

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF IRVINE
One Civic Center Plaza
P.O. Box 19575
Irvine, CA 92623-9575
Attn: City Clerk

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



NO FEE

2024000101494 4:00 pm 04/23/24

9 419A A17 11

0.00 0.00 0.00 0.00 30.00 0.00 0.000.000.00 0.00

(Space Above this Line is for Recorders' Use Only)

This Agreement is recorded at the request and for the benefit of the City of Irvine under the authority of Government Code §65868.5 requiring recordation by the county recorder and is exempt from the payment of a recording fee pursuant to Government Code §27383

**FIRST AMENDMENT TO
NITM PROGRAM IMPLEMENTING AGREEMENT**

Pursuant to Government Code §§ 65864-65869.5

by and among

CITY OF IRVINE

and

THE IRVINE COMPANY LLC

and

IRVINE COMMUNITY DEVELOPMENT COMPANY LLC

Accommodation recording only;
document not reviewed and
no insurance provided

Adm 802413

ORIGINAL

41617A

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF IRVINE
One Civic Center Plaza
P.O. Box 19575
Irvine, CA 92623-9575
Attn: City Clerk

(Space Above this Line is for Recorders' Use Only)

This Agreement is recorded at the request and for the benefit of the City of Irvine under the authority of Government Code §65868.5 requiring recordation by the county recorder and is exempt from the payment of a recording fee pursuant to Government Code §6103

**FIRST AMENDMENT TO
NITM PROGRAM IMPLEMENTING AGREEMENT**

Pursuant to Government Code §§ 65864-65869.5

by and among

CITY OF IRVINE

and

THE IRVINE COMPANY LLC

and

IRVINE COMMUNITY DEVELOPMENT COMPANY LLC

**Accommodation recording only;
document not reviewed and
no insurance provided**

APR 2024/2

FIRST AMENDMENT TO NITM PROGRAM IMPLEMENTING AGREEMENT

This First Amendment to NITM Program Implementing Agreement (“**Amendment**”) is entered into this 24th day of June, 2023, by and among (i) the City of Irvine, a California charter city (“**City**”) and (ii) The Irvine Company LLC and Irvine Community Development Company LLC (collectively, “**Landowner**”). The City and Landowner are collectively referred to herein as the “Parties” and individually as a “Party”.

RECITALS

- A. City and Landowner entered into that certain NITM Program Implementing Agreement recorded in the public record of the County of Orange, California at document number 2003000885815 on July 25, 2003 (“**NITM Agreement**”), pursuant to which City granted Landowner certain vested rights to proceed with development of the Project at the Property in accordance with the Development Plan, which would provide significant public benefits in accordance with the terms and conditions of the NITM Agreement.
- B. All capitalized terms used but not defined in this Amendment shall have the same meaning as set forth in the NITM Agreement.
- C. Pursuant to Section 3.8 of the NITM Agreement, Landowner consented to the parkland dedication requirements in the then draft “Community Parks Park Plan for Planning Areas 1 & 2 and the Northern Sphere” (Case No. 0031912 – PPP), dated April 22, 2003, and, if the Community Parks Park Plan was adopted by the City of Irvine Planning Commission, then Landowner waived any claim that the dedication requirements were in excess of City requirements.
- D. The City Planning Commission adopted the Community Parks Park Plan on June 24, 2003 (Planning Commission Resolution No. 03-2432). Landowner later consented to modifications to the Community Parks Park Plan pursuant to addenda dated November 8, 2005, July 8, 2010, May 28, 2015, September 5, 2017, July 16, 2020, December 7, 2021, and April 20, 2023, respectively (collectively, the Community Parks Park Plan and modifications are referred to herein as the “**CPPP**”). The CPPP set forth a community parkland dedication goal of three (3) acres per one thousand (1,000) population even though the City’s General Plan and Subdivision Ordinance at the time of the NITM Agreement only required two (2) acres per one thousand (1,000) population. The additional one (1) acre goal of parkland dedication per one thousand (1,000) population was over and above the requirements of the City’s General Plan and Subdivision Ordinance requirements.
- E. Since adoption of the CPPP, substantial park and open space opportunities have been created in the City. Pursuant to the CPPP, Landowner has caused 47.43 acres of parkland to be dedicated to the City and improved such parkland in a manner resulting in an additional 12.02 acres in parkland improvement credits, for a combined total of 59.45 acres. The only remaining parkland dedication and improvements contemplated under the CPPP are the dedication and improvement of the Landowner’s 71-acre property, located northeasterly of Portola Parkway and adjacent to Jeffrey Road and the future extension of

Jeffrey Road in Planning Area 1 of the City of Irvine General Plan, referred to as the “**Gateway Land**”. With its offer to dedicate the Gateway Land, the Landowner has met the parkland dedication requirements of the City’s Subdivision Ordinance.

- F. In addition to parkland improved and dedicated under the CPPP, Landowner has caused the dedication of hundreds of acres of open space land, including the area known as the “Tomato Springs Open Space” and the Jeffrey Open Space Trail. Landowner also offered for dedication an additional over 190 acres of natural open space, referred to as the Area Q land, in a manner that will allow for the development of passive open space park uses including hiking, riding, biking, and trails.
- G. The City has also received and improved hundreds of acres of land at the Orange County Great Park, which serves a significant role in meeting park and recreation needs for the community, including Planning Areas 1, 2 and the Northern Sphere.
- H. Given the substantial park and open space opportunities already existing in and near Planning Areas 1 & 2 and the Northern Sphere, on April 20, 2023 the City Planning Commission further modified the CPPP to clarify that the requirement of the CPPP is to provide parkland consistent with the requirements of the City’s Subdivision Ordinance of two (2) acres per one thousand (1,000) population, and to remove the goal of providing community parkland in excess of the City’s Subdivision Ordinance requirements and make corresponding edits to the neighborhood-level park plans and other approvals that refer to community parks goals in excess of the City’s Subdivision Ordinance requirements.
- I. At the same time, the City’s regional housing needs assessment has increased such that the City desires to meet housing needs with new affordable homes as opposed to having developers utilize any credits that otherwise have been established. Landowner currently has two hundred fifty-five (255) unused Income Level I and Income Level II affordable housing credits generated by the Planning Area 6 Portola Springs Site and available to be used on future development in the City. Landowner has agreed that, effective upon the satisfaction of certain terms and conditions set forth in that certain Agreement Regarding Satisfaction and Discharge of Community Park Obligations, Extinguishment of Affordable Housing Credits, Dedications of Land, and Related Matters entered into by the Parties on [April 11, 2023] (the “**Discharge Agreement**”), Landowner will waive the affordable housing credits.
- J. The Parties now wish to modify the NITM Agreement consistent with the amendments to the CPPP and the City’s findings and determinations in the Discharge Agreement.
- K. In connection with the City’s approval of the CPPP and NITM Agreement, and development projects in the Planning Areas included in the CPPP and NITM, in compliance with the California Environmental Quality Act (“**CEQA**”), the City certified the Environmental Impact Report for the Northern Sphere (SCH #2001051010) and the Environmental Impact Report for Planning Areas 1, 2, and 9B (SCH #2004041080) (collectively the “**Approved EIRs**”). On [April 20, 2023], the City Planning Commission, after giving notice pursuant to the applicable California Government Code

provisions, held a public hearing on this Amendment and recommended approval to the City of Irvine City Council. On May 23, 2023 the City Council, after giving notice pursuant to the applicable California Government Code provisions, held a public hearing on this Amendment, and after making appropriate findings, adopted Ordinance No. 23-10 approving this Amendment. The Planning Commission and City Council found, on the basis of substantial evidence based on the entire administrative record, that this Amendment is consistent with applicable plans, rules, regulations and official policies of the City of Irvine. Moreover, the City Council evaluated the potential environmental impacts of this Amendment and determined that the scope of the Amendment would be similar to impacts evaluated in the Approved EIRs, and there are no circumstances present requiring additional environmental analysis for this Amendment, including any new, subsequent or supplemental environmental impact report.

AGREEMENT

1. NITM AGREEMENT IN FULL FORCE AND EFFECT. The Parties acknowledge and agree that the NITM Agreement is in full force and effect and is a binding obligation on the Parties, and the Parties agree that there are no existing defaults under the NITM Agreement.
2. EXHIBITS. The following Exhibits to the NITM Agreement are amended hereby as follows:
 - a. Exhibit "C" to the NITM Agreement is hereby revised to include the Community Parks Park Plan for Planning Areas 1 & 2 and the Northern Sphere (Case No. 0031912 – PPP), dated April 22, 2003, as modified pursuant to addenda dated November 8, 2005, July 8, 2010, May 28, 2015, September 5, 2017, July 16, 2020, December 7, 2021, and [April 11, 2023], respectively, and the [modification/amendment] dated [April 20, 2023].
3. AMENDED SECTIONS.
 - a. Section 3.8 of the NITM Agreement is amended and restated in its entirety hereby to read as follows:

Subsequent General Plan Amendments and Zone Changes. General Plan amendments and zone changes which may be adopted after the date of this Agreement will not become effective for the Property or any portion of the Property unless consented to in writing by Landowner, or by its successors-in-interest to the portion of the Property affected by the General Plan amendment or zone change. If Landowner or its successors-in-interest for the portion of the Property affected by such amendment or change consent in writing to the amendment or change, then it shall be effective and considered as part of the Existing Land Use Regulations and Development Plan under the terms of this Agreement, including without limitation the provision regarding vested rights in Section 3.3 of this Agreement. Landowner hereby consents to the parkland

dedication requirements contained in the “Community Parks Park Plan For Planning Areas 1 & 2 and the Northern Sphere,” (Case No. 0031912 – PPP) (such Plan, together with any amendments, modifications, or changes thereto consented to in writing by Landowner or its successors-in-interest the “CPPP”). The CPPP shall be considered part of the Existing Land Use Regulations and Development Plan under the terms of this Agreement, including without limitation the provision regarding vested rights in Section 3.3 of this Agreement. The City acknowledges that compliance with the CPPP satisfies the parkland dedication requirements for the areas covered by the CPPP.

- b. The following is added hereby as a new Section 3.8.1 to the NITM Agreement:

Satisfaction of Parkland Obligations. The City finds and determines that as of May 23, 2023, Landowner has satisfied its parkland dedication and improvement requirements under the CPPP as amended and the NITM Agreement and City waives and releases Landowner and its successors and assigns from any and all remaining obligations for community park dedication or improvements or in lieu fees, if any, imposed by (a) the CPPP, (b) the NITM Agreement, (c) state or local law, or (d) any development conditions for, or other regulatory documents applicable to, the Planning Areas included in the CPPP or NITM Agreement. The City shall not impose on or enforce against Landowner or its successors and assigns any conditions on development within the Planning Areas included in the CPPP or NITM Agreement that require the dedication or improvement of community park land or fees in lieu thereof, to the extent the number of residential units developed by Landowner within the Planning Areas is consistent with the entitlements vested under the NITM Agreement. Any such community park land requirements are deemed satisfied.

4. MISCELLANEOUS.

- a. No Further Amendment. All other terms and conditions of the NITM Agreement that are not modified by this Amendment shall remain in full force and effect.
- b. Severability. If any term, provision, covenant or conditions of this Amendment is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Amendment shall continue in full force and effect, unless and to the extent the rights and obligations of any Party has been materially altered or abridged by such holding.
- c. Further Actions and Instructions. Each of the Parties shall cooperate with and provide reasonable assistance to the other Party to the extent necessary to implement this Amendment. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Amendment or to evidence or consummate the transactions contemplated by this Amendment.


- d. Governing Laws. This Amendment shall be governed by and construed and enforced in accordance with the internal laws of the State of California.
- e. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.
- f. Headings. The Paragraph and Section headings in this Amendment are for convenience only and shall not be used in the interpretation or considered part of this Amendment.

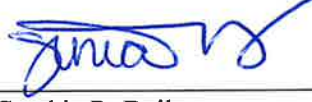
[rest of page intentionally left blank]

IN WITNESS WHEREOF, City and Landowner have caused this Amendment to be executed on the date first set forth above.


“LANDOWNER”

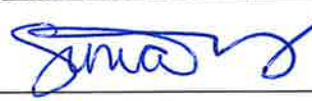
THE IRVINE COMPANY LLC,
a Delaware limited liability company

By: 
Name: Jeffrey S. Davis
Title: Senior Vice President, Entitlement

By: 
Name: Cynthia R. Daily
Title: Vice President, Land Sales & Homebuilding

IRVINE COMMUNITY DEVELOPMENT COMPANY LLC,
a Delaware limited liability company

By: 
Name: Jeffrey S. Davis
Title: Senior Vice President, Entitlement

By: 
Name: Cynthia R. Daily
Title: Vice President, Land Sales & Homebuilding

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

"CITY"

CITY OF IRVINE,
a California municipal corporation

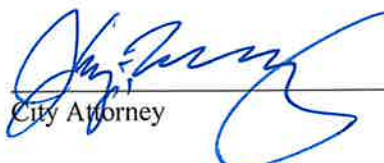
By: 
Name: OLIVER CHI
Title: CITY MANAGER

ATTEST:



City Clerk

APPROVED AS TO FORM:

By: 

City Attorney

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 Orange

On March 29, 2024 before me, Ise/a V. Ruiz
(insert name and title of the officer)

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 Ise/a V. Ruiz (Seal)




STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)



Notary Public

 KINDRA CHENIER-GLADISH
Notary Public - California
Orange County
Commission # 2352959
My Comm. Expires Mar 25, 2025

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)



Notary Public

 KINDRA CHENIER-GLADISH
Notary Public - California
Orange County
Commission # 2352959
My Comm. Expires Mar 25, 2025

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 MARCH 21, 2024, before me, CYNTHIA NIMBLETT AKERS, Notary Public, personally appeared CYNTHIA R. DAILY, 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.



(SEAL)

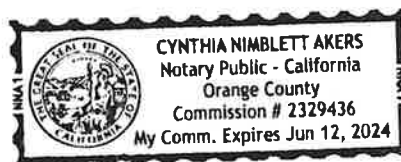
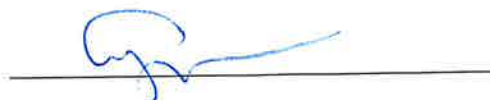
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF ORANGE

On MARCH 21, 2024, before me, CYNTHIA NIMBLETT AKERS, Notary Public, personally appeared CYNTHIA R. DAILY, 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.



(SEAL)