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City of Lake Forest
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DEVELOPMENT AGREEMENT

between

THE CITY OF LAKE FOREST,
a California municipal corporation

and

USA PORTOLA PROPERTIES, LLC.
a California limited liability company

THIS DEVELOPMENT AGREEMENT (the "New Agreement" or the "Agreement") is entered by and between THE CITY OF LAKE FOREST, a California municipal corporation ("City"), and USA Portola Properties, LLC, a California limited liability company ("Owner") with reference to the following facts:

RECITALS.

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the "Development Agreement Statute," Sections 65864 et seq., of the Government Code. City, a general law city, is authorized by the Development Agreement Statute to enter into development agreements with persons and entities having legal or equitable interests in real property for the purpose of establishing predictability for both City and the property owner in the development process. Owner has requested that City enter into a development agreement for the development of the Property, as defined below. City enters into this Agreement pursuant to the provisions of the California Government Code, the City's General Plan, the City Municipal Code, and applicable City policies.

B. Owner has a legal or equitable interest in that certain real property consisting of approximately 227.9 acres of land located in the City of Lake Forest, County of Orange, State of California, more particularly described in Exhibit "A" (the "Property"). Owner desires to develop the Property primarily with residential uses, but also with the potential for retail, commercial, and park uses. The Property has been subject to the provisions of the Portola Hills Development Agreement No. 87-10 between Village Properties, Baldwin Building Company, and Baldwin Building Contractors (collectively, "Baldwin"), and the County of Orange ("County"), dated May 23, 1988 (the "County Development Agreement"). The County Development Agreement pertained to an area identified as "Portola Hills," which included, but was significantly larger than, the Property. On May 2, 2000, Portola Hills was annexed into the City and pursuant to Section 65865.3 of the California Government Code, the County Development Agreement remained valid and the City and Baldwin had the same rights and obligations with respect to each other under the County Development Agreement as if Portola Hills had remained in the County.

The County Development Agreement established, among other things, certain permitted uses for Portola Hills, including the Property, and required Baldwin to provide certain public benefits. Since 1988, a substantial portion of Portola Hills was developed and the public benefits contemplated under the County Development Agreement were provided. However, the Property was not developed under the County Development Agreement, and this New Agreement is neither an amendment to nor an extension of the County Development Agreement. Rather, this New Agreement is intended to fully supersede the County Development Agreement.

C. In recognition of changes in the City and Orange County generally since much of the land now contained within the City was planned for development, the City identified for study an area consisting of approximately 956 acres of undeveloped land, including the Property, within both the City and the 65 dB CNEL Noise Contour depicted in the Airport Environs Land Use Plan line as it existed prior to 2005, all as illustrated in Exhibit "A" to Lake Forest Resolution No. 2003-17 (the "Greater OSA Boundaries"). Subsequently, the City commissioned an "Opportunities Study" to identify uses within the Greater OSA Boundaries which would better serve the needs of the community than would the then-permitted uses. As a result of the Opportunities Study, the City identified an 838-acre portion within the Greater OSA Boundaries for which it prepared and approved a general plan amendment on June 17, 2008 (the "General Plan Amendment"). This 838-acre area is identified within this Agreement as the "Opportunities Study Area." The General Plan Amendment establishes new uses within the Opportunities Study Area.

D. Owner participated in the Opportunities Study and desires to develop the Property in a manner consistent with the uses identified for the Property in the General Plan Amendment.

E. The Parties desire to enter into this New Agreement in order to permit uses on the Property that are not permitted under the Original City Agreement. These uses may create needs for different infrastructure and public facilities and services than were anticipated and required in the Original City Agreement.

F. This Agreement is intended to ensure that Owner has provided funding sufficient to provide the adequate and appropriate infrastructure and public facilities required by the development of the Property, and that

this infrastructure these public facilities will be available no later than when required to serve demand generated by development of the Property.

G. This Agreement also assures that development of the Property may occur in accordance with City's General Plan, as amended by the General Plan Amendment. The development of the Property pursuant to the Existing Land Use Regulations, this Agreement, the Subsequent Land Use Regulations to which Owner has consented in writing, and Subsequent Development Approvals (as each of those terms and phrases is defined within this Agreement) shall be referred to as the "New Development Plan."

H. This Agreement constitutes a current exercise of City's police powers to provide predictability to Owner in the development approval process by vesting the permitted uses(s), density, intensity of use, and timing and phasing of development consistent with the New Development Plan in exchange for Owner's commitment to provide significant public benefits to City (the "Public Benefits") as set forth in Section 9.

I. The provision by Owner of the Public Benefits allows the City to realize significant economic, recreational, park, open space, educational, social, and public facilities benefits. The Public Benefits will advance the interests and meet the needs of Lake Forest's residents and visitors to a significantly greater extent than would development of the Property under the Original City Agreement.

J. The phasing, timing, and development of public infrastructure necessitate a significant commitment of resources, planning, and effort by Owner for the public facilities financing, construction, and dedication to be successfully completed. In return for Owner's participation and commitment to these significant contributions of private resources for public purposes, City is willing to exercise its authority to enter into this Agreement and to make a commitment of predictability for the development process for the Property. Absent City's willingness to make such a commitment, Owner would be unwilling to enter into this Agreement or make the significant investment of resources required for the planning, financing, construction, and dedication of the public facilities and infrastructure identified in this Agreement.

AGREEMENT

City and Owner agree as follows:

1. INTEREST OF OWNER. Owner represents that it has a legal or equitable interest in the Property and is authorized to enter into this Agreement.

2. PUBLIC HEARINGS. On June 3, 2008, after providing notice as required by law, the City Council held a public hearing on this Agreement and made the findings set forth in Section 3.

3. CITY COUNCIL FINDINGS. The City Council finds that:

   3.1 Subject to the approval of the General Plan Amendment becoming effective on or before the Effective Date, this Agreement is consistent with City's General Plan.

   3.2 This Agreement ensures a desirable and functional community environment, provides effective and efficient development of public facilities, infrastructure, and services appropriate for the development of the Project, enhances effective utilization of resources within the City, provides assurances to the developer in an effort to control the cost of housing and development to the consumer, and provides other significant benefits to the City and its residents.

   3.3 This Agreement provides public benefits beyond those which are necessary to mitigate the development of the Project.

   3.4 This Agreement strengthens the public planning process, encourages private participation in comprehensive planning, particularly with respect to the implementation of the City's General Plan, and reduces the economic costs of development and government.

   3.5 The best interests of the citizens of the City and the public health, safety, and welfare will be served by entering into this Agreement.

4. CONTINUING OBLIGATIONS. This Agreement binds the City now and in the future. By approving this Agreement, the City Council has

elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by the City staff and the City Council and have been found to be fair, just, and reasonable. City has concluded that the Project will serve the best interests of its citizens and that the public health, safety, and welfare will be best served by entering into this Agreement.

5. DEFINITIONS. In this Agreement, unless the context otherwise requires, the following terms and phrases shall have the following meanings:

5.1 "Affordable Unit" means a unit of housing that is located within the City and is affordable to Moderate Income, Low Income, or Very Low Income Households, as those terms are defined herein.

5.2 "Agreement" or "New Agreement" shall mean this Development Agreement between the City and Owner. The terms "Agreement" and "New Agreement" shall include any amendment properly approved and executed pursuant to Section 7.5.

5.3 "'A' Map" shall mean a Final Map approved by the City as a ministerial action for all or a portion of a Tentative Map, that shall consist of neighborhoods or areas which may be further subdivided with a 'B' Map or which may be developed upon the approval of the 'A' Map. If a portion of the 'A' Map shall be further subdivided with a 'B' Map, the Developer shall be required to satisfy, for those portions of the 'A' Map, only the conditions identified as 'A' Map conditions on the Tentative Map. If the 'A' Map creates a lot which shall not be further subdivided with a 'B' Map, then all other applicable Tentative Map conditions shall be satisfied.

5.4 "Approval Date" means the date on which the City Council conducted the first reading of the ordinance adopting this Agreement. That date is June 3, 2008.

5.5 "Area Plan" means an area plan for a planned community as defined in Section 9.184.020 of the City Municipal Code. An application for an Area Plan shall be submitted concurrently with the Owner's application for the First Tentative Map(s) (First Tentative Map(s) Submittal Package) and shall include the following plans: Master Land Use Plan, Circulation Plan, Grading Concept Plan, Landscape Concept Plan, Open Space Plan, Fuel Modification Plan, Maintenance Responsibilities Plan, Drainage Master Plan, Sewer Master Plan, Water Distribution Master Plan, Development Phasing Plan, Public Facilities Phasing and Financing Plan, and Private Recreational Facilities Plan, Design Plan, Dry Utilities Plan and Housing Plan (consistent with the Affordable Housing Implementation Plan attached to this Agreement as Exhibit "G"). The Area Plan shall include the elements identified in Exhibit "C" to this Agreement. No Feature Plan (as defined in Section 9.184.020 of the City Municipal Code) shall be required prior to the approval of an Area Plan.

5.6 "'B' Map" shall mean a Final Map approved by the City as a ministerial action for all or a portion of the Tentative Map, for which no further subdivision is authorized under the Tentative Map.

5.7 "City" shall mean the City of Lake Forest, a California municipal corporation.

5.8 "City Council" shall mean the governing body of the City.

5.9 "City Facilities" shall mean the Sports Park, Community Center, New City Hall, LFTM Improvements, and neighborhood parks as further described in Section 9 and Exhibit "F" below.

5.10 "City Municipal Code" shall mean the Lake Forest Municipal Code. However, changes to the Lake Forest Municipal Code occurring between the Approval Date and the Effective Date shall not be considered part of the City Municipal Code for purposes of this Agreement without Owner's prior written consent.

5.11 "Day" refers to a calendar day unless specifically stated as a "business day."

5.12 "Default" shall refer to a Major Default or Minor Default as defined herein.

5.13 "Development" shall mean the improvement of the Property for the purposes of completing the structures, improvements, and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure and public and private facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; the installation of landscaping; and other improvements.

5.14 "Development Approvals" shall mean all permits and other entitlements approved or issued by the City for the use of, construction upon, and/or development of the Property. For the purposes of this Agreement, Development Approvals shall be deemed to include, but are not limited to, the following actions, including revisions, addenda, amendments, and modifications to these actions:

this Agreement;

amendments to this Agreement;

amendments to the General Plan;

Specific Plan and Specific Plan amendments;

tentative and final subdivision and parcel maps;

conditional use permits, use permits and site development permits;

zoning;

area plans;

grading and building permits;

certificates of compliance and/or lot line adjustments;

street, drainage, utility, stormwater, and landscape permits;

occupancy permits; and

environmental review documents for the Project.

5.15 "Development Impact Fees" shall mean all City fees established and imposed upon the Project by the City pursuant to the Mitigation Fee Act as set forth in California Government Code Section 66000 et seq. "Development Impact Fees" shall not include any City fees that have not been established and imposed pursuant to the Mitigation Fee Act and this Agreement.

5.16 "Effective Date" shall mean the later of: (i) date the ordinance adopting this Agreement becomes effective; or (ii) expiration of the period provided by applicable law, including but not limited to Government Code Section 65009, for challenging the General Plan Amendment.

5.17 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date, including the General Plan Amendment (including the range of units approved for the Project by the General Plan Amendment). However, changes to Land Use Regulations occurring between the Approval Date and the Effective Date shall not be considered part of the Existing Land Use Regulations without Owner's prior written consent. Owner has consented to the General Plan Amendment, which shall be considered part of the Existing Land Use Regulations.

5.18 "Fair Market Value" means the appraised value as determined by an appraiser mutually acceptable to the Owner and the City. If the parties cannot agree on an appraiser, each shall select an appraiser who shall appraise the site and Owner and City shall attempt to agree on the fair market value on the basis of the two appraisals. If Owner and the City cannot so agree, the two appraisers shall select a third appraiser who shall determine the fair market value of the site in question and whose appraisal shall be binding on the parties.

5.19 "Final Map(s)" refers to one or more final maps which may be filed with respect to any Tentative Map, including the First

Tentative Map(s), as set forth in Section 66456 et seq. of the Subdivision Map Act, and are referenced in this Agreement as either an 'A' Map or a 'B' Map.

5.20 "Financing District" refers to a community facilities district, assessment district, infrastructure financing district, or other form of district or bond financing authorized by California as a means to fund public improvements and/or the maintenance of those improvements.

5.21 "First Tentative Map(s)" shall mean the first Tentative Map for the Project which is approved by the City following the Effective Date of this Agreement. Owner may submit more than one Tentative Map to be considered concurrently as the First Tentative Map(s).

5.22 "First Tentative Map(s) Submittal Package" shall mean the package of materials to be submitted with the Owner's application for the First Tentative Map(s), which shall include the Area Plan as defined in this Agreement.

5.23 "General Plan" shall mean the general plan of the City.

5.24 "General Plan Amendment" shall refer to the amendment of the City's General Plan on June 17, 2008, for the Opportunities Study Area (including the Property). A copy of the General Plan Amendment is attached as Exhibit "B".

5.25 "Greater OSA Boundaries" refers to an area consisting of approximately 956 acres of undeveloped land, including the Property, within both the City and the 65 dB CNEL Noise Contour depicted in the Airport Environs Land Use Plan line as it existed prior to 2005, all as illustrated in Exhibit "A" to Lake Forest Resolution No. 2003-17.

5.26 "Implementing Agreement" refers to any agreement entered into by Owner and the City for the implementation of obligations established in this Agreement.

5.27 "Land Use Regulations" shall mean all ordinances, resolutions, codes, rules, regulations and official policies of the City governing the development and use of land, including, without

limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement, construction, and initial occupancy standards and specifications applicable to the Project. "Land Use Regulations" do not include any City ordinance, resolution, code, rule, regulation or official policy governing:

5.27.1 The conduct or taxation of businesses, professions, and occupations applicable to all businesses, professions, and occupations in the City;

5.27.2 Taxes and assessments of general application upon all residents of the City, provided that the taxes and assessments are not imposed for the purpose of taxing the right, power or privilege of developing or improving land (e.g., excise tax) or to directly finance the acquisition or dedication of open space or any other public improvement in respect of which the Owner is paying any fee (directly or through a Financing District) or providing any improvement pursuant to this Agreement;

5.27.3 The control and abatement of nuisances;

5.28 "LFTM Improvements" means those traffic and transportation improvements specified in the LFTM Ordinance.

5.29 "LFTM Fees" means fees imposed to fund LFTM Improvements pursuant to the LFTM Ordinance.

5.30 "LFTM Ordinance" means Ordinance No. 186, as adopted by the Lake Forest City Council on June 17, 2008. The LFTM Ordinance shall be considered one of the Existing Land Use Regulations.

5.31 "LFTM Program" means the Lake Forest Transportation Mitigation Program, as described in the LFTM Ordinance.

5.32 "Low Income Household" means persons and families whose income does not exceed eighty percent (80%) of the then-current area median income of the County of Orange adjusted for family size by the State Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended, and California Health and Safety Code Section 50093, as it may be amended from time-to-time. In no event, however, shall the stated maximum annual income for a Low Income Household be, for purposes of this Agreement, less than eighty percent (80%) of the then-current area median income of the County of Orange.

5.33 "Major Default" refers to the material and substantial failure by (1) Owner to timely meet Owner's Facilities Obligations, or (2) City's failure to issue Subsequent Development Approvals in accordance with its obligations under this Agreement, or (3) either Party to provide the agreed upon cooperation needed to implement the Public Benefits and/or the development of the Property pursuant to the New Development Plan, including but not limited to a failure to comply with the terms of any Implementing Agreement. For purposes of this Agreement, a failure by Owner to timely meet Owner's Facilities Obligations shall include, but not be limited to, a failure to vote in favor of the formation of a Financing District if the City takes steps to form a Financing District, a failure to timely dedicate land for Public Facilities as required by this Agreement or any Implementing Agreement, and a dedication of land for Public Facilities that has a cloud on title or is in a location or condition that is inconsistent with the requirements of this Agreement or any Implementing Agreement. This definition is not intended to expand or limit the legal definition of "materiality," but only to establish the agreement of the Parties as to the nature of a default which could lead to an early termination of this Agreement.

5.34 "Minor Default" means a failure by Owner or City to comply with the terms and conditions of this Agreement which is not a "Major Default" as defined herein.

5.35 "Moderate Income Household" means persons and families whose income does not exceed one hundred twenty percent (120%) of the then-current area median income of the County of Orange adjusted for family size by the State Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended, and California Health and Safety Code Section 50093, as it may be amended from time-to-time. In no event, however, shall the maximum annual income for a Moderate Income Household be, for purposes of this Agreement, less than one hundred twenty percent (120%) of the then-current area median income of the County of Orange.

5.36 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device, a lender, and their successors and assigns.

5.37 "New Agreement" or "Agreement" shall mean this Development Agreement between the City and Owner. The terms "New Agreement" and "Agreement" shall include any amendment properly approved and executed pursuant to Section 7.5.

5.38 "New Development Plan" means the Existing Land Use Regulations, this Agreement, the Subsequent Land Use Regulations to which Owner has consented in writing, and Subsequent Development Approvals.

5.39 "On-site Housing Unit" means a unit of housing that is developed as part of the Project and that is both an Affordable Unit and located on the Property.

5.40 "Opportunities Study Area" means the approximately 838 acres of undeveloped land, including the Property, within the City which is the subject of the General Plan Amendment. Although

the Opportunities Study Area has previously been considered to include as much as 956 acres within the Greater OSA Boundaries, only those properties which are the subject of the General Plan Amendment are considered to constitute the Opportunities Study Area for purposes of this Agreement.

5.41 "OSA Landowners" refers to all owners of property within the Opportunities Study Area.

5.42 "Owner" refers to USA Portola Properties, LLC, a California limited liability company, and Owner's successors and assigns as set forth in Section 14.14.

5.43 "Owner's Facilities Obligations" refers to the requirement of Owner to contribute to the City Facilities, the School Facilities, and the LFTM Improvements, as those terms are defined in this Agreement (including Section 9.2 and Exhibit "F," and attachments thereto), through the payment of City Facilities Fees, deposits of funds, and/or dedication of land.

5.44 "Owner's Vested Right" refers to Owner's guaranteed right to develop the Property as set forth in this Agreement, with particular reference to Section 8.

5.45 The "Parties" means the City and Owner. A "Party" refers to either the City or the Owner.

5.46 "Project" means the development of the Property as set forth in the New Development Plan.

5.47 "Property" means the real property described in Exhibit "A".

5.48 "Public Benefits" refers to those benefits provided to the City and the community by Owner pursuant to Section 9 and Exhibit "F" below.

5.49 "Public Facilities" refers to the City Facilities, School Facilities, and LFTM Improvements, as those terms are defined in this Agreement.

5.50 "Public Facilities Area of Benefit" refers to the area within both the City and the 65 dB CNEL Noise Contour depicted in the pre-2005 Airport Environs Land Use Plan.

5.51 "Reservation of Authority" means the rights and authority specifically reserved to City which limits the assurances and rights provided to the Owner under this Agreement. The Reservation of Authority is described in Section 8.8.

5.52 "Section" refers to a numbered section of this Agreement, unless specifically stated to refer to another document or matter.

5.53 "Subsequent Development Approvals" means all Development Approvals and permits approved, granted, or issued after the Effective Date for the Project which are required or permitted by the Existing Land Use Regulations, the Subsequent Land Use Regulations to which Owner has consented in writing, and this Agreement. Subsequent Development Approvals include, without limitation, all development review approvals required under the Subdivision Map Act, the City's subdivision ordinance and/or other provisions of the City Municipal Code, site development permits, excavation, grading, building, construction, encroachment or street improvement permits, occupancy certificates, utility connection authorizations, drainage, landscape, or other permits or approvals necessary for the grading, construction, marketing, use and occupancy of the Project.

5.54 "Subsequent Land Use Regulations" means those Land Use Regulations which are both adopted and effective after the Approval Date and which are not included within the definition of Existing Land Use Regulations. "Subsequent Land Use Regulations" include any Land Use Regulations adopted by moratorium by initiative, City action, or otherwise.

5.55 "Tentative Map" shall mean any tentative map, as defined in the Subdivision Map Act and the City Municipal Code, for the Project, including the First Tentative Map(s). With the approval of any Tentative Map, the City shall identify the conditions that

shall be satisfied to process an 'A' Map and the conditions that shall be satisfied to process a 'B' Map.

5.56 "Term" means the term of this Agreement as set forth in Section 7.2 of this Agreement.

5.57 "Unit" means a dwelling unit or 1,000 square feet of non-residential space in an area designated by the Land Use Approvals for residential use, provided that only non-residential space meeting the definition of "chargeable covered and enclosed space" in Government Code Section 65995(b)(2) shall be included in calculating or referring to Units under this definition. This definition is provided solely for the purposes of determining the uses which may be built as a part of the Project and for calculating the City Facilities Fee described in Exhibit F, and is not intended to allow for conversion of non-residential uses to residential uses.

5.58 "Very Low Income Household" means persons and families whose income does not exceed fifty percent (50%) of the then-current area median income of the County of Orange adjusted for family size by the State Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended, and California Health and Safety Code Section 50105, as it may be amended from time-to-time. In no event, however, shall the maximum annual income for a Very Low Income Household be, for purposes of this Agreement, less than fifty percent (50%) of the then-current area median income of the County of Orange.

6. EXHIBITS. All exhibits attached to this Agreement are incorporated as a part of this Agreement. Those exhibits are:

Exhibit	Description
"A"	Legal Description of the Property
"B"	General Plan Amendment
"C"	Area Plan – Table of Contents

"D"	City's Long-Term Financing and Land Secured Debt Policy
"E"	County and Regional Agency Fees
"F"	Public Benefits
"G"	Affordable Housing Implementation Program
"H"	Assignment and Assumption Agreement

7. GENERAL PROVISIONS.

7.1 Binding Effect of Agreement. This Agreement shall be recorded against the Property and shall run with the land. The Development shall be carried out only in accordance with the terms of this Agreement. Until released or terminated pursuant to the provisions of this Agreement or until Owner has fully performed its obligations arising out of this Agreement, no portion of the Property shall be released from this Agreement.

7.2 Term of Agreement. The Term shall commence on the Effective Date. The Term shall continue for a period of twenty (20) years from the Effective Date, subject to the following:

7.2.1 The Term shall be extended for periods equal to the time during which:

7.2.1.1 Litigation is pending which challenges any matter, including compliance with CEQA or any other local, state, or federal law, related in any way to the approval or implementation of all or any part of the New Development Plan. Any such extension shall be equal to the time between the filing of litigation, on the one hand, and the entry of final judgment or dismissal, on the other. All such extensions shall be cumulative.

7.2.1.2 Any application by Owner for state or federal regulatory permits and/or approvals required for the Project has been pending more than one year after its submittal, beginning on the 366th day following its submittal for approval.

7.2.1.3 Any other delay occurs which is beyond the control of the Parties, as described in Section 14.10.

7.2.2 During the Term, certain portions of the Property may be released from this Agreement as provided elsewhere in this Agreement.

7.2.3 As provided in Section 7.3 and elsewhere within this Agreement, the Term may end earlier than the end of the Term specified in this Section.

7.3 Termination. This Agreement shall be deemed terminated and of no further effect upon the earlier occurrence of any of the following events:

7.3.1 Expiration of the Term as set forth in Section 7.2;

7.3.2 Entry of a final judgment setting aside, voiding, or annulling the adoption of the ordinance approving this Agreement;

7.3.3 The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement;

7.3.4 Completion of the Project in accordance with the terms of this Agreement, including issuance of all required occupancy permits and acceptance, as required by state law, by City, or the applicable public agency, of all required dedications and the satisfaction of all of Owner's obligations under this Agreement; and

7.3.5 As may be provided by other specific provisions of this Agreement.

7.4 Effect of Termination. Subject to Section 8.12, upon any termination of this Agreement, the only rights or obligations under this Agreement which either Party shall have are:

7.4.1 The completion of obligations which were to have been performed prior to termination, other than those which are separately addressed by Section 12;

7.4.2 The performance and cure rights set forth in Section 12; and

7.4.3 Those obligations that are specifically set forth as surviving this Agreement, such as those described in Section 9 and in Sections 11.1 through 11.7 and 14.15.

7.5 Amendment or Cancellation of Agreement. This Agreement may be amended from time to time or canceled only by the written consent of both City and Owner in the same manner as its adoption, as set forth in California Government Code Section 65868. Any amendment or cancellation shall be in a form suitable for recording in the Official Records of Orange County, California. An amendment or other modification of this Agreement will continue to relate back to the Effective Date of this Agreement (as opposed to the effective date of the amendment or modification), unless the amendment or modification expressly states otherwise.

7.6 Release of Obligations With Respect to Individual Lots Upon Certification of Occupancy. Notwithstanding any other provision of this Agreement:

7.6.1 When any individual lot has been finally subdivided and sold, leased, or made available for lease to a member of the public or any other ultimate user, and a certificate of occupancy has been obtained for the building(s) on the lot, that lot and its owner shall have no further obligations under and shall be released from this Agreement.

7.6.2 Upon the conveyance of any lot, parcel, or other property, whether residential, commercial, or open space, to a homeowners' association, property owners' association, or public or quasi-public entity, that lot, parcel, or property and its owner shall have no further obligations under and shall be released from this Agreement, provided that this paragraph shall not be deemed to release any transferee (including a good faith purchaser) from obligations to pay assessments imposed in connection with a Financing District.

No formal action by the City is required to effect this release, but, upon Owner's request, City shall sign an estoppel certificate or other document to evidence the release.

7.7 Minor Changes. The provisions of this Agreement require a close degree of cooperation between the Parties and "Minor Changes" to the Project may be required from time to time to accommodate design changes, engineering changes, and other refinements related to the details of the Parties' performance. "Minor Changes" shall mean changes to the Project that are otherwise consistent with the New Development Plan, and which do not result in a change in the type of use, an increase in density or intensity of use, significant new or increased environmental impacts that cannot be mitigated, or violations of any applicable health and safety regulations in effect on the Effective Date.

Accordingly, the Parties may mutually consent to adopting "Minor Changes" through their signing of an "Operating Memorandum" reflecting the Minor Changes. Neither the Minor Changes nor any Operating Memorandum shall require public notice or hearing. The City Attorney and City Manager shall be authorized to determine whether proposed modifications and refinements are "Minor Changes" subject to this Section 7.7 or more significant changes requiring amendment of this Agreement. The City Manager may execute any Operating Memorandum without City Council action.

7.8 Term of Map(s) and Other Project Approvals.

7.8.1 Subdivision Maps. Pursuant to Government Code Section 66452.6, the term of all subdivision or parcel maps that are approved for all or any portion of the Property shall be extended to a date coincident with the Term and, where not prohibited by State law, with any extension of the Term.

7.8.2 Site Development Permits and Area Plans. Site Development Permits and Area Plans for the Project shall have terms that coincide with the term of the subdivision or parcel map for the portion of the

Property to which a particular Site Development Permit or Area Plan pertains.

7.8.3 Other Development Approvals. Pursuant to Government Code Section 65863.9, any and all other Development Approvals for any portion of the Project shall automatically be extended for a term ending concurrently with the applicable tentative maps for the Project. Pursuant to Section 7.8.1, those terms shall be the same as the Term of this Agreement.

7.8.4 Decisions of Development Services Director. Any decision of the Development Services Director with respect to Subsequent Development Approvals may be appealed to the City's Planning Commission pursuant to Section 2.04.100(D) of the Lake Forest Municipal Code. Decisions of the Planning Commission on appeal may be appealed to the City Council pursuant to Section 2.04.100(E) of the Lake Forest Municipal Code.

7.9 Relationship of City and Owner. The contractual relationship between City and Owner arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third-party beneficiary rights.

7.10 Notices. All notices, demands, and correspondence required or permitted by this Agreement shall be in writing and delivered in person or mailed by first class or certified mail, postage prepaid, addressed as follows:

If to City, to:
City of Lake Forest
25550 Commercentre Drive
Lake Forest, California 92630
Attn: City Manager

With a copy to:
Scott C. Smith
Best Best & Krieger LLP

5 Park Plaza, Suite 1500
Irvine, California 92614

If to Owner, to:
USA Portola Properties, LLC
610 West Ash Street, Suite 1500
San Diego, CA 92101
Attn: Kim Kilkenny

AND

USA Portola Properties, LLC
270 Newport Center Drive, Suite 200
Newport Beach, CA 92660
Attn: Jim Baldwin

With a copy to:
Weston Benshoof
333 South Hope Street, 16th Floor
Los Angeles, CA 90071
Attn: Nicki Carlsen

Jim Baldwin
270 Newport Center Drive, Suite 200
Newport Beach, CA 92660

AND

Al Baldwin
280 Newport Center Drive, Suite 240
Newport Beach, CA 92660

City or Owner may change its address by giving notice in writing to each of the other names and addresses listed above. Thereafter, notices, demands, and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery or, if mailed, two (2) business days following deposit in the United States mail.

7.11 Original City Agreement. Except as provided below and in Section 8.8, upon the Effective Date, the Original City Agreement shall no longer be of any force or effect with respect

to the Property. This Agreement shall supersede the Original City Agreement only as to the Property, and shall not affect the Original City Agreement if and to the extent that it applies to properties other than the Property.

Should this Agreement be invalidated pursuant to Section 7.3.2 or 7.3.3, the Original City Agreement shall be reinstated retroactively to the Effective Date and shall be deemed to have been continuously in effect. Under such circumstances, the term of the Original City Agreement shall not be suspended or tolled and shall continue as if the Original City Agreement was never superseded. Owner's obligations under the Original City Agreement, however, shall be deemed to have been suspended and tolled from the Effective Date until the date of termination of this Agreement (the "Tolling Period"). The time for Owner to perform any obligation under the Original City Agreement which should have been performed during the Tolling Period shall be extended for a period of time equal to the duration of the Tolling Period.

7.12 Waiver of Right to Protest. Execution of this Agreement is made by Owner without protest. Owner knowingly and willingly waives any rights it may have under Government Code Section 66020 or any other provision of law to protest the imposition of any fees, dedications, reservations, or other exactions imposed on the Project as authorized by this Agreement.

8. DEVELOPMENT OF THE PROPERTY.

8.1 Owner's Vested Right. Owner shall have the vested right to complete Development of the Property in accordance with the New Development Plan as provided in this Agreement ("Owner's Vested Right"). To enable Owner to complete the Project, Owner's Vested Right shall include, but not be limited to, the rights to (1) develop a minimum of 904 residential units and a maximum of 930 residential units and a minimum of 30,000 square feet of commercial space and a maximum of 40,000 square feet of commercial space, including appurtenant facilities, as permitted by the New Development Plan, (2) the timely issuance by the City of all Subsequent Development Approvals, and (3) the timely taking by the City of such other

actions that are (i) requested by Owner and (ii) consistent with the terms of this Agreement. Where the New Development Plan permits the development of some or all of the Property within a specified range of dwelling units or commercial square footage, Owner's Vested Right shall include the right to develop to the greater of: (i) the minimum number of dwelling units and/or commercial square footage permitted by the General Plan Amendment; and (ii) any greater number of dwelling units and/or commercial square footage approved by City Council subsequent to the execution of this Agreement, provided that (i) Owner can comply with all development standards contained in the New Development Plan and (ii) the Project does not exceed the development limits set forth in the General Plan Amendment and First Tentative Map(s) for the Property as a whole.

Owner's Vested Right shall be subject to the Reservation of Authority set forth in Section 8.8 and all provisions of this Agreement, and may not be modified or terminated except as expressly provided by this Agreement.

8.2 Planning Flexibility. Owner shall have the right to transfer residential units from the Mixed Use land use designation to the Medium Density Residential land use designation and the right to transfer residential units from the Medium Density Residential land use designation to the Low Density Residential land use designation, provided that the maximum number of residential units shall not exceed the maximum number of residential units authorized in Section 8.1 of this Agreement or the First Tentative Map(s). The land use designations referenced in this Section 8.2 are those set forth in the General Plan, as amended by the General Plan Amendment.

8.3 Governing Land Use Regulations. The Land Use Regulations applicable to the Project and the Property shall be those contained in the New Development Plan. An amendment or other modification of this Agreement will not change these applicable Land Use Regulations unless the amendment or modification expressly provides otherwise. Subsequent Land Use Regulations shall not apply to the Property except as authorized in Section 8.8 of this Agreement, unless the Owner

and the City mutually agree in writing that the Project will be subject to one or more Subsequent Land Use Regulations. To the extent of any inconsistency between this Agreement and any provision of the City's subdivision ordinance (comprising Title 7 of the Lake Forest Municipal Code), this Agreement shall control.

Nothing contained in this Section shall be deemed to authorize City to withhold any building permit, approval, and/or certificate of occupancy based on Owner's failure to comply with any Land Use Regulation that is not applicable to the Project because of this Agreement.

8.4 Permitted Uses. Except as otherwise provided within this Agreement, the permitted uses on the Property shall be as provided in the New Development Plan.

8.5 Density and Intensity; Requirement for Reservation and Dedication of Land. Except as otherwise provided within this Agreement, the density and intensity of use for all Development on the Property, and the requirements for reservation and dedication of land, shall be as provided in the New Development Plan.

8.6 Consideration of First Tentative Map(s). Notwithstanding any contrary provision of the Land Use Regulations or this Agreement, the First Tentative Map(s) shall include the entire Property and must be approved by City Council.

8.6.1 In addition to the contents required by the Land Use Regulations, an application for the First Tentative Map(s) approval shall also include the First Tentative Map(s) Submittal Package.

8.6.2 Subject to the City's review and approval, Owner agrees to implement and construct improvements based on the results of the studies identified in Exhibit "C" for the following study subjects:

a. Access from Northeast Area of Project to Glenn Ranch Road;

b. Intersection of Millwood Road and Saddleback Ranch Road;

c. Expanded Sidewalk along Saddleback Ranch Road;

d. Trail Connection to Aliso Creek Trail; and

e. Free Right Turn from Saddleback Ranch Road to Glenn Ranch Road

8.7 Unit Counts to be Determined with Approval of First Tentative Map(s). The City Council will, concurrently with the approval of the First Tentative Map(s), determine the specific number of Units which may be built as part of the Project in accordance with Owner's Vested Right set forth in Section 8.1 of this Agreement. In order for the City to make this determination, Owner shall submit the First Tentative Map(s) Submittal Package, concurrently with its application for the First Tentative Map(s).

8.8 Reservation of Authority. The following Land Use Regulations or Subsequent Land Use Regulations shall apply to the Property and the Project, provided that the City Council's determination in subsection (i) shall be considered an Existing Land Use Regulation implementing the Unit range approved in the General Plan Amendment:

8.8.1 Processing fees and charges imposed by the City to cover the City's estimated or actual costs of reviewing and processing applications for the Project, providing inspections, conducting annual reviews, providing environmental analysis, or for monitoring compliance with this Agreement or any Development Approvals granted or issued, provided such fees and charges are in force and effect on a general basis on the date of filing such applications with the City. This Section shall not be construed to limit the authority of City to charge its then-current, normal and customary application, processing, and permit fees for Subsequent Development Approvals, building permits and other similar permits, which fees are designed to reimburse

City's expenses attributable to such application, processing, and permitting and are in force and effect on a City-wide basis at such time as the Subsequent Development Approvals and permits are granted by City, notwithstanding the fact that such fees may have been increased by City subsequent to the Effective Date;

8.8.2 Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure;

8.8.3 The following, provided that (i) they are uniformly applied to all development projects within the City and (ii) are not applied retroactively to any Development Approval issued before their adoption or amendment:

8.8.3.1 Uniform codes governing engineering and construction standards and specifications adopted by the City pursuant to state law. Such codes include, without limitation, the City's adopted version of the Uniform Administrative Code, California Building Code, California Plumbing Code, California Mechanical Code, California Electrical Code, and California Fire Code;

8.8.3.2 Local amendments to those uniform codes which are adopted by the City pursuant to state law, provided they pertain exclusively to the preservation of life and safety; and

8.8.3.3 The City's standards and procedures regarding the granting of encroachment permits and the conveyance of rights and interests which provides for the use of or the entry upon public property.

8.8.4 Regulations which may be in conflict with this Agreement, but which are objectively required (and

there are no available reasonable alternatives) to protect the public health and safety in the event of a sudden, unexpected occurrence involving a clear and imminent danger, and demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services within the immediate community. Such regulations must be a valid exercise of the City's police power and must be applied and construed so as to provide Owner, to the maximum extent possible, with the rights and assurances provided in this Agreement. To apply to the Property, such regulations must be adopted after a public hearing and must be based upon findings of necessity established by a preponderance of the evidence. Any regulations, including moratoria, enacted by City and imposed on the Property to protect the public health and safety in the circumstances described above shall toll the Term and any time periods for performance by Owner and City set forth in this Agreement;

8.8.5 The City's public improvement engineering ordinances, policies, rules, regulations and standards in effect at the time of the construction of the Public Facilities;

8.8.6 Owner shall be issued building permits for the Project after permit applications are reviewed and approved by City in the City's customary fashion for such review and approval;

8.8.7 The exercise of the power of eminent domain.

8.8.8 The City Council may, concurrently with the approval of: (i) a zone change; (ii) specific plan; and/or (iii) the approval of the First Tentative Map(s) for the Project, determine the specific number of Units which may be built as part of the Project, within the range of Units allowed in the General Plan Amendment. Such determination shall not constitute an amendment to this Agreement.

8.9 Development Impact Fees. Except as otherwise expressly provided within this Agreement:

8.9.1 Owner shall pay only those City Development Impact Fees uniformly applied to all development projects within the City as of the Approval Date and permitted under this Agreement, or fees levied by the County or Regional Agencies other than the City, including, but not limited to those fees collected by the City for those Agencies and listed in Exhibit "E",

8.9.2 Owner shall have no obligation for fees related to traffic, roadways, parks, affordable housing, open space, trails or schools, except as expressly provided in Section 9 and Exhibit "F" (including Attachments 1, 2, and 3 thereto), Exhibit "G," or in an agreement between Owner and the Saddleback Valley Unified School District.

8.10 County-Mandated Impact Fees. Nothing in this Agreement shall relieve Owner of the responsibility to pay any impact fees established by regional agencies or the County of Orange or associated with any County program and for which Owner is legally responsible. Owner shall pay any such fees the City is required to collect or otherwise collects on behalf of the County of Orange or other regional agencies. A summary of these fees anticipated to be owed for the Project is attached as Exhibit "E". Owner understands and acknowledges that Exhibit "E" reflects only the City's estimate of fees paid, and may not accurately reflect Owner's regional agency or County fee obligations.

8.11 Adequacy of Required Infrastructure. Provided that Owner complies with Owner's Facilities Obligations and subject to the Reservation of Authority, the City acknowledges and agrees that there will be sufficient capacity to accommodate the Project in the infrastructure and services owned, operated, outsourced, controlled, and/or provided by the City, including, without limitation, traffic circulation, storm drainage, trash collection, and flood control. Where City renders or outsources such services or owns such infrastructure, and Owner complies with Owner's Facilities Obligations, City shall serve the Project and

there shall be no restrictions placed upon Owner concerning hookups or service for the Project, except for reasons beyond City's control. Notwithstanding the foregoing, City does not warrant the adequacy of and City shall not be responsible or liable for any infrastructure or services that are not owned, operated, outsourced, controlled, and/or provided by City.

8.12 Vested Rights Upon Termination. Termination of the Agreement shall not invalidate any Land Use Regulations or terminate any Subsequent Development Approvals obtained prior to the date of termination. Upon any termination of this Agreement, Owner's vested rights, if any, shall be determined by this Agreement to the extent development has occurred hereunder, and as to the remainder of the Project, by state and federal statutes and case law and then current factual state of the Development. Subject to that determination of rights and all other applicable law, Owner's right to continue development of the Project pursuant to some or all of the New Development Plan shall be subject to the ordinary exercise of the City's police power, including the adoption of a general plan amendment, zoning change, or other Land Use Regulations applicable to the Property. Owner acknowledges that following termination of this Agreement, except as to any development that has vested, City may amend the general plan designation of the Property and/or the zoning designation applicable to the Property.

8.13 Waiver of Density Bonus. While this Agreement is in effect, Owner waives any right Owner may have to a density bonus under Government Code Sections 65915 through 65917.5 or the Lake Forest Municipal Code. Densities vested hereunder include all densities available as density bonuses under the Lake Forest Municipal Code and Government Code Sections 65915 through 65917.5; Owner shall not be entitled to further density bonuses.

8.14 Staffing and Expedited Processing. City shall employ all lawful actions capable of being undertaken by City to (i) promptly receive and, when complete, accept all applications for Subsequent Development Approvals and related environmental analysis, if any (collectively, "Applications"), and (ii) expeditiously process and take action upon the Applications

in accordance with applicable law. These actions will include, but are not limited to:

8.14.1 In order to expedite either the processing of Applications or the review and "plan-checking" of Owner's submittals, Owner may request the City to retain a consultant or other third party to supplement the work of City staff. Upon such request, the City shall inform Owner within twenty (20) days of the estimated cost of retaining such assistance. If Owner agrees in writing to pay the full cost of retaining such assistance within ten (10) days after the City informs Owner of that estimated cost, the City shall immediately retain the consultant or other third party to provide that assistance. Under such circumstances, the City shall continue to use its best efforts to undertake the most accelerated processing of the Applications which the law permits. The City may require Owner to tender deposits against the estimated cost of retaining such assistance, and may further require Owner to make periodic payments of the costs of retaining such assistance.

8.14.2 With respect to the "plan-checking" of Owner's submittals, the City, directly or through its consultant, shall complete the plan-checking process within thirty (30) days of receiving each plan check submittal from Owner.

8.15 Changes in Federal and State Law. The Property may be subject to subsequently enacted state or federal laws or regulations which preempt local regulations or mandate the adoption of local regulations that conflict with the New Development Plan. Upon discovery of such a subsequently enacted federal or state law, City or Owner shall provide the other Party with written notice, a copy of the state or federal law or regulation, and a written explanation of the legal or regulatory conflict created. Within ten (10) days thereafter, City and Owner shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation. In such negotiations,

City and Owner agree to preserve the terms of this Agreement and the rights of Owner as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Owner in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Owner. City also agrees to process, in the same expedited manner as set forth for Applications in Section 8.14, Owner's proposed changes to the New Development Plan as needed to comply with such federal or state law, and to process those changes in accordance with City procedures. Any delays caused by such changes in state or federal law shall toll the term of this Agreement and the time periods for performance by Owner and City set forth in this Agreement.

8.16 Cooperation in Securing Other Governmental Approvals and Permits. City agrees to make its staff available, at Owner's cost, to assist Owner in securing permits and approvals required by other governmental agencies to assure Owner's ability to (i) implement the New Development Plan and (ii) perform its obligations under this Agreement in a timely manner. City does not warrant or represent that any other governmental permits or approvals will be granted.

8.17 Compliance with CEQA. The City Council has found that the environmental impacts of the Project have been addressed in the Environmental Impact Report certified by City for the General Plan Amendment and this Agreement (the "EIR"). Where the California Environmental Quality Act requires that an additional environmental analysis be performed in connection with a future discretionary approval granted by the City for the Project, the City, consistent with Section 8.14, shall provide the cooperation needed to expeditiously complete those actions.

8.18 Timing of Development. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal. 3d 465 (1984), that the failure of the parties in that case to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the specific intent of the Parties to provide for the timing of the Project in this Agreement. To do so, the Parties acknowledge and provide that, subject to

Section 8.20 below, Owner shall have the right, but not the obligation, to complete the Project in such order, at such rate, at such times, and in as many development phases and sub-phases as Owner deems appropriate in its sole subjective business judgment.

8.19 Conditions, Covenants and Restrictions. Owner shall have the ability to reserve and record such covenants, conditions, and restrictions (CC&Rs) against the Property as Owner deems appropriate, in its sole and absolute discretion. Such CC&Rs may not conflict with this Agreement or the General Plan. With respect to the Affordable Units, Owner shall record CC&Rs which include provisions as are proposed by Owner and acceptable to the City. Before recording any CC&Rs, Owner shall provide a copy of the CC&Rs to the City for review and approval by the City Attorney. The City Attorney's review shall be limited to determining if the CC&Rs substantially comply with this Agreement. Within thirty (30) days after receiving a copy of the proposed CC&Rs from Owner, the City Attorney shall provide Owner with either (i) a statement that the CC&Rs comply with this Agreement ("CC&R Approval") or (ii) written comments identifying each aspect of the CC&Rs which the City Attorney believes not to be in compliance with this Agreement (a "Statement of Non-Compliance"). If the City Attorney fails to provide Owner with either CC&R Approval or a Statement of Non-Compliance within thirty (30) days following a written request by Owner, City shall be deemed to have approved the CC&Rs and Owner may record the CC&Rs against the Property. If the City Attorney provides a Statement of Non-Compliance, Owner shall have thirty (30) days in which to respond to the Statement of Non-Compliance. Upon submittal of Owner's response, the procedure described above for the initial submittal and City Attorney review of proposed CC&Rs shall again be followed. This procedure shall be followed until Owner either (1) receives CC&R Approval, (2) submits the compliance issues to binding arbitration pursuant to the rules of the American Arbitration Association, (3) files an action for declaratory relief in Orange County Superior Court seeking a judicial determination of the compliance of the proposed CC&Rs, or (4) agreement is otherwise reached between the

Parties allowing for the recording of the CC&Rs. The CC&Rs may run with the land and bind Owner's successors and assigns. Except as provided above, any dispute between the Parties regarding the City's approval or rejection of the CC&Rs shall be subject to immediate and binding arbitration pursuant to the rules of the American Arbitration Association.

8.20 Refund of Fees. Within ninety (90) days after any termination of this Agreement, any Development Impact Fees or any other funds of any nature which have been paid by Owner (or a Financing District) to City in connection with the implementation of the New Development Plan shall be refunded to Owner (or the Financing District) to the extent that those fees were paid for any of the following, provided that no refund or reimbursement shall be required where the City has commenced construction of improvements paid for by such fees or funds, or where the City has committed such fees or funds through a binding agreement of any kind:

8.20.1 Construction not yet started;

8.20.2 Construction started, but not yet completed, provided that no refund or reimbursement shall be required for work for which the City is contractually obligated to pay; and

8.20.3 Onsite or offsite mitigation for the impacts of construction described in Sections 8.20.1 and 8.20.2.

Any such refunds shall be limited to the actual amounts attributable to the development and/or construction not yet completed or vested at the time of termination.

8.21 Amendment to Phasing of Traffic Circulation. In order to protect the public interest, City acknowledges that it may become necessary for Owner to revise the construction phasing of certain traffic circulation elements described in the New Development Plan. Such requested revisions by Owner shall be considered minor or insubstantial and not require this Agreement to be amended provided that:

8.21.1 The revisions are reasonably acceptable to the City Council;

8.21.2 The revisions have been the subject of or are exempt from any further legally required environmental review; and

8.21.3 The revisions do not result in a significant adverse impact on the levels of service, as determined by City, that presently are anticipated in the Environmental Impact Report for the General Plan Amendment.

8.22 Portola Hills Elementary School Mitigation. Owner shall assist the Saddleback Valley School District ("School District") for remediation and repair of existing conditions at Portola Hills Elementary School pursuant to the School Facilities Funding and Mitigation Agreement between Owner and the School District, attached to this Agreement as Attachment 3 to Exhibit "F". Owner's breach of the School Facilities Funding and Mitigation Agreement shall constitute a Major Default of this Agreement.

9. PUBLIC BENEFITS.

9.1 Intent. This Agreement is entered into by the City in consideration of, and in exchange for, Owner's agreement to contribute to the development of certain public facilities owned by the City and the School District as set forth in Exhibit "F" (the "Public Facilities").

9.2 Public Benefits. Owner's Facilities Obligations are set forth in Exhibit "F."

9.3 Advancement of Funds to Design City Facilities. Owner acknowledges the importance of making the City Facilities available for use as soon as possible following execution of this Agreement, and further acknowledges that the timing and phasing of development within the Opportunities Study Area may not provide the City with adequate funding for the acquisition of land for the City Facilities and design of the City Facilities soon enough to allow the City Facilities to be timely constructed and available for use. Therefore, Owner shall

make available to the City $745,325 ("Owner's Share of Design Budget") to fund Owner's share of the design costs for the sports park, and community center (as described in Exhibit "F"), upon request by the City, notwithstanding Owner's schedule of construction for the Project, as set forth in this section of the Agreement. Owner shall not be obligated to tender such advance of funds until City has contracted with consultants to provide design services for the sports park or community center, and such advance shall be paid as follows: (1) The City shall establish a budget for the design services ("Budget") subsequent to the execution of this Agreement and provide the budget to Owner; (2) Within 30 days of receipt of the Budget or 90 days from the execution of this Agreement, whichever is later, Owner shall advance funds to the City in the amount of 25% of the Owner's Share of Design Budget; (3) The remainder of the Budget shall be advanced to the City in equal installments over 15 months on a quarterly basis, commencing three months from the date of the first payment of 25% of Owner's Share of Design Budget. Such advance shall be treated as a non-interest bearing deposit and such deposit shall be eligible for reimbursement pursuant to Sections 9.4 and 9.5 below, or a credit against fees.

9.4 Financing Public Facilities.

9.4.1 At the City's discretion, Owner's Facility Obligations may be financed through the use of one or more Financing Districts, to the extent permitted by the City's Long Term Financing and Land Secured Debt Policy (the "Financing Policy"), which is attached hereto as Exhibit "D," which Financing Policy may be amended or modified at the City's discretion. To the extent that Financing Districts are used, the timing, procedure, and other details of Owner's participation in the Financing Districts shall be addressed in a separate agreement between the City and Owner, to which other OSA Landowners may also be parties. Owner is obligated under paragraph A.1 of Exhibit "F" to dedicate land to the City for City Facilities. Subject to the availability of funds from the Financing Districts to

do so, Owner may be reimbursed by the Financing Districts for the land so dedicated, at Fair Market Value, as calculated no more than 120 days prior to the date of reimbursement.

9.4.2 Owner shall advance funds to pay all costs for formation of the Financing Districts and the issuance and sale of bonds therein, including, but not limited to, (i) the fees and expenses of any consultants and legal counsel to the City employed in connection with the formation of the Financing Districts and issuance of the bonds, including an engineer, special tax consultant, financial advisor, bond counsel and any other consultant deemed necessary or advisable by the City, (ii) the costs of appraisals, market absorption and feasibility studies and other reports deemed necessary or advisable by the City in connection with the issuance of the bonds, (iii) the costs of publication of notices, preparation and mailing of ballots and other costs related to any hearing, protest election or other action or proceeding undertaken in connection with the formation of the Financing Districts and issuance of the bonds, (iv) reasonable charges for City staff time incurred in connection with the formation of the Financing Districts and issuance of the bonds, including a reasonable allocation of School District staff time related thereto, (v) any and all other actual costs and expenses incurred by the City in connection with the formation of the Financing Districts and issuance of the bonds, and (vi) administrative and other expenses incurred by the County of Orange in connection with any existing Community Facilities District on the Property. To the extent that one or more OSA Landowners other than Owner is participating in the Financing Districts, Owner's advance obligation shall be in the same proportion to the overall required advance for the Financing Districts as the midpoint of the range of Units allowed by the General Plan Amendment in the Project is to the midpoint of the range of Units allowed by the General

Plan Amendment for the OSA Landowners participating in the Financing Districts. Upon completion of the formation of the Financing Districts and successful sale of the bonds, funds advanced for such formation costs by Owner may be reimbursed from the bond proceeds within thirty (30) days of receipt of the bond proceeds.

9.4.3 Owner agrees to submit a petition to the City to form such Financing Districts prior to issuance of the first building permit for the Property. At the City's sole discretion, the City may form such Financing Districts for the purpose of levying a special tax and/or selling bonds in an amount sufficient to pay for the design, acquisition, construction and maintenance of all or part of the facilities described in the Financing Policy, provided however, that market conditions and the City Council permit the City staff to form such Financing Districts and issue bonds therein.

9.4.4 The Owner and the City shall, in good faith, negotiate the rate and method of apportionment of special taxes prior to the formation of the Financing Districts; provided however, that any such special tax rate shall comply with the Financing Policy, which is attached hereto as Exhibit "D."

9.4.5 The Property is currently subject to County of Orange Community Facilities District No. 87-2 ("Existing Financing District"), and the City shall, in good faith, use its best efforts to work with the County of Orange to refund the Existing Financing Districts as a part of the formation of any new Financing Districts on the Property.

9.4.6 The issuance of bonds shall comply with the Financing Policy. The bonds may be sold in one or more series. The timing of the issuance of any series of bonds, and the par amount of the bonds to be issued, shall be determined in the sole discretion of the City.

9.5 Independent Nature of Obligations. Owner's Facilities Obligations are independent of the obligations of any other OSA Landowner or any other property which the City intends to participate in providing some or all of the Public Benefits. Provided that Owner satisfies Owner's Facilities Obligations and is not in Material Default, Owner's Vested Right to complete the full development of the Project shall not be limited, diminished, or otherwise adversely affected by the failure of any other landowner or property to participate in providing the Public Benefits as anticipated by the City. Similarly, the City's obligations to Owner and the Property are independent of the City's obligations to any other property or landowner. However, the Public Facilities have been defined in Exhibit F, and Owner's Facilities Obligations are based on the overall development of the OSA by all OSA Landowners. Thus, to the extent that the City reduces the non-LFTM components of the City Facilities Fee for any other OSA Landowner, such that the per-Unit City Facilities Fee (excluding the LFTM component) is less than Owner's per-Unit City Facilities Fee (excluding the LFTM component), the City shall reimburse Owner (or, to the extent that portions of the Property have been sold, Owner's successors in interest with respect to such portions of the Property) for the difference, but no such reimbursement shall be allowed for any difference in credits to the City Facilities Fee received by any other OSA Landowner for the dedication of land for Public Facilities in the Opportunities Study Area. Owner acknowledges that the provisions of this paragraph shall not apply to any fee the amount of which is not controlled by the City, including but not limited to fees paid to the Saddleback Valley Unified School District, the County of Orange, and/or any other government agency.

10. ANNUAL REVIEW.

10.1 Timing of Annual Review. Pursuant to Government Code Section 65865.1, at least once during every twelve (12) month period of the Term, City shall review the good faith compliance of Owner with the terms of this Agreement ("Annual Review").

10.2 Standards for Annual Review. During the Annual Review, Owner shall be required to demonstrate good faith compliance with the terms of this Agreement. "Good faith compliance" shall be established if Owner is in compliance with every term and condition of this Agreement. If the City Council or its designee finds and determines, based on substantial evidence, that Owner is not in good faith compliance, then City may proceed in accordance with Section 12 pertaining to the potential Default of Owner and the opportunities for cure. City shall establish and Owner shall pay a reasonable fee to cover the costs incurred by City in connection with the Annual Review.

10.3 Procedures for Annual Review. The Annual Review shall be conducted by the City Council or its designee. Owner shall be given a minimum of sixty (60) days' notice of any date scheduled for an Annual Review. Owner shall not be limited in the information it presents to the City Council for the Annual Review and may, if needed, provide information to the City Council in the first instance at the City Council hearing on the Annual Review. Should the City Council designate a party other than itself to conduct the Annual Review, these same notice and procedural requirements shall apply to the conduct by the designee of the Annual Review.

10.4 Certificate of Compliance. At any time during any year that the City Council or its designee finds that Owner is not in Default under this Agreement, City shall, upon written request by Owner, provide Owner with a written certificate of good faith compliance within fifteen (15) days of City's receipt of that request.

11. THIRD PARTY LITIGATION.

11.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan. Owner has reviewed the General Plan and concurs with City's determination. Neither Owner nor City shall have any liability under this Agreement or otherwise for any failure of City to perform under this Agreement, or for the inability of Owner to develop the Property as contemplated by the New Development Plan or this Agreement, if such failure or inability

is the result of a judicial determination that part or all of the General Plan is invalid, inadequate, or not in compliance with law.

11.2 Third Party Litigation Concerning Agreement. Owner shall, at Owner's expense, defend, indemnify, and hold City, its officers, employees and independent contractors engaged in project planning or implementation, harmless from any third-party claim, action or proceeding against City, its agents, officers or employees to attack, set aside, void, or annul the approval of this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. City may in its discretion participate in the defense of any such claim, action or proceeding.

11.3 Indemnity. In addition to the provisions of Section 11.2, Owner shall indemnify and hold City, its officers, agents, employees and independent contractors, engaged in project planning or implementation, free and harmless from any third-party liability or claims based or alleged upon any act or omission of Owner, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury or death (Owner's employees included) or any other element of damage of any kind or nature, relating to or arising from development of the Project, except for claims for damages arising through active negligence or willful misconduct of City, its officers, agents, employees and independent contractors. Owner shall defend, at Owner's expense, including attorneys' fees, City, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions of Owner. City may in its discretion participate in the defense of any such legal claim, action, or proceeding.

11.4 Environmental Contamination. Owner shall indemnify and hold City, its officers, agents, and employees free and harmless from any liability, based or alleged, upon any act or omission of Owner, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns, and independent contractors, resulting in any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under, or about the Property,

including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including attorneys' fees, City, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such claim, action, or proceeding, but must assume its own costs in participating in the defense. Notwithstanding anything to the contrary set forth in this Section, Owner shall not be responsible for clean-up and removal of groundwater contamination migrating to or from an adjacent property not owned by Owner.

11.5 City to Approve Counsel; Conduct of Litigation. With respect to Sections 11.2 through 11.4, City reserves the right either (a) to approve the attorney(s) that Owner selects, hires, or otherwise engages to defend City, which approval shall not be unreasonably withheld or delayed, or (b) if Owner is not agreeable to City's disapproval of counsel, to conduct its own defense. If City elects to conduct its own defense, Owner shall reimburse City for a fraction of all reasonable attorneys fees and court costs incurred for such defense, which fraction shall be equal to the number of Units allowed for the Project by City Council in compliance with the General Plan Amendment, divided by the aggregate number of Units permitted by City Council within the Opportunities Study Area. To the extent that one or more OSA Landowners does not timely pay its full share of attorneys fees and court costs, the City reserves the right to reduce or abandon its defense of any litigation, provided that Owner may, but shall not be required to, tender funds to the City to make up any shortfall. Owner shall have the right to audit all billings for such fees and expenses. City shall not have the right to approve counsel selected by Owner to represent Owner's interests in any litigation. In any joint defense between the City and Owner of matters arising under this Agreement, City shall cooperate fully with Owner's counsel. To the extent that Owner has failed to timely pay its full share of attorneys fees and court costs under this section, Owner shall be deemed to have waived any right to participate in the selection of counsel and/or be involved in establishing and implementing litigation strategy, and Owner's rights under this

Agreement and the General Plan Amendment shall be suspended until Owner has fully reimbursed the OSA Landowner and/or the City which has advanced funds to make up a funding shortfall created by Owner's failure to timely pay.

11.6 Processing During Third Party Litigation. The filing of any third party lawsuit(s) against City or Owner relating to this Agreement, the General Plan, any Development Approvals, including Subsequent Development Approvals, or other development issues affecting the Property shall not delay or stop the development, processing, or construction of the Project, approval of Subsequent Development Approvals, or issuance of "Ministerial Approvals," unless the third party obtains a court order preventing the activity or invalidating this Agreement or any provision thereof. City shall not stipulate to the issuance of any such order without Owner's prior written consent. For purposes of this Section, the term "Ministerial Approvals" shall mean the issuance of approvals or permits requiring the determination of conformance with Land Use Regulations and Development Approvals, including, without limitation, site plans, site development permits, area plans, design review, development plans, land use plans, grading plans, improvement plans, building plans and specifications, ministerial issuance or approval of one or more final maps, zoning clearances, grading permits, improvement permits, stormwater management plans, wall permits, building permits, lot line adjustments, conditional and temporary use permits, certificates of use and occupancy, approvals, entitlements, and related matters as may be necessary for the completion of the Project.

11.7 Survival. The provisions of Sections 11.1 through 11.7 inclusive, shall survive the termination, cancellation, or expiration of this Agreement.

12. DEFAULTS AND REMEDIES.

12.1 Major Default Defined. A Major Default, as defined in Section 5.33 of this Agreement, may establish cause for early termination of this Agreement. This provision does not limit the

right of either Party to pursue other non-termination remedies permitted by this Section 12 for Minor Defaults.

12.2 Notice and Termination. Before either Party may declare a Major Default or termination of this Agreement or bring a legal action to terminate this Agreement, the procedures of this Section must be followed. In the case of a Major Default arising from the conduct of an Annual Review, the procedures of this Section shall be strictly followed and shall constitute a second and independent review of the good faith compliance of Owner.

The Party asserting a Default (the "Non-Defaulting Party") may elect to do so by providing written notice to the Party alleged to be in Default (the "Defaulting Party") setting forth the nature of the Default and the actions, if any, required by the Defaulting Party to cure the Default. The Defaulting Party shall be deemed in Default if the Defaulting Party fails to cure the Default within thirty (30) business days after the date of such notice (for monetary defaults) or within sixty business (60) days after the date of such notice (for non-monetary defaults)("cure periods"). If the nature of the alleged Default is such that it cannot reasonably be cured within the applicable cure period, the Defaulting Party shall not be deemed to be in Default if it has commenced efforts to cure the Default within the applicable cure period and continues to diligently pursue completion of the cure.

12.3 Default Remedies. A Party who complies with the notice of Default and opportunity to cure requirements of Section 12.2 may, at its option, institute legal action to cure, correct, or remedy the alleged Default, enjoin any threatened or attempted violation, enforce the terms of this Agreement by specific performance, or pursue any other legal or equitable remedy. These remedies shall be cumulative rather than exclusive, except as otherwise provided by law.

Furthermore, the City, after first following the procedures set forth in Section 12.2, may give notice of its intent to terminate or modify this Agreement for an uncured Major Default, in which event the matter shall be scheduled for consideration and review by the City Council, using the notice and procedure

provisions set forth in Section 10.3 for an Annual Review. The "preponderance of evidence" standard of review set forth in Section 12.4, however, shall be employed rather than the substantial evidence standard set forth in Section 10.2.

12.4 Standard of Review. Any determination by City that Owner is in Default shall be based on the preponderance of evidence before the City. In any legal action by Owner challenging the City's determination of Default, the court shall conduct a de novo review of Owner's compliance based on the administrative record and determine if the preponderance of evidence supports the City's determination.

12.5 Owner's and City's Exclusive Remedy. City and Owner acknowledge that neither City nor Owner would have entered into this Agreement if it were to be liable in damages under or with respect to all or any part of the New Development Plan. Accordingly, except as stated below, neither Party shall sue the other for damages or monetary relief for any matter related to the New Development Plan. City may, however, sue Owner for the payment of sums due from Owner to City under provisions of this Agreement which are expressly stated to survive termination of this Agreement. Owner may sue City for the non-performance of its obligations under the LFTM Program. With these exceptions, Owner's and City's litigation remedies shall be limited to declaratory and injunctive relief, mandate, and specific performance.

12.6 Waiver; Remedies Cumulative. All waivers of performance must be in a writing signed by the Party granting the waiver. There are no implied waivers. Failure by City or Owner to insist upon the strict performance of any provision of this Agreement, irrespective of the length of time for which such failure continues, shall not constitute a waiver of the right to demand strict compliance with this Agreement in the future.

A written waiver affects only the specific matter waived and defines the performance waived and the duration of the waiver. Unless expressly stated in a written waiver, future performance of the same or any other condition is not waived.

A Party who complies with the notice of Default and opportunity to cure requirements of Section 12.2, where applicable, and elects to pursue a legal or equitable remedy available under this Agreement does not waive its right to pursue any other remedy available under this Agreement, unless prohibited by statute, court rules, or judicial precedent.

Delays, tolling, and other actions arising under Section 14.10 shall not be considered waivers subject to this Section 12.6.

12.7 Alternative Dispute Resolution. Any dispute between the Parties may, upon the mutual agreement of the Parties, be submitted to mediation, binding arbitration, or any other mutually agreeable form of alternative dispute resolution. While an alternative dispute process is pending, the statute of limitation shall be tolled for any claim or cause of action which either of the Parties may have against the other.

13. ENCUMBRANCES, ASSIGNMENTS, AND RELEASES.

13.1 Discretion to Encumber. This Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering some or all of the Property or any improvement on the Property by any mortgage, deed of trust, or other security device to secure financing related to the Property or the Project.

13.2 Mortgagee Protection. City acknowledges that the Lender(s) providing financing secured by the Property and/or its improvements may require certain Agreement interpretations and modifications. City shall, at any time requested by Owner or the lender, meet with Owner and representatives of such lender(s) to negotiate in good faith any such interpretation or modification. City will not unreasonably withhold or delay its consent to any requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

13.2.1 Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or

impair the lien of any mortgage or deed of trust on the Property made in good faith and for value.

13.2.2 If City timely receives a request from a Mortgagee requesting a copy of any notice of Default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of Default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the Default during the remaining cure period allowed Owner under Section 12.2 of this Agreement.

13.2.3 Except as otherwise provided within this Agreement, any Mortgagee who comes into possession of some or all of the Property pursuant to foreclosure of a mortgage or deed of trust, or deed in lieu of such foreclosure or otherwise, shall:

13.2.3.1 Take that property subject to the terms of this Agreement and as Owner's successor;

13.2.3.2 Have the rights and obligations of an Assignee as set forth in Sections 13.3 and 13.4;

13.2.3.3 Have the right to rely on the provisions of Section 8 of this Agreement, provided that any development proposed by the Mortgagee is in substantial conformance with the terms of this Agreement; and

13.2.3.4 Not be liable for any defaults, whether material or immaterial, or monetary obligations of Owner arising prior to acquisition of title to the Property by the Mortgagee, except that the Mortgagee may not pursue development pursuant to this Agreement until all delinquent and current fees and other monetary obligations due under this Agreement for the

portions of the Property acquired by the Mortgagee have been paid to City.

13.3 Transfer or Assignment. Subject to Section 13.5, Owner shall have the right to sell, transfer, or assign its rights and obligations under this Agreement (collectively, an "Assignment") in connection with a transfer of Owner's interest in all, any portion of, or any interest in the Property (the "Transferred Property"). No Assignment shall be made unless made together with the sale, transfer, or assignment of all or any portion of Owner's interest in the Property.

Within fifteen (15) business days after any Assignment, Owner shall notify City in writing of the Assignment and provide City with an Assignment and Assumption Agreement, in a form substantially similar to Exhibit "H", executed by the purchaser, transferee, or assignee (collectively, the "Assignee") to expressly and unconditionally assume all duties and obligations of Owner under this Agreement remaining to be performed at the time of the Assignment.

13.4 Effect of Assignment. Subject to Section 13.5 and unless otherwise stated within the Assignment, upon an Assignment:

13.4.1 The Assignee shall be liable for the performance of all obligations of Owner with respect to Transferred Property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

13.4.2 The owner of the Retained Property shall be liable for the performance of all obligations of Owner with respect to Retained Property, but shall have no further obligations with respect to the Transferred Property.

13.4.3 The Assignee's exercise, use, and enjoyment of the Transferred Property shall be subject to the terms of this Agreement to the same extent as if the Assignee were the Owner.

13.5 City's Consent. The City's consent shall not be required to an Assignment unless, at the time of the Assignment, Owner has

been determined to be in Major Default pursuant to Section 12 and the Major Default has not been cured. If Owner is in Major Default, City shall consent to any Assignment which provides adequate security to City, in the reasonable exercise of City's discretion, to guarantee the cure of the Major Default upon completion of the Assignment.

14. MISCELLANEOUS PROVISIONS.

14.1 Rules of Construction. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

14.2 Entire Agreement. This Agreement constitutes the entire understanding and agreement of City and Owner with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between City and Owner respecting the subject matter of this Agreement including, without limitation, the Original City Agreement.

14.3 Recorded Statement Upon Termination. Upon the completion of performance of this Agreement or its cancellation or termination, a statement evidencing completion, cancellation, or termination signed by the appropriate agents of City, shall be recorded in the Official Records of Orange County, California.

14.4 Project as a Private Undertaking. It is specifically understood by City and Owner that (i) the Project is a private development; (ii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property unless City accepts the improvements pursuant to the provisions of this Agreement or in connection with subdivision map approvals; and (iii) Owner shall have the full power and exclusive control of the Property, subject to the obligations of Owner set forth in this Agreement.

14.5 Incorporation of Recitals. Each of the Recitals set forth at the beginning of this Agreement are part of this Agreement.

14.6 Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify,

construe, limit, amplify, or aid in the interpretation, construction, or meaning of any of the provisions of this Agreement.

14.7 Consent. Where the consent or approval of City or Owner is needed to implement Development under this Agreement, the consent or approval shall not be unreasonably withheld, delayed, or conditioned.

14.8 Covenant of Cooperation. City and Owner shall cooperate and deal with each other in good faith and assist each other in the performance of the provisions of this Agreement.

14.9 Execution and Recording. The City Clerk shall cause a copy of this Agreement to be signed by the appropriate representatives of the City and recorded with the Office of the County Recorder of Orange County, California, within ten (10) days following the effective date of Ordinance No. 193, the ordinance adopting this Agreement. The failure of the City to sign and/or record this Agreement shall not affect the validity of and binding obligations set forth within this Agreement.

14.10 Delay for Events Beyond the Parties' Control. Performance by either Party of its obligations under this Agreement shall be excused, and the Term shall be extended, for periods equal to the time during which (1) litigation is pending which challenges any matter, including compliance with CEQA or any other local, state, or federal law, related in any way to the approval or implementation of all or any part of the New Development Plan. Any such extension shall be equal to the time between the filing of litigation, on the one hand, and the entry of final judgment or dismissal, on the other. All such extensions shall be cumulative; (2) any application by Owner for state or federal regulatory permits and/or approvals required for the Project has been pending more than one year after its submittal; or (3) a delay is caused by reason of any event beyond the control of City or Owner which prevents or delays performance by City or Owner of obligations under this Agreement. Such events shall include, by way of example and not limitation, acts of nature, enactment of new conflicting federal or state laws or regulations (example: listing of a species as threatened or endangered), judicial actions such as the issuance of restraining orders and

injunctions, delay in the issuance of bonds or formation of any Financing Districts, and riots, strikes, or damage to work in process by reason of fire, mud, rain, floods, earthquake, or other such casualties.

If City or Owner seeks excuse from performance, it shall provide written notice of such delay to the other within thirty (30) days of the commencement of such delay. If the delay or default, whether material or immaterial, is beyond the control of City or Owner it shall be excused, and an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon. Any disagreement between the Parties with respect to whether this Section 14.10 applies to a particular delay or default is subject to the filing by either Party of an action for judicial review of the matter, including requests for declaratory and/or injunctive relief.

14.11 Interpretation and Governing Law. In any dispute regarding this Agreement, the Agreement shall be governed and interpreted in accordance with the laws of the State of California. Venue for any litigation concerning this Agreement shall be in Orange County, California.

14.12 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

14.13 Estoppel Certificate. Within ten (10) business days following a written request by either of the Parties, the other Party shall execute and deliver to the requesting Party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured Major Defaults under this Agreement or that the responding Party alleges that specified (date and nature) Major Defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification, except as may be represented by the requesting Party and that

there are no uncured Major Defaults in the performance of the requesting Party, except as may be represented by the requesting Party. Owner shall pay to City all reasonable administrative costs incurred by City in connection with the issuance of estoppel certificates under this Section 14.13 prior to City's issuance of such certificates.

14.14 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

14.15 Future Litigation Expenses.

14.15.1 Payment to Prevailing Party. If either Party brings a legal or equitable proceeding against the other Party which arises in any way out of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and all other reasonable costs and expenses incurred in that proceeding.

14.15.2 Scope of Fees. Attorneys' fees under this Section shall include attorneys' fees on any appeal and in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the termination of this Agreement.

14.15.3 Limitation of Liability. Owner's obligations under this Agreement are solely those of Owner. In no event shall any present, past or future officer, director, shareholder, member, employee, partner, affiliate, manager, representative or agent of Owner (a "Related Party") have any personal liability, directly or indirectly, under this Agreement. Recourse in any way connected with or arising from this Agreement shall not be available against any Related Party

Owner and City have executed this Agreement on the dates set forth below.

CITY:

City of Lake Forest

By: _____
Mark Tettemer
Mayor

Date:

OWNER:

USA Portola Properties, LLC
a Delaware limited liability company,
Portola Project, LLC

California limited liability company,
Managing Member,

By: _____
Kim John Kilkenny
Vice President

Date:

ATTEST:

By: Martha Halvorson 07/01/08
for Sherry A.F. Wentz, CMC
City Clerk

APPROVED AS TO FORM:

By: _____
Scott C. Smith
City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Orange }

On _____ (Date) before me, Sherry A.F. Wentz, Notary Public (Here Insert Name and Title of the Officer),

personally appeared Mark Tettemer and Martha Halvorson (Name(s) of Signer(s))

_____,

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

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

WITNESS my hand and official seal.

Signature _____ (Signature of Notary Public)

SHERRY A.F. WENTZ
COMM. #1535819
NOTARY PUBLIC - CALIFORNIA
ORANGE COUNTY
My Comm. Expires Dec. 17, 2008

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agmt btw City of Lake Forest & USA Portola

Document Date: 07/01/08 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Mark Tettemer

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☒ Other: Mayor

Signer Is Representing: City of Lake Forest

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: Martha Halvorson

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☒ Other: Asst. City Clerk

Signer Is Representing: Cityclerk, City of Lake Forest

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego }

On July 24, 2008 (Date) before me, Donald J. Ross, Notary Public (Here Insert Name and Title of the Officer),
personally appeared Kim John Kilkenny (Name(s) of Signer(s))

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

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

WITNESS my hand and official seal.

Signature _____ (Signature of Notary Public)

DONALD J. ROSS
Commission # 1804851
Notary Public - California
San Diego County
My Comm. Expires Jun 29, 2012

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement/City of Lake Forest/USA Portola

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, 2008, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (seal)

_____

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, 2008, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (seal)

_____

EXHIBIT "A"

PORTOLA CENTER LEGAL DESCRIPTION

PARCEL A:

Parcels 9 through 14 of Parcel Map No. 84-121, as shown on a Map filed in Book 192, Pages 5 through 8 of Parcel Maps, records of Orange County, California.

EXCEPTING THEREFROM:

Tract No. 13334 as shown on a Map filed in Book 617, Pages 42 to 46; Tract No. 13335 as shown on a Map filed in Book 617, Pages 33 to 41; those portions of Saddleback Ranch Road and Glenn Ranch Road of Tract No. 13524, as shown on a Map filed in Book 639, Pages 11 to 15; Tract No. 13849, as shown on a Map filed in Book 639, Pages 16 to 22, all of Miscellaneous Maps, records of Orange County California.

ALSO EXCEPTING THEREFROM:

That portion described in "Irrevocable Offer of Dedication" recorded December 29, 1988 as File No. 88-679627 of Official Records of Orange County. Said offer was accepted by Resolution No. 88-1647 of the Orange County Board of Supervisors.

ALSO EXCEPTING THEREFROM:

That portion described in "Irrevocable Offer to Convey Real Property" recorded July 23, 1991 as Document No. 91-384977 of Official Records. Said offer was accepted by Resolution No. 03-334 of Orange County Board of Supervisors, a certified copy of which recorded November 25, 2003 as Document No. 2003-1422386 of Official Records.

PARCEL B:

Lots 8 through 13 of Tract No. 13849, as shown on a Map filed in Book 639, Pages 16 through 22, of Miscellaneous Maps, records of Orange County, California.

EXCEPTING THEREFROM that portion of Lot 9 described in Deed to the Irvine Ranch Water District recorded December 9, 1992 as Document No. 92-844000 of Official Records.

PARCEL C:

Parcel 5 as shown on Exhibit "B" attached to that certain Lot Line Adjustment No. LL 91-022, recorded June 12, 1991 as Document No. 91-298380 of Official Records.

EXHIBIT "B"

GENERAL PLAN AMENDMENT

[Executed GPA No. 2008-02 attaches here]

EXHIBIT "C"

PORTOLA CENTER AREA PLAN TABLE OF CONTENTS

Exhibit List

EXHIBIT "D"

CITY OF LAKE FOREST

LONG TERM FINANCING AND LAND SECURED DEBT POLICY

EXHIBIT "E"

COUNTY AND REGIONAL AGENCY FEES

EXHIBIT "F"[1]

PUBLIC BENEFITS

In addition to complying with the Project conditions of approval which are designed to mitigate the significant environmental impacts of the Project, Owner has committed by this Agreement to contribute to the development of certain "Public Benefits."[2] The Public Benefits consist of contributions toward the "Public Facilities" (consisting of the City Facilities, the School Facilities, and the LFTM Improvements) as described in this Exhibit "F" (collectively, "Owner's Facilities Obligations"). City shall have no obligation to construct the Public Facilities in any particular order or sequence, except as required by the EIR, and provided that City shall use LFTM Fees paid by Owner to construct the LFTM Improvements as they become necessary.

A. **City Facilities**. Owner shall make contributions towards the development of the City Facilities, as follows:

1. Sports Park, City Hall, and Community Center. Owner shall pay a fee in the amount of $27,365 (the "City Facilities Fee") for each Unit constructed as part of the Project, subject to adjustment and the fee credit described in subparagraph A.4 below. The City Facilities Fees shall be due concurrently with the issuance of the building permit for each Unit, unless a different schedule is mutually agreed upon by the City and Owner. Subject to the City's issuance of fee credits for land dedications under subparagraph A.2 below, the City may commit the remainder of the City Facilities Fees to construction of facilities on land dedicated by Owner or other OSA Landowners or on other land in the Public Facilities Area of Benefit.

2. As part of the Owner's obligations under this section, Owner shall provide for the dedication or acquisition of a park site as follows:

a) Portola Center Park Site. As a part of the First Tentative Map(s), Owner shall identify a park site location within Portola Center ("Portola Center Park Site") which shall consist of 13

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1 Capitalized terms used in this Exhibit F shall have the same meaning as those terms are given in the body of this Agreement.

2 In the case of the LFTM Program discussed below, the Public Benefits include Project mitigation and additional and/or accelerated improvements beyond Project mitigation which have been blended into a single improvement program.

contiguous net useable acres, consisting of an eight (8) acre sports park site component (the "Sports Park Site Component"), which acreage may be reduced by up to one (1) acre as described below, and a five (5) acre neighborhood park site component (the "Five-Acre Neighborhood Park Site Component"), as required and described further below.

In addition to the dedication of the Portola Center Park Site described above, Owner shall pay the Five-Acre Neighborhood Park Site Improvement Fee described in subparagraph A.3 below in the amount of $2.375 million prior to the issuance of the first building permit for the Project.

Concurrently with the recordation of "A" Map, Owner shall (a) make an irrevocable offer to dedicate the Portola Center Park Site to City, (b) receive a credit against its City Facilities Fee for the dedication of the Sports Park Site Component, calculated at $1,450,000 per net usable acre, subject to adjustment as described in subparagraph A.4, below; and (c) memorialize its support for the creation of a Financing District, if created by the City pursuant to Section 9.4 of this Agreement, to accelerate payment of that portion of Owner's City Facilities Fee attributable to development and improvement on the Sports Park Site Component (the "Sports Park Site Component Improvements") in the amount of $653,759 per acre designated in the First Tentative Map(s), subject to the adjustment as described in subparagraph A.4, toward the cost of developing and improving the Sports Park Site Component of the Portola Center Park Site.

Prior to the recordation of the "B" Map which includes the grading of the Portola Center Park Site, Owner shall have improved the Portola Center Park site to "superpad' condition (rough grading and utilities stubbed to boundaries of Portola Center Park Site). Owner may process "B" Map even though City has not accepted the irrevocable offer of dedication.

If Owner proposes to develop fewer than 930 residential units as a part of the First Tentative Map(s), the size of the Sports Park Site Component of the Portola Center Park Site shall be reduced by 0.00867 acre for each unit fewer than 930, up to one acre (a maximum reduction from 8 acres to 7 acres). If the Sports Park Site Component is reduced in this manner, the credit to the City Facilities

Fee for the Sports Park Site Component dedication and Sports Park Site Component Improvements shall be reduced accordingly.

b) Rados Park Site Option. Prior to the City's acceptance of the irrevocable offer to dedicate the Portola Center Park Site, Owner shall be allowed to substitute the Sports Park Site Component of the Portola Center Park Site with an irrevocable offer to dedicate the site shown on Attachment 2 to this Exhibit "F" (the "Rados Park Site"). If the City accepts the offer of dedication for the Rados Park Site, Owner shall not be required to dedicate the Sports Park Site Component originally offered for dedication, and Owner shall receive a credit for the acquisition and dedication of the Rados Park Site against its City Facilities Fee equal to the 10.7 net usable park acres of the Rados Park Site multiplied by $1,450,000, subject to adjustment as described in subparagraph A.4, below. Notwithstanding the foregoing, the irrevocable offer to dedicate may, in the Owner's sole and absolute discretion, provide for the reasonable phasing of delivery of the Rados Park Site to the City, which shall allow for the removal of sand and gravel by the Owner on the Rados Park Site prior to delivery.

In the event that Owner is unable to offer to dedicate the Rados Park Site, City may, in its sole discretion, upon terms and a cost reasonably acceptable to Owner, which shall not be less than the Rados Park Site's Fair Market Value, and upon Owner's provision of adequate security for costs that City may reasonably incur (the "Condemnation Security"), commence proceedings (the "Condemnation Proceedings") pursuant to the California Code of Civil Procedure to condemn the Rados Park Site. Owner shall pay all costs, including, but not limited to, appraisal fees, attorneys' fees and costs and consultants' fees and costs associated with the Condemnation Proceedings (the "Condemnation Costs") and the fair market value for the Rados Park Site as determined by the Condemnation Proceedings (the "Fair Market Value"). On the date that Owner has paid the Fair Market Value, Owner shall receive a credit against its City Facilities Fee equal to the Fair Market Value and Condemnation Costs. Owner's payment of the Fair Market Value shall constitute full satisfaction of any condition on the First Tentative Map(s) related to the dedication of the Rados Park Site, and Owner shall be allowed to record the "A" Map, regardless of whether the

Condemnation Proceedings have concluded. In the event that the Condemnation Costs are greater than the Condemnation Security at the conclusion of the Condemnation Proceedings, the difference shall be paid by Owner to City. In the event that the Condemnation Security is greater than the Condemnation Costs at the conclusion of the Condemnation Proceedings, the difference shall be credited to the Owner against its Facilities Fees. Notwithstanding the foregoing, City's obligation to condemn the Rados Park Site shall be subject to City's conducting of public hearings in accordance with all applicable provisions of law to determine whether to condemn such property. Nothing herein shall be construed to obligate the City to adopt a resolution of necessity. The City's use of the power of eminent domain is conditioned by law upon certain findings and determinations that the City Council in its sole discretion, must make in accordance with California Code of Civil Procedure sections 1240.030, 1240.040, and 1245.230.

c) Alternative Off-Site Park Site Option. Prior to the City's acceptance of the irrevocable offer to dedicate the Portola Center Park Site, Owner may propose to dedicate another park site not within the Property but within the City boundaries ("Off-Site Park") to substitute for the 8 acres (or the Remaining Net Useable Acreage) of the Portola Center Park Site, subject to the City's review and approval. If the City accepts the offer of dedication for the Off-Site Park, the offer to dedicate the 8 acres (or the Remaining Net Useable Acreage) of the Portola Center Park Site shall terminate, and Owner shall receive a credit for the dedication of the Off-Site Site against its City Facilities Fee equal to the net usable park acres of the Off-Site Site multiplied by $1,450,000, subject to adjustment as described in subparagraph A.4, below.

d) Location of Park Site. Owner shall be allowed to process, and the City may approve, alternate Tentative Map(s) with the City as a part of the First Tentative Map(s) process in order to provide flexibility regarding the location of the Portola Center Park Site or the Five-Acre Neighborhood Park. Specifically, if City accepts the irrevocable offer of dedication for the Rados Park Site, Owner shall be allowed to develop residential units on the site identified for the Portola Center Park Site, subject to the maximum number of residential units allowed under this Agreement, and shall also be

allowed to site the Five-Acre Neighborhood Park Site in a location other than the location of the Portola Center Park Site.

e) Timing of Credits. Owner shall receive the credits to the City Facilities Fee provided in this Agreement at the time that building permits are issued, subject to the adjustment as described in subparagraph A.4 below, such that the first Unit's City Facilities Fee of $27,365 and thereafter, each subsequent Unit's City Facilities Fee of $27,365, shall be reduced to zero until the then-existing credits have been exhausted.

3. Neighborhood Parks. In addition to Owner's dedication of land and/or payment of fees for the City Facilities described above, Owner shall dedicate to the City on the schedule set forth in the Public Facilities and Financing Plan, neighborhood parkland at a rate of three net useable acres per 1,000 residents, adjusted for the park land improvements created as described in Attachment 1 to this Exhibit "F." Of this parkland, Owner shall dedicate to the City one neighborhood park site of at least five (5) net useable acres (the "Five-Acre Neighborhood Park Site Component") no later than the recordation of Owner's "A" Map. Prior to the issuance of the first building permit for the Project, Owner shall pay the City a fee of $2.375 million (the "Five-Acre Neighborhood Park Site Improvement Fee") toward the cost of developing and improving the Five-Acre Neighborhood Park Site Component. The remaining neighborhood parkland dedicated by Owner shall be improved by Owner subject to the Neighborhood Parks Improvement Criteria, described in Attachment 1 to this Exhibit "F."[3]

4. General Provisions for City Facilities.

a) Escalator for Costs of City Facilities, Fees, and Credits. The City shall, on July 1st of each year, commencing in 2009, apply an inflation escalator to: (i) the City Facilities Fee described in subparagraphs A.1 above, to the extent that they remain unpaid and/or unfunded and unpaid by the Financing District; (ii) the fee for improvements on the Five-Acre Neighborhood Park Site, (iii) the Sports Park Facility Component, and (iv) the amount of credit provided against Owner's Facilities Fee Obligation per acre of land dedicated by Owner, until the date that the City accepts Owner's irrevocable offer of dedication or the relevant fee is paid, based upon

[3] For purposes of this Agreement, one residential unit shall be assumed to generate 2.91 residents.

the change in the Engineering News-Record (ENR) Building Cost Index for the Los Angeles area between the Effective Date and the date of the annual July 1adjustment. In the event that the ENR Building Cost Index ceases to be published, the City shall select a successor third-party index which is designed to reflect generally-accepted changes in the cost of construction in Southern California.

b) Title and Condition of City Facilities Sites. Any land dedicated or otherwise conveyed to the City for the City Facilities or onsite neighborhood parks shall: (i) be free and clear from all assessments, liens, and other monetary obligations or encumbrances, as shown by an American Land Title Association (ALTA) policy of title insurance; (ii) be delivered in "superpad" condition (consisting of rough grading with drainage approved by the City Engineer, all necessary utility infrastructure stubbed to property boundaries, adjacent street improvements completed, and any required environmental remediation completed); and (iii) have had all mining-related reclamation completed.

c) Maintenance of City Facilities. Owner shall provide the City with funds to pay for the Owner's proportionate share of the City's annual maintenance costs of the community center and sports park, with one of the following options: 1) Owner shall pay a fee in the amount of $760 for each residential unit concurrently with the issuance of the building permit for that residential unit; 2) Owner shall pay the costs through the formation of a Financing District for maintenance purposes. Notwithstanding Owner's selection of one of the preceding options, the City may, in lieu of either such option, add an improvement to the list of LFTM Improvements for Alton Parkway, notwithstanding Section 5.a of this Exhibit F, provided the cost of such added improvement does not increase the LFTM Fee by more than $760 per residential unit. Owner shall select one of these options at the time of Owner's first submission of a TPM or TTM for the Project.

5. LFTM Improvements.

a) Payment of LFTM Fees. Owner agrees that it shall pay the LFTM fees applicable to the Property, as provided in the LFTM Ordinance. Payment may be made as provided in Section 9.4 of this Agreement. City shall not add new improvements to the list of

LFTM Improvements, provided that City may substitute less expensive alternative improvements for LFTM Improvements. City shall use LFTM fees paid by Owner to construct the LFTM Improvements, subject to City's authority to substitute less expensive alternative improvements for LFTM Improvements. The City's failure to timely complete the acquisitions or improvements shall not be cause for the City to refuse to issue Subsequent Development Approvals for the Project.

b) Notice of LFTM Program to Developers and Purchasers of the Property. Owner shall include notice of the LFTM Program obligations pursuant to this Agreement in each instrument conveying any portion of the Property to a developer, merchant builder, or corporate or institutional purchaser of a portion of the Property.

c) Subsequent Improvements Required by CEQA. If, during subsequent environmental review of the Project or Project components, the City determines under subsections (a)(2) or (a)(3) of Section 15165 of the CEQA Guidelines that additional traffic mitigation not included in LFTM is required, the City shall either fund those improvements or adopt a statement of overriding considerations finding that the Project benefits offset and outweigh the unanticipated impacts.

d) Effect of Third-Party Funding for Traffic Improvements on LFTM Fee. The City shall make a reasonable effort to obtain third-party funding for LFTM Improvements, provided that the City shall not be obligated to seek such funding to the extent that obtaining funding for LFTM Improvements would reduce the funding available to the City for non-LFTM transportation improvements, and shall reduce the costs of the LFTM Improvements to reflect any funding received for LFTM Improvements from the State of California, County of Orange, North Irvine Transportation Mitigation Program (NITM), voter-approved transportation funding programs (not including assessment districts, Community Facilities Districts, or other financing vehicles established to provide funds for improvements and other obligations of the Opportunities Study landowners), or the Foothill Circulation Phasing Plan ("FCPP").

B. **School Facilities**. Owner shall comply with its obligations under the agreement between Owner and the Saddleback Valley Unified School District. Owner's failure to comply with such agreement shall constitute a Major Default for purposes of this Agreement.

ATTACHMENT 1 TO EXHIBIT "F"

Neighborhood Parks Improvement Criteria

Many of the facilities located within neighborhood parks are associated with active recreation. Neighborhood parks should contain consolidated parcels with appropriate area devoted to active recreation such as ball fields, multi-purpose fields and open turf, game courts, tot lots and picnic facilities.

All such neighborhood parks shall be completed on the schedule set forth in the Public Facilities Phasing and Financing Plan. Owner shall receive credit against the neighborhood parks dedication requirement equal to 0.15 acres for each acre of parkland so dedicated and improved (or funded for improvements) in accordance with the specifications set forth in this Attachment 1. Owner may hire a consultant to assist with the design of the required neighborhood parks, but the City shall make the final determination concerning the design of the parks. All onsite neighborhood parks shall be planned and reviewed under the City's park planning process, and shall meet the criteria described below.

Neighborhood parks should be located near the center of a neighborhood. Easy access should be provided to pedestrians, bicyclists, and maintenance and public safety vehicles. Neighborhood parks should not be separated from its user population by major highway, railroads, or other untraversable obstacles. A neighborhood park is encouraged to be situated adjacent to or near schools, greenbelts, open space linkages, or other community open space/recreational facilities to facilitate an integrated open space system. Although neighborhood parks are designed to attract from a smaller service radius, they will also be utilized by residents who may live outside of the immediate neighborhood. This may be particularly true where there are limited recreational facilities, such as in Lake Forest.

All Neighborhood Parks must include:

- Minimum Improvements:
  - Construction water, WQMP, BMPs
  - Temporary Utilities
  - Site Grading, Rough
  - Site Grading, Fine
  - Site Drainage
  - Utility Connections

    - Hardscape, Sidewalks, minimum 5' wide, concrete
    - Hardscape, Mow-strip, concrete
    - Turf, sod
    - Shrubs, minimum 5 gallon size
    - Trees, minimum 15-gallon size
    - Mulch/Soil Preparation
    - Automatic irrigation system with computer and communications
    - Automatic security lighting system with communications
- ADA universal signage
- City standard park identification sign and park rules signs
- Parking area with van accessible ADA parking (for sites 3 acres or greater)
- ADA accessible path of travel
- Concrete Pavement
    - Under tables and seating
- Athletic field and/or courts
    - 1 Multi-Purpose Field (for sites 3 acres or greater)
    - 1 Tennis Court, Volleyball Court or Basketball Court
- Spectator seating
- Tables, benches, trash cans, drinking fountains, and barbecues
    - 1 group BBQ with 4 tables or 2 family BBQs with 2 tables per BBQ
    - 1 drinking fountain per field, court and picnic area
    - 1 Shade Structure for group recreation purposes, minimum 50% shade (for sites 3 acres or greater)
- Play lots appropriate by age group
    - 1 Tot Area
    - 1 ages 6 to 12 Play area (for sites 3 acres or greater)
    - 1 adjacent bench

For neighborhood park sites greater than 0.5 acres but less than three acres, the following criteria will apply to the area credited for parkland:

- Must be open all Lake Forest residents, not restricted to any private use.
- No slopes greater than 6:1
- No vertical elevation drop greater than 3 feet
- Minimum of 1 hard court active recreation or passive-use hardscape user amenity

No park areas less than 0.5 acres will be given neighborhood park credit. Proposed neighborhood parks ranging in size from 0.5 to 3 acres shall be reviewed and approved on a case-by-case basis by the Parks and Recreation Commission. Neighborhood park credit may be given based upon the precise design and amenities included, the relationship of the park to the surrounding residential development, other private recreation areas, open space and trail linkages. To the extent that a project includes park facilities that are not open to the public, but are open only to residents of the project, such facilities shall be given neighborhood park credit at the rate of 0.25 acres of credit per acre of park facilities, provided that such facilities otherwise meet the neighborhood parks improvement criteria set forth herein and meet the criteria listed in Section 7.38.050 of the Lake Forest Municipal Code.

ATTACHMENT 2 TO EXHIBIT "F"

DESCRIPTION OF OFFSITE LAND FOR SPORTS PARK (RADOS SITE)

ATTACHMENT 3 TO EXHIBIT "F"

SCHOOL FACILITIES FUNDING AND MITIGATION AGREEMENT

Recording Requested by
and when recorded mail to:

Saddleback Valley Unified School District
25631 Peter Hartman Way
Mission Viejo, CA 92691
Attn: Assistant Superintendent of Business Services

Space above this line for Recorder's use only.
Exempt from recording fee pursuant to Gov. Code § 6103.

SCHOOL FACILITIES FUNDING AND MITIGATION AGREEMENT BY AND BETWEEN SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT AND USA PORTOLA PROPERTIES, LLC

THIS SCHOOL FACILITIES FUNDING AND MITIGATION AGREEMENT ("Mitigation Agreement") is made and entered into as of this 14 day of MAY, 2008 by and between SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT of Orange County, California ("District"), a school district organized and existing under the laws of the State of California ("State") and USA PORTOLA PROPERTIES, LLC, a California limited liability company ("Portola" or "Owner"). The District and Owner may hereinafter be referred to individually as "Party" and collectively as "Parties."

RECITALS

A. The District is responsible for providing classroom capacity for students in kindergarten through the twelfth grade ("K-12") who reside within the District.

B. The City of Lake Forest (the "City") is considering a general plan amendment (the "GPA") for approximately 838 acres of land located within both the City and the 65 dB CNEL Noise Contour boundaries impacted by the former USMC Air Station at El Toro, commonly referred to by the City as the Opportunities Study Area (the "OSA"). The City General Plan Amendment ("GPA"), if adopted by the City, will change the permitted uses for all properties within the GPA boundaries from predominantly commercial to predominantly residential.

C. Portola is the owner of the undeveloped property within the OSA which is described in Exhibit A and depicted on Exhibit B (the "Property"). If the GPA is approved, Portola intends to develop the Property with up to 930 residential dwelling units (each a residential dwelling unit within the OSA, the "Unit") and approximately 40,000 square feet of commercial and retail space, as well as possible governmental and park uses, all as described in Exhibit C (the "Project").

D. The purpose of this Mitigation Agreement is to provide the District with funds to be used for improvements of school facilities. (collectively, the "School Facilities").

E. The funds for School Facilities represent a substantially greater investment by Portola in school facilities than is required by California law.

F. The District and Owner have agreed that given the uncertainties of the timing and amount of State funding for the School Facilities, it is in their mutual best interest to enter into this Mitigation Agreement to provide a local source of funding for the School Facilities in excess of the amount Owner would otherwise be required to provide in connection with the development of the Property.

G. The District acknowledges that it has an obligation to utilize its best efforts to pursue funding from the State for the School Facilities ("State Funding") to the extent herein provided.

H. Portola's performance of this Mitigation Agreement is intended to constitute complete mitigation of the impact of the development of the Property upon District in lieu of any fees which the District might impose in connection with such development pursuant to Education Code Section 17620 or Government Code Sections 65970, et seq. and 65995, et seq. or any other applicable law and in lieu of any other school facilities requirements which the District, the County of Orange, the City of Lake Forest or any other Public Agency might be authorized to impose pursuant to applicable existing or future law.

I. The Parties acknowledge that this Mitigation Agreement supersedes the "Settlement Agreement and Mutual Release" entered into by and between the Building Industry Association of Southern California, Inc.; Baldwin Building Company; Village Properties; Baldwin Building Contractors and the Saddleback Valley Unified School District; and Peter A. Hartman, dated on or about October 30, 1990, the "Agreement" entered into by and between Village Properties; Baldwin Building Contractors and the Saddleback Valley Unified School District, dated on or about December 12,1994, and the "School Fees Agreement (Portola Hills)" entered into by and among USA Petroleum Properties, LLC and the Saddleback Valley Unified School District, dated as of July 8, 1997.

AGREEMENT

1. Incorporation of Recitals. All of the foregoing Recitals are correct and are incorporated in this Mitigation Agreement by reference.

2. Purposes of Mitigation Agreement. The purpose of this Mitigation Agreement is to augment funding for the School Facilities. By entering into this Mitigation Agreement and complying with its terms, Portola shall be deemed to have fulfilled and mitigated its entire obligation to assist in funding School Facilities to house K-12 students enrolled in District schools and residing within the boundaries of the Project (the "Project Students") to be generated by development within the boundaries of the Property. Project residential Units (as defined in

this Mitigation Agreement), non residential property, or any other development undertaken within the boundaries of the Property, regardless of the size and type actually constructed, will be fully mitigated and not subject to any school fees or other financial obligation owing to the District, except as otherwise provided for in this Mitigation Agreement.

3. Formation of CFD. The Parties intend that a Community Facilities District ("CFD") will be formed by the City to finance the School Facilities and other public improvements to be provided in conjunction with development of the Project, the specific parameters of such CFD financing are anticipated to be set forth in a Development Agreement to be entered into between Portola and the City. Portola shall petition the City for the formation of the CFD in accordance with the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (Government Code Section 53311, et seq.) (the "Act") and this Mitigation Agreement. The Parties will cooperate to the maximum extent possible in the formation of the CFD.

4. Alternative to City Formation. If, for any reason, (i) the CFD is not formed by the City, (ii) a CFD formed by the City does not include all of the required funding for the School Facilities, or (iii) the City does not adopt a resolution of formation consistent with this Mitigation Agreement before the issuance of a building permit for the first Unit within the Project, then, at the option of the District, either:

(a.) The District shall form a CFD sufficient to fully finance the financial obligations of the Owner set forth in Sections 7 and 8 of the Mitigation Agreement; or

(b.) This Mitigation Agreement shall terminate and the Project shall be subject to statutory school fees only.

Should the District elect to form a CFD pursuant to Section 4(a) above, such CFD shall be subject to the CFD parameters set forth in Exhibit D.

5. Joint Community Facilities Agreement. The District shall cooperate to enter into a Joint Community Facilities Agreement (the "JCFA") by and among City, District and Portola to authorize funding of the School Facilities through the City CFD. The JCFA shall be consistent with this Mitigation Agreement and District shall reasonably cooperate to allow the terms of the JCFA to comply with the CFD parameters agreed upon between Owner and the City or Owner and the District, as applicable. District shall cooperate to enter into the JCFA prior to formation of the City CFD.

6. Covenants. The District will issue within a 30 day period from a request by Owner on a timely basis (i) a certificate issued by the District pursuant to Education Code Section 17620(b) acknowledging the fact that the recipient thereof has complied with all requirements of the District for the payment of statutory school fees/alternative school facility fees/mitigation payments and (ii) a certificate issued by the District acknowledging that adequate provisions have been made for School Facilities (the "Certificate Of Compliance") which are sought by the Owner or its successors and assigns for any Unit, non residential property or any other development undertaken within the boundaries of the Property. Therefore, except as expressly provided with this Mitigation Agreement, and provided that Portola is not in breach of

this Mitigation Agreement, the District covenants that, with respect to any present or future development within the boundaries of the Property, it will not under any circumstances or at any time:

(a.) exercise any power or authority (whether under Section 17620 of the California Education Code or any other provision of law) to levy or impose a fee, charge, dedication, or other requirement for the purpose of providing, funding, or financing the School Facilities;

(b.) require the City or any other governmental entity to exercise or cooperate in the exercise of, the power under Title 7, Division 1, Chapter 4.7 of the California Government Code (commencing with Section 65970) or any other provision of law, to require the dedication of land, the payment of fees in lieu of the dedication of land, or both for School Facilities.

(c.) oppose any development within the boundaries of the Property on the basis of inadequate School Facilities;

(d.) seek mitigation or conditions of approval of any type for any development within the boundaries of the Property, including, but not limited to, mitigation or conditions to require the payment of developer fees or other money, the dedication of land, or the application of an assessment or requirement of any nature against Portola or any portion of the Property, even if otherwise permitted by the present or future State law, rulings, regulations, or court decisions if any of the proceeds or such assessment or requirement will be used to finance or fund the School Facilities;

(e.) issue bonds (excluding CFD bonds under the Act pursuant to this Mitigation Agreement), or incur any other form of indebtedness, payable from taxes or assessments of any kind (other than the District's portion of the existing property taxes) levied on the Property, the proceeds of which are to be used in whole or in part, directly or indirectly, for funding or financing the School Facilities until such time as the Units approved and to be constructed have been constructed and sold. The limitation contained in this clause (e) shall not be applicable to levying of: (1) *ad valorem* real property taxes, or (2) District wide local general obligation bonds taxes or taxes from a school facilities improvement district with respect to real property within the District's boundaries or taxes or assessments which are necessary for new school facilities or the rehabilitation or reconstruction of existing school facilities;

(f.) levy special taxes, require prepayment of special taxes or seek payment of any type from the Property relating to the District's Community Facilities District No. 86-1.

7. Mitigation Amounts and Funding of School Facilities.

(a.) *Mitigation Amounts.* Owner shall be responsible for payment to the District in the amount of $8,410 per Unit payable no later than the issuance of the building permit for such Unit.

(b.) *Source of Payment.* The mitigation amounts shall be paid by Owner in cash or from CFD bond proceeds. If Owner paid the mitigation amount in cash and CFD bond proceeds are subsequently paid to District, Owner shall be reimbursed for such cash payments of mitigation amounts to the extent received by District from CFD bond proceeds. If CFD bond proceeds are available and are paid to the District as an advance payment for mitigation amounts not yet due, then such amounts shall serve as a corresponding credit toward future mitigation amounts required to be paid by the Owner based on the mitigation amount at the time of receipt of CFD funds by the District.

(c) *Use of Mitigation Amounts.* The District agrees that the mitigation amounts paid by Owner will be spent on School Facilities within the boundaries of the City.

8. Portola Hills Elementary School Repairs. In addition to and separate from the mitigation amounts identified in Section 7. the Owner shall pay to the District two million nine hundred thousand dollars ($2,900,000) at the time of the first residential building permit issued within the Project for modernization of the Portola Hills Elementary School facilities as recommended in the Stoney Miller Consultants, Inc., September 18, 2006 report entitled Third Party Review of Geotechnical Issues. The District agrees to make the recommended repairs to the extent that funding is available and as soon as reasonably feasible taking into consideration the process necessary for the State of California to review improvement plans or the time to secure State grant funding.

9. State Funding.

(a.) *Pursuit of State Funds.* The District shall use its best efforts to apply for and secure all reasonably available State and federal funding to provide additional funding for the School Facilities. The District will continue to apply for State and federal funding until the District determines that receipt of such funding is no longer reasonably practicable for the School Facilities. In the event the District determines that a potential source of funding is not reasonably practicable to the District, the District shall explain such reasons to Owner. The District shall reasonably consider funding sources proposed by Owner, however, the District reserves the right to determine if such proposed funding source is reasonably practicable to the District.

(b.) *Use of State Funds.* The District shall maintain a separate accounting of all State funds received with respect to the School Facilities, and shall provide an annual report to Owner of all State funds received and State funding used to fund the School Facilities until all the School Facilities are constructed.

10. Contingent Upon Approval of GPA. This Mitigation Agreement shall become effective only after the GPA and zone change have been approved by the City and all

appeal periods have expired without challenge. Should all or any part of the GPA be invalidated by a court of law, Owner may, at its sole option, terminate this Mitigation Agreement at any time between (i) the date of the order or judgment which creates that invalidation (the "Judgment Date") and (ii) 180 days after the expiration of the time during which a party may appeal that judgment or order or the termination of all appeals from that judgment or order, whichever comes later.

11. Representations, Warranties and Covenants of the District.

The District represents, warrants, and covenants with the Owner that:

(a.) The District is a school district organized and operating pursuant to the Constitution and laws of the State and has all necessary power and authority to enter into and perform its duties under this Mitigation Agreement and, when executed and delivered by the Parties, this Mitigation Agreement will constitute the legal, valid, and binding obligation of the District enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, or other laws affecting enforcement of creditors' rights generally.

(b.) The execution and delivery by the District of this Mitigation Agreement and compliance by the District with its provisions will not conflict with, or constitute a violation of or default under, the Constitution of the State or any existing law, charter, ordinance, regulation, decree, order or resolution applicable to the District, and will not conflict with or result in a violation or breach of, or constitute a default under, any contract, agreement, indenture, mortgage, lease or other instrument to which the District is subject or by which it is bound.

(c.) To the best knowledge of the District there is no action, suit, or proceeding of any court or governmental agency or body pending or threatened against the District in any way contesting or affecting the validity of this Mitigation Agreement or contesting the powers of the District to enter into or perform its obligations under this Mitigation Agreement or in which a final adverse decision could materially adversely affect the operations of the District or the consummation of the transactions contemplated by this Mitigation Agreement.

(d.) The District is not in breach of or default under any applicable law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or is otherwise subject, which breach or default would materially adversely affect the District's ability to enter into or perform its obligations under this Mitigation Agreement, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument and which would materially adversely affect the District's ability to enter into or perform its obligations under this Mitigation Agreement.

12. Representations, Warranties, Covenants of Owner.

Owner represents, warrants, and covenants with the District that:

(a.) Owner has all necessary corporate power and authority to enter into and perform its duties under this Mitigation Agreement and, when executed and delivered by the Parties, this Mitigation Agreement will constitute the legal, valid, and binding obligation of Owner, enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, or other laws affecting enforcement of creditors' rights generally.

(b.) The execution and delivery by Owner of this Mitigation Agreement and compliance by Owner with its provisions will not conflict with, or constitute a violation of or default under, the Constitution or laws of the State of California, or any existing law, charter, ordinance, regulation, decree, order or resolution applicable to Owner, and will not conflict with or result in a violation or breach of, or constitute a default under, any agreement, indenture, mortgage, lease, or other instrument to which Owner is subject or by which it is bound.

(c.) Owner will provide written notice to merchant builders or other successors or assigns of Owner of the existence of this Mitigation Agreement and their obligation to be bound by its terms.

(d.) Owner will not sue the District or willfully join in any lawsuit or actively participate in any lawsuit against the District regarding the validity of the CFD once it has been established, provided that it has been established in accordance with this Mitigation Agreement. This Mitigation Agreement shall not, however, prevent Owner from challenging in any manner (i) the levy of special taxes, if that levy is not in accordance with the Act or the applicable rate and method of apportionment of special taxes, or (ii) the application of proceeds of bonds, if such proceeds are not applied in accordance with this Mitigation Agreement.

(e.) Owner will cooperate with the District in the District's applications for State funds relating to the School Facilities.

13. Assignability of Mitigation Agreement. All of the covenants, stipulations, promises, and agreements contained in this Mitigation Agreement by or on behalf of, or for the benefit of, either of the Parties shall bind or inure to the benefit of the successors and assigns of the respective Parties.

14. Binding on Successors; No Third Party Beneficiaries. This Mitigation Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto. This Mitigation Agreement is entered into solely for the benefit of the Parties and the successors, transferees and assigns of all Parties. Other than District and Owner and their successors, transferees and assigns, no third person shall be entitled, directly or indirectly, to base any claim or to have any right arising from, or related to, this Mitigation Agreement.

15. Binding on Entire Agreement. This Mitigation Agreement contains the entire agreement and understanding concerning the funding of school facilities to house students generated by the development of the Project and supersedes and replaces all prior negotiations and proposed agreements, written and oral, except as they are incorporated into this Mitigation Agreement. The Parties acknowledge that neither the other Party nor its agents nor attorneys have made any promise, representation or warranty whatsoever, express or implied, not contained herein to induce the execution of this Mitigation Agreement. Each Party further and acknowledges that this Mitigation Agreement not been executed in reliance upon any promise, representation or warranty not contained herein.

16. Amendments Must Be In Writing. This Mitigation Agreement may not be amended, except by a writing signed by all of the Parties. The Parties recognize that it may be necessary to make revisions to this Mitigation Agreement after execution by the Parties. Therefore, the District delegates to the Superintendent the authority to approve amendments to this Mitigation Agreement which do not substantially affect the terms of this Mitigation Agreement.

17. Disputes To Be Arbitrated. The Parties desire to resolve any disputes as to the meaning of any portion of this Mitigation Agreement or the rights or obligations of District or Owner under this Mitigation Agreement as quickly as possible. Therefore, any such disputes shall be resolved by binding arbitration conducted by a mutually agreed upon arbitrator. If District and Owner are unable to agree on the arbitrator within thirty (30) days of the receipt of a request for arbitration, they shall request that the presiding judge of the Orange County Superior Court designate one. District and Owner shall each pay one-half the cost of the arbitration and each shall be responsible for its own attorneys' fees and costs as to any such arbitration.

18. Recovery of Litigation Expenses, Including Attorneys' Fees. Except as provided in Section 17, if it becomes necessary to enforce any of the terms of this Mitigation Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and other costs of litigation in addition to any other relief to which it may be entitled.

19. Interpretation Guides. In interpreting this Mitigation Agreement, it shall be deemed that it was prepared by the Parties jointly and no ambiguity shall be resolved against either Party on the premise that it or its attorneys were responsible for drafting this Mitigation Agreement or any provision thereof. Headings used in this Mitigation Agreement are for convenience and ease of reference only and are not intended nor may be construed as a guide to interpret any provision of this Mitigation Agreement.

20. Due Authority of Signatories to Execute Agreement. Each individual signing this Mitigation Agreement warrants and represents that he or she has been authorized by appropriate action of the Party which he or she represents to enter into this Mitigation Agreement on behalf of the Party.

21. Due Notices. All notices, demands and between the Parties shall be given by personal delivery, registered or certified mail, postage prepaid, return receipt requested, Federal Express or other reliable private express delivery, or by facsimile transmission. Such notices, demands or communications shall be deemed received upon delivery if personally served or sent

by facsimile or after three (3) business days if given by other approved means as specified above. Notices, demands and communications shall be sent:

To District:	SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT 25631 Peter Hartman Way Mission Viejo, CA 92691 Fax No.: (949) 454-1039 Attn: Assistant Superintendent of Business Services
With a copy to:	BOWIE, ARNESON, WILES & GIANNONE 4920 Campus Drive Newport Beach, CA 92660 Fax No.: (949) 851-2014 Attn: Wendy Wiles
To Owner:	USA PORTOLA PROPERTIES, LLC 610 W. ASH STREET, SUITE 1500 SAN DIEGO, CA 92101 Fax No.: 619) 234-4088

22. Time. Time is of the essence of each and every term, provision, and condition of this Mitigation Agreement.

23. SB 165 Disclosure. The Parties recognize that California SB 165, Chapter 535 of the Statutes of 2000, effective on January 1, 2001, provides disclosure and reporting requirements for any local bond measure that is subject to voter approval and which would provide for the sale of the Bonds by a local agency. Owner agrees to fully and completely cooperate with District and CFD in meeting the requirements of SB 165.

24. California Law Governs Mitigation Agreement. This Mitigation Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California.

25. Counterparts. This Mitigation Agreement may be signed in one or more counterparts which, taken together, shall constitute one original document.

26. Exhibits. All Exhibits attached hereto are incorporated into this Mitigation Agreement.

27. Recordation. Upon execution hereof, this Mitigation Agreement may be recorded by District.

[Remainder of page is blank.]

IN WITNESS WHEREOF, this Mitigation Agreement is agreed and entered into as of the date first written above.

SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT

By: _____
_____, Assistant Superintendent of Business Services

Owner:
USA Portola Properties, LLC
A Delaware limited liability company,
Portola Project, LLC

California limited liability company
Managing Member

By: _____
KIM KILKENNY
Vice President

[PLEASE HAVE ALL SIGNATURES NOTARIZED]

APPROVED AS TO FORM:

BOWIE, ARNESON, WILES & GIANNONE,
Legal Counsel to the SADDLEBACK
VALLEY UNIFIED SCHOOL DISTRICT

By: _____

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On July 24, 2008 before me, Treva A. Cutts, Notary Public personally appeared Kim Kilkenny, who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/the~~ir signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

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

WITNESS my hand and official seal.

TREVA A. CUTTS
Commission # 1530583
Notary Public - California
San Diego County
My Comm. Expires Nov 27, 2008

Signature Treva A. Cutts (Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of ORANGE

On July 25, 2008 (Date) before me, CHRISTINE RAMEY, Notary Public (Here Insert Name and Title of the Officer)

personally appeared STEPHEN L. MCMAHON (Name(s) of Signer(s))

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

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

WITNESS my hand and official seal.

Signature Christine Ramey (Signature of Notary Public)

CHRISTINE RAMEY
Commission # 1740965
Notary Public - California
Orange County
My Comm. Expires Apr 22, 2011

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

WITNESS my hand and official seal.

Signature _____ (SEAL)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PARCEL A:

Parcels 9 to 14 of Parcel Map No. 84-121, as shown on a Map filed in Book 192, Pages 5 to 8 of Parcel Maps, records of Orange County, California.

EXCEPTING THEREFROM:

Tract No. 13334 as shown on Map filed in Book 617, Pages 42 to 46; Tract Nos. 13335 as shown on a Map filed in Book 617, Pages 33 to 41; those portions of Saddleback Ranch Road and Glenn Ranch Road of Tract No. 13524 as shown on a Map filed in Book 639, Pages 11 to 15; Tract No. 13849 as shown on a Map filed in Book 639 Pages 16 to 22; all of Miscellaneous Maps, records of Orange County, California.

ALSO EXCEPTING THEREFROM:

That portion described in "Irrevocable Offer of Dedication" recorded December 29, 1988 as File No. 88-679627, of Official Records of Orange County. Said offer was accepted by Resolution No. 88-1647 of the Orange County Board of Supervisors.

ALSO EXCEPTING THEREFROM

That portion described in "Irrevocable Offer to Convey Real Property" recorded July 23, 1991 as Document No. 91-384977 of Official Records. Said offer was accepted by Resolution No. 03-334 of Orange County Board of Supervisors, a certified copy of which recorded November 25, 2003 as Document No. 2003-1422386 of Official Records.

PARCEL B:

Lots 8, 9, 10, 11, 12 and 13 of Tract No. 13849, as shown on a Map filed in Book 639, Pages 16 to 22 inclusive, of Miscellaneous Maps, records of Orange County, California.

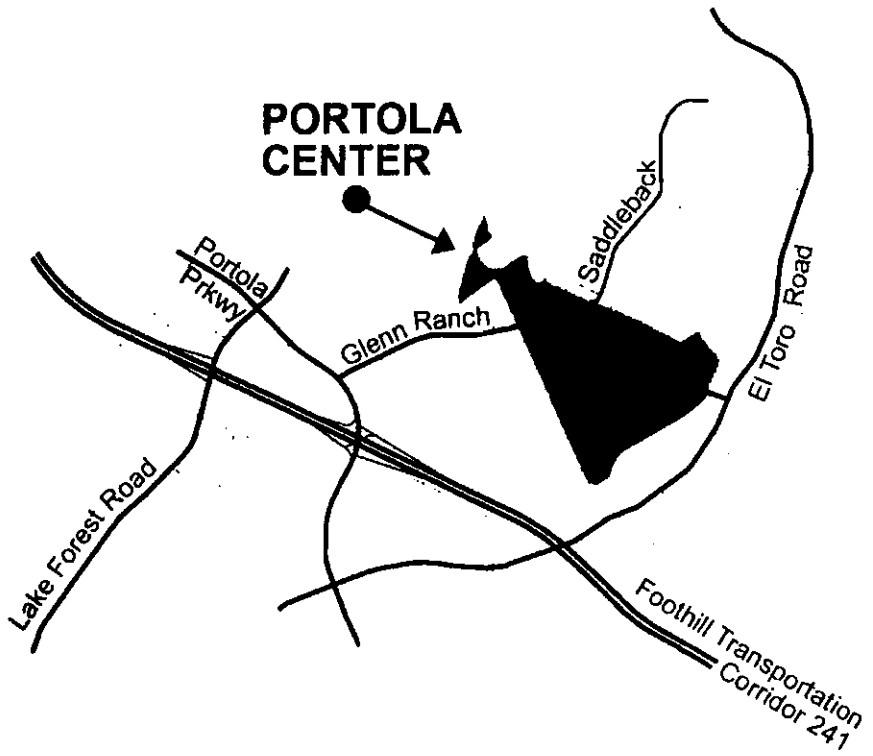
ALSO EXCEPTING from said Lot 9 that portion described in the deed to the Irvine Ranch Water District recorded December 9, 1992 as File No. 92-844000, of Official Records.

PARCEL C:

Parcel 5 as shown on Exhibit "B" attached to that certain Lot Line Adjustment No. LL 91-022 recorded June 12, 1991 as File No. 91-298380, of Official Records of Orange County, California.

EXHIBIT B

MAP OF PROPERTY



Portola Center
Vicinity Map

EXHIBIT C
PROJECTDESCRIPTION

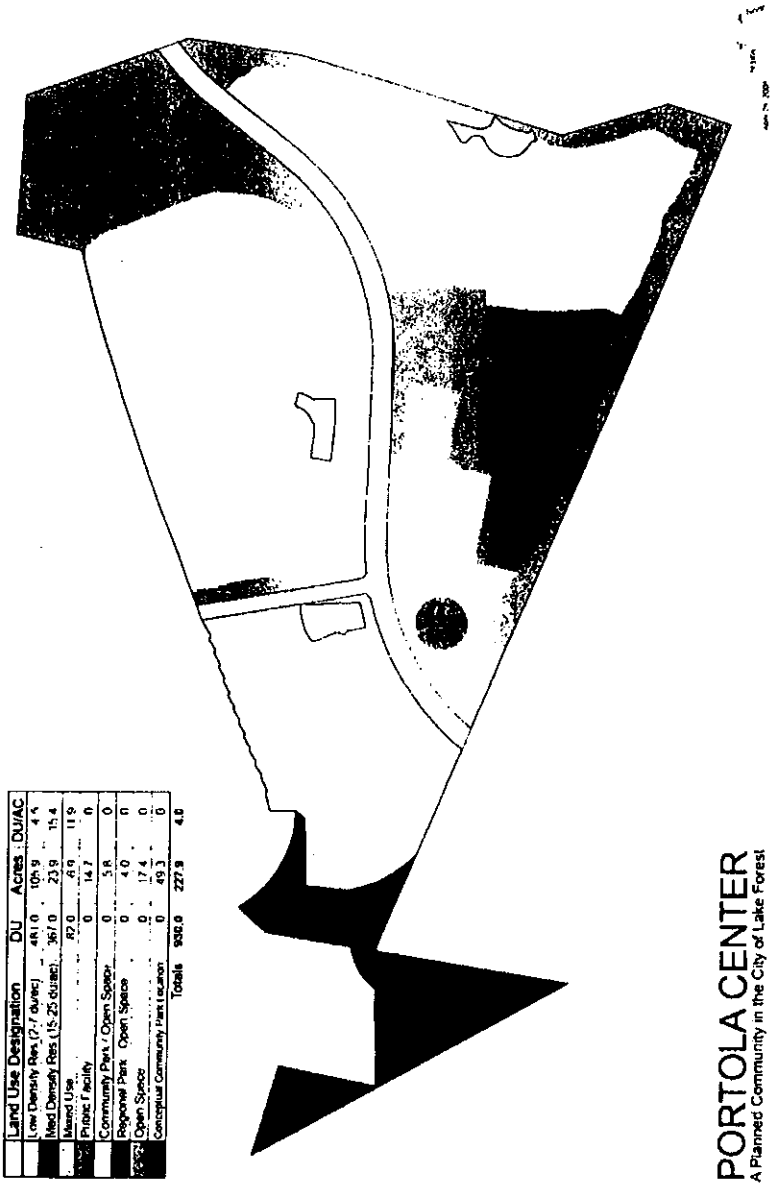


EXHIBIT D

CFD PARAMETERS

1) Community Facilities District ("CFD") shall encompass Owner's Property and may include multiple improvement areas corresponding to the development phases of the Owner's Project.

2) One or more series of bonds shall be issued by the CFD. A minimum of 3 to 1 value-to-lien ratio shall be required to issue bonds. If Project does not satisfy the minimum 3 to 1 value-to-lien requirement, then Owner may choose to request lead agency to:

   a) issue a subsequent series of bonds such that the current bond issue meets the value to lien requirement,

   b) post a letter of credit to cover the portion of the CFD bonds not supported by the value to lien requirement, or

   c) escrow a portion of the CFD bonds not supported by the value to lien requirement.

3) If the City is the CFD lead agency, the CFD shall fund certain City priority improvements including sports park land, sports park improvements and some LFTM improvements. District's School Facilities shall have subordinated priority to the City priority improvements. If Owner advances monies before CFD bond proceeds are paid to the District to fund school mitigation amounts, then Owner shall be reimbursed for such advances when CFD bond proceeds are paid to the District for funding of School Facilities.

4) Other CFD terms, special taxes and CFD bond sizing criteria shall consist of the following:

   a) The special taxes shall be levied in the following priority to satisfy the total annual "special tax requirement" of each CFD or improvement area:
      i) First, from "Developed Property" (i.e., parcels with building permits issued prior to May 1 of the preceding fiscal year);
      ii) Second, from "Approved Property" (i.e., parcels within a final map recorded prior to January 1 of the prior fiscal year); and
      iii) Third, from "Undeveloped Property" (i.e., all other taxable property).

   b) Developed Property special tax categories shall be based on house square footage, lot size, density ranges or other acceptable categorization elected by the Owner.

   c) CFD bonds shall have a minimum 30 year term.

   d) Special taxes may be levied for up to 40 years.

   e) At the Owner's election, special tax amounts will escalate at a rate of 2% per year and debt service on associated CFD bonds will escalate accordingly.

f) Each bond issue shall include up to 24 months capitalized interest or, at the Owner's election, a lesser amount.

g) $25,000 per year priority administrative expense for each CFD with a maximum escalation of 2% per year.

h) Bonds to be sized based on maximum 110% debt service coverage ratio plus priority administrative expense.

i) Up to 2% total property tax rate, at the Owner's election.

j) Prior to a bond issue, special taxes shall be levied on Developed Property to directly fund the CFD eligible facilities, but not on Approved Property or Undeveloped Property.

k) After a bond issue, special taxes shall be levied on Developed Property in excess of that amount required to pay CFD administrative expenses and debt service on outstanding bonds and applied to directly fund additional costs of CFD eligible facilities.

EXHIBIT "G"

AFFORDABLE HOUSING IMPLEMENTATION PLAN

[The Affordable Housing Implementation Plan is attached on the following pages.]

OPPORTUNITIES STUDY
AFFORDABLE HOUSING IMPLEMENTATION PLAN

A. Definitions.

1. **"Affordable Units"** means residential units, whether attached or detached, for sale or for rent, which are affordable to Very Low Income Households, Low Income Households, or Moderate Income Households, as those terms are defined below.

2. **"Housing Purchase Cost"** means the total payments for a single month for principal and interest on a 30-year fixed rate mortgage loan and any associated mortgage loan insurance costs, property taxes and assessments, fire and casualty insurance covering the replacement value of property improvements, and a reasonable allowance for utilities, and homeowner association fees.

3. **"Housing Rental Cost"** means the total payments for a single month for rent (other than security deposits), plus a reasonable allowance for utilities.

4. **"Low Income Household"** means a household whose annual income is greater than fifty percent (50%) but does not exceed eighty percent (80%) of the median family income for the area, as published by the California Department of Housing and Community Development, adjusted for family size.

5. **"Moderate Income Household"** means a household whose annual income is greater than eighty percent (80%) but does not exceed one hundred twenty percent (120%) of the median family income for the area, as published by the California Department of Housing and Community Development, adjusted for family size.

6. **"Offsite"** means outside of the boundaries of the entire Opportunities Study Area, but within the City of Lake Forest.

7. **"Project"** refers to the development of each of the individual project areas defined in the Opportunities Study Area General

Plan Amendment. Thus, there are a maximum of six "Projects" and this policy shall be applied individually to each Project, rather than to the OSA as a whole or all Projects collectively.

8. **"Second Unit"** refers to an "accessory living quarters/second unit" as those terms are used in Section 9.180.050 of the City's Municipal Code and which meets the standards of Section 9.180.050(D).

9. **"Senior Unit"** means a residential unit occupancy of which is restricted to persons sixty-two (62) years of age or older, provided that the minimum age shall be fifty-five (55) years in any project containing 150 or more Senior Units.

10. **"Very Low Income Households"** means a household whose annual income does not exceed fifty percent (50%) of the median family income for the area, as published by the California Department of Housing and Community Development, adjusted for family size.

B. <u>"Planning Principles" for Affordable Housing.</u>

1. The developer of each Project will provide or facilitate the production of Affordable Units in conjunction with the development of its Project. Participation will be based on the "Point System" set forth in Section C below. Facilitation of the production of Affordable Units may include participation with the Lake Forest Redevelopment Agency in producing such units, on such terms as may be mutually agreeable to the Redevelopment Agency and the developer.

2. The types and locations of Affordable Units in all income categories may include, among other variations, onsite and offsite units (subject to Paragraph C3(b) below), for-sale and rental units, attached and detached units, and units of varying size and bedroom counts.

3. Consistent with City policy as set forth in Section 5 of the Housing Plan of the City's Housing Element (entitled "Expedited Project Review"), the City shall:

(a) Prioritize the review and processing of the Affordable Units component of all development applications for all aspects of the Project (including, but not limited to, those for area plans, subdivision maps, site development permits, grading permits, and building permits); and

(b) Retain an independent contracting firm to expedite the processing of all such development applications, upon the developer's agreement to pay the full cost of such retention.

4. The developer, at its sole discretion, may satisfy the "point" requirement of this policy through the provision of either rental or for sale housing.

5. Subject to Paragraph B6 below, an Affordable Housing Covenant in favor of the City and/or Lake Forest Redevelopment Agency, in the form approved by the City as part of the implementation of each project, shall be recorded against each Affordable Unit that is not a Second Unit. The Affordable Housing Covenant shall be recorded at the time that the developer records its grant deed to the original home purchaser of a for-sale unit or prior to the occupancy of the first tenant of a rental unit.

6. An affordability covenant shall not be required for Affordable Units sold to Moderate Income Households if the developer declines to receive the additional one (1.0) point credit for a moderate for sale unit as provided in Paragraph C4 below. Regardless of whether an affordability covenant is recorded for a Moderate Income Affordable Unit, the initial sale of such unit shall be to a qualifying Moderate Income Household, with the household income adjusted for family size.

7. The provisions of this policy pertaining to the recording of affordability covenants shall apply to all pre-existing units for which "points" are given, including but not limited to pre-existing rental units converted to "for sale" units which are treated under the Point System below as "for sale" units.

C. <u>The Point System.</u>

The purpose of the "Point System" described below is to provide incentives for the provision of certain types of affordable housing as part of development in the Opportunities Study Area, in order to meet the housing needs of the community. These housing types include units affordable to lower income categories, onsite units, units with multiple bedrooms, and owner-occupied units.

1. **Required Points**. The number of Affordable Units to be provided will be based upon a "Point System." The number of required "points" will be equal to 15% of the total number of units approved and built within a Project. For example, if 2,815 units are built within a Project, then a total of 422 "points" will be required. Notwithstanding any provision of this Plan, including the application of any provision of the Point System, and with the exception of the Projects on Sites 5 and 6 in the OSA GPA, no Project shall provide a number of Affordable Units that is less than eight and one-half percent (8.5%) of the total number of market-rate units for which the Project is entitled under the General Plan.

2. **Offsite Affordable Units**. Offsite Affordable Units will be provided points only if they are affordable to Very Low and Low Income Households.

3. **Base Points**. Subject to Paragraph C2 above:

   (a) **One Base Point (1.0)** shall be awarded for each home sold or rented onsite to households within any affordable income category (moderate, low, and very low), constructed onsite, and

   (b) **One half Base Point (0.5)** shall be awarded for each home sold or rented offsite to Low or Very Low Income Households.

4. **Additional Points**. Because of the City's interest in (1) providing certain amenities, (2) serving lower income categories, and (3) providing onsite Affordable Units, points shall be awarded in addition to Base Points, as set forth below, for each onsite Affordable Unit in any income category which meets the following criteria:

(a) To encourage units for families, additional points based upon bedroom counts shall be provided as follows, with points awarded for only one bedroom count category in this subparagraph (a) (for example, a four bedroom unit receives one (1.0) additional point, not 0.2+0.7+1.0):

(i) 0.2 additional point for two-bedroom units;

(ii) 0.7 additional point for three-bedroom units; and

(iii) 1.0 additional point for four-bedroom units.

(b) In addition, to encourage development of Affordable Units in the Low and Very Low Income Household categories, one-half (0.5) additional point shall be provided for rental units affordable to Low Income Households and one (1.0) additional point shall be provided for rental units affordable to Very Low Income Households.

(c) In addition, to encourage the development of "for sale" Affordable Units, for each for-sale unit with an affordability deed restriction, the following points will be provided for deed restrictions consistent with Paragraph D1:

(i) 3.0 additional points for very low income units;

(ii) 2.0 additional points for low income units; and

(iii) 1.0 additional point for moderate income units, subject to the limitations of Paragraph C5(e).

5. **Other Considerations**.

(a) Points may be provided for any net increase in Affordable Units in the City constructed or provided by the developer of a Project (including through participation by the developer with the Lake Forest Redevelopment Agency) through any combination of housing units which are affordable to Moderate, Low, or Very Low Income Households, including, but not limited to:

(i) Apartments, including the conversion of existing market rate units to Affordable Units, provided that

the Developer assumes all tenant relocation obligations created by law and in effect on the date of the conversion;

(ii) For sale housing, including the conversion of off-site existing market rate rental or for sale units to Affordable Units with affordability covenants as described herein recorded against them, provided that the Developer assumes all tenant relocation obligations created by law and in effect on the date of the conversion;

(iii) The inclusion of Second Units on lots within the Project (all Second Units shall be deemed to be "Moderate" units).

(b) All "points" are cumulative, with a single Affordable Unit receiving points for all criteria which it meets, except as expressly provided within this Plan.

(c) An additional one (1.0) point shall be provided for a Second Unit. However, a Second Unit may have a total of no more than two (2.0) points, and no points shall be granted for the primary unit on any lot containing a Second Unit. No more than 25% of the total Affordable Units for a Project may receive Second Unit credit

(d) Moderate Income Affordable Units may account for no more than one-third (1/3) of the total number of "points" provided to a Project.

(e) An on-site for-sale unit sold to a Moderate Income Household need not be deed restricted (unless the unit is converted from existing housing), provided that the additional 1.0 point available under Paragraph C4(c) for for-sale moderate income units shall not be provided to any Affordable Unit for which no deed restriction is recorded.

(f) In calculating aggregate points earned by a given Project, fractions equaling one half (0.5) or greater shall be rounded to the next highest whole number. This rounding

shall not apply with respect to the points earned by any individual Affordable Unit.

(g) Senior Units receiving points under this Plan may account for no more than one third (1/3) of the Affordable Units provided by a Project, provided that Senior Units may be transferred between Projects if: (i) the aggregate cap on Senior Units among all Projects is not exceeded as a result of any transfer; and (ii) the City determines that the transfer of Senior Units will further the goals of the Housing Element, the Affordable Housing Implementation Plans for the Projects involved, and this Plan.

D. Other Terms and Conditions.

1. **Term of Affordability Restrictions**. The affordability restrictions will commence with the first occupancy of the Affordable Unit by a Very Low, Low, or Moderate Income Household and will terminate in thirty (30) years, except when sources of funding or applicable laws dictate longer periods of affordability restriction.

2. **Related Calculations**. Calculations related to qualification shall include:

   (a) For units not otherwise required by the funding sources to meet the Housing Rental Cost identified in California Health and Safety Code Section 50053, as may be amended from time to time, the Housing Rental Cost shall not be greater than the following amounts:

      (i) For Moderate Income Households: 30% of 120% of the area median income adjusted for family size appropriate for the unit;

      (ii) For Low Income Households, 30% of 80% of the area median income adjusted for family size appropriate for the unit;

      (iii) For Very Low Income Households, 30% of 50% of the area median income adjusted for family size appropriate for the unit.

(b) For units not otherwise required by the funding sources to meet the Housing Purchase Cost identified in California Health and Safety Code Section 50052.5, as may be amended from time to time, the Housing Purchase Cost shall not be greater than the following amounts:

(i) For Moderate Income Households: 35% of 120% of the area median income adjusted for family size appropriate for the unit;

(ii) For Low Income Households, 30% of 80% of the area median income adjusted for family size appropriate for the unit;

(iii) For Very Low Income Households, 30% of 50% of the area median income adjusted for family size appropriate for the unit.

(c) Unless a source of funding for a particular Project or Affordable Unit dictates a lower standard, household size shall be deemed to equal two persons per bedroom. For example, a two bedroom dwelling unit could accommodate a 4-person household.

(d) Unless private mortgage insurance is required by the mortgage lender, mortgage interest rate assumptions shall assume a fully amortized 30-year fixed rate loan. No requirement for private mortgage insurance shall be assumed (due to the loan to value ratio based on the unrestricted home value), provided that a lender can be found willing to forego private mortgage insurance, and the mortgage interest rate assumed shall be no lower than the interest rate such a lender offers under such conditions.

(e) Down payment on for-sale Affordable Units shall be assumed to be 5% of the Affordable Unit sales price.

3. **Updating of Pricing Estimates**. Pricing estimates required by this policy may be updated to reflect then-current eligibility requirements at any time before the Affordable Units are sold.

4. **Payment of In-Lieu Fees and Alternative Means of Satisfying Obligations**. An affordable housing in-lieu fee may be paid by the developers of those Projects built upon Sites 5 and 6 in the OSA GPA, and by developers of other Projects with the consent of the City. The affordable housing in-lieu fee shall be $12,000 per dwelling unit for each home within each Project. The fee is adjustable each year based on the latest California Consumer Price Index published by the State of California Department of Finance, with the January 2007 Consumer Price Index serving as a baseline. With the consent of the City, the developer of a Project may dedicate land to the City in partial or complete satisfaction of the developer's obligations under this Affordable Housing Implementation Plan to make available Affordable Units.

5. **Phasing**. Before or with the submittal of the first application for a Site Development Permit (an "SDP") for a neighborhood or phase within a Project, the developer of that neighborhood or phase shall estimate the total number of market rate residential units which it anticipates to build on the Project site as part of the neighborhood or phase (the "Total Units"). This number may be revised, at the developer's discretion, upon the submittal of future SDPs to reflect increases or decreases in the Total Units proposed to be built in the neighborhood or phase.

   (a) With each application for an SDP, the developer shall provide an updated Affordable Housing Plan which shows the anticipated type (for-sale or rental), size, estimated price or rent, and location of each proposed Affordable Unit to be provided through the completion of the development contemplated by that SDP (an "SDP Cycle"). Additionally, the developer shall indicate the number of "points" that it shall earn upon the completion of the Affordable Units within that SDP Cycle. The Affordable Housing Plan may be revised during the course of the SDP Cycle to reflect updated assumptions.

   (b) Building permits must be issued for Affordable Units which will generate one-fourth (25%) of the total required affordable housing "points" before the issuance of building

permits beyond 45% + 1 of the then current anticipated number of Total Units.

(c) Building permits must be issued for Affordable Units which will generate an additional one-fourth (for a total of 50%) of the total required affordable housing "points" before the issuance of building permits beyond 65% + 1 of the then current anticipated number of Total Units.

(d) Building permits must be issued for Affordable Units which will generate an additional one-fourth (for a total of 75%) of the total required affordable housing "points" before the issuance of building permits beyond 80% + 1 of the then current anticipated number of Total Units.

(e) Building permits must be issued for Affordable Units which will generate an additional one-fourth (for a total of 100%) of the total required affordable housing "points" before the issuance of building permits beyond 97% + 1 of the then current anticipated number of Total Units.

6. **Rehabilitation of Offsite Units**. No points shall be awarded for any offsite unit until and unless the unit has been rehabilitated to meet all codes and standards applicable to new units.

7. **Construction and Design Standards for Affordable Units**. Affordable Units shall be designed and constructed so as to be substantially equivalent to the base-level market rate units of a similar product type within the Project with respect to design, appearance, materials, finished quality, and interior amenities.

8. **Siting of Affordable Units**. If Affordable Units are part of a larger market rate neighborhood or development within a Project, the Affordable Units shall be dispersed throughout the neighborhood or development. This paragraph shall apply only to for-sale Affordable Units, and not to rental units.

9. **Reporting and Monitoring of Compliance**. The owner of any Affordable Unit shall comply with the requirements of California Health & Safety Code Section 33418, including but not limited to the submission of an annual report, with respect to the

Affordable Unit as though Section 33418 applies to the Affordable Unit, regardless of whether Section 33418 actually applies. With respect to rental Affordable Units, the owner of the units shall cause the information required by Section 33418 to be submitted on forms prescribed by the City, and any contract between the owner and the manager of the units shall require the manager to comply with the affordability requirements and standards established by this Affordable Housing Implementation Plan and applicable law. The owner of any Affordable Units shall provide the City with the name and qualifications of any proposed manager of the Affordable Units, and shall not employ or retain a manager not approved by the City, provided that the City's approval shall not be unreasonably denied, and further provided that the City shall not disapprove the following managers: (i) Shea Properties; (ii) Jamboree Housing Corporation; (iii) Bridge Housing; (iv) KDF Communities; (v) Steadfast Companies; (vi) Affirmed Housing Group; (vii) Pacific West Companies; (viii) AF Evans; (ix) Simpson Housing LLP; and (x) Fairfield Residential LLC. The City shall have the right to audit any information submitted by the owner of an Affordable Unit, and the owner shall pay the cost of such audit if such information is submitted on an improper form. With respect to owner-occupied Affordable Units for which an affordability covenant is recorded as described herein, the developer of such units shall cause a condition to be included in the covenant requiring that the information required by Section 33418 be submitted to the City in connection with any subsequent sale of the Affordable Unit.

10. **Maintenance Standards for Rental Affordable Units.** Owner shall comply with all provisions of the covenants, conditions and restrictions (CC&R's) for the rental property, approved by the City as part of the implementation of the Project, including the property maintenance requirements set forth in the CC&R's. The CC&R's shall provide that if property maintenance deficiencies are not corrected following notice from the City to Owner (or any successor in interest), the City may perform such repairs or maintenance as may be necessary, and may recover the cost of such work from Owner.

EXHIBIT "H"

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT BETWEEN CITY OF LAKE FOREST AND USA PORTOLA PROPERTIES, LLC

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT BETWEEN CITY OF LAKE FOREST AND USA PORTOLA PROPERTIES, LLC **("Assignment")** is made as of the ___ day of _____, 20__ **("Effective Date")**, by and among USA Portola Properties, LLC ("**Portola**"), a California limited liability company and _____ ("**Assignee**") with reference to the following facts:

RECITALS

A. Portola has entered into that certain Development Agreement, dated _____, 2008 by and between the City of Lake Forest ("**City**"), on the one hand, and USA Portola Properties, LLC, on the other hand ("**Agreement**") for certain real property consisting of approximately 227.9 acres of land located in the City, more particularly described in Exhibit "A" ("**Property**").

B. Portola desires to assign and delegate, and Assignee desires to accept and assume, all of Portola's rights and obligations under the Agreement in accordance with the terms and conditions set forth herein.

C. City has approved the Assignment in accordance with the terms and conditions set forth herein and in the Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Portola and Assignee do hereby agree as follows:

1. Assignment and Assumption. Effective as of the Effective Date, Portola hereby assigns, transfers, and conveys to Assignee all of Portola's

rights, interest, duties, liabilities, and obligations in, to, and under the Agreement, and Assignee hereby accepts and assumes all such rights, interests, duties, liabilities, and obligations under the Agreement from Portola for [the Property or a portion of the Property] ("Assigned Property") [, except to the extent Portola has retained a portion of the Property (the "Retained Property")].

2. City Consent to Assignment. Effective as of the Effective Date, City hereby consents to the Assignment and hereby fully releases and forever discharges Portola from any and all obligations to City under the Agreement for the Assigned Property, [except Portola's obligations with respect to the Retained Property].

3. Entire Agreement. This Agreement represents the final and entire agreement between the parties in connection with the subject matter hereof, and may not be modified except by a written agreement signed by both Portola and Assignee.

4. Governing Law. This Agreement has been prepared, negotiated, and executed in, and shall be construed in accordance with, the laws of the State of California, without regard to conflict of law rules.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Portola:

USA Portola Properties, LLC,
a California Limited Liability Company

By: _____
Name:
Its: Managing Member

Assignee:

_____
_____

By: _____
Name:
Its:

City:

City of Lake Forest,
a California Municipal Corporation

By: _____
Name:
Its: