



SUPPLEMENTAL AGENDA*

Donald P. Wagner
Mayor

Christina Shea
Mayor Pro Tempore

Melissa Fox
Councilmember

Jeffrey Lalloway
Councilmember

Lynn Schott
Councilmember

CITY COUNCIL REGULAR MEETING

October 23, 2018
4:00 PM

Conference and Training Center
One Civic Center Plaza
Irvine, CA 92606

*** NOTE: ITEMS WITH AN ASTERISK (*) INCLUDE THE FOLLOWING CHANGES TO THE MEETING AGENDA ORIGINALLY PUBLISHED ON OCTOBER 11, 2018:**

- 1. AGENDA ITEM NO. 2.4 - REMOVED**
- 2. AGENDA ITEM NO. 2.8 - ADDED**

Speaker's Card/Request to Speak: If you would like to address the City Council on a scheduled agenda item – including a Consent Calendar item, a Regular Council Business item, a Public Hearing item, or Public Comments – please complete the [Request to Speak Form](#). The card is at the table at the entrance to the City Council Chamber. Please identify on the card your name and the item on which you would like to speak and return to the City Clerk. The [Request to Speak Form](#) assists the Mayor in ensuring that all persons wishing to address the City Council are recognized. It also ensures the accurate identification of meeting participants in the City Council minutes. Your name will be called at the time the matter is heard by the City Council. City policy is to limit public testimony to up to three minutes per speaker depending on relevant circumstances (unless the time limit is extended by the Mayor), which includes the presentation of electronic or audio visual information. Speakers may not yield their time to other persons.

Please take notice that the order of scheduled agenda items below and/or the time they are actually heard, considered and decided may be modified by the Mayor or the City Council during the course of the meeting, so please stay alert.

CALL TO ORDER

ROLL CALL

1. CLOSED SESSION

1.1 CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: *Initiation of litigation pursuant to Government Code Section 54956.9(d)(4): one potential case*

1.2 CONFERENCE WITH REAL PROPERTY NEGOTIATORS: *(Gov Code § 54956.8); Property: Approximately 4.61 acre property at 17352 Derian Ave; Agency Negotiators: Marianna Marysheva, Assistant City Manager; Laurie Hoffman, Director of Community Services; Pete Carmichael, Director of Community Development/Interim Director, Orange County Great Park; and Darlene Nicandro, Project Development Administrator; Negotiating Parties: City of Irvine and MDD Derian 2 LP; Under Negotiation: Price and Terms of Payment*

RECONVENE TO THE CITY COUNCIL MEETING

PLEDGE OF ALLEGIANCE

INVOCATION

CITY MANAGER'S REPORT

ANNOUNCEMENTS/COMMITTEE REPORTS/COUNCIL REPORTS

Announcements, Committee Reports and Council Comments are for the purpose of presenting brief comments or reports, are subject to California Government Code Section 54954.2 of the Brown Act and are limited to 15 minutes per meeting.

ADDITIONS AND DELETIONS

Additions to the agenda are limited by California Government Code Section 54954.2 of the Brown Act and for those items that arise after the posting of the Agenda and must be acted upon prior to the next City Council meeting.

2. CONSENT CALENDAR

All matters listed under Consent Calendar are considered by the City Manager to be routine and enacted by one roll call vote. There will be no discussion of these items unless members of the City Council request specific items to be removed from the Consent Calendar for separate discussion. Any member of the public may address the Council on items on the Consent Calendar. See information for Speaker's Card/Request to Speak on first page.

2.1 MINUTES

ACTION:

Approve the minutes of a regular meeting of the Irvine City Council and regular joint meeting with the City of Irvine as Successor Agency to the dissolved Irvine Redevelopment Agency held on September 25, 2018.

2.2 COMMENDATIONS

ACTION:

Ratify and commend Reverend Mark E. Whitlock Jr. for 20 Years of Outstanding Community Service.

2.3 WARRANT AND WIRE TRANSFER RESOLUTION

ACTION:

Adopt - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, ALLOWING CERTAIN CLAIMS AND DEMANDS AND SPECIFYING THE FUNDS OUT OF WHICH THE SAME ARE TO BE PAID

2.4 * THIS ITEM WAS REMOVED FROM THE AGENDA ORIGINALLY POSTED ON OCTOBER 11, 2018.

2.5 AMENDMENT NO. 1 TO AFFORDABLE HOUSING LAND TRANSFER AGREEMENT BY AND BETWEEN THE CITY OF IRVINE AND THE IRVINE COMMUNITY LAND TRUST

ACTION:

- 1) Approve Amendment No. 1 to Affordable Housing Land Transfer Agreement by and between the City of Irvine and the Irvine Community Land Trust.
- 2) Authorize the City Manager and City Attorney to execute all documents necessary to implement Amendment No. 1 to Affordable Housing Land Transfer Agreement.

2.6 RELOCATION OF A MAINTENANCE ACCESS EASEMENT IN LOS OLIVOS

ACTION:

Authorize the Mayor to execute a quitclaim deed and amendment of easement deed relocating a maintenance access easement in Los Olivos.

2.7 NOTICE OF REVIEW FOR TRACT MAPS IN PORTOLA SPRINGS

ACTION:

Receive and file.

2.8 * COMMUNITY PARTNERSHIP FUND GRANT NOMINATIONS

ACTION:

- 1) Approve Mayor Pro Tempore Shea's request for Community Partnership Fund Grant nomination to Canyon View Elementary Parent Teacher Association in support of Jane Goodall's Roots & Shoots Program (\$600).
- 2) Approve Councilmember Fox's request for Community Partnership Fund Grant nomination to the Irvine 2/11 Marine Adoption Committee in support of the 2/11 Marine Birthday Ball (\$1,000).
- 3) Authorize the City Manager to prepare and sign the funding agreements listed in Actions 1 and 2.

3. COUNCIL BUSINESS

3.1 FIRST READING OF ORDINANCE ADDING DIVISION 15 OF TITLE 1 OF THE IRVINE MUNICIPAL CODE - PUBLIC MEETINGS AND PUBLIC RECORDS, TO BE KNOWN AS THE IRVINE SUNSHINE ORDINANCE, AND MAKING CONFORMING MODIFICATIONS

ACTION:

Introduce for first reading, and read by title only, an ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, ADDING DIVISION 15 OF TITLE 1 OF THE IRVINE MUNICIPAL CODE - PUBLIC MEETINGS AND PUBLIC RECORDS, TO BE KNOWN AS THE IRVINE SUNSHINE ORDINANCE, AND MAKING CONFORMING MODIFICATIONS TO CHAPTER 2-1 (GENERAL) OF DIVISION 2 OF TITLE 1, CHAPTER 2-2 (RULES OF ORDER) OF DIVISION 2 OF TITLE 1, CHAPTER 4-1 (IN GENERAL) OF DIVISION 4 OF TITLE 1; CHAPTER 4-2 (IN GENERAL) OF DIVISION 4 OF TITLE 1, DIVISION 13 (FINANCE COMMISSION) OF TITLE 2, DIVISION 3 (COMMUNITY SERVICES COMMISSION) OF TITLE 3, DIVISION 3 (PLANNING COMMISSION) OF TITLE 5, AND CHAPTER 9 (TRANSPORTATION COMMISSION) OF DIVISION 3 OF TITLE 6 OF THE IRVINE MUNICIPAL CODE

PUBLIC COMMENTS - Public comments will be heard at approximately 6:30 p.m. or prior to adjournment, whichever occurs earlier.

Any member of the public may address the City Council on items within the City Council's subject matter jurisdiction but which are not listed on this agenda during Public Comments; however, no action may be taken on matters that are not part of the posted agenda. See information for Speaker's Card/Request to Speak on the first page.

ADJOURNMENT

NOTICE TO THE PUBLIC

LIVE BROADCASTING AND REBROADCASTING

Regular City Council meetings are broadcast live every 2nd and 4th Tuesday of the month at 4 p.m. and are replayed on Tuesdays at 4 p.m. (in weeks in which there is not a live City Council meeting), Sundays at 11 a.m., Wednesdays at 7 p.m., and Thursdays at 10 a.m. until the next City Council meeting. All broadcasts can be viewed on Cox Communications Local Access Channel 30 and U-Verse Channel 99. City Council meetings are also available via live webcast and at any time for replaying through the City's ICTV webpage at cityofirvine.org/ictv. For more information, please contact the City Clerk's office at (949) 724-6205.

ADJOURNMENT

At 11:00 p.m., the City Council will determine which of the remaining agenda items can be considered and acted upon prior to 12:00 midnight and will continue all other items on which additional time is required until a future City Council meeting. All meetings are scheduled to terminate at 12:00 midnight.

STAFF REPORTS

As a general rule, staff reports or other written documentation have been prepared or organized with respect to each item of business listed on the agenda. Copies of these materials are on file with the City Clerk and are available for public inspection and copying once the agenda is publicly posted, (at least 72 hours prior to a regular City Council meeting). Staff reports can also be downloaded from the City's website at cityofirvine.org beginning the Friday prior to the scheduled City Council meeting on Tuesday.

In addition, meetings can be viewed live at the time posted on the agenda and related staff reports can be opened and viewed simultaneously along with the streaming of the meeting. To view the meeting, go to cityofirvine.org/ictv.

If you have any questions regarding any item of business on the agenda for this meeting, or any of the staff reports or other documentation relating to any agenda item, please contact City Clerk staff at (949)724-6205.

SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA

Any supplemental writings or documents distributed to a majority of the City Council regarding any item on this agenda after the posting of the agenda will be available for public review in the City Clerk's Office, One Civic Center Plaza, Irvine, California, during normal business hours. In addition, such writings or documents will be made available for public review at the respective public meeting.

If you have any questions regarding any item of business on the agenda for this meeting, or any of the staff reports or other documentation relating to any agenda item, please contact City Clerk staff at (949)724-6205.

SUBMITTAL OF INFORMATION BY MEMBERS OF THE PUBLIC FOR DISSEMINATION OR PRESENTATION AT PUBLIC MEETINGS

Media Types and Guidelines

1. Written Materials/Handouts:

Any member of the public who desires to submit documentation in hard copy form may do so prior to the meeting or at the time he/she addresses the City Council. Please provide 15 copies of the information to be submitted and file with the City Clerk at the time of arrival to the meeting. This information will be disseminated to the City Council at the time testimony is given.

2. Large Displays/Maps/Renderings:

Any member of the public who desires to display freestanding large displays or renderings in conjunction with their public testimony is asked to notify the City Clerk’s Office at (949)724-6205 no later than 12:00 noon on the day of the scheduled meeting so that an easel can be made available, if necessary.

3. Electronic Documents/Audio-Visuals:

Any member of the public who desires to display information electronically in conjunction with their public testimony is asked to submit the information to the Public Information Office (PIO) no later than 12:00 noon on the day of the scheduled meeting. To facilitate your request contact the PIO Office at (949)724-6253 or the City Clerk’s Office at (949)724-6205.

Information must be provided on CD, DVD, or VHS; or, emailed by 12:00 noon on the day of the scheduled meeting to pio@ci.irvine.ca.us. Members of the public will be asked to provide their name, identify the meeting and the agenda item to be addressed, and a day time phone number.

The PIO office will notify the person submitting the information as soon as possible prior to the meeting if the information cannot be accessed or if the version provided is incompatible with the City’s system. Every effort will be made by City staff to facilitate the presentation.

CITY SERVICES TO FACILITATE ACCESS TO PUBLIC MEETINGS

It is the intention of the City of Irvine to comply with the Americans With Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Irvine will attempt to accommodate you in every reasonable manner. Please contact the City Clerk’s Office at (949)724-6205.

Assisted listening devices are available at the meeting for individuals with hearing impairments. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35. 102-35. 104 ADA Title II)

CHALLENGING CITY DECISIONS

The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge that is not filed within this 90-day period will be barred.

If a person wishes to challenge the nature of the above actions in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of Irvine, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

COMMUNICATION AND ELECTRONIC DEVICES

To minimize distractions, please be sure all personal communication and electronic devices are turned off or on silent mode.

MEETING SCHEDULE

Regular meetings of the City Council are held on the second and fourth Tuesdays of each month at 4:00 p.m. Study Sessions and/or Closed Sessions are periodically held prior to the start of the regular meeting. Agendas are available at the following locations:

- City Clerk's Office
- Police Department
- Front Entrance of City Hall
- University Park Center (Culver/Michelson)
- Walnut Village Center (Culver/Walnut)
- Northwood Town Center (Irvine Blvd./Yale)
- City's web page at www.ci.irvine.ca.us

I hereby certify that the agenda for the Regular City Council meeting was posted in accordance with law in the posting book located in the Public Safety Lobby and at the entrance of City Hall, One Civic Center Plaza, Irvine, California on October 18, 2018 by 7:45pm as well as on the City's web page.

 ASST CITY CLERK

Molly McLaughlin, MPA
City Clerk

CLOSED SESSION

1.1-1.2

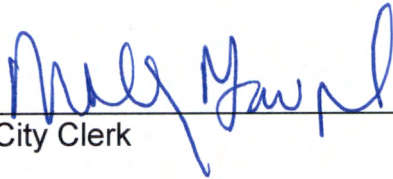
2.1



REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: OCTOBER 23, 2018

TITLE: MINUTES



City Clerk

RECOMMENDED ACTION:

Approve the minutes of a regular meeting of the Irvine City Council and regular joint meeting with the City of Irvine as Successor Agency to the dissolved Irvine Redevelopment Agency held on September 25, 2018.



MINUTES

CITY COUNCIL REGULAR MEETING AND REGULAR JOINT MEETING WITH THE CITY OF IRVINE AS SUCCESSOR AGENCY TO THE DISSOLVED IRVINE REDEVELOPMENT AGENCY

**September 25, 2018
Conference and Training Center
One Civic Center Plaza
Irvine, CA 92606**

CALL TO ORDER

The regular meeting of the Irvine City Council and regular joint meeting with the City of Irvine as Successor Agency to the dissolved Irvine Redevelopment Agency was called to order at 4:20 p.m. on September 25, 2018 in the Conference and Training Center, Irvine Civic Center, One Civic Center Plaza, Irvine, California; Mayor/Chairman Wagner presiding.

ROLL CALL

Present:	4	Councilmember/Boardmember:	Melissa Fox
		Councilmember/Boardmember:	Jeffrey Lalloway
		Mayor Pro Tempore/Vice Chairwoman:	Christina Shea
		Mayor/Chairman:	Donald P. Wagner

Absent:	1	Councilmember/Boardmember:	Lynn Schott
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1. CLOSED SESSION

City Attorney Melching announced the following Closed Session items:

- 1.1 **CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Government Code § 54956.8); Property: APN No. 58076135; Agency Negotiators: John Russo, City Manager; Pete Carmichael, Director of Community Development/Interim Director, Orange County Great Park; Chris Koster, Manager of Great Park Planning & Development; Kaitlyn Nguyen, Manager, Economic Development; Wil Soholt, Kosmont Companies; and Allison Lemoine-Bui, Rutan & Tucker; Negotiating Parties: City of Irvine; Wild Rivers Irvine, LLC; and EPR Irvine, LLC; Under Negotiation: Price and Terms of Payment**

- 1.2 **CONFERENCE WITH REAL PROPERTY NEGOTIATORS: (Gov Code § 54956.8); Property: Approximately 4.61 acre property at 17352 Derian Ave; Agency Negotiators: Marianna Marysheva, Assistant City Manager; Laurie Hoffman, Director of Community Services; Pete Carmichael, Director of Community Development/Interim Director, Orange County Great Park; and Darlene Nicandro, Project Development Administrator; Negotiating Parties: City of Irvine and MDD Derian 2 LP; Under Negotiation: Price and Terms of Payment**

City Attorney Melching noted that City Manager Russo would replace Assistant City Manager Marianna Marysheva in her absence as Agency Negotiator with respect to Closed Session Item No. 1.2.

Mike Riedel, representing Wild Rivers Irvine, LLC, spoke about his commitment to Opening Wild Rivers, and acknowledged that terms related to financing had recently changed.

RECESS

Prior to recessing the meeting to Closed Session, Mayor Wagner announced that Item 5.3 (Consideration of Mayor Wagner's Request for Discussion Regarding California State Senate Bill 54) would be continued to later date to allow for full City Council discussion.

Mayor Wagner convened the regular City Council meeting to Closed Session at 4:24 p.m.

RECONVENE TO THE CITY COUNCIL MEETING

Mayor Wagner reconvened the regular City Council meeting at 5:20 p.m. City Attorney Melching, on behalf of the City Council, announced that no reportable action was taken in Closed Session.

PLEDGE OF ALLEGIANCE

Councilmember Lalloway led the Pledge of Allegiance.

INVOCATION

Pastor Rob Mortenson from Saddleback Church in Irvine provided the invocation.

2. PRESENTATIONS

2.1 *Gonsalves & Son State Legislative Update*

Mayor Wagner introduced Anthony and Jason Gonsalves of Gonsalves and Son, who provided a brief state legislative update.

City Council discussion included: reiterating upcoming public policy challenges and goals for the future, which included funding for affordable housing.

CITY MANAGER'S REPORT

There was no report.

ANNOUNCEMENTS/COMMITTEE REPORTS/COUNCIL REPORTS

Mayor Pro Tempore Shea and Councilmember Fox provided brief reports on their recent attendance at the League of California Cities annual conference, held in Long Beach from September 12-14, noting different topics discussed that impact Irvine and other cities throughout the state.

Councilmember Fox also expressed her appreciation to Guy Doran, Irvine resident, for providing photos of bird species living in and around the Rancho San Joaquin Golf Course; and commended those who made the Irvine Global Village Festival a success.

Councilmember Lalloway acknowledged the attendance of former Irvine Mayor Beth Krom, who was in the audience.

Mayor Wagner made the following announcements:

- Irvine is once again the Safest City of its size for violent crime, recording the lowest per capita violent crime rate for all cities in the U.S. with a population over 250,000, according to FBI data just released for calendar year 2017, marking the 13th consecutive year that Irvine has earned this distinction. Irvine also recorded the lowest rate of total Part 1 Crime for a City of its size, which includes criminal homicide, rape, robbery, aggravated assault, burglary, larceny-theft, stolen vehicles, and arson.

- The City of Irvine has been honored for a third straight year as “Best City to Live In” by the Orange County Register’s annual “Best of OC” selections. Register readers chose the best categories, so it is particularly important in that so many community members took the time to choose Irvine as Number 1. Public safety, schools, parks and trails, diverse dining, shopping, and sports facilities all provide an unmatched quality of life in the City.
- Thoughts are with all of those on the East Coast who have been affected by Hurricane Florence and its aftermath. If you would like to support organizations helping with recovery in these areas, visit the City’s Irvine Gives website at cityofirvine.org/irvinegives and click Disaster Relief. Residents and businesses are strongly encouraged to take steps during National Preparedness Month to help protect family members and employees for any type of disaster, including earthquakes, fires, floods, and utility outages. For preparedness tips, visit cityofirvine.org/prepare.
- On Saturday, September 23, the 17th annual Irvine Global Village Festival was held at its new location, the Orange County Great Park. This year’s event was once again a great success, with more than 30,000 people attending, and more than 300 performers, vendors, and exhibitors sharing tastes, sights, and sounds from around the world. In addition, more than 400 community members volunteered their time to ensure a successful event, including 87 trained CERT program volunteers and 112 festival committee members. To provide feedback and complete a survey about this year’s festival, visit cityofirvine.org/festivals/survey.

ADDITIONS AND DELETIONS

Mayor Wagner reiterated that Item 5.3 (Consideration of Mayor Wagner’s Request for Discussion Regarding California State Senate Bill 54) would be continued to later a date to allow for full City Council discussion.

CONVENE TO THE REGULAR JOINT MEETING

Mayor/Chairman Wagner convened to the regular joint meeting with the City of Irvine as Successor Agency to the dissolved Irvine Redevelopment Agency at 5:44 p.m.

3. CONSENT CALENDAR - CITY COUNCIL

ACTION: Moved by Councilmember/Boardmember Lalloway, seconded by Mayor Pro Tempore/Vice Chairwoman Shea, and unanimously carried by those members present (Councilmember/Boardmember Schott absent) to approve City Council Consent Calendar Item Nos. 3.1 through 3.9, and Successor Agency Consent Calendar Item Nos. 4.1 and 4.2.

3.1 MINUTES

ACTION:

Approved the minutes of a regular meeting of the Irvine City Council, regular joint meeting with the City of Irvine as Successor Agency to the dissolved Irvine Redevelopment Agency, and special joint meeting with the Orange County Great Park Board held on August 28, 2018.

3.2 PROCLAMATIONS

ACTION:

Ratified and proclaimed September 9, 2018 as Stephen Siller Tunnel to Towers Foundation's "2018 Tunnel to Towers 5K Run & Walk - Orange County."

3.3 WARRANT AND WIRE TRANSFER RESOLUTION

ACTION:

Adopted RESOLUTION NO. 18-70 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, ALLOWING CERTAIN CLAIMS AND DEMANDS AND SPECIFYING THE FUNDS OUT OF WHICH THE SAME ARE TO BE PAID

3.4 2018 LOCAL AGENCY BIENNIAL NOTICE FOR THE CITY OF IRVINE

ACTION:

- 1) Received and filed the Fair Political Practices Commission 2018 Local Agency Biennial Notice for the City of Irvine.
- 2) Directed staff to return with proposed amendments to the City Council within 90 days.

3.5 NOTICE OF PENDING APPROVAL FOR A TRACT MAP IN THE IRVINE BUSINESS COMPLEX

ACTION:

Received and filed.

3.6 GRANT OF EASEMENT TO IRVINE RANCH WATER DISTRICT FOR WATER PIPELINE CATHODIC PROTECTION FACILITIES ALONG QUAIL HILL PARKWAY

ACTION:

Approved and authorized the City Manager to execute an Easement Deed and Offer Letter with Irvine Ranch Water District (**Contract No. 10405**).

3.7 PROPOSAL SELECTIONS AND BUDGET ADJUSTMENT FOR COMMUNITY CHOICE ENERGY FEASIBILITY STUDY AND STRATEGIC ENERGY PLAN

ACTION:

- 1) Approved a budget adjustment for the reallocation of existing funds and authorize staff to award a professional services contract in the amount of \$77,470 to EES Consulting, Inc. for a Community Choice Energy Feasibility Study (**Contract No. 10400**).
- 2) Approved a budget adjustment for the reallocation of existing funds and authorize staff to award a professional services contract in the amount of \$105,500 to Integral Group, Inc. to develop the City of Irvine Strategic Energy Plan (**Contract No. 10401**).

As amended to:

- 3) Directed staff to provide quarterly progress on the Community Choice Energy Feasibility Study and the Strategic Energy Plan to the Green Ribbon Environmental Committee, with updates to the City Council; and return to the City Council for approval once finalized.

(Unless otherwise directed by a member of the City Council, the vote on this matter will reflect the prior action of each Councilmember when he or she sat and voted as a member of the Board of Directors of the Orange County Great Park Corporation. However, if a Councilmember is not present at the City Council meeting, his or her vote will be reflected as absent.)

Approved 4-0-1 (Councilmember Schott absent).

3.8 QUITCLAIM OF AN EMERGENCY ACCESS EASEMENT IN IRVINE BUSINESS COMPLEX – LAKESHORE TOWERS

ACTION:

Authorized the Mayor to execute the quitclaim deed relinquishing easements on private property, Lakeshore Towers, no longer needed for emergency access purposes (**Deed No. 1633**).

3.9 SECOND READING OF ORDINANCE NO. 18-09 APPROVING AMENDMENTS TO THE CITY'S MUNICIPAL CODE RELATED TO ASSOCIATE ZONING ADMINISTRATOR APPOINTMENT PROCEDURES

ACTION:

Read by title only, second reading and adoption of ORDINANCE NO. 18-09 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, APPROVING AMENDMENTS TO THE CITY'S MUNICIPAL CODE RELATED TO ASSOCIATE ZONING ADMINISTRATOR APPOINTMENT PROCEDURES; FILED BY THE CITY OF IRVINE COMMUNITY DEVELOPMENT DEPARTMENT

(Unless otherwise directed by a Member of the City Council, the vote at second reading will reflect the same vote as at first reading. However, if a Councilmember was absent at first reading, his or her vote cast at second reading will be reflected. If a Councilmember is not present at the second reading/adoption, the vote will be reflected as absent.)

Approved 4-0-1 (Councilmember Schott absent).

4. CONSENT CALENDAR - SUCCESSOR AGENCY

4.1 MINUTES

ACTION:

Approved the minutes of a regular joint meeting of the City of Irvine as Successor Agency to the dissolved Irvine Redevelopment Agency with the Irvine City Council held on August 28, 2018.

4.2 2018 LOCAL AGENCY BIENNIAL NOTICE FOR THE SUCCESSOR AGENCY TO THE DISSOLVED IRVINE REDEVELOPMENT AGENCY

ACTION:

Received and filed the Fair Political Practices Commission 2018 Local Agency Biennial Notice for the conflict of interest code for Successor Agency to the dissolved Irvine Redevelopment Agency.

PUBLIC COMMENT - SUCCESSOR AGENCY

There were no public comments.

ADJOURNMENT - REGULAR JOINT MEETING

Moved by Mayor Pro Tempore/Vice Chairwoman Shea, seconded by Councilmember/Boardmember Fox, and unanimously carried by those members present (Councilmember/Boardmember Schott absent), to adjourn the regular joint meeting with the City of Irvine as Successor Agency to the dissolved Irvine Redevelopment Agency at 5:44 p.m.

RECONVENE TO THE CITY COUNCIL MEETING

Mayor Wagner reconvened the regular City Council meeting at 5:45 p.m.

5. COUNCIL BUSINESS

5.1 CONSIDERATION OF THE DEPARTMENT OF PUBLIC SAFETY UNMANNED AIRCRAFT SYSTEM TEAM

Bill Bingman, Police Lieutenant, presented the staff report and responded to questions.

City Council discussion included: noting Irvine’s status as the safest city in America over the last 13 years; reiterating the need for maintaining privacy and civil liberties; expressed support for narrowly tailored uses, including searching for suspects, articles and missing persons in established perimeters or search zones; inquired about the need and funding for a second unmanned aircraft unit; noted the thoughtfulness of the proposal; and expressed support of a reasonable approach to expansion of the program if necessary.

ACTION: Moved by Councilmember Lalloway, seconded by Mayor Pro Tempore Shea, and unanimously carried by those members present (Councilmember Schott absent), to:

Approve the Department of Public Safety’s request to establish an Unmanned Aircraft System Team.

5.2 CONSIDERATION OF A REQUEST BY MAYOR WAGNER AND MAYOR PRO TEMPORE SHEA TO TAKE AN OPPOSE POSITION ON A PROVISION PREEMPTING LOCAL REGULATION IN FEDERAL HOUSE RESOLUTION 2, KNOWN AS THE FARM BILL PACKAGE

This item was agendized at the request of Mayor Wagner and Mayor Pro Tempore Shea, who asked for consideration by the City Council to take an opposed position on Provision 9101 of a local regulation in House Resolution 2, known as the Farm Bill.

Mayor Pro Tempore Shea provided a brief overview and video of the City’s Organic Pesticide Use Program approved by the City Council on February 23, 2016; and a summary of Provision 9101 in the proposed Farm Bill, which would preempt local government’s pesticide protections.

The following individuals spoke in support of taking an opposed position on Provision 9191 of the proposed Farm Bill:

- Natalie Pattrath, Mission Viejo Resident and on behalf of Non-Toxic Mission Viejo
- Bob Johnson, Irvine resident
- MaryAnne Viney, Carlsbad resident and on behalf of Non-Toxic Carlsbad
- Kim Konte, Irvine resident and on behalf of Non-Toxic Irvine
- Michael Konte, Irvine resident
- Trevor Konte, Irvine resident

City Council discussion included: suggesting financial support to oppose the Provision 9101 of the Farm Bill if necessary; noted inquiries by other cities with respect to the groundbreaking efforts to eliminate harmful pesticides by the City of Irvine; reiterated that the movement toward organic pesticide use was initiated by parents; stated that the signed letter opposing Provision 9101 would be forwarded to federal representatives; reiterated the significant impacts of Provision 9101; and noted similar action taken by the City of Malibu.

ACTION: Moved by Mayor Wagner, seconded by Mayor Pro Tempore Shea, and unanimously carried by those members present (Councilmember Schott absent), to:

Authorize sending a letter to the House Committee on Agriculture, the Senate Committee on Agriculture, Nutrition and Forestry, and to all Senators and Congressional representatives on behalf of the City of Irvine to oppose any local government’s pesticide protection pre-emptions in House Resolution 2 (Farm Bill).

5.3 CONSIDERATION OF MAYOR WAGNER'S REQUEST FOR DISCUSSION REGARDING CALIFORNIA STATE SENATE BILL 54

This item was continued to a date uncertain at the request of Mayor Wagner. See Additions and Deletions.

PUBLIC COMMENT-CITY COUNCIL

The following individuals spoke in opposition to the City Council taking a position against Senate Bill 54:

- Rabbi Stephen Einstein
- Beth Krom, former Mayor, Councilwoman, and Irvine resident

Felicity Figueroa, Irvine resident
Jennifer Lee Koh, Western State College of Law
Farrah Khan, Irvine resident
Kev Abazajian, Irvine resident
Ben Leffel, University of California, Irvine
Diane Nied, Irvine resident
Naiui Huitzilopochtli
Tammy Kim, Irvine resident
Joe McLaughlin, Irvine resident
Alice Lee
Tim Pham, OC Young Democrats
Rebecca Whitehead, Irvine resident
Jacob Siroano on behalf of A. Reyes and S. Gandhi
Rebecca Newman, Irvine resident and on behalf of League of Women Voters
Robin Gurien
Luis Alemán
Tim Burns
Erin Roberts
S. G. Sarmiento
Jutta Gamboa
Maggy McCarty

Noosha Salemi submitted a Request to Speak card but did not speak.

Brigitte spoke about recent actions taken by the Orange County Board of Supervisors.

ADJOURNMENT-CITY COUNCIL

Moved by Councilmember Lalloway, seconded by Mayor Pro Tempore Shea, and unanimously carried by those members present (Councilmember Schott absent), to adjourn the regular City Council meeting at 7:49 p.m.

MAYOR OF THE CITY OF IRVINE

October 23, 2018

CITY CLERK OF THE CITY OF IRVINE

2.2



REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: OCTOBER 23, 2018

TITLE: COMMENDATIONS



City Clerk

RECOMMENDED ACTION:

Ratify and commend Reverend Mark E. Whitlock Jr. for 20 Years of Outstanding Community Service.

CITY OF IRVINE

Commendation

REVEREND MARK E. WHITLOCK JR.
20 YEARS OF OUTSTANDING COMMUNITY SERVICE
OCTOBER 14, 2018

WHEREAS, Reverend Mark E. Whitlock Jr. has served as pastor of Christ Our Redeemer African Methodist Episcopal Church in Irvine since 1998; and


WHEREAS, Reverend Whitlock also serves as the Director of Corporate Giving for the Connectional African Methodist Episcopal Church, Chief Executive Officer of Nehemiah Ministries, and Director of Community Initiatives at University of Southern California, Center for Religion and Civic Culture; and

WHEREAS, Reverend Whitlock provides seminars and lectures at the Harvard University School of Divinity, the University of Southern California School of Religion, and other universities and churches throughout the country; and

WHEREAS, prior to his full-time service in the ministry, Reverend Whitlock was the founder and executive director of FAME Renaissance, the economic development arm of the First African Methodist Episcopal Church in Los Angeles, which raised over four hundred million dollars in grants, loans, and contracted service initiatives that created over four thousand jobs in South Los Angeles; and

WHEREAS, Reverend Whitlock has committed his life to serving his church and the community.

NOW THEREFORE, the City Council of the City of Irvine DOES HEREBY COMMEND AND CONGRATULATE REVEREND MARK E. WHITLOCK JR. ON 20 YEARS OF OUTSTANDING COMMUNITY SERVICE.


DONALD P. WAGNER
MAYOR OF THE CITY OF IRVINE
OCTOBER 23, 2018



2.3



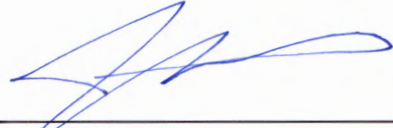
REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: OCTOBER 23, 2018

TITLE: WARRANT AND WIRE TRANSFER RESOLUTION



Director of Administrative Services



City Manager

RECOMMENDED ACTION

Adopt - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, ALLOWING CERTAIN CLAIMS AND DEMANDS AND SPECIFYING THE FUNDS OUT OF WHICH THE SAME ARE TO BE PAID

EXECUTIVE SUMMARY

A detailed register of claims, the Register of Warrants and Wire Transfers, are submitted to the City Council for review and authorization on a weekly basis. Approval of the attached resolution ratifies the disbursement of funds for the period of September 26, 2018 through October 9, 2018 in accordance with Section 2-7-211 of the Irvine Municipal Code.

ATTACHMENT Warrant and Wire Transfer Resolution

CITY COUNCIL RESOLUTION NO. 18-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, ALLOWING CERTAIN CLAIMS AND DEMANDS AND SPECIFYING THE FUNDS OUT OF WHICH THE SAME ARE TO BE PAID

(SEE ATTACHED)

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 23rd day of October 2018.

MAYOR OF THE CITY OF IRVINE

ATTEST:

CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF IRVINE)

I, MOLLY MCLAUGHLIN, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing resolution was duly adopted at a regular meeting of the City Council of the City of Irvine, held on the 23rd day of October 2018.

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

CITY CLERK OF THE CITY OF IRVINE

9/26/2018 through 10/2/2018

REGISTER OF DEMANDS AND WARRANTS

Fund	Fund Description	Amount
001	GENERAL FUND	843,267.39
004	PAYROLL CLEARING FUND	39,318.91
005	DEVELOPMENT SERVICES FUND	64,953.75
009	REVENUE CLEARING FUND	742.67
111	GAS TAX FUND	8,787.59
119	LIGHTING, LANDSCAPE & PARK MNT	630,872.25
128	OFFICE ON AGING PROGRAMS FUND	80.59
155	COMMUNITY SERVICES PROGRAMS	500.00
180	ORANGE COUNTY GREAT PARK	2,565.64
219	AD 04-20 PORTOLA SPRINGS	490.00
250	CAPITAL IMPROV PROJ FUND - CIR	783,726.96
260	CAPITAL IMPROV PROJ-NON CIRC	15,889.18
271	IRVINE BUSINESS COMPLEX	46,635.94
286	GREAT PARK DEVELOPMENT FUND	496,180.35
501	INVENTORY	11,426.51
570	INSURANCE FUND	46,883.06
574	FLEET SERVICES FUND	68,446.52
578	MAIL & PRINT INTERNAL SERVICES	104.80
579	STRATEGIC TECHNOLOGY PLAN FUND	200,769.23
580	CIVIC CTR MAINT & OPERATIONS	53,141.35
717	RAD 04-20 PORTOLA SPR VAR RT A	57,714.34
718	RAD 05-21 ORCHARD HLS VAR RT	74,169.03
719	REASSESSMENT 85-7A VARIABLE RT	72,636.25
721	AD00-18 SHADY CNYN&TURLT ROCK	20,312.32
723	AD03-19 WOODBURY SER B VAR RT	53,140.00
724	AD 07-22 STONEGATE VAR RT A	19,027.81
735	AD03-19 WOODBURY SER A VAR RT	46,320.89
760	AD87-8 ICD/BAKE PKWY DEBT SVC	33,361.08
767	AD94-15 WESTPARK II SERIES A	4,950.11
771	AD97-16 NORTHWEST IRVINE VARI	58,990.21
774	AD94-13 VARIABLE RT-OAKCREEK	37,752.51
775	AD97-17 LOWER PETERS CYN EAST	75,037.01
776	AD93-14 SPECT 6N/SPECT 7	119,112.71
	GRAND TOTAL	3,987,306.96

10/3/2018 through 10/9/2018

REGISTER OF DEMANDS AND WARRANTS

Fund	Fund Description	Amount
001	GENERAL FUND	704,176.82
005	DEVELOPMENT SERVICES FUND	47,778.23
024	BUILDING & SAFETY FUND	25.60
111	GAS TAX FUND	8,584.45
113	FEES & EXACTIONS FUND	2,203.10
114	HOME GRANT	25,084.00
118	SYSTEMS DEVELOPMENT FUND	2,350.00
119	LIGHTING, LANDSCAPE & PARK MNT	62,020.02
126	SENIOR SERVICES FUND	236.00
128	OFFICE ON AGING PROGRAMS FUND	8,751.87
180	ORANGE COUNTY GREAT PARK	110,746.20
250	CAPITAL IMPROV PROJ FUND - CIR	16,983.21
260	CAPITAL IMPROV PROJ-NON CIRC	243,075.99
270	NORTH IRVINE TRANSP MITIGATION	15,280.00
271	IRVINE BUSINESS COMPLEX	3,550.00
286	GREAT PARK DEVELOPMENT FUND	5,551.25
501	INVENTORY	13,075.99
570	INSURANCE FUND	72,357.98
574	FLEET SERVICES FUND	53,616.31
578	MAIL & PRINT INTERNAL SERVICES	131,327.85
579	STRATEGIC TECHNOLOGY PLAN FUND	210,145.13
580	CIVIC CTR MAINT & OPERATIONS	4,991.37
714	REASSESSMENT 12-1 FIXED RATE	5,676.17
715	AD 13-25 FIXED RATE	493.42
716	RAD 13-1 FIXED RATE	1,945.15
717	RAD 04-20 PORTOLA SPR VAR RT A	85.49
718	RAD 05-21 ORCHARD HLS VAR RT	6,484.43
719	REASSESSMENT 85-7A VARIABLE RT	6,301.65
721	AD00-18 SHADY CNYN&TURTL ROCK	1,790.22
723	AD03-19 WOODBURY SER B VAR RT	4,612.59
724	AD 07-22 STONEGATE VAR RT A	29.47
726	ADI0-23 SERIES B FR LAGUNA ALT	161.18
730	11-24 FIXED RT CYPRESS VILLAGE	833.82
731	AD07-22 GROUP 4 FIXED RATE	544.63
732	RAD 04-20 GROUP 3 FIXED RATE	188.67
735	AD03-19 WOODBURY SER A VAR RT	4,024.79
743	RAD 05-21 G4 FIXED RATE	2,250.00
745	CFD 2005-2R COLUMBUS GROVE SP	958.29
746	CFD 2004-1 CENTRAL PARK	1,604.11
760	AD87-8 ICD/BAKE PKWY DEBT SVC	2,905.02
767	AD94-15 WESTPARK II SERIES A	5,456.91
770	REASSESSMENT DIST 05-21 G2 FR	146.92
771	AD97-16 NORTHWEST IRVINE VARI	7,861.91
772	RAD 15-1 FIXED RATE	3,103.57
773	RAD 15-2 FIXED RATE	1,213.92
774	AD94-13 VARIABLE RT-OAKCREEK	6,030.87
775	AD97-17 LOWER PETERS CYN EAST	6,495.83

10/3/2018 through 10/9/2018

REGISTER OF DEMANDS AND WARRANTS

Fund	Fund Description	Amount
776	AD93-14 SPECT 6N/SPECT 7	7,553.61
777	RAD 05-21 G1 FIXED RATE	917.68
778	RAD 04-20 G4 FIXED RATE	311.19
779	RAD 04-20 G5 FIXED RATE	363.34
	GRAND TOTAL	1,822,256.22

2.4

CITY COUNCIL ITEM 2.4

THIS ITEM HAS BEEN REMOVED FROM THE AGENDA
PUBLISHED ON OCTOBER 11, 2018

2.5



REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: OCTOBER 23, 2018

TITLE: AMENDMENT NO. 1 TO AFFORDABLE HOUSING LAND TRANSFER AGREEMENT BY AND BETWEEN THE CITY OF IRVINE AND THE IRVINE COMMUNITY LAND TRUST

Director of Community Development

City Manager

RECOMMENDED ACTION

1. Approve Amendment No. 1 to Affordable Housing Land Transfer Agreement by and between the City of Irvine and the Irvine Community Land Trust.
2. Authorize the City Manager and City Attorney to execute all documents necessary to implement Amendment No. 1 to Affordable Housing Land Transfer Agreement.

EXECUTIVE SUMMARY

On May 10, 2016, the City Council approved by a 4-0-1 vote (Councilmembers Choi, Krom, Shea, and Schott approving; Councilmember Lalloway absent) a Conveyance Agreement accepting approximately 2.6 acres located at the southeast corner of Sand Canyon and Nightmist (Nightmist Parcel) from the Irvine Land Company, LLC (Company). A map of the subject property is included as Attachment 1. On June 28, 2016, the City Council approved by a 4-0-1 vote (Councilmembers Choi, Krom, Shea, and Schott approving; Councilmember Lalloway absent) an Affordable Housing Land Transfer Agreement (Affordable Housing Agreement) by and between the City and Irvine Community Land Trust (Land Trust). The Affordable Housing Agreement allowed for the transfer of the Nightmist Parcel to the Land Trust for the development of permanently affordable housing. The Affordable Housing Agreement is included as Attachment 2.

In July 2017, the Land Trust separated from the City becoming an independent entity. As part of the Nightmist Parcel affordable housing design plan currently in entitlement review, the developer is proposing that 543 square feet of interior building space be utilized as office space for the Land Trust. The existing Affordable Housing Agreement does not contemplate or allow for this type of use. Therefore, an Amendment No. 1 to the Affordable Housing Land Transfer Agreement (Amendment) has been prepared that would allow up to 550 square feet of interior building space to be utilized as Land Trust office space. The proposed Amendment is included for the Council's consideration as Attachment 3.

COMMISSION/BOARD/COMMITTEE RECOMMENDATION

Not Applicable.

ANALYSIS

Background

Pursuant to a 2006 Development Agreement between the City and the Company for Planning Area 39, the Company is required to convey multiple sites over time, totaling 15 acres, to the City for affordable housing. Conveyance Agreements between the Company and the City have been approved by the City Council for 9.6 of the 15 acres. Per the 2006 Development Agreement, the Company will transfer the remaining 5.4 additional acres to the City for affordable housing by December 2023. The Conveyance Agreement for the Nightmist Parcel was approved by the City Council in May, 2016.

The Affordable Housing Agreement between the City and the Land Trust approved in June 2016, provides for the City to transfer the Nightmist Parcel to the Land Trust and contains restrictions on development and use of the property. The Affordable Housing Agreement includes a provision that the Land Trust will cause the Nightmist Parcel to be developed with permanently affordable housing. Use of the Nightmist Parcel for any other purpose is expressly prohibited.

Amendment No. 1 to Affordable Housing Land Transfer Agreement

The Land Trust desires to utilize certain space within the Nightmist Parcel development as Land Trust office space. Such use has been approved by the Company, the prior owner of the property, but is not currently authorized by the by the Affordable Housing Agreement between the City and the Land Trust.

Amendment No. 1 would amend the Affordable Housing Agreement by modifying Exhibit B to the attachment Regulatory Agreement to allow the use of up to 550 square feet of interior building space by Land Trust, as Land Trust office space. The proposed Amendment No. 1 is submitted for consideration by the City Council (Attachment 3).

ALTERNATIVES CONSIDERED

The City Council could deny the proposed Amendment thereby not allowing the Land Trust to utilize space within the Nightmist Parcel development for Land Trust offices.

FINANCIAL IMPACT

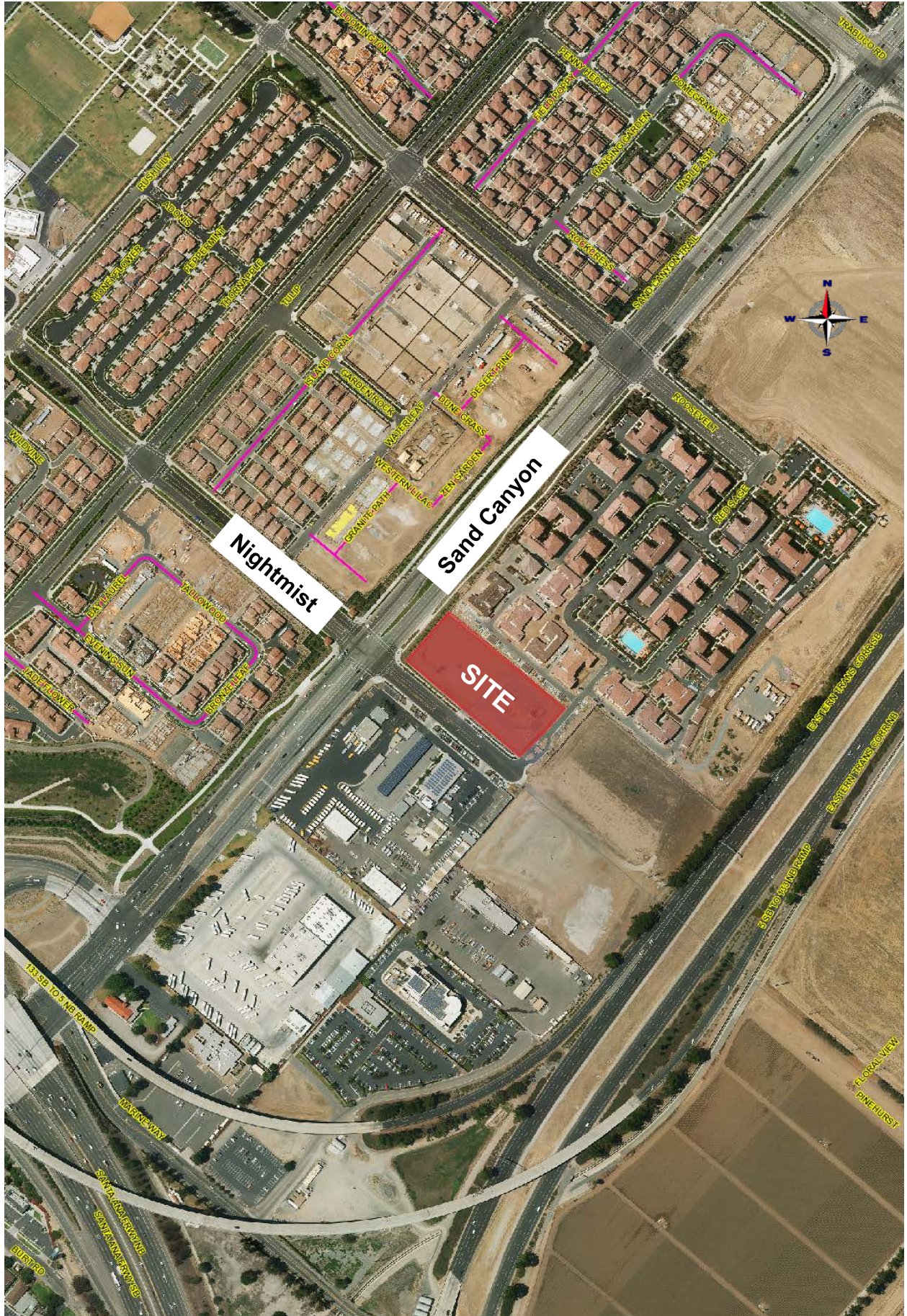
No financial impact to the City.

REPORT PREPARED BY Charles G. Kovac, Housing Administrator

ATTACHMENTS

1. Location Map
2. Affordable Housing Land Transfer Agreement by and between City of Irvine and Irvine Community Land Trust (June 30, 2016)
3. Proposed Amendment No. 1 to Affordable Housing Land Transfer Agreement by and between the City of Irvine and Irvine Community Land Trust

LOCATION MAP



COPY

AFFORDABLE HOUSING LAND TRANSFER AGREEMENT

BY AND BETWEEN

CITY OF IRVINE

AND

IRVINE COMMUNITY LAND TRUST

AFFORDABLE HOUSING LAND TRANSFER AGREEMENT

30th This Affordable Housing Land Transfer Agreement (“Agreement”) is entered into as of the day of June, 2016 (“Effective Date”) by and between CITY OF IRVINE, a California municipal corporation (the “City”) and the IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation (the “Land Trust”). The City and the Land Trust (sometimes individually referred to herein as a “Party” and collectively referred to herein as the “Parties”) hereby agree as follows:

1. SUBJECT OF AGREEMENT

1.1 Purpose of Agreement

On or about March 14, 2006, the City of Irvine adopted that certain Housing Strategy and Implementation Plan (“Housing Plan”). The Housing Plan sets forth various implementing activities for the purposes of assisting the Land Trust with increasing, improving, and preserving the City’s supply of low and moderate income housing. The Housing Plan identifies projects and programs that would further the City’s goal of having ten percent (10%) of the City’s housing stock permanently affordable to low and moderate income households at build-out of the City.

The purpose of this Agreement is to effectuate the Housing Plan and that certain Redevelopment Affordable Housing Funds Grant Agreement entered into by and between the Land Trust and the former Irvine Redevelopment Agency (“Agency”) on February 8, 2011 (the “RDA Grant Agreement”), by providing for the transfer of certain property situated within the City (the “Property”) to the Land Trust to facilitate the development thereon of affordable housing.

Pursuant to Assembly Bill 26 from the 2012-12 First Extraordinary Session of the California Legislature, which was signed by the Governor on June 28, 2012, all redevelopment agency activities, except continued performance of “enforceable obligations,” were immediately suspended. A lawsuit was filed, challenging the constitutionality of ABx1 26 and companion bill ABx1 27 (which would have allowed redevelopment agencies to remain in existence and continue redevelopment, if the legislative bodies that established the agencies elected to participate in a “voluntary alternative redevelopment program” and make certain remittance payments). The California Supreme Court upheld the constitutionality of ABx1 26, revising the effective dates of certain provisions, and struck down as unconstitutional ABx1 27. (*California Redevelopment Assn. v. Matosantos* (2012) 53 Cal.4th 231 (the “CRA Case”). ABx1 26 is chapter 5, Statutes 2012, First Extraordinary Session, which added Part 1.8 (suspension provisions) and Part 1.85 (dissolution provisions) (“Part 1.85”) of Division 24 of the Health and Safety Code. Under the CRA Case, all redevelopment agencies dissolved February 1, 2012. On June 27, 2012, the California Legislature passed, and the Governor signed, Assembly Bill 1484 (“AB 1484”), which, among other things, made certain revisions to certain of the statutes added by ABx1 26, and added Chapter 9 to Part 1.85.

Pursuant to Health and Safety Code section 34176(a), added by Part 1.85 and amended by AB 1484, the City Council of the City adopted its Resolution No. 12-11 on January 10, 2012, electing to retain the housing assets and functions previously performed by the Agency. Pursuant to said resolution, all housing assets and functions of the Agency were transferred to the City on

February 1, 2012. The RDA Grant Agreement is one of the housing assets and functions of the Agency that was so transferred to the City.

The conveyance to the Land Trust of the Property and the subsequent development thereon of affordable housing restricted to occupancy by households of limited incomes, all as provided in this Agreement, are in the vital and best interests of the City of Irvine and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the development will be undertaken.

1.2 The Property

The “Property” is currently owned by the City and consists of that certain real property located within Planning Area 40 of the City of Irvine, County of Orange. The Property is depicted on Attachment No. 1, which is attached hereto and incorporated herein by this reference. The legal description of the Property is set forth on Attachment No. 2, which is attached hereto and incorporated herein by this reference. The City intends to acquire the Property, which comprises approximately 2.583 acres, from the Irvine Land Company LLC and the Irvine Community Development Company LLC (collectively, the “Irvine Company”) pursuant to that certain Conveyance Agreement between the City and the Irvine Company, approved by the Irvine City Council on May 10, 2016 (the “Conveyance Agreement”). The Conveyance Agreement partially implements the Irvine Company’s obligation pursuant to that certain Development Agreement entered into between the City and the Irvine Company and recorded on October 3, 2006, as Instrument No. 2006000657515, in the Official Records, to dedicate to the City fifteen (15) acres of land for the development and use of affordable housing. The Property is subject to that certain Declaration of Special Land Use Restrictions between the City and the Irvine Company, approved by the Irvine City Council on May 10, 2016, which, in addition to other restrictions, restricts the use of the Property for the development of affordable housing (the “Irvine Company Declaration”).

1.3 Parties to the Agreement

A. The City

The City is a California municipal corporation. The principal office and mailing address of the City is One Civic Center Plaza, P.O. Box 19575, Irvine, CA 92623-9575, or such other address as City shall hereafter designate in writing to Land Trust.

Whenever the term “City” is used in this Agreement, such term shall include any and all assignees, or successors in interest as herein provided.

B. The Land Trust

The Land Trust is a duly organized California nonprofit public benefit corporation, certified by the United States Internal Revenue Service as a public charity under Internal Revenue Code sections 501(c)(3) and 509(a)(3). The principal office and mailing address of the Land Trust is One Civic Center Plaza, 3rd Floor, Irvine, CA 92606-5207.

As set forth in Article II of the Land Trust’s Articles of Incorporation, filed on March 17, 2006 with the California Secretary of State, the specific purpose of the Land Trust “is to lessen the

burdens of government by assisting the City of Irvine, California (“City”) to ensure that its residents are able to secure housing by, among other things, developing, constructing, financing, managing, selling, renting, subsidizing, and monitoring single- and multi-family housing, and to conduct or perform any ancillary or related activity in furtherance of the foregoing.” Also as set forth in the Land Trust’s Articles of Incorporation, the Land Trust was formed to help the City ensure that its residents are able to secure decent and affordable housing.

By executing this Agreement, each person signing on behalf of the Land Trust warrants and represents to the City that the Land Trust has the full power and authority to enter into this Agreement, that all authorizations required to make this Agreement binding upon the Land Trust have been obtained, and that the person or persons executing this Agreement on behalf of the Land Trust are fully authorized to do so.

Whenever the term “Land Trust” is used in this Agreement, such term shall include any and all assignees, or successors in interest as herein provided.

1.4 Definitions

“Affordable Cost” shall mean the cost to purchase an owner-occupied residential dwelling unit that does not exceed the maximum percentage of income that can be devoted to the purchase of said unit under Health & Safety Code § 50052.5, or any successor statute thereto, and the implementing regulations in Title 25 of the California Code of Regulations, which are and shall be for the Restricted Affordability Term, as follows:

- The Affordable Cost for residential units designated to be owned by extremely low income households is the product of 30 percent times 30 percent of the Median Income adjusted for family size appropriate for the unit.
- The Affordable Cost for residential units designated to be owned by very low income households is the product of 30 percent times 50 percent of the Median Income adjusted for family size appropriate for the unit.
- The Affordable Cost for residential units designated to be owned by lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the Median Income adjusted for family size, is the product of 30 percent times 70 percent of the Median Income adjusted for family size appropriate for the unit; OR, for any lower income household that has a gross income that equals or exceeds 70 percent of the Median Income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 30 percent of the gross income of the household.
- The Affordable Cost for residential units designated to be owned by moderate-income households shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of Median Income adjusted for family size appropriate for the unit; OR, for any moderate-income household that has a gross income that exceeds 110 percent of the Median

Income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 35 percent of the gross income of the household.

As used herein, “adjusted for family size appropriate for the unit” shall mean a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

“Affordable Housing Agreement” shall mean an affordable housing agreement by and between the Land Trust and an AHD that (i) sets forth the terms and conditions of the Land Trust’s ground lease to the AHD of the Property and the AHD’s development thereon of an Affordable Housing Development, and (ii) includes (a) a detailed schedule of performance, (b) a detailed project description, (c) a promissory note (“Note”) evidencing any financial assistance to be provided by the Land Trust to the AHD and requiring repayment of such financial assistance from (1) the sale of units, if the Affordable Housing Development is a for-sale single family development containing owner-occupied units, or (2) the cash flow of the Affordable Housing Development, if the Affordable Housing Development is a multifamily rental development, (d) a deed of trust securing the AHD’s repayment obligations under the Note (“Deed of Trust”), (e) a regulatory agreement that (1) restricts, for the Restricted Affordability Term, the rental and occupancy of the units in the Affordable Housing Development to Low and Moderate Income Households at Affordable Rent, if the Affordable Housing Development is a multifamily rental development, or (2) restricts, for the Restricted Affordability Term, the sale and resale of the units in the Affordable Housing Development to Low and Moderate Income Households at Affordable Cost, if the Affordable Housing Development is a for-sale single family development containing owner-occupied units (“Land Trust Regulatory Agreement”, and (f) a ground lease that sets forth the terms under which the Land Trust will ground lease to the AHD the Property (“Lease”). The City shall be expressly named as a third party beneficiary of each of the Affordable Housing Agreement and Land Trust Regulatory Agreement with the right, but not the obligation, to enforce the terms thereof.

“Affordable Housing Development” shall mean an affordable housing development containing residential dwelling unit(s), of any type or tenure, including owner-occupied and rental, that are available to Low and Moderate Income Households at Affordable Rent, for rental units, and Affordable Cost, for owner-occupied units.

“Affordable Rent” shall mean annual rent that does not exceed the maximum percentage of income that can be devoted to rent (including a reasonable utility allowance) under Health & Safety Code § 50053, or any successor statute thereto, and the implementing regulations in Title 25 of the California Code of Regulations, which are and shall be for the Restricted Affordability Term, as follows:

- The Affordable Rent for residential units designated to be occupied by extremely low income households is the product of 30 percent times 30 percent of the Median Income adjusted for family size appropriate for the unit.

- The Affordable Rent for residential units designated to be occupied by very low income households is the product of 30 percent times 50 percent of the Median Income adjusted for family size appropriate for the unit.
- The Affordable Rent for residential units designated to be occupied by lower income households whose gross incomes exceed the maximum income for very low income households, is the product of 30 percent times 60 percent of the Median Income adjusted for family size appropriate for the unit; OR, for those lower income households with gross incomes that exceed 60 percent of the Median Income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.
- The Affordable Rent for residential units designated to be occupied by moderate-income households is the product of 30 percent times 110 percent of the Median Income adjusted for family size appropriate for the unit; OR, for those moderate-income households whose gross incomes exceed 110 percent of the Median Income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.

As used herein, “adjusted for family size appropriate for the unit” shall mean a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

“AHD” shall mean an affordable housing developer with the experience, expertise, financial strength, and capability necessary to plan, finance, develop and operate (if applicable) an Affordable Housing Development.

“Annual Financial Statement” shall mean the financial statements prepared by the AHD for each calendar year, including a balance sheet, income statement, statement of retained earnings, statement of cash flow, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied, as audited by an independent certified public accountant.

“City Manager” shall mean the individual duly appointed to the position of City Manager of City, or his or her authorized designee. Whenever an administrative action is required by City to implement the terms of this Agreement, the City Manager, or his or her authorized designee, shall have authority to act on behalf of City, except with respect to matters reserved for City Council determination.

“City Regulatory Agreement” shall mean a Regulatory Agreement and Declaration of Covenants and Restrictions, substantially in the form attached hereto and incorporated herein as Attachment No. 5.

“City’s Conditions to Closing” shall have the meaning ascribed in Section 2.4.A.

“Closing Date” shall have the meaning ascribed in Section 2.2.C hereof.

“Effective Date” shall mean the later of the dates this Agreement is executed on behalf of City and Land Trust, which date shall be inserted in the preamble of this Agreement.

“Evidence of Financing” shall have the meaning ascribed in Section 3.3 hereof.

“Governmental Requirements” shall mean all present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Property is located, and any other state, county city, political subdivision, agency, instrumentality or other entity exercising jurisdiction over the Property and/or the Affordable Housing Development.

“Grant Deed” shall have the meaning ascribed in Section 2.1 hereof.

“Hazardous Materials” shall have the meaning ascribed in Section 2.9.H hereof.

“Indemnitees” shall have the meaning ascribed in Section 2.9.F hereof.

“Institutional Lender” shall mean any of the following institutions having assets or deposits in the aggregate of not less than One Hundred Million Dollars (\$100,000,000): a California chartered bank; a bank created and operated under and pursuant to the laws of the United States of America; an “incorporated admitted insurer” (as that term is used in Section 1100.1 of the California Insurance Code); a “foreign (other state) bank” (as that term is defined in Section 1700(1) of the California Financial Code); a federal savings and loan association (Cal. Fin. Code Section 8600); a commercial finance lender (within the meaning of Sections 2600 et seq. of the California Financial Code); a “foreign (other nation) bank” provided it is licensed to maintain an office in California, is licensed or otherwise authorized by another state to maintain an agency or branch office in that state, or maintains a federal agency or federal branch in any state (Section 1716 of the California Financial Code); a bank holding company or a subsidiary of a bank holding company which is not a bank (Section 3707 of the California Financial Code); a trust company, savings and loan association, insurance company, investment banker; college or university; pension or retirement fund or system, either governmental or private, or any pension or retirement fund or system of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any state thereof; and a Real Estate Investment Trust, as defined in Section 856 of the Internal Revenue Code of 1986, as amended, provided such trust is listed on either the American Stock Exchange or the New York Stock Exchange.

“Land Trust Executive Director” shall mean the individual duly appointed to the position of Executive Director of the Land Trust, or his or her authorized designee. Whenever an administrative action is required by the Land Trust to implement the terms of this Agreement, the Land Trust Executive Director, or his or her authorized designee, shall have authority to act on behalf of the Land Trust, except with respect to matters reserved for Land Trust Board of Directors determination.

“Land Trust’s Conditions to Closing” shall have the meaning ascribed in Section 2.4.B.

“Land Trust Title Policy” shall have the meaning ascribed in Section 2.6 hereof.

“Low and Moderate Income Household(s)” and “Low or Moderate Income Household(s)” shall have the same meaning as “persons and families of low or moderate income” as set forth in Health and Safety Code § 50093, as enacted as of the Effective Date, or any successor statute thereto. In accordance therewith, references in this Agreement to “extremely low income households,” “very low income households,” “low income households,” and “moderate income households” shall have the same meanings as set forth in Health and Safety Code §§ 50106, 50105, 50079.5, and 50093, respectively, as enacted as of the Effective Date, or any successor statutes thereto.

“Median Income” shall mean the Orange County area median income, as periodically published by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations, or successor regulation.

“Official Records” shall mean the Official Records of Orange County, California.

“Outside Closing Date” shall mean June 1, 2020.

“Phase 1” shall mean that certain Phase I Environmental Property Assessment, in the event such assessment is requested by the City of Irvine.

“Phase 2” shall mean that certain Phase 2 Environmental Property Assessment, in the event such assessment is requested by the City of Irvine.

“Property” shall have the meaning ascribed in Section 1.1 hereof.

“Recording Instructions” shall have the meaning ascribed in Section 2.2.C hereof.

“Restricted Affordability Term” shall mean an initial term of fifty-nine (59) years, commencing on the Closing Date; provided, however, that if the Land Trust and AHD mutually agree to extend the term of the Lease, then the Restricted Affordability Term shall be automatically extended to be coterminous with the extended term of the Lease.

“Schedule of Performance” shall mean that certain Schedule attached hereto and incorporated herein as Attachment No. 3.

“Title Company” shall mean First American Title Insurance Company, having its offices at 1250 Corona Pointe Court, Suite 200, Corona, CA 92879.

1.5 Prohibition Against Change in Ownership, Management and Control of Land Trust and Prohibition Against Transfer of the Property

The qualifications and identity of the Land Trust are of particular interest to the City. It is because of these qualifications and identity that the City has entered into this Agreement with the Land Trust. Consequently, no person, whether a voluntary or involuntary successor of Land Trust, shall acquire any rights or powers under this Agreement nor shall the Land Trust assign all or any part of this Agreement, the Property, or the City Regulatory Agreement without the prior written

approval of the City. A voluntary or involuntary sale or transfer of any interest in the Land Trust or the Property during the term of this Agreement shall be deemed to constitute an assignment or transfer for the purposes of this Section 1.5, and the written approval of the City shall be required prior to effecting such an assignment or transfer. Any purported transfer, voluntarily or by operation of law, except with the prior written consent of the City, shall render this Agreement absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee. During the term of this Agreement and the City Regulatory Agreement the Land Trust shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any rights or duties herein, nor make any total or partial sale, transfer, conveyance, or assignment of the whole or any part of the Property or any of the improvements thereon, nor take any action that results in a change in the ownership or with respect to the identity of the parties in control of the Land Trust, without the prior written approval of the City.

Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment or transfer of this Agreement or transfer of the Property, or any part thereof or interest therein shall not be required in connection with the conveyance or dedication of an easement over a portion of the Property to the City, or other appropriate governmental agency, including public utilities, where the granting of such easement permits or facilitates the development of affordable housing on the Property.

Notwithstanding anything in this Section 1.5 to the contrary, no transfer or assignment by Land Trust or any successor in interest to Land Trust shall be effective unless and until the transferor and transferee execute and deliver to City an assignment and assumption agreement in a form and with content reasonably acceptable to the City Attorney.

1.6 Representations by the Land Trust

The Land Trust represents and warrants to the City as follows:

i. The Land Trust is a duly organized nonprofit public benefit corporation and is in good standing under the laws of the State of California and has duly authorized, executed and delivered this Agreement and any and all other agreements and documents required to be executed and delivered by the Land Trust in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement. This Agreement is enforceable against the Land Trust in accordance with its terms.

ii. The Land Trust does not, as far as is known to the Land Trust, have any contingent obligations or contractual agreements which will materially adversely affect the ability of the Land Trust to carry out its obligations hereunder.

iii. There are no pending or, so far as is known to the Land Trust, threatened, legal proceedings to which the Land Trust is or may be made a party to or to which it or any of its property is or may become subject, which have not been fully disclosed in the material submitted to the City, which will materially adversely affect the ability of the Land Trust to carry out its obligations hereunder.

iv. There is no action or proceeding pending or, to the Land Trust's knowledge, threatened, looking toward the dissolution or liquidation of the Land Trust and there is no action

or proceeding pending or, to the Land Trust's knowledge, threatened, by or against the Land Trust which could affect the validity and enforceability of the terms of this Agreement, or adversely affect the ability of the Land Trust to carry out its obligations hereunder.

v. To the Land Trust's knowledge, the execution and delivery of this Agreement and all other documents to be executed by Land Trust pursuant to this Agreement will not constitute or result in any default or event that with notice or the lapse of time, or both, would be a default, breach, or violation of any other agreement, instrument, or arrangement by which Land Trust is bound.

vi. To the Land Trust's knowledge, the execution and delivery of this Agreement and all other documents to be executed by Land Trust pursuant to this Agreement and the consummation of the transactions contemplated herein will not violate any provision of or require any consent, authorization, or approval under any law or administrative regulation or any other order, award, judgment, writ, injunction or decree applicable to, or any governmental permit or license issued to Land Trust.

vii. To the Land Trust's knowledge, no representation, warranty, or covenant of Land Trust in this Agreement, or in any document or certificate furnished or to be furnished to City pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

As used in this Section 1.6, the term "knowledge" or "known" shall mean the actual (not constructive or imputed) knowledge of the Land Trust Executive Director, without any investigation or inquiry or duty of investigation or inquiry.

Each of the foregoing items i to vii, inclusive, shall be deemed to be an ongoing representation and warranty and shall survive the Closing. The Land Trust shall advise the City in writing if there is any material change pertaining to any matters set forth or referenced in the foregoing items i to vii, inclusive.

1.7 Representations by the City

The City represents and warrants to Land Trust as follows:

i. City is a California municipal corporation. The parties who have executed this Agreement on behalf of City are authorized to bind City by their signatures hereto.

ii. There are no pending or, so far as is known to City, threatened, legal proceedings to which City is or may be made a party or to which it or any of its property is or may become subject, which will materially adversely affect the ability of City to carry out its obligations hereunder.

iii. There is no action or proceeding pending or, to City's knowledge, threatened, looking toward the dissolution or liquidation of City and there is no action or proceeding pending or, to City's knowledge, threatened by or against City which could affect the

validity and enforceability of the terms of this Agreement, or adversely affect the ability of City to carry out its obligations hereunder.

iv. To City's knowledge, the Property is not currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation.

v. City is not the subject of a bankruptcy proceeding.

vi. To City's knowledge, no Hazardous Materials (as defined in Section 2.9 below) other than those that will be identified in the Phase I and Phase II, if so prepared, are now or have been released, used, or stored on or within any portion of the Property in violation of applicable laws or regulations governing the release, use, or storage of Hazardous Materials, and there has not been any federal, state, or local enforcement, clean-up, removal, remedial, or other governmental or regulatory actions instituted or completed affecting the Property.

vii. To City's knowledge, the execution and delivery of this Agreement and all other documents to be executed by City pursuant to this Agreement will not constitute or result in any default or event that with notice or the lapse of time, or both, would be a default, breach, or violation of any other agreement, instrument, or arrangement by which City is bound.

viii. To City's knowledge, the execution and delivery of this Agreement and all other documents to be executed by City pursuant to this Agreement and the consummation of the transactions contemplated herein will not violate any provision of or require any consent, authorization, or approval under any law or administrative regulation or any other order, award, judgment, writ, injunction or decree applicable to, or any governmental permit or license issued to City.

ix. To City's knowledge, no representation, warranty, or covenant of City in this Agreement, or in any document or certificate furnished or to be furnished to Land Trust pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

As used in this Section 1.7, the term "knowledge" or "known" shall mean the actual (not constructive or imputed) knowledge of the City Manager, without any investigation or inquiry or duty of investigation or inquiry.

2. CONVEYANCE OF THE PROPERTY

2.1 Conveyance of the Property

Pursuant to the provisions of this Section 2, City shall convey the Property to the Land Trust pursuant to a grant deed substantially in the form attached hereto and incorporated herein as Attachment No. 4 ("Grant Deed").

2.2 Delivery of Documents; Allocation of Costs

A. Delivery of Documents. Land Trust shall execute and deliver to City the Grant Deed and Regulatory Agreement, and City shall deliver to the Title Company the fully executed Grant Deed and City Regulatory Agreement.

B. Allocation of Costs. City and Land Trust shall be responsible to pay the following fees, charges and costs promptly after the Title Company has notified the City of the total amount of such fees, charges and costs, but not earlier than five (5) days prior to the scheduled Closing Date:

1. Land Trust shall pay the costs, if any, of drawing the Grant Deed;
3. Land Trust shall pay recording fees, if any;
4. City and Land Trust shall pay their respective Notary fees;
5. Land Trust shall pay for any transfer tax and any state, county or city documentary stamps.

C. Recording Instructions. The City and Land Trust shall prepare joint recording instructions for the Title Company which shall instruct the Title Company to record the Grant Deed and City Regulatory Agreement, in that order, upon (i) confirmation from the Title Company that the Title Company has in its possession fully executed originals of each of the Grant Deed and City Regulatory Agreement, (ii) confirmation from the City that all of the City's Conditions to Closing have been satisfied, or waived by the City, and (iii) confirmation from the Land Trust that all of the Land Trust's Conditions to Closing have been satisfied, or waived by the Land Trust (the "Recording Instructions"). The date such documents are recorded shall be referred to herein as the "Closing Date."

2.3 Conveyance of Title and Delivery of Possession

Provided that the Land Trust is not in default under this Agreement and all of City's Conditions to Closing and Land Trust's Conditions to Closing have occurred, and subject to any mutually agreed upon extensions of time, City shall convey to the Land Trust title to the Property. The City and the Land Trust agree to perform all acts necessary to conveyance of title on or before the Outside Closing Date.

Possession shall be delivered to the Land Trust concurrently with the conveyance of title on the Closing Date, except that limited access may be permitted before the Closing Date as permitted in Section 2.9 of this Agreement. The Land Trust shall accept title and possession on the Closing Date.

2.4 Conditions to Close

A. City's Conditions to Closing. The City's obligation to convey the Property to Land Trust shall, in addition to any other condition set forth herein in favor of the City, be conditional and contingent upon the satisfaction, or waiver by the City in its sole and absolute

discretion, on or before the Outside Closing Date, of each and all of the following conditions (collectively, "City's Conditions to Closing"):

i. The City shall have taken ownership of the Property pursuant to the Conveyance Agreement entered into between the City and the Irvine Company, approved by the Irvine City Council on May 10, 2016;

ii. Land Trust shall have delivered to City the City Regulatory Agreement, duly executed and acknowledged by Land Trust, and all other sums and documents required of Land Trust by this Agreement;

iii. Land Trust shall have submitted to the City Manager the authorizing resolution approving this Agreement and the transactions contemplated hereby;

iv. Land Trust shall have submitted to the City Manager the evidence of insurance required pursuant to Section 3.5 of this Agreement;

v. Land Trust shall have timely selected an AHD to develop an Affordable Housing Development on the Property;

vi. Land Trust shall have timely entered into an Affordable Housing Agreement with the AHD in a form approved by the City Attorney;

vii. Land Trust shall have approved the AHD's Evidence of Financing, in accordance with Section 3.3 herein;

viii. Land Trust shall have timely provided to City a copy of the AHD's most recently prepared Annual Financial Statement, and a copy of the AHD's most recent internally prepared, unaudited financial statement, which shall include a balance sheet, income statement, statement of retained earnings, statement of cash flows, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied.

ix. The Land Trust shall have submitted to the City Manager the AHD's budget and proforma for the Affordable Housing Development;

x. The Irvine Planning Department shall have made a finding that the conveyance of the Property to the Land Trust is consistent with the Irvine General Plan;

xi. All environmental review required under the California Environmental Quality Act shall have been completed;

xii. All land use entitlements and approvals necessary for the development of an Affordable Housing Development on the Property shall have been obtained, and all designs, plans, and construction drawings shall have been approved, and building permits shall be ready to be issued;

xiii. All representations of Land Trust contained herein shall be true and correct in all material respects;

xiv. Land Trust is not in material default of any term or condition of this Agreement.

B. Land Trust's Conditions to Closing. Land Trust's obligation to acquire the Property from City shall, in addition to any other condition set forth herein in favor of the Land Trust, be conditional and contingent upon the satisfaction, or waiver by the Land Trust in its sole and absolute discretion, on or before the Outside Closing Date, of each and all of the following conditions (collectively, "Land Trust's Conditions to Closing"):

i. City has delivered to the Title Company the Grant Deed, duly executed and acknowledged by City, and all other sums and documents required of City by this Agreement;

ii. City has transferred to Land Trust or shall transfer, on the Closing Date, the City In-Lieu Funds;

iii. On the Closing Date, the Title Company shall be irrevocably committed to issue the Land Trust Title Policy insuring fee title to the Property is vested in Land Trust;

iv. All land use entitlements and approvals necessary for the development of an Affordable Housing Development on the Property shall have been obtained, and all designs, plans, and construction drawings shall have been approved, and building permits shall be ready to be issued;

v. the Land Trust has approved the environmental condition of the Property and agrees to acquire the Property in its present condition; and

vi. City is not in material default of any term or condition of this Agreement.

C. Waiver. City may at any time or times, at its election, waive any of the conditions set forth in Section 2.4.A above to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by City and delivered to Land Trust. Land Trust may at any time or times, at its election, waive any of the conditions set forth in Section 2.4.B above to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Land Trust and delivered to City.

D. Failure of Conditions Precedent; Termination. In the event that by the Outside Closing Date each of the conditions set forth in Section 2.4.A is not fulfilled, or waived by City pursuant to Section 2.4.C, City may, at its option, terminate this Agreement, thereby releasing the parties from further obligations hereunder. In the event that by the Outside Closing Date each of the conditions set forth in Section 2.4.B are not fulfilled, or waived by Land Trust pursuant to Section 2.4.C, Land Trust may, at its option, terminate this Agreement, thereby releasing the parties from further obligations hereunder. In the event this Agreement is terminated, all documents and funds delivered by Land Trust to City shall be returned immediately to Land Trust and all documents and funds delivered by City to Land Trust shall be returned immediately to City. Nothing in this Section 2.4.D shall be construed as (i) releasing any party from liability

for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement, or (ii) releasing the Land Trust from its indemnifications obligations hereunder, all of which shall survive termination of this Agreement.

E. Agreement Void. In the event that by the Outside Closing Date the City has not taken ownership of the Property pursuant to the Conveyance Agreement entered into between the City and the Irvine Company, approved by the Irvine City Council on May 10, 2016, this Agreement and all obligations contained herein are void, thereby releasing the parties from further obligations hereunder. In the event this Agreement is terminated, all documents delivered by Land Trust to City shall be returned immediately to Land Trust and all documents delivered by City to Land Trust shall be returned immediately to City. Nothing in this Section 2.4.E shall be construed as (i) releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement, or (ii) releasing the Land Trust from its indemnifications obligations hereunder, all of which shall survive termination of this Agreement.

2.5 Condition of Title

The City shall convey to the Land Trust fee simple title to the Property free and clear of all recorded liens, encumbrances, encroachments, assessments, leases and taxes except (i) the provisions of the Irvine Company Declaration (ii) the exceptions and reservations set forth in that certain Grant Deed pursuant to which the Irvine Company intends to transfer title to the Property to the City, which was approved by the Irvine City Council on May 10, 2016 (iii) the provisions of the Grant Deed and the City Regulatory Agreement, and (iv) the standard conditions and exceptions contained in an ALTA standard owner's policy of title insurance that is regularly issued by the Title Company in transactions similar to the one contemplated by this Agreement.

2.6 Title Insurance

The Recording Instructions shall provide that concurrently with recordation of the Grant Deed, the Title Company shall provide and deliver to the Land Trust an ALTA standard form policy of title insurance issued by the Title Company insuring that the title is vested in the Land Trust with only those exceptions and conditions set forth in clauses (i), (ii), (iii), (iv) and (v) of Section 2.5 above (the "Land Trust Title Policy"). The Title Company shall provide the City with a copy of the Land Trust Title Policy.

2.7 Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Property, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the City. All ad valorem taxes and assessments levied or imposed for any period commencing after the conveyance of title shall be paid by the Land Trust.

2.8 Conveyance Free of Possession

The Property shall be conveyed free of any possession or right of possession by any person except that of the Land Trust and the easements and other encumbrances of record (subject to Land Trust's right to review the condition of title pursuant to Section 2.9).

2.9 Inspections; Condition of Property

A. Right of Entry

i. In connection with Land Trust's due diligence investigations of the Property, City hereby grants to Land Trust, and its affiliates, agents, contractors and employees, a license (the "License") to enter upon the Property in order to conduct any and all inspections, investigations, tests and studies (including, without limitation, architectural inspections, engineering tests, soils, seismic and geologic reports and environmental testing) with respect to the Property ("Due Diligence Investigations") as Land Trust may reasonably elect to make, all at Land Trust's sole cost and expense. Land Trust shall notify the City Manager, which may be by written or telephonic notice, prior to a planned entry on the Property and provide information to the City Manager as to the purpose of the planned entry and the estimated time for completing the particular Due Diligence Investigation. All Due Diligence Investigations performed on the Property shall be undertaken in conformance with all City requirements, including obtaining any and all permits, and the City's Municipal Code.

ii. City may revoke this License (i) upon written notice to Land Trust if, in the reasonable judgment of the City Manager, such revocation is necessary to protect the public health, safety, or welfare pursuant to the exercise of the City's police powers; or (ii) upon two (2) business days' written notice to Land Trust that Land Trust is in violation of the terms of this Agreement or of any applicable law, statute, ordinance, rule, or regulation pertaining to the Due Diligence Investigations or Land Trust's entry upon the Property pursuant to this Agreement, if Land Trust has failed to cure such violation within that period of two (2) business days following Land Trust's receipt of notice from City.

iii. The License shall terminate and be void as of the termination of this Agreement.

iv. Land Trust shall cause to have its Due Diligence Investigations conducted in accordance with all laws applicable thereto, and in a good and workmanlike manner.

B. Lien Free. Land Trust shall keep the Property free and clear of any mechanic's or materialmen's liens arising out of Land Trust's Due Diligence Investigations. The provisions of this paragraph shall survive the termination of this Agreement for any reason whatsoever.

C. Obligations Upon Expiration/Termination. Upon the earlier of (i) the termination of the License, or (ii) the termination of this Agreement, Land Trust shall promptly (a) repair any damage to the Property caused by Land Trust's or any of its representatives' entry thereon, and (b) remove Land Trust's or any of its representatives' personal property from the

Property. The provisions of this paragraph shall survive the expiration or early termination of this Agreement for any reason whatsoever.

D. Insurance

i. Without limiting Land Trust's indemnification obligations as set forth in this Agreement, Land Trust, prior to any entry on the Property by Land Trust or its employees, agents, representatives, consultants, or contractors, shall procure and maintain, at its sole cost and expense, for the period of such entry, the following policies of insurance:

a. Commercial General Liability insurance written on a per occurrence basis in an amount not less than \$3,000,000 per occurrence.

b. Business Auto Coverage written on a per accident basis in an amount not less than \$3,000,000 per accident. If Land Trust or Land Trust's employees use personal autos in connection with the performance of work under this Agreement, Land Trust shall provide evidence of personal auto liability coverage for each such person.

c. If applicable, Worker's Compensation insurance providing statutory benefits as required by California law.

ii. All of the insurance policies required hereunder, except the worker's compensation insurance, shall comply with the following requirements:

a. All insurance shall be written by insurers that are admitted and licensed to do business in the State of California and with A.M. Bests rating of B++ or better and a minimum financial size VII.

b. The policies shall be endorsed to name the City and the City's officers, officials, members, employees, agents, and volunteers as additional insureds.

c. All of Land Trust's insurance: (a) shall contain no special limitations on the scope of protection afforded to the additional insureds; and (b) shall be primary insurance and any insurance or self-insurance maintained by the additional insureds or any of them shall be in excess of Land Trust's insurance and shall not contribute with it.

d. The policies shall be "occurrence" rather than "claims made" insurance.

e. The policies shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

f. The policies shall prohibit Land Trust from waiving the right of subrogation prior to a loss.

g. The policies shall not contain any provision or definition that would serve to eliminate so-called “third party action over” claims, including any exclusion for bodily injury to an employee of the insured.

h. City reserves the right at any time during the term of this Agreement to reasonably change the amounts and types of insurance required by giving Land Trust not less than thirty (30) days advance written notice of such change.

iii. Prior to any entry onto the Property by Land Trust or its employees, agents, representatives, consultants, or contractors, Land Trust shall provide the City Manager with Certificates of Insurance evidencing the above insurance coverages and said Certificates of Insurance have been reasonably approved by City. Said Certificates are to reflect that the insurer will provide 30 days written notice to City of any cancellation of coverage and if the Accord certificate form is used the word “endeavor to” shall be stricken from the insurer’s written notification section. In the event any of said policies of insurance are reduced in limits or cancelled for any reason, Land Trust shall, prior to the cancellation date, submit new evidence of insurance, in conformance with this paragraph.

iv. Land Trust shall not enter upon the Property for the purpose of the Due Diligence Investigations until Land Trust has provided the City Manager with the required Certificate of Insurance and the City Manager has approved same.

v. The provisions of any workers’ compensation or similar act shall not limit the obligations of Land Trust under this Agreement. Land Trust expressly agrees not to use any statutory immunity defenses under such laws with respect to City or City’s officers, officials, members, employees, agents, representatives, or volunteers acting in an official capacity.

vi. Land Trust agrees to provide immediate notice to City of any claim or loss against Land Trust arising out of any acts or omissions of Land Trust under this Agreement. City assumes no obligation or liability by such notice, but has the right to monitor the handling of any such claim or claims if they are likely to involve the City or any officer, official, member, employee, agent, representative, or volunteer acting in an official capacity.

E. “As Is”. The City has provided the Land Trust with all information of which it has actual knowledge concerning the physical condition of the Property, including, without limitation, information about any “Hazardous Materials,” as defined in Section 2.9.H below. The Land Trust acknowledges and agrees that any portion of the Property that it acquires from the City pursuant to this Agreement shall be acquired “AS IS” “WHERE IS” “WITH ALL FAULTS,” in its current physical condition, with no warranties of any kind or nature, express or implied, except those warranties set forth in Section 1.9 above, as to the physical condition thereof, the presence or absence of any latent or patent condition thereon or therein, including, without limitation, any Hazardous Materials thereon or therein, and any other matters affecting the Property.

F. Indemnity. The Land Trust agrees, from and after the date of recordation of the Grant Deed, to defend (by counsel reasonably satisfactory to the City), indemnify, protect and hold harmless the City and the City’s officers, directors, members, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns (collectively, the “Indemnitees”)

from, regarding and against any and all liabilities, obligations, orders, charges, decrees, judgments, liens, demands, actions, "Environmental Response Actions" (as defined in Section 2.9.H below), claims, losses, damages, fines, penalties, expenses, "Environmental Response Costs" (as defined in Section 2.9.H below), administrative and judicial proceedings, remedial action requirements, enforcement actions of any kind, or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), (collectively, "Claims") occurring during and caused by Land Trust's use and occupancy of the Property, and resulting from or in connection with the actual or claimed generation, storage, handling, treatment, transportation, use, presence, placement, migration, removal, release, storage, decontamination, cleanup, and/or disposal of Hazardous Materials at, on, in, beneath or from the Property after the Closing Date. The Land Trust's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Hazardous Materials, at the Land Trust's sole cost. The foregoing indemnity shall further apply to any residual contamination on or under the Project, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials occurring after the Closing Date, and irrespective of whether any of such activities were or will be undertaken in accordance with all federal, state, and local laws, ordinances, regulations, orders, and directives pertaining to Hazardous Materials in, on, or under the Project or any portion thereof. The provisions of this section shall survive expiration of the Term, or the termination, of this Agreement, and shall remain in full force and effect.

G. Release and Waiver. Land Trust hereby releases and waives all rights, causes of action and claims the Land Trust has or may have in the future against the Indemnitees arising out of or in connection with any Hazardous Materials at, on, in, beneath or from the Property. In furtherance of the intentions set forth herein, the Land Trust acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California which provides as follows:

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

The Land Trust hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of the statutory or non-statutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this Section 2.9.G.

Land Trust's Initials:  _____

H. Definitions

i. As used in this Agreement, the term "Environmental Response Actions" means any and all activities, data compilations, preparation of studies or reports,

interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, initiated or required in connection with any local, state or federal governmental or private party claims, including any claims by the Land Trust.

ii. As used in this Agreement, the term “Environmental Response Costs” means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

iii. As used in this Agreement, the term “Hazardous Materials” means any substance, material or waste which is (1) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of California law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (7) defined as a “hazardous substance” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or its implementing regulations; (8) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (9) determined by a California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the community, including without limitation alcoholic beverages, aspirin, tobacco and saccharine.

I. Materiality. The Land Trust acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of the Land Trust for the benefit of the City set forth in this Agreement are a material element of the consideration to the City for the performance of its obligations under this Agreement, and that the City would not have entered this Agreement unless the Land Trust’s obligations were as provided for herein.

3. CITY FINANCING; GROUND LEASE AND USE OF THE PROPERTY

3.1 City In-Lieu Funds

Unless this Agreement has been terminated, by the earlier of June 1, 2017 or the Closing Date, the City shall transfer to the Land Trust all “available” monies deposited in the affordable housing in lieu account of the City’s Fees and Exactions Fund (the “City In-Lieu Funds”). As used herein, the term “available funds” shall mean funds in the City’s Fees and Exactions Fund as of the date of such transfer that have not been previously committed by the City to a different use, entity, or purpose.

3.2 Selection of AHD; Execution of Affordable Housing Agreement

City and Land Trust acknowledge and agree that the Land Trust has prepared a Request for Qualifications and Request for Proposals for an AHD to develop an Affordable Housing Development on the Property. Upon Land Trust's review of the proposals, Land Trust shall, within the time set forth in the Schedule of Performance, select an AHD. Promptly after selecting an AHD, Land Trust shall attempt to negotiate the terms of an Affordable Housing Agreement with the AHD. Land Trust shall submit any proposed Affordable Housing Agreement to the City, for review and approval by the City Attorney, prior to executing the same. The Land Trust's execution of a City Attorney-approved Affordable Housing Agreement with an AHD is one of City's Conditions to Closing. Land Trust acknowledges and agrees that it is City's intent that the Property be developed with the maximum number of residential dwelling units that may be developed on the Property pursuant to the City of Irvine Zoning Code. In furtherance of said intent, the Land Trust shall use its best efforts to ensure that the Affordable Housing Development provides for development of the maximum number of units allowable by the City of Irvine Zoning Code.

3.3 Evidence of Financing

As one of City's Conditions to Closing, Land Trust shall have received evidence that the AHD has obtained sufficient equity capital and/or has obtained firm and binding commitments for construction financing which together with equity financing is sufficient to pay for the development of the Affordable Housing Development in accordance with the terms of the Affordable Housing Agreement. Such evidence of financing shall include the following: (a) a copy of a legally binding, firm and enforceable loan commitment(s) obtained by the AHD from one or more Institutional Lenders (defined below) for the mortgage loan or loans for construction financing for the construction of the Affordable Housing Development subject to such lenders' reasonable, customary and normal conditions and terms, and/or (b) other documentation satisfactory to the City as evidence of other sources of capital sufficient to demonstrate to the City that the AHD has adequate funds to cover the difference between the total cost of construction and completion of the Affordable Housing Development, less financing authorized by those loans set forth in (a) above (collectively "Evidence of Financing").

As used herein, the term "Institutional Lender" shall mean any of the following institutions having assets or deposits in the aggregate of not less than One Hundred Million Dollars (\$100,000,000): a California chartered bank; a bank created and operated under and pursuant to the laws of the United States of America; an "incorporated admitted insurer" (as that term is used in Section 1100.1 of the California Insurance Code); a "foreign (other state) bank" (as that term is defined in Section 1700(1) of the California Financial Code); a federal savings and loan association (Cal. Fin. Code Section 8600); a commercial finance lender (within the meaning of Sections 2600 et seq. of the California Financial Code); a "foreign (other nation) bank" provided it is licensed to maintain an office in California, is licensed or otherwise authorized by another state to maintain an agency or branch office in that state, or maintains a federal agency or federal branch in any state (Section 1716 of the California Financial Code); a bank holding company or a subsidiary of a bank holding company which is not a bank (Section 3707 of the California Financial Code); a trust company, savings and loan association, insurance company, investment banker; college or university; pension or retirement fund or system, either governmental or private, or any pension or

retirement fund or system of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any state thereof; and a Real Estate Investment Trust, as defined in Section 856 of the Internal Revenue Code of 1986, as amended, provided such trust is listed on either the American Stock Exchange or the New York Stock Exchange.

3.4 Indemnity Requirements

The Land Trust shall indemnify, defend, and hold harmless the Indemnitees from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including expert witness fees, attorneys' fees, and costs), which may be caused by any of the Land Trust's activities under this Agreement except to the extent caused by the negligence or willful misconduct of any of the Indemnitees.

3.5 Insurance Requirements

Commencing on the Effective Date hereof and ending on the expiration date of the City Regulatory Agreement, Land Trust shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to the City Manager, Commercial General Liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Such insurance shall:

- (1) be issued by a company that holds a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by City's Risk Manager.
- (2) name and list as additional insureds the Indemnitees. An endorsement shall accompany the insurance certificate naming such additional insureds.
- (3) specify it acts as primary insurance and that no insurance held or owned by City shall be called upon to cover a loss under said policy;
- (4) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to City of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (5) be written on an occurrence and not a claims made basis.

3.6 Taxes and Assessments

After the conveyance of title by City to Land Trust, the Land Trust shall pay prior to delinquency all real estate taxes and assessments on the Property for any period subsequent to the conveyance of title and possession, so long as the Land Trust retains any ownership interest therein. The Land Trust shall remove or have removed any levy or attachment made on the

Property or any part thereof, or assure the satisfaction thereof within a reasonable time but in any event prior to any sale or transfer of all or any portions thereof. Notwithstanding the above, the Land Trust shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance available to the Land Trust in respect thereto, and nothing herein shall limit the remedies available to the Land Trust in respect thereto.

3.7 Right of the City to Satisfy Other Liens on the Property After Title Passes

After the conveyance of title by City and prior to the ground lease of the Property by Land Trust to an AHD, and after the Land Trust has had written notice and has failed after a reasonable time, to challenge, cure, or satisfy any liens or encumbrances on the Property which are not otherwise permitted under this Agreement, the City shall have the right but no obligation to satisfy any such liens or encumbrances and receive immediate reimbursement of the costs thereof from the Land Trust. Notwithstanding the above, the Land Trust shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance available to the Land Trust in respect thereto.

3.8 Land Trust's Ground Lease of Property; Development of Affordable Housing Development

By the time set forth in the Schedule of Performance, Land Trust shall ground lease the Property to the AHD for the AHD's development thereon of an Affordable Housing Development. Land Trust shall strictly enforce all of the terms of the Affordable Housing Agreement, Note, Deed of Trust, AHD Regulatory Agreement, and Lease, and shall ensure that the AHD complies with all Governmental Requirements in the development and operation (if applicable) of the Affordable Housing Development.

3.9 Affordable Housing

Land Trust hereby covenants and agrees, for itself and its successors and assigns, that the Property will be used and maintained during the Restricted Affordability Term only for the development and operation (if applicable) of an Affordable Housing Development.

3.10 Nondiscrimination

Land Trust covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person, or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any part thereof, nor shall Land Trust, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property, or any part thereof. The foregoing covenants shall run with the land.

3.11 Maintenance of the Property

During the time the Land Trust owns the Property, the Land Trust shall maintain the Property in conformity with the Irvine Municipal Code and the requirements of the City Regulatory Agreement, and shall keep the Property free from any graffiti and from any accumulation of debris or waste materials.

The Land Trust shall also maintain any landscaping on the Property in a healthy and attractive condition. If, at any time, Land Trust fails to maintain the Property or any portion thereof, and said condition is not corrected as soon as reasonably possible after written notice from the City, the City may enter the Property or applicable portion thereof to perform the necessary maintenance thereon and Land Trust shall pay such costs as are reasonably incurred for such maintenance plus a fifteen percent (15%) administrative fee.

4. **DEFAULTS AND REMEDIES**

4.1 Defaults – General

Subject to the extensions of time set forth in Section 5.3, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within thirty (30) days after service of the notice of default (or within such other period as is set forth herein), the non-defaulting party shall be entitled to pursue whatever remedies to which such party is entitled under this Agreement.

4.2 Legal Actions

A. Specific Performance. The non-defaulting party, upon expiration of applicable notice and cure periods, shall be permitted, but not obligated, to commence an action for specific performance of the terms of this Agreement, or to cure, correct or remedy any default hereunder or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement. In this regard, Land Trust specifically acknowledges that City is entering into this Agreement for the purpose of assisting in the development of the Property and the provision of affordable housing and not for the purpose of enabling Land Trust to speculate in land. In no event shall either party be entitled to damages of any kind from the other party, including, without limitation, damages for economic loss, lost profits, or any other economic or consequential damages of any kind.

B. Institution of Legal Actions; Attorney's Fees. Any legal actions must be instituted in the Superior Court of the County of Orange, State of California, or in the Federal District Court in the Southern District of California. In the event of any litigation between the parties hereto, the prevailing party shall be entitled to receive, in addition to the relief granted, its reasonable attorney's fees and costs and such other costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery.

C. Applicable Law. The internal laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

D. Acceptance of Service of Process. In the event that any legal action is commenced by the Land Trust against the City, service of process on the City shall be made by personal service upon the City Manager or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City against the Land Trust, service of process on the Land Trust shall be made by personal service upon the Executive Director of the Land Trust or in such other manner as may be provided by law.

4.3 Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

4.4 Inaction Not a Waiver of Default

Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

4.5 Termination

A. Termination by the Land Trust. In the event that prior to the Closing Date:

a. City is in material default of this Agreement, and any such failure is not cured within thirty (30) days, or for those defaults which cannot reasonably be cured within thirty (30) days, commenced to be cured within said thirty (30) day period and thereafter diligently prosecuted to completion, after written demand by the Land Trust; or

b. the City fails to satisfy any or all of Land Trust's Conditions to Closing by the Outside Date for Closing; or

c. The Closing does not occur by the Outside Closing Date; or

d. Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the Land Trust in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the Land Trust;

then, at the option of the Land Trust, upon written notice thereof to the City, all provisions of this Agreement shall terminate and be of no further force and effect. Thereafter, except as provided in the next sentence, neither the City nor the Land Trust shall have any further rights against or liability to the other with respect to this Agreement. Nothing in this section shall be construed as (i) releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this

Agreement, or (ii) releasing the Land Trust from its indemnifications obligations hereunder, all of which shall survive termination of this Agreement.

B. Termination by the City. In the event that prior to the Closing Date:

a. The Land Trust fails to satisfy any or all of City's Conditions to Closing by the Outside Date for Closing; or

b. The Closing does not occur by the Outside Closing Date; or

c. Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the City;

d. The Land Trust (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Property in violation of this Agreement; or

e. There is a change in the ownership of the Land Trust contrary to the provisions of Section 1.5 hereof; or

f. The Land Trust is in material default hereof, and such default or failure is not cured within thirty (30) days, or for those defaults which cannot reasonably be cured within thirty (30) days, commenced to be cured within said thirty (30) day period and thereafter diligently prosecuted to completion, after the date of written demand therefor by the City; or

g. A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Land Trust to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Land Trust or seeking any arrangement for the Land Trust under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Land Trust in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of the Land Trust, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection (f) as well; or prior to sooner sale pursuant to such sequestration, attachment, or execution; or

h. The Land Trust shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall

apply under this subsection (e) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution; or

i. The Land Trust shall have voluntarily suspended its business.

then, at the option of the City, upon such written notice thereof to the Land Trust as may be set forth above, this Agreement shall be terminated. Thereafter, except as provided in the next sentence, neither party shall have any further rights or liability against the other under this Agreement. Nothing in this section shall be construed as (i) releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement, or (ii) releasing the Land Trust from its indemnifications obligations hereunder, all of which shall survive termination of this Agreement.

5. GENERAL PROVISIONS

5.1 Notices, Demands and Communications Between Parties

Written notices, demands and communications between the City and the Land Trust shall be sufficiently given if (i) delivered by hand, (ii) delivered by reputable same-day or overnight messenger service that provides a receipt showing date and time of delivery, or (iii) dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City and the Land Trust at the addresses specified in Section 1.3.A and 1.3.B, respectively. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 5.1.

Any written notice, demand, or communication shall be deemed received immediately if delivered by hand or delivered by messenger in accordance with the preceding paragraph, and shall be deemed received on the third (3rd) day from the date it is postmarked if delivered by registered or certified mail in accordance with the preceding paragraph.

Copies of any such written notice, demand, or communication shall also be sent to:

Rutan & Tucker, LLP
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92626
Attn: Jeffrey T. Melching, Esq.

5.2 Conflicts of Interest

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

5.3 Enforced Delay; Extension of Times of Performance

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor; subcontractor or supplier; acts or omissions of the other party; acts or failures to act of the City of Irvine, or any other public or governmental agency or entity (except that the acts or failures to act of the City shall not excuse performance by the City); or any other causes beyond the control or without the default of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days after the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Land Trust. The City Manager shall also have the authority on behalf of City to administratively approve extensions of time not to exceed a cumulative total of one (1) year.

Notwithstanding the foregoing portion of this Section 5.3, the Land Trust is not entitled pursuant to this Section 5.3 to an extension of time to perform because of economic or market conditions.

5.4 Provision Not Merged with DeedsNone of the provisions of this Agreement are intended to or shall be merged by any grant deed transferring title to any real property which is the subject of this Agreement from City to Land Trust or any successor in interest, and any such grant deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

5.5 Non-Liability of Officials and Employees of the City

No member, official or employee of the City shall be personally liable to the Land Trust, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Land Trust or its successors, or on any obligations under the terms of this Agreement.

5.6 Parties Not Co-VenturersNothing in this Agreement is intended to or does establish the City and the Land Trust as partners, co-venturers, or principal and agent with one another.

5.7 WarrantiesThe City expresses no warranty or representation to the Land Trust as to fitness or condition of the Property for the building or construction to be conducted thereon.

5.8 Interpretation; Entire Agreement, Waivers; Attachments

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the City and the Land Trust, and all amendments hereto must be in writing by the appropriate authorities of the City and the Land Trust. Except as otherwise expressly provided, in any circumstance where under this Agreement either party is required to approve or disapprove any matter, approval shall not be unreasonably withheld.

The exhibits and attachments to this Agreement are incorporated herein and made a part hereof.

5.9 Time of Essence

Time is of the essence in the performance of this Agreement.

5.10 No Brokers

Each party represents to the other party that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's attorneys' fees, arising out of the broker's or finder's claim. The provisions of this section shall survive expiration of the term or other termination of this Agreement, and shall remain in full force and effect.

5.11 Maintenance of Books and Records

Land Trust shall prepare and maintain all books, records, and reports necessary to substantiate Land Trust's compliance with the terms of this Agreement.

5.12 Right to Inspect

City shall have the right, upon not less than twenty-four (24) hours' notice, at all reasonable times during business hours, to inspect the books and records of the Land Trust pertinent to the

purposes of this Agreement. Said right of inspection shall not extend to documents privileged under attorney-client or other such privileges.

5.13 Binding Effect of Agreement

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their legal representatives, successors, and assigns. This Agreement shall likewise be binding upon and obligate the Property and the successors in interest, owner or owners thereof, and all of the tenants, lessees, sublessees, and occupants of such Property. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property shall be held conclusively to have been executed, delivered, and accepted subject to the terms and provisions hereof, regardless of whether such terms and provisions are set forth in such contract, deed, or other instrument, unless the City expressly releases the Property from the requirements of this Agreement.

5.14 Severability

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

5.15 Counterparts

This Agreement may be executed in counterparts, each of which, when this Agreement shall have been signed by all the parties hereto, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

5.16 Amendments to this Agreement

The Land Trust and the City agree to mutually consider reasonable requests for amendments to this Agreement which may be made by either of the Parties hereto, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. The City Manager shall have the authority to issue interpretations, waive terms and conditions, and approve, on behalf of the City, amendments to this Agreement that would not change the uses or development permitted on the Property. All other amendments shall require the action of the City Council. All amendments, including those authorized to be approved by the City Manager, shall be in writing and shall be signed by authorized representatives of City and Land Trust. The City Manager shall have the authority, on behalf of the City, to approve extensions of time in Land Trust's performance under this Agreement, including, but not limited to, times of performance set forth in the Schedule of Performance, for a cumulative period of up to one (1) year.

[End of Agreement – Signature page follows]

IN WITNESS WHEREOF, the City and the Land Trust have signed this Agreement on the respective dates set forth below.

CITY OF IRVINE, a California municipal corporation

By: Sean Joyce
Sean Joyce, City Manager

ATTEST:
Molly Myer
City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP
[Signature]
City Attorney

IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation

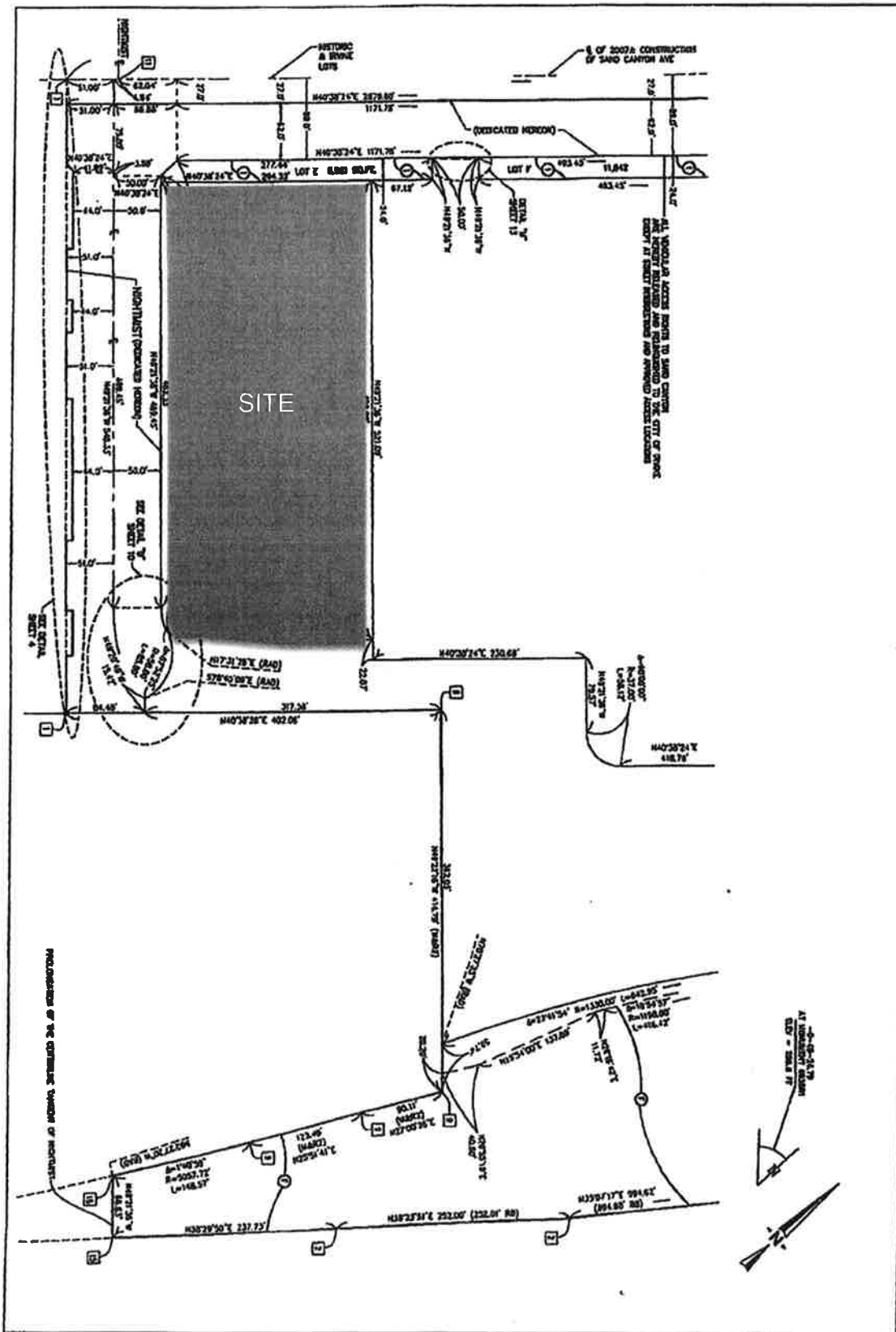
By: Mark Asturias
Mark Asturias, Executive Director

ATTACHMENT NO. 1

SITE MAP

[SEE FOLLOWING PAGE]

SITE MAP



ATTACHMENT NO. 2

LEGAL DESCRIPTION

That certain property in the City of Irvine, County of Orange, State of California, more specifically described as:

Lot 7 of Tract 17612, as shown on a Map recorded on March 18, 2014, as Instrument No. 2014000101130 in Book 924, Pages 1 to 14, inclusive, of Miscellaneous Maps, Records of Orange County, California (the "Property").

EXCEPTING THEREFROM, all water rights as conveyed to Irvine Ranch Water District in the Quitclaim Deed recorded on June 21, 2006, as Instrument No. 2006000416403 of Official Records of Orange County, California ("**Official Records**").

EXCEPTING THEREFROM, all oil, mineral and other related rights as reserved to The Irvine Company, its affiliates, successors and assigns, in the Grant Deed recorded in the Official Records on November 30, 2005 as Instrument No. 2005000953645.

RESERVING UNTO CITY OF IRVINE ("GRANTOR"), its successors and assigns, together with the right (without the consent of Irvine Community Land Trust ["Grantee"] or any other owner of an interest in the Property) to grant, transfer or license all or a portion of the same to one or more grantees, transferees or licensees, as to the portions of the Property located within ten (10) feet of (a) the common boundary line of the Property and Lot 5 of said Tract 17612 and (b) the common boundary line of the Property and the portion of Lot 6 of said Tract 17612 upon which the private street known as "Red Sage" is located (collectively, the "**Wall Easement Area**"), permanent, nonexclusive easements in gross on, over, under and across the Wall Easement Area for the construction, maintenance, repair, relocation and replacement of the walls that separate the Property from said Lots 5 and 6 of Tract 17612 (the "**Apartment Site Walls**"), including without limitation the right to place footings for said walls within the portions of the Wall Easement Area located within two (2) feet of said common boundary line, together with the right to enter upon the Wall Easement Area (upon reasonable notice to Grantee and without unreasonably interfering with Grantee's reasonable use and enjoyment thereof) in order to construct, maintain, repair, relocate and replace the Apartment Site Walls.

RESERVING UNTO GRANTOR, its successors and assigns together with the right (without the consent of Grantee or any other owner of an interest in the Property) to grant, transfer or license all or a portion of the same to one or more grantees, transferees or licensees, permanent nonexclusive easements in gross on over, under and across the portions of the Property located within twenty (20) feet of any property line bordering on and parallel to any public or private street, for the construction, installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines, drainage and flood control facilities and any other utilities (collectively, "**Utilities**") as necessary to accomplish the development of Grantor's property within Planning Area 40, which utilities are collectively referred to herein as the "**Utility Easements**," together with the right to enter upon such portions of the Property (without unreasonably interfering with Grantee's reasonable use and enjoyment thereof) in order to service, maintain,

repair, reconstruct, relocate or replace any of such Utilities; provided, however, that actual location and use of the Utility Easements shall be subject to the prior approval of Grantee, which approval shall not be unreasonably withheld or delayed so long as (i) the design and location of such facilities or improvements and the revegetation of areas to be disturbed by such activities do not, in Grantee's reasonable opinion, interfere with Grantee's use of the Property, and (ii) Grantor has prepared and obtained Grantee's approval of reasonably detailed plans for the construction of such improvements or facilities and associated revegetation. To the extent technologically and economically feasible, any such utility easements shall be consolidated and located to minimize adverse impacts to Grantee's use of the Property. Within a reasonable time after completion of installation of any Utilities pursuant to these reserved easements, Grantor shall (i) provide Grantee with a map depicting the location of the Utility(ies) installed within the Property, and (ii) revegetate any portion of the Property disturbed by such installation in accordance with the revegetation plans approved by Grantee. Grantor's reserved easements to install Utilities within the Property shall expire at such time as all bonds have been exonerated for subdivision improvements required in connection with the development of Grantor's property within all final maps located in Planning Area 40.

All of the work performed by Grantor pursuant to the foregoing reservations shall be pursuant to written agreement between Grantor and its contractors, which agreement shall require Grantor's contractors, in connection with the use of such easements, to (i) indemnify and hold harmless Grantee and its officials, officers, members, employees, agents and representatives from and against any and all claims, losses, actions, damages, and liabilities arising from such use that may be asserted or claimed by any person or entity, (ii) promptly repair, at its sole cost and expense, any damage it causes to the Property, and (iii) comply with the insurance requirements specified in the last sentence of this paragraph. (If Grantor elects to perform any work under any such easements itself, Grantor shall likewise comply with the indemnity and repair obligations specified in the preceding sentence.) In the event that the rights under such easements are transferred to a person or entity (other than Grantor) who is responsible for maintenance thereof, such person or entity shall, in connection with its exercise of any such rights and in addition to complying with all other requirements of this subsection, maintain insurance covering such activities at all times during the exercise of such rights. Such insurance shall be in commercially reasonable form, shall require that the contractor maintain worker's compensation coverage as required by law, comprehensive general liability insurance on an "occurrence" basis with a combined single limit for bodily injury and property damage of \$1,000,000 or greater, and automobile liability insurance covering owned, hired and non-owned vehicles with a combined single limit for bodily injury, property damage and uninsured motorists of \$1,000,000 or greater, and shall name Grantee as an additional insured on the comprehensive general liability insurance policy.

In addition to the foregoing, if the exercise of Grantor's rights under the foregoing reservations involves construction of improvements within the reserved easement area, then Grantor shall (I) consult with Grantee prior to the commencement of work within such area and give reasonable consideration to Grantee's suggestions regarding the proposed improvements, and (II) provide Grantee with at least ten (10) business days prior notice of the commencement of such work, the anticipated duration of the work, and the location where the work will take place.

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

ACTIVITY	TIME FRAME
1. Land Trust selects an AHD. (Section 3.2)	Not later than June 30, 2019
2. Land Trust obtains City Attorney approval of proposed form of Affordable Housing Agreement and enters into the same. (Section 3.2)	Not later than December 31, 2019
3. Land Trust satisfies all of the City's Conditions to Closing. (Section 2.4.A)	Not later than Outside Closing Date.
4. City transfers City In-Lieu Funds to Land Trust. (Section 3.1)	By the earlier of June 30, 2017, or on the Closing Date.
5. Land Trust executes and delivers to City Grant Deed and City Regulatory Agreement. (Section 2.2.B)	Within five (5) days prior to proposed Closing Date.
6. City executes and delivers to Title Officer Grant Deed and City Regulatory Agreement. (Section 2.2.B)	Within five (5) days prior to proposed Closing Date.
7. Grant Deed and City Regulatory Agreement are recorded. (Section 2.2.C)	Not later than the Outside Closing Date.

It is understood that the foregoing Schedule is subject to all of the terms and conditions of the text of the Agreement. The summary of items of performance in the Schedule is not intended to supersede or modify any more complete description in the text; in the event of any conflict or inconsistency between this Schedule and text of the Agreement, the text of the Agreement shall govern.

ATTACHMENT NO. 4

GRANT DEED

[SEE FOLLOWING DOCUMENT]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

IRVINE COMMUNITY LAND TRUST
One Civic Center Plaza, 3rd Floor
Irvine, CA 92606-5207

WITH A CONFORMED COPY TO:
City Clerk
City of Irvine
P.O. Box 19575
Irvine, CA 92623-9575

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

The undersigned declares that this document is recorded at the request of and for the benefit of the City of Irvine and therefore is exempt from the payment of the recording fee pursuant to Government Code §6103 and 27383 and from the payment of the Documentary Transfer Tax pursuant to Revenue and Taxation Code § 11922.

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF IRVINE, a California municipal corporation (the "**Grantor**"), hereby grants to IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation ("**Grantee**"), that certain real property ("**Property**") located in the City of Irvine, County of Orange, State of California, described in the legal description attached hereto as Exhibit "A" and incorporated herein by this reference, subject to all matters of record including, without limitation, that certain Declaration of Special Land Use Restrictions by and between the Grantor and the Irvine Land Company, dated _____, and recorded on _____, as Instrument No. _____ in the Official Records of the County of Orange.

[End – Signature page follows]

“Grantor”

CITY OF IRVINE, a California municipal corporation

Dated: _____, 20__

By: _____
Sean Joyce, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

City Attorney

“Grantee”

IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation

Dated: _____, 20__

By: _____
Mark Asturias, Executive Director

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

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

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

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

That certain property in the City of Irvine, County of Orange, State of California, more specifically described as:

Lot 7 of Tract 17612, as shown on a Map recorded on March 18, 2014, as Instrument No. 2014000101130 in Book 924, Pages 1 to 14, inclusive, of Miscellaneous Maps, Records of Orange County, California (the "Property").

EXCEPTING THEREFROM, all water rights as conveyed to Irvine Ranch Water District in the Quitclaim Deed recorded on June 21, 2006, as Instrument No. 2006000416403 of Official Records of Orange County, California ("**Official Records**").

EXCEPTING THEREFROM, all oil, mineral and other related rights as reserved to The Irvine Company, its affiliates, successors and assigns, in the Grant Deed recorded in the Official Records on November 30, 2005 as Instrument No. 2005000953645.

RESERVING UNTO GRANTOR, its successors and assigns, together with the right (without the consent of Grantee or any other owner of an interest in the Property) to grant, transfer or license all or a portion of the same to one or more grantees, transferees or licensees, as to the portions of the Property located within ten (10) feet of (a) the common boundary line of the Property and Lot 5 of said Tract 17612 and (b) the common boundary line of the Property and the portion of Lot 6 of said Tract 17612 upon which the private street known as "Red Sage" is located (collectively, the "**Wall Easement Area**"), permanent, nonexclusive easements in gross on, over, under and across the Wall Easement Area for the construction, maintenance, repair, relocation and replacement of the walls that separate the Property from said Lots 5 and 6 of Tract 17612 (the "**Apartment Site Walls**"), including without limitation the right to place footings for said walls within the portions of the Wall Easement Area located within two (2) feet of said common boundary line, together with the right to enter upon the Wall Easement Area (upon reasonable notice to Grantee and without unreasonably interfering with Grantee's reasonable use and enjoyment thereof) in order to construct, maintain, repair, relocate and replace the Apartment Site Walls.

RESERVING UNTO GRANTOR, its successors and assigns together with the right (without the consent of Grantee or any other owner of an interest in the Property) to grant, transfer or license all or a portion of the same to one or more grantees, transferees or licensees, permanent nonexclusive easements in gross on over, under and across the portions of the Property located within twenty (20) feet of any property line bordering on and parallel to any public or private street, for the construction, installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines, drainage and flood control facilities and any other utilities (collectively, "**Utilities**") as necessary to accomplish the development of Grantor's property within Planning Area 40, which utilities are collectively referred to herein as the "**Utility Easements**," together with the right to enter upon such portions of the Property (without unreasonably interfering with Grantee's reasonable use and enjoyment thereof) in order to service, maintain,

repair, reconstruct, relocate or replace any of such Utilities; provided, however, that actual location and use of the Utility Easements shall be subject to the prior approval of Grantee, which approval shall not be unreasonably withheld or delayed so long as (i) the design and location of such facilities or improvements and the revegetation of areas to be disturbed by such activities do not, in Grantee's reasonable opinion, interfere with Grantee's use of the Property, and (ii) Grantor has prepared and obtained Grantee's approval of reasonably detailed plans for the construction of such improvements or facilities and associated revegetation. To the extent technologically and economically feasible, any such utility easements shall be consolidated and located to minimize adverse impacts to Grantee's use of the Property. Within a reasonable time after completion of installation of any Utilities pursuant to these reserved easements, Grantor shall (i) provide Grantee with a map depicting the location of the Utility(ies) installed within the Property, and (ii) revegetate any portion of the Property disturbed by such installation in accordance with the revegetation plans approved by Grantee. Grantor's reserved easements to install Utilities within the Property shall expire at such time as all bonds have been exonerated for subdivision improvements required in connection with the development of Grantor's property within all final maps located in Planning Area 40.

All of the work performed by Grantor pursuant to the foregoing reservations shall be pursuant to written agreement between Grantor and its contractors, which agreement shall require Grantor's contractors, in connection with the use of such easements, to (i) indemnify and hold harmless Grantee and its officials, officers, members, employees, agents and representatives from and against any and all claims, losses, actions, damages, and liabilities arising from such use that may be asserted or claimed by any person or entity, (ii) promptly repair, at its sole cost and expense, any damage it causes to the Property, and (iii) comply with the insurance requirements specified in the last sentence of this paragraph. (If Grantor elects to perform any work under any such easements itself, Grantor shall likewise comply with the indemnity and repair obligations specified in the preceding sentence.) In the event that the rights under such easements are transferred to a person or entity (other than Grantor) who is responsible for maintenance thereof, such person or entity shall, in connection with its exercise of any such rights and in addition to complying with all other requirements of this subsection, maintain insurance covering such activities at all times during the exercise of such rights. Such insurance shall be in commercially reasonable form, shall require that the contractor maintain worker's compensation coverage as required by law, comprehensive general liability insurance on an "occurrence" basis with a combined single limit for bodily injury and property damage of \$1,000,000 or greater, and automobile liability insurance covering owned, hired and non-owned vehicles with a combined single limit for bodily injury, property damage and uninsured motorists of \$1,000,000 or greater, and shall name Grantee as an additional insured on the comprehensive general liability insurance policy.

In addition to the foregoing, if the exercise of Grantor's rights under the foregoing reservations involves construction of improvements within the reserved easement area, then Grantor shall (I) consult with Grantee prior to the commencement of work within such area and give reasonable consideration to Grantee's suggestions regarding the proposed improvements, and (II) provide Grantee with at least ten (10) business days prior notice of the commencement of such work, the anticipated duration of the work, and the location where the work will take place.

ATTACHMENT NO. 5

**REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS**

[SEE FOLLOWING DOCUMENT]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Irvine
One Civic Center Plaza
P.O. box 19575
Irvine, CA 92623-9575
Attn: City Manager

The undersigned declares that this document is recorded at the request of and for the benefit of the City of Irvine and therefore is exempt from the payment of the recording fee pursuant to Government Code §6103 and 27383 and from the payment of the Documentary Transfer Tax pursuant to Revenue and Taxation Code § 11922.

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

**REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is made and entered into as of _____ ("Effective Date"), by and between CITY OF IRVINE, a California municipal corporation ("City") and IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation ("Land Trust").

RECITALS:

A. The Land Trust is the owner of fee title to that certain real property more particularly described in Exhibit "A", attached hereto and incorporated by reference herein (the "Property").

B. The Land Trust is a duly organized California nonprofit public benefit corporation, certified by the United States Internal Revenue Service as a public charity under Internal Revenue Code sections 501(c)(3) and 509(a)(3). The specific purpose of the Land Trust, as set forth in Article II of the Land Trust's Articles of Incorporation, filed on March 17, 2006 with the California Secretary of State, "is to lessen the burdens of government by assisting the City of Irvine, California ("City") to ensure that its residents are able to secure housing by, among other things, developing, constructing, financing, managing, selling, renting, subsidizing, and monitoring single- and multi-family housing, and to conduct or perform any ancillary or related activity in furtherance of the foregoing." Also as set forth in the Land Trust's Articles of Incorporation, the Land Trust was formed to help the City ensure that its residents are able to secure decent and affordable housing.

C. Land Trust acquired the Property from the City pursuant to An Affordable Housing Land Transfer Agreement by and between Land Trust and City, dated _____ (the "AHLTA"). The purpose of the AHLTA, and the City's transfer of the Property to the Land Trust thereunder, is to effectuate that certain Housing Strategy and Implementation Plan adopted by the City on or about March 14, 2006, which sets forth various implementing activities for the purposes of

assisting the Land Trust with increasing, improving, and preserving the City's supply of low and moderate income housing (the "Housing Plan"). The Housing Plan identifies projects and programs that would further the City's goal of having ten percent (10%) of the City's housing stock permanently affordable to low and moderate income households at build-out of the City.

D. The AHLTA requires the Land Trust to ground lease the Property to an experienced affordable housing developer for the development of an affordable housing development containing either affordable rental dwelling units or affordable single-family, owner-occupied dwelling units (the "Affordable Housing Development").

E. The conveyance to the Land Trust of the Property and the subsequent development thereon of affordable housing restricted to occupancy by households of limited incomes, all as provided in this Agreement, are in the vital and best interests of the City of Irvine and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the development will be undertaken.

F. The AHLTA requires Land Trust to enter into this Agreement, which restricts the use of the Property for development and operation (if applicable) of an Affordable Housing Development for the "Affordability Period" (as that term is defined in Section 1.2 below).

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the Land Trust and City declare, covenant and agree, by and for themselves, their heirs, executors, administrators, successors and assigns, and all persons claiming under or through them, that, commencing upon the Effective Date and continuing throughout the "Affordability Period" (as that term is defined in Section 1 below):

1. DEFINITIONS.

"Affordability Period" shall mean the period commencing on the Effective Date and ending on the fifty-ninth (59th) anniversary of the Ground Lease Date; provided, however, that if the Land Trust and AHD mutually agree to extend the term of the Lease, then the Affordability Period shall be automatically extended to be coterminous with the extended term of the Lease. City and Land Trust agree to execute and record an amendment to this A.

"Affordable Cost" shall mean the cost to purchase an owner-occupied residential dwelling unit that does not exceed the maximum percentage of income that can be devoted to the purchase of said unit under Health & Safety Code § 50052.5, or any successor statute thereto, and the implementing regulations in Title 25 of the California Code of Regulations, which are and shall be for the Affordability Period, as follows:

- The Affordable Cost for residential units designated to be owned by extremely low income households is the product of 30 percent times 30 percent of the Median Income adjusted for family size appropriate for the unit.

- The Affordable Cost for residential units designated to be owned by very low income households is the product of 30 percent times 50 percent of the Median Income adjusted for family size appropriate for the unit.
- The Affordable Cost for residential units designated to be owned by lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the Median Income adjusted for family size, is the product of 30 percent times 70 percent of the Median Income adjusted for family size appropriate for the unit; OR, for any lower income household that has a gross income that equals or exceeds 70 percent of the Median Income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 30 percent of the gross income of the household.
- The Affordable Cost for residential units designated to be owned by moderate-income households shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of Median Income adjusted for family size appropriate for the unit; OR, for any moderate-income household that has a gross income that exceeds 110 percent of the Median Income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 35 percent of the gross income of the household.

As used herein, “adjusted for family size appropriate for the unit” shall mean a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

“Affordable Housing Agreement” shall mean an affordable housing agreement by and between the Land Trust and an AHD that (i) sets forth the terms and conditions of the Land Trust’s conveyance to the AHD by ground lease of the Property and the AHD’s development thereon of an Affordable Housing Development, and (ii) includes (a) a detailed schedule of performance, (b) a detailed project description, (c) a promissory note (“Note”) evidencing any financial assistance to be provided by the Land Trust to the AHD and requiring repayment of such financial assistance from the sale of units, if the Affordable Housing Development is a for-sale single family development containing owner-occupied units, or from the cash flow of the Affordable Housing Development, if the Affordable Housing Development is a multifamily rental development, (d) a deed of trust securing the AHD’s repayment obligations under the promissory note referenced in clause (ii)(c) above (“Deed of Trust”), (e) an affordable housing regulatory agreement that (1) restricts, for the Restricted Affordability Term, the rental and occupancy of the units in the Affordable Housing Development to Low and Moderate Income Households at Affordable Rent, if the Affordable Housing Development is a multifamily rental development, or (2) restricts, for the Restricted Affordability Term, the sale and resale of the units in the Affordable Housing Development to Low and Moderate Income Households at Affordable Cost, if the Affordable Housing Development is a for-sale single family development containing owner-occupied units (“Land Trust Regulatory Agreement”), and (f) a ground lease that sets forth the lease terms

(“Lease”). The City shall be expressly named as a third party beneficiary of the Land Trust Regulatory Agreement with the right, but not the obligation, to enforce the terms thereof.

“Affordable Housing Development” shall mean an affordable housing development containing residential dwelling unit(s), of any type or tenure, including owner-occupied and rental, that are available to Low and Moderate Income Households at Affordable Rent, for rental units, and Affordable Cost, for owner-occupied units.

“Affordable Rent” shall mean annual rent that does not exceed the maximum percentage of income that can be devoted to rent (including a reasonable utility allowance) under Health & Safety Code § 50053, or any successor statute thereto, and the implementing regulations in Title 25 of the California Code of Regulations, which are and shall be for the Affordability Period, as follows:

- The Affordable Rent for residential units designated to be occupied by extremely low income households is the product of 30 percent times 30 percent of the Median Income adjusted for family size appropriate for the unit.
- The Affordable Rent for residential units designated to be occupied by very low income households is the product of 30 percent times 50 percent of the Median Income adjusted for family size appropriate for the unit.
- The Affordable Rent for residential units designated to be occupied by lower income households whose gross incomes exceed the maximum income for very low income households, is the product of 30 percent times 60 percent of the Median Income adjusted for family size appropriate for the unit; OR, for those lower income households with gross incomes that exceed 60 percent of the Median Income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.
- The Affordable Rent for residential units designated to be occupied by moderate-income households is the product of 30 percent times 110 percent of the Median Income adjusted for family size appropriate for the unit; OR, for those moderate-income households whose gross incomes exceed 110 percent of the Median Income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.

As used herein, “adjusted for family size appropriate for the unit” shall mean a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

“AHD” shall mean an affordable housing developer with the experience, expertise, financial strength, and capability necessary to plan, finance, develop and operate (if applicable) an Affordable Housing Development.

“City Manager” shall mean the individual duly appointed to the position of City Manager of City, or his or her authorized designee. Whenever an administrative action is required by City to implement the terms of this Agreement, the City Manager, or his or her authorized designee, shall have authority to act on behalf of City, except with respect to matters reserved for City Council determination.

“Days” shall mean calendar days and the statement of any time period herein shall be calendar days, and not business days, unless otherwise specified.

“Effective Date” shall mean the later of the dates this Agreement is executed on behalf of City and Land Trust, which date shall be inserted in the preamble of this Agreement.

“Governmental Requirements” shall mean all present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Property is located, and any other state, county city, political subdivision, agency, instrumentality or other entity exercising jurisdiction over the Property and/or the Affordable Housing Development.

“Ground Lease Date” shall mean the date the Land Trust ground leases the Property to a City-approved AHD.

“Hazardous Materials” shall have the meaning ascribed in Section 4.A hereof.

“Indemnitees” shall have the meaning ascribed in Section 4.B hereof.

“Low and Moderate Income Household(s)” and “Low or Moderate Income Household(s)” shall have the same meaning as “persons and families of low or moderate income” as set forth in Health and Safety Code § 50093, as enacted as of the Effective Date, or any successor statute thereto. In accordance therewith, references in this Agreement to “extremely low income households,” “very low income households,” “low income households,” and “moderate income households” shall have the same meanings as set forth in Health and Safety Code §§ 50106, 50105, 50079.5, and 50093, respectively, as enacted as of the Effective Date, or any successor statutes thereto.

“Median Income” shall mean the Orange County area median income, as periodically published by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations, or successor regulation.

“Outside Transfer Date” shall mean June 1, 2020.

2. USE AS AFFORDABLE HOUSING.

For the Affordability Term, the Property shall only be used for the development and operation of an Affordable Housing Development with all of the residential dwelling units therein

restricted for occupancy by Low and Moderate Income Households at Affordable Rent, for affordable rental units, and at Affordable Cost, for affordable single family, owner-occupied units.

Land Trust acknowledges that City acquired the Property from the Irvine Land Company, a Delaware limited liability company ("ILC"), and that in connection with the City's acquisition of the Property from ILC, the City entered into with ILC that certain Declaration of Special Land Use Restrictions that was recorded on _____, as Instrument No. _____, in the Official Records of the County of Orange ("Declaration"). The Declaration requires, among other things, that the Property be developed and used only as affordable housing. Land Trust shall timely comply with all of the requirements of the Declaration.

3. RESTRICTIONS REGARDING USE OF PROPERTY.

Land Trust or its successors in interest to the Property shall cause the Property to be (i) developed only with the Improvements described on Exhibit "B" attached hereto (the "Permitted Improvements") and (ii) used solely for the uses described in Exhibit "B" (the "Permitted Uses") and for no other use notwithstanding that other uses may be permitted under applicable zoning ordinances. No portion of the Property, or any Improvements thereon, or any portion thereof, shall be developed, used, operated or maintained with any facilities or for any purpose whatsoever except as set forth above and in Exhibit "B" unless expressly approved by ILC, which approval may be granted or withheld by ILC in its sole and absolute discretion. The Land Trust acknowledges and agrees that (A) the use restrictions contained in Exhibit "B" are reasonable and necessary to ensure that uses on the Property are not inconsistent with the harmonious growth and development of the remaining landholdings of ILC and the other Irvine Affiliates, (B) are binding on the Land Trust and its successors in interest to the Property, including without limitation any future transferee of an interest in any Unit within the Residential Facility constructed on the Property, and (C) ILC and the Irvine Affiliates may suffer significant economic harm if the Property is used for purposes other than the Permitted Uses, including without limitation the loss of revenues on other properties owned by ILC and the Irvine Affiliates from competing uses on the Property.

In addition to the above, the Property is subject to that certain Declaration of Special Land Use Restrictions entered into between the City and the Irvine Company and recorded on _____ as Instrument No. _____, in the Official Records, which, in addition to other restrictions, restricts the use of the Property for the development of affordable housing (the "Irvine Company Declaration").

4. MAINTENANCE.

Land Trust shall maintain the Property in conformity with the Irvine Municipal Code, and shall keep the Property free from any graffiti and from any accumulation of debris or waste materials.

The Land Trust shall also maintain any landscaping on the Property in a healthy and attractive condition. If, at any time, Land Trust fails to maintain the Property or any portion thereof, and said condition is not corrected as soon as reasonably possible after written notice from the City, the City may enter the Property or applicable portion thereof to perform the necessary

maintenance thereon and Land Trust shall pay such costs as are reasonably incurred for such maintenance plus a fifteen percent (15%) administrative fee.

5. COMPLIANCE WITH LAWS; ENVIRONMENTAL MATTERS.

5.1 Compliance With Laws. Land Trust shall comply with all Governmental Requirements, including, without limitation, (i) all ordinances, regulations and standards of the City, the County of Orange, any regional governmental entity, State of California, and federal government applicable to the Property and to the funding obtained for the Project; (ii) all rules and regulations of any assessment district of the City with jurisdiction over the Property; and (iii) all applicable labor standards of California law and federal law; and (iv) the requirements of California law and federal law with respect to the employment of undocumented workers or illegal aliens.

5.2 Waiver and Release. Land Trust hereby waives, releases, acquits, and forever discharges City, its officers, officials, members, employees, agents, and representatives, and their respective heirs, successors, personal representatives, and assigns, of and from any liability for the physical or environmental condition of the Property, or for removal or remediation of Hazardous Materials, or repair or alteration of the physical condition of the Property. Land Trust accepts and approves the physical and environmental condition of the Property in its "AS IS" "WHERE IS" "WITH ALL FAULTS" condition.

A. Definitions. For the purposes of this Agreement, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

i. The term "Hazardous Materials" means any substance, material or waste which is (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (7) defined as a "hazardous substance" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or its implementing regulations; (8) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (9) determined by a California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property. Notwithstanding the foregoing, "Hazardous Materials" shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the community, including without limitation alcoholic beverages, aspirin, tobacco and saccharine.

ii. The term "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Property by Hazardous Materials, or the

contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time emanating from the Property.

B. Indemnity. Land Trust shall save, protect, defend, indemnify and hold harmless City and the City's officers, officials, directors, members, employees, attorneys, agents, representatives (collectively, the "Indemnitees) from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, reasonable attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by any of the Indemnitees by reason of, resulting from, in connection with, or existing in any manner whatsoever as a direct or indirect result of (i) Land Trust's placement on or under the Property of any Hazardous Materials or Hazardous Materials Contamination after the Effective Date, (ii) the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials or Hazardous Materials Contamination after the Effective Date, unless caused by the negligence or willful misconduct of City, or (iii) any Liabilities incurred under any Governmental Requirements relating to the acts described in the foregoing clauses (i) and (ii).

6. LIMITATION ON TRANSFERS.

The qualifications and identity of the Land Trust are of particular interest to the City. It is because of these qualifications and identity that the City has entered into the AHLTA and this Agreement with the Land Trust. Consequently, no person, whether a voluntary or involuntary successor of Land Trust, shall acquire any rights or powers under this Agreement nor shall the Land Trust assign all or any part of this Agreement or the Property without the prior written approval of the City. A voluntary or involuntary sale or transfer of any interest in the Land Trust or the Property during the term of this Agreement shall be deemed to constitute an assignment or transfer for the purposes of this Section 5, and the written approval of the City shall be required prior to effecting such an assignment or transfer. Any purported transfer, voluntarily or by operation of law, except with the prior written consent of the City, shall confer no rights whatsoever upon any purported assignee or transferee. During the term of this Agreement the Land Trust shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any rights or duties herein, nor make any total or partial sale, transfer, conveyance, or assignment of the whole or any part of the Property or any of the improvements thereon, nor take any action that results in a change in the ownership or with respect to the identity of the parties in control of the Land Trust, without the prior written approval of the City.

Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment or transfer of this Agreement or transfer of the Property, or any part thereof or interest therein shall not be required in connection with the conveyance or dedication of an easement over a portion of the Property to the City, or other appropriate governmental agency, including public utilities, where the granting of such easement permits or facilitates the development of affordable housing on the Property.

Notwithstanding anything in this Section 5 to the contrary, no transfer or assignment by Land Trust or any successor in interest to Land Trust shall be effective unless and until the

transferor and transferee execute and deliver to City an assignment and assumption agreement in a form and with content reasonably acceptable to the City Attorney.

7. DEFAULTS AND REMEDIES.

7.1 General. Subject to extensions of time pursuant to the terms of Section 14 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time period provided herein following notice and failure to cure as described hereafter, constitutes a “Default” under this Agreement. In addition, the Land Trust shall be in “Default” hereunder on the occurrence of any of the following: (i) Land Trust voluntarily files or has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the same has not been dismissed within sixty (60) days thereafter; or (ii) Land Trust is adjudicated a bankrupt.

A party claiming a Default shall give written Notice of Default to the other Party specifying such Default. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against the other party, and the other party shall not be in Default if such party within thirty (30) days from receipt of such notice, cures, corrects or remedies such failure or delay.

7.2 Cross Default. Failure by either party to perform any action or covenant required by the AHLTA within the time period provided therein following notice and failure to cure as described therein, and subject to any applicable force majeure extensions, constitutes a “Default” under this Agreement.

7.3 Specific Performance. The non-defaulting party, upon expiration of applicable notice and cure periods, shall be permitted, but not obligated, to commence an action for specific performance of the terms of this Agreement, or to cure, correct or remedy any default hereunder or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement. In this regard, Land Trust specifically acknowledges that City is entering into this Agreement for the purpose of assisting in the development of the Property and the provision of affordable housing and not for the purpose of enabling Land Trust to speculate in land. In no event shall either party be entitled to damages of any kind from the other party, including, without limitation, damages for economic loss, lost profits, or any other economic or consequential damages of any kind. All legal actions must be instituted in the Superior Court of the County of Orange, State of California, or in the United States District Court for District of California in which Orange County is located.

7.4 City Right to Reacquire the Property. Notwithstanding anything herein to the contrary, in the event the Land Trust fails to convey the Property by Ground Lease to a City-approved AHD by the Outside Transfer Date, the City shall have the right to reacquire the Property from the Land Trust, by providing written notice to Land Trust of City’s election to reacquire the Property (“City’s Notice to Reacquire Property”). Promptly upon receipt of City’s Notice to Reacquire Property, the Land Trust shall execute, with signatures acknowledged, a grant deed in a form required by First American Title Company or such other title company reasonably approved by the City (the “Title Company”), effecting the transfer of the Land Trust’s fee interest in the Property to the City, and any and all additional documents required by the Title Company to complete said transfer to the City. Land Trust acknowledges and agrees that City’s remedy

hereunder is fair and reasonable considering that (i) the City transferred the Property to the Land Trust for no monetary consideration, and (ii) the sole purpose of City's transfer of the Property to the Land Trust and the entering into this Agreement was to facilitate the development on the Property of an Affordable Housing Development.

7.5 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another party.

7.6 Acceptance of Service of Process. In the event that any legal action is commenced by Land Trust against City, service of process on City shall be made by personal service upon the City Manager or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Land Trust, service of process on Land Trust shall be made by personal service upon the Executive Director of Land Trust in such manner as may be provided by law.

7.7 Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

7.8 Applicable Law. The internal laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

8. NONDISCRIMINATION.

Land Trust covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person, or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any part thereof, nor shall Land Trust, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property, or any part thereof. The foregoing covenants shall run with the land.

9. COVENANTS TO RUN WITH THE LAND.

Land Trust hereby subjects the Property to the covenants, reservations, and restrictions set forth in this Agreement. City and Land Trust hereby declare their express intent that all such covenants, reservations, and restrictions shall be deemed covenants running with the land, and shall pass to and be binding upon the Land Trust's successors in title to the Property; provided, however, that on the termination of this Agreement said covenants, reservations and restrictions shall automatically expire. All covenants established in this Agreement shall, without regard to technical classification or designation, be binding for the benefit of the City, and such covenants

shall run in favor of the City for the entire term of this Agreement, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed or other instrument.

City and Land Trust hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that Land Trust's legal interest in the Property is rendered less valuable thereby. City and Land Trust further hereby declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by Low and Moderate Income Households, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the City acquired the Property.

Land Trust, in exchange for the City entering into the AHLTA, hereby agrees to hold, sell, and ground lease the Property subject to the terms of this Agreement. Land Trust also grants to the City the right and power to enforce the terms of this Agreement against the Land Trust and all persons having any right, title or interest in the Property or any part thereof, their heirs, successive owners and assigns.

The covenants set forth in this Agreement shall remain in effect for the Affordability Period.

10. INDEMNIFICATION.

Land Trust shall defend (by counsel satisfactory to City), assume all responsibility for and hold the Indemnitees harmless from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including expert witness fees, attorneys fees and costs), which may be caused by the activities or performance of Land Trust or any of Land Trust's employees, agents, representatives, contractors, or subcontractors under (i) this Agreement, (ii) a claim, demand or cause of action that any person has or asserts against Land Trust; (iii) any act or omission of Land Trust, any contractor, subcontractor or material supplier, engineer, architect or other person with respect to the Property; or (iv) the occupancy or use of the Property by Land Trust, whether such damage shall accrue or be discovered before or after termination of this Agreement, unless caused by the City's active negligence or willful misconduct. The obligations and indemnifications in this Section 9 shall constitute covenants running with the land.

11. AMENDMENTS.

The Land Trust and the City agree to mutually consider reasonable requests for amendments to this Agreement which may be made by either of the parties hereto, lending institutions, or financial consultants to the City, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. The City Manager shall have the authority to approve, on behalf of the City, amendments to this Agreement that would not substantially alter the basic business terms or substantially increase the risk to the City. All other amendments shall require the action of the City Council. All amendments,

including those authorized to be approved by the City Manager, shall be in writing and shall be signed by authorized representatives of City and Land Trust.

12. NOTICE.

Formal notices, demands, and communications between City and Land Trust shall be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) or by mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To City:	City of Irvine One Civic Center Plaza P.O. Box 19575- Irvine, CA 92623-9575 Attn: City Manager
With a copy to:	Rutan & Tucker, LLP 611 Anton Blvd., Suite 1400 Costa Mesa, CA 92626 Attn: Jeffrey T. Melching, Esq.
To Land Trust:	Irvine Community Land Trust One Civic Center Plaza, 3 rd Floor Irvine, CA 92606-5207 Attn: Executive Director
With a copies to:	Rutan & Tucker, LLP 611 Anton Blvd., Suite 1400 Costa Mesa, CA 92626 Attn: Bill Ihrke, Esq.

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed in the manner provided above shall be deemed effective on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either party may from time to time designate by mail.

13. NONLIABILITY OF CITY OFFICIALS.

No officer, official, member, employee, agent, or representative of City shall be personally liable to Land Trust, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Land Trust or successor or on any obligations under the terms of this Agreement or the AHLTA.

14. SEVERABILITY/ WAIVER/ INTEGRATION/ INTERPRETATION; ENTIRE AGREEMENT.

14.1 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

14.2 Waiver. All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of City or Land Trust, as applicable. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not invalidate this Agreement nor shall it be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

14.3 Integration. This Agreement contains the entire Agreement between the parties concerning the subject matter hereof and neither party relies on any warranty or representation not contained in this Agreement.

14.4 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

14.5 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

15. ENFORCED DELAY; EXTENSIONS OF TIME.

Performance by a party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority litigation; unusually severe weather; inability to secure necessary labor, materials or tools; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of City shall not excuse performance by City unless the act or failure is caused by the acts or omissions of Land Trust); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "Enforced Delay"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within fifteen (15) days after the sending party has knowledge, or should have obtained knowledge, of the commencement of the cause. The following shall not be considered as events or causes beyond

the control of Land Trust, and shall not entitle Land Trust to an extension of time to perform: interest rates or economic or market conditions. Times of performance under this Agreement may also be extended by mutual written agreement by City and Land Trust. The City Manager shall also have the authority on behalf of City to administratively approve extensions of time not to exceed a cumulative total of one (1) year.

16. GOVERNING LAW.

This Agreement shall be governed by the internal laws of the State of California, without regard to conflict of law principles.

17. NO MERGER.

The covenants, terms, and provisions of this Agreement shall not merge with any grant deed or other instrument pertaining to the conveyance of any interest in real property.

18. COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

[end - signature page follows]

IN WITNESS WHEREOF, the City and Land Trust have executed this Regulatory Agreement and Declaration of Covenants and Restrictions by duly authorized representatives on the date first written hereinabove.

CITY OF IRVINE, a California municipal corporation

Dated: _____, 20__

By: _____
Its: City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

City Attorney

IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation

Dated: _____, 20__

By: _____
Its: Executive Director

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

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

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

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

That certain property in the City of Irvine, County of Orange, State of California, more specifically described as:

Lot 7 of Tract 17612, as shown on a Map recorded on March 18, 2014, as Instrument No. 2014000101130 in Book 924, Pages 1 to 14, inclusive, of Miscellaneous Maps, Records of Orange County, California (the "Property").

EXCEPTING THEREFROM, all water rights as conveyed to Irvine Ranch Water District in the Quitclaim Deed recorded on June 21, 2006, as Instrument No. 2006000416403 of Official Records of Orange County, California ("**Official Records**").

EXCEPTING THEREFROM, all oil, mineral and other related rights as reserved to The Irvine Company, its affiliates, successors and assigns, in the Grant Deed recorded in the Official Records on November 30, 2005 as Instrument No. 2005000953645.

RESERVING UNTO GRANTOR, its successors and assigns, together with the right (without the consent of Grantee or any other owner of an interest in the Property) to grant, transfer or license all or a portion of the same to one or more grantees, transferees or licensees, as to the portions of the Property located within ten (10) feet of (a) the common boundary line of the Property and Lot 5 of said Tract 17612 and (b) the common boundary line of the Property and the portion of Lot 6 of said Tract 17612 upon which the private street known as "Red Sage" is located (collectively, the "**Wall Easement Area**"), permanent, nonexclusive easements in gross on, over, under and across the Wall Easement Area for the construction, maintenance, repair, relocation and replacement of the walls that separate the Property from said Lots 5 and 6 of Tract 17612 (the "**Apartment Site Walls**"), including without limitation the right to place footings for said walls within the portions of the Wall Easement Area located within two (2) feet of said common boundary line, together with the right to enter upon the Wall Easement Area (upon reasonable notice to Grantee and without unreasonably interfering with Grantee's reasonable use and enjoyment thereof) in order to construct, maintain, repair, relocate and replace the Apartment Site Walls.

RESERVING UNTO GRANTOR, its successors and assigns together with the right (without the consent of Grantee or any other owner of an interest in the Property) to grant, transfer or license all or a portion of the same to one or more grantees, transferees or licensees, permanent nonexclusive easements in gross on over, under and across the portions of the Property located within twenty (20) feet of any property line bordering on and parallel to any public or private street, for the construction, installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines, drainage and flood control facilities and any other utilities (collectively, "**Utilities**") as necessary to accomplish the development of Grantor's property within Planning Area 40, which utilities are collectively referred to herein as the "**Utility Easements**," together with the right to enter upon such portions of the Property (without unreasonably interfering with Grantee's reasonable use and enjoyment thereof) in order to service, maintain, repair, reconstruct, relocate or replace any of such Utilities; provided, however, that actual location

and use of the Utility Easements shall be subject to the prior approval of Grantee, which approval shall not be unreasonably withheld or delayed so long as (i) the design and location of such facilities or improvements and the revegetation of areas to be disturbed by such activities do not, in Grantee's reasonable opinion, interfere with Grantee's use of the Property, and (ii) Grantor has prepared and obtained Grantee's approval of reasonably detailed plans for the construction of such improvements or facilities and associated revegetation. To the extent technologically and economically feasible, any such utility easements shall be consolidated and located to minimize adverse impacts to Grantee's use of the Property. Within a reasonable time after completion of installation of any Utilities pursuant to these reserved easements, Grantor shall (i) provide Grantee with a map depicting the location of the Utility(ies) installed within the Property, and (ii) revegetate any portion of the Property disturbed by such installation in accordance with the revegetation plans approved by Grantee. Grantor's reserved easements to install Utilities within the Property shall expire at such time as all bonds have been exonerated for subdivision improvements required in connection with the development of Grantor's property within all final maps located in Planning Area 40.

All of the work performed by Grantor pursuant to the foregoing reservations shall be pursuant to written agreement between Grantor and its contractors, which agreement shall require Grantor's contractors, in connection with the use of such easements, to (i) indemnify and hold harmless Grantee and its officials, officers, members, employees, agents and representatives from and against any and all claims, losses, actions, damages, and liabilities arising from such use that may be asserted or claimed by any person or entity, (ii) promptly repair, at its sole cost and expense, any damage it causes to the Property, and (iii) comply with the insurance requirements specified in the last sentence of this paragraph. (If Grantor elects to perform any work under any such easements itself, Grantor shall likewise comply with the indemnity and repair obligations specified in the preceding sentence.) In the event that the rights under such easements are transferred to a person or entity (other than Grantor) who is responsible for maintenance thereof, such person or entity shall, in connection with its exercise of any such rights and in addition to complying with all other requirements of this subsection, maintain insurance covering such activities at all times during the exercise of such rights. Such insurance shall be in commercially reasonable form, shall require that the contractor maintain worker's compensation coverage as required by law, comprehensive general liability insurance on an "occurrence" basis with a combined single limit for bodily injury and property damage of \$1,000,000 or greater, and automobile liability insurance covering owned, hired and non-owned vehicles with a combined single limit for bodily injury, property damage and uninsured motorists of \$1,000,000 or greater, and shall name Grantee as an additional insured on the comprehensive general liability insurance policy.

In addition to the foregoing, if the exercise of Grantor's rights under the foregoing reservations involves construction of improvements within the reserved easement area, then Grantor shall (I) consult with Grantee prior to the commencement of work within such area and give reasonable consideration to Grantee's suggestions regarding the proposed improvements, and (II) provide Grantee with at least ten (10) business days prior notice of the commencement of such work, the anticipated duration of the work, and the location where the work will take place.

Exhibit B

RESTRICTIONS ON DEVELOPMENT AND USE OF THE PROPERTY

The Property shall at all times be developed, used, operated and maintained only with (I) a residential housing facility (the "Residential Facility") for lease or sale to families satisfying the income requirements set forth below, which Residential Facility shall be the predominate use of the Property, (II) child care facilities, social services office, occupational training room or other similar ancillary residential uses provided solely for the benefit of and use by residents of the Residential Facility, (III) landscaping and landscape irrigation systems, and (IV) access road improvements connecting to Nightmist. Each Unit in the Residential Facility that is occupied shall at all times be occupied only by a family household whose annual income satisfies the requirements of the California State Department of Housing and Community Development for affordable housing. If Units within the Residential Facility are leased to families satisfying the foregoing requirements, nothing in this paragraph shall preclude occupancy of one or more Units in the Residential Facility by management or maintenance personnel servicing exclusively the Residential Facility and required by any public agency providing funding to the Residential Facility to live on site.

**AMENDMENT NO. 1 TO AFFORDABLE HOUSING
LAND TRANSFER AGREEMENT**

This AMENDMENT NO. 1 TO AFFORDABLE HOUSING LAND TRANSFER AGREEMENT ("**Amendment No. 1**") is entered into as of this ___ day of October, 2018 ("**Amendment Effective Date**") by and between the CITY OF IRVINE, a California municipal corporation and charter city ("**City**"), and IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation ("**Land Trust**").

RECITALS:

A. On or about June 30, 2016, City and Land Trust entered into that certain Affordable Housing Land Transfer Agreement, pursuant to which (i) City agreed to grant to Land Trust fee title to certain real property identified therein as the "Property", and (ii) Land Trust agreed to ground lease the Property to an experienced affordable housing developer for the construction and operation on the Property of an affordable housing development containing affordable residential dwelling units restricted for (i) rental to and occupancy by income-qualified tenants at restricted rents, or (ii) owner occupancy by income-qualified purchaser households at restricted sales prices, and all required on-site improvements (the "**Agreement**").

B. The Agreement includes, as Attachment No. 5, a form of Regulatory Agreement and Declaration of Covenants and Restrictions (the "**Regulatory Agreement**"), and requires as a condition to the close of escrow under the Agreement that the parties execute and record against the Property a regulatory agreement substantially in the form of the Regulatory Agreement.

C. Exhibit B to the Regulatory Agreement restricts the development and use of the property to the uses specified thereon. Land Trust desires to utilize certain space within the Property as Land Trust office space. Such use is permitted pursuant to that certain Declaration of Special Land Use Restrictions dated September 27, 2018, by and between City and Irvine Land Company LLC ("**ILC**"), the prior owner of the Property, which was recorded in the Official Records of Orange County on October 9, 2018, as Instrument No. 2018000366241 (the "**Declaration of Special Land Use Restrictions**"), which specifically allows "community facility space and/or offices" as a permitted use. City and Land Trust desire to revise the form of the Regulatory Agreement to permit a portion of the Property to be used as community facility space and/or offices, consistent with the Declaration of Special Land Use Restrictions, specifically including, without limitation, use by Land Trust as Land Trust office space.

D. City and Land Trust now wish to amend the form of the Regulatory Agreement on the terms and conditions set forth herein.

AMENDMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, and the promises and covenants hereinafter

contained, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Regulatory Agreement. Exhibit B to the form of Regulatory Agreement is hereby amended to add at the end of the first sentence thereof, as an approved use, “and (V) up to five hundred fifty (550) square feet of interior building space as community facility space and/or offices, specifically including, without limitation, use by Land Trust as Land Trust office space.”

2. Terms of Agreement. Except as otherwise expressly provided in this Amendment No.1, all of the terms and conditions of the Agreement shall remain in full force and effect. In the event of any conflict between this Amendment No. 1 and the Agreement, the provisions of this Amendment No. 1 shall prevail.

3. Interpretation. The terms of this Amendment No. 1 shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Amendment No. 1 or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Amendment No. 1.

4. Litigation Matters. The Superior Court of the State of California in and for the County of Orange shall have exclusive jurisdiction of any litigation between the parties arising out of or connected to this Amendment No. 1. This Amendment No. 1 shall be governed by and construed under the internal laws of the State of California, without regard to conflict of law principles. If either party to this action is required to initiate or defend, or is made a party to any action or proceeding in any way connected with this Amendment No. 1, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to reasonable attorney's fees and costs. The term "attorney's fees" shall include reasonable costs for investigating the action, conducting discovery, cost of appeal, costs and fees for expert witnesses, and all other costs the court allows which are incurred in such litigation, whether or not such litigation is prosecuted to final judgment.

5. Corporate Authority. The person(s) executing this Amendment No. 1 on behalf of each of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment No. 1 on behalf of said party, (iii) by so executing this Amendment No. 1 such party is formally bound to the provisions of this Amendment No. 1, and (iv) the entering into this Amendment No. 1 does not violate any provision of any agreement to which said party is bound.

6. Entire Agreement; Waiver; Amendment. This Amendment No. 1 integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Amendment No. 1 must be

in writing and signed by the appropriate authorities of City or Land Trust. All amendments hereto must be in writing and signed by the appropriate authorities of the parties hereto.

7. Counterparts. This Amendment No. 1 may be executed in counterparts, each of which, when all the parties hereto have signed this Amendment No. 1, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

[End of Document - Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 as of the Amendment Effective Date.

“City”


CITY OF IRVINE, a California municipal corporation and charter city

By: _____
John A. Russo, City Manager

ATTEST:

Molly McLaughlin, City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP



Jeffrey T. Melching, City Attorney

“Land Trust”

IRVINE COMMUNITY LAND TRUST,
a California nonprofit public benefit corporation

By: _____
Mark Asturias, Executive Director

2.6




REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: OCTOBER 23, 2018

TITLE: RELOCATION OF A MAINTENANCE ACCESS EASEMENT IN
LOS OLIVOS



Director of Public Works



City Manager

RECOMMENDED ACTION

Authorize the Mayor to execute a quitclaim deed and amendment of easement deed relocating a maintenance access easement in Los Olivos.

EXECUTIVE SUMMARY

In 2013, the Irvine Company granted an easement to the City of Irvine for maintenance access to the Bake Parkway bridge over the San Diego Creek. The maintenance access road has been realigned as part of the Los Olivos Phase 2 development. The recommended actions will quitclaim the original maintenance access easement, which is no longer needed, and accept the amended maintenance access easement for the new location.

COMMISSION/BOARD/COMMITTEE RECOMMENDATION

Not applicable.

ANALYSIS

On April 4, 2013, the Irvine Company granted a maintenance access easement to the City of Irvine allowing access from Bake Parkway to the Bake Parkway bridge structure over the San Diego Creek. On June 15, 2017, Planning Commission approved a Master Plan for Los Olivos Phase 2. The grading associated with the Phase 2 development realigned the maintenance access location from Bake Parkway to Alfonso, a newly created public street in Los Olivos. The original maintenance road no longer exists and the corresponding easement is no longer needed by the City. Staff has reviewed the request to amend the existing easement and agrees that the new alignment is consistent with the approved Master Plan.

ALTERNATIVES CONSIDERED

The City Council can deny the request to quitclaim and amend the maintenance access easement. This alternative is not recommended because the City would not have access to the new maintenance access and continue to own an existing maintenance access easement that is no longer needed.

FINANCIAL IMPACT

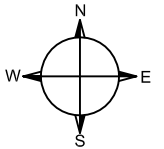
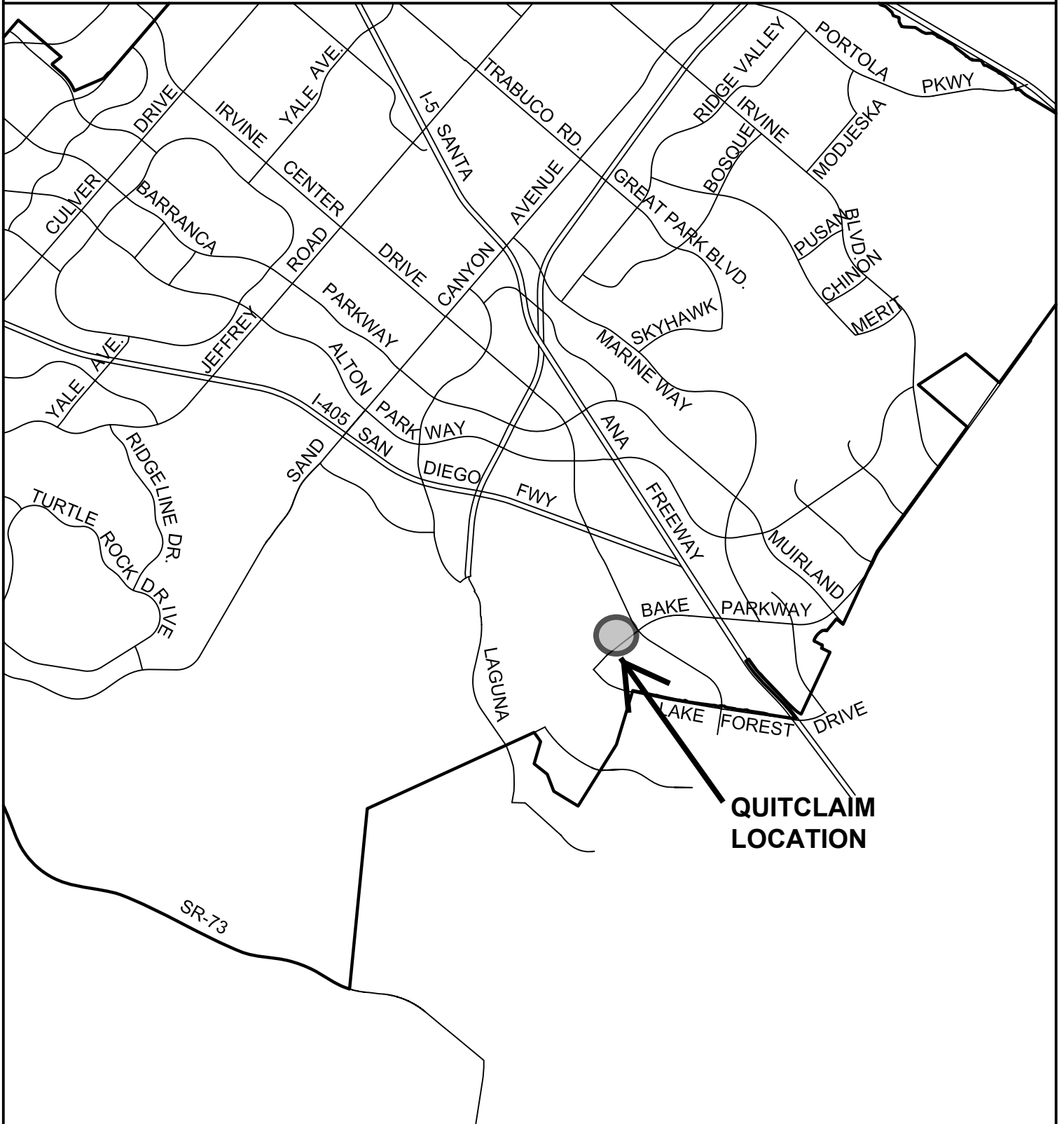
The administrative cost to the City for processing this quitclaim is offset by developer fees.

REPORT PREPARED BY Andrew Pham, P.E., Senior Civil Engineer

ATTACHMENTS

1. Vicinity Map
2. Site Map
3. Quitclaim Deed & Amendment of Easement Deed

QUITCLAIM OF A MAINTENANCE ACCESS EASEMENT

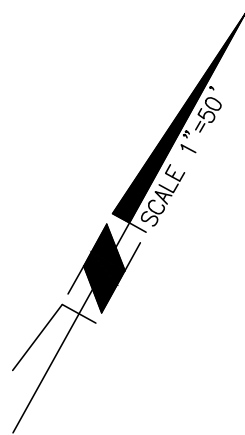


VICINITY MAP



TRACT NO. 17759

LOT 11



LOT P

LOT P

C/L ALFONSO

NEW EASEMENT

QUITCLAIM LOCATION

EXISTING ACCESS EASEMENT
INST. NO. 2013000203119, O.R.

LOT L

LOT M

M.M. 972/33-46

LOT H

SE'LY BOUNDARY LINE
TRACT NO. 17759

GRANT DEED
OCFCD PARCEL 1702
INSTRUMENT NO.
2013000203122, O.R.

C/L BAKE PARKWAY

SHEET 1 OF 1 SHEET

Michael Baker

INTERNATIONAL

5 Hutton Centre Drive, Suite 500

Santa Ana, CA 92707

(949) 472-3505 · MBAKERINTL.COM

NOVEMBER 1, 2017

139843

SITE MAP

DEPICTION OF NEW EASEMENT AREA &
EXISTING ACCESS EASEMENT

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Irvine
P.O. Box 19575
One Civic Center Plaza
Irvine, CA 92623-9575
Attn: Public Works Department

WITH A CONFORMED COPY TO:

The Irvine Land Company LLC
550 Newport Center Drive
Newport Beach, CA 92660
Attn: General Counsel's Office

(Space above this line for Recorder's use only)

THE UNDERSIGNED DECLARES:

This document is recorded at the request of and for the benefit of the City of Irvine, and therefore is exempt from the payment of a recording fee pursuant to California Government Code § 27383 and from payment of documentary transfer tax pursuant to California Revenue and Taxation Code § 11922.

QUITCLAIM DEED & AMENDMENT OF EASEMENT DEED

(Access to Bake Parkway Bridge Structure over San Diego Creek)

WHEREAS, The Irvine Land Company LLC, a Delaware limited liability company ("**Company**") previously conveyed to the City of Irvine, a California municipal corporation ("**City**") easements over Company's property for (a) access between Bake Parkway and the bridge structure ("**Bridge Structure**") over the San Diego Creek Channel in connection with Grantee's obligations related to inspection, maintenance, repair and replacement of the Bridge Structure, and (b) public recreational trail purposes (together, the "**Easements**") pursuant to that certain Easement Deed recorded on March 5, 2013 as Instrument No. 2013000135934 in the Official Records of Orange County, California ("**Official Records**") and re-recorded in the Official Records on April 4, 2013 as Instrument No. 2013000203119 (the "**Easement Deed**"). The land over which the Easements are located is described on Exhibit A and depicted on Exhibit B to the Easement Deed (the "**Easement Area**").

WHEREAS, pursuant to its right to relocate the Easement Area contained in the Easement Deed, Company desires to relocate the Easement Area to the location described on Exhibit 1 and depicted on Exhibit 2 attached hereto (hereinafter, the "**New Easement Area**"), and to have City quitclaim its rights under the Easement Deed as to all portions of the original Easement Area located outside of the New Easement Area.

WHEREAS, in view of the above, Company and City wish to amend the Easement Deed as provided in this Quitclaim Deed and Amendment of Easement Deed ("**Amendment**") to reflect the above changes.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Amendment of Easement Area. The description and depiction of the Easement Area contained in Exhibit A and Exhibit B of the Easement Deed are hereby deleted in their entirety and replaced with the legal description and depiction of the New Easement Area contained in Exhibits 1 and 2 to this Amendment.

2. Quitclaim of Excess Easement Area. City hereby quitclaims to Company, effective as of the date of recordation of this Amendment in the Official Records of Orange County, California, all right, title and interest of City as to (a) all portions of the original Easement Area located outside of the New Easement Area.

3. Exhibits. This Amendment includes the following attachments, which are incorporated herein by this reference:

Exhibit 1 - Description of New Easement Area

Exhibit 2 - Depiction of New Easement Area.

4. Effective Date. This Amendment shall be deemed effective as of the date of its recordation in the Official Records of Orange County, California.

5. Other Terms of Easement Remain in Effect. Except as amended hereby, all other terms and conditions of the Easement Deed remain unchanged and in full force and effect.

[Signature Page Follows]

[Signature Page to Amendment]

COMPANY:

THE IRVINE LAND COMPANY LLC,
a Delaware limited liability company

DATE: AUG 22 2018

By: 

Thomas E. Heggi
Vice President

By: 

Jamie Yoshida
Vice President

CITY:

CITY OF IRVINE,
a California municipal corporation

DATE: _____

By: _____
Donald Wagner
Mayor

ATTEST:

Molly McLaughlin
City Clerk

APPROVED AS TO FORM:

By: 

Jeffrey T. Melching
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)

Judith G. Maldonado

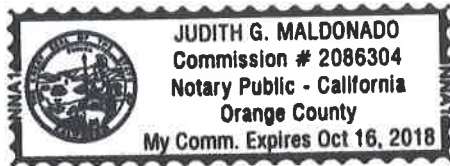
On August 22, 2018, before me, _____, a Notary Public, personally appeared **Thomas E. Heggi and Jamie Yoshida**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same 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.

Judith G. Maldonado
Notary Public

(SEAL)



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 _____, 20____, before me, _____, a Notary Public, personally appeared **Donald Wagner**, 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.

Notary Public

(SEAL)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interests in real property conveyed by this Easement Deed, dated _____, 20__, as made by The Irvine Land Company LLC, a Delaware limited liability company, to the City of Irvine, a chartered City of the State of California, is hereby accepted by the undersigned City Engineer on behalf of the City Council of City pursuant to authority conferred by Ordinance No. 83-4 of such City Council adopted on April 12, 1983, and revised by Ordinance No. 92-19 adopted on October 27, 1992, and the City consents to recordation hereof by its duly authorized officer and to the transfer of such easement interest in the property to City.

City of Irvine,
a California municipal corporation

James Houlihan
City Engineer

Date

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 _____, 20__, before me, _____, a Notary Public, personally appeared **James Houlihan**, 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.

Notary Public

(SEAL)

Exhibit 1

Legal Description of New Easement Area

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EXHIBIT "1"

LEGAL DESCRIPTION OF NEW EASEMENT AREA

That certain parcel of land situated in the City of Irvine, County of Orange, State of California, being that portion of Lot P of Tract No. 17759 as shown on a map thereof filed in Book 972, Pages 33 through 46 of Miscellaneous Maps in the Office of the County Recorder of said Orange County, included within a strip of land 17.00 feet wide, the centerline of which is described as follows:

COMMENCING at a well monument with a 3 ½ inch brass cap stamped "L.S. 6673" at the intersection of the centerline of Bake Parkway with the centerline of Alfonso as shown on said Tract No. 17759; thence along said centerline of Alfonso through the following courses: North 39°45'55" West 98.85 feet to the beginning of a tangent curve concave southwesterly and having a radius of 300.00 feet; thence along said curve northwesterly 246.77 feet through a central angle of 47°07'47" to a point of reverse curvature with a curve concave northerly and having a radius of 300.00 feet, a radial line of said curve from said point bears North 03°06'18" East; thence along said curve westerly 40.76 feet through central angle of 07°47'04"; thence leaving said centerline, radially from said curve South 10°53'22" West 24.00 feet to the southwesterly right-of-way line of Alfonso as shown on said map, said point being the **TRUE POINT OF BEGINNING**; thence continuing South 10°53'22" West 2.55 feet to the beginning of a tangent curve concave northeasterly and having a radius of 45.00 feet; thence along said curve southerly 44.95 feet through a central angle of 57°14'05"; thence tangent from said curve South 46°20'43" East 47.31 feet to the beginning of a tangent curve concave southwesterly and having a radius of 100.00 feet, the southeasterly terminus of said curve being a point of tangency with the northwesterly prolongation of that certain course shown as "L11" on sheet 12 of 14 of the map of said Tract No. 17759; thence along said curve southeasterly 30.31 feet through a central angle of 17°22'06" to said point of tangency; thence tangent from said curve and southeasterly along said northwesterly prolongation and said course "L11" South 28°58'37" East 71.68 feet to the southeasterly boundary line of said Tract No. 17759.

Legal Description of New Easement Area

Exhibit "1"

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The sidelines of said strip of land shall be lengthened or shortened so as to terminate northeasterly in said southwesterly right-of-way line of Alfonso, and southeasterly in said southeasterly boundary line of Tract No. 17759.

CONTAINING: 3346 Square Feet, more or less.

SUBJECT TO covenants, conditions, reservations, restrictions, rights-of-way and easements of record, if any.

All as shown on **EXHIBIT "2"** attached hereto and by this reference made a part hereof.

William G. Cox

William G. Cox, L.S. 6673

1-29-18

Date

Michael Baker International
5 Hutton Centre, Suite 500
Santa Ana, California 92707

H:\pdata\139843\CADD\Mapping\Exhibits\Access Road\LEGAL\139843-Lot_P.docm



Exhibit 2

Depiction of New Easement Area

TRACT NO. 17759

LOT 11

CURVE DATA TABLE

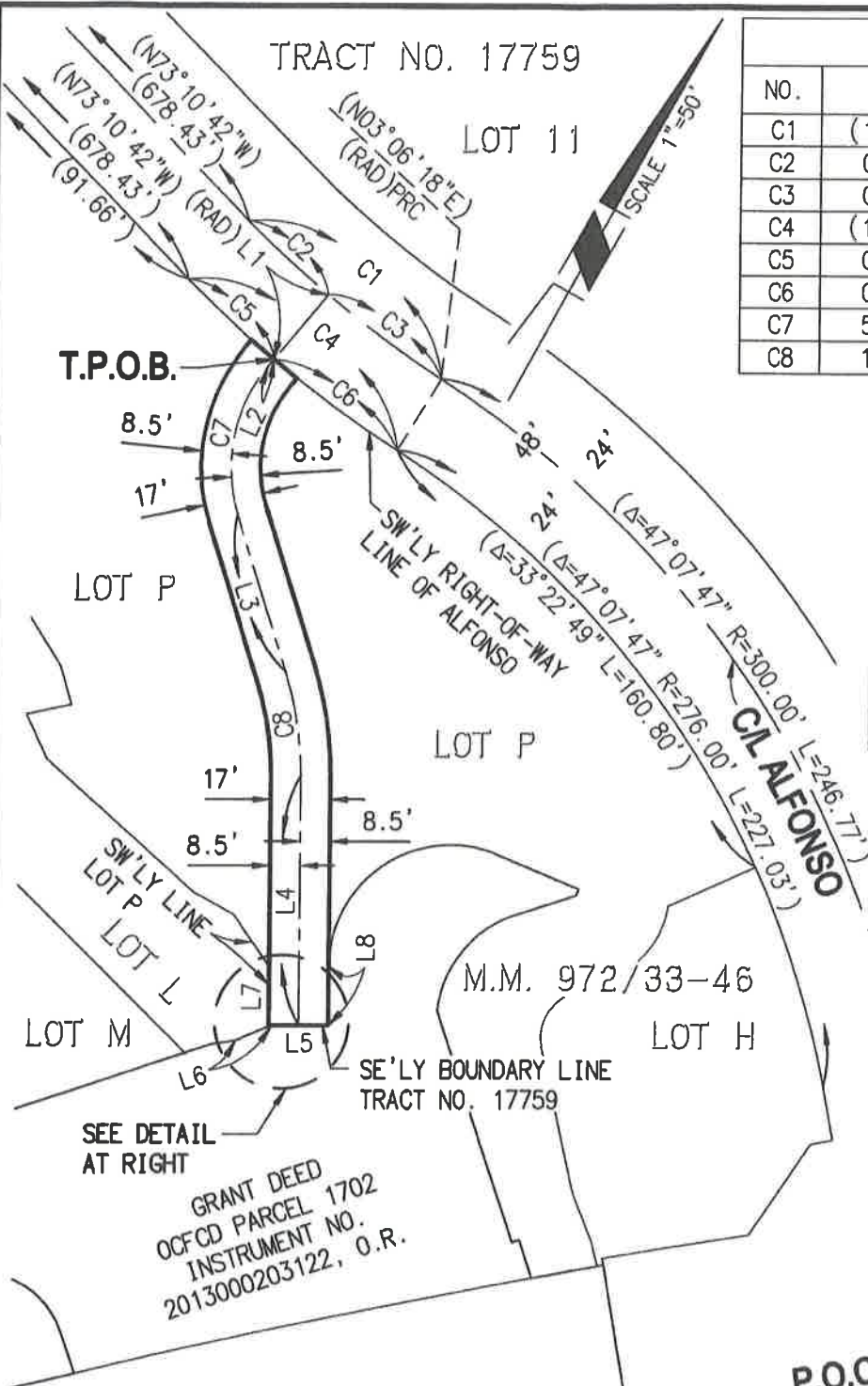
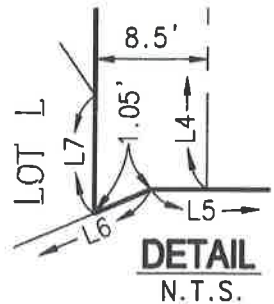
NO.	DELTA	RADIUS	LENGTH
C1	(13°43'00")	(300.00')	(71.82')
C2	05°55'56"	300.00'	31.06'
C3	07°47'04"	300.00'	40.76'
C4	(13°43'00")	(324.00')	(77.57')
C5	05°55'56"	324.00'	33.55'
C6	07°47'04"	324.00'	44.02'
C7	57°14'05"	45.00'	44.95'
C8	17°22'06"	100.00'	30.31'

LINE DATA TABLE

NO.	BEARING	LENGTH
L1	S10°53'22"W	24.00'
L2	S10°53'22"W	2.55'
L3	S46°20'43"E	47.31'
L4	S28°58'37"E	71.68'
L5	(N61°01'23"E)	(16.04')
L6	(N37°41'44"E)	(11.24')
L7	(N28°58'37"W)	(17.34')
L8	(N28°58'37"W)	(16.90')

LEGEND

- () DENOTES RECORD DATA PER TRACT NO. 17759, M.M. 972/33-42
- ▲ DENOTES WELL MONUMENT WITH 3 1/2" BRASS CAP STAMPED "L.S. 6673" PER TRACT NO. 17759, M.M. 972/33-46



SEE DETAIL AT RIGHT

GRANT DEED
OCFCD PARCEL 1702
INSTRUMENT NO.
2013000203122, O.R.

PREPARED BY ME OR UNDER MY DIRECTION.

William G. Cox 1-29-18
WILLIAM G. COX, L.S. 6673 DATE

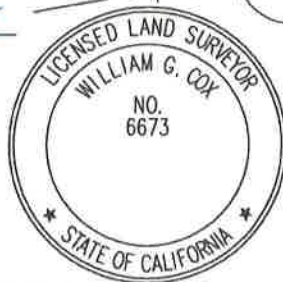


EXHIBIT "2"

DEPICTION OF NEW EASEMENT AREA

CONTAINING: 3346 +/- S.F.

SHEET 1 OF 1 SHEET

Michael Baker

INTERNATIONAL

5 Hutton Centre Drive, Suite 500
Santa Ana, CA 92707

(949) 472-3505 · MBAKERINTL.COM

JANUARY 4, 2018

139843

2.7



REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: OCTOBER 23, 2018

TITLE: NOTICE OF REVIEW FOR TRACT MAPS IN PORTOLA SPRINGS

Director of Public Works

City Manager

RECOMMENDED ACTION

Receive and file.

EXECUTIVE SUMMARY

The subject notice to the City Council is provided in accordance with City of Irvine Ordinance No. 07-12, notifying the City Council of three final tract maps received for review by staff. Ordinance No. 07-12 delegates authority to the City Engineer for approval of final tract maps and requires notice to the City Council following receipt of such maps for review and again prior to approval/disapproval by the City Engineer. The subject notice satisfies this requirement. This is a ministerial matter and there is no discretionary action to be taken by the City Council. The tract maps covering property referenced in this staff report are located in Portola Springs (Attachment 1) and are available for public review in the Public Works department.

Tract Map No. 18138 (Portola Springs) is located near the intersection of Portola Parkway and Portola Springs, as shown in Attachment 2. The map for this property contains the subdivision of 13.9 acres into 55 lots. The property is proposed for development of 93 detached single-family condominiums. The Portola Springs development project is consistent with the Northern Sphere Area Final Environmental Impact Report approved by City Council in June 2002, which considered area-wide impacts associated with the ultimate build-out for residential units, open space, parks, and schools within the corresponding planning area.

Tract Map No. 18139 (Portola Springs) is located near the intersection of Portola Parkway and Portola Springs, as shown in Attachment 3. The map for this property contains the subdivision of 28.9 acres into 118 lots. The property is proposed for development of 153 detached single-family condominiums. The Portola Springs development project is consistent with the Northern Sphere Area Final Environmental Impact Report approved by City Council in June 2002, which considered area-wide impacts associated with the ultimate build-out for residential units, open space, parks, and schools within the corresponding planning area.

Tract Map No. 18141 (Portola Springs) is located near the intersection of Portola Parkway and Portola Springs, as shown in Attachment 4. The map for this property contains the subdivision of 34.9 acres into 251 lots. The property is proposed for development of 168 single-family residences. The Portola Springs development project is consistent with the Northern Sphere Area Final Environmental Impact Report approved by City Council in June 2002, which considered area-wide impacts associated with the ultimate build-out for residential units, open space, parks, and schools within the corresponding planning area.

COMMISSION/BOARD/COMMITTEE RECOMMENDATION

Prior to City Engineer approval of a final tract map, the Planning Commission reviews and approves the corresponding tentative tract map based on consistency with the City's General Plan, Subdivision Ordinance, and Zoning Code. The underlying tentative maps referenced in this staff report are scheduled for consideration by the Planning Commission as follows:

The underlying tentative map for Tract Map No. 18138 (Portola Springs) is tentatively scheduled for a November 2018 Planning Commission hearing. Staff will withhold its approval of the submitted Final Map pending the outcome of the November Planning Commission meeting and the subsequent City Council meeting.

The underlying tentative map for Tract Map No. 18139 (Portola Springs) is tentatively scheduled for a November 2018 Planning Commission hearing. Staff will withhold its approval of the submitted Final Map pending the outcome of the November Planning Commission meeting and the subsequent City Council meeting.

The underlying tentative map for Tract Map No. 18141 (Portola Springs) is tentatively scheduled for a November 2018 Planning Commission hearing. Staff will withhold its approval of the submitted Final Map pending the outcome of the November Planning Commission meeting and the subsequent City Council meeting.

ANALYSIS

The approval of tract maps is a multi-step process that assures development is reflective and compliant with the City's General Plan and with respective provisions of the City's development standards. City of Irvine Ordinance No. 07-12 authorizes the City Engineer to approve final tract maps if they substantially conform to the approved underlying tentative map and all applicable conditions of approval have been satisfied. The ordinance further requires staff to notify the City Council upon receipt of such maps for review and prior to approval/disapproval of a final tract map by the City Engineer. In addition, the State Subdivision Map Act requires the approval of final maps if the City Engineer has found that the final map substantially conforms to the underlying tentative map.

The final tract maps listed below has been received and are under review for consistency with the applicable City standards and corresponding Planning Commission tentative tract map conditions of approval. Notice will be provided to the City Council prior to final approval by the City Engineer. Following approval and a 15-day appeal period, the map will be released for recordation. Recordation of the map is required prior to the issuance of building permits.

Submitted by	Tract Map No.	No. of Lots	Location	Status
Irvine Community Development Company, LLC	18138	55-lot map	Portola Springs and Portola Parkway <i>(Portola Springs)</i>	Under Review
	18139	118-lot map	Portola Springs and Portola Parkway <i>(Portola Springs)</i>	Under Review
	18141	251-lot map	Portola Springs and Portola Parkway <i>(Portola Springs)</i>	Under Review

ALTERNATIVES CONSIDERED

An alternative to this notification was not considered. Pursuant to the State Subdivision Map Act and City of Irvine Ordinance 07-12, when approval authority of tract maps is delegated to the City Engineer, notification to the City Council of receipt and approval of such maps is required.

FINANCIAL IMPACT

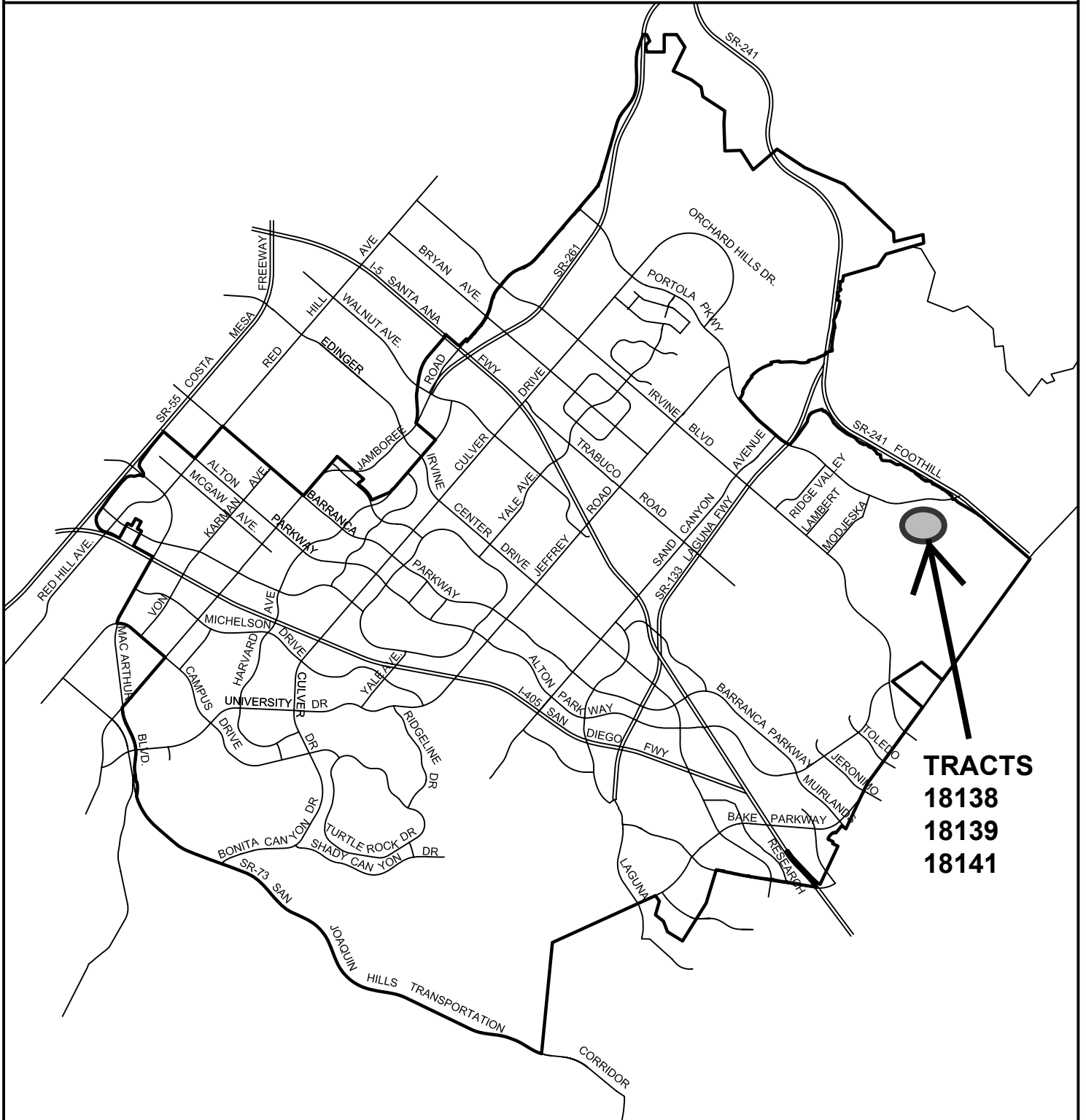
The administrative cost to the City for processing the map is offset by developer fees paid by the applicant submitting the map.

REPORT PREPARED BY Stacy DeLong, Associate Engineer

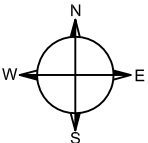
ATTACHMENTS

1. Vicinity Map
2. Site Map – Tract 18138 (Portola Springs)
3. Site Map – Tract 18139 (Portola Springs)
4. Site Map – Tract 18141 (Portola Springs)

FINAL TRACT MAP Nos. 18138, 18139, AND 18141



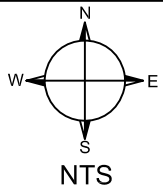
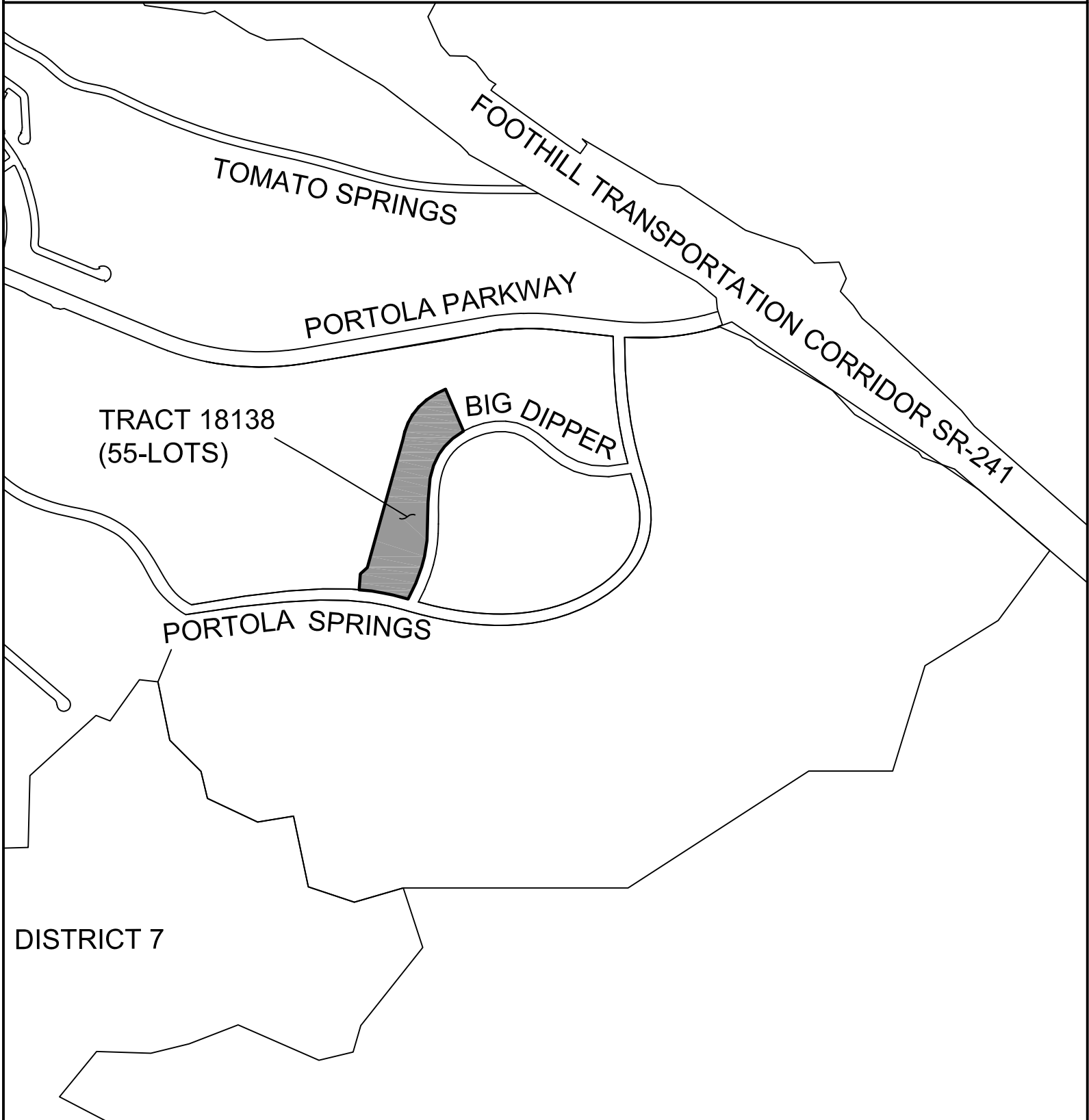
TRACTS
18138
18139
18141



VICINITY MAP



FINAL TRACT MAP No. 18138
PORTOLA SPRINGS

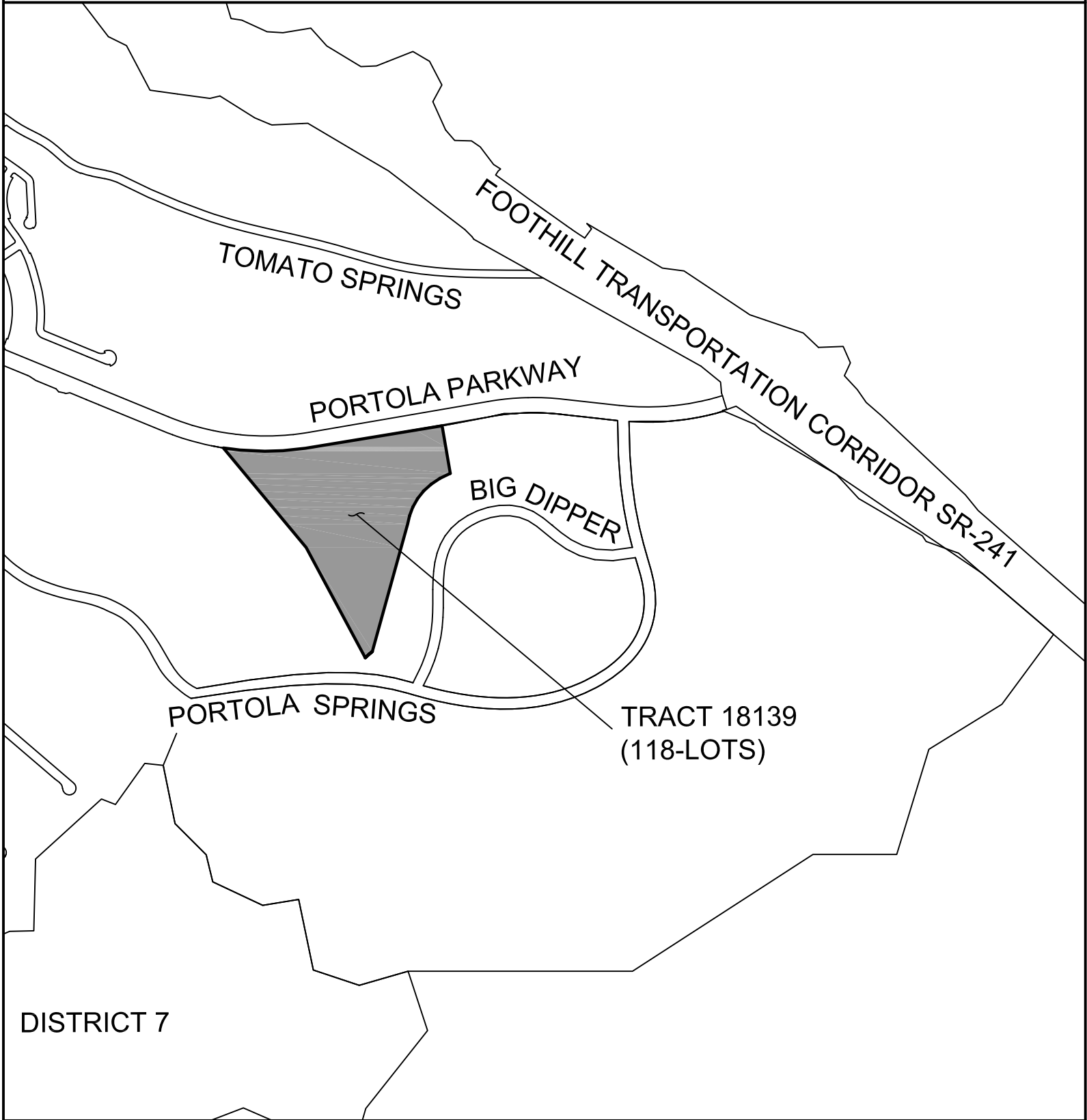


SITE MAP

ATTACHMENT 2



FINAL TRACT MAP No. 18139
PORTOLA SPRINGS



DISTRICT 7

PORTOLA SPRINGS

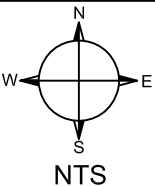
TRACT 18139
(118-LOTS)

BIG DIPPER

PORTOLA PARKWAY

TOMATO SPRINGS

FOOTHILL TRANSPORTATION CORRIDOR SR-241

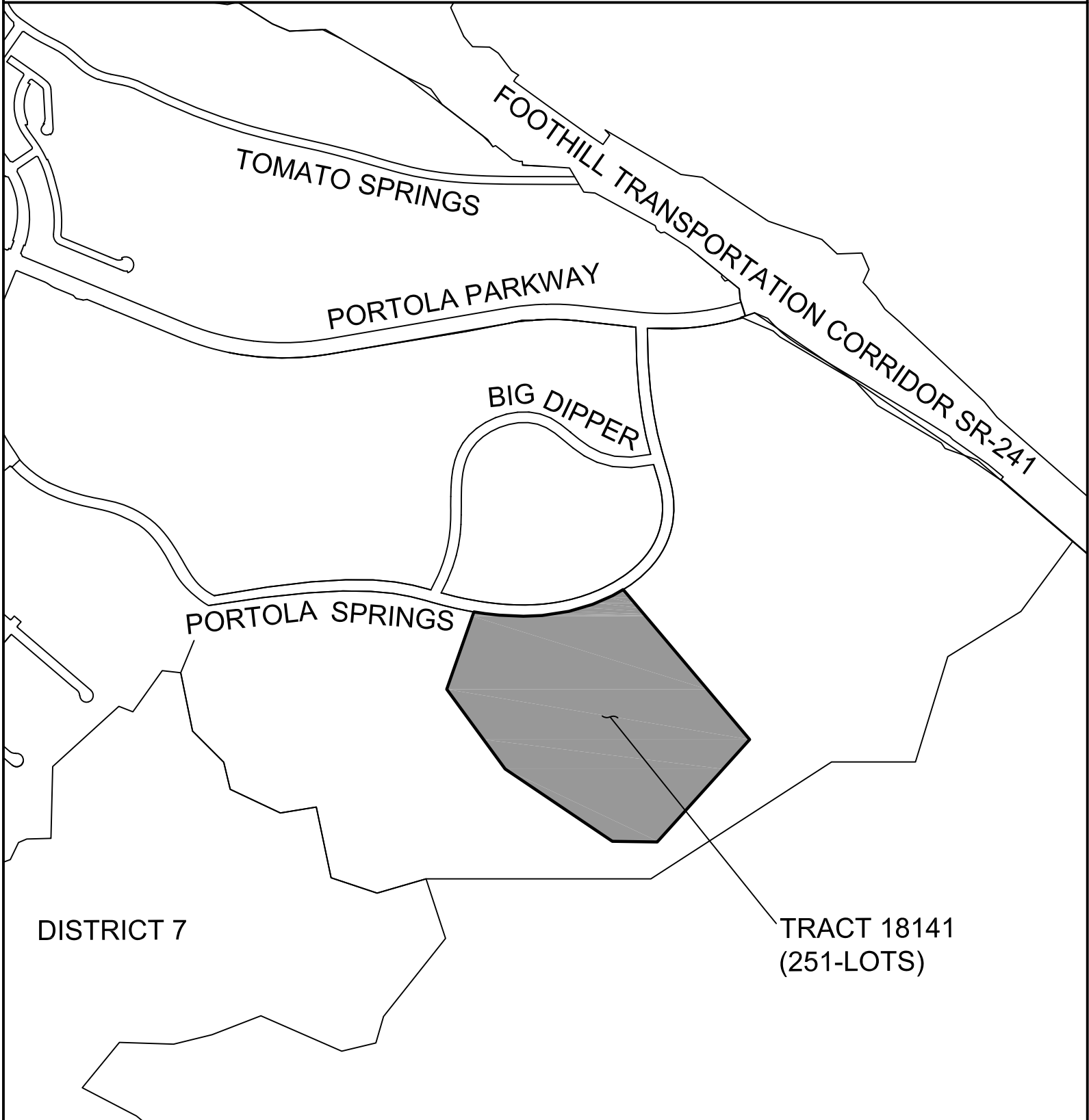


SITE MAP



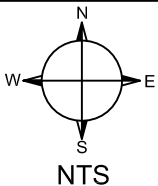
ATTACHMENT 3

FINAL TRACT MAP No. 18141
PORTOLA SPRINGS



DISTRICT 7

TRACT 18141
(251-LOTS)



SITE MAP



2.8

RECEIVED
CITY OF IRVINE
CITY CLERK'S OFFICE

2018 OCT 16 PM 1:32

Memo

RECEIVED

OCT 16 2018

CITY OF IRVINE
CITY MANAGER'S OFFICE

To: John A. Russo, City Manager
From: Christina Shea, Mayor Pro Tem *CLS*
Date: October 16, 2018
Re: **Community Partnership Fund Grant Nomination**

In accordance with City Council Resolution No. 08-42, I am requesting the City Council approve a \$600 community partnership grant award to Canyon View Elementary Parent Teacher Association in support of Jane Goodall's Roots & Shoots program including its organic school garden and monarch butterfly sanctuary.

Jane Goodall's Roots & Shoots is a youth service program whose mission is to foster respect and compassion for all living things, to promote understanding of all cultures and beliefs, and to inspire each individual to take action to make the world a better place for people, other animals, and the environment.

Should the City Council approve this request, the organization will enter into a Funding Agreement with the City that specify the grants use of funds, reporting requirements and regulatory compliance.

I would like to place this item on the October 23 City Council agenda to approve this community partnership grant award and authorize the City Manager to prepare and execute a Funding Agreement.

cc: Irvine City Council
Molly McLaughlin, City Clerk

RECEIVED
CITY OF IRVINE
CITY CLERK'S OFFICE

2018 OCT 16 PM 3: 34

RECEIVED

OCT 16 2018

CITY OF IRVINE
CITY MANAGER'S OFFICE

Memo

To: John A. Russo, City Manager
From: Melissa Fox, Councilmember
Date: October 16, 2018
Re: **Community Partnership Fund Grant Nomination**

In accordance with City Council Resolution No. 08-42, I am requesting the City Council approve a \$1,000 community partnership grant award to Irvine 2/11 Marine Adoption Committee in support of the 2/11 Marine Birthday Ball which will be hosted for the first time in Irvine on November 2.

The Irvine 2/11 Marine Adoption Committee provides charitable and educational activities and support for the benefit and welfare of the United States Marines and their families assigned to Camp Pendleton, California.

Should the City Council approve this request, the organization will enter into a Funding Agreement with the City that specify the grants use of funds, reporting requirements and regulatory compliance.

I would like to place this item on the October 23 City Council agenda to approve this community partnership grant award and authorize the City Manager to prepare and execute a Funding Agreement.

cc: Irvine City Council
Molly McLaughlin, City Clerk

3.1



REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: OCTOBER 23, 2018

TITLE: FIRST READING OF ORDINANCE ADDING DIVISION 15 OF TITLE 1 OF THE IRVINE MUNICIPAL CODE - PUBLIC MEETINGS AND PUBLIC RECORDS, TO BE KNOWN AS THE IRVINE SUNSHINE ORDINANCE, AND MAKING CONFORMING MODIFICATIONS

City Clerk

City Manager

City Attorney

RECOMMENDED ACTION

Introduce for first reading, and read by title only, an ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, ADDING DIVISION 15 OF TITLE 1 OF THE IRVINE MUNICIPAL CODE - PUBLIC MEETINGS AND PUBLIC RECORDS, TO BE KNOWN AS THE IRVINE SUNSHINE ORDINANCE, AND MAKING CONFORMING MODIFICATIONS TO CHAPTER 2-1 (GENERAL) OF DIVISION 2 OF TITLE 1, CHAPTER 2-2 (RULES OF ORDER) OF DIVISION 2 OF TITLE 1, CHAPTER 4-1 (IN GENERAL) OF DIVISION 4 OF TITLE 1, CHAPTER 4-2 (IN GENERAL) OF DIVISION 4 OF TITLE 1, DIVISION 13 (FINANCE COMMISSION) OF TITLE 2, DIVISION 3 (COMMUNITY SERVICES COMMISSION) OF TITLE 3, DIVISION 3 (PLANNING COMMISSION) OF TITLE 5, AND CHAPTER 9 (TRANSPORTATION COMMISSION) OF DIVISION 3 OF TITLE 6 OF THE IRVINE MUNICIPAL CODE

EXECUTIVE SUMMARY

The City, including its Council, its commissions, and its committees, exists to conduct the people's business. That business is conducted most effectively when the public has the information and the opportunity to meaningfully participate in the City's legislative and other decision-making processes. Informed participation is protected by assuring that (1) the public has advanced notice of business that is scheduled for consideration by the City Council and City commissions, (2) the public has timely and reasonable access to information and materials that may be considered by the City Council and City commissions, (3) the public and has the opportunity to present opinions, viewpoints, and information to the City's decision-making bodies, and (4) the City's decision-making bodies conduct their meetings in full view of the public. Minimum standards for each of

these four pillars of good governance are found in the Ralph M. Brown Act (Government Code § 54950 *et seq.*) and the California Public Records Act (Government Code § 6250 *et seq.*).

The City has historically exceeded the standards set by the Brown Act and the Public Records Act. Those steps have served the City well, as the City's citizens have played active and meaningful roles in City Council and City commission decision-making processes. The public has contributed valuable knowledge, experience, opinions, and those contributions lead to better decisions.

Those experiences suggest that further increases to public transparency will yield even better results. To that end, City staff has assembled a proposed ordinance that significantly bolsters public transparency and the dissemination of information, so that citizens may be fully informed and retain control over the instruments of local government. In short, the proposed ordinance – referred to as the "Irvine Sunshine Ordinance" – would: (a) increase standard regular agenda publication timelines from five (5) days prior to a regular meeting and one (1) day prior to a special meeting, to twelve (12) days prior to a regular meeting and five (5) days prior to a special meeting; (b) mandate agenda posting in no fewer than four locations that are open to the public twenty four (24) hours a day; which postings will be in addition to the on-line agenda postings available on the City's website; (c) clarify that the Rules of Order applicable during City Council meetings apply equally to the Planning Commission, Finance Commission, Community Services Commission, and Transportation Commission; (d) codify and update the City's practices for recording meetings of public bodies and making those recordings available to the public at no charge; and (e) establish uniform standards for the preparation of meeting minutes.

COMMISSION/BOARD/COMMITTEE RECOMMENDATION

Not applicable

ANALYSIS

In 2003, The Office of the Attorney General stated: "Throughout California's history, local legislative bodies have played a vital role in bringing participatory democracy to the citizens of the state. As such, local legislative bodies – such as boards, City Councils and Commissions – are created in recognition of the fact that several minds are better than one, and that through debate and discussion, the best ideas will emerge."

California's open meeting law, the Brown Act, provides the minimum standards participatory democracy, including but not limited to meeting notice requirements. For example, the Brown Act requires that an agenda be posted 72 hours in advance of a regular meeting, and 24 hours in advance of a special meeting. While the City follows the standards provided by the Brown Act for special meeting agendas, the City has

generally exceeded such requirements for regular meeting agendas, which are posted five days preceding each meeting, well beyond the legal requirements.

The City can do even more. To increase transparency and participatory democracy, staff recommends that the City Council adopt the proposed Irvine Sunshine Ordinance, which will expand public noticing requirements and establish additional transparency features to ensure that members of the public are fully aware and able to participate in City operations and business. Elements of the Sunshine Ordinance include the following:

Element 1 – Twelve Day Agenda Packet Distribution for Regular Meetings

This element includes expanding noticing and publication of all City Council, Planning Commission, Finance Commission, Community Services Commission, and Transportation Commission regular meeting agenda reports and supplemental information from five (5) days (already exceeding state law) to twelve (12) days. Exceptions to the twelve-day agenda requirement are very limited and meant to apply only in unusual circumstances, e.g., emergencies, circumstances requiring immediate attention that arose after the posting of the agenda, or threatened litigation.

Element 2 – Five Day Special Meeting Noticing Requirement

Under the Brown Act, special meetings are permissible upon the provision of 24 hours prior notice. The proposed ordinance extends that notice period to at least five days advanced notice of any such special meeting. As with regular meeting agendas, exceptions to the five day agenda requirement for special meeting are very limited and meant to apply only in unusual circumstances.

Element 3 – Expanded Agenda Posting

The City's posting locations, as required by Resolution No. 82-16, follow the Brown Act requirements of 24-hour accessibility for City notices. Four locations that allow for 24-hour noticing include the Front Entrance of City Hall, University Park Center, Walnut Village Center, and Northwood Town Center. In addition, agenda materials are available 24-hours a day on the City's website at cityofirvine.org. Additional posting locations, available only during business hours, include the City Clerk's Office and the Police Department Lobby. Continuation of these posting obligations is mandated in the Irvine Sunshine Ordinance.

Element 4 – Video and Audio Recording of Public Meetings

The City has historically video recorded and streamed City Council meetings, and has audio recorded meetings of the Planning Commission, Finance Commission, Community Services Commission, and Transportation Commission. The Sunshine Ordinance will convert these practices into requirements, and will further require video streaming of Planning Commission Meetings to begin in January 2019. Further, the Sunshine Ordinance requires that recordings of all meetings be retained for at least five years (City Council, Great Park Board, and Planning Commission recordings will be permanently retained). These recordings will all be available to the public at no charge.

Element 5 – Public Records Act Responses

While no ordinance revisions are proposed in this area, the City's Record's Section has recently completed a conversion that allows quicker and more intuitive access to public records. This improves the public's ability to access records through the "Quick Records" website (www.irvinequickrecords.com), and it also increases the City's ability to promptly and thoroughly respond to Public Records Act requests.

Sunshine Ordinance Implementation

In anticipation of enhancing the City's transparency efforts, City staff began a "soft launch" of the twelve-day agenda packet and five-day supplemental agenda by implementing new deadlines and coordinating with all City departments to ensure a successful launch of the new program. The soft launch began in August for City Council and Great Park Board of Directors meetings and was followed by the Planning Commission and Transportation Commissions who have now incorporated the twelve-day packet into their distribution timeframes. The ordinance requires that the Finance Commission and Community Services Commission complete their transition to the twelve-day agenda protocol by the end of January 2019.

ALTERNATIVES CONSIDERED

The City Council may choose to amend or not adopt the proposed Irvine Sunshine Ordinance.

FINANCIAL IMPACT

There are no anticipated fiscal impacts related to the implementation of the Irvine Sunshine Ordinance.

REPORT PREPARED BY Molly McLaughlin, City Clerk
Jeff Melching, City Attorney

ATTACHMENTS

Proposed Irvine Sunshine Ordinance

CITY COUNCIL ORDINANCE NO. 18-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, ADDING DIVISION 15 OF TITLE 1 OF THE IRVINE MUNICIPAL CODE - PUBLIC MEETINGS AND PUBLIC RECORDS, TO BE KNOWN AS THE IRVINE SUNSHINE ORDINANCE, AND MAKING CONFORMING MODIFICATIONS TO CHAPTER 2-1 (GENERAL) OF DIVISION 2 OF TITLE 1, CHAPTER 2-2 (RULES OF ORDER) OF DIVISION 2 OF TITLE 1, CHAPTER 4-1 (IN GENERAL) OF DIVISION 4 OF TITLE 1; CHAPTER 4-2 (IN GENERAL) OF DIVISION 4 OF TITLE 1, DIVISION 13 (FINANCE COMMISSION) OF TITLE 2, DIVISION 3 (COMMUNITY SERVICES COMMISSION) OF TITLE 3, DIVISION 3 (PLANNING COMMISSION) OF TITLE 5, AND CHAPTER 9 (TRANSPORTATION COMMISSION) OF DIVISION 3 OF TITLE 6 OF THE IRVINE MUNICIPAL CODE

WHEREAS, the City has a duty is to serve the public and to accommodate those who wish to obtain information about or participate in the City's decision-making processes; and

WHEREAS, the City Council and City Commissions, including the Planning Commission, Finance Commission, Community Services Commission, and Transportation Commission exist to conduct the people's business; and

WHEREAS, the City Council recognizes and appreciates the enormous value of direct, active participation by citizens in their government, and of the primary importance of guaranteeing public access to and participation in the operation and development of the community; and

WHEREAS, Government Code section 54953.6 provides "Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in [the Brown Act]. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body"; and

WHEREAS, the City has historically met and exceeded the requirements of California's open meeting law, the Ralph M. Brown Act (Government Code §§ 54950 *et seq.* [Brown Act]), regarding the timelines for posting meeting agendas for special meetings, and generally exceeds Brown Act requirements for posting meeting agendas for regular meetings; and

ATTACHMENT

WHEREAS, the City Council values and appreciates the input and participation of members of the public in the open meeting process, and believes that further enhancements beyond the minimum requirements set forth in the Brown Act (and beyond the City's historic practices, which have exceeded Brown Act requirements) will make public participation easier and more meaningful; and

WHEREAS, revisions to the Irvine Municipal Code that will increase transparency, participation, and accountability in public processes include: (a) increasing standard regular agenda publication timelines from five (5) days prior to a regular meeting and one (1) day prior to a special meeting, to twelve (12) days prior to a regular meeting and five (5) days prior to a special meeting; (b) mandating agenda posting in no fewer than four locations that are open to the public twenty four (24) hours a day; which postings shall be in addition to the on-line agenda postings available on the City's website; (c) clarifying that the Rules of Order applicable during City Council meetings apply equally to the Planning Commission, Finance Commission, Community Services Commission, and Transportation Commission; (d) codifying and updating the City's practices for recording meetings of public bodies and making those recordings available to the public at no charge; and (e) codifying standards for the preparation of meeting minutes.

NOW, THEREFORE, the City Council of the City of Irvine DOES HEREBY ORDAIN as follows:

SECTION 1. The above recitals are true and correct and incorporated herein.

SECTION 2: Division 15 of Title 1 Public Meetings and Public Records is hereby added to the Irvine Municipal Code to read as follows:

Division 15 of Title 1

PUBLIC MEETINGS AND PUBLIC RECORDS

Sections:

- | | |
|----------------------|---|
| Sec. 15-1-101 | Findings and purpose. |
| Sec. 15-1-102 | Citation. |
| Sec. 15-1-103 | Definitions. |
| Sec. 15-1-104 | Meetings to be open and public – Application of Brown Act. |
| Sec. 15-1-105 | [Reserved] |
| Sec. 15-1-106 | Conduct of business – Time and place for meetings. |

- Sec. 15-1-107** **Notice and agenda requirements – Special meetings.**
- Sec. 15-1-108** **Notice and agenda requirements – Regular meetings.**
- Sec. 15-1-109** **Conduct at meetings.**
- Sec. 15-1-110** **Minutes and recordings.**
- Sec. 15-1-111** **Responsibility for implementation and administration.**

Sec. 15-1-101 **Findings and purpose.**

The Irvine City Council finds and declares:

- A. The City has a duty is to serve the public and to accommodate those who wish to obtain information about or participate in the decision-making process. The City and City Commissions, including the Planning Commission, Finance Commission, Community Services Commission, and Transportation Commission exist to conduct the people’s business.
- B. The City Council, in prescribing the provisions of this division, hereby states its recognition of the enormous value of direct, active participation by citizens in their government, and of the primary importance of guaranteeing public access to and participation in the operation and development of the community.
- C. The provisions of this division shall be interpreted to further the intent of the City Council to assure that the City’s deliberations and operations are open to the public. This division is intended to clarify and supplement the Irvine City Charter, the Ralph M. Brown Act, and the California Public Records Act to assure that the people of the City of Irvine can be fully informed and thereby retain control over the instruments of local government in their city.

Section 15-1-102 **Citation.**

This division may be cited as the Irvine Sunshine Ordinance.

Section 15-1-103 **Definitions.**

Words or phrases in this division shall be defined pursuant to the Ralph M. Brown Act, Government Code § 54950 *et. seq.* and the Public Records Act, Government Section 6250 *et. seq.* unless otherwise specified as follows:

- A. *Agenda* means the agenda of a local body which has scheduled a meeting. The agenda shall meet the requirements of Government Code § 54954.2, except that the timing requirements of this division shall control. For closed sessions, the agenda shall meet the requirements set forth in Government Code § 54954.5. The agenda shall contain a brief, general description of each item of business to be transacted or discussed during the meeting and shall avoid the use of abbreviations or acronyms not in common usage and terms whose meaning is not known to the general public. The agenda may refer to explanatory documents, including but not limited to, correspondence or reports, in the agenda related material. A description of an item on the agenda is adequate if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item.
- B. *Agenda related materials* means the agenda, all reports, correspondence and any other document prepared and forwarded by staff to any local body, and other documents forwarded to the local body, which provide background information or recommendations concerning the subject matter of any agenda item. Notwithstanding the foregoing, agenda related materials shall not include: (1) the written text or visual aids for any oral presentation so long as such text or aids are not substituted for, or submitted in lieu of, a written report that would otherwise be required to meet the filing deadlines of this Division, and (2) written amendments or recommendations from a member of a local body pertaining to an item contained in agenda related materials previously filed pursuant to Section 15-1-107 or Section 15-1-108.
- C. *Local body* means the Irvine City Council, the Irvine Planning Commission, the Irvine Finance Commission, the Irvine Community Services Commission, and the Irvine Transportation Commission. “Local body” shall not mean any congregation or gathering which consists solely of employees of the City of Irvine.
- D. *Meeting* shall have the meaning set forth in Government Code § 54952.2(b)(1), which states “‘meeting’ mean any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Government Code § 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the local body and shall also mean a meal or social gathering of a majority of the members of a local body immediately before, during or after a meeting of a local body.” Communications shall constitute a “meeting” where members of a local body use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the local body.
1. As specified in Government Code § 54952.2(b)(2), the definition of meeting “shall not be construed as preventing an employee or official

of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by [the Brown Act] with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or positions of any other member or members of the legislative body.”

2. As specified in Government Code § 54952.2(c), the following categories of communications shall not be subject to the Brown Act or the requirements of this Division.
 - a. Individual contacts or conversations between a member of a local body and any other person that do not otherwise constitute a meeting under subsection (D)(1);
 - b. The attendance of a majority of the members of a local body at a conference or similar gathering open to the public that involves a discussion of issues of general interest of the public or to public agencies of the type represented by the local body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this subsection is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance;
 - c. The attendance of a majority of the members of a local body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the local body of the local agency;
 - d. The attendance of a majority of the members of a local body at an open and noticed meeting of another local body of the local agency, or at an open and noticed meeting of a local body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the local body of the local agency; or

- e. The attendance of a majority of the members of a local body at a purely social and ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the local body of the local agency.
- E. *Notice* means the posting of an agenda in a location that is freely accessible to the public 24 hours a day and as additionally specified in Section 15-1-107 and Section 15-1-108.
- F. *On line* means accessible by computer without charge to the user.
- G. *Software or hardware impairment* means a circumstance where the City is unable to utilize computer software, hardware and/or network services to produce agendas, agenda related material or to post agendas on-line due to inoperability of software or hardware caused by the introduction of a malicious program (including but not limited to a computer virus), electrical outage affecting the City's computer network, or unanticipated system or equipment failure. "Software or hardware impairment" may also include situations when the City is unable to access the internet due to required or necessary maintenance or the installation of system upgrades that necessitates deactivating the system network; however, the City shall make reasonable efforts to avoid a delay in the preparation, distribution, or posting of agendas and agenda related material as a result of required or necessary maintenance or installation of system upgrades.

Section 15-1-104 Meetings to be open and public – Application of Brown Act.

All meetings of local bodies specified in Section 15-1-103(C) shall be open and public, to the same extent as if that body were governed by the provisions of the Ralph M. Brown Act (Government Code § 54950 *et seq.*) unless greater public access is required by this division, in which case this division shall be applicable.

Section 15-1-106 Conduct of business – Time and place for meetings.

- A. Every local body, or the authority creating each local body, shall establish by formal action the time and place for holding regular meetings and shall conduct such regular meetings in accordance with such resolution or formal action.
- B. Regular and special meetings of local bodies shall be held within the City of Irvine except to do any of the following:
 - 1. Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local body is a party;

2. Inspect real or personal property which cannot be conveniently brought to Irvine, provided that the topic of such meeting shall be limited to items directly related to the real or personal property;
 3. Participate in meetings or discussions of multi-agency significance that are outside Irvine, provided that any such meeting or discussion shall take place within the jurisdiction of one of the participating agencies and be noticed by the respective local body as specified in this division; or
 4. Meet outside the City of Irvine with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the City of Irvine, and over which issue the other federal or state agency has jurisdiction.
- C. If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet in the customary location, the meetings may be held for the duration of the emergency at some other place specified by the City Manager or his or her designee. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to media organizations who have requested written notice of meetings.
- D. No local body shall take any action at a meeting which occurs when a quorum of the local body becomes present at a meeting of a standing or ad hoc committee of the local body, although the committee may take action consistent with its jurisdiction and authority.

Section 15-1-107 Notice and agenda requirements – Regular meetings.

- A. Twelve Day Advance Notice Requirement. Local bodies shall provide notice no later than twelve (12) days before the date of each of their respective regular meetings by:
1. posting a copy or image of the agenda in no fewer than four (4) locations freely accessible to the public twenty-four (24) hours per day;
 2. making a copy or image of the agenda available in the City Clerk's office and at the Irvine Police Department during regular business hours; and
 3. posting a copy or image of the agenda on-line on the City's website; provided, however, the failure to timely post a copy or image of the agenda online because of software or hardware impairment shall not constitute a defect in the notice for a regular meeting, if the local body complies with all other posting and noticing requirements.

B. Supplemental Agenda And Related Materials Requirements. Notwithstanding the notice provisions of Section 15-1-107(A), agendas for the local bodies may be amended or supplemented to include additional items or additional agenda-related materials no later than five (5) days before a regular meeting for the following reasons or under the following conditions:

1. to add an item due to an emergency or urgency that arose after the agenda posting deadlines required by Section 15-1-107(A);
2. to add an item that requires immediate action, where the need for action came to the attention of the local agency after the agenda posting deadlines required by Section 15-1-107(A);
3. to add an item that requires immediate action to avoid a substantial impact that would occur if the action were deferred to a subsequent special or regular meeting;
4. to add an item that requires immediate action which relates to federal, state, county or other governmental agency, including without limitation, actions on pending or proposed legislation and/or actions or the City's eligibility for any grant or gift;
5. to add an item relates to a purely ceremonial or commendatory action;
6. to add a closed session item relating to ongoing, proposed or threatened litigation;
7. to provide additional information to supplement the agenda-related material previously published with the agenda, provided that the additional information was not known to City staff or considered to be relevant at the time the agenda-related materials were filed. Examples of supplemental material permitted by this subsection are reports responding to questions or requests raised by members of a local body after posting and filing of the twelve- day agenda and materials, and analyses or opinions of the item by the City Attorney, any member of the City Council, or the Mayor;
8. to continue an agendized item to a future regular meeting of the local body provided that members of the public are given an opportunity to address the local body on the limited question whether to continue the item to a future meeting; or
9. to remove any item from a posted agenda.

C. Excuse of Sunshine Notice Requirements for Regular Meetings. An item may appear on an agenda and be acted upon by a local body, even though it fails to

meet the notice requirements under Section 15-1-107(A) and/or Section 15-1-107(B), only if one of the following circumstances exists:

1. A majority of the legislative body first determines during a public meeting that an emergency situation exists, as defined by Government Code § 54956.5.
 2. Two-thirds of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, all of those members present, determine that upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this division and any one of the following exists:
 - a. there is a need to take immediate action on the item to avoid a substantial impact that would occur if the action were deferred to a subsequent special or regular meeting;
 - b. there is a need to take immediate action which relates to federal, state, county or other governmental agency, including without limitation, actions on pending or proposed legislation and/or actions or the City's eligibility for any grant or gift; or,
 - c. the item relates to a purely ceremonial or commendatory action.
 3. The item is placed on the agenda by the Mayor or a member of the City Council in a manner consistent with an adopted City Council policy and/or procedure.
- D. Action on Items Not Appearing on the Agenda. Except as otherwise provided in Government Code § 54954.2, no action shall be taken on matters not appearing on the posted agenda
- E. Future Meeting. Nothing in this section shall prohibit a the local body from taking action to schedule items for a future meeting to which regular or special meeting notice requirements will apply, or to distribute agenda-related materials relating to items added pursuant to Section 15-1-107(C) before or during a meeting.
- F. Conforming Documents and Errata. Nothing in this Section shall prohibit the City Attorney from conforming a document to comply with technical requirements as to form and legality, nor shall this Section prohibit the distribution of errata prepared by City staff make minor corrections to published agenda materials.

G. Submittal of Additional Documents. The City Manager, City Attorney, City Clerk and their designees, in their capacities with the City, must submit public agenda related materials to the City Clerk or other responsible department in sufficient time to meet the deadlines of this Section and Section 15-1-108. However, the referenced officers may submit additional documents to the local body, and that body may accept the documents if it finds by a two-thirds vote of the members present that the additional information in the documents was not known to the officers or considered to be relevant by the officers at the time of the filing deadlines. Copies of such documents shall be made available to the public at the subject meeting. Documents submitted by outside parties may be distributed to and accepted by the local body at any time prior to or during the subject meeting. Documents submitted by outside parties prior to the meeting shall be made available to the public at the subject meeting. Documents submitted by outside parties at the meeting shall be made available to the public the following business day. Nothing in this Section or in any other provision of this division shall be interpreted to require that the City Manager, City Attorney or City Clerk submit to the City Clerk any documents that are not public records.

Section 15-1-108 Notice and agenda requirements – Special Meetings.

- A. Special meetings of the local body may be called at any time by the presiding officer thereof or by a majority of the members thereof. All local bodies calling a special meeting shall provide notice by:
1. posting a copy or image of the agenda in no fewer than four (4) locations freely accessible to the public 24 hours per day for at least five (5) days before the time of the meeting set forth in the agenda; and
 2. making a copy or image of the agenda available in the City Clerk’s office and at the Irvine Police Department during regular business hours, at least five (5) days before the time of the meeting set forth in the agenda; and
 3. posting a copy or image of the agenda on-line on the City’s website at least five (5) days before the time of the meeting set forth in the agenda. Notwithstanding the foregoing, the failure to timely post a copy or image of the agenda online because of software or hardware impairment shall not constitute a defect in the notice for a special meeting, if the local body complies with all other posting and noticing requirements; and
 4. delivering a copy or image of the agenda to each member of the local body, to each local newspaper of general circulation, and to each media organization which has previously requested notice in writing at least five (5) days before the time of the meeting set forth in the agenda.

Receipt of the agenda shall be presumed upon reasonable proof that delivery was made.

- B. No business other than that set forth in the agenda shall be considered at a special meeting. Each special meeting shall be held at the regular meeting place of the local body except that the City Manager may designate an alternative meeting location provided that such alternative location is specified in the agenda and that notice pursuant to this Section is given at least five (5) days prior to the special meeting. This five (5) day notice requirement shall not apply if the alternative location is at the same address at which regular meetings of the local body occur.
- C. To the extent practicable, the presiding officer or the majority of members of any local body may cancel a special meeting by delivering notice of cancellation in the same manner and to the same persons as required for the notice of such meeting.
- D. Special meetings may not be noticed on the same day as a previously scheduled regular meeting that was not noticed in compliance with this division if the special meeting is called to consider any of the items that were included in the notice for such regular meeting.
- E. Excuse of Sunshine Notice Requirements for Special Meetings. An item may appear on an agenda and be acted upon by a local body, even though it fails to meet the notice requirements under Section 15-1-108(A)-(D), only if one of the following circumstances exists:
 - 1. A majority of the legislative body first determines during a public meeting that an emergency situation exists, as defined by Government Code § 54956.5.
 - 2. Two-thirds of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, all of those members present, determine that upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this division and any one of the following exists:
 - a. there is a need to take immediate action on the item to avoid a substantial impact that would occur if the action were deferred to a subsequent special or regular meeting;
 - b. there is a need to take immediate action which relates to federal, state, county or other governmental agency, including without limitation actions on pending or proposed legislation and/or actions or the City's eligibility for any grant or gift; or,

3. The item is placed on the agenda by the Mayor or a member of the City Council in a manner consistent with an adopted City Council policy and/or procedure.

Section 15-1-109 Conduct at meetings.

- A. The Rules of Order of the City Council, as provided in chapter 3 of division 2 of this title, and any such amendments thereto, shall govern all proceedings of local bodies and are hereby incorporated into this division; provided, however, that references to the “Mayor” shall be refer to the presiding officer of each local body, and references to “City Council” and/or “Council” shall refer to the local body.
- B. No local body shall abridge or prohibit public criticism of the policies, procedures, programs or services of the local body or agency, or of any other aspect of its proposals or activities, or of the acts or omissions of the local body, even if the criticism implicates the performance of one or more public employees. Nothing in this subsection shall change the operation of law in the area of defamation.

Section 15-1-110 Minutes and recordings.

- A. The City Council, and Planning Commission (commencing January 2019) shall make a visual and audio recording of every open meeting. All other local bodies shall make audio recording of every open meeting. Any recording of any open meeting shall be a public record subject to inspection and copying and shall not be erased, deleted or destroyed for at least five (5) years, provided that if during that five-year period a written request for inspection or copying of any recording is made, the recording shall not be erased, deleted or destroyed until the requested inspection or copying has been accomplished. A copy of any such recording shall be provided, free of charge, upon request.
- B. All local bodies shall record the minutes for each regular and special meeting convened under the provisions of this division. The minutes of the Council shall be kept by the clerk of the local body with a record of each particular type of business transacted set off in paragraphs, with proper subheadings; provided that the clerk of the local body shall be required to make a record only of such business as was actually passed by a vote of the local body, and shall not be required to record any remarks of a member of the local body, or of any other person, except at the special request of a member of the local body (per Section 1-2-311(E)); provided, further, that a record shall be made of the names of persons addressing the local body, the title of the subject matter to which the remarks related, and whether they spoke in support of or in opposition to such matter.

Section 15-1-111 Responsibility for administration.

- A. The City Manager shall administer and coordinate the implementation of the provisions of this division for all local bodies, agencies and departments under his or her authority, responsibility or control.
- B. The City Clerk or other responsible department shall timely post all agendas and shall make available for immediate public inspection and copying all agendas and agenda-related material filed with it.

SECTION 3. Division 2 of Title 1 City Council is amended as follows and shall in all other respects remain in full force and effect:

CHAPTER 2-1

GENERAL

Sec. 1-2-101. - Time and place of meetings.

- A. Regular meetings of the City Council shall be held on the second and fourth Tuesdays of each month, and shall convene at the hour of 4:00 p.m. When the day for any regular meeting of the Council falls on a legal holiday, no meeting shall be held on such holiday; but such meeting shall be held at the same hour on the next succeeding business day which is not a holiday
- B. All meetings of the City Council shall be held at the Irvine City Council Chambers, One Civic Center Plaza, Irvine, California. However, any such meeting may be adjourned to another time, date and place certain within the City, provided that any change of meeting time, date and place shall be announced, by the most rapid means of communication available at the time, in a notice to media organizations who have requested written notice of meetings.

Sec. 1-2-102. - Special meetings.

Special meetings may be called by the Mayor or a majority of the members of the City Council ~~on 24 hours' notice~~, pursuant to the notice and agenda requirements for special meetings set forth in Chapter 2 of Division 15 of this Title, and Government Code § 54956. Only matters contained in such notice may be considered and only urgency ordinances may be adopted. No regular ordinances or orders for payment of money shall be considered at such special meetings.

Sec. 1-2-103. - Public meetings.

All meetings of the City Council shall ~~must~~ be open to the public and comply with the Ralph M. Brown Act (Government Code § 54950 et seq.) and the Irvine Sunshine

Ordinance (Division 15 of Title 1) except "closed session" matters, as provided by law. Such closed sessions may be held only during the course of a duly called meeting.

CHAPTER 2-3

RULES OF ORDER

Sec. 1-2-301. - Agenda.

All meetings of the City Council shall be noticed via posting of the agenda in accordance with the notice and agenda requirements set forth in the Irvine Sunshine Ordinance (Division 15 of Title 1). Except as provided in Section 15-1-107 and/or as otherwise provided in Government Code § 54954.2, no action shall be taken on matters not appearing on the posted agenda.

Sec. 1-2-309. - Preparation of minutes.

The minutes of the Council shall be kept by the City Clerk with a record of each particular type of business transacted set off in paragraphs, with proper subheadings; provided that the City Clerk shall be required to make a record only of such business as was actually passed by a vote of the Council, and shall not be required to record any remarks of a member of the Council, or of any other person, except at the special request of a member of the Council (Section 1-2-311(E) is applicable); provided, further, that a record shall be made of the names of persons addressing the Council, the title of the subject matter to which the remarks related, and whether they spoke in support of or in opposition to such matter. Such minutes shall meet the minimum standards set forth in Chapter 2 of Division 2 of this Title, Section 15-1-108(B) (Minutes and Recordings).

SECTION 4. Division 4 of Title 1 Commissions and Committees is amended as follows and shall in all other respects remain in full force and effect:

CHAPTER 4-1

IN GENERAL

Sec. 1-4-104. - Application of State law and the Irvine Sunshine Ordinance.

All commissions and committees shall be subject to those sections of the California Government Code known as the "Ralph M. Brown Act" (Government Code § 54950 et seq.), and shall conduct their business in conformity therewith. All local bodies as defined in Section 15-1-103(C) shall comply with the additional requirements of the Irvine Sunshine Ordinance, and shall conduct their business in conformity therewith.

CHAPTER 4-2
COMMISSIONS

Sec. 1-4-207. - Meetings.

The commission shall meet at such times as may be established by the City Council. All meetings shall be opened to the public and shall conform to the provisions of the "Ralph M. Brown Act" (Government Code § 54950 et seq.) and to the extent such commission constitutes a local body under Section 15-1-103(C), it shall comply with the additional requirements of the Irvine Sunshine Ordinance. Special meetings may be called by the chair of the commission or upon the written request of at least a majority of its members.

Sec. 1-4-208. - Procedures.

- A. Unless otherwise specifically provided by law or elsewhere in the Code, including the provisions of the Irvine Sunshine Ordinance, Robert's Rules of Order, Newly Revised, shall govern the general conduct of meetings of commissions. The adoption of Robert's Rules of Order is for the purpose of establishing a procedural framework for the conduct of meetings only. Any failure to adhere thereto shall in no way affect the validity of any action taken by the commission.
- B. It shall be the duty of each commissioner to take an active part in the commission's deliberation and to act in whatever capacity the commissioner may be called. Absence from three consecutive meetings without the formal consent of the commission shall be deemed to constitute the retirement of the commissioner, and the position shall automatically become vacant.

CHAPTER 4-3
COMMITTEES

Sec. 1-4-302. - Structure.

The structure, composition, number of members, manner of their appointment or selection, and other matters necessary to the creation and operation of each committee shall be determined in each case by the authority which establishes such committee, subject, however, to compliance with this division and the Irvine Sunshine Ordinance.

SECTION 5. Division 13 of Title 2 Finance Commission is amended as follows and shall in all other respects remain in full force and effect:

Sec. 2-13-108. - Meetings and procedures.

- A. The Finance Commission shall meet regularly at least once each month, at a time and place to be fixed by the City Council, and shall hold such other meetings as from time-to-time shall be called in the manner and form required by law, including the provisions of the Irvine Sunshine Ordinance.
- B. The meetings and procedures of the Finance Commission shall be subject to and governed by the resolutions and ordinances of the City Council establishing rules and regulations for commissions and committees.

SECTION 6. Division 3 of Title 3 Community Services Commission is amended as follows and shall in all other respects remain in full force and effect:

Sec. 3-3-109. - Meetings and procedures.

- A. The Community Services Commission shall meet regularly at least once each month, on a day to be fixed by the City Council, and shall hold such other meetings as from time-to-time shall be called in the manner and form required by law, including the provisions of the Irvine Sunshine Ordinance.
- B. The meetings and procedures of the Community Services Commission shall be subject to and governed by the rules and regulations for commissions and committees set forth in Chapter 2 of Division 4 of Title 1 of the Code.

SECTION 7. Division 3 of Title 5 Commission (Planning) is amended as follows and shall in all other respects remain in full force and effect:

Sec. 5-3-107. - Meetings and procedures.

- A. The Planning Commission shall meet regularly at least once each month on a day and place to be fixed by the City Council, and shall hold such other meetings as from time-to-time shall be called in the manner and form required by law, including the provisions of the Irvine Sunshine Ordinance.
- B. The meetings of the Planning Commission shall be subject to and governed by the rules and regulations for commissions and committees set forth in Chapter 2 of Division 4 of Title 1 of the Code.

SECTION 8. Chapter 9 of Division 3 of Title 6 (Transportation Commission) is amended as follows and shall in all other respects remain in full force and effect:

Sec. 6-3-906. - Meetings and procedures.

- A. The Transportation Commission shall meet regularly twice per month on a day and place to be fixed by the City Council, and shall hold such other meetings

as from time-to-time as called in the manner and form required by law, including the provisions of the Irvine Sunshine Ordinance.

- B. The meetings and procedures of the Transportation Commission shall be subject to and governed by the rules and regulations for commissions and committees set forth in Chapter 2 of Division 4 of Title 1 of the Code, as well as any bylaws which are approved by the City Council.

SECTION 9. CEQA Determination. In adopting this Ordinance, the City Council finds that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Title 14 California Code of Regulations Sections 15061(b)(3) and 15378, in that it can be seen with certainty that the Municipal Code amendments propose no activity that may have a significant effect on the environment and will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

SECTION 10: This Ordinance shall become effective as to the City Council, the Irvine Planning Commission, and the Irvine Transportation Commission thirty (30) days after adoption, and shall become effective as to the Irvine Finance Commission and the Irvine Community Services Commission on January 30, 2019.

SECTION 11: If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional.

SECTION 12. The City Clerk shall certify to the passage of this Ordinance and this Ordinance shall be published as required by law and shall take effect as provided by law.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the ___ day of ____, 2018.

MAYOR OF THE CITY OF IRVINE

ATTEST:

CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF IRVINE)

I, MOLLY MCLAUGHLIN, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on the ___ day of ____, 2018, and duly adopted at a regular meeting of the City Council of the City of Irvine held on the ___ day of _____, 2018.

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

CITY CLERK OF THE CITY OF IRVINE