

**EXCLUSIVE NEGOTIATING AGREEMENT
(TUSTIN LEGACY PORTION OF DISPOSITION PACKAGES 2C AND 8)**

THIS EXCLUSIVE NEGOTIATING AGREEMENT (TUSTIN LEGACY PORTION OF DISPOSITION PACKAGES 2C AND 8) (“**ENA**”) is made as of February 5, 2019 (“**Effective Date**”) by and between the **CITY OF TUSTIN** (“**City**”) and **BROOKFIELD HOMES SOUTHERN CALIFORNIA LLC**, a Delaware limited liability company (“**Developer**”), with respect to certain land referred to herein as the “**Development Parcels**” (as defined below). The City and Developer, each sometimes referred to herein as a “**Party**” and collectively as the “**Parties**,” hereby agree as follows:

1. Introduction.

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

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

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

1.4 On February 3, 2003, the City adopted an ordinance approving the MCAS Tustin Specific Plan/Reuse Plan setting forth the zoning and entitlement framework for future development of Tustin Legacy. Since its initial adoption, the City has approved numerous Specific Plan amendments. All references in this ENA to the “**Specific Plan**” shall be deemed to refer to

the MCAS Tustin Specific Plan/Reuse Plan, as the same may have been previously or may be subsequently amended. The Specific Plan conforms to and implements the Reuse Plan and the City's General Plan.

1.5 The City desires to effectuate development of Tustin Legacy through the sale and development of property in accordance with applicable federal and local requirements. Tustin Legacy shall be developed in accordance with all City requirements, including, without limitation, the Reuse Plan and the Specific Plan.

1.6 Pursuant to the City's Disposition Strategy for Former Master Developer Footprint Tustin Legacy Project dated April, 2011 ("**Disposition Strategy**") the City is authorized to enter into a controlled disposition strategy allowing the location of uses and placement of products to provide an incremental, logical, orderly and planned phasing of development of the former military base. Specifically, the Disposition Strategy authorizes the City, among other things, to establish a short list of vertical developers, to sell property at Tustin Legacy in a series of Disposition Packages to developers selected pursuant to RFP, to enter into negotiations with previously selected developers who have demonstrated success on initial development opportunities and to provide rolling take down options on future phases or segments to those developers.

1.7 In February 2012, the City issued a Request for Proposal ("**RFP**") seeking residential developers of for-sale residences in connection with development of certain for-sale residential communities at Tustin Legacy. Developer submitted a proposal pursuant to the RFP for purchase and development of the property and was one of three developers selected for further negotiations. Developer subsequently successfully constructed and conveyed homes within the Greenwood development (Disposition Package 1B and 6A).

1.8 City intends to continue development of for-sale single family attached and detached product at Tustin Legacy upon the real property comprising approximately 28 gross acres as depicted on the site map attached as Exhibit A but there shall be excluded from that acreage public streets and other publicly owned facilities and publicly owned open space (such acreage, excluding the publicly owned real property and facilities, "**Development Parcels**") and desires to enter into negotiations with Developer for construction on the Development Parcels of approximately 400 for-sale residential units comprised of three products, and with required infrastructure and a complete accompanying set of amenities to be constructed by Developer, including common open space, with a portion of such open space to be made accessible to the public pursuant to recorded easement, and including a clubhouse and recreation center for project residents and guests, all in accordance with a preliminary site plan to be developed by Developer and approved by the City. The proposed development of the Development Parcels described above and as further described in this ENA is referred to herein as the "**Project**".

1.9 The Development Parcels comprise a portion of the land conveyed by the Navy to the City in Navy quitclaim deed D dated May 13, 2002 and recorded in the Orange County Clerk Recorder Office on May 14, 2002 as Instrument No. 20020404594 ("**Navy Quitclaim Deed**"). The Development Parcels are located in Specific Plan Neighborhood D, Planning Areas 13 and 14

and are referred to in the Navy Reuse Plan as a portion of Parcels 8, 14, and 40 and in the Navy Quitclaim Deed as a portion of Parcels I-D-3 and I-D-4.

1.10 The City and Developer desire, for the ENA Negotiating Period (as defined below), to negotiate diligently and in good faith, the terms and conditions of a disposition and development agreement (“**DDA**”) and development agreement (“**DA**”) and related instruments and agreements described by the DDA or DA (collectively with the DA and DDA, the “**Transaction Documents**”), which if agreed upon and executed by the Parties will specify the rights, obligations and method of participation of the City and Developer with respect to the sale and development of the Development Parcels and the development thereon of the Project (“**Transaction**”).

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

2. Agreement to Negotiate.

2.1 DA and DDA. The City and Developer each desire to negotiate Transaction Documents which if agreed upon and executed, shall set forth the terms and conditions pursuant to which the Development Parcels shall be conveyed by the City to Developer and developed by Developer. Notwithstanding that the terms of the purchase and sale and development of the Development Parcels are to be negotiated, Developer and the City have agreed that the transactional documents to be negotiated to describe the transaction shall be in the form of a DDA and DA. The City will prepare a draft of the Transaction Documents and submit the draft documents to Developer for review and comment.

2.2 ENA Not a Final Agreement. The Parties acknowledge and agree that:

(a) this ENA is entered into for the sole purpose of providing a framework for and establishing and facilitating the initial basis for negotiation of the Transaction;

(b) this ENA is not, and the Parties do not intend that this ENA be, a lease, purchase and sale agreement, option or similar contract setting forth the essential terms of a land transaction (“**Essential Terms Agreement**”);

(c) the Parties have not agreed upon the essential terms or the material elements of a transaction, including, without limitation, the purchase price, the legal description of the Development Parcels to be conveyed (including the exact amount of acreage, phasing, and precise location of the land), the time or manner of and significant terms related to the conveyance, the conditions precedent to conveyance (including without limitation, related to the design and entitlement of the Project) or the requirements related to development of the Project, each of which are an essential component of the transaction (collectively, the “**Essential Terms**”) and which shall be a matter of their further negotiation during the ENA Negotiating Period;

(d) this ENA does not contain the Essential Terms of the Transaction;

(e) this ENA is merely an agreement to enter into the ENA Negotiating Period according to the concepts presented herein, reserving final discretion and approval of any

Transaction Documents by the City to the City Council and by Developer to the authorized representatives of Developer, and unless and until a DDA and DA are approved as set forth in Section 2.3 and executed by both Parties, the Parties do not intend to be bound in any way to an Essential Terms Agreement, nor do they intend to be bound by any other agreement except for the specific undertakings of each set forth in this ENA;

(f) the concurrence of the City negotiators with the terms and provisions of a proposed DDA and DA or other Transaction Documents shall not be construed or interpreted as the City approving or accepting such terms. Such concurrence shall be viewed as nothing more than the willingness of the City negotiators to recommend to the planning commission of the City (as to the DA) and the City Council (as to the DDA and DA and other Transaction Documents) that they approve such terms.

Further, Developer acknowledges that the design of the Project, the identity, stability and financial capacity of Developer and any proposed manager/operator of the Project and the terms and conditions of the sale of the Project, if any, will be of material concern to the City and comprise part of the Essential Terms that are not yet agreed upon by the Parties.

2.3 **Public Hearings and Compliance.** The DDA and DA shall become effective only after and if the agreements have been considered and approved by the City Council of the City at a properly noticed meeting and after compliance with the California Environmental Quality Act (“CEQA”). Nothing in this ENA shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City pursuant to the Tustin City Code or other City ordinance or the provisions of any applicable state of California (“State”), regional or federal law or regulation.

2.4 **Assumption of Risk.** The City and Developer each assume the risk that, notwithstanding this ENA and good faith negotiations, the City and Developer may not enter into any agreements due to their failure to agree upon Essential Terms of the transaction or the Transaction Documents, or any of them. Accordingly, except as specifically set forth in this ENA, neither Party will have any liability to the other in the event that the Parties are unable to reach such a definitive agreement with respect to the proposed Transaction for any reason or no reason.

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

Developer represents, warrants and agrees as follows:

3.1 **Expertise and Financial Qualifications.** Developer has the necessary expertise, experience and financial capability to undertake development of the Project at the Development Parcels as contemplated by this ENA.

3.2 **No Speculation in Land Holding.** Developer’s intended acquisition of the Development Parcels and acquisition and its other intended undertakings pursuant to this ENA shall be used for the timely development of the Project upon the Development Parcels and, if

applicable, certain adjoining land owned by the City, and accompanying infrastructure and amenities and not for speculation in land holding.

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

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

3.5 **Release.** Except as specifically set forth in Sections 4.3, 4.4, 6.9.2 or 10.6, Developer, on behalf of itself and its successors and assigns, hereby waives the right to recover from and fully and irrevocably releases the City and its elected and appointed officials, employees, agents, representatives, attorneys, affiliates, consultants, contractors, successors and assigns (“**City Parties**”) with respect to any and all Claims (as defined below) that Developer or its officers, directors, employees, agents, representatives, home buyers and prospective home buyers, homeowner’s associations, consultants or contractors may now or hereafter have or incur relating to or arising from: (a) the process by which Developer was selected or any modification or defect thereto, or any information set forth therein; (b) the terms of this ENA including, without limitation, the information set forth in or the termination of this ENA in accordance with its terms; (c) the breach by the City of its obligations under this ENA; (d) the failure of the Parties or either of them to agree upon the Essential Terms of the Transaction contemplated by this ENA; (e) any disputes or Claims arising between Developer and any third parties; (f) the right to protest the terms of this ENA; (g) any information provided by the City during the course of the selection or negotiation; (h) the negotiation of or failure to negotiate the Transaction Documents, or any of them, or the failure of the City to approve any Transaction Document; (i) any condition of the Development Parcels, or any current or future improvement thereon, known or unknown, including, without limitation, the environmental condition of the Development Parcels or the extent or effect of any grading of the Development Parcels; (j) economic or legal conditions on or affecting the Project, the Development Parcels or the improvements thereon; (k) the actions or inaction of the Navy with respect to any agreements between the City and the Navy; (l) the ability of the City or any third party to complete, or the likelihood of the completion or actual completion of, any of the improvements and infrastructure related to the Project described by the General Plan, the Reuse Plan, the Specific Plan, the Tustin Legacy Backbone Infrastructure Program, the agreements, environmental reports and statements listed on Exhibit B (“**Environmental Documents**”) or any other plan or policy of the City or any other governmental entity; (m) the compliance or non-compliance by the City or any third party, including without limitation, the Navy, with the Reuse Plan, the City’s General Plan, the Specific Plan, the Navy Quitclaim Deed and the Environmental Documents, or any special restrictions or other covenants and agreements applicable to other property at Tustin Legacy, or any other agreement or governmental restriction or plan affecting Tustin Legacy; and/or (n) any action or inaction of the City or the City Parties in connection with any of the foregoing (including, without limitation, the exercise by the City of its discretion, decision or judgment with respect to the foregoing). This waiver and release includes, without limitation, a waiver and release with respect to (1) any and all damages and/or monetary relief (whether based in contract or in tort), including, without limitation, any right to claim direct, compensatory, reliance, special, indirect, consequential, expectation, anticipation, exemplary or

punitive damages or losses relating to or arising out of this ENA, and any other rights or claims it may otherwise have at law or at equity; (2) any right to payment or reimbursement from the City except as expressly set forth in Sections 4.3 and 4.4; (3) the right to protest the terms of this ENA, any Transaction Document or the selection, or revocation of the selection of Developer for exclusive negotiations with respect to the Development Parcels, including by termination of this ENA; (4) any right to specific performance for conveyance of or to claim any right of title or interest in the Development Parcels or any portion thereof, and (5) the failure of the City to enter into any of the Transaction Documents, to negotiate in good faith pursuant to this ENA or, except as set forth in Section 4.4, to negotiate exclusively pursuant to Section 4.4. Nothing herein limits or releases Claims by Developer against the United States Government, including but not limited to the Department of the Navy, regarding the environmental condition of the Development Parcels.

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

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

4. **Negotiations.**

4.1 **Diligent and Good Faith Negotiations.** The City and Developer agree for the ENA Negotiating Period (as defined below) to exclusively negotiate with one another diligently and in good faith to prepare Transaction Documents and related documents to be entered into between the City and Developer with respect to the purchase and sale of the Development Parcels and development of the Project.

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

4.2.1 **Term of Negotiations.** The initial period of negotiations pursuant to this ENA shall terminated upon the date that is nine (9) months from the Effective Date (“**Initial ENA Negotiating Period**”), subject to extensions as further provided in this Section 4.2. If at the expiration of the Initial ENA Negotiating Period (or within any extension of time mutually approved by the City and Developer in accordance with the terms of this ENA), Developer has not, in accordance with Section 4.2.4, signed a DDA and DA in form and substance prepared and approved by the City in its sole discretion, then this ENA shall automatically terminate. The Initial ENA Negotiating Period, as the same may be extended pursuant to Section 4.2.2 or earlier terminated pursuant to Sections 4.2.5, 4.2.6 or 4.2.7 is referred to herein as the “**ENA Negotiating Period**”.

4.2.2 **Request for Extension.** Developer may request from the City an extension of the ENA Negotiating Period for an additional period of sixty (60) calendar days. The City will

determine whether reasonable and sufficient progress has been made toward fulfillment of the requirements of this ENA in its consideration of such requested extension.

4.2.3 Authority to Extend. The City hereby delegates to the City Manager, or his or her designated representative, the authority to agree to grant the sixty (60) calendar day extension specified in Section 4.2.2 upon determination by the City Manager or his or her designated representative in his or her sole and absolute discretion that Developer has negotiated diligently and in good faith and that reasonable and sufficient progress has been made toward fulfillment of the requirements of this ENA. No such extension of the ENA Negotiating Period shall be effective unless it is in writing. Any extensions other than the sixty (60) calendar days specified in Section 4.2.2 shall require approval by the City Council, which approval shall be at the sole and absolute discretion of the City Council.

4.2.4 Offer to Purchase. The execution by Developer of a form DDA and DA and submittal of same to the City shall constitute an offer to purchase the Development Parcels. If Developer has not submitted an executed form of the DDA and DA to the City prior to the termination of the ENA Negotiating Period, this ENA shall automatically terminate. If Developer does submit an executed DA and DDA, then this ENA shall remain in effect for an additional period of sixty (60) calendar days following the submittal of the last of the executed DDA and DA to the City (“**Offer Period**”) to enable the City to (a) consider the environmental impacts of the proposed Transaction Documents as evaluated in an environmental document prepared by the City during the ENA Negotiating Period in accordance with the California Environmental Quality Act; (b) determine whether it desires to enter into such a DDA and DA; (c) take the actions necessary to authorize the City to sign the DDA if the City desires to do so; and (d) sign the DDA and DA. Developer hereby agrees that it shall not withdraw such offer to purchase during the Offer Period. This ENA shall automatically terminate at the end of the Offer Period, if any. The City shall have the right to request, in writing, an extension of the Offer Period in order to complete required CEQA documentation for the Transaction Documents. If an extension of the Offer Period is requested by the City for such purpose, Developer shall either consent to the extension within seven (7) calendar days following such request or this ENA shall automatically terminate.

4.2.5 Rights of the Parties to Earlier Terminate ENA for Breach. Developer may terminate this ENA and the ENA Negotiating Period upon provision of seven (7) calendar days’ prior written notice to the City alleging breach of Section 4.4.1 by the City, and the City may terminate this ENA upon provision of seven (7) calendar days’ prior written notice to Developer alleging breach by Developer of any provision of this ENA, including, without limitations, Section 4.4.2.

4.2.6 Rights of the Parties to Earlier Terminate Due to Infeasibility or Non-Economic Transaction. Either Party may terminate this ENA and the ENA Negotiating Period upon provision of seven (7) calendar days’ prior written notice to the other Party if, during the course of negotiations, investigations and evaluation of the Development Parcels, the Transaction or the Project, either Party determines in good faith that (a) the Project or the Transaction is not feasible or financeable, (b) based on the terms offered by the other Party, that it is unlikely to reach agreement on the terms of the DDA and/or the DA or (c) the terms offered by the other Party do not meet its economic, or in the case of the City, public policy or health, safety or welfare requirements.

4.2.7 Termination Following Determination of City Council Not to Approve DDA or DA. The effectiveness of the DA and DDA are conditioned on approval, execution and effectiveness of both agreements. Therefore, notwithstanding any other provision of this ENA, if the DDA and DA are executed and presented by Developer to the City pursuant to Section 4.2.4, and the City Council disapproves (affirmatively or by failure to consider) either the DDA or DA or the City Council approves either the DDA or the DA but does not approve (affirmatively or by failure to consider) the second such document, then, upon the earlier of (i) the termination of the Offer Period or (ii) the affirmative determination of the City Council not to approve either the DA or DDA, this ENA and all rights of the Parties in and to the first document approved, if any, shall automatically terminate and the Parties will cooperate and execute such instruments as may be reasonably requested by the City to effect such termination. The determination of the City to approve or disapprove the DDA and/or the DA, any other Transaction Documents or any entitlements related to the Project shall be made in the sole discretion of the City Council and the City Council's determination to disapprove or not to take action on the DDA, the DA, any other Transaction Document or any Project entitlements shall not be a breach of the City's obligation to negotiate diligently, in good faith or exclusively under this ENA.

4.3 Deposits and Costs.

4.3.1 Good Faith Deposit. Concurrently with the execution of this ENA by the Developer, Developer will submit to the City a good faith deposit in the sum of One Hundred Fifty Thousand Dollars (\$150,000) (together with any interest accruing thereon and any additional amount deposited as set forth below in this Section 4.3.1, the "ENA Deposit") in the form of a check to the City to ensure that Developer will proceed diligently and in good faith to negotiate and perform all of Developer's obligations under this ENA and to also be applied to cover any City Transaction Expenses (as defined below) incurred by the City after the Effective Date of this ENA. The ENA Deposit shall be deposited in an account in a bank or trust company selected by the City. Interest, if any, shall accrue to any balances in the account for the benefit of Developer and as additional security for Developer's obligations hereunder. The ENA Deposit will be expended to cover the City Transaction Expenses, as further described in Section 4.3.2 and the ENA Deposit will be depleted accordingly. Each time the amount of funds in the ENA Deposit account is depleted below Fifty Thousand Dollars (\$50,000), Developer shall be required to submit an additional Fifty Thousand Dollars (\$50,000) to City which shall be credited by the City to the ENA Deposit account. Amounts due to the City on account of City Transaction Expenses and deducted by the City from the ENA Deposit are referred to herein as "**City Expense Payments**".

4.3.2 City Transaction Expenses. The ENA Deposit may be used by the City to pay the predevelopment and negotiation costs and expenses incurred by the City or accrued with respect to the drafting, negotiation and execution of the ENA and during the ENA Negotiating Period and the Offer Period, if any, including, without limitation, City staff costs attributable to the Project, fees and costs of third-party consultants, legal counsel (including, without, limitation, fees and expenses of the City Attorney and outside legal counsel) financial advisors, engineers, appraisers and environmental and other consultants and any other expenditures required in connection with the implementation of the Transaction, the implementation and termination of the ENA, the drafting, negotiation and execution of the Transaction Documents, and other acts carried out in contemplation of the proposed Project (collectively, the "**City Transaction Expenses**"). Fees and deposits required of Developer for processing entitlement applications or complying with

provisions of CEQA or the State CEQA implementing regulations shall be separately funded by Developer and shall not constitute City Transaction Expenses. Determination of costs, expenses, and fees constituting 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 the identity of the provider or cost and the amounts attributable to each that constitute City Transaction Expenses and related non-confidential documents evidencing such expenses; provided that Developer shall identify its objections, if any, to each summary notice provided by the City, within fifteen (15) calendar days following its receipt of each such notice and provided further that in no event shall Developer have the right to challenge the hourly rates of City staff, nor those of the City's third party attorneys or consultants.

4.3.3 Return of Unapplied Deposit Funds Under Specified Conditions. Except as otherwise set forth in Section 4.4, upon the termination of this ENA, the City shall have the right to retain in full all City Expense Payments (and to be paid any additional sums due to the City under this ENA on account of City Transaction Expenses or otherwise) and, after deducting any amounts due to the City under this ENA from the ENA Deposit, the City shall return to Developer the remaining ENA Deposit (including any additional funds deposited by Developer pursuant to Section 4.3.1) ("**Unapplied Deposit Funds**").

4.3.4 Costs and Expenses Borne by Developer. Developer acknowledges and agrees that the City shall have no responsibility to pay or reimburse Developer for costs and expenses incurred by Developer in connection with this ENA, the compliance by Developer with its obligations under this ENA, the termination of this ENA, the negotiation of the DDA, DA or any other Transaction Documents, or any other matters unless the City, in its sole discretion, agrees to assume any specific responsibilities in the fully executed and delivered Transaction Documents. Developer shall be responsible, without any cost or liability to the City (except as specifically set forth in Sections 4.4.1, 6.9.2 or 10.6), for all City Transaction Expenses and all costs and expenses incurred by Developer with respect to compliance with the terms of this ENA, including without limitation, costs incurred by Developer in planning and designing the Project, preparing Plans, submitting applications, conducting due diligence or property investigations, arranging financing, negotiating the terms of the Transaction Documents or carrying out other acts in contemplation of the possible purchase and sale of the Development Parcels.

4.3.5 Payment of Outstanding Amounts. Upon a termination of this ENA to the extent that the ENA Deposit or other funds provided by Developer to pay City Transaction Expenses are not sufficient to pay all City Transaction Expenses, Developer shall promptly upon termination of this ENA fund the amount remaining unpaid to the City.

4.3.6 Survival of Provisions. The provisions of this Section 4.3 shall survive the termination of this ENA.

4.4 Exclusivity; Good Faith Negotiations and Remedies.

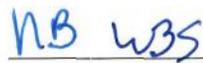
4.4.1 City Failure to Negotiate Exclusively and in Good Faith. During the ENA Negotiating Period, the City covenants and agrees to negotiate exclusively with Developer and any assignee or transferee of Developer approved by the City pursuant to Section 6.4 and the City shall not solicit another Person (as defined below) for the Project or enter into any agreement with

any other Person regarding the development of the Development Parcels or any portion thereof. The City acknowledges and agrees that but for this exclusivity, Developer would not have entered into this ENA. In the event a court of competent jurisdiction determines in a final decision that the City has breached this exclusivity covenant, the City shall be deemed to have failed to negotiate diligently and in good faith. Breach of this exclusivity covenant shall be the sole means by which City may be deemed to have breached its obligation to negotiate diligently and in good faith under this ENA and Developer's sole remedies for such breach shall be (a) the right to terminate this ENA and (b) the return to Developer of the ENA Deposit, including the refund of any City Expense Payments made. Except as specifically required by this Section 4.4.1, the City shall at no time have any obligation to return any City Expense Payments nor, except as set forth in Sections 4.4.1, 6.9.2 and/or 10.6, to make any other payments to Developer for any reason in connection with or pursuant to this ENA.

4.4.2 Developer Default. If Developer has not negotiated diligently or in good faith or has not carried out its obligations under this ENA as evidenced by Developer's failure to submit to the City plans, reports, studies, investigations, applications and materials specified in Section 5 and Section 6 within the time periods specified therein or to attend regularly scheduled negotiation meetings or calls, inasmuch as the actual damages which would result from a breach by Developer of its obligations under this ENA are uncertain and would be impractical or extremely difficult to determine, the City shall be entitled to terminate this ENA and to retain the ENA Deposit, including the Unapplied Deposit Funds plus interest, if any, which has accrued thereon and on the ENA Deposit, unless a court of competent jurisdiction determines in a final decision that the City has not met the standard for negotiation in good faith set forth in Section 4.4.1. By the initials of their respective signatories hereunder, the City and Developer acknowledge and agree that forfeiture of the amount of the ENA Deposit by Developer (together with any interest earned and accrued thereon) is not in lieu of any other relief, right or remedy to which the City might be entitled by reason of Developer's default (other than a default in any obligation to negotiate in good faith) including without limitation from the City from seeking or receiving payment for amounts which Developer is obligated to pay pursuant to Section 4.3 (to the extent the ENA Deposit is not sufficient to cover all City Transaction Expenses or such amounts are not included in City Transaction Expenses) or Sections 4.2.4, 4.3.1, 4.3.4, 4.3.5, 4.5.3, 10.2 and/or 10.6 of this ENA.



CITY'S INITIALS



DEVELOPER'S INITIALS

4.4.3 Limitation on Damages Payable by City. Developer acknowledges that the City would not have entered into this ENA if the City could become liable for significant damages under or with respect to this ENA or the proposed transaction. Consequently, and notwithstanding any other provision of this ENA, except as set forth in Section 4.4.1 and the following sentence, the City shall not be liable in damages under this ENA to Developer or any third party and Developer, on behalf of itself and its successors and assigns, hereby waives any and all rights to

claim damages, reimbursements or monetary payments of any kind or nature from the City except as set forth herein. Nothing herein shall be deemed to preclude Developer from seeking payment for amounts which City is obligated to pay pursuant to Sections 4.4.1, 6.9.2 and/or 10.6 of this ENA, provided that Developer shall not be entitled to any damages in addition to the actual amounts owed by the City to Developer pursuant to such Sections.

4.4.4 Additional Limitations on Damages. 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 or damages or monetary remedies not otherwise specifically set forth in this ENA.

4.4.5 No Liens or Lis Pendens. Developer, on behalf of itself and its successors and assigns, hereby expressly waives any and all rights to record a lis pendens or to otherwise place a lien or restriction of any type upon or affecting the Development Parcels.

4.4.6 Other Remedies and Restrictions. In the event the Parties enter into one or more Transaction Documents, each Party, on behalf of itself and its successors and assigns, hereby expressly waives its right to assert any breach by the other Party of the covenants of good faith and exclusivity in this ENA. Nothing in this ENA shall preclude either Party from seeking injunctive relief in order to enforce the ENA Negotiating Period, the Offer Period, release and/or confidentiality requirements of this ENA.

4.4.7 Survival of Provisions. The provisions of this Section 4.4 shall survive the termination of this ENA.

4.5 Inspection; License.

4.5.1 Access License. The City hereby grants to Developer, for use by Developer and its employees, representatives, agents, contractors and consultants (collectively, the “**Developer Parties**”), a license during the ENA Negotiating Period to enter upon the Development Parcels for purposes of conducting a due diligence inspection, provided that Developer shall and shall cause the Developer Parties to: (a) deliver to the City written evidence that Developer has procured and then maintains in effect the insurance required under Section 4.5.2 prior to entry on the Development Parcels; (b) give the City twenty-four (24) hours advance telephonic or written notice of any intended access which involves work on or may result in any impairment of the use of the Development Parcels; (c) access the Development Parcels in a safe manner; (d) conduct invasive testing or boring only after obtaining the written consent of the City to a work plan for such testing, which consent shall not be unreasonably withheld; (e) allow no dangerous or hazardous condition created by Developer and/or the Developer Parties to continue beyond the completion of such access; (f) comply with all laws and obtain all permits required in connection with such access; (g) keep the Development Parcels free and clear of any and all liens of any kind caused by Developer or the Developer Parties, including without limitation, mechanics' liens or materialmen's liens related to Developer's or any Developer Parties' access to or inspection of the Development Parcels; and (h) conduct inspections and testing, subject to the rights of any existing tenants or contractors doing work on the Development Parcels, if any (which inspections and testing, if conducted at times other than normal business hours, shall be conducted only after obtaining the City's consent, which shall not be unreasonably withheld)

and in accordance with reasonable terms and conditions established by the City. The limited license granted herein is revocable by the City during the continuation of any breach of this ENA by Developer and unless otherwise agreed by the Parties, shall be automatically revoked and terminated, without further action of the City, upon the termination of this ENA.

4.5.2 Insurance. Developer shall obtain, or cause the Developer Parties, with respect to their access and investigative activities, to obtain, at Developer's sole cost and expense, prior to commencement of any investigative activities on the Development Parcels, a policy of commercial general liability insurance and shall cause its consultants and contractors to obtain commercial general liability insurance, professional liability insurance and a pollution legal liability (PLL) policy, in each case meeting the requirements set forth in Exhibit C and naming "the City of Tustin, the Tustin Finance Authority and the Successor Agency to the Tustin Community Redevelopment Agency, and their respective elected and appointed officials, agents, representatives and employees" as additional insureds on the commercial general and pollution legal liability policies. Developer shall provide certificates of insurance and insurer endorsements (or a copy of the signed policy binder, if applicable), signed by a representative of the carrier evidencing the required insurance. To cover any Claims by persons or property resulting from any acts or omissions of Developer and/or the Developer Parties during the ENA Negotiating Period and the Offer Period, if any, such policies of insurance shall be kept and maintained in full force and effect and for "claims-made" insurance policies, such insurance shall be kept and maintained or tail insurance shall be obtained and maintained extending the reporting period under the claims-made policy for a period of at least three years after the later of the end of the ENA Negotiating Period or Offer Period, if any.

4.5.3 Indemnity. Developer hereby agrees to indemnify, defend, protect and hold the City and the City Parties free and harmless from and against any and all Claims arising in connection with or resulting from or related to Developer's or the Developer Parties': (a) exercise of the license provided in Section 4.5.1, including without limitation, entry onto or access to the Development Parcels, or breach by Developer or any Developer Parties of the terms and conditions of the grant of license; (b) exercise of any rights hereunder, including, without limitation, any inspections, surveys, tests or studies performed by Developer or the Developer Parties with respect to the Development Parcels, the Project or the Transaction; (c) presence, activities or work on or related to use of the Development Parcels and any mechanics' or materialmen's liens arising with respect thereto; (d) bodily injury to or death of any person (including, without limitation, any of the City Parties); or (e) damage to or loss of use of property resulting from any of the foregoing, save and except to the extent such Claims result from (x) the discovery by Developer of any pre-existing environmental conditions on the Development Parcels not caused or contributed to by Developer or the Developer Parties, or (y) the gross negligence or willful misconduct of the City or its agents or employees.

4.5.4 Survival of Provisions. The insurance obligations in Section 4.5.2 and the indemnification by Developer set forth in Section 4.5.3 shall survive the termination of this ENA and, if applicable, the execution of the DDA and the closing and transfer to Developer and shall not merge into any deed conveying the Development Parcels.

5. Proposed Development Concept.

5.1 Compliance with Existing Land Use and Zoning Requirements. The proposed Project to be negotiated hereunder shall include the development and use of the Development Parcels consistent with the Reuse Plan, the City's General Plan, and the Specific Plan.

5.2 Terms of Transaction Documents to be Negotiated. Developer and the City agree that it is their intent during the ENA Negotiating Period to negotiate Transaction Documents which are anticipated to address the following terms and conditions and such other terms and conditions as they may agree, and which will be binding upon the City and Developer and, to the extent provided therein, their successors and assigns.

5.2.1 As-Is Conveyance. While Developer should undertake its own investigation to determine the presence of hazardous materials and suitability of the Development Parcels for development, Developer acknowledges and agrees that if the Development Parcels are conveyed by the City pursuant to a DDA, the Development Parcels shall be conveyed on an "AS-IS, WHERE-IS AND WITH ALL FAULTS" basis, and Developer shall be obligated to release, defend, indemnify and hold harmless the City with respect to its acquisition and development of the Development Parcels and the condition of the Development Parcels, including, without limitation, any and all land use, soil and environmental conditions of the Development Parcels.

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

5.2.3 Product Mix. Developer understands and acknowledges that the product mix proposed for the Project will be subject to approval by the City, in its governmental and proprietary capacity, and will be required to comply with all necessary City entitlement approvals requested to carry out development of the Project on the Development Parcels. The product mix will include three products, comprised of single-family detached units, townhome units and "flats" units in locations and with unit counts for each product to be agreed upon by the Parties. The actual number of units will be based on compliance with development standards in the Specific Plan and any requirements contained in the Transaction Documents.

5.2.4 Tustin Legacy Backbone Infrastructure Program Costs. In connection with development of the Development Parcels, Developer shall make a fair share contribution to the Tustin Legacy Backbone Infrastructure Program based on the allocations to the Development Parcels in the City's Tustin Legacy Backbone Infrastructure Financing Program-2017 Update adopted October 17, 2017 as the same may be amended from time to time ("**Tustin Legacy Backbone Infrastructure Program**"). Pursuant to the Tustin Legacy Backbone Infrastructure Program, a fair share contribution shall be allocated to the Development Parcels ("**Project Fair Share Contribution**"). The DDA shall address the timing of payment of the Project Fair Share Contribution by Developer to the City.

5.2.5 Community Facilities District (“CFD”). Developer acknowledges that the City has formed a community facilities district for services funded by a Special Tax “B” (“**Tax B**”) imposed within the boundaries of the CFD to fund a portion of the City essential services, including, without limitation, 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. Developer acknowledges and agrees that (a) the CFD shall impose Tax B upon the Development Parcels and the improvements constructed thereon in connection with the Project in an amount to be determined in a rate and method of apportionment (“**RMA**”) to be adopted by the CFD; and (b) Tax B shall be perpetual and shall not be time limited in any manner unless determined by the City in its sole discretion. Developer agrees that it shall affirmatively support and shall cooperate with the City and CFD in the adoption of the RMA and imposition of Tax B upon the Development Parcels. Although the CFD formation documents permit the CFD to impose a Special Tax A (“**Tax A**”) on portions of Tustin Legacy to pay for construction of certain capital facilities described by the Tustin Legacy Backbone Infrastructure Program, Developer acknowledges and agrees that its development plan for the Project will not require use of community facility district proceeds (including, without limitation, Tax A funds) 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 and the City agrees that Tax A shall not be applicable to the Development Parcels or the improvements thereon and Developer shall have no obligation or liability on account thereof.

5.2.6 Construction of In-Tract and Off-Site Infrastructure. Other than as provided in the DDA or DA, Developer will be responsible for all costs of any necessary in-tract improvements and other off-site improvements identified by the City in the DDA, the DA or the Project entitlements, which work shall not be subject to reimbursement by the City. The off-site infrastructure work may include installation of or modifications to utilities, roadways, sidewalks, curb and parking on perimeter streets and will be further defined and described as the planning effort for the Project evolves.

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

5.2.8 Project Costs; Local Infrastructure. Project costs and revenues will be separately analyzed and funding of all Project costs will be the responsibility of Developer, provided that the City shall provide mainline utilities to serve the Development Parcels. Project costs for which the Developer will be responsible shall include, without limitation, all costs of planning, designing, entitling and constructing the Project and all costs of any necessary local infrastructure improvements and in-tract improvements required in connection with development of the Project. Nothing in this ENA waives or limits the applicability of the Tustin Legacy Backbone Infrastructure Program.

5.2.9 Development Fees. In connection with its development of the Development Parcels, Developer acknowledges that the Development Parcels will be subject to applicable development fees, including, but not limited to, those required by the City or other jurisdictions such as the Foothill/Eastern Corridor Fee, the Santa Ana/Tustin Transportation System Improvement Area (TSIA) fee, school impact fees and school facility bonds, if any, by the Santa Ana Unified School District and Tustin Unified School District, as applicable, current Orange County School Facility Bonds (Measure G and Measure L), utility meter and connection fees. Developer acknowledges that Tustin Unified School District has imposed CFD 15-02 upon portions of Tustin Legacy which may be applicable the Development Parcels.

5.2.10 Transfer and Assignment Restrictions. Developer acknowledges that the Transaction Documents shall contain limitations on transfer and assignment of the rights of Developer including, among other things, the right of the City to approve in its sole discretion all assignments and transfers by Developer of interests in Developer, the Transaction Documents, the Project or the Development Parcels.

5.2.11 Mortgagee Limitations and Subordination. Developer acknowledges that prior to conveyance of homes to homebuyers, the Transaction Documents shall prohibit mortgages and mortgagees on the Development Parcels without the prior written consent of the City in its sole discretion.

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

5.2.13 Completion Guaranty. To secure the completion of the Project and the performance of Developer's construction obligations under the DDA, Developer shall cause a guarantor approved by the City in its sole discretion to execute a payment and completion guaranty in form and substance acceptable to each of the Parties in its sole discretion or shall furnish the City with another form of security meeting the requirements of the City in its sole discretion ("**Guaranty**").

5.2.14 Insurance. Developer, and any permitted assignee(s), will be responsible in conjunction with the Transaction Documents to provide commercial general liability, workers compensation, builder's risk property insurance, and environmental insurance as further described on Exhibit C attached hereto.

5.2.15 Additional DDA Deposit. Developer acknowledges that it is currently anticipated that the DDA shall require additional deposits in amounts to be determined (a) as security for the performance of Developer's obligations under the DDA and (b) to pay expenses (including all staff and third-party expenses) incurred by the City for the periods from execution of the DDA to issuance a final certificate of compliance for the Development Parcels.

5.2.16 Purchase Price and Profit Participation. The purchase price for the Development Parcels shall consist of a base purchase price and payment of a profit participation to the City each in an amount to be negotiated by the Parties. The profit participation shall be

secured by a deed of trust on a portion of the Development Parcels or by other security agreed to by each of the Parties in its sole discretion.

5.2.17 Master Marketing Program Fees. Developer acknowledges that the City acting in its proprietary capacity requires that all builders within Tustin Legacy pay a one-time master marketing fee towards the marketing of Tustin Legacy by the City in the amount of Fifty Thousand Dollars (\$50,000).

6. Developer's Responsibilities.

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

6.2 Development Team. Developer shall, within ten (10) calendar days following the Effective Date, submit in writing to the City full disclosure of the names of Developer's agents, authorized negotiators, professional employees or other associates of Developer who may be participants in development of the Project and other relevant information concerning the above, such as addresses, telephone numbers and employers. Developer's lead negotiator(s) shall be Nicole Burdette.

6.3 Financial Status.

6.3.1 Financial Capacity. Developer shall continue to be responsible for demonstrating to the City Developer's financial capacity and capability to perform its obligations under this ENA and the proposed Transaction Documents. Subject to the provisions of Section 6.3.2 (the "**Confidentiality Protocols**"), Developer shall submit any additional financial information required to demonstrate Developer's, and guarantor's, if any, financial capacity and capability to perform its obligations under this ENA and the proposed Transaction Documents as requested by the City within thirty (30) calendar days of a request.

6.3.2 Confidentiality Protocols. Developer acknowledges that documents or other "records" (as that term is defined in the California Public Records Act ("**CPRA**")) related to the Project may be required to be made public upon request. Government Code Section 6253(a) provides that "Public records are open to inspection at all times during the office hours" of the City. If Developer believes that any documents or other records provided to the City are exempt from the CPRA, Developer shall state in writing the legal basis for Developer's belief that such documents or other records are exempt from the CPRA, Developer and City shall meet and confer about exemption of such documents or other records, and City shall evaluate the asserted basis for the exemption(s) in good faith. If City determines that the requested documents or other records qualify for an exemption, Developer shall conspicuously mark the documents and other records "Confidential" and shall submit them to City, and City will not make the records public except as otherwise required by law or by court order. City's failure to correctly determine the applicability or inapplicability of an exemption to the CPRA shall not constitute a breach of this ENA or the Transaction Documents. City will endeavor to notify Developer of any request made for records

related to the Project when the request for the records allows adequate time to provide such notice. Developer agrees to defend, indemnify and hold harmless the City and the City Parties from any claims for damages, costs, court costs, awards of attorney fees, or related claims in all lawsuits and writ proceedings seeking to make records public that Developer has marked “Confidential” hereunder. In no event shall the City be required to maintain as confidential any materials required by law to be disclosed by Developer, or otherwise disclosed by Developer in connection with its public filings.

6.4 **Assignment and Transfer.**

6.4.1 **Restrictions on Transfer.** Developer recognizes that the qualifications and identity of Developer and its Controlling Person are important to the City in light of the importance of the development of the Development Parcels and Tustin Legacy to the general welfare of the community; the fact that a Transfer is for practical purposes a transfer of rights and obligations under this ENA and that it is because of the qualifications and identity of Developer and its key employees and Controlling Persons that the City is entering into this ENA with Developer. Therefore, except as provided below, Developer shall not make or create any voluntary or involuntary transfer, sale, assignment, pledge, hypothecation or the like to any Person, including without limitation, any transfer, sale, assignment, pledge or hypothecation of this ENA, the Ownership Interests in Developer, or of Developer’s interest in this ENA or any part thereof (“**Transfer**”), nor shall any Person having an Ownership Interests in Developer Transfer any such Ownership Interests without the prior written consent of the City, which consent may be given in the sole discretion of the City. Developer shall provide prior written notice to the City of any Transfer. Any consent or approval of the City pursuant to this Section 6.4 shall be as authorized by the City Council. Notwithstanding the foregoing, subject to the terms of this Section 6.4 and Section 7.1, Developer may assign or transfer its rights or obligations under this ENA to a Developer Affiliate in which event such transferee shall assume in writing all of the transferor's obligations hereunder, but such transferor shall not be released from its obligations hereunder. In the absence of express written approval by the City, no Transfer shall relieve Developer or any other Person from any obligations pursuant to this ENA. Except as set forth in clause (a) and (b) below, any attempted or purported Transfer without the consent of the City as required by this Section 6.4 including, without limitation, Section 6.4.2 where applicable, and Section 7.1 shall be void and immediately upon such Transfer this ENA shall terminate. Further, any Transfer without the consent of the City other than a transfer of Control by Transfer of Ownership Interests in Brookfield Homes Southern California LLC shall be a breach by Developer of its obligation to negotiate in good faith under this ENA. With respect to any Transfer of Ownership Interests of Brookfield Homes Southern California LLC, Developer shall have the option to either (a) seek and obtain the prior written consent of the City, in its sole discretion or (b) notify City in writing in advance of such Transfer of its intent to Transfer Control without seeking City consent, in which event (notice of Transfer without consent) the City shall have the right, within ninety (90) days following its receipt of such written notice to terminate this ENA by provision of written notice to Developer, which termination shall be binding upon but shall not be a default of Developer. Any termination of this ENA pursuant to this Section shall not relieve Developer of its obligations to pay sums due to the City pursuant to this ENA, including without limitation, pursuant to Sections 4.2.4, 4.3, 4.5.3, 10.2 and/or 10.6 of this ENA.

6.4.2 Financial Capacity of Transferee. Prior and as a condition to the effectiveness of any Transfer, Developer shall cause the proposed assignee to provide (a) the information, including without limitation, assets and liquidity, of the proposed assignee and any Guarantor as required by Section 7.1, which shall be subject to the approval of the City in its sole discretion, and (b) where the City indicates that a Guaranty will be required as a condition of the Transaction Documents, written assurance from such Guarantor to the City, satisfactory to the City in its sole discretion, that Guarantor will provide, on behalf of assignee, a Guaranty for the Project at close of escrow for the Development Parcels.

6.4.3 Definitions. As used in the main body of this ENA:

(1) the term “**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;

(2) the term “**Developer Affiliate**” shall mean any entity that directly or indirectly Controls, is Controlled by or is under common Control with Developer.

(3) The term “**Guarantor**” shall mean an entity with assets and liquidity meeting the requirements of the City and sufficient, in the determination of the City in its sole discretion, to secure the development, construction and maintenance obligations of Developer under the Transaction Documents.

(4) the term “**Person**” shall mean any individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, joint venture, firm, joint stock company, trust, unincorporated association, governmental agency or other entity, domestic or foreign or any other entity or association; and

(5) the term “**Ownership Interests**” shall mean shall mean the possession, directly or indirectly, of voting securities or partnership, general partnership, membership or other ownership interests (based upon value or vote) of a Person.

6.5 Design Review/Entitlements. It is understood and agreed by Developer that the quality, character and uses proposed for the Project are of particular importance to the City and that planning and design review approval and other entitlements by the City will be required for the development of the Development Parcels. Developer and the proposed architect and engineer for the Project shall meet with representatives of the City to review and come to a clear understanding of the planning and design criteria required by the City. Within twenty (20) calendar days after the Effective Date, Developer shall submit a schedule for entitlement processing. Within ninety (90) calendar days after the Effective Date, Developer shall submit for approval of the City preliminary revised design drawings and related documents containing the overall plan for development of the Project including, but not limited to, the following: a preliminary site plan showing building layout and dimensions, product mix and unit counts for

each product, parking, landscaping and access on or related to each individual parcel, floor plans, preliminary materials call-outs and conceptual building renderings and a development schedule.

6.6 **Project Financial Pro Forma and Other Required Deliverables.** Within ninety (90) calendar days after the Effective Date, Developer shall submit the following in the business plan format and schedule format requested by the City:

- (a) overall cost and revenue estimates;
- (b) Project cost and revenue data, including information on the Project's financial return adequate to enable the City to evaluate Developer's business offer and economic feasibility of the proposed development of the Project, as proposed, on the Development Parcels. Developer shall periodically update the financial pro formas for the Project throughout the ENA Negotiating Period to reflect changes to the Project, the Plans (as defined below), expected costs and revenue assumptions, and any comments the City provides to Developer on the Project, including, without limitation, the preliminary site plan. Developer shall provide updated pro formas to the City on a quarterly basis, or more frequently if requested by the City.
- (c) a comprehensive Project proforma demonstrating the feasibility of the Project, including a static analysis and a cash flow analysis by quarter, that shall reflect any comments the City provides to Developer on the preliminary site plan;
- (d) a Project schedule for land takedown and construction.

The financial proformas for the Project shall reflect any comments the City provides to Developer on the preliminary site plan.

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

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

6.9 **Environmental and Other Studies.**

6.9.1 **Environmental Requirements.** Compliance with CEQA is a legal precondition to any final City action to approve and execute Transaction Documents for the Development Parcels. It is contemplated by the Parties that the City will commence preparation of any CEQA documentation required in connection with the Transaction Documents and

entitlements upon submittal by Developer of an application for entitlements pursuant to Sections 5.2.7 and 6.5. Developer agrees to finance and supply information and otherwise assist the City as requested to enable the City to determine the environmental impact of the proposed development of the Project as described by the Transaction Documents and to prepare such additional environmental documents, if any, as may be needed to be completed for the development, including without limitation, any supplement or addendum to the Final EIS/EIR and to cooperate with the City and abide by the City's environmental compliance procedures and fee requirements, which include, but are not limited to, the obligation to deposit funds to pay all of the City's costs of preparing any additional required environmental studies as may be determined by the City based on its independent judgment and analysis.

6.9.2 Plans, Reports, Studies and Investigations. Developer shall provide the City, without cost or expense to the City, copies of all plans, reports, studies or investigations (collectively, "**Plans**") prepared by or on behalf of Developer for development of the Project on the Development Parcels and adjoining City-owned property, if applicable. All Plans shall be prepared at Developer's sole cost and expense. Plans prepared by Developer's surveyor, geotechnical consultant(s) or hazardous materials consultant(s) shall be certified in favor of the City and Developer. If this ENA is terminated for any reason other than a breach or default hereunder by the City pursuant to Section 4.4.1, the City may request that Developer, for consideration to be mutually agreed, transfer Developer's rights to any or all Plans identified by the City), but in no event shall the cost to the City exceed five hundred dollars (\$500). In order to assure that the City shall be able to acquire Developer's interest in the contracts and the Plans, Developer agrees as follows:

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

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

(c) Upon the City's acquiring Developer's rights to any or all of the Plans, the City shall be permitted to use, grant, license or otherwise dispose of such Plans to any Person for development of the Development Parcels and adjoining City-owned property, if applicable; provided, however, that Developer shall have no liability whatsoever to the City or any transferee of title to the Plans in connection with the use of the Plans.

6.9.3 Hazardous Materials Assessment. Developer acknowledges that pursuant to the Navy Quitclaim Deed, the Navy found and determined that there was no contamination on

the Development Parcels and issued a Finding of Suitability for Transfer for Southern Parcels 4-8, 10-12, 14, and 42 and Parcels 25, 26, 30-33, 37, and Portions of 40 and 41 dated September 28, 2001. However, during due diligence and grading activities within and adjacent to the Development Parcels from 2012-2014, several detections of total petroleum hydrocarbons were discovered. Several rounds of soil removals by the Navy occurred within and adjacent to the Development Parcels from 2015-2018 and a No Further Action letter was issued by the Regional Water Quality Control Board in November 2018 under the Low Threat Underground Storage Tank Case Closure Policy. The City would intend upon approval of a DDA to sell and convey by quitclaim in the same manner as the parcels were conveyed to the City to include the covenants and warranties as identified in the Navy Quitclaim Deed.

7. Developer.

7.1 **Nature of Developer.** Developer acknowledges that the City will require that the Developer be an entity with substantial development expertise and assets (i.e., assets in an amount sufficient to provide assurance to the City, in its sole discretion, that Developer has the financial capacity to develop, construct and maintain the Project, to secure such obligations and to comply with the requirements of the Transaction Documents without requirement for any mortgage) or shall require a Guaranty from a Guarantor approved by the City in its sole discretion. Developer will be Brookfield Homes Southern California LLC or such other business entity (such as a limited liability company) as the City may approve for this Transaction in its sole discretion and in accordance with Section 6.4, upon such terms and conditions as the City may request and the City and Developer may agree, as specified in the Transaction Documents. Should another business entity be desired by Developer, subject to approval of the City, Developer shall submit a copy of the applicable formation documents relating to Developer and any corporate members of Developer (i.e., as applicable: articles of incorporation; partnership agreement; and/or limited liability corporation articles of incorporation, statement of information and operating agreement). Developer acknowledges and agrees that the financial capacity of such entity shall be of critical importance to the City. Accordingly, the City shall have the right (a) to review and approve the entity and its owners, including the financial capacity, assets and liquidity of each of the foregoing and (b) to require, as a condition to execution of the DDA and to close of escrow for the Development Parcels, security for performance of the obligations of such entity to be provided by a Guarantor approved by the City, which may be Brookfield Residential US Corporation if such entity is approved by City as Guarantor. The foregoing security shall be provided by a Guaranty provided by such approved Guarantor in a form acceptable to the City in its sole discretion or by other instrument approved by the City in its sole discretion, as further described in the DDA. Unless otherwise approved by the City in accordance with Section 6.4, in no event shall Developer propose as Developer a business entity that is not Controlled by or under common Control with Brookfield Homes Southern California LLC.

7.2 **Offices of Developer.** The principal offices of Developer are located at 3200 Park Center Drive, Suite 1000, Costa Mesa, California 92626. The principal of Developer is Brookfield Homes Holdings LLC, a Delaware limited liability company.

7.3 **Developer's Consultants and Professionals.** Developer is required to make full disclosure to the City of any changes to its principals, officers, stockholders, partners, joint venturers, Project employees, and other associates and all other pertinent information concerning

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

8. Developer's Financial Capacity.

8.1 **Financial Capacity.** Any additional financial information required to demonstrate financial capacity and capability to perform the obligations under this ENA of Developer, if requested, shall, subject to the Confidentiality Protocols set forth in Section 6.3, be submitted to the City or its consultant as requested by the City for the purposes of this ENA.

8.2 **Equity.** Developer proposes to obtain its equity capital for development of the Development Parcels from Developer Affiliates.

8.3 **Construction Financing.** Developer proposes to finance Project costs for development of the Development Parcels with 100% equity and but shall retain the option to utilize other mechanisms to secure a portion of such financing, provided that Developer acknowledges and agrees that in no event shall (a) such financing be secured in any manner by the Development Parcels, this ENA or the Transaction Documents without the prior written consent of the City in its sole discretion or (b) use of financing other than Developer's equity be a condition to Developer's obligations under the DDA or DA.

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

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

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

9. City's Responsibilities.

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

9.2 **Plans and Studies.** The City shall, within ten (10) business days following the Effective Date and at no cost to Developer, provide Developer with copies of all plans, reports, studies, investigations and other materials the City may have pertinent to disposition of the Development Parcels and/or development of the Project on the Development Parcels ("**City Plans and Studies**"); provided, however, that the City makes no representations, warrantee or guarantee regarding the completeness or accuracy of such plans, reports, studies, investigations and other materials and the City shall have no liability whatsoever to Developer or any transferee of Developer in connection with such plans and studies or the use thereof for any purposes.

9.3 **Environmental Documents.** The City agrees to provide a copy of the Environmental Documents to Developer within ten (10) business days following the Effective Date.

10. **Miscellaneous.**

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

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

10.3 **No City Duty.** Except as expressly provided above in Sections 4.3 and 4.4, the City shall have no obligations or duties hereunder and no liability whatsoever in the event the City and Developer fail to agree upon or to execute a DDA, DA or any other Transaction Documents.

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

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

10.6 **Attorneys' Fees.** If either the City or Developer institutes any action, suit, 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 ENA, then the Prevailing Party (as defined below) in such Action shall be entitled to have and recover of and from the other Party all costs and expenses of the Action, including (a) the Prevailing Party's reasonable attorneys' fees which shall be payable at the actual contractual hourly rate for City's litigation counsel at the time the fees were incurred, but in no event more than \$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

With a copy to: Director of Economic Development
City of Tustin
300 Centennial Way
Tustin, CA 92780
Attn: John Buchanan
Email: jbuchanan@tustinca.org

And with a copy to: City Attorney
Woodruff, Spradlin & Smart
555 Anton Blvd., Suite 1200
Costa Mesa, CA 92626
Attn: David Kendig, Esq.
Email: dkendig@wss-law.com

Developer: Brookfield Homes Southern California LLC
3200 Park Center Drive, Suite 1000
Costa Mesa, California 92626
Attn: Nicole Burdette, Senior Vice President
Email: Nicole.Burdette@brookfieldrp.com

With a copy to: Songstad Randall Coffee & Humphrey LLP
3200 Park Center Drive, Suite 950
Costa Mesa, California 92626
Attn: Timothy L. Randall
Email: trandall@sr-firm.com

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

10.10 **Effect of Transaction Documents.** Following mutual execution by the City and Developer of the DDA and DA, this ENA shall be of no further force or effect, except that, unless otherwise agreed in writing by Developer and the City, the release set forth in Section 3.5, the insurance requirements set forth in Section 4.5.2, the indemnities set forth in Sections 4.5.3, 6.3.2 and 10.2, and the confidentiality provisions of Section 10.11 shall remain in effect with respect to Claims arising and documents and information delivered, during the ENA Negotiating Period and the Offer Period. Following execution and delivery of the DDA and DA by the City and Developer, in the event of any conflict between the provisions of this ENA and any Transaction Document approved by the City and Developer, the provisions of the Transaction Document shall for all purposes prevail.

10.11 **Confidentiality.** Except as otherwise required by law or court order, the City and Developer represent and warrant that each shall keep all information and/or reports obtained from the other, or related to or connected with the Development Parcels, the other Party, this ENA, and until presentation to the City for approval, the Transaction Documents or any other documents negotiated by the City and Developer, including but not limited to City Plans and Studies,

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 (i) to disclose any information contained in any third party reports obtained by Developer and (ii) to make disclosures to City's employees and independent contractors, including, but not limited to consultants, financial planners, outside counsel, contractors and experts as necessary in order to determine if the Project is feasible and financeable, provided such Persons are made aware the information is confidential; and (b) Developer shall have the right to make disclosures to Developer's potential capital partners and lenders, and Developer's employees, partners, members and independent contractors, including but not limited to consultants, financial planners, outside counsel, and experts as necessary in order to determine if the Project is feasible and financeable, provided such Persons are made aware the information is confidential. Developer shall not disclose such information to any of its affiliates not working on the Project. Notwithstanding the foregoing, (i) information which is or becomes in the public domain, or which is required by any law, rule or regulation to be disclosed shall not be considered confidential, and (ii) this ENA, the draft Transaction Documents and all other material relating to this ENA are subject to the provisions of the CPRA. The City's use and disclosure of its agreements and records are governed by the Act and nothing herein limits the City's right and obligation to comply with the Act or with laws mandating public notice or disclosure of public records, including without limitation, agendas, public hearings, staff reports and minutes produced in connection therewith, including, without limitation, the Ralph M. Brown Act. The City makes no representations nor warranties that writings and materials provided to or generated by the City during negotiations will be exempt from the Public Records Act; provided however that nothing in the foregoing shall relieve the City of its obligation to abide by the Confidentiality Protocols as set forth in Section 6.3 of this ENA. The provisions of this Section shall survive the termination of this ENA with respect to matters provided or disclosed during the ENA Negotiating Period and Offer Period, if any.

10.12 Governing Law/Exclusive Venue. This ENA shall be interpreted in accordance with California law. The Parties agree that in the event of litigation, exclusive venue shall be in Orange County, California.

10.13 Counterparts. This ENA 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 ENA 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 ENA by facsimile or other electronically transmitted signatures; provided, however, 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. The Parties hereby authorize each other 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 ENA.

10.14 Days; Performance of Acts on Business Days. All references to "business days" in this ENA shall mean and refer to days on which the City of Tustin City Hall is open. In the event that the final date for payment of any amount or performance of any act under this ENA falls

on a day on which the City of Tustin City Hall is closed, such payment may be made or act performed on the next succeeding day upon which the City of Tustin City Hall is open.

IN WITNESS WHEREOF, authorized signatories of the City and Developer hereto have executed this ENA as of the Effective Date.

{remainder of page is blank/signatures commence on following page}

“CITY”

CITY OF TUSTIN

Dated: 2/19/19

By: Matthew S. West
Name: Matthew S. West
Title: Acting City Manager

APPROVED AS TO FORM

By: David Kendig
David Kendig
City Attorney

Dated: 2/12/19

“DEVELOPER”

BROOKFIELD HOMES SOUTHERN CALIFORNIA LLC, a Delaware limited liability company

Dated: 2/19/19

By: Nicole B
Name: Nicole Burdette
Title: Senior Vice President

By: William B. Seith
Name: William B. Seith
Title: Secretary

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

By:  _____
Amy E. Freilich

Exhibit A

**Depiction of Development Parcels
(Site Map)**

{attached}

Exhibit A - Depiction of Development Parcels (Site Map)

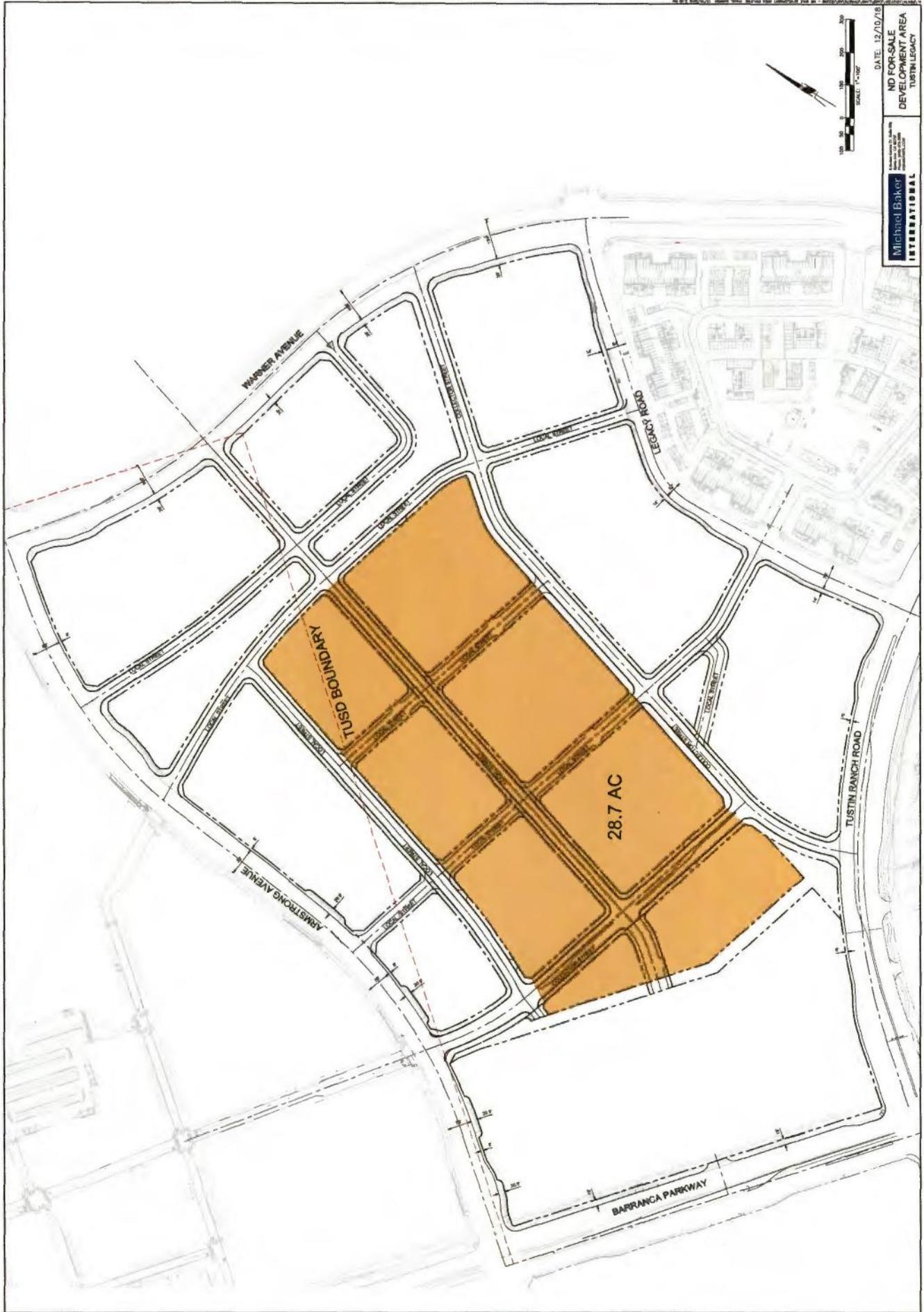


Exhibit B

Environmental Documents

1. Department of Navy "Final Environmental Baseline Survey" dated March 2001
2. Finding of Suitability to Transfer for Southern Parcels 4-8, 10-12, 14, and 42 and Parcels 25, 26, 30-33, 37, and Portions of 40 and 41 Marine Corps Air Station Tustin, California" dated September 28, 2001.
3. Agreement Between The United States of America and The City of Tustin, California for the Conveyance of a Portion of the Former Marine Corps Air Station Tustin dated May 13, 2002
4. Quitclaim Deed D and Environmental Restriction Pursuant to Civil Code Section 1471 dated May 13, 2002
5. Geotechnical Report of Observation and Testing during Rough Grading, "Neighborhood D" Phases I and II, Disposition Area 8, 2C and a Portion of 2B, Tustin Legacy, City of Tustin, California dated September 26, 2014.
6. Final Summary Report for Per-and Polyfluoroalkyl Substances Sampling at Operable Unit 3, IRP Site 1, Former Marine Corps Air Station Tustin dated April 2018
7. Final Site Assessment and Soil Removal Action Report Tustin Neighborhood D-South, Areas 1 and 2 Total Petroleum Hydrocarbon Impacts Former Marine Corps Air Station Tustin, Tustin, California dated September 2018.
8. Determination of No Further Action for Petroleum Release at Neighborhood D South at Former Marine Corps Air Station Tustin, Orange County, California dated September 10, 2018.
9. Final Summary Report for Per-and Polyfluoroalkyl Substances Presence/Absence Sampling in Groundwater in Carve-Outs 5 and 6 dated November 2018.

Exhibit C
Insurance Requirements

This Exhibit C is attached to and forms part of the ENA to which it is attached. Unless otherwise indicated, Section references in this Exhibit C are to Sections in this Exhibit C.

1. **Insurance.**

1.1. **Required Insurance.**

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

1.1.1. **Liability Insurance.** Commencing upon the effective date of the DDA, Developer shall maintain or cause to be maintained commercial general liability and automobile 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 Development Parcels, the Project and/or the improvements and the business of Developer on the Development Parcels, 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 Development Parcels, the Project and/or the improvements or related to the Project and the business of Developer on the Development Parcels, 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 policies of insurance shall be kept and maintained in full force and effect until issuance of the Certificate of Compliance, and for "claims-made" insurance policies, such insurance shall be kept and maintained, or tail insurance shall be obtained and maintained extending the reporting period under the claims-made policy for a period of at least three years from the date of issuance of the Certificate of Compliance, to cover any Claims by Persons or property resulting from any acts or omissions of Developer and/or the Developer Parties during the period in which the DDA was in effect to cover any Claims of damages suffered by Persons or property prior to issuance of the Certificate of Compliance, resulting from any acts or omissions of Developer, Developer's employees, agents, contractors, suppliers, consultants or other related parties. The amount of insurance required hereunder shall include comprehensive general liability and personal injury with limits of at least Five Million Dollars (\$5,000,000) 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. Such insurance may be provided by an umbrella insurance policy otherwise meeting the requirements of this Section 1.

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

1.1.2. Workers' Compensation Insurance. Commencing upon the effective date of the ENA, 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 the State, 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 Development Parcels carries workers' compensation insurance required by law. The insurance policy, and each renewal or replacement thereof, by endorsement approved by an authorized representative of the underwriter, shall contain a waiver of subrogation against the City, and its council members, officers, employees, attorneys and agents. The insurance provided for under this Section 1.1.2 shall be issued by a company rated B-/VIII or better or by the State Compensation Fund.

1.1.3. Builder's Risk Insurance. Commencing upon the commencement of construction by Developer of any improvements and continuing until such time as the City delivers a final Certificate of Compliance, Developer shall obtain, or shall cause its contractor to obtain, and thereafter maintain a builder's risk policy with respect to such improvements or maintain

comparable coverage through a property policy. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Building(s) and improvements. The insurance provided for under this Section 1.1.3 shall be provided by insurer(s) permitted to do business in the State and with a Best's rating of B/NR or better.

1.1.4. Environmental Insurance. From and after the Close of Escrow, Developer shall obtain and shall thereafter maintain environmental and pollution legal liability insurance coverage for the Development Parcels, including coverage for loss, remediation expense and legal defense expenses, and naming the City as a named insured to address pollution risks at the Development Parcels. The terms, policy amount and deductible for environmental insurance will be determined by the Parties in the DDA. Such policy shall include coverage relating to known pre-existing conditions and/or conditions that are discovered during development on the 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 not less than Five Million Dollars (\$5,000,000) in coverage, subject to a maximum One Million Dollar (\$1,000,000) deductible per claim, to protect against Claims from liability relating to known and unknown conditions on the Development Parcels for a period of not less than 10 years; and

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

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

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

1.2. General Insurance Requirements.

1.2.1. For all policies or certificates, the insurer endorsements (or a copy of the policy binder, if applicable) shall specifically identify the DDA and shall provide evidence that either (a) Developer has paid for its premium in full for any policy that is currently in place, or (b) that said insurance shall not be cancelled except if the City is given at least thirty (30) calendar days advance written notice of any cancellation or termination of insurance by the insurer.

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

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

1.2.4. If Developer fails or refuses to procure and maintain insurance as required by the DDA, the City shall have the right, at the City’s election, and upon ten (10) 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. The City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insurer(s).

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

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

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

2.2. “**Close of Escrow**” shall mean the close of escrow for the Development Parcels and the transfer of fee title to the Development Parcels by the City to Developer.

2.3. “**Governmental Authority**” shall mean any and all federal, State, county, municipal and local governmental and quasi-governmental bodies and authorities (including the United States of America, the State 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 Development Parcels or such portions of the foregoing as the context indicates.

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

2.5. **“State”** shall mean the State of California.