

COSTA MESA HOUSING AUTHORITY RESOLUTION NO. 05-2012

A RESOLUTION OF THE COSTA MESA HOUSING AUTHORITY APPROVING THAT CERTAIN MUTUAL TERMINATION AGREEMENT WITH SETTLEMENT AND RELEASE (PACIFIC GATEWAY AT 421 BERNARD STREET-FORMERLY CALLED PLAZA RESIDENCES AT 1901 NEWPORT BOULEVARD) AMONG THE CITY OF COSTA MESA, THE COSTA MESA HOUSING AUTHORITY, AND FAIRFIELD PACIFICA LP; AND, AUTHORIZING EXECUTION AND IMPLEMENTATION THEREOF

WHEREAS, the City of Costa Mesa ("City") is a California municipal corporation and the Costa Mesa City Council ("City Council") is its governing and legislative body; and

WHEREAS, the Costa Mesa Housing Authority ("CMHA") is a California housing authority operating under the Housing Authorities Law, commencing with California Health and Safety Code Section 34200, *et seq.* ("HAL") and is the Housing Successor pursuant to the Dissolution Act as hereinafter defined and described; and

WHEREAS, the Costa Mesa Redevelopment Agency ("Agency") was established as a community redevelopment agency that was previously organized and existing under the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* ("CRL"), and previously authorized to transact business and exercise powers of a redevelopment agency pursuant to action of the City Council; and

WHEREAS, Assembly Bill x1 26 chaptered and effective on June 27, 2011 added Parts 1.8 and 1.85 to Division 24 of the California Health & Safety Code, which caused the dissolution of all redevelopment agencies and winding down of the affairs of former agencies, including as such laws were amended by Assembly Bill 1484 chaptered and effective on June 27, 2012 (together, the "Dissolution Act"); and

WHEREAS, as the "Housing Successor" under the Dissolution Act, the CMHA elected to and has assumed the transfer of the housing assets and functions of the Agency upon, and as of, dissolution; and

WHEREAS, on February 1, 2012 the Agency was dissolved pursuant to the Dissolution Act and the Successor Agency to the Costa Mesa Redevelopment Agency, which is a separate legal entity under the Dissolution Act ("Successor Agency"), commenced administering certain enforceable obligations and assets of the former Agency and otherwise the unwinding of the Agency's affairs, in particular the non-housing obligations and affairs, all subject to the review and approval by a seven-member oversight board ("Oversight Board"); and

WHEREAS, the City and former Agency were parties to that certain Settlement Agreement- Plaza Residences Project- 1901 Newport Boulevard ("Settlement Agreement") with Rutter 1901 Newport LLC ("Original Developer") and the former Agency was a party with the Original Developer to that certain Affordable Housing Agreement ("AHA"); and

WHEREAS, the Settlement Agreement and AHA are housing assets of the former Agency that were transferred to the CMHA by operation of law and fully assumed by the CMHA as of February 1, 2012, concurrent with the former Agency's dissolution; and

WHEREAS, Fairfield Pacifica LP ("Fairfield") is the fee owner of certain real property commonly referred to as either or both 1901 Newport or 421 Bernard in the City ("Site"), which Site is legally described in the Settlement Agreement, the AHA, and that certain Termination Agreement defined in the next recital, and further this Site was previously owned by the Original Developer and was and remains the subject of the AHA and the Settlement Agreement; and


WHEREAS, as Housing Successor the CMHA desires to enter into that certain Mutual Termination Agreement with Settlement and Release (Pacific Gateway at 421 Bernard Street - Formerly Called Plaza Residences at 1901 Newport Boulevard) among the City, CMHA, and Fairfield ("Termination Agreement"); and

WHEREAS, as a party to and the direct beneficiary of the Settlement Agreement, the City desires to enter into the Termination Agreement and under the terms thereof accept payment from Fairfield of the Settlement Agreement Termination Consideration.

NOW, THEREFORE, BE IT RESOLVED BY THE COSTA MESA HOUSING AUTHORITY:

1. The foregoing Recitals are incorporated into this Resolution by this reference and constitute a material part of this Resolution.
2. The CMHA approves the Mutual Termination Agreement with Settlement and Release (Pacific Gateway at 421 Bernard Street -Formerly Called Plaza Residences at 1901 Newport Boulevard) among the City of Costa Mesa, the Costa Mesa Housing Authority, and Fairfield Pacifica LP (Attachment No. 1 hereto) with such changes, if any, mutually agreed upon by the Executive Director (or his designee) and the General Counsel or special counsel and Fairfield and its counsel as are minor and in substantial conformance with the form of the Termination Agreement that has been submitted with this Resolution. The Chair and the Secretary are authorized to execute and attest the Termination Agreement on behalf of the CMHA. In such regard, the Executive Director (or his designee) is authorized to cause the Chair and Secretary to sign the final version of the Termination Agreement after completion of such non-substantive, minor revisions, if any. The final form of the Termination Agreement, when duly executed and attested, shall be placed on file in the office of the City Clerk. Further, the Executive Director (or his designee) is authorized to implement the Termination Agreement and take further actions and execute all documents referenced and/or necessary and appropriate to carry out the Termination Agreement; provided that actions not expressly addressed or provided for in the Termination Agreement shall require further action by the CMHA. The Executive Director (or his designee) is authorized to the extent necessary during the implementation of the Termination Agreement to make technical or minor changes after execution, as necessary to properly implement and carry out the Termination Agreement, provided the changes shall not in any manner materially affect the rights and obligations of the CMHA.
3. The CMHA Secretary shall certify to the adoption of this Resolution.


APPROVED AND ADOPTED by the Costa Mesa Housing Authority this 20th day of November 2012.



Jim Righheimer, Chair
Costa Mesa Housing Authority


(SEAL)

ATTEST:



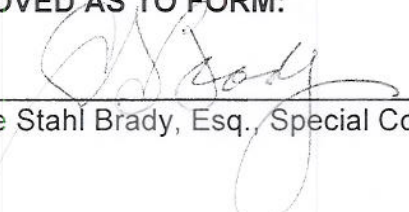
Martha Rosales, Secretary

APPROVED AS TO FORM:



Thomas P. Duarte, Esq., General Counsel

APPROVED AS TO FORM:



Celeste Stahl Brady, Esq., Special Counsel

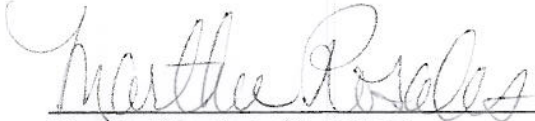
STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF COSTA MESA)

I, Martha Rosales, Secretary of the Costa Mesa Housing Authority hereby certify that the foregoing Resolution No. 05-2012 was duly adopted by the Costa Mesa Housing Authority at a Special Joint Meeting with the City Council, held on the 20th day of November 2012, and that it was so adopted by the following vote:

AYES: **MEMBERS BEVER, RICHEIMER, LEECE, MONAHAN AND MENSINGER**

NOES:

ABSENT:



Martha Rosales, Secretary

(SEAL)

**ATTACHMENT 1
to CMHA Resolution
Termination Agreement
(attached)**

MUTUAL TERMINATION AGREEMENT WITH SETTLEMENT AND RELEASE
**(Pacific Gateway at 421 Bernard Street -- formerly called
Plaza Residences at 1901 Newport Boulevard)**

This **MUTUAL TERMINATION AGREEMENT WITH SETTLEMENT AND RELEASE (Pacific Gateway at 421 Bernard Street - formerly called Plaza Residences at 1901 Newport Boulevard)** ("Termination Agreement") is entered into as of November 20, 2012 ("Date of Agreement") by and among the **CITY OF COSTA MESA**, a California municipal corporation ("City"), **COSTA MESA HOUSING AUTHORITY**, a public body, corporate and politic ("CMHA") and **FAIRFIELD PACIFICA LP**, a Delaware limited partnership ("Fairfield" or "Owner/Developer"). The City and the CMHA may collectively be referred to as the "Public Agency Parties".

RECITALS

A. The Costa Mesa Redevelopment Agency, City of Costa Mesa, California ("Agency" or "former Agency") was previously a community redevelopment agency duly originally organized and existing as a public body corporate and politic under the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* ("CRL"), and was previously authorized to transact business and exercise the power of a community redevelopment agency pursuant to action of the City Council ("City Council") of the City of Costa Mesa. As of and following February 1, 2012, the Agency became a dissolved community redevelopment agency pursuant to the Dissolution Act (as the term is defined below in Recital X hereinafter.)

B. CMHA is a California housing authority duly organized and existing under the California Housing Authorities Law, Part 2 of Division 24, Section 34200, *et seq.*, of the Health and Safety Code ("HAL"), and has been authorized to transact business and exercise the power of a California housing authority pursuant to action of the City Council of the City of Costa Mesa ("City Council").

C. The City is a California municipal corporation.

D. Prior to February 1, 2012, the Agency was engaged in activities necessary and appropriate to carry out the Redevelopment Plan ("Redevelopment Plan") for the Costa Mesa Downtown Project ("Project Area") that was adopted and amended by ordinances of the City Council.

E. Prior to February 1, 2012 and pursuant to Section 33334.2, *et seq.* of the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* ("CRL"), the Agency deposited funds into the Low and Moderate Income Housing Fund ("Housing Fund") for the purpose of providing subsidies to, or for the benefit of, persons and families of Low and Moderate Income, including Low Income and Very Low Income households, to assist them in obtaining affordable housing within the community.

F. The former Agency was a party to that certain Affordable Housing Agreement ("AHA") dated as of June 14, 2004 entered into with Rutter 1901 Newport LLC, a California limited liability company ("Original Owner/Developer"). The AHA encumbered monies from the Housing Fund to subsidize certain Affordable Units as set forth therein.

G. In April 2005 in implementation of the AHA and as an express condition therein, the City, the Agency and the Original Owner/Developer entered into that certain “*Settlement Agreement-Plaza Residences Project- 1901 Newport Boulevard*” (“Settlement Agreement”).

H. The AHA effected the settlement of the Original Owner/Developer’s Action (defined below in Recital M.) filed against the City and other parties.

I. The original entitlement for the Original Project (defined below in Recital L.) and the scope of development in the AHA related to the development of a new 145-unit townhome/condominium development to be constructed and completed in multiple phases on a 3.61 acre “Site” located at 1901 Newport Boulevard in the City referred to as the “Plaza Residences”.

J. The original land use entitlement for the Original Project included conditions of approval, which included, without limitation, requirements related to the Affordable Units as also described in the AHA; however, that original entitlement has been replaced with the New Entitlement for the New Project as defined in Recital U. and more fully described herein, and such New Entitlement includes, without limitation, Condition 45 also as more fully described herein.

K. The Site is legally described on the attached Exhibit A, Legal Description.

L. Pursuant to the AHA and as a part of the settlement of the Action (defined in Recital M.), the Original Owner/Developer (the AHA defined the term “Developer” to include any and all successors in interest to the Site) was to provide on-site seven (7) Affordable Units for owner-occupancy by eligible Moderate Income Homebuyers to be sold at an Affordable Housing Cost with each Affordable Unit subject to a recorded 45-year Affordable Housing Restriction all as more fully described in the AHA (“Original Project”).

M. The scope of the Original Project was the result of compromise and settlement of that certain legal action filed on August 1, 2003 by the Original Owner/Developer, as plaintiff/petitioner, against the City and an unincorporated association of local stakeholders called Costa Mesa Citizens for Responsible Growth, as defendants/respondents, in the Superior Court, County of Orange, State of California as Case No. OCSC No. 03CC09792 (“Action”). In connection with negotiations toward resolution of the Action, the Original Owner/Developer, including on behalf of its successors in interest, the City and the Agency agreed to carry out part of the settlement of such Action by entering into the AHA with the Agency, and the City approved with conditions the Original Owner/Developer’s land use entitlement for the Original Project.

N. Capitalized terms used in this Termination Agreement have the meaning defined in the AHA or the Settlement Agreement or otherwise as separately defined herein.

O. The Settlement Agreement is a contract directly benefiting the City and the (former) Agency as such contract was part of the material consideration exchanged between the City and the Original Owner/Developer, including its successors in interest, in settlement of the Action.

P. One phase of the Original Project with 32 townhome/condominiums, but with no Affordable Units, was completed on part of the Site by the Original Owner/Developer in about 2006.

Q. Thereafter, due to the economic downturn, the Original Owner/Developer apparently defaulted on its loans relating to the development of the Original Project for which the Site was encumbered as security and collateral therefor.

R. The Public Agency Parties have informed Fairfield and Fairfield acknowledges it has been informed that in 2009 the former Agency and the City issued to the Original Owner/Developer notice of Default asserting the following as bases of default of the AHA: (1) Notice of Unified Trustee's Sale initiating foreclosure proceedings by Owner/Developer's Lender, Pacific Western National Bank (and through its trustee/agent, SBS Trust Deed Network); and (2) Order Appointing Receiver and Temporary Restraining Order relating to all or a part of the Greater Site and the Site; and (3) Appointment of Receiver, Bellann Raile of Cordes & Company, over all of Lender's beneficial interests in the Site, the Greater Site and Site, the Original Project, and other assets secured by Lender as against its borrower, the Original Owner/Developer. As specified in the AHA, the former Agency did not disburse or otherwise issue a subsidy of \$892,000 to the Original Owner/Developer for development of affordable units at the Original Project ("Agency Subsidy").

S. The Public Agency Parties have informed Fairfield and Fairfield acknowledges it has been informed that the Site was transferred by Original Owner/Developer to the Lender, Pacific Western National Bank, as holder of the construction loan mortgage for the Project and to the receiver in Orange County Superior Court Case No. 30 2009-00120994 ("Receivership Action"). Prior to entering into negotiations for this Termination Agreement, CMHA had informed Fairfield that Cordes & Company, as receiver and during the pendency of the Receivership Action, requested that the AHA not be terminated or cancelled so that the Agency Subsidy of up to \$892,000 could be available to the new owner of the Site; therefore, neither the City Council nor the former Agency Board terminated the AHA during the Receivership Action and therefore the City and the CMHA to date also have not terminated the AHA.

T. Subsequently, Pacifica Partners LLC ("Pacifica") acquired the Site. Pacifica then conveyed the site to Fairfield and Fairfield now holds fee title to the Site as a successor-in-interest to the Original Owner/Developer.

U. After its acquisition of the Site (exclusive of the first phase 32-unit condominium project), Fairfield filed with the City an application for a modified land use entitlement seeking to revise the original entitlement for the Original Project, which "New Entitlement" was conditionally approved by resolution of the City Council at an open meeting on April 17, 2012 ("New Project"). Fairfield's New Entitlement includes various conditions, including without limitation Development Services and Housing Condition No. 45, which relates to Fairfield negotiating and reaching agreement with and entering into a contract or contracts with the City and CMHA under which the "Covenants" (defined in such Condition No. 45) may be amended and/or terminated and released.

V. As conditionally approved by the New Entitlement, the New Project will include a 113-unit rental housing development on the remaining part of the Site and appurtenant areas (113 units is derived from 145 units in the Original Project less the previously developed 32 units). While the New Project is located on the remaining portion of the same "Site", Fairfield refers to the New Project and proposed rental housing development as "Pacific Gateway" located at 421 Bernard Street, Costa Mesa.

W. Assembly Bill x1 26 ("AB x1 26") chaptered and effective on June 27, 2011 added Parts 1.8 and 1.85 to Division 24 of the California Health & Safety Code and which laws were modified, in part, and determined constitutional by the California Supreme Court in the petition *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. S194861 ("*Matosantos Decision*"), which laws and court opinion caused the dissolution of all redevelopment agencies and winding down of the affairs of former redevelopment agencies; thereafter, such laws were amended further by Assembly Bill 1484 ("AB 1484") that was chaptered and effective on

June 27, 2012 (together AB x1 26, the *Matosantos* Decision, and AB 1484 are referred to as the "Dissolution Act").

X. As of February 1, 2012 the former Agency was dissolved pursuant to the Dissolution Act and the Successor Agency to the Costa Mesa Redevelopment Agency, a public body corporate and politic under AB 1484 ("Successor Agency"), is carrying out winding down the affairs of the former Agency, subject to the review and approval by a seven-member oversight board pursuant to Section 34179 thereof ("Oversight Board").

Y. Pursuant to Section 34176 of AB x1 26, on January 17, 2012 the City Council, by resolution, declined to assume the housing functions and assets, including related agreements, of the Agency and selected the CMHA to assume all such housing functions and assets, including related agreements, of the Agency on and after dissolution as the "Housing Successor" under the Dissolution Act.

Z. Pursuant to Section 34176 of AB x1 26, on January 17, 2012, by resolution, the CMHA agreed to assume all of the housing functions and assets, including related agreements, of the Agency and as of February 1, 2012 the CMHA became and serves as the Housing Successor to the former Agency pursuant to AB x1 26, including as Section 34176 was amended by AB 1484.

AA. Pursuant to Section 34176 as amended by AB 1484, the AHA is one of the housing assets and AHA encumbered pre-AB x1 26 and pre-dissolution monies from the Housing Fund to implement the AHA. All housing assets are listed on that certain housing asset transfer schedule ("HAT") prepared by the CMHA, as Housing Successor, and submitted to the State Department of Finance ("DOF") for review and approval or disapproval of each item listed thereon pursuant to AB 1484. The AHA is one of the housing assets listed on that schedule. The HAT has been reviewed by the DOF pursuant to Section 34176, and while there were several disallowed items on the HAT, the AHA was not one of those disallowed items. Pursuant to the Dissolution Act, the CMHA has requested a meet and confer session with DOF about these disallowed items on the HAT; however, as of the date of preparation of this Termination Agreement, the DOF had not scheduled a date for the meet and confer on the disallowed items, nor has the CMHA received final approval from DOF of the HAT of which the AHA is one of the listed items.

BB. Pursuant to Section 34179.5 of the Dissolution Act, the Successor Agency engaged a licensed accountant approved by the County of Orange Auditor-Controller, which accountant prepared the housing due diligence review of the low and moderate income housing fund ("Housing DDR"). The Housing DDR included, among other data, information about the encumbered monies transferred as of February 1, 2012 by the Successor Agency to the CMHA relating to the potential implementation of the AHA and payment of the project subsidy thereunder. The Housing DDR was received by the Successor Agency and then received by the Oversight Board and after a public comment session was approved by the Oversight Board; and, drafts and final versions of the Housing DDR were submitted by the Successor Agency to the DOF and other county and state entities as required by the Dissolution Act. As of the date of preparation of this Termination Agreement, the Housing DDR is still under review by the DOF and the date on which final approval will occur is subject to the timing under the Dissolution Act and final action by the DOF thereon.

CC. At this time, pursuant to Section 34176 all housing assets have been transferred by operation of law and to be assigned and transferred by authorization of and direction from the Oversight Board pursuant to the Dissolution Act are held by and remain with the CMHA, as Housing Successor, including without limitation the AHA and the Settlement Agreement; provided however,

the DOF has not as of the preparation of this Termination Agreement issued final approval of the HAT or the Housing DDR, or issued the findings of completion related to the Housing DDR that are to be issued by the DOF pursuant to the Dissolution Act.

DD. The parties acknowledge that this Termination Agreement is entered into subject to the requirements of the Dissolution Act, as and if applicable, and the review and actions by the DOF thereunder.

EE. The City and CMHA provide the above Recitals W. through EE. inclusive, to inform Fairfield and all persons of the status of the AHA and Settlement Agreement as housing assets of the CMHA.

FF. Fairfield contends that it may not be subject to the AHA and the Settlement Agreement, while the City and CMHA contend otherwise. Nonetheless, the City and Fairfield have continued and now completed negotiations relating to the satisfaction of Condition 45 of the New Entitlement and have determined that it is in the best interests of the parties to cause the termination of both the AHA and the Settlement Agreement and in consideration thereof Fairfield by this Termination Agreement shall pay to the City the sum of Five Hundred Fifty Thousand Dollars (\$550,000.00) as the ("Settlement Agreement Termination Consideration") as a condition to and upon issuance of the first building permit for all or any part of the construction of the New Project, all as more fully set forth in this Termination Agreement; provided that in no event shall the payment of the Settlement Agreement Termination Consideration by Fairfield to the City occur later than 4:00 p.m. April 16, 2013 as more fully described in Section 2 herein.

GG. Pursuant to this Termination Agreement the parties desire to terminate their obligations under the AHA and the Settlement Agreement and mutually release each other and all parties from any liabilities relating to the AHA and the Settlement Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained in this Termination Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, the CMHA, and Fairfield agree as follows:

Section 1. Effective Date. This Termination Agreement shall be deemed to be approved as of November 20, 2012 but shall be effective only as of the *last* date to occur of both (a) and (b) of the following: (a) action and approval of this Termination Agreement by (i) City Council and (ii) CMHA, and (b) payment to City by Fairfield of the \$550,000 Settlement Agreement Termination Consideration ("Effective Date").

1.1 Tolling and Standstill between Parties until Effective Date.

(a) *Tolling, Standstill and Reservation of Rights.* City, CMHA and Fairfield agree that for period commencing on November 20, 2012 until the Effective Date ("Term of Tolling"), the running of applicable statutes of limitations, laches period, period for filing any complaint, cross complaint, answer, responsive pleading, petition, or other legal action or proceeding at law or in equity, and/or any period related to the timing of the assertion of any claims, actions, suits, rights, cross-demand, defense and/or any remedies at law or equity of any kind or nature arising out of the subject matter of this Termination Agreement, including without limitation the AHA, the Settlement Agreement, the Original Project and its land use entitlement, the New Project and its New Entitlement (together, "Claims") by, for, or against City, CMHA, or Fairfield, or among the parties and relating in any way to any such Claims, shall be suspended, stand still, and be tolled, reserving to City, CMHA

and Fairfield all of their rights and remedies with respect thereto. Nothing in this Termination Agreement shall revive any Claims that are or would be barred under applicable laws and/or precedent as of November 20, 2012, and nothing herein shall waive any claims or defenses any party to this Termination Agreement may have as of November 20, 2012. Nothing in this section shall limit, bar, impair, or otherwise diminish any delayed accrual of any Claims because of delayed discovery of pertinent facts.

(b) *No Filing of Legal Action.* During the Term of Tolling, City, CMHA and Fairfield shall refrain from commencing or filing any legal action or proceeding of any kind or nature, at law or in equity, against the other related in any way to the AHA, the Settlement Agreement, and any and all Claims.

(c) *Last Day for Legal Action re Alleged Breach of Contract of the AHA without this Tolling.* City, CMHA and Fairfield intend by this tolling section of the Termination Agreement to acknowledge and agree, and the parties do hereby acknowledge and agree, that (i) the final date for CMHA or City to commence legal action or any other legal proceeding against Fairfield related to an alleged breach of contract claim under or arising out of the AHA is, will be, and would have been June 14, 2014, and (ii) the final date for Fairfield to commence legal action or any other legal proceeding against City, CMHA related to an alleged breach of contract claim under or arising out of the AHA is, will be, and would have been June 14, 2014. Notwithstanding the foregoing, the tolling created in this Section 1.1 shall terminate upon payment of the Settlement Agreement Termination Consideration by Fairfield.

Section 2. Settlement Agreement Termination Consideration; Outside Date for Payment. In consideration for the City's cancellation and termination of the Settlement Agreement, Fairfield agrees to pay to the City the sum of \$550,000. The full amount of the Settlement Agreement Termination Consideration shall be paid by Fairfield upon issuance of the first building permit for the New Project but in no event later than the "Outside Date" of April 16, 2013. In consideration for this Termination Agreement, Fairfield knowingly waives any and all rights it may have to receive all or a portion of the project subsidy under the AHA or otherwise. The City shall use its reasonable efforts to promptly process Fairfield's plans for the New Project under the New Entitlement in a reasonably expeditious manner and City shall not unreasonably delay review and action (including approval and/or disapproval) of all such plans therefor.

Section 3. City's Clearance of Condition 45. Upon City's receipt of the Settlement Agreement Termination Consideration, Condition 45 of the New Entitlement will automatically be deemed to be completely satisfied. The City shall issue written confirmation to Fairfield that Fairfield has completely satisfied Condition 45 and that each of the Public Agency Parties has not imposed, and shall not in the future unilaterally initiate the imposition of, any Inclusionary Housing requirements on the New Project that may have been, or may be, allowed under federal, state or local law; provided however, the foregoing does not include or cover any Inclusionary Housing requirements that may in the future be imposed or ordered by a court of competent jurisdiction or by a federal, state or local agency or entity with jurisdiction to do so on such New Project, aside from the Public Agency Parties. In this regard, nothing in the foregoing is or shall be construed to be a representation or warranty by any federal or state or local agency or entity other than by the City and CMHA.

Section 4. Settlement Agreement Termination Conditions. The Public Agency Parties, including any of their commissions, departments, or administrators, have not imposed, and shall not in the future unilaterally initiate the imposition of any subsequent exaction, condition of approval, or regulation requiring Fairfield to provide any affordable units at the New Project, or pay any in-lieu

affordable housing fee; provided however, the foregoing does not include or cover any subsequent exaction, condition of approval, or regulation requiring Fairfield to provide affordable units that may in the future be imposed or ordered by a court of competent jurisdiction or by a federal, state or local agency or entity (aside from the Public Agency Parties unless so ordered by a court) with jurisdiction to do so on such New Project. In this regard, nothing in the foregoing is or shall be construed to be a representation or warranty by any federal or state or local agency or entity other than by the City and CMHA.

Section 5. Termination of AHA and Settlement Agreement. Upon payment by Fairfield to the City the Settlement Agreement Termination Consideration, the Public Agency Parties and Fairfield hereby agree that the AHA and Settlement Agreement are automatically terminated, and such AHA and Settlement Agreement shall be of no further force or effect. All covenants, duties, and obligations of the Public Agency Parties and/or Fairfield set forth in the AHA and Settlement Agreement, including implementation of the AHA, with Fairfield as successor in interest thereunder, are terminated as of the Effective Date of this Termination Agreement after receipt of the Settlement Agreement Termination Consideration. Neither the AHA nor the Settlement Agreement shall constitute an encumbrance to title to the Site or bind any future owners of the Site.

Section 6. No Representation or Warranty by City or CMHA Due to Dissolution Act. Prior to November 9, 2012, neither the City, nor CMHA (nor to the City's or CMHA's actual knowledge the Successor Agency) has received a final order from the DOF, the State Controller's Office ("SCO"), or County Auditor-Controller ("CAC") (or other public agency with final decision-making authority under the Dissolution Act) (collectively, "Dissolution Entities") directing the City, or the CMHA, as Housing Successor, (or to the City's or CMHA's actual knowledge the Successor Agency) to return the monies committed by the former Agency (now the CMHA) pursuant to the AHA or other asset or obligation that is directly related to the AHA pursuant to the Dissolution Act. While the City and CMHA (and to the City's and CMHA's actual knowledge the Successor Agency) believe that each has the right and power to enter into the cancellation and termination of the AHA and the Settlement Agreement as provided herein, nothing in this Termination Agreement shall be construed, expressly or impliedly, to be a representation or warranty by the City or CMHA (or parenthetically by the Successor Agency) to Fairfield of such legal authority due to the uncertainty and ambiguity related to the Dissolution Act and its implementation and the fact that final actions by the Dissolution Entities on both the HAT under 34176 and the Housing DDR and the findings of completion related thereto under Section 34179.5 and 34179.6 have not occurred as of the date set forth in the first clause hereof. Notwithstanding the foregoing, the parties acknowledge and agree, regardless of whatever action or lack of action is taken or not taken by the Dissolution Entities or any other State agency, (i) Fairfield is obligated to pay the Settlement Agreement Termination Consideration to the City; (ii) the Public Agency Parties are bound to comply with Sections 3 and 4 of this Termination Agreement after receipt of the Settlement Agreement Termination Consideration; and (iii) the parties agree that after the Effective Date, the AHA and the Settlement Agreement shall be of no further force and effect.

Section 7. Mutual Release of Claims. In consideration of the foregoing and in particular Fairfield's payment and release to the City of the Settlement Agreement Termination Consideration, the parties hereby irrevocably and unconditionally release, acquit, and forever discharge each other, and each of the other's successors, predecessors, assigns, owners, partners, members, stockholders, directors, officers, elected and appointed officials, employees, agents, guarantors, representatives, attorneys, divisions, parent corporations, subsidiaries, affiliates, partners, joint venturers, unincorporated associates, trusts, trustors, trustees, beneficiaries, heirs, insurers, and affiliated persons or entities, from any and all charges, complaints, claims, contracts, liabilities, duties, obligations,

promises, agreements, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, including attorney's fees and court costs, anticipated or actually incurred, of any nature whatsoever, known or unknown, suspected or unsuspected, which any party or any related person or entity as described above, now has, owns or holds, or claims to have, own or hold, or which said parties at any time heretofore had, owned or held, or claimed to have had, owned or held, against one another, or any of the other related persons or entities as described above, in any way arising out of or relating to the Settlement Agreement, and/or the AHA by any party.

Section 8. Waiver of Unknown Claims. Each party and all parties to this Termination Agreement each expressly waive the provisions of Section 1542 of the California Civil Code that provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

City: _____ *(Initials of Authorized Signatory)*
CMHA: _____ *(Initials of Authorized Signatory)*
Fairfield: _____ *(Initials of Authorized Signatory)*

Section 9. Indemnification. Fairfield shall have no obligation to defend, indemnify or hold harmless any of the Public Agency Parties, and all of their agencies, districts, special districts and departments, respective elected and appointed officials, officers, employees, and agents (collectively, "Public Agency Indemnitees") from any claim, action, or proceeding brought or asserted by a third person or entity against any Public Agency Indemnitees to attack, set aside, void, or annul this Termination Agreement. Similarly, the Public Agency Parties shall have no obligation to defend, indemnify or hold harmless Fairfield and/or any of its affiliates, partners, members, directors, officers, employees, agents or representatives ("Fairfield Indemnitees") from any claim, action, or proceeding brought or asserted by a third person or entity against the Fairfield Indemnitees.

Section 10. Legal Challenges. Nothing herein shall be construed to require the Public Agency Parties to defend any third party claims or lawsuits challenging any action taken by the Public Agency Parties with respect to the New Project or this Termination Agreement. Fairfield may, however, in its sole and absolute discretion, appear as a party in any such third party action or proceeding. If such legal challenge is filed, the Public Agency Parties and Fairfield shall meet and confer to mutually agree upon the appropriate actions to be undertaken by each and/or any of such parties. Regardless of whether any lawsuit is filed or disposed of, in no case shall the Public Agency Parties unilaterally invalidate the New Entitlement or initiate imposition on Fairfield an obligation to provide any inclusionary housing or pay any affordable housing in lieu fee, as specified in Section 4 of the Termination Agreement, unless so imposed and/or ordered by a court of competent jurisdiction or other lawful order of a federal or state agency empowered to impose such requirement to provide inclusionary housing or pay any affordable housing in lieu fee. If the Public Agency Parties or the Successor Agency defend such action or proceeding, Fairfield shall have no obligation to defend the Public Agency Parties or the Successor Agency, or itself, and Fairfield shall not be responsible to reimburse the Public Agency Parties for whatever legal fees and costs which may be incurred by the Public Agency Parties or the Successor Agency in defense of such action or proceeding, including any

award of court costs, attorneys' fees, damages or other costs awarded to any third party. If Fairfield defends such action or proceeding, Fairfield agrees that the Public Agency Parties and/or the Successor Agency shall have no obligation to defend themselves or Fairfield, and Fairfield agrees that the Public Agency Parties and/or Successor Agency shall not be responsible to reimburse Fairfield for whatever legal fees and costs which may be incurred by Fairfield in defense of such action or proceeding, including any award of court costs, attorneys' fees, damages, or other costs awarded to any third party. Notwithstanding the foregoing unilateral statements by Fairfield, in particular as to the Successor Agency that is not a party hereto; nothing in the foregoing is or shall be construed to be a promise or agreement by the Successor Agency of Fairfield's statements.

Section 11. Counterparts. This Termination Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one agreement.

Section 12. Reliance on Termination Agreement. Each party and all parties to this Termination Agreement recognize each of them is relying on this Termination Agreement in refraining from commencing or filing any legal action or proceeding of any kind or nature, at law or in equity, against the other relating to any and all claims, real, existing or potential arising out of the AHA and/or the Settlement Agreement.

Section 13. Representation and Warranty. Each party and all parties represents and warrants to the other that it will not attack or challenge the validity or enforceability of this Termination Agreement on any basis whatsoever, substantively or procedurally, and each party acknowledges to the other that it is entering into this Termination Agreement in reliance on such representation and warranty by the other. The City and CMHA both represent to Fairfield that the Recitals and information explained and presented in this Termination Agreement, in particular about the Dissolution Act, is the best information that City and CMHA have as of November 5, 2012. In furtherance thereof and subject thereto, the City and CMHA believe that pursuant to the Dissolution Act the CMHA has assumed all housing assets and housing functions of the former Agency, including, without limitation, the AHA, the Settlement Agreement and all other rights, if any, the former Agency or Successor Agency may have possessed concerning development and ownership of the Original Project or the New Project. Nothing in the foregoing is intended to be, or shall be construed in any manner to be, a legal conclusion, legal opinion, and/or the pre-judgment or pre-determination by the DOF or a reviewing court under the Dissolution Act about such housing assets and housing functions of the former Agency, including, without limitation, the AHA, the Settlement Agreement. The "best information" clause hereof and the factual information and representations stated in this Termination Agreement relate to the best information of the following City officials and representatives as of November 5, 2012: (i) Peter Naghavi, Economic and Development Services Director/Deputy CEO, (ii) Claire Flynn, Development Services Assistant Director, (iii) Hilda Veturis, Management Analyst, (iv) Colleen O'Donoghue, Assistant Finance Director, (v) Bobby Young, Finance and I.T. Director, and (vi) Celeste Brady of Stradling Yocca Carlson and Rauth, special counsel to the City and CMHA in this matter (provided that legal counsel reserves any and all rights to attorney-client communications and any and all privileges related thereto under applicable federal, state, and local laws and regulations and the California Rules of Professional Responsibility.)

Section 14. Assignment. Until the Effective Date, Fairfield shall have no right to sell, mortgage, hypothecate, assign or transfer this Termination Agreement, or any and all of its rights, duties and obligations hereunder, to any person, partnership, joint venture, firm or corporation without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

In the event Fairfield desires to seek the City's consent to sell, mortgage, hypothecate, assign or transfer this Termination Agreement and subject to Section 15.2 hereinafter, then (i) Fairfield shall provide fourteen (14) days prior notice to the City of its desire and intention to sell, mortgage, hypothecate, or assign and provide supporting information of the name, experience, and qualifications of and disclosure to the proposed transferee, relating to this Termination Agreement and constructing and completing the New Project, and (ii) the form of an assignment and assumption agreement under which the proposed transferee will assume all legal and financial responsibilities for this Termination Agreement and the New Project and that such proposed transferee shall become and be liable for the performance of all obligations of Fairfield pursuant to this Termination Agreement. The City will approve or disapprove the proposed transfer within such 14-day period so long as Fairfield provides to City all necessary supporting documentation to evaluate the proposed transferee and its assumption of the obligations hereunder, and that Fairfield pays and reimburses the City and CMHA, as applicable for the Post-Agreement Costs pursuant to Section 15.3 below. Notwithstanding the foregoing, Fairfield has advised the City that Behringer Harvard or an entity of Behringer Harvard (collectively, "BH") may be making an equity investment in the New Project, and thus BH would qualify as an assignee of this Termination Agreement subject to the following. In such a situation, the City shall be automatically deemed to have issued its consent to an assignment from Fairfield to BH conditioned upon and subject to (A) Fairfield retains not less than 51% interest in the existing developer entity or a new developer entity for the New Project that would be the assignee thereof, and (B) Fairfield provides written notice to the City of such assignment with concurrent transmittal of a complete, legible copy of a fully executed assignment and assumption agreement by which, among other provisions, BH expressly, jointly and severally assumes the rights and obligations of this Termination Agreement and all terms and conditions of the New Entitlement, which notice and copy shall be provided within five (5) business days of such assignment, and (c) Fairfield pays and reimburses to City and CMHA, as applicable the Post-Agreement Costs pursuant to Section 15.3; and failure to satisfy (A) and (B) shall deem an assignment or attempted assignment to BH null and void. Fairfield also may prepay the Settlement Agreement Termination Consideration at its discretion thereby triggering the Effective Date, in which event the City's review and consent rights regarding a proposed assignment or transfer will have expired.

Section 15. Costs, Attorneys' Fees and Remedies.

15.1 *Prevailing Party.* In the event of any action to enforce the terms and provisions of this Termination Agreement, the prevailing party shall be entitled to recover its actual attorneys' fees and costs of litigation from the other party, including without limitation, any post-judgment fees, costs, or expenses incurred on any appeal or in collection of any judgment.

15.2 *Pre-Agreement Costs/Fees.* Each party shall bear its own fees and costs incurred in drafting and negotiating this Termination Agreement.

15.3 *Fairfield Payment and Reimbursement of City's and CMHA's Post-Agreement Costs (post-November 20, 2012).* From November 21, 2012 up to the Effective Date, as to any request by or on behalf of Fairfield to the City or CMHA for review and/or approval of any assignment documents, estoppel certificates, or any other documentation for which the City and/or CMHA incurs any costs, fees, or other expenses for such review, including costs, fees, or expenses for City/CMHA staff, legal counsels, or other consulting services that arise from or relate to implementation of this Termination Agreement or performance hereunder, Fairfield agrees it is responsible for and shall pay and reimburse City and/or CMHA, as applicable, for all such costs, fees, and expenses incurred by City and/or CMHA (together, "Post-Agreement Costs"). The Post-Agreement Costs shall be limited to those

actually incurred by City or CMHA and in an amount that is reasonable and customary in private real estate transactions and commercial lending practices in Southern California. The Post-Agreement Costs shall be paid within 14 days of the City's submittal of an invoice with reasonable supporting documentation therefor. Fairfield agrees that if it has not paid in full such Post-Agreement Costs, if any, at the time Fairfield or its representative or agent requests issuance of the first building permit for the New Project, then no permit shall issue from the City unless and until such Post-Agreement Costs are paid and reimbursed.

Section 16. Governing Law. This Termination Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 17. Notices. Any notice required or necessary under this Termination Agreement shall be made by U.S. Mail, Certified, Return Receipt Requested, or by Federal Express or other comparable and reputable overnight delivery service that provides a written confirmation of delivery and directed as follows:

If to City or CMHA:

City of Costa Mesa and Costa Mesa Housing Authority
City Hall
77 Fair Drive
P.O. Box 1200

Costa Mesa, California 92628-1200
Attn: CEO and Executive Director

With copies:

Celeste Stahl Brady, Esq.
Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660-6401
Special Counsel

Thomas P. Duarte, Esq.
Jones & Mayer
3777 N Harbor Blvd
Fullerton, CA 928351
City Attorney and CMHA General Counsel

If to Fairfield:

Fairfield Pacifica LP
5510 Morehouse Drive, Ste. 200
San Diego, CA 92121
Attn: Lawrence A. Scott

With copies:

Fairfield Pacifica LP
5510 Morehouse Drive, Ste. 200
San Diego, CA 92121
Attn: Jon MacDonald, Esq.

John Condas, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, 5th Floor
Irvine, CA 92614

Section 18. No Third Party Beneficiaries. This Termination Agreement and all provisions hereof is made and entered into for the sole protection and benefit of the Public Agency Parties, Fairfield and their successors and assigns. No other person shall have the right of action based upon any provisions in this Termination Agreement.

Section 19. Entire Agreement. This Termination Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Termination Agreement, and this Termination Agreement supersedes all previous negotiations, discussions, and agreements between the Parties, and no parol evidence of any prior or other agreements shall be permitted to contradict or vary the terms hereof; provided however, this Termination Agreement is and remains subject to the review and actions of the DOF and any court of competent jurisdiction under the Dissolution Act, as and if applicable.

Section 20. Force Majeure. The Term of this Termination Agreement (as provided in Section 2 of this Termination Agreement) and the time within which the parties are required to perform any act under this Termination Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably by strikes, lock-outs, Acts of God, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, initiative or referenda, moratoria, enemy action, civil disturbances, fire, unavoidable casualties, economic slowdowns, or any other cause beyond the reasonable control of the parties, such as for example actions or delays caused by the DOF or matters related to the Dissolution Act. Any litigation filed attacking the approval of this Termination Agreement shall toll the expiration date of this Termination Agreement and the time within which the parties are required to perform any act under this Termination Agreement for the length of time such litigation is pending until it is finally resolved.

Section 21. Authority. Subject to the Dissolution Act, each party represents and warrants to the other that the person executing this Termination Agreement on behalf thereof is duly authorized to enter into this Termination Agreement, to bind the party and to execute this Termination Agreement on its behalf.

[Signature blocks begin on next page]

IN WITNESS WHEREOF, the parties have executed this Mutual Termination Agreement with Settlement and Release (Pacific Gateway at 421 Bernard Street- formerly called Plaza Residences at 1901 Newport Boulevard) as of November 20, 2012.

CITY:

CITY OF COSTA MESA, a California municipal corporation

By: Thomas R. Hatch
Chief Executive Officer or Authorized Designee



ATTEST:

Brenda Green
Interim City Clerk

APPROVED AS TO FORM:
JONES & MAYER

Thomas P. Duarte
Thomas P. Duarte, Esq., City Attorney

APPROVED AS TO FORM:
STRADLING YOCCA CARLSON & RAUTH

[Signature]
Special Counsel

CMHA:

COSTA MESA HOUSING AUTHORITY, a public body corporate and politic

By: Thomas R. Hatch
Executive Director or Authorized Designee

ATTEST:

Martha Rosales
Secretary of CMHA

APPROVED AS TO FORM:
STRADLING YOCCA CARLSON & RAUTH

[Signature]
Special Counsel

[Signature block continued on next page]

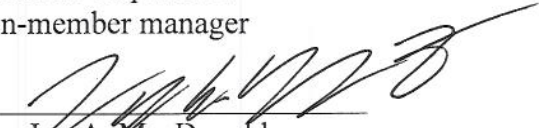
[Signature block for Termination Agreement continued from previous page]

FAIRFIELD:


FAIRFIELD PACIFICA LP,
a Delaware limited partnership

By: FFI Pacifica GP LLC,
a Delaware limited liability company,
its general partner

By: FFI GP Inc.,
A Delaware corporation
Its non-member manager

By: 
Name: Jon A. MacDonald
Title: General Counsel

APPROVED AS TO FORM:
ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP



Counsel to Fairfield

EXHIBIT A
LEGAL DESCRIPTION

Lot 1 of Tract No. 16382, in the City of Costa Mesa, County of Orange, State of California, as per map recorded in Book 863, Pages 33 to 37 inclusive of Maps, in the Office of the County Recorder of said County