

ORDINANCE 1770

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA HABRA APPROVING AMMENDED AND RESTATED DEVELOPMENT AGREEMENT 14-01 BETWEEN THE CITY OF LA HABRA AND FARFIELD LA HABRA LLC FOR 951-1055 SOUTH BEACH BOULEVARD ATTACHED HERETO AS ATTACHMENT "A".

WHEREAS, California Government Code Section 65865 provides that any city may enter into a Development Agreement with any person having a legal authority or equitable interest in real property for the development of such property; and

WHEREAS, the proposed project meets the objectives of the project proponent as listed in the Mitigated Negative Declaration and assures that certain improvements are implemented that promote the public health, safety and welfare of the community, and assures the developer of certainty in the development of the property; and

WHEREAS, the Planning Commission of the City of La Habra has heretofore held a duly noticed public hearing, as required by law, on Amended and Restated Development Agreement 14-01 for the properties constituting the sites located at 951-1055 South Beach Boulevard and has recommended that the City Council approve the agreement; and

WHEREAS, the City Council of the City of La Habra has heretofore held a duly noticed public hearing, as required by law, on Amended and Restated Development Agreement 14-01 for the properties constituting the sites located at 951-1055 South Beach Boulevard.

WHEREAS, a Mitigated Negative Declaration was certified by the City Council subject to the Mitigation Monitoring Program and the Findings of Facts for construction of a 335 unit apartment complex on the proposed site for which the subject Development Agreement 14-01 applies;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of La Habra does approve an Ordinance adopting Amended and Restated Development Agreement 14-01 with Fairfield La Habra LLC, attached hereto as Attachment "A".

PASSED, APPROVED AND ADOPTED this 1st day of August, 2016.

Jim Gomez, Mayor

Attest:

Tamara D. Mason, MMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS.
CITY OF LA HABRA)

I, Tamara D. Mason, City Clerk of the City of La Habra, do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 1770 introduced at a regular meeting of the City Council of the City of La Habra held on the 18th day of July, 2016, and was thereafter adopted at a regular meeting held on the 1st day of August, 2016, by the following vote:

AYES: COUNCILMEMBERS: BEAMISH, BLAZEY, ESPINOZA, GOMEZ
NOES: COUNCILMEMBERS: NONE
ABSENT: COUNCILMEMBERS: SHAW
ABSTAIN: COUNCILMEMBERS: NONE

Said ordinance has been published or posted pursuant to law.

Witness my hand and the official seal of the City of La Habra this 1st day of August, 2016.

Tamara D. Mason, MMC, City Clerk

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of La Habra
City Clerk
201 East La Habra Blvd
La Habra, California 90631

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF LA HABRA,
a California municipal corporation

and

FAIRFIELD 951 BEACH LLC,
a Delaware limited liability company

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AMENDED AND RESTATED DEVELOPMENT AGREEMENT

This Amended and Restated Development Agreement ("**Agreement**") is entered into this ___ day of _____, 201, by and between the City of La Habra, a California municipal corporation ("**City**") and Fairfield 951 Beach LLC, a Delaware limited liability company ("**Owner**") pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code and Article XI of the California Constitution. City and Owner shall be referred to within this Agreement as the "**Parties**".

Recitals

Owner and City enter into this Agreement on the basis of the following facts, understandings and intentions, and the following recitals are a substantive part of this Agreement:

A. California Government Code Sections 65864-65869.5 authorize a city to enter into a binding development agreement with persons having legal or equitable interests in real property located within a city's municipal boundaries. Among the purposes of a development agreement are providing certainty in the approval of development projects, and maximizing the efficient utilization of resources at the least cost to the public.

B. This Agreement pertains to the parcel of land identified as 951 S. Beach Boulevard, in the City of La Habra, California (the "**Property**"). The Property consists of four separate tax parcels (APNs 018-371-08, 018-371-26, 018-371-30, 018-432-11, and 018-371-27) totaling approximately 10.48 acres of land, as further described in Exhibit A attached hereto and hereby incorporated by this reference. The Agreement also pertains to, but is not limited to, that certain 951 S. Beach Specific Plan dated March

2015 (the “**Fairfield Specific Plan**”) and related documents, buildings, access and parking facilities, landscaping, and infrastructure improvements, all more particularly shown on the development plans dated May 21, 2015, submitted by Architects Orange, MJS Design Group, and Alliance Land Planning (collectively, the “**Plan Documents**”). The Fairfield Specific Plan, Plan Documents, and parcel map attached hereto as Exhibit B (the “**Parcel Map**”) and hereby incorporated by this reference.

C. City desires to assure that the implementation of the Plan Documents will have a net positive fiscal impact for the City and that mitigation measures required by the California Environmental Quality Act (“**CEQA**”) are incorporated into the Plan Documents for the Property.

D. On August 5, 2015, the City and Fairfield La Habra LLC, a Delaware limited liability company entered into a Development Agreement for the Property (the “**Original Agreement**”). On August 28, 2015, Fairfield La Habra LLC transferred its interest in the Property to Owner, a joint venture between Fairfield La Habra LLC and The Northwestern Mutual Life Insurance Company. This Agreement amends and restates the Original Agreement and evidences the ownership of the Property and the performance of this Agreement by Owner in lieu of Fairfield La Habra LLC.

E. The Owner requests to be allowed to develop the Property as a residential project consisting of an apartment community with a maximum total of 335 units (the “**Project**”). A complete description of the proposed development is contained in the Plan Documents and the Fairfield Specific Plan.

F. City finds and determines that entering into this Agreement is in the best interests of its citizens and furthers the public health, safety, and welfare of the community.

G. The City has conducted noticed public hearings before the City of La Habra Planning Commission (the "**Planning Commission**") and La Habra City Council ("**City Council**") as required by Government Code Section 65867.

H. The Planning Commission and City Council reviewed the Mitigated Negative Declaration pertaining to the Property ("**MND**") and determined that it complies with all of the requirements of the CEQA.

I. In conjunction with the approval of the Original Agreement, which approval was effective as of August 5, 2015 (the "**Approval Date**"), the City Council approved the following actions: (i) certification of the MND; (ii) approval of the Original Agreement pursuant to Ordinance No. 1761; (iii) approval of the Ordinance adopting the Fairfield Specific Plan; (iv) approval of the Parcel Map; and (v) approval of the Plan Documents detailing the design of the Project (collectively, the "**Project Approvals**").

J. The Project Approvals, along with City's general plan ("**General Plan**"), zoning ordinances, and other development approvals for the Property existing on the Approval Date shall be referred to within this Agreement as the "**Existing Development Approvals**".

K. Development of the Property in accordance with this Agreement will provide substantial benefits to the Owner and to City by providing important public benefits and furthering important policies and goals of City and have been found to be fair, just and reasonable, including increasing housing opportunities within the City, developing vacant, underutilized property, implementing the General Plan goals of placing people in walkable nodes adjacent to transit and retail uses, and increasing the City's tax base.

Agreement

NOW, THEREFORE, pursuant to the authority contained in Section 65864 of the California Government Code, and in consideration of Owner's agreement to provide to the City the extraordinary and significant public benefits described in this agreement and in addition the mutual representations, covenants and promises above, the Parties hereto agree as follows:

1. Term.

1.1 Effective Date. The term ("Term") of this Agreement shall commence on the later of (i) the Approval Date set forth above, or (ii) on the effective date of Ordinance No. 1761 approving this Agreement and the balance of the Project Approvals (the "**Effective Date**"), and shall continue until the earlier to occur of (x) ten (10) years after the Effective Date, or (y) the completion of the Project and satisfaction of the obligations of Owner provided for hereunder, in each case unless sooner terminated or extended as hereinafter provided.

1.2 Expiration. Following expiration of the Term or any extension, or if sooner terminated pursuant to the terms hereof, this Agreement shall have no force and effect, subject, however, to post-termination obligations of Owner and City, as may be expressly set forth in this Agreement. Upon completion of the development or portions thereof in accordance with the requirements of this Agreement, the expiration of this Agreement shall not constitute termination of any land use entitlements approved for the Property except that development of the Property pursuant to such land use entitlements shall be in accordance with the requirements of this Agreement. Land use entitlements shall expire for any

portions of the project not completed within the Term of this Agreement. Upon the expiration of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such expiration or with respect to any uncured Default in the performance of the provisions of this Agreement or with respect to any obligations that are specifically set forth as surviving this Agreement.

2. Development of the Property.

2.1 Property. The Property that is the subject of this Agreement is that certain real property described in Exhibit A attached hereto.

2.2 Binding Covenants; Assignment. It is intended and agreed that the provisions of this Agreement shall constitute covenants that shall run with the Property, and the benefits and burdens hereof shall bind and inure to all successors in interest to the Parties hereto. Notwithstanding the foregoing, provided (a) Fairfield La Habra LLC is not in breach of the Limited Liability Company Agreement of Owner, (b) Fairfield Development L.P. is not in breach of that certain Development Agreement by and between Owner and Fairfield Development L.P. dated August 28, 2015 (the "**Development Agreement**") and (c) Fairfield Development L.P. is not in breach of that certain AIA Document A102-2007 Standard Form of Agreement Between Owner and Contractor dated August 28, 2015 (the "**General Contract**"), (i) Owner agrees to use commercially reasonable efforts to cause Fairfield Development L.P. to develop and construct the Project and (ii) upon completion of the Project, Owner intends to execute a property management agreement with FF Properties L.P. whereby FF Properties

L.P. shall manage the Property, for a period of not less than five (5) years from the Effective Date so long as FF Properties L.P. is not in breach of the property management agreement. At any time during the Term of this Agreement, if Fairfield La Habra LLC is in breach of the Limited Liability Company Agreement of Owner, Fairfield Development L.P. is in breach of the Development Agreement and/or General Contract and/or FF Properties L.P. is in breach of the property management agreement in place with Owner, Owner shall be permitted to assign, convey, lease, sell or otherwise transfer the Assignable Rights (defined below) to The Northwestern Mutual Life Insurance Company, a Wisconsin corporation without the consent of but with prior notice to the City. In the event of an assignment to Northwestern Mutual Life Insurance Company as a result of a breach by Fairfield La Habra LLC, Fairfield Development L.P. or FF Properties L.P. as described above, The Northwestern Mutual Life Insurance Company shall provide thirty (30) days' prior written notice to the City that it intends to take over the Assignable Rights from Owner. Additionally, The Northwestern Mutual Life Insurance Company agrees that (i) it shall be the sole owner of the Assignable Rights unless the City's consent is sought pursuant to the following sentence, provided, however, The Northwestern Mutual Life Insurance Company may hold such Assignable Rights either directly or indirectly through wholly-owned subsidiaries and/or affiliates of The Northwestern Mutual Life Insurance Company and (ii) it shall continue the construction and completion of the Project as a luxury apartment community as contemplated in the Existing Development Approvals, and commensurate with similar Class A rental communities including

Blu Sol in Costa Mesa and Alize in Aliso Viejo, both constructed by Fairfield Development L.P. Additionally, during the period from the Effective Date through the fifth anniversary thereof, Owner shall be permitted to assign, convey, lease, sell or otherwise transfer the rights under this Agreement corresponding to any portion of the Property and/or any approvals related thereto ("**Assignable Rights**") to any entity that has Fairfield Investment Company LLC or any of its subsidiaries or entities controlled by Fairfield Investment Company LLC as a member or partner and is managed by Fairfield Investment Company LLC or any of its subsidiaries or entities controlled by Fairfield Investment Company LLC without the consent of but with prior notice to the City and to a third party subject to the prior approval of the City, which approval shall be given in the City's sole discretion provided that either such assignment shall be subject to execution of the assignment agreement substantially in the form attached hereto as Exhibit G. City agrees that Owner may, at any time following the date that is five years after the Effective Date, assign, convey, lease, sell or otherwise transfer the Assignable Rights to a third party, or an Affiliate (each an "**Assignment**"), provided that any Assignment shall be subject to execution of the assignment agreement substantially in the form attached hereto as Exhibit G. In the case of an Assignment to a third party as opposed to an Affiliate of Owner, such Assignment shall be subject to the prior approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed. City shall have the right to base its consent to any assignment hereunder upon such factors and considerations as City reasonably deems relevant or material to the proposed

assignment and the development of the Project, including, without limitation (i) the proposed assignee's financial condition and ability to properly and successfully meet the obligations of Owner hereunder; and (ii) the proposed assignee's reputation and experience in the development and management of projects similar to the Project. Upon any such Assignment, Owner shall be released and discharged of any further obligations under this Agreement and the Assignee shall thereafter be subject to the Owner's obligations under this Agreement. The City shall respond to any request for approval of an assignment within sixty (60) days after delivery of written request therefor by Owner. In the event City fails to respond within said 60-day period, Owner shall send a second notice to City. If City fails to respond within ten (10) days after the delivery of the second notice, City shall be deemed to have approved such request for assignment. "Affiliate" shall mean any entity that, directly or indirectly, through one or more intermediaries, has control of, is controlled by, or is under common control with, Owner. For these purposes, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management of any entity, whether through the ownership of voting securities, by contract or otherwise.

2.3 Life of Project Approvals. Pursuant to Government Code Section 66452.6(a), notwithstanding any expiration of the Project Approvals under other provisions of California (the "State") law or the La Habra Municipal Code ("Municipal Code"), the duration of all Project Approvals shall automatically be extended to and until the end of the Term of this Agreement or any extension

thereof; provided that the Vested Elements (as defined below) secured by Owner under this Agreement shall have a life no greater than the Term of this Agreement, and any extension thereof.

2.4 Vested Elements. The permitted uses of the Property, the maximum density and intensity of use, the maximum heights, locations, numbers and gross square footage of the proposed buildings, the provisions for vehicular access and parking, reservation or dedication of land for public purposes, or fees in-lieu thereof, provisions of Owner's contributions to the City's efforts to provide additional park land within the City, if any, and the items set forth below, all as may be limited, supplemented or amended by this Agreement and the Project Approvals, shall each be vested and are referred to herein as the "**Vested Elements**". In addition to the foregoing, other terms and conditions of development applicable to the Project are set forth in the following documents as they exist as of the Effective Date (or as of the date issued, if a subsequent approval under (f) below), and shall be considered part of the Vested Elements:

(a) The General Plan, current as of the Effective Date, the terms and conditions of which are incorporated herein by this reference;

(b) The Municipal Code, current as of the Effective Date,

(c) The Fairfield Specific Plan by adoption of City Ordinance No. 1760 on August 5, 2015;

(d) The Plan Documents, Parcel Map, and the Conditions of Approval set forth in Exhibit C ("**Conditions of Approval**") imposed thereon;

(e) All other applicable City plans, policies, programs, regulations,

ordinances, and resolutions of the City in effect as of the Effective Date, which regulate development of the Property and implementation of the Project, and which are not inconsistent with the terms of this Agreement ("**Other Regulations**").

(f) Any permits and/or subsequent approvals issued after the Effective Date which are needed for the implementation and development of the Project or may be required under the Project Approvals, including but not limited to additional subdivision maps or lot line adjustments, if any, final maps, site and architectural review, demolition permits, building permits, grading permits, and infrastructure improvement plans, processed in accordance with the terms of this Agreement. Upon approval, such subsequent approvals shall be automatically incorporated into this Agreement and vested hereby; except that subsequent approvals shall be subject to the terms of such permits or approvals as then-issued and shall be subject to the then-applicable timeframes as to their validity.

2.5 Permitted Uses. The permitted uses for the Property are as follows: up to 335 residential dwelling units, and all improvements appurtenant thereto, including a minimum of 1.25 parking spaces per 1-bedroom unit, 2.25 parking spaces per 2-bedroom unit, and 3.25 parking spaces per 3-bedroom unit, pursuant to the Parking Study prepared by LSA Associates, Inc. and dated July 15, 2014 attached hereto as Exhibit I approved by the City of La Habra; and public and private infrastructure; all of which must be implemented in accordance with the applicable Plan Documents and the Conditions of Approval; provided, however, that should issues arise relating to parking at the Project that materially

and adversely impact the neighborhood in which the Project is located, such as excessive parking by residents and guests of the Project in the streets surrounding the Project, then Owner shall enhance the parking provided for above, which enhancements may include the conversion of up to 30% of the parking stalls to compact spaces, the institution of Transportation Demand Management techniques, or other options as determined by the Community Development Director. In addition, should the Project be converted from apartment to owner-occupied units, the parking ratios of the Project shall then be required to comply with the then-applicable parking standards in effect at the time of such conversion for such owner-occupied units, which requirement must be satisfied prior to the submittal of applications to the City for such conversion to owner-occupied units.

2.6 Present Right to Develop. Subject to Owner's fulfillment of the provisions of this Agreement, the Plan Documents, the Project Approvals and the Conditions of Approval, the City hereby grants to Owner the present vested right to develop the Project and construct on the Property all the improvements authorized by, and in accordance with, this Agreement and the Vested Elements, including, without limitation, the terms of the Plan Documents and the Project Approvals. To the extent permitted by law, no future modification (including by later-adopted initiative and/or referendum) of the General Plan, Municipal Code, Other Regulations, ordinances, policies or regulations that purport to (i) limit the rate or timing of development, size of buildings or other improvements (including developable square footage), or amount of development of the portions of the

Project to be built; or (ii) impose or increase any fees, taxes, assessments, charges or other exactions or conditions upon development, occupancy or use of the Property, other than as provided in the Plan Documents or Conditions of Approval or other Approval or pursuant to Sections 2.8, 3.2 or 4.1 of this Agreement, shall apply to the Property; provided, however, that nothing in this Agreement shall prevent or preclude City from adopting any fees or land use regulations or amendments thereto, expressly permitted in Section 3.2 of this Agreement.

2.7 Timing of Improvements. Owner may implement the Plan Documents, if at all, in phases in Owner's sole and absolute discretion. It is the Parties' specific intent that this Agreement shall prevail over any later-adopted, general initiative or moratorium that might otherwise have the effect of restricting or limiting the timing of development of the Project, and that Owner shall have the right to develop the Project at such time as Owner deems appropriate within the exercise of its subjective business judgment; and no annual (or other) later-adopted or approved limit, moratoria, or other limitation upon the number of, or phasing or pacing of, buildings which may be constructed, or building permits which may be obtained, or the like shall apply to the Project within the Term of this Agreement.

2.8 Agreement and Comprehensive Plan Documents. The Parties acknowledge that, except as specifically set forth herein, this Agreement, the Plan Documents, the Mitigation Monitoring and Reporting Program, as set forth in Exhibit D attached hereto (the "**Mitigation and Monitoring Reporting Program**") and the Conditions of Approval and the other Project Approvals set

forth a comprehensive schedule of all development terms and conditions, development mitigation measures and fees, special assessments, special taxes, exactions, fees in-lieu, charges and dedications required in the public interest to be contributed, paid or constructed due to development of the Property as defined in the Plan Documents. All fees referred to herein shall be fixed and not subject to increase, and shall further be limited in the manner specified in Sections 3.2 or 4.1, respectively.

2.9 Design of On-Site and Off-Site Improvements. The design review approvals described in the Plan Documents provide the final architectural and design review approval by the City. The Plan Documents, Mitigation and Monitoring and Reporting Program, Conditions of Approval, Project Approvals and all improvement plans prepared in accordance thereof, shall govern the design and scope of all on-site and off-site improvements benefiting or to be constructed on the Property, including all street widths and dedications. In no event shall final architectural and design approval by City be conditioned on or require any change in the approved Plan Documents, Mitigation Monitoring and Reporting Program or Conditions of Approval or other Project Approvals, without Owner's consent.

2.10 Development of the Site. In consideration for the City entering into this Agreement, upon Owner's election to commence development of the Project, if at all, Owner agrees to perform all of its obligations contained in this Agreement in the time and manner set out in this Agreement and the Plan Documents, Mitigation Monitoring and Reporting Program, Project Approvals and Conditions

of Approval.

2.11 Building Standards. Owner hereby agrees that the Project will be built to the Standards set forth in the building codes in effect at the time of submission of Owner's construction documents. Should building permits be allowed to expire, the Owner shall submit plans to the City that comply with the Building Code in effect at the time of resubmittal for the reissuance of building permits.

3. Effect of Agreement.

3.1 Subsequent State or Federal Laws or Regulations. As provided in California Government Code Section 65869.5, this Agreement shall not preclude the application to the Project of changes in State or federal laws or regulations ("Changes in the Law"). In the event Changes in the Law prevent or preclude compliance with one or more material provisions of this Agreement, Owner may request that such material provisions be modified or suspended, or performance delayed as may be necessary to comply with Changes in the Law, and City may take such action as it reasonably deems necessary to be consistent with the intent of this Agreement.

3.2 Changes to Existing Regulations. Changes to the Vested Elements, including such changes adopted by the electorate through the powers of initiative or otherwise, shall not apply to the development, occupancy and use of the Property, except as follows:

(a) Subject to Section 4 herein, City regulations, ordinances, policies, programs, resolutions or fees adopted after the Effective Date that are (i) not in conflict with the Vested Elements and the terms and conditions for development

of the Property established by this Agreement, or otherwise applicable regulations existing as of the Effective Date; and (ii) applicable to all similarly situated projects within the City. Changes to the General Plan, Municipal Code or Other Regulations shall be deemed to conflict with the Project Approvals and this Agreement (a "**Conflicting City Law**") and shall not apply to the Project or any part thereof if such changes (i) prevent, restrict, condition or delay the development, occupancy or use of the Property in accordance with the Project Approvals; (ii) require changes in the development of the Property from what is contemplated by the Project Approvals; (iii) delay, ration or impose a moratorium on development, occupancy or use of the Property; or (iv) require the issuance of discretionary or nondiscretionary permits or approvals by the City other than those required as of the Effective Date. A fee, tax, assessment or other exaction imposed on the development, occupancy or use of the Property shall be deemed to conflict with this Agreement and not apply to development of the Property in accordance with the Project Approvals and this Agreement, if it is (i) a new fee, tax, assessment or other exaction, or (ii) an increase in an existing fee, tax, assessment or other exaction that exceeds the amount permitted pursuant to Section 4 below.

(b) Any law, regulation or policy which would otherwise be Conflicting City Law, but through this Agreement or by later separate document, application to the Property has been consented to in writing by the Owner.

3.3 Further Reviews. Owner acknowledges that existing land use regulations, the Vested Elements and this Agreement contemplate the possibility of further

reviews of elements of portions of the Project by the City. Nothing in this Agreement shall be deemed to limit the legal authority of City with respect to these reviews as provided by, and otherwise consistent with, this Agreement. In no event shall such further review by City revisit the Plan Documents, Conditions of Approval or the other Project Approvals, or be conditioned on or require any change in the Project except as expressly provided in the Plan Documents, Conditions of Approval or this Agreement.

3.4 Local Rules. Future development on the Property shall be subject to all the official rules, regulations and policies of the City which govern uses, architectural design, landscaping, public improvements and construction standards, and which are contained in the Plan Documents or are in effect as of the Effective Date (collectively, “Local Rules”), with the exception that revisions or amendments to the Local Rules necessary to address a change in condition occurring after the Effective Date which threatens the public health or fire and life-safety of the residents of the Project and/or the immediate community, shall apply as though the rules were in effect as of the Effective Date. Notwithstanding any other provision of this Agreement, and without limitation as to any other exceptions contained in this Agreement, City shall retain the authority to take the following actions, so long as such action is applied on a City-wide basis as to similarly situated projects:

- (a) Adopt and apply property transfer taxes and/or excise taxes;
- (b) Adopt and apply utility charges;
- (c) Adopt updates to building and/or fire codes;

(d) Maintain the right of voters to act by initiative or referendum, but only to the extent that the initiative or referendum does not affect or interfere with any Vested Elements acquired by the Owner in this Agreement, except as referendum is provided for in California Government Code Section 65867.5 (a); and

(e) Take other actions not inconsistent with the Vested Elements or expressly prohibited by the terms or provisions of this Agreement.

3.5 Future Exercise of Discretion by City. This Agreement shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or, except as provided herein, to limit discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances or laws which require the exercise of discretion by City or any of its officers or officials. Except as provided herein, this Agreement shall not prevent City from applying new rules, regulations and policies, or from conditioning future Project development approval applications on new rules, regulations and policies that do not conflict with the terms of the Project Approvals, the Vested Elements, or this Agreement.

3.6 Regional Programs. Except as specifically provided in Section 4 below, City shall not require all or any portion of the Project or the Property to participate in any regional program (*i.e.* a program that is not initiated by City or adopted by the City prior to the Effective Date, and that includes properties located in whole or in part outside of the City) nor shall City require all or any portion of the Property or the Project to pay or contribute to any regional development exaction to the extent that such program or development exaction

is not in effect as of the Effective Date, including without limitation, any such program or development exaction initiated by the County of Orange, except as may be required by law.

4. **Development Fees, Exactions and Dedications.** The fees, assessments, taxes, exactions and dedications (collectively "Fees") payable due to the development, build out, occupancy and/or use of the Property pursuant to this Agreement shall be exclusively those set forth in the Project Approvals, Conditions of Approval and the Plan Documents and as specified in this Agreement. Notwithstanding any amendments to the Fees or imposition of any new City fees, taxes, assessments, or other exactions after the Effective Date, the Fees set forth in this Agreement, the Project Approvals, Conditions of Approval and the Plan Documents shall be the only fees, charges, assessments, taxes, dedications and exactions payable to City due to development, occupancy or use of the Property as contemplated by this Agreement.

4.1 Processing Fees. Processing fees, including without limitation Building Permit fees ("Processing Fees"), may be increased if the increase is applicable Citywide and reflects the reasonable cost to City of performing the administrative processing or other service for which the particular Processing Fee is charged. New Processing Fees may be imposed if the new Processing Fees apply to all similarly situated projects or works within the City and if the application of these Processing Fees to the Property is prospective only. Processing Fees shall be due and payable upon submittal and/or the issuance of the appropriate permits as customarily charged for such services. Owner shall reimburse City for

reasonable staff overtime expenses incurred by City in processing review, approval, inspection and completion of the Project provided that such overtime expenses are (a) reasonably necessary for the completion of the Project in accordance with Owner's schedule, if and to the extent Owner's schedule requires action sooner than the mandated deadlines for such actions by the City; and (b) applied to Owner in the same manner as similarly situated project applicants.

4.2 Dedications. Owner shall offer to dedicate to City, upon request by City, all portions of the Property designated in the Conditions of Approval for public easements, streets or public areas.

4.4 Mitigations. Owner agrees to contribute to the costs of public facilities and services in the amounts set forth in the Plan Documents, Mitigation Monitoring and Reporting Program and Conditions of Approval, as required to mitigate impacts of the development, occupancy and use of the Property ("**Mitigations**"). City and Owner recognize and agree that but for Owner's contributions to mitigate the impacts arising as a result of the entitlements granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement. City's approval of development of the Property is in reliance upon, and in consideration of, Owner's agreement to make contributions toward the cost of public improvements and public services as provided to mitigate the impacts of development of the Property pursuant to this Agreement.

4.5 Contributions to City-Wide Enhancements. As further consideration for

the City entering into this Agreement, and as significant public benefits to the City and its residents, Owner agrees to participate to the extent hereinafter specifically described in the City's efforts to provide additional parks and recreational areas within the City:

(a) Contribution to Open Space, Recreation and Parks. In order to alleviate any effect of the occupancy and use of the Project upon public parks and recreational areas within the City, Owner agrees to construct within the Property, and as part of the Project, significant open space and recreational amenities (including pool/spa areas, fitness center and club room, courtyards, bar-b-que areas, tot lot, and public realm), as more particularly described and depicted in the Plan Documents and Fairfield Specific Plan, and incorporated herein, and to contribute up to \$2,503,000 to the City for the acquisition, improvement, and/or maintenance of public open space and park facilities ("**Park Contribution**"). Such contribution amount is based on the City approved 1.75 persons per household factor and on-site recreational amenity credit, as detailed in Exhibit E attached hereto. Completion of the on-site Recreational Amenities and payment of the fee listed above, shall constitute Owner's sole and complete obligation to the City for the Project with respect to alleviating any effect of the occupancy and use of the Project upon public parks and recreational areas within the City. The full payment of the fee shall be made at the time the first building permit is issued for the project. The parties acknowledge that Owner's payment of the Park Contribution and the construction of the Recreational Areas provide significant public benefits to the City and its residents with respect to the use and

availability of parks and recreational areas, and is a material inducement to the City in entering into this Agreement. Should the project or any portion of the project be converted from apartment to home ownership the Owner shall be subject to payment of full park fees as required by the La Habra Municipal Code Section 15.48.062, except that credit shall be given to the owner for the park fees paid by the Owner or the developer of the Project against the amount due to the City as required by Section 15.48.062.

(b) Intentionally Omitted.

5. **Standard of Review of Permits.** All permits ("Permits") required of Owner to develop the Property, including but not limited to (i) encroachment permits, (ii) road construction permits, (iii) infrastructure permits, (iv) grading permits, (v) building permits, (vi) fire permits, and (vii) Certificates of Occupancy, shall be issued by City after City's review and approval of Owner's development plans, provided that City's review of the applications is limited to determining whether the following conditions are met:

(a) The application is complete; and,

(b) The application demonstrates that Owner has complied with this Agreement, the Plan Documents, the Mitigation Monitoring and Reporting Program, the Conditions of Approval, Project Approvals and the applicable Local Rules.

6. **Priority.** In the event of conflict between the General Plan, this Agreement, the Code, Other Regulations and Local Rules, all as they exist on the Effective Date, the Parties agree that the following sequence establishing the relative priority of

each item: (1) the General Plan, as existing on the Effective Date; (2) Fairfield Specific Plan, and this Agreement; (3) the Mitigation Monitoring and Reporting Program; (4) the Project Approvals, (5) the Plan Documents; and (6) the Code, Other Regulations and Local Rules.

7. Cooperation in Implementation. Upon Owner's or Owner transferee's satisfactory completion of all required preliminary actions provided in the Plan Documents, and payment of required fees, if any, City shall proceed in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Property in accordance with the Plan Documents, including the following actions:

(a) Scheduling any required public hearings by the Planning Commission and City Council; and,

(b) Processing and checking all maps, plans, land use and architectural review permits, building plans and specifications and other plans relating to development of the Property filed by Owner as necessary for complete development of the Property. Owner, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and to cause City's planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents. It is the Parties' express intent to cooperate with one another and diligently work to implement all land use and building approvals for development of the Property in accordance with the Plan Documents and other

Approvals and the terms hereof. At Owner's request and sole expense, City shall retain outside building consultants to review plans or otherwise assist City's efforts in order to expedite City processing and approval work. City shall cooperate with Owner, and assist Owner in obtaining any third-party governmental or private party permits, approvals, consents, rights of entry, or encroachment permits, needed for development of the Project or any other on or offsite improvements.

8. Annual Review of Compliance with Agreement.

8.1 City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code Section 65865.1. Owner or successor shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review.

8.1.1 During each annual review by City, Owner is required to demonstrate good faith compliance with the terms of the Agreement. Owner shall submit a report describing its compliance with the Agreement in the preceding year and further agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, within thirty (30) days after the City's written request therefor.

8.1.2 The City Council shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Owner has, for the period under review, complied with the terms of this Agreement. If the City Council finds that the Owner has so complied, the annual review shall be concluded. If the City

Council finds, on the basis of substantial evidence, that Owner has not so complied after the expiration of the notice and cure period set forth below, the City Council may terminate the Agreement, or require the Owner to come into compliance with the Agreement as set forth in Section 9 below; provided however that a notice and cure period shall not be required if (i) the failure to comply is material, (ii) was previously noticed to Owner in prior annual reviews, and (iii) (a) after notice in connection with such prior review, Owner did not timely or sufficiently cure such failure to comply, or (b) even if Owner attempted to timely and sufficiently cure such default, the same failure to comply has occurred on two or more prior occasions.

9. Default and Remedies

9.1 **General Provisions.** In the event of any default, breach, or violation of the terms of this Agreement ("**Default**"), the Party alleging a Default shall give the other Party a written Notice of Default, which notice shall specify the nature of the alleged Default. The defaulting party shall have a period of thirty (30) days to cure such Default; provided, however, that such period shall be extended to the extent that such Default cannot reasonably be cured within thirty (30) days so long as the defaulting party commences to cure such default within such 30-day period and thereafter diligently pursues the same to completion (the "**Cure Period**"). During the Cure Period, the Party charged shall not be subject to the exercise of remedies under this Agreement, and if the alleged Default is cured within the Cure Period, then no remedies shall be available with respect to such Default, except as set forth in 8.1.2. If the Default is not cured within the Cure

Period specified in the Notice of Default, then the non-defaulting party may exercise the remedies set forth in the balance of this Section 9 below or in 8.1.2, if applicable.

9.2 Termination of Agreement for Default. The validity of any termination may be judicially challenged by Owner. Any such judicial challenge must be brought within sixty (60) days of service on Owner, by first class mail, postage prepaid, of written notice of termination by City.

9.3 Other Remedies for Default. If a Default is not cured within the Cure Period, the non-defaulting Party may immediately terminate this Agreement or institute legal proceedings to enforce the provisions thereof. The non-defaulting Party shall be entitled to seek any and all remedies at law or in equity, as limited herein, in the event of an uncured Default under this Agreement or Default if cure is not required.

9.4 Waiver. Failure or delay in giving Notice of Default shall not waive a Party's right to give future Notice of the same or any other Default.

9.5 Monetary Damages. The parties agree that monetary damages shall not be an available remedy for either party. Enforcing the payment of money agreed to be paid herein, or claims for reimbursement of amounts overpaid or otherwise paid under protest, shall not constitute "monetary damages" for purposes of this Agreement.

9.6 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary equitable relief are a particularly appropriate remedy for the

enforcement of this Agreement and therefore shall be available to the parties to this Agreement, and to their successors and assigns. The foregoing shall not be construed as a covenant by Owner to build all or any portion of the Project.

10. Third Party Litigation

10.1 Third Party Litigation Concerning Agreement. Owner shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless City, its agents, officers and employees from any claim, action or proceeding against City, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement, or to challenge the City's compliance with the provisions of CEQA. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense of such claim. If City fails to promptly notify Owner of such claim, action or proceeding, or if City fails to reasonably cooperate in the defense, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless City.

The Parties shall reasonably cooperate with each other in defending any such litigation. Owner shall pay any attorneys' fees awarded against the City or Owner, or both, resulting from that cause of action. Owner shall be entitled to any award of attorneys' fees arising out of such action.

Notwithstanding the foregoing, Owner shall not be required to indemnify the City against any claims arising out of the gross negligence or willful misconduct of the City or any of its agents or employees.

10.2 Environmental Indemnity. Owner shall defend, indemnify and hold City, its officers, agents, employees, and independent contractors free and harmless from any claims or liability based upon or arising from the presence of any Hazardous Substance on any of the Property located in the Project in violation of Environmental Laws. As used herein, "Hazardous Substance" shall mean any substances or materials which are regulated as hazardous or toxic under Environmental Laws. As used herein, "Environmental Laws" shall mean any and all federal, state, municipal and local laws, statutes, ordinances, rules, and regulations which are in effect as of the date of this Agreement, or any and all federal, or state laws, statutes, rules and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment or removal of any hazardous or toxic substances, including without limitation, the Comprehensive Environmental Response Compensation Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., ("RCRA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and California Health and Safety Code Section 25100, et seq. To the extent that Owner is or may be entitled to defense or indemnification from any predecessor in interest in connection with the presence of any such Hazardous Substances on the Property, as part of its Purchase Agreement or otherwise, Owner shall also assert any such defenses or indemnification rights on behalf of City, its officers, agents, employees, and independent contractors. Owner's

obligation to defend, indemnify and hold harmless City and its officers, employees, agents or independent contractors from any claims or liability in connection with or arising from the presence of any Hazardous Substance on the Property or any portion thereof shall be limited to claims resulting from the actions of Owner or otherwise occurring during Owner's ownership of the Property, and Owner's obligation hereunder shall survive the termination of this Agreement.

10.3 Challenge to Entitlements. By accepting the benefits of this Agreement, Owner, on behalf of itself and its successors in interest, hereby expressly agrees and covenants not to sue or otherwise challenge the Existing Development Approvals or any City ordinance or resolution affecting the Property existing as of the date of this Agreement. Such agreement and covenant includes, without limitation, the covenant against any direct suit by OWNER or its successor in interest, or any participation, encouragement or involvement whatsoever that is adverse to CITY, in each case, relating to the Property, other than as part of a required response to lawful orders of a court or other body of competent jurisdiction.

11. Mortgage Protection

11.1 This Agreement shall not prevent or limit Owner, in any manner, at Owner's reasonable discretion, and with City's consent, from encumbering all or part of the Property or its improvements by any mortgage, deed of trust, or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain

Agreement interpretations and modifications, and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Notwithstanding the foregoing, the City has previously consented to that certain Construction Cost Agreement dated as of August 28, 2015 by and between Owner, as borrower and The Northwestern Mutual Life Insurance Company, as lender ("Lender"). Any modifications to the aforementioned Construction Cost Agreement or other loan documents ancillary to the Construction Cost Agreement, other than recorded loan documents such as the related Deed of Trust, between Owner and Lender shall not require the consent of the City. Owner shall inform City of any involuntary liens which are placed on the property as when they occur. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

11.1.1 Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

11.1.2 The Mortgagee of any mortgage or deed of trust encumbering all or any part of the Property who has submitted a written request to the City in the manner specified below for giving notices, shall be entitled to receive written notification from City of any Default by Owner.

11.1.3 If City receives a timely request from a Mortgagee requesting a copy of any notice of default given to Owner, 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 such party under this Agreement.

11.1.4. Any Mortgagee who comes into possession of all or part of the Property, through foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take possession subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform or guarantee performance of any of Owner's obligations under this Agreement; provided, however, that to the extent that any covenant to be performed by Owner is a condition precedent to the performance of a covenant by City, the performance thereof by such Mortgagee shall continue to be a condition precedent to City's performance hereunder.

12. Miscellaneous Provisions

12.1 Recordation of Agreement. This Agreement and any amendment of this Agreement shall be recorded in the official records of Orange County, California within the period required by Section 65868.5 of the Government Code. The Parties agree that the signing and recording of this Agreement by City is a ministerial act.

12.2 Entire Agreement. This Agreement contains the entire agreement of the Parties. There are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to within this Agreement. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

12.3 Severability. If any term, provision, covenant, or condition of this Agreement is determined invalid, void, or unenforceable by a court of law, the remainder of this Agreement shall remain in effect provided that the remaining provisions allow the original purpose of this Agreement to be implemented. Notwithstanding the foregoing, the payment of the Fees are essential elements of this Agreement and City would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever unless Owner actually pays such fees notwithstanding the determination that such fees are invalid, void or unenforceable.

12.4 Interpretation and Governing Law. The parties agree that this Agreement is entered into in the County of Orange, State of California and is to be performed in the County of Orange, State of California. Any dispute regarding this Agreement shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to

its fair language and common meaning to achieve the objectives and purposes of the Parties. This Agreement is the mutual drafting product of the Parties, and neither Party shall be deemed the drafting party for purposes of resolving such ambiguities.

12.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

12.6 Singular and Plural. The singular of any word includes the plural.

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

12.8 Waiver. Failure by a Party to require the strict performance of any of the provisions of this Agreement, or the failure by a Party to exercise its rights upon the default of the other Party, shall not waive that Party's right to require subsequent strict compliance with this Agreement.

12.9 Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

12.10 Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquake, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government regulations, court actions (such as

restraining orders or injunctions), or other causes beyond the party's control. If any such events occur, the Term and the time for performance of obligations under this Agreement shall be extended for a time equal to the duration of the delaying event, provided that the Term shall not be extended under any circumstances for more than five (5) years. Any Party learning of such an event shall, as soon as reasonably practicable, notify the other Party in writing of the date on which the event ended.

12.11 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefitted thereby of the covenants to be performed hereunder by such benefitted party.

12.12 Successors in Interest. The burdens of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. During the term of this Agreement only, all provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. During the term of this Agreement, each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each party, each of Owner's assignees and successors in interest, during their respective ownership of the Property or any portion thereof.

12.13 Counterparts. This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

12.14 Jurisdiction and Venue. Any action or proceeding regarding this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California. The Parties waive all provisions of law providing for the filing, removal or change of venue to any other court.

12.15 Project as a Private Undertaking. The Project is a private development. Neither party is acting as the agent of the other in any respect. Each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. No partnership, joint venture, or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

12.16 Further Actions and Instruments. The Parties shall, upon reasonable request, cooperate with and provide reasonable assistance to each other in implementing the provisions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

12.17 Attorneys' Fees and Costs. In any action brought regarding this Agreement, to enforce a provision of this Agreement, because of a breach of this Agreement, or arising out of or connected with this Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs.

12.18 Processing. City shall accept for processing and promptly take action on all applications for Subsequent Development Approvals, provided they are in proper form for required processing. City shall, in a reasonably expeditious manner, review such applications and, upon request and payment by Owner of any costs and/or extra fees associated with that review, shall assign to that review the staff needed to ensure timely processing and completion of the Project.

12.19 Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid.

Notice required to be given to City shall be addressed as follows:

City: City Clerk
City of La Habra
201 East La Habra Blvd
La Habra, CA 90631

With copy to: Director of Community Development
City of La Habra
201 East La Habra Blvd
La Habra, CA 90631

and

Richard D. Jones.
City Attorney
Jones & Mayer
3777 N. Harbor Blvd
Fullerton, CA 92632

Owner: Fairfield 951 Beach LLC
c/o FF Realty, Inc.
5510 Morehouse Drive, Suite 200
San Diego, CA 92121
Attn: Jon MacDonald

With copy to: Kennerly, Lamishaw & Rossi LLP
707 Wilshire Blvd., Suite 1400
Los Angeles, California 90017
Attn: Robert L. Madok, Esq.

The Northwestern Mutual Life Insurance Company
720 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
Attn: Real Estate Department

And: Northwestern Mutual Investment Management
Company, LLC
Attn: Regional Director
610 Newport Center Drive, Suite 850
Newport Beach, CA 92660

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

12.20 Estoppel Certificates. Either Party may at any time deliver written Notice to the other Party requesting an estoppel certificate (the "**Estoppel Certificate**") stating:

12.20.1 The Agreement is in full force and effect and is a binding obligation of the Parties.

12.20.2 The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments.

12.20.3 No Default in the performance of the requesting Party's obligations under the Agreement exist or, if a default does exist, the nature

and amount to cure any Default. A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The Community Development Director may sign Estoppel Certificates on behalf of the City. An Estoppel Certificate may be relied on by assignees and Mortgagees. The Estoppel Certificate shall be substantially in the same form as Exhibit H.

12.21 Agent for Service of Process. In the event Owner is a foreign corporation, then Owner shall file with the Secretary of State, upon execution of this Agreement, a designation of a natural person residing in the State of California, giving its name, residence, business addresses, and its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon such party. If for any reason service of such process upon such agent is not feasible, then in such event such party may be personally served with such process out of this County and such service shall constitute valid service upon such party. Owner hereby concedes that it, and any assignee or transferee, is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto.

12.22 Authority to Execute. The person executing this Agreement on behalf of each Party warrants and represents that he/she has the authority to do so.

The parties have executed this Agreement on the date set forth next to their signatures below.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

CITY OF LA HABRA, CALIFORNIA
a California municipal corporation

City

Approved as to Form:

City Attorney

Attest:

City Clerk

City Manager

201 East La Habra Blvd
La Habra, CA 90631
Telephone: (562) 383-4030
Facsimile: (562) 383-4474

Owner

FAIRFIELD 951 BEACH LLC,
a Delaware limited liability company

By: FAIRFIELD LA HABRA LLC
a Delaware limited liability company,
its Managing Member

By: FFI GP, Inc., a Delaware corporation,
Its Non-member Manager

By: _____
Name: _____
Title: _____
Telephone: _____
Facsimile: _____

By: THE NORTHWESTERN MUTUAL LIFE INSURANCE
COMPANY, a Wisconsin corporation, member

By: Northwestern Mutual Investment
Management Company LLC, a
Delaware limited liability company,
its wholly-owned affiliate

By: _____
Name: _____
Title: _____
Attest: _____
Name: _____
Title: Assistant Secretary

**EXHIBIT A
LEGAL PROPERTY DESCRIPTION**

**EXHIBIT B
PARCEL MAP**

(See Attached)

EXHIBIT C
CONDITIONS OF APPROVAL
(See Attached)

**EXHIBIT D
MITIGATION MONITORING AND REPORTING PROGRAM**

EXHIBIT E

Open Space and Park Fee Calculation

The City of La Habra collects open space and park fees based upon a formula established by the State-wide Quimby Act. The Quimby Act requires park fee payments or dedications based upon persons generated by new subdivisions. If the project was a subdivision, the current open space and park fee formula results in the following fee:

335 units X 2.33 persons per household / 1,000 X 2.5 acres = 1.95 acres
1.95 acres X \$1,800,000 per acre = \$3,510,000

Recognizing that the proposed project is not a Subdivision within the traditional definition, the City reviewed data to determine an appropriate persons per household (PPHH) generation factor. Based on the project's residential mix of 96% one and two bedroom units (184 one bedroom units and 136 two bedroom units), an average PPHH figure of 1.75 was determined to be acceptable. Based on the 1.75 PPHH factor, the Open Space and Park Fee Contribution for the project is:

335 units X 1.75 PPHH / 1,000 X 2.5 acres = 1.46 acres
1.46 acres X \$ 1,800,000 per acre = \$2,628,000

Additionally, the City recognizes the benefit of the provision of a Public Realm area along Beach Boulevard. This area will provide enhanced landscaping and seating areas for persons utilizing the bus stop as well as a lush green setback. The area of the Public Realm is approximately 3,300 square feet. Based on the land value of \$1,800,000 per acre, the Public Realm represents a value (land only) of \$136,363. The City agrees to credit the project a total of \$125,000 for the Public Realm.

Accounting for the Public Realm credit results in a total Open Space and Park Fee amount of **\$2,503,000**.

EXHIBIT F INSURANCE REQUIREMENTS

Without limiting the Owner's indemnification of the City, and prior to commencing any of the activities provided for under this Agreement, the Owner shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$5,000,000 Each occurrence
\$5,000,000 General aggregate
\$5,000,000 Products/Completed Operations aggregate
\$5,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Owner; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Owner to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than two million dollars (\$2,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Owner and/or its subcontractors involved in such activities shall provide coverage with a limit of four million dollars (\$4,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least two million dollars (\$2,000,000) policy limit Bodily Injury by disease, two million dollars (\$2,000,000) each accident/Bodily Injury and two million dollars (\$2,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Owner included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Owner or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of La Habra, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of La Habra, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Owner's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Owner shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-

insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Owner's insurance.

3. General Aggregate. The general aggregate limits shall apply separately to Owner's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit E, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Owner and City agree as follows:

1. Owner agrees to ensure that subcontractors, and any other party involved with services or work relating to the Agreement who is brought onto or involved in the performance of such work or services by Owner, provide the same minimum insurance coverage required of Owner, except as with respect to limits. Owner agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Owner agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Owner agrees to be responsible for ensuring that no contract used by any party involved in any way with the Project reserves the right to charge City or Owner for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Owner in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any activities provided for under this Agreement, Owner, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Owner shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Owner or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage, which shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Owner shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of La Habra

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Owner shall have, and provide written proof of, an A.M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

EXHIBIT G

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

KLR

Robert Madok, Esq. AND

City of La Habra, City Clerk
201 East La Habra Blvd.
La Habra, CA 90631

(Space Above For Recorder's Use)

PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT TOGETHER WITH CONFIRMATION AND CONSENT

THIS PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT TOGETHER WITH CONFIRMATION AND CONSENT ("**Agreement**") is entered into and made effective as of _____, 2015, by and among THE CITY OF LA HABRA, a California municipal corporation ("**City**"), FAIRFIELD 951 BEACH LLC, a Delaware limited liability company ("**Assignor**") _____, a _____ ("**Assignee**"). City, Assignor and Assignee are each herein referred to as a "**Party**" and, collectively, as the "**Parties**."

RECITALS

- A. Assignor is the current or previous owner of certain real property consisting of approximately 10.8 acres of land located at 951 S. Beach Boulevard, in the City of La Habra, California (APNs 018-371-08, 018-371-26, 018-371-30, 018-432-11 and 018-371-27) and more particularly described on Exhibit "A" attached hereto ("**Property**").
- B. The Property is subject to that certain Amended and Restated Development Agreement dated as of _____ 2015, by and between City and Assignor (the "**DA**"). Terms defined in the DA shall have the same meaning when used in this Agreement.
- C. Assignor and Assignee have entered into that certain Purchase Agreement and Escrow Instructions dated as of _____, 20__ (the "**Purchase Agreement**") pursuant to which Assignor has agreed to purchase that portion of the Property described in Exhibit "B attached hereto (the "**Development Parcel**") upon the terms and conditions contained in the Purchase Agreement.
- D. The closing under the Purchase Agreement is scheduled to occur upon the satisfaction of certain conditions set forth in the Purchase Agreement,

including, if applicable), the condition that a final subdivision map (the "Final Map") be recorded in the Official Records of Orange County showing the Development Parcel as a separate legal lot or parcel.

- E. The Parties have entered into this Agreement in order to, among other things: (i) evidence the assignment by Assignor to Assignee of certain rights under the DA and the assumption by Assignee of certain obligations of Assignor under the DA relating to the Development Parcel, (ii) evidence the City's consent to (a) the Transfer of the Development Parcel by Assignor to Assignee, and (b) the granting of a lien on the Development Parcel by Assignee to a lender who will make a development loan to Assignee to finance the development of the Development Parcel by Assignee (the "Development Lender"), and (iii) confirm the completion of certain obligations under the DA and confirm certain facts relative to the development of the Development Parcel; and (iv) confirm that certain remaining obligations relative to the development of the Development Parcel are appropriately allocated among Assignor and Assignee (and their respective successors and assigns) as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Effective Date of Agreement. This Agreement shall be effective as to all of the Parties at such time as (i) the City has confirmed in writing to Assignee that the statements in Section 4 are accurate and (ii) fee title to the Development Parcel has been properly vested in Assignee (the "Effective Date"). This Agreement shall be void and of no force and effect in the event (a) the Purchase Agreement is terminated for any reason whatsoever prior to such conveyance or (b) the Effective Date has not occurred on or prior to _____, 20__.

2. Assignment and Assumption. Subject to the terms and conditions set forth in this Agreement, as of the Effective Date, Assignor assigns, transfers, conveys and sets over unto Assignee all of the rights set forth in the DA which inure to the benefit of or pertain to the Development Parcel, and Assignee assumes all of the obligations of Assignor under the DA respecting the Development Parcel to the extent provided in this Agreement.

3. City Consent to Transfers.

3.1 City Consent. Pursuant to Section 2.2 of the DA, the City's prior written consent is required in connection with certain Transfers. Notwithstanding anything contained in the DA to the contrary, City hereby acknowledges and agrees to the following Transfers:

(a) Transfer of Development Parcel by Assignor to Assignee. City hereby approves and consents to the Transfer of the Development Parcel by Assignor to Assignee pursuant to the terms and provisions of the Purchase Agreement.

(b) Grant of Lien on Development Parcel by Assignee to Development Lender. City hereby approves and consents to the transfer of the Development Parcel by Assignee to the Development Lender to secure a promissory note executed by Assignee to Development Lender in the face amount not to exceed _____ Dollars (\$_____).

Assignor and Assignee have provided the City with copies of the form of the conveyancing documents evidencing the Transfers referenced above, and the City hereby approves such conveyancing documents and all the terms and conditions of such Transfers.

3.2 (Intentionally Deleted.)

4. Confirmation of Certain Facts Relative to Development Parcel.

4.1 Status of Performance. Certain obligations set forth in the DA relating to the development of the Project have been completed. The Parties acknowledge and agree that the following are true, complete, and accurate statements regarding the status of the DA insofar as it pertains to the Development Parcel:

(Insert Conditions of Approval and other performances under the DA that have been completed relative to the Development Parcel if any).

4.2 No Defaults; No Termination. The DA is in full force and effect and has not been modified, supplemented or amended in any way except as provided in this Agreement. There are no uncured defaults under the DA, and no event has occurred which with notice or the passage of time, or both, would constitute such a default. Neither Assignor nor City has exercised any right to terminate the DA. Nothing in this Agreement shall prohibit Assignor and the City from further amending, modifying or supplementing the DA without the consent of Assignee so long as such amendment, modification or supplement does not impose any obligations on the Development Parcel.

5. Allocation of Continuing Obligations.

5.1 In General. The Parties agree that the DA shall continue to be binding upon the Development Parcel. Assignor (and not Assignee) shall be responsible for all obligations of the Owner under the DA with respect to all portions of the Property still owned by Assignor and Assignee (and not Assignor), shall be responsible for all obligations of the Owner under the DA with respect to the Development Parcel.

5.2 Conditions of Approval. After the Effective Date, Assignee shall observe and/or perform those restrictions and obligations listed in Conditions of Approval ## _____ within the boundaries of the Development Parcel.

5.3 Obligations under DA. After the Effective Date, Assignee shall assume

the obligations of the Owner under the following Sections of the DA with respect to the Development Parcel:

6. Indemnity/Release.

6.1 Indemnity. As of the Effective Date, Assignor indemnifies and holds harmless Assignee and Assignee's trustees, officers, directors, employees, agents, subsidiaries, and affiliates and its and their respective successors and assigns (the "**Assignee Parties**") from and against any and all claims, demands, causes of action, losses, liabilities, liens, encumbrances, costs, and expenses (collectively, "**Claims**") relating to or arising out of the default by Assignor of any of its obligations of any nature whatsoever set forth in the DA occurring prior to the Effective Date.

6.2 Release. As of the Effective Date, Assignee forever releases and discharges City, Assignor and each of City's and Assignor's trustees, officers, directors, employees, agents, subsidiaries, and affiliates and its and their respective successors and assigns (the "**City Parties**" and the "**Assignor Parties**") from and against any and all claims, demands, causes of action, losses, liabilities, liens, encumbrances, costs, and expenses (collectively, "**Claims**") relating to the failure of any obligation of any nature whatsoever set forth in the DA to be satisfied or fulfilled, irrespective of how, why, or by reason of what facts, whether heretofore, now existing, or hereafter existing, or which could, might, or be claimed to exist, of whatever kind or name, whether known or unknown, suspected or unsuspected, liquidated or unliquidated; provided, however, the foregoing release shall not apply to any Claim made against the City Parties or Assignor Parties for any default under the terms of the Purchase Agreement, this Agreement or with respect to any matter for which the Assignee Parties are indemnified pursuant to the preceding paragraph.

Furthermore, as of the Effective Date, City hereby releases and discharges Assignor from and against any and all Claims relating to the failure of any obligation of any nature whatsoever set forth in the DA to be satisfied or fulfilled, irrespective of how, why, or by reason of what facts, whether heretofore, now existing, or hereafter existing, or which could, might, or be claimed to exist, of whatever kind or name, whether known or unknown, suspected or unsuspected, liquidated or unliquidated.

7. No Cross-Default. Notwithstanding anything contained in the DA to the contrary, the Parties hereby agree that (i) in no event shall a default by Assignor under the DA affect or be deemed to constitute a default by Assignee under this Agreement, or otherwise affect the ownership and development of the Development Parcel and (ii) in no event shall a default after the Effective Date by Assignee under this Agreement affect or be deemed to constitute a default by Assignor under the DA or otherwise affect the ownership, lease, development, or use of the remaining Property.

9. Further Amendments. The Parties hereby agree that the City, on the one hand,

and any other Party, on the other hand, shall have the right to enter into such further agreements which may affect the rights and/or obligations of the City and such party under the terms of the DA and/or this Agreement provided that any such agreement shall not impose any further obligation or liability on any other Party without such other Party's written consent.

10. Notices. Section 12.16 of the DA is hereby amended to include the following: Unless otherwise expressly provided herein, all notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by facsimile, telecopier, registered mail, messenger service, or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the date of receipt thereof at the address set forth below. Notices of change of address shall be given by written notice as described in this Paragraph 10:

If to Assignee:

Attn: _____

Fax: _____

Phone: _____

With a copy to:

Attn: _____

Fax: _____

Phone: _____

If to Assignor:

Fairfield 951 Beach LLC
c/o Fairfield Properties, Inc.
5510 Morehouse Drive, Suite 200
San Diego, CA 92121

Attention: _____

Fax: _____

Phone: _____

With a copy to:

Kennerly, Lamishaw & Rossi LLP
707 Wilshire Blvd., Suite 1400

Los Angeles, California 90017
Attn: Robert L. Madok, Esq.

If to City:

City Clerk
City of La Habra
201 East La Habra Blvd
La Habra, CA 90631

With copy to:

Director of Community Development
City of La Habra
201 East La Habra Blvd
La Habra, CA 90631

and

Richard D. Jones
City Attorney
Jones & Mayer
3777 N. Harbor Blvd
Fullerton, CA 92632

10. Effect of This Agreement. Except as amended and/or modified by this Agreement, the DA is hereby ratified and confirmed and all other terms of the DA shall remain full force and effect, unaltered and unchanged by this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of the DA, the provisions of this Agreement shall prevail. Whether or not specifically amended by the provisions of this Agreement, all of the terms and provisions of the DA are hereby amended to the extent necessary to give effect to the purpose and intent of this Agreement.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together will constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other Parties to this Agreement attached thereto.

(Signatures continued on next page)

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

"City"

THE CITY OF LA HABRA

By: _____
Name: _____
Title: _____

"Assignee"

a _____
By: _____
Name: _____
Title: _____

"Assignor"

FAIRFIELD 951 BEACH LLC,
a Delaware limited liability company

By: FAIRFIELD LA HABRA LLC
a Delaware limited liability company,
its Managing Member

By: FFI GP, Inc., a Delaware corporation,
Its Non-member Manager

By: _____
Name: _____
Title: _____
Telephone: _____
Facsimile: _____

By: THE NORTHWESTERN MUTUAL LIFE INSURANCE
COMPANY, a Wisconsin corporation, member

By: Northwestern Mutual Investment
Management Company LLC, a
Delaware limited liability company,
its wholly-owned affiliate

By: _____
Name: _____
Title: _____
Attest: _____
Name: _____
Title: Assistant Secretary

STATE OF)
) ss.
COUNTY OF)

On _____, before me, _____, Notary Public
(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
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)

STATE OF)
) ss.
COUNTY OF)

On _____, before me, _____, Notary Public
(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
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)

STATE OF)
) ss.
COUNTY OF)

On _____, before me, _____, Notary Public
(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
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 H
ESTOPPEL CERTIFICATE**

**EXHIBIT I
PARKING STUDY**

