

RECORDING REQUESTED BY
First American Title Insurance Co.

AND WHEN RECORDED MAIL DOCUMENT TO:

NAME First American Title Ins Co. Kim McBride

STREET ADDRESS 200 W. Madison St., Ste 800

CITY, STATE & ZIP CODE Chicago, IL 60606

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder



49.00

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2024000038244 8:00 am 02/22/24

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SPACE ABOVE FOR RECORDER'S USE ONLY

Subordination Agreement

Title of Document

Pursuant to Senate Bill 2 – Building Homes and Jobs Act (GC Code Section 27388.1), effective January 1, 2018, a fee of seventy-five dollars (\$75.00) shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded, except those expressly exempted from payment of recording fees, per each single transaction per parcel of real property. The fee imposed by this section shall not exceed two hundred twenty-five dollars (\$225.00).

- ☐ Exempt from the fee per GC 27388.1 (a) (2); This document is subject to Documentary Transfer Tax
- ☐ Exempt from fee per GC 27388.1 (a) (2); recorded concurrently "in connection with" a transfer subject to the imposition of documentary transfer tax (DTT).
- ☐ Exempt from fee per GC 27388.1 (a) (2); recorded concurrently "in connection with" a transfer of real property that is a residential dwelling to an owner-occupier.
- ☒ Exempt from fee per GC 27388.1 (a) (1); fee cap of \$225.00 reached.
- ☐ Exempt from the fee per GC 27388.1 (a) (1); not related to real property.

THIS COVER SHEET ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(\$3.00 Additional Recording Fee Applies)

RECORDING REQUESTED BY
The Northwestern Mutual Life
Insurance Company

When Recorded Mail to:

The Northwestern Mutual Life
Insurance Company
Leah Hillmer
720 E. Wisconsin Avenue
Milwaukee, WI 53202

Loan No. 345292

SUBORDINATION AGREEMENT

California
Loan No. 345292
RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.
720 East Wisconsin Avenue
Milwaukee, WI 53202
Attn: Leah Hillmer

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "**Agreement**") is dated as of February 20th, 2024 by the CITY OF IRVINE, a California municipal corporation (the "**City**") and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, as contractual representative of the Lenders ("**Lender**").

RECITALS:

A. ELEMENTS 1A, LLC, a California limited liability company ("**Leasehold Borrower**") and CAMPOS VERDES 1A LLC, a California limited liability company ("**Fee Borrower**") and collectively with Leasehold Borrower, the "**Borrowers**"), are the owners of that certain real property located in the County of Orange, State of California, as more particularly described on Exhibit A attached hereto ("**Property**").

B. The Property is subject to that certain Phase 1 Density Bonus Housing Agreement, dated October 13, 2015, by and among the City, Campos Verdes, LLC, a California limited liability company ("**Original Fee Owner 1**") and Campos Verdes I, LLC, a California limited liability company ("**Original Fee Owner 2**") and collectively with Original Fee Owner 1, as tenants in common, the "**Original Fee Owners**"), recorded on November 17, 2015 as Instrument No: 2015000591568 in the Official Records of Orange County ("**Official Records**"), (as amended, the "**Density Bonus Agreement**" or "**DBA**"). In addition to the terms defined elsewhere in this Agreement, any capitalized terms not otherwise defined below shall have the same meaning as set forth in the Density Bonus Agreement.

C. Pursuant to the Density Bonus Agreement, City and Original Fee Owners entered into that certain Phase 1 Regulatory Agreement and Declaration of Covenants and Restrictions, by and between the City and Original Fee Owners,

recorded on March 2, 2016, as Instrument No. 2016000087385 in the Official Records (the "**Declaration**"), which sets forth certain covenants and restrictions on the Property and use and operation thereof, including the imposition of certain affordability covenants.

D. Among other terms and conditions, the Density Bonus Agreement, Declaration, and other implementing documents attached to the Density Bonus Agreement memorialize the following rights and obligations of Borrowers: (i) Borrowers may develop on the Property seven hundred (700) residential units (defined in the DBA as "Units") as long as Borrowers comply with California density bonus law (defined in the DBA as "State Density Bonus Law") as implemented in the City of Irvine's Inclusionary Housing Ordinance (Irvine Zoning Code, Chapter 2-3), which require Borrowers to designate no less than seventy (70) of the Units (defined in the DBA as the "Affordable Units") as being available for use and occupancy by very low-income, low-income and moderate-income households, as more particularly set forth in the Density Bonus Agreement; (ii) In order to comply with State Density Bonus Law, each Affordable Unit must remain restricted as being available for use and occupancy by very low-income, low-income and moderate-income households for a period of no less than 30 years, commencing from the date such Affordable Unit receives its required occupancy permits from the City (each Affordable Unit's 30-year period is defined in the DBA as the "Total Affordability Term"), as more particularly set forth in the Density Bonus Agreement; (iii) To accommodate the potential varying commencement dates for each Affordable Unit's Total Affordability Term, the Density Bonus Agreement sets forth and defines the "Total Phase 1 Density Bonus Agreement Term," which commenced on the "Effective Date" of the Density Bonus Agreement and continues in accordance with the Density Bonus Agreement to ensure all Affordable Units meet the minimum 30-year restriction period; (iv) Borrowers have the right to develop and operate the Property either as a rental project (during such rental period, the DBA defines the Affordable Units as "For Rent Affordable Units") or as an owner-occupied/condominium project (the DBA defines such Affordable Units as "For Sale Affordable Units") as long as, for each Affordable Unit, rent remains affordable to eligible tenants or the purchase and repurchase price remains affordable to qualifying purchasers, for the duration of the Affordable Unit's 30-year restriction period, as more particularly set forth in the Density Bonus Agreement; (v) To accommodate the flexibility desired by Borrowers to develop and operate the Property as a rental project, the Density Bonus Agreement requires the Declaration to set forth the minimum affordability requirements for the duration of the "Project Rental Period" as defined in the DBA, which commences on the Effective Date of the Density Bonus Agreement and ends upon the earlier of either the expiration of the Total Phase 1 Density Bonus Agreement Term or the sale of all Affordable Units as For Sale Affordable Units to qualified purchasers, as more particularly set forth in the Density Bonus Agreement; (vi) To accommodate the flexibility desired by Borrowers to possibly market and sell the Units, including the

Affordable Units, to "Individual Unit Owners" (as defined in the DBA), each Affordable Unit that has all or a portion of the 30-year restriction period remaining at the time of purchase or resale of a designated For Sale Affordable Unit will be governed by an "Affordable Housing Covenant" (as defined in the DBA) to be recorded against the For Sale Affordable Unit to ensure it is owned and occupied by a very low-income or moderate-income household, as applicable, and as more particularly set forth in the Density Bonus Agreement; (vii) If Borrowers intend to offer for sale any of the Units, including the Affordable Units, Borrowers must notify the City and must commence and complete the conversion of the residential rental project to an owner-occupied/condominium residential project, which, as part of this process, allows for the Declaration to be removed from title of individual Units (defined in the DBA as "Unit Release") as long as each For Sale Affordable Unit has recorded against it the Affordable Housing Covenant, as more particularly set forth in the Density Bonus Agreement.

E. Lender is making a loan to Borrowers in the original principal amount of One Hundred Three Million Dollars (\$103,000,000.00) ("**Loan**") pursuant to that certain Loan Application dated November 22, 2023, made by Borrowers to Lender and that certain acceptance letter dated January 19, 2024 issued by Lender to Borrowers (together, the "**Loan Commitment**"), and evidenced by a Promissory Note by Borrowers to Lender (the "**Note**"). The Loan is secured by that certain Fee and Leasehold Deed of Trust and Security Agreement dated February 20th, 2024 to be recorded in the Official Records of Orange County, California (the "**Deed of Trust**") the Loan Commitment, the Note and the Deed of Trust, together with all other documents executed with respect to the Loan that are approved by the City pursuant to this Agreement, are hereinafter collectively referred to as the "**Loan Documents**"). Lender is a reputable lender that is regularly engaged in the business of making or owning loans of similar types to the Loan provided to the Borrowers.

F. As a condition to making the Loan, Lender requires that the Deed of Trust be a lien on the Property. Except for the affordability requirements in the Declaration and in the Density Bonus Agreement concerning the obligation to dedicate no less than seventy (70) Affordable Units for use and occupancy by very low-, low- and moderate-income households, as set forth in Section 4 of the Declaration and as set forth in the Density Bonus Agreement ("Affordability Requirements"), which must be preserved pursuant to state and local law in the event of a default on the Deed of Trust or interests in the Loan Documents secured by the Deed of Trust, the lien created by the Deed of Trust shall be superior to the liens of the Declaration and the Density Bonus Agreement, and the rights of Lender under the Deed of Trust shall be superior to the rights of the City under the Declaration and under the Density Bonus Agreement. Lender will not make the Loan unless City and Borrowers agree to subordinate their rights and obligations under the Declaration and under the Density Bonus Agreement pursuant to the terms hereof.

G. City hereby agrees to subordinate the Declaration on and subject to the terms, conditions and requirements set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.

2. Subordination. Subject to the terms and conditions in this Agreement, and except for the Affordability Requirements in the Declaration and in the Density Bonus Agreement, the City hereby covenants and agrees that the Declaration and the Density Bonus Agreement are and shall at all times continue to be, subordinate to the Deed of Trust during the Project Rental Period (as defined in the Density Bonus Agreement) until full reconveyance of the Deed of Trust. The City may exercise the remedies of specific performance, declaratory relief and injunctive relief with respect to the Affordability Requirements in the Declaration and in the Density Bonus Agreement. In the event that Borrowers sell the Units, or the Project Rental Period terminates as set forth in the Density Bonus Agreement, this Agreement shall be of no further force and effect. Nothing in this Agreement subordinates or shall be deemed to subordinate any Affordable Housing Covenant (as defined in the Density Bonus Agreement) that must be recorded against a For Sale Affordable Unit (as defined in the Density Bonus Agreement).

3. City Approvals. The City consents (and no further consent shall be required) to any agreement or arrangement in which Lender waives, postpones, extends, reduces or modifies any provisions of the Loan Documents, including any provision requiring the payment of money, as long as Borrowers' obligations to perform in accordance with the Declaration and Density Bonus Agreement are not modified, limited, or impaired thereby. City further agrees that, upon request of Borrowers, it shall enter into a new subordination agreement in form and content substantially similar to this Agreement in connection with any future refinancing of all or any part of the Loan (including reasonable and necessary costs associated with the closing and/or the refinancing) as long as: (i) the outstanding debt secured by the deed of trust securing such new loan does not exceed a combined loan-to-value ratio of 80% of the fair market value of the Property, as encumbered by the Affordability Requirements in the Declaration, at the time of the refinancing as determined by an independent appraisal commissioned by the lender originating such new loan and such appraisal is approved by the City, (ii) the refinancing results in a maximum debt service coverage ratio of 1.20 using for basis of calculation the higher of the actual proposed interest rate for the new loan or then-applicable interest rate for a Fannie Mae (or successor entity) 10-year

fixed rate loan, and (iii) Borrowers' obligations to perform in accordance with the Declaration and Density Bonus Agreement are not modified, limited, or impaired by such refinancing. (iv) City shall have received notice of such refinancing and any supporting documents reasonably requested by City to ensure the terms and conditions authorized in this Section 3 have been followed. Except as expressly provided in this Agreement, any supplement, modification, or amendment to the Loan or other obligations secured by the Deed of Trust shall require the prior written consent of the City, which shall not be unreasonably withheld or delayed.

4. Declaration Survives Foreclosure. Lender hereby acknowledges and shall ensure that the Affordability Requirements in the Density Bonus Agreement and in the Declaration shall not terminate upon foreclosure (or deed in lieu thereof) and shall be binding on the successor in interest to the Property and purchaser of the Property at any foreclosure sale (or deed in lieu thereof). City agrees that any transfer of the Property in connection with a foreclosure or deed in lieu thereof or a subsequent transfer by a nominee or affiliate of Lender who becomes the owner of the Property by virtue of a foreclosure or deed in lieu thereof (any such transfer, a "Post- Foreclosure Transfer") shall not require City's consent as long as any subsequent successor in interest to the Property shall be subject to the Affordability Requirements in the Declaration and in the Density Bonus Agreement and all of the exhibits and attachments thereto, including but not limited to the permitted assignments and transfers set forth in the Density Bonus Agreement, provided, however, that any transferee pursuant to a Post-Foreclosure Transfer shall only be required to have assets equal or greater to Forty Million Dollars (\$40,000,000) (and, for avoidance of doubt, shall not be required to have assets equal or greater to One Hundred Million Dollars (\$100,000,000) as set forth in Section 8.1.2 of the Density Bonus Agreement). Lender shall execute or cause Borrowers to execute any documents, in recordable form as appropriate, to effectuate the continued enforceability of the Affordability Requirements in the Density Bonus Agreement and in the Declaration upon any foreclosure (or deed in lieu thereof), including but not limited to an assignment and assumption or similar agreement from Borrowers or Lender to the successor in interest to the Property.

5. Lender Notice of Default. In consideration of City's agreements contained in this Agreement, Lender shall give City a concurrent copy of each material notice (including without limitation each notice of default) given by Lender to Borrowers under or with respect to the Loan Documents, and agrees that City, at City's sole election, shall have the right (but not the obligation) to cure any default by Borrowers under the Loan Documents on its and/or Borrowers' behalf. Neither the giving nor the failure to give a notice to City pursuant to this Section 5 will affect the validity of any notice given by Lender to the Borrowers.

6. City Notice of Default. City shall give Lender a concurrent copy of each material notice (including without limitation each notice of default) given by City under

or with respect to the Declaration, and agrees that Lender, at Lender's sole election, shall have the right (but not the obligation) to cure any default by Borrowers under the Declaration on its and/or Borrowers' behalf. Neither the giving nor the failure to give a notice to Lender pursuant to this Section 6 will affect the validity of any notice given by City to the Borrowers under the Declaration.

7. Governmental Entity's Rights. Except as otherwise provided in Section 2 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrowers and/or City, respectively, under the Declaration or under the Density Bonus Agreement.

8. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties hereto with regard to the subordination of the Declaration and the Density Bonus Agreement to the lien or charge of the Loan Documents, and shall supersede and cancel any prior agreements with regard to this subject matter.

9. Binding Provisions. The covenants and agreements contained in this Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties to this Agreement.

10. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflict of law principles.

11. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

12. Notices. All notices required or permitted hereunder shall be deemed to have been received (i) when delivered by hand and the party giving such notice has received a signed receipt thereof, or (ii) one (1) business day following delivery by facsimile or e-mail (at such phone numbers and e-mail addresses mutually agreeable to the parties), with a confirming receipt that the notice was received by the receiving party, or (iii) three (3) business days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

If to City:
City of Irvine
One Civic Center Plaza
Irvine, CA 92606-5208

Attention: Director of Community Development & Housing Manager

With a copy to:

Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612
Attn: Jeffrey T Melching

If to Lender:

The Northwestern Mutual Life Insurance Company
Real Estate Investment Department
720 East Wisconsin Avenue
Milwaukee, WI 53202
Loan No. 345292

If to Borrowers:

c/o Wilf Law Firm, LLP
820 Morris Turnpike, Suite 201
Short Hills, NJ 07078
Attention: Jonathan Wilf

With a copy to:

Wilf Law Firm, LLP
820 Morris Turnpike, Suite 201
Short Hills, New Jersey 07078
Attention: Legal Notice- Elements 1A loan with Northwestern (MDD)

13. Business Days. For purposes of this Agreement, "business day" means any day of the week during which City Hall for the City of Irvine is open to the public.

14. Further Instruments. Each of the parties hereto will, whenever and as often as they shall be requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement. When the Loan is fully repaid in accordance with its terms and all of the terms of this Agreement have been complied with, Lender shall execute for the benefit of City a recordable instrument (in a form approved by the City Attorney's Office) and deliver to City a release from this

Agreement concurrently with, and in no event later than thirty (30) days after, the recording of a full reconveyance of (or other similar instrument that releases) the Deed of Trust. City shall have the right to record the executed release after delivery from Lender.

15. Valid Authorization. Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder.

16. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which when taken together constitute one and the same instrument, binding on all of the parties. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE DECLARATION AND DENSITY BONUS AGREEMENT (EXCEPT THE AFFORDABILITY REQUIREMENTS SET FORTH HEREIN) BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE DEED OF TRUST.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year above written.

CITY:

CITY OF IRVINE, a
California municipal corporation

By:


Name: Oliver C. Chi
Title: City Manager

APPROVED AS TO FORM:

RUTAN & TUCKER, LLP

By:


Name: Jeffrey T. Melching
Title: City Attorney

ATTEST:


CITY CLERK OF THE CITY OF IRVINE

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

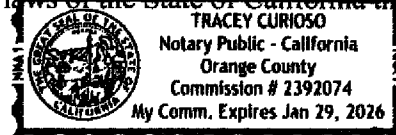
State of California)
County of Orange)

On February 16, 2024, before me, Tracey Curioso,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.



Signature



(Seal)

ACKNOWLEDGMENT

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

State of California)
County of)

On February 16, 2024, before me, Tracey Curioso,
(insert name of notary)

Notary Public, personally appeared Oliver Chi,
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 Tracey Curioso

(Seal)



THE NORTHWESTERN MUTUAL LIFE
INSURANCE COMPANY, a Wisconsin corporation

By: Brian D. Bennett
Brian D. Bennett, Senior Director

STATE OF WISCONSIN)
)ss.
COUNTY OF MILWAUKEE)

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Milwaukee County
My Commission Expires: March 19, 2024

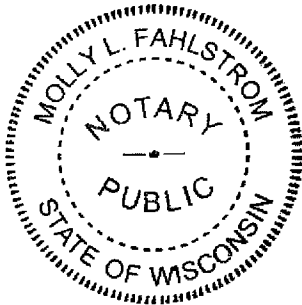


EXHIBIT A

Legal Description

PARCEL 1:

LOT 1 OF TRACT NO. 17641, AS PER MAP RECORDED IN BOOK 947, PAGES 1 THROUGH 9 INCLUSIVE OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE, CALIFORNIA.

PARCEL 2:

NON-EXCLUSIVE EASEMENTS AS GRANTED IN THAT CERTAIN DOCUMENT ENTITLED "DECLARATION OF EASEMENTS" DATED DECEMBER 22, 2020 AND RECORDED DECEMBER 23, 2020 AS INSTRUMENT NO. 2020000761491 OF OFFICIAL RECORDS OF ORANGE COUNTY.