

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: Clerk of the Council

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*Free Recording pursuant to  
Government Code 27383*

### **DENSITY BONUS HOUSING AGREEMENT**

This DENSITY BONUS HOUSING AGREEMENT (“Agreement”), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Santa Ana, a charter city and municipal corporation of the State of California (“City”), and Shelter Providers of Orange County, Inc., a California nonprofit corporation doing business as HomeAid of Orange County (“Developer”). City and Developer are sometimes referred to collectively as the “Parties” and individually as a “Party.”

#### **RECITALS**

A. The Housing Authority of the City of Santa Ana, a public body, corporate and politic (“Housing Authority”) is the owner of that certain property located within the City of Santa Ana, County of Orange, State of California, commonly known as 801, 807, 809 and 809 ½ East Santa Ana Boulevard, Santa Ana, California, 92701, and legally described as set forth in Exhibit A attached hereto and incorporated herein by this reference as if set forth in full (“Property”).

B. The Housing Authority desires to enter into an agreement for a long-term ground lease of the Property with Developer and the Developer desires to lease and develop the Property with the Project as defined herein, subject to approval of a long-term ground lease and associated documentation.

C. Developer is proposing to develop an affordable rental residential community consisting of seventeen (17) units with sixteen (16) units of permanent supportive housing for homeless individuals, 1,120 square feet of group space, and a 389 square foot community room on the Property, as more particularly set forth in Density Bonus Application No. 2020-02 (“Project”).

D. Santa Ana Municipal Code sections 41-1600, *et seq.* (“City Density Bonus for Affordable Housing”), and California Government Code sections 65915, *et seq.* (“State Density Bonus Law”), set forth a process to provide increased residential densities and incentives, concessions, and waivers to property owners or developers who guarantee that a portion of their residential development will be available to low income, very-low income, or senior (also known

as "qualified") households. These regulations are intended to materially assist the housing industry in providing adequate and affordable housing for all economic segments of the community and to provide a balance of housing opportunities for very-low income, low income and senior households throughout the city.

E. The Project is proposing a total number of seventeen (17) residential units, including sixteen (16) units for extremely-low income households and one manager's unit. Accordingly, the Developer is able to obtain an onsite parking standards incentive, concessions and waivers pursuant to the California Government Code because the Project will include onsite affordable units. Specifically, pursuant to California Government Code section 65915(p)(1), the Developer is seeking an incentive to provide onsite parking at the ratio of 0.71 spaces per unit and waivers and concessions for permitted building type, lot width and depth, tandem parking, open space, landscape standards and density bonus pursuant to California Government Code section 65915(d)(1) and (e)(1).

F. The Project complies with the affordable housing requirements set forth in the State Density Bonus Law and City Density Bonus for Affordable Housing. For purposes of this Agreement, the Project shall be the "housing development" as defined in the State Density Bonus Law.

G. In light of the purpose of the State Density Bonus Law and City Density Bonus for Affordable Housing, and the express provisions of Government Code section 65915(p), the City has determined to grant Developer's application for density bonus and related onsite parking standards incentive, three concessions and waivers.

H. This Agreement, and the exhibits attached hereto and incorporated herein by reference, are intended to set forth the terms and conditions for the implementation of the Project's requirement to provide affordable housing units in exchange for receiving the density bonus incentive 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 Health and Safety Code Section 50052.5(h).

1.1.2 **"Affordable Rent"** means the maximum Monthly Rent that may be charged to and paid by an Eligible Household for the Affordable Units, as required by the terms of this Agreement. The Affordable Rent shall be adjusted to reflect a reasonable utilities

allowance for utilities paid by the household using the Santa Ana Housing Authority Multi-Family Housing Utility Allowance Schedule, and shall be updated no less than annually.

1.1.3 **"Affordable Rent Schedule"** means a rent schedule established as of the date of issuance of an occupancy permit (exclusive of tenant utility payments or security deposits) for the required number/percentage of the total number of units in the Project which are to be rented or available for rent to Extremely-Low Income Tenants. Said Affordable Rent Schedule shall be established at the time of the issuance of the occupancy permit ("Initial Rent Schedule") and shall be created in accordance with the Orange County, California Primary Metropolitan Statistical Area ("PMSA") as published by the California Department of Housing and Community Development ("HCD"), adjusted for family size, and shall be updated no less than annually.

1.1.4 **"Affordable Units"** means sixteen (16) units, which shall be comprised of sixteen (16) one-bedroom units for Extremely-Low Income Tenants. Any change to the number or distribution of Affordable Units is subject to City Manager approval.

1.1.5 **"Agreement"** means this Density Bonus Housing Agreement.

1.1.6 **"Base Units"** means the ten (10) Units that Developer would be authorized to develop on the Property without application of the State Density Bonus Law.

1.1.7 **"City"** means the City of Santa Ana, California

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

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

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

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

1.1.12 **"Density Bonus Housing Agreement Term"** means the period during which this Agreement shall be in full force and effect, as provided for in Section 6.1 below.

1.1.13 **"Density Bonus Units"** means the seven (7) Units in addition to the Base Units that Developer shall develop or cause to be developed pursuant to the terms and conditions of this Agreement, of which Developer would not be entitled to develop without providing the Affordable Units.

1.1.14 **"Developer"** means Shelter Providers of Orange County, Inc., a California nonprofit corporation doing business as HomeAid of Orange County and its permitted successors and assigns to all or any part of the Property, Project or this Agreement.

1.1.15 **"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.

1.1.16 **"Eligible Household"** means a Household whose income does not exceed the qualifying limit for an "Extremely-Low Income Tenant" as defined herein.

1.1.17 **"Extremely-Low Income Tenant"** means persons and families whose income does not exceed thirty (30%) of the area median income for the Orange County, California PMSA, adjusted for household size, as published by HCD.

1.1.18 **"Household"** means all persons residing in a Unit.

1.1.19 **"Median Income"** means the Orange County, California area median income, adjusted for family size appropriate to the unit, as periodically published by HCD.

1.1.20 **"Monthly Rent"** means the total of monthly payments for: (a) use and occupancy of each Affordable Unit and land and facilities associated therewith; (b) any separately charged fees or service charges assessed by Developer which are required of all tenants, other than security deposits, application fees or credit check fees; (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone or cable service, to the extent applicable and charged to tenant; and, (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Developer. In the event that certain utility charges are paid by the landlord rather than the tenant, no utility allowance shall be deducted from the rent for that type of utility charge.

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

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

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

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

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

1.1.26 **"Very-Low Income Tenant"** means persons and families whose income does not exceed fifty (50%) of the area median income for the Orange County, California PMSA, adjusted for household size, as published by HCD.

1.2 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** – Tenant Verification

1.2.3 **Exhibit C** – Annual Tenant Recertification

1.2.4 **Exhibit D** – Annual Rental Housing Compliance Report

1.2.5 **Exhibit E** – Notice of Affordability Restrictions on Transfer of Property

## 2. DEVELOPMENT OF THE PROPERTY

2.1 Project. Developer shall develop, operate, and maintain, or cause the development, operation and maintenance of, the Property as a seventeen (17) Unit rental residential community, with sixteen (16) Affordable Units for Extremely Low Income Tenants.

2.2 Density Bonus. The Project shall have seventeen (17) Units, including sixteen (16) Affordable Units, to be rented, occupied, operated, and maintained pursuant to the terms and conditions of this Agreement. Developer understands and agrees that Developer is utilizing a seventy percent (70%) density bonus increase provided by the State Density Bonus Law (10 Base Units x 70% = 7 State Density Bonus Units) for a total of 17 units. Although Developer has a right to construct up to eight (8) State Density Bonus Units on the Property, Developer has elected to construct or develop, or otherwise claim a right to construct or develop, no more than seven (7) State Density Bonus Units on the Property.

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 2020-02 for the Project:

2.3.1 The onsite parking standards for the Project shall be reduced from 2.25 parking spaces per unit to 0.71 spaces per unit pursuant to California Government Code sections 65915(p)(3)(a), which allows onsite parking at the ratio of 0.71 stall for one-bedroom units for a total of twelve (12) onsite parking spaces for the Project, due to the affordability levels provided at the Project and the unobstructed access of the Project to a major transit stop within one-half mile.

2.3.2 Certain development standards for this Project shall be waived in accordance with Government Code Section 65915(e)(1), such that the stacked dwelling building type shall be a permitted building type for the project.

2.3.3 Certain development standards for this Project shall be waived in accordance with Government Code Section 65915(e)(1), such that no trees shall be required

along Garfield Street and less than one tree per 25 lineal feet shall be required along Santa Ana Boulevard.

2.3.4 The lot width and lot depth requirements for this Project shall be reduced in accordance with Government Code Section 65915 (d)(1), such that the minimum required lot depth shall be 150 feet and the minimum required lot width shall be 100 feet.

2.3.5 The tandem parking requirements for this Project shall be allowed to exceed the maximum allowable in accordance with Government Code Section 65915 (d)(1), such that 83-percent of the parking spaces provided (10 of 12), shall be tandem parking spaces.

2.3.6 The common open space requirements for this Project shall reduce in accordance with Government Code Section 65915 (d)(1), such that common open space shall be provided as an 1,877-square-foot interior courtyard, or 12-percent of the lot size.

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

2.5 Unrestricted Units. The Project, for purposes of this Agreement, may have no more than one (1) Unrestricted Unit (i.e. – manager's unit) comprised of one (1) one-bedroom unit. Developer may alter the unit distribution of the Unrestricted Unit in Developer's discretion, provided that the Project has the minimum number of Affordable Units and the minimum distribution thereof as specific in this Agreement.

2.6 Affordable Units. The Project, for purposes of this Agreement, shall have no less than sixteen (16) Units, which shall be comprised of sixteen (16) one-bedroom units designated as Affordable Units pursuant to the terms and conditions of this Agreement. The Affordable Units shall be consistent with all City approvals, comparable in bedroom distribution and amenities to the Unrestricted Units, and shall be located throughout the Project as required under Santa Ana Municipal Code section 41-1602(c)(6).

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

2.8 Permits and Processing; Compliance with Laws. Developer, at its sole cost and expense, or as otherwise set forth in a separate written agreement, shall secure or cause to be secured any and all permits that may be required for development of the Project by City or any

other federal, state, or local governmental entity having or claiming jurisdiction over the Property or Project. Upon securing any and all permits, and all necessary financing and property interests, Developer shall carry out and perform the development, operation, and maintenance of the Project or cause the performance of the development, operation, and maintenance of the Project, in conformity with all applicable federal, state, and local laws and regulations, and all conditions of approval issued by the City Council and City's Planning Commission for the Project. Any changes to the Project shall be reviewed by the City to determine compliance with this Agreement. If any changes to the Project shall materially alter the ability of Developer to comply with any terms of this Agreement in City's sole determination, then City and Developer shall meet and confer to address amendments and revisions to this Agreement as necessary.

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

2.10 Local Sourcing Plan. Developer agrees to make a good faith effort to encourage contractors and suppliers to hire and procure locally, to the extent that it is cost effective and does not delay the overall project development schedule. Prior to issuance of a Building Permit, Developer shall develop and submit or cause the development and submittal to the Community Development Agency (the "CDA") 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. The plan must be reviewed and approved by the CDA which if not granted or denied within five (5) Business Days, shall be deemed approved (with such approval not to be unreasonably withheld, conditioned or delayed) and be implemented for the construction of the project prior to issuance of Building Permit.

2.11 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 to use and occupancy by an Eligible Household for a total period of no less than fifty-five (55) years ("Total Affordability Term"). The Total Affordability Term for an Affordable Unit shall commence on the date that the building in which the Affordable Unit is located receives all required occupancy permits from the City.

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

#### 3.3 Levels of Affordability.

3.3.1 Extremely-Low Income Tenants. Developer covenants that no less than sixteen (16) Affordable Units in the Project shall at all times during the Density Bonus Housing Agreement Term be rented to, or held vacant and available for immediate occupancy by Extremely-Low Income Tenants, at a rent that does not exceed thirty percent (30%) of thirty percent (30%) of the area median income for the Orange County, California PMSA, adjusted for household size, as published by HCD, including, as applicable, an allowance for utilities.

### 4. OPERATION OF THE PROJECT BY DEVELOPER

4.1 Payment of Density Bonus Setup Fee. A Density Bonus Setup Fee will not be charged to the Developer for developing on Housing Authority land.

4.2 Recording of Documents. No later than issuance of building permits for the Project, Developer and the City shall record or cause to be recorded in the Official Records for Orange County, California, an executed original of this Agreement. 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 the Project. It is the express intent and agreement between the Parties that this Agreement shall remain binding and enforceable against the Property, the Project, and the Units to ensure



compliance with the State Density Bonus Law and City Density Bonus Law, and to ensure the continued supply of Affordable Units in the Project, except as expressly set forth in this Agreement.

4.2 Rental of Units. Upon the completion of construction of the Project and receipt by Developer of all required permits for the occupancy of the Units, Developer shall rent or cause to be rented each Affordable Unit for the Total Affordability Term for such Affordable Unit in accordance with the terms and conditions set forth in this Agreement, which provide among other terms and conditions for the rental of each Affordable Unit at an Affordable Rent to an Eligible Household for the Total Affordability Term.

4.3 Location of Affordable Units. During the Density Bonus Housing Agreement Term, the Affordable Units shall be dispersed throughout the Project in accordance with the terms and conditions set forth in this Agreement.

4.4 Occupancy Levels. The number of persons permitted to occupy each Affordable Unit shall not exceed the occupancy permitted pursuant to Health and Safety Code section 50052.5(h).

4.5 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. The Project shall at all times during the term of this Agreement be used as a rental supportive housing complex and none of the Affordable Units in the Project, nor shall the Property or any portion thereof, ever be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium or rest home, or be converted to condominium ownership. All of the community facilities and any social programs provided to the Project's residents shall be available on an equal, nondiscriminatory basis to residents of all Units at the Project.

4.6 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, to the extent commercially reasonable. 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. If at any time Developer fails to maintain the Project or the Property in accordance with this Agreement and such condition is not corrected within seven (7) days after written notice from City with respect to debris and waste material, or within thirty (30) days after written notice from City with respect to general maintenance, landscaping and building improvements, unless Developer has initiated corrections and City has agreed to a reasonable amount of time to complete corrections, then City, in addition to whatever remedy it may have at law or at equity, shall have the right to enter upon the applicable portion of the Project or the Property and perform all acts and work necessary to protect, maintain, and preserve the Project and the Property, and to attach a lien upon the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure, including a

reasonable administrative charge, which amount shall be promptly paid by Developer to City upon demand.

4.6.1 Property Maintenance Agreement. Subject to review and applicability by the Planning and Building Agency (the “PBA”), the CDA, the Public Works Agency (the “PWA”), and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained, Developer shall execute a maintenance agreement with the City of Santa Ana or Housing Authority, as applicable, prior to occupancy which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. If the anticipated Ground Lease between Developer and the Housing Authority includes terms that meet the maintenance requirements contained herein, then the Ground Lease shall be sufficient to meet the requirements of this section in place of a separate maintenance agreement. The maintenance agreement or Ground Lease, as applicable, shall contain covenants, conditions and restrictions relating to the following:

(a) Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);

(b) Compliance with ongoing operational conditions, requirement and restrictions as applicable, the proper storage and disposal of trash and debris, and/or restrictions on certain uses;

(c) Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;

(d) Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris about the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);

(e) If Developer and the owner of the property are different (e.g., if the applicant is a tenant or licensee of the property or any portion thereof), both the applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms;

(f) The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, except as set forth herein or unless the prospective assignee agrees in writing to assume all of the duties and obligations and responsibilities set forth under the maintenance agreement;

(g) The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City; and,

(h) The execution and recordation of the maintenance agreement shall be a condition precedent to the issuance of the Certification of Occupancy.

4.7 Management Plan. Prior to Certificate of Occupancy, Developer shall submit for the reasonable approval of City a "Management Plan" which sets forth in detail the property management duties, a tenant selection process in accordance with this Agreement, a security system and crime prevention program, the procedures for the collection of rent, the procedures for eviction of tenants, the rules and regulations for the Property and manner of enforcement, a standard lease form, an operating budget, the identity and emergency contact information of the professional property management company to be contracted with to provide onsite property management services at the Property ("Property Manager"), and other matters relevant to the management of the Property. The Management Plan shall require Developer to adhere to a fair lease and grievance procedure. The management of the Property shall be in compliance with the Management Plan as approved by City.

If City determines that the performance of the Property Manager is deficient based upon the standards set forth in the approved Management Plan and in this Agreement, City shall provide written notice to Developer of such deficiencies and Developer shall use its best efforts to correct such deficiencies. In the event that such deficiencies have not been cured within thirty (30) days, or, if cure is not reasonably possible within 30 days, then unless actions to commence a cure are taken within 30 days and continued thereafter with diligence, City shall have the right to require Developer to immediately remove and replace the Property Manager with another property manager or property management company which is reasonably acceptable to the City Manager, which is not related to or affiliated with Developer, and which has not less than five (5) years experience in property management, including significant experience managing housing facilities of the size, quality and scope of the Project.

4.8 Rental Lease Agreement. Developer shall prepare and obtain City's approval, which approval shall not be unreasonably withheld, conditioned or delayed, of a rental lease agreement ("Lease Agreement"). All Lease Agreements must 1) identify the names and ages of all members of the household who will occupy the Affordable Unit; and 2) state that the Household's right to occupy the Affordable Unit is subject to compliance with the Median Income requirements, adjusted for family size appropriate to the unit, as periodically published by HCD. All Lease Agreements must be consistent with the terms contained in this Density Bonus Agreement.

4.8.1 Prohibited Lease Terms. The Lease Agreement may not contain any of the following provisions:

- (a) Agreement to be Sued. Agreement by the tenant to be sued, to admit to guilt, or to a judgment in favor of the Developer in a lawsuit brought in connection with the lease;
- (b) Treatment of Property. Agreement by tenant that the Developer may take, hold, or sell personal property of household members without notice to tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The Developer may dispose of this personal property in accordance with State law;
- (c) Excusing Developer of Responsibility. Agreement by the tenant not to hold the Developer or the Developer's agent legally responsible for any action or failure to act, whether intentional or negligent;
- (d) Waiver of Notice. Agreement of the tenant that the Developer may institute a lawsuit without notice to the tenant;
- (e) Waiver of Legal Proceedings. Agreement by the tenant that the Developer may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
- (f) Waiver of a Jury Trial. Agreement by the tenant to waive any rights to a trial by jury;
- (g) Waiver of Right to Appeal Court Decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
- (h) Tenant Chargeable with Cost of Legal Action Regardless of Outcome. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Developer against the tenant. The tenant, however, may be obligated to pay attorney's fees and costs if the tenant loses, if provided for under applicable law or court ruling.

#### 4.9 Selection of Tenants.

4.9.1 Developer shall review the selection of tenants for the Affordable Units in compliance with lawful and reasonable criteria and the requirements of this Agreement. Each Affordable Unit shall be leased to Eligible Households that are chronically homeless and document-ready individuals on the Coordinated Entry List. All residents will be referred from the County of Orange Coordinated Entry System.

4.9.2 Local preference for Santa Ana residents and workers in tenant selection for the Affordable Units shall be a requirement of the Project. Subject to applicable laws and regulations governing nondiscrimination and preferences in housing occupancy required by the State of California, the Developer shall give preference or cause for the preference in leasing the Affordable Units to households that live and/or work in the City of Santa Ana or who have an

active Housing Choice Voucher issued by the Housing Authority of the City of Santa Ana or any other Public Housing Authority.

4.9.3 Prior to the rental or lease of an Affordable Unit to a tenant(s), Developer shall require the tenant(s) or cause for the tenant(s) to be required to execute a written lease and to complete a Tenant Income Verification Form (in substantially the form attached hereto as Exhibit B) certifying that the tenant(s) occupying the Affordable Unit is/are an Eligible Household and otherwise meet(s) the eligibility requirements established for the Affordable Unit. Developer shall verify the income of the tenant(s) as set forth herein. Developer and City shall be entitled to rely on the Tenant Income Verification Form and supporting documentation provided by tenant(s) unless Developer or City has knowledge of, or a reasonable basis for belief as to, the inaccuracy or falsehood of any of the supporting documentation.

#### 4.10 Income Verification and Certification.

Developer covenants to City that it will at all times abide by all specific compliance standards set forth in the regulatory agreements entered into between the Developer and all public funding sources including but not limited to No Place Like Home (“NPLH”), Housing and Urban Development-Veterans Affairs Supportive Housing (“HUD-VASH”) and Special Needs Housing Program (SNHP”), as applicable. Developer will abide by all standards including but not limited to number of extremely-low and very-low and low-income affordable units by number of bedrooms, standards for qualifying household incomes and other qualifying criteria. Developer shall provide City with a certified copy of each of the recorded Regulatory Agreements applicable to the Project. The compliance standards set forth in said Regulatory Agreements are hereby incorporated by reference as fully set forth herein. In the event of a conflict between this Agreement and the Regulatory Agreements: (1) the more stringent requirement shall prevail if such interpretation eliminates the relevant conflict; or (2) Regulatory Agreements, or any of them, shall prevail.

Developer shall be entitled to rely on the Tenant Income Verification Form and supporting documentation provided by tenant(s) unless Developer has knowledge of, or a reasonable basis for belief as to, the inaccuracy or falsehood of any of the supporting documentation. Developer shall make reasonable efforts to verify or cause to be verified that the income and asset statement provided by an applicant in an income certification is accurate by taking, at a minimum, at least one of the following steps as a part of the verification process: (1) obtain three months consecutive pay stubs for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) obtain an income verification form from the applicant’s current employer, (4) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies, or (5) if the applicant is unemployed and has no such tax return, obtain another form of independent verification.

4.10.1 Gross Household Income. 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.

4.10.2 Annual Recertification. Developer agrees to recertify or cause to be recertified household eligibility annually. Notification of Annual Tenant Recertification shall be sent to the household in substantially the form attached hereto as Exhibit C. An Annual Rental Housing Compliance Report ("Annual Compliance Report") shall be sent by Developer to the City in substantially the form attached hereto as Exhibit D for City's review and approval. The Annual Compliance Report shall be due to the City within 30 days of the anniversary of the commencement of the Total Affordability Term, which is the date that each building receives all required occupancy permits from the City.

4.11 Monitoring and Recordkeeping. Throughout the Term of this Agreement, Developer shall annually complete or cause to be completed and submit to City a Certification of Continuing Program Compliance in the form provided by City. Developer agrees to pay a reasonable fee, as set by City resolution, for the purpose of paying the actual costs associated with the City's obligation to monitor Developer's compliance with the affordability restrictions contained in this Agreement related to the Affordable Units, not to exceed monitoring costs for up to sixteen (16) Affordable Units. Representatives of City shall be entitled to enter the Property if necessary after review of above documentation, upon at least forty-eight (48) hour notice, to monitor compliance with this Agreement, and shall be entitled to inspect the records of the Project relating to the Affordable Units and to conduct an independent audit or inspection of such records at a location within the City that is reasonably acceptable to the City without a fee from the City. Developer agrees to cooperate with City in making the Property and the records of the Project relating to the Affordable Units available for such inspection or audit. Developer agrees to maintain or cause for the maintenance of each record of the Project for no less than five (5) years after creation of each such record.

Developer shall allow the City to conduct annual inspections of each of the Affordable Units on the Property after the date of construction completion, with reasonable notice. Developer shall commence to cure or cause the commencement to cure any defects or deficiencies found by the City while conducting such inspections within ten (10) Business Days of written notice thereof, or such longer period as is reasonable within the sole discretion of the City.

4.12 Notice of Affordability Restrictions on Transfer of Property. In the event the Property Owner wishes to sell or transfer the Project, or the Developer wishes to assign the ground lease to the Property, during the Total Affordability Term, the City and the Developer shall execute and deposit into escrow, or record against the Property, a Notice of Affordability Restrictions on Transfer of the Property as contained herein (Exhibit E). The sale or transfer of the Property, or assignment of ground lease, shall not be effective unless and until the City and the transferee execute the documents necessary to transfer the Density Bonus Agreement obligations from the Developer to the transferee.

4.13 Onsite Supportive Services, Programs and Amenities. Throughout the Term of this Agreement, and to the extent such can be coordinated with and largely supplied by

philanthropic and other social welfare providers, Developer shall provide residents of the Project, or cause to be provided to residents of the Project, access to discounted or no-cost onsite supportive services, programming and amenities that promote independent living and economic mobility and include but are not limited to: health and wellness services, transportation services, social activities, and physical or recreational amenities.

4.14 Alternative Transportation and Energy Source, Resource Conservation, and LEED Certification. While not a condition of the project's Density Bonus, 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. Prior to the meeting, the energy analyst shall complete an initial energy model based on either current T24 standards or, if the project is eligible, the California Utility Allowance Calculator using best available information on the project. To the extent financially feasible for the project, Developer agrees to incorporate and optimize energy efficient building materials, methods, and amenities.

4.15 Onsite Property Manager. The Project shall have 24-hour on-site Property Management services and personnel. Up-to-date 24-hour contact information for the on-site personnel shall be provided to the following City agencies on an ongoing basis:

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

4.16 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

4.17 Crime Free Housing. Developer shall work with City staff to develop a crime free housing policy, procedure, and design plan (the "CFH Plan"). Developer shall submit and obtain approval from the PBA that the CFH Plan meets the requirements of this Subsection 4.17 prior to issuance of the Certificate of Occupancy. The approved CFH Plan shall be implemented and administered by Property Management.

4.18 Parking Management Plan. Developer shall provide onsite parking for residents and visitors of the Project in accordance with Subsections 2.3.1 and 2.3.5 and actively monitor the parking demand of the Project site. Developer shall continually monitor and take appropriate

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. Developer has submitted a Parking Management Plan (the "PMP") dated March 10, 2020, outlining appropriate measures to manage and mitigate the use of offsite parking spaces and/or right of way. Prior to issuance of the Certificate of Occupancy, Developer shall obtain approval from the PBA of the PMP, as such PMP may be revised consistent with requirements of this Subsection 4.18 and Agreement. The approved PMP shall be adhered to and be enforced by the Project at all times. Notwithstanding the foregoing, in no event may the PMP or the requirements of this Subsection supersede Subsections 2.3.1 or 2.3.5 or be interpreted in a manner requiring parking in excess of twelve (12) onsite parking spaces, ten (10) of which shall be tandem parking spaces.

5. [INTENTIONALLY RESERVED]

6. TERM OF THIS AGREEMENT

6.1 Term. The term of this Agreement ("Density Bonus Housing Agreement Term") shall commence on the Effective Date and shall continue until the date that is fifty-five (55) years after the City issues the last certificate of occupancy for the building in which the Affordable Units are located.

7. DEFAULT AND TERMINATION; INDEMNIFICATION

7.1 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.

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

7.3 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 connection with its obligations under this Agreement, except to the extent caused by the negligence or willful misconduct of Indemnitees.

7.4 Termination. Prior to the issuance of building permits for the Project, Developer has the right to terminate this Agreement by written notice to City if one or more of the following does not occur: (1) approval and execution of a ground lease between the Housing Authority and Developer (or an entity formed by Developer to lease the Property) in their reasonable discretion for the lease of the Property; or, (2) receipt by Developer of all financing required for the Project.

## 8. ASSIGNMENT; COVENANTS RUN WITH THE LAND

### 8.1 Assignment by Developer.

8.1.1 Prohibited Transfers or Assignments. Except as authorized in this Section or Section 8.1.2 below, 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, without City's prior written approval, which shall not be unreasonably withheld, conditioned or delayed ("Permitted Transfer"); provided, however, Developer shall have the right without City's prior written approval to transfer or assign the Property, Project and/or Developer's rights and obligations in this Agreement to any entity that is controlled by, or is under common control with, Developer, and Developer shall thereafter be released from any future obligations under this Agreement; and provided further, Developer also shall have the right without City's prior written approval to transfer or assign Developer's rights and obligations in this Agreement, in whole or in part, to Mercy Housing or to any entity that is controlled by, or is under common control with, Mercy Housing and Developer shall thereafter be released from any transfer or assigned obligations under this Agreement. In connection with Permitted Transfer, Developer shall: (i) notify City in writing of the sale, transfer, or assignment of all or any portion of the Property, and (ii) deliver to City an assignment and assumption agreement (or other agreement) in a form approved by City in its reasonable discretion and executed by Developer and its transferee/assignee pursuant to which Developer's transferee/assignee assumes all of Developer's covenants and obligations set forth herein with respect to the Property or the portion thereof so transferred. Any request for transfer or assignment of the Agreement by Developer shall require the payment of fees or a deposit to compensate the City for approximate expenses incurred by Developer to City, as applicable, for the City's review of the request. Upon the delivery of the assignment and assumption agreement as provided for above for a Permitted Transfer, or in the event of a sale of the Property as provided for in Section 8.1.1, Developer shall be released from any future obligations under this Agreement.

8.1.2 Lease of Property. Developer agrees and declares that the Property and the Project shall be leased, rented, used, occupied, operated, and approved subject to all obligations set forth or incorporated in this Agreement, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property and the Project. All of the obligations set

forth or incorporated in this Agreement shall constitute covenants which run with the land and shall be binding on Developer and its successors and assigns, and all parties having or acquiring any right, title or interest in, or to any part of the Property or Project. Developer further understands and agrees that the Density Bonus permit approvals received for this Project have been made on the condition that Developer and all subsequent lessees, or other successors and assigns of the Property and/or Project lease and rent the Affordable Units in accordance with the terms and conditions stipulated in Sections 4, 5 and 6 of this Agreement for a term of fifty-five (55) consecutive years commencing upon the date of issuance of the last certificate of occupancy for the Project.

8.1.3 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.

8.1.4 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.

8.2 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, without regard to whether City or the Housing Authority is or remains an owner of any land or interest therein to which such covenants relate. However, all such covenants and restrictions shall be deemed to run in favor of all real property owned by City or the Housing Authority which real property shall be deemed the benefited property of such covenants and this Agreement shall create equitable servitudes and covenants appurtenant to all real property owned by City or the Housing Authority and running with the Property in accordance with the provisions of Civil Code Section 1468. Furthermore, all of the covenants, conditions, and restrictions contained herein shall also constitute easements in gross running 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 lease interest in the Property is rendered less valuable thereby. Developer hereby further declares its understanding and intent that the 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.

## 9. MISCELLANEOUS

9.1 Entire Agreement. This Agreement and all of its exhibits and attachments set forth and contain the entire understanding and agreement of the parties with respect to the density bonus of the Project, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

9.2 Amendment. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance approved by the City Council, or through the City Manager as detailed herein, and signed on behalf of each party. The City Manager shall have the authority to make approvals, issue interpretations, execute documents, waive provisions, and/or enter into amendments of this Agreement on behalf of City, including but not limited to amendments to this Agreement for consistency with other Project agreements, funding sources or to assist Developer in obtaining other funding sources. 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.

### 9.3 Notices.

9.3.1 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: Shelter Providers of Orange County, Inc.  
1130 North Citrus Street  
Orange, CA 92867  
Attention: Executive Director

9.3.2 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.

9.4 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.

9.5 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.

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

9.7 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.

9.8 Intentionally Omitted.

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

9.10 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.

9.11 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.

9.12 Non-Discrimination. In performing its obligations under this Agreement, Developer shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, 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.

9.13 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.

9.14 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.

9.15 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.

9.16 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.

9.17 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.

9.18 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.

9.19 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the development of private property and the Developer of such property.

9.20 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.

9.21 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.

9.22 No Subordination; Mortgagee Protection; Covenants Do Not Impair Liens. City's approval of the necessary land use entitlements that authorize Developer to develop, operate, and maintain the Project or to cause the development, operation and maintenance of the Project was based upon Developer's obligation to provide the Affordable Units pursuant to the State Density Bonus Law, City Density Bonus for Affordable Housing, and the terms and conditions of this Agreement. For the Term of the Density Bonus Housing Agreement, 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. This Agreement shall not prevent or limit Developer, in Developer's reasonable discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property or Project and such action shall not constitute an assignment of this Agreement. No violation or breach of covenants, conditions, restrictions, provisions, or limitations contained in this Agreement shall defeat or render invalid or diminish or in any way impair the lien or charge of any mortgage or deed of trust or security instrument.

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

9.24 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}*

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

**ATTEST:**

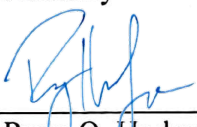
**CITY OF SANTA ANA**

\_\_\_\_\_  
Daisy Gomez  
Clerk of the Council

\_\_\_\_\_  
Kristine Ridge  
City Manager

**APPROVED AS TO FORM**

Sonia R. Carvalho  
City Attorney

  
\_\_\_\_\_  
By: Ryan O. Hodge  
Assistant City Attorney

**RECOMMENDED FOR APPROVAL:**

\_\_\_\_\_  
Steven A. Mendoza  
Executive Director  
Community Development Agency

**SHELTER PROVIDERS OF ORANGE  
COUNTY, INC.**

  
\_\_\_\_\_



**EXHIBIT A**

LEGAL DESCRIPTION OF THE PROPERTY

## LEGAL DESCRIPTIONS

Property Address:

801 EAST SANTA ANA BOULEVARD, Santa Ana, CA 92701 in the County of Orange.

Apparent Legal Description:

For APN/Parcel ID(s): 398-303-04

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS: THE SOUTHWESTERLY 50.00 FEET OF LOTS 13,14,15 AND 16 IN BLOCK 66 OF SANTA ANA EAST, AS SHOWN ON A MAP RECORDED IN BOOK 10, PAGES 43 AND 44 OF MISCELLANEOUS RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

Property Address:

807 EAST SANTA ANA BOULEVARD, Santa Ana, CA 92701 in the County of Orange.

Apparent Legal Description:

For APN/Parcel ID(s): 398-303-05

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS: THE NORTHEASTERLY 50 FEET OF THE SOUTHWESTERLY 100 FEET OF LOTS 13,14, 15 AND 16, BLOCK 66 OF SANTA ANA, EAST AS PER MAP RECORDED IN BOOK 10, PAGES 43 AND 44 OF MISCELLANEOUS RECORDS OF LOS ANGELES COUNTY

Property Address:

809 EAST SANTA ANA BOULEVARD, Santa Ana, CA 92701 in the County of Orange

Apparent Legal Description:

For APN/Parcel ID(s): 398-303-06

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS: THE EASTERLY 47 FEET OF THE SOUTHERLY 15 FEET OF LOT 14 AND THE EASTERLY 47 FEET OF LOTS 15 AND 16, ALL IN BLOCK 66 OF "SANTA ANA EAST", CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP THEREOF RECORDED IN BOOK 10 PAGES 43 AND 44 OF MISCELLANEOUS MAPS RECORDS OF LOS ANGELES, CALIFORNIA.

Property Address:

809 1/2 EAST SANTA ANA BOULEVARD, Santa Ana, CA 92701 in the County of Orange.

Apparent Legal Description:

For APN/Parcel ID(s): 398-303-07

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS: THE EASTERLY 50 FEET OF LOT 13, THE NORTHERLY 10 FEET OF THE

EASTERLY 50 FEET OF LOT 14, THE WESTERLY 3 FEET OF THE EASTERLY 50 FEET OF THE SOUTHERLY 15 FEET OF LOT 14, AND THE WESTERLY 3 FEET OF THE EASTERLY 50 FEET OF LOTS 15 AND 16 IN BLOCK 66 OF SANTA ANA EAST, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 10 PAGES 43 AND 44 OF MISCELLANEOUS MAPS, OF LOS ANGELES COUNTY.

**EXHIBIT B**

TENANT VERIFICATION

## TENANT INCOME VERIFICATION FORM

Head of Household (Print Name): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: Home: \_\_\_\_\_ Work: \_\_\_\_\_ Cell: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Social Security #: \_\_\_\_\_

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

List additional household members on a separate sheet of paper.

## TENANT 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 Adult Household Members	Total
1.	Gross amount, before payroll deductions of wages, salaries, overtime pay, commissions, fees, tips and bonuses.	\$	\$	\$
2.	Net income from business.	\$	\$	\$
3.	Social security, 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				

## TENANT 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.

## TENANT 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	Other Adult Household Members	Total Value of Assets
		Value	Value	
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.



## TENANT 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	
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <div style="border-bottom: 1px solid black; width: 100%;"></div>                     Paycheck stubs from two most recent pay periods                 </div> <div style="width: 45%;"> <div style="border-bottom: 1px solid black; width: 100%;"></div>                     Bank/Savings account verification                 </div> </div>	
<div style="border-bottom: 1px solid black; width: 100%;"></div> Employment verification	<div style="border-bottom: 1px solid black; width: 100%;"></div> Self-employment verification
<div style="border-bottom: 1px solid black; width: 100%;"></div> Income tax return	<div style="border-bottom: 1px solid black; width: 100%;"></div> Unemployment verification
<div style="border-bottom: 1px solid black; width: 100%;"></div> Social security verification	<div style="border-bottom: 1px solid black; width: 100%;"></div> Welfare verification
<div style="border-bottom: 1px solid black; width: 100%;"></div> Alimony/child support verification	<div style="border-bottom: 1px solid black; width: 100%;"></div> Disability income verification
<div style="border-bottom: 1px solid black; width: 100%;"></div> Other (Describe)	

## AFFIDAVIT

This Affidavit is made with the knowledge that it will be relied upon by the \_\_\_\_\_ City of Santa Ana, our landlord and the owner of our apartment building, to determine maximum income for eligibility. (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) rental agreement with the property owner to rent the unit and will additionally enable the property owner to initiate and pursue all applicable legal and equitable remedies with respect to the unit and to me/us.

(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 C**

ANNUAL TENANT RECERTIFICATION

**ANNUAL TENANT RECERTIFICATION  
CITY OF SANTA ANA  
AFFORDABLE RENTAL HOUSING PROGRAM**

Date:

Tenant Name:

Unit Address:

Dear \_\_\_\_\_:

In accordance with the requirements imposed by the City of Santa Ana (City), and your lease, the City requires that we review your income and family composition every year. To complete our review, the Property Owner or Property Manager will set up a meeting with you to receive the necessary information.

When you attend the meeting with the Property Owner or Property Manager you must bring documents that verify the income of all the adult members of your household. This information can include income tax returns, employment verification, wage statements, interest statements, and/or unemployment compensation statements.

Cooperation with the recertification requirement is a condition of continuing tenancy in an Inclusionary Unit. You must report the required information to enable the Property Owner to process the recertification by **Month/Day**.

Sincerely,

Property Manager / Property Owner

**EXHIBIT D**

ANNUAL RENTAL HOUSING COMPLIANCE REPORT

## HOUSING OPPORTUNITY ORDINANCE COMPLIANCE REPORT ANNUAL RENTAL HOUSING COMPLIANCE REPORT

**Project:** \_\_\_\_\_

Address: \_\_\_\_\_

**Total # of Units in the Project:** \_\_\_\_\_

**Compliance Report Completed By:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

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

Reporting Period: \_\_\_\_\_

# of Affordable Units: \_\_\_\_\_

**Very-Low Income Units** \_\_\_\_\_

### Low Income Units

[illegible]

**EXHIBIT E**

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

## **EXHIBIT E**

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

NOTICE IS HEREBY GIVEN that the CITY OF SANTA ANA, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California, has entered into a Density Bonus Agreement with Shelter Providers of Orange County, Inc., a California nonprofit corporation doing business as HomeAid of Orange County (“Developer”). The Density Bonus Agreement imposes income and affordability covenants on designated Affordable Units with the Project located at 801, 807, 809, 809 ½ East Santa Ana Boulevard, Santa Ana, Orange County, and further described in the legal description provided in Exhibit A to the Density Bonus Agreement.

The Density Bonus Agreement was recorded as Document/Instrument Number \_\_\_\_\_, and shall remain in effect until \_\_\_\_\_, 20\_\_\_\_  
(Insert date of the termination of the Affordability Period). The Density Bonus Agreement imposes the following income and affordability restrictions on the Affordable Units.

Number of Bedrooms	Extremely-Low Income Households	Low Income Households
Studio Units		
One-Bedroom Units	16	
Two-Bedroom Units		
Three-Bedroom Units		
Four-Bedroom Units		

In the event the Property Owner wishes to sell or transfer the Project during the Affordability Period, or the Developer wishes to assign the ground lease to the Property and such assignment requires City approval, the City and the Developer shall execute and deposit into escrow, or record against the Property, this Notice of Affordability Covenants on Transfer of the Property. The sale or transfer of the Property, or assignment of ground lease, shall not be effective unless and until the City and transferee execute the documents necessary to transfer the Density Bonus Agreement obligations from the Developer to the transferee, to the extent documentation or approval is required under section 8.1.1.

This Notice of Affordability Covenants on Transfer of the Property in no way modifies the provisions of the Density Bonus Agreement. In the event of any conflict between this Notice of Affordability Covenants on Transfer of the Property and the Density Bonus Agreement, the terms of the Density Bonus Agreement shall prevail.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Notice of Affordability Restrictions on Transfer of Property as of the dates set forth below.

**[Signatures on Following Pages]**



**SIGNATURE PAGE  
TO  
NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY**

**CITY:**

CITY OF SANTA ANA

A California Charter City and Municipal  
Corporation

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

Name: Kristine Ridge

Its: City Manager

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

APPROVED AS TO LEGAL FORM:

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

Ryan O. Hodge

Assistant City Attorney

**SIGNATURE PAGE  
TO  
NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY**

**DEVELOPER:**

\_\_\_\_\_

A \_\_\_\_\_

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

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

Its: \_\_\_\_\_

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