

Attachment No. PC 1

Draft Resolution

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RESOLUTION NO. PC2025-023

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, RECOMMENDING CITY COUNCIL ADOPTION OF A DEVELOPMENT AGREEMENT AND AFFORDABLE HOUSING IMPLEMENTATION PLAN FOR THE MACARTHUR COURT PROJECT LOCATED AT 4665, 4675, 4680, 4680, 4685 AND 4695 MACARTHUR COURT AND 4770 CAMPUS DRIVE (PA2025-0090)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by The Irvine Company ("Applicant"), with respect to properties located at 4665, 4675, 4680, 4685 and 4695 MacArthur Court, and 4770 Campus Drive and legally described in Exhibit "A," which is attached hereto and incorporated by reference ("Property").
2. The Applicant is requesting entitlements for the development of MacArthur Court Campus, a mixed-use campus consisting of two five-story residential buildings containing 700 residential units ("MacArthur Court Apartments"), and a 10,000-square-foot retail building. The project would also retain the two existing high rise office towers and an existing parking garage ("Project"). The Applicant requests the following approvals to vest the development rights for the Project:
 - Development Agreement ("DA") - A development agreement between the Applicant and the City, pursuant to Chapter 15.45 (Development Agreements) of the Newport Beach Municipal Code ("NBMC"), which would provide the Applicant with the vested right to develop the Project for a term of 10 years and to provide negotiated public benefits to the City; and
 - Affordable Housing Implementation Plan ("AHIP") - A preliminary plan specifying how the Project would contribute affordable housing as a public benefit, by providing affordable housing units equivalent to 7% of up to 700 market rate residential units, or up to 49 affordable housing units. The Applicant will identify an appropriate site for development of the 49 affordable units at a future date.
3. The Property is designated General Commercial Office (CO-G) by the General Plan Land Use Element and is located within the Koll Center Planned Community (PC-15) Zoning District - Office Site C.
4. The Property is not located within the coastal zone.

5. A public hearing was held on October 23, 2025, in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of the time, place, and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapters 20.62 (“Public Hearings”) of the Newport Beach Municipal Code (“NBMC”). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

Pursuant to the California Environmental Quality Act (“CEQA”) as set forth in California Public Resources Code Section 21000 *et seq.* and its implementing guidelines set forth in California Code of Regulations, Title 14, Division 6, Chapter 3 (CEQA Guidelines), the City Council adopted Resolution No. 2024-50 on July 23, 2024, certifying Final Program Environmental Impact Report SCH No. 2023060699 (“PEIR”), approving a Mitigation Monitoring and Reporting Program (MMRP), and adopting Findings and a Statement of Overriding Considerations related to the implementation of the Housing Element involving amendments to the General Plan, Coastal Land Use Plan, and Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC which are available at: [Housing Implementation Program EIR](#).

The Project is not subject to further environmental review pursuant to Section 21083.3 of the California Public Resources Code (PRC) and Section 15183 of the CEQA Guidelines because, inasmuch as the Properties involved are all within the HO-1 Subarea, the Project does not change the underlying land use or zoning designations; and would not result in new significant impacts or a substantial more adverse impact than addressed in the PEIR.

Section 15183 of the CEQA Guidelines provides, in relevant part:

- a. Projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an environmental impact report (“EIR”) was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies.
- b. In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:
 - i. Are peculiar to the project or the parcel on which the project would be located;

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- ii. Were not analyzed as significant effects in a prior EIR on the zoning action, general plan, or community plan, with which the project is consistent;
 - iii. Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action; or
 - iv. Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.
 - c. If an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, as contemplated by subdivision (e) below, then an additional EIR need not be prepared for the project solely on the basis of that impact.
 - d. This section shall limit the analysis of only those significant environmental effects for which:
 - i. Each public agency with authority to mitigate any of the significant effects on the environment identified in the EIR on the planning or zoning action undertakes or requires others to undertake mitigation measures specified in the EIR which the lead agency found to be feasible, and
 - ii. The lead agency makes a finding at a public hearing as to whether the feasible mitigation measures will be undertaken.
 - e. An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect. The finding shall be based on substantial evidence which need not include an EIR. Such development policies or standards need not apply throughout the entire city or county but can apply only within the zoning district in which the project is located, or within the area subject to the community plan on which the lead agency is relying. Moreover, such policies or standards need not be part of the general plan or any community plan but can be found within another pertinent planning document such as a zoning ordinance.

As part of its decision-making process, the City is required to review and consider whether the Project would create new significant impacts or significant impacts that would be substantially more severe than those disclosed in the PEIR. Additional CEQA review is only triggered if the Project's new significant impacts or impacts that are more severe than those disclosed in PEIR such that major revisions to the PEIR would be required. A detailed consistency analysis has been prepared by T & B Planning Inc., dated September 2025, and peer reviewed by Kimley-Horn & Associates, Inc., is provided as Exhibit "B" to this draft resolution and hereby incorporated by reference. The PEIR contemplated those future projects meeting the thresholds of Senate Bill No. 610 (SB 610) would require the preparation of a WSA. The project area is within the Irvine Ranch Water District (IRWD) service area and the PEIR concluded that water demands from future housing projects would result in a significant and unavoidable impact concerning water supply. The City, therefore, adopted a Statement of Overriding Consideration for this impact in connection with its certification of the PEIR.

The Project is consistent with the development density and use characteristics established by the City's General Plan Housing Implementation Program as analyzed by the PEIR, and the required determinations can be made, as detailed in Exhibit "B" of Attachment No. PC 1 and incorporated by reference.

SECTION 3. REQUIRED FINDINGS.

Development Agreement

Although not required pursuant to Section 15.45.020(A)(1) (Development Agreement Required) of the NBMC, a voluntary DA is requested to vest the development rights for the Project over a period of 10 years. The DA provides the content required in Section 15.45.040 (Development Agreement – Contents) of the NBMC as follows:

1. A development agreement is requested by the Applicant, as the Project would include a total of 700 residential units. The development agreement includes all the mandatory elements including a term of 10 years and public benefits that are appropriate to support conveying the vested development rights consistent with the City's General Plan, the NBMC, and Government Code Sections 65864 *et seq.*
2. Public benefits include the payment of a public benefit fee for each residential unit. In addition to the public benefit fee, the DA includes public benefits in the form of a recorded easement for one acre of open space, a MacArthur Boulevard Revitalization Fee of 3.25 million (Three Million Two Hundred Fifty Thousand) Dollars, payment of Development Impact Fees, and an affordable housing obligation in the form of an AHIP to be adopted for the development of affordable housing units.

Affordable Housing Implementation Plan

The AHIP is consistent with the intent to implement affordable housing goals within the City pursuant to the Sixth Cycle Housing Element in response to the Regional Housing Needs Assessment (“RHNA”) allocation for the following reasons:

1. The Applicant has committed to assisting the City in the provision of additional affordable housing opportunities. The location, type, affordability level, design, and other details will be determined in the future as part of a site-specific project review. The AHIP is attached as Exhibit “C” to this resolution and incorporated herein by reference.
2. The AHIP proposes the construction of 700 residential units that will be rented at market rate on the Property. The Applicant will construct new affordable housing units equal to 7% of the new market rate units constructed on the Property, or 49 affordable units. The Applicant will identify an appropriate site to develop a new affordable housing project for these 49 affordable units. The Project will facilitate the City’s efforts in attaining its Sixth Cycle RHNA mandate through the provision of market-rate and affordable units.
3. The AHIP has been prepared consistent with the provisions of Section 20.52.015 (Affordable Housing Implementation Plan) of the NBMC.

SECTION 4. DECISION.**NOW, THEREFORE, BE IT RESOLVED:**

1. In accordance with Section 21083.3 of the California Public Resources Code and Section 15183 of the CEQA Guidelines, the Project is consistent with the development density, intensity, and use characteristics established by the City’s General Plan Housing Implementation Program as analyzed by the PEIR, and the required determinations can be made, as detailed in Exhibit “D”; therefore, the Planning Commission finds that no additional environmental review is required to approve the Project.
2. The Planning Commission of the City of Newport Beach hereby recommends approval of the Project to the City Council, including: (1) the Development Agreement in compliance with Chapter 15.45 (Development Agreements) of the NBMC and California Code Section 65864 attached hereto as Exhibit “B”; and (2) the Affordable Housing Implementation Plan attached hereto as Exhibit “C.”

PASSED, APPROVED, AND ADOPTED THIS 23RD DAY OF OCTOBER, 2025.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Tristan Harris, Chair

BY: _____
Jon Langford, Secretary

Attachment(s): Exhibit A – Legal Description
 Exhibit B – Development Agreement
 Exhibit C – Affordable Housing Implementation Plan
 prepared by CAA Planning Inc. dated May 2025
 Exhibit D – CEQA Consistency Analysis prepared by T&B
 Planning Inc. dated October 2025
 Exhibit E – Conditions of Approval

EXHIBIT "A"

LEGAL DESCRIPTION

The Land referred to herein below is situated in the City of Newport Beach, County of Orange, State of California, and is described as follows:

PARCEL A:

PARCEL 1 OF PARCEL MAP NO. 84-716, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A PARCEL MAP FILED IN BOOK 196, PAGE 40 THROUGH 43 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL B:

PARCEL 1, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A PARCEL MAP FILED IN BOOK 68, PAGE 19 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL C:

PARCELS 2, 3 AND 4 OF PARCEL MAP NO. 84-716, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A PARCEL MAP FILED IN BOOK 196, PAGES 40 THROUGH 43 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APNs:

445-121-14 (Affects Parcel A)

445-121-05 (Affects Parcel B)

445-121-15 (Affects Parcel 2 of Parcel C)

445-121-16 (Affects Parcel 3 of Parcel C)

445-121-17 (Affects Parcel 4 of Parcel C)

EXHIBIT “B”

DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

THE IRVINE COMPANY LLC, a Delaware limited liability company

and

**MACARTHUR COURT I LLC,
a Delaware limited liability company**

CONCERNING

“MACARTHUR COURT”

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DEVELOPMENT AGREEMENT

(Pursuant to California Government Code sections 65864-65869.5)

This DEVELOPMENT AGREEMENT (the “Agreement”) is dated as of the ____ day of _____, 2025, and is being entered into by and between the CITY OF NEWPORT BEACH (“City”) and THE IRVINE COMPANY LLC, a Delaware limited liability company and MACARTHUR COURT I LLC, a Delaware limited liability company (each a “Property Owner” and together “Property Owners”). City and Property Owners are sometimes collectively referred to in this Agreement as the “Parties” and individually as a “Party.”

RECITALS

A. The Irvine Company LLC is the owner of that certain real property located in the City of Newport Beach, County of Orange, State of California commonly referred to as 4675, 4680 and 4695 MacArthur Boulevard (APN ## 445-121-15, -16 and -17) and MacArthur Court I LLC is the owner of that certain real property located in the City of Newport Beach, County of Orange, State of California commonly referred to as 4665 and 4685 MacArthur Boulevard and 4770 Campus Drive (APN ## 445-121-14 and 445-121-05), which together are bounded by Campus Drive to the north, MacArthur Boulevard to the west, and Birch Street to the south (collectively referred to herein as the “Property”). The Property is more particularly described in the legal description attached hereto as Exhibit A and is depicted on the site map attached hereto as Exhibit B.

B. In order to encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects in order to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code sections 65864-65869.5 (the “Development Agreement Statute”) authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

C. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled “Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code Regarding Development Agreements” (the “Development Agreement Ordinance”). This Agreement is consistent with the Development Agreement Ordinance.

D. In consideration of City entering into this Agreement, Property Owners have agreed to provide significant public benefits as detailed in this Agreement. City has determined that these public benefits to City constitute adequate consideration for City’s entering into and performing its obligations set forth in this Agreement.

E. The City Council adopted the General Plan 6th Cycle Housing Element (“Housing Element”) in September 2022 covering the planning period from 2021-2029. As required by state

law, the Housing Element was certified by the State Department of Housing and Community Development (“HCD”) in October 2022.

F. On July 23, 2024, the City Council adopted Resolution No. 2024-50 certifying the Housing Element Implementation Program Amendments Final Program Environmental Impact Report (State Clearinghouse No. 2023060699), approving a Mitigation Monitoring and Reporting Program, and adopting Findings and a Statement of Overriding Considerations and related approvals to implement the Housing Element including amendments to the General Plan, Coastal Land Use Plan, and Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code and amending the General Plan Land Use Element, Coastal Land Use Plan and Title 20 (Planning and Zoning) of the Newport Beach Municipal Code.

G. On _____, 2025, the City’s Planning Commission approved the AHIP (as defined below).

H. On _____, 2025, the City’s Planning Commission held a public hearing on this Agreement, made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.

I. On _____, 2025, the City Council also held a public hearing on this Agreement and considered the Planning Commission’s recommendations and the testimony and information submitted by City staff, Property Owners or their representatives and members of the public. On _____, 2025, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council adopted its Ordinance No. ____ (the “Adopting Ordinance”), finding this Agreement to be consistent with the City of Newport Beach General Plan in approving this Agreement.

J. In recognition of the significant public benefits that this Agreement provides, the City Council has found that this Agreement: (i) is consistent with the City of Newport Beach General Plan; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, the City’s police power; (iv) is consistent with the provisions of the California Environmental Quality Act (“CEQA”); and (v) has been approved consistent with provisions of California Government Code section 65867 and City of Newport Beach Municipal Code Chapter 15.45.

AGREEMENT

NOW, THEREFORE, City and Property Owners agree as follows:

1. Definitions.

In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

“Action” shall have the meaning ascribed in Section 8.10 of this Agreement.

“Adopting Ordinance” shall mean City Council Ordinance No. ____ approving and adopting this Agreement.

“Agreement” shall mean this Development Agreement, as the same may be amended from time to time.

“Agreement Date” shall mean the date first written above, which date is the date the City Council adopted the Adopting Ordinance.

“AHIP” shall mean the Affordable Housing Implementation Plan attached hereto as Exhibit C, as may be amended from time to time.

“CEQA” shall mean the California Environmental Quality Act (California Public Resources Code sections 21000-21177) and the implementing regulations promulgated thereunder by the Secretary for Resources (California Code of Regulations, Title 14, section 15000 *et seq.*), as the same may be amended from time to time.

“City” shall mean the City of Newport Beach, a California charter city, and any successor or assignee of the rights and obligations of the City of Newport Beach hereunder.

“City Council” shall mean the governing body of City.

“City’s Affiliated Parties” shall have the meaning ascribed in Section 10.1 of this Agreement.

“Claim” shall have the meaning ascribed in Section 10.1 of this Agreement.

“Cure Period” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Default” shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

“Develop” or “Development” shall mean to improve or the improvement of the Property, including but not limited to: grading; demolition, the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; the installation of landscaping; and subdivisions of land.

“Developer” shall mean the owner of that certain real property located in the City of Newport Beach, County of Orange, State of California commonly referred to as 4665 and 4685 MacArthur Boulevard and 4770 Campus Drive (APN ## 445-121-14 and 445-121-05).

“Development Agreement Ordinance” shall mean Chapter 15.45 of the City of Newport Beach Municipal Code.

“Development Agreement Statute” shall mean California Government Code sections 65864-65869.5, inclusive.

“Development Exactions” shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or charge in order to lessen, offset, mitigate, or compensate for the impacts of development of the Project on the environment or other public interests.

“Development Impact Fee” shall mean the development impact fee adopted by the City on November 12, 2024, pursuant to Resolution No. 2024-83.

“Development Plan” shall mean all of the land use entitlements, approvals and permits approved by the City for the Project on or before the Agreement Date, as the same may be amended or expanded from time to time consistent with this Agreement. Such land use entitlements, approvals and permits include, without limitation, the following: (1) the Development rights as provided under this Agreement; (2) the AHIP; and (3) all conditions of approval and all mitigation measures approved for the Project on or before the Agreement Date.

“Development Regulations” shall mean the following regulations as they are in effect as of the Agreement Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Agreement Date that impairs or restricts Property Owners’ rights set forth in this Agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by Property Owners in writing: the General Plan; the Development Plan; and, to the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions), and Title 20 of the Municipal Code (planning and zoning). Notwithstanding the foregoing, the term “Development Regulations,” as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; or (v) the exercise of the power of eminent domain.

“Effective Date” shall mean the latest of all of the following occurring: (i) the date that is thirty (30) days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is certified resulting in upholding and approving the Adopting Ordinance and such Development Regulations and

becomes effective, if applicable; (iii) if a lawsuit is timely filed challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or the AHIP, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, and/or the AHIP, whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement. Promptly after the Effective Date occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date.

“General Plan” shall mean City’s 2006 General Plan adopted by the City Council on July 25, 2006, by Resolution No. 2006-76, as amended by Resolution No. 2022-60, Resolution No. 2022-80, Resolution No. 2024-51, and any other amendments through the Agreement Date but excluding any amendment after the Agreement Date that impairs or restricts a Property Owner’s rights set forth in this Agreement, unless such amendment is expressly authorized by this Agreement, is authorized by Sections 8 or 9, or is specifically agreed to by such Property Owner.

“MacArthur Boulevard Street Revitalization” shall mean improvements to the public right of way that City may undertake on and along MacArthur Boulevard between [____] and [____].

“Mortgage” shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

“Mortgagee” shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

“Notice of Default” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Party” shall mean either City or one or both Property Owners as determined by the context.

“Parties” shall mean City and one or both Property Owners as determined by the context.

“Project” shall mean the development of up to 700 residential units and 10,000 square feet of retail and/or restaurant space, including all on-site and off-site improvements related thereto, that Property Owners are authorized to construct with respect to each parcel of the Property, as provided in this Agreement and the Development Regulations, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

“Property” is described in Exhibit A and depicted on Exhibit B.

“Property Owner” shall mean The Irvine Company LLC or MacArthur Court I LLC or the applicable successor or assignee to all or any portion of the rights, title, and interest in and to ownership of all or a portion of the Property, as determined by the context.

“Property Owners” shall mean The Irvine Company LLC and MacArthur Court I LLC and any successor or assignee to all or any portion of the rights, title, and interest in and to ownership of all or a portion of the Property.

“Public Benefit Fee” shall have the meaning ascribed in Section 3.1 of this Agreement.

“Subsequent Development Approvals” shall mean all discretionary development and building approvals that Property Owners are required to obtain to Develop the Project on and with respect to the Property after the Agreement Date consistent with the Development Regulations and this Agreement.

“Term” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Termination Date” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Transfer” shall have the meaning ascribed in Section 11 of this Agreement.

2. General Provisions.

2.1 Plan Consistency, Zoning Implementation.

This Agreement, the Development Plan and the Development Regulations applicable to the Property are consistent with the City’s zoning and the General Plan.

2.2 Binding Effect of Agreement.

The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

2.3 Property Owner Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement.

Each Property Owner for itself, and each person executing this Agreement on behalf of a Property Owner, hereby represents and warrants to City as follows: (i) that Property Owner is owner of the fee simple title to the Property or portion thereof as set forth in Recital A of this Agreement; (ii) that Property Owner is duly formed and existing and is authorized to do business in the State of California; (iii) that all actions required to be taken by all persons and entities comprising Property Owner to enter into this Agreement have been taken and that Property Owner has the legal authority to enter into this Agreement; (iv) that Property Owner’s entering into and performing its obligations set forth in this Agreement will not result in a violation of any obligation, contractual or otherwise, that Property Owner or any person or entity comprising Property Owner has to any third party; (v) that neither Property Owner nor any co-owner comprising Property Owner is the subject of any voluntary or involuntary bankruptcy or insolvency petition; and (vi) that Property Owner has no actual knowledge of any pending or threatened claims of any person or entity affecting the validity of any of the representations and

warranties set forth in clauses (i)-(vi), inclusive, or affecting Property Owner's authority or ability to enter into or perform any of its obligations set forth in this Agreement.

2.4 Term.

The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue for a period of ten (10) years after the Effective Date unless otherwise terminated or modified pursuant to the terms of this Agreement or the mutual written agreement of the Parties hereto.

The Termination Date shall be the earliest of the following dates: (i) the tenth (10th) anniversary of the Effective Date; or (ii) such earlier date that this Agreement is terminated in accordance with Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other Property Owners' obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

3. Public Benefits.

3.1 Public Benefit Fee.

As consideration for City's approval and performance of its obligations set forth in this Agreement, the Developer undertaking the Development of any of the 700 residential units shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Public Benefit Fee") in the sum of \$17,000 per unit payable at the issuance of the respective building permit for any of the 700 residential units that are issued a building permit on or after July 1, 2028. Development of all or a portion of the 700 residential units on the Property shall not be subject to a Public Benefit Fee for any units that are issued a building permit for such residential units before July 1, 2028. Developer acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the applicable Public Benefit Fee if and when it undertakes Development of any of the 700 residential units, that its obligation to pay the Public Benefit Fee for each residential unit it Develops is an essential term of this Agreement and is not severable from City's obligations and Developer's vesting rights to be acquired hereunder, and that Developer expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise.

3.2 Other Public Benefits. In addition to the Public Benefit Fee, the direct and indirect benefits the City shall receive pursuant to this Development Agreement are as follows:

3.2.1 Open Space. Prior to the issuance of the final certificate of occupancy for the 700 residential units of the Project, Developer shall record an easement for a 1.0-acre publicly accessible, but privately owned and maintained, area of open space within the Property. The provision of the publicly accessible open space pursuant to this Section 3.2.1 is in-lieu of any park fee or dedication that would otherwise be applicable to the Project, including as may be required pursuant to the Newport Beach Municipal Code or any other Development Regulation.

3.2.2 MacArthur Boulevard Revitalization Fee. Developer shall provide funding in the amount of Three Million Two Hundred Fifty Thousand Dollars and 00/100 (\$3,250,000.00) to the City for the MacArthur Boulevard Street Revitalization work to be completed by the City, to be paid at the issuance of the first building permit for all or any portion of the 700 residential units on the Property. If Property Owners do not develop all 700 residential units prior to the expiration of this Agreement, then City agrees that Developer shall receive a credit for a portion of the MacArthur Boulevard Revitalization Fee (determined on a pro rata basis based on residential units remaining to be developed) that Developer or its designated affiliate(s) may apply against any Development Impact Fee required for development in the City, which credit shall survive the termination of this Agreement.

3.2.3 Development Impact Fee. The Developer undertaking the Development of any of the 700 residential units on the Property shall pay the applicable Development Impact Fee at the issuance of the respective building permit for any of the 700 residential units.

3.2.4 Affordable Housing Obligation. The Parties agree that Developer's compliance with the AHIP satisfies any obligation of Property Owners to the City with respect to the provision of affordable housing for the Project or the Property pursuant to and during the Term of this Agreement. The adopted AHIP may be amended by the mutual consent of the Parties without requiring an amendment to this Agreement.

4. Development of Project.

4.1 Applicable Regulations; Property Owner's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals.

Other than as expressly set forth in this Agreement, during the Term of this Agreement, (i) Property Owners shall have the vested right to Develop the Project, including without limitation, permitted uses, density and intensity of use, the maximum height, size and location of proposed structures, on and with respect to the Property in accordance with the terms of the Development Plan, Development Regulations and this Agreement and (ii) City shall not prohibit, prevent, restrict or condition Development of the Property on grounds inconsistent with the Development Plan, Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict City's discretion with respect to (i) review and approval requirements contained in the Development Regulations, (ii) the approval, conditional approval, or denial of any Subsequent Development Approvals that are required for Development of the Project as of the

Agreement Date, or (iii) any environmental approvals that may be required under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions referred to in clauses (i)-(iii) of this sentence, City reserves its full discretion; provided, however, that consistent with Government Code section 65865.2, any conditions, terms, restrictions, and requirements for Subsequent Development Approvals shall not limit or restrict development of the permitted uses, density and intensity of use, including without limitation the 700 residential units, or the maximum height, size and location of proposed structures, or require dedications of land, Development Impact Fees, park fees or dedications, affordable housing obligations, or other Development Exactions other than as provided for in the Development Plan, Development Regulations or this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest Property Owners' rights with respect to any laws, regulations, rules, or official policies of any other governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the provisions set forth in this Agreement, and regardless of whether such overriding or superseding laws, regulations, rules, or official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date.

Property Owners have expended and will continue to expend substantial amounts of time and money planning and preparing for Development of the Project. Property Owners represent and City acknowledges that Property Owners would not make these expenditures without this Agreement, and that Property Owners are and will be making these expenditures in reasonable reliance upon their vested rights to Develop the Project as set forth in this Agreement.

During the Term of this Agreement, except to the extent City reserves its discretion as expressly set forth in this Agreement or in the applicable Development Regulations, Property Owners shall have the vested right to exercise their discretion within the limits and constraints of the Development Regulations in designing any buildings, structures, streets, sidewalks, buildings and development within the Property. City shall not exercise or require any design review approval for Property Owners' use of the Property unless expressly set forth in the Development Regulations. Subject to review for completeness, City shall accept for processing and shall timely review and act on all applications for further land use approvals with respect to the Project called for or required under this Agreement. Any subsequent approvals or permits, including without limitation site development review or parcel or tract maps shall upon approval by the City and written concurrence of the applicable Property Owners be vested in the same manner as provided in this Agreement for the Development Regulations, and shall be a part of and included in the Development Plan without requiring an amendment of this Agreement.

4.2 No Conflicting Enactments.

Except to the extent City reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement, City shall not apply to the Project or the Property any ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Agreement Date to the extent it conflicts with this

Agreement. This Section 4.2 shall not restrict the City's ability to enact an ordinance, policy, rule, regulation, or other measure applicable to the Project pursuant to California Government Code Section 65866 consistent with the procedures specified in Section 4.3 of this Agreement. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance even though the city and construction company had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property consistent with the zoning. The California Supreme Court reached this result because the consent judgment failed to address the timing of development. The Parties intend to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that Property Owners shall have the vested right to Develop the Project on and with respect to the Property at the rate, timing, and sequencing that Property Owners deem appropriate within the exercise of Property Owners' sole subjective business judgment, provided that such Development occurs in accordance with this Agreement and the Development Regulations, notwithstanding adoption by City's electorate of an initiative to the contrary after the Effective Date. No City moratorium or other similar limitation relating to the rate, timing, or sequencing of the Development of all or any part of the Project and whether enacted by initiative or another method, affecting subdivision maps, building permits, occupancy certificates, or other entitlement to use, shall apply to the Project to the extent such moratorium or other similar limitation restricts Property Owners' vested rights in this Agreement or otherwise conflicts with the express provisions of this Agreement. Nothing herein shall obligate Property Owners to Develop the Project.

4.3 Reservations of Authority.

Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 4.3 shall apply to and govern the Development of the Project on and with respect to the Property.

4.3.1 Procedural Regulations. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property, provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

4.3.2 Processing and Permit Fees. City shall have the right to charge, and the respective Property Owners shall be required to pay, all applicable processing and permit fees to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of such Property Owner, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

4.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the

Development Regulations, or with respect to such regulations that do conflict, where Property Owners have consented in writing to the regulations, shall apply to the Property.

4.3.4 Development Exactions Applicable to Property. During the Term of this Agreement, Developer shall be required to satisfy and pay the Public Benefit Fee (Section 3.1), provision of open space (Section 3.2.1), MacArthur Boulevard Revitalization Fee (Section 3.2.2), Development Impact Fee (Section 3.2.3), and affordable housing obligations (Section 3.2.4) as set forth in this Agreement, and any applicable traffic fees required pursuant to the Fair Share Traffic Contribution Ordinance (Chapter 15.38 of the City’s Municipal Code) and the Traffic Phasing Ordinance (Chapter 15.40 of the City’s Municipal Code) at the time performance or payment of any such fees are due as set forth in the Fair Share Traffic Contribution Ordinance and Traffic Phasing Ordinance. Other than the foregoing, Property Owners shall not be required to pay any Development Exaction for the Project and City shall not alter, increase, or modify any Public Benefits or Development Exactions required under this Agreement in a manner that is inconsistent with the Development Plan, Development Regulations or this Agreement without Property Owners’ prior written consent or as may be otherwise required pursuant to overriding federal or state laws or regulations (Section 4.3.5 hereinbelow). In addition, nothing in this Agreement is intended or shall be deemed to vest Property Owners against the obligation to pay any of the following (which are not included within the definition of “Development Exactions”) in the amount that would apply in the absence of this Agreement: (i) City’s normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City’s costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; or (iii) community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, transient occupancy taxes, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the Property Development Tax payable under Section 3.12 of City’s Municipal Code.

4.3.5 Overriding Federal and State Laws and Regulations. Federal and state laws and regulations that override Property Owners’ vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) Property Owners do not waive their right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or enabling City law or regulation that prevents or precludes compliance with any provision of this Agreement, City or Property Owner shall provide to the other Parties a written notice identifying the federal, state, or enabling City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter City and Property Owners shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or enabling City law or regulation. In such

negotiations, City and Property Owners agree to preserve the terms of this Agreement and the rights of Property Owners as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Property Owners at no cost to City in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Property Owners. City also agrees to process in a prompt manner a Property Owner's proposed changes to the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or enabling City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

4.3.6 Public Health and Safety. Any City ordinance, resolution, rule, regulation, program, or official policy that is necessary to protect persons on the Property or in the immediate vicinity from conditions dangerous to their health or safety, as reasonably determined by City, shall apply to the Property, even though the application of the ordinance, resolution, rule regulation, program, or official policy would result in the impairment of Property Owners' vested rights under this Agreement.

4.3.7 Uniform Building Standards. Existing and future building and building-related standards set forth in the uniform codes adopted and amended by City from time to time, including building, plumbing, mechanical, electrical, housing, swimming pool, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Property to the same extent that the same would apply in the absence of this Agreement.

4.3.8 Public Works Improvements. To the extent a Property Owner constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

4.3.9 No Guarantee or Reservation of Utility Capacity. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing in this Agreement is intended or shall be interpreted to require City to guarantee or reserve to or for the benefit of Property Owners or the Property any utility capacity, service, or facilities that may be needed to serve the Project, whether domestic or reclaimed water service, sanitary sewer transmission or wastewater treatment capacity, downstream drainage capacity, or otherwise, and City shall have the right to limit or restrict Development of the Project if and to the extent that City reasonably determines that inadequate utility capacity exists to adequately serve the Project at the time Development is scheduled to commence. Notwithstanding the foregoing, City covenants to provide utility services to the Project on a non-discriminatory basis (i.e., on the same terms and conditions that City undertakes to provide such services to other similarly situated new developments in the City of Newport Beach as and when service connections are provided and service commences). Notwithstanding the foregoing, if, as a result of City action or inaction and after a Property Owner has paid a Public Benefit Fee or Development Exaction, sufficient utility capacity or service is not available to allow building permits and/or certificates of occupancy to be issued for construction or occupancy of the residential units authorized for development under this Agreement, City shall

refund to the applicable Property Owner any such fees paid by such Property Owner for units for which building permits and/or certificates of occupancy are not available.

4.4 Tentative Subdivision Maps.

City agrees that Property Owners may file and process new and existing tentative subdivision maps for the Property consistent with California Government Code sections 66498.1-66498.9 and City of Newport Beach Municipal Code Chapter 19.20. Pursuant to the applicable provision of the California Subdivision Map Act (California Government Code section 66452.6(a)), the life of any tentative subdivision map approved for the Property, whether designated a “vesting tentative map,” or otherwise, shall be extended for the Term of this Agreement.

5. Amendment or Cancellation of Agreement.

Other than modifications of this Agreement under Section 8.3 and 8.4 of this Agreement, this Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code section 65868 and City of Newport Beach Municipal Code section 15.45.070.

6. Enforcement.

Unless this Agreement is amended, canceled, modified, or suspended as authorized herein or pursuant to California Government Code section 65869.5, this Agreement shall be enforceable by either Party despite any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City’s electorate) that purports to apply to any or all of the Property.

7. Annual Review of Property Owner’s Compliance With Agreement.

7.1 General.

City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code section 65865.1. Developer shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review. City’s failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

7.2 Property Owner Obligation to Demonstrate Good Faith Compliance.

During each annual review by City, Property Owners are required to demonstrate good faith compliance with the terms of the Agreement. Each Property Owner agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) days prior to each anniversary of the Effective Date during the Term; provided, however, that the evidence may be provided in one submittal for all Property Owners.

7.3 Procedure.

The City shall conduct a review of whether or not each Property Owner has, for the period under review, complied with the terms of this Agreement, as provided for in the Newport Beach Municipal Code. If the City finds that Property Owners have so complied, the annual review shall be concluded. If the City finds, on the basis of substantial evidence, that a Property Owner has not so complied, written notice shall be sent to such Property Owner by first class mail of the City's finding of non-compliance, and Property Owners shall be given at thirty (30) days to cure any noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) days for reasons which are beyond the control of the Property Owner, such Property Owner must commence the cure within such thirty (30) days and diligently pursue such cure to completion. If such Property Owner fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

7.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of Property Owner's Default.

The annual review procedures set forth in this Section 7 shall not be the exclusive means for City to identify a Default by a Property Owner or limit City's rights or remedies for any such Default.

8. Events of Default.

8.1 General Provisions.

In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall have the right to deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (thirty (30) days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than sixty (60) days in the event of non-monetary Defaults) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than sixty (60) days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion.

8.2 Default by Property Owner.

If a Property Owner is alleged to be in Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within (30) thirty days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider such Property Owner's appeal of the Notice of Default. Failure to

appeal a Notice of Default to the City Council within the thirty (30) business day period shall waive any right to a hearing on the claimed Default. If Property Owner's appeal of the Notice of Default is timely and in good faith but after a public hearing of Property Owner's appeal the City Council concludes that such Property Owner is in Default as alleged in the Notice of Default, the accrual date for commencement of the sixty (60) day Cure Period provided in Section 8.1 shall be extended until the City Council's denial of Property Owner's appeal is communicated to Property Owner in writing. Notwithstanding any provision of this Agreement, no Property Owner shall be liable under this Agreement for a Default by any other Property Owner with respect to the defaulting Property Owner's Property, such that Default by one Property Owner shall not be considered a default by all Property Owners.

8.3 City's Option to Terminate Agreement.

In the event of an alleged Property Owner Default, City may not terminate this Agreement as to such Property Owner without first delivering a written Notice of Default and providing such Property Owner with the opportunity to cure the Default within the Cure Period, as provided in Section 8.1, and complying with Section 8.2 if the Property Owner timely appeals any Notice of Default. A termination of this Agreement by City shall be valid if good cause exists and is supported by evidence presented to the City Council at or in connection with a duly noticed public hearing to establish the existence of a Default and then only as to the Property Owner in Default. The validity of any termination may be judicially challenged by Property Owner. Any such judicial challenge must be brought within ninety (90) calendar days of service on Property Owner, by first class mail, postage prepaid, of written notice of termination by City or a written notice of City's determination of an appeal of the Notice of Default as provided in Section 8.2. Any partial termination of this Agreement as it relates to one Property Owner shall not affect the remaining entirety of this Agreement.

8.4 Default by City.

If a Property Owner alleges a City Default and alleges that the City has not cured the Default within the Cure Period, such Property Owner may (i) pursue any equitable remedy available to it under this Agreement, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific performance of City's obligations set forth in this Agreement, (ii) seek a modification of this Agreement and/or (iii) withhold any payments that might be otherwise due to City under this Agreement. Upon a City Default, any resulting delays in a Property Owner's performance hereunder shall neither be a Property Owner Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at Property Owner's option (and provided Property Owner delivers written notice to City within thirty (30) days of the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

8.5 Waiver.

Failure or delay by a Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

8.6 Specific Performance Remedy.

Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, Property Owners and City may be foreclosed from other choices they may have had to plan for the development of the Property, to utilize the Property or provide for other benefits and alternatives. Property Owners and City have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate Property Owners or City for such efforts. For the above reasons, Property Owners and City agree that damages would not be an adequate remedy if either City or a Property Owner fails to carry out its obligations under this Agreement. Therefore, specific performance of this Agreement is necessary to compensate Property Owners if City fails to carry out its obligations under this Agreement or to compensate City if a Property Owner fails to carry out its obligations under this Agreement.

8.7 Monetary Damages.

The Parties agree that monetary damages shall not be an available remedy for either Party for a Default hereunder by the other Party; provided, however, that (i) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict City's right to recover the Public Benefit Fees due from Developer as set forth herein; (ii) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict Property Owner's indemnity obligations set forth in Article 10 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in Section 8.10 and (iii) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict Developer's right to recover repayment of Public Benefit Fees or any Development Exaction as set forth in Section 4.3.9.

8.8 Additional City Remedy for Property Owner's Default.

Except as required by Section 4.3.9, in the event of any Default by a Property Owner, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to receive and retain any Development Exactions applicable to the Project or the Property, including any fees, grants, dedications, or improvements to public property which it may have received from such Property Owner prior to Property Owner's Default without recourse from Property Owner or its successors or assigns.

8.9 No Personal Liability of City Officials, Employees, or Agents.

No City official, employee, or agent shall have any personal liability hereunder for a Default by City of any of its obligations set forth in this Agreement.

8.10 Recovery of Legal Expenses by Prevailing Party in Any Action.

In any judicial proceeding, arbitration, or mediation (collectively, an “Action”) between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall recover all of its actual and reasonable costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include court costs, expert witness fees, attorneys’ fees, and costs of investigation and preparation before initiation of the Action. The right to recover these costs and expenses shall accrue upon initiation of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

9. Force Majeure.

No Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person (other than another Party). In no event shall the occurrence of an event of force majeure operate to extend the Term of this Agreement. In addition, in no event shall the time for performance of a monetary obligation, including without limitation Developer’s obligation to pay Public Benefit Fees, be extended pursuant to this Section.

10. Indemnity Obligations.

10.1 Indemnity Arising From Acts or Omissions of Property Owner.

Except to the extent caused by the intentional misconduct or negligent acts, errors or omissions of City or one or more of City’s officials, employees, agents, attorneys, and contractors (collectively, the “City’s Affiliated Parties”), each Property Owner on its own behalf agrees to indemnify, defend, and hold harmless City and City’s Affiliated Parties from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to reasonable attorneys’ fees and costs) (collectively, a “Claim”) that may arise, directly or indirectly, from the acts, omissions, or operations of such Property Owner or its agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of such Property Owner pursuant to this Agreement. City shall have the right to select and retain counsel to defend any Claim filed against City and/or any of City’s Affiliated Parties, and the indemnifying Property Owner shall pay the reasonable cost for defense of any Claim. The indemnity provisions in this Section 10.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.2 Third Party Litigation.

In addition to its indemnity obligations set forth in Section 10.1, Developer shall indemnify, defend, and hold harmless City and City’s Affiliated Parties from and against any

Claim against City or City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Plan for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of reasonable attorney's fees, expert witness fees, and court costs. City shall promptly notify Developer of any such Claim and City shall cooperate with Developer in the defense of such Claim. If City fails to promptly notify Developer of such Claim, Developer shall not be responsible to indemnify, defend, and hold City harmless from such Claim until Developer is so notified and if City fails to cooperate in the defense of a Claim Developer shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel to represent City against the Claim and the City's defense costs for its separate counsel shall be included in Developer's indemnity obligation, provided that such counsel shall reasonably cooperate with Developer in an effort to minimize the total litigation expenses incurred by Developer. In the event either City or Developer recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, Developer shall be entitled to retain the same (provided they have fully performed their indemnity obligations hereunder). The indemnity provisions in this Section 10.2 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

11. Assignment.

Each Property Owner shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") such Property Owner's interest in or fee title to the Property, in whole or in part, to a Permitted Transferee (which successor, as of the effective date of the Transfer, shall become a "Property Owner" under this Agreement) at any time from the Agreement Date until the Termination Date without the consent or approval of City; provided, however, that no such Transfer shall violate the provisions of the Subdivision Map Act (Government Code Section 66410 et seq.) or City's local subdivision ordinance. Any Transfer shall include the assignment and assumption of the transferring Property Owner's rights, duties, and obligations set forth in or arising under this Agreement as to the Property or the portion thereof so Transferred and shall be made in strict compliance with the following conditions: (i) no Transfer of any of Property Owner's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of Property Owner's interest in the Property; and (ii) upon the effective date of any proposed Transfer, the transferring Property Owner (as transferor) shall notify City, in writing, of such Transfer and deliver to City a written assignment and assumption, by the transferring and successor Property Owner, pursuant to which the transferring Property Owner or assigns to the successor Property Owner and the successor Property Owner assumes from the transferring Property Owner all of the rights and obligations of the transferring Property Owner with respect to the Property, or interest in the Property, or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed that are a condition precedent to the successor Property Owner's right to develop the portion of the Property so Transferred. Any Permitted Transferee shall have all of the same rights, benefits, duties, obligations, and liabilities of Property Owner under this Agreement with respect to the portion of, or interest in, the Property sold, transferred, and assigned to such Permitted

Transferee; provided, however, that in the event of a Transfer of less than all of the Property, or interest in the Property, no such Permitted Transferee shall have the right to enter into an amendment of this Agreement that jeopardizes or impairs the rights or increases the obligations of the other Property Owners with respect to the balance of the Property.

Notwithstanding any Transfer, the transferring Property Owner shall continue to be jointly and severally liable to City, together with the successor Property Owner, to perform all of the transferred obligations set forth in or arising under this Agreement unless there is full satisfaction of all of the following conditions, in which event the transferring Property Owner shall be automatically released from any and all obligations with respect to the portion of the Property so Transferred: (i) the transferring Property Owner no longer has a legal or equitable interest in the portion of the Property so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring Property Owner is not then in Default under this Agreement; and (iii) the transferring Property Owner has provided City with the notice and the fully executed written and assignment and assumption agreement required as set forth in the first paragraph of this Section 11.

12. Mortgagee Rights.

12.1 Encumbrances on Property.

The Parties agree that this Agreement shall not prevent or limit Property Owners in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

12.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property or part of the Property by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Property or any part of the Property shall be entitled to the benefits arising under this Agreement.

12.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section 12.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of Property Owners or other affirmative covenants of Property Owners, or to guarantee this performance except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be performed by Property Owner is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

12.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in section 7 of this Agreement, and (ii) any default by the Property Owner subject to the Mortgage of its obligations set forth in this Agreement.

Each Mortgagee shall have a further right, but not an obligation, to cure the Default of a Property Owner subject to the Mortgage within thirty (30) days after receiving a Notice of Default with respect to a monetary Default and within sixty (60) days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Property or applicable portion thereof, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within sixty (60) days after obtaining possession and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of the sixty (60)-day period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within sixty (60) days, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within sixty (60) days and diligently prosecutes the cure to completion.

13. Miscellaneous Terms.

13.1 Notices.

Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail, certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY:

City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92660
Attn: City Manager

With a copy to:

City Attorney
City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92660

TO IRVINE COMPANY LLC: 550 Newport Center Drive
Newport Beach, California 92660
Attn: General Counsel

TO MACARTHUR COURT I 550 Newport Center Drive
LLC: Newport Beach, California 92660
Attn: General Counsel

With a copy to: Latham & Watkins LLP
10250 Constellation Boulevard, Suite 1100
Century City, California 90067
Attn: Maria Hoye

Any Party may change the address stated in this Section 13.1 by delivering notice to the other Parties in the manner provided in this Section 13.1, and thereafter notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.

13.2 Project as Private Undertaking.

The Development of the Project is a private undertaking. No Party is acting as the agent of the other in any respect, and each Party is an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner of the property.

13.3 Cooperation.

Each Party shall cooperate with and provide reasonable assistance to the other Parties to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Parties shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

13.4 Estoppel Certificates.

At any time, either City or any Property Owner may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting

Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) days following receipt.

13.5 Rules of Construction.

The singular includes the plural; the masculine and neuter include the feminine; “shall” is mandatory; and “may” is permissive.

13.6 Time Is of the Essence.

Time is of the essence regarding each provision of this Agreement as to which time is an element.

13.7 Waiver.

The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party’s right to demand strict compliance by the other Party in the future.

13.8 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one and the same agreement.

13.9 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement.

13.10 Severability.

The Parties intend that each and every obligation of the Parties is interdependent and interrelated with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that neither Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the

generality of the foregoing, the Parties intend that a Property Owner shall not receive any of the benefits of this Agreement if such Property Owner's obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to such Property Owner and its Property and such Property Owner shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of Property Owner's obligations under this Agreement. The provisions of this Section 13.10 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

13.11 Construction.

This Agreement has been drafted after extensive negotiation and revision. City and Property Owners are sophisticated parties who were represented by independent counsel throughout the negotiations or City and Property Owners had the opportunity to be so represented and voluntarily chose to not be so represented. City and Property Owners each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning, and no principle or presumption of contract construction or interpretation shall be used to construe the whole or any part of this Agreement in favor of or against either Party.

13.12 Successors and Assigns; Constructive Notice and Acceptance.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all subsequent owners of all or any portion of the Property and their respective transferees, successors and assigns. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property or portion thereof: (i) is for the benefit of and is a burden upon such portion of the Property; (ii) runs with the Property and such portion thereof; and (iii) is binding upon each Party and each successor in interest during its ownership of the Property or any portion thereof. Every person or entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every applicable provision of this Agreement. This Section 13.12 applies regardless of whether the instrument by which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Section 11.

13.13 No Third Party Beneficiaries.

The only Parties to this Agreement are City and Property Owners. This Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

13.14 Applicable Law and Venue.

This Agreement shall be construed and enforced consistent with the internal laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

13.15 Section Headings.

All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

13.16 Incorporation of Recitals and Exhibits.

All of the Recitals are incorporated into this Agreement by this reference. Exhibits A and B are attached to this Agreement and incorporated by this reference as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B	Depiction of the Property
C	Affordable Housing Implementation Plan

13.17 Recordation.

The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.090. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

[Signature page follows]

SIGNATURE PAGE TO DEVELOPMENT AGREEMENT

“PROPERTY OWNERS”

The Irvine Company LLC,
a Delaware limited liability company

By: _____

By: _____

MacArthur Court I LLC,
a Delaware limited liability company

By: _____

By: _____

“CITY”

CITY OF NEWPORT BEACH

By: _____
 _____, Mayor

ATTEST:

Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

Aaron Harp, City Attorney

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

State of California)
County of Orange)

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

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

WITNESS my hand and official seal.

Signature _____

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

State of California)
County of Orange)

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The Land referred to herein below is situated in the City of Newport Beach, County of Orange, State of California, and is described as follows:

PARCEL A:

PARCEL 1 OF PARCEL MAP NO. 84-716, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A PARCEL MAP FILED IN BOOK 196, PAGE 40 THROUGH 43 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL B:

PARCEL 1, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A PARCEL MAP FILED IN BOOK 68, PAGE 19 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL C:

PARCELS 2, 3 AND 4 OF PARCEL MAP NO. 84-716, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A PARCEL MAP FILED IN BOOK 196, PAGES 40 THROUGH 43 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APNs:

445-121-14 (Affects Parcel A)

445-121-05 (Affects Parcel B)

445-121-15 (Affects Parcel 2 of Parcel C)

445-121-16 (Affects Parcel 3 of Parcel C)

445-121-17 (Affects Parcel 4 of Parcel C)

EXHIBIT B
DEPICTION OF PROPERTY

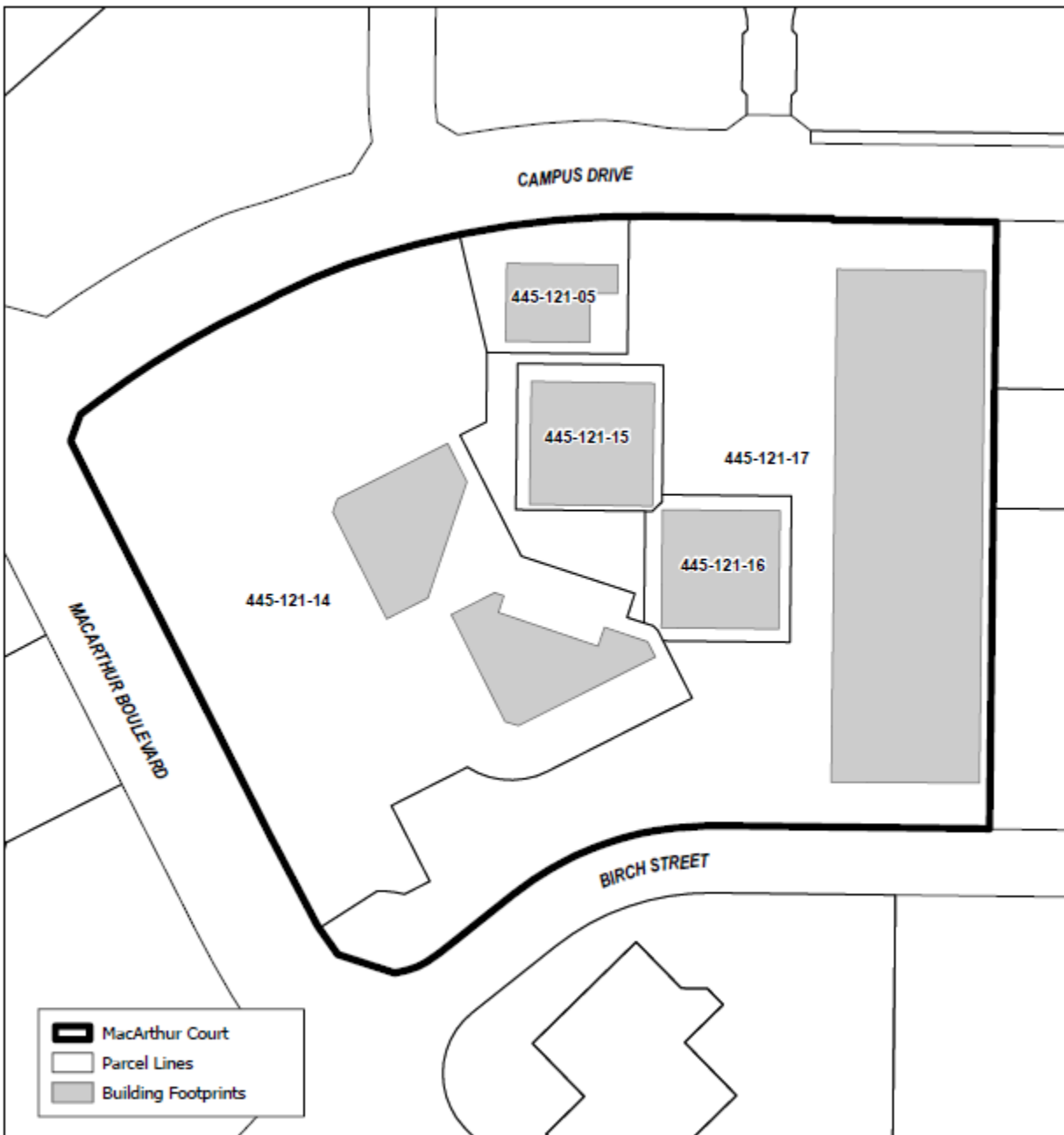


EXHIBIT “C”

AFFORDABLE HOUSING IMPLEMENTATION PLAN (AHIP) PREPARED BY CAA
PLANNING INC. DATED SEPTEMBER 2025

MACARTHUR COURT

AFFORDABLE HOUSING IMPLEMENTATION PLAN

**Prepared For:
The City of Newport Beach**

September 2025

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I. Introduction

The MacArthur Court project approval by the City of Newport Beach will implement the goals and policies of the City's General Plan. With the project, MacArthur Court, as shown on Exhibit 1, will consist of a mixed-use office and residential community with retail located at the strategic intersection of MacArthur Boulevard and Campus Drive in the City's Airport Area, a regional center comprised of professional office, residential, retail, recreation and hotel uses in proximity to John Wayne Airport. The subject property is located within the HO-1 subarea (Airport Area Environs Area) as identified in Newport Beach Municipal Code Sections 20.80.025 (Housing Opportunity Overlay Zoning Districts maps) and 20.28.050 (Housing Opportunity (HO) Overlay Zoning Districts) including 4665, 4675, 4680, 4685, and 4695 MacArthur Court and 4770 Campus Drive.

With the project, a total of 700 residential units may be developed on MacArthur Court. The City has not adopted an inclusionary housing policy. However, the City is encouraging new residential development projects to provide affordable housing. This Affordable Housing Implementation Plan (AHIP) outlines how affordable housing will be provided relative to the 700 new residential units allowed at MacArthur Court.

Background

On September 13, 2022, the Newport Beach City Council adopted the 6th Cycle Housing Element for the 2021-2029 planning cycle in response to the Regional Housing Needs Assessment (RHNA) allocation. The Housing Element identifies moderate income households as those with annual incomes between 81% and 120% of the County median household income. Low-income households are those with annual incomes between 51% and 80% of the County median household income. Very-low income households are those with annual incomes between 31% and 50% of the County median household income. Extremely low-income households are those with annual incomes of 30% or less of the County median household income. While the Housing Element does not require an AHIP, this document has been prepared to outline how the development will meet the City's affordable housing goal.

The Southern California Association of Governments (SCAG) prepares the state-mandated RHNA. The RHNA quantifies the need for housing within each jurisdiction during specified planning periods. The City's General Plan Housing Element must include its "fair share" regional housing needs allocation for all income groups which must be updated periodically. The most recently published SCAG RHNA identifies the City allocation as follows:

- Total allocation between 10/15/2021 and 10/15/2029 – 4,845 units
- Very-low income allocation – 30% (1,456 units)
- Low-income allocation – 19% (930 units)
- Moderate-income allocation – 22% (1,050 units)

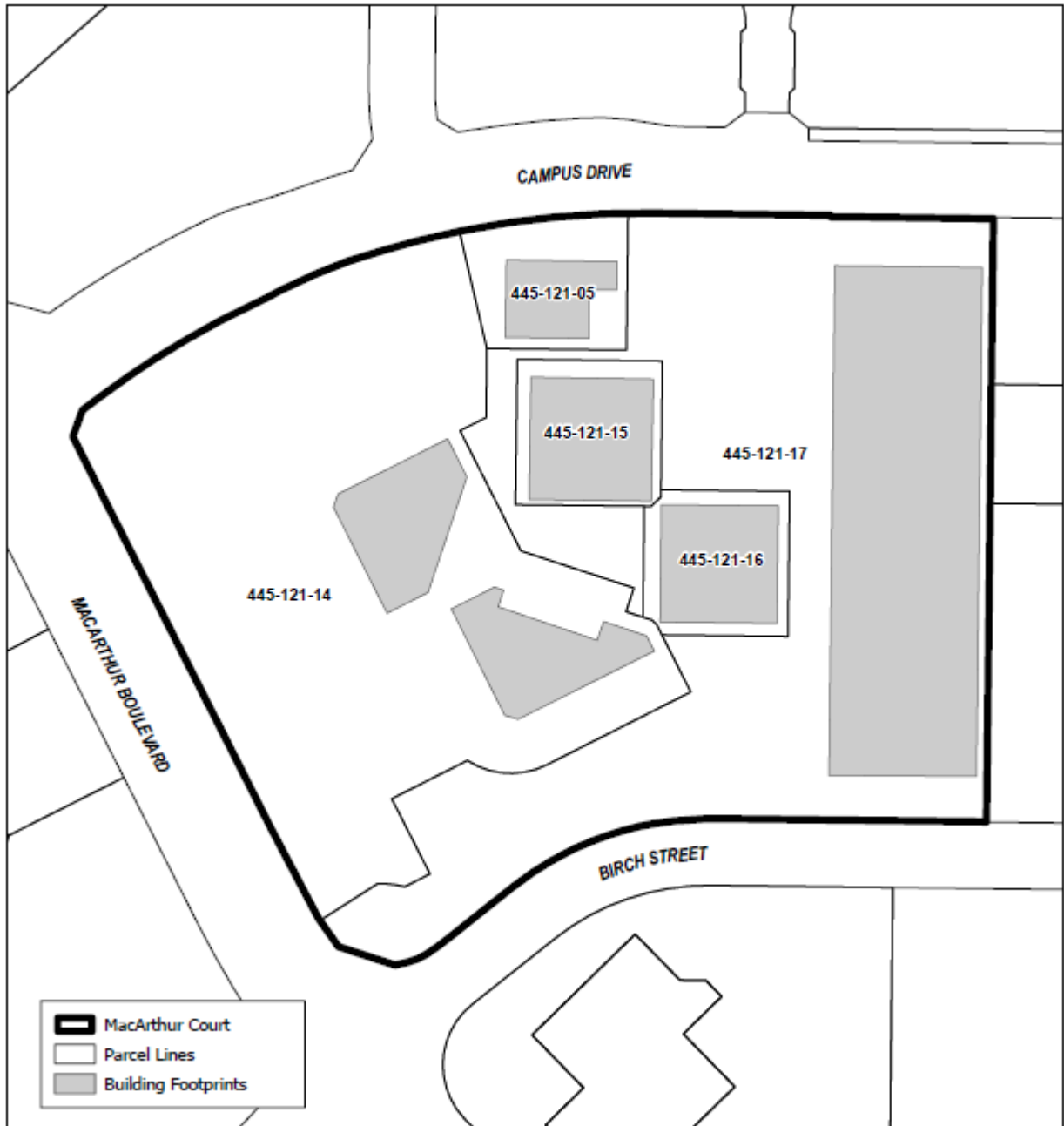


Exhibit 1 – MacArthur Court

II. Affordable Housing Plan

Proposed Plan

This Affordable Housing Implementation Plan includes the following plan.

A. Construction of New Affordable Housing Units

Irvine Company owns property within Newport Beach that would allow for the development of new affordable housing. Irvine Company proposes to identify an appropriate site for the development of affordable housing and to develop a new affordable housing project. Due to land costs, the location may be located outside of the Airport Area.

The units must be sold or rented to households qualifying as very-low or low-income households. The annualized rents chargeable for occupancy of the Affordable Units shall not exceed thirty percent (30%) of the Very-Low or Low-income limits. The restriction on these units – for example, tenant selection procedures, monitoring – will be included in an affordable housing agreement, which shall be submitted for review and approval by the City Attorney and recorded against the property(ies).

B. Dedication of Property to the City

If Irvine Company is unable to construct new affordable housing units as described in Section II.A above and in a manner consistent with the Implementation terms below, Irvine Company shall dedicate land to the City, which could include land not currently zoned for residential use, for the purpose of future affordable housing development. The site shall be of adequate size to allow for construction of at least 49 affordable housing units at an assumed density of 20-50 dwelling units to the acre. The site shall be free of any restrictions such as easements, covenants, conditions, or other restrictions that would preclude or make financially infeasible the development of the intended affordable housing development as determined by the City. The City shall coordinate with Irvine Company regarding design. Notwithstanding any covenants, conditions or other restrictions, the City shall be the final review authority regarding design of the building(s) and property.

C. Fee Payment

In the event that construction of new affordable housing units as described in Section II.A above, or dedication of property as described in Section II.B above, is not possible, Irvine Company shall pay the City an affordable housing in-lieu fee of \$36,690 per market-rate unit constructed. If the City determines that the conditions in Sections II.A and II.B above cannot be met, the fee for any market-rate unit that has received a building permit shall be paid to the City within 90 days of said determination. For any remaining market-rate units to be constructed, the in-lieu fee shall be paid at the time of building permit issuance.

Number and Type of Affordable Units

The Irvine Company proposes to build new affordable housing units which equate to 7% of new market-rate housing units built at MacArthur Court. Irvine Company shall be permitted to construct conventional affordable housing or senior affordable housing. Irvine Company shall be required to build the number of affordable housing units equivalent to 7% of new market-rate residential units permitted. Irvine Company is contemplating the construction of approximately 700 new market-rate residential units at MacArthur Court, which would require construction of 49 new affordable units. If

additional affordable units are provided (or land is dedicated that will accommodate more affordable housing units) in excess of the 7% requirement, Irvine Company shall be allowed to offset any future residential development against the excess affordable units provided.

Implementation

The new affordable housing units shall be constructed on a single site (which may include additional new affordable housing units that are intended to meet the affordable housing requirements related to other projects in the City) and may be implemented in a single phase or in multiple phases. Irvine Company shall secure the first approved building permit (i.e. issued) from the City by January 31, 2029, for the affordable housing units required under this AHIP (Section II.A), unless the deadline is extended by the Director of Community Development upon mutual consent of the parties.

Conclusion

Implementation of this AHIP will result in the availability of affordable housing units as identified above within the City of Newport Beach in accordance with the City's Housing Element.

III. Consistency with Housing Element

The City of Newport Beach adopted a Housing Element Implementation Plan in 2024. A Housing Element was included in the General Plan in accordance with state law. The Housing Element was updated in 2022 and amended in 2024. The Housing Element identifies goals and programs for the provision of affordable housing in the City. The AHIP is intended to meet the specific goals of the Housing Element as follows:

Housing Goal #3 A variety of housing types, designs, and opportunities for all social and economic segments.

Housing Policy 3.1 Encourage preservation of existing and provision of new housing affordable to extremely low-, very low-, low-, and moderate-income households.

The AHIP supports the City's requirement for the provision of affordable housing for all new residential development. The Irvine Company has prepared a Development Agreement in accordance with this Policy/Program.

Housing Goal #5 Preservation of the City's housing stock for extremely low-, very low-, low-, and moderate-income households.

Housing Policy 5.1 Continue or undertake the following programs to mitigate potential loss of "at risk" units due to conversion to market-rate units. These efforts utilize existing City and local resources. They include efforts to secure additional resources from public and private sectors should they become available.

The affordable housing provided per the AHIP will increase the City's affordable housing stock. The units will be deed-restricted to remain affordable for a period of 55 years. In addition, the developer will provide periodic reports in the form required by the City. The provision of the affordable housing units will assist the City in meeting Housing Element Goal #1: Provision of adequate sites to accommodate projected housing unit growth needs identified by the 2021-2029 RHNA.

In conclusion, the AHIP is consistent with the relevant goals and programs in the City's 2022 General Plan Housing Element.

IV. Amendments to the AHIP

This AHIP may be amended with the approval of the City Council.

V. Authority

The AHIP has been adopted by the City of Newport Beach per Resolution No. 2025-____ on the 18th day of November, 2025.

EXHIBIT “D”

CEQA CONSISTENCY ANALYSIS PREPARED BY T&B PLANNING INC. DATED
SEPTEMBER 2025

<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3187695&dbid=0&repo=CNB>

Appendix A – Mitigation, Monitoring, and Reporting Program (MMRP) Applicability Matrix:
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3187694&dbid=0&repo=CNB>

Appendix B – Water Supply Assessment (WSA)
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3187693&dbid=0&repo=CNB>

EXHIBIT “E”**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

Planning Division

1. The development shall be in substantial conformance with the approved *MacArthur Court Development Agreement dated September 25, 2025, and Affordable Housing Implementation Plan dated May 2025* (except as modified by applicable conditions of approval).
2. *Prior to the issuance of building permits, the Applicant shall obtain all applicable discretionary permits (e.g. Site Development Review, Parcel Map, etc.). The Applicant shall comply with all conditions of approval for said discretionary permits.*
3. The Project is subject to compliance with all applicable submittals approved by the City of Newport Beach (“City”) and all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Development Agreement and Affordable Housing Implementation Plan.
5. *The Approval of the Affordable Housing Implementation Plan granted under PA2025-0090 shall expire unless exercised within twenty-four (24) months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code (“NBMC”), unless an extension is otherwise granted by the City for a period of time provided for in the Development Agreement pursuant to California Government Code Section 66452.06(a).*
6. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Development Agreement or Affordable Housing Implementation Plan or the processing of a new Development Agreement or Affordable Housing Implementation Plan.
7. *Prior to the issuance of a building permit, an affordable housing agreement shall be executed in a recordable form as required by the City Attorney’s Office.*
8. *The Applicant shall comply with all provisions of the Development Agreement including payment and timing of the public benefit fees.*
9. A copy of the Resolution, including conditions of approval Exhibit “A” shall be incorporated into the Building Division and field sets of plans before issuance of the building permits.

10. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
11. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of ***MacArthur Court Project including, but not limited to, Development Agreement and Affordable Housing Implementation Plan (PA2025-0090)***. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.