

RECORDING REQUESTED BY:
CHICAGO TITLE COMPANY
COMMERCIAL DIVISION

WHEN RECORDED RETURN TO:

City of Irvine
Community Development Department
One Civic Center Plaza
Irvine, CA 92606-5207
Attn.: Director of Community Development

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



NO FEE

2025000259103 03:53 pm 09/19/25
869 RecWin3A S13 12
0.00 0.00 0.00 0.00 33.00 0.00 0.00 0.00 0.00 0.00

SPACE ABOVE LINE FOR RECORDER'S USE

*Exempt from the payment
of a recording fee pursuant
to Government Code
Sections 6103 and 27383*

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is dated as of SEPTEMBER 18, 2025, by the City of Irvine, a California municipal corporation (the "City") and U.S. BANK NATIONAL ASSOCIATION, a national banking association, in its capacity as administrative agent for itself and certain other lenders as described in the Deed of Trust defined below ("Lender").

RECITALS:

A. VALLEYHEART GARDEN, LLC, a California limited liability company, SYLMAR GARDEN, LLC, a California limited liability company, IRVINE GARDENS, LLC, a California limited liability company, and KESTER GARDEN, LLC, a California limited liability company (collectively, the "Fee Owners"), are the fee owners of that certain real property located in the City of Irvine, County of Orange, State of California, as more particularly described on Exhibit A attached hereto ("Property"). Volar Gardens 3, LLC, a California limited liability company ("Borrower"), owns a leasehold interest in the Property.

B. The Property is subject to that certain Phase 2 Density Bonus Housing Agreement, recorded concurrently herewith, dated SEPTEMBER 18, 2025 by and between the City and Fee Owners ~~and recorded on title to the Property on []~~, 2025, ~~as Instrument No. [] in the Official Records of Orange County ("Official Records")~~, (the "Density Bonus Agreement" or "DBA").

C. Pursuant to the Density Bonus Agreement, City and Fee Owners entered into that certain Regulatory Agreement and Declaration of Covenants and Restrictions, recorded concurrently herewith, dated SEPTEMBER 18, 2025, by and between the City and Fee Owners, ~~and recorded on []~~, 2025, ~~as Instrument No. [] 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 Fee Owners: (i) Fee Owners may develop on the Property three

Exempt from fee per GC27388.1 due to
the maximum fees being paid on documents
in this transaction

13013

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63

hundred twenty-seven (327) residential units (defined in the DBA as “Units”) as long as Fee Owners 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 Fee Owners to designate no less than thirty-four (34) 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 and low-income households, for a period of no less than fifty-five (55) years and for moderate-income households for a period of no less than thirty (30) years, commencing from the date such Affordable Unit receives its required occupancy permits from the City (the restricted 55-year period for each Affordable Unit restricted for Very Low Income Households and for each Affordable Unit restricted for Low Income Households, and the restricted 30-year period for each Affordable Unit restricted for Moderate Income Households 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 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 or 55-year restriction period; (iv) Fee Owners 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 or 55-year restriction period, as more particularly set forth in the Density Bonus Agreement; (v) To accommodate the flexibility desired by Fee Owners 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 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 Fee Owners possibly to 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 or 55-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, low-income, or moderate-income household, as applicable, and as more particularly set forth in the Density Bonus Agreement; (vii) If Fee Owners intend to offer for sale any of the Units, including the Affordable Units, Fee Owners 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 construction loan to Borrower in the original principal amount of \$ 100,000,000 (“**Loan**”) pursuant to a Construction Loan Agreement between Lender, as lender and administrative agent, and Borrower (the “**Loan Agreement**”) and evidenced by a Promissory Note by Borrower to Lender (the “**Note**”). The Loan is to be secured by a Construction Fee and Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing that will be recorded*among the Official Records (the “**Deed of Trust**”) (the Loan Agreement, 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 Borrower.

*concurrently herewith

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 the Density Bonus Agreement concerning the obligation to dedicate no less than 34 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 lien 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 the Density Bonus Agreement. Lender will not make the Loan unless City and Borrower agree to subordinate their rights and obligations under the Declaration and 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 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 the Density Bonus Agreement; provided, that a violation of the Affordability Requirements in the Declaration or the Density Bonus Agreement shall not defeat, render invalid or limit the Deed of Trust. In the event that Borrower or Fee Owners 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 Borrower's 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 Borrower, 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 and the Density Bonus Agreement 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, (iii) Borrower's obligations to perform in accordance with the Declaration and Density Bonus Agreement are not modified, limited, or impaired by such refinancing, and (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 Density Bonus Agreement and Declaration (including, but not limited to, the Affordability Requirements set forth therein) 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 Declaration and 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 Borrower to execute any documents, in recordable form as appropriate, to effectuate the continued enforceability of the Density Bonus Agreement and Declaration upon any foreclosure (or deed in lieu thereof), including but not limited to an assignment and assumption or similar agreement from Borrower or Lender to the successor in interest to the Property. Furthermore, notwithstanding anything contained in the Declaration or the Density Bonus Agreement to the contrary, in the event

Lender or any nominee or affiliate of Lender becomes the owner of the Property following a foreclosure (or deed in lieu thereof), such new owner (excluding an affiliate of any of the Fee Owners) (i) will not be liable for any act, omission, or breach by Borrower or Fee Owners under the Declaration or the Density Bonus Agreement which occurs prior to the date such new owner acquires title to and possession of the Property, but shall be obligated to cure ongoing defaults as to the Property within the applicable cure period set forth in the Declaration or Density Bonus Agreement (as applicable), and (ii) will, upon any sale or other transfer by such new owner of its interest in the Property, automatically be released and discharged from all liability thereafter accruing under the Declaration and the Density Bonus Agreement

5. Lender Notice of Default. In consideration of City's agreements contained in this Agreement, Lender shall concurrently give City a copy of each material notice (including without limitation each notice of default) given by Lender to Borrower 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 Borrower under the Loan Documents on its and/or Borrower's 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 Borrower.

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 Borrower or Fee Owners under the Declaration on its and/or Borrower's and/or Fee Owners' 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 Borrower or Fee Owners under the Declaration and the Density Bonus Agreement.

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 Borrower and/or City, respectively, under the Declaration and 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) 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 92606-5207
Attention.: Director of Community Development & Housing Manager

With a copy to:

Rutan & Tucker, LLP
18575 Jamboree Rd. 9th Floor
Irvine, CA 92612
Attn: Jeffrey Melching, Esq.

If to Lender:

U.S. Bank National Association
800 Nicollet Mall, BC-MN-5CRA
Minneapolis, Minnesota 55402
Attention: Real Estate Banking Division

With a copy to:

Fabyanske, Westra, Hart & Thomson, P.A.
80 South Eighth Street, Suite 1900
Minneapolis, Minnesota 55402
Attention: Katie A. Welsch, Esq.

If to Borrower:

Volar Gardens 3, LLC
c/o Garden Communities
9110 Judicial Drive – Office
San Diego, CA 92122
Attention: Stuart Posnock

With a copy to:

Zygmunt Wilf
c/o Volar Gardens 3, LLC
820 Morris Turnpike

Short Hills, NJ 07078

And to:

Wilf Law Firm, LLP
820 Morris Turnpike, Suite 104
Short Hills, NJ 07078
Attention: Legal Notice – Volar Gardens 3
Construction Loan with US Bank (MDD)

13. Business Days. For purposes of this Agreement, “business day” means any day of the week during with 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.

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: Pete Carmichael
Its: Assistant City Manager

ATTEST:


Carl Petersen, City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

By: 
Jeffrey T. Melching, 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 September 15, 2025 before me, Lori Beyer, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature  (Seal)



EXHIBIT A

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

LOT 1 OF TRACT NO. 18180, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 1009, PAGES 24 THROUGH 29 INCLUSIVE OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE OR OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AS RESERVED BY THE IRVINE COMPANY, IN DEED RECORDED FEBRUARY 19, 1968 IN BOOK 8521, PAGE 41 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM, ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER THE SUBJECT PROPERTY, TOGETHER WITH ALL NECESSARY AND CONVENIENT RIGHTS TO EXPLORE FOR, DEVELOP, PRODUCE, EXTRACT AND TAKE THE SAME, SUBJECT TO THE EXPRESS LIMITATION THAT ANY AND ALL OPERATIONS FOR THE EXPLORATION, DEVELOPMENT, PRODUCTION, EXTRACTION AND TAKING OF ANY OF SAID SUBSTANCES SHALL BE CARRIED ON AT LEVELS BELOW THE DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND BY MEANS OF WELLS, DERRICKS AND/OR OTHER EQUIPMENT FROM SURFACE LOCATIONS ON ADJOINING OR NEIGHBORING LAND, AND SUBJECT FURTHER TO THE EXPRESS LIMITATIONS THAT THE FOREGOING RESERVATION SHALL IN NO WAY BE INTERPRETED TO INCLUDE ANY RIGHT OF ENTRY IN AND UPON THE SURFACE OF THE LAND

HEREINABOVE DESCRIBED, AS RESERVED BY IRVINE INDUSTRIAL COMPLEX BY DEED RECORDED SEPTEMBER 10, 1969, IN BOOK 9073, PAGE 688 OF OFFICIAL RECORDS.

PARCEL B:

NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS, ACCESS AND AMENITY USE GRANTED IN THAT CERTAIN DECLARATION OF EASEMENTS DATED MARCH 2, 2021, RECORDED MARCH 3, 2021 AS DOCUMENT NO. 2021000146989 OF OFFICIAL RECORDS.

APN: 445-015-01