

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, California 92702
Attention: City Clerk

*Free Recording pursuant to
Government Code §§ 6103 and 27383*

**DENSITY BONUS HOUSING AGREEMENT WITH DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

2020 East First Street, California; APN: 402-191-03

This DENSITY BONUS HOUSING AGREEMENT WITH DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (“Agreement”), is made and entered into this ___ day of _____, 2025 (“Effective Date”), for reference purposes only, by and between the City of Santa Ana, a charter city and municipal corporation of the State of California (“City”), and **MLC Holdings, Inc./Meritage Homes** (“Developer”). City and Developer are sometimes referred to collectively as the “Parties” and individually as a “Party.”

RECITALS

- A. Developer is the owner of that certain property located within the City of Santa Ana, County of Orange, State of California, commonly known as 2020 East First Street, Santa Ana, California, and legally described as set forth in Exhibit A, which is attached hereto and incorporated herein by this reference as if set forth in full (“Property”).
- B. Developer is proposing to develop a residential development consisting of no more than eighty-six (86) units, five (5) of which are proposed as very low income residential ownership units on the Property, as more particularly set forth in Density Bonus Application No. 2025-01 (“Project”).
- C. Santa Ana Municipal Code sections 41-1600, *et seq.* (“City Density Bonus for Affordable Housing”), and California Government Code sections 65915, *et seq.* (“State Density Bonus Law”), set forth a process to provide increased residential densities and incentives, concessions, and waivers to property owners or developers who restrict a portion of their residential development to very low income households, as specified. These regulations are intended to materially assist the housing industry in providing adequate and affordable housing for all economic segments of the community and to provide a balance of housing opportunities throughout the City.

- D. The Project complies with the affordability requirements for a housing development as set forth in the State Density Bonus Law and City Density Bonus for Affordable Housing.
- E. In light of the purpose of the State Density Bonus Law and City Density Bonus for Affordable Housing, and the express provisions of Government Code Section 65915(d)(1)(2)(A), the City has determined that the Project is eligible for one (1) incentive or concession, and waivers as prescribed by the State Density Bonus Law.
- F. This Agreement, and the exhibits attached hereto and incorporated herein by reference, are intended to set forth the terms and conditions for the implementation of the Project's requirement to provide affordable housing units in exchange for receiving the density bonus, concession and waivers set forth herein.

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein by this reference, and of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS

1.1 Definitions. In addition to the terms that may be defined elsewhere in this Agreement, the following terms when used in this Agreement shall be defined as follows:

1.1.1 **"Affordability Covenants"** means restrictions on the sale and conveyance of the Property pursuant to California Government Code Section 65915 that ensure that the Property will be preserved for Very Low income Households for at least fifty five (55) years for owner-occupied housing units and will be sold or resold only to persons or families of very low, as defined in Section 50052.5 of the California Health and Safety Code.

1.1.2 **"Adjusted for family size appropriate to the unit"** shall have the meaning set forth by Health and Safety Code Section 50052.5(h).

1.1.3 **"Administrative Procedures Manual"** shall mean the City's Administrative Procedures Manual: Ownership Housing Development, setting forth rules and regulations for the City's homeownership program.

1.1.4 **"Affordability Term"** means the duration of the Affordability Covenants as set forth in Section 3.1.

1.1.5 **"Affordable Housing Cost"** means the total housing costs paid by a qualifying Very Low Income Household in accordance with California Health and Safety Code Section 50052.5, and implementing regulations of Sections 6920, 6924 and 6926 of Title 25 of the California Code of Regulations for Very Low Households. .

1.1.6 **"Affordable Housing Resale Restrictions"** means the restrictions imposed on each Affordable Unit that restrict sales to qualified Eligible Households pursuant to a

local preference for families who live or work in the City of Santa Ana at an Affordable Sales Price, in the form of Exhibit B attached hereto.

1.1.7 "**Affordable Sales Price**" means the maximum sales price that can be charged for an Affordable Unit as set forth in Section 3.3.2.

1.1.8 "**Affordable Units(s)**" means the five (5) unit(s), which shall comprise of two (2) four-bedroom, two (2) three-bedroom units and one (1) two-bedroom unit, which always must be proportionate to the unit mix for the property. Any change to the number, bedroom size, location, or distribution of Affordable Units is subject to City Manager approval.

1.1.9 "**Agreement**" means this Density Bonus Housing Agreement With Declaration of Covenants, Conditions and Restrictions.

1.1.10 "**Benchmark Down Payment**" is a component of the Affordable Sales Price calculations. For the purposes of this Agreement, the Benchmark Down Payment is set at 5% of the total Affordable Sales Price. The Benchmark Down Payment is used solely as a component for determining the Affordable Sales Price for an Affordable Unit. It does not represent a cap on the down payment amount that can be contributed by a Homebuyer.

1.1.11 "**City**" means the City of Santa Ana, California.

1.1.12 "**City Attorney**" means the City Attorney for the City of Santa Ana.

1.1.13 "**City Council**" means the City Council of the City of Santa Ana.

1.1.14 "**City Deed of Trust**" means the deed of trust to be executed by the Homebuyer and recorded against Affordable Unit the Homebuyer's obligations under the City Promissory Note, substantially in the form attached hereto as Exhibit D.

1.1.15 "**City Manager**" means the City Manager for the City of Santa Ana.

1.1.16 "**City's Planning Commission**" means the Planning Commission for the City of Santa Ana.

1.1.17 "**City Promissory Note**" means the promissory note executed by the Homebuyer evidencing Homebuyer's agreement to pay the City Equity Share, substantially in the form attached hereto as Exhibit C.

1.1.18 "**Density Bonus Application**" shall mean the Density Bonus Application No. 2025-01 for the Project.

1.1.19 "**Developer**" means MLC Holdings Inc./Meritage Homes, and its permitted successors and assigns to all or any part of the Property, Project or this Agreement.

1.1.20 "**Effective Date**" means the date the Developer and the City shall record or cause to be recorded in the Official Records for Orange County, California, an executed original of this Agreement, pursuant to Section 4.2 herein.

1.1.21 "**Eligible Household**" means a Household whose income does not exceed the "Very Low Income Household" qualifying limit as defined herein.

1.1.22 "**First Lien**" means the lien of the institution making the purchase money mortgage loan to Homebuyer for the purchase of the Property.

1.1.23 "**Gross Household Income**" means all income from whatever source from all adult Household members, which is anticipated to be received during the 12-month period following the date of the determination of Gross Household Income. The applicable sources of income are defined in California Code of Regulations Title 25 Housing and Community Development Section 6914. The definition includes the following specific requirements:

(a) Except as provided in subdivision (b), all payments from all sources received by the head of Household (even if temporarily absent) and each additional member of the Household who is not a minor shall be included in the annual income of a Household. Gross Household Income shall include, but not be limited to:

(i) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses;

(ii) The net income from operation of a business or profession or from rental or real or personal property (for this purpose, expenditures for business expansion or amortization of capital indebtedness shall not be deducted to determine the net income from a business);

(iii) Interest and dividends;

(iv) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts (but see subdivision (2)(c));

(v) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay;

(vi) Public Assistance. If the public assistance payment includes an amount specifically designated for shelter and utilities which is subject to adjustment by the public assistance agency in accordance with the actual cost of shelter and utilities, the amount of public assistance income to be included as income shall consist of:

(1) The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities, plus

(2) The maximum amount which the public assistance agency could in fact allow for the Household for shelter and utilities.

(vii) Periodic and determinable allowances such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;

(viii) All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the Household or spouse or domestic partner (but see subdivision (b)(v));

(ix) Where a Household has net assets in excess of \$5,000, income shall include the actual amount of income, if any, derived from all of the net Household assets or 10 percent of the value of all such assets, whichever is greater. For purposes of this section, net Household assets means value of equity in real property other than the Household's full-time residence, savings, stocks, bonds, and other forms of capital investment. The value of necessary items such as furniture and automobiles shall be excluded.

(b) The following items shall not be considered as income:

(i) Casual, sporadic or irregular gifts;

(ii) Amounts which are specifically for or in reimbursement of the cost of medical expenses;

(iii) Lump-sum additions to Household assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;

(iv) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans not used for the above purposes of which are available for subsistence are to be included in income;

(v) The special pay to a serviceman head of a Household away from home and exposed to hostile fire;

(vi) Relocation payments made pursuant to federal, state, or local relocation law;

(vii) Foster child care payments;

(viii) The value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged the eligible Household;

(ix) Payments received pursuant to participation in the following volunteer programs under the ACTION Agency:

(1) National Volunteer Antipoverty Programs which include VISTA, Service Learning Programs and Special Volunteer Programs.

(c) National Older American Volunteer Programs for persons aged 60 and over which include Retired Senior Volunteer Programs, Foster Grandparent Program, Older

American Community Services Program, and National Volunteer Program to Assist Small Business Experience, Service Corps of Retired Executive (SCORE) and Active Corps of Executives (ACE)

1.1.24 "**Homebuyer**" means an Eligible Household that has entered into an agreement to purchase an Affordable Unit in accordance with this Agreement.

1.1.25 "**Household**" means all the persons who will occupy the Affordable Unit as their primary residence. The size of a prospective Household must be compatible with the size of the Affordable Unit to be purchased. The minimum number of occupants is three (3) for the three bedroom units and two (2) for the two bedroom units. A child who is subject to a legally-binding shared-custody agreement, in which the child resides with the Household at least 50% of the time, is counted as a member of the Household. For the purpose of calculating the Household income and not the number of occupants, excluded from the definition of Household are live-in caregivers/caretakers, foster children, unborn children and children being pursued for legal custody or adoption that are not currently living with the Household.

1.1.26 "**Housing Cost**" means and includes all of the following costs associated with ownership of an Inclusionary Unit as defined in Title 25 of the California Code of Regulations Section 6920:

- (a) Principal and interest on a mortgage loan at the defined interest rate;
- (b) Property tax and assessments;
- (c) Fire and casualty insurance covering replacement value of property improvements;
- (d) Property maintenance and repairs;
- (e) A reasonable utility allowance, as determined by the City; and
- (f) Homeowner Association assessments and dues.

1.1.27 "**Median Income**" means the Orange County, California area median income, adjusted for family size appropriate to the unit pursuant to California Health and Safety Code § 50052.5(h), as periodically published by HCD.

1.1.28 "**Very-Low Income Household(s)**" means a Household whose income does not exceed fifty (50%) of the area median income for the Orange County, California PMSA, adjusted for household size, as published by HCD.

1.1.29 "**Primary Residence**" means that the Homebuyer is occupying the Affordable Unit for at least ten (10) months out of any twelve (12) month period.

1.1.30 "**Project**" means that certain affordable residential development as more particularly described in the Recitals and Section 2 of this Agreement.

1.1.31 "**Project Approvals**" means all approvals, conditions, and entitlements issued by the City, inclusive of the Planning Commission and City Council.

1.1.32 "**Property**" means that certain real property more particularly described in the legal description in Exhibit A and improvements thereon.

1.1.33 "**Request for Default**" means the request for default attached hereto as Exhibit I.

1.1.34 "**State Density Bonus Law**" means Government Code Section 65915, et seq., as they exist on the Effective Date.

1.1.35 "**Supportable Mortgage**" means the mortgage amount that can be supported by a Very Low Income Household based on the Affordable Housing Cost calculations. The mortgage calculation is based on the prevailing market interest rate for a 30-year fully amortizing mortgage with a fixed interest rate. The Supportable Mortgage shall be determined in accordance with the City's Administrative Procedures Manual, provided that it should be determined for a Very Low Income Household consistent with the requirements of this Agreement and State Density Bonus Law.

1.1.36 "**Transfer**" means any sale, assignment, conveyance, lease or transfer, voluntary or involuntary, of any interest in the Property. Without limiting the generality of the foregoing, Transfer shall include (i) a transfer by devise, inheritance or intestacy; (ii) creation of a life estate or joint tenancy interest; (iii) a gift of all or any portion of the Property; or (iv) any voluntary conveyance of the Property.

1.1.37 "**Transferee**" means any natural person or entity who obtains ownership or possessory rights in the Property pursuant to a Transfer.

1.1.38 "**Term**" means the period during which this Agreement shall be in full force and effect, as provided for in Section 5.1 below.

1.1.39 "**Unit**" means a residential dwelling unit within the Project to be constructed or caused to be constructed by Developer pursuant to this Agreement.

1.1.40 "**Unrestricted Units**" means the Units within the Project to be constructed or caused to be constructed by Developer to a Household without restriction.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

- 1.2.1 **Exhibit A :** Legal Description of the Property
- 1.2.2 **Exhibit B:** Affordable Housing Resale Restrictions, Equity Sharing and Regulatory Agreement
- 1.2.3 **Exhibit C:** City Promissory Note
- 1.2.4 **Exhibit D:** City Deed of Trust
- 1.2.5 **Exhibit E:** Income Verification Form
- 1.2.6 **Exhibit F:** Certification of Continued Occupancy

1.2.7 **Exhibit G:** Notice of Affordability Restrictions on Transfer of Property

1.2.8 **Exhibit H:** Request for Default

2. DEVELOPMENT OF THE PROPERTY

2.1 Project. Developer shall develop, operate, and maintain, or cause the development, operation and maintenance of, the Property as eighty-six (86) Units, with five (5) Affordable Units for Eligible Households in accordance with this Agreement and the Project Approvals.

2.2 Density Bonus. The Project shall have eighty-six (86) Units, to be sold, owned, occupied, operated, and maintained pursuant to the terms and conditions of this Agreement. Developer understands and agrees that Developer is not requesting an increase in density and that this Agreement does not allow or approve an increase in residential density over the allowed density regulations of the City. Developer shall not construct or develop, or otherwise claim a right to construct or develop any additional residential units on the Property under this Agreement.

2.3 Development Concessions, Incentives, and Waivers. As set forth in the City entitlements, Developer petitioned for and is hereby granted the following concessions, incentives, and waivers as part of the approval of Density Bonus Application:

2.3.1 Concession. In accordance with Government Code Section 65915(d)(1), Developer is granted the following concession: a reduction in the publically accessible common open space from 24,020 square feet to 9,676 square feet. This concession is a reduction of the requirement in the Metro East Mixed Use Overlay District Section 4.5.

2.3.2 Waivers. Developer has not requested waivers.

2.4 Parking Requirements. Onsite parking shall be provided in compliance with Government Code Section 65915(p). The Project shall provide not less than one hundred sixty three (163) parking spaces.

2.5 No Further Concessions, Incentives, or Waivers. Developer acknowledges and agrees that no further concessions, incentives, waivers or parking requirements are requested, and that the terms set forth in Section 2.3 and 2.4 fully satisfies any duty City may have under the City Density Bonus for Affordable Housing, the Density Bonus Law, or any other law or regulation to provide any density bonus incentive or to waive any building, zoning, or other requirement in connection with a density bonus. By this Agreement, Developer releases any and all claims Developer may have against City in any way relating to or arising from City's obligation to waive requirements of or provide development incentives pursuant to the City Density Bonus for Affordable Housing and the Density Bonus Law applicable to the Project.

2.6 Unit Mix.

2.6.1 Unrestricted Units. The Project, for purposes of this Agreement, may have no more than eight-one (81) Unrestricted Units, as set forth Section 2.6.3, below, and pursuant to the terms and conditions of this Agreement. Any change to the unit distribution of the Unrestricted

Units may affect the comparability of the Affordable Units and is subject to City Manager approval.

2.6.2 Affordable Units. The Project, for purposes of this Agreement, shall have no less than five (5) Affordable Units for Very Low Income Households, as set forth in Section 2.6.3, and pursuant to the terms and conditions of this Agreement. The Affordable Units shall be consistent with the Project Approvals, comparable in bedroom distribution and amenities to the Unrestricted Units, and shall be located throughout the Project as required under Santa Ana Municipal Code section 41-1602(c)(5).

2.6.3 Unit Mix. Two (2) Affordable Units shall be four-bedroom units. Two (2) Affordable Units shall be three-bedroom units and one (1) Affordable Unit shall be a two-bedroom unit. The Affordable Units shall be consistent with the Project Approvals for approved for the Project, and conform to the standards for habitable area per unit, based on square footage, for the Unrestricted Units of the same bedroom count.

2.7 Minimum Development Standards for Affordable Units. The Affordable Units shall be constructed with the same exterior appearance and interior features, fixtures, and amenities, and shall use the same type and quality of materials as provided for any Unrestricted Units, regardless of whether such Unrestricted Units are in the Project.

2.8 Permits and Processing; Compliance with Laws. Developer, at its sole cost and expense, or as otherwise set forth in a separate written agreement, shall secure or cause to be secured any and all permits that may be required for development of the Project by City or any other federal, state, or local governmental entity having or claiming jurisdiction over the Property or Project. Upon securing any and all permits, and all necessary financing and property interests, Developer shall carry out and perform the development, operation, and maintenance of the Project or cause the performance of the development, operation, and maintenance of the Project, in conformity with all applicable federal, state, and local laws and regulations, and all conditions of approval issued by the City Council and City's Planning Commission for the Project, inclusive of the Project Approvals. Any changes to the Project shall be reviewed by the City to determine compliance with this Agreement. If any changes to the Project shall materially alter the ability of Developer to comply with any terms of this Agreement in City's sole determination, then City and Developer shall meet and confer to address amendments and revisions to this Agreement as necessary.

2.9 Relocation Prior to Development of Project. If relocation is required prior to the completion of development of the Project, Developer shall have the sole and exclusive responsibility for providing relocation assistance and paying all relocation costs as may be required to comply with applicable federal and state laws and regulations. In addition to any other indemnity provided by Developer under this Agreement, Developer shall indemnify, defend (with counsel of City's choosing and the consent of Developer, which shall not be unreasonably withheld, and which may be joint defense counsel upon City's and Developer's consent), and hold harmless City and all of its officials, officers, employees, representatives, volunteers and agents from any and all alleged or actual claims, causes of action, liabilities, and damages from any third party for relocation assistance, benefits and costs prior to the completion of the development of the Project.

2.10 Mechanic's Liens; Indemnification. Developer shall take all actions reasonably necessary to remove any future mechanic's liens or other similar liens (including design professional liens) against the Property or Project, or any part thereof, by reason of work, labor, services, or materials supplied or claimed to have been supplied to Developer or caused by, at the direction of, or on behalf of Developer. Prior to the recording of this Agreement (or memorandum thereof) pursuant to Section 4.2 below, Developer shall provide evidence from the Title Company of any new recordings against the Property or Project. City hereby reserves all rights to post notices of non-responsibility and any other notices as may be appropriate upon a filing of a mechanic's lien. In addition to any other indemnity provided by Developer under this Agreement, Developer shall indemnify, defend (with counsel of City's choosing and the consent of Developer, which shall not be unreasonably withheld, conditioned or delayed and which may be joint defense counsel upon City's and Developer's consent), and hold harmless City and all of its officials, officers, employees, representatives, volunteers and agents from any and all alleged or actual claims, causes of action, liabilities, and damages from any third party by reason of a mechanic's lien or work, labor, services, or materials supplied or claimed to have been supplied to Developer or caused by, at the direction of, or on behalf of Developer.

2.11 Timing of Construction of Affordable Units. The Affordable Units shall be constructed concurrently with, or prior to, the construction of the Unrestricted Units.

3. AFFORDABILITY

3.1 Affordability Term. The Affordability Term for each Affordable Unit shall commence on the date the Affordable Unit receives a certificate occupancy and expire fifty five (55) years later (each an "Affordability Term").

3.2 Memorializing Commencement of Total Affordability Term. Developer shall keep or cause to be kept detailed records of the commencement date of the Total Affordability Term for each Affordable Unit. City shall have the right to review and verify said records without a fee from City to Developer to ensure that the commencement date specified by Developer for an Affordable Unit coincides with the date that the initial Affordable Unit received all permits from City required for occupancy of the Unit. In the event that a conflict exists between the date specified by Developer for the commencement of the Total Affordability Term for an Affordable Unit and the date specified by City's issuance of all required permits for occupancy of the Unit, the date specified by City's issuance of all required permits for occupancy of the Unit shall control.

3.3 Levels of Affordability. Each Affordable Unit shall be initially sold to and occupied by an Eligible Household for an Affordable Sales Price, and any resale shall be subject to the Affordable Housing Resale Restrictions and the City Deed of Trust recorded against the Affordable Unit.

3.3.1 Affordable Sales Price. Developer covenants that, during the Affordability Term, each Affordable Unit shall be sold to, or held vacant for sale to, an Eligible Household for an Affordable Sales Price. The Affordable Sales Price is equal to the sum of the Supportable Mortgage plus, if applicable, the Benchmark Down Payment. Prior to the sale of any Affordable Unit, Developer shall provide the City with at least thirty (30) days' written notice of the determined amount, and the City shall have ten (10) days to approve or disapprove of the proposed

Affordable Sales Price. The Affordable Sales Price for Affordable Units shall be adjusted quarterly until all Affordable Units are sold and, thereafter, determined in connection with each re-sale, as applicable.

3.4 Notice to City. Prior to entering into an agreement for the transfer of an Affordable Unit, Developer shall provide at least thirty (30) days written notice to the City, along with a proposed written agreement setting forth the terms of the sale, including the proposed Affordable Sales Price.

3.5 Homebuyer Documents. The sale of each Affordable Unit is subject to satisfaction of the following conditions:

3.5.1 Each Homebuyer shall execute the Affordable Housing Resale Restrictions, which shall be recorded against the Affordable Unit.

3.5.2 The Affordable Housing Resale Restrictions shall provide for the terms of resale and the distribution of proceeds from any sale, as follows:

(a) The Homebuyer shall execute the City Promissory Note evidencing Homebuyer's agreement to pay the City Equity Share, and record the City Deed of Trust against the Affordable Unit to secure the City Promissory Note.

(b) During the Affordability Term, prior to the Transfer of an Affordable Unit, each Homebuyer shall agree to the City Promissory Note, and execute the Affordable Housing Resale Restrictions, the City Deed of Trust, the Notice of Restrictions, and the Request for Default, which shall be recorded against each Affordable Unit. In the event a Homebuyer seeks to Transfer an Affordable Unit during the Affordability Term, the City, in its sole and absolute discretion, may approve an assignment and assumption agreement for subsequent sales of the Property to Eligible Households during the Affordability Term. The Affordable Housing Resale Restrictions shall provide that Affordable Units shall only be Transferred to an Eligible Household for an Affordable Sales Price during the Affordability Term, and the City Deed of Trust securing the City Promissory Note shall remain a lien on the Property.

(c) During the Affordability Term, if a Transfer complies with the requirements of the Affordable Housing Resale Restrictions, then the Homebuyer selling the Affordable Unit shall be entitled to closing proceeds after payment of a First Lien for the Affordable Unit, and the City Equity Share shall be an obligation of the new Homebuyer, pursuant to the City Promissory Note and City Deed of Trust recorded against the Property.

(d) Following the expiration of the Affordability Term for the Affordable Unit, the City Equity Share shall become due and payable upon a Transfer of the Property.

(e) The City Equity Share includes an amount equal to the "initial subsidy" and "proportionate share of appreciation," in accordance with California Government Code section 65915(c)(2), and shall be determined as follows:

(i) An amount equal to the difference between the fair market value of the Affordable Unit at the time of the initial purchase and the Affordable Sales Price (the "Initial Subsidy"), plus

(ii) An amount equal to the product of (1) the appreciation of the Affordable Unit, as measured by the increase in the fair market value of the Affordable Unit at the time of the sale to the Homebuyer and the resale of the Affordable Unit, and (2) the percentage that the Initial Subsidy represented of the fair market value of the Affordable Unit when it was purchased by the Homebuyer (the "Proportionate Share of Appreciation").

(f) Payment of the City Equity Share is subject to the following: (1) payment to satisfy a first lien from a primary lender, as approved by City at the time of the initial sale, or subsequent approval in the event of a refinance event, and (2) an amount equal to the down payment and the cost of improvements paid by the Homebuyer. Following payment of the City Equity Share, the Homebuyer shall receive the remainder of any closing proceeds, less any costs of closing, including any and all real estate broker commissions.

3.5.3 The fair market value of the initial sale and each subsequent sale during the Affordability Term shall be determined as follows:

(a) For the initial sale, Developer may propose to the City a fair market value based on a price per square foot that is based on comparable sales of other units within the Project.

(b) Except as approved in writing by the City under sub-paragraph (a), prior to the sale of an Affordable Unit, a qualified appraiser shall conduct an appraisal of the Affordable Unit to determine fair market value without the restrictions of this Agreement. If the Developer or a prospective Homebuyer disputes the appraised value, then that party may pay for the costs of a second appraisal and, if there is still disagreement, the average of the two appraisals shall be used to determine the fair market value.

(c) The fair market value of the Affordable Unit, as determined in accordance with the above, shall be provided to the City for approval or disapproval, which City shall provide within thirty (30) days of receipt of the proposed fair market value. If City does not provide a written response within such time period, then the proposed fair market value shall be deemed approved by the City.

3.5.4 When the City Equity Share becomes due, the proceeds from the sale of the Property shall first satisfy a First Lien, and the Homebuyer shall receive proceeds for the value of any improvements and any down payment actually paid. The City Equity Share shall be paid prior to disbursement of remaining sales proceeds to the Homebuyer.

4. OPERATION OF THE PROJECT BY DEVELOPER

4.1 Payment of Density Bonus Setup Fee. A Density Bonus Setup Fee in the amount of \$34,707.75 will be charged to the Developer and must be paid prior to execution of this Agreement.

4.2 Recording of Documents; Priority.

4.2.1 Prior to issuance of building permits for the Project, Developer and the City shall record or cause to be recorded in the Official Records for Orange County, California, an executed original of this Agreement, and Developer shall deliver the proof of recording as required by Section 4.2.3, below. City shall cooperate with Developer in promptly executing in recordable form this Agreement. The date of recording of the Agreement shall be the Effective Date of the Agreement. Upon the date of recording, the terms and conditions of this Agreement shall be binding upon and run with the Property and Project for the Term of this Agreement. It is the express intent and agreement between the Parties that this Agreement shall remain binding and enforceable against the Property, the Project, and the Units to ensure compliance with the State Density Bonus Law and City Density Bonus Law, and to ensure the continued supply of Affordable Units in the Project, except as expressly set forth in this Agreement.

4.2.2 The Agreement shall be recorded against the Property and have priority over those matters of public record, except as approved in writing by the City; provided, however, prior to issuance of a certificate of occupancy (or its equivalent) for the Project, the Parties may execute an amendment to this Agreement or other appropriate instrument that ensures that the requirements of this Agreement are properly recorded against each Affordable Unit and memorializes Owner's obligation to provide the Affordable Units on a for-sale basis in accordance with this Agreement and, upon the recording of such instrument as to the individual Affordable Units, the City may determine, in its sole and absolute discretion, to a release of this Agreement to the Property as a whole.

4.2.3 Prior to issuance of building permits for the Project, Developer shall cause to be provided to City a condition of title guarantee (or other evidence acceptable to the City) that demonstrates this Agreement is senior to any other lien, deed of trust, mortgage, or other interest in the Property or the Project, except those approved by the City in writing. The City shall have not less than ten (10) days to determine, in its sole and absolute discretion, that this Agreement (or an amended version of the Agreement restricting the Affordable Units) has senior rights. If City disapproves the evidence provided by Developer, then Developer agrees and acknowledges that City may withhold the building permit unless and until Developer provides evidence satisfactory to the City demonstrating priority of this Agreement or an amendment thereto.

4.3 Occupancy Levels. Developer shall not apply or permit any occupancy requirements that violate local, state or federal law during the development or sale of the Units

4.4 Use of the Property. All uses conducted on the Property by Developer, including, without limitation, all activities undertaken by the Developer pursuant to this Agreement, shall conform to all applicable provisions of the Santa Ana Municipal Code and other applicable federal, state, and local laws, rules, and regulations.

4.5 Maintenance. Developer shall, at all times during the term of this Agreement, cause the Property and the Project to be maintained in a decent, safe and sanitary manner, regardless of cause of the disrepair. Developer and each Homebuyer shall be fully and solely responsible for costs of maintenance, repair, addition and improvements. City, and any of its employees, agents, contractors or designees shall have the right to enter upon the Property at

reasonable times and in a reasonable manner to inspect the Project, after providing notice as follows: (i) at least a 24-hour notice to Developer and Homebuyer of the Affordable Unit which will be inspected, or (ii) at least 48 hours' notice to Developer, which shall promptly give notice to Owners of the Affordable Unit to be inspected.

4.6 Preparation and Recordation of Transfer Documents. Developer shall prepare and obtain City's approval, which approval shall not be unreasonably withheld, conditioned or delayed, of the Affordable Housing Resale Restrictions, the City Promissory Note, the City Deed of Trust, and the Notice of Affordability Restrictions, for each Affordable Unit to Eligible Households required by Section 3 of this Agreement. Developer shall not sell an Affordable Unit unless and until the City has reviewed and approved the Homebuyer as an Eligible Household for the purchase of the Affordable Unit, and the Homebuyer has executed and submitted to the Program Director, in recordable form, the Affordable Housing Resale Restrictions, the City Deed of Trust, and the Notice of Affordability Restrictions, and the approved financing for the Homebuyer, including the executed City Promissory Note.

4.7 Selection of Homebuyers.

4.7.1 Developer shall be responsible for the selection of Homebuyers for the Affordable Units in compliance with lawful and reasonable criteria and the requirements of this Agreement.

4.7.2 In selecting Homebuyers for the Affordable Units, Developer shall apply a preference for Santa Ana residents and workers. Subject to applicable laws and regulations governing nondiscrimination and preferences in housing occupancy required by the State of California, the Developer shall give preference in transferring the Affordable Units to households that live and/or work in the City of Santa Ana or who have an active Housing Choice Voucher issued by the Housing Authority of the City of Santa Ana or any other Public Housing Authority.

4.7.3 All applicants for Affordable Units will be screened and "lotterized." A waiting list will be created from a lottery generated from the initial pool of rental applications. The waiting list will track applicant name and contact information, lottery number (or designated number after the initial lottery), household income, household size, status of application, and any other information deemed necessary. The waiting list will be maintained as an electronic file and available for audit by the City of Santa Ana in accordance with resident selection procedures as set forth herein.

4.7.4 Prior to the sale of an Affordable Unit, Developer shall require the Homebuyer to execute a written purchase sale agreement substantially similar to the Form PSA, and a written certification from the Homebuyer verifying compliance with the requirements for an Eligible Household and all other eligibility requirements established for the Affordable Unit. Developer shall verify the income of the Homebuyer as set forth herein.

4.8 Income Verification and Certification. Developer shall verify income of prospective Homebuyers and certify the verification to the City. In evaluating prospective Homebuyers, Developer shall consider the following sources of income in order of preference: (i) employment income; (ii) business income; (iii) income from Social Security, Supplemental

Security Income (SSI), welfare, disability, or pension payments; and (iv) alimony or child support. To verify income, Developer shall comply with the procedures set forth in Section A-3 of the Administrative Procedures Manual. Subject to the foregoing preferences, Developer shall consider Gross Household Income from all adult Household members, which is anticipated to be received during the 12-month period following the date of the determination of Gross Household Income. Within fifteen (15) days of delivery of an executed contract for purchase of an Affordable Unit by a prospective Homebuyer, Developer shall provide City with the Income Verification Form set forth in **Exhibit F** and the Certification of Continuing Occupancy set forth in **Exhibit G**.

4.9 Occupancy Requirements. The Owner shall occupy and continually use the Affordable Unit as the Homebuyer's Primary Residence during the Total Affordability Term. On an annual basis, the Program Manager will send the Homebuyer an Occupancy Recertification Form to be filled out and returned to the City within thirty (30) days of receipt. The Owner shall affirm that they are occupying the Affordable Unit as their Primary Residence. The Owner will be required to submit copies of two current utility bills, or other evidence of occupancy that is acceptable to the City, as part of the annual recertification process.

4.10 Emergency Evacuation Plan. Developer shall submit and obtain approval of an Emergency Evacuation Plan (the EEP) from City Police and Fire Protection agencies prior to issuance of a Certificate of Occupancy. Up-to-date 24-hour emergency contact information for the on-site personnel shall be provided to the City on an ongoing basis and the approved EEP shall be kept onsite and also be submitted to the following City Agencies:

- (a) Police Department
- (b) Fire Department
- (c) Planning and Building Agency
- (d) Community Development Agency

4.11 INTENTIONALLY DELETED

4.12 INTENTIONALLY DELETED

4.13 Marketing and Resident Selection Plan.

4.13.1 Prior to Certificate of Occupancy, Developer shall prepare and obtain City's approval of a marketing program and resident selection plan for the sale of the Affordable Units at the Project ("Marketing Program"). The sale of the Affordable Units shall thereafter be marketed in accordance with the Marketing Program as the same may be amended from time to time with City's prior written approval. Upon request, Developer shall provide City with periodic reports with respect to the sale of the Affordable Units.

4.13.2 The Marketing Program shall include, but is not limited to, marketing and community outreach activities, proposed homebuyer selection criteria, occupancy standards, income requirements, timeline and details for outreach and marketing, data collection, record keeping and monitoring, procedures for complaints, and compliance assessment. Components of

the resident selection plan shall include, but are not limited to, the application process, interview procedure, Affordable Unit offer and assignment for selected homeowners, rejected applications, and wait list management. All requirements set forth herein shall be incorporated in the Marketing Program.

4.14 Non-Discrimination in Housing. Developer, and any successors in interest, shall not discriminate any person or group of persons on account of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial or marital status, disability, veteran or military status, genetic information, political affiliation or opinion, medical condition, pregnancy or pregnancy-related condition, or condition of physical or mental disability or other handicap, age, or source of income or status with regard to public assistance in the transfer, use, occupancy, tenure or enjoyment of the Property or the Affordable Units, and the Developer, or any person claiming under or through it, shall not establish or permit any such practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of any Homebuyer or resident of the Property or the Affordable Units.

4.15 Monitoring and Recordkeeping. Throughout the Term of this Agreement, on or before January 31 of each year, Developer shall annually complete or cause to be completed and submit to City the Annual Compliance Report in the form set forth in **Exhibit G** for each year until all Affordable Units are sold and, thereafter, in each year when an Affordable Unit is resold. Developer agrees to pay a reasonable fee, as set by City resolution, for the purpose of paying the actual costs associated with the City's obligation to monitor Developer's compliance with the affordability restrictions contained in this Agreement related to the Affordable Units. Representatives of City shall be entitled to enter the Property if necessary after review of above documentation, upon at least forty-eight (48) hour notice, to monitor compliance with this Agreement, and shall be entitled to inspect the records of the Project relating to the Affordable Units and to conduct an independent audit or inspection of such records at a location within the City that is reasonably acceptable to the City without a fee from the City. Developer agrees to cooperate with City in making the Property and the records of the Project relating to the Affordable Unit reasonably available for such inspection or audit. Developer agrees to maintain or cause for the maintenance of each record of the Project for no less than five (5) years after creation of each such record.

4.16 Developer shall allow the City to conduct annual inspections of the Affordable Units on the Property after the date of construction completion, with reasonable notice, which shall be at least twenty four (24) hours in advance, unless a shorter time is required in an emergency, to Owner of the Affordable Unit. Developer shall commence to cure or cause the commencement to cure any defects or deficiencies found by the City while conducting such inspections within ten (10) business days of written notice thereof, or such longer period as is reasonable within the sole discretion of the City. Developer shall be relieved from this obligation upon the initial sale of all Affordable Units to Eligible Households.

5. TERM OF THIS AGREEMENT

5.1 Term. This Agreement shall continue for a Total Affordability Term that runs from the Effective Date until the expiration of the Affordability Term for all Units (the "Total

Affordability Term"). Upon the initial sale of all Affordable Units to Eligible Households pursuant to this Agreement, the Parties shall cooperate to execute and record a release or termination as to the Unrestricted Units.

5.2 Continuing Obligation to Pay the City Equity Share. Notwithstanding the expiration of the Total Affordability Term, the City shall have the right to receive payment for the City Equity Share, and enforce the Affordable Housing Resale Restrictions, the City Promissory Note, and the City Deed of Trust until satisfactory payment of the City Equity Share.

6. DEFAULT AND TERMINATION; INDEMNIFICATION

6.1 Default. Failure or delay by any Party to perform any term or provision of this Agreement, which is not cured within thirty (30) days after receipt of notice from the other Party specifying the default (or such other period specifically provided herein), constitutes a default under this Agreement; provided, however, if such default is of the nature requiring more than thirty (30) days to cure, the defaulting Party shall avoid default hereunder by commencing to cure within such thirty (30) day period, and thereafter diligently pursuing such cure to completion within an additional sixty (60) days following the conclusion of such thirty (30) day period (for a total of ninety (90) days). Except as required to protect against further damages, the injured Party may not institute proceedings against the Party in default until the time for cure has expired. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

6.2 Remedies.

6.2.1 Any individual who sells or rents (including subleasing) an Affordable Unit in violation of the provisions of this Agreement shall be required to forfeit to City all monetary amounts so obtained.

6.2.2 City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Agreement, including but not limited to:

- (a) Actions to revoke, deny or suspend any permits and/or certificate of occupancy;
- (b) Actions under the Affordable Housing Resale Restrictions, City Promissory Note, or City Deed of Trust executed by a Homebuyer;
- (c) Actions for injunctive relief, damages, or other monetary relief; and
- (d) Civil citations or penalties.

6.3 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

6.4 Waiver of Speculative, Consequential, or Punitive Damages. Notwithstanding anything to the contrary contained in this Agreement, in no event shall either Party be liable for speculative, consequential, punitive or other indirect damages, and each Party waives any right to collect speculative, consequential, punitive or other indirect damages against the other Party. Developer acknowledges the protections of Civil Code Section 1542 relative to this waiver and release, which section reads as follows:

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

BY INITIALING BELOW, DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION.

DEVELOPER'S INITIALS JK

6.5 Indemnification. In addition to any other indemnity specifically provided in this Agreement, Developer agrees to defend (with counsel of City's choosing and the consent of Developer, which shall not be unreasonably withheld, conditioned or delayed and which may be joint defense counsel upon City's and Developer's consent) indemnify and hold harmless City and its respective officers, officials, agents, employees, representatives, and volunteers (collectively, "Indemnitees") from and against any loss, liability, claim, or judgment arising from any claims, demands, or causes of action arising from or related to this Agreement, including the approval thereof, except to the extent caused by the active negligence or willful misconduct of Indemnitees.

7. ASSIGNMENT; COVENANTS RUN WITH THE LAND

7.1 Assignment by Developer.

7.1.1 Prohibited Transfers or Assignments. Developer shall not sell, transfer, or assign the Property or Project in whole or in part, or transfer or assign Developer's rights and obligations in this Agreement, in whole or in part, unless the sale, transfer, or assignment complies with this Section 7. If Developer seeks to sell, transfer or assign the Property or Project, or any rights and obligations in this Agreement, Developer shall request City's written consent, and City shall respond within thirty (30) days with a written approval or denial, which City may determine in its sole and absolute discretion. If City approves such a request, then prior to any such sale, transfer or assignment, Developer shall pay City's reasonable fees as compensation for the City's review of the request. City's failure to respond to the request within thirty (30) days shall be deemed an approval.

7.1.2 Sale of Property. Developer agrees and declares that the Property and the Project shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, operated, sold, and approved subject to all obligations set forth or incorporated in this Agreement, all of

which are for the purpose of enhancing and protecting the value and attractiveness of the Property and the Project. All of the obligations set forth or incorporated in this Agreement shall constitute covenants which run with the land and shall be binding on Developer and its successors and assigns, and all parties having or acquiring any right, title or interest in, or to any part of the Property or Project. Developer further understands and agrees that the approvals received for this Project have been made on the condition that Developer and all subsequent owners, or other successors and assigns of the Property and/or Project sell the Affordable Units in accordance with the covenants, conditions and restrictions of this Agreement.

7.1.3 Subsequent Assignment. As used in this Agreement, the term "Developer" shall be deemed to include any such transferee or assignee after the date such sale, transfer, or assignment occurs in compliance with this Agreement.

7.1.4 Unpermitted Assignments Void. Any sale, transfer, or assignment made in violation of this Agreement shall be null and void, and City shall have the right to pursue any right or remedy at law or in equity to enforce the provisions of the restriction against unpermitted sales, transfers, or assignments.

7.2 Covenants Run with the Land. The Property shall be used, occupied and improved subject to the covenants, conditions, and restrictions set forth herein. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth in this Agreement shall run with the Property and shall be binding upon Developer and all persons having any right, title or interest in the Property, or any part thereof, their heirs, and successive owners and assigns, shall inure to the benefit of City and its successors and assigns, and may be enforced by City and its successors and assigns. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of City and its successors and assigns, and the parties hereto expressly agree that this Agreement and the covenants herein shall run in favor of City. City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. Developer hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land and that the Developer's interest in the Property is rendered less valuable thereby. Developer hereby further declares its understanding and intent that the agreement provides a public benefit in furtherance of benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by the citizens of City and by furthering the health, safety, and welfare of the residents of City.

8. MISCELLANEOUS

8.1 Entire Agreement. This Agreement and all of its exhibits and attachments set forth and contain the entire understanding and agreement of the parties with respect to the density bonus of the Project, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. 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.

8.2 Amendment. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance approved by the City Council, or through the City Manager as detailed herein, and signed on behalf of each party. The City Manager shall have the authority to make approvals, issue interpretations, execute documents, waive provisions, and/or enter into amendments of this Agreement on behalf of City that further the intent of this Agreement. Any requested alteration, change or modification of the Agreement by Developer shall require the payment of fees or deposit by Developer to City, as applicable, for the City's review of the request. Each alteration, change, or modification to this Agreement shall be recorded against the Property in the Official Records of Orange County, California.

8.3 Notices.

8.3.1 Delivery. As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder. All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) two (2) days after deposit in the United States mail in a sealed envelope, first class mail and postage prepaid, and addressed to the recipient named below; or (iv) one (1) day after deposit with a known and reliable next-day document delivery service (such as Federal Express), charges prepaid and delivery scheduled next-day to the recipient named below, provided that the sending party receives a confirmation of delivery from the delivery service provider; or (v) the first business day following the date of transmittal of any facsimile, provided confirmation of successful transmittal is retained by the sending Party; or (vi) upon transmission thereof (as evidenced by the recipient's reply to such notice or other competent evidence of actual receipt) if transmitted by electronic transmission (email), provided that a copy of such notice is concurrently sent by first-class mail postage prepaid. All notices shall be addressed as follows:

- If to City: City of Santa Ana
Community Development Agency
20 Civic Center Plaza (M-26)
P.O. Box 1988
Santa Ana, California 92702
Attention: Housing Manager

- With a copy to: Office of the City Attorney
City of Santa Ana
20 Civic Center Plaza, 7th Floor (M-29)
Santa Ana, California 92702

- If to Developer: **MLC Holdings Inc./Meritage Homes**
5 Peters Canyon Road,
Suite 310
Irvine, CA 92606

8.3.2 Change of Address. Either Party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

8.4 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.

8.5 Interpretation and Governing Law. This Agreement and any dispute hereunder shall be governed and interpreted in accordance with the laws of the State of California without regard to conflict of law principles. 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 hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation hereof.

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

8.7 Singular and Plural. As used herein, the singular of any word includes the plural, and vice versa, as context so dictates. Masculine, feminine, and neuter forms of any word include the other as context so dictates.

8.8 Joint and Several Obligations. If at any time during the term of this Agreement the Property and/or Project is owned, in whole or in part, by more than one Developer, all obligations of such Developer under this Agreement shall be joint and several, and the default of any such Developer shall be the default of all such Developers.

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

8.10 Computation of Days. Unless otherwise specified in this Agreement or any Exhibit attached hereto, use of the term "days" shall mean calendar days. For purposes of this Agreement and all Exhibits attached hereto, "business days" shall mean every day of the week except Saturdays, Sundays, official State holidays as recognized in Government Code Section 19853(a) or successor statute, and any days in which Santa Ana City Hall is closed for business.

8.11 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

8.12 Non-Discrimination. In performing its obligations under this Agreement, Developer shall not discriminate because of race, color, creed, religion, sex, gender, gender identity, gender expression, marital status, sexual orientation, familial status, source of income, veteran or military status, age, national origin, ancestry, disability or genetic information, as

defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other related activities. Developer affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

8.13 Third Party Beneficiaries. No person or entity, other than City and Developer shall have any right of action based upon any provision of this Agreement.

8.14 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, earthquakes, other Acts of God, fires, pandemics as declared by federal, state, or local emergency resolution, wars, riots or similar hostilities, strikes and other labor difficulties beyond the Party's control (including the Party's employment force), court actions (such as restraining orders or injunctions), or other causes beyond the Party's control, including delays by any governmental entity (although the City may not benefit from this provision for a delay that results from City's failure to perform its obligations under this Agreement), or an insurance company of either party. If any such events shall occur, the term of this Agreement and the time for performance by either Party of any of its obligations hereunder may be extended by the written agreement of the Parties for the period of time that such events prevented such performance.

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

8.16 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all permitted successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. 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 and each successor in interest approved pursuant to this Agreement during ownership of the Property or any portion thereof.

8.17 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.

8.18 Jurisdiction and Venue. Any action at law or in equity under this Agreement or brought by a Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or to the extent allowed by law, in the federal court district covering the City, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

8.19 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that 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 Developer is that of a government entity regulating the development of private property and the Developer of such property.

8.20 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and in the satisfaction of the Project and conditions 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 the Project or to evidence or consummate the transactions contemplated by this Agreement. City hereby authorizes City Manager to take such other actions and negotiate and execute any additional agreements or amendments to this agreement as may be reasonably necessary or proper to fulfill the City's obligations under this Agreement. The City Manager may delegate her or his powers and duties under this Agreement to an authorized management level employee of the City.

8.21 Estoppel Certificate. Within ten (10) business days following a written request by any of the Parties, the other Party shall execute and deliver to the requesting Party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding Party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification, except as may be represented by the requesting Party, and that there are no uncured defaults in the performance of the requesting Party, except as may be represented by the requesting Party.

8.22 No Subordination. City's approval of the necessary land use entitlements that authorize Developer to develop, operate, and maintain the Project was based upon Developer's obligation to provide the Affordable Units pursuant to the State Density Bonus Law, City Density Bonus for Affordable Housing, and the terms and conditions of this Agreement. For the duration of the Term, this Agreement shall have priority over any and all mortgages, deeds of trust, and other similar forms of secured financing recorded against the Property, the Affordable Units, or any portion thereof. Developer expressly understands and acknowledges that state law requires preservation of affordability covenants in connection with the approval of this density bonus project.

8.23 Attorneys' Fees and Costs. If either Party to this Agreement commences an action against the other Party to this Agreement arising out of or in connection with this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, expert witness fees, costs of investigation, and costs of suit from the losing Party.

8.24 Authority to Execute. The person or persons executing this Agreement on behalf of each Party warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants

and represents that he or she/they has/have the authority to bind the Party to the performance of its obligations hereunder.

{Signatures on following page}

DRAFT

IN WITNESS WHEREOF, the parties hereto have caused this Density Bonus Housing Agreement to be executed on the date set forth at the beginning of this Agreement.

ATTEST:

CITY OF SANTA ANA

Jennifer Hall
City Clerk

Alvaro Nuñez
City Manager

APPROVED AS TO FORM:



Matthew Cody
Best, Best & Krieger
Special Counsel for the City

RECOMMEND FOR APPROVAL:

[TO BE ADDED]



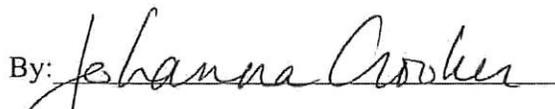
Michael Garcia
Executive Director
Community Development Agency

By: _____
Its: _____

NOTE:

Developer acknowledges and agrees to the language within this document.

MLC Holdings, Inc.

By: 

Johanna Crooker
Vice President

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

APN: 402-191-03

The Land referred to herein below is situated in the City of Santa Ana, County of Orange, State of California, and is described as follows:

THAT PORTION OF LOT "D" OF THE STAFFORD AND TUSTIN TRACT, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN [BOOK 2, PAGES 618 AND 619](#) OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT "D"; THENCE EASTERLY ALONG THE NORTHERLY LINE OF SAID LOT "D", 225.75 FEET TO THE NORTHWESTERLY CORNER OF THE LAND DESCRIBED IN A DEED TO MARY A. VANDERMEULEN, RECORDED SEPTEMBER 2, 1897, IN [BOOK 33, PAGE 68](#) OF DEEDS, RECORDS OF ORANGE COUNTY; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID LAND OF VANDERMEULEN, 733.36 FEET TO THE NORTHERLY LINE OF THE LAND DESCRIBED IN A DEED TO CHARLES L. FOSTER, RECORDED NOVEMBER 3, 1892 IN [BOOK 55, PAGE 126](#) OF DEEDS, RECORDS OF ORANGE COUNTY; THENCE WESTERLY ALONG SAID NORTHERLY LINE OF THE LAND OF FOSTER, 225.75 FEET TO THE WESTERLY LINE OF SAID LOT "D"; THENCE NORTHERLY ALONG SAID WESTERLY LINE OF LOT "D", 733.36 FEET TO THE POINT OF BEGINNING. EXCEPT THE NORTH 19.00 FEET OF THAT PORTION OF THE LAND DESCRIBED IN THE DEED TO THE CITY OF SANTA ANA, RECORDED DECEMBER 22, 1965, IN [BOOK 7781, PAGE 486](#), OFFICIAL RECORDS OF SAID COUNTY. A PORTION OF SAID LAND IS INCLUDED WITH THE AREA SHOWN ON A MAP FILED IN [BOOK 74, PAGE 3](#) OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

DRAFT

EXHIBIT B

FORM OF AFFORDABLE HOUSING RESALE RESTRICTIONS, EQUITY SHARING, AND REGULATORY AGREEMENT

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702
Attn: City Clerk

*Free Recording pursuant to
Government Code 6103 & 27383*

AFFORDABLE HOUSING RESALE RESTRICTIONS, EQUITY SHARING AND REGULATORY AGREEMENT

2020 East First Street, APN: 402-191-02

This **AFFORDABLE HOUSING RESALE RESTRICTIONS, EQUITY SHARING AND REGULATORY AGREEMENT** (“Affordable Housing Resale Restrictions” or “Agreement”) is made as of _____, by _____ (“Homebuyer”) in favor of the **CITY OF SANTA ANA**, a municipal corporation (“City”).

RECITALS

A. Homebuyer has purchased a single family house located at _____, Santa Ana, California, _____, as such real property is more particularly described in “Exhibit 1” attached hereto and incorporated herein (“Property”).

B. In connection with Homebuyer purchasing the Property, Homebuyer acknowledged and received disclosures that the purchase was subject to a Density Bonus Housing Agreement with Declaration of Covenants, Conditions and Restrictions ("Density Bonus Agreement"), dated on or about _____, 2025, between the developer of the Property, _____ ("Developer"). The Density Bonus Agreement required the Property to be sold to a Very Low Income Household, subject to the provisions of this Affordable Housing Resale Restrictions, pursuant to which Developer imposed covenants upon the Property to be sold to Eligible Homebuyers at an Affordable Sales Price. Homebuyer hereby acknowledges and agrees that this Affordable Housing Resale Restrictions is intended to implement the requirements of the Density Bonus Agreement, and that the purchase, use and occupancy of the Property is subject to

the conditions, covenants and restrictions contained herein. Capitalized terms used herein and not otherwise defined shall have the same meaning as set forth in the Density Bonus Agreement.

C. Homebuyer desires and intends to restrict the Property and the improvements thereon in accordance with this Affordable Housing Resale Restrictions. Homebuyer agrees and acknowledges that this Affordable Housing Resale Restrictions is intended to implement and further the intent of the Density Bonus Agreement, entered into between City and Developer of the Property, which was recorded against the Affordable Unit to impose the conditions, covenants, and restrictions as set forth herein. This Affordable Housing Resale Restrictions shall be construed in accordance with the Regulatory Agreement.

D. Homebuyer is a Very Low Income Household, as that term is defined in this Agreement.

E. Homebuyer has represented to City that Homebuyer and Homebuyer's household intend to reside in the Property as Homebuyer's principal residence at all times during Homebuyer's ownership of the Property.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. DEFINITIONS

"Affordability Term" means that period of time commencing upon the Date of this Agreement and terminating on the date that is fifty five (55) years from the date a certificate of occupancy was issued for the Property.

"Affordable Housing Cost" means the purchase price for Very Low Income Households pursuant to California Health & Safety Code Section 50052.5, and implementing regulations of Sections 6920, 6924 and 6926 of Title 25 of the California Code of Regulations for Very Low Income Households.

"Affordable Sales Price" means a purchase price required under a written purchase sale agreement that does not exceed the sum of the Supportable Mortgage plus the Benchmark Down Payment.

"Affordable Unit" or **"Property"** means the individual dwelling unit restricted by this Agreement

"City" means the City of Santa Ana, California, a California municipal corporation, and the City's successors and assigns.

"City Deed of Trust" means the City Deed of Trust, securing this Affordable Housing Resale Restrictions and the City Promissory Note, and dated on or about the same date hereof.

"City Equity Share" means the amount that Homebuyers agree to pay to the City in accordance with the City Promissory Note.

"City Promissory Note" means the City Promissory Note, evidencing Homebuyer's agreement to pay the City Equity Share and dated on or about the same date hereof.

"County" means the County of Orange, California.

"Date of this Agreement" means the date in the first paragraph of this Agreement.

"Default" means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure. The term default also includes an Ownership Default and a Maintenance Default as more fully defined and described herein. Notwithstanding the foregoing for purposes of acceleration of the City Promissory Note, or initiation of foreclosure proceedings there shall be a distinction between the types of default hereunder, including an "Ownership Default" and a "Maintenance Default." The term "Ownership Default" means the failure of Homebuyer to perform any action or covenant required by the Affordable Housing Resale Restriction related to ownership, owner-occupancy, lien priority, and restrictions on sale and resale of the Property subject to the notice and opportunity to cure provisions set forth herein. A default of any obligation secured by the First Lien shall be a cross-default and also constitute an Ownership Default. The term "Maintenance Default" means the failure of Homebuyer to perform any action or covenant required by this Agreement relating to a "Maintenance Deficiency," including the ongoing upkeep, maintenance, and use of the Property in decent, safe, sanitary, clean, and neighborly manner, subject to the notice and opportunity to cure provisions set forth herein (and expressly excluding an Ownership Default).

"Developer" means MLC Holdings, Inc./Meritage Homes.

"Eligible Household" means a Household whose income does not exceed the "Very Low Income Household" qualifying limit as defined herein.

"First Lien" means the lien of the institution making the purchase money mortgage loan to Homebuyer for the purchase of the Property.

"Homebuyer" means the person or persons set forth in the first paragraph of this Agreement, and their successors and assigns.

"Housing Cost" means and includes all of the following costs associated with ownership of an Affordable Unit as defined in Title 25 of the California Code of Regulations Section 6920, and Santa Ana Municipal Code, including:

- (a) Principal and interest on a mortgage loan at the defined interest rate;
- (b) Property tax and assessments;
- (c) Fire and casualty insurance covering replacement value of property improvements;
- (d) Property maintenance and repairs;

(e) A reasonable utility allowance, as determined by the Orange County Housing Authority; and

(f) Homeowner Association assessments and dues.

“Legal Description” means the legal description of the Property which is attached hereto as Exhibit A and incorporated herein.

“Median Income” means the area median income for Orange County PMSA, adjusted for family size appropriate to the unit pursuant to California Health and Safety Code § 50052.5(h), as periodically published by the California Department of Housing and Community Development.

“Very Low Income and Very Low Income Households” means a Household whose income does not exceed fifty (50%) of the area median income for the Orange County, California PMSA, adjusted for household size, as published by HCD.

“Notice of Intent to Transfer” means a written notice from Homebuyer to the City that provides notice of an intent to Transfer the Property and all information required by this Agreement in connection with the proposed Transfer.

“Permitted Transfer” means any Transfer which is permitted under this Agreement with the written consent of the City.

“Prohibited Transfer” means any Transfer which is disapproved by the City or violates this Agreement.

“Property” means that certain real property located at the street address set forth in Recital A and legally described in the Legal Description.

“Purchase Agreement” means that certain agreement pursuant to which Homebuyer has agreed to purchase the Property from the Developer.

“Request for Notice” means the Request for Notice of Default attached hereto as Exhibit I and incorporated herein.

“Sales Price” means the sum to be paid by a Transferee for the Transfer of the Property.

“Transfer” shall mean any sale, assignment, conveyance, lease or transfer, voluntary or involuntary, of any interest in the Property. Without limiting the generality of the foregoing, Transfer shall include (i) a transfer by devise, inheritance or intestacy; (ii) creation of a life estate; (iii) creation of a joint tenancy interest; (iv) a gift of all or any portion of the Property; or (v) any voluntary conveyance of the Property.

“Transferee” shall mean any natural person or entity who obtains ownership or possessory rights in the Property pursuant to a Transfer.

2. HOMEBUYER'S REPRESENTATIONS AND WARRANTIES AS TO THE SALE OF THE PROPERTY TO HOMEBUYER.

2.1 Homebuyer represents and warrants to City that the financial and other information which Homebuyer has provided to City with respect to Homebuyer's income and the purchase price of the Property was true and correct at the time such information was provided, and remains true and correct as of the Date of this Agreement.

2.2 Homebuyer agrees to occupy the Property as Homebuyer's primary residence.

3. RESTRICTIONS ON SALE OF PROPERTY.

3.1 Homebuyer covenants and agrees that during the Affordability Term, any resale of the Property shall be to a Very Low Income Household for an amount that does not exceed an Affordable Sales Price.

3.2 Prior to any Transfer of the Affordable Unit, Homebuyer shall provide the City with a Notice of Intent to Transfer, in a form approved by the City, and the City shall have the right to approve or disapprove of any Transfer, which approval shall not be unreasonably withheld.

3.3 Permitted Transfers. Prior to any Transfer of the Property, Homebuyer shall obtain City's written consent pursuant to the requirements of Section 4 and 5, below, and subject to the following:

(a) During the Affordability Term, the Homebuyer may Transfer the Property to a Very Low Income Household for an Affordable Sales Price.

(b) Upon expiration of the Affordability Term, Homebuyer may sell the Property without the affordability restrictions of this Agreement, subject to the satisfaction of the City Promissory Note and City Deed of Trust.

3.4 Prohibited Transfers. Any Transfer of the Property without the City's written consent or in violation of this Agreement is a Prohibited Transfer.

4. HOMEBUYER PROCEEDS FROM SALE OF PROPERTY.

4.1 This Agreement implements the provisions of the Density Bonus Agreement for disbursement of funds from a sale of the Property, as further set forth below.

4.2 Permitted Transfers During the Affordability Term. During the Affordability Term, a Homebuyer retains the proceeds from a Permitted Transfer after payment of the First Lien, and reasonable closing costs and broker fees. The City Deed of Trust shall remain a lien on the Property, or the Transferee shall executed a new Affordable Housing Resale Restrictions, City Promissory Note, and City Deed of Trust.

4.3 Permitted Transfers Upon Expiration of the Affordability Term. Upon expiration of the Affordability Term, the City Equity Share shall become due and payable upon a

Permitted Transfer, and the proceeds from a sale shall be used for payment of the City Equity Share in satisfaction of the City Promissory Note.

4.4 Prohibited Transfers. Homebuyer agrees and acknowledges that a Prohibited Transfer is a default of this Agreement and, in the event of such a default, the City shall be entitled to the greater of: (a) all amounts paid for the Property in excess of the Affordable Sales Price shall be forfeited to the City, or (b) the City Equity Share.

4.5 Equity Sharing Agreement.

4.5.1 Following the expiration of the Affordability Term, Homebuyer agrees to pay to the City the City Equity Share, as follows:

4.5.2 The City Equity Share shall be paid out of proceeds from a Transfer of the Property after the Affordability Term.

4.5.3 The City Equity Share includes the following:

(a) An amount equal to the difference between the fair market value of the Affordable Unit at the time of the initial purchase and the Affordable Sales Price (the "Initial Subsidy").

(b) An amount equal to the product of (1) the appreciation of the Affordable Unit, as measured by the increase in the fair market value of the Affordable Unit at the time of the sale to the Homebuyer and the resale of the Affordable Unit, and (2) the percentage that the initial subsidy represented of the fair market value of the Affordable Unit when it was purchased by the Homebuyer (the "Proportionate Share of Appreciation").

4.6 The City Equity Share shall only be subordinate to a First Lien, as approved by the City at the time of the initial sale (or subsequent approval in the event of a refinance or resale during the Affordability Term), and amounts owed to Homebuyer for the value of improvements to the Property and the down payment paid by Homebuyer.

4.7 For purposes of determining the City Equity Share, at the time of the initial sale of the Property, and each re-sale during the Affordability Term, the fair market value shall be determined as follows:

4.7.1 For the initial sale, Developer may propose to the City a fair market value based on a price per square foot that is based on comparable sales of other units within the Project.

4.7.2 Except as approved in writing by the City, prior to the sale of an Affordable Unit, a qualified appraiser shall conduct an appraisal of the Affordable Unit to determine fair market value without the restrictions of this Agreement. If the Developer or a prospective Homebuyer disputes the appraised value, then that party may pay for the costs of a second appraisal and, if there is still disagreement, the average of the two appraisals shall be used to determine the fair market value.

4.7.3 The fair market value of the Affordable Unit, as determined in accordance with the above, shall be provided to the City for approval or disapproval, which City shall provide within thirty (30) days of receipt of the proposed fair market value. If City does not provide a written response within such time period, then the proposed fair market value shall be deemed approved by the City.

5. **PROCESS FOR TRANSFER OF THE PROPERTY.** In the event that Homebuyer desires to Transfer the Property, the following procedure shall apply:

5.1 **Notice to City.** Prior to any Transfer, Homebuyer shall send a completed Notice of Intent to Transfer to City at the address set forth in Section 22. The Notice of Intent to Transfer shall include: (a) the identity of the proposed Transferee and contact information, including current address and phone number, (b) the proposed terms of the Transfer, (c) whether the Property is being sold to a purchaser that qualifies as a Very Low Household and supporting documentation, and (d) if during the Affordability Term, the proposed Affordable Sales Price and the resulting Monthly Housing Costs. If the proposed Transfer is upon expiration of the Affordability Term, then the Notice of Intent to Transfer shall include the proposed sales price and a good faith estimate of the proceeds from the sale of the Property. The City may request additional information as reasonably necessary to evaluate the requested Transfer.

5.2 **Qualification of Proposed Transferee.** For a transfer during the Affordability Term, the proposed Transferee shall complete an Income Verification Form, in a form approved by the City, which shall include, without limitation, a certification as to the income and family size of the proposed Transferee.

5.3 **Certificates from Parties.** In the event the City approves the proposed Transfer, Homebuyer and proposed Transferee each shall certify in writing, in a form acceptable to City, that the Transfer shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by City and that all consideration delivered by the proposed Transferee to owner has been fully disclosed to City. The written certificate shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certificate submitted to City for its approval of the Transfer, City shall have the right to file an action at law or in equity to make the parties terminate and/or rescind the sales contract and/or declare the sale void notwithstanding the fact that the Transfer may have closed and become final as between Homebuyer and Transferee.

5.4 **Requirements for Permitted Transfers.** For a Permitted Transfer during the Affordability Term, the City will require: (1) an assignment and assumption agreement that is reasonably acceptable to City, or (2) the proposed Transferee execute a new City Promissory Note, City Deed of Trust, and Affordable Housing Resale Restrictions. Upon expiration of the Affordability Term, the City will require a closing statement setting forth the proceeds from a proposed sale, and shall have at least thirty (30) days to review and approve the sales documents.

5.5 **Written Approval of City Required Before Transfer.** The purchase sale agreement or other contract for Transfer of the Property, and the Income Verification Form, shall be provided to the City, which shall have at least thirty (30) days to review. The Property, and any interest therein, shall not be conveyed by any Transfer except with the express written consent of

City, which consent shall be given only if the Transfer is in accordance with the provisions of this Agreement.

5.6 **Notice of Prohibited Transfer.** Within thirty (30) days after receiving all information required by this Section 5, the City shall determine and give notice to Homebuyer as to whether the City consents to the Transfer as a Permitted Transfer, or if the City determines the proposed Transfer is a Prohibited Transfer. Any attempt to Transfer the Property without the City's written approval, or after the City has given notice of a Prohibited Transfer, shall be a Default of this Agreement, and the City may apply to a court of competent jurisdiction for specific performance of this Agreement, for an injunction prohibiting a proposed sale or Transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate.

5.7 **Delivery of Documents.** Upon the close of the proposed Transfer, Homebuyer and Transferee, as applicable, shall provide the City with a copy of the final sales contract, settlement statement, escrow instructions, all certificates required by this Section 5 and any other documents City may request.

6. ENCUMBRANCES.

6.1 **Subordination.** Except as provided otherwise herein, the provisions of this Agreement, the Notice of Affordability Restrictions and the City Deed of Trust, the obligations herein and therein, shall be subordinate only to the First Lien on the Property and, if applicable, other loan(s) as approved by the City, including lien instruments that secure other Homebuyer purchase money and/or down payment assistance, including without limitation City, State of California, or federal affordable housing programs, which liens shall not impair the rights under the First Lien in the event of default under the First Lien by Homebuyer. Such remedies under the First Lien include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure.

6.2 **Request for Notice of Default.** City may cause a Request for Notice to be recorded on the Property subsequent to the recordation of the First Lien deed of trust or mortgage requesting a statutory notice of default as set forth in California Civil Code Section 2924b. A form of a Request for Notice is attached hereto as Exhibit I and incorporated herein.

6.3 **Further Encumbrances.** Homebuyer agrees that it shall not record or cause the recordation of any deed of trust ("Further Encumbrance") securing a note having an original principal sum which, when added to the sum of the principal amount(s) of any notes secured by any deeds of trust against the Property as of the date of recordation of the Further Encumbrance, exceeds one hundred percent (100%) of the fair market value of the Property.

7. **USES.** Homebuyer covenants and agrees to devote, use and maintain the Property in accordance with this Agreement. All uses conducted on the Property, including, without limitation, all activities undertaken by Homebuyer pursuant to this Agreement, shall conform to all applicable provisions of the Santa Ana Municipal Code, and the recorded documents pertaining to and running with the Property.

8. NONDISCRIMINATION COVENANTS.

Homebuyer covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land. All deeds, leases or contracts relating to the Property, or any part thereof, shall contain or be subject to substantially the following non-discrimination or non-segregation clauses:

“The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

The covenants established in this Section 8 shall, without regard to technical classification and designation, be binding for the benefit and in favor of City and its successors and assigns, and shall remain in effect in perpetuity.

9. MAINTENANCE OF PROPERTY.

Homebuyer shall maintain the improvements and landscaping on the Property in a manner consistent with community standards which will uphold the value of the Property, in accordance with the Santa Ana Municipal Code. Homebuyer also agrees to comply with all applicable federal, state and local laws.

9.1 Exterior Maintenance. Except as to be maintained by the homeowners association, as applicable, all exterior, painted surfaces of any structures located on the Property shall be maintained at all times in a clean and good condition. Any defacing marks shall be cleaned or removed within a reasonable period of time.

9.2 Front and Side Exteriors. Except as to be maintained by the homeowners association, as applicable, Homebuyer shall at all times maintain the front exterior, any visible side exteriors, and yards, if any, in a clean, safe and presentable manner.

9.3 **Graffiti Removal.** All graffiti and defacement of any type, including but not limited to marks, words and pictures, shall be promptly removed from the Property within two (2) days of the time they were made and any necessary painting or repair completed in a timely and expeditious manner after notice thereof, whichever is less.

9.4 **No Nuisance.** Homebuyer shall not maintain, cause to be maintained, or allow to be maintained on or about the Property any public or private nuisance, including without limitation, the conduct of criminal activities set forth in the nuisance abatement provisions of the Uniform Controlled Substances Act (Health & Safety Code Sections 11570, *et seq.*) or the Street Terrorism Enforcement and Prevention Act (Penal Code Sections 186.22 *et seq.*), or any successor statute or law.

10. OCCUPANCY STANDARDS.

The Property shall be used as the principal personal residence of Homebuyer and Homebuyer's immediate family/household and for no other purpose. Homebuyer shall not enter into an agreement for the rental or lease of all or any part of the Property. Homebuyer shall not rent out a room or rooms at the Property. Homebuyer may request a temporary waiver of the foregoing requirement in the event of extreme hardship requiring Homebuyer to move to another geographical area or to less expensive housing, including, for example and without limitation, transfer of job location, loss of job, or unexpected major expenses. City may approve or disapprove such request in its sole discretion, and may require as a condition of approval that Homebuyer only rent the Property to Eligible Households at an affordable rent (as defined in Section 50052.5 and 50053 of the California Health & Safety Code.) Subject to applicable state or federal law, the standard occupancy for the Property shall be consistent with the Regulatory Agreement. Homebuyer shall, upon demand by City, submit to City an affidavit of occupancy verifying Homebuyer's compliance with this Section 10. Such affidavit may be required by City on an annual basis.

11. EFFECT OF VIOLATION OF THE TERMS AND PROVISIONS OF THIS AGREEMENT.

11.1 **In General.** The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of City, its successors and assigns, as to those covenants which are for its benefit. The covenants contained in this Agreement shall remain in effect for the periods of time specified herein. The covenants against discrimination shall remain in effect in perpetuity. City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants herein shall run in favor of City, without regard to whether City has been, remains or is an owner of any land or interest therein in the Property or in the Project Area. City shall have the right, if the Restriction or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

11.2 **Acceleration.** The City shall be entitled to accelerate payments due under the City Promissory Note, and the amount required thereunder shall become due and immediately payable to City by Homebuyer upon the occurrence of any one of the following events of acceleration:

11.2.1 During the Affordability Term, Homebuyer Transfers the Property for a price in excess of an Affordable Sales Price or to a Transferee who does not qualify as a Very Low Income Household;

11.2.2 Homebuyer makes a Prohibited Transfer of title to or any interest in the Property without City's consent or in violation of this Agreement;

11.2.3 Homebuyer refinances any lien or encumbrance to which City Deed of Trust is subordinate (each such lien, a "First Lien") for a loan amount in excess of the then current loan balance secured by such lien or encumbrance and loan closing costs;

11.2.4 Homebuyer fails to occupy the Property as Homebuyer's principal residence or is in Default of any other obligation under the Affordable Housing Resale Restrictions;

11.2.5 Homebuyer has an Ownership Default violating any affordable housing terms or provisions of this Agreement.

12. COMPLIANCE WITH LAWS; GOVERNING LAW.

Homebuyer hereby agrees to comply with all applicable ordinances, rules, and regulations of City. Nothing herein is intended to be, nor shall it be deemed to be, a waiver of any City ordinance, rule, or regulation. This Agreement shall be governed by the laws of the State of California. Any legal action brought under this declaration must be instituted in the Superior Court of the County of Orange, State of California, or in the Federal District Court in the Central District.

13. INDEMNIFICATION.

Homebuyer shall pay for, defend, indemnify and hold harmless City and the City and their respective officers, officials, agents, employees, representatives, and volunteers from and against any loss, liability, claim, or judgment relating in any manner to Homebuyer's use of the Property or Homebuyer's violation of this Agreement. Homebuyer shall remain fully obligated for the payment of taxes, liens and assessments related to the Property. There shall be no reduction in taxes for Homebuyer, nor any transfer of responsibility to City to make such payments, by virtue of this Agreement.

14. INSURANCE.

Homebuyer shall maintain, during the term of this Agreement, an all-risk property insurance policy insuring the Property in an amount equal to the full replacement value of the structures on the Property. The policy shall contain a statement of obligation on behalf of the carrier to notify the City of any material change, cancellation or termination of coverage at least thirty (30) days in advance of the effective date of such material change, cancellation or termination. Homebuyer

shall transmit a copy of the certificate of insurance to City within thirty (30) days of the effective Date of this Agreement, and Homebuyer shall annually transmit to City a copy of the certificate of insurance, signed by an authorized agent of the insurance carrier setting forth the general provisions of coverage. The copy of the certificate of insurance shall be transmitted to City at the address set forth in Section 22 hereof. The form, content and issuer of any certificate of insurance approved by City.

15. DEFAULTS.

Failure or delay by either party to perform any term or provision of this Agreement which is not cured within thirty (30) days after receipt of notice from the other party constitutes a default under this Agreement; provided, however, that if such default is of the nature requiring more than thirty (30) days to cure, the defaulting party shall avoid default hereunder by commencing to cure within such thirty (30) day period, and thereafter diligently pursuing such cure to completion. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

16. NON-WAIVER.

Failure to exercise any right City may have or be entitled to, in the event of default hereunder, shall not constitute a waiver of such right or any other right in the event of a subsequent default.

17. FURTHER ASSURANCES.

Homebuyer shall execute any further documents consistent with the terms of this Agreement, including documents in recordable form, as City shall from time to time find necessary or appropriate to effectuate its purposes in entering into this Agreement.

18. GOVERNING LAW.

Homebuyer hereby agrees to comply with all ordinances, rules and regulations of City. Nothing in this Agreement is intended to be, nor shall it be deemed to be, a waiver of any City ordinance, rule or regulation. This Agreement shall be governed by the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of the County of Orange, State of California, or in the Federal District Court where the City is located.

19. AMENDMENT OF RESTRICTION.

No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by Homebuyer and City.

20. CITY MAY ASSIGN.

City may, at its option, assign its rights hereunder without obtaining the consent of Homebuyer.

21. HOMEBUYER ASSIGNMENT PROHIBITED.

In no event shall Homebuyer assign or transfer any portion of this Agreement without the prior express written consent of City, which consent shall be given by City only in the event that City determines that the assignee or transferee is an Eligible Household, that the assignee's or transferee's monthly housing payments are at an Affordable Housing Cost, and that the assignee or transferee has expressly assumed this Agreement by execution of a written assignment document to be provided by City and recorded against the Property, or execution of new instruments by the transferee. This section shall not affect or diminish City's right to assign all or any portion of its rights hereunder.

22. NOTICES.

Any notices, requests or approvals given under this Agreement from one party to another may be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, registered or certified mail, return receipt requested to the following address:

To Homebuyer: At the property address.

To City: City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92702
Attn: City Clerk

Either party may change its address for notice by giving written notice thereof to the other party.

23. ATTORNEYS' FEES AND COSTS.

In the event that any action is instituted to enforce payment or performance under this Agreement, the parties agree the non-prevailing party shall be responsible for and shall pay all costs and all attorneys' fees incurred by such prevailing party in enforcing this Agreement.

24. ENTIRE AGREEMENT.

This Agreement, together with the City Promissory Note and City Deed of Trust, and all attachments thereto and hereto, constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between the City and Homebuyer concerning all or any part of the subject matter of this Agreement.

[Signature block begins on follow page.]

DRAFT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

HOMEBUYER:

By: _____

By: _____

CITY:

ATTEST:

CITY OF SANTA ANA

By:
City Clerk

By:
City Manager

Dated: _____

Dated: _____

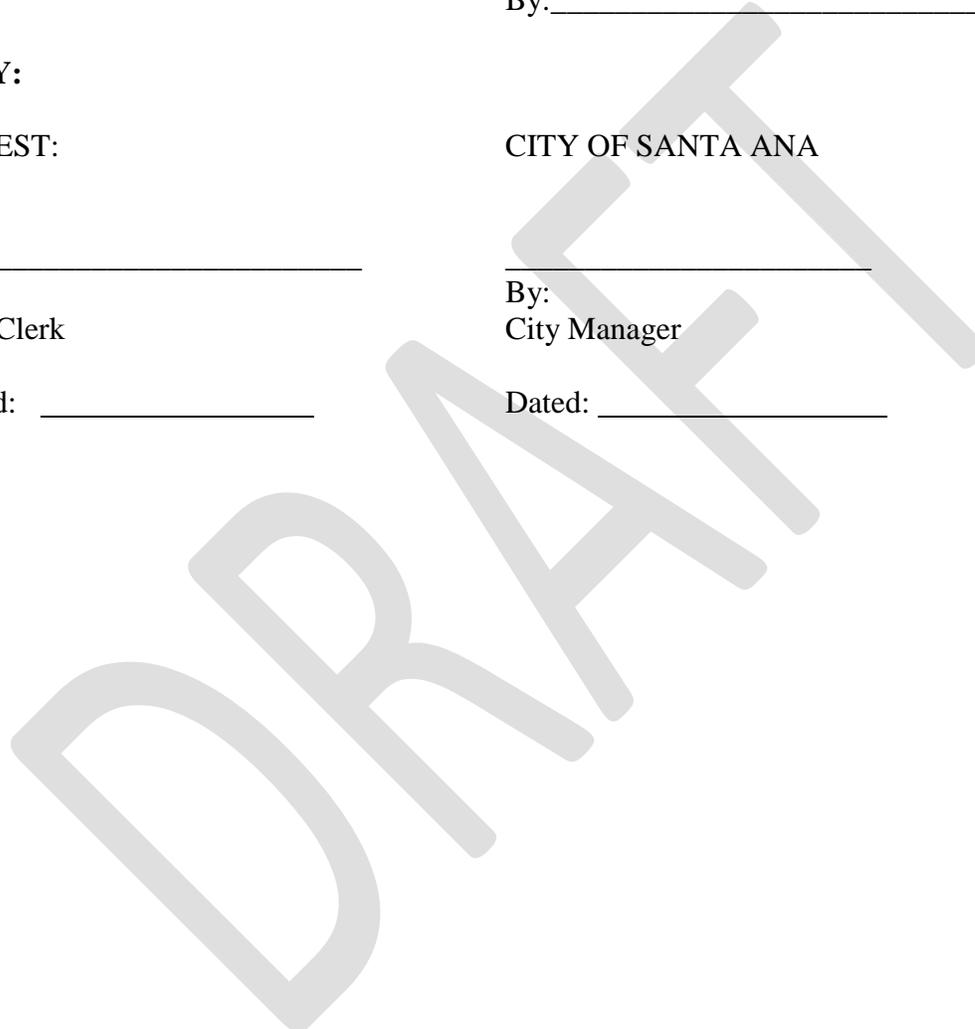


EXHIBIT 1 OF THE AFFORDABLE HOUSING RESALE RESTRICTIONS, EQUITY SHARING, AND REGULATORY AGREEMENT

LEGAL DESCRIPTION

DRAFT

EXHIBIT C

FORM OF CITY PROMISSORY NOTE

City Equity Share

[DATE]
Santa Ana, CA

1. FUNDAMENTAL PROVISIONS.

The following terms will be used as defined terms in this City Promissory Note (as it may be amended, modified, extended and renewed from time to time, this “Note”):

- Lender/Payee: City of Santa Ana, a California municipal corporation.
- Borrower/Maker: **[HOMEBUYER]**
- Principal Amount: City Equity Share, as defined in the Affordable Housing Resale Restrictions
- Interest Rate: None.
- Default Interest Rate: Eight percent per annum.
- Affordability Term: The date of this Note until [ADD DATE 55 YEARS FROM CERTIFICATE OF OCCUPANCY]
- Maturity Date: The date of a Transfer of the Property after expiration of the Affordability Term.
- Business Day: Any day of the year other than Saturdays, Sundays and legal holidays on which City's main office is closed.
- Property: **[ADDRESS]**
- Deed of Trust: The City Deed of Trust executed by Borrower, as “Trustor”, for the benefit of City, as “Beneficiary,” concurrently with this Note, and recorded against the Property.
- Affordable Housing Resale Restrictions: The Affordable Housing Resale Restrictions, Equity Sharing and Regulatory Agreement, dated on or about [DATE].
- Loan: The agreement by Borrower to pay the Principal Amount to City, in accordance with the Affordable Housing Resale Restrictions and this Note.

City Documents: This Note, the Affordable Housing Resale Restrictions, the City Deed of Trust

2. **PROMISE TO PAY.** For value received, Borrower promises to pay to the City, at its office at 20 Civic Center Plaza (M-30), Santa Ana, CA 92702, or at such other place as the Lender hereof may from time to time designate in writing, the Principal Amount together with interest thereon, and all other sums due under and secured by the Deed of Trust.

3. **SECURITY.** This Note is secured by the City Deed of Trust. The holder of this Note will be entitled to the benefits of the security provided by the City Deed of Trust and will have the right to enforce the covenants and agreements of Maker contained therein and in the Affordable Housing Resale Restrictions

4. **PAYMENTS.** The City Equity Share is due upon a Transfer of the Property after expiration of the Affordability Term, or upon an event of Default. In the event any City Equity Share become due and payable hereunder or pursuant to the Affordable Housing Resale Restrictions, the City Equity Share shall be immediately due and payable hereunder. Failure to declare such amounts due in any instance shall not constitute a waiver on the part of the City to declare them due in the future. Maker will pay to City all sums owing under this Note without deduction, offset, or counterclaim of any kind.

5. **DEFAULT RATE OF INTEREST.** If City Equity Share payable to City pursuant to the Affordable Housing Resale Restrictions and this Note are not paid to City within ten (10) days of the due date thereof, then interest shall accrue on such sum at a rate equal to the lesser of eight percent (8%) interest per annum, compounded annually, or the maximum rate permitted by law.

6. **PREPAYMENT.** This Note may not be prepaid in whole or in part.

7. **TRANSFER.** Maker shall not transfer, lease, sell, assign, refinance, encumber, convey or otherwise Transfer any interest in the Property without complying with all requirements of the Affordable Housing Resale Restrictions. Maker's failure to comply with the requirements of this paragraph shall be a Default under this Note.

8. **DEFAULT.** The occurrence of any one or more of the following shall constitute an event of default ("**Default**") hereunder.

8.1 The occurrence of a breach of any of Maker's covenants, warranties, or representations under this Note, the City Deed of Trust, or the Affordable Housing Resale Restrictions, including without limitation, any unauthorized refinancing, sale, conveyance, lease, assignment, encumbrance, or other Transfer of the Property, Maker's failure to occupy the Property as Maker's principal residence, any failure to pay amounts payable pursuant to this

Note, and Maker's failure to maintain insurance on the Property as required pursuant to the City Deed of Trust.

8.2 The entry of an order for relief under federal bankruptcy laws as to Maker or the adjudication of Maker as insolvent or bankrupt pursuant to the provisions of any state or federal insolvency or bankruptcy act, or Maker's consent to, acquiescence in, or attempt to secure the appointment of, any receiver for all or any substantial part of the Property.

8.3 The occurrence of an event of default under any loan secured by the Property and the continuance of such default beyond the expiration of all applicable cure periods such that the holder of such loan has the right to accelerate such loan.

9. Remedies. Upon the occurrence of a Default, the giving of any required notice thereof, and the expiration of any applicable cure period, City may, at its option, exercise any one or more of the following remedies:

9.1 Declare all of the sums payable under this Note to be immediately due and payable without further demand.

9.2 Pursue the exercise of the power of sale provided under the City Deed of Trust.

9.3 Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Property and take possession thereof (or any part thereof) and of any of the Security in its own name or in the name of the Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach, and notwithstanding the continuance in possession of the Property, the City shall be entitled to exercise every remedy provided by the City Documents or by law, upon the occurrence of any uncured breach.

9.4 Commence an action to foreclose the City Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants set forth in the City Documents.

9.5 Exercise its option to purchase the Property pursuant to the Affordable Housing Resale Restrictions.

9.6 Exercise all other rights and remedies provided herein or in any other City Document.

9.7 Exercise any other remedy provided by law or in equity.

The rights and remedies of the City hereunder are cumulative, and the City's exercise or failure to exercise one or more of such rights or remedies shall not preclude City's exercise, at the same time or different times, of any other right or remedy for the same Default or any other Default.

10. Maker's Personal Liability. Maker will be fully and personally liable for all loss, cost, liability, damage, and expense (including without limitation attorneys' fees) suffered or incurred by City arising from any of the following:

10.1 Failure to pay taxes, assessments, and any other charges that could result in liens against any portion of the Property or any other Security.

10.2 Failure to pay and discharge any mechanics' liens, materialmen's liens, or other unpermitted liens against any portion of the Property or any other Security.

10.3 Maker's fraud or intentional misrepresentation with respect to any representations, warranties, or certifications made in the City Documents or in connection with Maker's application to participate in the City's affordable housing program.

10.4 Maker's retention of any rental income or other income arising with respect to any portion of the Property or any other Security subsequent to the date of City's delivery of any notice of a Default, or which, under the terms of the City Documents, should otherwise have been paid to City.

10.5 Maker's retention or use of insurance proceeds, condemnation awards, or other similar funds or payments attributable to the Property or any other Security that pursuant to the City Documents should have been paid to City or used for another purpose.

10.6 Waste of the Property, or any other failure to maintain, repair, or restore any portion of the Property or any other Security in accordance with the requirements of the City Documents.

10.7 The removal, demolition, damage or destruction of any portion of the Property or any other Security that is neither consented to in writing by City nor fully compensated for by insurance proceeds or condemnation awards.

10.8 The failure of the City Documents to constitute a lien or security interest, as applicable, on the Property or any other Security, subject only to those exceptions, if any, permitted by the City Documents or otherwise approved in writing by City.

10.9 Nothing in this paragraph will affect or limit the rights of City to enforce any of City's rights or remedies with respect to any portion of the Property or any other Security.

11. Maker's Waivers. Maker hereby expressly waives diligence, presentment, protest, and demand, and notice of protest, notice of dishonor and notice of nonpayment of this Note, and expressly waives any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration or release of any security given for the payments hereof, and expressly waives the right to plead any and all statutes of limitation as a defense to any demand on this Note.

12. Notices. All notices, requests, demands, reports or other communications regarding this Note shall be in writing and delivered: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; addressed as follows, or to such other address as specified in written notice delivered to the parties pursuant to this Section:

To Maker: At the Property address.

To City: City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702
Attn: City Clerk

13. Any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of delivery thereof.

14. Assignment by Lender; Successors and Assigns. This Note shall be binding upon Maker and Maker's heirs, successors and assigns; provided however, Maker may not assign this Note without City's prior written consent except as may be permitted in accordance with the City Deed of Trust and the Affordable Housing Resale Restrictions. City may assign its rights to receive the proceeds under this Note to any person or entity without the consent of Maker, and upon notice to Maker of such assignment, all payments shall be made to the assignee.

15. No Joint Venture. The relationship of Maker and City under this Note is solely that of a participant and administrator of an affordable housing program, and in no manner are the City and the Maker partners or joint ventures, nor do any of the City Documents establish a principal and agent relationship between City and Maker.

16. Attorneys' Fees and Costs. If any legal action is filed to interpret or enforce this Note, the prevailing party shall be entitled to an award of its reasonable attorneys' fees, costs and expenses incurred therein. Maker agrees to pay all costs and expenses (including reasonable attorneys' fees) that City may incur in connection with enforcement of this Note and collection of sums payable hereunder whether or not suit is filed.

17. No Third-Party Beneficiaries. This Note shall not benefit or be enforceable by any person or entity except the City and the Maker and their respective successors and assigns.

18. Entire Agreement; Amendments. This Note, together with the Affordable Housing Resale Restrictions and the City Deed of Trust, sets forth the entire understanding between Maker and the City with respect to the subject matter hereof. Any previous representations, warranties, agreements, and understandings among the parties regarding the subject matter of the Affordable Housing Resale Restrictions, this Note and City Deed of Trust whether written or oral, are superseded by the terms of the Affordable Housing Resale Restrictions, this Note and the City Deed of Trust. This Note may be modified or amended only by a written instrument duly executed by City and Maker.

19. No City Waiver. Any waiver of any term or provision of this Note must be in writing. No waiver of any breach, default or failure of condition under this Note or any other City Document shall be implied from City's failure or delay in declaring a default or exercising any of City's rights or remedies with respect to such breach, default or failure, or from any previous waiver of any similar or unrelated breach, default or failure, nor shall acceptance by City of any payment hereunder constitute a waiver of City's right to require prompt payment of any remaining amounts owed. Without limiting the generality of the foregoing, City's failure or delay in declaring any amount due hereunder shall not constitute a waiver of City's right to declare such sum due for the same or any subsequent event that triggers Maker's payment obligations hereunder.

20. Severability. If any provision of this Note shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Note shall not be affected or impaired thereby.

21. Controlling Law and Venue. The terms of this Note shall be interpreted under the laws of the State of California without regard to principles of conflicts of law. This Note was entered into and is to be performed in the County of Orange, which is the exclusive venue for any action or dispute arising hereunder.

22. Captions. All captions and headings in this Note are for the purposes of reference and convenience and shall be disregarded for all other purposes, including the construction or enforcement of any of the provisions of this Note.

23. Joint and Several. The obligations of each signatory to this Note shall be joint and several.

24. Time of the Essence. Time is of the essence with regard to all matters contained in this Note.

MAKER and HOMEBUYER:

By: _____

DRAFT

EXHIBIT D

FORM OF CITY DEED OF TRUST

CITY DEED OF TRUST

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, California 92702
Attention: City Clerk

*Free Recording pursuant to
Government Code 6103 & 27383*

**CITY DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY
AGREEMENT**

THIS PERFORMANCE DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (“**Deed of Trust**”) is made as of _____, 20__, by _____ and _____ (collectively, “**Trustor**”) as Trustor, to the City of Santa Ana, as Trustee and Beneficiary (hereafter, “**Trustee**”, “**Beneficiary**,” or “**City**”).

The Trustor, in consideration of the promises herein recited and the trust herein created, irrevocably and unconditionally grants, transfers, conveys and assigns to Trustee, in trust for the benefit of City, with power of sale and right of entry and possession, all of Trustor’s right, title and interest now held or hereafter acquired in and to the property located in the City of Santa Ana, Orange County, State of California, described in the attached Exhibit 1 and more commonly known as: _____ (APN: _____) (the “**Property**”);

TOGETHER with the rents, issues, and profits of such Property, subject however, to the right, power, and authority granted and conferred on City in this Deed of Trust to collect and apply the rents, issues, and profits; and TOGETHER with all the improvements now or hereafter erected on the Property, and all easements, rights of way, and appurtenances thereto, and all fixtures now or hereafter attached to the Property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by this Deed of Trust;

All of the foregoing, together with the Property, is herein collectively referred to as the “**Security**.”

TO HAVE AND TO HOLD the Security, together with acquittances, to the Trustee, its successors and assigns forever;

TO SECURE to the City the payment of the sums, and the performance of the covenants and agreements of the Trustor evidenced by (i) that certain Affordable Housing Resale Restrictions, Equity Sharing and Regulatory Agreement executed by and between Trustor and City, dated as of the date hereof and recorded substantially concurrently herewith (the “**Affordable Housing Resale Restrictions**”), and (ii) that certain City Promissory Note (the “**Note**”) dated as of the date hereof and executed by Trustor for the benefit of City, pursuant to which Trustor is obligated to pay to City a City Equity Share, and all extensions, modifications, or renewals of the Note and the Affordable Housing Resale Restrictions. The Note and the Affordable Housing Resale Restrictions are incorporated herein by this reference; and TO SECURE the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust and the performance of the covenants and agreements of Trustor herein contained.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Trustor’s Estate. Trustor represents and warrants that Trustor is lawfully seized of the estate hereby conveyed, has the right to grant and convey the Security, and that other than this Deed of Trust, the Security is encumbered only by: (1) that certain deed of trust executed by Trustor and recorded against the Property substantially concurrently herewith to secure repayment of a loan made by _____ (the “**First Mortgage Lender**”) to assist Trustor in the purchase of the Property and evidenced by a promissory note executed by Trustor in favor of the First Mortgage Lender in the original principal amount of [Dollars] (\$ ____)(the “**First Mortgage Note**”), and (2) the Affordable Housing Resale Restrictions. Trustor agrees to warrant and defend generally the title to the Security against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring the City’s interest in the Security, and Trustor shall pay all costs and expenses, including cost of evidence of title and attorneys’ fees in a reasonable sum, in any such action or proceeding in which City or Trustee may appear, and in any suit brought by City to foreclose this Deed of Trust. As used in this Deed of Trust, the term “First Mortgage Lender” shall include all successors and assigns of the First Mortgage Lender with respect to the First Mortgage Note.

2. Note and Affordable Housing Resale Restrictions. Trustor will promptly pay when due all sums payable pursuant to the Note and shall perform all of Trustor’s covenants and obligations under the Note, the Affordable Housing Resale Restrictions, and this Deed of Trust. The amount due under the Note is payable upon transfer of the Property following expiration of the Affordability Term. The Affordability Term expires on [ADD DATE THAT IS 55 YEARS FROM CERTIFICATE OF OCCUPANCY].

3. Charges and Liens. Trustor will promptly pay when due, the interest, principal, and all other charges accruing under any deed of trust, mortgage, or other instrument encumbering the Property, and will pay when due directly to the payee thereof all taxes, assessments and other charges, fines and impositions affecting the Property. Upon request by the City, Trustor will promptly furnish to the City copies of all notices of amounts due described in this Section and evidence of payment of such amounts. Trustor shall pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest therein, whether or not such lien, charge or

encumbrance is or would be senior or subordinate to this Deed of Trust; provided however, Trustor will not be required to discharge the lien of the deed of trust securing the First Mortgage Note (the “**First Mortgage Deed of Trust**”), and Trustor will not be required to pay any tax, charge, lien or assessment described in this Section so long as Trustor is actively contesting its validity in good faith and by appropriate legal proceedings that will operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof. Trustor shall post security for the payment of such contested claims as may be requested by the City.

4. Protection of Security. If Trustor fails to perform any of the covenants and agreements set forth in this Deed of Trust, or if any action or proceeding is commenced that materially affects City’s interest in the Property, including, but not limited to, default under any senior lienholder document, eminent domain, insolvency, code enforcement, arrangements or proceedings involving a bankrupt or decedent, foreclosure of any mortgage secured by the Property or sale of the Property under a power of sale of any instrument secured by the Property, City, at its option, without releasing Trustor from any obligation hereunder, may upon notice to Trustor, make such appearance, disburse such sums and take such action as is necessary to protect City’s interest, including, but not limited to, the purchase of insurance, disbursement of reasonable attorneys’ fees and entry upon the Property to make repairs. Any amounts disbursed by City pursuant to this Section, with interest thereon, shall become additional indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and City agree to other terms of payment, such amounts shall be payable upon notice from City to Trustor requesting payment thereof, and shall bear interest from the date of disbursement at the highest rate permissible under applicable law. Nothing contained in this Section shall require City to incur any expense or take any action hereunder.

5. Inspection. The City may make, or cause to be made, reasonable entries upon the Property and inspections of the Security; provided that the City will give Trustor reasonable notice of inspection.

6. Title Insurance. At Trustor’s expense, Trustor shall purchase a CLTA lender’s policy of title insurance for the benefit of City, insuring this Deed of Trust as a secondary lien on the Property, with no delinquent taxes or assessment liens appearing as exceptions to title.

7. Hazard Insurance. Trustor shall keep the Property insured by a standard all-risk property insurance policy with endorsements for vandalism, malicious mischief, and special extended perils, in the full replacement value of the improvements, and with endorsements for increases in costs due to changes in code and inflation, with loss payable to City and any superior trust deed holder, as their interests may appear, and any other insurance required by the City.

The insurance carrier providing such insurance shall be licensed to do business in the State of California and may be chosen by Trustor, subject to approval by City. All insurance policies and renewals thereof shall be in a form acceptable to the City, and shall include a standard mortgagee clause with standard lender’s endorsement in favor of the holder of any senior lien and the City as their interests may appear and in a form acceptable to the City. Trustor shall provide City with copies of all policies and renewals thereof, certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Trustor shall give prompt notice to the insurance carrier and the City or its designated agent. The City, or its designated agent, may make

proof of loss if not made promptly by Trustor. The policies shall include an endorsement providing that City shall receive thirty (30) days' advance written notice of the cancellation, expiration or termination or any material change in the coverage afforded by any of the insurance policies required under this Section.

If the Property is acquired by the City, all right, title and interest of Trustor in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition will pass to the City to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition, subject to the rights of the holder of any senior lien.

Renewal policies and any replacement policies, together with premium receipts satisfactory to the City, shall be delivered to the City at least thirty (30) days prior to the expiration of existing policies. Neither Trustee nor the City shall by reason of accepting, rejecting, approving or obtaining insurance incur any liability for the existence, nonexistence, form or legal sufficiency of such insurance, or solvency of any insurer for payment of losses. The application of proceeds pursuant to this Section shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

8. Awards and Damages. Subject to the rights of senior lienholders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of (a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (b) any damage to or destruction of the Property or any part thereof by insured casualty, and (c) any other injury or damage to all or any part of the Property, are hereby assigned to and shall be applied to the restoration or repair of the Property (if applicable) or paid to the City. The City is authorized and empowered (but not required) to collect and receive any such sums and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the City shall determine at its option. The City shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the City may be released to Trustor upon such conditions as the City may impose for its disposition. Application of all or any part of the amounts collected and received by the City or the release thereof shall not cure or waive any default under this Deed of Trust. If the Property is abandoned by Trustor, or if, after notice by City or its designated agent to Trustor that the condemnor or insurer offers to make an award or settle a claim for damages, Trustor fails to respond to City within thirty (30) days after the date such notice is mailed, City or its designated agent is authorized to collect and apply the proceeds, at City's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust

9. Maintenance. Trustor shall maintain the Property and all structures and landscaping thereon in good condition and repair. Trustor agrees to complete installation of landscaping as approved by the City, and to diligently maintain and care for installed landscaping, using generally accepted methods of cultivation and watering. Trustor shall not remove or demolish any building located on the Property, and agrees to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor, and to comply with all laws affecting the Property or requiring any alterations or improvements to be

made thereon. Trustor shall not commit or permit waste thereof, and shall not commit or permit any act upon the Property in violation of applicable laws. Trustor will comply with all applicable laws, ordinances and governmental regulations affecting the Property or requiring any alteration or improvement thereof, and will not suffer or permit any violations of any such law, ordinance or governmental regulation, nor of any covenant, condition or restriction affecting the Property. If there arises a condition in contravention of this Section, and if the Trustor has not cured such condition within thirty (30) days after receiving a notice from City of such a condition, then in addition to any other rights available to City, City shall have the right (but not the obligation) to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property to recover its cost of cure.

10. Occupancy. Trustor shall occupy the Property as Trustor's primary residence, and the Property shall be used as the primary residence of Trustor and Trustor's household and for no other purpose. The Property shall not be leased or rented by Trustor to any person or entity other than as expressly permitted by the Affordable Housing Resale Restrictions or consented to by City in writing. The City shall have the right to monitor whether the Property is owner-occupied by requesting that Trustor provide City with a written certification under penalty of perjury that the Property is owner-occupied, accompanied by supporting documentation reasonably satisfactory to the City.

11. Transfer. Trustor shall not allow any Further Encumbrance or Transfer of the Property (as such terms are defined in the Affordable Housing Resale Restrictions) any without complying with all requirements of the Affordable Housing Resale Restrictions.

12. Assignment of Rents. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to City the rents, issues, revenue and profits of the Property. This is an absolute assignment and not an assignment for security only. Subject to the limitations on lease or rental of the Property as set forth herein and in the Affordable Housing Resale Restrictions, City hereby confers upon Trustor a license to collect and retain such rents, issues, revenue and profits, as they become due and payable prior to any Default hereunder. Upon the occurrence of any such Default, City may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness secured hereby, and in such order as City may determine. City's right to the rents, issues, revenue and profits of the Property does not depend upon whether or not City takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, revenue and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If a Default occurs while City is in possession of all or part of the Property and/or is collecting and applying rents as permitted under this Deed of Trust, City, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not City, in person or by agent, takes actual possession of the Property, City shall not be deemed to be a

“mortgagee in possession,” shall not be responsible for performing any obligation of the lessor under any lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it , and unless due solely to the willful misconduct or gross negligence of City, shall not be responsible for any dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property.

13. Default. An event of default (“**Default**”) shall arise hereunder upon the occurrence of any one or more of the following and the expiration of any applicable cure period:

- a. Trustor fails to occupy the Property as Trustor’s principal residence;
- b. The sale, conveyance, encumbrance, refinance, assignment, or other transfer of the Property including without limitation, the lease or rental of the Property in violation of the Affordable Housing Resale Restrictions;
- c. An event of default arises under the Note or the Affordable Housing Resale Restrictions, and such default remains uncured following the expiration of any applicable cure period;
- d. Trustor fails to pay when due any sum payable pursuant to the Note, the Affordable Housing Resale Restrictions or this Deed of Trust;
- e. The Property is refinanced or encumbered in violation of the Affordable Housing Resale Restrictions or this Deed of Trust;
- f. Trustor fails to maintain insurance on the Property as required by the Affordable Housing Resale Restrictions and this Deed of Trust,
- g. Subject to Trustor’s right to contest the following charges, Trustor fails to pay prior to delinquency taxes or assessments due on the Property or fails to pay when due any other charge that may result in a lien on the Property, and Trustor fails to cure such default within twenty (20) days of date of delinquency, but in all events prior to the time that the holder of such lien has the right to pursue foreclosure thereon;
- h. Trustor declares bankruptcy or makes an assignment of assets for the benefit of creditors, or an order for relief is entered under federal bankruptcy laws as to Trustor, or Trustor is adjudicated as insolvent or bankrupt pursuant to the provisions of any state or federal insolvency or bankruptcy, or Trustor consents to, acquiesces in, or attempts to secure the appointment of, any receiver for all or any substantial part of the Property;
- i. The occurrence of an event of default under any loan secured by the Property and the continuance of such default beyond the expiration of all applicable cure periods such that the holder of such loan has the right to accelerate such loan.
- j. Trustor fails to observe or perform any other covenant, condition, or agreement to be observed or performed by Trustor pursuant to the Note, the Affordable Housing Resale Restrictions or this Deed of Trust.

14. Remedies. Upon the occurrence of a Default, the giving of notice thereof and the expiration of any applicable cure period, City may, at its option, exercise any one or more of the following remedies:

- a. Declare all of the sums payable under the Note to be immediately due and payable without further demand.
- b. Pursue the exercise of the power of sale provided under this Deed of Trust.
- c. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, enter upon, take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom, or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right and remedy provided under the Note, this Deed of Trust, or the Affordable Housing Resale Restrictions, or by law upon occurrence of any uncured breach.
- d. Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof.
- e. Exercise any option to purchase the Property, as authorized pursuant to the Affordable Housing Resale Restrictions.
- f. Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby.
- g. Exercise any other remedy provided by law or in equity.

15. Acceleration and Sale.

a. **Notice of Default.** Upon Trustor's breach of any covenant or agreement of Trustor under the Note, the Affordable Housing Resale Restrictions or this Deed of Trust, City shall mail notice to Trustor as provided in Section 24 hereof specifying: (i) the nature of the breach; (ii) the action required to cure such breach; (iii) a date no less than thirty (30) days from the date the notice is mailed to Trustor by which such breach must be cured or such shorter cure period as may be provided in the Note, the Affordable Housing Resale Restrictions or this Deed of Trust; and (iv) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the Loan and the sale of the Property. The notice shall further inform Trustor of Trustor's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and sale. If the breach is not cured on or before the date specified in the notice, City at City's option declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and/or pursue any other remedy provided herein or available under law.

City shall be entitled to collect from the Trustor, or from the proceeds of the sale of the Property, all reasonable costs and expenses incurred in pursuing the remedies provided hereunder, including, but not limited to, reasonable attorneys' fees.

If a non-monetary default is not reasonably capable of being cured within thirty (30) days, the City, in its sole and absolute discretion, may grant the Trustor or the First Mortgage Lender such additional time as is reasonably necessary to cure the default provided that the Trustor or the First Mortgage Lender (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible.

Notwithstanding the cure periods established in this Section, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

b. **Trustor's Right to Reinstate.** Notwithstanding City's acceleration of the sums secured by this Deed of Trust, Trustor will have the right to have any proceedings begun by City to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of the judgment enforcing this Deed of Trust if: (a) Trustor pays City all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Trustor pays all reasonable expenses incurred by City and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust, including, but not limited to, reasonable attorneys' fees;

Trustor cures all breaches of any other covenants or agreements of Trustor set forth in the Affordable Housing Resale Restrictions and this Deed of Trust; and (d) Trustor takes such action as City may reasonably require to assure that the lien of this Deed of Trust, City's interest in the Property and Trustor's obligation to pay the sums and perform the obligations secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

c. **Sale.** After delivery to Trustee of a Notice of Default and Demand for Sale and after the expiration of such time and the giving of such notice of default and sale as may then be required by law, and without demand on Trustor, Trustee shall sell the Property at the time and place of sale fixed by it in said notice of sale, at public auction to the highest bidder for cash in lawful money of the United States of America, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Any person, including Trustor, Trustee or the City, may purchase at such sale. Upon such sale by Trustee it shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of their truthfulness. Upon sale by Trustee and after deducting all costs, expenses and fees of Trustee, Trustee shall apply the proceeds of sale to the payment of the indebtedness hereby secured, including without limitation the indebtedness evidenced by the Note, any advances made or costs or expenses paid or incurred by City under this Deed of Trust, any indebtedness evidenced by any other instrument hereby

secured, and all other sums then secured hereby, including without limitation, interest as provided in the Note and the Affordable Housing Resale Restrictions, in such order as the City shall direct; and then the remainder, if any, shall be paid to the person or persons legally entitled thereto.

16. Remedies Cumulative; No Waiver. No exercise of any right or remedy by the City or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law, and no delay or forbearance by the City or Trustee in exercising any such right or remedy hereunder shall operate as a waiver thereof or preclude the exercise thereof in any continued or subsequent default hereunder. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively. No sale of the Property, forbearance on the part of City, or extension of the time for payment of the indebtedness hereby secured shall operate to release, discharge, waive, modify, change or affect the liability of Trustor either in whole or in part.

17. Indemnity. Trustor agrees to defend, indemnify, and hold the Santa Ana, and its elected and appointed officers, officials, employees, and agents harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys' fees that they may incur as a direct or indirect consequence of: (i) Trustor's failure to perform any obligations as and when required by the Note, the Affordable Housing Resale Restrictions, or this Deed of Trust; or (ii) the failure at any time of any of Trustor's representations or warranties herein or in the Affordable Housing Resale Restrictions or the Note to be true and correct.

18. Due on Transfer of the Property. If the Trustor sells, conveys, assigns, transfers, alienates, or otherwise disposes of its interest in the Property, either voluntarily or involuntarily or by operation of law, in part or in full, in violation of the Affordable Housing Resale Restrictions, the City may, at its option, require immediate payment in full of all sums due under the Note.

19. Reconveyance. Upon payment of all sums and satisfaction of all obligations secured by this Deed of Trust, including without limitation, payment of the City Equity Share as defined in the Affordable Housing Resale Restrictions, and upon the expiration or termination of the Affordable Housing Resale Restrictions, the City will provide a written request to the Trustee to reconvey the Security and will surrender this Deed of Trust and the Note to Trustee. The Trustee shall reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

20. Trustee Substitution. The City, at its option and without prior notice, may from time to time, by written instrument, remove the Trustee and appoint a successor trustee pursuant to a written instrument executed by City and duly acknowledged and recorded in the Official Records of Orange. Such instrument shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all the title, estate, power and duties conferred upon the Trustee herein and by applicable law. Such instrument shall set forth the name of the Trustor, the original Trustee and the Beneficiary hereunder, the book and page where this Deed of Trust is recorded, and the name and address of the new Trustee.

21. City's Rights to Release. Without affecting the liability of any person for payment of any indebtedness hereby secured (other than any person released pursuant hereto), including without limitation any one or more endorsers or guarantors, and without affecting the lien hereof upon any of the Property not released pursuant hereto, at any time and from time to time without notice: (a) City may in its sole discretion: (i) release any person now or hereafter liable for payment of any or all such indebtedness, (ii) extend the time for or agree to alter the terms of payment of any or all of such indebtedness, and (iii) release or accept additional security for such indebtedness, or subordinate the lien or charge hereof; and (b) Trustee, acting pursuant to the written request of the City, may reconvey all or any part of the Property, consent to the making of any map or plot of the Land, join in granting any easement thereon, or join in any extension agreement of any agreement subordinating the lien or charge hereof.

22. Subordination. Absent the prior written consent of City, this Deed of Trust shall not be subordinated to any other deed of trust or encumbrance on the Property, except a First Lien, as allowed by the Affordable Housing Resale Restrictions.

23. Request for Notice. City requests that copies of any notice of default and notice of sale affecting the Property be sent to City at its address set forth herein. City shall record a Request for Notice of Default and Sale.

24. Notices. All notices, requests, demands, reports or other communications regarding this Deed of Trust shall be in writing and delivered: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, and addressed as follows, or to such other address as specified in written notice delivered to the parties pursuant to this Section:

To Trustor: At the Property address.

To City: City of Santa Ana
20 Civic Center Plaza (M-30)
Santa Ana, CA 92702
Attn: City Clerk

Any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of delivery thereof.

25. Successors Bound. The terms of this Deed of Trust shall be binding upon the Trustor and the Trustor's heirs, legatees, devisees, administrators, executors, successors and assigns.

26. Attorneys' Fees and Costs. If any legal action is filed to enforce or interpret this Deed of Trust, or the interpretation or enforcement thereof, the prevailing party shall be entitled to an award of its reasonable attorneys' fees, costs and expenses incurred therein.

27. **No Waiver.** Any waiver of any term or provision of this Deed of Trust must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Deed of Trust or applicable law. No failure or delay by City at any time to require strict performance of any provision of this Deed of Trust or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

28. **No Third-Party Beneficiaries.** This Deed of Trust shall not benefit or be enforceable by any person or entity except the City, the Trustee, and the Trustor and their respective successors and assigns.

29. **Entire Agreement.** This Deed of Trust, together with the Affordable Housing Resale Restrictions and the Note, sets forth the entire understanding between Trustor and the City with respect to the subject matter hereof. Any previous representations, warranties, agreements, and understandings among the parties regarding the subject matter of the Affordable Housing Resale Restrictions, this Deed of Trust and Note whether written or oral, are superseded by the terms of the Affordable Housing Resale Restrictions, the Note and this Deed of Trust.

30. **Amendments.** This Deed of Trust shall not be amended except by a written instrument duly executed by Trustor and Beneficiary and recorded in the Official Records of Orange.

31. **Severability.** If any provision of this Deed of Trust shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Deed of Trust shall not be affected or impaired thereby.

32. **Controlling Law and Venue.** The terms of this Deed of Trust shall be interpreted under the laws of the State of California without regard to principles of conflicts of law. This Deed of Trust was entered into and is to be performed in the County of Orange, which is the exclusive venue for any action or dispute arising out of this Deed of Trust.

33. **Captions and Gender.** All captions and headings in this Deed of Trust are for the purposes of reference and convenience and shall be disregarded for all other purposes, including the construction or enforcement of any of provisions thereof. Whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

34. **Joint and Several.** The obligations of each signatory to this Deed of Trust shall be joint and several.

35. **Time of the Essence.** Time is of the essence with regard to all matters contained in this Deed of Trust.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first written above.

TRUSTOR:

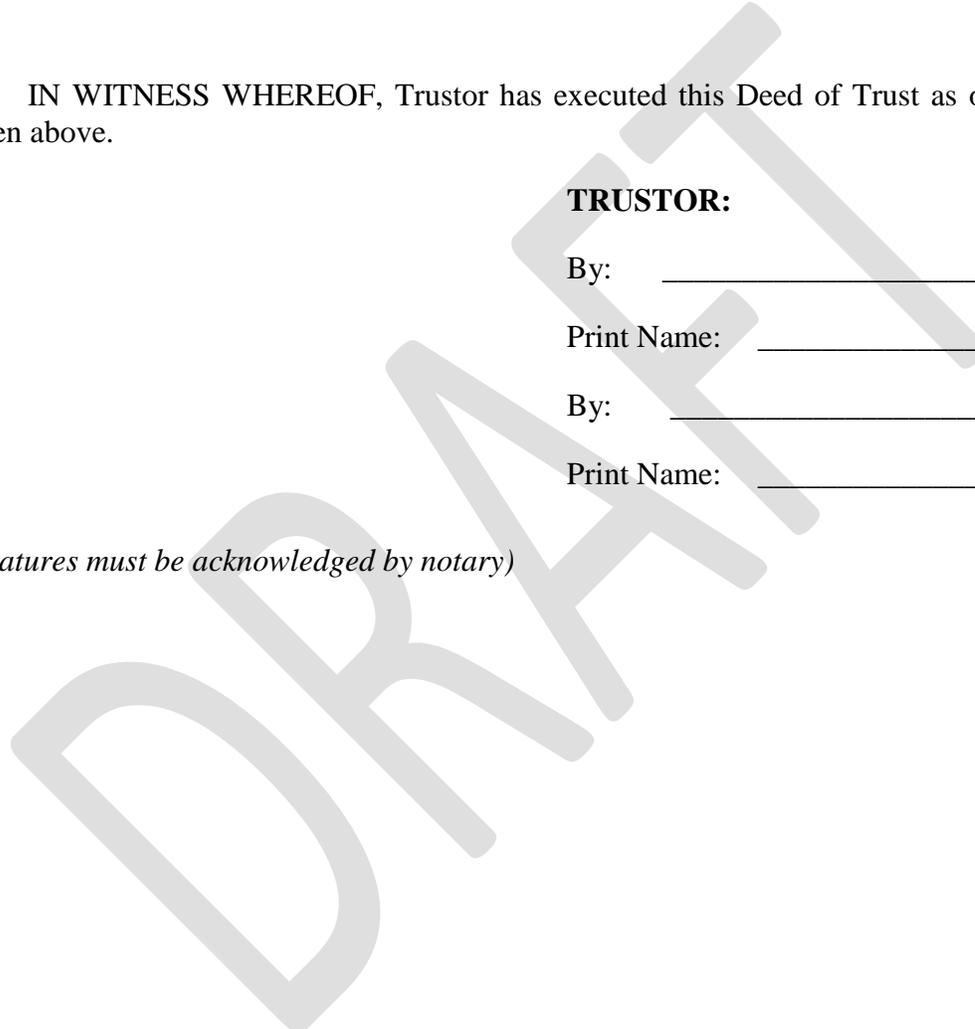
By: _____

Print Name: _____

By: _____

Print Name: _____

(Signatures must be acknowledged by notary)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

State of California County of Orange} ss.

On _____, 20____, 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 is true and correct.

WITNESS my hand and official seal Signature of Notary Public

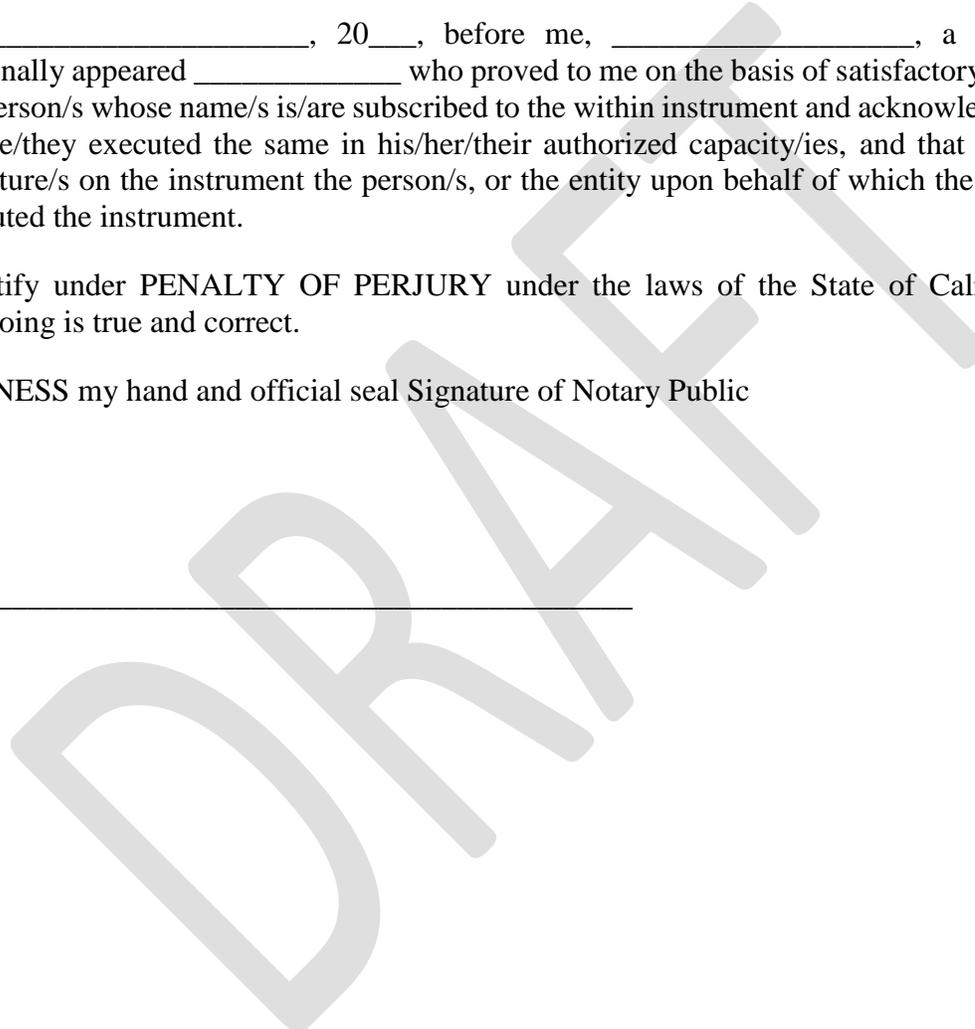


EXHIBIT 1 OF DEED OF TRUST

LEGAL DESCRIPTION

DRAFT

EXHIBIT E

INCOME VERIFICATION FORM

Affordable Unit Address: _____

Head of Household (Print Name): _____

Current Address (if different from above): _____

Telephone Number: Home: _____ Work: _____ Cell: _____

Email address: _____

Date of Birth: _____ Social Security # or TIN: _____

Household Composition				
List All Household Members Living in the Affordable Unit				
Name	Sex	Age	Dependent (Y/N)	Social Security # or Taxpayer ID #

List additional household members on a separate sheet of paper.

INCOME VERIFICATION FORM

Monthly Gross Income *

List All Sources of Income of All Household Members Living in the Affordable Unit

Part 1: Earned Income

		Head of Household	Other Household Members	Total
1.	Gross wages, before payroll deductions and including overtime pay, commissions, fees, tips and bonuses.	\$	\$	\$
2.	Net income from self employment, independent contractor work or a business.	\$	\$	\$
3.	Social security and any payments from annuities, insurance policies, pension/retirement funds, disability or death benefits received periodically.	\$	\$	\$
4.	Payment in lieu of earnings, such as unemployment, disability compensation, worker's compensation and severance pay.	\$	\$	\$
5.	Public assistance, welfare payments	\$	\$	\$
6.	Alimony, child support, other periodic allowances	\$	\$	\$
7.	Regular pay, special pay and allowances of members of the Armed Forces	\$	\$	\$
8.	Other	\$	\$	\$
Subtotal: Monthly Earned Income				\$
Total Monthly Earned Income x 12 = \$ _____ Total Annual Household Gross Earned Income				

INCOME VERIFICATION FORM

Monthly Gross Income *

List All Sources of Income of All Household Members Living in the Affordable Unit

Part 2: Investment Income

		Head of Household	Other Adult Household Members	Total Household Investment Income
1.	Interest paid on Bank and Savings accounts	\$	\$	\$
2.	Dividends and other payments from stocks and bonds	\$	\$	\$
3.	Income from real property (i.e. rental property)	\$	\$	\$
4.	Other (describe)	\$	\$	\$
Subtotal: Monthly Investment Income:				\$
Total Monthly Investment Income x 12 = \$ _____ Total Annual Household Investment Income				

*Note: The following items are not considered income: casual or sporadic gifts; amounts specifically for or in reimbursement of medical expenses; lump sum payments such as inheritances, insurance payments, capital gains and settlement for personal or property losses; educational scholarships paid directly to the student or educational institution; special pay to a serviceman head of family away from home and under hostile fire; relocation payments under federal, state or local law; foster child care payments; value of coupon allotments for purpose of food under Food Stamp Act of 1964 which is in excess of amount actually charged the eligible household; payments received pursuant to participation in the following programs: VISTA, Service Learning Programs, and Special Volunteer Programs, SCORE, ACE, Retired Senior Volunteer Program, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Program to Assist Small Business Experience.

INCOME VERIFICATION FORM

Assets **

List the Current Value of All Assets of All Household Members Living in the Affordable Unit

If the Asset generates income, that income must be specified In Part 2 above

		Head of Household Value	Other Adult Household Members Value	Total Value of Assets
1.	Bank and Savings accounts	\$	\$	\$
2.	Stocks and bonds	\$	\$	\$
3.	Real property (i.e. rental property)	\$	\$	\$
4.	Other (describe)	\$	\$	\$

Total Asset Value \$ _____

**Note: Necessary items, such as furniture and automobiles, used for personal use are excluded from household assets. Collections of items for hobby, investment or business purposes must be included in household assets. If the total value of household assets exceeds \$5,000, the calculation of the household's annual income shall include the greater of the actual amount of income, if any, derived from all of the household assets; or 10% of the total value of the assets.

INCOME VERIFICATION FORM

If the total asset value exceeds \$5,000, perform the calculations in the following table. If the total asset value is less than \$5,000, the amount of investment income to be included in annual household income is \$0.

Calculation of Investment Income to be Included in Annual Household Income			
1.	Total Annual Household Investment Income		\$
2.	Total Asset Value	\$	x 10%
The Greater of #1 or #2 = Investment Income to be Included in Annual Household Income \$_____			

Calculation of the Household's Total Annual Income	
Total Annual Household Gross Earned Income	\$
Total Investment Income to be Included in Annual Household Income	\$
Total Household Income	\$

Documentation	
Attach True Copies of the Relevant Documents Listed Below	
_____ Paycheck stubs from three most recent pay periods	_____ Bank/Savings account verification
_____ Employment verification	_____ Self-employment verification
_____ Three years Income tax returns for Title Holders	_____ Unemployment verification
_____ Social security verification	_____ Welfare verification
_____ Alimony/child support verification	_____ Disability income verification
_____ Other (Describe)	

AFFIDAVIT

This Affidavit is made with the knowledge that it will be relied upon by _____ and the City of Santa Ana to determine maximum income for eligibility to purchase the Affordable Unit listed above. (I/we) warrant that all information set forth in this document is true, correct and complete and based upon information (I/we) deem reliable and based upon such investigation as (I/we) deemed necessary.

(I/We) acknowledge that (I/we) have been advised that the making of any misrepresentation or misstatement in this affidavit will constitute a material breach of (my/our) purchase agreement and will additionally enable the seller to terminate the purchase contract and sell the Affordable Unit to another party.

(I/We) do hereby swear under penalty of perjury that the foregoing statements are true and correct and that this affidavit has been executed as of the date specified below by each adult member of the household which intends to occupy an Affordable Unit located at _____, Santa Ana, California.

Signature

Date

Printed Name

Executed at _____, Santa Ana, California

Signature

Date

Printed Name

Executed at _____, Santa Ana, California

EXHIBIT F

CERTIFICATION OF CONTINUED OCCUPANCY

Date:

Owner(s) Name:

Address: Santa Ana, CA

We are the Owners of an Inclusionary Unit that was produced under the requirements of the City of Santa Ana Inclusionary Housing Ordinance. We understand and agree that the Inclusionary Unit must be used as our Primary Residence and for no other purpose.

By this Certification, we declare under penalty of perjury that:

1. We currently occupy the Inclusionary Unit; and
2. We have occupied the Inclusionary Unit for at least ten (10) out of the past twelve (12) months; and
3. We have not used the Inclusionary Unit for any other purpose than as our Primary Residence; and
4. We are not renting or leasing any part of the Inclusionary Unit to another party.

We have attached true and accurate copies of two utility bills or other documentation evidencing our continued occupancy of the Inclusionary Unit.

We acknowledge that any intentional or negligent misrepresentation in this Certification may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment, or both, and liability for monetary damages under the provisions of Title 18, United States Code, Section 100.1, et seq.

Signed: _____

Signed: _____

EXHIBIT G

**FORM OF NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF
PROPERTY**

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, California 92702
Attention: City Clerk

*Free Recording pursuant to
Government Code 6103 & 27383*

**NOTICE OF AFFORDABILITY RESTRICTIONS ON
TRANSFER OF PROPERTY**

This Notice of Affordability Restrictions on Transfer of Property (or “Notice of Affordability Restrictions”) is executed and recorded pursuant to the Density Bonus Housing Agreement With Declaration of Covenants, Conditions, and Restrictions (the "Density Bonus Agreement"), recorded on or about _____, 202_, in the Official Records of Orange County, against that certain real property generally located at _____ (APN: _____) in the City of Santa Ana, California (“City”) as legally described in Exhibit 1 hereto (“Property”). The City of Santa Ana, a municipal corporation (“City”), and _____ (collectively “Homebuyer”) have entered into that certain Affordable Housing Resale Restrictions, Equity Sharing, and Regulatory Agreement, dated concurrently herewith (“Affordable Housing Resale Restrictions”).

1. The Affordable Housing Resale Restrictions provides for affordability restrictions and restrictions on the transfer of the Property, as more particularly set forth in the Affordable Housing Resale Restrictions. A copy of the Affordable Housing Resale Restrictions is on file with City as a public record and is deemed incorporated herein. Reference is made to the Affordable Housing Resale Restrictions with regard to the complete text of the provisions of such agreement and all defined terms therein, which provides for affordability restrictions and restrictions on the transfer of the Property.

2. The Affordable Housing Resale Restrictions contains restrictions on the sale of the Property and an equity sharing agreement for Homebuyer to pay to the City certain proceeds from the sale of the Property upon the expiration of the Affordability Term for the Property.

2. The Affordable Housing Resale Restrictions contains restrictions on the sale of the Property and an equity sharing agreement for Homebuyer to pay to the City certain proceeds from the sale of the Property upon the expiration of the Affordability Term for the Property.

(A) For a period commencing upon the date on which the Property receives a certificate of occupancy, which occurred on [DATE], and terminating on the date that is fifty five (55) years later (the "Affordability Term"), the Property may only be transferred to another eligible, qualified Very Low Income Household, at an Affordable Sales Price; such restrictions are set forth at greater length in the Density Bonus Agreement and the Affordable Housing Resale Restrictions.

(B) Upon expiration of the Affordability Term, the City is entitled to an amount of the proceeds from any Transfer that is equal to the City Equity Share, which is secured by the City Deed of Trust. The City Equity Share is based on the following: (i) an amount equal to the difference between the fair market value of the Affordable Unit at the time of the initial purchase and the Affordable Sales Price (the "Initial Subsidy"), plus (ii) an amount equal to the product of (1) the appreciation of the Affordable Unit, as measured by the increase in the fair market value of the Affordable Unit at the time of the sale to the Homebuyer and the resale of the Affordable Unit, and (2) the percentage that the initial subsidy represented of the fair market value of the Affordable Unit when it was purchased by the Homebuyer (the "Proportionate Share of Appreciation"). The City Deed of Trust will not be released as an interest in the Property or otherwise reconveyed unless and until the City is paid the City Equity Share in accordance with the Affordable Housing Resale Restrictions.

3. Prior to a transfer of the Property, Homebuyer must comply with requirements of the Affordable Housing Resale Restrictions, including but not limited to the following requirements of Section 5:

a. Notice to City. Homebuyer shall send the Notice of Intent to Transfer to City pursuant to Section of the Affordable Housing Resale Restrictions.

b. Qualification of Proposed Transferee. During the Affordability Term, the proposed Transferee shall provide City with sufficient information in the form provided by City including without limitation, a certification as to the income and family size of the proposed Transferee, for City to determine if the proposed Transferee is a Very Low Income Household, and the proposed Affordable Sales Price.

c. Certificates from Parties. During the Affordability Term, Homebuyer and proposed Transferee each shall certify in writing, in a form acceptable to City, that the Transfer shall be closed in accordance with, and only with, the terms of the sales contract and other documents submitted to and approved by City and that all consideration delivered by the proposed Transferee to owner has been fully disclosed to City. The written certificate shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certificate submitted to City for its approval of the Transfer, City shall have the right to file an action at law or in equity to make the

parties terminate and/or rescind the sales contract and/or declare the sale void notwithstanding the fact that the Transfer may have closed and become final as between Homebuyer and Transferee.

d. Written Consent of City Required Before Transfer. During the Affordability Term, the purchase sale agreement or other contract for Transfer of the Property, and the Income Verification Form, shall be provided to the City, which shall have at least thirty (30) days to review. The Property, and any interest therein, shall not be conveyed by any Transfer except with the express written consent of City, which consent shall be given only if the Transfer is in accordance with the provisions of this Agreement. The Property, and any interest therein, shall not be conveyed by any Transfer except with the express written consent of City, which consent shall be given only if the Transfer is in accordance with the provisions of the Affordable Housing Resale Restrictions.

e. Notice of Prohibited Transfer. Within thirty (30) days after receiving all information required by the Affordable Housing Resale Restrictions, the City shall determine and give notice to Homebuyer as to whether the City consents to the Transfer as a Permitted Transfer, or if the City determines the proposed Transfer is a Prohibited Transfer. Any attempt to Transfer the Property without the City's written approval, or after the City has given notice of a Prohibited Transfer, shall be a Default of this Agreement, and the City may apply to a court of competent jurisdiction for specific performance of this Agreement, for an injunction prohibiting a proposed sale or Transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate.

f. Delivery of Documents. Upon the close of the proposed Transfer, Homebuyer and Transferee, as applicable, shall provide the City with a copy of the final sales contract, settlement statement, escrow instructions, all required certificates, and any other documents City may request.”

8. The Affordable Housing Resale Restrictions and the Density Bonus agreement both remain in full force and effect and are not amended or altered in any manner whatsoever by this Notice of Affordability Restrictions.

10. Capitalized terms shall have the meaning established under the Density Bonus Agreement or the Affordable Housing Resale Restrictions (including all Attachments or Exhibits thereto) excepting only to the extent as otherwise expressly provided under this Notice of Affordability Restrictions.

11. Persons having questions regarding this Notice of Affordability Restrictions, the Affordable Housing Resale Restrictions or the Density Bonus Agreement should contact City to obtain copies.

HOMEBUYER:

By: _____

By: _____

(Signatures must be acknowledged by notary)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

State of California County of Orange} ss.

On _____, 20__, 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 is true and correct.

WITNESS my hand and official seal Signature of Notary Public

EXHIBIT 1 TO NOTICE OF AFFORDABILITY RESTRICTIONS

LEGAL DESCRIPTION

Exhibit H

FORM OF REQUEST FOR NOTICE OF DEFAULT

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, California 92702
Attention: City Clerk

*Free Recording pursuant to
Government Code 6103 & 27383*

REQUEST FOR NOTICE UNDER CIVIL CODE SECTION 2924B

In accordance with California Civil Code Section 2924b request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deeds of Trust recorded as Instrument Nos. _____, _____, and _____ on _____ in the Official Records of County of Orange, California, _____ and describing land therein as:

[See Exhibit 1 attached hereto]

executed by _____, as Trustor/Borrower, in which the City of Santa Ana is named as Beneficiary and Trustee, be mailed to: City of Santa Ana, 20 Civic Center Plaza (M-30) P.O. Box 1988, Santa Ana, CA 92702, Attention: City Clerk.

[Signature on next page]

ATTEST:

CITY OF SANTA ANA

Jennifer Hall
City Clerk

Alvaro Nuñez
City Manager

APPROVED AS TO FORM:

By: [NAME]
City Attorney

EXHIBIT 1 TO REQUEST FOR DEFAULT

LEGAL DESCRIPTION