

CONTRACTS SCAN SHEET

CONTRACT NUMBER: 7077

CONTRACT TYPE: AGREEMENT

DEPARTMENT: COMMUNITY DEVELOPMENT
Department initiating contract

CONTRACT DATE: 9/13/2011
As stated in Terms section of Contract

EXPIRATION DATE:
As stated in Terms section of Contract

MEETING DATE:
Date of meeting where contract was approved

ITEM NUMBER:
Item number of meeting where contract was approved

CONTRACT AMOUNT:
As stated in Budget section of Contract

CONTRACT NAME: HERITAGE FIELDS EL TORO, LLC
As stated in 1st paragraph of contract

CONTRACT SUBJECT: AGREEMENT WITH CITY OF IRVINE
As stated in Description of Services section of contract AS ADJACENT LANDOWNER; ALA;
CONTRACTS 7224, 7092, 7087, 7083,
7121, 7120, 6298, 7225

**AGREEMENT WITH CITY OF IRVINE
AS ADJACENT LANDOWNER**

THIS AGREEMENT WITH CITY OF IRVINE AS ADJACENT LANDOWNER (this "**Agreement**") is dated for reference purposes only as of September 13, 2011 but shall be effective as of the "Effective Date" (as defined below in Section 7(o), below), by and between HERITAGE FIELDS EL TORO, LLC, a Delaware limited liability company ("**Heritage Fields**"), and The City of Irvine, a California charter city ("**City**").

RECITALS

A. The City, the Irvine Redevelopment Agency, and Heritage Fields entered into an agreement entitled "AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF IRVINE, THE IRVINE REDEVELOPMENT AGENCY and HERITAGE FIELDS EL TORO, LLC" on December 27, 2010 ("**Original ARDA**"). The Original ARDA was approved by the City Council pursuant to Ordinance No. 09-09 on September 8, 2009, and has been supplemented by that certain letter agreement dated December 27, 2010 (the "**ARDA Letter Agreement**"). The Original ARDA, as supplemented by the ARDA Letter Agreement, is hereinafter referred to as the "**ARDA**". Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the ARDA.

B. The City and Heritage Fields entered into an agreement entitled "AMENDED AND RESTATED MASTER IMPLEMENTATION AGREEMENT" on December 27, 2010 (the "**Original ARMIA**"). The Original ARMIA was supplemented by that certain letter agreement dated December 27, 2010 (the "**ARMIA Letter Agreement**"). The Original ARMIA, as supplemented by the ARMIA Letter Agreement, is hereinafter referred to as the "**ARMIA**."

C. Heritage Fields filed applications with and/or submitted requests to the City for the Entitlements (as defined below). The City, as an adjacent landowner, has identified certain matters it would like to see addressed and implemented in connection with the proposed development of the Heritage Fields Property and City Property, and Heritage Fields and the City have mutually agreed to address those matters through, among other things, this Agreement.

AGREEMENT

NOW, THEREFORE, in view of the foregoing recitals and in consideration of the following terms, conditions and covenants, it is agreed as follows:

1. **Definitions:**

(a) The term “**Authorized Park Expenditures**” means work performed by the City, the Orange County Great Park Corporation (“**GPC**”), or designee, to maintain, to construct, to manage, to program, to operate, to provide services for, or to rehabilitate the Great Park Property. Work includes but is not limited to: landscape, grass and turf, open space, agriculture, water features, buildings and facilities, parking, and drainage facilities. Work may be performed on a sports park and other sports fields and athletic facilities; on lands comprising a museum district; on utilities for the Great Park Property (to the extent not paid for directly by users/vendors/operators of improvements on the Great Park Property); on public safety and other security services for the Great Park Property; on the Agua Chinon; on the Wildlife Corridor; and may include administrative costs including allocated overhead. The totality of administrative costs, overhead or other similar management costs shall not, in the aggregate, exceed the amount allocated toward overhead expense in the Full Cost Allocation Plan prepared by the City on a city-wide basis and applicable in any given fiscal year.

(b) The term “**Backbone Contractors**” has the meaning assigned to that term in the ARMIA.

(c) The term “**Backbone Infrastructure**” has the meaning assigned to that term in the ARMIA.

(d) The term “**Backbone Infrastructure Activities**” has the meaning assigned to that term in the ARMIA.

(e) The term “**Commercially Reasonable Efforts**” means an obligation to use commercially reasonable efforts.

(f) The term “**City-Critical Backbone Infrastructure**” has the meaning assigned to that term in the ARMIA.

(g) The term “**Demolition Work**” has the meaning assigned to that term in the ARMIA.

(h) The term “**Entitlements**” means all of the following entitlements (or amendments/modifications to existing entitlements, as applicable), and the environmental review connected with such entitlements applied for by Heritage Fields:

- i. The City’s adoption of General Plan Amendment 00517351-PGA, pursuant to City Council Resolution 11-98;

ii. City Council adoption of Ordinance No. 11-12, which requires two readings, approving the Zone Change 00516294-PZC in the form substantively identical to that approved by the City Council at the first reading of the Ordinance at the City Council hearing dated August 30, 2011 (the “Zone Change”);

iii. The City’s approval of the Master Landscape and Trails Plan, File No. 00516248-PMP/00524049-PMP, pursuant to Planning Commission Resolution 11-3110;

iv. The City’s approval of the 2nd Amended Vesting Tentative Tract Map (“**VTTM**”) 17008 (00522051-PTT), pursuant to Planning Commission Resolution 11-3109, subject only to the following two modifications in response to Heritage Fields’ August 25, 2011 appeal of 2nd Amended VTTM 17008 (00522051-PTT):

(a) A revision of the Condition imposed by the Planning Commission at the August 18, 2011 hearing, such that it will read: “Approval of this map (2nd Amended VTTM 17008) is contingent on, and shall have no force or effect until there is, complete City Council approval (which requires a second reading of the Zone Change Ordinance) of the following items: (1) GPA 00517351-PGA), (2) Zone Change 00516294-PZC in the form substantially identical to that approved by the City Council at the August 30, 2011 first reading of the Ordinance approving Zone Change 00516294-PZC, and (3) certification of Supplemental Environmental Impact Report (SCH #2002101020) for the Great Park Neighborhoods project”;

(b) Addition of an additional Condition which will read: “Under the Amended and Restated Development Agreement among the City of Irvine, the Irvine Redevelopment Agency, and Heritage Fields, Heritage Fields may, after 2nd Amended VTTM 17008 (00522051-PTT) becomes effective, consent in writing to 2nd Amended VTTM 17008 (00522051-PTT), and if Heritage Fields so consents, 2nd Amended VTTM 17008 (00522051-PTT) will become a part of Heritage Fields’ vested rights under the Amended and Restated Development Agreement”;

v. The City’s approval of the Amendment to Tentative Parcel Map 2006-271 (00520075-PTP), pursuant to Subdivision Committee Resolution 11-868;

vi. The City’s approval of Vesting Tentative Tract Map 17283A (00516277-PTT) and District 1 North Comprehensive Park Plan (00519958-PPP), pursuant to Planning Commission Resolution 11-3111, subject only to the following modification in response to Heritage Fields’ August 25, 2011 appeal of Amended VTTM No. 17283;

(a) Deletion of the Condition imposed by the Planning Commission at the August 18, 2011 hearing on amended VTTM 17283, which states: “The applicant shall submit a revised Master Affordable Housing Plan that accomplishes the following: 1) depicts the 196 affordable units removed from its current location, identified as lots 537 and 538 on Amended Vesting Tentative Tract Map No. 17283, in district 1 North and locates them at least one quarter mile from other proposed affordable housing sites in District 1 North, in either Development District 1 South, 4, or 8. If located in District 8, the site shall not be on lots 512 or 513 as depicted on Vesting Tentative Tract Map no 17364; and 2) incorporates a schedule for the timing of construction of affordable units consistent with the schedule incorporated in the Density Bonus Agreement executed by the City on August 11, 2009 as to be amended from time to time”;

vii. The City’s approval of District 1 North Master Plan (00516282-PMP), pursuant to Planning Commission Resolution 11-3112;

viii. The City’s approval of Vesting Tentative Tract Map 17368 (00516246-PTT), and District 1 South Comprehensive Park Plan (00519873-PPP) pursuant to Planning Commission Resolution 11-3113;

ix. The City’s approval of District 1 South Master Plan (00516242-PMP), pursuant to Planning Commission Resolution 11-3114;

x. The City’s approval of Vesting Tentative Tract Map 17366 (00516252-PTT) and District 4 Comprehensive Park Plan (00519955-PPP), pursuant to Planning Commission Resolution 11-3115;

xi. The City’s approval of District 4 Master Plan (00516256-PMP), pursuant to Planning Commission Resolution 11-3116;

xii. The City’s approval of Vesting Tentative Tract Map 17202 (00516269-PTT) and District 7 Comprehensive Park Plan (00519883-PPP), pursuant to Planning Commission Resolution 11-3117;

xiii. The City’s approval of District 7 Master Plan (00516257-PMP), pursuant to Planning Commission Resolution 11-3118;

xiv. The City’s approval of Vesting Tentative Tract Map 17364 (00516254-PTT) and District 8 Comprehensive Park Plan (00519451-PPP), pursuant to Planning Commission Resolution 11-3119;

xv. The City’s approval of District 8 Master Plan (00516253-PMP), pursuant to Planning Commission Resolution 11-3120;

xvi. The City's Certification of the Supplemental Environmental Impact Report No. SCH#2002101020 (00527796-PCLE) and adoption of a Mitigation Monitoring and Reporting Program, pursuant to City Council Resolution 11-97;

xvii. The City's August 4, 2011 approval of an Amendment to the Great Park Neighborhoods Master Affordable Housing Plan, subject only to the following modification in response to Heritage Fields' August 22, 2011 appeal:

(a) Deletion of the requirement that: "(1) the developer remove references to the 196 affordable units on Lots 537 and 538 and work with the Director of Community Development to find identify other lots or lots within a quarter mile (2) This approval is contingent upon, and held in abeyance until, the City Council approval of General Plan Amendment 00517351-PGA, Zone change 00516294-PZC"; and

xviii. The City's approval of the Amendment to the Density Bonus Agreement in the form attached hereto as **SCHEDULE 9**.

(i) The term "**Entitlements are Deemed Approved**" means that the Entitlements have been approved by the Subdivision Committee (where applicable), Planning Commission (where applicable) and the City Council (where applicable) and that no legal action or challenge is commenced against the City by any party other than Heritage Fields or any of its parents, subsidiaries or affiliates (including without limitation, all of the entities listed in the Heritage Fields signature block to this Agreement), prior to December 13, 2011 to set aside or challenge the validity or enforceability of the Entitlements (in whole or in part). If any such action or challenge is commenced, then the "Entitlements are Deemed Approved" when the action or challenge has been dismissed or otherwise settled and resolved in a manner mutually approved by Heritage Fields and the City.

(j) The term "**Master Phasing Plan & Schedule**" has the meaning assigned to that term in the ARMIA.

(k) The term "**Phase 1 HMMP Mitigation Area**" means construction, planting, implementation and establishment of naturalized, stabilized channel, flood control improvements, and 6.5 acres of jurisdictional habitat, generally within Agua Chinon reach "AC-2a" (as identified in ARDA Exhibits E and E-3) and as shown on **SCHEDULE 8A**, in accordance with the terms and conditions of the revised draft Habitat Mitigation and Monitoring Plan proposed by Heritage Fields in April 2011 for approval by the United States Army Corp of Engineers and the California Department of

Fish and Game, as that document may be revised or amended to obtain approval by those resources protection agencies.

(l) The term “**Recycled Products**” has the meaning assigned to that term in the ARMIA.

(m) The term “**Runway Demolition & Recycling Services**” has the meaning assigned to that term in the ARMIA.

2. **Authorized Park Expenditures Payments.** In addition to the payment of the Guaranteed Amount (or, as applicable, Indexed GA) identified in the ARDA, Heritage Fields agrees to pay to the City additional amounts for Authorized Park Expenditures (“**Authorized Park Expenditures Payments**”), subject to the terms set forth in this Agreement. If the Entitlements are Deemed Approved on or before December 30, 2011, then the Authorized Park Expenditures Payments shall be paid to the City by Heritage Fields at the times set forth on **SCHEDULE 1** attached hereto. If the Entitlements are Deemed Approved after December 30, 2011, then the Authorized Park Expenditures Payments shall be paid to the City by Heritage Fields at the times set forth on **SCHEDULE 2** attached hereto.

3. **Acceleration of Certain Backbone Infrastructure Elements.** Pursuant to the ARDA and the ARMIA, the City approved a Master Phasing Plan & Schedule for the initial five years of the Backbone Infrastructure Activities (i.e., calendar years 2011 through 2015), which identified the City-Critical Backbone Infrastructure for the initial five year period. The Master Phasing Plan & Schedule is hereby modified by the City and Heritage Fields as follows:

(a) **Additional City-Critical Backbone Infrastructure.** The City and Heritage Fields hereby approve the inclusion of certain additional Backbone Infrastructure elements in the initial Master Phasing Plan & Schedule, as set forth on **SCHEDULE 3** attached hereto. **SCHEDULE 3** sets forth the timing for commencement of engineering and permitting of those elements of the Backbone Infrastructure described therein. Once Heritage Fields has received permits from all agencies with jurisdiction over the applicable element of Backbone Infrastructure set forth on **SCHEDULE 3** and secured all required rights-of-way and easements necessary for the same, which Heritage Fields will use Commercially Reasonable Efforts to obtain and will diligently pursue, Heritage Fields will promptly thereafter commence construction. To that end, Heritage Fields will commence construction of (i) the Trabuco improvements in January 2013, (ii) the “O” Street improvements in January 2014 and (iii) the Marine Way improvements in January 2015, provided that all such construction commencement is subject to all the terms and provisions of the ARMIA (other than Section 3.3.2(ii)) including, without limitation, the provisions of Sections 3.3 [other than 3.3.2(ii)], 3.4, 3.6, 3.7, 4.1 and 15.11 of the ARMIA, as well as the provisions of the ARMIA requiring Heritage Fields to update the City as to the estimated completion dates of the portions of the Backbone Infrastructure following commencement of the same). To that end, once construction has commenced on a particular element or portion of Backbone Infrastructure, Heritage

Fields shall use Commercially Reasonable Efforts to cause the applicable Backbone Contractors to proceed diligently with the completion of such work. Notwithstanding the foregoing, if the Entitlements are Deemed Approved after December 30, 2011, then each date set forth on **SCHEDULE 3** shall be adjusted to two years after the date set forth on **SCHEDULE 3**, except for the dates for the work for the segments identified as “Segment 7 – Trabuco – SR 133 to ‘O’ Street” and “Segment 6 – Trabuco – Between ‘O’ Street and ‘LY’ Street,” which shall remain unchanged.

(b) Updates to Master Phasing Plan & Schedule. The Master Phasing Plan & Schedule, as supplemented by **SCHEDULE 3**, shall constitute the Master Phasing Plan & Schedule for the time period from 2011 through 2015 (i.e., years 1 – 5). Unless the City and Heritage Fields agree (in writing) otherwise, the next update to the Master Phasing Plan & Schedule shall not occur until July 2014. Pursuant to Section 4.3 of the ARMIA, that update to the Master Phasing Plan & Schedule shall include the timing for the Backbone Infrastructure and Demolition Work the City and Heritage Fields intend to occur during the subsequent two year period beyond the initial 5-year period covered by the current Master Phasing Plan & Schedule (i.e., 2016 and 2017) unless the City and Heritage Fields mutually elect to have such schedule cover a different period of time.

4. **Property Transfers.**

(a) ARDA Transfer Site. The parties have mutually agreed to delay the conveyance of the ARDA Transfer Site, except for the portion of the ARDA Transfer Site identified as the “Southern Parcel” in the ARDA Letter Agreement (i.e., also referred to as the 5-acre notch). The Southern Parcel is also shown as “Lot 66” on 2nd Amended VTTM 17008. A depiction of Lot 66 (the “Southern Parcel”) is attached hereto as **SCHEDULE 4**. Heritage Fields shall convey the Southern Parcel to the City on or before October 17, 2011. Heritage Fields shall deliver a metes and bounds description to the City for its review for the Southern Parcel by October 3, 2011. By October 17, 2011, Heritage Fields and the City (i) shall enter into a lease for those portions of the ARDA Transfer Site that are not the Southern Parcel and also not the subject of a Lease in Furtherance of Conveyance (“**LIFOC**”) and (ii) shall enter into a sublease for those portions of the ARDA Transfer Site are not the Southern Parcel and are the subject of a LIFOC. The material terms of the lease (and, where applicable, the sublease) shall be as follows: (i) the City shall pay no rent under the lease or sublease, (ii) City shall comply with all obligations with respect to the leased or subleased premises, as applicable, imposed by the LIFOC, the applicable Finding of Suitability to Lease, the Conceptual Project Water Quality Management Plan, and the applicable Storm Water Pollution Prevention Plan, (iii) the City’s use of the leased (or, as applicable, subleased) property shall be restricted in accordance with the terms of the LIFOC, the ARDA, and this Agreement, including the granting by the City of a license to Heritage Fields (and its contractors) to enter the leased (or, as applicable, subleased) property to carry out the obligations and exercise the rights of Heritage Fields under the ARMIA, and (iv) such additional standard terms as are reasonable, customary, and consistent with subparagraphs (i)-(iv) in this sentence (collectively “**Lease/Sublease Terms**”). Unless otherwise agreed by Heritage Fields and the City in writing, the remaining portion of the

ARDA Transfer Site (i.e., the “Northern Parcel” as shown in the ARDA Letter Agreement) shall be conveyed to the City no later than ninety (90) days after Heritage Fields’ receipt of written notice (a “**Transfer Site Notice**”) from the City to convey the same to the City, except for such portion that is still subject to a LIFO at the time of delivery of such a Transfer Site Notice. After the termination of any LIFO covering any portion of the ARDA Transfer Site and the conveyance of fee title of such property to Heritage Fields by the Navy, Heritage Fields shall convey fee title to the applicable portions of the ARDA Transfer Site to the City in accordance with the terms of that certain letter agreement dated December 27, 2010 between the City and Heritage Fields Re: Protocol for Conveyance of City Parcels Under Amended and Restated Development Agreement (“**FOST Protocol Letter**”). Heritage Fields shall reserve over the Southern Parcel and the other portions of the ARDA Transfer Site easements for roads and utilities in the locations shown on 2nd Amended VTTM 17008 (00522051-PTT) and/or the District 1 South VTTM (to the extent applicable), which reservations shall be included in the grant deeds, lease and subleases (as applicable).

ARDA Section 9.6, concerning modifications to property boundaries to accommodate the ultimate roadway alignments and design standards, shall continue to apply to all of the Heritage Fields Property and City Property, including the entirety of the ARDA Transfer Site.

(b) Exchange Properties/Land Swap Agreement. This Agreement shall constitute the “land swap agreement” contemplated in ARDA Section 9.2.3. In furtherance thereof, the Exchange Properties shall only include the exchange or conveyance of those portions of the previously identified Exchange Properties that are shown on SCHEDULE 6 attached hereto labeled “Remaining Exchange Properties” (hereinafter, the “**Remaining Exchange Properties**”). The other portions of the Exchange Properties that are not shown on SCHEDULE 6 shall not be exchanged/conveyed to each party and shall not be deemed to be part of the Remaining Exchange Properties or this land swap agreement. The precise configurations of the Remaining Exchange Properties shall continue to be subject to Sections 9.6 of the ARDA. Except for the exchange/conveyance of the Remaining Exchange Properties as provided for in Section 4(b), the City and Heritage Fields hereby waive and relinquish one another from any obligation to commence or complete the “Exchange of Exchange Properties” obligations set forth in Section 9.2.3 of the ARDA.

In furtherance of the foregoing, by October 17, 2011, Heritage Fields and the City each shall convey to the other party fee title to those portions of the Remaining Exchange Properties it currently owns in fee title using the form of grant deed attached as Exhibit P to the ARDA, subject to the deletion of the words “Police Site” from that Exhibit P. Heritage Fields shall reserve over the Remaining Exchange Properties easements for roads and utilities in the locations shown on 2nd Amended VTTM 17008 (00522051-PTT), which reservations shall be included in the grant deed. The Remaining Exchange Properties to be conveyed by City are of equal value to the Remaining Exchange Properties to be conveyed by Heritage Fields. City and Heritage Fields shall execute and record such additional documents as are necessary to evidence that this

transfer of the Remaining Exchange Properties satisfies all requirements to exchange real property pursuant to Section 9.2.3 of the ARDA.

(c) “LM”, “LN”, and “LQ” Streets. The City and Heritage Fields acknowledge portions of LM and LN (in addition to LQ) streets cross City Property, as shown on VTTM 17366 (i.e., the District 4 VTTM) and 2nd Amended VTTM 17008, respectively. City agrees to accept LQ, LM and LN streets (and appurtenant utilities) as public right of ways as generally shown on VTTM 17366 (i.e., the District 4 VTTM) or 2nd Amended VTTM 17008, as applicable, and shall not, in its capacity as a land owner, object to the continued processing and/or approval of subsequent entitlement applications (including subdivision maps and other entitlement applications, as necessary) that depict such streets and appurtenant utilities as ultimately shown on the final maps. The City agrees further that such streets (and appurtenant utilities) will be consistent with the Existing Land Use Regulations upon Heritage Fields granting of consent to the Entitlements under Section 3.6 of the ARDA.

(d) Conveyances of Lots 67, 68 & 69. Heritage Fields shall convey fee title to the City the property depicted on 2nd Amended VTTM 17008 as Lots 67 and 68 (“**Lots 67 and 68**”), and that portion of the property depicted on Amended VTTM 17008 as Lot 69 (“**Lot 69**”) that is not the subject of a LIFO, for no further consideration, by October 17, 2011. A depiction of Lots 67 and 68, and Lot 69 is attached hereto as **SCHEDULE 4**; these Lots are also depicted on 2nd Amended VTTM 17008. Heritage Fields shall deliver to the City a metes and bounds description of Lots 67 and 68, and that portion of Lot 69 that is not the subject of a LIFO within by October 3, 2011. By October 17, 2011, Heritage Fields and the City shall enter into a sublease on the Lease/Sublease Terms for that portion of Lot 69 that is the subject of a LIFO. After the termination of any LIFO covering any portion of Lot 69 and the conveyance of fee title of such property to Heritage Fields by the Navy, Heritage Fields shall convey fee title to said portion of Lot 69 to the City in accordance with the terms of the FOST Protocol Letter. Heritage Fields shall reserve over Lots 67 and 68, and Lot 69 an easement for utilities in the locations shown on 2nd Amended VTTM 17008 (00522051-PTT), which reservations shall be included in the grant deed and subleases.

(e) Police Site/Lot 45. By October 17, 2011, Heritage Fields shall convey to the City fee title to the property depicted on Amended VTTM as Lot 45 (“**Lot 45**”). Lot 45 was identified in the ARDA as the “Police Site”; thus, the conveyance of Lot 45 will be in satisfaction of Heritage Fields’ obligation to convey the Police Site to the City in accordance with Section 9.1 of the ARDA. A depiction of Lot 45 is attached hereto as **SCHEDULE 4**; this Lot is also depicted on 2nd Amended VTTM 17008. Heritage Fields shall deliver a metes and bounds description of the Lot 45 to the City by October 3, 2011. The City and Heritage Fields hereby supplement the land use restrictions placed on Lot 45 under the ARDA, such that the requirement to use Lot 45 primarily for a police facility is removed, and the uses allowable on Lot 45 are expanded to include, whether ancillary or not, City civic or municipal uses (including fire station uses, offices uses for the Orange County Great Park Corporation, and/or a Great Park information center). Heritage Fields agrees to take such additional steps as may be reasonable and necessary to memorialize the modifications to the allowable and required

uses at the Lot 45. The City shall establish a permanent police substation at a location on City-owned property within Planning Areas 30 or 51. Notwithstanding the expanded uses permitted herein for the Lot 45, the conveyance of the Lot 45 remains subject to the provisions of the second sentence of Sections 3.9.5 of the ARDA and the provisions of third and fourth to last sentences of Section 9.1 of the ARDA. Further, if the primary use of the Lot 45 is not a police substation, the City shall also be responsible for any additional off-site infrastructure burden (i.e., beyond that which would be applicable as a police substation).

(f) Environmental Insurance Policy. Heritage Fields and City covenant and agree to cooperate in connection with obtaining from the insurer of the American International Specialty Lines Insurance Company Policy Number EPP 1956943 (the "**Environmental Insurance Policy**") an endorsement to the Environmental Insurance Policy reflecting the change in ownership of the properties described in this Section 4.

(g) Complete Understanding of Material Terms for Transfers and Subleases: This Agreement creates a present obligation to convey and/or lease and/or sublease the properties described herein on the schedule and within the timeframes specified herein. All material terms and requirements to be included in those conveyances and/or leases and/or subleases have been included herein and in the ARDA, and any additional matters included by mutual consent in a lease, sublease, deed, or other instrument related to the conveyances and/or leases and/or subleases shall be fully consistent with the terms set forth in this Agreement and the ARDA.

5. Land Use Restrictions.

(a) Additional Hotel/Sports Park & Village. In connection with the City's planning for its Sports Park on the Great Park, the City has requested and Heritage Fields has agreed that Sections 3.9.2 and 3.9.3 of the ARDA be supplemented to allow the City to include an additional hotel (i.e., for a total of two (2) hotels, in the aggregate) on the Great Park Property, as opposed to only one (1) hotel, in the aggregate, as is currently permitted as an ancillary use to the Great Park uses. The City's right to include a total of two (2) hotels, in the aggregate, as between the ARDA Transfer Site and the remaining portion of the Great Park Property remains subject to all of the other terms and provisions of the ARDA, including, without limitation, (i) Section 3.9.2 of the ARDA, which provides that no hotel is permitted on the ARDA Transfer Site until after the 7-Year Period and (ii) Section 3.9.7 of the ARDA, which grants to Heritage Fields a right of first negotiation for uses on City Property (and which is modified herein in Section 5(b)). Further, the City and Heritage Fields agree that the development of "Sports Village Uses" on the Great Park Property that are located on or abut the area depicted as a "Sports Park" on the Great Park Master Plan shall be permitted. As used herein, the term "**Sports Park Village**" means a hotel or lodging facility (provided that any such hotel or lodging facility shall constitute one of the two hotels permitted to be located on the Great Park Property), and restaurants and small scale retail intended to support primarily those who play and attend sporting events at or around the Great Park and that are of the type and nature one would find in a metropolitan park (such as Balboa Park in

San Diego, California) and that are complimentary to and do not compete with the “Main Street retail area” to be developed on the Heritage Fields Property in District 1.

(b) Timing for Right of First Negotiation. Heritage Fields agrees that so long as the City presents a reasonably detailed and complete package of information with respect to the portion of the City Property being presented for sale or lease pursuant to Section 3.9.7 of the ARDA, Heritage Fields agrees that its initial response to the City (i.e., pursuant to subsection (ii) of Section 3.9.7) will be within 30-days after Heritage Fields’ receipt of such complete package from the City. Heritage Fields agrees further that if Heritage Fields accepts the proposed terms (i.e., pursuant to subsection (iii) of Section 3.9.7), the City shall negotiate in good faith with Heritage Fields exclusively for a period of 90-days after the date Heritage Fields accepts such terms. If the City and Heritage Fields do not enter into an agreement within such 90-day period despite their good faith efforts, the negotiations shall be deemed to have been “affirmatively abandoned by Heritage Fields” within the meaning of Section 3.9.7 of the ARDA, provided that the remaining provisions of Section 3.9.7 of the ARDA shall remain in full force and effect.

6. **Heritage Fields – Great Park Coordination Matters.**

(a) Joint Welcome Home/Visitors’ Center. Heritage Fields intends to construct a home finding/information center to serve the Great Park Neighborhoods’ project. The City desires to include visitors’ center uses within that facility approximately comparable in size to the space in the facility devoted to the Great Park Neighborhoods’ project (the facility that jointly serves Heritage fields home finding/information center, and the City’s visitors’ center purposes is hereinafter referred to as the “**Center**”). Accordingly, Heritage Fields and the City agree to cooperate towards identifying a mutually approved location, designing and constructing the Center. The location shall take into account and adhere to the phasing of Backbone Infrastructure to the applicable area consistent with the Master Phasing Plan & Schedule. The cost to design and construct the Center shall not exceed \$5,000,000 unless Heritage Fields agrees (in its sole discretion) to design and construct a Center that costs in excess of such amount. If the City and Heritage Fields have identified the location of the Center but Heritage Fields has not commenced construction of the center during calendar year 2013, then the City thereafter can, in its sole discretion, require Heritage Fields to construct the same at any time during calendar year 2014 on the mutually approved location in which case (i) Heritage Fields shall be entitled to reduce its Authorized Park Expenditure Payment due for 2014 by the amount of the engineer’s estimate for the cost to construct the Center, up to the amount of \$5,000,000 (the “**Deferred Payment**”), and (ii) the Deferred Payment will then be due and payable one year following the last payment date for the Authorized Park Expenditure Payments. Notwithstanding the foregoing, if the Entitlements are Deemed Approved after December 30, 2011, then each date set forth in this Section shall be adjusted to two years after the date set forth in this Section.

(b) HMMP Mitigation. Notwithstanding anything to the contrary in the provisions of the ARDA, including but not limited to Exhibit E-3 of the ARDA, and the ARMIA, including but not limited to Sections 3.3.2 or 4.2 and footnote (6) of Exhibit

B to the ARMIA, the City shall have the right to commence work that results in impacts to areas under the jurisdiction of the U.S. Army Corps of Engineers and/or the California Department of Fish and Game as shown on **SCHEDULE 8B** attached hereto (as shown, the “**City Phase 1 Impact Areas**”), which the City and Heritage Fields acknowledge will require Heritage Fields to commence construction and establishment of the Phase 1 HMMP Mitigation Area; provided, however, (i) that impacts in the jurisdictional areas shown on **SCHEDULE 8B** shall not be commenced prior to December 31, 2012 and (ii) so long as Heritage Fields development does not consume mitigation credit in the Phase 1 HMMP Mitigation Area so as to preclude the City from being able to impact the City Phase 1 Impact Areas, Heritage Fields shall not be obligated to commence construction and establishment of more than the 6.5 acre Phase 1 HMMP Mitigation Area. Consistent with Paragraph 3(a), above, the City and Heritage Fields further agree that the qualifications on the completion of backbone infrastructure obligations set forth in Section 3.3.2(ii) of the ARMIA shall not be applicable to the infrastructure items listed on **SCHEDULE 3**. If the City commences work that results in impacts to areas under the jurisdiction of the U.S. Army Corps of Engineers and/or the California Department of Fish and Game as shown on **SCHEDULE 8B** attached hereto, then the City shall, at its cost, install and maintain the facilities to maintain the drainage functionality in such areas. The City shall provide Heritage Fields not less than sixty (60) days prior written notice (or such longer advance notice as may be required under the applicable Habitat Mitigation and Monitoring Plan) of its intent to undertake work in these particular areas and which specific area it intends to impact. Aside from the foregoing exception and as set forth in **SCHEDULE 3** attached hereto, Section 4.2 and footnote (6) of Exhibit B to the ARMIA shall remain in full force and effect.

(c) **Runway Materials Usage.**

(i) **Balloon Site.** Pursuant to Article VIII of the ARMIA, Heritage Fields and the City have identified a process for the Runway Demolition & Recycling Services, including the manner in which Recycled Products are allocated between the City and Heritage Fields. Notwithstanding the provisions of Article VIII of the ARMIA, the City shall have the sole right to use the existing stockpiles from the balloon site on the City Property to create Recycled Products for re-use at the Great Park, and Heritage Fields shall not have any right to use those particular materials.

(ii) **Future Stockpiles.** City has the right but not obligation to remove concrete on City Property for the purpose of using said material on site in connection with the development and promotion of the Orange County Great Park. Heritage Fields waives and relinquishes any right it may have under the ARMIA to contest the City’s right to remove concrete on City Property in accordance with this paragraph, and further waives and relinquishes any right it may have under the ARMIA or otherwise to use or sell any portion of the material generated by the City through the removal of concrete on City Property in accordance with this paragraph, provided that all such activities, including sale, by the City are conducted in compliance with all applicable laws, codes, ordinances and mitigation measures. The City represents and warrants to and

agrees with Heritage Fields that its rights under this section are not intended to be implemented so as to deprive Heritage Fields of its right to use a sufficient amount of the Runway materials to create Recycled Products for use in the construction of the Backbone Infrastructure.

(d) Hangar 10 Lease. The GPC has expressed a desire to use and lease Hangar 10 for Great Park use for a period of up to ten years. The area that constitutes “**Hanger 10**” is depicted on the attached **SCHEDULE 7**. Heritage Fields and the GPC shall enter into a lease of Hangar 10 that includes the following fundamental terms: (i) the lease rate shall be \$1 per year; (ii) the lease agreement shall include a reservation of rights for use of Hangar 10 by Heritage Fields for events benefiting the Great Park Neighborhoods’ project for the following events the Anniversary Event , the Foundation / “Jewel” Event , and the Fall Harvest Event-- collectively, the “**Pre-Scheduled Events**”), and for additional events up to 30 “usage” days (i.e., which include days devoted to set up or take down prior to and following events) per calendar year, provided Heritage Fields gives the City 30 days prior written notice of such event from Heritage Fields (other than the Pre-Scheduled Events for which no notice shall be required), and provided the intended Heritage Fields event does not conflict with another event already scheduled by or through the GPC (excepting the Pre-Scheduled Events, which shall be reserved for Heritage Fields as a first-priority); (iii) the parties shall work cooperatively to allow for the Great Park to host the Great Park Farmers’ Market each Sunday, recognizing that there will be occasions on which the farmers’ market may not be able to occur due to clean-up/breakdown following Pre-Scheduled Events or other events that occur on Saturday evenings and/or due to construction activities; (iv) the lease shall provide for a temporary access plan for access to the leased premises until such time that a permanent street has been constructed to provide permanent access to the leased premises; and (v) the usage of Hangar 10 by GPC shall at all times be subject to the development schedule and requirements of Heritage Fields that shall occur over time in and around Hangar 10. The lease shall also specify that the Pre-Scheduled Events includes reasonable time before and after such events to allow for pre-event construction, staging, set-up and clean-up/break down. Additional lease terms shall be reasonable, customary and consistent with the fundamental lease terms set forth in the preceding sentence. The parties shall memorialize and enter into the lease required by this paragraph through good faith discussions towards the consummation of the lease transaction by October 17, 2011.

(e) Access Plan: Concurrently herewith, Heritage Fields and the Great Park are entering into an interim access plan to ensure access to the Great Park Property until such time as the streets providing permanent access to the Great Park Property are established as described in the interim access plan.

7. Miscellaneous.

(a) Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

(b) Exhibits/Schedules. The exhibits/schedules attached hereto are hereby incorporated herein by this reference.

(c) No Third-Party Beneficiary. The covenants and agreements and any and all other terms and provisions herein contained, express or implied, shall be only for the benefit of the City and Heritage Fields hereto and their respective successors and assigns, and such covenants, agreements, terms, and provisions shall not inure to the benefit of the obligees of any indebtedness or any other party, whomsoever, deemed to be a third-party beneficiary of this Agreement.

(d) Attorneys' Fees. In any proceeding between the City and Heritage Fields seeking enforcement of any of the terms and provisions of this Agreement (“**Action**”), the prevailing party in such Action shall recover all of its actual and reasonable costs and expenses (whether or not the same would be recoverable pursuant to Code of Civil Procedure Section 1033.5 or Civil Code Section 1717 in the absence of this Agreement), including expert witness fees, attorney’s fees, and costs of investigation and preparation prior to the commencement of the Action. However, such recovery shall not exceed the dollar amount of the actual costs and expenses of the party from whom such recovery is sought for such same Action (“**Non-Prevailing Party’s Expenses**”), and such prevailing party shall not recover any costs and expenses in excess of the Non-Prevailing Party’s Expenses. The right to recover such costs and expenses shall accrue upon commencement of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

(e) Partial Invalidity. If any term or provision or portion thereof of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision or portion thereof to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(f) No Partnership/Fiduciary Relationship. The City and Heritage Fields acknowledge and agree that the relationship created by this Agreement between Heritage Fields and the City is one of contract only, and that no partnership, joint venture or other fiduciary or quasi-fiduciary relationship is intended or in any way created hereby.

(g) No Recordation. No party shall file or record any instrument or document relative to this Agreement in the public records of any County or State at any time.

(h) Estoppel Certificate. No more than two (2) times per year upon written request of a party to this Agreement, the other party shall deliver to the requesting party and at such party’s request, to such party’s mortgagee, prospective mortgagee or prospective purchaser (including a ground lessee), an estoppel certificate or statement stating whether: (i) it knows of any default under this Agreement; (ii) to its knowledge,

the Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and (iii) to its knowledge, this Agreement, as of that date, is in full force and effect. Any such statement or certificate may be conclusively relied upon by the Party requesting the statement or certificate.

(i) Non-Liability Of Officers, Employees and Other Parties; Available Remedies. Notwithstanding anything in this Agreement to the contrary, (1) no official, officer, or employee of the City shall be personally liable to Heritage Fields or its respective predecessors, successors and assigns for any loss arising out of or connected with this Agreement, and (2) no partner, member or affiliate of Heritage Fields, nor any such partner's, member's or affiliate's separate property shall be personally liable for any claim arising out of or related to this Agreement.

Further, the Parties acknowledge that they would not have entered into this Agreement if either Party were to have any monetary liability to the other beyond the financial obligations specifically set forth in this Agreement, and the fee liability created by paragraph 7(d). Accordingly, Heritage Fields covenants on behalf of itself and its successors and assigns, not to sue the City, and the City on behalf of itself and its successors and assigns, not to sue Heritage Fields, for any form of monetary relief for any breach arising under or related to this Agreement, the parties agreeing that declaratory and injunctive relief, mandate, and specific performance (including specific performance of the financial obligations described herein) shall be their sole and exclusive judicial remedies.

(k) Entire Agreement, Waivers And Amendments. This Agreement, together with the other documents and agreements attached hereto or referenced herein, constitutes the entire understanding and agreement of the Parties and supersedes all previous negotiations, discussions, and agreements among the Parties with respect to all or part of the subject matter hereof. No parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by any other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Parties with the terms of this Agreement thereafter. Any amendments or modifications to this Agreement must be in writing, signed by duly authorized representatives of each of the Parties hereto.

(l) Interpretation. The headings of this Agreement are inserted for convenience and identification only and are not intended to describe, interpret, define or limit the scope, extent, or intent of this Agreement or any provisions hereof. All references herein to Paragraphs or Sections shall refer to the corresponding Paragraphs or Sections of this Agreement unless specific reference is made to Paragraphs or Sections of another document or instrument.

(m) Applicable Law; Venue. This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. Any action at law or in equity arising under this Agreement or brought by any Party hereto for the

purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California or the United States District Court for the Central District of California, Santa Ana Division, and the Parties hereto waive all provisions of law providing for the removal or change of venue to any other court.

(n) Assignment. If Heritage Fields assigns the ARDA to a successor to Heritage Fields that acts as master developer (as opposed to, for example, a merchant builder) of the Heritage Fields Property in connection with the transfer of some or all of Heritage Fields' interest in the Heritage Fields Property, Heritage Fields shall also assign and require such successor assume the duties and obligations of Heritage Fields under this Agreement. Further, Heritage Fields shall not assign the master developer rights and obligations under the ARDA with respect to the Heritage Fields Property (1) to more than one person or entity and (2) without also assigning this Agreement to such successor to Heritage Fields as master developer. The foregoing is not intended to apply to partial assignments of the ARDA to parties that are not a successor to Heritage Fields as master developer.

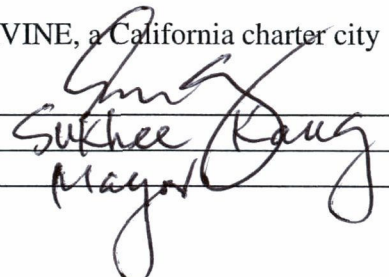
(o) Effective Date. This Agreement shall be effective as of the date that the City has granted all of the approvals specified in Paragraph 1(h) above ("**Effective Date**").

[signature page follows this page]

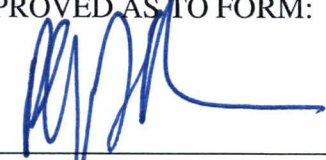
IN WITNESS WHEREOF, the City and Heritage Fields have executed this Agreement as of the date first above written.

“City”

CITY OF IRVINE, a California charter city

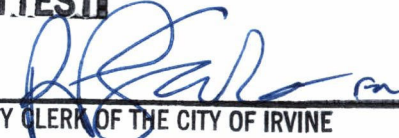
By: 
Name: Sukhee Kang
Its: Mayor

APPROVED AS TO FORM:



City Attorney

ATTEST



CITY CLERK OF THE CITY OF IRVINE

[signatures continue on following page]

“Heritage Fields”

HERITAGE FIELDS EL TORO, LLC,
a Delaware limited liability company

By: Heritage Fields El Toro Sole Member LLC,
a Delaware limited liability company
Its: Sole Member

By: Heritage Fields LLC,
a Delaware limited liability company
Its: Sole Member

By: Lennar Heritage Fields, LLC,
a California limited liability
company
Its: Administrative Member

By: Lennar Homes of California,
Inc., a California corporation
Its: Sole Member

By: 

Name: _____

Title: _____

Erik R. Higgins
Vice President

SCHEDULE 1

Authorized Park Expenditures Payments **(Entitlements Deemed Approved by 12-13-11)**

	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>Total</u>
Authorized Park Expenditures Payments*	\$500,000	\$7,600,000	\$7,600,000	\$9,350,000	\$8,850,000	\$6,600,000	\$40,500,000

*Payments due on December 30 of each calendar year noted above.

SCHEDULE 2

Authorized Park Expenditures Payments **(Entitlements Deemed Approved After 12-13-11)**

	<u>Year 1</u> <u>Payment</u>	<u>Year 2</u> <u>Payment</u>	<u>Year 3</u> <u>Payment</u>	<u>Year 4</u> <u>Payment</u>	<u>Year 5</u> <u>Payment</u>	<u>Year 6</u> <u>Payment</u>	<u>Total</u>
Authorized Park Expenditures Payments*	\$500,000	\$7,600,000	\$7,600,000	\$9,350,000	\$8,850,000	\$6,600,000	\$40,500,000

*The Year 1 payment is due on the second anniversary of the date on which the Entitlements are Deemed Approved (“**Anniversary Date**”). Each annual payment thereafter is due on the Anniversary Date of each succeeding year.

SCHEDULE 3

Supplement to Master Phasing Plan & Schedule - Phase 1 (Years 1-5 Summary)

Reference Location⁽²⁾	Year 2 (2012)⁽³⁾ (Engineering, Permitting, Construction)
Segment 7	Trabuco - SR133 to "O" Street ⁽⁴⁾
Segment 6	Trabuco – Between "O" Street and "LY" Street ⁽⁴⁾
	Year 3 (2013)⁽³⁾ (Engineering, Permitting, Construction)
Segment 3B	"O" Street - Trabuco Road to "LV" Street ⁽⁵⁾
Segment 3A	"O" Street - "LV" Street to Marine Way ⁽⁵⁾
Segment 3D	Undergrounding Dry Utility Transmission from Trabuco Substation to approximately 2,500 linear feet south of Trabuco ⁽⁴⁾
	Year 4 (2014)⁽³⁾ (Engineering, Permitting, Construction)
Segment 9	Marine Way - "O" Street to Great Park Boulevard (West) ⁽⁵⁾

(1) Specific construction commencement months for comprehensive segments are specified in, and subject to the various qualifications set forth in, Section 3(a).

(2) Segments are more particularly depicted in the exhibit attached hereto as Schedule 3(a)

(3) Commencement and completion timing subject to (i) Section 3(a) of this Agreement and (ii) Article III (Including Section 3.7), and Sections 4.2, 4.3, and 15.11 of the ARMIA.

(4) This work remains subject to Exhibit B, Footnote 5 of the ARMIA regarding the cap for Phase 1 (Years 1-5 Summary).

(5) This work is not subject to (i) the timing of issuance and/or receipt of any bond or special tax proceeds, or (ii) Exhibit B, Footnote 5 of the ARMIA regarding the cap for Phase 1 (Years 1-5 Summary), and the costs associated with this work shall not be included when determining whether that cap has been exceeded.

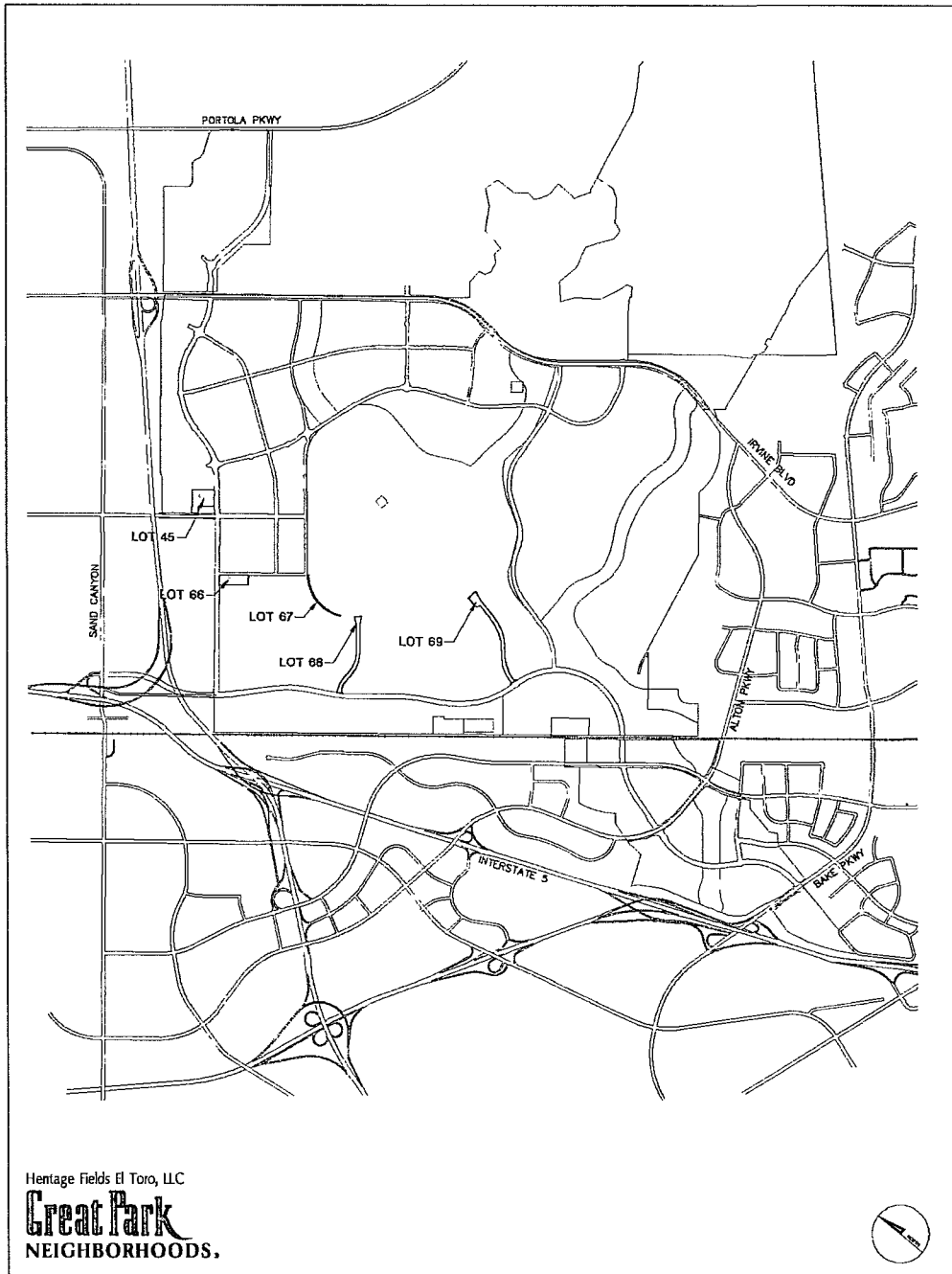
Great Park

NEIGHBORHOODS.



SCHEDULE 4

Depictions of Lots 45, 66, 67, 68, and 69

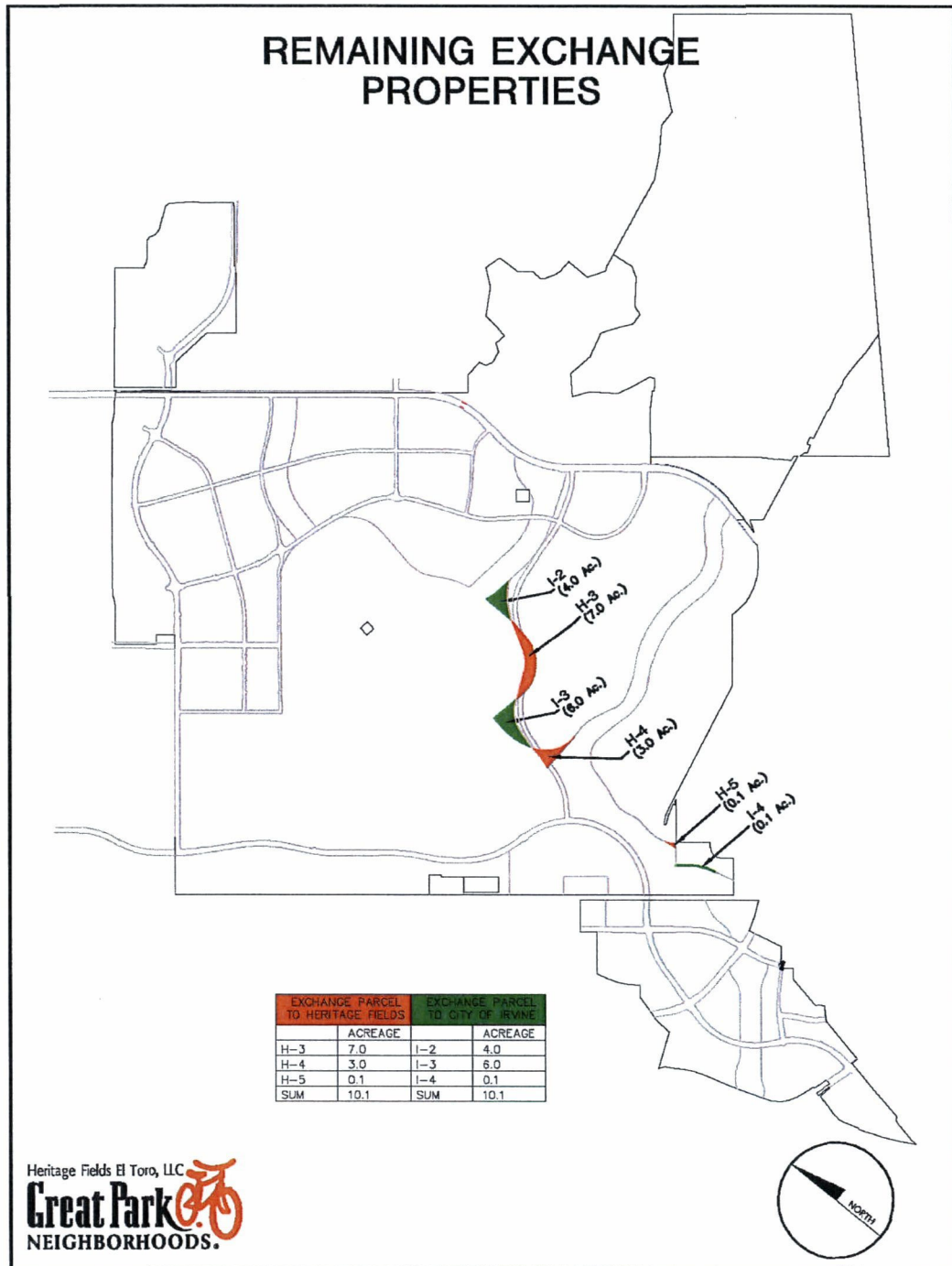


SCHEDULE 5

[Reserved]

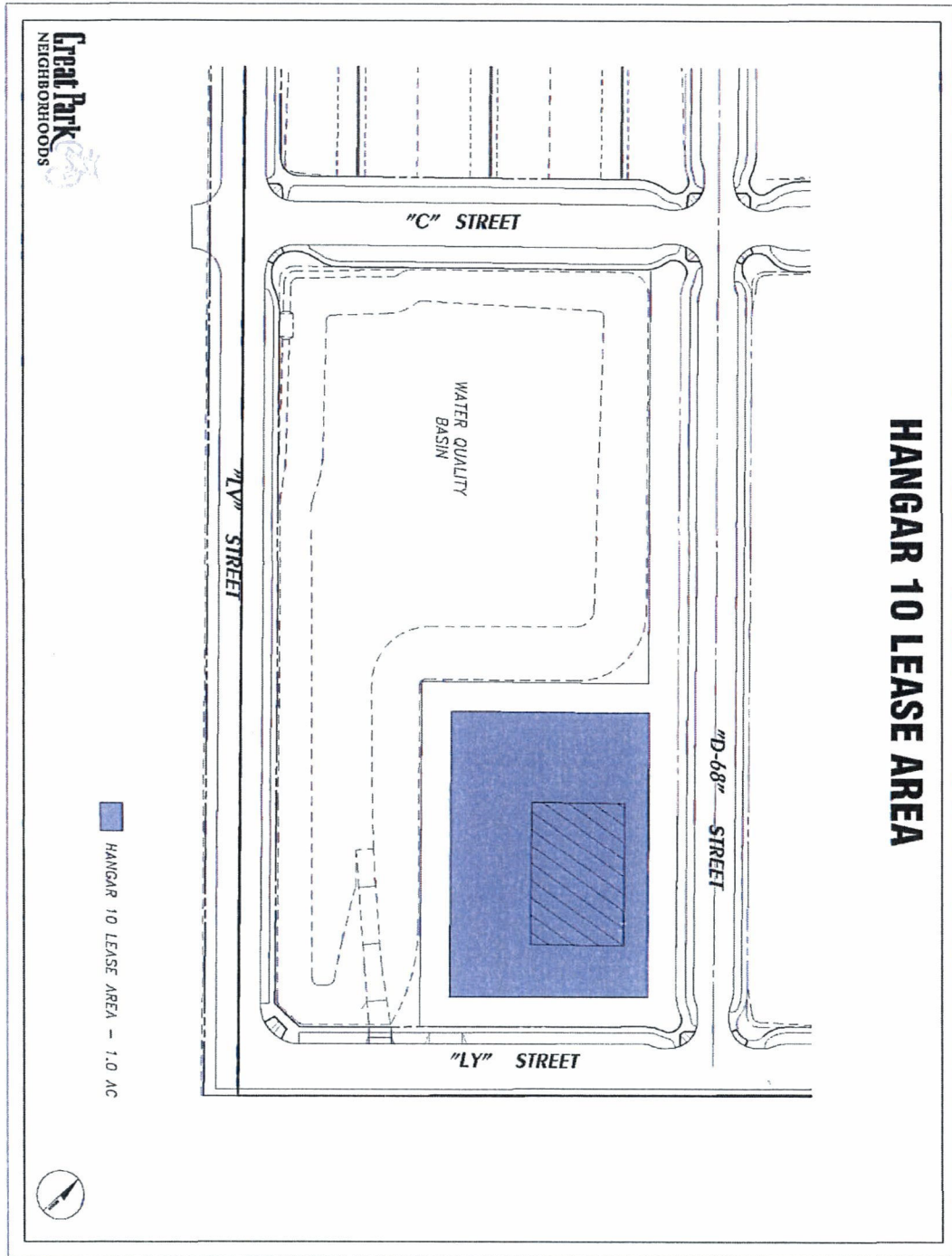
SCHEDULE 6

Depiction of Remaining Exchange Properties



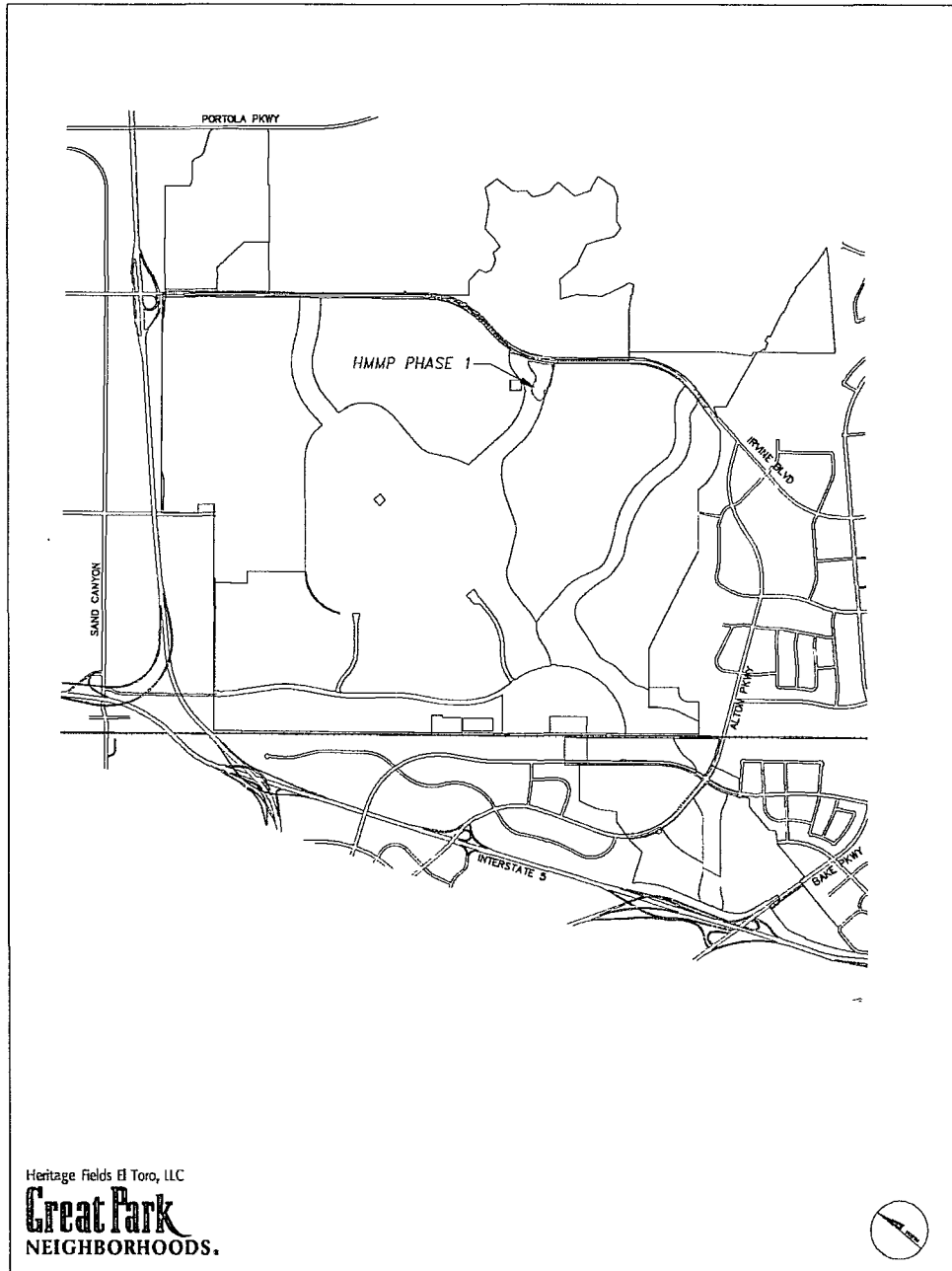
SCHEDULE 7

Hangar 10 Leased Premises Depiction



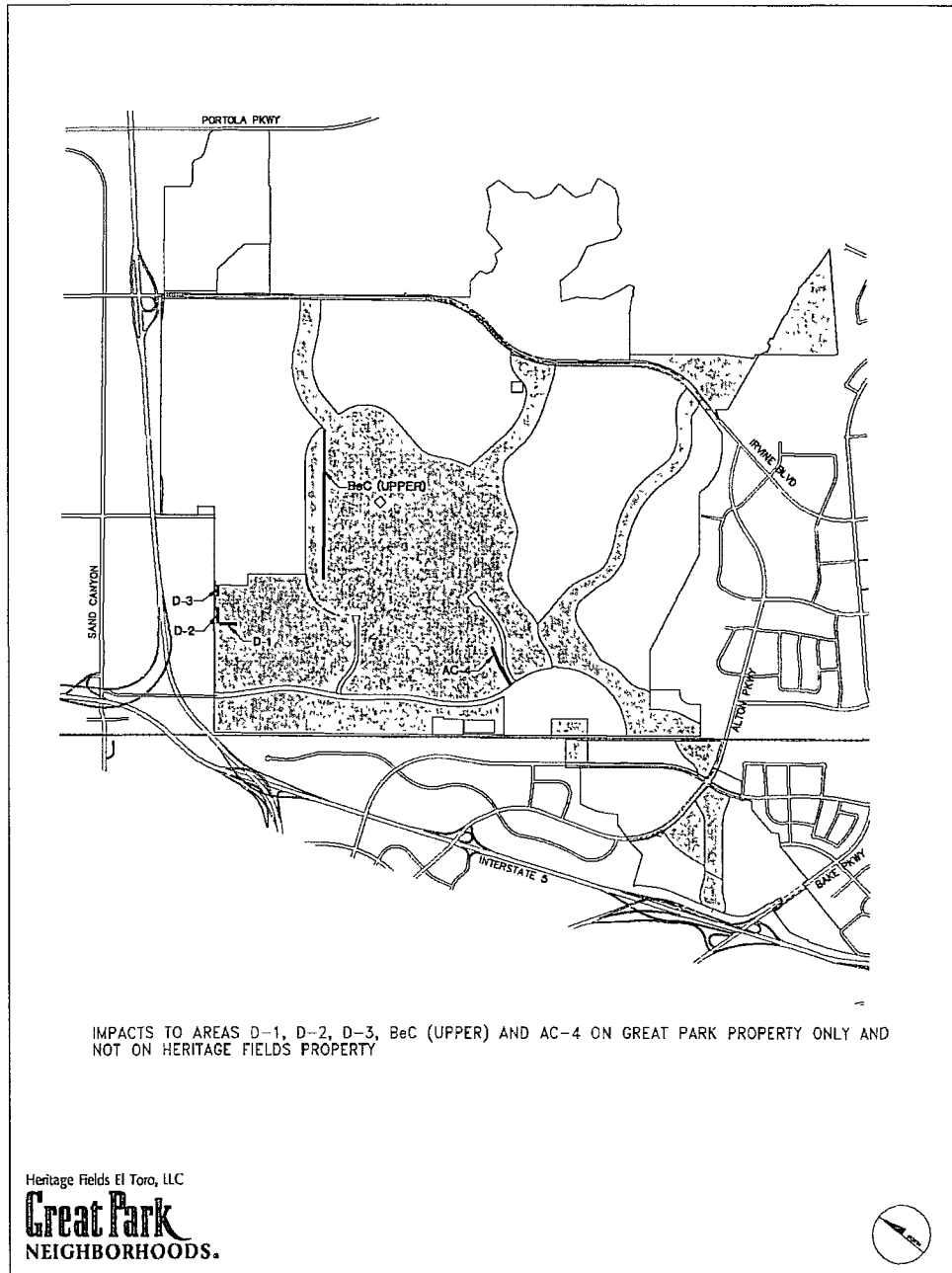
SCHEDULE 8A

HMMP Phase 1 Mitigation Area



SCHEDULE 8B

Area For City Work In Jurisdictional Areas



SCHEDULE 9

Form of Density Bonus Agreement Amendment

RECORDING REQUESTED BY)
AND WHEN RECORDED, MAIL TO:)
)
City of Irvine)
Community Development Department)
One Civic Center Plaza)
Irvine, CA 92623-9575)
Attn: Director of Community Development)
)

Recorded at the request and for the benefit of the
City of Irvine – exempt from recording fee pursuant
to Government Code Sections 6103 and 27383.

FIRST AMENDMENT TO DENSITY BONUS AGREEMENT

This First Amendment to Density Bonus Agreement (“First Amendment”) is entered into as of _____, 2011, by and between the City of Irvine, a California municipal corporation (“City”), and Heritage Fields El Toro, LLC, a Delaware limited liability company (“Developer”).

RECITALS

A. The City approved a Master Affordable Housing Plan, including a Density Bonus Application (“MAHP/Application”), on November 6, 2008 pursuant to Planning Commission Resolution No. 08-2926. The MAHP requires the Developer to provide, or cause to be provided, certain affordable units for very low income households and moderate income households (the “Affordable Units”) on Developer’s property located on a portion of the former Marine Corps Air Station El Toro in the City (the “Property”), in exchange for the City granting to Developer certain density bonus units and additional incentives in accordance with applicable state law, as set forth therein.

B. City and Developer have entered into a Density Bonus Agreement (the “Agreement”) dated August 11, 2009, which was recorded in the official records of Orange County on September 9, 2009, as Document No. 2009000482561. Unless otherwise provided herein, all defined terms used herein shall be the same as those in the Agreement.

C. On or about January 10, 2011, Developer submitted to the City an application for changes to the zoning of the Property (the “Zone Change”) which would modify the locations of certain portions of residential development within the Property. The Zone Change would also modify the nomenclature of the zoning, by replacing the term “Lifelong Learning District” with “Trails and Transit Oriented District.” The term “Lifelong Learning District” is used in the Agreement.

D. The Agreement provides that the location of the Affordable Units is subject to refinement, and that the final selection of the location of the Affordable Units

will take into consideration sound planning and design principles, and the relationship of the Affordable Units to nearby development and public services, including retail centers, educational opportunities and public transportation. The Parties desire to replace the Lifelong Learning District Affordable Housing Site Map and Transit Oriented District Affordable Housing Site Map attached to the Agreement as Exhibit "C" with the proposed Affordable Housing Site Map attached hereto as Exhibit "C". Notwithstanding the foregoing, however, the Parties anticipate that the location of Affordable Units may be changed in accordance with the vesting tentative tract maps approved by the City from time to time, in accordance with the guidelines set forth in this paragraph.

E. The City Zoning Code currently restricts development in Nonresidential Development Districts 2 and 9 to nonresidential uses. Accordingly, the Parties desire to concurrently herewith execute, deliver and record a Termination and Release from Density Bonus Agreement as to Nonresidential Development Districts 2 and 9 in accordance with Section 6 of the Agreement.

F. The Parties have determined, taking into consideration the Developer's anticipated development plan and schedule for the Project, sound planning and design principles, and the relationship of Development District 8 to development and public services in other Development Districts, including retail centers, educational opportunities and public transportation, that District 8 is not a preferred site within the Project for Affordable Units. Accordingly, the Parties desire to concurrently herewith execute, deliver and record a Termination and Release from Density Bonus Agreement as to Development District 8.

G. The City and the Developer desire to make certain revisions to the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein by reference, and the mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions. The following definitions in the Agreement are modified as follows:

a. Section 1.1.45 of the Agreement is hereby amended in its entirety and shall be replaced as follows: "MAHP/Application" means the Master Affordable Housing Plan and Density Bonus Application approved by the City on November 6, 2008 pursuant to Planning Commission Resolution No. 08-2926, and any amendments thereto that may be adopted or approved by the City from time to time, all of which are incorporated herein by reference. The original MAHP/Application is described in Recital G of this Agreement. A copy of the original MAHP/Application is attached hereto for reference only as Exhibit "L"."

b. Section 1.1.73 of the Agreement is hereby amended in its entirety and shall be replaced as follows: “Site Specific Housing Sub-Project” means a specific residential sub-project with any number of Units (as authorized by this Agreement) on a portion of the Property resulting from City approval of a Subsequent Subdivision Map or Site Specific Master Plan, which specific residential sub-project has received all permits and entitlements therefor required by City law, regulation or policy.”

c. Section 1.1.79 of the Agreement is hereby amended in its entirety and shall be replaced as follows: "Subsequent Subdivision Map" or "B Map" means the first tentative map, vesting tentative map or parcel map, or any amendment thereto approved by the City (as those terms are defined in the Map Act), that further subdivides any portion of the Property with any number of Units in accordance with the Map Act, the A Map, and the Other Land Use/Development Requirements. It is anticipated that Developer shall submit to City one or more “B Maps” for the further subdivision and development of the Units on the Property into Site Specific Housing Sub-Projects, and any one of said “B Maps” shall be a “Subsequent Subdivision Map” for purposes of this Agreement. A Subsequent Subdivision Map for the development of any portion of the Property that will have Affordable Units shall be either a tentative map or vesting tentative map.”

d. Section 1.1.89 is hereby added to the Agreement and shall read as follows: “Residential Development Districts” shall mean the property depicted as Districts 1, 3, 4, 5, 6, 7 and 8 in Exhibit B of the Agreement, as such exhibit may be amended from time to time.”

e. Section 1.1.90 is hereby added to the Agreement and shall read as follows: “Nonresidential Development Districts” shall mean the property depicted as Districts 2 and 9 in Exhibit B of the Agreement, as such exhibit may be amended from time to time.”

f. The last two sentences of Recital D of the Agreement are hereby deleted.

g. Sections 1.1.43, 1.1.83 and 1.1.84 of the Agreement are hereby deleted.

2. Senior Moderate Affordable Units.

a. Section 2.4.1 of the Agreement is hereby amended in its entirety and shall be replaced as follows:

“2.4.1 Affordable Units for Non-Senior Very Low Income Households. Of the five hundred forty-four (544) Affordable Units in the Project, no less than three hundred ninety-nine (399) shall be Affordable Units for Very Low Income Households. No less than one hundred sixty-six (166) of the Very Low Income Affordable Units shall be Affordable Units for Non-Senior Very Low Income Households. The

Affordable Units for Non-Senior Very Low Income Households shall be available in perpetuity. A Regulatory Agreement for Non-Senior Affordable Units shall be executed and recorded against any portion of the Property that has Affordable Units for Non-Senior Very Low Income Households, in accordance with the terms and conditions of this Agreement.”

b. Section 2.4.2 of the Agreement is hereby amended in its entirety and shall be replaced as follows:

“2.4.2 Affordable Units for Senior Very Low Income Households. Of the five hundred forty-four (544) Affordable Units in the Project, up to two hundred thirty-three (233) may be Affordable Units for Senior Very Low Income Households. The Affordable Units for Senior Very Low Income Households shall be available in perpetuity. A Regulatory Agreement for Senior Affordable Units shall be executed and recorded against any portion of the Property that has Affordable Units for Senior Very Low Income Households, in accordance with the terms and conditions of this Agreement.”

c. Section 2.4.4 of the Agreement is hereby amended in its entirety and shall be replaced as follows:

“2.4.4 Affordable Units for Senior Moderate Income Households. A portion of or all of the Project’s one hundred forty-five (145) Affordable Units for Moderate Income Households may be Affordable Units for Senior Moderate Income Households subject to the following requirements. In the event that Low and Moderate Income Housing Funds are available and Developer or its assignee uses such funds for the development of all or any portion of the Property, as may be authorized pursuant to this Agreement as a Discretionary Financial Incentive and Concession, then the Project shall receive no more Low and Moderate Income Housing Funds for Senior Moderate Income Households than the proportionate share of such funds for senior units which is allowable pursuant to Health and Safety Code Section 33334.4(b) as it exists on the Effective Date. Prior to the approval of any Site Specific Master Plan that has Affordable Units for Senior Moderate Income Households, which has been subdivided by a Subsequent Subdivision Map, and for which Low and Moderate Income Housing Funds are requested, Developer or its assignee shall: (i) obtain any and all demographic data necessary to determine what portion (if any) of the Low and Moderate Income Housing Funds may be used to assist Affordable Units for Senior Moderate Income Households in accordance with Health and Safety Code Section 33334.4(b); and (ii) obtain from Agency written approval of the maximum amount of Low and Moderate Income Housing Funds that may be used to assist Affordable Units for Senior Moderate Income Households that are to be developed on any portion of the Property. City shall cooperate with Developer to obtain any information from Agency as may be required pursuant to this Section 2.4.4. A Regulatory Agreement for Senior Affordable Units shall be executed and recorded against any portion of the Property that has Affordable Units for Senior Moderate Income Households, in accordance with the terms and conditions of this Agreement.”

3. Location of Affordable Units. Section 2.10.4 of the Agreement is hereby amended in its entirety and shall be replaced as follows:

“2.10.4 Location of Affordable Units. Developer shall develop the Affordable Units at locations within certain of the Property’s Residential Development Districts in those specific locations which are identified as affordable housing sites in the vesting tentative tract maps, tentative tract maps and parcel maps for the Property which are approved by the City, as such maps and/or locations may be revised with City approval from time to time. The currently proposed locations of the affordable housing sites are depicted on the Affordable Housing Site Map attached to this Agreement as Exhibit “C”. The final selection of these locations will take into consideration sound planning and design principles and the relationship of the Affordable Units to nearby development and public services, including retail centers, educational opportunities and public transportation.”

4. Termination and Release.

a. Section 6.3.1 of the Agreement is hereby amended in its entirety and shall be replaced as follows:

“6.3.1 Conditions for Release of Specific Sites. Notwithstanding any of the provisions in Section 6.2 to the contrary, Developer shall have the right to record against any portion of the Property a Termination and Release from Density Bonus Agreement if any one of the following conditions in (a)-(g) applies:

(a) The portion of the Property is located in an area zoned by the City of Irvine Zoning Code that does not allow any residential uses, and the portion of the Property is subject to a parcel map, tentative map, or vesting tentative map that has been approved by City’s Planning Commission.

(b) The portion of the Property is located in an area zoned by the City of Irvine Zoning Code that does allow residential uses, and all of the following conditions are met: (i) the portion of the Property is proposed by Developer in accordance with the Other Land Use/Development Requirements to be used for a non-residential use (i.e., solely commercial, industrial, park, or open space use, but not a mixed residential/commercial or other mixed residential use); (ii) the City has approved and Developer has recorded a subdivision map pursuant to the Map Act for the portion of the Property to be used for a non-residential use; and (iii) Developer is in compliance with the Affordable Units Schedule of Development attached to this Agreement (as it may be amended from time to time).

(c) The portion of the Property is located in an area zoned by the City of Irvine Zoning Code that does allow residential uses, and all of the following conditions are met: (i) the portion of the Property is a Site Specific Housing Sub-Project with no Affordable Units; (ii) the City has approved the Subsequent Subdivision Map and Site Specific Master Plan for the Site Specific Housing Sub-Project with no

Affordable Units; (iii) the Subsequent Subdivision Map (if recordable) or final map (as defined in the Map Act) has been recorded for the Site Specific Housing Sub-Project with no Affordable Units; and (iv) Developer is in compliance with the Affordable Units Schedule of Development attached to this Agreement (as it may be amended from time to time).

(d) The portion of the Property is located in an area zoned by the City of Irvine Zoning Code that does allow residential uses, and all of the following conditions are met: (i) the portion of the Property is a Site Specific Housing Sub-Project with no Affordable Units; (ii) the City has approved the Subsequent Subdivision Map and Site Specific Master Plan for the Site Specific Housing Sub-Project with no Affordable Units; (iii) the Subsequent Subdivision Map (if recordable) or final map (as defined in the Map Act) has been recorded for the Site Specific Housing Sub-Project with no Affordable Units; and (iv) certificates of completion and certificates of occupancy have been issued by City for all of the Affordable Units required to be developed pursuant to this Agreement.

(e) The portion of the Property is located in an area zoned by the City of Irvine Zoning Code that does allow residential uses, but no remaining Units may be built on such portion of the Property because other portions of the Property have been allocated all of the Units permitted to be developed pursuant to the Development Agreement and this Agreement pursuant to one or more parcel maps, tentative maps, or vesting tentative maps that have been approved by City's Planning Commission.

(f) Upon the date that certificates of occupancy have been issued by the City for all of the Affordable Units required to be developed pursuant to this Agreement, and provided that all such Affordable Units are subject to a recorded Regulatory Agreement as provided herein, Developer shall have the right to record a Termination and Release from Density Bonus Agreement against all Property that remains encumbered by this Agreement as of such date.

(g) The portion of the Property is being conveyed (through transfer of fee title, easement or otherwise) for a non-residential use to the City, any other public agency or public district (including without limitation a water district, school district, landscape and lighting district or community services district), or a home or property owners' association, in accordance with the Map Act."

b. All references to "sixty (60) days" in Section 6.3.2 of the Agreement are hereby amended to read "forty-five (45) days."

c. The Parties have determined, taking into consideration the Developer's anticipated development plan and schedule for the Project, sound planning and design principles and the relationship of Residential Development District 8 to development and public services in other Development Districts, including retail centers, educational opportunities and public transportation, that Residential Development District 8 is not a preferred site within the Project for Affordable Units. Accordingly, concurrently with the Parties' execution and delivery of this First

Amendment, the Parties shall execute, acknowledge and cause to be recorded in the Recorder's Office a Termination and Release from the Density Bonus Agreement in the form attached to this First Amendment as Exhibit "1," as to Residential Development District 8.

d. Concurrently with the Parties' execution and delivery of this First Amendment, the Parties shall execute, acknowledge and cause to be recorded in the Recorder's Office a Termination and Release from the Density Bonus Agreement in the form attached to this First Amendment as Exhibit "1," as to Nonresidential Development Districts 2 and 9.

e. If any Subsequent Subdivision Maps and/or Site Specific Master Plans for any portion of the Property which has previously been released from the Agreement, including, without limitation, any or all of Residential Development District 8 or Nonresidential Development Districts 2 and 9, are later revised to include one or more Affordable Housing Sites in such portion, then the Parties shall execute and record a mutually acceptable document that causes this Agreement to be applicable to such added Affordable Housing Sites.

f. The execution and recordation of a Termination and Release from Density Bonus Agreement shall not be construed as removing the released real property from the Project or Property, and while any such released real property shall no longer be subject to the Agreement, such real property shall still comprise a portion of the Project and Property.

5. Affordable Units Schedule of Development. The Revised Affordable Units Schedule of Development attached hereto as Exhibit "D" and incorporated herein hereby replaces in its entirety and supersedes the Affordable Housing Schedule of Development attached to the Agreement as Exhibit "D."

6. Permitted Assignments.

a. Section 9.1.3 of the Agreement is hereby amended in its entirety and shall be replaced as follows:

"9.1.3 Required Consent by City: Release Upon Transfer. Subject to the last sentence of this paragraph, upon the written consent of City to the partial or complete assignment of this Agreement (which consent shall not be unreasonably withheld) and the express written assignment and assumption agreement in a form approved by City of such assigned obligations of Developer under this Agreement by assignee, Developer shall be relieved of its legal duty to perform the assigned obligations set forth in this Agreement, except to the extent that Developer is in default hereunder with respect to the particular assigned obligation prior to said transfer. For any transfer by Developer for a portion of the Property that is an Affordable Housing Site, City hereby consents to the partial assignment of Developer's rights and interest in this Agreement, with respect to the transferred Affordable Housing Site only, to (i)

ETHIC Housing Trust, a California trust (“ETHIC”), or any limited liability company or general or limited partnership directly controlled by ETHIC, and (ii) Riverside Charitable Corporation, a California corporation (“RCC”), or any limited liability company or general or limited partnership directly controlled by RCC (collectively referred to in this Section as the “Preapproved Assignees”). For purposes of clause (i) of the preceding sentence, “directly controlled by ETHIC” means a limited liability company or general or limited partnership comprised of all of the beneficiaries of ETHIC, and whose managing member or managing general partner is one of the beneficiaries of ETHIC. For purposes of clause (ii) of that same sentence, “directly controlled by RCC” means that RCC is the sole managing general partner of the general or limited partnership, or sole managing member of the limited liability company. No later than ten (10) days after the transfer of the portion of the Property and partial assignment of rights and interest in this Agreement to a Preapproved Assignee, Developer shall deliver to City an executed assignment and assumption agreement evidencing said transfer and assignment. Notwithstanding anything to the contrary in the first sentence of this paragraph, Developer’s ability to obtain certificates of occupancy for market rate units shall remain subject to the Affordable Unit Schedule of Development.”

b. Section 10.7 of the Agreement is hereby amended in its entirety and shall be replaced as follows:

“10.7 Joint and Several Obligations. If at any time during the term of this Agreement the Property and/or Project is owned, in whole or in part, by more than one Developer, all obligations of such Developer under this Agreement shall be joint and several, and the default of any such Developer shall be the default of all such Developers, except to the extent a Developer is relieved pursuant to the terms and conditions of this Agreement from the obligations herein including, without limitation, the release provisions set forth in Section 9.1.3. Developer and City acknowledge that Developer intends to transfer Affordable Housing Sites to ETHIC and RCC (or its Preapproved Assignees as defined in Section 9.1.3 above), and Developer and City agree that ETHIC (or its Preapproved Assignees as defined in Section 9.1.3 above) shall not be jointly and severally liable for any default of this Agreement by RCC (or its Preapproved Assignees as defined in Section 9.1.3 above), and Developer and City agree that RCC (or its Preapproved Assignees) shall not be jointly and severally liable for any default of this Agreement by ETHIC (or its Preapproved Assignees); provided, however, that in the event ETHIC and RCC jointly form an entity (such as a limited liability company) and assign their collective rights and obligations under this Agreement to said entity upon receiving City approval pursuant to Section 9.1 above, then to the extent said entity is liable for an uncured default under this Agreement, ETHIC and RCC may have joint and several liability. Nothing in this Section shall relieve or be deemed to relieve RCC (or its Preapproved Assignees) from any liability for any uncured default by RCC (or its Preapproved Assignees) of any obligations under this Agreement assigned to RCC (or its Preapproved Assignees), and nothing in this Section shall relieve or be deemed to relieve ETHIC (or its Preapproved Assignees) from any liability for any uncured default by ETHIC (or its Preapproved Assignees) of

any obligations under this Agreement assigned to ETHIC (or its Preapproved Assignees).”

7. Notices. All notices for Developer, as provided in Section 10.1.1 of the Agreement, shall be addressed as follows:

Heritage Fields El Toro, LLC
25 Enterprise, Fourth Floor
Aliso Viejo, CA 92656
Attn: Lynn Jochim
Telephone: (949) 349-1000
Telecopy: (949) 349-1075

With copies to:

Kronick Moskowitz Tiedemann & Girard
1432 Higuera Street
San Luis Obispo, CA 93401
Attn: Jon E. Goetz, Esq.
Telephone: (805) 786-4302
Telecopy: (805) 786-4319

And to:

Samuels, Green & Steel, LLP
19800 MacArthur Blvd., Suite 1000
Irvine, CA 92612-2433
Attn: William L. Steel, Esq.
Telephone: (949) 263-0004
Telecopy: (949) 263-0005

8. Map Depicting Property and Development Districts. The Revised Map Depicting Property and Development Districts attached hereto as Exhibit “B” and incorporated herein hereby replaces in its entirety and supersedes the Map Depicting Property and Development Districts attached to the Agreement as Exhibit “B.” If Developer modifies its Property or Development Districts, the City Community Development Director (or his or her designee) and an authorized signatory for Developer shall have the authority to make administrative changes to Exhibit “B” as may be necessary to reflect such modifications.

9. Map Depicting Proposed Affordable Housing Sites. The Revised Affordable Housing Site Map attached hereto as Exhibit “C” and incorporated herein hereby replaces in its entirety and supersedes the Lifelong Learning District Affordable Housing Site Map and Transit Oriented District Affordable Housing Site Map attached to the Agreement as Exhibit “C.” If the location of any of the affordable housing sites is modified as identified in the vesting tentative tract maps, tentative tract maps and parcel maps for the Property which are approved by the City, the City Community Development Director (or his or her designee) and an authorized signatory for

Developer shall have the authority to make administrative changes to Exhibit "C" as may be necessary to reflect such modifications.

10. Remaining Terms of Agreement Unaffected. Except as expressly provided herein, nothing in this First Amendment shall be deemed to waive or modify any of the other provisions of the Agreement. In the event of any conflict between this First Amendment and the Agreement, the terms of this First Amendment shall prevail. Any terms used in this First Amendment that are not separately defined herein shall have the meanings as defined in the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment as of the date set forth in the preamble above.

"CITY"

CITY OF IRVINE,
a California municipal corporation

By: _____
Its: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

“DEVELOPER”

HERITAGE FIELDS EL TORO, LLC,
a Delaware limited liability company

By: Heritage Fields El Toro Sole Member LLC,
a Delaware limited liability company
Its: Sole Member

By: Heritage Fields LLC,
a Delaware limited liability company
Its: Sole Member

By: Lennar Heritage Fields, LLC,
a California limited liability company
Its: Administrative Member

By: Lennar Homes of California, Inc.,
a California corporation
Its: Sole Member

By: _____

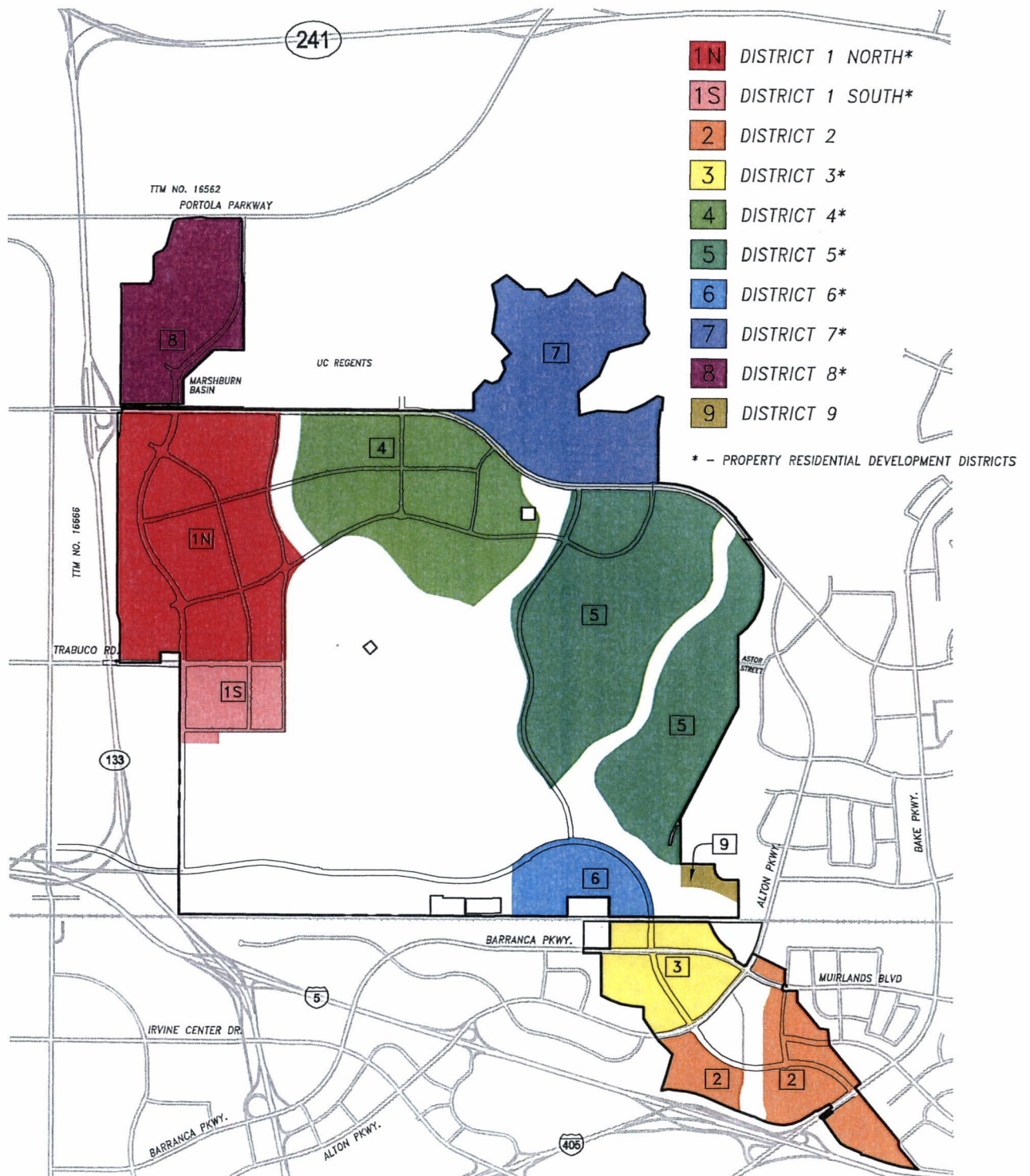
Print Name: _____

Print Title: _____

EXHIBIT “B”
TO FIRST AMENDMENT TO DENSITY BONUS AGREEMENT
REVISED MAP DEPICTING PROPERTY AND DEVELOPMENT DISTRICTS

[To Be Attached]

EXHIBIT "B"



**EXHIBIT “C”
TO FIRST AMENDMENT TO DENSITY BONUS AGREEMENT**

REVISED AFFORDABLE HOUSING SITE MAP

[To Be Attached]

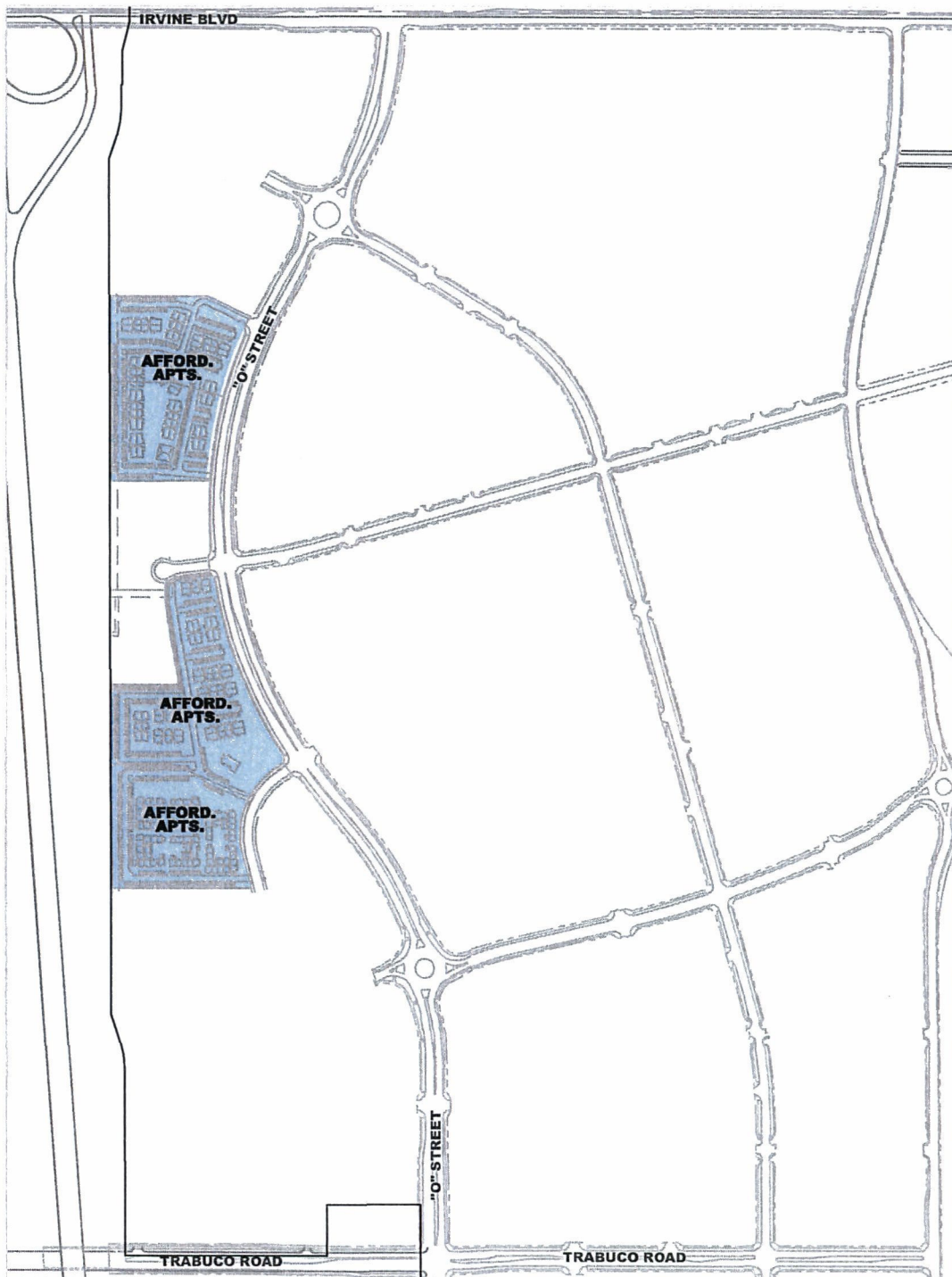


EXHIBIT C

DISTRICT 1 PROPOSED AFFORDABLE HOUSING SITES - 544 UNITS



EXHIBIT “D”
TO FIRST AMENDMENT TO DENSITY BONUS AGREEMENT
REVISED AFFORDABLE UNITS SCHEDULE OF DEVELOPMENT

<u>Item No.:</u>	<u>ACTIVITY TO BE PERFORMED</u>	<u>DATE OF COMPLETION</u>
Item 1	Developer shall have completed construction of, and received from City Certificates of Occupancy for, the initial 95 of the Affordable Units to be developed within the Property.	Prior to City’s issuance of Certificate of Occupancy of the 300 th Market Rate Unit in Residential Development District 1, 3, 4, 5, 6 and/or 7.
Item 2	Developer shall have completed construction of, and received from City Certificates of Occupancy for, the next 71 of the Affordable Units to be developed within the Property (in addition to the Affordable Units in Item 1 hereof).	Prior to City’s issuance of Certificate of Occupancy of the 800 th Market Rate Unit in Residential Development District 1, 3, 4, 5, 6 and/or 7.
Item 3	Developer shall have completed construction of, and received from City Certificates of Occupancy for, the next 182 Affordable Units to be developed within the Property (in addition to the Affordable Units in Items 1 and 2 hereof).	Prior to City’s issuance of Certificate of Occupancy of the 1,972 nd Market Rate Unit in the Project.
Item 4	Developer shall have completed construction of, and received from City Certificates of Occupancy for, all of the remaining 196 Affordable Units to be developed within the Property (in addition to the Affordable Units in Items 1, 2 and 3 hereof).	Prior to City’s issuance of Certificate of Occupancy of the 2,773 rd Market Rate Unit in the Project.

All capitalized terms in this Affordable Housing Schedule of Development shall have the same meanings as set forth in the Density Bonus Agreement, as amended (“Agreement”). It is expressly understood and agreed by the Parties that the foregoing schedule of development is subject to all of the terms and conditions set forth in the text of the Agreement. Times of performance under the Agreement may be extended by request of any Party memorialized by a mutual written agreement between Parties, which agreement may be granted or denied in the non-requesting Party’s sole and absolute discretion (subject to events of force majeure set forth in Section 10.11 of this Agreement).

[END OF SCHEDULE OF DEVELOPMENT]

EXHIBIT 1
TO FIRST AMENDMENT TO DENSITY BONUS AGREEMENT

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Irvine
Community Development Department
One Civic Center Plaza
Irvine, CA 92623-9575
Attn: Director of Community Development

(Space Above For Recorder's Use)

This Termination and Release is recorded at the request
and for the benefit of the City of Irvine and is exempt
from the payment of a recording fee pursuant to
Government Code Sections 6103 and 27383.

TERMINATION AND RELEASE FROM
DENSITY BONUS AGREEMENT
(Site Specific Termination and Release)

This Termination and Release from Density Bonus Agreement (hereinafter "Termination and Release") is entered into as of the ____ day of _____, 2011, by and between the City of Irvine, a California municipal corporation (hereinafter "City"), and Heritage Fields El Toro, LLC, a Delaware limited liability company (hereinafter "Developer"). City and Developer are hereinafter sometimes referred to collectively as the "Parties."

RECITALS

A. On or about August 11, 2009, City and Developer entered into that certain Density Bonus Agreement recorded on September 9, 2009 as Instrument No. 2009000482561 in the Official Records of Orange County, California (the "Density Bonus Agreement"). The Density Bonus Agreement sets forth the terms and conditions for the development of certain real property and improvements thereon located in the City and owned by Developer, consisting of approximately 2,293 acres of land ("Density Bonus Agreement Land Area"). The Density Bonus Agreement implemented Developer's request for a density bonus in accordance with Government Code Section 65915 (the "State Density Bonus Law") and the City's density bonus ordinance in City of Irvine Zoning Code Section 2-3-10. The Density Bonus Agreement also implemented Developer's obligations to comply with the affordable housing requirements promulgated pursuant to the California Community Redevelopment Law, Health and Safety Code Section 33000 *et seq.*, and the City's Affordable Housing Implementation Procedures, City of Irvine Zoning Code Chapter 2-3.

B. Pursuant to the terms and conditions of the Development Agreement and the Density Bonus Agreement, Developer has the right to develop on the Density Bonus Agreement Land Area a total of 4,894 residential units so long as no less than 544 residential units are available in perpetuity as affordable residential units with unit sizes and affordability tenure as more particularly set forth therein. The Density Bonus Agreement sets forth the terms and conditions for the development of the affordable residential units, which among other provisions, requires their development in phases on portions of the Density Bonus Agreement Land Area specified therein. Said phased developments are required to comply with the terms and conditions of the Subdivision Map Act, Government Code Section 66410 *et seq.* (the "Map Act"). Because not all of the Density Bonus Agreement Land Area is planned to be used for the development, use, and operation of the minimum 544 residential units required to be available in perpetuity as affordable residential units, the Density Bonus Agreement, as amended by that certain First Amendment to Density Bonus Agreement executed and recorded concurrently herewith, authorizes Developer (or its permitted successor or assign) to terminate and release Residential Development District 8 and Nonresidential Development Districts 2 and 9 (as defined in the Agreement) from the terms and conditions of the Density Bonus Agreement (and all Exhibits attached thereto) (collectively, the "Termination and Release Property").

C. A legal description of the Termination and Release Property is attached hereto as Attachment "1" and such property is more particularly depicted in Attachment "2".

COVENANTS

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein by this reference, and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS AND ATTACHMENTS

1.1 Definitions. In addition to the capitalized terms that may be defined elsewhere in this Termination and Release, all capitalized terms herein shall have the same meanings as set forth in the Density Bonus Agreement.

1.2 References and Other Terms. Any reference to any document shall include such document both as originally executed and as it may from time to time be amended. References herein to "Article," "Section," "Subsection," "Exhibit," or "Attachment" shall be construed as references to this Termination and Release unless a different document is named. References to "this Article" "this Section" or "this Subsection" shall be construed to mean the same Article, Section or Subsection in which the reference appears. The terms "including" and "include" shall mean "including (include) without limitation" unless specifically limited to items or events therein listed.

1.3 Attachments. All Attachments to this Termination and Release are by this referenced incorporated into and made a part hereof.

2. TERMINATION AND RELEASE

2.1 General. From and after the date that this Termination and Release is recorded against the Termination and Release Property, the Termination and Release Property shall not be bound or burdened by any of the provisions set forth or referred to in the Density Bonus Agreement.

2.2 Duty to Cooperate. City shall cooperate in executing any further or additional documents, in recordable form if necessary, as may be reasonably requested by any existing or prospective owner or holder of a mortgage or deed of trust of, in, or to the Termination and Release Property (or portion thereof) to confirm said Termination and Release from the Density Bonus Agreement. The form of any such additional documents shall be prepared by such existing or prospective owner or holder at no cost to City and shall be subject to City Attorney's approval, which shall not be unreasonably withheld or delayed.

2.3 No Release from Affordable Housing Obligations. Nothing in this Termination and Release terminates or releases, or shall be deemed or construed to terminate or release, the Developer from its obligations to develop, use, and maintain the Affordable Units on the other portions of the Density Bonus Agreement Land Area, as set forth and required by the Density Bonus Agreement. Nothing in this Termination and Release terminates or releases, or shall be deemed or construed to terminate or release, any portion of the Density Bonus Agreement Land Area that is not described herein as the Termination and Release Property, unless said portion of the Density Bonus Agreement Land Area has a separate Termination and Release (in a form substantially similar to this document) recorded against said property. Nothing in this Termination and Release terminates or releases, or shall be deemed or construed to terminate or release, any portion of the Density Bonus Agreement Land Area from a Regulatory Agreement and/or Affordable Housing Covenant recorded against those portions of the Property that are the locations of the Affordable Units, as set forth in and required by the Density Bonus Agreement.

2.4 Limitation of Applicability of Release. This Termination and Release shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the construction or operation of work on the Density Bonus Agreement Land Area or any portion thereof. This Termination and Release is not a notice of completion as referred to in Civil Code Section 3093.

IN WITNESS WHEREOF, the Parties hereto have executed this Termination and Release on the day and year set forth in the preamble above.

"CITY"

CITY OF IRVINE, a California municipal corporation

By: _____

Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

"DEVELOPER"

HERITAGE FIELDS EL TORO, LLC,
a Delaware limited liability company

By: Heritage Fields El Toro Sole Member LLC,
a Delaware limited liability company
Its: Sole Member

By: Heritage Fields LLC,
a Delaware limited liability company
Its: Sole Member

By: Lennar Heritage Fields, LLC,
a California limited liability company
Its: Administrative Member

By: Lennar Homes of California, Inc.,
a California corporation
Its: Sole Member

By: _____
Print Name: _____
Print Title: _____

[illegible]

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

(SEAL)

[illegible]

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

(SEAL)

ATTACHMENT "1"
TO TERMINATION AND RELEASE
FROM DENSITY BONUS AGREEMENT

Legal Description of Termination and Release Property

[To Be Attached]

ATTACHMENT "2"
TO TERMINATION AND RELEASE
FROM DENSITY BONUS AGREEMENT

Depiction of Termination and Release Property

[To Be Attached]

**CONSENT OF LIENHOLDER AND
SUBORDINATION OF LIEN AGREEMENT
(FIRST AMENDMENT TO DENSITY BONUS AGREEMENT)**

State Street Bank & Trust Company ("SSBT") is the current beneficiary under that certain Amended and Restated Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement, dated December 29, 2010 and recorded in the official records of Orange County, California on December 29, 2010 as Instrument No. 2010000707704, and re-recorded in the Official Records on January 5, 2011 as Instrument No. 2011000006923 (the "ARDOT"), and hereby subordinates the lien and charge of the ARDOT to the Density Bonus Agreement as amended by the Amendment to which this Consent is attached, and agrees that the Density Bonus Agreement (as amended by the Amendment to which this Consent is attached) shall be and remain a lien prior and superior to the lien imposed by the ARDOT.

STATE STREET BANK & TRUST COMPANY,
a Massachusetts trust company

By: _____

Name: _____

Title: _____

COMMONWEALTH OF MASSACHUSETTS

_____ ss

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, as _____ of State Street Bank and Trust Company, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as _____ of said trust company.

(official signature and seal of notary)



25 Enterprise, Suite 400
Aliso Viejo, CA 92656
Phone (949) 349-1000 Fax (949) 349-1075

Sean Joyce
City of Irvine
City Manager
One Civic Plaza
Irvine, CA 62606

September 13, 2011

Dear City Manager Joyce:


This letter documents our understanding regarding the Adjacent Landowner Agreement ("ALA") and the Vesting letter. Copies executed by Heritage Fields El Toro, LLC of both documents are included herein, as requested. However, the signed ALA shall not be deemed delivered until the City delivers a countersigned copy of this letter to Heritage Fields. Further, the Vesting letter shall not be deemed delivered until (1) the City Council grants those approvals specified in Section 1(h) of the ALA that have not previously been granted by a subordinate body of the City (i.e., the Planning Commission or Subdivision Committee), and (2) the City delivers a countersigned copy of this letter to Heritage Fields.

This letter confirms that if the City Council proceeds to take the staff recommended actions on September 13, 2011 with regard to items 3.7 (Density Bonus Agreement), 4.4 (appeal of conditions on VTTMs 17008 and 17283 and on the Master Affordable Housing Plan), and 5.2 (second reading of Zone Change Ordinance 11-12) on the published September 13, 2011 City Council Agenda, (as modified by errata that Heritage Fields has previously reviewed in response to an email from the City's counsel to Heritage Fields counsel on September 13, 2011) then the City and Heritage Fields agree that the City will have granted all approvals specified in Section 1(h) of the ALA, and the ALA shall therefore become "effective" pursuant to section 7(o) of the ALA.

If the foregoing constitutes your understanding and agreement, then please counter-sign this letter and return an original to my attention at your earliest opportunity.

[SIGNATURES ON FOLLOWING PAGE]

City of Irvine

By: 
Sean Joyce

"Heritage Fields"

HERITAGE FIELDS EL TORO, LLC,
a Delaware limited liability company

By: Heritage Fields El Toro Sole Member LLC,
a Delaware limited liability company
Its: Sole Member

By: Heritage Fields LLC,
a Delaware limited liability company
Its: Sole Member

By: Lennar Heritage Fields, LLC,
a California limited liability company
Its: Administrative Member

By: Lennar Homes of California, Inc.,
a California corporation
Its: Sole Member

By: 

Name: 
Title: _____