

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

County of Orange Executive Office
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701
Attn: Suzanne Luster, Public Finance Director

This document is exempt from the payment of recording
fees pursuant to Government Code Section 27383

**SECOND AMENDMENT TO PROTOCOL AGREEMENT
(COUNTY OF ORANGE AD NO. 88-1)**

THIS SECOND AMENDMENT TO PROTOCOL AGREEMENT (this “Second Amendment”), dated as of _____, 2016, is by and among the County of Orange, a political subdivision of the State of California (the “County”), The Irvine Company LLC, a Delaware limited liability company (“TIC”), and PH Finance LLC, a Delaware limited liability company (“PHF”).

WITNESSETH:

WHEREAS, the County and The Irvine Company, a Michigan corporation, entered into that certain Protocol Agreement, dated November 9, 1988 (the “Original Protocol Agreement”), with respect to Irvine Coast Assessment District No. 88-1 (the “Assessment District”);

WHEREAS, in 1988, the County issued its adjustable rate Irvine Coast Assessment District No. 88-1 Limited Obligation Improvement Bonds (the “Adjustable Rate Bonds”) pursuant to the Trust Indenture, dated as of December 1, 1988, by and between Citbank, N.A. and the County (said Trust Indenture, as amended and supplemented to date, the “Indenture”) (capitalized undefined terms used herein have the meanings ascribed thereto in the Indenture);

WHEREAS, the Original Protocol Agreement was amended pursuant to the First Amendment to Protocol Agreement, made and entered into as of April 1, 2012, by and among the County, TIC and The Irvine Land Company LLC, a Delaware limited liability company (“TILC”) (as so amended, the “First Amended Agreement”);

WHEREAS, PHF is the owner of the property in the Assessment District that was owned by TILC as of the date of the First Amended Agreement;

WHEREAS, TIC and PHF own all of the property within the Assessment District that remains subject to the First Amended Agreement and the Assessments securing the Adjustable Rate Bonds, which property is described in Exhibit A attached hereto (the “Property”);

WHEREAS, TIC and PHF have each indicated that it intends to prepay in full the Assessments levied on the portion of the Property owned by it, as provided in the Indenture;

WHEREAS, such prepayment of the Assessments would, pursuant to the Indenture, result in the redemption in full of all of the remaining Outstanding Adjustable Rate Bonds;

WHEREAS, amounts in the Interest Disbursement Fund established under the Indenture are, under the circumstance described therein, to be applied to the payment of interest on the Adjustable Rate Bonds;

WHEREAS, Section 6.04 the Indenture provides that, if there are any moneys remaining in the Interest Disbursement Fund after conversion of all of the Adjustable Rate Bonds to Fixed Rate Bonds, such moneys, after any portion thereof required thereby to be transferred to the Banks has been so transferred, are to be deposited in the Fixed Rate Bond Interest Subaccount for the final conversion pursuant to Section 2.04(c)(i) of the Indenture and applied as a pro rata credit on the Assessment Installments against those parcels designated as “Investment Property” pursuant to the Protocol Agreement;

WHEREAS, said provisions of Section 6.04 of the Indenture result in such remaining moneys in the Interest Disbursement Account being applied for the benefit of the parcels designated as “Investment Property” pursuant to the Protocol Agreement;

WHEREAS, the parcels owned by TIC and PHF are the remaining parcels designated as “Investment Property” pursuant to the Protocol Agreement and, therefore, those parcels would receive a pro rata credit on the Assessment Installments thereon from moneys remaining in the Interest Disbursement Fund after the final conversion pursuant to Section 2.04(c)(i) of the Indenture;

WHEREAS, the final conversion pursuant to Section 2.04(c)(i) of the Indenture has not occurred to date and, if all of the remaining Adjustable Rate Bonds are redeemed, the final conversion pursuant to Section 2.04(c)(i) of the Indenture will never occur;

WHEREAS, neither Section 6.04 of the Indenture nor the other provisions of the Indenture provide direction as to how moneys in the Interest Disbursement Fund are to be applied if the final conversion pursuant to Section 2.04(c)(i) of the Indenture does not occur, all of the Assessments on the parcels designated as “Investment Property” pursuant to the Protocol Agreement are prepaid and all of the Outstanding Adjustable Rate Bonds are redeemed;

WHEREAS, it would seem that, if such a situation had been contemplated, Section 6.04 of the Indenture likely would have directed that any such moneys remaining in the Interest Disbursement Fund upon the prepayment of all of the Assessments on the parcels designated as “Investment Property” pursuant to the Protocol Agreement be applied to reduce the amount due by reason of such prepayment, since such application would result in said moneys being applied for the benefit of the parcels designated as “Investment Property” pursuant to the Protocol Agreement in a manner substantially similar to the application thereof to such parcels if the final conversion pursuant to Section 2.04(c)(i) of the Indenture had occurred; and

WHEREAS, TIC and PHF have informed the County that they would be willing to assume responsibility for any losses, expenses and costs that the County might incur as a result of the County’s directing that such moneys remaining in the Interest Disbursement Fund upon the prepayment of all of the Assessments on the parcels designated as “Investment Property” pursuant

to the Protocol Agreement be applied to reduce the amount due by reason of such prepayment and that such moneys to be applied to the redemption of the Adjustable Rate Bonds to be redeemed in connection with such prepayment;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

Section 1. Assumption of Rights and Obligations. PHF hereby assumes all of the rights and obligations of TILC under the First Amended Agreement with respect to the Property, and the County hereby acknowledges and consents to the foregoing assumption.

Section 2. Amendment of First Amended Agreement. The First Amended Agreement is hereby amended by adding thereto immediately following existing Section 16 a new Section 17, which shall read in full as follows:

17. TIC and PHF agree that, if, in connection with the prepayment by TIC and PHF of all of the Assessments on the parcels designated as “Investment Property” pursuant to the Protocol Agreement, the County directs the Trustee that if there are moneys remaining in the Interest Disbursement Fund, after any portion thereof required by Section 6.04 of the Indenture to be transferred to the Banks has been so transferred, the amount due by reason of such prepayment shall be reduced by an amount equal to the amount of such moneys, and that such moneys shall be transferred to the Redemption Account and applied to the redemption of the Adjustable Rate Bonds to be redeemed in connection with such prepayment of such Assessments, TIC and PHF shall, jointly and severally indemnify, defend and hold the County, and its officers, employees and agents, and each of them, harmless from and against any and all claims, losses, expenses, suits actions, decrees, judgments, awards, attorneys’ fees and court costs which the County, or its officers, employees and agents, or any combination thereof, may suffer or which may be sought against or recovered or obtained from the County, or its respective officers, employees or agents, or any combination thereof, as a result of or by reason of or arising out of or in consequence of such direction by the County or such application of said moneys. If TIC and PHF fail to do so, the County shall have the right, but not the obligation, to defend the same and charge all of the direct and incidental costs of such defense, including any attorneys’ fees or court costs, to and recover the same from either or both of TIC and PHF.

Section 3. Investment Property. TIC and PHF hereby represent and warrant to the County that, as of the effective date of this Second Amendment, the Property, which is described in Exhibit A attached hereto, constitutes the parcels designated as “Investment Property” pursuant to the Protocol Agreement and that, as of the effective date of this Second Amendment, there are no other parcels designated as “Investment Property” pursuant to the Protocol Agreement.

Section 4. Effect of Second Amendment. This Second Amendment and all of the terms and provisions herein contained shall form part of the First Amended Agreement as fully and with the same effect as if all such terms and provisions had been set forth in the First Amended Agreement. The First Amended Agreement is hereby ratified and confirmed and shall continue in

full force and effect in accordance with the terms and provisions thereof, as heretofore amended and supplemented, and as amended and supplemented hereby. If there shall be any conflict between the terms of this Second Amendment and the terms of the First Amended Agreement (as in effect on the day prior to the effective date of this Second Amendment), the terms of this Second Amendment shall prevail.

Section 5. Execution in Several Counterparts. This Second Amendment may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

Section 6. Recording. In accordance with Section 16 of the First Amended Agreement, the County shall cause this Second Amendment to be recorded and filed in the real property records in the Office of the County Recorder of the County of Orange.

Section 7. Effective Date of Second Amendment. This Second Amendment shall take effect on _____, 2016.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date first written above.

COUNTY OF ORANGE

By: _____

ATTEST:

Clerk

APPROVED AS TO FORM:

County Counsel

THE IRVINE COMPANY LLC, a
Delaware limited liability company

By: _____

By: _____

PH FINANCE LLC, a Delaware limited
liability company

By: _____

By: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY/INVESTMENT PROPERTY

The property situated in the City of Newport Beach, County of Orange, State of California, described as follows:

OWNER: PH FINANCE LLC

Tract No. 16566 per Map filed in Book 887, Pages 21 through 26, inclusive of Miscellaneous Maps, in the Office of the County Recorder of said County.

Tract No. 16567 per Map filed in Book 886, Pages 41 through 44, inclusive of Miscellaneous Maps, in the Office of the County Recorder of said County.

OWNER: THE IRVINE COMPANY LLC

Tract No. 16568 per Map filed in Book 882, Pages 48 through 50, inclusive of Miscellaneous Maps, in the Office of the County Recorder of said County.

Parcel 2 of Lot Line Adjustment No. LL 2003-027, recorded on June 24, 2004 as Instrument No. 2004000575815 of Official Records, in the Office of the County Recorder of said County.

Parcel 3 of Lot Line Adjustment No. LL 2003-026, recorded on June 24, 2004 as Instrument No. 2004000575812 of Official Records, in the Office of the County Recorder of said County.

Parcel 4 of Lot Line Adjustment No. LL 94-008, recorded on April 28, 1995 as Instrument No. 95-0180634 of Official Records, in the Office of the County Recorder of said County.

Parcel 1 of Lot Line Adjustment No. LL 92-017, recorded on May 22, 1992 as Instrument No. 92-343565 of Official Records, in the Office of the County Recorder of said County.

Tract No. 14131, Lots 2, 5 and 6 per Map filed in Book 662, Page 42 through 46, inclusive of Miscellaneous Maps, in the Office of the County Recorder of said County.

Tract No. 14063, Lots A and B per Map filed in Book 670, Page 23 through 29, inclusive of Miscellaneous Maps Office of the County Recorder of said County.

Parcel 1 of Lot Line Adjustment No. LL 2002-014, recorded on June 17, 2002 as Instrument No. 20020506756 of Official Records, in the Office of the County Recorder of said County.

Attachment C

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On _____, before me, _____, a Notary Public, 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.

Notary Public