

**CONDITIONAL GRANT AGREEMENT**

**by and between**

**CITY OF SANTA ANA,**

**a California charter city,**

**and**

**HABITAT FOR HUMANITY OF ORANGE COUNTY,**

**a California nonprofit religious corporation.**

**1921 W. Washington Street (APN 405-101-37)**

**Dated: \_\_\_\_\_, 2024**

## CONDITIONAL GRANT AGREEMENT INCLUSIONARY HOUSING PROGRAM

**THIS CONDITIONAL GRANT AGREEMENT** ("Agreement") dated, for identification purposes only, as of \_\_\_\_\_, 2024, is made and entered into by and between the City of Santa Ana, a charter city and municipal corporation ("City"), and Habitat for Humanity of Orange County, a nonprofit religious organization ("Developer") with reference to the following:

### RECITALS:

A. The City's Affordable Housing Opportunity and Creation Ordinance ("Ordinance") was originally adopted by the City Council on November 28, 2011 (Ordinance No. NS-2825), and is codified in Article XVIII.I of the Santa Ana Municipal Code ("SAMC"), as amended from time to time. The Ordinance established standards and procedures to encourage the development of housing that is affordable to a range of households with varying income levels. Pursuant to SAMC section 41-1904(c), developers may pay an in-lieu fee in certain instances to satisfy the inclusionary requirements. These funds are deposited into the Inclusionary Housing Fund, as defined by SAMC section 41-1901, and are to be used to increase and improve the supply of affordable housing per SAMC section 41-1909.

B. Developer is the owner of that certain real property located at 1921 W. Washington Avenue, Santa Ana, California 92701, with Assessor Parcel Number 405-101-37, which is more particularly described in the legal description attached hereto as Exhibit A (the "Property").

C. The Property previously contained abandoned structures that were uninhabitable. Developer has demolished the structures and now desires to improve the Property with three duplex buildings that will provide six new affordable homeownership opportunities for low-income families who earn no more than eighty percent of the Orange County Area Median Income (the "Project").

D. Developer responded to a request for proposals from the City regarding the Inclusionary Housing Fund, and the Project was selected for an award of funds. Consistent with the Pre-Commitment Letter from the City dated November 16, 2022, City desires to provide financial assistance to Developer for the development and construction of the Project by providing a grant to Developer in an amount not to exceed Two Million Two Hundred Thousand Dollars (\$2,200,000) on terms and conditions set forth in this Agreement ("Inclusionary Grant"). The Inclusionary Grant is funded through the City's Inclusionary Housing Fund for the purpose of providing affordable housing.

E. The amount of the Inclusionary Grant was determined based upon the City's review of the Developer's proposal, the development Proforma and projected cash flows for the Project submitted by the Developer to the City ("Proforma"). The City Project Manager has authority to approve revisions to the Proforma and projected cash flows for the Project, provided that the Inclusionary Grant is not materially increased or extended.

F. Developer desires to accept the Inclusionary Grant on the terms and conditions set forth in this Agreement. Among other things, this Agreement requires a Regulatory Agreement Imposing Affordable Housing Covenants and Restrictions (Density Bonus) ("Regulatory Agreement") must be recorded against the Property and other protections to ensure the affordable housing requirements of this Agreement.

G. The Project is in the best interest of the City and the health, safety and welfare of the residents of the City, and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements herein contained, City and Developer agree as follows:

## **1. DEFINITIONS AND INTERPRETATION**

**1.1 Defined Terms.** All capitalized terms used herein, including, without limitation, in the Recitals above and in all other Project Documents, unless otherwise expressly defined, are defined where first used in this Agreement and/or as set forth in this Article 1.

(a) **"Building Permit"** means the building permit(s) issued by City and required for the construction.

(b) **"Business Day"** means any Monday, Tuesday, Wednesday, Thursday or Friday on which Santa Ana City Hall is open to the public to conduct City affairs.

(c) **"Calendar Year"** means each consecutive twelve (12) month period from January 1 to December 31.

(d) **"Certificate of Completion"** has the meaning set forth in Article 13.

(e) **"City"** means the City of Santa Ana, California, a charter city and municipal corporation.

(f) **"City Deed of Trust"** shall mean the deed of trust in favor of the City executed by homebuyers in accordance with the Regulatory Agreement.

(g) **"City Project Manager"** shall mean the City's Housing Division Manager and/or his/her designee.

(h) **"County"** means the County of Orange, California.

(i) **"Developer"** means Habitat for Humanity of Orange County, a nonprofit organization.

(j) **"Governmental Authority"** means any governmental or quasi-governmental agency, board, bureau, commission, department, court, administrative tribunal or other instrumentality or authority, and any public utility.

(k) **"Hazardous Materials"** means flammable materials, explosives, radioactive materials, hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable law, including without limitation the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended. Hazardous Material shall not include (i) construction products, household cleaners and office materials of the type and quantity ordinarily used in the normal construction, operation, ownership, occupancy and maintenance of properties similar to the Project or (ii) small amounts of household mold to the extent promptly remediated upon discovery.

(l) **"HUD"** means the United States (U.S.) Department of Housing and Urban Development, and any successors or assigns thereof.

(m) **"Improvements"** means all improvements and fixtures now and hereafter comprising any portion of the Property, including, without limitation, landscaping, trees and plant materials; and offsite improvements, as required through the City of Santa Ana Planning and Building Agency entitlement process.

(n) **"Inclusionary Grant"** means a grant in the original principal amount of up to Two Million Two Hundred Thousand Dollars (\$2,200,000) to be made to Developer by the City to be funded exclusively from the Inclusionary Housing Fund.

(o) **"Indemnitees"** has the meaning set forth in Section 11.5.

(p) **"Laws"** means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or other Governmental Authority.

(q) **"Lien"** means any lien, mortgage, pledge, security interest, charge or encumbrance of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any lien or security interest.

(r) **"Project"** means the construction of the Improvements generally described in the attached **Exhibit B** upon the Property by Developer pursuant to this Agreement.

(s) **"Project Budget"** means the line-item budget for the Project attached hereto as Exhibit C, as modified from time to time in accordance with this Agreement.

(t) **"Property"** means the property located at 1921 W. Washington Avenue, Santa Ana, California 92701, with Assessor Parcel Number 405-101-37, which is more particularly described in the legal description attached hereto as **Exhibit A**.

(u) **"Regulatory Agreement"** means the recorded affordability covenants required by Section 4.1 and in a form substantially similar to those attached hereto as **Exhibit D**.

(v) **"Scope of Work"** means the detailed statement of the work, with a Schedule of Performance, to be performed by Developer on and to the Property for the Project pursuant to this Agreement which document is attached hereto as **Exhibit B**.

(w) **"Senior Lender"** means a commercial or private financial institution providing the Senior Loan or any other holder of the Senior Loan Note.

(x) **"Senior Loan"** means a loan from a Senior Lender for payment of a portion of the construction costs and is secured by a Senior Loan Deed of Trust, and shall include any subsequent loan that permanently refinances the initial Senior Loan.

(y) **"Senior Loan Deed of Trust"** means a deed(s) of trust securing the Senior Loan by encumbering the Property and having priority over the City Deed of Trust to be recorded pursuant to the Regulatory Agreement.

(z) **"Senior Loan Documents"** means, collectively, the loan agreement governing the Senior Loan, the Senior Loan Note, the Senior Loan Deed of Trust, and any other agreement, document or instrument that the Senior Lender requires in connection with the Senior Loan.

**1.2 Singular and Plural Terms.** Any defined term used in the plural in this Agreement shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

**1.3 References and Other Terms.** Any reference to this Agreement shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections and Exhibits shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term "document" is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms "including" and "include" mean "including (include) without limitation."

**1.4 Exhibits Incorporated.** All exhibits to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference. The exhibits attached hereto and incorporated herein include:

Exhibit A – Legal Description

Exhibit B – Project Description, Scope of Work, and Schedule of Performance

Exhibit C – Project Budget

Exhibit D – Regulatory Agreement

## 2. SCOPE OF WORK/PROJECT BUDGET

The Project Description and Scope of Work is generally described in **Exhibit B**, and shall comprise of the development, construction, and operation of the Property as providing the six (6) Affordable Housing Units. Any material change to the Scope of Work requested by the Developer shall be subject to the prior written approval of the City Project Manager. The Scope of Work sets forth the construction work that shall be performed on the Property for the Project and timeframes for approvals of such work with a Schedule of Performance.

A line-item budget for the Project, including a summary of statement of sources and uses of funds, is incorporated into **Exhibit C** ("Project Budget").

## 3. CONDITIONAL INCLUSIONARY GRANT

**3.1** Developer is not subject to a repayment obligation for the Inclusionary Grant, except for an Event of Default, as set forth in Section 16. This Agreement shall automatically terminate when all Affordable Housing Units have been initially transferred to Low Income Households in accordance with the terms of this Agreement and the Regulatory Agreement. In the event the Project is not constructed in compliance with the Scope of Work within two (2) years from the date of the first disbursement of the Inclusionary Grant funds, the City may terminate this Agreement and, pursuant to the default remedy provisions of this Agreement set forth in Section 16, the City shall be entitled to repayment of Inclusionary Grant monies not expended on the Project or any amounts expended in violation of this Agreement.

**3.2** Amount and Purpose. Following complete execution of this Agreement, subject to the terms and conditions of this Agreement, including the conditions set forth in Section 4, City agrees to provide the Inclusionary Grant to Developer from the Inclusionary Housing Fund in the principal amount of up to Two Million Two Hundred Thousand Dollars (\$2,200,000), as follows: an initial disbursement of One Million Nine Hundred Eighty Thousand Dollars (\$1,980,000) (the "Initial Disbursement"), and a final disbursement of Two Hundred Twenty Thousand Dollars (\$220,000) (the "Final Disbursement") upon completion of construction of the Project. Developer represents and warrants that it shall only use the Inclusionary Grant proceeds in accordance with this Agreement for expenses that are actually and reasonably incurred by Developer for the Project and approved by City (such approval not to be unreasonably withheld or delayed), and for no other purpose.

## 4. CONDITIONS TO DISBURSEMENT OF GRANT PROCEEDS

**4.1** Conditions Precedent to Initial Disbursement. City's obligation to make the Initial Disbursement is subject to the satisfaction of the following conditions precedent:

(a) City Council. Review, approval and execution of this Agreement, the Regulatory Agreement, and the entitlements for the Project.

(b) Code Compliance. Compliance with California Health and Safety Code and applicable regulations set forth in Section 34176, if applicable.

(c) Recordation of Regulatory Agreement. Developer has signed and notarized the Regulatory Agreement and has recorded it against the Property in the Official Records for Orange County to impose the affordable housing covenants set forth herein.

(d) Insurance. City shall have received evidence satisfactory to the City Attorney that all of the policies of insurance required by Section 15 of this Agreement are in full force and effect.

(e) Representations and Warranties. The representations and warranties of Developer contained in this Agreement shall be correct in all material respects as of the date of the Initial Disbursement as though made on and as of that date, and if requested by the City Project Manager, City shall have received a certificate to that effect signed by Developer's Representative.

(f) No Default. No Event of Default by Developer shall have occurred, and no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer under this Agreement, and if requested by the City Project Manager, City shall have received a certificate to that effect signed by Developer's Representative.

(g) Condition of Title. The City Project Manager reasonably believes that no event has occurred that would give rise to a colorable claim against the Property (e.g., a mechanic's lien) superior to the claim of City against the Property with respect to the subject disbursement or the Regulatory Agreement, or if such claim is made, then City Project Manager shall receive satisfactory evidence that such claim has been bonded over until its resolution.

(h) The City's analysis and approval of the available funding sources and development and operating costs of the Project and the overall economic feasibility of the Project.

(i) The City's Inclusionary Housing Fund has sufficient monies available for the Initial Disbursement.

(j) The Project has received all entitlements and discretionary actions to commence construction, including approval as a "common interest development" as defined in California Civil Code § 4100.

(k) All grading permits shall have been issued or the City shall have issued a letter stating that Building Permits are ready to issue, subject only to payment of fees and the completion of grading of the Project site.

(l) Developer shall have secured all necessary financing and funding for the construction and operation of the Project. Such financing and funding shall be sufficient to pay all Project development costs, as set forth in the final budget consistent with the approved Proforma (or as otherwise approved by the City), and must comply with the City's Affordable Housing Funds Policies and Procedures.

(m) Developer shall have provided construction security, as set forth in Section 8.7, in favor of the City, which may include a completion guarantee from Developer and/or a letter of credit and/or performance and payment bonds from the general contractor for the Project (or some combination of these), in an amount sufficient to ensure the Project will be completed and placed in service within the time set forth in the Project schedule approved by the City.

(n) Developer shall have established a separate account for deposit of all proceeds from the Inclusionary Grant (the "Project Account").

**4.2 Final Disbursement Conditions Precedent.** City's obligation to make the Final Disbursement to Developer is subject to the satisfaction of the following additional conditions precedent:

(a) Construction complete. The construction of the Project shall be complete.

(b) Certificate of Occupancy Issued. Any portion of the construction work requiring inspection or certification by any Governmental Authority shall have been inspected and certified as complete. Developer shall request that the City of Santa Ana Planning and Building Agency issue a Certificate of Occupancy, or similar document as applicable, a copy of which shall be delivered to the City Project Manager, in order for the Final Disbursement to occur.

(c) The conditions set forth in the Regulatory Agreement regarding homebuyers shall have been satisfied, including but not limited to homebuyers must have executed Loan Documents, as defined in the Regulatory Agreement, with the City and have closed escrow on an Affordable Unit. The Loan Documents must be recorded on each Affordable Unit in second lien position to a first deed of trust from a private institutional lender.

(d) Lien Free. At least one of the following shall have occurred:

(i) Thirty-five (35) days shall have passed since the recording of a valid Notice of Completion as required by Section 8.5 for the construction, and no mechanic's or materialman's lien shall be outstanding; or

(ii) Ninety-five (95) days shall have passed since actual completion of the construction, and no mechanic's or materialman's lien shall be outstanding, or Developer shall have bonded over any such lien to City's reasonable satisfaction.

**4.3 Disbursement Procedures for Grant.** The Inclusionary Grant proceeds shall be disbursed to Developer to finance the development and construction of the Project (as evidenced in the Project Budget, attached as **Exhibit C**). Upon satisfaction of the required conditions for the Initial Disbursement or the Final Disbursement, as applicable, the City shall disburse the Inclusionary Grant within twenty one (21) days. The Inclusionary Grant proceeds shall not be used for any purpose other than for development and construction costs set forth in the Project Budget, including Developer fee and soft costs related to the development of the Project. City may make any disbursement by check or wire transfer payable to Developer.



**4.4 Termination for Failure of Condition.** If (a) any of the conditions precedent set forth herein are not timely satisfied within two (2) years of the date of this Agreement (subject to applicable notice and cure rights), and (b) City is not in default under this Agreement, City may terminate this Agreement without any further liability on its part by giving written notice of termination to Developer. Upon the giving of such notice, the City shall not be obligated to pay to Developer the Inclusionary Grant, any portion thereof, or any other amounts owing under the Agreement, and Developer shall return to the City any Inclusionary Grant monies received but not expended on the Project as of the date of the notice of termination.

**4.5 Waiver of Conditions.** The conditions set forth pertaining to City's obligation to make disbursements of the Inclusionary Grant proceeds are for City's benefit only and the City Project Manager may waive all or any part of such rights by written notice to Developer.

**4.6 Waiver of Disbursement Conditions.** Unless City otherwise agrees in writing, the making by City of any disbursement with knowledge that any condition to such disbursement is not fulfilled shall constitute a waiver of such condition only with respect to the particular disbursement made, provided that such condition shall be a condition to all further disbursements until fulfilled.

**4.7 Other Terms and Conditions of Grant.** , Without limiting any other remedies, any disbursements of the Inclusionary Grant that have not already been expended for development and construction of the Project shall become immediately due and payable by Developer back to City, in the event of any of the following:

- (a) Failure to complete the Project within two (2) years of the date of the first disbursement, unless extended due to Force Majeure delays, as defined in Section 17.2;
- (b) Violation of any of the use covenants and restrictions contained in this Agreement after the expiration of any applicable notice and cure periods; or,
- (c) An Event of Default by Developer, which is not timely cured after expiration of any applicable notice and cure periods pursuant to the terms of this Agreement.

**4.8 Costs and Fees.** Developer shall pay all recording fees and charges on any document recorded pursuant to this Agreement.

## **5. USE AND MAINTENANCE OF THE PROPERTY**

**5.1 Maintenance of the Property.** During all phases of construction, solely at Developer's expense, Developer agrees to maintain the Property in a clean and orderly condition and in good condition and repair and keep the Property free from any accumulation of debris and waste materials, as appropriate and consistent with construction industry standards and all permits and regulations of any Governmental Authority. If at any time Developer fails to maintain, or cause to be maintained, the Property as required by this section, and said condition is not corrected after the expiration of a reasonable period of time not to exceed thirty (30) days from the date of written notice from the City, unless such condition cannot reasonably be cured within thirty (30) days, in which case

Developer shall have such additional time as reasonably necessary to complete such cure, the City may perform the necessary maintenance and Developer shall pay all reasonable costs incurred for such maintenance. Following the Certificate of Completion for construction of the homes, the Property maintenance shall be governed by the provisions of the Regulatory Agreement.

**5.2 Obligation to Refrain from Discrimination.** Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, in the development and construction of the Property nor shall Developer itself or any person claiming under or through him establish or permit any such practice or practices of discrimination or segregation with reference to the development and construction of the Property. The foregoing covenants shall run with the land and shall remain in effect until termination of the Agreement. Following the Certificate of Completion for construction of the homes, the Developer's obligation to refrain from discrimination shall be governed by the provisions of the Regulatory Agreement.

(a) **In Employment.** In construction on the Property, Developer shall not discriminate against any employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status. Developer shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status.

(b) **In all Contracts.** Developer shall cause the foregoing covenants to be inserted in all contracts for any work covered by this Agreement so that such provisions will be binding upon each contractor for the benefit of City, provided that the foregoing covenant shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

## **6. RESERVED**

## **7. GENERAL PROVISIONS AND WARRANTIES**

As a material inducement to City to enter into this Agreement, Developer represents and warrants as follows, which representations and warranties are made solely by Developer and not by or on behalf of any partner of Developer:

**7.1 Formation, Qualification and Compliance.** Developer is a nonprofit organization. Developer is in compliance with all laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished all

filings, registrations and qualifications with, any Governmental Authority that are necessary for the transaction of its business.

## **7.2 Execution and Performance of Inclusionary Grant Documents.**

(a) Developer has all requisite authority to execute and perform its obligations under this Agreement.

(b) The execution and delivery by Developer of, and the performance by Developer of its obligations under, this Agreement that has been authorized by all necessary action and does not and will not:

(i) require any consent or approval not heretofore obtained of any person having any interest in Developer;

(ii) violate any provision of, or require any consent or approval not heretofore obtained under, any articles of incorporation, by-laws or other governing document applicable to Developer;

(iii) result in or require the creation of any lien, claim, charge or other right of others of any kind (other than under this Agreement and under the contemplated Senior Loan Documents) on or with respect to any property now or hereafter owned or leased by Developer;

(iv) to the best of its knowledge, violate any provision of any law presently in effect; or

(v) constitute a breach or default under, or permit the acceleration of obligations owed under, any contract, loan agreement, lease or other agreement or document to which Developer is a party or by which Developer or any of its property is bound.

(c) Developer is not in default, in any respect that is materially adverse to the interests of City under this Agreement or that would have any material adverse effect on the financial condition of Developer or the conduct of its business, under any law, contract, lease or other agreement or document described in sub-paragraph (iii) or (v) of sub-paragraph (b) of this Section 7.2.

(d) Except for the development and construction permitting contemplated to be subsequently obtained under this Agreement, no approval, license, exemption or other authorization from, or filing, registration or qualification with, any Governmental Authority is required which has not been previously obtained in connection with the execution by Developer of, and the performance by Developer of its obligations under, this Agreement.

**7.3 Financial and Other Information.** To the best of Developer's knowledge, all financial information furnished to City by the Developer or any affiliate thereof with respect to Developer in connection with the Inclusionary Grant (a) is complete and correct in all material

respects as of the date of preparation thereof, (b) accurately presents the financial condition of Developer, and (c) has been prepared in accordance with generally accepted accounting principles consistently applied or in accordance with such other principles or methods as are reasonably acceptable to City. To the best of Developer's knowledge, all other documents and information furnished to City by the Developer or any affiliate thereof with respect to Developer, in connection with the Inclusionary Grant, are correct and complete insofar as completeness is necessary to give the City accurate knowledge of the subject matter. To the best of Developer's knowledge Developer has no material liability or contingent liability not disclosed to City in writing and there is no material lien, claim, charge or other right of others of any kinds (including liens or retained security titles of conditional vendors) on any property of Developer not disclosed in such financial statements or otherwise disclosed to City in writing.

**7.4 No Material Adverse Change.** There has been no material adverse change in the condition, financial or otherwise, of Developer since the dates of the latest financial statements furnished to City, except for Senior Loan Documents that have been disclosed to the City. Since those dates, Developer has not entered into any material transaction not disclosed in such financial statements or otherwise disclosed to City in writing.

**7.5 Tax Liability.** Developer has filed all required federal, state and local tax returns and has paid all taxes (including interest and penalties, but subject to lawful extensions disclosed to City in writing) other than taxes being promptly and actively contested in good faith and by appropriate proceedings. Developer is maintaining adequate reserves for tax liabilities (including contested liabilities) in accordance with generally accepted accounting principles or in accordance with such other principles or methods as are reasonably acceptable to City.

**7.6 Governmental Requirements.** Except for the development and construction permitting contemplated to be subsequently obtained under this Agreement, to best of its knowledge, Developer is in compliance with all laws relating to the Property and all Governmental Authority approvals, including zoning, land use, planning requirements, and requirements arising from or relating to the adoption or amendment of, any applicable general plan, subdivision and parcel map requirement; environmental requirements, including the requirements of the California Environmental Quality Act and the National Environmental Policy Act, and the preparation and approval of all required environmental impact statements and reports; use, occupancy and building permit requirements; and public utilities requirements.

**7.7 Rights of Others.** Developer is in compliance with all covenants, conditions, restrictions, easements, rights of way and other rights of third parties relating to the Property as may be shown on title for the Property.

**7.8 Litigation.** There are no material actions or proceedings pending or, to the best of the Developer's knowledge, threatened against or affecting Developer or any property of Developer before any Governmental Authority, except as disclosed to City in writing prior to the execution of this Agreement.

**7.9 Bankruptcy.** To the best of Developer's knowledge, no attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or threatened against Developer, nor are any of such proceedings contemplated by Developer.

**7.10 Information Accurate.** To the best of Developer's knowledge, all information, regardless of its form, conveyed by Developer to City, by whatever means, is accurate, and correct in all material respects and is sufficiently complete to give City true and accurate knowledge of its subject matter, and does not contain any material misrepresentation or omission.

**7.11 Conflicts of Interest.** No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she has a direct or indirect financial interest. The Developer warrants that it neither has paid nor given, nor will pay or give, any third party any money or other consideration for obtaining this Agreement.

**7.12 Nonliability of City Officials and Employees.** No member, official or employee of the City shall be personally liable to the Developer in the event of any default or breach by the City or for any amount which may become due to Developer or on any obligations under the terms of this Agreement.

**7.13 No Assignment.** Developer expressly acknowledges and agrees that the City has only agreed to assist the Developer as a means by which to induce the construction and development of the Project. Accordingly, Developer further expressly acknowledges and agrees that this Agreement is a personal right of Developer that is neither negotiable, transferable, nor assignable except as set forth herein. Developer may assign some or all of its rights under the Agreement only with the prior written consent of the City Project Manager, except that no prior consent is necessary for an assignment by a limited partner of Developer to an affiliate, for the inclusion of tax credit investors in the Agreement.

**7.14 Applicable Law.** This Agreement shall be interpreted, governed and enforced under federal and California state law with venue in Orange County, California.

**7.15 Third Parties.** This Agreement is made for the sole benefit of Developer and the City and their successors and assigns, and no other person or persons shall have any rights or remedies under or by reason of this Agreement or any right to the exercise of any right or power of the City hereunder or arising from any default by Developer, nor shall the City owe any duty whatsoever to any claimant for labor performed or materials furnished in connection with the construction of the Property.

**7.16 City Approval of Senior Loans; Subordination.** Developer shall obtain City's written approval and consent for any Senior Loans. Developer shall provide the City at least thirty (30) days' notice of any request for subordination of the City Deed of Trust. If the City does not respond to a request for approval of a Senior Loan or subordination of the City Deed of Trust within thirty (30) days, then the request shall be deemed disapproved. Developer acknowledges

and agrees that the Regulatory Agreement shall have priority over, and shall not be subordinated to, any Senior Loan.

**7.17 Use of Project Account.** The Project Account shall be used exclusively for the deposit of proceeds from the Inclusionary Grant and to pay expenses for the Project in accordance with the Project Budget. No other funds shall be deposited into the Project Account.

## **8. CONDITIONS FOR CONSTRUCTION**

**8.1 Permits and Approvals.** Developer shall diligently obtain all permits, including all Building Permits, licenses, approvals, exemptions and other authorizations of Governmental Agencies required in connection with the construction and conversion of the Property. Developer shall follow industry-standard, best management practices, as applicable, during construction.

**8.2 Commencement and Completion of Construction.** The construction of the Project shall be considered complete for purposes of this Agreement only when (a) all work described has been completed and fully paid for, and (b) all work requiring inspection or certification by Governmental Authority has been completed and all requisite certificates, approvals and other necessary authorizations (including required final certificates of occupancy) have been obtained.

**8.3 Entry and Inspection.** At all times prior to completion of the construction, upon reasonable prior written notice and subject to reasonable job site safety rules, City and its agents shall have (a) the right of free access to the Property and all sites away from the Property where materials for the construction are stored, (b) the right to inspect all labor performed and materials furnished for the construction, and (c) the right to inspect and copy all documents pertaining to the construction.

**8.4 Construction Information.** From time to time, as needed, during the course of the construction, within ten (10) Business Days following City's written demand therefore, Developer shall furnish requested reports of Project Costs, progress schedules and contractors' costs breakdowns for the construction, itemized as to trade description and item, showing the name of the contractor(s) and/or subcontractor(s), and including such indirect costs as real estate taxes, legal and accounting fees, insurance, architects' and engineers' fees, loan fees, interest during construction and contractors' overhead.

**8.5 Protection Against Liens:** Developer shall diligently file a valid Notice of Completion upon completion of the construction, diligently file a notice of cessation in the event of a cessation of labor on the construction for a period of thirty (30) days or more, and take all actions reasonably required to prevent the assertion of claims of lien against the Property. In the event that any claim of lien is asserted against the property or any stop notice or claim is asserted against the City by any person furnishing labor or materials to the Property, Developer shall immediately give written notice of the same to City and shall, promptly and in any event within ten (10) Business Days after written demand therefor, (a) pay and discharge the same, (b) effect the release thereof by delivering to City a surety bond complying with the requirement of applicable laws for such

release, or (c) take such other action as City may require to release City from any obligation or liability with respect to such stop notice or claim.

### **8.6 Prevailing Wages.**

(a) Developer shall assume any and all responsibility and be solely responsible for determining whether or not laborers employed relative to the construction or installation of the project must be paid the prevailing per diem wage rate for their labor classification, as determined by the State, pursuant to labor code sections 1720, et seq.

(b) Developer, on behalf of itself, its successors, and assigns, waives and releases the City from any right of action that may be available to any of them pursuant to Labor Code section 1781. Developer acknowledges the protections of Civil Code section 1542 relative to the waiver and release contained in this section 8.6, which 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.

(c) By signing this Agreement, Developer knowingly and voluntarily waives the provisions of section 1542 solely in connection with the waivers and releases of this section 8.6.

(d) Additionally, Developer shall indemnify, defend and hold harmless the city against any claims pursuant to Labor Code section 1781 arising from this agreement or the construction or installation of all or any portion of the project.

(e) Developer represents and warrants that the Project is within the exemption of California Labor Code § 1720(c)(5)(A) (“the habitat provision”) that exempts projects from being considered a “public works” project if “the project is a self-help housing project in which no fewer than 500 hours of construction work associated with the homes are to be performed by the homebuyers.”

**8.7 Developer's Assurance of Construction Completion.** Prior to the Initial Disbursement and commencement of construction of the Improvements, Developer shall furnish to City evidence that assures Developer that sufficient monies will be available to complete the proposed construction (the “Construction Security”). The City Project Manager shall approve or disapprove the Construction Security, which approval shall not be unreasonably withheld. The amount of money available from the Construction Security shall be at least the total estimated construction cost. Subject to approval from the City Project Manager, the Construction Security may take one of the following forms:

(i) Performance bond and labor and materials bond in a principal sum equal to the total estimated construction cost supplied by Contractor or subcontractors, provided said bonds are issued jointly to Developer, City and any Senior Lenders as obligees.

(ii) Irrevocable letter of credit issued to City from a financial institution to be in effect until City acknowledges satisfactory Completion of Construction;

(iii) Cash deposited with the City (may be in the form of cashier's check or money order or may be electronically deposited);

(iv) A completion guaranty, in favor of City from an Affiliate of Developer, in a form reasonably acceptable to City, coupled with a repayment guaranty in favor of the Senior construction Lender for its loan;

(v) Any combination of the above.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and acceptable to City. All bonds and letters of credit shall insure faithful and full observance and performance by Developer of all terms, conditions, covenants, and agreements relating to the construction of improvements within the Property.

Developer shall provide or cause its Contractor to provide payment and/or performance bonds in connection with the construction of the Project Improvements, and shall name the City as an additional obligee on, with the right to enforce, any such bonds.

## 9. PROJECT COVENANTS

**9.1 Local Sourcing Plan.** Developer agrees to make a good faith effort to encourage subcontractors and suppliers to hire and procure locally. Prior to issuance of any Building Permit, Developer shall develop and submit to the City a local sourcing plan for the Project targeting, to the extent feasible, the hiring of qualified workers, construction contractors, or the purchasing of goods locally within the City of Santa Ana.

**9.2 Lead-Based Paint.** Developer shall comply with the requirements, as applicable of the Lead-Based Paint Poisoning Prevention Act.

**9.3 Property Standards.** Developer shall cause the Property to meet all applicable local, state and federal codes and ordinances, including zoning ordinances. Developer shall also cause the Property to meet the current edition of the Model Energy Code published by the Council of American Building Officials. No fewer than one (1) unit shall comply with requirements for mobility features under California Building Code section 11B-233.3, and communication features that comply with California Building Code section 11B-809.5.

**9.4 Alternative Transportation and Energy Source, Resource Conservation, and LEED Certification.** In recognition of the City's desire to optimize the energy efficiency of the Project, Developer agrees to consult with the Project design team, a CABEC certified 2016 Certified Energy Analyst, a LEED AP Homes (low-rise and mid-rise), LEED AP BD+C (high rise), National Green Building Standard (NGBS) Green Verifier, or GreenPoint Rater (one person may meet both of these latter qualifications) early in the Project design process to



evaluate a building energy model analysis and identify and consider energy efficiency or generation measures beyond those required by minimum construction standards.

**9.5 Maintenance.** At all times during the term of this Agreement, Developer shall cause the Property and the Project to be maintained in a decent, safe and sanitary manner, regardless of cause of the disrepair. The maintenance obligation shall be commensurate with the work being done on the Property according to the Scope of Work, provided that at all times the Property and Project shall be maintained in accordance with all permits, building codes, and any other requirement imposed by a Governmental Authority.

**9.6 RESERVED.**

**9.7 RESERVED.**

**9.8 Conflict of Interest.** Developer shall comply with and be bound by the conflict of interest provisions set forth in all applicable state regulations pertaining to conflict of interest.

**9.9 Right to Work and Minimum Wage Laws.**

(a) Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and State of California Labor Code, Section 1178.5, Developer shall pay no less than the greater of the Federal or California Minimum Wage to all its employees that directly or indirectly service the Property, in any manner whatsoever. Developer shall require and verify that all its subcontractors or other persons servicing the Property on behalf of the Developer also pay their employees no less than the greater of the Federal or California Minimum Wage.

(b) Developer shall comply and verify that its subcontractors comply with all other Federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to the servicing of the Property or terms and conditions of this Lease.

## **10. ENVIRONMENTAL MATTERS**

**10.1 Representation and Warranty.** Except as disclosed in writing to the City, Developer represents that it has no knowledge: (a) of the presence on, under or about the Property, now or in the past, of any Hazardous Materials, or of the transportation to or from the Property of any Hazardous Materials; (b) that asbestos or polychlorinated biphenyls (PCBs) are contained in or stored on the Property; or, (c) that there are any underground storage tanks located in, on or under the Property.

**10.2 Compliance with Environmental Laws.** Developer shall: (a) comply with all environmental laws and environmental permits applicable to the construction of the Property; (b) immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance; (c) keep the Property free and clear of any environmental claims or liens imposed pursuant to any environmental law; and, (d) obtain and renew all environmental permits required for ownership or use of the Property.

**10.3 Presence of Hazardous Materials.** Developer shall not, and shall not permit anyone else to, generate, use, treat, store, handle, release, or dispose of Hazardous Materials on the Property, or transport or permit the transportation of Hazardous Materials to or from the Property, except for de minimis quantities used at the Property in compliance with all applicable environmental laws and required in connection with the construction of the homes and the routine operation and maintenance of the Property.

**10.4 Notice of Environmental Matters.** Developer shall immediately advise City in writing of any of the following: (a) any pending or threatened environmental claim against Developer or the Property; or (b) any condition or occurrence that: (i) results in noncompliance with any applicable environmental law; (ii) could reasonably be anticipated to cause the Property to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any environmental Law; or, (iii) could reasonably be anticipated to form the basis of an environmental claim against the Property or Developer.

**10.5 Environmental Indemnification by the Developer.** Developer agrees to defend, indemnify and hold harmless the City and its respective officers, directors, employees and agents (collectively the "Indemnitees") from and against any and all obligations (including removal and remediation), losses, claims (including third party claims), suits, judgments, liabilities, penalties, damages (including consequential and punitive damages), costs and expenses (including consultants, and attorneys' fees) of whatever kind or nature whatsoever that may at any time be incurred by, imposed on, or asserted against the Indemnitees directly or indirectly based on, or arising or resulting from any Hazardous Materials on the Property, other than resulting from the gross negligence or willful misconduct of any Indemnatee.

## **11. OTHER AFFIRMATIVE COVENANTS**

The following provisions shall apply, except to the extent that City Project Manager otherwise consents in writing:

**11.1 Existence.** The sole member of Developer's managing general partner shall maintain its existence in good standing under the laws of the State of California.

**11.2 Notice of Certain Matters.** Developer shall give notice to City, within ten (10) days of Developer's learning thereof, of each of the following:

- (a) any filed litigation or claim affecting or relating to the Property and involving an amount in excess of \$5,000; and any litigation or claim that might subject Developer or any general partner to liability in excess of \$5,000, whether covered by insurance or not;
- (b) any dispute between Developer and a Governmental Authority relating to the Property, the adverse determination of which might materially affect the Property;
- (c) any change in Developer's principal place of business;

(d) any aspect of the Improvements that is not in substantial conformity with the plans or code;

(e) any event which after the giving of all required notices and the expiration of all applicable cure periods, would constitute an Event of Default;

(f) any material default by Developer or any other party under any Senior Loan document, or the receipt by Developer of any notice of default under any Senior Loan document;

(g) the creation or imposition of any mechanics' or materialmans' lien or other lien against the Property which might materially affect the Property, which is not bonded over or released; and/or

(h) any material adverse change in the financial condition of Developer.

**11.3 Further Assurances.** Developer shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to City all documents, and take all actions, reasonably required by City from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement.

## **12. OTHER COVENANTS**

The following provisions shall apply, except to the extent that the City Project Manager otherwise consents in writing:

**12.1 Default on Senior Loan.** Developer shall not be in default on any Senior Loan Documents (as approved by the City), provided however, that Developer shall have such period as is provided in the Senior Loan Documents during which to effectuate a cure.

**12.2 Sale or Lease of Property.** Developer shall not sell, lease (other than to qualified homeowners meeting the requirements set forth in this Agreement), sublease or otherwise transfer all or any part of the Property or any interest therein without the prior written consent of the City Project Manager, which consent may be withheld in the City Project Manager's sole discretion. In connection with the foregoing consent requirements, Developer acknowledges that City relied upon Developer's particular expertise in entering into this Agreement and continues to rely on such expertise to ensure the satisfactory completion of the construction.

## **13. CERTIFICATE OF COMPLETION**

Upon satisfactory completion of the construction and upon the request of Developer, or at its own election, the City shall issue a Certificate of Completion. Such Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction. The Certificate of Completion may be issued in the form of the Certificate of Occupancy or Final Inspection Notice from the City. The City may deny the Certificate of Completion if the Developer

has not provided the City with an acceptable Property Management Plan, Marketing and Resident Selection Plan, or other condition specified in the Regulatory Agreement.

If City declines to furnish a Certificate of Completion after written request from Developer, the City Project Manager shall, within thirty (30) days after receipt of the request, provide Developer with a written statement of the reasons therefore. The statement shall contain a description of the action Developer must take to obtain a Certificate of Completion. If the reason therefore is that the Developer has not completed a minor portion of the construction, City may, in its sole and absolute discretion, issue the Certificate of Completion upon the posting with City of a bond or other form of security acceptable to the City Project Manager in the amount of the fair value of the uncompleted work.

A Certificate of Completion is not "notice of completion" referred to in Section 3093 of the California Civil Code.

## **14. INDEMNIFICATION**

### **14.1 Nonliability of City.** Developer acknowledges and agrees that:

(a) The relationship between Developer and the City is and shall remain solely that of Developer and grantor. City neither undertakes nor assumes any responsibility to review, inspect, supervise, approve (other than for aesthetics) or inform Developer of any matter in connection with the construction, including matters relating to: (i) the performance of the construction work; (ii) architects, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them; or, (iii) the progress of the construction; and Developer shall rely entirely on its own judgment with respect to such matters and acknowledges that any review, inspection, supervision, approval or information supplied to Developer by City in connection with such matters is solely for the protection of City, and that neither Developer nor any third party is entitled to rely on it;

(b) Notwithstanding any other provision of this Agreement: (i) the City is not a partner, joint venture, alter-ego, manager, controlling person or other business associate or participant of any kind of Developer, and City does not intend to ever assume any such status; (ii) City's activities in connection with the Inclusionary Grant shall not be "outside the scope of the activities of a lender of money" within the meaning of California Civil Code Section 3434, as modified or recodified from time to time, and City does not intend to ever assume any responsibility to any person for the quality or safety of the Property; and, (iii) City shall not be deemed responsible for or a participant in any acts, omissions or decisions of Developer;

(c) City shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, the Property, whether arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of Developer or any of Developer's agents, employees, independent contractors, licensees or invitees; or (iii) any accident on the Property or any fire or other casualty or hazard thereon; and,

(d) By accepting or approving anything required to be performed or given to City under this Agreement, including any certificate, financial statement, survey, appraisal or insurance policy, City shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by City to anyone.

**14.2 Indemnity.** Developer shall defend (by counsel reasonably satisfactory to City), indemnify and save and hold harmless the Indemnitees from and against all claims, damages, demands, actions, losses, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) arising from or relating to: (i) any act or omission of Developer in connection with its obligations under this Agreement; (ii) the making of the Inclusionary Grant; (iii) a claim, demand or cause of action that any person has or asserts against Developer arising from or related to this Agreement; and (iv) any act or omission of Developer, any contractor, subcontractor or material supplier, engineer, architect or other person with respect to the Property, except to the extent any of the foregoing arise from gross negligence or willful misconduct of the City. Developer's obligations under this Section shall survive the issuance of the Certificate of Completion, and termination of this Agreement.

**14.3 Reimbursement of City.** With respect to the indemnification obligations under this Article 14, Developer shall reimburse City immediately upon written demand for all costs reasonably incurred by City (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of City) in connection with the enforcement of this Agreement and all related matters, including all claims, demands, causes of action, liabilities, losses, commissions and other costs against which City is indemnified under this Agreement. Such reimbursement obligations shall bear interest from the date occurring twenty (20) days after City gives written demand to Developer. Such reimbursement obligations shall survive the issuance of a Certificate of Completion and termination of this Agreement.

## **15. INSURANCE, CASUALTY AND CONDEMNATION**

**15.1 Policies Required; Minimum Coverage.** Developer shall procure and maintain for the duration of the contract, and for five (5) years thereafter, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, and sub-contractors, which meets the following minimum requirements:

(a) **Commercial General Liability (CGL).** Insurance Services Office (ISO) Form CG 0001 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate. Umbrella and excess insurance policies can be used to meet the required limits.

(b) **Automobile Liability (AL).** Insurance Services Office Form CA 0001 covering Code 1(any auto), with combined single limit no less than \$2,000,000.

(c) **Workers' Compensation (WC).** As required by the State of California, with statutory limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident, policy, employee for bodily injury or disease.

(d) **Builder's Risk (Course of Construction) (BR).** Utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no co-insurance penalty provisions.

(e) **Surety Bonds** as described below.

(f) **Professional Liability (PL).** With limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. The Professional Liability coverage may be obtained by Developer's architect or other design profession, provided that the coverage meets all other requirements of this Agreement and City consents to the coverage in writing.

(g) **Pollution Legal Liability and/or Errors and Omissions (PLL).** With limits no less than \$50,000.

These insurance requirements shall not in any way act to reduce coverage that is broader or includes higher limits than the minimums shown above. If Developer maintains broader coverage and/or higher limits than the minimums shown above, City shall be entitled to the broader coverage and/or the higher limits maintained by Developer. Insurance provided under this contract shall not contain any restrictions or limitations which are inconsistent with City's rights under this contract.

**15.2 Self-Insured Retentions.** Self-insured retentions must be declared to and approved by City. At the option of City, Developer shall cause its insurer(s) to reduce or eliminate such self-insured retentions as respects City; or Developer shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

**15.3 Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

(a) City of Santa Ana, its City Council, officers, officials, employees, agents, and volunteers are to be covered as additional insureds on Contractor's CGL and AL policies with respect to liability arising out of work operations performed by or on behalf of Developer including materials, parts, and equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of Developer. Additional insured status can be provided in the form of an endorsement to Developer's insurance.

(b) For any claims related to this project, Developer's insurance coverage shall be primary insurance coverage as respects City of Santa Ana, its City Council, officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by City of Santa Ana, its City Council, officers, officials, employees, agents, or volunteers shall not contribute with it.

(c) A severability of interest provision must apply for all the additional insureds, ensuring that Developer's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limits of liability.

(d) Developer hereby grants to City a waiver of subrogation which any insurer of said Developer may acquire against City of Santa Ana, its City Council, officers, officials, employees, agents and volunteers" by virtue of the payment of any loss under such insurance. Developer agrees to obtain any endorsement(s) that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from any insurer(s).

(e) Each insurance policy required by this clause shall provide that coverage shall not be canceled, suspended, voided, reduced in scope or in limits, non-renewed by the carrier, or materially changed except after thirty (30) days prior written notice has been given to City and ten (10) days prior written notice of policy cancellation or non-renewal due to non-payment.

(f) Certificate Holder on each Evidence of Insurance certificate shall be: City of Santa Ana, Attention: (Name of Department Staff Responsible for Agreement), 20 Civic Center Plaza M-26 (Housing Division), Santa Ana, CA 92701. The name and location of project must be indicated in the Description of Operations section of each certificate.

(g) If any of the insurance required under this Agreement is not commercially available, not applicable to the Project, or imposes an undue cost burden on the Project, the City may, in its sole and absolute discretion, agree to reduce the coverage or waive the coverage; provided, however, that if such coverage does become available or applicable to the Project, and securing the insurance would not impose an undue burden on the Project, the City may require the insurance to be procured within thirty (30) days of written notice.

**15.4 Builder's Risk (Course of Construction) Insurance.** Developer may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name City of Santa Ana as a loss payee as its interest may appear. If the project does not involve new or major reconstruction, at the option of City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at Project site.

**15.5 Claims Made Policies.** If any coverage required is written on a claims-made coverage form:

(a) The retroactive date must be shown, and this date must be before the execution date of the contract.

(b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of work.

(c) If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, Developer must purchase extended reporting period coverage for a minimum of five (5) years after completion of work.

(d) A copy of the claims reporting requirements must be submitted to City.

**15.6 Acceptability of Insurers.** Insurance is to be placed with insurers authorized to conduct business in the state of California with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to City.

**15.7 Waiver of Subrogation.** Developer hereby agrees to waive rights of subrogation which any insurer of Developer may acquire from Developer by virtue of the payment of any loss. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Developer, its employees, agents, contractors and sub-contractors.

**15.8 Verification of Coverage.** Developer shall furnish City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause). A statement on a Certificate(s)/Evidence of Insurance will not be accepted in lieu of the actual endorsements required herein. Failure to obtain the required documents prior to the work beginning shall not waive Developer's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

**15.9 Sub-Contractors.** Developer shall require and verify that all sub-contractors maintain insurance meeting all requirements stated herein, and Developer shall ensure that City is an additional insured on insurance required from sub-contractors. For CGL coverage, sub-contractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

**15.10 Surety Bonds.** Developer shall provide the following Surety Bonds:

- (a) Bid Bond
- (b) Performance Bond
- (c) Payment Bond
- (d) Maintenance Bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not



necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

**15.11 Claims and Proceedings.** Developer shall give City immediate notice of any material casualty to any portion of the Property, whether or not covered by insurance, and of the initiation or threatened initiation of any proceeding for the condemnation or other taking for public or quasi-public use of any portion of the Property (collectively, "Condemnation"), and shall provide City with copies of all documents which pertain to any such casualty or Condemnation. Developer shall take all action reasonably required by City in connection therewith to protect the interests of Developer and/or City, and City shall be entitled (without regard to the adequacy of its security) to participate in any action, claim, adjustment or proceeding and to be represented therein by counsel of its choice. Developer shall not settle, adjust, or compromise any claim, action, adjustment or proceeding without prior written approval, which approval shall not be unreasonably withheld or delayed.

**15.12 Delivery of Proceeds to City.** In the event that, notwithstanding the "lender's loss payable endorsement" requirement set forth above, the proceeds of any casualty insurance policy described herein are paid to Developer, Developer shall, subject to any superior rights of the Senior Lender, deliver such proceeds to the City immediately upon receipt.

**15.13 Application of Casualty Insurance Proceeds.** Subject to any superior rights of a Senior Lender, any proceeds collected (the "Proceeds") under any casualty insurance policy described in this Agreement shall be disbursed to Developer as provided below, but only upon fulfillment of each of the following conditions (the "Restoration Conditions") within ninety (90) days (unless extended by mutual agreement of Developer and City) following the occurrence of the receipt of the Proceeds:

(a) Developer shall demonstrate to City's reasonable satisfaction that the Proceeds (together with amounts deposited by Developer pursuant to subparagraph (b)) will be adequate to repair the Improvements and to restore the fair market value of the Property, within a time period reasonably determined by City, to at least the value it had immediately prior to sustaining the damage. Such demonstration shall include delivery to City of: (i) plans and specifications reasonably satisfactory to City; and, (ii) a construction contract in form and content, and with a contractor, reasonably satisfactory to City;

(b) Developer shall execute such documents as City reasonably requires to evidence and secure Developer's obligation to use all amounts disbursed for the diligent restoration of the Property; and,

(c) No Event of Default shall remain uncured; provided, however, if an Event of Default has occurred, then Developer shall assign to the City an amount of the Proceeds equal to the disbursements received from the City for the Inclusionary Grant and such amount shall be paid to City prior to any disbursement of the Proceeds to Developer.

**15.14 Method of Disbursement and Undisbursed Funds.** Any Proceeds to be disbursed to Developer shall be held by the Senior Lender if a Senior Loan is outstanding, and disbursed in accordance with the Senior Loan Documents or, if no Senior Loan, then held by the City and disbursed in accordance with the City's then customary disbursement procedures and related provisions. Any amounts remaining undisbursed following completion of such restoration shall be returned to Developer, and any other amounts remaining shall either be paid to Developer or applied by the Senior Lender, or the City in the absence of a Senior Loan, as the case may be against any obligations that are secured by a lien on the Property, as they elect in their sole and absolute discretion.

**15.15 Failure to Satisfy Conditions.** In the event that Developer fails to fulfill the Restoration Conditions within one hundred and eighty (180) days (unless extended pursuant to Section 15.4) following the date Proceeds are received, the Proceeds shall be applied by City against any obligations to City that are secured by a lien on the Property, and the selection of which such obligations to apply the Proceeds against shall be made by City in its sole and absolute discretion.

**15.16 Restoration.** Nothing in this Article 15 shall be construed to excuse Developer from repairing and restoring all damage to the Property in accordance with other obligations of this Agreement.

**15.17 Condemnation; Treatment of Compensation.**

(a) Subject to any superior rights of Senior Lender, Developer hereby assigns to the City, as security for all obligations to City secured by a lien on the Property, all amounts payable to Developer in connection with any Condemnation, and any proceeds of any related settlement (collectively, "Compensation"). Subject to any superior rights of Senior Lender, Developer shall deliver such remaining Compensation to City immediately upon receipt. If the taking results in a loss of the Property to an extent that, in the reasonable opinion of City, renders or is likely to render the Property not economically viable or if, in City's reasonable judgment Developer's security is otherwise impaired, City may apply the Compensation received due to judgment or settlement in connection with any condemnation or other taking to repay the Inclusionary Grant. If so applied, any award in excess of the Inclusionary Grant repayment and other sums due to City shall be paid to Developer or Developer's assignee. City shall have no obligation to take any action in connection with any actual or threatened condemnation or other proceeding.

(b) Notwithstanding the foregoing, as long as the value of City's liens are not impaired, any condemnation proceeds may be used by the Developer for repair and/or restoration of the Project.

**16. DEFAULTS AND REMEDIES**

**16.1 Events of Default.** Failure or delay by either party to perform any material term or provision of this Agreement within the time periods provided herein for such performance

constitutes a default under the Agreement. If any party defaults in performance of its material obligations, covenants or agreements hereunder, the defaulting party shall be entitled to cure the default in accordance with this section. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default. Unless a specific time to cure is set forth below, the defaulting party must, within thirty (30) days following service of said written notice, commence to cure, correct or remedy such failure or delay and shall complete such cure, correction, or remedy with reasonable diligence, provided that any cure must occur within ninety (90) days, or such shorter time specified below. Without limitation, the occurrence of any of the following, whatever the reason therefore which is not cured, shall constitute an Event of Default by Developer:

(a) Developer fails to perform any obligation for the payment of money under this Agreement, and such failure is not cured within ten (10) Business Days after Developer's receipt of written notice that such obligation was not performed when due;

(b) Any representation or warranty in this Agreement proves to have been incorrect in any material respect when made;

(c) The Property is materially damaged or destroyed by fire or other casualty unless Developer fulfills the Restoration Conditions set forth in the insurance provisions of this Agreement within one hundred eighty (180) days and thereafter diligently restores the Property in accordance with this Agreement;

(d) Work on the construction ceases for thirty (30) consecutive days for any reason (other than Force Majeure delays, as defined in Section 17.2);

(e) Developer is enjoined or otherwise prohibited by any Governmental Authority from constructing and/or occupying the Improvements and such injunction or prohibition continues unstayed for sixty (60) days or more for any reason;

(f) Construction of the Project has not commenced within thirty (30) days of the Initial Disbursement.

(g) Construction of the Project in accordance with the Scope of Work is not complete within two (2) years from the Initial Disbursement.

(h) Developer has not conveyed the Affordable Units to Eligible Homebuyers in accordance with the Regulatory Agreement within eighteen (18) months from completion of construction, provided, however, that Developer shall have not less than ninety (90) days from written notice by the City to cure said default, or such longer time as reasonably necessary so long as Developer diligently pursues curing the default.

(i) Developer is dissolved, liquidated or terminated, or all or substantially all of the assets of Developer are sold or otherwise transferred without the City Project Manager's prior written consent; or,

(j) Developer is the subject of an order for relief by a bankruptcy court, or is unable or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Developer applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or any part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Developer and the appointment continues undischarged or unstayed for ninety (90) days; or Developer institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, construction or similar proceeding relating to it or any part of its property; or any similar proceeding is instituted without the consent of Developer and continues undismissed or unstayed for ninety (90) days; or any judgment, writ, warrant of attachment or execution, or similar process is issued or levied against any property of Developer and is not released, vacated or fully bonded within ninety (90) days after its issue or levy.

**16.2 Remedies Upon Default.** Upon the occurrence of any Event of Default, City may, at its option and in its absolute discretion, do any or all of the following:

(a) Terminate this Agreement by giving written notice to Developer and obtain restitution for the Inclusionary Grant in the amount of unexpended portions of any amounts the City has disbursed to Developer for the Inclusionary Grant, or any expenditures of the Inclusionary Grant in violation of this Agreement. Upon written notice of termination and demand from the City, Developer shall repay to the City those amounts expended in violation of this Agreement or any unexpended portions of the Inclusionary Grant and assign to the City all rights to pursue any contractor, subcontractor and/or materials supplier who has been paid by Developer with Inclusionary Grant funds but has not provided work or materials paid for.

(b) In its own right or by a court-appointed receiver, take possession of the Property, enter into contracts for and otherwise proceed with the completion of the construction by expenditure of its own funds, and operate the Project in accordance with the Regulatory Agreement.

(c) Exercise any of its rights under this Agreement, the Regulatory Agreement, and any rights provided by law, including, without limitation, the right to seek specific performance and the right to foreclose on any security and exercise any other rights with respect to any security, inclusive of the Construction Security, all in such order and manner as City elects in its sole and absolute discretion.

(d) Suspend or terminate the award of City funds if Developer fails to comply with any term of such award.

**16.3 Cumulative Remedies: No Waiver.** City's rights and remedies under this Agreement are cumulative and in addition to all rights and remedies provided by law. The exercise by City of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice the City in the exercise of any other right or remedy. No waiver of any default shall be implied from any omission by City to take action on account of such default if such default persists or is repeated.

No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of this Agreement or related agreement shall be construed as a waiver of any subsequent breach of the same provision. City's consent to or approval of any act by Developer requiring further consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act. The City's acceptance of the late performance of any obligation shall not constitute a waiver by City of the right to require prompt performance of all further obligations; City's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of either party's right to proceed with the exercise of its remedies for any unfulfilled obligations; and City's acceptance of any partial performance shall not constitute a waiver by City of any rights.

**16.4 Limitation of Developer Remedies.** In the event that the City is liable for damages to Developer, such liability shall not exceed costs incurred by the Developer in the performance of this Agreement and shall not extend to compensation for loss of future income, profits or assets.

**16.5 Liability.** Developer shall have liability under this Agreement for any judgment, decree or order for the payment of money obtained in any action to enforce the obligation of Developer to repay the Inclusionary Grant.

**16.6 Cure Rights.** Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered under this Agreement by an entity on behalf of Developer shall be deemed to be a cure by Developer and shall be accepted or rejected on the same basis as if made or tendered by Developer.

## **17. MISCELLANEOUS**

**17.1 Obligations Unconditional and Independent.** Notwithstanding the existence at any time of any obligation or liability of City to Developer, or any other claim by developer against City, in connection with the Inclusionary Grant or otherwise, Developer hereby waives any right it might otherwise have: (a) to offset any such obligation, liability or claim against Developer's obligations under this Agreement; or, (b) to claim that the existence of any such outstanding obligation, liability or claim excuses the nonperformance by Developer of any of its obligations under this Agreement.

**17.2 Notices.** All notices, demands, approvals and other communications provided for in this Agreement shall be in writing and be delivered to the appropriate party by personal service or U.S. mail at its address as follows:

If to Developer: Habitat for Humanity of Orange County  
 2200 S. Ritchey Street  
 Santa Ana, CA 92705  
 Attention: Executive Director or Chief Executive Officer

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

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

Addresses for notice may be changed as required by written notice to all other parties. All notices personally served shall be effective when actually received. All notices mailed shall be effective three (3) days after deposit in the U.S. Mail, postage prepaid. The foregoing notwithstanding, the non-receipt of any notice as the result of a change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such notice.

**17.3 Survival of Representations and Warranties.** All representations and warranties in this Agreement shall survive the making of the Inclusionary Grant(s) described herein until the City determination of Completion of Construction and have been or will be relied on by City notwithstanding any investigation made by either party.

**17.4 No Third Parties Benefited.** This Agreement is made for the purpose of setting forth rights and obligations of Developer and the City, and no other person shall have any rights hereunder or by reason hereof.

**17.5 Binding Effect; Assignment of Obligations.** This Agreement shall bind, and shall inure to the benefit of, Developer and City and their respective successors and assigns. Other than as expressly provided to the contrary in this Agreement, Developer shall not assign any of its rights or obligations under this Agreement without the prior written consent of City, which consent may be withheld in City's sole and absolute discretion. Any such assignment without such consent shall, at City's option, be void.

**17.6 Prior Agreements; Amendments; Consents.** This Agreement contains the entire agreement between the City and Developer with respect to the Inclusionary Grant, and all prior negotiations, understandings and agreements are superseded by this Agreement. No modification of this Agreement (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given.

**17.7 Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Developer irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of Orange or the United States District Court of the Central District of California, as City may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Agreement. Assuming proper service of process, Developer also waives any objection regarding personal or in rem jurisdiction or venue.

**17.8 Severability of Provisions.** No provision of this Agreement that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of this Agreement are hereby declared to be severable.

**17.9 Headings.** Article and section headings are included in this Agreement for convenience of reference only and shall not be used in construing this Agreement.

**17.10 Conflicts.** In the event of any conflict between the provisions of this Agreement and those of the Regulatory Agreement, this Agreement, unless otherwise expressly provided, shall prevail; provided however that, with respect to any matter addressed in the other such documents, the fact that one document provides for greater, lesser or different rights or obligations than the others shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

**17.11 Time of the Essence.** Time is of the essence under this Agreement and in the performance of every term, covenant, and obligation contained herein.

**17.12 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.

**17.13 Conflict of Interest.** No member, official or employee of the City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, which is prohibited by law.

**17.14 Warranty Against Payment of Consideration.** Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

**17.15 Plans and Data.** Where Developer does not proceed with the work and construction of the Project, and when this Agreement is terminated with respect thereto for any reason, Developer shall deliver to City any and all plans and data concerning the Property, and City or any person or entity designated by City shall have the right to use such plans and data without compensation to Developer. Such right of City shall be subject to any right of the preparer of the plans to their use.

**17.16 Authority to Enter Agreement.** Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify the City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.


*{Signatures on following page}*



**IN WITNESS WHEREOF**, the parties hereto have caused this Conditional Grant Agreement to be executed on the date set forth at the beginning of this Agreement.

**DEVELOPER:**

HABITAT FOR HUMANITY OF ORANGE COUNTY  
a California nonprofit religious corporation.

By:   
Name: Michael Valentine  
Title: President & CEO

ATTEST:

CITY OF SANTA ANA

\_\_\_\_\_  
Jennifer L. Hall  
City Clerk

\_\_\_\_\_  
Alvaro Nuñez  
Acting City Manager

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM:  
SONIA R. CARVALHO, City Attorney



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

Dated: June 25, 2024

RECOMMENDED FOR APPROVAL:



\_\_\_\_\_  
Michael L. Garcia  
Executive Director  
Community Development Agency

Dated: July 9, 2024

**EXHIBITS**

Exhibit A – Legal Description

Exhibit B – Project Description, Scope of Work, and Schedule of Performance

Exhibit C – Project Budget

Exhibit D – Regulatory Agreement

**EXHIBIT A**

**LEGAL DESCRIPTION**

Real property in the City of Santa Ana, County of Orange, State of California, described as follows:

LOT 4 IN BLOCK A OF TRACT NO. 451, IN THE CITY OF SANTA ANA, AS PER MAP RECORDED IN BOOK 16, PAGE 41 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

EXCEPTING THEREFROM THE WEST 7 FEET AND THE EAST 3 FEET.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF SANTA ANA AS DESCRIBED IN DOCUMENT RECORDED FEBRUARY 25, 1983 AS INSTRUMENT NO. 83-84912 OF OFFICIAL RECORDS.

APN: 405-101-37

## EXHIBIT B



## Project Description

1921 West Washington Avenue  
Santa Ana, CA

### Overview

The proposed project will be developed at the vacant lot located at 1921 West Washington Avenue, Santa Ana, CA, and includes the construction of three new duplex buildings that accommodate six 100-percent affordable, for-sale residential units.

### Floor Plan and Unit Amenities

The front two duplex buildings (Units 1- 4, closest to Washington Avenue) are designed with a similar floor plan, and each contain the same square footage of approximately 1,859-square-feet (net floor area) for each unit.

The rear duplex building (Units 5 & 6) will consist of 3,446 square-feet of floor area. In total, all new floor area onsite will be 10,882 square-feet. Units 1-4 each will consist of three bedrooms, two and a half restrooms, a kitchen, living room, and in-unit laundry facilities. Unit 5 will consist of 1,165 square-feet with three bedrooms, two restrooms, a living room, a dining room, a kitchen, and a balcony. Unit 6 will consist of one 1,168-square-foot ADA compliant unit with three bedrooms, two restrooms, a dining room, living room, kitchen, and in-unit laundry facilities.

### Design Description

The project architecture features a traditional farmhouse style. The overall design, massing, features, and materials of the new construction will be compatible with and complement the variation of styles within the neighborhood. The farmhouse architectural style would include exterior horizontal and vertical board siding, exterior wood finishes, vinyl frame hung windows, wood eave brackets, wood trellises, decorative light fixtures, an enhanced frontage-facing porch area for Unit 1 and porticos for the remaining units.

Moreover, the structure is designed to fully screen all mechanical equipment with the inclusion of walls or enhanced landscaping screens. Overall, the project will include a design and quality construction materials that will ensure that the project ages well for the duration of the building's lifetime.

### Landscaping

The landscaping concept consists of drought-tolerant and native plants where feasible that complements the Project's architecture and is consistent with the overall landscaping of the surrounding neighborhood.

### Parking

Onsite there will be a total of 15 parking stalls, which consist of two garage stalls per unit (tandem spaces for Unit 5) and three guest surface spaces (one ADA compliant space).

### Homeowners Association (HOA)

The maintenance of Habitat developments is handled by a Homeowners Association (HOA) that is formed and incorporated by Habitat during the construction phase of the development. The HOA will maintain the property in a safe, decent, and sanitary manner and ensure the projects are maintained in accordance with all permits, building codes and other requirements imposed by a Governmental Authority.

## EXHIBIT B



## Scope of Work

1921 West Washington Avenue  
Santa Ana, CA

The scope of work for this Project shall include the processing of permits, all necessary site work for the construction of three duplex buildings and construction completion, performing maintenance obligations through the term up to the date that is forty-five (45) years after the City issues the last certificate of occupancy for the Affordable Units in this project.

**Compliance with All Entitlements and Approvals for the Project**

The Project will be developed in adherence to the entitlements approved by the City and in conformance to the terms in the Regulatory Agreement and the Conditional Grant Agreement during construction, home sales, and enforcement required during the duration of the affordability restrictions through the term up to the date that is forty-five (45) years after the City issues the last certificate of occupancy for the Affordable Units in this project

**Performing Maintenance Obligations**

The maintenance of Habitat developments is handled by a Homeowners Association (HOA) that is formed and incorporated by Habitat during the construction phase of the development. During this time, a property manager is hired, so the HOA gets off to a strong start.

Habitat OC reviews the details of the development with the budget preparer with a preference to include maintenance details including costs of maintenance, repair, and improvements in HOA responsibility, rather than that of the homeowner, to ensure completion on a regular schedule. The HOA's responsibility covers the common area including improvements and landscaping in a manner consistent with community standards and in accordance with the Santa Ana Municipal Code.

The HOA will maintain the property in a safe, decent, and sanitary manner and ensure the projects are maintained in accordance with all permits, building codes and other requirements imposed by a Governmental Authority. In addition, all exterior, painted surfaces of any structures located on the Property will be maintained at all times in a clean and good condition.

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 Tenants / Homebuyer of the Affordable Unit which will be inspected, or (ii) at least 48 hours' notice to Developer.

**Operational Requirements Related to Sale of the Affordable Units**

**Affordability:** The Developer will conduct marketing and outreach to reach low-income households (households whose income does not exceed eighty (80%) of the area median income for the Orange County, California PMSA).

**Homebuyer Local Preference and Priority:**

Subject to applicable laws and regulations governing nondiscrimination and preferences in housing occupancy required by the State of California, the Developer shall give a local preference in selecting Homebuyers of the Affordable Units. The Developer will adhere to the City's requirement to provide first priority to persons who have been permanently displaced or who face permanent displacement from housing in the City as a result of any of the following: (i) for projects funded by the Low-Moderate Income

**EXHIBIT B**

Housing Asset Fund, a redevelopment project undertaken pursuant to California's Community Redevelopment Law (Health & Safety Code Sections 33000, et seq.); (ii) Ellis Act, owner-occupancy, or removal permit eviction; (iii) earthquake, fire, flood, or other natural disaster; (iv) cancellation of a Housing Choice Voucher HAP Contract by property owner; or (v) governmental action, such as Code Enforcement.

Second, the Developer will provide priority to persons who are either: (i) residents of Santa Ana, (ii) individuals working in the City at least thirty two (32) hours per week for at least six (6) months prior to the occupancy, (iii) persons who seek to reside in the City as an accommodation to a mental or physical disability, or (iv) households with students who attend public school in the City.

Homebuyer Selection: Developer shall select Homebuyers in accordance with their Homebuyer Selection Process set forth in the City's Administrative Procedures Manual referenced in the Regulatory agreement.

Income Verification and Certification: Developer shall verify income of prospective Homebuyers and certify the verification to the City in compliance with the procedures set forth in the Administrative Procedures Manual.

## EXHIBIT B



## Schedule of Performance

1921 West Washington Avenue  
Santa Ana, CA

CONSTRUCTION ACTIVITY	DURATION	START	FINISH
1921 West Washington Ave	473 days	Fri 9/1/23	Mon 6/23/25
Pre-Development Review	247 days	Fri 9/1/23	Fri 8/9/24
Site Permits	155 days	Wed 2/14/24	Mon 9/16/24
Building Permit	185 days	Fri 2/2/24	Wed 10/16/24
Grading	22 days	Tue 9/17/24	Wed 10/16/24
Wet Utilities	15 days	Thu 10/17/24	Wed 11/6/24
Dry Utilities	254 days	Thu 6/13/24	Mon 6/2/25
Foundation	26 days	Thu 11/7/24	Thu 12/12/24
Framing	25 days	Fri 12/13/24	Thu 1/16/25
Dry In	68 days	Tue 1/14/25	Thu 4/17/25
Exterior Finishes	14 days	Wed 1/22/25	Mon 2/10/25
Utility Rough-Ins and Complete Concrete	23 days	Thu 1/16/25	Mon 2/17/25
Interior Finishes	108 days	Tue 1/14/25	Thu 6/12/25
Landscaping and Grounds Work	26 days	Mon 4/28/25	Mon 6/2/25
Final Acceptance	15 days	Tue 6/3/25	Mon 6/23/25

Total estimate timeline from City Processing / Permits to House Construction Completion is estimated to be 16 months.

HOME SALE ACTIVITY	START	FINISH
Outreach and Program Orientations	07/01/24	09/30/24
Initial Needs Assessment, Eligibility Evaluation and Homebuyer Selection	08/01/24	10/31/24
Board Approval of Selected Homebuyer	11/01/24	11/30/24
City Approval of Selected Homebuyer	11/01/24	11/30/24
Homebuyer Pre-Qualification	12/01/24	12/31/24
Homebuyer Onboarding and Sweat Equity Hours	12/01/24	06/15/25
Sales Purchase Agreement Executed and Escrow Opened	04/01/25	06/27/25
Homebuyer Loan Approval	04/01/25	04/30/25
Home Sales Complete	06/25/25	06/27/25
Dedication Day & Homebuyer Receives Keys	06/28/25	06/28/25



## EXHIBIT C



Project: 1921 West Washington Avenue  
 Units 6 Low Income  
 Average SF: 1,430  
 Average Sales Price: \$225,400 \*

## PROJECT COSTS

LAND COSTS:	Total	Per Unit
Land Cost	580,000	96,667
Site Improvements	737,000	122,833
Impact Fees	50,000	8,333
Finished Land Costs	1,367,000	227,833
HOUSE COSTS:		
Directs	1,287,000	214,500
Indirects	680,000	113,333
Plan Check/Permit Fees	22,000	3,667
Property Taxes	21,000	3,500
Insurance	78,000	13,000
Bonds	55,000	9,167
Finance	113,000	18,833
Marketing/Broker Coop	67,620	11,270
Overhead/Management	280,000	46,667
Warranty	43,000	7,167
Total Housing Costs	2,646,620	441,103
Project Contingency	477,762	79,627
Total Costs	4,491,382	748,564

## ESTIMATED PROJECT REVENUE

	Total	Per Unit
Unit Sales	1,352,400	225,400
City Subsidy	2,200,000	366,667
Habitat Fundraising	938,982	156,497
	4,491,382	748,564

## SOURCES

	Total	Per Unit
City Subsidy	2,200,000	366,667
Construction Loan	2,252,000	375,333
Habitat Fundraising	39,382	6,564
	4,491,382	748,564

## USES

	Total	Per Unit
Land Costs	1,367,000	227,833
House Costs	2,646,620	441,103
Contingency	477,762	79,627
	4,491,382	748,564

\* Sales price based on quarterly affordable sales price calculations for 2nd Quarter 2024 prepared by Keyser Marsont Associate, Inc.

## EXHIBIT D

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

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

*Free Recording pursuant to  
 Government Code 27383*

**REGULATORY AGREEMENT  
 IMPOSING AFFORDABLE HOUSING COVENANTS AND RESTRICTIONS  
 (DENSITY BONUS)**

**(1921 W. Washington, Santa Ana, California; APN: 405-101-37)**

This REGULATORY AGREEMENT IMPOSING AFFORDABLE HOUSING COVENANTS AND RESTRICTIONS (DENSITY BONUS) (“Regulatory Agreement”), made and entered into this \_ day of \_\_\_\_\_, 2024 (“Effective Date”), by and between the City of Santa Ana, a charter city and municipal corporation of the State of California (“City”), and Habitat for Humanity of Orange County, a California nonprofit religious corporation (“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 1921 W. Washington Avenue, Santa Ana, California, (APN 405-101-37), with the legal description set forth in Exhibit A attached hereto and incorporated herein by this reference (“Property”).
- B. City and Developer have entered into a Conditional Grant Agreement, pursuant to which, City agreed to provide a grant (the “Inclusionary Grant”) in an amount up to Two Million Two Hundred Thousand Dollars (\$2,200,000) to Developer for a residential homeownership project that involves construction of six (6) affordable housing units restricted for sale to low income households, which will be provided within three (3) duplex buildings, and include related amenities, including but not limited to: parking, landscaping, lighting, signage, and other amenities, and all other on-site and off-site improvements required for operation of the Property (the “Project”).
- C. As a condition of receiving the Inclusionary Grant, Developer agrees that this Regulatory Agreement shall be recorded against the Property prior to disbursement

## EXHIBIT D

of any portion of the Inclusionary Grant and that the Property and the Project shall be subject to the covenants and restrictions set forth herein.

- D. In addition, in connection with the Project, Developer seeks a density bonus under California Government Code § 65915, *et seq.* (“State Density Bonus Law”) and Santa Ana Municipal Code sections 41-1600, *et seq.* (“City Density Bonus Ordinance”). Based on the Property size of 0.37 acres, and the City’s allowable density for the Property of seven (7) dwelling units per acre, without the density bonus, the existing density for the Property would allow only two (2) dwelling units on the Property (rounded down from 2.59). Thus, the City also enters into this Agreement to fulfill requirements of the State Density Bonus Law and City Density Bonus Ordinance.
- E. In light of the purpose of the State Density Bonus Law and City Density Bonus Ordinance, City has determined to approve Developer’s application for four (4) concessions/incentives and one (1) waiver.
- F. Based upon the foregoing, on the terms and conditions set forth below, this Agreement, and the exhibits attached hereto and incorporated herein by reference, are intended to (1) implement and fulfill obligations set forth in the Conditional Grant Agreement, and (2) implement 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 **"Adjusted for family size appropriate to the unit"** shall have the meaning set forth by California Health and Safety Code Section 50052.5(h).

1.1.2 **“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.

1.1.3 **"Affordable Housing Cost"** means the total housing costs paid by a qualifying Low Income Household in accordance with California Health and Safety Code Section 50052.5.

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

## EXHIBIT D

local preference for families who live or work in the City of Santa Ana at an Affordable Sales Price as set forth in Section 4.6.3, in accordance with Homebuyer Loan Agreement.

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

1.1.6 **“Affordable Unit(s)”** means the six (6) individual dwelling units, which shall be constructed within three (3) duplex buildings, and each restricted for occupancy to Low Income Households.

1.1.7 **“Area Median Income”** or **“AMI”** shall mean the area median income published by HCD in accordance with California Health and Safety Code § 50093.

1.1.8 **“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.

1.1.9 **“Certificate of Occupancy”** shall mean a certificate of occupancy issued by the City after completion of construction and a dwelling unit has been certified by the City as available for occupancy.

1.1.10 **“City”** means the City of Santa Ana, California

1.1.11 **“City Council”** means the City Council of the City of Santa Ana.

1.1.12 **“City Attorney”** means the City Attorney for the City of Santa Ana.

1.1.13 **“City Manager”** means the City Manager for the City of Santa Ana.

1.1.14 **“City's Planning Commission”** means the Planning Commission for the City of Santa Ana.

1.1.15 **“City Deed of Trust”** means a deed of trust, in the form attached hereto as Exhibit C, executed by Homebuyer in favor of the City that secures the performance of the Affordable Housing Resale Restrictions, the City and Homebuyer Loan Agreement, and the City Promissory Note, and which is recorded against each Affordable Unit as required under this Agreement.

1.1.16 **“City Promissory Note”** shall mean a promissory note, in the form attached hereto as Exhibit D, executed by Homebuyer evidencing an agreement to pay to City the amount owed pursuant to the City and Homebuyer Loan Agreement.

1.1.17 **“Density Bonus Application”** shall mean the Density Bonus Application No. [REDACTED] for the Project.

## EXHIBIT D

1.1.18 **"Developer"** means Habitat for Humanity of Orange County, a California nonprofit religious corporation, and its permitted successors and assigns to all or any part of the Property, Project or this Agreement.

1.1.19 **"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 4.1 herein.

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

1.1.21 **"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

## EXHIBIT D

(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;

## EXHIBIT D

(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.

(2) 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).

1.1.22 **“HCD”** means the California Department of Housing and Community Development.

1.1.23 **“Homebuyer”** means an Eligible Household that has an executed agreement to purchase an Affordable Unit.

1.1.24 **“Homebuyer Loan Agreement”** means the loan agreement entered into between Homebuyer and City prior to transfer of an Affordable Unit, as referenced in Section 3.5 and 4.6 of this Agreement.

1.1.25 **“Household”** 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). The maximum number of occupants is eight (8). 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.

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1.1.27 **"Low Income Household"** means a Household whose income does not exceed eighty percent (80%) of the area median income for the Orange County, California PMSA, adjusted for actual household size, as published by HCD, and in accordance with the definition of "low-income household" set forth in SAMC § 41-1901 and California Health and Safety Code § 50079.5.

1.1.28 **"Notice of Affordability Restrictions"** means the notice of affordability restrictions to prospective buyers, which shall have a term of at least forty-five (45) years, in the form attached hereto as Exhibit E.

1.1.29 **"Program Director"** has the day-to-day authority for making determinations related to the Administrative Procedures Manual. The Program Director will be appointed by the Executive Director for the City's Community Development Agency.

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

1.1.31 **"Property"** means that certain real property more particularly described in the legal description in Exhibit A and improvements thereon, including each Affordable Unit.

1.1.32 **"Regulatory Agreement"** means this Affordable Housing Agreement and Declaration of Covenants and Restrictions.

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

1.1.34 **"Supportable Mortgage"** means the mortgage amount that can be supported by a 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 Low Income Household consistent with the requirements of this Agreement and State Density Bonus Law.

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

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
- 1.2.3 **Exhibit C:** City Deed of Trust
- 1.2.4 **Exhibit D:** City Promissory Note
- 1.2.5 **Exhibit E:** Notice of Affordability Restrictions
- 1.2.6 **Exhibit F:** Income Verification Form
- 1.2.7 **Exhibit G:** Certification of Continued Occupancy



## EXHIBIT D

2. DEVELOPMENT OF THE PROPERTY

2.1 Project. Developer shall develop, operate, and maintain, or cause the development, operation and maintenance of, the Property, to provide the Affordable Units required by this Agreement.

2.2 Density Bonus. Developer understands and agrees that, for purposes of calculating the density bonus in accordance with the State Density Bonus Law, the base density for the Property is three (3) dwelling units (fractional units are rounded up) and therefore the Project will receive a density bonus to develop a total of six (6) dwelling units that will be restricted as Affordable Units under this Agreement. Developer shall not construct or develop, or otherwise claim a right to construct or develop any additional dwelling units on the Property. Developer agrees that the Project is eligible for a density bonus based upon compliance with the requirement to develop the Project as a common interest development, in accordance with California Government Code § 65915(i).

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(s):

(a) The setback at the north end of the parcel shall be reduced from ten feet (10') to six feet (6'), and the setback at the west side of the parcel shall be reduced to seven feet (7') (provided that the Project provides a minimum of 1,200 square feet of open space per unit).

(b) The building separation shall be reduced from fifteen feet (15') to nine to ten feet (9-10').

(c) The open space requirement for a private balcony for unit five, as identified on the Project entitlements, shall be reduced from one hundred (100) square feet to ninety one (91) square feet, provided that the unit is also provided with four hundred twelve (412) square feet of private yard space.

(d) The private yard fencing encroachment into the front-yard area for unit one, as identified on the Project entitlements, shall be allowed to exceed the height restriction of three feet (3') but shall not exceed six feet (6'), as necessary to allow for the screening of the air conditioner.

2.3.2 Waivers. In accordance with Government Code Section 65915(e)(1), Developer is granted the following waiver(s): The drive aisle area by the trash enclosures shall be reduced by eight inches (8") to a total of eighteen feet ten inches (18'10") to accommodate PWA trash pickup requirements.

2.4 Parking Requirements. Onsite parking shall be provided in compliance with Government Code Sections 65915 (p)(1)(A) and 65915 (p)(1)(B). All units will have a private

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two-car garage with direct access to each unit (residents shall be required to park vehicles in the garages and not use garages only for storage). The Project must also provide short-term overflow/guest parking spots as follows: two (2) standard parking spots and one (1) accessible parking spot.

2.5 No Further Concessions, Incentives, or Waivers. Developer acknowledges and agrees that the concessions, incentives, and waivers set forth in section 2.3, and the parking requirements set forth in section 2.4, above fully satisfies any duty City may have under the City Density Bonus Ordinance, 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 Ordinance and the Density Bonus Law applicable to the Project.

2.6 Affordable Units. The Project, for purposes of this Agreement, shall have no less than six (6) Affordable Units, restricted for homeownership opportunities to Low Income Households, pursuant to the terms and conditions of this Agreement. Each Affordable Unit shall be consistent with all City approvals, and meet the following requirements:

2.6.1 Each unit shall have three (3) bedrooms and a minimum of two (2) bathrooms;

2.6.2 Each unit shall have a private two-car garage with direct access to the interior living space;

2.6.3 The interior living space of each unit shall range from a minimum of 1,100 square feet to 1,430 square feet;

2.6.4 Each unit shall have a private yard; and,

2.6.5 One unit shall be constructed as an accessible unit with mobility and communication features in compliance with the California Building Code.

2.7 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. 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.

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2.8 Common Interest Development. The Project shall be operated as a “common interest development” as defined in California Civil Code § 4100 and operated in accordance with all state laws regarding common interest developments.

2.9 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 4.1 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.

3. AFFORDABILITY

3.1 Total Affordability Term. Each Affordable Unit shall be restricted for sale to an Eligible Household for a total period of no less than forty-five (45) years ("Total Affordability Term"). The Total Affordability Term for an Affordable Unit shall commence on the date that the Affordable Unit receives all required occupancy permits from the City and a Certificate of Occupancy.

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 Affordability Covenants and Restrictions.

3.3.1 Affordable Homeownership. Developer covenants that, during the Total Affordability Term, each Affordable Unit shall be sold to, or held vacant for sale to, an Eligible Household for an Affordable Sales Price.

3.3.2 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

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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. For the initial sale of an Affordable Unit from Developer to a Homebuyer, Developer shall also provide a proposed equity share promissory note and a deed of trust.

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

3.5.1 City and Homebuyer shall enter into the Homebuyer Loan Agreement, which memorializes a loan from the City to Homebuyer in the amount equal to the difference between (a) the Affordable Sales Price for the Affordable Unit and (b) the fair market value of the Affordable Unit without any restrictions on affordability or resale price as set forth herein, which amount shall be the amount of the City Promissory Note. The Homebuyer Loan Agreement shall also set forth the terms of the Affordable Housing Resale Restrictions, the City Deed of Trust, and the Notice of Affordability Restrictions (collectively, the "City Loan Documents"). The Parties agree and understand that the Homebuyer Loan Agreement does not require the payment of funds from City to Homebuyer, but rather evidences a promise to pay the amount of the City Promissory Note in the event of a breach of the obligations, covenants, and restrictions set forth in the City Loan Documents.

3.5.2 Each Homebuyer shall execute the Affordable Housing Resale Restrictions, the City Deed of Trust, and the Notice of Affordability Restrictions, each of which shall be recorded against the Affordable Unit.

3.5.3 Each Homebuyer of an Affordable Unit shall execute the City Promissory Note, which shall be secured by the City Deed of Trust.

3.6 Equity Sharing Agreement. The Affordable Housing Resale Restrictions for each initial sale from Developer to a Homebuyer shall include an equity sharing agreement in accordance with California Government Code § 65915(c)(2)(A). The City and Developer agree that Developer shall recapture the equity share pursuant to Government Code § 65915(c)(2)(C). the amount of the equity share shall be determined in accordance with this Section 3.6, and shall be evidenced by a promissory note secured by a deed of trust in favor of Developer.

3.6.1 Except in the event of a conflict with requirements of another public funding source, the following provisions of the equity sharing agreement shall be enforced when the initial Homebuyer sells an Affordable Unit:

(i) The Homebuyer selling the Affordable Unit shall retain the value of any improvements and the down payment that were paid for by the seller, and the seller's proportionate share of appreciation.

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(ii) Developer shall recapture its “initial subsidy,” in accordance with Government Code Section 65915(c)(2)(C)(v), in an amount equal to the fair market value of the Affordable Unit at the time of the initial sale from Developer to the Homebuyer, minus the Affordable Sales Price, plus any down payment assistance or mortgage assistance.

(iii) Developer shall recapture its “proportionate share of appreciation,” in accordance with Government Code Section 65915(c)(2)(C)(v), in an amount equal to: (A) the ratio of the City’s initial subsidy to the fair market value of the home at the time of the initial sale multiplied by (B) the fair market value of the Affordable Unit at the time of the sale from the Homebuyer to a new Eligible Household.

(iv) The proceeds of the sale of an Affordable Unit from a Homebuyer to a new Eligible Household shall be disbursed in the following priority: first, to satisfy a first deed of trust 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; second, to the Developer for the equity share determined in accordance with this Section 3.6.1; and, third, the remainder to the selling Homebuyer.

(v) Developer shall use one hundred percent (100%) of the proceeds to promote homeownership for lower income households as defined by Section 50079.5 of the Health and Safety Code within the jurisdiction of the City. By way of example, and without approval from the City or limiting any the eligible uses, these uses may include: financing a silent second for a homeownership program, neighborhood improvements and revitalization; outreach and qualification of new homebuyers; financial education and counseling; advocacy and policy work; and, homeowner support networks. Developer is solely responsible for determining compliance with requirements of state law for using proceeds referenced herein.

3.6.2 To determine the fair market value of the Affordable Unit for purposes of this Section 3.6, Developer shall require an appraisal by a qualified appraisal at the time of the initial sale to an Eligible Household and for the initial re-sale by a Homebuyer. If a Homebuyer disputes the appraised value, the Homebuyer 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. OPERATION OF THE PROJECT BY DEVELOPER

##### 4.1 Recording of Documents.

4.1.1 Prior to issuance of a building permit 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. 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 each Affordable Unit for the Total Affordability Term. It is the express intent and agreement between the Parties that this Agreement

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shall remain binding and enforceable against the Property, the Project, and the Affordable Units to ensure compliance with the Conditional Grant Agreement, the State Density Bonus Law and City Density Bonus Ordinance, and to ensure the continued supply of Affordable Units in the Project, except as expressly set forth in this Agreement.

4.1.2 Prior to the sale of an individual Affordable Unit to a Homebuyer, Developer shall cause each Eligible Household purchasing an Affordable Unit to sign the Affordable Housing Resale Restrictions and, as required by Section 3, the City Deed of Trust, as approved by the City pursuant to Section 4.5, below, and Developer shall record them or cause them to be recorded in the Official Records for Orange County, California.

4.2 Occupancy Levels. Subject to state or federal laws and regulations, the number of persons permitted to occupy each three-bedroom Affordable Unit shall not exceed eight (8) occupants.

4.3 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.

4.4 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 Tenants / Homebuyer of the Affordable Unit which will be inspected, or (ii) at least 48 hours' notice to Developer, which shall promptly give notice to Tenants / Owners of the Affordable Unit to be inspected.

4.5 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 City Loan Documents for each Affordable Unit to Eligible Households required by Section 3.5 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 Homebuyer Loan Agreement, the Affordable Housing Resale Restrictions, the City Promissory Note, the City Deed of Trust, the Notice of Affordability Restrictions, and the approved financing for the Homebuyer.

4.6 Selection of Homebuyers.

4.6.1 The Developer shall, at its sole cost and expense, conduct all procedures and comply with all requirements as set forth in this Agreement and the Administrative Procedures Manual in selecting Eligible Homebuyers for each Affordable Unit. Specific procedures are set forth in Attachment C in the Administrative Procedures Manual.

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4.6.2 Developer shall be responsible for the selection of Eligible Homebuyers for the Affordable Units in compliance with lawful and reasonable criteria and the requirements of this Agreement. Prior to marketing any Affordable Units, Developer shall submit to the City for review and approval a proposed form purchase and sale agreement (“Form PSA”) to be used for transferring the Affordable Units to Homebuyers. The Form PSA must contain all disclosures required by the Administrative Procedures Manual, and copy of the Affordable Housing Resale Restrictions, the City Promissory Note and the City Deed of Trust.

4.6.3 Subject to applicable laws and regulations governing nondiscrimination and preferences in housing occupancy required by the State of California, the Developer shall give a local preference in selecting Homebuyers of the Affordable Units in the following order of priority:

(a) First priority shall be given to persons who have been permanently displaced or who face permanent displacement from housing in the City as a result of any of the following: (i) for projects funded by the Low-Moderate Income Housing Asset Fund, a redevelopment project undertaken pursuant to California’s Community Redevelopment Law (Health & Safety Code Sections 33000, et seq.); (ii) Ellis Act, owner-occupancy, or removal permit eviction; (iii) earthquake, fire, flood, or other natural disaster; (iv) cancellation of a Housing Choice Voucher HAP Contract by property owner; or (v) governmental action, such as Code Enforcement.

(b) Second priority shall be given to persons who are either: (i) residents of Santa Ana, (ii) individuals working in the City at least thirty two (32) hours per work for at least six (6) months prior to the occupancy, (iii) persons who seek to reside in the City as an accommodation to a mental or physical disability, or (iv) households with students who attend public school in the City.

4.6.4 The initial Homebuyer for each Affordable Unit shall have provided at least five hundred (500) hours of sweat equity pursuant to a written program implemented by Developer, with written documentation of the requisite number of hours.

4.6.5 Developer shall select Homebuyers in accordance with their Homebuyer Selection Process, which shall be provided to City upon request.

4.6.6 If a prospective Homebuyer qualifies as an Eligible Household, as defined herein, the Homebuyer shall be required to execute the Developer’s Form PSA for the purchase and sale of an Affordable Unit. The Developer shall seek and obtain all approvals required from the City pursuant to the Form PSA and the Administrative Procedures Manual, and shall provide the City with all documentation required pursuant to this Agreement and the Administrative Procedures Manual. The Developer must submit a copy of the executed Form PSA for the purchase and sale of the Affordable Unit. The Program Director shall have not less than thirty (30) days to review the agreement to verify the total purchase price and the Homebuyer down payment amount to determine whether the terms are consistent with the requirements of this Agreement. The City has approval rights over any material amendments to the Form PSA made after it has been reviewed and approved by the Program Director.

### 4.7 Income Verification and Certification.

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4.7.1 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 the executed Form PSA for a prospective Homebuyer to the City, Developer shall provide City with the Income Verification Form set forth in **Exhibit F**.

#### 4.8 RESERVED

4.9 Notice of Affordability Restrictions on Transfer of Property. For each sale of an Affordable Unit, Developer and the proposed buyer shall execute and deposit into escrow, a Notice of Affordability Restrictions, in a form substantially similar to Exhibit E, which is attached hereto and must be executed by the parties prior to any transfer of the Property.

4.10 Property Management Plan. Prior to issuance of a Certificate of Completion, Developer shall submit, for the reasonable approval of the City, a "Management Plan" that sets forth in detail Developer's property management duties to operate the Project in accordance with this Agreement, including but not limited to the rules and regulations for the Property and manner of enforcement, an operating budget, the identity and emergency contact information of the professional property manager who will provide property management services for the Property, and other matters relevant to the management of the Property. The Management Plan may include, or be submitted in coordination with, the Emergency Evacuation Plan required under Section 4.11, the Crime Free Housing Plan required by Section 4.12, the Onsite Parking Management Plan required by Section 4.13, and the Marketing and Resident Selection Plan required by Section 4.14.

4.11 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

4.12 Crime Free Housing. Developer shall submit a crime-free housing policy, procedure, and design plan (the "CFH Plan"), which includes the following provisions:

- (a) Require parking areas to contain security cameras;



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(b) Require routine unit inspections; and

(c) Have policies in place to ensure that common use areas such as trash enclosures are maintained in good condition and repair (e.g., well-lit, kept clean, etc.).

Developer shall submit and obtain approval from the City's Planning and Building Agency ("PBA") that the CFH Plan meets the requirements of this Subsection 4.12 prior to issuance of the Certificate of Occupancy. The approved CFH Plan shall be implemented and administered by Developer or its designated property manager, subject to all legal requirements, prohibitions against discrimination or unlawful housing practices.

4.13 Onsite Parking Management Plan. Developer shall provide onsite parking for residents and visitors of the Project and actively monitor the parking demand of the Project site. Developer shall continually monitor and take the following measures to manage the parking demand of the Project site to mitigate the use of offsite parking spaces on private or public properties and/or right-of-way.

(a) Require onsite parking permits (such as stickers or hang-tags) for any parking in the short-term overflow/guest parking spots;

(b) Policies for maximum time vehicles may be parked in the short-term overflow/guest parking spots; and

(c) Policies for towing unauthorized vehicles, vehicles parked in unauthorized locations (such as fire lanes), vehicles parking in short-term overflow/guest parking spots without a sticker, hang-tag, or other identifiers, and vehicles parked longer than any maximum guest parking timeframes allowed.

Prior to issuance of the Certificate of Occupancy, Developer shall submit and obtain approval from the PBA a Parking Management Plan (the "PMP") including those measures above. The approved PMP shall be adhered to and be enforced by the Project at all times.

4.14 Marketing and Resident Selection Plan.

4.14.1 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.

4.14.2 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. The resident selection process shall contain the Local Preference set

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forth in Section 4.6.3. All requirements set forth herein shall be incorporated in the Marketing Program.

4.15 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.

5. TERM OF THIS AGREEMENT

5.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue until the date that is forty-five (45) years after the City issues the last certificate of occupancy for the building in which the Affordable Units are located.

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 Rights and Remedies Cumulative.

6.2.1 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. City's rights and remedies to enforce this Agreement include any and all civil, administrative, or criminal remedies as set forth in local, state, or federal law. 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.

6.2.2 The City's actions and remedies may include, but are not limited to, the following:

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(a) Actions for specific performance of this Agreement or to enjoin any actions by the Developer or any other person in violation of this Agreement, the Conditional Grant Agreement, or the requirements of the Administrative Procedures Manual;

(b) Actions to disapprove, revoke or suspend any permit, including a building permit, Certificate of Occupancy or other discretionary approval;

(c) Actions for civil damages, restitution, or other monetary relief;

(d) Injunctive relief and damages; or

(e) Civil citations with monetary penalties.

6.2.3 If the Developer sells any of the Affordable Units in violation of this Agreement, as restitution to the City, the Developer shall forfeit all monetary amounts obtained through the sale of the Affordable Units.

6.2.4 All such restitution shall be made to the City. Any funds received by the City under this provision of this Agreement shall be placed in the City's Inclusionary Housing Fund.

6.3 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 act or omission of Developer in carrying out its obligations under this Agreement, except to the extent caused by the 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 ("Permitted Transfer"). If Developer seeks to sell, transfer or assign the Property or Project, or any rights and obligations in this Agreement, in a manner that does not constitute a Permitted Transfer, 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, used, occupied, operated, sold, and approved subject to all obligations set forth or incorporated in this Agreement, all of which are for

## EXHIBIT D

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 Owner 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. Owner further understands and agrees that the Density Bonus permit approvals received for this Project have been made on the condition that Owner and all subsequent owners, or other successors and assigns of the Property and/or Project sell the Affordable Units in accordance with the terms, conditions, covenants, and restrictions of this Agreement for the Total Affordability Term.

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 matters set forth herein, 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

## EXHIBIT D

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, and signed on behalf of each party. 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:	Habitat for Humanity of Orange County 2200 S. Ritchey Street Santa Ana, CA 92705 Attn: Executive Director

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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 Employment. In performing its obligations under this Agreement, Developer shall not discriminate because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender

## EXHIBIT D

expression, age, sexual orientation, or veteran or military status, 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, 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 Public-Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Project is a public-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

## EXHIBIT D

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 public-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 Ordinance, and the terms and conditions of this Agreement. For the Total Affordability 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 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.

8.22.1 Furthermore, the City will require each Homebuyer purchasing an Affordable Unit to execute an Affordable Housing Resale Restrictions and Notice of Affordability on Transfer of Property. The Affordable Housing Resale Restrictions and Notice of Affordability on Transfer of Property shall have priority over any and all mortgages, deeds of trust, and other similar forms of secured financing recorded against the Property or any portion thereof.

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



## EXHIBIT D

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}*

**EXHIBIT D**

**IN WITNESS WHEREOF**, the parties hereto have caused this Affordable Housing Regulatory Agreement and Declaration of Covenants and Restrictions to be executed on the date set forth at the beginning of this Agreement.

**DEVELOPER**

HABITAT FOR HUMANITY OF ORANGE COUNTY  
a California nonprofit religious corporation.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT D

ATTEST:

CITY OF SANTA ANA

\_\_\_\_\_  
Jennifer L. Hall  
City Clerk

\_\_\_\_\_  
Alvaro Nuñez  
Acting City Manager

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM:  
SONIA R. CARVALHO, City Attorney

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

Dated: \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
Michael L. Garcia  
Executive Director  
Community Development Agency

Dated: \_\_\_\_\_

**EXHIBIT D**

**EXHIBITS**

- Exhibit A: Legal Description of the Property
- Exhibit B: Affordable Housing Resale Restrictions
- Exhibit C: City Deed of Trust
- Exhibit D: City Promissory Note
- Exhibit E: Notice of Affordability Restrictions
- Exhibit F: Income Verification Form
- Exhibit G: Certification of Continued Occupancy

EXHIBIT D

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

**EXHIBIT D**

**LEGAL DESCRIPTION**

Real property in the City of Santa Ana, County of Orange, State of California, described as follows:

LOT 4 IN BLOCK A OF TRACT NO. 451, IN THE CITY OF SANTA ANA, AS PER MAP RECORDED IN BOOK 16, PAGE 41 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

EXCEPTING THEREFROM THE WEST 7 FEET AND THE EAST 3 FEET.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF SANTA ANA AS DESCRIBED IN DOCUMENT RECORDED FEBRUARY 25, 1983 AS INSTRUMENT NO. 83-84912 OF OFFICIAL RECORDS.

APN: 405-101-37

EXHIBIT D

**EXHIBIT B**

AFFORDABLE HOUSING RESALE RESTRICTIONS

## EXHIBIT D

RECORDING REQUESTED BY, )  
 AND WHEN RECORDED MAIL TO: )  
 )  
 City of Santa Ana )  
 20 Civic Center Plaza (M-37) )  
 Santa Ana, California 92702 )  
 Attn: Housing Manager )

---

This document is exempt from payment of a recording fee pursuant to Government Code Sections 27383 and 6103.

**AFFORDABLE HOUSING RESALE RESTRICTION**  
**(Conditions, Covenants, and Restrictions Affecting Real Property and the Resale, Ownership, Occupancy, Maintenance, and Other Matters Related to Real Property)**

This **AFFORDABLE HOUSING RESALE RESTRICTION** (“Restriction”) is made as of \_\_\_\_\_, by \_\_\_\_\_ (“Homebuyer”) in favor of the **CITY OF SANTA ANA**, a charter city and municipal corporation (“City”).

**R E C I T A L S**

A. Homebuyer has purchased a single family house located at \_\_\_\_\_, Santa Ana, California 9270\_, as such real property is more particularly described in “Exhibit A” attached hereto and incorporated herein (“Property”).

B. Homebuyer and City have entered into that certain Homebuyer Loan Agreement (“Loan Agreement”) dated of even date herewith, which is incorporated herein by reference and a copy of which is on file with City at its offices and is a public record, pursuant to which City has agreed for the Property to be sold to Homebuyer at an Affordable Sales Price by providing certain financial assistance for the Project, which benefits the Homebuyer (“Homebuyer Loan”) and Homebuyer has agreed to subject the Property to certain conditions, covenants and restrictions. Capitalized terms used herein and not otherwise defined shall have the same meaning as set forth in the Loan Agreement.

C. Homebuyer and City desire and intend to restrict the Property and the improvements thereon in accordance with this Restriction to preserve its value for the benefit of Homebuyer, its successors and the surrounding neighborhood. Homebuyer agrees and acknowledges that these Restrictions are intended to implement and further the intent of the Regulatory Agreement Imposing Affordable Housing Covenants and Restrictions (Density Bonus) (hereafter, the “Regulatory 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. These Restrictions shall be construed in accordance with the Regulatory Agreement and, in the event of a conflict, the provisions of the Regulatory Agreement shall control.



## EXHIBIT D

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

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 Period"*** means that period of time commencing upon the Date of this Restriction and terminating on the forty-fifth (45th) anniversary of such date.

***"Affordable Housing Cost"*** means the purchase price for Moderate Income Households pursuant to California Health & Safety Code Section 50052.5, the implementing regulations of Sections 6920, 6924 and 6930 of Title 25 of the California Code of Regulations for Moderate Income Households

Notwithstanding the provisions of this Restriction, if the Property is sold during the Affordability Period by Homebuyer to a Low Income Household, and the Sales Price does not exceed an "Affordable Housing Cost" to such Buyer, then so long as the Maker is not in default (either Ownership Default or Maintenance Default) of the Agreement, the Note may be assumed by the eligible Buyer by an assignment and assumption agreement that is reasonably acceptable to City. Upon the effective date of such assignment and assumption, the assigning Homebuyer shall no longer be liable for any further obligations under the Loan Agreement or this Restriction that accrue after the date of such assignment and assumption. In order to verify the Buyer's status as a Low Income Household, Homebuyer shall submit to the City the identity of the proposed Buyer and adequate information evidencing the income and household size of the proposed Buyer. Said income information shall be submitted together with the notice of proposed sale pursuant to Section 2 of the Loan Agreement not less than thirty (30) days prior to opening of escrow for the proposed sale and shall include original or true copies of pay stubs, income tax records or other financial documents in order that the City may determine and verify the household income of the proposed Buyer to determine whether the Buyer is a Low Income Household, and whether the Property is being transferred to such Buyer at an Affordable Housing Cost. If the City is unable to verify the Buyer's income as provided herein prior to the proposed sale, then the Buyer's income shall be deemed to exceed the maximum allowable income limit for Eligible Persons and Families.

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

***"County"*** means the County of Orange, California.

***"Date of this Restriction"*** means the date in the first paragraph of this Restriction.

***"Default"*** means the failure of a party to perform any action or covenant required by this Restriction within the time periods provided herein following notice and opportunity to cure.

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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 Homebuyer Loan, 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 Restriction 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 Habitat for Humanity of Orange County, a non-profit public benefit corporation.

**“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 Restriction, and their successors and assigns.

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

**“Low Income”** and **“Low Income Households”** means low income households as defined in Health & Safety Code Section 50079.5.

**“Notice of Intent to Transfer”** means the Notice of Intent to Transfer attached hereto as Exhibit B and incorporated herein by reference.

**“Permitted Transfer”** means any Transfer which is permitted pursuant to Section 4 hereof.

**“Prohibited Transfer”** means any Transfer which is not permitted pursuant to Section 4 hereof.

**“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 Approval of Proposed Transferee”** means the Request for Approval of Proposed Transferee attached hereto as Exhibit B and incorporated herein.

## EXHIBIT D

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

***“Restriction”*** means this Affordable Housing Resale Restriction.

***“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 to a party who does not meet the definition of a Low or Moderate Income Household; (ii) 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. Transfer shall not include transfer to a spouse in a dissolution proceeding.

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

**2. Restrictions on Sale of Property.** Homebuyer covenants and agrees that during the Affordability Period, each subsequent resale of the Property by the then-owner thereof shall be to a Low Income Household at an Affordable Housing Cost.

**3. Homebuyer’s Representations and Warranties as to the Sale of the Property to Homebuyer.** 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 Restriction.

**4. Permitted Sales of the Property.** City hereby permits sales of the Property to proposed Transferees who are Low Income Households, and are approved in accordance with this Section 4, provided the Sales Price does not exceed an Affordable Housing Cost to such proposed Transferee (“Permitted Transfers”). In the event that Homebuyer desires to Transfer the Property during the Affordability Period, prior to the Transfer the owner shall notify City by delivering a Notice of Intent to Transfer to City, which shall indicate the identity of the proposed Transferee who desires to purchase the Property, whether the purchaser is a Low Income Household, and whether the sales price is at an Affordable Housing Cost. In addition to Homebuyer’s and the proposed Transferee’s delivery of the Notice of Intent to Transfer, the following procedure shall apply:

**a. Notice to City.** Homebuyer shall send the Notice of Intent to Transfer to City at the address set forth in Section 24.

**b. Qualification of Proposed Transferee.** 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 Low or Moderate Income Household, and the purchase price is at an Affordable Housing Cost.

## EXHIBIT D

**c. Certificates from Parties.** 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 Restriction 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 Period, 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 Restriction. This provision shall not prohibit the encumbering of title for the sole purpose of securing financing of the purchase price of the Property.

**e. Notice of Prohibited Transfer.** Within twenty (20) days after receiving notification of a proposed Transfer in accordance with Section 4a., City shall determine and give notice to Homebuyer as to whether the proposed Transfer is a Permitted Transfer or Prohibited Transfer, or whether the Transfer would cause an acceleration of the Note. In the event that the proposed Transfer is a Prohibited Transfer, such notice to Homebuyer shall specify the nature of the Prohibited Transfer. If the violation is not corrected to the satisfaction of City within ten (10) days after the date of the notice, or within such further time as City determines is necessary to correct the violation, City may declare a Default under this Restriction. Upon the declaration of a Default, City may apply to a court of competent jurisdiction for specific performance of this Restriction, for an injunction prohibiting a proposed sale or Transfer in violation of this Restriction, 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 certificates required by this Section 4 and any other documents City may request.

## EXHIBIT D

**5. Encumbrances.**

**a. Subordination.** Except as provided otherwise herein, the provisions of the Loan Agreement, this Restriction, the Notice of Affordability Restrictions and the City Deed of Trust and Rider, 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 Executive Director, 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. If title to the Property is transferred by foreclosure or acceptance of a deed in lieu of foreclosure, or assignment of the First Lien to the Secretary of the Department of Housing and Urban Development, the Loan Agreement, this Restriction, and City Deed of Trust shall be automatically terminated and shall have no further effect as to the Property or any Transferee thereafter. However, in no event shall the Loan Agreement, the City Deed of Trust, and this Affordable Housing Resale Restriction, be subordinate to any First Lien on the Property securing a loan with provisions which allow negative amortization, or to refinancing of the lien of the First Lien for a loan amount in excess of the sum of the then current loan balance secured by the First Lien and loan closing costs.

**b. 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 C and incorporated herein.

**c. 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.

**6. Reserved.**

**7. Uses.** Homebuyer covenants and agrees to devote, use and maintain the Property in accordance with this Restriction. All uses conducted on the Property, including, without limitation, all activities undertaken by Homebuyer pursuant to this Restriction, 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

## EXHIBIT D

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:

(a) In deeds: “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.”

(b) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: “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 leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(c) In contracts: “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 which are the subject of this Agreement, 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.”

## EXHIBIT D

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.

**a. 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.

**b. 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.

**c. 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.

**d. 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 Low Income 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.

## EXHIBIT D

**11. Effect of Violation of the Terms and Provisions of this Restriction.**

**a. In General.** The covenants established in this Restriction 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 Restriction 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 Restriction 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 Restriction and the covenants running with the land have been provided. This Restriction 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 Restriction and covenants may be entitled.

**b. Acceleration.** The whole of the Note Amount (as defined in Section 1.2.b. of the Loan Agreement) and all other payments due under the Homebuyer Loan shall become due and immediately payable to City by Homebuyer upon the occurrence of any one of the following events of acceleration:

(i) Homebuyer, in Homebuyer's sole discretion, elects to Transfer the Property for a price in excess of an Affordable Housing Cost, and Transfers the Property;

(ii) Homebuyer makes a Prohibited Transfer of title to or any interest in the Property in violation of this Restriction;

(iii) 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;

(iv) Homebuyer fails to occupy the Property as Homebuyer's principal residence pursuant to Section 7 of the Regulatory Agreement or is in Default of any other obligation under the Loan Agreement;

(v) Homebuyer has an Ownership Default violating any affordable housing terms or provisions of this Restriction.

**12. Hardship.** At the request of Homebuyer, and for a specific occasion, City may, in its sole and absolute discretion, in writing waive the requirements of Section 11, subparagraph (b) and defer repayment and/or extend the term of the Note. Any waiver or deferment shall be on a case-by-case basis, and no future rights for waiver or deferment shall arise or be implied. Notwithstanding the foregoing, Homebuyer may, upon written approval by City, refinance any First Lien with a fixed rate loan for a loan amount equal to or less than the then current loan balance secured by such First Lien with no reduction in term.

**13. Reserved.**



## EXHIBIT D

**14. 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 Restriction 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, Santa Ana Division.

**15. 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 Restriction. 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 Restriction.

**16. Insurance.** Homebuyer shall maintain, during the term of this Restriction, 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 Restriction, 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 24 hereof. The form, content and issuer of any certificate of insurance approved by City.

**17. Defaults.** Failure or delay by either party to perform any term or provision of this Restriction which is not cured within thirty (30) days after receipt of notice from the other party constitutes a default under this Restriction; 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.

**18. 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.

**19. Further Assurances.** Homebuyer shall execute any further documents consistent with the terms of this Restriction, including documents in recordable form, as City shall from

## EXHIBIT D

time to time find necessary or appropriate to effectuate its purposes in entering into this Restriction.

**20. Governing Law.** Homebuyer hereby agrees to comply with all ordinances, rules and regulations of City and the County. Nothing in this Restriction is intended to be, nor shall it be deemed to be, a waiver of any City ordinance, rule or regulation. This Restriction shall be governed by the laws of the State of California. Any legal action brought under this Restriction 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 of California, Santa Ana Division.

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

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

**23. Homebuyer Assignment Prohibited.** In no event shall Homebuyer assign or transfer any portion of this Restriction 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 a Low or Moderate Income 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 Restriction by execution of a written assignment document to be provided by City. This section shall not affect or diminish City's right to assign all or any portion of its rights hereunder.

**24. Notices.** Any notices, requests or approvals given under this Restriction 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:

Santa Ana, CA 92704

To City:

Housing City  
City of Santa Ana  
20 Civic Center Plaza (M-37)  
Santa Ana, California 92701  
Attn: Housing Manager

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

## EXHIBIT D

**25. Attorneys' Fees and Costs.** In the event that any action is instituted to enforce payment or performance under this Restriction, 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 Restriction.

**26. Entire Agreement.** This Restriction, together with the Loan Agreement and all attachments thereto and hereto, constitutes the entire understanding and agreement of the parties. This Restriction 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 Restriction.

[Signature block begins on follow page.]

EXHIBIT D

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

**HOMEBUYER:**

By: \_\_\_\_\_

By: \_\_\_\_\_

**CITY:**

**ATTEST:**

CITY OF SANTA ANA

\_\_\_\_\_  
By:  
City Clerk

\_\_\_\_\_  
By:  
City Manager

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM:  
City Attorney

\_\_\_\_\_  
By:

Dated: \_\_\_\_\_

**RECOMMENDED FOR APPROVAL:**

\_\_\_\_\_  
By:  
Executive Director  
Community Development Agency

**EXHIBIT D**

Exhibit A  
Legal Description

EXHIBIT D

EXHIBIT C

CITY DEED OF TRUST

## EXHIBIT D

## DEED OF TRUST WITH ASSIGNMENT OF RENTS

RECORDING REQUESTED BY, )  
 AND WHEN RECORDED MAIL TO: )  
 )  
 City of Santa Ana )  
 20 Civic Center Plaza (M-37) )  
 Santa Ana, California 92702 )  
 Attn: Housing Manager )

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This document is exempt from payment of a recording fee pursuant to Government Code Sections 27383 and 6103.

**DEED OF TRUST WITH ASSIGNMENT OF RENTS**  
 (SHORT FORM)

This **DEED OF TRUST** is made as of \_\_\_\_\_ between \_\_\_\_\_ herein called TRUSTOR, whose address is \_\_\_\_\_, \_\_\_\_\_, herein called TRUSTEE, and the **CITY OF SANTA ANA**, a charter city and municipal corporation, herein called BENEFICIARY.

**WITNESSETH:** That Trustor grants to Trustee in trust, with power of sale, that property in the City of Santa Ana, County of Orange, State of California, described as:

**SEE EXHIBIT 1 ATTACHED HERETO AND MADE A PART HEREOF.**

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) that Promissory Note dated concurrently herewith, made by Trustor in favor of Beneficiary, and extensions or renewals thereof, in the principal sum of \$\_\_\_\_\_, with the balance of the indebtedness, due and payable on occurrence of an event of acceleration as defined in the Promissory Note, (2) the performance of each agreement of Trustor incorporated by reference or contained herein, and (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Orange County August 17, 1964, and in all other counties August 18, 1964, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

## EXHIBIT D

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Los Angeles	T3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	S. Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	S. Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	S. Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	S. Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego	1964	149774			
						Series 5					

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor also agrees to all terms set forth in Exhibit 2, 3 and 4, attached hereto and incorporated herein by reference.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him/her at the address hereinbefore set forth.

TRUSTOR:

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**EXHIBIT D**

**EXHIBIT 1 TO DEED OF TRUST**

**LEGAL DESCRIPTION**

**Address:**

**EXHIBIT D****EXHIBIT 2 TO DEED OF TRUST**

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

**A.** To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; 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; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) to pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation thereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

## EXHIBIT D

(5) To Pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

**B.** It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name 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 attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues 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.

## EXHIBIT D

(6) That upon default Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said 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 fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

## EXHIBIT D

## EXHIBIT 3

## DO NOT RECORD

**REQUEST FOR FULL RECONVEYANCE  
TO \_\_\_\_\_, TRUSTEE**

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Please mail Deed of Trust,  
Note and Reconveyance to

\_\_\_\_\_

*Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.*

**DEED OF TRUST  
with power of sale**

\_\_\_\_\_  
TRUSTEE

## EXHIBIT D

## EXHIBIT 4

## RIDER TO DEED OF TRUST

This **RIDER TO DEED OF TRUST** is made and delivered pursuant to and in implementation of the Homebuyer Loan Agreement entered by and between the Trustor and the Beneficiary dated concurrently herewith (“Agreement”), a copy of which is on file as a public record with the Beneficiary at 20 Civic Center Plaza, Santa Ana, California 92701 and is incorporated herein by reference. Unless definitions of terms have been expressly set out at length herein, each term shall have the same definition as set forth in the Agreement. Trustor and Beneficiary further covenant and agree as follows:

**1. Acceleration of Payment.** The whole of the Note Amount and all other payments due hereunder and under the Agreement shall become due and be immediately payable to the Beneficiary by the Trustor upon the occurrence of any one of the following events of acceleration:

(a) the sale or transfer of the Property (or any part thereof) by any means, including, without limitation, the lease, exchange or other disposition of the Property or any interest therein, whether voluntary or involuntary, except (A) a sale of the Property to a qualified Low Income Household at an Affordable Housing Cost with the Beneficiary’s prior written approval accomplished in strict conformity with Section 4 of the Agreement, or (B) the transfer of the Property solely as a result of the marriage, divorce, incompetence or death of one or more individuals constituting the Trustor, so long as the transferee(s) give written notice supported by reasonable evidence of such event to the Beneficiary within thirty (30) days of its occurrence and the transferee(s) assume(s) the Trustor’s obligations under the Agreement, by execution of an assignment and assumption agreement to be provided by the Beneficiary, or (C) a sale or transfer which under federal law would not, by itself, permit the Beneficiary to exercise a due on sale or due on encumbrance clause;

(b) the Trustor refinances any purchase money lien or encumbrance to which the Authority 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; and/or

(c) the Trustor fails to own and occupy the Property as their principal residence pursuant to Section 7 of the Agreement or is in Ownership Default as defined in Section 18 of the Agreement.

At the request of the Trustor, and for a specific occasion, the Beneficiary may, in its sole and absolute discretion, in writing waive the requirements of these subparagraphs. Any waiver or deferment shall be on a case by case basis, and no future rights for waiver or deferment shall arise or be implied. Notwithstanding the foregoing, the Trustor may, upon prior written approval by the Beneficiary, refinance any First Lien for a loan amount equal to or less than the then current loan balance secured by such First Lien.

**2. Reserved.**

**EXHIBIT D**

**3. Sale to Low Income Household.** During the Affordability Period, the Note Amount will not become due and payable, if Trustor sells or otherwise conveys the Property to a Low Income Household at an Affordable Sales Price (an “Eligible Household”), and the purchaser assumes the Note and the Agreement by an assignment and assumption agreement which is reasonably acceptable to the Beneficiary.

For the purposes of this Authority Deed of Trust, the Note, and the Agreement, “Low Income” and “Low Income Households” means low income households as defined in Health & Safety Code Section 50079.5.

**3.1 Affordable Sales Price and Affordable Housing Cost – Low Income Household.**

“Affordable Housing Cost” shall be as defined in Health & Safety Code Section 50052.5 (or its successor statute) and the implementing regulations thereto promulgated by the Housing and Community Development Department of the State of California.

Notwithstanding the provisions of this Section 3, if the Property is sold during the Affordability Period by the Trustor to a Low Income Household and the Affordable Sales Price does not exceed an “Affordable Housing Cost” to such Buyer, then so long as the Trustor is not in default (either Ownership Default or Maintenance Default) of the Agreement, this Note may be assumed by the eligible Buyer by an assignment and assumption agreement which is reasonably acceptable to the Beneficiary. Upon the effective date of such assignment and assumption, the assigning Trustor shall no longer be liable for any further obligations under the Agreement, the Note or the City Deed of Trust that accrue after the date of such assignment and assumption. In order to verify the Buyer’s status as a Low Income Household, the Trustor shall submit to the Beneficiary the identity of the proposed Buyer and adequate information evidencing the income and household size of the proposed Buyer. Said income information shall be submitted together with the notice of proposed sale pursuant the Agreement not less than thirty (30) days prior to opening of escrow for the proposed sale and shall include original or true copies of pay stubs, income tax records or other financial documents in order that the Holder may determine and verify the household income of the proposed Buyer to determine whether the Buyer is a Low Income Household, and whether the Property is being transferred to such Buyer at an Affordable Housing Cost. If the Holder is unable to verify the Buyer’s income as provided herein prior to the proposed sale, then the Buyer’s income shall be deemed to exceed the maximum allowable income limit for Eligible Persons and Families.

**4. Subordination.** Except as provided otherwise herein, the provisions of the Agreement, the Notice of Affordability Restrictions, this Rider and Deed of Trust, and the Affordable Housing Resale Restriction, and the obligations therein, shall be subordinate only to the First Lien on the Property held by the Lender and, if applicable, other loan(s) as approved by the Executive Director, including lien instruments that secure other homebuyer purchase money and/or downpayment assistance, including without limitation City, State of California, or federal affordable housing programs, which liens shall not impair the rights of Lender, or Lender’s assignee or successor in interest or the City, if applicable, to exercise their remedies under the First Lien in the event of default under the First Lien by the Homebuyer. Such remedies under the First Lien include the right of foreclosure or acceptance of a deed or assignment in lieu of

**EXHIBIT D**

foreclosure. If title to the Property is transferred by foreclosure or acceptance of a deed in lieu of foreclosure, or assignment of the First Lien to the Secretary of the Department of Housing and Urban Development, this Agreement and the Authority Deed of Trust shall be automatically terminated and shall have no further effect as to the Property or any transferee thereafter. However, in no event shall this Agreement, the Deed of Trust, and the Affordable Housing Resale Restriction, be subordinate to any First Lien on the Property securing a loan with provisions which allow negative amortization, or to refinancing of the lien of the First Lien for a loan amount in excess of the sum of the then current loan balance secured by the First Lien and loan closing costs.

Trustor agrees it shall instruct the Escrow Agent for the acquisition of the Property by Trustor that the order of recording in the escrow for the purchase of the Property by Trustor shall occur as follows: (1) the Grant Deed, (2) the First Lien; (3) other affordable housing loan(s), if applicable; (4) the Affordable Housing Resale Restriction; (5) the Notice of Affordability Restrictions and (6) the Deed of Trust. City shall cause a Request for Notice of Default 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 the California Civil Code Section 2924b, and shall cause a request for Notice of Delinquency to be recorded on the Property subsequent to the recordation of the First Lien deed of trust or mortgage.

**IN WITNESS WHEREOF**, Trustor has executed this Rider to Deed of Trust as of the date set forth below.

**TRUSTOR/HOMEBUYER:**

By:\_\_\_\_\_

By:\_\_\_\_\_



EXHIBIT D

**EXHIBIT D**

CITY PROMISSORY NOTE

## EXHIBIT D

## PROMISSORY NOTE SECURED BY DEED OF TRUST

\$ \_\_\_\_\_

Santa Ana, California

Date: \_\_\_\_\_

Property Address: \_\_\_\_\_ Street, Santa Ana, CA 9270

**FOR VALUE RECEIVED**, the undersigned \_\_\_\_\_, (the “Maker” or “Homebuyer”) promises to pay to the **CITY OF SANTA ANA**, a public body, corporate and politic (the “Holder”) at 20 Civic Center Plaza, Santa Ana, California 92701, or at such other address as the Holder may direct from time to time in writing, the sums specified in the terms and provisions of this Promissory Note as the “Note Amount”.

**1. Loan Agreement.** This Promissory Note Secured by Deed of Trust (this “Note”) is made and delivered pursuant to and in implementation of the Homebuyer Loan Agreement entered into by and between the Holder and the Maker dated concurrently herewith (“Agreement”), a copy of which is on file as a public record with the Holder. The Agreement is incorporated herein by this reference. The Maker acknowledges that but for the execution of this Note, the Holder would not enter into the Agreement or make the loan contemplated therein. Unless definitions of terms have been expressly set out at length herein, each term shall have the same definition as set forth in the Agreement.

**2. Term.** The term of the Note shall be forty-five (45) years from the Homebuyer Loan Date (“Term”).

**3. Note Amount.** The sums due and payable pursuant to the terms and provisions of this Note consists of the Homebuyer Loan Amount (the “Note Amount”). Maker shall pay to the City the principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “Homebuyer Loan Amount”), with zero percent (0%) interest thereon. [The Homebuyer Loan Amount shall be determined as the difference between the Affordable Sales Price and the fair market value of the Property, as determined in accordance with the Homebuyer Loan Agreement and the Regulatory Agreement Imposing Affordable Housing Covenants and Restrictions (Density Bonus), which restricts the sale and resale of Affordable Units.]

**4. Homebuyer Loan Amount; Interest Deferred Until Acceleration.** The Homebuyer Assistance Loan Amount shall accrue zero percent (0%) interest unless and until an event of acceleration occurs as set forth in Section 6.

**5. Homebuyer Loan Amount; Time of Payment.** In the event that the Homebuyer Loan Amount does not become due and payable prior to the forty-fifth (45<sup>th</sup>) Anniversary (“Maturity Date”) as set forth below in Section 6, the full amount of the Promissory Note shall be considered mature and the obligation to pay shall be extinguished as of the Maturity Date.

**6. Acceleration.** The whole of the Note Amount and all other payments due hereunder and under the Agreement shall become due and be immediately payable to the Holder by the Maker upon the occurrence of any one of the following events of acceleration:

## EXHIBIT D

(a) the sale or transfer of the Property (or any part thereof) by any means, including, without limitation, the lease, exchange or other disposition of the Property or any interest therein, whether voluntary or involuntary, except (i) a sale of the Property to a qualified Low Income Household at an Affordable Housing Cost with the City's prior written approval accomplished in strict conformity with [Section 4] of the Agreement, or (ii) the transfer of the Property solely as a result of the marriage, divorce, incompetence or death of one or more individuals constituting the Homebuyer, so long as the transferee(s) give written notice supported by reasonable evidence of such event to the Authority within thirty (30) days of its occurrence and the transferee(s) assume(s) the Homebuyer's obligations under the Agreement, by execution of an assignment and assumption agreement to be provided by the Authority, or (iii) a sale or transfer which under federal law would not, by itself, permit the City to exercise a due on sale or due on encumbrance clause;

(b) the Maker refinances any purchase money lien or encumbrance to which the 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; and/or

(c) the Maker (and all co-signors and co-mortgagors, if any) fails to own and occupy the Property as their principal residence pursuant to [Section 7] of the Agreement or is in Ownership Default as defined in [Section 18] of the Agreement.

At the request of the Maker, and for a specific occasion, the Holder may, in its sole and absolute discretion, in writing waive the requirements of these subparagraphs and defer repayment and/or extend the term of this Note. Any waiver or deferment shall be on a case by case basis, and no future rights for waiver or deferment shall arise or be implied. Notwithstanding the foregoing, the Maker may, upon prior written approval by the Holder, refinance any First Lien for a loan amount equal to or less than the then current loan balance secured by such First Lien.

**7. Reserved.**

**8. Right of First Refusal.** Homebuyer shall notify the Holder of any desire to sell the Property immediately. Homebuyer shall also immediately notify Developer (Habitat for Humanity of Orange County) as required by the terms of the Agreement and documents executed between Homebuyer and Developer provide Developer an option and the right of first refusal to purchase the Property.

**9. Sale to Low Income Household at Affordable Housing Cost.** During the Affordability Period, the Note will not become due and payable in connection with such sale, if the Maker sells or otherwise conveys the Property to an Eligible Household, and the purchaser assumes this Note and the Agreement by an assignment and assumption agreement which is reasonably acceptable to the Holder.

**9.1 Affordable Housing Cost – Low Income Household.** The Maker has qualified as and each eligible and qualified successor-in-interest to the Maker shall be a Low Income Household. The term "Affordable Housing Cost" as used herein and for each Homebuyer (and

## EXHIBIT D

all successors thereto during the Affordability Period) shall be as defined in Health & Safety Code Section 50079.5 (or its successor statute) and the implementing regulations thereto promulgated by the Housing and Community Development Department of the State of California; provided, however, that the term Affordable Housing Cost shall include Monthly Housing Cost as defined in Section 6924 of Title 25 of the Regulations.

Notwithstanding the provisions of this Section 9.1, if the Property is sold during the Affordability Period by the Maker to an Eligible Household, and the Sales Price does not exceed an "Affordable Housing Cost" to such Buyer, then so long as the Maker is not in default (either Ownership Default and/or Maintenance Default) of the Agreement, this Note may be assumed by the Eligible Household by an assignment and assumption agreement which is reasonably acceptable to the Holder. Upon the effective date of such assignment and assumption, the assigning Maker shall no longer be liable for any further obligations under the Agreement or this Note that accrue after the date of such assignment and assumption. In order to verify the Buyer's status as a Low Income Household, the Maker shall submit to the Holder the identity of the proposed Buyer and adequate information evidencing the income and household size of the proposed Buyer. Said income information shall be submitted together with the notice of proposed sale pursuant to Section 2 of the Agreement not less than thirty (30) days prior to opening of escrow for the proposed sale and shall include original or true copies of pay stubs, income tax records or other financial documents in order that the Holder may verify the household income of the proposed Buyer to determine whether the Buyer is a Low Income Household, and whether the Property is being transferred to such Buyer at an Affordable Housing Cost. If the Holder is unable to verify the Buyer's income as provided herein prior to the proposed sale, then the Buyer's income shall be deemed to exceed the maximum allowable income limit for an Eligible Household.

**10. Security for Note.** This Note shall be secured by a subordinate deed of trust and rider thereto of even date herewith encumbering the Property (the "City Deed of Trust"), executed by the Maker, as Trustor, in favor of the Holder, as beneficiary.

**11. Prepayment of Note.** The Maker may prepay this Note to the Holder, provided that any prepayment must be in full and not in part. Prepayment shall be treated in the same manner as refinancing of the Property. In any event, the Affordable Housing Resale Restrictions shall continue in full force and effect, notwithstanding such prepayment.

**12. Holder May Assign.** The Holder may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Maker.

**13. Maker Assignment Prohibited.** In no event shall the Maker assign or transfer any portion of this Note, the Note Amount and/or the Agreement without the prior express written consent of the Holder, as provided in Section 9.

**14. Joint and Several.** The undersigned, if more than one, shall be jointly and severally liable hereunder.

**15. Attorneys' Fees and Costs.** In the event that any action is instituted to enforce payment under this Note, the parties agree the non-prevailing party shall be responsible for and

## EXHIBIT D

shall pay to the prevailing party all court costs and all attorneys' fees incurred in enforcing this Note.

**16. Amendments.** This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.

**17. Maker's Waivers.** The Maker waives any rights to require the Holder to: (a) demand payment of amounts due (known as "presentment"), (b) give notice that amounts due have not been paid (known as "notice of dishonor"), and (c) obtain an official certification of nonpayment (known as "protest").

**18. Notice.** Any notice that must be given to the Maker under this Note shall be given by personal delivery or by mailing it by certified mail addressed to the Maker at the Property address above or such other address, as Maker shall direct from time to time in writing. Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment. Any notice to the Holder shall be given by certified mail at the address stated above.

**19. Successors Bound.** This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

**20. Effect of Foreclosure.** If title to the Property is transferred by foreclosure or acceptance of a deed in lieu of foreclosure, or assignment of the First Lien to the Secretary of the Department of Housing and Urban Development, the Agreement, the Affordable Housing Resale Restriction executed pursuant to the Agreement, Notice of Affordability Restrictions and the Authority Deed of trust shall be automatically terminated and shall have no further effect as to the Property or any transferee thereafter.

**IN WITNESS WHEREOF,** Maker has executed this Note as of the date set forth below.

**MAKER and HOMEBUYER:**

By: \_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT D**

**EXHIBIT E**

**NOTICE OF AFFORDABILITY RESTRICTIONS**

## EXHIBIT D

RECORDING REQUESTED BY, )  
 AND WHEN RECORDED MAIL TO: )  
 )  
 City of Santa Ana )  
 20 Civic Center Plaza (M-37) )  
 Santa Ana, California 92702 )  
 Attn: Housing Manager )

---

This document is exempt from payment of a recording fee pursuant to Government Code Sections 27383 and 6103.

**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 Regulatory Agreement Imposing Affordable Housing Covenants and Restrictions (Density Bonus), recorded on or about \_\_\_\_\_, 2024, in the Official Records of San Orange County, against that certain real property generally located at \_\_\_\_\_, in the City of Santa Ana, California (“City”) as legally described in Exhibit A hereto (“Property”). The City of Santa Ana, a charter city and \_\_\_\_\_ municipal \_\_\_\_\_ corporation (“City”), and \_\_\_\_\_ (collectively “Homebuyer”) have entered into that certain Homebuyer Loan Agreement dated concurrently herewith (“Homebuyer Loan Agreement”).

1. The Homebuyer Loan Agreement provides for affordability restrictions and restrictions on the transfer of the Property, as more particularly set forth in the Homebuyer Loan Agreement. A copy of the Homebuyer Loan Agreement is on file with City as a public record and is deemed incorporated herein. Reference is made to the Homebuyer Loan Agreement 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 Homebuyer Loan Agreement generally provides for City to lend to Homebuyer and for Homebuyer to borrow from City a loan in order to assist

## EXHIBIT D

Homebuyer's purchase of the Property pursuant to the Program and subject to the terms and conditions set forth herein. For a period commencing upon the date on which Homebuyer acquires fee title to the Property and terminating on the forty-fifth (45th) anniversary thereof, the Property may only be transferred to another eligible, qualified Low Income Household at an Affordable Housing Cost; such restrictions are set forth at greater length in a document entitled Affordable Housing Resale Restriction (Conditions, Covenants, and Restrictions Affecting Real Property and the Resale, Ownership, Occupancy, Maintenance, and Other Matters Related to Real Property), substantially in the form of Exhibit "D" to the Homebuyer Loan Agreement ("Affordable Housing Resale Restriction"), which has been entered into by and between City and Homebuyer, and which is expected to be recorded substantially concurrently herewith among the Official Records of Orange County, California. The Affordable Housing Resale Restriction and the Homebuyer Loan Agreement are deemed to be incorporated herein by reference.

3. Section 4 of the Affordable Housing Resale Restriction provides as follows:

**"4. Permitted Sales of the Property.** City hereby permits sales of the Property to proposed Transferees who are Low Income Households, and are approved in accordance with this Section 4, provided the Sales Price does not exceed an Affordable Housing Cost to such proposed Transferee ("Permitted Transfers"). In the event that Homebuyer desires to Transfer the Property during the Affordability Period, prior to the Transfer the owner shall notify City by delivering a Notice of Intent to Transfer to City, which shall indicate the identity of the proposed Transferee who desires to purchase the Property, whether the purchaser is a Low or Moderate Income Household, and whether the sales price is at an Affordable Housing Cost. In addition to Homebuyer's and the proposed Transferee's delivery of the Notice of Intent to Transfer, the following procedure shall apply:

**a. Notice to City.** Homebuyer shall send the Notice of Intent to Transfer to City at the address set forth in [Section 28] of the Loan Agreement.

**b. Qualification of Proposed Transferee.** 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 Low Income Household, and the purchase price is at an Affordable Housing Cost.



## EXHIBIT D

**c. Certificates from Parties.** 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 Restriction 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 Period, 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 Restriction. This provision shall not prohibit the encumbering of title for the sole purpose of securing financing of the purchase price of the Property.

**e. Notice of Prohibited Transfer.** Within twenty (20) days after receiving notification of a proposed Transfer in accordance with Section 4a., City shall determine and give notice to Homebuyer as to whether the proposed Transfer is a Permitted Transfer or Prohibited Transfer, or whether the Transfer would cause an acceleration under the Note under Section 1.f. of the Agreement, in which case, upon Homebuyer's payment of the Contingent Equity Participation Amount as set forth in Section 3 of the Agreement such Transfer would be deemed a Permitted Transfer. In the event that the proposed Transfer is a Prohibited Transfer, such notice to Homebuyer shall specify the nature of the Prohibited Transfer. If the violation is not corrected to the satisfaction of City within ten (10) days after the date of the notice, or within such further time as City determines is necessary to correct the violation, City may declare a Default under this Restriction. Upon the declaration of a Default, City may apply to a court of competent jurisdiction for specific performance of this Restriction, for an injunction prohibiting a proposed sale or Transfer in violation of this Restriction, 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 certificates required by this Section 4 and any other documents City may request."

**EXHIBIT D**

4. The restrictions contained in the Affordable Housing Resale Restriction commence upon the date on which Homebuyer acquires fee title to the Property and terminate on the forty-fifth (45th) anniversary thereof.

5. The commonly known address for the Property is \_\_\_\_\_Street, Santa Ana, California 92701.

6. The assessor's parcel number for the Property is APN\_\_\_\_\_.

7. The legal description of the Property is attached hereto as Exhibit A, and is incorporated herein by reference.

8. The Affordable Housing Resale Restriction, which includes the affordability restrictions referenced above, is expected to be submitted for recordation in the Office of the Orange County Recorder contemporaneously with this Notice of Affordability Restrictions.

9. The Homebuyer Loan Agreement and the Affordable Housing Resale Restriction 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 Homebuyer Loan Agreement (including all Attachments 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 Homebuyer Loan Agreement or the Attachments thereto (including the Affordable Housing Resale Restriction) should contact City at its offices (20 Civic Center Plaza, Santa Ana, California 92701, or such other address as may be designated by City from time to time).

**HOMEBUYER:**

By:\_\_\_\_\_

By:\_\_\_\_\_

EXHIBIT D

**CITY:**

**ATTEST:**

CITY OF SANTA ANA

\_\_\_\_\_  
By:  
City Clerk

\_\_\_\_\_  
By:  
City Manager

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**APPROVED AS TO FORM:**  
City Attorney

\_\_\_\_\_  
By:

Dated: \_\_\_\_\_

**RECOMMENDED FOR APPROVAL:**

\_\_\_\_\_  
By:  
Executive Director  
Community Development Agency

EXHIBIT D

**EXHIBIT F**

INCOME VERIFICATION FORM

## EXHIBIT D

## EXHIBIT "F"

## INCOME VERIFICATION FORM

Inclusionary 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 Inclusionary Unit				
Name	Sex	Age	Dependent (Y/N)	Social Security # or Taxpayer ID #

List additional household members on a separate sheet of paper.

## EXHIBIT D

EXHIBIT "F"  
INCOME VERIFICATION FORM

Monthly Gross Income \*

List All Sources of Income of All Household Members Living in the Inclusionary 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				

## EXHIBIT D

EXHIBIT "F"  
INCOME VERIFICATION FORM

Monthly Gross Income *				
List All Sources of Income of All Household Members Living in the Inclusionary 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.

## EXHIBIT D

EXHIBIT "F"  
INCOME VERIFICATION FORM

## Assets \*\*

List the Current Value of All Assets of All Household Members Living in the Inclusionary 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.



## EXHIBIT D

EXHIBIT "F"  
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)	

**EXHIBIT D**

EXHIBIT "F"

**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 Inclusionary 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 Inclusionary 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 Inclusionary 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 D**

**EXHIBIT G**

**CERTIFICATION OF CONTINUED OCCUPANCY**

~~EXHIBIT C~~  
EXHIBIT D

## 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.

EXHIBIT C

**EXHIBIT D**

**SIGNATURE PAGE  
TO  
OCCUPANCY RECERTIFICATION FORM**

**OWNER:**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**CO-OWNER:**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_