurtenant rights applicable thereto, including those units allocated to development of the Reacquired Property as shown in the Approved Plans or established pursuant to any Recorded Condominium Map approved by the City pursuant to Section 8.12(g).

(a) Developer fails to commence the Grading Work within three (3) months after Close of Escrow or to Complete the Horizontal Improvements within thirty-six (36) months after Close of Escrow, subject to extension for Force Majeure Delay for a period not to exceed a total of twelve (12) months;

(b) Developer fails to Complete the Project within thirty-six (36) months following opening of the Models to the public, as such date may be extended for Force Majeure Delay (not to exceed a total of twelve (12) months);

(c) Developer commits waste on the Property and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2, subject to extension for Force Majeure Delay;

(d) For a period of one hundred eighty (180) consecutive calendar days, Developer is in Material Default with respect to the Inventory Commitment set forth in Section 8.9.3;

(e) For a period of one hundred eighty (180) consecutive calendar days, Developer is in Material Default of the maintenance obligations set forth in Section 12.2 (including as set forth in the Special Restrictions, CC&Rs or Landscape Maintenance Agreement), in accordance with the notice and cure provisions of Section 14.2;

(f) The occurrence of a Developer Insolvency Event;

(g) With respect to any Guarantor which has provided a Guaranty to the City, the occurrence of a Guarantor Illiquidity Event, unless Developer shall, within the time period required thereby, provide substitute security meeting the requirements of Section 4.7.1; or

(h) A Material Default arises because of a voluntary or involuntary Transfer or Transfer of Control.

16.4.2. Conditions to Exercise of the Right of Reversion. The City shall be entitled to exercise the Right of Reversion at any time on or after the applicable Reversion Action Trigger Date, without regard to any notice and cure periods except as expressly provided in Section 16.4.1; provided that the City has provided written notice to Developer that the City elects to exercise its Right of Reversion and such notice states the date for the Reversion Event. The provisions of Section 16.5 shall be applicable to exercise of the Right of Reversion. The date for the Reversion Event shall not occur before the later of (a) the date that is ninety (90) calendar days after the date of such notice of exercise; (b) the date that is five (5) Business Days after Developer has had the opportunity to address the City Council at a public meeting regarding the Reversion Action Trigger; and (c) the date that is five (5) Business Days following the delivery of the City Repair Acknowledgment with respect to any repairs to the Improvements made pursuant to Section 16.5.2 below. In the event that, following the first notice by City of its election to exercise the Right of Reversion and prior to the Reversion Event, Developer or any Person on behalf of Developer either (a) cures the Reversion Action Trigger which is the basis for the City's exercise of its Right of Reversion or (b) Completes the Improvements prior to the date of the Reversion Event, such Right of Reversion shall cease and terminate with respect to such Reversion Action Trigger only; provided that the provisions of this sentence shall not be applicable to any subsequent notice by the City of its election to exercise the Right of Reversion.

16.4.3. Sale of Reacquired Property. Upon the revesting in the City of title to the Reacquired Property, the City shall use reasonable efforts to resell the Reacquired Property as

soon and in such manner as the City shall find feasible, in accordance with applicable state law, if any, and consistent with the objectives of this Agreement, to a qualified and responsible party or parties (as determined by the City in its sole discretion) who will assume the obligation of making or completing the Improvements. Concurrently with the resale of the entire Reacquired Property, or concurrently with each resale of any portion of the Reacquired Property, the proceeds thereof shall be applied in the following order and amounts:

(a) **Delinquencies.** First, to repayment in full of all delinquent tax, assessment and other liens with respect to the portion of the Reacquired Property sold;

(b) **Reimbursement to the City.** Second, to reimburse the City on its own behalf for all costs and expenses incurred by the City, in connection with the recapture, management and resale of the Reacquired Property, or any part thereof, including: a pro-rata share of the salaries of personnel engaged in such action (based on the amount of time spent by such personnel on such matters relating to the Reacquired Property as compared to the aggregate amount of time worked by such personnel; all taxes, assessments and utility charges with respect to the Reacquired Property; any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, Defaults or acts of Developer or any Successor Owner or each and every Person claiming by, through or under Developer or any Successor Owner; any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Reacquired Property; all costs of sale and marketing, including reasonable brokers' fees and costs incurred in the marketing and sale of the Reacquired Property; all legal fees and expenses; all escrow and title fees and costs; all survey and due diligence fees and costs; all the Lien Release Amounts, if any, paid by the City to third parties; and any amounts otherwise owing to the City by Developer and/or any Successor Owner under this Agreement or the Other Agreements, including any City Liens and the actual cost incurred by the City to acquire environmental and pollution legal liability insurance coverage for the Reacquired Property, including coverage for loss, remediation expense and legal defense expenses.

(c) **Reimbursement to Developer.** Third, to reimburse Developer up to the amount equal to the Repurchase Price attributable to the portion of the Reacquired Property sold; and

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

16.4.4. **Effect of Exercise of Right of Reversion.** The provisions of Section 16.6 shall apply with respect to the Reacquired Property following close of escrow. Following such close of escrow, under no circumstances shall Developer or any lienholder have any right or claim to, or against, the Repurchased Property. Notwithstanding the acquisition of the Reacquired Property by the City as provided in this Section 16.4, this Agreement shall remain in full force and effect with respect to the portions of the Property and Improvements not purchased by the City. The City's Right of Reversion shall not defeat or render invalid or limit any rights or interests provided in easements, covenants, conditions or restrictions in favor of third parties who are not Developer Affiliates that are approved by the City (or constituting a Permitted Transfer) and

recorded on the portion of the Property for which the City exercises its rights under this Section 16.4.

16.4.5. **Cooperation and Grant of Easements.** *Concurrently with close of escrow for the Reacquired Property, the Parties shall each reserve and/or grant to the other such roadway, utility, access and other easement rights as may be required by the other Party and its successors in interest to develop the Property as a unified development and as contemplated by the Entitlements, the CC&Rs, this Agreement and the Other Agreements.*

16.4.6. **Survival of Provisions.** *The provisions of Sections 16.4.3 and 16.4.4 and this Section 16.4.6 shall survive the termination of this Agreement.*

5. **Certificate of Compliance.** If Developer satisfies the Conditions Precedent set forth in Section 9.3 of the *{Original}* DDA with respect to issuance of a Certificate of Compliance for the Development Parcels, then the City shall furnish Developer with a Certificate of Compliance in recordable form upon written request by Developer. The Certificate of Compliance shall be binding upon the Parties to this Memorandum of DDA and their Successor Owners, and each and every Person claiming by, through or under Developer or any Successor Owner as and to the extent set forth therein, and shall be deemed to be the City's conclusive determination of satisfactory completion of the obligations of Developer pursuant to the DDA and shall be evidence of termination of the DDA, subject only to the continuing effectiveness of the DDA provisions referenced in Sections 9.7(a) through (e) of the DDA and the Other Agreements, each of which shall survive in accordance with its respective terms. Developer, on behalf of itself and its Successor Owners, and each and every Person claiming by, through or under Developer or any Successor Owner, including each End User, hereby consents to the recordation of the Certificate of Compliance against the entirety of the Property, notwithstanding that portions of all of the Property may have been transferred prior thereto to Successor Owners or End Users and confirms that no further acknowledgement or consent by the then-owners of the Property shall be required in connection with such Recording. For ease of reference only, the following italicized Section 9.7 is copied verbatim from the *{Original}* DDA:

9.7. **Effect of Certificate of Compliance; Termination of Agreement.**

After the Recording of the Certificate of Compliance, except as set forth below, the DDA shall terminate and any Person then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Development Parcels subject to the Certificate of Compliance shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to such Improvements, except that the Quitclaim Deed, the Profit Participation Agreement, the Special Restrictions, the CC&Rs, and the Landscape Maintenance Agreement shall each remain in effect for the term specified therein. Issuance of the Certificate of Compliance shall not waive any rights or claims that the City may have against any Person for latent or patent defects in design, construction or similar matters under any applicable law, nor shall it be evidence of satisfaction of any of Developer's obligations to others not a party to this Agreement. The Certificate of Compliance shall be in such form as to permit it to be

Recorded. Upon Recordation of the Certificate of Compliance, this Agreement shall terminate, except that:

(a) the provisions of Sections 4.5.2 and 8.14, including the releases set forth therein, as and to the extent set forth in the Quitclaim Deed shall survive in perpetuity, shall run with the land and shall be binding upon Developer, its successors and assigns and its Successor Owners, as well as Homebuyers and other End Users;

(b) the provisions of Section 11.1.4 shall survive until the expiration of the time period for provision of the environmental insurance policy described thereby; and the obligation to provide such insurance policy shall remain in effect for a period of ten (10) years from Close of Escrow and shall (i) continue to run with the land owned by Developer, its successors and assigns and Successor Owners, and not then conveyed to any Homebuyer or other End User, and (ii) bind Developer, its successors and assigns and Successor Owners and each and every prior Developer not released by the City pursuant to Section 2.2.3(a)(iii), provided that upon sale or transfer to any Homebuyer or any other End User, such obligation shall not run with the land or survive with respect to or bind any such Homebuyer or End User or any of their respective successors and assigns;

(c) the indemnities set forth in Sections 5.5, 8.12(e), 8.15, 8.16, 10.1, 10.2 and 17.12.1 shall remain in effect as and to the extent set forth in Section 10.3 and shall bind the Persons bound as set forth therein; provided that upon sale or transfer to any Homebuyer or any other End User, such obligation shall not run with the land or survive with respect to or bind any such Homebuyer or End User or any of their respective successors and assigns;

(d) any and all obligations contained in the Federal Deeds shall survive in perpetuity to the extent set forth therein, unless such obligations are released by the Federal Government;

(e) neither Developer, its successors and assigns (but excluding any End User), nor any Successor Owner shall modify or terminate any prepaid environmental insurance policy in effect as of the issuance of the Certificate of Compliance; and

(f) the provisions of Section 11.1.1 requiring liability insurance to 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 shall (A) continue to run with the land owned by Developer, its successors and assigns and Successor Owners and not then conveyed to any Homebuyer or other End User and (B) bind Developer and its successors and assigns and Successor Owners and each and every prior Developer not released by the City pursuant to Section 2.2.3(c), provided that upon sale or transfer to any Homebuyer or any other End

User, such obligation shall not run with the land or survive with respect to or bind any such Homebuyer or any other End User or any of their respective successors and assigns.

Notwithstanding anything to the contrary set forth in this Agreement, the provisions of this Section 9.7 shall survive the termination of this Agreement and the Recording of the Certificate of Compliance and shall be binding upon Developer, its successors and assigns and Successor Owners and each and every prior Developer (unless released by the City pursuant to Section 2.2.3(c) or Section 16.6) and Successor Owner thereof the Development Parcels and the Improvements for the term set forth above, and each such party shall be jointly and severally liable under such provisions with respect to the entirety of the Project, the Development Parcels and the Improvements for the term set forth above, but except as set forth in clause (a) of this Section or in the Quitclaim Deed, shall not be binding on any End User.

6. DDA and Memorandum of DDA Run With the Land. Subject to Section 3 above, the DDA and this Memorandum of DDA, including, without limitation, the provisions of the DDA recited and set forth above, and all other obligations, agreements, covenants, representations, warranties, and indemnities set forth in the DDA and this Memorandum of DDA are hereby agreed by Developer and by the City to be covenants running with the land and enforceable as equitable servitudes against the Development Parcels and are hereby declared to be and shall be binding upon the Development Parcels and Developer and its successors and assigns (who may own all or any portion of the Development Parcels) for the benefit of the City and its successors and assigns, subject to the effects of recordation of a Certificate of Compliance as provided for in Section 5 above.

7. Priority of DDA and Special Restrictions. The DDA, including the City Lien, the Right of Purchase and the Right of Reversion contained therein, this Memorandum of DDA and the Special Restrictions shall be superior in priority to all Mortgages, provided, however, this priority shall not apply to any Mortgages obtained by Homebuyers.

8. City Lien Rights. The delinquent amount of any payments due under the DDA, together with any late charges or interest due on any such delinquent payment, reasonable attorneys' fees, experts' fees and consultants' fees and collection costs related to such delinquent payment shall, to the greatest extent permitted by applicable law, be a lien and charge upon the Property in favor of the City effective upon Recording of the Memorandum of DDA, which lien and charge shall be paramount to the lien and charge of any Mortgage upon or affecting the Property and City shall have the right to foreclose the City Lien with respect to any property so encumbered by such lien. Upon conveyance of any portion of the Development Parcels to an End User, the City Lien shall automatically terminate as to such conveyed portions, provided however, that the termination of such City Lien shall not terminate the obligations of Developer to City with respect to amounts due and secured by such lien, which shall remain an ongoing obligation of Developer.

9. Acknowledgment and Assumption by Developer. By acceptance of the Quitclaim Deed and Special Restrictions and upon recording of the Quitclaim Deed, Special Restrictions and this Memorandum of DDA, Developer hereby acknowledges and assumes all responsibilities placed upon Developer under the terms of the DDA.

10. Public Documents. The documents constituting the DDA are public documents and may be reviewed at the official offices of the City.

11. Interpretation; Notice. This Memorandum of DDA is prepared for recordation and notice purposes only and in no way modifies the terms, conditions, provisions and covenants of the DDA. In the event of any inconsistency between terms, conditions, provisions and covenants of this Memorandum of DDA and the DDA, the terms, conditions, provisions and covenants of the DDA shall prevail.

12. Attachments. The Attachments attached to this Memorandum of DDA are hereby incorporated by this reference into this Memorandum of DDA as though fully set forth in this Section.

{signatures on next page}

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum of DDA as of the Memorandum Effective Date.

CITY OF TUSTIN:

Dated: _____

By: _____
Jeffrey C. Parker,
City Manager

ATTEST:

By: _____
Erica Rabe
City Clerk

APPROVED AS TO FORM

By: _____
David Kendig,
City Attorney

Armbruster Goldsmith & Delvac LLP
Special Real Estate Counsel to the City

By: _____
Amy E. Freilich

DEVELOPER:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

EXHIBIT "A"
DEVELOPMENT PARCELS LEGAL DESCRIPTION
{to be attached}

ATTACHMENT 14
PROFIT PARTICIPATION AGREEMENT

THIS PROFIT PARTICIPATION AGREEMENT (this "Agreement") is made as of _____, 2018, by and between CITY OF TUSTIN ("City"), and _____, a _____ ("Developer") (collectively, the "Parties" and individually, a "Party").

RECITALS:

A. Pursuant to that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 6B dated as of _____, 2018, by and between City and Developer, as may be further amended from time to time ("DDA"), Developer has acquired from City certain real property located in the unincorporated area of the City of Tustin, County of Orange, State of California, more particularly described in Exhibit "A" attached hereto ("Development Parcels").

B. As additional consideration for the purchase of the Property, and in addition to the purchase price payable under the DDA, Developer has agreed to pay to City a certain portion of the profits, if any, that will be received by Developer from the sale of Residences (as defined below) within the Property in accordance with the terms and conditions set forth below.

AGREEMENT:

NOW, THEREFORE, in consideration of the above and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used in this Agreement and not defined below or elsewhere in this Agreement shall have the meanings set forth in the DDA.

- 1.1 "Action" is defined in Section 6.5 of this Agreement.
- 1.2 "Allowable Expenses" is defined in Section 2.2 of this Agreement.
- 1.3 "Audit" is defined in Section 4.1 of this Agreement.
- 1.4 "Bond" is defined in Section 3.1 of this Agreement.
- 1.5 "Bond Amount" is defined in Section 3.1 of this Agreement.
- 1.6 "Common Area" shall have the meaning as defined in the DDA.
- 1.7 "Costs" is defined in Section 6.5 of this Agreement.
- 1.8 "DDA" is defined in Recital A of this Agreement.
- 1.9 "Decision" is defined in Section 6.5 of this Agreement.

- 1.10 "Default" is defined in Section 5.1 of this Agreement.
- 1.11 "Developer Affiliate" shall have the meaning as defined in the DDA.
- 1.12 "Developer Profitability Report" shall mean a report to be submitted by Developer in the form of Exhibit "B" attached hereto.
- 1.13 "Final Accounting" is defined in Section 3.3 of this Agreement.
- 1.14 "Final Sale" is defined in Section 3.2 of this Agreement.
- 1.15 "Final Tract Map" shall mean the final map recorded pursuant to Vesting Tentative Tract Map No. 18125.
- 1.16 "Gross Revenue" shall mean the Gross Sale Price less the dollar amount of any Sale Incentives.
- 1.17 "Gross Sales Price" shall mean and refer to the total consideration actually received by Developer in connection with the sale of Residences to members of the home-buyer public, including any Premiums and prices for Options and Upgrades.
- 1.18 "Interim Payment" is defined in Section 3.1 of this Agreement.
- 1.19 "Invested Cash" is defined in Section 2.2 of this Agreement.
- 1.20 "Lot" shall mean those lots shown on a final subdivision map covering the Property which are actually acquired by Developer and upon which the development of certain Residences are entitled to be constructed.
- 1.21 "Model Lots" shall mean the Lots identified on tentative tract map No. 18125 approved by the City as Lots 6 and 7, on which Developer intends to construct model Residences, and such Lots shall be reflected with the same Lot numbers on any final subdivision map covering the Property.
- 1.22 "Net Profits" is defined in Section 2.2 of this Agreement.
- 1.23 "New Entity" shall have the meaning as defined in the DDA.
- 1.24 "Options and Upgrades" shall mean and refer to floor plan modifications or special or upgraded amenities or appliances sold by Developer for a Residence. Without limiting the generality of the foregoing, Options and Upgrades would include room options, appliance upgrades, cabinetry upgrades, countertop upgrades, finish carpentry upgrades, electrical options, fireplace options, paint upgrades, any exterior options, and landscaping options and upgrades.
- 1.25 "Options and Upgrades Costs" shall mean and refer to the actual costs incurred by Developer for Options and Upgrades for each Residence.
- 1.26 "Premiums" shall mean all premiums charged by Developer in connection with the sale of any Residence within the Property, including, without limitation, any premium for

location or elevation of the Residence, for the view available from the Residence or for any other feature applicable to the Residence.

1.27 "Profit Participation" is defined in Section 2.1 of this Agreement.

1.28 "Project" shall mean Developer's development of the Development Parcels on the Property it acquires, together with any related off-site and on-site improvements and any Common Area facilities or improvements as more fully described in the DDA. The Project is anticipated to include 218 Residences.

1.29 "Property" shall mean the Development Parcels defined in Recital A with the exception of any property re-acquired by City pursuant to the terms and provisions of the DDA.

1.30 "Residence(s)" shall mean each residential dwelling unit, including each row townhome, motor court flat and detached single-family home, constructed by Developer on the Development Parcels.

1.31 "Sales Incentives" shall mean allowances, credits and the like made by Developer to purchasers of the Residences as an inducement to purchase the Residences (such as free Options and Upgrades, Developer payment of purchaser closing costs, allowances and prepayments of assessments, special taxes and charges).

1.32 "Second Interim Payment" is defined in Section 3.2 of this Agreement.

1.33 "Transferee" shall mean any permitted assignee of Developer (i.e., (i) the New Entity following the Merger, or any Developer Affiliate, as permitted by the DDA, without City approval, or (ii) an assignee approved by the City pursuant to the DDA) which acquires or purchases all or any portion of the Development Parcels from Developer.

2. Profit Participation. Developer agrees to pay to City, at the time and in the manner specified below, the amount of the "Profit Participation" (as defined below).

2.1 Calculation of Profit Participation. "Profit Participation" shall mean 50% of the amount by which the total Net Profits exceed 8.50% of the Gross Sales Price received by Developer.

2.2 Net Profits. "Net Profits" for purposes of this Agreement shall be defined to be the Gross Revenues less the following allowable deductions (collectively, "Allowable Expenses"), provided that notwithstanding that certain categories below are overlapping, there shall be no double-counting of expenses incurred by Developer:

(a) Land Acquisition Cost. The total purchase price and any other consideration paid to the City under the DDA.

(b) Land Acquisition Transaction Costs. The third-party out-of-pocket transaction costs directly related to acquiring the Property from City, such as escrow, title insurance and endorsements, legal fees, easement costs, due diligence costs, market studies, consultant fees, and costs of third party reports and studies.

(c) Site Improvement and Entitlement Costs. On-site and off-site improvement costs actually expended for the Project for engineering, consultants, bonds, grading, wet utilities, dry utilities, street improvements, walls and fences, landscaping, and common area and recreational facilities, and all costs to obtain, alter or amend any entitlements for the Project or to record the any tract map or Final Map.

(d) Indirect Construction. Indirect construction costs actually expended for the Project, including, but not limited to, permits and fees, architecture, engineering, inspections, construction supervision, construction trailer, security, repair and replacement, and other on-site costs associated with the construction of the Project.

(e) Direct Construction. The actual costs of construction materials, equipment rental, labor and subcontractors for the construction of Residences and any Common Areas.

(f) Cost of Funds. Interest at the rate of seven and one-tenth percent (7.1%) per annum on the Invested Cash (defined below) outstanding from time to time, compounded monthly.

For purposes of this Section, "Invested Cash" shall mean the cumulative cash outflows for all Allowable Expenses regardless of the source of funds less Gross Revenues received. All calculations shall be made based on accounting for all cash outflows of Allowable Expenses from the date of payment and all cash inflows of Gross Revenues from the date of receipt of cash. For this purpose, the cash outflows for Section 2.2(k) of this Agreement (Overhead Allocation) shall be deemed to occur for each Residence at the start of construction for such Residence and Section 2.2(m) of this Agreement (Warranty Allocation) and Section 2.2(j) of this Agreement (Insurance Allocation) shall be deemed to occur for each Residence upon the date of transfer of such Residence to a member of the home-buying public.

(g) Property Taxes. Costs of property taxes and assessments on the Property acquired by Developer, and all other assessments paid in connection with community facility districts, landscape maintenance districts and any other public financing districts charged with respect to the Property.

(h) Model and Marketing Costs. Actual costs of model decorating, model landscaping, model refurbishing, sales office, utilities and supplies, sales salaries, maintenance, signage, and marketing and advertising costs which are directly related to the marketing and sale of the Residences, and all actual internal and external sales commissions paid.

(i) HOA Fees and Costs. Third party costs actually incurred in the setup of a homeowners' association with respect to the Property, including association dues, subsidy payments, and legal fees.

(j) Insurance. An agreed amount equal to one percent (1.0%) of the Gross Sales Price of each detached single-family home and two percent (2.0%) of the Gross Sales Price of each row townhome and motor court flat to compensate Developer for insurance costs related to the Project.

(k) Overhead Allocation. An agreed amount equal to three and one-half percent (3.5%) of the Gross Sales Price to compensate Developer for its overhead in connection with the development of the Project for costs not specifically allocated to the Project such as: payroll additives and salaries of Developer's corporate and division office executives, officers, department heads and staff in directing, administering and supervising such development; employee bonuses (excluding bonuses paid to field superintendents that are directly allocable to the Project); general legal and accounting fees; and the operating expenses of Developer's corporate and division offices such as rent, utilities, office supplies, office equipment and other office related expenses. This allocation is made at the start of construction of each Residence.

(l) Sales Expense. All actual closing costs and charges incurred in connection with the sale of any portion of the Project, including all escrow fees, title fees, and transfer taxes.

(m) Warranty Allocation. An agreed amount equal to one percent (1.0%) of the Gross Sales Price of each Residence to compensate Developer for warranty costs related to the Project.

(n) Options and Upgrades. All Options and Upgrades Costs.

(o) Design Center. An agreed amount equal to Five Thousand Dollars (\$5,000) per Residence for design center cost.

(p) Legal and Professional. Costs for legal and other professional fees incurred in connection with the Project.

(q) Other Allocable Costs. Any other actual costs properly and directly allocable specifically to the development, construction, maintenance, repair and sale of the Project, and not to any other project or property, but specifically excluding costs of the type described in clauses (j) and (k) of this Section 2.2 over the allowable percentage.

Allowable Expenses shall be allocated to each specific Residence in accordance with Developer's ordinary operating and accounting procedures. Where Allowable Expenses cannot reasonably be allocated to a specific Residence, they shall be allocated to all of the Residences pro-rata by dividing such expenses equally by the total number of Residences.

2.3 Exclusions from Allowable Expenses. Allowable Expenses shall specifically exclude any and all costs of Developer and any Transferee associated with the sale, assignment or transfer of the Property or any portion thereof by Developer to any Transferee and any and all costs of any Transferee in connection with due diligence, entitlement or conveyance, including without limitation, any consideration paid by any Transferee to acquire the Property or any portion thereof. For purposes of clarity, it is the intent of the Parties that there shall be no adjustment to land basis or increase in Allowable Expenses as the result of any sale or transfer to a Transferee, and the City's right to Profit Participation shall not be diluted or decreased as a result of the sale or assignment of any Development Parcels or other portion of the Property to any Transferee. The proceeds of any sale, assignment or Transfer of the Property or any portion thereof by Developer to any Transferee shall be excluded from the calculation of Gross Sales Price.

3. Payment of Profit Participation.

3.1 Interim Payment. Within thirty (30) days following the execution of a contract for sale of the 200th Residence within the Project, Developer shall complete and submit to City an interim Developer Profitability Report setting forth the calculation of Profit Participation as of the date of such report, including all Gross Revenues, Sales Incentives and Allowable Expenses by category and the Profit Participation with respect to the 200 Residences closed or subject to a sales contract (which calculation shall be based upon estimated Allowable Expenses through the estimated date of the projected closing of the last of the 200 Residences and Gross Revenues with respect to any sales which have not yet closed). Concurrently with submission of such interim report, Developer shall provide (a) an interim payment of Profit Participation ("Interim Payment") in an amount equal to 75% of the Profit Participation based upon the 200 Residences closed or subject to a sales contract, if any; and (b) a payment bond ("Bond") in an amount equal to 25% of the Profit Participation based upon the 200 Residences closed or subject to a sales contract (the "Bond Amount") from a surety reasonable acceptable to City, and in form reasonably acceptable to City, to secure Developer's obligations to pay the remaining Profit Participation, if any, pursuant to Section 3.2 and 3.3 of this Agreement. The interim Developer Profitability Report shall calculate the Profit Participation based upon the information available at such time, and may include estimated reserves for any undetermined or future Allowable Expenses.

3.2 Final Developer Profitability Report. Within thirty (30) days following the closing of the sale of the 218th Residence in the Project (the "Final Sale") (provided that to the extent that the Developer determines to develop fewer than 218 Residences, the Final Sale shall consist of the close of escrow for the last Residence to be developed at the Project), Developer shall complete and submit to City a Developer Profitability Report for the entire Project. Such Developer Profitability Report shall calculate the Profit Participation for the entire Project based upon the information available at such time, and shall include estimated reserves for any undetermined or future Allowable Expenses. Concurrently with such Developer Profitability Report, Developer shall pay to the City the Profit Participation calculated in such Developer Profitability Report, less the amount of the Interim Payment made to City. However, if the amount of the Interim Payment made to City exceeds the aggregate amount of Profit Participation for all of the Residences, then City will pay to Developer the difference within sixty (60) days after Developer delivers the Building Profitability Report pursuant to this Section 3.2. Immediately following City's receipt of the Developer Profitability Report and if applicable, the amount of the remaining Profit Participation, City shall release the Bond. In the event that the Final Sale has not occurred by the date which is two (2) years following the date of the Interim Payment, Developer shall prepare a Developer Profitability Report with respect to all of the Residences closed or subject to sales contracts through the date thereof and shall pay the City the amount of ninety percent (90%) of the Profit Participation calculated with respect to all of the Residences sold and closed to date, less the amount of the Interim Payment made to the City (the "Second Interim Payment"). Thereafter, upon the Final Sale, the Developer Profitability Report and payment of the Profit Participation shall be paid to the City by calculating the total Profit Participation for the Project less the amount of the Interim Payment and the Second Interim Payment made to the City.

3.3 Final Accounting. By the later of the date that is twelve (12) months after the Final Sale or the date that all of Developer's bonds posted for the Project have been exonerated,

Developer shall perform a final accounting and true-up of the Profit Participation reconciling any additional items of revenue or Allowable Expenses which were not included in the Developer Profitability Report prepared after the Final Sale (the "Final Accounting"). If such accounting shows that Developer has overpaid the Profit Participation for the Project, City shall refund such overpayment within sixty (60) days of receiving notice thereof, and if Developer has under paid the Profit Participation for the Project, Developer shall deliver such additional Profit Participation to City within sixty (60) days of completion of the accounting.

3.4 Financial Records and Statements of Developer. Developer shall keep and maintain, or cause to be kept and maintained, accurate financial books and records with respect to the development of the Property as necessary to calculate the Profit Participation. If Developer is a publicly traded company, such records shall be kept in accordance with Developer's standard accounting principles and practices and if not, shall be kept in accordance with GAAP and FASB. These financial books and records shall include all supporting documentation relative to Gross Revenues and Allowable Expenses, and shall be maintained by Developer for three (3) years after the Final Sale. Developer shall not be required to keep paper copies of invoices, charges and evidence of Allowable Expenses incurred, or payments related thereto, but shall only be required to retain evidence of such records as are customarily maintained in accordance with its normal accounting records in the ordinary course of business. Developer shall make all such books and records available to City, or its representatives, at any time upon five (5) business days' prior written notice for City's inspection and copying thereof. Such inspection, examination and copying shall be made at such time and place as the Developer may reasonably designate provided that the designated place must be at an office located in Orange County, California. Developer shall cooperate fully with City in making the inspection.

4. Audit.

4.1 Generally. At the option of City and, except as set forth below, at City's cost, exercised by written notice to Developer delivered by the City at any time following the Final Sale through the date which is one (1) year after Developer's delivery to the City of the Final Developer Profitability Report, City may cause Developer's books and records for the Project to be audited by an independent third-party certified public accountant licensed in the State of California selected by City (but not one that is compensated based upon the results of the audit or a percentage of collections) for the purpose of verifying the calculation of Net Profit, Allowable Costs, Gross Sales Amount, Gross Revenues, Sales Incentives, Profit Participation, and other factors used to determine Profit Participation, due City for the Project (the "Audit"). Developer shall make available to the auditor at Developer's business office in Orange County, California, within thirty (30) days after notice of Audit, all of the books and records of Developer for the Project which such auditor deems necessary or desirable for the purpose of performing the Audit. Subject to the resolution of any dispute regarding the Audit, if it is properly determined by the Audit that there was a deficiency in the amount of Profit Participation paid to the City hereunder, or any overpayment of Profit Participation to the City by Developer, the Developer shall pay to City the amount of the underpayment, or City shall pay to Developer the amount of the overpayment, as applicable, within thirty (30) days after receipt of the results of the Audit with interest thereon at 8.0%. If the Audit properly determines that the amount of the Profit Participation was underpaid by more than the greater of (i) three percent (3%) of the aggregate Profit Participation for the Project, or (ii) One Hundred Thousand Dollars (\$100,000.00), then

Developer shall pay the actual costs and expenses incurred by the City to the third party auditor in connection with the performance of the Audit. Any dispute regarding the Audit or the result thereof shall be resolved pursuant to Section 7.8.

5. Default.

5.1 Default. In the event that any Party hereto believes the other Party is in breach of its obligations under this Agreement, such Party shall deliver written notice of such alleged breach and the actions necessary to cure such breach to the other Party. Such Party shall be in default under this Agreement if it has not cured the breach within thirty (30) days from the receipt of such notice, or in the event that the breach is not reasonably susceptible or cure within such thirty (30) day period, then if it has not commenced the cure of such breach within the thirty (30) day period and diligently prosecuted the cure to completion, but in no event to exceed ninety (90) days ("Default").

5.2 Remedies. In the event of a Default by either Party hereunder, either Party shall have all rights and remedies available to it at law or in equity. To the maximum extent permitted by law, all rights, options and remedies contained in this Agreement, or under law, shall be cumulative, and no one remedy shall be exclusive of any other remedy. Notwithstanding the foregoing, each Party hereby waives the right to recover consequential, special or punitive damages.

5.3 Recordation of Deed of Trust. Concurrently with the acquisition of the Development Parcels by Developer, Developer shall execute, acknowledge and permit to be recorded against the Model Lots a first lien Deed of Trust in the form attached hereto as Exhibit "C" (the "Deed of Trust") to secure payment of the Profit Participation. City shall execute, acknowledge and deliver to Developer a full reconveyance of the Deed of Trust and such other documentation as may be reasonably required in order to release the Deed of Trust as an encumbrance upon the Model Lots concurrent with Developer making the Interim Payment and delivering the Bond to City pursuant to Section 3.1.

6. Miscellaneous.

6.1 Notices. All notices, demands, consents, requests and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed conclusively to have been duly given: (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 facsimile transmission or email to the fax number or email address set forth below; provided that notices given by facsimile or 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 facsimile or 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 facsimile, email or any other method permitted under this Section. Any notice given by facsimile or 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:

If to City,

City of Tustin
300 Centennial Way
Tustin, CA 92780
Attn: Jeffrey C. Parker, City Manager
Telephone: 714-573-3010
Facsimile: 714-834-1602
Email: jparker@tustinca.org

with a copy to:

Woodruff Spradlin & Smart, APC
555 Anton Boulevard, #1200
Costa Mesa, CA 92626
Attn: David Kendig, Esq., City Attorney
Telephone: 714-415-1083
Facsimile: 714-415-1183
Email: dkendig@wss-law.com

with a copy to:

Armbruster Goldsmith & Delvac LLP
Attn: Amy E. Freilich, Esq., Special Counsel
12100 Wilshire Boulevard, Suite 1600
Los Angeles, CA 90025
Fax: (310) 209-8801
Email: amy@agd-landuse.com

If to Developer,

{TO BE INSERTED}

with a copy to:

Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, California 92626
Attention: F. Kevin Brazil, Esq.
Telephone No.: 714-641-3462
Facsimile: 714-546-9035
Email: kbrazil@rutan.com

Either Party may change the address to which notices are to be given to it by giving notice of such change of address in the manner set forth above for giving notice.

6.2 Interpretation. This Agreement shall be construed as if prepared by both Parties. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived.

6.3 Severability. If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and application of such provision to other circumstances, shall be interpreted so as best to reasonably effect the intent of the Parties hereto.

6.4 Performance of Acts on Business Days. Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days. In the event that the final date for payment of any amount or performance of any act hereunder falls on a Saturday, Sunday or holiday, such payment may be made or act performed on the next succeeding business day.

6.5 Attorneys' Fees. If any Party to this Agreement institutes any action, suit, proceeding, counterclaim or other proceeding for any relief against another Party, declaratory or otherwise (collectively an "Action"), to enforce the terms hereof or to declare rights hereunder or with respect to any inaccuracies or material omissions in connection with any of the covenants, representations, warranties or obligations on the part of the other Party to this Agreement, then the Prevailing Party in such Action shall be entitled to have and recover of and from the other Party all costs and expenses of the Action, including (a) reasonable attorneys' fees which shall be payable at the contractual hourly rate for City's litigation counsel at the time the fees were incurred, but in no event more than \$200 per hour with such hourly rate being used to calculate the amount of attorney's fees recoverable regardless of whether City or Developer is the prevailing party and (b) costs actually incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling or award (collectively, a "Decision") granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including reasonable attorneys' fees and expert fees and costs (collectively "Costs") incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include in addition to Costs incurred in prosecution or defense of the underlying action, reasonable attorneys' fees, costs, expenses and expert fees and costs incurred in the following: post judgment motions and collection actions, contempt proceedings, garnishment, levy, debtor and third party examinations, discovery, bankruptcy litigation and appeals of any order or judgment. "Prevailing Party" within the meaning of this Section 6.5 includes a Party who agrees to dismiss an Action in consideration for the other Party's payment of the amounts allegedly due or performance of the covenants allegedly breached, or obtains substantially the relief sought by such Party.

6.6 Entire Agreement; Amendments. This Agreement, together with the other written agreements referred to herein, is intended by the Parties to be the final expression of their agreement with respect to the subject matter hereof, and is intended as the complete and exclusive statement of the terms of the agreement between the Parties. As such, this Agreement supersedes any prior understandings between the Parties, whether oral or written. Any amendments to this Agreement shall be in writing and shall be signed by all Parties hereto.

6.7 Governing Law. This Agreement and the documents in the forms attached as exhibits hereto shall be governed by and construed under the internal laws of the State of California.

6.8 Jurisdiction. The Parties hereto agree that the State Courts located in Orange County, California ("Court") shall have exclusive jurisdiction over any Action and the Parties hereby consent to the exercise of personal jurisdiction over them by the Court for purposes of resolving the Action. Any Party may file a complaint with the Court, and in no other court.

6.9 No Waiver. No delay on the part of any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

6.10 Assignment. In the event that the Property (or that portion thereof remaining unsold to members of the home-buying public) is conveyed by Developer to any successor owner prior to the Final Sale, Developer shall assign its right and obligations under this Agreement to such successor owner of the Project; provided, however, upon such assignment of Developer's rights and obligations hereunder to a successor owner of the Project, Developer shall only be released from the obligations arising under this Agreement accruing after such assignment to the extent that Developer is released from its obligation under the DDA pursuant to the terms of Section 2.2 of the Original DDA. Nothing in this Agreement shall modify the obligation of Developer to obtain the consent of the City to any conveyance, transfer or assignment to the extent required by the DDA. For avoidance of doubt, it is the intent of the Parties that the Profit Participation be calculated by taking into account each initial sale, and only such initial sale and no subsequent sale, of a Residence within the limits of the Property to a member of the home-buying public which occurs prior to or is the Final Sale, regardless of whether such Residence is sold by Developer or any Transferee of all or any portion of the Property or the Project. Further, and notwithstanding any other provision of this Agreement to the contrary, with respect to any Transfer occurring following the Close of Escrow (as defined in the DDA), the Transferee shall assume the obligation to pay all sums due under this Agreement not yet paid and accordingly shall include in the calculation of Gross Sales Price all consideration received by any Developer or any Transferee for sale of Residences to members of the home-buyer public, including any Premiums and prices for Options and Upgrades, whether such consideration was received by Developer or any Transferee prior to or following the date of the Transfer.

6.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, representatives, successors and permitted assigns.

6.12 Headings; Cross-References; Exhibits. The headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement.

6.13 No Partnership. No agency, partnership, joint venture or other relationship is intended hereby, and neither Party shall be deemed the agent, servant, employee, partner or joint venturer of the other Party. City and Developer shall not, in any way or for any reason be deemed to have become a partner of the other in the conduct of its business or otherwise, or a joint venturer.

In addition, no merger or joint enterprise between Developer and City shall be deemed to exist by virtue of this Agreement.

{signatures on next page}

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY:

CITY OF TUSTIN

By: _____
Name: Jeffrey C. Parker
Title: City Manager

DEVELOPER:

_____,
a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

By: _____
David Kendig, City Attorney

Armbruster Goldsmith & Delvac LLP
Special Tustin Counsel

By: _____
Amy E. Freilich

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

{insert legal description of Property and add following}

But excepting therefrom the matters set forth in Section 2 of that certain Quitclaim Deed For Disposition Parcels 6B and Covenants, Conditions and Restrictions, Including Environmental Restriction Pursuant to Civil Code Section 1472 made by the City in favor of Developer, dated as of _____, 2018 and recorded in the official records of Orange County California on _____ as Instrument No. _____.

EXHIBIT "B"

DEVELOPER PROFITABILITY REPORT

Date:				
Developer:				
Project:				
Phases:				
	This Phase Per Unit	This Phase Total	Cumulative Per Unit	Cumulative Total
Number of Residences				
Base Square Footage				
Base Gross Sales Price				
Lot Premiums				
Option & Upgrades				
Incentives				
Total Sales Price				
Land Acquisition				
Transaction Costs				
Site Improvement				
Common Area & Fencing				
Indirect Construction				
Direct Construction				
Overhead Allocation @ 3.5%				
Cost of Funds Allocation				
Property Taxes & HOA				
Legal				
Models & Marketing				
Sales Expense				
Options & Upgrades				
Warranty Allocation @ 1%				
Insurance @ 1% SFR; @ 2% townhome/flat				
Design Center @ \$5,000 per Residence				
Other Allocable Costs				
Total Development Costs				
Net Profit				
Developer Profit @ 8.50%				
Excess Profit				
City Participation @ 50%				
City Participation Paid				
City Participation Payable				

EXHIBIT "C"

DEED OF TRUST

RECORDING REQUESTED BY: WHEN RECORDED MAIL TO:	
---	--

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST WITH ASSIGNMENT OF RENTS

(SHORT FORM)

This DEED OF TRUST is made as of _____, 2018, between _____, herein called TRUSTOR, whose address is _____, FIRST AMERICAN TITLE INSURANCE COMPANY, herein called TRUSTEE, and the CITY OF TUSTIN, herein called BENEFICIARY.

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that certain property in the County of Orange, State of California, more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"), together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) Trustor's payment of the "Profit Participation" as defined and calculated in accordance with the terms of that certain unrecorded Profit Participation Agreement dated as of even date herewith between Trustor and Beneficiary (the "PPA"); and (2) the performance of each agreement of Trustor incorporated by reference or contained herein (collectively, the "Secured Obligations").

To protect the security of this Deed of Trust, and with respect to the Property, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Orange County August 17, 1964, and in all other counties August 18, 1964, in the book and at the page of official records in the office of the county recorder of the county where the Property is located ("Official Records"), noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Los Angeles	T-3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	San Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	San Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego	SERIES 5 Book 1964, Page 149774				

shall inure to and bind the parties hereto, with respect to the Property. Said agreements, terms and provisions contained in said subdivisions A and B (identical in all counties) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

Trustor and Beneficiary have previously entered into a disposition and development agreement as further described by that certain Memorandum of Tustin Legacy Disposition and Development Agreement for Disposition Parcel 6B, recorded in the Official Records immediately prior to this Deed of Trust ("DDA"). Trustor and Beneficiary acknowledge and agree: (i) it is their mutual intent that, pursuant to Section 5.3 of the PPA, upon approval by the City Council of the City of Tustin ("City Council") and recordation of Final Tract Map No. 18125 covering the entirety of the Property (the "Final Map"), the Secured Obligations will be secured by two (2) particular lots encompassing portions of the Property upon which model homes are proposed to be constructed ("Reserved Lots"), comprised of Lots 6 and 7 on that certain tentative tract map No. 18125 approved by the City Council on _____, 20__ and (ii) this Deed of Trust is being recorded against the entirety of the Property pending the recordation of the Final Map. Promptly following the recordation of the Final Map, Beneficiary agrees to execute a Request for Partial Reconveyance and cause Trustee to record a Partial Reconveyance which will release the Property, other than the Reserved Lots, from the lien of this Deed of Trust.

Beneficiary agrees to subordinate this Deed of Trust to documents and instruments related to Trustor's development of the Property in accordance with the DDA (collectively, the "Development Documents"), including, but not limited to, the Final Map, easements, dedications, and the covenants, conditions and restrictions for the development of the Property recorded in accordance with the DDA (the "CC&Rs"); provided, however, Beneficiary shall have no obligation to subordinate this Deed of Trust to any monetary liens (other than those generally provided in the CC&Rs). Additionally, Beneficiary agrees to execute documents and instruments in form and substance reasonably acceptable to Beneficiary, Trustor and Trustee required to

subordinate this Deed of Trust to the Development Documents. In the event this Deed of Trust is to be subordinated in accordance with this paragraph, Trustor shall deliver a proposed form of subordination to Beneficiary. Beneficiary shall have ten (10) business days following Beneficiary's receipt of the proposed form of subordination (the "Subordination Review Period") to review, provide comments on and approve or disapprove the proposed form of subordination as further described below. If Beneficiary approves the proposed form of subordination, Beneficiary shall execute and return the subordination to Trustor prior to the expiration of the Subordination Review Period. If the Beneficiary disapproves the proposed form of subordination, Beneficiary shall provide Trustor with specific comments to the proposed form of subordination and/or reasons why Beneficiary disapproves the proposed form of subordination prior to the expiration of the Subordination Review Period. Thereafter, Beneficiary and Trustor shall promptly meet and confer and use diligent good faith efforts to agree upon a form of subordination and Beneficiary will promptly execute the agreed upon form of subordination. The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

Signature of Trustor

_____,
a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

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State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

EXHIBIT "A"

To Deed of Trust

DESCRIPTION OF PROPERTY

DO NOT RECORD

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To protect the security of this Deed of Trust, Trustor agrees:

1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in a good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

1) That any award in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or be a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collecting of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6) That upon default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

ATTACHMENT 15
CERTIFICATE OF COMPLIANCE

<p>CITY OF TUSTIN OFFICIAL BUSINESS REQUEST DOCUMENT TO BE RECORDED AND TO BE EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE 6103 AND 27383.</p> <p>Recording requested by and When recorded mail to:</p> <p>The City of Tustin 300 Centennial Way Tustin, CA 92780 Attn: City Manager</p>	
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SPACE ABOVE THIS LINE FOR
RECORDER'S USE

CERTIFICATE OF COMPLIANCE

This CERTIFICATE OF COMPLIANCE (“Certificate of Compliance”) is made as of _____, 20__ by the CITY OF TUSTIN, a municipal corporation of the State of California (“City”), in favor of _____ *{insert name of Developer under DDA at time of issuance, State of formation and type of entity}* (“Developer”), with reference to the following matters:

A. The City and *{if no Assignment or Merger:} Developer / {if Assignment or Merger:} CalAtlantic Group, Inc., a Delaware corporation, predecessor in interest to Developer (“Original Developer”),* entered into that certain Tustin Legacy Disposition and Development Agreement For Disposition Parcel 6B, dated as of _____, 2018 *{if amendments are made to DDA insert the following:} (“Original DDA”) {insert any amendments to DDA} (collectively (the “DDA”))* *{if no amendments are made to DDA, insert the following:} (the “DDA”)*. The DDA is evidenced by that certain Memorandum of Disposition and Development Agreement (Parcel 6B), dated as of _____, 2018, and recorded in the Office of the County Recorder, Orange County, California (the “Official Records”) as Instrument No. _____ *{insert any amendments to Memorandum of DDA}* (the “Memorandum of DDA”) with respect to certain real property legally described on Exhibit “A” attached hereto and incorporated herein by this reference (the “Development Parcels”). All initially capitalized terms not otherwise defined herein shall have the meanings assigned to them in the DDA.

B. Pursuant to the DDA, the Developer agreed to develop and construct certain Improvements comprising the Project on the Development Parcels.

C. Pursuant to Section 9 of the *{Original}* DDA, the City agreed to furnish to the Developer, upon request therefor by the Developer, a Certificate of Compliance in recordable form upon satisfaction of the Conditions Precedent to issuance thereof set forth in Section 9.3 of the *{Original}* DDA (including, without limitation, Completion of all Improvements for the Project in accordance with the terms and conditions of the DDA).

D. The City has determined that the Developer has satisfied the Conditions Precedent set forth in Section 9.3 of the *{Original}* DDA for the City's issuance of a Certificate of Compliance with respect to the Development Parcels and the Project.

NOW, THEREFORE, the City certifies as follows:

1. This Certificate of Compliance covers and applies to the Development Parcels and the entirety of the Improvements and the Project.

2. This Certificate of Compliance shall be deemed conclusive evidence of the City's determination that the Developer has satisfactorily Completed all construction and development with respect to the Improvements comprising the Project and has satisfied all Conditions Precedent set forth in Section 9.3 of the DDA for issuance of this Certificate of Compliance.

3. Developer has completed *{218 or lesser number as applicable pursuant to Section 4.1(a)(iii) of the DDA}* residential units on the Developer Parcels, comprising the number of units described on the Recorded Condominium Plan and actually constructed by Developer prior to issuance of this Certificate of Compliance. The City retains all excess development rights remaining within Specific Plan Neighborhood G, Planning Area 15 after deducting the foregoing *{218 or lesser number as applicable pursuant to Section 4.1(a)(iii) of the DDA}* units, and, except to the extent any of such rights were conveyed by the City to third parties prior to the Effective Date, the City shall retain all residential units and all development rights associated with Specific Plan Neighborhood G, Planning Area 15 in excess of *{218 or lesser number as applicable pursuant to Section 4.1(a)(iii) of the DDA}* units, and the units and development rights retained by the City shall be freely transferable by the City throughout Tustin Legacy.

4. After the Recording of this Certificate of Compliance in the Official Records, the DDA shall terminate and, except as set forth below, any Person then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Development Parcels shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under the DDA with respect to such Improvements, except that the following matters shall survive the termination of the DDA each in accordance with their terms:

(a) The Quitclaim Deed dated _____, 20__ and recorded on _____, 20__ in the Official Records as Instrument No. _____ shall remain in effect in perpetuity,

(b) The Profit Participation Agreement, the Special Restrictions, the CC&Rs and the Landscape Maintenance Agreement shall each remain in effect for the terms specified therein; and

(c) The following provisions of the DDA shall expressly survive the termination of the DDA and shall remain in effect for the period set forth below:

(i) The provisions of Sections 4.5.2 and 8.14 of the DDA, including the releases set forth therein, as and to the extent set forth in the Quitclaim Deed shall survive in perpetuity, shall run with the land and shall be binding upon Developer, its successors and assigns and its Successor Owners, as well as Homebuyers and other End Users;

(ii) The provisions of Section 11.1.4 of the DDA shall survive until the expiration of the time period for provision of the environmental insurance policy described thereby; and the obligation to provide such insurance policy shall remain in effect for a period of ten (10) years from Close of Escrow and shall (A) continue to run with the land owned by Developer, its successors and assigns and Successor Owners, and not then conveyed to any Homebuyer or other End User, and (B) bind Developer, its successors and assigns and Successor Owners and each and every prior Developer not released by the City pursuant to Section 2.2.3(c) of the DDA, provided that upon sale or transfer to any Homebuyer or any other End User, such obligation shall not run with the land or survive with respect to or bind any such Homebuyer or End User or any of their respective successors and assigns;

(iii) The indemnities set forth in Sections 5.5, 8.12(e), 8.15, 8.16, 10.1, 10.2 and 17.12.1 of the DDA shall remain in effect as and to the extent set forth in Section 10.3 of the DDA and shall bind the Persons bound as set forth therein; provided that upon sale or transfer to any Homebuyer or any other End User, such obligation shall not run with the land or survive with respect to or bind any such Homebuyer or End User or any of their respective successors and assigns;

(iv) Any and all obligations contained in the Federal Deeds shall survive in perpetuity to the extent set forth therein, unless such obligations are released by the Federal Government;

(v) Neither Developer, its successors and assigns (but excluding any End Users) or any Successor Owner shall modify or terminate any prepaid environmental insurance policy in effect as of the issuance of the Certificate of Compliance; and

(vi) The provisions of Section 11.1.1 of the DDA requiring liability insurance to 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, and shall (A) continue to run with the land owned by Developer, its successors and assigns (excluding any End Users) and Successor Owners and not then conveyed to any Homebuyer or other End User and (B) bind Developer and its successors and assigns (excluding any End Users) and Successor Owners and each and every prior Developer not released by the City pursuant to Section 2.2.3(c) of the DDA, provided that upon sale or transfer to any Homebuyer or any other End User, such obligation shall not

run with the land or survive with respect to or bind any such Homebuyer or any other End User or any of their respective successors and assigns.

Except as set forth above with respect to Homebuyers and End Users and their respective successors and assigns, this Certificate shall be binding upon Developer, its successors and assigns and Successor Owners and each and every prior Developer (unless released by the City pursuant to Section 2.2.3(c)) and Successor Owner thereof, the Development Parcels and the Improvements for the term set forth above, and each such party shall be jointly and severally liable under such provisions with respect to the entirety of the Project, the Development Parcels and the Improvements for the term set forth above, but except as set forth in Sections 4(a) and 4(c)(i) of this Certificate of Compliance or in the Quitclaim Deed, shall not be binding on any Homebuyer or other End User.

5. Issuance of the Certificate of Compliance shall not waive any rights or claims that the City may have against any Person for latent or patent defects in design, construction or similar matters under any applicable law, nor shall it be evidence of satisfaction of any of Developer's obligations to third parties who are not a party to the DDA.

6. This Certificate of Compliance is not a Notice of Completion as referred to in California Civil Code Section 8182.

7. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the DDA or any other provisions of the documents incorporated herein.

{remainder of page is blank / signatures on following page}

IN WITNESS WHEREOF, the City has caused this Certificate of Compliance to be duly executed by its officer duly authorized as of the date first above written.

CITY OF TUSTIN

Dated: _____

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Name: _____

City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, 2017, before me, _____,
(insert name of notary)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT "A"
Legal Description of the Development Parcels

{to be attached}

ATTACHMENT 16

ASSIGNMENT AND ASSUMPTION AGREEMENT

<p>CITY OF TUSTIN OFFICIAL BUSINESS REQUEST DOCUMENT TO BE RECORDED AND TO BE EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE 6103 AND 27383.</p> <p>Recording requested by and When recorded mail to:</p> <p>The City of Tustin 300 Centennial Way Tustin, CA 92780 Attn: City Manager</p>	
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SPACE ABOVE THIS LINE FOR
RECORDER'S USE

ASSIGNMENT AND ASSUMPTION AGREEMENT

(Parcel 6B Tustin Legacy)

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment") is made as of _____, 20__ (the "Assignment Effective Date") by and between _____, a _____ corporation ("Developer") and _____, a _____ ("Transferee"), *[to be inserted only in connection with a Transfer that is not a Permitted Transfer:] with the consent of the CITY OF TUSTIN, a municipal corporation of the State of California (the "City").]* with reference to the following matters:

- A. The City and *[if developer:] Developer / if predecessor to Developer:] CALATLANTIC GROUP, INC., a Delaware Corporation, a predecessor in interest to developer]* entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 6B, dated as of _____, 201_ *[if amended:] (the "Original DDA") as amended by that certain Amendment No. __ to Tustin Legacy Disposition and Development Agreement for Disposition Parcel 6B dated as of _____, 201_ (as amended, the "DDA")]* *[if not amended:] (the "DDA")]*, relating to the conveyance from the City to Developer of that certain real property legally described on Exhibit "A" attached hereto (the "Development Parcels") and the subsequent development of the Development Parcels by Developer, all as more particularly set forth in the DDA. All initially capitalized terms not otherwise defined in this Assignment shall have the meanings ascribed to such terms in the DDA.
- B. The City has executed that certain Declaration of Special Restrictions for Disposition Parcel 6B ("Special Restrictions"), dated _____, 201_, that was recorded in the Office of the County Recorder, Orange County, California (the "Official Records"),

against title to the Development Parcels on _____, 201_ as Instrument No. _____, which includes, among other matters, certain requirements regarding the use and maintenance of the Development Parcels and sets forth certain provisions of the DDA that survive the Recording of a Certificate of Compliance with respect to the Project.

- C. The City has executed that certain Quitclaim Deed for Disposition Parcel 6B and Covenants, Conditions and Restrictions, Including Environmental Restriction Pursuant To Civil Code Section 1471 ("**Quitclaim Deed**"), dated _____, 201_, which was recorded in the Official Records against title to the Development Parcels on _____, 201_ as Instrument No. _____, which Quitclaim Deed conveyed to Developer the fee title to the Development Parcels, subject to certain restrictions and limitations set forth in the Quitclaim Deed and sets forth certain provisions of the DDA that survive Recording of a Certificate of Compliance with respect to the Project.
- D. Developer and the City executed that certain Memorandum of Disposition and Development Agreement (Parcel 6B) ("**Memorandum of DDA**"), dated _____, 201_, which was recorded in the Official Records against title to the Development Parcels on _____, 201_ as Instrument No. _____, and provided record notice of the DDA and sets forth certain provisions of the DDA that survive Recording of a Certificate of Compliance with respect to the Project.
- E. Developer and the City executed that certain Landscape Maintenance Agreement ("**Landscape Maintenance Agreement**"), dated _____, 201_, which was recorded against title to the Development Parcels on _____, 201_ as Instrument No. _____.
- F. Developer and the City executed that certain Tustin Legacy Development Agreement ("**DA**"), dated _____, 201_, which was recorded in the Official Records against title to the Development Parcels on _____, 201_ as Instrument No. _____.
- G. *[[If Deed of Trust executed and not released:]] Developer executed that certain Deed of Trust in favor of the City dated _____, 201_, which was recorded in the Official Records against title to *[[if recorded only against Lots 6 and 7:]]* Lots 6 and 7 off the Development Parcels on _____, 201_ as Instrument No. _____, securing Developer's obligations under the Profit Participation Agreement.]*
- H. The DDA, the Memorandum of DDA, the Special Restrictions, the DA, the Quitclaim Deed, the Landscape Maintenance Agreement, *[[if Deed of Trust executed and not released:]] the Deed of Trust,* and the Profit Participation Agreement are collectively referred to herein as the "**Property Documents.**"
- I. Pursuant to the DDA, Developer agreed to develop and construct, on the Development Parcels, certain Improvements comprising the Project.

- J. Concurrently with the execution and delivery of this Assignment, Developer is conveying to Transferee the entirety of the Development Parcels *[excluding only those portions, previously conveyed to End Users unless otherwise consented to by the City in its sole discretion]* comprised of that certain real property legally described on Exhibit "B" attached hereto ("Transfer Parcel"), and all Improvements located on the Transfer Parcel, and Transferee will develop the Transfer Parcel in accordance with the requirements of the DDA, including, without limitation, the Scope of Development and the Schedule of Performance, and the other Property Documents.
- K. The DDA imposes certain covenants, conditions, payment obligations and restrictions on the Development Parcels and, prior to the filing of a Certificate of Completion, the DDA restricts Developer's ability to transfer ownership and/or control of the Development Parcels, the Project, the Improvements and/or Developer's obligations with respect to the Project (including, without limitation, Developer's obligations with respect to the off-site infrastructure improvements), all as set forth in the DDA.
- L. Developer desires to convey the Transfer Parcel to Transferee and to assign to Transferee all of Developer's right, title and interest in and to the Property Documents with respect to the Transfer Parcel (the "Transfer Event") *[[to be inserted only in connection with a Transfer that is NOT a Permitted Transfer:]], to have such assignment approved by the City, and to have Transferee approved by the City as a "Transferee" (as that term is defined in and used in Section 2 of the DDA).]* Pursuant to Section 2 of the DDA, a Transfer must include, among other things, the execution and delivery of an assignment and assumption agreement. Developer and Transferee are entering into this Assignment in order to fulfill the obligations of Developer and Transferee as a Transferee under Section 2 of the DDA.
- M. *[[Insert if applicable:]] [[Prior to/simultaneously with this Transfer Event:]], Transferee {has acquired/will be acquiring} the Transfer Parcel from Developer pursuant to and in accordance with the terms of the DDA.]*

NOW, THEREFORE, for good and valuable consideration, Developer and Transferee agree as follows:

1. Assignment.

1.1. As of the Assignment Effective Date, Developer hereby assigns, conveys, transfers, bargains, grants, sells and sets over to Transferee, as and to the extent owned or held by Developer, the following (collectively, the "Assigned Interests"):

(a) all right, title, interest and obligation of Developer as the "Developer" under the Property Documents with respect to the Transfer Parcel, arising from and after the Assignment Effective Date, including (i) all benefits provided to and burdens imposed upon Developer pursuant to the Property Documents with respect to the Transfer Parcel, and (ii) all benefits provided to and burdens imposed upon the Transfer Parcel and all improvements thereon

and all personal property associated therewith pursuant to the Property Documents;

(b) all Entitlements and Development Permits with respect to the Transfer Parcel;

(c) all plans, specifications, maps, drawings, and other renderings owned by Developer and relating to the Transfer Parcel, the Project and the Entitlements or such portion thereof as is subject to this Assignment;

(d) all warranties, claims, and any similar rights of Developer relating to and benefiting the Transfer Parcel or the rights and interests transferred pursuant to this Assignment;

(e) *[[Include only if Transfer Parcel comprises all of the Development Parcels:] all intangible rights, goodwill, and similar rights relating to the Project and/or the Transfer Parcel;]* and

(f) all development rights relating to the Transfer Parcel.

1.2. The Assigned Interests together with the Transfer Parcel are collectively referred to in this Assignment as the “**Assigned Property**.”

2. Assumption.

2.1. *[[ALTERNATE 2.1– To be used in connection with a merger:] Transferee, on behalf of itself and its successors and assigns, from and after the Assignment Effective Date, hereby assumes and receives the Assigned Property and Transferee agrees with Developer (and such agreement is expressly also made for the benefit of the City and may be directly enforced by the City) as follows and agrees to be bound by, perform and discharge all obligations of Developer under the Property Documents, regardless of whether they relate to the period prior to the Assignment Effective Date or thereafter:*

{ALTERNATE 2.1– To be used in connection with Transfers other than by Merger:} Transferee, on behalf of itself and its successors and assigns, from and after the Assignment Effective Date, hereby assumes and receives the Assigned Property and Transferee agrees with Developer (and such agreement is expressly made for the benefit of the City and may be directly enforced by the City) as follows and agrees to be bound by, perform and discharge all obligations of Developer under the Property Documents that arise from and after the Assignment Effective Date:]

(a) Transferee accepts and assumes all of the rights and benefits accruing to Developer under the Property Documents relating to the Transfer Parcel, and all of the obligations, conditions, limitations and restrictions related to the Transfer Parcel and/or the Assigned Interests imposed upon Developer under the Property Documents. Transferee expressly assumes and shall be subject to all the obligations, conditions, limitations and restrictions to which Developer and/or the Transfer Parcel is subject under or by reason of the Property Documents that relate to the

Transfer Parcel, including, without limitation, the provisions of the release set forth in Section 4.5.2 of the DDA and the indemnities set forth in Section 10 of the DDA;

(b) Transferee expressly assumes and shall be subject to all the obligations, conditions, limitations and restrictions to which Developer and/or the Assigned Property are subject by reason of the Entitlements related to the Transfer Parcel;

(c) Upon and subject to the terms and provisions of the Property Documents, Transferee expressly assumes and shall be subject to all the obligations to perform, construct and/or install any and all Improvements to be constructed on the Transfer Parcel in accordance with the Scope of Development and within the time period specified in the Schedule of Performance; and

(d) Upon and subject to the terms and provisions of the Property Documents, Transferee shall pay and perform all obligations of Developer set forth in the Property Documents that relate to the Assigned Property, including, without limitation, the following obligations: (i) the obligation to construct the Improvements to be constructed on the Transfer Parcel in accordance with the Scope of Development and within the time period specified in the Schedule of Performance; and (ii) the obligation to pay all sums required to be paid by Developer under the Property Documents in connection with the ownership and/or development of the Assigned Property, to the extent such amounts have not been paid as of the Assignment Effective Date. Without limiting the generality of the foregoing, Transferee specifically agrees to pay all costs and expenses incurred by the City in connection with the Transfer, including the costs of reviewing the documents relating to the Transfer, Transferee or Transferor and preparing, negotiating and reviewing all documents that effectuate or relate to the Transfer. Such costs and expenses shall include, without limitation, City Staff costs as well as fees and costs incurred by the City for attorneys and other professionals and agents.

2.2. Transferee shall remain fully responsible to perform and satisfy all of the obligations and liabilities assumed by Transferee pursuant to Section 2.1 above regardless of any of the following:

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

(b) the existence or non-existence of any liens, easements, covenants, conditions, restrictions, claims or encumbrances affecting the Assigned Property (including without limitation any of the foregoing arising from or related to the Entitlements or any of the Property Documents);

(c) the suitability of the Assigned Property for any and all future development, uses and activities which Transferee or Developer may conduct thereon, including the development of the Project as described in the Property Documents;

(d) the ability of the City or any third party to complete, or likelihood of the completion of, any of the improvements and infrastructure described by the General Plan,

the Reuse Plan, the Specific Plan, the Tustin Legacy Backbone Infrastructure Program or any other plan or policy of the City or any other Governmental Authorities;

(e) the compliance by the City or any third party with respect to the Reuse Plan, the General Plan, the Specific Plan, the Special Restrictions applicable to the Transfer Parcel or any other portion of the Development Parcels or the special restrictions or other covenants and agreements applicable to other property at Tustin Legacy, the CC&Rs or any other agreement or governmental restriction or plan affecting Tustin Legacy;

(f) the habitability, merchantability or fitness for a particular purpose of the Assigned Property;

(g) the manner, quality, state of repair or lack of repair of the Assigned Property;

(h) the nature, quality or condition of the Transfer Parcel including water, soil and geology;

(i) the compliance of or by the Assigned Property and/or its operation in accordance with any of the Entitlements or any Governmental Requirement, including without limitation, the National Environmental Policy Act, CEQA and the Americans with Disabilities Act of 1990;

(j) the manner or quality of the construction or materials, if any, incorporated into any part of the Transfer Parcel or the Improvements;

(k) the presence or absence of Hazardous Materials, including without limitation, asbestos or lead paint at, on, under, or adjacent to the Transfer Parcel or any other portion of the Development Parcels or Tustin Legacy;

(l) the content, completeness or accuracy of the information, documentation, studies, reports, surveys and other materials, delivered to Transferee by Developer or others in connection with Transferee's review of the Assigned Property and the transactions contemplated in the Property Documents;

(m) the conformity of the existing improvements on the Transfer Parcel, if any, to any plans or specifications;

(n) compliance of the Assigned Property with past, current or future Governmental Requirements (including, without limitation, the Entitlements) relating to zoning, subdivision, planning, building, fire, safety, health or Environmental Matters and/or covenants, conditions, restrictions or deed restrictions;

(o) the deficiency of any undershoring or of any drainage to, on or from the Transfer Parcel or any other portion of Tustin Legacy;

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

(q) the existence or lack of vested land use, zoning or building entitlements affecting the Transfer Parcel;

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

(s) the conditions, covenants and restrictions imposed upon the Assigned Property or any portion thereof under the Property Documents or the Entitlements;

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

(u) any other matters.

3. Representations and Warranties.

3.1. As an inducement to the City to consent to the Transfer and this Assignment and to perform its obligations hereunder, Transferee represents and warrants to the City as follows:

(a) Transferee has the necessary expertise, experience, financial experience, financial capacity and qualifications and legal status necessary to perform as Transferee pursuant to this Assignment and to construct and Complete the Project as contemplated by this Assignment, and, without limiting the foregoing, Transferee is experienced in the development, management, and sale of residential condominium projects of the size and type described in this Assignment and understands the process and requirements associated with projects such as the Project described herein.

(b) Transferee's acquisition of the Assigned Property, development of the Project and its other undertakings pursuant to this Assignment are for the purpose of timely development of the Project upon the Transfer Parcel in accordance with the Schedule of Performance attached to the DDA and not for speculation or land holding.

(c) Transferee is a [insert type of legal entity], duly incorporated [or formed] and validly existing and in good standing under the laws of the State of [insert state of formation], is duly qualified to do business and in good standing in the State and in each other jurisdiction where the operation of its business or its ownership of property or the performance of Transferee's obligations under this Assignment make such qualification necessary.

(d) Subject to all of the conditions in the DDA for the benefit of Transferee, Transferee has (or will have prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Assignment or any Property Document) all requisite power and authority required to enter into this Assignment and the instruments referenced in this Assignment, to consummate the transaction contemplated hereby and thereby and to take any steps contemplated thereby or hereby, and to perform its obligations hereunder and thereunder.

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

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

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

(h) Neither the execution or delivery of this Assignment or the documents referenced in this Assignment, nor the incurring of the obligations set forth in the Property Documents in this Assignment and the certificates, declarations and other documents referenced in this Assignment, nor the consummation of the transactions contemplated in this Assignment, nor compliance with the terms of this Assignment and the documents referenced in this Assignment, will violate any provision of law or any order of any court or Governmental Authority to which Transferee is subject or conflict with or result in the breach of any terms, conditions, or provisions of, or constitute a default under any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership Assignment, lease or other Assignments or instruments to which Transferee, or to the extent applicable to any non-publicly traded Transferee, one of its owners, members or partners are a party and which affect the Property, the Development Parcels or the transactions contemplated by this Assignment.

(i) No attachments, execution proceedings, assignments of benefit to creditors, bankruptcy, reorganization or other proceedings are pending or, to the best of Transferee's knowledge, threatened against Transferee, or to the extent applicable to any non-publicly traded Transferee, one of its owners, members or partners.

(j) Except for those representations and warranties of the City expressly set forth in Sections 3.3 and 17.12.2 of the DDA, Transferee is relying solely upon its own inspections and investigations in proceeding with this Assignment and the transactions contemplated hereby, and is not relying on the accuracy or reliability of any information provided to it by the City, on any oral or written representation or on any facts or conclusions of law made by the City, or any of its elected and appointed officials, officials, employees, agents, attorneys or representatives made in connection with this Assignment. In making such investigation and assessment, Transferee has been provided access to any persons, records or other sources of information which it has deemed appropriate to review and it has thereafter completed such investigation and assessment. Without limiting the generality of the foregoing provisions, Transferee acknowledges that, without limiting any other provision of the Property Documents, the City has not made and will not make any representations or warranties concerning the condition of the Assigned Property, the compliance or non-compliance of the Assigned Property or any portion thereof with Environmental Laws or the existence or non-existence of Hazardous Materials in relation to the Assigned Property or any portion thereof or otherwise.

(k) To Transferee's knowledge, except as described on Attachment 4, there are no adverse conditions or circumstances, no pending or threatened legal proceedings or litigation against Transferee, no governmental action, and no other condition which could prevent or materially impair Transferee's ability to carry out its obligations hereunder or under the Property Documents to develop the Transfer Parcel and the Project as contemplated by the terms of this Assignment or the Property Documents.

(l) Except as set forth in this Assignment or the Property Documents, Transferee has not paid or given, and will not pay or give, any third Person any money or other consideration for this Assignment, other than the purchase price paid to the Transferor and the normal cost of conducting business and cost of professional services such as architects, engineers and attorneys.

(m) All reports, documents, instruments, information and forms of evidence delivered by Transferee to the City concerning or related to this Assignment and the Property Documents and the transactions contemplated hereby and thereby are, to Transferee's knowledge, accurate and correct and sufficiently complete at the time of submission to give the City true and accurate knowledge of the subject matter, and do not contain any material misrepresentation or omission.

(n) As of the Effective date of this Assignment, Transferee will have the equity capital and financial capacity required for Completion of the Development without requirement of third party financing.

(o) Transferee does not have any contingent obligations or any other contracts the performance or nonperformance of which could adversely affect the ability of Transferee to carry out its obligations hereunder or under the Property Documents.

Transferee's representations and warranties set forth in this Section 3.1 shall be deemed to

be restated at the Close of Escrow of the Assigned Property covered by this Assignment if the same has not yet occurred, and shall survive the Close of Escrow (and any other close of escrow with respect to conveyance of the Assigned Property to Transferee) until the earlier to occur of the following (a) termination of this Assignment or (b) issuance of the Certificate of Compliance, and shall not be merged with the Quitclaim Deed or any other deed. As used in Section 3.1 and 3.2, "to Transferee's knowledge" and similar phrases means the actual present knowledge of the "Transferee Knowledge Parties" as of the Effective Date, in each case without any duty of inquiry; provided, however, that in the event any of the Transferee Knowledge Parties are unavailable at the time these representations and warranties set forth in this Section 3.1 are restated at the close of escrow for the Assigned Property covered by this Assignment, Transferee may specifically identify different Transferee's Knowledge Parties, subject to the City's reasonable approval. Notwithstanding anything to the contrary contained herein, none of the Transferee Knowledge Parties shall be personally liable for any inaccuracy or breach by Transferee of the representations and warranties contained in Section 3.1 or elsewhere in this Assignment.

3.2. Transferee Covenants Regarding Representations and Warranties. Transferee shall promptly advise the City in writing if any of the Transferee Knowledge Parties becomes aware (without any duty of inquiry) that any representation or warranty made by Transferee in Section 3.1 is or becomes untrue in any material respect prior to the close of escrow of the Assigned Property covered by this Assignment.

3.3. Transferee Knowledge Parties. For purposes of the DDA, the "Developer Knowledge Parties" of Transferee (also referred to in this Assignment as the "**Transferee Knowledge Parties**") are _____, _____, and _____.
{insert names of employees, officers, etc. of Transferee acceptable to the City in its sole discretion}

4. No Waiver or Modification. Nothing contained in this Assignment shall modify in any way any provisions of the Property Documents or the Entitlements.

5. Additional Documents. Developer and Transferee shall each execute and deliver to the other party, upon demand, such further documents, instruments and conveyances, and shall take such further actions as are necessary or desirable to effectuate the intent and purposes of this Assignment. In addition to the foregoing, Developer shall reasonably cooperate with Transferee, at the expense of Transferee, to allow Transferee to submit and process any warranty claim under any warranty in which Transferee obtained an interest as part of the Assigned Interests.

6. Miscellaneous.

6.1. Modification. No amendment, change, modification or supplement to this Assignment shall be valid and binding on Developer or Transferee unless it is represented in writing and signed by both Developer and Transferee. ***{To be inserted only in connection with a Transfer that is not a Permitted Transfer:} No amendment, change, modification or supplement***

to this Assignment shall be deemed to be part of the consent or deemed to be consented to by the City, unless the City executes a separate written consent to such amendment, change, modification or supplement.]

6.2. Applicable Law. This Assignment shall be governed by, interpreted under, construed and enforced in accordance with the laws of the State of California, irrespective of California's choice-of-law principles.

6.3. Binding Effect. This Assignment and the terms, provisions, promises, covenants and conditions hereof shall be binding upon and inure to the benefit of Developer and Transferee and their respective heirs, legal representatives, successors and assigns.

6.4. Counterparts. This Assignment may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and shall be one and the same instrument. This Assignment shall not be effective until the execution and delivery by Developer and Transferee of at least one set of counterparts ***[to be inserted only in connection with a Transfer that is not a Permitted Transfer:]*** *(together with an executed counterpart of the City's consent attached to this Assignment).* A counterpart of this Assignment that is executed and delivered electronically (by facsimile machine or email) shall not be effective unless an ink-signed original executed copy of the signature page of this Assignment is also promptly delivered to the other party, and such ink-signed original executed page is actually received by the other party. Developer and Transferee hereby authorize each other to detach and combine original signature pages and notarial acknowledgements and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Assignment as a duly and validly executed agreement.

6.5. City as Third-Party Beneficiary. Developer and Transferee hereby acknowledge and agree that until the Certificate of Compliance is recorded in the Official Records, the City shall be an intended third-party beneficiary under this Assignment and the City shall have the right to enforce the terms and provisions of this Assignment applicable to the City. Other than the City, there shall be no third-party beneficiaries of this Assignment.

6.6. ***[To be inserted only in connection with a Transfer that is not a Permitted Transfer; any Transferee subject to a Permitted Transfer may provide separate notice to the City of any change in address for notice purposes:]*** Notices. *From and after the Amendment Effective Date, all notices that the City may desire or is required to deliver to the "Developer" under the Property Documents and/or the Entitlements with respect to the Transfer Parcel, and pursuant to Section 17.6 of the DDA, shall be delivered to Transferee only at the following addresses:*

Transferee:
[entity]

with a copy to:
[legal counsel]

{signatures on next page}

Developer and Transferee each has caused this Assignment to be duly executed by its duly authorized officer as of the Assignment Effective Date.

“DEVELOPER”

CalAtlantic Group, Inc.,
a Delaware corporation

By: _____

Name: _____

Title: _____

Dated: _____

“TRANSFEEE”

[entity],

a _____

Dated: _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

{City consent on next page}

[THE FOLLOWING ACKNOWLEDGEMENT IS TO BE INSERTED ONLY IN CONNECTION WITH A TRANSFER THAT IS NOT A PERMITTED TRANSFER]

ACKNOWLEDGMENT AND CONSENT BY CITY OF TUSTIN

By executing in the space set forth below, the City of Tustin hereby:

- (a) Acknowledges receipt of the Assignment and Assumption Agreement (the “Assignment”) to which this Consent is attached;
- (b) Consents to the making of the Assignment between Developer and Transferee, subject to the terms and conditions set forth in the Assignment;
- (c) This Consent by the City constitutes the consent required pursuant to Section 2 of the DDA and constitutes satisfaction of Developer’s obligation to obtain the City’s consent pursuant to Section 2 of the DDA;
- (d) Agrees that *[insert name of Transferee]*, a _____ (the assignee in the Assignment) shall be deemed by the City to be the “Developer” under the DDA with respect to the Transfer Parcel, from and after the Assignment Effective Date;
- (e) Confirms that *[[applies only if there is a release of Developer and not in the case of a Merger:} Developer shall be released from any of its obligations under the Property Documents related to the Transfer Parcel arising from and after the Assignment Effective Date; provided, however, that]* notwithstanding the assignment by Developer and the assumption by Transferee in this Assignment, Developer is not released from, and remains fully liable for all obligations and liabilities with respect to: (i) matters or circumstances (including any payment obligations) which relate to or arose during the period that Developer was the “Developer” under the DDA and for the Additional Liability Period, as applicable; (ii) the releases set forth in Section 4.5.2(f) of the DDA or in any of the other Property Documents, (iii) the indemnities set forth in Sections 5.5, 8.12(e), 8.15, 8.16, 10.1, 10.2 and 17.12.1 of the DDA and indemnities in any of the other Property Documents for matters Accruing during the period that such transferor was Developer hereunder and for the Additional Liability Period as applicable; and (iv) any of Developer’s obligations under the Property Documents to the extent that the same arise prior to the Assignment Effective Date or subsequently if arising due to the acts or omissions of Developer and/or any Developer Affiliate or Developer Representative;
- (f) *[[Applies to an Assignment in connection with Merger:} Further confirms that notwithstanding the assignment by Developer and the assumption by Transferee in this Assignment, Developer is not released from, and remains fully liable for all obligations and liabilities under the Property Documents;]*

(g) *[[Applies only if one of the following is applicable:} notwithstanding the assignment by Developer and the assumption by Transferee in this Assignment, Developer is not released from, and remains fully liable for all obligations and liabilities from, and]*

(i) *[[Applies only if there is Property retained by Developer;] under the Property Documents which relate to any other portion of the Developer Parcels, the Property or the Project that is not subject to the foregoing Transfer Event and as to which Developer has not been theretofore released in accordance with the Property Documents]; and*

(ii) *[[ii) and (iii) Apply only if Transfer is a Permitted Transfer or if there is No Release;] that have Accrued prior to the Assignment Effective Date under the Property Documents and the Entitlements including, without limitation, pursuant to any indemnity given by Developer under the Property Documents and/or the Entitlements, and*

(iii) *in addition to all of the obligations of Transferee under the Property Documents, Developer remains jointly and severally liable with Assignee for all the obligations under the Property Documents relating to the Transfer Parcel, including, without limitation, for the following: (i) construction of the Improvements, (ii) payment of the Project Fair Share Contribution, and (iii) performance of Developer's maintenance obligation and all release and indemnity obligations of Developer set forth in the Property Documents with respect to the Transfer Parcel.]*

(h) Acknowledges the new addresses for Notices for Transferee set forth in the Assignment and agrees that such new addresses shall be the effective notice addresses for the Developer from and after the Assignment Effective Date under the Property Documents and the Entitlements.

{signatures on next page}

This Consent by the City to the Assignment shall not constitute evidence of compliance with or satisfaction of any obligation of Developer under any of the Property Documents, or any other agreement between Developer and the City, except for the obligation of Developer to obtain the City's consent to any Transfer.

CITY OF TUSTIN:

Dated: _____

By: _____
Jeffrey C. Parker,
City Manager

ATTEST:

By: _____
Erica Rabe
City Clerk

APPROVED AS TO FORM

By: _____
David Kendig,
City Attorney

Armbruster Goldsmith & Delvac LLP
Special Real Estate Counsel to the City

By: _____
Amy E. Freilich

{signatures continued on next page}

ACKNOWLEDGED AND AGREED:

DEVELOPER:

CalAtlantic Group, Inc., a Delaware
corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

EXHIBIT "A"
Legal Description of the Development Parcels

{to be attached}

EXHIBIT "B"
Legal Description of the Transfer Parcel

{to be attached}

ATTACHMENT 17

CITY DATE DOWN CERTIFICATE
REGARDING REPRESENTATIONS AND WARRANTIES

Reference is hereby made to that certain Tustin Legacy Disposition and Development Agreement For Disposition Parcel 6B dated as of _____, 201_ *[if amended:]* (the "**Original DDA**") as amended by that certain Amendment No. ___ to Tustin Legacy Disposition and Development Agreement for Disposition Parcel 6B dated as of _____, 201_ (as amended, the "**DDA**") *[if not amended:]* (the "**DDA**"), by and between the City of Tustin, a municipal corporation of the State of California (the "**City**") and CalAtlantic Group, Inc., a Delaware corporation *[if no Assignment or Merger:]* ("**Developer**") / *[if Assignment or Merger:]* ("**Original Developer**") which has, by assignment {and merger}, including pursuant to that certain Assignment Agreement by and between _____, a _____ ("**Developer**") and Original Developer ("**Assignment Agreement**"), assigned all of its right, title and interest in and to the DDA to Developer.] Capitalized terms used herein that are not defined herein shall have the meanings specified in the DDA.

This Date Down Certificate is being delivered by the City pursuant to Section 7.2.1(a)(xi) of the Original DDA concurrently with the Close of Escrow.

The undersigned does hereby certify to Developer, in the name and on behalf of the City, that all of the representations and warranties made by the City in Section 3.3 and in Section 17.12.2 of the *{Original}* DDA are true and correct as of the date hereof, except as set forth on Exhibit A attached hereto.

Without the written consent of the City: (i) no Person other than Developer may rely on this Date Down Certificate for any purpose; and (ii) copies of this Date Down Certificate may not be furnished to anyone for purposes of encouraging such reliance.

In no event shall the individual executing this Date Down Certificate on behalf of the City have any personal liability hereunder.

{signatures on next page}

CITY OF TUSTIN:

Dated: _____

By: _____
Jeffrey C. Parker,
City Manager

APPROVED AS TO FORM

By: _____
David Kendig,
City Attorney

Armbruster Goldsmith & Delvac LLP
Special Real Estate Counsel to the City

By: _____
Amy E. Freilich

{signatures continued on next page}

EXHIBIT "A"
{If None, state NONE}.

ATTACHMENT 18

DEVELOPER DATE DOWN CERTIFICATE REGARDING REPRESENTATIONS AND WARRANTIES

Reference is hereby made to that certain Tustin Legacy Disposition and Development Agreement For Disposition Parcel 6B dated as of _____, 201__ *[if amended:]* (the "**Original DDA**") as amended by that certain Amendment No. ___ to Tustin Legacy Disposition and Development Agreement for Disposition Parcel 6B dated as of _____, 201__ (as amended, the "**DDA**") *[if not amended:]* (the "**DDA**"), by and between the City of Tustin, a municipal corporation of the State of California (the "**City**") and CalAtlantic Group, Inc., a Delaware corporation *[if no Assignment or Merger:]* ("**Developer**") / *[if Assignment or Merger:]* ("**Original Developer**") which has, by assignment {and merger}, including pursuant to that certain Assignment Agreement by and between _____, a _____ ("**Developer**") and Original Developer ("**Assignment Agreement**"), assigned all of its right, title and interest in and to the DDA to Developer.] Capitalized terms used herein that are not defined herein shall have the meanings specified in the DDA.

This Date Down Certificate is being delivered by the Developer pursuant to Section 7.2.2(b)(x) and Section 7.2.2(b)(xi) of the *{Original}* DDA concurrently with the Close of Escrow.

The undersigned does hereby certify to the City, in his capacity as an officer of Developer and for and on behalf of Developer as follows:

All of the representations and warranties made by *[if no Assignment or Merger:]* Developer in Section 3.1 of the *{Original}* DDA / *[if Assignment or Merger:]* Developer pursuant to the Assignment Agreement] and in Section 17.12.1 of the *{Original}* DDA are true and correct as of the date hereof, except as set forth on Exhibit A attached hereto.

1. *[if no Assignment or Merger:]* Any documentation submitted to the City by Developer pursuant to Sections 3.1 and 4.6.5 of the *{Original}* DDA prior to the Effective Date is true and correct as of the date of this certificate.]

[if Assignment or Merger:] Any documentation submitted to the City by Developer pursuant to Sections 2.2 and 4.6.5 of the *{Original}* DDA as of the effective date of the *{Transfer/Merger}* is true and correct as of the date of this certificate;]

2. Attached to this Date Down Certificate as Exhibit B are true and correct copies of the certificate of good standing for Developer from the *{Delaware/other state of formation if not California}* Secretary of State and the California Secretary of State, and each attached certificate of good standing is dated not earlier than thirty (30) days prior to the date of this Date Down Certificate.

Without the written consent of Developer: (i) no Person other than the City may rely on this Date Down Certificate for any purpose; and (ii) copies of this Date Down Certificate may not be furnished to anyone for purposes of encouraging such reliance.

In no event shall the individual executing this Date Down Certificate on behalf of Developer have any personal liability hereunder.

{signatures on next page}

Dated: _____, 201_

DEVELOPER:

_____,
a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

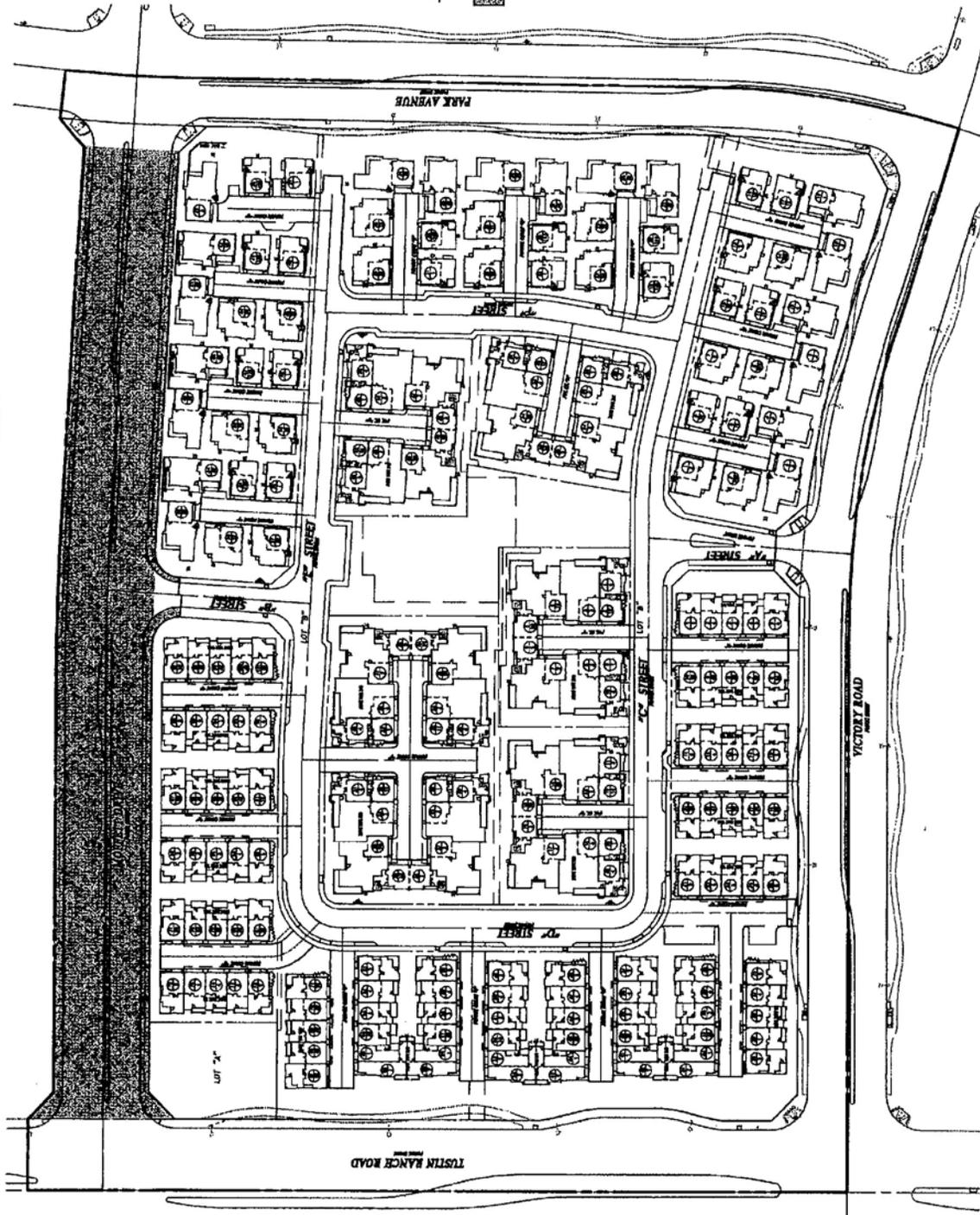
EXHIBIT "A"
{If None, state NONE}.

EXHIBIT "B"

- *Certificate of Good Standing from _____ Secretary of State*
- *Certificate of Good Standing from California Secretary of State and*
- *Certificate of tax good standing from the California Franchise Tax Board*

ATTACHMENT 19

City Improvements



LEGEND:



CITY IMPROVEMENTS



N.T.S.

01/30/2018

ATTACHMENT 20
DECLARATION OF SPECIAL RESTRICTIONS
FOR DISPOSITION PARCEL 6B

<p>CITY OF TUSTIN OFFICIAL BUSINESS REQUEST DOCUMENT TO BE RECORDED AND TO BE EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE 6103 AND 27383.</p> <p>Recording requested by and when recorded mail to:</p> <p>The City of Tustin 300 Centennial Way Tustin, CA 92780 Attn: City Manager</p>	
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SPACE ABOVE THIS LINE FOR
RECORDER'S USE

DECLARATION OF SPECIAL RESTRICTIONS
FOR DISPOSITION PARCEL 6B

*[PRIOR TO EXECUTION, CONFORM ALL QUOTED SECTIONS OF DDA
TO THEN CURRENT VERSION OF DDA]*

This **DECLARATION OF SPECIAL RESTRICTIONS FOR DISPOSITION PARCEL 6B** (this "**Declaration**"), is made as of _____, 201_ (the "**Effective Date**") by the CITY OF TUSTIN, a municipal corporation of the State of California ("**City**"), and is acknowledged by _____, a _____ corporation ("**Developer**").

A. Pursuant to the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of Public Law 101-510; 10 U.S.C. Section 2687 Note), as amended (the "**Base Closure Law**"), the Marine Corps Air Station-Tustin ("**MCAS Tustin**") located substantially in the City of Tustin, California was closed by the United States of America, acting by and through the Department of the Navy (the "**Navy**"). 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.

B. In May 2002, the Navy and the City entered into that certain 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 as of May 13, 2002 (the "**Navy Conveyance Agreement**,") pursuant to which the Navy agreed to convey 1,153 acres of MCAS Tustin to the City. The 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 is referred to in this Declaration as "**Tustin Legacy**".

C. The "**Land**", comprised of approximately 14.45 gross acres of land, more or less, located in the City of Tustin, County of Orange, California and legally described on Attachment 1 attached hereto and incorporated herein by this reference, constitutes a portion of Tustin Legacy conveyed to the City pursuant to the Navy Conveyance Agreement.

D. The City and Developer entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 6B, dated as of _____, 201_, pursuant to which Developer has agreed to purchase the Development Property (as defined below) from the City upon and subject to the terms and conditions set forth therein, and as the same may hereafter be further amended, modified or supplemented in accordance with its terms, collectively, the "**DDA**". The DDA is evidenced by that certain Memorandum of Tustin Legacy Disposition and Development Agreement for Disposition Parcel 6B. (as the same may hereafter be amended, modified or supplemented, the "**Memorandum of DDA**"), dated as of the Effective Date and Recorded immediately prior to the Recordation of this Declaration. Capitalized terms not otherwise defined herein shall have the meaning set forth for such terms in the DDA and such terms are hereby incorporated by this reference.

E. Upon the Effective Date, Developer is acquiring the Development Property and has agreed to develop the Project on the Development Parcels (as defined below) as a community of residential homes for sale to members of the home buying public ("**Homeowners**"), together with certain privately owned, Publicly Accessible Common Areas and Publicly Accessible Common Area Improvements, Landscape Areas and Private Streets and Sidewalks that will be made available to the public, and certain Common Areas and Common Area Improvements restricted to use by Homeowners pursuant to and in accordance with the DDA and the Final Map.

F. The City intends that each and every Property Owner use and maintain the Development Property in accordance with this Declaration and the Restrictions and following the completion of the Project pursuant to the DDA, as a High Quality Residential Project, as more particularly set forth herein and in the DDA. For purposes of this Declaration, the term "**Property Owner**" shall mean the Developer and each Successor Owner of the Development Property or any portion thereof, but shall specifically exclude the following (referred to herein collectively as "**End Users**"): (a) each Homebuyer who purchases a Home; (b) the Homeowners' Association with respect to any Common Area within the Development Parcels conveyed to the Homeowners' Association, (c) any utility or Governmental Authority with respect to any transfer of portions of the Property or grants of easements affecting the Development Parcels desirable for the development of the Development Parcels, and/or (d) any lighting or landscaping district.

G. To create and preserve the value, desirability and attractiveness of the Development Property, each Property Owner will hereafter hold and convey title to the Development Property owned by it subject to those certain protective covenants, conditions and restrictions set forth herein, which restrictions shall be applicable for the Term (defined below).

H. The City now desires to impose on the Development Property this Declaration, for these purposes, among others: (a) to preserve the general plan for the use and maintenance of Tustin Legacy, including of the Development Parcels, through development and maintenance of a High Quality Residential Project upon the Development Parcels; (b) to ensure proper use and maintenance of the Project; and (c) to protect each owner of the Development Property and nearby owners and residents including the residents of the City of Tustin, from improper use of the Development Property, in each case upon and subject to the terms of this Declaration.

I. This Declaration also sets forth those rights of the City and, upon acquisition by Developer, certain obligations of Property Owner specified in the DDA or otherwise, each of which shall remain in full force and effect for the applicable Term, notwithstanding the termination of the DDA and/or the issuance by the City of a Certificate of Compliance for the Project.

NOW, THEREFORE, the City hereby covenants and declares that the Development Parcels are now held and shall hereafter be held, transferred, conveyed, sold, leased, subleased, encumbered, mortgaged, used, occupied and improved subject to the covenants, conditions and restrictions herein set forth for the Term, each and all of which is and are for, and shall inure to the benefit of and pass with, the Development Parcels and every portion of or interest in the Project and shall apply to Declarant and each Property Owner, to the extent set forth herein, for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Development Parcels and Tustin Legacy in furtherance of a general plan for the protection, maintenance, subdivision and improvement of Tustin Legacy or any portion thereof. For the Term of this Declaration, the covenants, conditions and restrictions set forth in the Declaration shall run with the Development Parcels, shall inure to the benefit of the City and its Governmental Successors and shall burden and be binding upon the Development Parcels and Property Owner and each and every Person claiming by, through or under any Property Owner, including, only where specified below, each End User, and where not otherwise specified, excluding any End Users.

The City hereby further declares as follows:

1. **Property Affected by this Declaration.** The property affected by this Declaration is the “**Development Property**”, consisting of (a) the Land, but excepting therefrom the matters set forth in Section 2 of that certain Quitclaim Deed For Disposition Parcels 6B and Covenants, Conditions and Restrictions, Including Environmental Restriction Pursuant to Civil Code Section 1472 made by the City in favor of Developer, dated as of even date herewith and recorded immediately following the recordation of this Declaration (taking into account such exceptions, the “**Development Parcels**”); (b) all improvements, now existing or hereafter constructed, located on the Development Parcels, and (c) all appurtenances pertaining to the Development Parcels.

2. **Covenants, Conditions and Restrictions:** For the benefit of the City and its Governmental Successors, and as an inducement for the City to consummate the transactions contemplated by the DDA, but subject to Section 4.2 of this Declaration, the violation of any of the Restrictions (as hereinafter defined) set forth in this Section 2 for the Term, shall at the City’s option constitute a Material Default hereunder and entitle the City to exercise any of the rights and

remedies set forth herein. The covenants, conditions, restrictions and agreements set forth in this Declaration are collectively referred to herein as the "**Restrictions.**"

2.1 **Use Covenants and Restrictions.** From and after the acquisition of fee title to the Property by Developer, Property Owner shall cause the Development Parcels to be developed (a) only for lawful residential uses and such uses as are ancillary or incidental thereto and (b) as a High Quality Residential Project.

2.2 **Maintenance Covenants and Restrictions.**

2.2.1 From and after the acquisition of fee title to the Property by Developer, Property Owner shall maintain the Horizontal Improvements and all buildings (including Homes), structures, landscaping, Private Streets and Sidewalks, and all other roads, drives, bike paths, alleyways, sidewalks, utilities, Common Area, Common Area Improvements, Landscape Improvements, courtyards, hardscaping, fountains and similar improvements constructed on the Development Parcels from time to time (collectively, the "**Improvements**") and the Development Parcels, consistent with the following requirements:

(a) Prior to commencement of construction, Property Owner shall be responsible, at its sole cost and expense, (i) to secure and maintain the Development Property in a clean, safe and secure condition, in compliance with all applicable laws, (ii) to abate weeds and other hazards and nuisances on the Development Property, (iii) to erect and maintain barricades and fencing, and provide security, in each case with respect to the Development Parcels as reasonably necessary to protect the public and any Improvements already constructed, and (iv) to maintain (in compliance with all Environmental Laws) erosion control on the Development Parcels.

(b) From the date of commencement and during the continuance of construction of any Improvements on the Development Parcels and until Completion thereof, Property Owner shall maintain the Development Parcels and the Improvements thereon then under construction consistent with normal and customary construction industry practice.

(c) From and after the issuance of a certificate of occupancy for any Improvements and prior to the transfer thereof by Property Owner to an End User, Property Owner shall maintain all Improvements on the Development Parcels not then under construction in a clean, sanitary, orderly and attractive condition, and in accordance with High Quality Residential Standards, subject to reasonable wear and tear, and in accordance with the requirements of the Landscape Maintenance Agreement and, further subject to Section 2.2.1(e) of this Declaration, with respect to change or damage by casualty or condemnation. Property Owner shall be required to meet the standard for the quality of maintenance of the Improvements on the Development Parcels required by this Section 2.2.1(c) of this Declaration regardless of whether or not a specific item of maintenance is listed below, except that, in each case, and notwithstanding anything in this Section 2.2.1 of this Declaration to the contrary, Property Owner shall not have any maintenance obligation with respect to any (x) Completed Improvements owned or controlled by (or on property owned or maintained by) any Homebuyer or the Homebuyer's Association or (y) with respect to any Completed Improvements owned by any utility, Governmental Authority, lighting

or landscape district or, except as set forth in the Landscape Maintenance Agreement, by the City. Representative items of maintenance shall include: (i) maintenance, repair and replacement on a regular schedule, consistent with High Quality Residential Standards, of all Improvements; (ii) regular inspection for graffiti or damage or deterioration or failure, and reasonably prompt (or, in the case of graffiti, within 48 hours) repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; (iii) emptying of trash receptacles and removal of litter; (iv) regular sweeping of Private Streets and Sidewalks throughout the Development Parcels; (v) fertilizing, irrigating, trimming and replacing vegetation and other Landscaping Improvements as necessary; (vi) cleaning exterior windows on a regular basis; (vii) painting the buildings on a regular program and prior to the deterioration of the painted surfaces; and (viii) conducting roof inspections on a regular basis and maintaining roofs in a leak-free and weather-tight condition.

(d) Except as otherwise provided in this Section, the maintenance responsibilities of all Property Owners shall be vested in one entity at any given time during the Term. Property Owners' obligations under Section 2.1 of this Declaration shall terminate with respect to any portion of the Development Property transferred to an End User and such termination shall be effective automatically upon such transfer. With respect to those portions of the Development Property not yet transferred to an End User, Property Owner shall have the right (i) to assign its maintenance responsibilities under this Declaration to a Homeowners' Association to be created through the CC&Rs, upon which assignment Property Owner shall have no further liability under this Section 2.2.1, and (ii) to subcontract its maintenance responsibilities under this Declaration to such Homeowners' Association or an Affiliate of Developer or a first class property management company provided that such subcontracting shall not relieve Property Owner of any liability for its obligations under this Section 2.2.1.

(e) In the event of casualty, Property Owner shall, in its sole discretion, either (i) promptly repair the Improvements and prior to commencement of such repair maintain the portions of the Development Property subject to casualty in accordance with Section 2.2.1(b) of this Declaration or (ii) if Property Owner determines in its sole discretion not to repair such Improvements, maintain the portions of the Development Property subject to casualty in accordance with Section 2.2.1(a) of this Declaration. In each case, upon commencement of any construction with respect to the affected portions of the Development Property and until completion of the repair work, Property Owner shall comply with the requirements set forth in Section 2.2.1(b) of this Declaration and upon completion of the repair work, shall comply with the requirements set forth in Section 2.2.1(c) of this Declaration. Notwithstanding the foregoing, the portions of the Development Property unaffected by any such casualty shall be maintained as otherwise required by this Declaration and, including pursuant to Section 2.2.1(c) of this Declaration, and unless not economically feasible due to cost or physical proximity as demonstrated to the reasonable satisfaction of the City, Property Owner shall provide landscaping or other barriers to shield the portions of the Development Property remaining in use and adjacent public roadways from those subject to casualty in order to maintain the unaffected portions of the Development Parcels and the Improvements thereon as required pursuant to Section 2.2.1(a), (b) and/or (c) of this Declaration, as applicable.

2.2.2 If Property Owner fails to maintain the Development Property or any portion thereof in accordance with the requirements of this Declaration and the same constitutes a

Material Default by Property Owner hereunder, the City or its designee shall have the right, but not the obligation, to enter the Development Property upon reasonable notice to Property Owner, correct such failure, and hold Property Owner responsible for the cost thereof and such cost, until paid, shall constitute a lien on the applicable portion of the Development Property as and to the extent described in Section 4.6 of this Declaration.

2.3 **Profit Participation Price.** Developer, its successors and assigns and Successor Owners shall pay to the City the Profit Participation Price pursuant to the terms and conditions of the Profit Participation Agreement executed by the Parties.

2.4 **Obligation to Refrain from Discrimination.** There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the Development Property or in development of the Project, nor shall Property Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Development Property or in development of the Project. The provisions of this Section 2.4 shall be binding upon Developer, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner, including each End User.

2.5 **DDA Provisions.** Pursuant to the DDA, the City has imposed certain covenants, conditions and restrictions on the Development Property, including the releases contained in Section 4.5.2 of the DDA, and certain environmental indemnity and environmental provisions, each of which is set forth verbatim below in italics and each of which is hereby declared to be a covenant running with the land, binding Developer and each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner (but in each case excluding any End Users unless otherwise specifically set forth below) for the Term of this Declaration and for such longer period as is established by the DDA and/or the Quitclaim Deed, as applicable. Within the italicized language which follows, section references shall be to sections of the DDA and certain terms shall have the following meanings and the remaining terms shall have the meanings set forth in the DDA: the term "Agreement" shall mean the DDA as defined in this Declaration; the terms "Close of Escrow" and "Closing Date" shall mean the Effective Date of this Declaration; the term "Property" shall mean the "Development Property" as defined in this Declaration; the term "Quitclaim Deed" shall mean that certain "Quitclaim Deed" pursuant to which the City shall convey the Property to Developer at the Close of Escrow, which shall be Recorded immediately following Recording of this Declaration; and the term "Special Restrictions" shall mean this Declaration.

2.5.1 **Releases.** Section 4.5.2(f) of the DDA provides as follows:

*"(f) **Release.** Developer, on behalf of itself, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner and including, without limitation, each End User (each, including Developer, a "Developer Releasing Party"), hereby waives, as of the Effective Date, and agrees to waive, as of the Close of Escrow, the right of each Developer Releasing Party to recover from, and fully and*

irrevocably releases, the City Released Parties from any and all Claims that any Developer Releasing Party may now have or hereafter suffer or acquire arising from or related to: (i) any Due Diligence Information, (ii) any condition of the Property or any current or future improvement thereon, known or unknown by any Developer Releasing Party or any City Released Party, including as to the extent or effect of any grading of the Development Parcels; (iii) any construction defects, errors, omissions or other conditions, latent or otherwise; (iv) economic and legal conditions on or affecting the Property or any improvements thereon; (v) Environmental Matters, including the existence, Release, threatened Release, presence, storage, treatment, transportation or disposal of any Hazardous Materials at any time on, in, under, or from, the Property or any current or future improvement thereon or any portion thereof; (vi) Claims of or acts or omissions to act of any Governmental Authority or any other third party arising from or related to any actual, threatened, or suspected Release of a Hazardous Material on, in, under, or from or about the Property or any current or future improvement thereon, including any Investigation or Remediation at or about the Property or any current or future improvement thereon; and/or (vii) arising from the Tustin Legacy Backbone Infrastructure Program, any community facilities district, service district or assessment district the cost or extent thereof, or the amount of the Project Fair Share Contribution or any community facilities district, service district or assessment district assessment against the Development Parcels described in this Agreement or the DA; provided that the foregoing release by the Developer Releasing Parties shall not extend to the extent of (A) any breach by the City of any of the representations or warranties of the City set forth in Sections 3.3 or 17.12 of this Agreement, (B) any breach by the City of any of the covenants or obligations set forth in this Agreement or any Other Agreement, (C) any Claim that is the result of the gross negligence, willful misconduct or fraud of the City Released Parties, (D) any actions of the City Released Parties which occur following the Close of Escrow with respect to the Property, or (E) any other Claims against City relating to or arising out of tort Claims brought by third parties against Developer, to the extent such claims are based upon the Active Negligence of the City Released Parties and Accruing prior to the Close of Escrow; provided that the exceptions in clauses (C) and (E) above shall not apply with respect to any matter for which the City is indemnified pursuant to Section 5.5 or Section 10.2. This release includes Claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer's release of the City Released Parties. Developer specifically waives the provision of California Civil Code Section 1542, which provides as follows:

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

In this connection and to the extent permitted by law, Developer on behalf of itself, and the other Developer Releasing Parties hereby agrees that (x) it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to Claims or

controversies which are presently unknown, unanticipated and unsuspected; (y) the waivers and releases in this Section 4.5.2(f) have been negotiated and agreed upon in light of that realization and (z) Developer, on behalf of itself and the other Developer Releasing Parties, nevertheless hereby intends to release, discharge and acquit the City Released Parties from any such unknown Claims and controversies to the extent set forth above.

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

CITY'S INITIALS

DEVELOPER'S INITIALS

From and after the acquisition of the Development Parcels by Developer, this release shall run with the land for the benefit of the City and its Governmental Successors and burdening the Development Parcels and Developer and the Successor Owners owning all or any portion of the Development Parcels and all Persons claiming by, through or under Developer or any Successor Owner of the Development Parcels or such portion thereof, including each End User, and to further evidence its effectiveness with respect to Developer and the Successor Owners of the Development Parcels, shall be included in its entirety in the Quitclaim Deed. The provisions of this Section 4.5.2 shall survive the Close of Escrow and the termination of this Agreement and shall not be merged with the Quitclaim Deed."

2.5.2 **Local, State and Federal Laws.** The applicable portion of Section 8.15 of the DDA provides as follows:

" . . . Developer hereby agrees that, with respect to the Project, Developer shall . . . indemnify, defend and hold the City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns free and harmless from and against any and all Claims arising from or related to compliance by Developer or Developer's officers, directors, employees, agents, representatives, consultants and/or contractors (at every tier) in construction of the Project with the prevailing wage requirements imposed by any applicable federal and State labor laws. The indemnity set forth in this Section shall survive the termination of this Agreement."

2.5.3 **Liens, Taxes and Assessments.** Section 8.16 of the DDA provides as follows:

"8.16 Liens, Taxes and Assessments

"Developer shall pay prior to delinquency all real estate taxes and assessments assessed and levied on or against all portions of the Property or the Improvements during the period

of ownership thereof by Developer. Developer shall not place, or allow to be placed, on its interests in the Property, or any Lot or Home, or any portion thereof, any Mortgage or encumbrance of lien not authorized by this Agreement. Developer shall remove, or shall have removed, any levy or attachment made on its interests in the Property or the Improvements (or any portion thereof), or shall assure the satisfaction thereof within thirty (30) calendar days following receipt of notice thereof. Except as set forth in Section 8.7.2 and Section 8.7.3(g), nothing contained in this Agreement shall be deemed to prohibit Developer from contesting the validity or amount of any tax or assessment or to limit the remedies available to Developer in respect thereto. Developer hereby agrees to indemnify, defend and hold the City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns free and harmless from and against any and all Claims arising with respect to payment of liens, taxes and assessments assessed or levied against the Property and/or the Improvements during the period of ownership thereof by Developer. The indemnity set forth in this Section shall survive the termination of this Agreement.”

2.5.4 **Indemnity.** Section 10.1 of the DDA provides as follows:

“10.1 Developer’s Indemnification. As a material part of the consideration for this Agreement, effective upon Close of Escrow, and to the maximum extent permitted by law, Developer shall indemnify, protect, defend, assume all responsibility for and hold harmless the City Indemnified Parties, from and against any and all Claims to the extent caused by the following:

- (a) Developer’s marketing, sale or use of the Property in any way;
- (b) All acts and omissions of Developer in connection with the Project, the Property, the Improvements or any portion of any of the foregoing;
- (c) Any plans or designs for Improvements prepared by or on behalf of Developer, including any errors or omissions with respect to such plans or designs;
- (d) Any loss or damage to the City resulting from any inaccuracy in or breach of any representation or warranty of Developer, or resulting from any Default, including Material Default, by Developer, under this Agreement;
- (e) the non-performance or breach by Developer or the Developer Representatives, of any term or condition of this Agreement; or
- (f) Any development or construction of Improvements or other structures or facilities by Developer or Developer’s Representatives, whether regarding the quality, adequacy or suitability of any labor, service, equipment or material furnished to the Property, any Person furnishing the same, or otherwise.

Notwithstanding anything to the contrary set forth in this Section 10.1, the foregoing indemnities shall not apply to and Developer shall not be obligated to indemnify any of the

City Indemnified Parties with respect to the foregoing to the extent such Claims are a result of: (i) any breach of any covenant or representation or warranty by City under this Agreement, (ii) the gross negligence, willful misconduct or fraud of City or any City Indemnified Party; or (iii) any other Claims against the City relating to or arising out of tort Claims brought by third parties against Developer, to the extent such claims are based upon the Active Negligence of the City or any City Indemnified Party and Accruing prior to the Close of Escrow. This indemnity shall remain in effect for the period specified in Section 10.3 and shall be subject to the other terms set forth therein.”

2.5.5 **Environmental Indemnity.** Section 10.2 of the DDA provides as follows:

*“10.2 **Environmental Indemnity.** As a material part of the consideration for this Agreement, and effective as of the Close of Escrow, Developer on behalf of itself and Successor Owners and each and every Person claiming by, through or under Developer or any Successor Owner, hereby agrees that Developer and each Successor Owner shall, to the maximum extent permitted by law, indemnify, protect, defend, assume all responsibility for and hold harmless the City Indemnified Parties from and against any and all Claims resulting or arising from or in any way connected with the existence, Release, threatened Release, presence, storage, treatment, transportation and/or disposal of any Hazardous Materials on, in or under the Property, or migrating from the Property to adjacent properties regardless whether any such condition is known or unknown now or upon acquisition and regardless of whether any such condition pre-exists acquisition or is subsequently caused, created or occurring; provided that neither Developer nor any Successor Owner shall be responsible (and such indemnity shall not apply) to the extent of (a) any breach of any covenant or representation or warranty by City under this Agreement; (b) the gross negligence, willful misconduct or fraud of City or any City Indemnified Party; or (c) to the extent of the Active Negligence or willful misconduct of the City or the City’s employees, contractors or consultants with respect to Hazardous Materials occurring prior to the Close of Escrow with respect to work performed by such Persons on the Development Parcels. This indemnity shall remain in effect for the period specified in Section 10.3 and shall be subject to the other terms set forth therein. This indemnity shall not be deemed to limit in any manner the rights and/or remedies that City, Developer or Successor Owners may have against the Federal Government as described in Section 4.1.”*

2.5.6 **Duration of Indemnities.** The applicable portion of Section 10.3 of the DDA provides as follows:

*“10.3 **Duration of Indemnities.** The obligations of Developer with respect to each of the indemnities set forth in Sections . . . 8.15, 8.16, 10.1 and 10.2 . . . shall (a) survive the Close of Escrow and shall not merge into the Quitclaim Deed, (b) survive the sale of land to each End User and the issuance of the Certificate of Compliance, and (c) until the date that is ten (10) years following issuance of the Certificate of Compliance, continue to be binding upon Developer and Developer’s successors and assigns and each and every prior Developer not released by the City pursuant to Section 2.2.3(c) and each such party shall be jointly and severally liable under such provisions with respect to the entirety of the*

Project and the Property. . . . The provisions of [this] Section . . . 10.3 shall survive the termination of this Agreement.”

2.5.7 **Claims Response.** Section 10.4 of the DDA provides as follows:

*“10.4 **Claims Response.** In the event that following the Close of Escrow, any Environmental Agency or other third party brings, makes, alleges, or asserts a Claim, arising from or related to any actual, threatened, or suspected Release of Hazardous Materials on or about the Property, including any Claim for Investigation or Remediation on the Property, or such Environmental Agency or other third party orders, demands, or otherwise requires that any Investigation or Remediation be conducted on the Property, Developer shall promptly upon its receipt of notice thereof, notify the City in writing and thereafter shall promptly and responsibly evaluate and respond to such Claim as provided in Section 10.5. Further, upon receipt of such Claim, order, demand or requirement, Developer shall take such reasonable measures, as necessary or appropriate, to reasonably dissuade such Environmental Agency or other third party from bringing, making, alleging, or asserting any Claim against the City arising from or related to any actual, threatened, or suspected Release of Hazardous Material on or about the Property, including any Claim for Investigation or Remediation on the Property; provided that such obligation shall not apply to those excluded Claims set forth as (a) through (c) of Section 10.2.”*

2.5.8 **Release Notification and Remedial Actions.** Section 10.5 of the DDA provides as follows:

*“10.5 **Release Notification and Remedial Actions.** If, after Close of Escrow, any Release of a Hazardous Material is discovered on the Property, Developer shall promptly provide written notice (or in the event of emergency, telephonic notice, followed by written notice) of any such Release to the City. To the extent that any Environmental Agency (other than the City) is requiring that the City Remediate such Release and Developer acknowledges that it is obligated to assume responsibility or indemnify the City with respect to such Release pursuant to Section 10.2 or there is a good faith dispute between the City and Developer as to whether Developer is obligated to assume responsibility or indemnify the City with respect to such Release pursuant to Section 10.2, then Developer shall (a) Remediate the Release in compliance with and to the extent required by Environmental Laws and such Environmental Agency, or if such removal is prohibited by any Environmental Laws, take whatever action is required by any Environmental Law and such Environmental Agency; (b) take such other reasonable action as is necessary to have the full use and benefit of the Property as contemplated by this Agreement; and (c) provide the City with satisfactory evidence of the actions taken as required in this Section. To the extent that any Environmental Agency (other than the City) is requiring that the City Remediate such Release and the City acknowledges that Developer is not obligated to assume responsibility or indemnify the City with respect to such Release pursuant to Section 10.2 or no Environmental Agency (other than the City) is requiring that the City Remediate such Release, then (as between Developer and the City under this Agreement) Developer may elect in its sole and absolute discretion whether to Remediate such Release*

and/or pursue any rights that Developer has against any Person (including the Federal Government and the City) with respect to such Release. The foregoing shall be without prejudice to Developer's or the City's rights against any responsible party or against the Federal Government pursuant to the Navy Responsibilities and without compromising the applicability of any insurance coverage in regard to such Release. The City and Developer will coordinate any action required under this Section 10.5 with appropriate environmental insurance carriers so as not to compromise coverage for the costs of such actions. Nothing set forth herein requires Developer to perform any obligation of the Federal Government and nothing set forth herein shall be deemed to limit or impair (or take any action that might limit or impair) in any manner the rights and/or remedies that Developer or the City may have against the Federal Government or any other third party. The foregoing shall not apply to the Returned Property after acquisition thereof by the City."

2.5.9 **Conflict with Section 330 and Other Federal Government Obligations.** Section 10.6 of the DDA provides as follows:

*"10.6 **Conflict with Section 330 and Other Federal Government Obligations.** Notwithstanding anything to the contrary contained in this Section 10, in the event that any actions required to be taken by Developer pursuant to this Section 10 could potentially result in Developer losing rights, or are contrary to any rights, which it otherwise would have pursuant to the Navy Responsibilities or otherwise against the Federal Government, then the City and Developer shall meet in order to determine the proper course of action to be taken by Developer. The course of action to be agreed upon shall protect the City's interest in the Project and Tustin Legacy, while retaining for Developer its rights pursuant to the Navy Responsibilities or otherwise against the Federal Government to the maximum extent reasonable under the circumstances. Notwithstanding the foregoing, nothing set forth in this Section 10.6 relieves Developer or its Transferees or Successor Owners with respect to the environmental responsibilities and obligations and/or environmental indemnification of Developer to the City in this Agreement."*

2.5.10 **Rights of the City to Enforce.** Section 17.15.2 of the DDA provides as follows:

*"17.15.2 **Rights of the City to Enforce.** The City is the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether the City has been, remains or is an owner of any land or interest in the Property, the Development Parcels or in the Project. The City shall have the right, if this Agreement or any covenants herein are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and any covenants may be entitled. For avoidance of doubt, the provisions of this Section 17.15 shall be included in the*

Quitclaim Deed and the Special Restrictions and shall apply with respect to all covenants, representations, warranties, releases and indemnities included therein."

3. **Enforcement of Covenants.**

3.1 **General Purpose and Constructive Notice.** For the Term of this Declaration, the covenants, conditions and restrictions set forth in the Declaration shall run with the Development Property, shall inure to the benefit of the City and its Governmental Successors and shall be binding upon and burden the Development Property and Developer, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner for the benefit of the City and its Governmental Successors (but excluding any End Users). . Except as specifically set forth herein, the Restrictions shall remain in full force and effect for the Term, notwithstanding the City's exercise of any right or remedy herein. For the Term, Developer and each Successor Owner that now or hereafter owns or acquires any right, title or interest in or to any portion of the Development Property and each and every Person claiming by, through or under Developer or any Successor Owner is and shall be conclusively deemed to have consented to and agreed to every Restriction, provision, covenant, condition, right and limitation contained herein, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired such interest in the Development Property or portion thereof.

3.2 **Transfers and Transfers of Control.** Notwithstanding anything to the contrary in this Declaration, except as set forth below, in the event that any Property Owner conveys the Development Parcels to another Person, the Property Owner conveying the Development Parcels shall be released from the obligations of this Declaration first occurring from and after the effective date of such conveyance to another Person; provided, however, that (a) the foregoing shall not be construed to permit any Transfer or Transfer of Control by Property Owner of the Development Parcels or any portion thereof prior to the issuance of a Certificate of Compliance except as permitted by the DDA, (b) during the Term of the DDA, notwithstanding any Transfers and/or Transfers of Control, no Property Owner shall be released with respect to matters for which it remains liable pursuant to Section 2.2.1 (b) or 2.2.2(a) or (b) of the DDA, and (c) unless it is released by the City as set forth in Section 2.2.3(c) or Section 16.6 of the DDA, or otherwise by the City in writing, each Property Owner shall remain fully liable for the obligations of Property Owner under this Declaration for such period as it is Property Owner and for such longer period as may be applicable to it during the Additional Liability Period under the DDA.

3.3 **Inspection.** Upon twenty-four (24) hours' notice, or such longer period as may be explicitly set forth in this Declaration, and subject to reasonable security provisions of Property Owner, and in addition to any rights that the City may have in its governmental capacity, the City and its authorized representatives may from time to time enter upon and inspect the Development Property or any portion thereof or any Improvements thereon (excluding, however, the interior space of any buildings or Homes on the Development Parcels) for purposes of ascertaining compliance with the Restrictions, but without obligation to do so or liability therefor.

3.4 **Other Restrictions.** This Declaration and the Restrictions contained herein are not the exclusive source of restrictions on the use and maintenance of the Development Property. Nothing contained herein shall prejudice or diminish in any way the City's rights under the DDA

or the Other Agreements or its authority in its governmental capacity, nor the rights and authority of any other Governmental Authority having jurisdiction over the Project or any portion thereof, and the exercise of any rights or remedies by the City hereunder shall be considered separate from and independent of any breach or violation by Property Owner which is also a breach or violation of any Governmental Requirements.

4. **Potential and Material Defaults.** In the event of any breach, violation or failure to perform or satisfy any of the Restrictions which has not been cured within the applicable cure period set forth below, the City may in its sole discretion enforce any one or more of the remedies set forth in Section 4.3 of this Declaration.

4.1 **Potential Defaults.** Except as otherwise provided in this Declaration, it shall be a "Potential Default" if:

(a) Property Owner fails to pay timely any sum required to be paid to the City pursuant to this Declaration; or

(b) Property Owner fails to perform, or delays in the performance of, in whole or in part, any obligation required to be performed under, or otherwise violates the provisions of this Declaration, other than as set forth in Section 4.1(a) of this Declaration.

4.2 **Material Defaults.**

(a) A Potential Default under Section 4.1(a) of this Declaration shall become a "Material Default" if it is not cured within fifteen (15) calendar days from the date of receipt by Property Owner of the notice of Potential Default from the City.

(b) A Potential Default under Section 4.1(b) of this Declaration shall become a "Material Default" if it is not cured, at Property Owner's expense, (i) within thirty (30) calendar days from the date of receipt by Property Owner of written notice of such Potential Default from the City, or (ii) if such cure cannot be reasonably accomplished within such thirty (30) calendar day period, within ninety (90) calendar days after receiving written notice of such Potential Default from the City, but only if Property Owner has commenced such cure within such thirty (30) calendar day period and diligently pursues such cure to completion, or (iii) within such longer period of time as may be expressly granted by the City in the City's sole discretion, taking into account the nature of the Potential Default and the diligence and good faith efforts of Property Owner, as applicable, to cure such Potential Default. The foregoing cure periods for Potential Defaults under this Section 4.2(b) shall be extended by Force Majeure Delays.

(c) Following written notice and failure to cure within the time periods set forth in this Section 4.2, each Potential Default shall become a Material Default that shall be deemed to have occurred upon the expiration of the applicable cure period.

4.3 **Certain City Remedies.** In the event of a Material Default, subject to the Mortgagee cure rights in Section 4.5 of this Declaration, and without limiting the rights and remedies of the City under any other agreement, the City may do any or all of the following:

(a) The City may bring a suit for damages for any compensable breach of or noncompliance with any of the Restrictions, or declaratory relief to determine the enforceability of any of the Restrictions; provided, however, that (i) such damages shall be limited to direct (actual) damages to the City for such Material Default, and (ii) the City hereby expressly waives, releases and relinquishes any and all right to any expectation, anticipation, indirect, consequential, exemplary or punitive damages; and/or

(b) The City may bring an action in equity or otherwise for specific performance to enforce compliance with the Restrictions or an injunction to enjoin the continuance of any such breach or violation thereof, whether or not the City exercises any other remedy set forth herein, and Property Owner acknowledges that a particular or ongoing violation of one or more of the Restrictions may cause the City to suffer material injury or damage not compensable in money (including irreparable effects on the type and quality of development at Tustin Legacy or portions thereof, and/or the maintenance of the Development Property, including without limitation, the Improvements in accordance with the standards(s) for the quality of maintenance set forth in Section 2.2.1 of this Declaration); and/or

(c) Any such breach or violation of the Restrictions or any provision hereof is hereby declared to be a nuisance, and the City shall be entitled to enter the Development Property and summarily abate and remove, without further legal process to the maximum extent permitted by law, any structure, thing or condition that may exist in violation of any of these Restrictions, or to prosecute any remedy allowed by law or equity for the abatement of such nuisance against any person or entity acting or failing to act in violation of the Restrictions, all at the sole cost and expense of Property Owner. Such rights shall include the right of the City or its designee to enter the Development Property and to correct any Material Default by Property Owner in the maintenance of the Improvements or landscaping on the Development Parcels in accordance with the Restrictions.

4.4 **Failure to Timely Pay Amounts Due.** If there is a Material Default under this Declaration then, in addition to any other remedies conferred upon the City pursuant to this Declaration, Property Owner shall pay to the City, in addition to all principal amounts due, interest from the date of such payment or part thereof was due until the date paid at the default rate of eight percent (8%) per annum, compounded annually, but in no event in excess of the maximum legal rate.

4.5 **Rights of Mortgagees and Mortgagee Protection.**

(a) This Declaration, including the lien rights of the City described in Section 4.6 hereof, shall be superior in priority to all Mortgages, but shall not apply to any Mortgages obtained by Homebuyers.

(b) No breach or violation of the Restrictions shall defeat or render invalid the lien of any Mortgage or similar instrument securing a loan made in good faith and for value with respect to the permanent financing of the Project or any portion thereof; provided, however, that this Declaration and all provisions hereof shall be binding upon and effective against each Property Owner and each and every other occupant of the Development Property or portion

thereof whose title is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, but (i) such subsequent owner shall have a reasonable time after acquiring title in which to cure any violations or correct and change any facts giving rise to the City's rights under this Declaration occurring prior to such transfer of title or occupancy and which are reasonably capable of being cured or changed provided that such Property Owner diligently acts to effect such cure or change (and in the event of such diligent and timely cure, such Property Owner shall have no further liability in connection with such prior violation or the continued existence of such violation until such cure is completed), and (ii) Sections 4.1(a) and 4.1(c) shall not be applicable as to such Property Owner with regard to any noncurable default occurring prior to the time such Property Owner acquired title. Notwithstanding the foregoing, each Property Owner shall be required to use the Development Property in accordance with the Restrictions set forth in this Declaration.

(c) Notwithstanding anything to the contrary set forth in the Restrictions, this Section 4.5 shall not apply to any portion of the Development Property transferred to an End User.

4.6 **Lien Rights**. The delinquent amount of any payments due hereunder, together with any late charges or interest due on any such delinquent payment, reasonable attorneys' fees, experts' fees and consultants' fees and collection costs related to such delinquent payment shall, to the greatest extent permitted by applicable law, be a lien and charge upon the Development Property and shall be a continuing lien upon the Development Property in favor of the City effective upon Recordation of this Declaration and such lien and charge shall be paramount to the lien and charge of any Mortgage upon the Development Property. Upon conveyance of any portion of the Development Property to an End User, such lien shall automatically terminate and be released as to such conveyed portions.

4.7 **No Damages Payable by City**. The City would not have executed this Declaration if the City could become liable for damages under or with respect to this Declaration, the DDA or the Other Agreements. Consequently, and notwithstanding any other provision of this Declaration, except as specifically set forth in Section 17.5.3 of the DDA, the City shall not be liable in damages under this Declaration, the DDA or any Other Agreement to Property Owner, or any Person claiming by, through or under such Property Owner and by acceptance of this Declaration, Developer, on behalf of itself and each Successor Owner, hereby waives any and all rights to claim damages of any kind or nature from the City except, during the term of the DDA, as set forth in Section 17.5.3 of the DDA.

5. **Term and Termination**.

5.1 **Residential CC&Rs**. One or more new declarations of covenants, conditions and restrictions establishing a common and general scheme for the development, improvement, enhancement and protection of the value and desirability of the Development Property (the "**Residential CC&Rs**") will be recorded against the Development Parcels (or portions thereof) by Developer or a Successor Owner prior to sale or lease of any individual Homes in that Development Parcel or portion thereof or transfer of Common Areas to a Homeowner's Association. The Residential CC&Rs will address the use and maintenance restrictions as contained in this Declaration, as well as various matters amongst the owners and occupants of

individual Homes and provisions required by the California Department of Real Estate in order to obtain a final Subdivision Public Report for sale or lease of the individual Homes. Such Residential CC&Rs shall be prepared by Property Owner, and approved by the City in its sole and absolute discretion.

5.2 **Term.** This Declaration and the Restrictions set forth herein shall remain in force and effect with respect to the Development Property from the Effective Date until the twenty-fifth (25th) anniversary of the Recording of this Declaration, provided that the provisions of **Section 2.2.1(c)** of this Declaration shall terminate upon the Recordation of the Residential CC&Rs against the Development Parcels, unless released at an earlier date by City in writing. In addition, the covenant set forth in **Section 2.21(e)** of this Declaration shall apply with respect to all portions of the Development Property owned by Developer during the term of this Agreement.

6. **Miscellaneous.**

6.1 **Modification.** From and after the transfer of the Development Property to Developer, no amendment, change, modification or supplement to this Declaration shall be valid and binding unless it is represented in writing and signed by (a) the City, as the first party, and (b) the Property Owners then owning any portion of the Development Property or any interest in the Project, as the second parties, and Recorded; provided that no consent or approval of any End User shall be required in order to modify or amend any provisions of this Declaration. This Declaration shall be administered by the City Manager. 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 his or her designee). The City Manager or his or her designee shall have the authority to issue interpretations with respect to this Declaration and to determine whether any action requires the approval of the City Council.

6.2 **Applicable Law.** This Declaration shall be governed by, interpreted under, construed and enforced in accordance with the laws of the State of California, irrespective of California's choice-of-law principles.

6.3 **Attorneys' Fees.** If City or Developer or any Successor Owner of Developer (each a "party" for purposes of this Section 6.3) to this Declaration institutes any action, suit, proceeding, counterclaim or other proceeding for any relief against another party, declaratory or otherwise (collectively an "Action"), to enforce the terms hereof or to declare rights hereunder or with respect to any inaccuracies or material omissions in connection with any of the covenants, representations, warranties or obligations on the part of the other party to this Declaration, then the Prevailing Party in such Action shall be entitled to have and recover of and from the other party all costs and expenses of the Action, including (a) reasonable attorneys' fees which, regardless of which party is the Prevailing Party, shall be payable at the contractual hourly rate for the City's litigation counsel at the time the fees were incurred, but in no event more than \$200 per hour and (b) costs actually incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling or award (collectively, a "Decision") granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including reasonable

attorneys' fees and expert fees and costs (collectively, "Costs") incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include in addition to Costs incurred in prosecution or defense of the underlying action, reasonable attorneys' fees, costs, expenses and expert fees and costs incurred in the following: post judgment motions and collection actions, contempt proceedings, garnishment, levy, debtor and third-party examinations, discovery, bankruptcy litigation and appeals of any order or judgment. "**Prevailing Party**" within the meaning of this Section 6.3 includes a party who agrees to dismiss an Action in consideration for the other party's payment of the amounts allegedly due or performance of the covenants allegedly breached, or obtains substantially the relief sought by such party.

6.4 **Conflict of Interest.** No appointed or elected official or employee of the City shall have any personal interest, direct or indirect, in this Declaration nor shall any official or employee participate in any decision relating to the Declaration which affects his or her interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. Developer warrants that it has not paid or given and will not pay or give any third person any money or other consideration for obtaining this Declaration.

6.5 **Non-liability of City Officials and Employees.** No elected or appointed official, representative, employee, agent, consultant, legal counsel or employee of the City shall be personally liable under this Declaration.

6.6 **Construction and Interpretation of Declaration.**

(a) The language in all parts of this Declaration shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Person.

(b) Any provision of this Declaration that is deemed to be illegal, invalid or unenforceable by an arbitrator or court of competent jurisdiction shall be ineffective to the extent of the invalidity or unenforceability of such provision and shall be deemed stricken from this Declaration. Any stricken provision shall not affect the legality, enforceability or validity of the remainder of this Declaration. If any provision or part thereof of this Declaration is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor and intent to the stricken provision as is legally possible.

(c) The captions of the sections and subsections in this Declaration are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(d) References in this instrument to "this Declaration" mean, refer to and include this instrument as well as any riders, schedules, exhibits, addenda and attachments hereto (which are hereby incorporated in this Declaration by this reference). Any references to any covenant, conditions, obligation and/or undertaking, "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to and include the covenants, obligations and

undertakings existing pursuant to this Declaration and any riders, schedules, exhibits, addenda, attachments or other documents affixed to this instrument.

(e) As used in this Declaration and as the context may require, the singular includes the plural and vice versa and the masculine gender includes the feminine and vice versa.

(f) As used in this Declaration the words "include" and "including" mean respectively "include, without limitation" and "including, without limitation".

(g) Unless otherwise indicated, references in this Declaration to sections, paragraphs, clauses, exhibits, attachments and schedules are to the same contained in or attached to this Declaration.

6.7 **Time of Essence.** Time is of the essence with respect to all provisions of this Declaration in which a definite time for performance is specified:

6.8 **Counterparts.** This Declaration may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and shall be one and the same instrument. This Declaration shall not be effective until the execution by the City and Developer of at least one set of counterparts. Any one of such completely executed counterparts shall be sufficient proof of this Declaration.

6.9 **Estoppel.** During the Term, the City shall, from time to time upon not less than twenty (20) calendar days' notice from Property Owner, but not more often than annually unless in connection with a sale or refinancing of the Development Parcels and/or Improvements, execute and deliver to Property Owner a certificate in recordable form stating that this Declaration is unmodified and in full force and effect or, if modified, that this Declaration is in full force and effect, as modified, and stating the modifications and stating whether or not, to the actual knowledge of the City Manager (and without duty of inquiry), (a) a Potential Default or Material Default by Property Owner has occurred and is continuing and (b) if a Potential Default or Material Default by Property Owner has occurred and is continuing, specifying the same. In connection with any such certificate, and to the extent that the City still has copies thereof in its possession or control, the City shall provide a copy of the DDA, together with all amendments, supplements and modifications thereto. Any such certificate may be relied upon by Property Owner or any prospective purchaser or lender of Property Owner. Property Owner shall promptly pay to the City all of the City's actual out of pocket third party expenses, including legal fees, and staff costs incurred with respect to the preparation, review, and delivery of each City estoppel, provided that such expenses, fees and costs shall not exceed Five Thousand Dollars (\$5,000.00) with respect to any single estoppel.

6.10 **Force Majeure Procedures.** If any party (the "First Party") believes that it is entitled to an extension of time due to Force Majeure Delay, it shall notify the other party (the "Second Party") in writing within ninety (90) calendar days from the date upon which the First Party becomes aware of such Force Majeure Delay, generally describing the Force Majeure Delay

and its date of commencement. Upon written request from the Second Party, the First Party shall promptly provide the following information with respect to such Force Majeure Delay: a more detailed description of the Force Majeure Delay, when and how the First Party obtained knowledge thereof, the steps the First Party anticipates taking to respond to such Force Majeure Delay, and the estimated delay resulting from such Force Majeure Delay and response and such other information as the Second Party may reasonable request. The extension for Force Majeure Delay shall be granted or denied in the Second Party's reasonable discretion. If the First Party fails to notify the Second Party in writing of its request for a given Force Majeure Delay within the ninety (90) calendar days specified above, there shall be no extension for such Force Majeure Delay.

[signatures on next page]

IN WITNESS WHEREOF, the City has executed this Declaration as of the date first set forth above.

“CITY”

CITY OF TUSTIN:

By: _____
Jeffrey C. Parker,
City Manager

ATTEST:

Erica Rabe
City Clerk

APPROVED AS TO FORM

By: _____
David Kendig,
City Attorney

Armbruster Goldsmith & Delvac LLP
Special Real Estate Counsel to the City

By: _____
Amy E. Freilich

[signatures continued on next page]

**BY EXECUTING THIS DECLARATION OF SPECIAL RESTRICTIONS FOR
PARCEL 6B, DEVELOPER ACKNOWLEDGES AND AGREES ON BEHALF OF
DEVELOPER AND ITS SUCCESSOR OWNERS THAT, UPON OBTAINING TITLE TO
THE PROPERTY, DEVELOPER SHALL ASSUME AND BE BOUND BY ALL OF THE
OBLIGATIONS AND LIABILITIES, COVENANTS, CONDITIONS, AND
RESTRICTIONS HEREIN:**

“DEVELOPER”

_____, a

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

**ATTACHMENT 1
LEGAL DESCRIPTION OF THE LAND**

{to be attached}

ATTACHMENT 21

LANDSCAPE INSTALLATION AND MAINTENANCE AGREEMENT

<p>CITY OF TUSTIN OFFICIAL BUSINESS REQUEST DOCUMENT TO BE RECORDED AND TO BE EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE 6103 AND 27383.</p> <p>Recording requested by and When recorded mail to:</p> <p>The City of Tustin 300 Centennial Way Tustin, CA 92780 Attn: City Manager</p>	
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SPACE ABOVE THIS LINE FOR
RECORDER'S USE

LANDSCAPE INSTALLATION AND MAINTENANCE AGREEMENT

This LANDSCAPE INSTALLATION AND MAINTENANCE AGREEMENT (“**Agreement**”) is entered into this ___ day of _____, 201__ (“**Effective Date**”) by and between the City of Tustin, a municipal corporation (“**City**”) and _____, a _____ (“**Developer**”).

RECITALS

A. City and CalAtlantic Group, Inc., a Delaware corporation [*if no Assignment or Merger:*] (“**Developer**”) / [*if Assignment or Merger:*], predecessor in interest to Developer (“**Original Developer**”) have entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 6B, dated as of _____, 201_ [*if amended:*] as amended by that certain Amendment No. __ to Tustin Legacy Disposition and Development Agreement for Disposition Parcel 6B dated as of _____, 201_ J (“**DDA**”) pursuant to which Developer has acquired from City that certain real property described and depicted on Exhibit “A” (“**Development Parcels**”).

B. City is the owner of certain real property adjacent to the Development Parcels described on Exhibit “B” (“**City Property**”).

C. City has approved certain entitlements with respect to the Development Parcels (“**Entitlements**”), including, without limitation Tentative Tract Map No. 18125. The DDA and the Conditions of Approval with respect to the Entitlements, including, but not limited to the Conditions of Approval in Resolution No. 17-57 approving Design Review application 2017-012 adopted by the Tustin City Council on January 16, 2018 (“**Conditions**”), require that Developer

install and maintain, among other things, certain landscape, hardscape, irrigation and other improvements within the Boundary Landscape Area.

D. Developer has agreed to execute this Agreement in order to provide for Developer's maintenance of the Landscape Areas. This Agreement shall be a covenant running with the land and burdening the Development Parcels for the benefit of the Boundary Landscape Area and the City.

NOW, THEREFORE, in consideration of the benefits conferred, the mutual covenants and conditions contained herein, and the duties and obligations incurred, the parties hereto agree as follows:

AGREEMENT

1. Definitions. For purposes of this Agreement, the following capitalized terms shall have the following meanings:

"Boundary Landscape Area" shall mean (a) that certain property owned by the City and/or Developer between the back of curb on each public street adjoining the Development Parcels and the Buildings or private low walls/patio areas, as depicted on Exhibit "C" and (b) Lot A and shall include the landscaping within such area installed by the Developer in accordance with the Entitlements and Conditions.

"City Indemnified Parties" shall mean City and its appointed and elected officials, agents, attorneys, affiliates, employees, contractors, consultants and representatives.

"Default Interest Rate" shall mean an interest rate of eight percent (8%) per annum, compounded annually, but in no event in excess of the maximum legal rate.

"Developer Representatives" shall mean the officers, directors, employees, agents, representatives, consultants, contractors, and other persons accessing the Landscape Areas through or with the permission or under the direction or auspices of Developer.

"Entry Areas" shall mean those portions of the City Property providing vehicular access to the Development Parcels along Victory Road and Moffett Drive, as depicted on Exhibit "C" as Entry Areas.

"Final Map" shall mean the final tract map for the Development Parcels in the form recorded.

"High Quality Residential Project" shall mean a neighborhood of single-family homes that is of high quality and very well maintained and managed, in each case comparable to other high quality single family developments in the City of Tustin and the City of Irvine of similar age.

"High Quality Residential Standards" shall mean, in terms of the quality of maintenance, standards consistent with a High Quality Residential Project.

“Homeowners’ Association” shall mean a homeowners’ association established pursuant to the laws and regulations of the State of California for the management of the common area development on the Development Parcels.

“Landscape Area” shall mean (a) the Publicly Accessible Common Area and (b) the Boundary Landscape Area, collectively.

“Landscape Improvements” shall mean any and all landscaping, irrigation and/or hardscape improvements required by the Approved Plans, the Conditions or the DDA to be constructed in connection with the Project upon the Landscape Area.

“Lot A” shall mean lettered lot “A” as depicted on the Final Map; provided that until such time as the Final Map is Recorded, the term “Lot A” shall mean lettered lot “A” on Tentative Tract Map No. 18125 approved by the City on January 16, 2018.

“Master Association” shall mean one or more Homeowners’ Associations formed for the overall management of the entirety of the common areas, excluding all Sub-Associations.

“Pedestrian Plaza” shall mean the portion of Lot A generally in the location depicted as the “Pedestrian Plaza” on Exhibit “C”.

“Private Streets and Sidewalks” shall mean those private streets, roadways, sidewalks, pedestrian pathways, and bike ways within the Development Parcels depicted on Exhibit “D” to be constructed by Developer on the Development Parcels.

“Publicly Accessible Common Area” shall mean the areas depicted as “Publicly Accessible Common Area” on Exhibit “E”. comprising (a) Lot A, including the portion thereof comprising the Pedestrian Plaza, and (b) a portion of the Private Streets and Sidewalks to be constructed or installed by Developer on the Development Parcels, which are also subject to the Master Association.

“Publicly Accessible Common Area Improvements” shall mean the Improvements constructed on the Publicly Accessible Common Area.

“Sub-Associations” shall mean any Homeowners’ Associations formed for the management of a portion of the common areas within the Development Parcels and which are also subject to a Master Association.

2. Maintenance Obligation. Upon completion by the Developer of the construction of Landscape Improvements for all or any portion of the Landscape Areas, Developer shall maintain, repair, replace and restore, at its sole cost and expense, the Landscape Improvements and the Landscape Areas, including, without limitation, all hardscape and paving materials upon the Entry Areas, but excluding any standard or meandering perimeter public street sidewalks on the Landscape Areas which shall be maintained by the City, in the same aesthetic and sound condition or better as the condition of such improvements at the time of their acceptance by the City,

excepting only reasonable wear and tear and any necessary replacement of Landscape Improvements pursuant to this Agreement. Any necessary replacements of Landscape Improvements shall be consistent with the Conditions and the quality of improvements originally approved by City and shall in addition be subject to any applicable City review and approvals. The Landscape Areas shall be maintained in accordance with High Quality Residential Standards. All utilities required to maintain the Landscape Improvements including, without limitation, water and electrical, shall be paid for by Developer.

3. Standard of Maintenance. The standard for the quality of maintenance of the Landscape Areas and Landscape Improvements shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include: (a) proper maintenance of all Landscape Areas and Landscape Improvements such that they are evenly cut, evenly edged, reasonably free of bare and brown spots, debris, trash, litter, droppings and weeds; (b) maintenance, repair and replacement on a regular schedule, of landscaping, hardscaping, irrigation systems and utilities; (c) frequent and regular inspection for graffiti or damage or deterioration or failure, and reasonably prompt repair or replacement of all surfaces, fencing, walls, lighted bollards, decorative pavement, equipment, etc., as necessary; (d) fertilizing, irrigating and replacing vegetation, as necessary; (e) use and replacement of vegetation of a type and amount as may reasonably be required to maintain the Landscape Areas in accordance with the Conditions and the Tustin Legacy Specific Plan and consistent with High Quality Residential Standards; (f) adequate maintenance of all Landscape Areas and Landscape Improvements such as not to be detrimental to public health, safety, or general welfare; and (g) regular and even trimming and pruning of all trees and shrubs so they do not impede vehicular or pedestrian traffic, do not intrude into neighboring properties, do not create nuisances to neighboring properties, including but not limited also to root pruning to eliminate exposed surface roots and damage to curbs and gutters, sidewalks, driveways, utilities and other structures or improvements.

4. Allocation of Maintenance Responsibilities. Except as set forth in Section 22 with respect to assignment to a Homeowners' Association, maintenance responsibilities shall be vested in one entity for all of the Development Parcels and the Boundary Landscape Area and the Landscape Improvements at any given time during the Term.

5. Term. The term of this Agreement shall be perpetual, unless termination is consented to by the City, in its sole discretion; provided, however, that in the event that the City accepts the irrevocable offer of dedication provided on the Final Map for Lot A, this Agreement shall terminate as to Lot A, and Developer shall concurrently be released from the performance of all maintenance obligations and all other terms and conditions under this Agreement with respect to Lot A.

6. Access. City hereby grants to Developer and its successors-in-interest authorization for installation, maintenance, repair and replacement of landscape and hardscape within the Boundary Landscape Area and Entry Areas to access and maintain the Boundary Landscape Area and Entry Areas in accordance with this Agreement. Developer hereby grants to City authorization for installation, maintenance, repair and replacement of standard or meandering perimeter public street sidewalks on Developer owned portions of the Boundary Landscape Area to access and maintain said sidewalks in accordance with this Agreement.

7. Insurance. From and after the Effective Date, Developer, at its cost, shall maintain public liability and property damage insurance with a single combined liability of not less than \$1,000,000 and property damage limits of not less than \$500,000 insuring against all liability of Developer and the Developer Representatives arising out of or in connection with the presence, activities or work on or use of the Landscape Improvements and/or Landscape Area or any act or omission to act of Developer and/or the Developer Representatives with respect to the Landscape Areas and/or Landscape Improvements. In addition, Developer shall provide workers' compensation insurance meeting statutory limits for all persons employed by Developer in connection with obligations under this Agreement. The foregoing may be satisfied during the term of the DDA by insurance required thereby but shall not subtract from any insurance obligations of Developer to City under the DDA. Developer will furnish to City duly authenticated Certificates of Insurance evidencing maintenance of the insurance required under this Agreement and such other evidence of insurance or copies of policies as may be reasonably required by City from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A-/VII" (if an admitted carrier) or A-/X (if offered by a surplus line broker). An Accord certificate evidencing the foregoing and providing the following endorsements signed by the authorized representative of the underwriter and approved by City shall be delivered within seven (7) Business Days following the Effective Date of this Agreement and annually evidencing renewals of each policy. The endorsements shall provide as follows: (a) designate the City, its 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 City and (c) a waiver of subrogation for the benefit of the City. Such insurance will be on an "occurrence," not a "claims made" and will be prepaid on an annual basis. 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 City as set forth herein.

8. Indemnity. Developer hereby agrees to protect, indemnify, defend and hold harmless the City Indemnified Parties from and against any and all claims, actions, damages, costs (including, without limitation, attorneys' fees), injuries, or liability, arising out of or in connection with (a) the presence, activities or work on or use of the Landscape Improvements and/or Landscape Area by Developer and/or Developer Representatives; (b) any act or omission to act of Developer and/or the Developer Representatives with respect to the Landscape Areas and/or Landscape Improvements; (c) entry onto the Landscape Areas by Developer or the Developer Representatives in connection with this Agreement; and (d) bodily injury to or death of any person (including any employee or contractor of the City Indemnified Parties) or damage to or loss of use of property resulting from such acts or omissions of Developer or any Developer's Representative with respect to the Landscape Areas and/or Landscape Improvements; provided that the foregoing indemnity shall not apply to the extent of the negligence, willful misconduct or fraud of any City Indemnified Party. The provisions of this Section shall survive the termination of this Agreement.

9. Mechanic's Liens. Developer shall keep the Landscape Areas free and clear of any mechanics' liens or materialmen's liens.

10. Compliance with Laws. Developer shall comply with all laws, regulations, conditions, or instructions affecting the Landscape Areas and the Landscape Improvements, including without limitation, those issued by the Environmental Protection Agency, or any federal, state, interstate, or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the Landscape Areas is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection

Agency, or any federal, state, interstate, or local governmental agency shall be complied with by Developer. The Developer shall not discharge waste or effluent from the Landscape Area in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance. The foregoing shall not subtract from any environmental responsibilities of Developer to City under the DDA.

11. City Remedies. In the event of a breach of any provision of this Agreement, City may demand by written notice ("**Default Notice**") that the violation be cured. Except for utility service interruptions or similar emergencies which shall not require advance notice or cure periods hereunder, if Developer does not cure the violation within thirty (30) days after receipt of the Default Notice, or if such default is of a kind which cannot reasonably be cured within thirty (30) days, and Developer does not within such thirty (30) day period commence to cure such default and diligently thereafter prosecute such cure to completion, then City shall have the right, but not the obligation, to (i) institute legal action against Developer for specific performance, injunction, declaratory relief, damages, or any other remedy provided by law, (ii) pay any sum owed by Developer to the party entitled to such payment and/or (iii) enter upon the Development Parcels and the Landscape Areas and to summarily abate, remove or otherwise remedy any improvement, and/or repair or modify any improvement which violates the terms of this Agreement and/or perform any obligation of Developer under this Agreement to be performed thereon. Developer shall pay to the City, within thirty (30) calendar days of written demand by City (which demand is accompanied by appropriate supporting documentation), an amount equal to all costs and expenses incurred by City in undertaking any of the actions permitted by the preceding sentence, including without limitation, third party costs and City hourly wages and benefits reasonably allocable to the time expended by City in taking such actions, together with interest thereon at the rate equal to the Default Interest Rate, from the date such costs and expenses were advanced or incurred by the City. The rights and remedies given to City by this Agreement shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which City might otherwise have by virtue of a default under this Agreement, and the exercise of one such right or remedy by any City shall not impair the City's standing to exercise any other right or remedy.

12. Estoppel Certificate. Each party hereby covenants that within twenty (20) business days of the written request of any other party it will issue to such other party an Estoppel Certificate stating: (a) whether the party to whom the request has been directed knows of any default under this Agreement and if there are known defaults specifying the nature thereof; (b) whether to its knowledge this Agreement has been assigned, modified, or amended in any way (and if it has, then stating the nature thereof); and whether to the party's knowledge this Agreement is as of that date in full force and effect, provided that in no event shall an estoppel be requested more often than annually.

13. Excuse for Non-Performance. Each party shall be excused from performing any obligation or undertaking provided in this Agreement except any obligation to pay any sum of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded, or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials, or supplies in the ordinary course on the open market; failure of normal transportation strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military authorities.

14. Effect on Third Parties. Except as herein specifically provided, no rights, privileges or immunities conferred upon the parties to this Agreement shall inure to the benefit of any homeowner nor shall any person be deemed to be a third-party beneficiary of any of the provisions contained herein.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. Prior agreements, representations, negotiations, and understandings of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

16. Modification. This Agreement may not be modified in any respect or rescinded, in whole or in part, except by an instrument in writing, duly executed and acknowledged by the parties hereto, or their successors or assigns that are the record owners of the Landscape Areas. Any change, modification, amendment or rescission which is made without the written consent of such owners shall be null and void and of no effect. No consent or approval of any owner other than those owners described in the first sentence of this Section shall be required in order to modify or amend any provisions of this Agreement.

17. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

18. Governing Law. This Agreement and the obligations of the parties hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of California.

19. Waiver and Default. The waiver by one party of the performance of any provision of this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other provision under this Agreement or of any subsequent breach by the other party of the same provision.

20. References to Sections, Clauses and Exhibits. Unless otherwise indicated, references in this Agreement to sections, clauses and exhibits are to the same contained in or attached to this Agreement and all exhibits referenced in this Agreement are incorporated in this Agreement by this reference as though fully set forth in this Section.

21. Counterparts. This Agreement may be executed in one or more counterparts. All counterparts so executed shall constitute one agreement, binding on all parties, even though all parties are not signatory to the same counterpart.

22. Runs With the Land; Release and Termination; Assignment. This Agreement and the terms, provisions, promises, covenants and conditions hereof shall constitute equitable servitudes and covenants running with the land comprising the Development Parcels and shall burden the Development Parcels and shall be binding upon Developer and its successors and assigns for the benefit of the Boundary Landscape Area and City and its legal representatives, successors and assigns. All references in this Agreement to "City" and "Developer" shall include their respective heirs, representatives, successors and assigns. This Agreement and all the terms, covenants and conditions herein contained shall be enforceable as equitable servitudes in favor of the Boundary Landscape Area and any portion thereof. This Agreement shall automatically be released and terminate with respect to any portion of the Development Parcels which is improved with a residential dwelling unit and conveyed to a home buyer ("**Home Buyer**"). In the event of a transfer by Developer of all of the Development Parcels, the obligations and liabilities of the Developer under this Agreement shall be binding upon the successor owner of the Development Parcels, and Developer shall be released from all obligations and liabilities under this Agreement accruing from and after the date of the conveyance, except that prior to issuance of the Certificate of Compliance pursuant to the DDA, any such release shall be applicable only to the extent provided in the DDA. Developer and any successor owner of the Development Parcels shall only be liable for the obligations and liabilities under this Agreement which accrue during the period that Developer or such successor owner owns the Development Parcels, except that prior to issuance of the Certificate of Compliance pursuant to the DDA, any such limitation on liability shall be applicable only to the extent provided in the DDA. Developer may assign its duties, obligations and liabilities under this Agreement to the Homeowners' Association either in full, or with respect to certain phases or portions of the Landscape Areas. Such assignment shall be accomplished through the recordation of an assignment and assumption instrument which shall clearly set forth those portions of the Landscape Areas to which such assignment applies and shall contain an assumption by the Homeowners' Association of the obligations and liabilities under this Agreement with respect to such portions of the Landscape Areas arising from and after the date of the assignment ("**Assignment Agreement**"). Upon recordation of the Assignment Agreement, Developer shall be released from any and all obligations or liabilities arising or accruing under this Agreement from and after the effective date of the assignment with respect to those portions of the Landscape Areas and Landscape Improvements and those obligations and liabilities which are subject to the Assignment Agreement. If all of the duties, obligations and liabilities of Developer under this Agreement have not been assigned to Homeowners' Associations on or before the date of conveyance of the last residential lot within the Development Parcels to a Home Buyer by a builder or other entity required to file a public report as required by Section 11010(a) of the California Business and Professions Code ("**Final Home Sale Date**"), the Homeowners' Association shall automatically, and without requirement or necessity for any further written documentation or assignment agreement, assume and be obligated to perform any duties and obligations of Developer arising or accruing under this Agreement from and after the Final Home Sale Date which have not been previously assigned to a Homeowners' Association. If, after the Final Home Sale Date, there is more than one Master Association, the obligations of the Master Association

under this Agreement with respect to the performance of any duties and obligations which have not been previously assigned to a Homeowners' Association shall be joint and several.

[signature page follows]

IN WITNESS WHEREOF, City and Developer have signed this Agreement as of the date first set forth above.

CITY OF TUSTIN:

By: _____
Jeffrey C. Parker,
City Manager

ATTEST:

By: _____
Erica Rabe
City Clerk

APPROVED AS TO FORM

By: _____
David Kendig,
City Attorney

Armbruster Goldsmith & Delvac LLP
Special Real Estate Counsel to the City

By: _____
Amy E. Freilich

DEVELOPER:

_____,
a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____,
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

EXHIBIT "A"
LEGAL DESCRIPTION OF DEVELOPMENT PARCELS

{to be attached}

EXHIBIT "B"
DEPICTION OF CITY PROPERTY

EXHIBIT "B"
Depiction of City Property

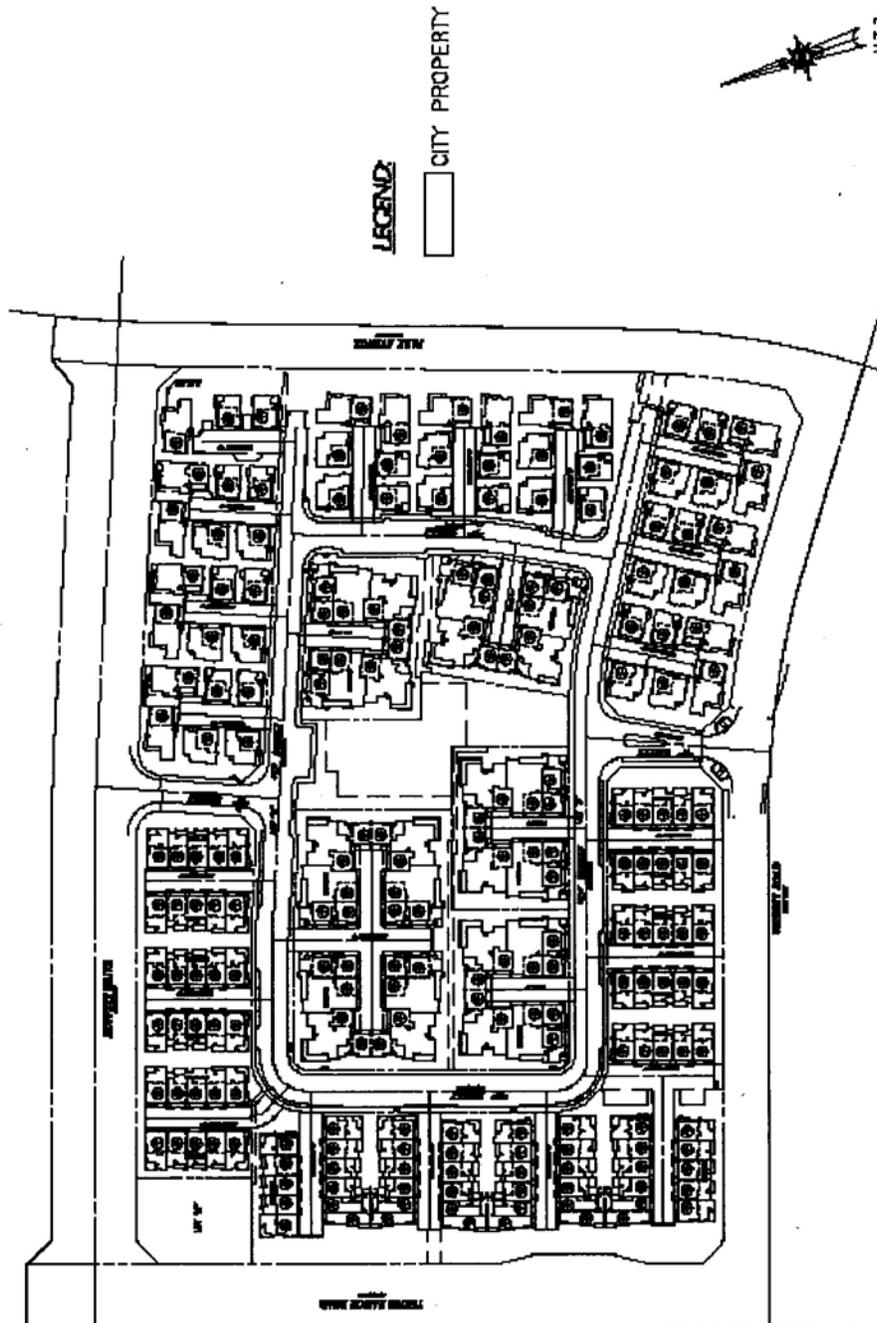


EXHIBIT "C"
DEPICTION OF LANDSCAPE AREAS

EXHIBIT "C"
Depiction of Landscape Areas

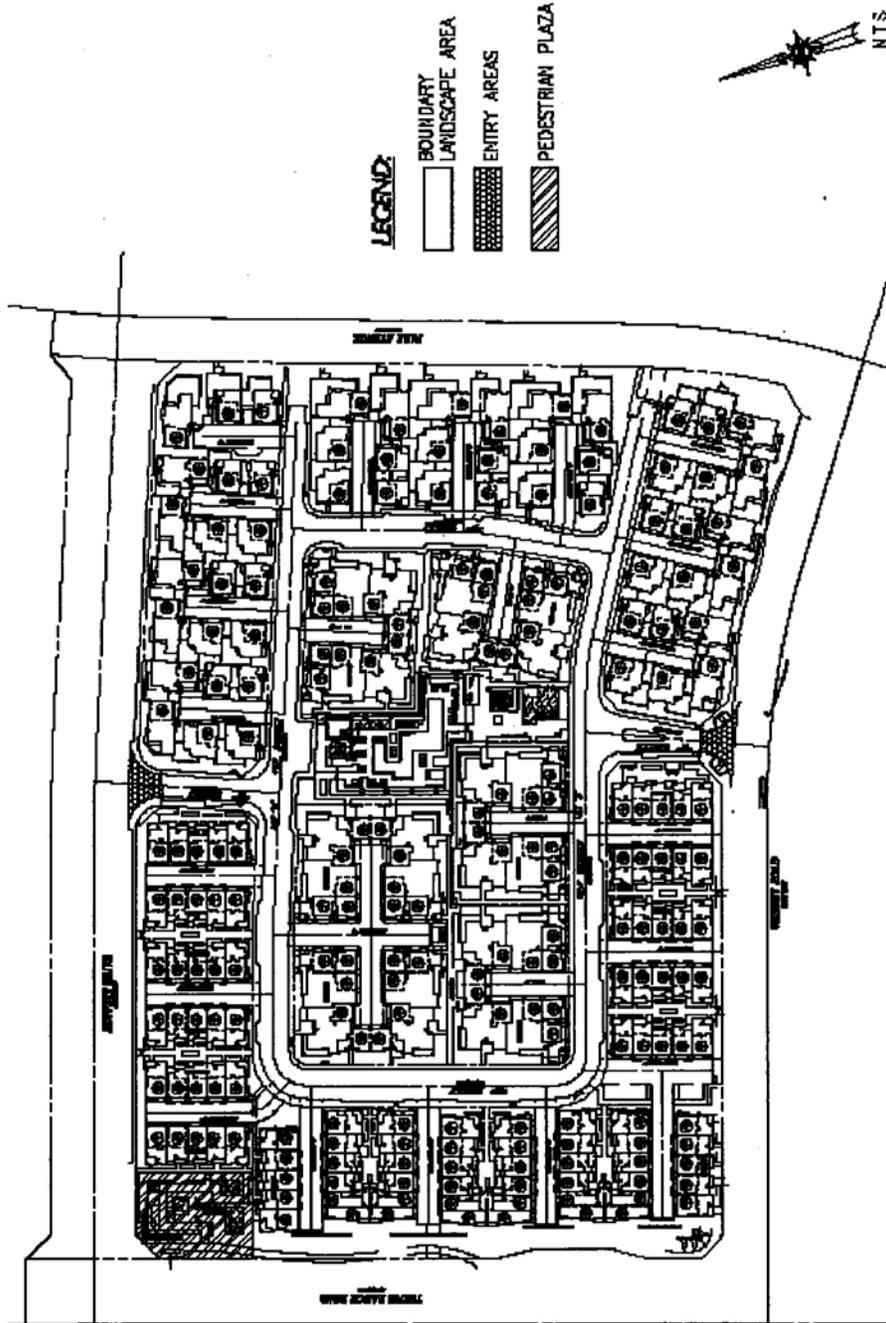
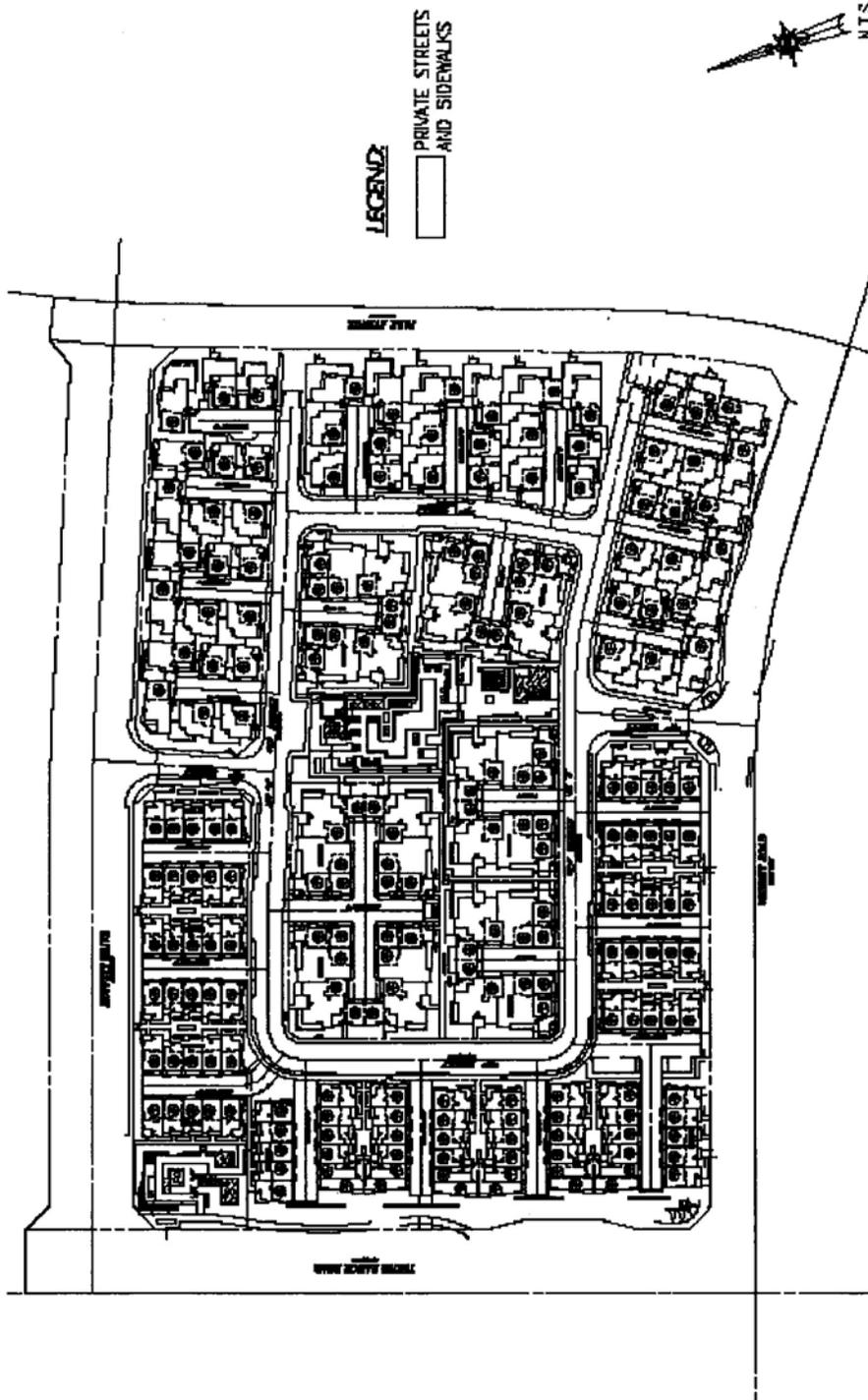


EXHIBIT "D"
DEPICTION OF PRIVATE STREETS
AND SIDEWALKS

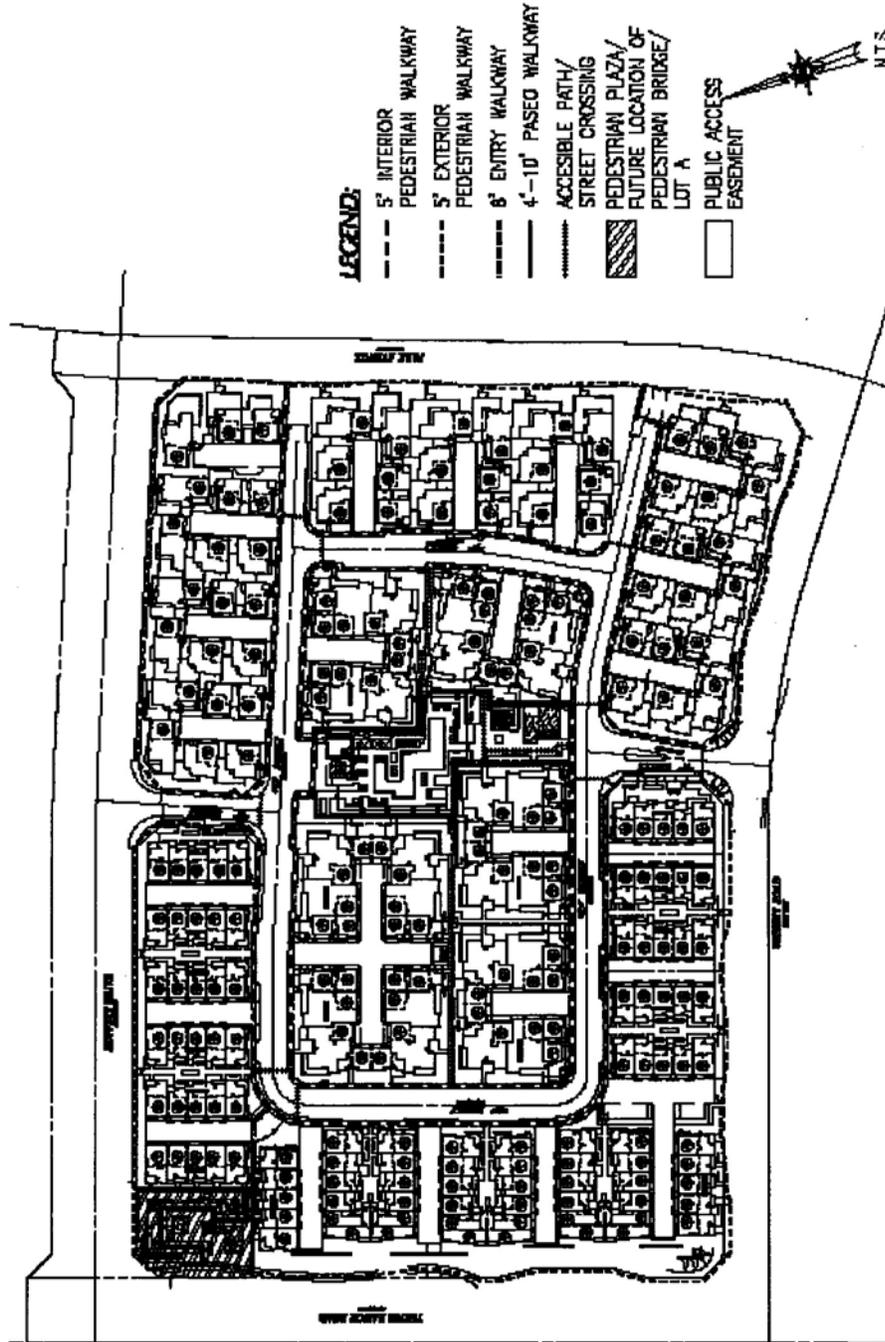
EXHIBIT "D"
Depiction of Private Streets and Sidewalks



01/30/2018

EXHIBIT "E"
DEPICTION OF PUBLICLY ACCESSIBLE COMMON AREA

EXHIBIT "E"
Public Access Easement Areas and Pedestrian Plaza Location



ATTACHMENT 22

LICENSE AND AGREEMENT FOR SITE DEVELOPMENT

THIS LICENSE AND AGREEMENT FOR SITE DEVELOPMENT (“Agreement”) is made and entered into as of _____, 201_ (the “Effective Date”), by and between CITY OF TUSTIN, a municipal corporation of the State of California (“City”) and _____ *{insert name of Developer under DDA at time of issuance, State of formation and type of entity}* (“Developer”), with reference to the facts set forth below:

RECITALS

A. WHEREAS, the City and CalAtlantic Group, Inc., a predecessor in interest to Developer, entered into that certain Tustin Legacy Disposition and Development Agreement For Disposition Parcel 6B, dated as of _____, 2018 *{if amendments are made to DDA insert the following:}* (“Original DDA”) *{insert any amendments to DDA}* (collectively (the “DDA”)) *{if no amendments are made to DDA, insert the following:}* (the “DDA”) for the purchase by Developer of certain real property located in the City of Tustin, County of Orange, State of California depicted on Exhibit “A” attached hereto comprising the Development Parcels under the DDA (the “Development Parcels”) upon which Developer intends to construct certain residential improvements. All initially capitalized terms not otherwise defined herein shall have the meanings assigned to them in the DDA.

B. WHEREAS, in connection with the acquisition and development of the Development Parcels, the City has agreed to grant a construction license to Developer in accordance with the provisions of Section 8.2.3 of the *{Original}* DDA to permit Developer to enter upon the Development Parcels prior to the Close of Escrow to commence the Horizontal Improvements Work (as defined below).

NOW THEREFORE, in consideration of the promises and mutual covenants, agreements and conditions hereof, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as set forth below.

AGREEMENT

1. Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.

2. Term. The term of this Agreement and the License (as defined below) shall commence as of the Effective Date and unless extended by the Parties in writing or terminated earlier in accordance with this Agreement, shall remain in effect only until the earlier to occur of the following (the “Termination Date”): (a) the Close of Escrow under the DDA; (b) 5:00 pm on the Outside Closing Date (as the same may be extended pursuant to Section 7.1 of the *{Original}* DDA), provided that Close of Escrow has not then occurred; or (c) the fifteenth (15th) calendar day after Developer ceases to perform Horizontal Improvements Work upon the Premises (as defined below), unless such failure to prosecute the work to completion is due to Force Majeure Delay.

Upon the Termination Date, Developer shall return the Premises to the City in the condition described in Section 8.1 of this Agreement. In the event this Agreement terminates for reasons other than the Close of Escrow under the DDA, Developer shall relinquish all right, title and interest in and to the Premises and any Horizontal Improvements Work performed, and Developer and the City agree that any such Horizontal Improvements Work shall be transferred to the City without compensation to Developer and the City shall accept possession of any such Horizontal Improvements Work.

3. Construction License. The City hereby grants to Developer and to the Developer Representatives a non-exclusive, revocable license (the "License") over (a) the portions of Moffett Drive (to the extent not yet opened as a public street) depicted on Exhibit "B" attached hereto and (b) the Development Parcels (collectively, the "Premises") for purposes of accessing the Development Parcels and carrying out the Horizontal Improvements Work. The City may restrict access to all or a portion of Moffett Drive as a result of ongoing construction activities in order to complete construction of Moffett Drive in accordance with Section 8.10 of the DDA. Developer is granted control of the Premises for this purpose. Notwithstanding the foregoing, the License and this Agreement shall be revocable by the City prior to the Termination Date only in accordance with Section 19 of this Agreement.

4. Commencement and Performance of Work.

4.1 Commencement of Grading Work. Developer may not enter the Premises or commence the Grading Work until each of the following has occurred: (a) the City's issuance of grading permits and all other permits required to be issued by the City and third parties with respect to the grading of the Development Parcels and incidental work permitted by such permits ("Grading Permits"); (b) provision by Developer of one or more Performance Bonds in favor of the City as obligee securing Developer's obligations to perform the Grading Work and the return of the Premises in the condition described in Section 8 of this Agreement and the payment of liens, costs and expenses associated therewith; (c) provision of the insurance required by this Agreement; and (d) the satisfaction of all other conditions to commencement of the Grading Work described in the Entitlements, the DDA and the Schedule of Performance. Prior to commencement of any Grading Work within the public right-of-way, in addition to the foregoing requirements of this Section 4.1, Developer shall also first obtain an encroachment permit and approved street improvement plans as required by the City's Public Works Department. This Agreement and the License shall each become null and void unless the Grading Work begins within one month of the Effective Date of this Agreement. For purposes of this Agreement, the term "Grading Work" shall mean all work permitted to be performed under the Grading Permit and all additional grading work performed by Developer or on behalf of Developer in order to comply with the requirements of this Agreement, provided that the City issues such additional grading permits as are needed for the performance of such work.

4.2 Commencement of Horizontal Improvements Work. Developer may not commence the Horizontal Improvements Work other than Grading Work described in Section 4.1 of this Agreement until each of the following has occurred: (a) the City's issuance of the permits required to be issued by the City, and third parties' issuance of any additional permits required by such third parties to be issued, with respect to construction of the Horizontal Improvements or the

applicable portion thereof for which Developer proposes to commence work ("**Horizontal Work Permits**"); and collectively with the Grading Permit, the "**Permits**"; (b) provision by Developer of one or more Performance Bonds in favor of the City as obligee securing Developer's obligations to perform such Horizontal Improvements Work and the return of the Premises in the condition described in Section 8 of this Agreement and the payment of liens, costs and expenses associated therewith; (c) provision of the insurance required by this Agreement; and (d) the satisfaction of all other conditions to commencement of the Horizontal Improvements Work described in the Entitlements, the DDA and the Schedule of Performance. Prior to commencement of any Horizontal Improvements within the public right-of-way, in addition to the foregoing requirements of this Section 4.2, Developer shall also first obtain an encroachment permit and approved street improvement plans as required by the City's Public Works Department. For purposes of this Agreement, the term "**Horizontal Improvements Work**" shall mean all work permitted to be performed under the Permits and all additional work performed by Developer or on behalf of Developer in order to comply with the requirements of this Agreement and shall include, without limitation, the Grading Work and construction of all remaining Horizontal Improvements, provided that the City issues permits necessary for the performance of such work.

5. Repair. In the event that Developer's performance of the Horizontal Improvements Work damages or destroys any improvements located on City-owned property (other than on the Premises) or on public streets or rights of way, Developer shall repair such damage to as near a condition as existed prior to the performance of such Horizontal Improvements Work as is reasonably practicable at Developer's sole cost and expense.

6. Insurance. Prior to Developer exercising the License, Developer shall, at its own expense, cause to be procured and maintained the policies of insurance required pursuant to Section 11.1 of the *{Original}* DDA. Specifically, Developer shall obtain Builder's Risk insurance meeting the requirements of Section 11.1.3, and Pollution Legal Liability ("**PLL**") insurance meeting the requirements in Section 11.1.4, of the *{Original}* DDA. Developer shall not rely upon or have rights to claim for reimbursement, payment, or coverage under any PLL insurance presently maintained by City. The provisions of Section 11 of the *{Original}* DDA shall apply with respect to this Agreement as though fully set forth herein. In addition, to the extent the contractor performing the Horizontal Improvements Work on behalf of the Developer has or obtains a Contractor Pollution Liability Policy with respect to the Horizontal Improvements Work ("**CPL**"), Developer shall use commercially reasonable efforts to have the contractor cause its policy be primary and the PLL policy to be non-contributory with respect to matters covered by the CPL policy. Developer shall be responsible for all self-insured retention or deductible amounts due under the PLL policy.

7. "As-Is, Where-Is" License. Developer acknowledges that (a) the City makes no representations or warranties as to the condition or suitability of the Premises, the soil located thereon, any hazards or Hazardous Materials, contaminants or pollutants that may be present on or below grade at the Premises, or otherwise; (b) Developer's use of the Premises and the soil thereon and its license of the Premises is "as is, where is" as described in Section 4.5.1 of the *{Original}* DDA, in its present condition and subject to and without liability to City, without any representation, promise, agreement or warrant on the part of the City regarding such condition and state of repair needed for the exercise of this License. Developer acknowledges that it has inspected

the Premises and its determination to engage in this undertaking is based solely on its own investigation and is not based on reliance of any statements, suggestions or information provided by the City, its agents, officers, employees or contractors. Developer further acknowledges that the City shall not be liable for any latent or patent defects in the Premises, whether disclosed or not.

8. Condition of Premises at Termination of License Agreement: Performance Bonds.

8.1 Condition of Premises. At the Termination Date or upon any earlier termination of the License and this Agreement (other than termination due to the occurrence of the Close of Escrow), Developer shall (a) remove its property from the Premises including without limitation all Hazardous Materials it brought to or is required to remove from the Premises in accordance with Sections 10 and 12 of this Agreement; (b) report, contain, remove and Remediate in accordance with Sections 10 and 12 of this Agreement any land, air or water pollution resulting from the Horizontal Improvements Work or any additional work performed by Developer pursuant to this Agreement provided that the foregoing shall not be required in connection with any pre-existing Hazardous Materials that are the responsibility of the City pursuant to Section 12 of this Agreement; (c) deliver the Premises to the City in lien free condition; (d) cause the Premises, including without limitation, all Horizontal Improvements Work, to be delivered in a condition consistent with the Permits (but in the final condition specified in the Grading Permit only to the extent the Grading Work authorized thereby has been completed as of the date of termination, and in the condition specified by any and all other Permits only to the extent the remaining Horizontal Improvements Work described by each such permit has been completed as of the date of termination) and all Governmental Requirements; and (e) deliver the Premises in a condition meeting all requirements of the City of Tustin Water Quality Ordinance, and all Federal, State, and Regional Water Quality Control Board and Regional Air Quality rules, permits and regulations and applicable Mitigation Monitoring and Reporting Requirements relating to such standards, including keeping the adjoining public roadways clear of any dirt or mud.

8.2 Performance Bond(s). Upon termination of this Agreement for any reason other than Close of Escrow under the DDA, if Developer shall have failed in any manner to comply with the requirements of Section 8.1 of this Agreement, the City shall have the right, in its sole discretion, to cause the surety under the Horizontal Improvements Work Performance Bonds, or any of them, to satisfy the requirements of Section 8.1 of this Agreement (including without limitation, to restore the condition of the Premises to the condition specified by Section 8.1 and to pay in full all contractors and subcontractors performing the Horizontal Improvements Work or any other work performed pursuant to this Agreement) or to seek reimbursement under such bond for work performed or amounts paid by the City in satisfaction of the foregoing. Upon payment in full of all amounts due and release of all liens (or bonding of outstanding liens in the amounts required by the DDA) and performance by Developer or the surety under the Horizontal Improvements Work Performance Bonds of the work required by this Section 8, the City shall release the Horizontal Improvements Work Performance Bonds.

8.3 Survival. The provisions of this Section shall survive termination of this Agreement.

9. Release.

9.1 Developer's Release. Developer, on behalf of itself, its members, principals, officers, elected officials, beneficiaries, trustees, shareholders, partners, heirs, personal representatives, successors and assigns (collectively, and including Developer, the "**Releasing Parties**"), as the case may be, hereby waives the right to recover from and fully and irrevocably releases City and its officers, elected officials, employees, consultants, agents, representatives and contractors (collectively, and including the City, the "**Released Parties**"), from and against any and all Claims that each of the Releasing Parties may now have or hereafter acquire arising from or related to the activities of any of the Releasing Parties and any damage or destruction of any improvements located on the Premises, excepting from the foregoing release: (a) any Claim that is the result of the gross negligence, willful misconduct or fraud of any of the Released Parties; (b) any breach by the City of any of the covenants or obligations set forth in this Agreement; and (c) any other Claims to the extent such claims are based upon the Active Negligence of any of the Released Parties. This release includes Claims of which the Releasing Parties are presently unaware or which the Releasing Parties do not presently suspect to exist which, if known by the Releasing Parties, would materially affect the Releasing Parties' decision to release the Released Parties. The Releasing Parties specifically waive the protection of California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

In this connection and to the extent permitted by law, the Releasing Parties realize and acknowledge that factual matters now unknown to it may have given or may hereafter give rise to Claims or controversies which are presently unknown, unanticipated and unsuspected, and the Releasing Parties further agree that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Releasing Parties nevertheless hereby intend to release, discharge and acquit the Released Parties from any such unknown Claims and controversies to the extent set forth above. To the extent permitted by law, the foregoing provisions of this Section 9.1 shall survive the termination of this Agreement.

CITY HAS AGREED TO ENTER INTO THIS AGREEMENT AND HAS GIVEN THE RELEASING PARTIES MATERIAL CONCESSIONS REGARDING THIS TRANSACTION IN EXCHANGE FOR THE RELEASING PARTIES AGREEING TO THE PROVISIONS OF THIS

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

CITY

DEVELOPER

9.2 City's Release. The City shall record the Release in the form attached in **Exhibit "D"** to this Agreement upon the occurrence of each of the following: (a) termination of the License and this Agreement due to a termination of the DDA prior to the Close of Escrow; (b) the final resolution of all Actions and disputes pending between the Parties with respect to any terms or conditions of the DDA, this Agreement, the Horizontal Improvements Work Performance Bond(s) or the Premises; and (c) compliance by Developer with its obligations under Section 8 of this Agreement.

10. Indemnity. Developer hereby agrees to protect, indemnify, defend and hold harmless the City Indemnified Parties from and against any and all Claims Accruing during the term of this Agreement to the extent arising from or related to Developer's activities during the term of this Agreement including, but not limited to (a) the acts or omissions to act of Developer or the Developer Representatives arising from the presence, activities or work on or use of the Premises by Developer or the Developer Representatives, including with respect to any Horizontal Improvements Work performed by Developer or any Developer Representatives on the Premises pursuant to this Agreement; any inspections, surveys, tests, Investigations and studies carried out by Developer or the Developer Representatives on the Premises during the term of this Agreement or from the exercise of the License by Developer or the Developer Representatives; (b) entry onto the Premises by Developer or the Developer Representatives in connection with this Agreement; (c) bodily injury to or death of any person (including any employee or contractor of the City Indemnified Parties) or damage to or loss of use of property resulting from such acts or omissions of Developer or any of the Developer Representatives; and (d) the cost of compliance with any Construction Conditions established by any Environmental Agency or Environmental Law and accepted by the City and Developer pursuant to Section 12.1 of this Agreement; provided that Developer shall not be responsible for and shall have no obligation to defend or indemnify the City Indemnified Parties to the extent a Claim relates to or arises from: (i) the active negligence, gross negligence or willful misconduct of a City Indemnified Party; and/or (ii) the mere discovery of existing conditions, contamination or hazardous materials at, on, under or emanating from the Premises (collectively, "**Excluded Claims**"). If the City is served or otherwise presented with a Claim or potential Claim for which it believes it is entitled to defense and/or indemnity under this Section, City will notify Developer of such Claim or potential Claim within ten (10) Business Days of receipt of such claim. Selection of counsel and defense of a Claim shall be conducted in accordance with the provisions of Section 10.8 of the *{Original}* DDA. The provisions of this Section shall survive termination of this Agreement.

11. Costs; No Liens. Developer shall bear all costs relating to the Horizontal Improvements Work. Developer and the Developer Representatives shall not place, allow to be placed on, or incur any liens against the Premises or any portion thereof in connection with the Horizontal Improvements Work or in any way attributable to the acts of Developer and/or the Developer Representatives on the Premises. Developer agrees to indemnify, defend, and hold the City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns free and harmless from and against any and all Claims arising with respect to payment of liens assessed or levied against the Premises and/or the Improvements in connection with the Horizontal Improvements Work performed, materials furnished, or any other activities under control of Developer or the Developer Representatives which, pursuant to the laws of California, may become a lien on the Premises. Should any lien be filed against the Premises in connection with the Horizontal Improvements Work, Developer shall promptly bond around the lien as part of disputing the lien with the party asserting the lien. The provisions of this Section shall survive termination of the License and this Agreement. The City may post notices of non-responsibility on the Premises prior to Developer's commencement of any work under this Agreement.

12. Damage and Destruction; Environmental Remediation.

12.1 Remediation. In the event of damage to or loss of any improvements or personal property situated on the Premises, Developer shall take all appropriate steps to erect fences to preclude unauthorized access to the Premises and otherwise mitigate hazardous and unsafe conditions within the Premises caused by the damage and destruction. In addition, if any presence or Release of a Hazardous Material is discovered by Developer or a Release is caused by the Developer or any Developer Representative on the Premises during the term of this Agreement, (a) Developer shall promptly provide written notice (or in the event of emergency, telephonic notice, followed by written notice) of any such presence or Release to the City; and (b) Developer shall, in full compliance with this Agreement, including without limitation, Section 11 and Section 18 of this Agreement: (i) Remediate the Hazardous Materials in compliance with and to the extent required by Environmental Laws and any Environmental Agency to the level required by Governmental Agencies for single family residential purposes, or if such removal is prohibited by any Environmental Laws, take whatever action is required by any Environmental Law and any Environmental Agency. Developer's obligation to Remediate with respect to any affected area under this Section 12 shall be considered fully satisfied upon receipt of a No Further Action Letter with respect to such affected area; (ii) take such other action as is necessary to have the full use and benefit of the Premises as contemplated by this Agreement; and (iii) provide the City with satisfactory evidence of the actions taken as required in this Section 12. For purposes of this Agreement, the term "No Further Action Letter" shall mean a "No Further Action Letter," "Closure Letter" or other equivalent document to be issued by the appropriate governmental agency, which letter is to generally confirm that "no further action" is to be required to address the existence of Hazardous Substances within the affected area and there are no constraints or restrictions on future use. The City shall have a right to have an observer present during all such testing and remediation work. City may provide comments to any remedial action plan prepared by Developer for any remediation (a "RAP"), and Developer shall not unreasonably decline to incorporate such comments in such RAP, provided, however, that City shall not have approval or consent rights with respect to such RAP; provided that, in the event that a Governmental Agency

requires the consent of the City for the approval of any RAP or issuance of a No Further Action Letter, City shall have a right to consent but agrees not to unreasonably withhold, delay or condition such consent except to the extent necessary to assure that there shall be no land use control, constraint, limitation or restriction on the construction and sale of single family residences on the Premises ("**Constraints**"); provided that the City shall not unreasonably withhold its consent to Construction Conditions (as defined below) that meet the requirements of clauses (a) and (b) below. Examples of Constraints that the City may reject in its sole discretion are Constraints that affect the ability of any Person to construct single family residential homes on the Premises, to construct swimming pools on the Premises, to dig 12 feet or less below the surface of the land and the like. On the other hand, the Parties recognize that certain remedial or removal action to address pre-existing contamination at the Premises is not feasible economically or from an engineering perspective without imposition of certain conditions. Such conditions that will not provide Constraints on the use of the Premises are referred to herein as "**Construction Conditions**". As an example, if methane exists below the surface of the Premises, in lieu of removal of the methane, use of a methane boot may be required. If Developer proposes a Construction Condition and the City does not agree to Developer's assertion and withholds consent on that basis; then Developer will obtain and submit to the City estimates from at least two contractors as to the cost to Remediate the Premises to a level without Constraints without Construction Conditions and the cost to Remediate to such level with Construction Conditions. If (a) the cost to Remediate the pre-existing Hazardous Materials without imposition of Construction Conditions is more than 15% greater than the cost to Remediate with the imposition of Construction Conditions; and (b) following Remediation to the standard required with imposition of the Construction Condition there is no Constraint on the ability to construct and sell single family homes, then failure of the City to agree will be deemed unreasonable absent other basis for denial asserted by the City.

12.2 Assignment of Rights. City hereby assigns to Developer, to the extent such rights are assignable, on a non-exclusive basis and as the Parties' interests may appear, any rights that City has against any Person with respect to any Remediation, indemnification or liability with respect to Hazardous Materials located on or about the Premises that Developer is responsible for under this Agreement, excluding any rights with respect to City's existing pollution legal liability insurance policies.

12.3 Cooperation; Further Assurances. City shall reasonably cooperate with Developer in pursuing and/or processing any claim against any insurer (excluding claims under City's existing pollution legal liability insurance policies) or any other Person with respect to Developer's obligations under this Agreement, including, without limitation, by making a claim against any insurer in City's name for the benefit of Developer with respect to any costs, liability or damages incurred by Developer under this Agreement, all at Developer's cost and expense. Developer shall have full authority to pursue such claims in its own name and without consent or approval from City, and shall have the right to make all decisions in connection with the pursuit of any such claim. In the event that for any reason the assignment of rights set forth in Section 12.2 of this Agreement is ineffective or incomplete, City agrees: (a) upon written request of Developer, to pursue claims against any Person for whom the assignment of rights is ineffective or incomplete on behalf of the Developer in City's own name for the benefit of Developer (a "Third Party Claim") subject to the provisions of this Section; (b) to initiate a Third Party Claim requested

by Developer, which may include an action, arbitration, reference or other alternative dispute resolution mechanism; and (c) if the City has no claim, to cooperate with Developer in pursuing any such matter initiated by Developer. If City fails to initiate a Third Party Claim if the City has such a claim, as required hereunder, Developer shall be excused from its obligations to remediate under Section 12 of this Agreement. City shall not unreasonably withhold, condition or delay its compliance with Developer's requests in connection with the prosecution and resolution of such Third Party Claim, including with respect to venue, strategy, law and motion and settlement. The City shall use its commercially reasonable diligence in prosecuting such claim to conclusion. City's prosecution of any Third Party Claim or other compliance with the provisions of this Section shall be at Developer's sole cost and expense, and if applicable, with the assistance of counsel selected by Developer who shall represent the City as well as Developer as the real party in interest, except in the event of a conflict of or disparate interest. Such cost and expense of City shall include reimbursement for time of City personnel and counsel incurred in connection with such pursuit, to be charged at the then existing rates charged by City with respect to such personnel. Each of the Parties shall execute and deliver any and all additional papers, documents or instruments, and shall do any and all acts and things reasonably necessary or appropriate in connection with the performance of its obligations under this Section 12 in order to carry out the intent and purpose of this Agreement. City shall promptly pay over to Developer any award, payment, judgment or settlement received by it in respect of any Third Party Claim.

12.4 Survival. In the event the Close of Escrow occurs under the DDA, this Section 12 shall survive the termination of this Agreement. In the event this Agreement terminates due to the Close of Escrow under the DDA, the terms of the DDA shall govern the Remediation of the Premises by Developer and the provisions of this Section 12 shall not survive other than Sections 12.2 and 12.3 of this Agreement which shall survive only with respect to any Hazardous Materials or Hazardous Material Release discovered on the Premises by Developer during the term of this Agreement. In the event this Agreement terminates in accordance with subsections (b), (c) or (d) under Section 2 of this Agreement, the parties' rights and obligations under Section 12.1 of this Agreement shall survive the termination of this Agreement but only with respect to any Hazardous Material or Hazardous Material Release discovered on the Premises by Developer or caused by Developer or any Developer Representative during the term of this Agreement and the parties' obligations under Sections 12.2 and 12.3 of this Agreement shall survive only with respect to any Hazardous Materials or Hazardous Material Release discovered on the Premises by Developer during the term of this Agreement. To the extent that completion of any Remediation is required pursuant to the foregoing, Developer will complete such Remediation obligations in full and shall not be relieved of its obligations as a result of the termination of this Agreement or for any other reason.

13. Exculpation. The City shall not be liable in damages to Developer or to any owner, lessee, any Developer or other Person, on account of (a) any approvals or disapproval by the City, including by the City Manager or designee, whether made in the Governmental Capacity or Proprietary Capacity of the City of any design documents, including the Approved Plans, any Basic Concept Plan and grading plans and other improvements plans, including without limitation, plans and specifications, for the Horizontal Improvements Work, whether or not defective or whether or not in compliance with applicable laws or ordinances; (b) any construction, performance or nonperformance by Developer or any owner, lessee, Developer or other Person of

any work on the Premises or the Improvements, whether or not pursuant to the Permits or whether or not in compliance with applicable laws or ordinances; (c) any mistake in judgment, negligence, action or omission in exercising its rights, powers and responsibilities hereunder; and/or (d) the enforcement or failure to enforce any of the provisions of this Agreement. Every Person who makes design submittals to Developer for approval shall be informed in writing and shall agree that by reason of such submittal agrees not to bring any suit or action against the City seeking to recover any such damages and expressly waives any such claim or cause of action for such damages which it would otherwise be entitled to assert. The review of any design submittals shall not constitute the assumption of any responsibility by, or impose any liability upon, the City as to the accuracy, efficacy, sufficiency or legality thereof nor decrease or diminish any liability, duties, responsibilities, or obligations of Developer under this Agreement or otherwise. The provisions of this Section shall survive termination of the License and this Agreement.

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

15. No Waiver. Nothing contained in this Agreement shall be deemed to waive the right of the City to act in its Governmental Capacity with respect to the consideration and approval of the Entitlements and all other permits, licenses and approvals requested by Developer from time to time in connection with the Project

16. Bailee Disclaimer and Waiver of Claims. Developer acknowledges and agrees that City has granted its permission for use of the Premises only for the purposes and in accordance with the provisions of this Agreement. By entering into this Agreement, City is not agreeing in any manner to accept obligations or responsibility for the safekeeping of the vehicles or other property of Developer or of Developer's agents, contractors, officers, employees or invitees. This Agreement is not a contract for bailment or deposit of goods for safekeeping and City in no manner whatsoever purports to be a bailee. As a material part of the consideration to be rendered to City for this Agreement, Developer hereby waives any and all claims or causes of action against City, its officers, agents, or employees which it may now or hereafter have for damages to, loss of, or theft of Developer's vehicles or other property anywhere in, about, or on Tustin Legacy, including, but not limited to, the Premises, from any cause whatsoever, unless such damage, loss, or theft results from the sole negligence, gross negligence or willful misconduct of City, its officers, agents, or employees.

17. Compliance with Laws. Developer will at all times during the term of this Agreement promptly observe and comply, at its sole cost and expense, and shall maintain the Premises and cause its use of the Premises, including without limitation, all Horizontal Improvements Work, to be performed in accordance with the Permits and all Governmental Requirements, including without limitation all applicable federal and State labor laws and regulations, all permits required to perform the Horizontal Improvements Work. Developer shall investigate the applicability of and, if and to the extent applicable, pay prevailing wages meeting the requirements of such laws and regulations. Developer covenants that it will not generate, use, or store hazardous substances or hazardous waste on the Premises in violation of Environmental

Laws. Developer shall defend, indemnify and hold harmless the City of Tustin from and against all claims, liabilities, losses, damages and costs, foreseen or unforeseen, which the City of Tustin may incur by reason of Developer's action or non-action in violation of its obligations under this Section; provided however, that the foregoing indemnity shall exclude any Excluded Claims. This provision shall survive the expiration or termination of the License and this Agreement.

18. Data Sharing. Developer agrees to provide the City with copies of all soil test results. Notwithstanding the provisions of Section 17 of this Agreement, and except for the routine reporting of data incident to a permit application, should Developer discover conditions on the Premises during the conduct of the Horizontal Improvements Work, that Developer believes may require reporting to any Governmental Authority (local, regional, state, or federal), Developer shall, as promptly as reasonably practical, advise the City of such discovery and thereafter provide City with the field and/or laboratory data pertaining to such discovery. The City shall be responsible for making whatever report or reports may be required in light of such discovery(ies).

19. Rights of City to Revoke License for Default. This Agreement and the License granted hereby may be revoked by the City by provision of written notice to Developer, (a) during the continuation of any default by Developer under this Agreement beyond the notice and cure period set forth in Section 32 of this Agreement; or (b) at any time if the City determines, in its sole discretion, that the conduct or activities of Developer create health or safety concerns requiring stoppage of the work. If Developer disputes the City's revocation of the License pursuant clause (b) above, Developer shall have the right to provide the City with written notice within three (3) calendar day(s) following delivery of such revocation notice setting forth Developer's basis for the dispute. Developer and City shall meet and confer within five (5) Business Days from the delivery of Developer's notice, in order to identify specific actions and remedies to be taken by Developer to cure the default asserted by the City and provided that Developer agrees in writing to take such actions and to promptly prosecute them to completion in a manner satisfactory to the City in its reasonable discretion, the City shall not unreasonably withhold the reinstatement of the License and this Agreement.

20. Additional Rules and Regulations Applicable to Use of Premises. In connection with its use of the Premises, Developer shall comply with the rules and regulations of the City attached as Exhibit "C" to this Agreement.

21. Dispute Resolution. In the event of a dispute between the Parties with respect to this Agreement, the Parties agree that they shall resolve such dispute in accordance with the provisions of Section 17.1 of the *{Original}* DDA, and the cost of any such proceeding shall be borne in accordance with the provisions of Section 17.2 of the *{Original}* DDA and the provisions of Section 17.8 and 17.9 of the *{Original}* DDA shall apply with respect to such dispute.

22. Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California.

23. Relationship of Parties; Not an Easement or Interest in Land. Nothing contained in this Agreement shall be deemed or construed, either by the Parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other relationship between the Parties. Nothing in this Agreement shall create or constitute an easement

in the Premises and this Agreement shall be considered nothing other than a license as set forth herein.

24. Notices. All notices required by this Agreement shall be provided in writing and shall be deemed received when (a) personally served; (b) two (2) days after being sent by registered or certified mail, return receipt requested, postage or charges prepaid, or by recognized overnight carrier; or (c) one (1) day after receipt by facsimile machine or electronic mail, with transmission and receipt acknowledged in writing, and addressed to the Party for whom intended at such Party's address herein specified, or at such other address as such Party may have substituted therefore by proper notice to the other.

25.

If to Developer:

{insert}

With a copy to:

Rutan & Tucker, LLP
Attn: Kevin Brazil, Esq.
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626
Fax: (714) 546-9035
Email: kbrazil@rutan.com

If to the City:

City of Tustin
Attn: Jeffrey C. Parker, City Manager
300 Centennial Way
Tustin, CA 92780
Fax: 714-838-1602
Email: jparker@tustinca.org

With a copy to:

Woodruff Spradlin & Smart, APC
Attn: David Kendig, Esq., City Attorney
555 Anton Boulevard, #1200
Costa Mesa, CA 92626
Fax: (714) 415-1183
Email: dkendig@wss-law.com

and:

Armbruster Goldsmith & Delvac LLP
Attn: Amy E. Freilich, Esq., Special Counsel
12100 Wilshire Blvd. Suite 1600 Los Angeles, CA 90025
Fax: (310) 209-8800
Email: amy@agd-landuse.com

26. No Assignment. This Agreement shall not be assigned by Developer except with the prior written consent of the City in its sole discretion.

27. Exhibits Incorporated. Each exhibit attached and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

28. Severability. If any provision of this Agreement or application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement (including the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

29. Entire Agreement. This Agreement and the DDA contains the entire agreement of the Parties with respect to the subject matter and no amendment, change, modification or supplement to this Agreement shall be valid and binding on any of the Parties unless it is represented in writing and signed by each of the Parties hereto.

30. Counterparts. This Agreement and any amendments hereto may be executed in counterparts, each of which is deemed an original and all of which, when taken together constitute one and the same instrument.

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

32. Authority. Each Party warrants that it has the power and authority to enter into this Agreement and to perform its obligations hereunder. Each individual who signs this Agreement on behalf of an entity warrants that he/she has been duly authorized to do so and to bind such entity.

33. Default Procedure. A non-defaulting party (the "**Non-Defaulting Party**") at its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of any other party ("**Defaulting Party**") to perform any material duty or obligation of said Defaulting Party in accordance with the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed to be in "default" of its obligations set forth in this Agreement if the Defaulting Party has failed to take action and cure the default within five (5) Business Days after the date of such notice.

34. Limitation on Damages. Developer acknowledges that the City would not have entered into this Agreement if the City could become liable for damages under or with respect to this Agreement. Consequently, and notwithstanding any other provision of this Agreement, except for the payment of attorneys' fees in accordance with Section 21 of this Agreement and court costs, the City shall not be liable in damages under this Agreement to Developer and Developer, on behalf of itself and each Developer Representative hereby waives any and all rights to claim damages of any other kind or nature from the City including without limitation, Claims for lost profits, consequential, incidental, indirect, special, collateral, exemplary or punitive damages. Except as otherwise set forth in this Agreement, in no event shall Developer be liable to the City

for any lost profits, consequential, incidental, indirect, special, collateral, exemplary or punitive damages in connection with this Agreement or the Horizontal Improvements Work.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.
SIGNATURES FOLLOW.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

DEVELOPER:

a _____

By: _____

Name: _____

Title: _____

CITY OF TUSTIN:

By: _____

Jeffrey C. Parker,
City Manager

ATTEST:

By: _____

Erica Rabe, City Clerk

APPROVED AS TO FORM

By: _____

David Kendig,
City Attorney

Ambruster Goldsmith & Delvac LLP
Special Real Estate Counsel to the City

By: _____

Amy E. Freilich

EXHIBIT "A"
DEPICTION OF DEVELOPMENT PARCELS

{to be attached}

EXHIBIT "B"
DEPICTION OF PORTION OF
MOFFETT DRIVE

{to be attached}

EXHIBIT "C"
RULES AND REGULATIONS

1. Developer shall comply with all requirements of the Occupational Safety and Health Administration.
2. Trash disposal shall comply with CR&R Incorporated and City of Tustin standards.
3. Developer shall be required to have and maintain a valid City of Tustin Business License.
4. All requirements of the City's Noise Ordinance (Chapter 6 of the City Code) shall be met at all times.
5. Developer may not access any other areas on the adjacent Tustin Legacy properties and may not enter any of the buildings on the Tustin Legacy site for any purpose unless approved in writing by the City.
6. Developer shall ensure controlled access to the Premises is maintained via the Victory Road Gate ("Gate"). The Gate is Developer's sole authorized access to the Premises and Developer will be responsible for ensuring that no unauthorized persons or vehicles access the overall Tustin Legacy property. Developer shall ensure the gate remain closed all times while not in use.
7. Except for ingress and egress, Developer must keep the Gate and adjacent roadways free and clear at all times. Developer shall maintain the existing fence and screening along Tustin Ranch Road, Victory Road and Park Avenue through the term of the License at its sole cost and expense.
8. Security and access to Tustin Legacy is currently performed by the City of Tustin Police Department. The City of Tustin is not responsible for providing security services for Developer, Developer's equipment or property, or the Premises during the license period. Access to the Premises shall be permitted only during daylight hours only from 7:00 a.m. until 6:00 p.m., Monday through Friday, 9:00 a.m. until 5:00 p.m. on Saturdays. Developer is responsible for securing the Premises; including keeping the Gate closed and locked during hours when use of the Premises is not permitted.
9. Hours of operation shall be according to Tustin City Code Section 4616 which limits construction activities to between 7:00 a.m. and 6:00 p.m. Monday through Friday, and between 9:00 a.m. and 5:00 p.m. on Saturdays, and at no time on Sundays unless otherwise approved by the City. Construction activities are prohibited on New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day.
10. This development shall comply with all provisions of the City of Tustin Water Quality Ordinance and all Federal, State, and Regional Water Quality Control Board rules and

regulations, including keeping the Premises, and public roadways, including but not limited to Tustin Ranch Road, Victory Road, Moffett Drive, and Park Avenue clear of any dirt or mud tracked out of the Premises.

11. In addition to access required under other provisions of this Agreement, the City, and the Department of Navy and their representatives shall be allowed access to the Premises at all times throughout the term of this Agreement for any purpose without prior written notice to Developer. Developer shall ensure that the City has a current roster of on-call personnel and their phone numbers. Developer shall have no claim against the City for exercise of their rights of access hereunder.

12. Developer shall not make or permit to be made any use of the Premises or any part thereof (i) which would violate any of the covenants, agreements, terms, provisions, and conditions of this Agreement; or (ii) which would directly or indirectly violate any federal, state or local law, ordinance, rule or governmental regulation; or (iii) which will suffer or permit the Premises or any part thereof to be used in any manner or permit anything to be brought onto or kept thereon which, in the reasonable judgment of City, shall in any way impair or tend to impair the character, reputation or appearance of the Premises or which will impair or interfere with or tend to impair or interfere with any of the services performed by City.

13. Developer shall not display, inscribe, print, maintain or affix on any place in or about the Premises any sign, notice, legend, direction, figure or advertisement, except as may be approved by City in writing.

14. Developer shall comply with all laws, enactments, rules, ordinances and regulations of all governmental authorities relating or applicable to Developer's occupancy of the Premises governing use of the Premises. Developer shall obtain all permits and licenses required by the City of Tustin and shall pay all required fees.

15. Developer shall allow no dangerous or hazardous condition to be created or caused on the Premises.

EXHIBIT "D"
FORM OF RELEASE

--	--

SPACE ABOVE THIS LINE FOR
RECORDER'S USE

**RELEASE AND HOLD HARMLESS REGARDING CERTAIN HORIZONTAL
IMPROVEMENTS WORK CLAIMS RELATING TO REAL PROPERTY**

The CITY OF TUSTIN (the "City") and CALATLANTIC GROUP, INC., a Delaware corporation ("Developer"), previously entered into (a) that certain Tustin Legacy Disposition and Development Agreement For Disposition Parcel 6B dated _____, 201_, *fas amended* ("DDA"), which has terminated in accordance with its terms; and (b) that certain License and Agreement for Site Development dated _____, 2018 ("License Agreement") with respect to certain grading and horizontal improvements work on the Development Parcels (as defined in the DDA) owned by City in the City of Tustin, County of Orange, State of California, more particularly described in the legal description attached hereto as **Exhibit "1"** and incorporated herein by this reference ("Property"). Pursuant to the License Agreement, the City agreed to provide a release to Developer under certain circumstances upon termination of the DDA prior to Close of Escrow (as defined in the DDA) pursuant to the DDA. This Release and Hold Harmless Regarding Certain Horizontal Improvements Work Claims Relating to Real Property is referred to herein as this "Release Agreement."

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the City hereby agrees as follows:

1. **Release.** City, on behalf of itself, and all successor owners of fee title to all or any portion of the Property (other than a home buyer who purchases a lot improved with a residence or any utility or governmental authority acquiring any portion or interest in the Property) ("Successor Owners") and their respective members, principals, officers, elected officials beneficiaries, trustees, shareholders, partners, heirs, personal representatives, successors and

assigns (collectively, the "**Releasing Parties**"), as the case may be, hereby waives the right to recover from and fully and irrevocably releases Developer and its officers and employees, agents and, except as set forth in the last sentence of Section 2 of this Release, Developer Representatives (as defined below) (collectively, the "**Released Parties**"), from and against any and all claims, actions, causes of action, demands, orders, penalties, losses, damages, liabilities, costs, expenses (including attorneys' fees, expert witness and consultant fees and court and litigation costs) (collectively, "**Claims**") that each of the Releasing Parties may now have or hereafter acquire arising from or related to the performance by the Developer or Developer's consultants or contractors (the "**Developer Representatives**") of the work described by [Grading Permit # _____; _____ {add other permits}] on the Property (the "**Horizontal Improvements Work**"), including without limitation, any and all design or construction defects (the "**Horizontal Improvements Work Claims**") excepting from the foregoing release: (A) any of the foregoing Horizontal Improvements Work Claims that is the result of the willful misconduct or fraud of Developer or any Developer Representative; (B) any breach by Developer of any of the covenants or obligations set forth in this Release Agreement; and (C) any Claims other than Horizontal Improvements Work Claims. For the avoidance of doubt, the foregoing release shall not be construed to release the Released Parties from any liability or Claim by the City under the DDA or the License Agreement other than with respect to any design defect or construction defect relating to the Horizontal Improvements Work performed on the Property by the Released Parties.

1. Successor Owner Indemnity, Agreement to Defend and Hold Harmless. All Successor Owners (but expressly excluding the City) shall indemnify, defend and hold harmless the Released Parties from and against any and all Claims brought by homeowners with respect to builder liability arising from or related to the Horizontal Improvements Work performed by the Released Parties on the Premises under the License Agreement; excepting from the foregoing indemnity (A) any Claim that is the result of the willful misconduct or fraud of Developer or any Developer Representative; and (B) any breach by Developer of any of the covenants or obligations set forth in this Release Agreement. Notwithstanding anything to the contrary set forth above, any Successor Owner may enter into a new contractual agreement with any contractor or consultant who performed any work on the Property on behalf of the Developer (a "**New Contract**") and the release and indemnification provided in this Release Agreement shall not in any way affect or limit any rights or claims such Successor Owner would have against any such contractor or consultant arising from or related to such New Contract.

2. Legal Fees and Costs. If City, Developer or any Successor Owner institutes any action, suit, proceeding, counterclaim or other proceeding for any relief against another Party, declaratory or otherwise (collectively an "**Action**"), to enforce the terms hereof or to declare rights hereunder then the Prevailing Party in such Action shall be entitled to have and recover of and from the other Party all costs and expenses of the Action, including (a) reasonable attorneys' fees which, regardless of which party is the Prevailing Party, shall be payable at the contractual hourly rate for City's litigation counsel at the time the fees were incurred, but in no event more than \$200 per hour; and (b) costs actually incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling or award (collectively, a "**Decision**") granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not

such Action is prosecuted to a Decision. Any Decision entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including reasonable attorneys' fees and expert fees and costs (collectively "Costs") incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include in addition to Costs incurred in prosecution or defense of the underlying action, reasonable attorneys' fees, costs, expenses and expert fees and costs incurred in the following: post judgment motions and collection actions, contempt proceedings, garnishment, levy, debtor and third party examinations, discovery, bankruptcy litigation and appeals of any order or judgment. "**Prevailing Party**" within the meaning of this Section includes a party who agrees to dismiss an Action in consideration for the other Party's payment of the amounts allegedly due or performance of the covenants allegedly breached, or obtains substantially the relief sought by such party.

3. Termination and Amendments. City shall not terminate, amend or modify this Release Agreement without the prior written consent of Developer. This Release Agreement shall automatically terminate, without further action of any party, upon the fifteenth (15th) anniversary of the date set forth immediately below.

{signatures on following page}

IN WITNESS WHEREOF, the City has executed this Release and Hold Harmless Regarding Agreement Certain Horizontal Improvements Work Claims Relating to Real Property on _____, 20__.

CITY OF TUSTIN:

By: _____
Jeffrey C. Parker,
City Manager

ATTEST:

By: _____
Erica Rabe, City Clerk

APPROVED AS TO FORM

By: _____
David Kendig,
City Attorney

Ambruster Goldsmith & Delvac LLP
Special Real Estate Counsel to the City

By: _____
Amy E. Freilich

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

**FORM OF RELEASE
EXHIBIT "1"**

LEGAL DESCRIPTION OF PROPERTY

ATTACHMENT 23

CALCULATION OF REPURCHASE PRICE

The Repurchase Price shall be: 1.) The land price associated with the Repurchased Property as identified in Table 1 for units of which a building permit has not been issued; and 2.) the repurchase value associated with the pro rata share of the completed Horizontal Improvements.

Those Buildings and the Phases upon which such Buildings are located for which Developer has been issued a building permit prior to the date of the City's delivery of notice of a Repurchase Default which permit has not expired as of the date of the City's exercise of the Right of Purchase are excluded under the definition of Repurchased Property pursuant to Section 16.3.1 of the DDA.

Table 1 – Land Price				
Product Line	Product Type	Total Price	Units	Price Per Unit
A - Icon	SFD	\$12,857,055	57	\$225,562
B - Velocity	Flats	\$10,107,260	60	\$168,454
C - Fleet	TH	\$12,579,540	101	\$124,550
Total Land Price		\$35,543,855	218	

Pro Rata Share of Completed Horizontal Improvements

The repurchase value associated with Horizontal Improvements shall be calculated based on the actual Horizontal Improvement Costs of completed Horizontal Improvements as of the date City delivers written notice to Developer exercising the Right of Purchase, and for avoidance of doubt shall exclude any Developer overhead, general administration, or financing costs associated with the Horizontal Improvements.

The completed Horizontal Improvements repurchase value will be a pro rata share of the remaining units being repurchased; calculated by dividing actual Horizontal Improvement Costs of the completed Horizontal Improvements by the total number of units (218) approved within the Development Parcels, and then multiplying by the total number of units within the Phases of the Repurchased Property.

ATTACHMENT 24

**MAXIMUM SPECIAL TAXES FOR DEVELOPED PROPERTY
FOR FISCAL YEAR 2018-19
COMMUNITY FACILITIES DISTRICT NO. 2018-1**

Land Use Class	Land Use	Fiscal Year 2018-19 Maximum Special Tax
1	FLATS (\geq 2,500 SF)	\$2,416 PER DWELLING UNIT
2	FLATS (2,000 - 2,499 SF)	\$2,267 PER DWELLING UNIT
3	FLATS (1,500 - 1,999 SF)	\$1,889 PER DWELLING UNIT
4	FLATS ($<$ 1,500 SF)	\$1,809 PER DWELLING UNIT
5	SFD (\geq 2,800 SF)	\$2,717 PER DWELLING UNIT
6	SFD (2,500 - 2,799 SF)	\$2,585 PER DWELLING UNIT
7	SFD (2,200 - 2,499 SF)	\$2,240 PER DWELLING UNIT
8	SFD ($<$ 2,200 SF)	\$2,177 PER DWELLING UNIT
9	TOWNHOMES (\geq 2,125 SF)	\$1,852 PER DWELLING UNIT
10	TOWNHOMES (1,875 - 2,124 SF)	\$1,690 PER DWELLING UNIT
11	TOWNHOMES (1,625 - 1,874 SF)	\$1,617 PER DWELLING UNIT
12	TOWNHOMES ($<$ 1,625 SF)	\$1,408 PER DWELLING UNIT

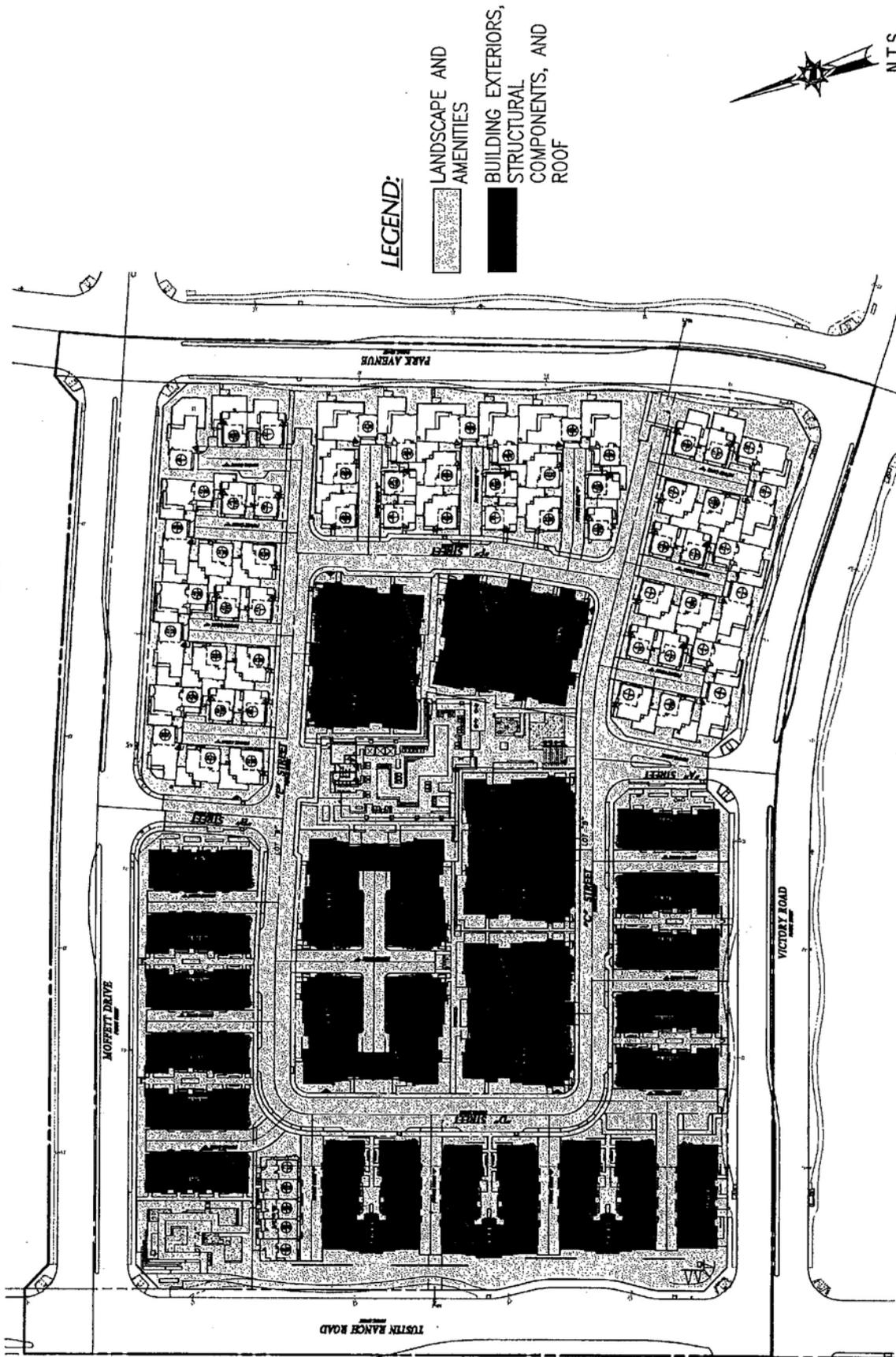
Increase in the Maximum Special Tax

On each July 1, commencing on July 1, 2018, the Maximum Special Tax for Developed Property shall be increased annually by the greater of the change in the **Consumer Price Index** during the twelve (12) months prior to December of the previous Fiscal Year and two percent (2.00%), not to exceed four percent (4.00%). Any incremental adjustment that exceeds 2.00% shall be rounded to the nearest one-tenth of a percent.

“**Consumer Price Index**” means, for each Fiscal Year, the “*All items in Los Angeles-Riverside-Orange County, CA, all urban consumers, not seasonally adjusted*” index published by the U.S. Bureau of Labor Statistics (Series ID: CUURA421SA0), measured as of the month of December in the calendar year that ends in the previous Fiscal Year. In the event this index ceases to be published, the Consumer Price Index shall be another index as determined by the CFD Administrator that is reasonably comparable to the Consumer Price Index.

ATTACHMENT 25

Common Areas Owned by HOA



LEGEND:

LANDSCAPE AND AMENITIES

BUILDING EXTERIORS, STRUCTURAL COMPONENTS, AND ROOF

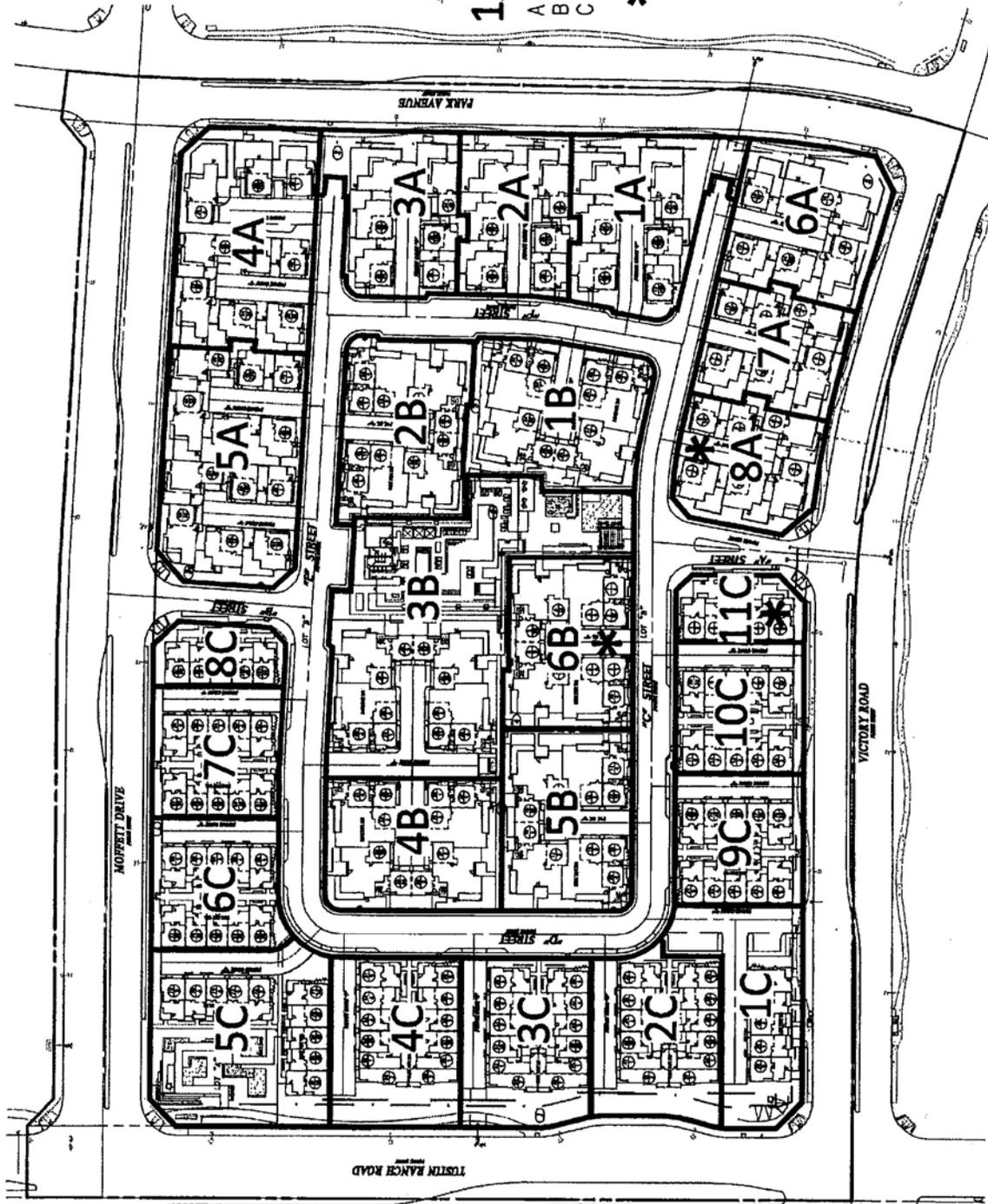


N.T.S.

01/30/2018

ATTACHMENT 26

Phasing Map



LEGEND:

- 1A** PHASE NUMBER/PRODUCT
- A = ICON (SINGLE FAMILY CLUSTERS)
- B = VELOCITY (MOTORCOURT FLATS)
- C = FLEET (COURT/ROW TOWNHOMES)
- *** MODELS



01/25/2018

ATTACHMENT 27

FORM OF GUARANTY

This **GUARANTY AGREEMENT** ((this "**Guaranty**") is made as of the _____ day of _____, 20__ (the "**Effective Date**"), by Lennar Corporation *{confirm}*, a corporation formed under the laws of the State of Delaware ("**Guarantor**"), in favor of the CITY OF TUSTIN, a public body, corporate and politic ("**City**").

RECITALS

A. CalAtlantic Group, Inc., a Delaware Corporation ("**Developer**" *{or if DDA is subsequently assigned after execution "CalAtlantic"}*), has entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 6B, dated as of _____ (including all Attachments thereto, which as may be amended, updated or modified from time to time are referred to collectively as "**DDA**") under which Developer would acquire the Property (as defined in the DDA). Initially capitalized terms used and not defined herein shall have the meanings set forth in the DDA.

B. *{If applicable, add following sentence:} Concurrently with the delivery of this Guaranty, CalAtlantic has assigned the DDA to _____, a _____ ("**Developer**"), and Developer is acquiring the Property under the DDA.* Under the terms of the DDA, Developer will be required to perform certain design work and construct the Improvements on the Development Parcels.]

C. *{Revise as applicable:}* Guarantor directly or indirectly owns 100 % of Developer and thus has a substantial interest in Developer and will derive benefit from the acquisition of the Property and the development and sale or lease of the Project.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to induce City to convey the Development Parcels to Developer, City has required that the Guarantor execute and deliver this Guaranty to City. Each Guarantor hereby jointly and severally makes the guaranties, obligations, covenants and agreements set forth below in this Guaranty.

Section 1. Guaranty.

1.1 Payment and Completion Obligations. The Guarantor absolutely and unconditionally guarantees all obligations of Developer under the DDA and Other Agreements, including, but not limited to, the the items set forth in Section 1.1.1 and 1.1.2 below.

1.1.1 Guarantor shall pay any and all costs, including all Development Costs (as such term is defined in the DDA), required and cause any and all work to be performed as may be required to carry out and Complete (as such term is defined in the DDA) each of the

following elements of the Project if Developer shall fail to timely perform its obligations under the DDA, all as required by and in accordance with, the terms of the DDA (collectively, the “**Completion Obligations**”):

(a) Design, construction and Completion of the required Improvements, including, for avoidance of doubt, Completion of the Horizontal Improvements and the Vertical Improvements, as more particularly described in the DDA in accordance with all Governmental Requirements, Entitlements and the requirements of the DDA, including the Scope of Development attached thereto as Attachment 8.

(b) Developer’s obligations with respect to the Ongoing Matters;

(c) The indemnities and other obligations of Developer pursuant to Sections 4.5.2(f), 5.5, 8.8, 8.9, 8.11, 8.12, 10.1, 10.2, 11.1 (including payment of all deductible amounts) and 17.12 of the DDA, including, to the extent applicable, during the Additional Liability Period; and

(d) Payment of all amounts and discharge of all obligations of Developer under the Profit Participation Agreement and the City Deed of Trust.

1.1.2 The guarantee of the Completion of the foregoing work and the performance of the foregoing obligations shall be an absolute obligation of Guarantor in the event that Developer fails to commence or Complete, in a lien-free condition (as required by the DDA), construction of the foregoing work within the time period set forth in the Schedule of Performance (subject to any extension permitted by the DDA for Force Majeure Delay. The Guarantor also absolutely and unconditionally guarantees that Guarantor shall pay any and all costs required and cause any and all work to be performed as may be required to carry out the following obligations as required by and in accordance with the terms of the DDA and the Other Agreements if Developer shall fail to timely perform its obligations under the DDA and the Other Agreements (collectively, the “**Payment Obligations**” and collectively with the Completion Obligations, the “**Payment and Completion Obligations**”), including the following:

(a) Payment of all of the costs and expenses incurred by the City arising in connection with the exercise by the City of any or all of its remedies under the DDA and the Other Agreements with respect to Developer to the extent payable by Developer pursuant to the terms of the DDA and the Other Agreements, the work covered by Section 1.1 hereof, the Development Parcels or any Improvements thereon. The foregoing shall specifically include any costs and expenses incurred by the City arising from its exercise of the Right of Repurchase or Right of Reversion with respect to the Development Parcels as provided in Sections 16.3 and 16.4 of the DDA, respectively. Without limiting the foregoing, such amounts shall specifically include any amount paid by City to obtain the release of any and all Construction Liens and/or Mortgages, as well as any amounts paid to obtain the release of any other liens that came into existence as a result of Developer’s actions or inactions and any outstanding taxes and assessments; but excluding the Repurchase Price applicable to any Réacquired Property actually acquired by the City pursuant to the Right of Repurchase; provided that the City shall be entitled to retain the Réacquired Property so acquired in its entirety, notwithstanding any contribution or payment made

by Developer, or by Guarantor pursuant to this Guaranty. Guarantor acknowledges and agrees that the foregoing obligation of Guarantor to pay costs and expenses incurred by the City arising from its exercise of its rights under Sections 16.3 and 16.4 of the DDA shall continue; and

(b) Payment of all of the Development Costs incurred to cause the timely Completion of the work referred to in Section 1.1.2 hereof, such that the Development Parcels shall be in a lien-free condition as required by the DDA.

1.2 Payment of Enforcement Costs. In addition to its obligations in Section 1.1, the Guarantor agrees to pay all costs and expenses incurred by City, including reasonable attorneys' fees and costs, court costs and all other litigation expenses (including reasonable expert witness fees, costs of depositions and other discovery, travel expenses, exhibit preparation, and courier, postage, communication and document copying expenses), in enforcing this Guaranty (the "**Enforcement Payment Obligation**"). The provisions of this Section 1.2 shall survive the termination of this Guaranty.

1.3 Performance of Work. The work required for Guarantor to satisfy its Payment and Completion Obligations: (a) shall be performed in accordance with the Scope of Development and within the time periods set forth in the Schedule of Performance all as and to the extent set forth in the DDA; provided, however, that if the time periods set forth in the Schedule of Performance have expired, the City and Guarantor shall meet and confer in good faith to revise the Schedule of Performance as reasonably necessary to provide adequate time to Guarantor to satisfy its obligations hereunder; (b) shall be performed in accordance with the other requirements for construction of the Project set forth in the DDA; and (c) shall be diligently pursued by the Guarantor to Completion of the Project and issuance of a Certificate of Compliance for the Development Parcels.

1.4 Guaranteed Obligations. "**Guaranteed Obligations**" means the Payment and Completion Obligations and the Enforcement Payment Obligation.

Section 2. Performance of Payment and Completion Obligations upon Default by Developer.

2.1 Default by Developer. If Developer is in Material Default under the DDA or the Other Agreements with respect to any of the Guaranteed Obligations, then City may, but shall not be obligated to, deliver written notice to the Guarantor (a "**Guaranty Notice**"), that is designed to provide notice to Guarantor of such default. The Guarantor, promptly after receipt of the Guaranty Notice shall perform its Payment and Completion Obligations and the Enforcement Payment Obligation, provided that the Guarantor does not need to commence any such performance obligations until receipt of a Guaranty Notice. The Guarantor will take whatever actions may be necessary to perform the Guaranteed Obligations, including the following:

(a) Diligently and expeditiously proceed to ensure the Completion of the Project at the Guarantor's sole cost and expense, at the times (subject to Section 1.3 hereof) set forth in the DDA and subject to the other terms and conditions set forth in the DDA;

(b) To the extent unpaid, fully pay and discharge all Development Costs incurred or required to be incurred in connection with the Completion of the Project; and

(c) Pay any amounts necessary to release and discharge any mechanics', material providers' or other liens that may exist or come into existence in connection with the Development Parcels or the Completion of the Improvements on the Development Parcels, or in the alternative contest the same subject to the terms and conditions set forth in the DDA.

2.2 Difficulty or Expense of Completion of the Project Does Not Excuse Guarantor or Guaranty. Guarantor's obligations under this Guaranty will remain in full force and effect until the Guaranteed Obligations are fully and finally performed, regardless of whether the Guarantor or any other Person determines that Completion of the Project is difficult, more expensive than originally intended, or involves "Unanticipated Expense or Delay" (defined below). "Unanticipated Expense or Delay" includes any event or circumstance that would make the Completion of the Project more costly or would delay the Completion of the Project, such events and circumstances specifically including the following matters: (a) a casualty that affects the Parcel or any Improvements that may have been constructed; (b) the discovery of unanticipated soils conditions or Hazardous Materials in, on, or under the Development Parcels; (c) Governmental Requirements or court orders applicable to the Project; (d) any lack of debt or equity financing for Development Costs; (e) any change in market conditions and (f) other events or circumstances beyond the control of Developer or the Guarantor relating to the Project other than the City's non-performance of its obligations under the DDA.

2.3 No Discharge until Completion. It is the intent of the Guarantor and City that the obligations and liabilities of the Guarantor hereunder are absolute, irrevocable and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally performed, the obligations and liabilities of Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor. The Guaranteed Obligations shall be deemed to be fully and finally performed for purposes of this Guaranty and this Guaranty shall terminate on the date on which the Certificate of Compliance is recorded by the City.

Section 3. Absolute, Irrevocable and Unconditional Guaranty.

3.1 Irrevocable Guaranty. This Guaranty is an absolute, irrevocable and unconditional guaranty of performance. To the extent permitted by applicable law, this Guaranty shall be effective as a waiver of, and each Guarantor hereby expressly waives, any right to which the Guarantor may otherwise have been entitled, whether now existing under statute, at law or in equity, or arising under any statute enacted after the date hereof or arising under any doctrine of law or equity promulgated after the date hereof to require City to take prior recourse or proceedings against any collateral, security or Person. It shall not be necessary for City, in order to enforce such payment or performance by the Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Developer or any other Person liable on such indebtedness or for such performance, or to enforce any rights against any security given to secure such indebtedness or performance, or to join Developer or any other Person liable for the performance of the Guaranteed

Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining performance of the Guaranteed Obligations.

3.2 Demand Against the Guarantor. City may bring suit or make a demand against Developer or against Guarantor or any other parties who have signed this Guaranty or any other guaranty covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of City against Guarantor.

3.3 Independent Guaranty. The obligations of the Guarantor under this Guaranty are independent of and in addition to the obligations and liabilities of Developer under the DDA and under the Other Agreements. This Guaranty is independent of (and shall not be limited by) any other guaranty now existing or hereafter given by Guarantor, or any other Person under or in connection with the Property, the Improvements, the DDA or the Other Agreements. The liability of the Guarantor under this Guaranty is in addition to any and all other liability the Guarantor may have in any other capacity with respect to Developer, including, if applicable, any direct or indirect ownership or control of any debt and/or equity securities of Developer or any Controlling Person of the Developer.

Section 4. Certain Agreements and Waivers by the Guarantor.

4.1 Waivers. Guarantor agrees that, except in the event of full performance of the Guaranteed Obligations or as otherwise provided in this Guaranty, (a) neither City's rights or remedies nor the Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, (b) to the extent permitted by applicable law, Guarantor waives any rights, claims or defenses arising from any such events, actions, facts, or circumstances, and (c) the liability of Guarantor under this Guaranty shall be absolute, unconditional and irrevocable irrespective of:

(a) any limitation on the liability of, or recourse against, any other Person, including City, in the DDA or any of the Other Agreements or arising under any law;

(b) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration or that the obligations of the Guarantor hereunder exceed or are more burdensome than those of Developer under the DDA or the Other Agreements;

(c) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;

(d) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, or any impairment of either Guarantor's recourse against any Person or collateral;

(e) whether express or by operation of law, any partial release of the liability of Guarantor hereunder (except to the extent expressly so released by City with respect to this Guaranty) or any complete or partial release of Developer or any other Person liable, directly or indirectly, for the performance of any or all of the Guaranteed Obligations;

(f) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of Developer or any other Person at any time liable for the performance of any or all of the Guaranteed Obligations;

(g) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of either Guarantor or its respective successors or assigns;

(h) either with or without notice to or consent of Guarantor, any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or the DDA or any of the Other Agreements or any other agreements that may have been executed by Developer, City or any third party affecting the obligations of Developer or City under the DDA, or performance (including changes with respect to the construction of the Improvements) or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the DDA, the Other Agreements, any other agreements that may have been executed by Developer, City or any third party affecting the obligations of Developer or City under the DDA, the Other Agreements or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by City to Developer or to any other Person at any time liable for the performance of any or all of the Guaranteed Obligations;

(i) any neglect, lack of diligence, delay, omission, failure, or refusal of City to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting), or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(j) any failure of City to notify Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the DDA or any of the Other Agreements or any of the Guaranteed Obligations or any part thereof, or of any release of or change in any security, or of the occurrence or existence of any Material Default, or of any other action taken or refrained from being taken by City against Developer or any security or other recourse, or of any new agreement between City and Developer, it being understood that except as expressly set forth in this Guaranty, City shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to other notice Guarantor may have otherwise had

being hereby waived by the Guarantor, and except for notices(s) expressly required to be delivered to Guarantor under this Guaranty, Guarantor shall be responsible for obtaining for itself information regarding Developer and any collateral, including any changes in the business or financial condition of Developer or any collateral, and Guarantor acknowledges and agrees that City shall have no duty to notify either Guarantor of any information which City may have concerning Developer or any collateral;

(k) the existence of any claim, counterclaim, set-off or other right that either Guarantor may at any time have against Developer, or any other Person, whether or not arising in connection with this Guaranty, the DDA, or any Other Agreements;

(l) the unenforceability of all or any part of the Guaranteed Obligations against Developer, whether because the Guaranteed Obligations exceed the amount permitted by law or violate any usury or other law (subject to the provisions of Section 12 below), or because the Persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in the DDA or the Other Agreements, or because Developer has any valid defense, claim or offset with respect thereto, or because Developer's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that Guarantor shall remain liable hereon regardless of whether Developer or any other Person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Developer or any other Person in any action to obtain payment or performance of any or all of the Guaranteed Obligations);

(m) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Developer or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by City, or any action taken or omitted by City in any such proceedings, including any election to have City's claim allowed as being secured, partially secured or unsecured, any extension of credit by City in any such proceedings or the taking and holding by City of any security for any such extension of credit;

(n) any other condition, event, omission, action that would in the absence of the provisions of this Section 4 result in the release or discharge of Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty or any other agreement;

(o) except as provided in this Guaranty, any notice to either Guarantor of the existence of or the extending to Developer of any grace or cure period for the performance of any of the Guaranteed Obligations or any failure to provide notice thereof;

(p) any defense of waiver, release, discharge in res judicata, statute of frauds, fraud, or ultra vires acts that may be available to Developer in respect of the DDA or any of the Other Agreements;

(q) to the fullest extent permitted by law: (A) any defense arising as a result of City's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code; and (B) without limiting the

generality of any other provision hereof, all rights and benefits that might otherwise be available to either Guarantor under California Civil Code Sections 2787 through 2855, inclusive, including without limitation any rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the Guarantor by reason of such provisions of the California Civil Code;

(r) the benefit of any statute of limitations affecting the liability of Developer under the DDA or any of the Other Agreements;

(s) any other circumstance that might otherwise constitute a defense available to, or a discharge of, Developer in respect of the Guaranteed Obligations or Guarantor in respect of this Guaranty; and/or

(t) any early termination of any of the Guaranteed Obligations, except as expressly agreed to in writing by City, it being agreed that, among other things, that Guarantor shall be obligated to pay all costs and expenses incurred by the City in its exercise of its rights under Section 16.3 and Section 16.4 of the DDA.

Notwithstanding Guarantor's foregoing waivers, Guarantor shall be entitled to (i) credit against the Guaranteed Obligations any of Developer's actual payment or performance of such obligations made to or for the benefit of the City, but without exoneration of either Guarantor in the event that the City accepts something other than prompt and full performance of any of the Guaranteed Obligations by Developer, and (ii) all contractual rights, remedies and defenses of the Developer under the DDA and the Other Agreements.

4.2 Additional Waivers.

4.2.1 Without limiting any of the waivers contained in Section 4.1, to the extent permitted by applicable law, Guarantor waives all rights and defenses that the Guarantor may have because some or all of Developer's obligations may be, or may be deemed to be, secured by real property. This means, among other things:

(a) The City may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Developer.

(b) If the City forecloses on any real property collateral pledged by Developer: (i) the amount of the obligation owed to the City may be reduced only by the net price for which that collateral is sold at the foreclosure sale or proceedings, even if the collateral is worth more than the sale price and (ii) the City may collect from Guarantor even if the City, by foreclosing on the real property collateral, has destroyed any right the Guarantor may have to collect from the Developer.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Developer's obligations may be, or may be deemed to be, secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

4.2.2 Without limiting any of the waivers contained in Section 4.1, Guarantor hereby waives any rights or defenses the Guarantor may have in respect of his or her obligations as a guarantor by reason of any election of remedies by the creditor.

4.2.3 Without limiting the generality of any other waiver or provision of this Guaranty, Guarantor waives any and all benefits or defenses under California Civil Code Sections 2899 and 3433, Chapter 2 of Title 14 of the California Civil Code and California Commercial Code Section 3605.

4.3 Preferences. In the event any payment by Developer or any other Person to City is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason City is required to refund such payment or pay the amount thereof to any other Person, such payment by Developer or any other Person to City shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by City of this Guaranty or of the Guarantor or the prior expiration of this Guaranty), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by City or paid by City to another Person which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by City and any attorneys' fees, costs and expenses paid or incurred by City in connection with any such event.

4.4 Defenses. Guarantor waives, to the extent permitted by applicable law, all rights and defenses arising out of an election of remedies by City, including exercise by the City of its Right of Reversion upon occurrence of a Reversion Event or a repurchase of the Property pursuant to City's Right of Repurchase, even though such election of remedies may have destroyed such Guarantor's rights of subrogation and reimbursement against Developer by operation of California Code of Civil Procedure Section 580d or otherwise.

4.5 Anti-Deficiency Waivers. Guarantor waives, to the extent permitted by applicable law, (a) any defenses the Guarantor may have by reason of an election of remedies by City, and (b) any rights or defenses the Guarantor may have by reason of protection afforded to Developer with respect to the Guaranteed Obligations pursuant to the anti-deficiency or other laws of California limiting or discharging Developer's obligations, including California Code of Civil Procedure Sections 580a, 580b, 580d or 726.

4.6 Waiver of Notice of Acceptance. Guarantor waives notice of acceptance of this Guaranty.

4.7 No Limitation on Waivers. No provision or waiver in this Guaranty shall be construed as limiting the generality of any other provision or waiver contained in this Guaranty. All of the waivers contained herein are irrevocable and unconditional and are intentionally and freely made by the Guarantor.

Section 5. Subordination.

If, for any reason whatsoever, Developer is now or hereafter becomes indebted, directly or indirectly to Guarantor including, without limitation, by operation of California Civil Code

Sections 2847 and 2848, or any successor statutes or similar law (any such indebtedness being referred to as the "**Subordinated Debt**"):

(a) The Subordinated Debt and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Developer securing the Subordinated Debt shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations, until the Guaranteed Obligations have been paid or performed in full;

(b) Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any of the Subordinated Debt until the Guaranteed Obligations have been fully and finally performed; provided, however, that so long as no Material Default under the DDA or the Other Agreements shall have occurred and be continuing, Guarantor shall not be prohibited from receiving such, (i) reasonable management fees or reasonable salary from Developer, and (ii) distributions from Developer in an amount equal to any income taxes imposed on such Guarantor which are attributable to Developer's income from the Property;

(c) In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Developer as debtor, City shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian, dividends and payments that are payable upon any obligation of Developer to the Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally performed. If, notwithstanding the foregoing provisions, either Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 5, the Guarantor shall pay the same to City immediately, the Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for City and shall have absolutely no dominion over the same except to pay it immediately to City; and

(d) Guarantor shall promptly upon request of City from time to time execute such documents and perform such acts as City may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 5, including execution and delivery of proofs of claim, further assignments and security agreements, and delivery to City of any promissory notes or other instruments evidencing indebtedness of Developer to the Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Developer to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

Section 6. Other Liability of the Guarantor or Developer.

6.1 Other Liability. If Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Developer to City other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of City hereunder shall be cumulative of any and all other rights that City may have against the Guarantor. If Developer is or becomes obligated to City for any liabilities or indebtedness other than or in excess of the Guaranteed Obligations, any payment received or recovery realized upon such other

liabilities or indebtedness of Developer to City may be applied by City to such other liabilities or indebtedness.

6.2 Net Worth and Liquidity Covenants.

(a) As of the Effective Date, Guarantor has, and during the term of this Guaranty shall maintain, a Net Worth of not less than Two Hundred Fifty Million Dollars (\$250,000,000) and Liquid Assets of not less than Twenty Five Million Dollars (\$25,000,000) (collectively, the "**Minimum Liquidity Standards**") as determined on the last day of each fiscal quarter of Guarantor and evidenced in financial statements filed with the Securities and Exchange Commission. As used in this Guaranty, the term "**Net Worth**" shall mean the net worth of Guarantor which shall be determined based on (x) the fair market value of the assets of the Guarantor, *less* (y) all liabilities of the Guarantor (as determined in accordance with GAAP), and the term "**Liquid Assets**" shall mean cash, marketable securities and other cash equivalents.

(b) City may access the most recently filed financial statements of Guarantor at www.SEC.gov (ticker symbol: LEN) to assure that the Minimum Liquidity Standards are met and that none of the events or actions described in Section 2.2.5 of the DDA with respect to the Guarantor have occurred (the failure of any such standard being, a "**Guarantor Illiquidity Event**"). In the event of a Guarantor Illiquidity Event, within thirty (30) calendar days following the notice from City of a Guarantor Illiquidity Event, Guarantor shall supplement its Net Worth and Liquid Assets to meet the Minimum Liquidity Standards or Developer shall be required to provide the City with additional security satisfactory to the City by (A) providing the City with a Guaranty in the form and substance of the Guaranty, or otherwise acceptable to the City in its sole discretion, from a replacement or supplemental guarantor or guarantors acceptable to the City in its sole discretion, or (B) furnishing the City with another form of security such as a pledge of specified assets, letter of credit or completion bond, in each case in a manner meeting the requirements of the City in its reasonable discretion. Failure of Guarantor to provide such substitute security within the required time frame shall constitute a default by Guarantor under this Guaranty.

(c) Within thirty (30) calendar days following the date of commencement of the Guarantor Illiquidity Event as specified in Section 6.2(b) above, unless Developer has provided alternative security as permitted by the DDA to the satisfaction of the City, Guarantor shall, for the benefit of the City supplement the security furnished by it in a manner meeting the requirements of Section 6.2(a) above or otherwise as agreed by the City in its reasonable discretion. Failure of Guarantor to provide substitution of security to the City within such one thirty (30) calendar day period shall be a default under this Guaranty.

Section 7. City Assigns; Disclosure of Information.

This Guaranty is for the benefit of City and City's successors and assigns, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations or any part thereof.

Section 8. Binding Effect; Successor and Assigns; Joint and Several.

This Guaranty is binding not only on Guarantor, but also on the Guarantor's successors and assigns. All obligations of Guarantor hereunder are joint and several obligations.

Section 9. Governing Law.

The validity, enforcement, and interpretation of this Guaranty, shall for all purposes be governed by and construed in accordance with the laws of the State of California (without regard to its conflicts of law principles) and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. Any disputes arising in connection with this Guaranty or in connection with or under any instrument, agreement or document provided for or contemplated by this Guaranty, including in connection with the execution of this Guaranty, the Guaranteed Obligations or any other matter arising under, related to or in connection with this Guaranty (including a determination of any and all issues in such dispute, whether of fact or of law) shall be tried and litigated exclusively in the Superior Court of the County of Orange, State of California, in any other appropriate court of that county, or in the United States District Court for the Central District of California. This choice of venue is intended to be mandatory and not permissive in nature, thereby precluding the possibility of litigation with respect to or arising out of this Guaranty in any jurisdiction other than that specified in this Section 9. Guarantor hereby waives any right that it may have to assert forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section 9, and stipulates that the State and federal courts located in the County of Orange, State of California, shall have in personam jurisdiction and venue over it for the purpose of litigating any dispute, controversy or proceeding arising out of this Guaranty. Guarantor hereby authorizes and agrees to accept service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section 9 by means of registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Guaranty, or in the manner set forth below for notices. Any final judgment rendered against Guarantor in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

Section 10. Invalidity of Certain Provisions.

If any provision of this Guaranty or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

Section 11. Costs and Expenses of Enforcement.

Guarantor agrees to pay to City within fifteen (15) calendar days after written demand all costs and expenses incurred by City in seeking to enforce City's rights and remedies under this Guaranty, including court costs, costs of alternative dispute resolution and reasonable attorneys' fees, whether or not suit is filed or other proceedings are initiated hereon. All such costs and

expenses incurred by City shall constitute a portion of the Guaranteed Obligations hereunder, shall be subject to the provisions hereof with respect to the Guaranteed Obligations and shall be payable by the Guarantor within fifteen (15) calendar days after written demand by City. In the event of any suit or proceeding to adjudicate or resolve any dispute in connection with this Guaranty, the prevailing party shall be entitled to recover its reasonable attorneys' fees which shall be payable regardless of which party is the Prevailing Party, at the actual contractual hourly rate for City's litigation counsel at the time the fees were incurred, but, in no event more than \$200 per hour and costs, court costs and all other litigation expenses (including reasonable expert witness fees, costs of depositions and other discovery, travel expenses, exhibit preparation, and courier, postage, communication and document copying expenses).

Section 12. No Usury.

It is not the intention of City or the Guarantor to obligate the Guarantor to pay interest in excess of that lawfully permitted to be paid by the Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Obligations or any other amount payable by the Guarantor under this Guaranty constitutes interest in excess of the maximum amount of interest that the Guarantor, in its capacity as guarantor, may lawfully be required to pay under applicable law, the obligation of the Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable law. The provisions of this Section shall override and control all other provisions of this Guaranty and of any other agreement between the Guarantor and City.

Section 13. Representations, Warranties, and Covenants of the Guarantor.

Guarantor hereby represents, warrants, and covenants that: (a) the Guarantor has a financial interest in Developer and will derive a material and substantial benefit, directly or indirectly, from the developing the Project and from the making of this Guaranty by the Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against the Guarantor subject to the effect of bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and limitations imposed by general principles of equity and applicable law; (c) the Guarantor is not, and the execution, delivery and performance by the Guarantor of this Guaranty will not cause the Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which the Guarantor is bound or affected; (d) the Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization and has full power and authority to enter into and perform this Guaranty; (e) except as may have been previously disclosed to City in writing, there is no litigation pending or, to the knowledge of the Guarantor, threatened by or before any tribunal against or affecting the Guarantor that would have a material adverse impact on Guarantor's ability to perform its obligations hereunder; (f) all financial statements and information heretofore furnished to City by the Guarantor do, and all financial statements and information hereafter furnished to City by the Guarantor will, fully and accurately present the condition (financial or otherwise) of Guarantor as of their dates and the results of the Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of the Guarantor heretofore furnished to City, no material adverse change has occurred in the financial condition of the Guarantor, nor, except as heretofore disclosed in writing to City, has the Guarantor incurred any material liability, direct or indirect, fixed or

contingent that would materially adversely affect Guarantor's ability to perform obligations hereunder; (g) after giving effect to this Guaranty, the Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of the Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (h) the Guarantor has read and fully understands the provisions contained in the DDA and the Other Agreements. The Guarantor's representations, warranties and covenants are a material inducement to City to *{approve the Transfer to Developer and to}* convey the Property and enter into the Other Agreements and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Developer, any Person, or any security for all or any part of the Guaranteed Obligations.

Section 14. Notices.

All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under the DDA shall be in writing and, unless otherwise specifically provided in the DDA, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Guaranty or in the DDA (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Guaranty, the DDA or the Other Agreements or to require giving of notice or demand to or upon any Person in any situation or for any reason.

Section 15. Cumulative Rights.

All of the rights and remedies of City under this Guaranty, the DDA and the Other Agreements are cumulative of each other and of any and all other rights at law or in equity, and the exercise by City of any one or more of such rights and remedies shall not preclude the simultaneous or later exercise by City of any or all such other rights and remedies. No single or partial exercise of any right or remedy shall exhaust it or preclude any other or further exercise thereof, and every right and remedy may be exercised at any time and from time to time. No failure by City to exercise, or delay in exercising, any right or remedy shall operate as a waiver of such right or remedy or as a waiver of any Material Default. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty or any right or remedy of City with respect hereto, or any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed and delivered by City to the Guarantor.

Section 16. Subrogation.

Guarantor shall not have any right of subrogation under the DDA or the Other Agreements or any right to participate in any security for the Guaranteed Obligations or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Guaranteed Obligations have been fully and finally discharged in accordance with Section 2.3 above, and Guarantor hereby waives all of such rights. Guarantor not shall exercise any rights that it may acquire by way of subrogation under this Guaranty, by virtue of any payment made hereunder or otherwise, until all the Guaranteed Obligations have been paid or performed in full. If any amount is paid to Guarantor on account of such subrogation rights before the Guaranteed Obligations have been paid or performed in full, the amount will be held in trust for the benefit of City and will immediately be paid to City to be credited and applied upon the Guaranteed Obligations, whether matured or unmatured, in such order as City, in its sole and absolute discretion, determines. Until the Guaranteed Obligations are paid or performed in full, any indebtedness of Developer to Guarantor is hereby subordinated to all obligations and liabilities of Developer to City arising out of or related to the DDA.

Section 17. Time of Essence.

Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

Section 18. Bankruptcy of Developer.

The obligations of Guarantor under this Guaranty will continue to be effective, or be automatically reinstated: (a) if the performance or the payment, in whole or in part, of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned by City (as a preference, fraudulent conveyance or otherwise) upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of City, the Guarantor, Developer or any other Person, or (b) upon or as a result of the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to Developer, either Guarantor, or any other Person, or any substantial part of its property, or otherwise, all as though such payments had not been made. If a Default has occurred and continues or exists under or with respect to the DDA or if any default occurs under this Guaranty or with respect to any of the Guaranteed Obligations at such time as City is prevented by reason of the pendency against the Guarantor, Developer or any other Person of a case or proceeding under a bankruptcy or insolvency law, Guarantor agrees that this Guaranty and the Guaranteed Obligations will be deemed to have been declared in default or accelerated with the same effect as if this Guaranty and the Guaranteed Obligations had been declared in default and accelerated in accordance with their respective terms. Guarantor will immediately perform or pay the Guaranteed Obligations as required under this Guaranty without further notice or demand.

Section 19. Entire Agreement; Counterparts; Construction.

This Guaranty embodies the entire agreement between City and the Guarantor with respect to the guaranty by the Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by the Guarantor of the Guaranteed Obligations. This Guaranty shall be effective upon execution by

the Guarantor and delivery to City. This Guaranty may not be modified, amended or superseded except in a writing signed by City and the Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded. This Guaranty has been executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement. As used herein, the words "include" and "including" shall be interpreted as if followed by the words "without limitation."

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Guarantor has duly executed this Guaranty as of the date first written above.

Address of Guarantor:

By: LENNAR CORPORATION,
a Delaware corporation

By: _____
Name: _____
Authorized Signatory

ATTACHMENT 28
FORM OF GUARANTY OPINION

_____, 201__

City of Tustin, California (the "City")
300 Centennial Way
Tustin, CA 92780

Re: Guaranty Agreement made by Guarantor (as defined herein) in favor of City dated as of _____, 201_ (the "Guaranty")

Ladies and Gentlemen:

We have acted as special counsel to Lennar Corporation, a Delaware Corporation ("the "Guarantor"), in connection with the Guaranty (as defined above). We advise you that we are not general counsel to the Guarantor, but rather we represent the Guarantor as requested on specific matters.

In connection with this opinion we have examined and relied upon copies of each of the following:

1. Articles of Incorporation dated as of _____, 20__ as amended by Amendments dated as of [insert dates of all amendments] filed with the Secretary of State of Delaware and certified by the Secretary of State of Delaware.
2. Certified copy of Certificate of Bylaws dated _____, 20__ _____, certified by the Secretary of Guarantor as amended by amendments dated as of ***[insert dates of all amendments]*** Certificate of Good Standing of Guarantor issued by the Secretary of State of the State of Delaware dated _____, 201_.
3. Certificate of Good Standing Foreign Corporation of Guarantor issued by the Secretary of State of the State of California dated _____, 20__ and
4. ***[Describe corporate proceedings authorizing the Guaranty]*** dated as of _____, 201_.
5. The Guaranty.

All assumptions stated herein have been made based upon appropriate certifications of parties purporting to have knowledge of the facts and we are not aware of any inconsistent information.

We have assumed the genuineness of all signatures except for those signatures on the Guaranty of the persons signing the Guaranty, on behalf of the Guarantor, and the signature of Guarantor on the Guaranty. We also have assumed the authenticity and completeness of all items submitted to us as originals, the conformity with originals of all items submitted to us as copies, and the accuracy and completeness of all records made available to us by Guarantor. We have assumed that any certificate or other document on which we have relied that was given or dated earlier than the date of this letter continued to remain accurate insofar as relevant to our opinions from such earlier date through, and including the date of this letter. In making our examination of the Guaranty, we have assumed: that City was in legal existence and had the power to accept the Guaranty, and that any person acting on behalf of the City was duly authorized to act in that capacity; the conduct of the City in connection with the transaction has complied with any requirement of good faith, fair dealing and conscionability; and the City and any agent acting for the City in connection with the transaction have acted in good faith and without notice of any defense against the enforcement of any rights created by, or adverse claim to any property or security interest transferred or created as part of, the transaction. We have assumed the legal capacity of natural persons. We have assumed that there are no agreements or understandings among the parties, written or oral, and there is no usage of trade or course of prior dealing among the parties that would, in either case, define, supplement, or qualify the terms of the Guaranty. We have assumed that there has not been any mutual mistake of fact or misunderstanding, fraud, duress or undue influence.

Based upon and subject to the foregoing and any further qualifications set forth below, we are of the opinion that:

- (a) Based solely on the Guarantor's Good Standing Certificate(s), Guarantor is a corporation validly existing and in good standing under the laws of the State of Delaware. Guarantor has full corporate power and authority to enter into and perform its obligations under the Guaranty. Guarantor has duly registered to transact intrastate business as a foreign corporation in, and is in good standing in the State of California.
- (b) The execution, delivery and performance of the Guaranty and the Guarantor Certificate have been duly authorized by all requisite corporate action of Guarantor, and the Guaranty and the Guarantor Certificate have been duly executed and delivered by Guarantor.
- (c) The Guaranty constitutes the valid and binding obligation of Guarantor and is enforceable against Guarantor in accordance with its terms.
- (d) Guarantor's execution and delivery of the Guaranty and Guarantor's performance and observance of and compliance with the provisions of the Guaranty does not conflict with or result in a violation of Guarantor's articles of incorporation or bylaws.

The opinions expressed in paragraph (c) above is subject to each of the following further qualifications:

- (i) Our opinion is subject to the effect of bankruptcy, insolvency, fraudulent transfer, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally.
- (ii) The enforceability of the Guaranty is subject to limitations imposed by general principles of equity, as well as legal or statutory principles affecting the enforcement of contractual rights generally, (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- (iii) We advise you of California statutory provisions and case law to the effect that a guarantor may be discharged, in whole or in part, if the beneficiary of the guaranty alters the obligation of the principal, fails to inform the guarantor of material information pertinent to the principal or any collateral, elects remedies that may impair either the subrogation or reimbursement rights of the guarantor against the principal or the value of any collateral, fails to accord the guarantor the provisions afforded a debtor under Division 9 of the California UCC or otherwise takes any action that materially prejudices the guarantor, unless in any such case, the guarantor has effectively waived such rights or the consequences of such action or has consented to such action. See, e.g., California Civil Code Section 2799 through Section 2855; California Uniform Commercial Code § 9-602, *Sumitomo Bank of California v. Iwasaki*, 70 Cal. 2d 81, 73 Cal. Rptr. 564 (1968); *Union Bank v. Gradsky*, 265 Cal. App. 2d 40, 71 Cal. Rptr. 64 (1968). While California Civil Code Section 2856, and case law, provide that express waivers of a guarantor's right to be discharged, such as those contained in the Guaranty, are generally enforceable under California law, we express no opinion regarding the effectiveness of the waivers in the Guaranty.
- (iv) Certain provisions of the Guaranty may not be enforceable; nevertheless, subject to the limitations expressed elsewhere in this opinion letter, upon the material breach by Guarantor of its obligations thereunder, such unenforceability will not preclude the City from recovering from Guarantor, in accordance with

applicable law, such damages as were proximately caused by such breach.

- (v) Without limiting any of the qualifications contained elsewhere in this opinion letter, we express no opinion as to the validity or enforceability of any provisions of the Guaranty that: (A) select any jurisdiction's laws to govern the Guaranty; (B) contain a covenant not to compete; (C) provide for penalties, liquidated damages, acceleration of future amounts due (other than principal) without appropriate discount to present value, late charges, prepayment charges, or increased interest rates upon default; (D) provide for the confession of judgment or provide for one party to act as attorney-in-fact for another party; (E) provide for indemnification in excess of the indemnification rights provided for by statute; (F) provide for arbitration, choice of law, choice of forum, choice of venue, or severability; or (G) contain a waiver of (1) broadly or vaguely stated rights, (2) the benefits of statutory, regulatory or constitutional rights, unless and to the extent the statute, regulation or constitution explicitly allows waiver, (3) unknown future defenses, or (4) rights to damages; Guarantor's execution and delivery of the Guaranty and Guarantor's performance and observance of and compliance with the provisions of the Guaranty does not conflict with or result in a violation of Guarantor's articles of incorporation or bylaws.

Our examination of law relevant to the matters herein is limited to the laws of the State of California and Delaware and Federal law. We have not made an independent review of the laws of any state other than California and Delaware. Our opinion as to matters governed by Delaware law is limited to the due authorization of the Guaranty and does not extend to the enforceability of the Guaranty under Delaware law. We express no opinion as to the matters governed by the laws of any other state or jurisdiction.

You also should be aware of the following provisions of California law, to which the opinions expressed in this opinion letter are subject to:

- A. Section 726 of the California Code of Civil Procedure (the "Civil Procedure Code") provides that any action to recover on any debt or other right secured by a mortgage or deed of trust on real property must comply with the requirements of such Section, which requirements relate to and specify the procedures for the sale of encumbered property, the application of sale proceeds, the rendition in certain cases of a deficiency judgment and other related matters. We advise you that in such action or proceeding, whether

position of the Transferee.]

7. Transferee has adequate liquid assets to fully fund the development of the Project and to discharge all obligations under the DDA in accordance with the terms of the DDA.

8. Transferee has not taken any action looking toward its dissolution, no event, whether voluntary or involuntary, has occurred that has caused the dissolution of Transferor and there are no proceedings pending or contemplated for the merger, consolidation, conversion, dissolution, liquidation or termination of Transferor.

9. Transferor's ability to fully fund the development of the Project and to discharge all obligations under the DDA in accordance with its terms is not contingent on third party financing.

10. This Certificate is being furnished to the City solely to assist it in conducting its investigation of Transferee's financial resources in connection with Transferee's obligation to discharge its obligations in accordance with the terms of the DDA. Transferee acknowledges and agrees that the City intends to rely on the information in this Certificate and this Certificate may be relied upon by the City for these purposes.

Without the written consent of the Transferee no Person other than the City may rely on this Certificate for any purpose.

In no event shall the individual executing this Certificate on behalf of the Transferee have any personal liability hereunder.

{signatures on next page}

Dated: _____, 2018

a _____
Transferee

By: _____

Name: _____

Authorized Signatory

judicial or extrajudicial, the debtor may invoke the "affirmative defense" aspect of Section 726 and require that the creditor exhaust all its security before a personal judgment may be obtained against the debtor for a deficiency. We also advise you that failure to comply with the provisions of Section 726 (including, without limitation, an attempt to exercise a right of setoff with respect to any funds of Borrower which may be deposited with you from time to time and with respect to which you do not hold a valid security interest) may result in the loss of your rights with respect to the real property collateral and, under certain circumstances, the loss of your right to a deficiency judgment. Section 580b of the Civil Procedure Code provides that no deficiency judgment shall be rendered upon a purchase-money obligation in favor of the vendor arising from the sale of real property where such purchase-money obligation is secured by a lien on the real property purchased from the vendor, or in favor of a lender where the proceeds of the loan are used to purchase a one-to-four family dwelling occupied entirely or in part by the borrower and where such loan is secured by a lien on such dwelling.

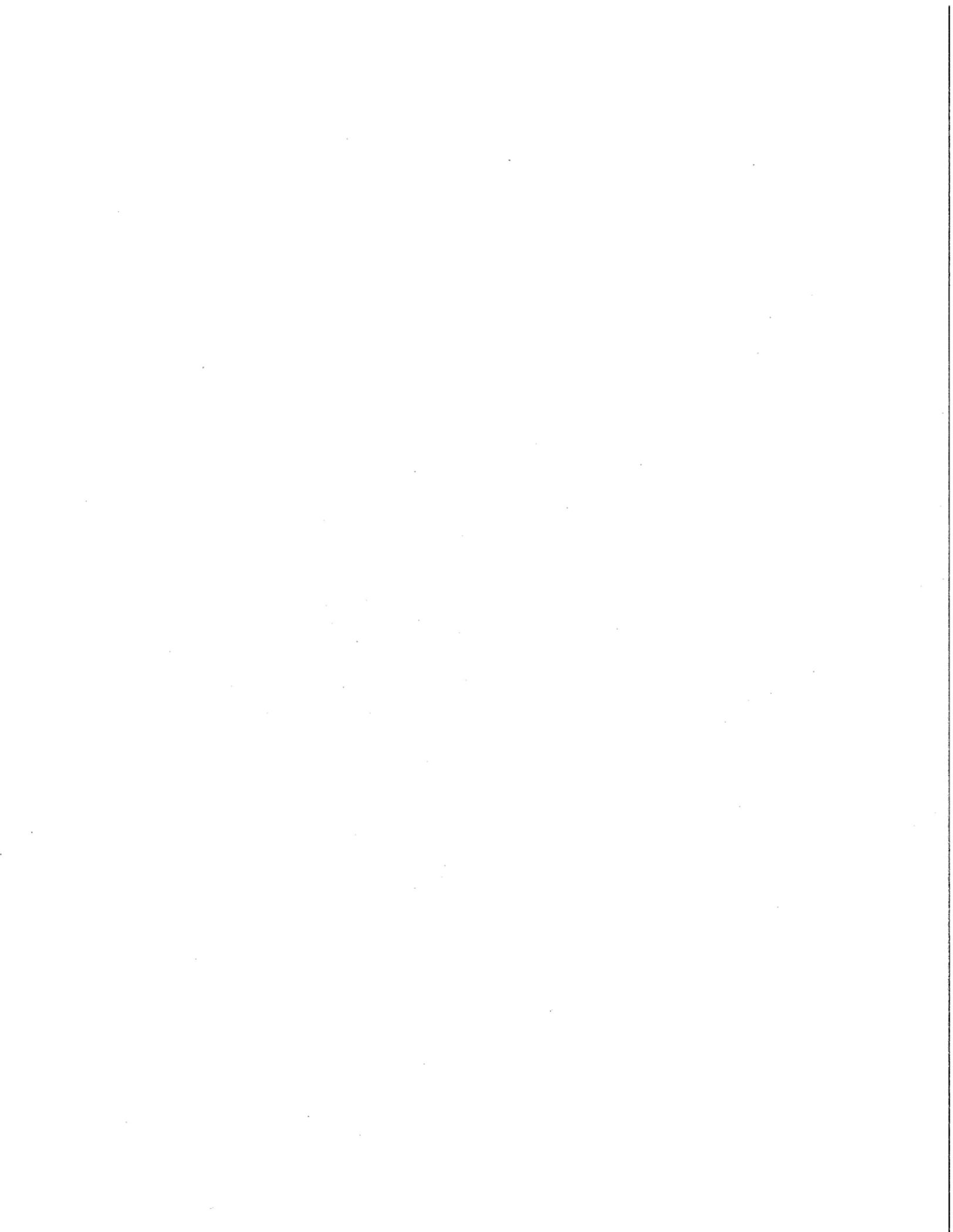
- B. Section 580d of the Civil Procedure Code provides that no deficiency judgment shall be rendered upon a note secured by a deed of trust or mortgage on real property after a sale of the real property pursuant to a power of sale contained in such deed of trust or mortgage.

This opinion letter is furnished by us as counsel for Guarantor solely in connection with the Guaranty and may be relied upon only by you and by transferees of the Guaranty and solely in connection with the Guaranty. No attorney-client relationship has existed or exists between our firm and you regarding this matter. Our opinion letter may not be used, quoted from, referred to or relied upon in whole or in part by you or by any other person for any other purpose, nor may copies be delivered to any other person, without our prior written consent in each instance. We shall have no obligation to revise or reissue this opinion letter with respect to any change in law or any event, fact, circumstance or transaction which occurs after the date hereof. In addition, we express no opinion with respect to any issue arising out of or related to (i) the identity or status of any transferee of the Guaranty or (ii) any subsequent transaction.

We bring to your attention the fact that our legal opinions are an expression of professional judgment and are not a guarantee of a result. This letter is limited to the matters expressly set forth herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein.

This opinion letter and the opinions it contains shall be interpreted in accordance with the Legal Opinion Principles issued by the Committee on Legal Opinions of the American Bar Association's Business Law Section as published in 53 *Business Lawyer* 831 (May 1998).

Very truly yours,



ATTACHMENT 29
TRANSFEEE CERTIFICATE

This Certificate is being delivered pursuant to that certain Tustin Legacy Disposition and Development Agreement for Parcel 6B dated as of _____, 2018 (the "DDA"), by and between _____, a _____ ("Developer"), and the City of Tustin, a municipal corporation of the State of California (the "City"). Capitalized terms used herein that are not defined herein shall have the meanings specified in the DDA.

The undersigned, on behalf of [Insert name of Transferee entity], a _____ ("Transferee"),¹ does hereby certify to the City, as of the date hereof:

1. Transferee is the Assignee under an Assignment and Assumption Agreement dated _____, between [insert Assignor name] a _____ and Transferee. Transferee is [Insert full description of the relationship between Assignor and Transferee.] The undersigned officer of Transferee has the authority from Transferee to execute and deliver this Certificate on behalf of Transferee as evidenced by the [Corporate resolution and /or other information] attached as Exhibit A.

2. Attached hereto as Exhibit B is a true and correct copy of the [Articles of Incorporation/Certificate of Formation] of Transferee and any and all amendments thereto in effect on the date hereof.

3. Attached hereto as Exhibit C is a true and correct copy of the [Bylaws/Operating Agreement] of Transferee and any and all amendments thereto in effect on the date hereof.

4. Attached hereto as Exhibit D is a true and correct copy of the certificate of good standing for Transferee from the [Delaware] Secretary of State, dated not earlier than thirty (30) days prior to the date of this Certificate.

5. ***[[If applicable:] attached hereto as Exhibit E is a true and correct copy of the County of Orange Fictitious Business Name Statement of Transferee and any and all amendments thereto in effect on the date hereof.]***

6. ***[[If Transferee is Lennar Corporation, the New Entity, or a Developer Affiliate of the New entity following the Merger:] City may access the most recently filed financial statements of Lennar Corporation at www.SEC.gov (ticker symbol: LEN) to review the financial status of Transferee.] [[If Transferee is not Lennar Corporation, the New Entity, or a Developer Affiliate of Lennar following the Merger:] Transferee has provided City with financial statements dated no more than 90 days prior to the date hereof that were prepared in accordance with GAAP. Since the date thereof, there have been no material adverse changes to the financial***

¹ *If Merger, replace Transferee with New Entity and update accordingly.*

EXHIBIT "A"
CORPORATE RESOLUTION

{to be attached}

EXHIBIT "B"
ARTICLES OF INCORPORATION/CERTIFICATE OF FORMATION

{to be attached}

EXHIBIT "C"
BYLAWS/OPERATING AGREEMENT

{to be attached}

EXHIBIT "D"
CERTIFICATE OF GOOD STANDING FROM THE
[DELAWARE] SECRETARY OF STATE

{to be attached}

EXHIBIT "E"
FICTITIOUS NAME STATEMENT

{to be attached}

ATTACHMENT 30
GUARANTOR CERTIFICATE

This Certificate is being delivered pursuant to that certain Tustin Legacy Disposition and Development Agreement For Disposition Parcel 6B dated as of _____, 201_ *[if amended:]* (the "Original DDA") as amended by that certain Amendment No. __ to Tustin Legacy Disposition and Development Agreement for Disposition Parcel 6B dated as of _____, 201_ (as amended, the "DDA") *[if not amended:]* (the "DDA"), by and between the City of Tustin, a municipal corporation of the State of California (the "City") and CalAtlantic Group, Inc., a Delaware corporation *[if no Assignment or Merger:]* ("Developer") / *[if Assignment or Merger:]* ("Original Developer") which has, by assignment *[add if applicable:]* and merger, including pursuant to that certain Assignment Agreement by and between _____, a _____ ("Developer") and Original Developer ("Assignment Agreement"), assigned all of its right, title and interest in and to the DDA to Developer.] Capitalized terms used herein that are not defined herein shall have the meanings specified in the DDA.

The undersigned, on behalf of _____ a, _____ ("Guarantor") does hereby certify as follows to the City, as of the date hereof:

1. Guarantor, a *[insert state of formation]* is the *[sole]* *[shareholder/member]* of Developer. *[REVISED TO ADDRESS STRUCTURE AS APPLICABLE]*
2. The undersigned *[Secretary/ Managing Member/Chief Financial Officer of Guarantor]* has the authority from Guarantor to execute and deliver this Certificate on behalf of Guarantor as evidenced by the *[Corporate resolution and /or other information]* attached as Exhibit A.
3. Attached hereto as Exhibit B is a true and correct copy of the *[Articles of Incorporation of the Company/Certificate of Formation]* of Guarantor and any and all amendments thereto in effect on the date hereof.
4. Attached hereto as Exhibit C is a true and correct copy of the *[Bylaws/Operating Agreement]* of Guarantor and any and all amendments thereto in effect on the date hereof.
5. Attached hereto as Exhibit D are true and correct copies of the Certificate of good standing for Guarantor from *[the _____ Secretary of State and the]* California Secretary of State and each attached certificate of good standing is dated not earlier than thirty (30) days prior to the date of this Certificate.
6. *[If applicable:]* attached hereto as Exhibit E is a true and correct copy of the Certificate of Status of Foreign Corporation of Guarantor from the California Secretary of State and any and all amendments thereto in effect on the date hereof.]

7. *[[If applicable:] attached hereto as Exhibit F is a true and correct copy of the County of Orange Fictitious Business Name Statement of Guarantor and any and all amendments thereto in effect on the date hereof.]*

8. *[[Add if with respect to Lennar Corporation:] As of Lennar's last filing with the Securities and Exchange Commission,] Guarantor has (without the requirement of third party financing) Liquid Assets and Net Worth (as both terms are defined in the DDA) sufficient to allow Guarantor to meet its obligations under the Guaranty and to meet the Minimum Liquidity Standards under the DDA and the Guaranty of Two Hundred Fifty Million Dollars (\$250,000,000) of Net Worth and *[[with respect to Lennar Corporation:] Fifty Million Dollars (\$50,000,000) of Liquid Assets at the Close of Escrow and Twenty-Five Million Dollars (\$25,000,000) thereafter]* *[[in all other cases:] Seventy-Five Million Dollars (\$75,000,000) of Liquid Assets.]**

This Certificate is being furnished to the City solely to assist it in conducting its investigation of Developer's and Guarantor's financial resources and its investigation of Guarantor's financial resources in connection with Guarantor's obligation and the Guaranty. Guarantor acknowledges and agrees that the City intends to rely on the information in this Certificate and this Certificate may be relied upon by the City for these purposes.

Without the written consent of Guarantor, no Person other than the City may rely on this Certificate for any purpose.

In no event shall the individual executing this Certificate on behalf of Guarantor have any personal liability hereunder.

[Signature page follows]

Dated: _____

Guarantor. a _____

By: _____

Name: _____

Title: _____

EXHIBIT "A"
EVIDENCE OF AUTHORITY AND
AUTHORIZATION OF SIGNATORIES

{to be attached}

EXHIBIT "B"
ARTICLES OF INCORPORATION/CERTIFICATE OF FORMATION

{to be attached}

EXHIBIT "C"
BYLAWS/OPERATING AGREEMENT

{to be attached}

EXHIBIT "D"
CERTIFICATE OF GOOD STANDING FROM THE
[DELAWARE] SECRETARY OF STATE AND
CALIFORNIA SECRETARY OF STATE

{to be attached}

EXHIBIT "E"
CERTIFICATES OF STATUS OF FOREIGN CORPORATION

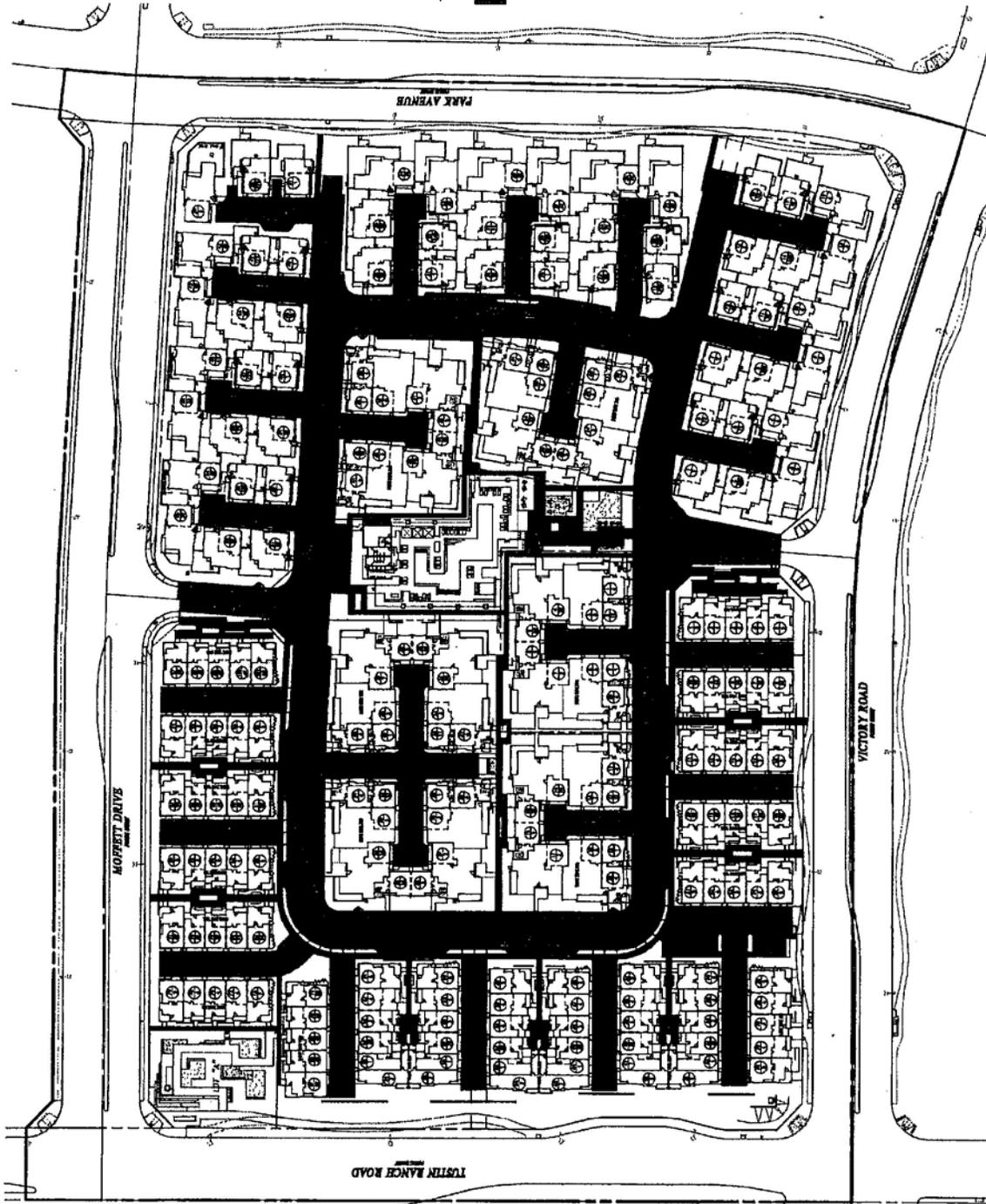
{to be attached}

EXHIBIT "F"
FICTITIOUS NAME STATEMENT

{to be attached}

ATTACHMENT 31

Private Streets and Sidewalks



LEGEND:

PRIVATE STREETS
AND SIDEWALKS



N.T.S.

01/30/2018

ATTACHMENT 32

EQUITY FUNDING CERTIFICATE

{Revise as applicable if certifying party is other than Lennar Corporation}

This Certificate is being delivered pursuant to Section 4.6 of that certain Tustin Legacy Disposition and Development Agreement for Parcel 6B, dated as of _____, 2018 (“DDA”), by and between CalAtlantic Group, Inc. a Delaware Corporation (“Developer”) and the City of Tustin, a municipal corporation of the State of California (the “City”). Capitalized terms used herein that are not defined herein shall have the meanings specified in the DDA.

The undersigned does hereby certify to the City, in the name and on behalf of Lennar Corporation, a Delaware Corporation (“Lennar”) that, as of the date hereof:

1. The undersigned *[Secretary/Chief Financial Officer of Lennar]* has the authority from Lennar to execute and deliver this Certificate on behalf of Lennar as evidenced by the *[Corporate resolution and /or other information]* attached as Exhibit A.
2. Attached hereto as Exhibit B is a true and correct copy of the *[Articles of Incorporation of the Company/Certificate of Formation]* of Lennar and any and all amendments thereto in effect on the date hereof.
3. Attached hereto as Exhibit C is a true and correct copy of the Bylaws of Lennar and any and all amendments thereto in effect on the date hereof.
4. Attached hereto as Exhibit D are true and correct copies of the Certificate of good standing for Lennar from the Delaware Secretary of State and the California Secretary of State, and each attached certificate of good standing is dated not earlier than thirty (30) days prior to the date of this Certificate.
5. Attached hereto as Exhibit E is a true and correct copy of the Certificate of Status of Foreign Corporation of Lennar from the California Secretary of State and any and all amendments thereto in effect on the date hereof, dated not less than thirty (30) days prior to the date of this Certificate.
6. *[[If applicable:] attached hereto as Exhibit F is a true and correct copy of the County of Orange Fictitious Business Name Statement of Lennar and any and all amendments thereto in effect on the date hereof.]*
7. Lennar and Developer have entered into that certain Agreement and Plan of Merger dated October 29, 2017 (the “Merger Agreement”). Following completion of the Merger as defined in the DDA, Lennar will, directly or indirectly, be the sole owner of the New Entity as defined in the DDA.

8. Pursuant to the Merger Agreement, and in accordance with Delaware law, upon the consummation of the Merger, the New Entity will be liable for all the obligations of Developer including the obligations of Developer under the DDA (the “**DDA Obligations**”).
9. As of Lennar’s last filing with the Securities and Exchange Commission, Lennar has (without the requirement of third party financing) Liquidity and Net Worth (as both terms are defined in the DDA) sufficient to allow Lennar to discharge its DDA Obligations and to meet the Liquidity Covenants and Minimum Liquidity Standards under Section 4.7.1(a) of the DDA.
10. Lennar hereby agrees, upon the consummation of the Merger, to provide funds to New Entity sufficient to allow New Entity to discharge the DDA Obligations, without the use of any Project-level debt financing.

This Certificate is being furnished to the City solely to assist it in conducting its investigation of Developer's financial resources in connection with the execution of the DDA and its investigation of Lennar's financial resources in connection with New Entity's ability to discharge the DDA Obligations. Lennar acknowledges and agrees that the City intends to rely on the information in this Certificate for these purposes in connection with its execution of the DDA. This Certificate may be relied upon by the City for these purposes. Without the written consent of Lennar: (i) no Person other than the City may rely on this Certificate for any purpose; (ii) copies of this Certificate may not be furnished to anyone for purposes of encouraging such reliance; (iii) the City shall maintain this Certificate as a confidential document pursuant to the provisions of the Public Records Act of the State of California; and (iv) the City shall not disseminate this Certificate and shall take all reasonable steps to maintain the confidentiality of this Certificate and the contents hereof, including maintenance of this Certificate at a non-public location, unless otherwise required by law. The City's staff, agents, negotiators and consultants may review this Certificate as necessary as long as such parties agree to maintain the confidentiality of this Certificate.

In no event shall the individual executing this Certificate on behalf of Lennar have any personal liability hereunder.

[Signature page follows]

[Signature page to Certificate of Chief Financial Officer]

Dated: _____, 201_

LENNAR CORPORATION,
a Delaware Corporation

By: _____

ATTACHMENT 33A
REQUEST FOR PARTIAL RECONVEYANCE

Date: _____, _____

To First American Title Insurance Company, Trustee:

THE UNDERSIGNED BENEFICIARY is the beneficiary under that certain Deed of Trust with Assignment of Rents dated _____, 2018, executed by _____, a _____, Trustor, and recorded on _____, 20____, as Instrument No. _____ of Official Record, in the Office of the County Recorder of Orange, California, ("*Deed of Trust*").

You are hereby requested and authorized to reconvey to the person(s) entitled thereto the right, title or interest now held by you thereunder in and to that portion of the real property described in said Deed of Trust, as follows: In the City of Tustin, County of Orange, State of California, being all of Lots 1 through 5, inclusive, Lot 8, and Lots A through B, inclusive, of Tract No. 18125 as per map filed in Book _____, Pages __ through __, inclusive, of Miscellaneous Maps, in the office of the County Recorder of said county.

This Request for Partial Reconveyance shall be held by you until such time as Final Tract Map No. 18125 ("Final Map") is approved by the City of Tustin and the County of Orange County, California, recording of the Final Map is authorized by each such entity and you have caused the Final Map to be recorded in the official records of Orange County, California. Immediately following the recording of such Final Map, you shall record the Partial Reconveyance requested herein, without further instruction from the undersigned beneficiary or trustor.

The making of this partial reconveyance shall be endorsed by you upon said Deed of Trust, a copy of which is herewith presented to you, for that purpose.

Executed as of the date first written above.

BENEFICIARY:

The City of Tustin

By: _____
Name: _____
Title: _____

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

ATTACHMENT 33B
PARTIAL RECONVEYANCE

<p>RECORDING REQUESTED BY First American Title Insurance Company</p> <p>WHEN RECORDED MAIL DOCUMENT TO:</p> <p>CalAtlantic Group, Inc. 15360 Barranca Parkway Irvine, CA 92618 Attn: Michael Battaglia</p>	
--	--

SPACE ABOVE THIS LINE FOR
RECORDER'S USE

A.P.N. *[TO BE UPDATED]*

PARTIAL RECONVEYANCE

First American Title Insurance Company, Trustee under that Deed of Trust With Assignment of Rents dated _____, 2018, executed by _____, a _____, Trustor, and recorded on _____, 20____, as Instrument No. _____ of Official Record, in the Office of the County Recorder of Orange, California, having been requested in writing by The City of Tustin, the beneficiary and holder of the obligations secured by said Deed of Trust, to reconvey a portion of the estate granted to Trustee under said Deed of Trust, **DOES HEREBY RECONVEY TO THE PERSON OR PERSONS LEGALLY ENTITLED THERETO, WITHOUT WARRANTY, ALL THE ESTATE, TITLE, AND INTEREST** acquired by Trustee under said Deed of Trust, in and to the portion of the property described as follows:

In the City of Tustin, County of Orange, State of California, being all of Lots 1 through 5, inclusive, Lot 8, and Lots A through B, inclusive, of Tract No. 18125 as per map filed in Book _____, Pages __ through __, inclusive, of Miscellaneous Maps, in the office of the County Recorder of said county.

But excepting from this reconveyance that certain real property (the "**Reserved Property**") in the City of Tustin, County of Orange, State of California, being all of Lots 6 and 7 of Tract No. 18125 as per map filed in Book _____, Pages __ through __, inclusive, of Miscellaneous Maps, in the office of the County Recorder of said county.

The Reserved Property, comprising a portion of the real property described in said Deed of Trust, shall continue to be held by said Trustee under the terms thereof. As provided in said Deed of Trust, this Partial Reconveyance is made without affecting the personal liability of any person or the corporate liability of any corporation for the payment of the indebtedness mentioned as secured

thereby or the unpaid portion thereof. Furthermore, except with respect to the reconveyance of real property in accordance with this Partial Reconveyance, the rights and obligations of the parties to said Deed of Trust shall remain unmodified.

Dated: _____

First American Title Insurance Company

By: _____
Authorized Signer

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public