

REQUEST FOR COUNCIL/ HOUSING AUTHORITY ACTION



CITY COUNCIL MEETING DATE:

NOVEMBER 17, 2020

TITLE:

**APPROVE A CONDITIONAL GRANT
AGREEMENT, 99-YEAR GROUND LEASES,
AND AFFORDABILITY AND MAINTENANCE
RESTRICTIONS WITH HABITAT FOR
HUMANITY OF ORANGE COUNTY FOR THE
DEVELOPMENT OF THE LACY STREET
PROJECT
(NON-GENERAL FUND)**

/s/ Kristine Ridge

CITY MANAGER

/s/ Kristine Ridge

EXECUTIVE DIRECTOR

CLERK OF COUNCIL USE ONLY:

APPROVED

- ☐ As Recommended
- ☐ As Amended
- ☐ Ordinance on 1st Reading
- ☐ Ordinance on 2nd Reading
- ☐ Implementing Resolution
- ☐ Set Public Hearing For _____

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

CITY COUNCIL

Authorize the City Manager to execute a Conditional Grant Agreement (instead of a loan agreement as originally approved) with Habitat for Humanity of Orange County for \$231,494 in Inclusionary Housing Funds for the development of the Lacy Street affordable housing project located at 826 N Lacy Street (APN 398-041-22) and 416 Vance Street (APN 398-041-22), subject to non-substantive changes approved by the City Manager and City Attorney.

HOUSING AUTHORITY

1. Authorize the Executive Director of the Housing Authority to execute two Affordability and Maintenance Restrictions Agreements for the development of the Lacy Street affordable housing project located at 826 N Lacy Street (APN 398-041-22) and 416 Vance Street (APN 398-041-22), only differentiated by the address, subject to non-substantive changes approved by the Executive Director of the Housing Authority and Authority General Counsel.
2. Authorize the Executive Director of the Housing Authority to execute two 99-year Ground Leases for the development of the Lacy Street affordable housing project located at 826 N Lacy Street (APN 398-041-22) and 416 Vance Street (APN 398-041-22), only differentiated by the address, subject to non-substantive changes approved by the Executive Director of the Housing Authority and Authority General Counsel.

DISCUSSION

On June 19, 2018, the City Council authorized the Community Development Agency to issue a Request for Proposals (RFP # 18-056) to develop affordable rental and ownership project(s) in the City of Santa Ana with available affordable housing funds. The RFP also included two land assets currently owned by the Housing Authority of the City of Santa Ana at 826 N Lacy Street and 416 Vance Street. The RFP was drafted in compliance with the City's Affordable Housing Funds Policies and Procedures and it was issued on July 1, 2018.

Following the City's RFP process, on March 5, 2019, the City Council authorized the City Manager and the Executive Director of the Housing Authority to execute a pre-loan commitment letter with Habitat for Humanity of Orange County ("Habitat for Humanity") for \$231,494 in Inclusionary Housing Funds and a 99-year ground lease for the development of the Lacy Street affordable housing project located at 416 Vance Street and 826 N Lacy Street (Exhibit 1). Two of the conditions in the pre-loan commitment letter are review and approval of the documents evidencing the City loan by the City Council and review and approval of the document evidencing the Ground Lease by the Housing Authority. Therefore, staff are now seeking approval of the final documents with one modification.

When staff originally recommended the pre-loan commitment for this project, it was drafted for an affordable rental project instead of an affordable ownership project. Since this project is not a rental project that would generate rental payments, Habitat for Humanity needs a grant to develop this ownership project for homeowners instead of a loan that would be repaid through residual receipts from rental payments. Therefore, staff is seeking approval to change the funding commitment from a loan to a grant.

For the Conditional Grant Agreement, Habitat for Humanity proposes to utilize the \$231,494 grant for the development of the Lacy Street affordable housing project ("Project"). The City's Conditional Grant Agreement for \$231,494 in Inclusionary Housing Funds is conditional upon the successful development and construction of the Project (Exhibit 2). 90 percent of the funds will be disbursed upfront for the construction, with a 10 percent contingency. The grant is not subject to repayment if the Project is completed successfully.

The Affordability and Maintenance Restrictions agreements for both homes in the Project will remain in effect for ninety-nine (99) years to align with the 99-year Ground Leases. There is one Affordability and Maintenance Restrictions agreement for the 416 Vance Street parcel and a second agreement for the 826 N Lacy Street parcel (Exhibit 3 and 4). Among the main components of these agreements, Habitat for Humanity will act as an agent for the Housing Authority and agrees that the properties shall be used only for decent, safe, sanitary and affordable housing. Habitat for Humanity will only enter into affordable mortgages for resale to moderate income households at an affordable purchase price. The agreements provide Habitat for Humanity the exclusive right to approve any assignment and re-sale of the affordable homes and Habitat for Humanity shall take all necessary steps to review the income of all homeowners prior to selling to them. Additionally, a local preference for Santa Ana residents and workers in homebuyer selection shall be a requirement of the project. Habitat for Humanity will also maintain a monthly maintenance reserve to pay for any required roof repairs, re-painting, landscaping, and pest control/remediation with the Housing Authority having the right to conduct periodic inspections of the roof, exterior paint, or landscaping.

Ninety-Nine (99) Year Ground Leases

The ninety-nine (99) year Ground Lease is between the Housing Authority (Agency) as the "Lessor" and Habitat for Humanity as the "Tenant", "Developer" of the improvements, and "Agent". Habitat for Humanity is referred to as the "Tenant" when referring to their tenancy obligations and their assigns, "Developer" when referring to their obligations during their tenancy while they develop the improvements on our properties, or "Agent" when referring to Habitat for Humanity's

obligations after they sell the homes and begin acting as the Lessor's agent for enforcing the Ground Lease and Affordability and Maintenance restrictions. In its simplest form, the Ground Lease binds the Agency into a 99-year Ground Lease with Habitat for Humanity to develop, maintain and operate the Lacy Street affordable housing project. There is one Ground Lease agreement for the 416 Vance Street parcel and a second agreement for the 826 N Lacy Street parcel (Exhibit 5 and 6).

The following is a list of key terms agreed upon in the 99-year Ground Leases:

- Term: The Term of the Lease is for ninety-nine (99) years beginning on the date of the Agreement. The Tenant accepts the premises "as-is".
- Rent: The base rent for the lease of the properties is one dollar per year. Tenant shall pay directly to the taxing authorities all taxes required and utility costs.
- Use of Premises: Tenant shall construct, operate, maintain, replace, and repair the improvements on the properties only for the following uses:
 - Single-family affordable housing restricted to and affordable to qualifying moderate income families (up to 120% of Area Median Income) or below; and
 - Related community-serving uses as needed for the siting of the affordable housing units.
- The Agency and their authorized representatives may enter the premises upon two (2) business days' prior written notice to Tenant in order to determine whether Tenant is complying with Tenant's obligations or to enforce any rights given to Agency under the Lease.
- Throughout the Term of the Lease, Tenant shall, at Tenant's sole cost and expense, keep and maintain the premises and any and all Improvements now or hereafter constructed and installed on the premises in good order, condition and repair.
- In the event the whole or any part of the Improvements shall be damaged or destroyed by fire or other casualty, damage or action of the elements which is fully covered by insurance required to be carried by Tenant pursuant to this Lease or in fact caused by Tenant, at any time during the Term, Tenant shall with all due diligence, at Tenant's sole cost and expense, repair, restore and rebuild the Improvements on substantially the same plan and design as existed immediately prior to such damage or destruction and to substantially the same condition that existed immediately prior to such damage.
- Tenant will purchase all required insurance at Tenant's expense and provide active certificates of insurance, including all endorsements required by the Agency.

Project Description

Habitat for Humanity is a non-profit organization specializing in the construction of affordable homes for purchase by qualifying families. Since 1988, the Orange County affiliate has completed and sold 219 new homes in its service area. Thirty of those homes have been built in the City of Santa Ana. The project location is at the SW corner of Lacy and Vance Streets and is composed of two single-family lots within the "Historic French Park" community.

Construction will consist of two (2) single-family detached homes. The design and construction of the homes will reflect the architectural elements and finishes that are present in the French Park community. Habitat for Humanity will construct two distinct floor plans for this project whose sizes are proportionate to the approximately 7,500 sq. ft. lots on which they will be built. With these requirements in mind, Habitat will construct the following:

- A single-story “Craftsman-style” home. This will be a three bedroom, two and a half bathroom residence, of approximately 1,500 sq. ft.
- A second home that will be influenced by the “Victorian-Style” of architecture will be a two-story residence with four bedrooms and three bathrooms and will be approximately 1,700 sq. ft.

It is important to note that the architectural designs proposed for the Project are more in line with custom home developments as opposed to Habitat for Humanity’s original mission to provide “simple, decent and affordable” housing. The proposed architectural designs result in significantly higher construction costs than the projects typically constructed by Habitat for Humanity.

These homes will be made available to qualifying moderate income families (up to 120% of Area Median Income) as set forth in California Health and Safety Code. Construction will comply with all City of Santa Ana building standards, as well as the Historic French Park community. In RFP #18-056, staff informed all applicants this vacant site will need to comply with the design guidelines of the French Park Historic District and will require review by the French Park Design Committee. The Historic French Park Association Architectural Review Committee provided a letter of support to Habitat for Humanity for the development of the Project.

The construction of all required improvements associated with the development will be the responsibility of Habitat for Humanity. Materials will include composite roofing material, wood, or simulated wood siding, concrete-paving surfaces, and professionally designed landscape. The two homes will be constructed concurrently, with an anticipated building cycle of 10 months from the issuance of building permits.

In summary, for the development of this project by Habitat for Humanity, staff is recommending approval of a Conditional Grant Agreement for \$231,494 in Inclusionary Housing Funds, a 99-year Ground Lease of 416 Vance Street and 826 N Lacy Street, respectively, and Affordability and Maintenance Restrictions for each property.

FISCAL IMPACT

Funds for the Conditional Grant Agreement in the amount of \$208,345 (90% of the total) are available in the Inclusionary Housing Fund, Loans and Grants account (No. 41718820-69152) for expenditure in the current fiscal year. The remaining \$23,149 (10%) will be budgeted and included in the FY 21-2022 annual budget.

Fiscal Impact Verified By: Kathryn Downs, CPA, Executive Director – Finance and Management Services Agency

Submitted By: Steven A. Mendoza, Executive Director – Community Development Agency

- Exhibits:
1. March 5, 2019 Pre-Loan Commitment Letter
 2. Conditional Grant Agreement
 3. Affordability and Maintenance Restrictions Agreement - 416 Vance Street
 4. Affordability and Maintenance Restrictions Agreement - 826 N Lacy Street
 5. 99-Year Ground Lease Agreement - 416 Vance Street
 6. 99-Year Ground Lease Agreement - 826 N Lacy Street

MAYOR
Miguel A. Pulido
MAYOR PRO TEM
Juan Villegas
COUNCILMEMBERS
Cecilia Iglesias
David Penaloza
Vacant
Vicente Samliento
Jose Solorio

INSURANCE NOT REQUIRED
WORK MAY PROCEED
CLERK OF COUNCIL

APR 04 2019



ACTING CITY MANAGER
Steven A. Mendoza
CITY ATTORNEY
Sonia R. Carvalho
ACTING CLERK OF THE COUNCIL
Norma Mitre-Ramirez

CITY OF SANTA ANA

Community Development Agency

20 Civic Center Plaza • P.O. Box 1988
Santa Ana, California 92702
www.santa-ana.org
(714) 847-5360

March 5, 2019

Troy Hendrickson
Vice President of Construction
Habitat for Humanity of Orange County
2200 S. Ritchey Street
Santa Ana, CA 92705

Re: Lacy Street Project
416 Vance Street (APN 398-041-22) and 826 N. Lacy Street (APN 398-041-22),
Santa Ana, CA 92701
Pre-Commitment Letter for Lease Agreement

Dear Mr. Hendrickson:

Habitat for Humanity of Orange County ("Developer") requested financial assistance in connection with the proposed development of a two (2) unit affordable housing project to be located at 416 Vance Street (APN 398-041-22) and 826 N. Lacy Street (APN 398-041-22) ("Project").

The City of Santa Ana ("City") and Housing Authority of the City of Santa Ana ("Housing Authority") have reviewed the Developer's request for assistance, and at the joint City Council / Housing Authority meeting on March 5, 2019, the City Council and Housing Authority Board authorized and approved issuance of this pre-commitment letter evidencing the preliminary award of ("Agency Assistance"):

- A loan in the maximum amount of \$231,494 in inclusionary housing in-lieu fee payments made pursuant to the City's Housing Opportunity Ordinance (Article XVIII.I of Chapter 41 of the Santa Ana Municipal Code) (the "Inclusionary Housing Fund") held by the City of Santa Ana for the Project ("City Loan"); and,
- A 99-year ground lease for the property located at 416 Vance Street (APN 398-041-22) and 826 N. Lacy Street (APN 398-041-22), Santa Ana, CA 92701, with a combined appraised value of \$578,000.00 as of October 25, 2018; to be used

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80A-5

for the development of affordable housing at 416 Vance Street and 826 N. Lacy Street, Santa Ana, CA 92701 ("Ground Lease").

This letter shall evidence the Agency's pre-commitment of the Agency Assistance to the Developer for the Project subject to the conditions described below.

City Loan:

The amount of the proposed City Loan has been determined based upon the City's review of the Developer's request for the receipt of the Agency Assistance and the development proforma and projected cash flows for the Project submitted by the Developer to the City ("Proforma"). The City Manager and Housing Authority Executive Director has authority to approve revised development proformas and projected cash flows for the Project; provided, however, that the City Assistance is not increased or extended.

The City Loan shall include the following terms:

- \$231,494 maximum principal amount, or as much thereof as is disbursed for hard and soft costs in constructing the Project, provided from the City of Santa Ana Inclusionary Housing Fund.
- 3% simple interest per annum.
- Repayment from 50% of Residual Receipts (pro-rata with payments due in connection with other financing provided by other public agencies) (after payment of operating expenses, debt service, any deferred developer fee, and partnership fees to be described in the Agreement) with the remaining 50% to be disbursed to the Developer.
- Remaining principal and accrued interest due upon the 55th anniversary of the issuance of Certificate of Occupancy and/or final building permits or earlier upon sale, refinancing or default. On that date, the City agrees to review the performance of the property and consider in good faith any reasonable request by Developer to modify the terms or extend the term of the City Promissory Notes. Additionally, the City will receive a pro rata share of 50% of the net proceeds received from any sale or refinancing of the Project, after payment of outstanding debt and payment in full of any deferred developer fee and establishment of any reserves and transaction costs.
- Cost savings from the Project, if any, will be applied first to pay down the City Loan.

Ground Lease:

The Project will be located at 416 Vance Street (APN 398-041-22) and 826 N. Lacy Street (APN 398-041-22) ("Property"). The Housing Authority currently owns the Property. Accordingly, the Housing Authority Board authorized the lease of the Property to the Developer for the Project. After Developer secures all of its remaining financing for the

development of the Project, staff will return to the Housing Authority for consideration of a 99-year Ground Lease Agreement.

General Provisions:

The Agency's obligation to provide the Agency Assistance to the Project is subject to each of the following conditions:

- Developer must provide proof that it has secured all of its remaining financing for the development of the Project before staff will return to the City Council / Housing Authority for consideration of the Loan Agreement and Ground Lease Agreement.
- All provided funding and project requirements shall conform to the City's adopted Affordable Housing Funds Policies and Procedures, unless alternative requirements are expressly provided in the executed Loan Agreement and/or Ground Lease Agreement, or any other documents related to the development of the Project.
- Approval of all required entitlements and discretionary actions, to allow the construction of a 2-unit affordable housing project to be located at 416 Vance Street (APN 398-041-22) and 826 N. Lacy Street (APN 398-041-22), Santa Ana, CA 92701.
- The City's obligation to provide the Loan is and shall remain subject to all covenants, conditions, and restrictions set forth in the Loan Agreement, and in particular City's analysis of the available funding sources and development and operating costs of the Project and the overall economic feasibility of the Project.
- Review and approval of the documents evidencing the City Loan by the City Council, as applicable.
- Review and approval of the documents evidencing the Ground Lease by the Housing Authority as applicable.
- Compliance with California Health and Safety Code and applicable regulations set forth in Section 34176.

Developer, at its sole cost and expense, will be responsible for securing any and all permits and discretionary approvals that may be required for the Project by the City, Housing Authority, or any other federal, state, or local governmental entity having or claiming jurisdiction over the Property or Project. Notably, this pre-commitment letter shall not obligate the City or any department thereof to approve any application or request for or take any other action in connection with any planning approval, permit or other action necessary for the construction, rehabilitation, installation or operation of the Project.

This pre-commitment letter for the Project will expire on March 5, 2021.

If you have any questions or require any additional information regarding this award letter, please contact Judson Brown, Housing Division Manager, by telephone at (714) 667-2241 or by e-mail at jbrown@santa-ana.org.

Sincerely,



Steven A. Mendoza
Acting City Manager
City of Santa Ana



Steven A. Mendoza
Executive Director
Housing Authority of the City of Santa Ana

Attest:



Norma Mitre
Acting Clerk of Council
City of Santa Ana



Norma Mitre
Recording Secretary
Housing Authority of the City of Santa Ana

CONDITIONAL GRANT AGREEMENT

by and between the

CITY OF SANTA ANA

and

HABITAT FOR HUMANITY OF ORANGE COUNTY, a nonprofit organization

416 Vance Street (APN 398-041-22) and 826 N. Lacy Street (APN 398-041-22)

Dated: November 17, 2020

**CONDITIONAL GRANT AGREEMENT
INCLUSIONARY HOUSING PROGRAM**

THIS CONDITIONAL GRANT AGREEMENT (“Agreement”) dated, for identification purposes only, as of November 17, 2020, 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 organization (“Developer”) with reference to the following:

RECITALS:

A. The City’s Housing Opportunity 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”). The Ordinance was amended by the City Council on September 1, 2015 (Ordinance No. NS-2881), on October 6, 2015 (Ordinance No. NS-2885), and on September 1, 2020 (Ordinance No. NS-2994). 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. The Developer, Habitat for Humanity of Orange County, a nonprofit organization (“Habitat for Humanity”) requested financial assistance in connection with the proposed development of two (2) single-family detached homes restricted for sale to moderate income families earning no more than 120% of the Orange County Area Median Income (“Project”) to be located at 416 Vance Street (APN 398-041-22) and 826 N. Lacy Street (APN 398-041-220) (collectively, the “Property”). The two (2) units will be affordable to family households earning no more than 120% of the Area Median Income (“AMI”).

C. On March 5, 2019, the City of Santa Ana authorized the City Manager and the Clerk of the Council to execute a pre-loan commitment letter with Habitat for Humanity of Orange County for \$231,494 in Inclusionary Housing Funds for the development of the Project located at 416 Vance Street (APN 398-041-22) and 826 N. Lacy Street (APN 398-041-22), subject to non-substantive changes approved by the City Manager and City Attorney.

D. On November 17, 2020, the Santa Ana City Council agreed to change the terms of the pre-loan commitment from a loan to a conditional grant.

E. The amount of the Conditional Inclusionary Grant was determined based upon the City’s review of the Developer’s request for the receipt of the Inclusionary Grant and 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

revised development proformas and projected cash flows for the Project; provided, however, that the Inclusionary Grant is not materially increased or extended.

F. In furtherance of the Inclusionary Housing Program, Developer has applied to the City for a grant with which to develop and construct the Project.

G. The City, on certain terms and conditions, desires to make such Conditional Inclusionary Grant to Developer in order to make possible the development and construction of the Project, thereby expanding the supply of decent, safe, sanitary and affordable housing within the City.

H. This Agreement is entered into for the purpose of providing for development and construction of affordable residential ownership units in the City of Santa Ana pursuant to the Inclusionary Housing Fund regulations and guidelines. The parties to this Agreement are separately entering into a ninety-nine (99) year Ground Leases for each of the two Property parcels that will establish and require recordation of affordability and maintenance restrictions on the Property and allow the Developer to maintain those restrictions.

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.

"Best Management Practices" shall mean the City's Best Management Practices as described in the attached **Exhibit D**.

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

"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.

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

"Certificate of Completion" has the meaning set forth in Article 14.

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

“City Project Manager” shall mean the City’s Housing Manager and/or his/her designee.

"County" means the County of Orange, California.

“Developer” means Habitat for Humanity of Orange County, a nonprofit organization.

"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.

"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.

"Housing Authority" means the Housing Authority of the City of Santa Ana (CA093), a public body, corporate and politic.

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

"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.

“Inclusionary Grant” or **“Inclusionary City Grant”** means a grant in the original principal amount of up to two hundred, thirty-one thousand, four hundred and ninety-four dollars (\$231,494) to be made to Developer by the City to be funded exclusively from the Inclusionary Housing Fund.

"Indemnitees" has the meaning set forth in Section 11.5.

"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.

"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.

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

"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.

"Property" means the property that is located at 416 Vance Street (APN 398-041-22) and 826 N. Lacy Street (APN 398-041-22), Santa Ana, CA 92701 in the City of Santa Ana.

"Scope of Work/Schedule of Performance" means the detailed statement of the work to be performed by Developer on and to the Property for the Project pursuant to this Agreement, along with the Schedule of Performance setting forth timeframes for certain tasks, which document is attached hereto as **Exhibit B**.

"Senior Lender" means a commercial or institutional financial institution providing the Senior Loan or any other holder of the Senior Loan Note.

"Senior Loan" means a loan from the Senior Lender concurrent to the Inclusionary Grant for payment of a portion of the construction costs, and shall include any subsequent loan that permanently refinances the initial Senior Loan.

"Senior Loan Deed of Trust" means the first deed(s) of trust securing the Senior Loan by encumbering the Property.

"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 attachments and exhibits to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

2. **SCOPE OF WORK/PROJECT BUDGET**

The Project is generally described in the attached **Exhibit A**. The “Scope of Work” and “Schedule of Performance” for the Project is attached hereto as **Exhibit B**. Any material change to the Scope of Work/Schedule of Performance requested by the Developer shall be subject to the prior written approval of the City Project Manager. The Scope of Work/Schedule sets forth the construction work that shall be performed on the Property for the Project and timeframes for approvals of such work.

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:**

Provided Developer constructs the Project according to the Scope of Work and Schedule of Performance, the Developer will be subject to no repayment obligation. Upon the City’s issuance of a Certificate of Completion, this Agreement shall automatically terminate. In the event the Project is not constructed in compliance with the Scope of Work and Schedule of Performance within two (2) years from the date of the first disbursement of the Grant funds, the City may terminate this Agreement and may seek repayment of Inclusionary Grant monies not expended on development and construction of the Project pursuant to the default remedy provisions of this Agreement set forth in Section 6.1.

3.1. **Inclusionary Funds:**

(a) **Amount and Purpose.** Subject to the terms and conditions of this Agreement, City agrees to make a grant to Developer from the Inclusionary Housing Fund in the principal amount of up to two hundred, thirty-one thousand, four hundred and ninety-four dollars (\$231,494) for the development and construction of the Project.

4. **CONDITIONS TO DISBURSEMENT OF GRANT PROCEEDS**

4.1 **Conditions Precedent.** City's obligation to disburse the grant is subject to the satisfaction of the following conditions precedent:

(a) **City Council.** Review, approval and execution of this Agreement, the Affordability and Maintenance Restrictions, and of the Ground Leases for the two Property parcels by the City Council of the City of Santa Ana.

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

(c) Environmental Review. Compliance with and completion of environmental review of the Project pursuant to the California Environmental Quality Act (“CEQA”) and approval thereof.

(d) Recordation of Affordability Restrictions. The funding of two hundred, thirty-one thousand, four hundred and ninety-four dollars (\$231,494) is from the Inclusionary Housing Fund. The two (2) “Housing Units” at the Project shall and will be restricted to an affordable home purchase price based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD. The Property shall remain affordable for a period of not less than ninety-nine (99) years recorded against the Project in the Official Records, County of Orange, California, as required by the Ground Leases.

(e) Insurance. City shall have received evidence satisfactory to the City Attorney that all of the policies of insurance required by Section 19 of this Agreement are in full force and effect.

(f) 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 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.

(g) 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.

(h) The City’s obligation to provide the Conditional Inclusionary Grant is and shall remain subject to all covenants, conditions, and restrictions set forth in this Agreement, and in particular City’s analysis of the available funding sources and development and operating costs of the Project and the overall economic feasibility of the Project.

4.2 Disbursement Procedures for Grant. The Conditional 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**). The Inclusionary Grant proceeds shall not be used for any purpose other than for development and construction related costs, including Developer fee and soft costs related to the development of the Project (costs all subject to City’s prior review).

4.3 First Disbursement. City's obligation to make the first disbursement of the Grant, which first disbursement shall be ninety percent (90%) of the Grant funds, is subject to satisfaction of the following conditions precedent:

(a) 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.

(b) 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).

(c) Developer shall have provided evidence to the City that the Developer has obtained insurance policies and certificates or endorsements acceptable to the City, as described in this Agreement.

(d) Developer shall have provided construction security 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.

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 any grant or other amounts owing under the Agreement, and Developer shall be required to return to the City any funds not expended on the Project as of the date of the notice of termination.

4.5 **Any Disbursement.** City's obligation to make any disbursement of the Grant, including the first and final disbursements, is subject to the satisfaction of the following conditions precedent:

(a) **Satisfactory Progress.** The City Project Manager shall be satisfied that, based on his/her own inspections or other reliable information, the construction is progressing satisfactorily in conformance with all applicable laws and other requirements.

(b) **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 if such claim is made, then City Project Manager shall receive satisfactory evidence that such claim has been bonded over until its resolution;.

(c) **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 disbursement as though made on and as of that date.

(d) No Default. No Event of Default by Developer shall remain uncured (unless, to the extent permitted under this Agreement, Developer is diligently taking action to cure such default) 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.

4.6 **Final Disbursement.** City's obligation to disburse that portion of the Grant funds retained pursuant to Section 6.12 (the final ten percent (10%) of the Grant funds) 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 final disbursement to occur.

(c) 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 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.

4.7 **Waiver of Conditions.** The conditions set forth pertaining to City's obligation to make disbursements of the 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.

4.8 **Manner of Disbursement.** City may make any disbursement by check or wire transfer payable to Developer.

4.9 **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, and such condition shall be conditioned to all further disbursements until fulfilled.

4.10 **Other Terms and Conditions of Grant.**

(a) Any disbursed Grant amounts not already expended for development and construction shall become immediately due and payable by Developer back to City, in the event of any of the following:

(1) Failure to complete the Project within two (2) years of the date of the first disbursement, unless extended due to Force Majeure delays;

(2) Violation of any of the use covenants and restrictions contained in this Agreement after the expiration of any applicable notice and cure periods; or,

(3) 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.

4.11 **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 **Reserved.**

5.2 **Reserved.**

5.3 **Maintenance of the Property.** During construction of the homes, 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. 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 Ground Leases and Affordability and Maintenance Restrictions.

5.4 **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, color, creed, disability, religion, sex, marital status, ancestry or national origin 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 Ground Leases and Affordability and Maintenance Restrictions.

5.4.1 **In Employment.** In construction on the Property, Developer shall not discriminate against any employee or applicant because of race, color, creed, religion, sex, marital status, disability, national origin, or ancestry. Developer shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, disability, creed, religion, sex, marital status, disability, national origin, or ancestry.

5.4.2 **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. DEFAULTS AND REMEDIES

6.1 **Event 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. 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. Upon a default by Developer which is not cured within thirty (30) days following service of said notice, unless such default cannot reasonably be cured within thirty (30) days, in which case Developer shall have such additional time as reasonably necessary to complete such cure but no more than ninety (90) days, the City shall have the right to terminate this Agreement by delivery of written notice of termination to Developer, at which time Developer would be required to repay any portion of the Grant proceeds disbursed to Developer not already expended for development and construction of the Project pursuant to the Project Budget and the City may enforce the Developer's construction security to complete those portions of the Project not already completed.

6.2 **City Remedies for Default.** Upon termination of this Agreement for Developer default, should the Developer not provide repayment of available unexpended Grant proceeds or should Developer prevent City resort to the construction security, the City, as its sole remedy, shall be entitled to foreclose on the construction security and to cause completion of the Project, and all Developer obligations under this Agreement shall cease.

6.3 **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.

6.4 **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 grant.

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.** Habitat for Humanity 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.**

7.2.1 Developer has all requisite authority to execute and perform its obligations under this Agreement.

7.2.2 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:

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

(b) 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;

(c) 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 the Senior Loan Documents) on or with respect to any property now or hereafter owned or leased by Developer;

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

(e) 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.

7.2.3 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 (d) or (e) of the previous subsection.

7.2.4 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 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 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/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.

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 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.**

8.6.1 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.

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

8.6.3 BY INITIALING BELOW, DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 8.6:

8.6.4 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.

8.7 **Developer's Assurance of Construction Completion.** Prior to commencement of construction of the Project Improvements, Developer shall furnish to City evidence that assures Developer that sufficient monies will be available to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

8.7.1. 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.

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

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

8.7.4. 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;

8.7.5. 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 be in a form acceptable to the City's Risk Manager in its reasonable discretion, and 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.

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.

9.6 **Management Plan.** Prior to issuance of a Certificate of Occupancy, Developer shall submit for the reasonable approval of the City a "Management Plan" that sets forth in detail Developer's property management duties, a homeowner selection process, a security system and crime prevention program, the procedures for the sale of the units, 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.

9.7 **Crime Free Housing.** Developer shall work with City staff to develop a crime free housing policy, procedure, and design plan.

9.8 **Onsite Parking.** Developer shall provide onsite parking for residents and visitors of the Project as required by the building code requirements.

9.9 **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.

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

9.10.2. 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.

9.10.3. 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 Indemnitee.

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 materialman's 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 default on any of the Senior Loan Documents, 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.

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 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) this Agreement; (ii) the making of the Grant(s); (iii) a claim, demand or cause of action that any person has or asserts against Developer; (iv) any act or omission of Developer, any contractor, subcontractor or material supplier, engineer, architect or other person with respect to the Property. Developer's obligations under this Section shall survive the issuance of the Certificate of Completion, and termination of this Agreement.

14.2.1 Notwithstanding the foregoing, neither Developer, nor any of its partners, shall be personally liable for any indemnification obligation hereunder that would result as the repayment of the Grant.

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 the Grant Documents and all related matters, including all claims, demands, causes of action, liabilities, losses, commissions and other costs against which City is indemnified under the Grant Documents. 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.** Developer shall maintain at Developer's sole expense, with insurers either: (i) admitted in California; or, (ii) are not admitted to California but have an A.M. Best Rating of "A" or above and reasonably approved by the City, the

following policies of insurance in form and substance reasonably satisfactory to the City Attorney:

(a) worker's compensation insurance and any other insurance required by law in connection with the construction;

(b) fire and hazard "all risk" insurance covering 100% of the replacement cost of the Improvements in the event of fire, lightning, windstorm, vandalism, malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Property is located (including loss by flood if the Property is in an area designated as subject to the danger of flood);

(c) builder's risk-all risk insurance covering 100% of the replacement cost of all Improvements (including offsite materials) during the course of construction in the event of fire, lightning, windstorm, vandalism, earthquake, malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Property is located (including loss by flood if the Property is in an area designated as subject to the danger of flood);

(d) public liability insurance in amounts reasonably required by City from time to time, and in no event less than \$1,000,000 for "single occurrence;"

(e) property damage insurance in amounts reasonably required by the City from time to time, and in no event less than \$1,000,000; and

(f) any other insurance reasonably required by City that is available at commercially reasonable rates.

All such insurance shall provide that it may not be canceled or materially modified without thirty (30) days prior written notice to City. The policies required under subparagraphs (b) and (c) shall include a "lender's loss payable endorsement" in form and substance satisfactory to City, showing the City as encumbrance. The City shall be named as an additional insured in the policies required under subparagraphs (d) and (e). Certificates of insurance for the above policies (and/or original policies, if required by City) shall be primary and delivered within ten (10) days after demand therefore, and prior to start of any construction work. All policies insuring against damage to the Improvements shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. No less than thirty (30) days prior to the expiration of each policy, Developer shall deliver to City evidence of renewal or replacement of such policy reasonably satisfactory to the City Attorney.

The City Attorney may modify the type and amounts of insurance required pursuant to this Section if the requirements of the City changes.

15.2 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.

15.3 **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.

15.4 **Application of Casualty Insurance Proceeds.** Subject to any superior rights of the 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) To the extent that the Proceeds (together with all undisbursed Grant proceeds and any other financing proceeds available to the Developer) are insufficient to accomplish the restoration required above, Developer shall deliver to City funds (the "Shortfall Funds") in the amount of such shortfall, which funds shall be assigned to City as security for Developer's obligation hereunder and held and disbursed in the same manner as the Proceeds;

(c) 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,

(d) No Event of Default shall remain uncured.

15.5 **Method of Disbursement and Undisbursed Funds.** Any Proceeds and Shortfall Funds 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 up to the amount of any Shortfall Funds deposited by 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.

15.6 **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.

15.7 **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 Grant Document provisions.

15.8 **Condemnation; Treatment of Compensation.** 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 Grant. If so applied, any award in excess of the 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.

15.8.1 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.

15.9 **Waiver of Subrogation.** Developer hereby waives all rights to recover against the City (or any officer, employee, agent or representative of City) for any loss incurred by Developer from any cause insured; provided, however, that this waiver of subrogation shall not be effective with respect to any insurance policy if the coverage thereunder would be materially reduced or impaired as a result. Developer shall use its best efforts to obtain only policies that permit the foregoing waiver of subrogation.

16. DEFAULTS AND REMEDIES

16.1 **Events of Default.** 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) Developer fails to perform any obligation (other than the obligations described in subparagraph (a) above) under this Agreement, and such failure is not cured within thirty (30) days after Developer's receipt of written notice that such obligation was not performed; provided that, if cure cannot reasonably be effected within such thirty (30)-day period, such failure shall not be an Event of Default so long as Developer (in any event, within ten (10) Business Days after receipt of such notice) commences to cure, and thereafter diligently (in any event within ninety (90) days after receipt of such notice) prosecutes such cure to completion;

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

(d) 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 (unless extended pursuant to Section 19.5) and thereafter diligently restores the Property in accordance with this Agreement;

(e) Work on the construction ceases for thirty (30) consecutive days for any reason (other than governmental orders, decrees or regulations, acts of God or any other deity, strikes or other causes beyond Developer's reasonable control);

(f) 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;

(g) 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;

(h) 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; or

(i)

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.

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) By written notice to Developer, declare the balance of all amounts owing under this Agreement, together with all accrued interest and other amounts owing in connection therewith, to be immediately due and payable, regardless of any other specified due date; provided that any Event of Default described in Section 16.1 (d) shall automatically, without notice or other action on City's part, cause all such amounts to be immediately due and payable;

(b) By written notice to Develop, require repayment of all or some portion of the Grant proceeds disbursed to Developer back to the City proportionate to the scale and duration of the uncorrected noncompliance relative to the 99-year Term of Affordability;

(c) 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;

(d) Exercise any of its rights under this 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, all in such order and manner as City elects in its sole and absolute discretion; and,

(e) 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 the Grant Documents 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 any Grant Document 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.

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 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 Manager 20 Civic Center Plaza (M-26) P.O. Box 1988 Santa Ana, California 92702
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

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 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 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 Ground Lease or the Affordability and Maintenance Restrictions, 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 **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.

17.13 **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.

17.14 **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.

17.15 **Authority to Enter Agreement.** Each undersigned represents and warrants that its signature hereinbelow 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 Agreement to be executed on the date set forth at the beginning of this Agreement.

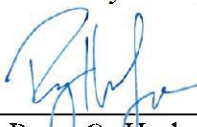
ATTEST:

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


{Signatures continue on following page}

DEVELOPER:

Habitat for Humanity of Orange County

By: _____
Sharon Ellis
Its: Executive Director

HABITAT WILL REQUIRE NO
ADDITIONAL CHANGES TO THE
CONDITIONAL GRANT AGREEMENT
FOR 416 VINCE STREET AND
826 N. LAZY STREET


Troy Hendrickson
V.P.
HFHOC

EXHIBITS

- A. The Project
- B. Scope of Work / Schedule of Performance
- C. Project Budget
- D. Best Management Practices

EXHIBIT A**THE PROJECT**

The proposed project includes the development of two (2) single-family detached homes restricted for sale to moderate income families earning no more than 120% of the Orange County Area Median Income. The project location is at the SW corner of Lacy and Vance Streets and is comprised of two single-family lots within the “Historic French Park” community.

Construction will consist of two (2) single-family detached homes. The design and construction of the homes shall reflect the architectural elements and finishes that are present in the “Historic French Park” community. Habitat for Humanity will create two distinct floor plans for this project whose sizes are proportionate to the approximately 7,500 sq. ft. lots on which they will be built. Specifically, the two (2) single-family detached homes will consist of:

- A single-story “Craftsman-style” home. This residence will be a three bedroom, two and a half bath of approximately 1,500 sq. ft.
- A second home that will be influenced by the “Victorian-Style” of architecture. This will be a two-story residence with four bedrooms and three bathrooms and will be approximately 1,700 sq. ft.

These homes will be made available to qualifying moderate income families (up to 120% of Area Median Income). Construction will comply with all City of Santa Ana building standards, as well as the “Historic French Park” community. The project will comply with the design guidelines of the French Park Historic District and will require review by the French Park Design Committee.

The construction of all required improvements associated with the development will be the responsibility of Habitat for Humanity. Materials will include composite roofing material, wood, or simulated wood siding, concrete-paving surfaces, and professionally designed landscape. The two homes will be constructed concurrently.

Exhibit B**Scope of Work/Schedule of Performance**Scope of Work

The scope of work shall include the preparation of plans, processing for permits, all necessary site work for the construction of two single-family homes with detached garages, and front-yard landscaping/fencing.

Schedule of Performance

	<u>Months</u>
Site Acquisition/Due Diligence	3
Preparation of Plans	3
City Processing/Permits	4
Grading/Site Improvements	2
House Construction	10
Home Sales	2
Total Schedule	24

Exhibit C
Project Budget/Sources & Uses

Project Budget:

Site Improvements	155,000
Impact Fees	50,000
Direct Construction	404,000
Indirect Construction	336,000
Insurance	21,000
Finance	33,000
Overhead	157,000
Warranty	20,000
Contingency	<u>40,000</u>
	1,216,000

Sources:

City Grant	231,494
Habitat Fundraising	284,506
Construction Loan	<u>700,000</u>
Total Sources	1,216,000

Uses:

Site Improvements	155,000
Impact Fees	50,000
Direct Construction	404,000
Indirects/Soft Costs	<u>607,000</u>
Total Uses	1,216,000

EXHIBIT D**BEST MANAGEMENT PRACTICES
("BMPs" Fact Sheets)**

Best Management Practices can be found at: <http://www.ocwatersheds.com/documents/bmp> which website may change from time to time.

BMPs apply to the Project and BMPs also apply to Developer and its subcontractors, therefore Developer shall be responsible and shall cause its subcontractors to be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to construction activity with respect to the Project, and also including, without limiting the generality of the foregoing, site preparation, landscaping, installation of utilities, street construction or improvement and grading or filling in or on the Property. Developer is to be aware that the BMP clause within this Lease, along with all related BMP Exhibits, may be revised, and may incorporate more than what is initially being presented in this Agreement. Suggested BMPs Fact Sheets may include, but may not be limited to, the following list shown below and can be found at:

<http://www.ocwatersheds.com/documents/bmp/industrialcommercialbusinessesactivities> (which website may change from time to time):

- IC3 Building Maintenance
- IC4 Carpet Cleaning
- IC6 Contaminated or Erodible Surface Areas
- IC7 Landscape Maintenance
- IC9 Outdoor Drainage from Indoor Areas
- IC10 Outdoor Loading/Unloading of Materials
- IC12 Outdoor Storage of Raw Materials, Products, and Containers
- IC14 Painting, Finishing, and Coatings of Vehicles, Boats, Buildings, and Equipment
- IC15 Parking & Storage Area Maintenance
- IC17 Spill Prevention and Cleanup
- IC21 Waste Handling and Disposal
- IC22 Eating and Drinking Establishments
- IC23 Fire Sprinkler Testing/Maintenance
- IC24 Wastewater Disposal Guidelines

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 6103 & 27383

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

AFFORDABILITY AND MAINTENANCE RESTRICTIONS

{Address: 416 Vance Street (APN 398-041-22)}

THESE AFFORDABILITY AND MAINTENANCE RESTRICTIONS (the “Restrictions”) are entered into by and between Habitat for Humanity of Orange County, a nonprofit organization (“Habitat”), as the “Tenant” under the Ground Lease for each of two parcels of Property (defined below), and the Housing Authority of the City of Santa Ana, a public body, corporate and politic (“City” and/or “Agency”) as the “Lessor” under the Ground Lease for the above-referenced Premises.

RECITALS:

A. The City’s Housing Opportunity 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”). The Ordinance was amended by the City Council on September 1, 2015 (Ordinance No. NS-2881), on October 6, 2015 (Ordinance No. NS-2885), and on September 1, 2020 (Ordinance No. NS-2994). 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. Habitat requested financial assistance in connection with the proposed development of two (2) single-family detached homes (“Restricted Units”) restricted for sale to moderate income families earning no more than 120% of the Orange County Area Median Income (“Project”) to be located at 416 Vance Street (APN 398-041-22) and 826 N. Lacy Street (APN 398-041-22 (“Property”). The two (2) Restricted Units will be affordable to family households earning no more than 120% of the Area Median Income (“AMI”).

C. On March 5, 2019, the City of Santa Ana authorized the City Manager and the Clerk of the Council to execute a pre-loan commitment letter with Habitat for \$231,494 in Inclusionary

Housing Funds for the development of the Project at the Property, subject to non-substantive changes approved by the City Manager and City Attorney.

D. On November 17, 2020, the City of Santa Ana agreed to change the terms of the pre-loan commitment from a loan to a conditional grant.

E. The amount of the Conditional Inclusionary Grant was determined based upon the City's review of the Habitat's request for the receipt of the Conditional Inclusionary Grant and the development proforma and projected cash flows for the Project submitted by the Habitat to the City ("Proforma"). The City Project Manager has authority to approve revised development proformas and projected cash flows for the Project; provided, however, that the Conditional Inclusionary Grant is not materially increased or extended.

F. In furtherance of the Inclusionary Housing Program, Habitat applied to the City for a grant with which to:

1. Develop and construct the Project.

G. The City, on certain terms and conditions, made such Inclusionary Grant to Developer in order to make possible the development and construction of the Project, thereby expanding the supply of decent, safe, sanitary and affordable housing within the City.

H. If there is any inconsistency between Federal, State, and local guidelines with regard to any of the terms and conditions contained herein, the more stringent shall apply.

I. The Inclusionary Grant Agreement and Ground Leases for the two parcels of the Property are entered into for the purpose of providing for affordable residential ownership units in the City of Santa Ana pursuant to the Inclusionary Housing Fund regulations and guidance.

J. These Restrictions empower Habitat, as Lessor's Agent, following construction of the homes, to maintain the affordability of the Restricted Units and to maintain the certain components of the Premises that may not be covered by Tenant insurance under the Ground Lease for the Premises.

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

1. Definitions:

"**Affordable Housing**" means the total housing costs paid by a qualifying household, which shall not exceed the fraction of gross income specified, as follows, in accordance with the State of California Department of Housing and Community Development pursuant to Health and Safety Code Section 50052.5(b)(4) and the U.S. Department of Housing and Urban Development (HUD):

Moderate-Income Households. Thirty (30) percent of the income of a household earning one hundred and twenty (120) percent of the Median Income for the Area for for-sale units, adjusted for family size appropriate for the unit.

“Affordable Mortgage” means the monthly mortgage payment, which does not exceed the maximum amount applicable to Moderate Income Households.

“Agent” shall mean, with respect to Habitat’s rights and responsibilities under this Restriction, Habitat or similarly situated non-profit public benefit organization assisting with providing housing for moderate-income persons as Habitat’s successors and assigns, subject to the City’s right to approve the agreement to effect such assignment or transfer. City shall permit Habitat assignments or transfers of Habitat’s interests under the Restriction to an Affiliate nonprofit public benefit corporation or for-profit corporation of Habitat, or to a limited partnership whose general partner is a nonprofit corporation, for-profit corporation or limited liability company is an Affiliate of Habitat or Habitat’s general partner

“Applicable Law” shall mean those federal, state and local laws, ordinances, regulations, policies and procedures applicable to the Inclusionary Housing Funds.

“City” means the City of Santa Ana, California, a charter city and municipal corporation. “City” shall also refer to the Housing Authority of the City of Santa Ana where the context dictates, to the effect that the Housing Authority of the City shall have all the rights granted to the City hereunder.

“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.

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

“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.

“Inclusionary Grant” or **“Conditional Inclusionary City Grant”** means a grant in the original principal amount of up to two hundred, thirty-one thousand, four hundred and ninety-four dollars (\$231,494) to be made to Developer by the City to be funded exclusively from the Inclusionary Housing Fund.

“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.

"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.

"Median Income for the Area" means the median income for Orange County, California PMSA as most recently determined by HUD. Also may be referred to interchangeably in the Inclusionary Grant Documents as "Area Median Income" or "AMI".

"Premises" means that portion of the Property and any Improvements thereon that is located at 416 Vance Street (APN 398-041-22), Santa Ana, CA 92701, as more fully described in the "Legal Description" attached to the Agreement as **Exhibit A** and incorporated herein by reference.

"Project" means the construction of the Improvements upon the Property by Developer pursuant to the Agreement.

"Property" means the property that is located at 416 Vance Street (APN 398-041-22), Santa Ana, CA 92701 in the City of Santa Ana.

"Restricted Units" means the two (2) "Housing Units" at the Project, which shall and will be restricted to an affordable home purchase price based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD for a period of not less than ninety-nine (99) years recorded against the Premises in the Official Records, County of Orange, California.

"Term of Affordability" or "Affordability Period" means the terms and conditions contained herein shall remain in effect for ninety-nine (99) years from the date of the Ground Lease.

2. Use of the Premises. Except while Habitat is the initial Tenant under the Ground Lease, Tenant covenants and agrees, for itself, its successors, its assigns, and every successor in interest to the Premises any part thereof, that Tenant is a Moderate-Income Household, as provided in these Restrictions. Tenant agrees that during the Term of Affordability, the Premises shall be used only for decent, safe, sanitary and Affordable Housing pursuant to the affordability requirements of California Health and Safety Code ("H&S") sections 50052.5 and 33334.3, as applicable.

3. Premises Affordability and Maintenance Restrictions.

3.1 Affordability Restrictions:

A. Tenant agrees and covenants, which covenants shall run with the land and bind Tenant, its successors, its assign and every successor in interest to the Property that Tenant will only enter into Affordable Mortgages and only make the Restricted Unit on the Premises available for resale to Moderate Income Households at an Affordable Housing purchase price based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD during the Term of Affordability. Tenant agrees that, upon

termination of Tenant's right in the Lease and/or resale of the Restricted Unit, Agent shall have the exclusive right to approve any assignment of the Lease and re-sale of the Restricted Unit, and that Tenant (other than Habitat) have no right to assign its interests in the Lease and/or to sell the Restricted Unit without such Agent approval other than to a Leasehold Mortgage lenders as a pledge to finance an Affordable Mortgage. Agent shall take all necessary steps to review the income of all homeowners prior to selling to them. Agent shall allow the City to conduct periodic reviews of homeowner files and files relating to affirmative marketing and outreach to ensure the Project's compliance with applicable regulations and guidelines. The interests of Leasehold Mortgage Lenders shall be subordinate to the Restrictions and to Agent's right to approve assignment of the Tenant Leasehold interest and resale of the home to Qualifying Purchasers following foreclosure by the Leasehold Mortgage lenders.

- (1) Local Preference. Local preference for Santa Ana residents and workers in homebuyer selection shall be a requirement of the Project. Subject to the prohibition of discrimination and the granting of preferences in housing occupancy imposed by federal laws and regulations, the State of California, and by the City of Santa Ana Affordable Housing Funds Policies and Procedures, when selling the Restricted Unit and assigning its interests in the Lease, Tenant, with the assistance of Agent shall use its best efforts to sell the Restricted Unit and assign its interests in the Lease in the following order of priority:

- First priority shall be given to persons who have been permanently displaced or face permanent displacement from housing in Santa Ana as a result of any of the following:
 - A redevelopment project undertaken pursuant to California's Community Redevelopment Law (Health & Safety Code Sections 33000, et seq.) -- applicable only to projects funded by the Low and Moderate Income Housing Asset Fund.
 - Ellis Act, owner-occupancy, or removal permit eviction;
 - Earthquake, fire, flood, or other natural disaster;
 - Cancellation of a Housing Choice Voucher HAP Contract by property owner; or
 - Governmental Action, such as Code Enforcement.
- Second priority shall be given to persons who are either:
 - a. Residents of Santa Ana and/or
 - b. Working in Santa Ana at least 32 hours per week for at

least the last 6 months.

B. The two (2) single-family detached homes will be restricted for sale to moderate income families earning no more than 120% of the Orange County Area Median Income based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD.

C. These Restrictions shall be recorded in the Official Records of the County, and shall remain in first position on title and shall not be subordinated.

3.2 Maintenance of the Property:

A. Maintenance Reserve Fee. Tenant agrees and covenants, which covenants shall run with the land and bind Tenant, its successors, its assign and every successor in interest to the Property that Tenant will pay to Habitat, as Agent for Lessor, a monthly maintenance reserve fee in an amount established by Habitat sufficient to maintain a reserve fund to pay for any required roof repairs, re-painting, landscaping and pest control/remediation for the Restricted Unit on the Premises, which amount shall be established by Habitat, in its sole discretion, and which fees shall be maintained by Habitat in a separate account and used as needed by Habitat for the purpose of paying for any required roof repairs, re-painting, landscaping and pest control/remediation, as determined to be necessary by Habitat and/or the City. Tenant shall allow Habitat and its agents and contractors access to the Premises at reasonable hours to carry out such maintenance by Habitat as Habitat may determine, in its sole discretion.

B. Maintenance. Tenant agrees to maintain the roofing, exterior paint, and the landscaping in a clean and good condition and repair in compliance with all applicable housing quality standards and state and local code requirements, and keep the Property free from any accumulation of debris and waste materials. If at any time Tenant fails to maintain, or cause to be maintained, the roofing, exterior paint, and landscaping as required, 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 Tenant shall have such additional time as reasonably necessary to complete such cure, the City may perform the necessary maintenance and Tenant shall pay all reasonable costs incurred for such maintenance from the maintenance reserve fund detailed in section 3.2(A) above.

C. Monitoring. Tenant shall allow the City to conduct periodic inspections of the roof, exterior paint, or landscaping after the date of construction completion, with reasonable notice. Tenant shall cure any defects or deficiencies found by the City while conducting such inspections within thirty (30) days of written notice thereof, or such longer period as is reasonable within the sole discretion of the City.

3.3 Obligation to Refrain from Discrimination:

A. In Use of Property. Any party subject to the terms of these Affordability and Maintenance Restrictions covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, disability,

sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Habitat itself or any person claiming under or through it 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, subtenants, sublessees or vendees of the Property, as required by the Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 U.S.C. 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975, and all implementing regulations.

B. In Affordable Housing Restrictions. Any party subject to the terms of these Affordability and Maintenance Restrictions shall not refuse to sell a unit to a holder of a rental voucher under 24 CFR part 887 (Housing Choice Voucher Program) or to a holder of a comparable document evidencing participation in a federally funded tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable tenant-based assistance document.

4. Miscellaneous Provisions:

A. Any sales prices of any of the Restricted Units must be for an amount not more than what is affordable to a moderate income family earning no more than 120% of the Orange County Area Median Income based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD.

B. The covenants established in these Restrictions shall be binding for the benefit of and in favor of the City and its respective successors and assigns, without regard to technical classification and designation. These Restrictions shall remain in effect for the Term of Affordability. The covenants against discrimination shall remain in effect for the period of these Restrictions.

C. The City is the beneficiary of the terms and provisions of these Restrictions and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit these Restrictions and the covenants running with the land have been provided. The City shall have the right if the 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 they or any other beneficiaries of these Restrictions and covenants are entitled.

D. The covenants and agreements contained herein shall run with the land and shall remain in effect for the Term of Affordability.

E. Upon a Transfer of the Property, the transferee will be obligated to meet with the Agent prior to closing of the Transfer to review the terms of these Restrictions and requirements of the transferee therein. Any failure of transferee to meet with the Agent as required would constitute a default under these Restrictions.

F. The Ground Lease and all of its attachments, including these Affordability Restrictions, shall be enforceable by the City in accordance with the default and remedy terms and procedures detailed in the Ground Lease.

G. Reserved

{Signatures on following page}

IN WITNESS WHEREOF, the parties hereto have caused these Affordability Restrictions on Transfer of Property to be executed on the date set forth at the beginning of these Restrictions.

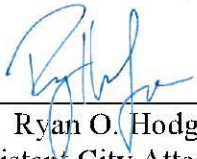
ATTEST:

HOUSING AUTHORITY OF THE CITY OF
SANTA ANA, ACTING AS THE HOUSING
SUCCESSOR AGENCY

Daisy Gomez
Recording Secretary

Steven A. Mendoza
Executive Director

APPROVED AS TO FORM
Sonia R. Carvalho
Authority General Counsel



By: Ryan O. Hodge
Assistant City Attorney

{Signatures continue on following page}

DEVELOPER:

Habitat for Humanity of Orange County

By: _____
Sharon Ellis
Its: Executive Director

HABITAT WILL REQUIRE NO ADDITIONAL
CHANGES TO THE AFFORDABILITY AND
MAINTENANCE AGREEMENT FOR
416 VANCE STREET



TROY HENDRICKSON
V.P. HFHOC

Exhibit A

Legal Description

Lots 31 and 32 in Block 83 of the Town of Santa Ana East, as per map recorded in Book 10, Pages 43 and 44 of Miscellaneous Records, in the office of the County Recorder of said County.

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 6103 & 27383

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

AFFORDABILITY AND MAINTENANCE RESTRICTIONS

{Address: 826 N. Lacy Street (APN 398-041-22)}

THESE AFFORDABILITY AND MAINTENANCE RESTRICTIONS (the “Restrictions”) are entered into by and between Habitat for Humanity of Orange County, a nonprofit organization (“Habitat”), as the “Tenant” under the Ground Lease for each of two parcels of Property (defined below), and the Housing Authority of the City of Santa Ana, a public body, corporate and politic (“City” and/or “Agency”) as the “Lessor” under the Ground Lease for the above-referenced Premises.

RECITALS:

A. The City’s Housing Opportunity 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”). The Ordinance was amended by the City Council on September 1, 2015 (Ordinance No. NS-2881), on October 6, 2015 (Ordinance No. NS-2885), and on September 1, 2020 (Ordinance No. NS-2994). 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. Habitat requested financial assistance in connection with the proposed development of two (2) single-family detached homes (“Restricted Units”) restricted for sale to moderate income families earning no more than 120% of the Orange County Area Median Income (“Project”) to be located at 416 Vance Street (APN 398-041-22) and 826 N. Lacy Street (APN 398-041-22 (“Property”). The two (2) Restricted Units will be affordable to family households earning no more than 120% of the Area Median Income (“AMI”).

C. On March 5, 2019, the City of Santa Ana authorized the City Manager and the Clerk of the Council to execute a pre-loan commitment letter with Habitat for \$231,494 in Inclusionary

Housing Funds for the development of the Project at the Property, subject to non-substantive changes approved by the City Manager and City Attorney.

D. On November 17, 2020, the City of Santa Ana agreed to change the terms of the pre-loan commitment from a loan to a conditional grant.

E. The amount of the Conditional Inclusionary Grant was determined based upon the City's review of the Habitat's request for the receipt of the Conditional Inclusionary Grant and the development proforma and projected cash flows for the Project submitted by the Habitat to the City ("Proforma"). The City Project Manager has authority to approve revised development proformas and projected cash flows for the Project; provided, however, that the Conditional Inclusionary Grant is not materially increased or extended.

F. In furtherance of the Inclusionary Housing Program, Habitat applied to the City for a grant with which to:

1. Develop and construct the Project.

G. The City, on certain terms and conditions, made such Inclusionary Grant to Developer in order to make possible the development and construction of the Project, thereby expanding the supply of decent, safe, sanitary and affordable housing within the City.

H. If there is any inconsistency between Federal, State, and local guidelines with regard to any of the terms and conditions contained herein, the more stringent shall apply.

I. The Inclusionary Grant Agreement and Ground Leases for the two parcels of the Property are entered into for the purpose of providing for affordable residential ownership units in the City of Santa Ana pursuant to the Inclusionary Housing Fund regulations and guidance.

J. These Restrictions empower Habitat, as Lessor's Agent, following construction of the homes, to maintain the affordability of the Restricted Units and to maintain the certain components of the Premises that may not be covered by Tenant insurance under the Ground Lease for the Premises.

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

1. Definitions:

"**Affordable Housing**" means the total housing costs paid by a qualifying household, which shall not exceed the fraction of gross income specified, as follows, in accordance with the State of California Department of Housing and Community Development pursuant to Health and Safety Code Section 50052.5(b)(4) and the U.S. Department of Housing and Urban Development (HUD):

Moderate-Income Households. Thirty (30) percent of the income of a household earning one hundred and twenty (120) percent of the Median Income for the Area for for-sale units, adjusted for family size appropriate for the unit.

“Affordable Mortgage” means the monthly mortgage payment, which does not exceed the maximum amount applicable to Moderate Income Households.

“Agent” shall mean, with respect to Habitat’s rights and responsibilities under this Restriction, Habitat or similarly situated non-profit public benefit organization assisting with providing housing for moderate-income persons as Habitat’s successors and assigns, subject to the City’s right to approve the agreement to effect such assignment or transfer. City shall permit Habitat assignments or transfers of Habitat’s interests under the Restriction to an Affiliate nonprofit public benefit corporation or for-profit corporation of Habitat, or to a limited partnership whose general partner is a nonprofit corporation, for-profit corporation or limited liability company is an Affiliate of Habitat or Habitat’s general partner

“Applicable Law” shall mean those federal, state and local laws, ordinances, regulations, policies and procedures applicable to the Inclusionary Housing Funds.

“City” means the City of Santa Ana, California, a charter city and municipal corporation. “City” shall also refer to the Housing Authority of the City of Santa Ana where the context dictates, to the effect that the Housing Authority of the City shall have all the rights granted to the City hereunder.

“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.

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

“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.

“Inclusionary Grant” or “Conditional Inclusionary City Grant” means a grant in the original principal amount of up to two hundred, thirty-one thousand, four hundred and ninety-four dollars (\$231,494) to be made to Developer by the City to be funded exclusively from the Inclusionary Housing Fund.

“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.

"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.

"Median Income for the Area" means the median income for Orange County, California PMSA as most recently determined by HUD. Also may be referred to interchangeably in the Inclusionary Grant Documents as "Area Median Income" or "AMI".

"Premises" means that portion of the Property and any Improvements thereon that is located at 826 N. Lacy Street (APN 398-041-22), Santa Ana, CA 92701, as more fully described in the "Legal Description" attached to the Agreement as **Exhibit A** and incorporated herein by reference.

"Project" means the construction of the Improvements upon the Property by Developer pursuant to the Agreement.

"Property" means the property that is located at 826 N. Lacy Street (APN 398-041-22), Santa Ana, CA 92701 in the City of Santa Ana.

"Restricted Units" means the two (2) "Housing Units" at the Project, which shall and will be restricted to an affordable home purchase price based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD for a period of not less than ninety-nine (99) years recorded against the Premises in the Official Records, County of Orange, California.

"Term of Affordability" or "Affordability Period" means the terms and conditions contained herein shall remain in effect for ninety-nine (99) years from the date of the Ground Lease.

2. Use of the Premises. Except while Habitat is the initial Tenant under the Ground Lease, Tenant covenants and agrees, for itself, its successors, its assigns, and every successor in interest to the Premises any part thereof, that Tenant is a Moderate-Income Household, as provided in these Restrictions. Tenant agrees that during the Term of Affordability, the Premises shall be used only for decent, safe, sanitary and Affordable Housing pursuant to the affordability requirements of California Health and Safety Code ("H&S") sections 50052.5 and 33334.3, as applicable.

3. Premises Affordability and Maintenance Restrictions.

3.1 Affordability Restrictions:

A. Tenant agrees and covenants, which covenants shall run with the land and bind Tenant, its successors, its assign and every successor in interest to the Property that Tenant will only enter into Affordable Mortgages and only make the Restricted Unit on the Premises available for resale to Moderate Income Households at an Affordable Housing purchase price based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD during the Term of Affordability. Tenant agrees that, upon

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- First priority shall be given to persons who have been permanently displaced or face permanent displacement from housing in Santa Ana as a result of any of the following:
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 - Ellis Act, owner-occupancy, or removal permit eviction;
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B. The two (2) single-family detached homes will be restricted for sale to moderate income families earning no more than 120% of the Orange County Area Median Income based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD.

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C. Monitoring. Tenant shall allow the City to conduct periodic inspections of the roof, exterior paint, or landscaping after the date of construction completion, with reasonable notice. Tenant shall cure any defects or deficiencies found by the City while conducting such inspections within thirty (30) days of written notice thereof, or such longer period as is reasonable within the sole discretion of the City.

3.3 Obligation to Refrain from Discrimination:

A. In Use of Property. Any party subject to the terms of these Affordability and Maintenance Restrictions covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, disability,

sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Habitat itself or any person claiming under or through it 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, subtenants, sublessees or vendees of the Property, as required by the Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 U.S.C. 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975, and all implementing regulations.

B. In Affordable Housing Restrictions. Any party subject to the terms of these Affordability and Maintenance Restrictions shall not refuse to sell a unit to a holder of a rental voucher under 24 CFR part 887 (Housing Choice Voucher Program) or to a holder of a comparable document evidencing participation in a federally funded tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable tenant-based assistance document.

4. Miscellaneous Provisions:

A. Any sales prices of any of the Restricted Units must be for an amount not more than what is affordable to a moderate income family earning no more than 120% of the Orange County Area Median Income based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD.

B. The covenants established in these Restrictions shall be binding for the benefit of and in favor of the City and its respective successors and assigns, without regard to technical classification and designation. These Restrictions shall remain in effect for the Term of Affordability. The covenants against discrimination shall remain in effect for the period of these Restrictions.

C. The City is the beneficiary of the terms and provisions of these Restrictions and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit these Restrictions and the covenants running with the land have been provided. The City shall have the right if the 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 they or any other beneficiaries of these Restrictions and covenants are entitled.

D. The covenants and agreements contained herein shall run with the land and shall remain in effect for the Term of Affordability.

E. Upon a Transfer of the Property, the transferee will be obligated to meet with the Agent prior to closing of the Transfer to review the terms of these Restrictions and requirements of the transferee therein. Any failure of transferee to meet with the Agent as required would constitute a default under these Restrictions.

F. The Ground Lease and all of its attachments, including these Affordability Restrictions, shall be enforceable by the City in accordance with the default and remedy terms and procedures detailed in the Ground Lease.

G. Reserved

{Signatures on following page}

IN WITNESS WHEREOF, the parties hereto have caused these Affordability Restrictions on Transfer of Property to be executed on the date set forth at the beginning of these Restrictions.

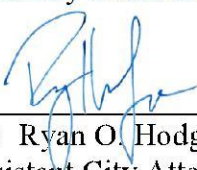
ATTEST:

HOUSING AUTHORITY OF THE CITY OF
SANTA ANA, ACTING AS THE HOUSING
SUCCESSOR AGENCY

Daisy Gomez
Recording Secretary

Steven A. Mendoza
Executive Director

APPROVED AS TO FORM
Sonia R. Carvalho
Authority General Counsel



By: Ryan O. Hodge
Assistant City Attorney

{Signatures continue on following page}

DEVELOPER:

Habitat for Humanity of Orange County

By: _____
Sharon Ellis
Its: Executive Director

HABITAT WILL REQUIRE NO ADDITIONAL
CHANGES TO THE AFFORDABILITY AND
MAINTENANCE AGREEMENT FOR
826 N. LALY STREET

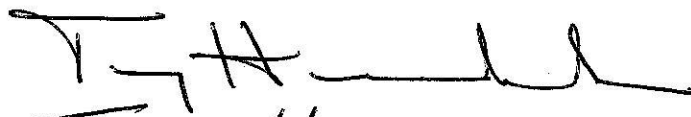

TROY HENDRICKSON
V.P. HFHOC

EXHIBIT A

Legal Description

Commonly known as: 826 N. Lacy Street, Santa Ana, CA

PARCEL 1 AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE
ADJUSTMENT 93-11 RECORDED JANUARY 7, 1994 AS INSTRUMENT NO. 94-
0016423 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXHIBIT A

**HOUSING AUTHORITY OF THE CITY OF SANTA ANA****GROUND LEASE—VANCE STREET PARCEL**

Habitat for Humanity Affordable Housing Project at
416 Vance Street (APN 398-041-22)

THIS GROUND LEASE (“**Lease**”) is made and effective as of the 17th day of November, 2020 (“**Effective Date**”) by and between the HOUSING AUTHORITY OF THE CITY OF SANTA ANA, a public body, corporate and politic, (“**Lessor**,” “**City**” and/or “**Agency**”) and HABITAT FOR HUMANITY OF ORANGE COUNTY, a nonprofit organization specializing in the construction of affordable housing for purchase by qualifying families (“**Habitat**,” hereinafter called “**Tenant**” when referring to tenancy obligations of Habitat and its assigns, “**Developer**” when referring to Habitat obligations during Habitat’s tenancy herein to develop Initial Improvements defined herein as those obligations are more particularly described in the Inclusionary Grant Agreement, or “**Agent**” when referring to Habitat obligations after Habitat’s tenancy herein as Lessor’s agent for enforcing the Restrictions defined herein) (also referred to hereinafter each as “**Party**” or collectively as the “**Parties**”).

RECITALS

A. Lessor owns that certain real property generally located at 416 Vance Street (“**Vance Street Parcel**” APN 398-041-22) and 826 N. Lacy Street (“**Lacy Street Parcel**” APN 398-041-22), Santa Ana, CA 92701 (the Vance Street Parcel and the Lacy Street Parcel, collectively as the “**Property**”).

B. Developer proposes to develop on the two Property parcels two (2) single-family detached homes (“**Project**”) as generally described in Exhibit “A” to the concurrently executed Inclusionary Grant Agreement between Developer and the City. The homes will be made available for purchase and occupancy by qualifying moderate income families (up to 120% of Area Median Income) pursuant to assignment of this Lease and of the companion ground lease for the Lacy Street Parcel.

C. On March 5, 2019, the Agency authorized the Executive Director of the Agency and the Recording Secretary to execute a pre-commitment letter with Tenant for a 99-year ground-lease of the Property for the development of the Project, subject to non-substantive changes approved by the Executive Director of the Housing Authority and Authority General Counsel.

D. On March 5, 2019, the City authorized the City Manager and the Clerk of the City Council to execute a pre-loan commitment letter with Developer for \$231,494 in Inclusionary Housing Funds for the development of the Project located at the Property, subject to non-substantive changes approved by the City Manager and City Attorney. The City has subsequently determined that instead of a loan, the funds will be disbursed as a grant.

E. The proposed Project will result in the redevelopment of underutilized land owned by the Agency, development of two affordable single-family homes for the benefit of local residents, and increased homeownership opportunities within the City produced by the Project. The proposed Project is intended to be developed by Developer pursuant to the terms and conditions for development of the Project contained in the Inclusionary Grant Agreement.

F. Based on the reasons identified in Recital E, above, together with the commitments and obligations of Developer to develop the Property according to the Project as contained in the Inclusionary Grant Agreement, Lessor has determined that the lease of the Vance Street and Lacy Street Parcels to Habitat and its assigns as Tenant for occupancy of the homes is in the best interest of the Lessor.

G. Lessor desires to lease the Vance Street Parcel as more particularly described in the Legal Description attached to this Lease as Exhibit “A” and incorporated herein by reference (“**Premises**”), and the Tenant desires to enter into a lease of the Premises for the purposes of development of the Project and subsequent occupancy of the two homes on the Premises for Affordable Housing on the terms and conditions set forth in this Lease.

H. Lessor and Tenant have jointly agreed to enter into this Lease as of the date set forth above.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH THE PARTIES ACKNOWLEDGE, AND PURSUANT TO THE PROMISES AND COVENANTS SET FORTH IN THIS AGREEMENT, THE PARTIES AGREE, AS FOLLOWS:

ARTICLE I

DEFINITIONS

1.1 **Definitions:** The following defined terms used in this Lease shall have the meanings set forth below. Other terms are defined in other provisions of this Lease, and shall have the definitions given to such terms in such other provisions.

1.1.1. “**Affiliate**” shall mean, with respect to any person (which as used herein includes an individual, trust or entity), any other person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such person.

1.1.2. “**Affordability and Maintenance Restrictions**” or “**Restrictions**” means that certain document affecting real property benefiting the Lessor, attached hereto and incorporated herein as **Exhibit B**.

1.1.3. “**Affordable Housing**” means the total housing costs paid by a qualifying household, which shall not exceed the fraction of gross income specified, as follows, in accordance with the State of California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093(e): Moderate-Income Households. Thirty-Five (35) percent

of the income of a household earning one hundred and twenty (120) percent of the Median Income for the Area for for-sale units, adjusted for family size appropriate for the unit.

1.1.4. **“Affordable Mortgage”** means the monthly mortgage payment which does not exceed the maximum amount applicable to Moderate Income Households.

1.1.5. **“Agency”** shall mean the Housing Authority of the City of Santa Ana, acting as the Housing Successor Agency, a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the California Redevelopment Law. The principal office of the Agency is located at 20 Civic Center Plaza, Santa Ana, California 92702. “Agency” shall also refer to the City of Santa Ana where the context dictates, to the effect that the City of Santa Ana shall have or succeed to all rights granted to the Agency hereunder.

1.1.6. **“Agent”** shall mean, with respect to Habitat’s rights and responsibilities under the Restriction, Habitat or similarly situated non-profit public benefit organization assisting with providing housing for low income persons as Habitat’s successors and assigns, subject to the Agency’s right to reasonably approve the agreement to effect such assignment or transfer. Agency may permit Habitat assignments or transfers of Habitat’s interests under the Restriction to an Affiliate nonprofit public benefit corporation or for-profit corporation of Habitat, or to a limited partnership whose general partner is a nonprofit corporation, for-profit corporation or limited liability company is an Affiliate of Habitat or Habitat’s general partner, which shall not be unreasonably withheld.

1.1.7. **“Certificate of Occupancy”** shall mean a temporary or final certificate of occupancy (or other equivalent entitlement, however designated) for the Initial Improvements.

1.1.8. **“City”** shall mean the City of Santa Ana, California, a charter city and municipal corporation. “City” shall also refer to the Agency where the context dictates, to the effect that the Agency shall have all the rights granted to the City hereunder. **“City Council”** shall mean the City Council of the City of Santa Ana.

1.1.9. **“Claims”** shall mean liens, claims, demands, suits, judgments, liabilities, damages, fines, losses, penalties, costs and expenses (including without limitation reasonable attorneys' fees and expert witness costs, and costs of suit), and sums reasonably paid in settlement of any of the foregoing.

1.1.10. **“Effective Date”** is defined in the introductory paragraph to this Lease, and shall be the date on which Tenant takes possession of the Premises and is entitled to commence construction pursuant to Article V, below.

1.1.11. **“Event of Default”** is defined in Section 11.1.

1.1.12. **“Force Majeure Event”** is defined in Article XIV.

1.1.13. **“Hazardous Material(s)”** is defined in Section 4.4.

1.1.14. “**HCD**” shall mean the California Department of Housing and Community Development.

1.1.15. “**Improvements**” shall mean and includes all buildings (including above-ground and below ground portions thereof, and all foundations and supports), building systems and equipment (such as HVAC, electrical and plumbing equipment), physical structures, fixtures, hardscape, paving, curbs, gutters, sidewalks, fences, landscaping and all other improvements of any type or nature whatsoever now or hereafter made or constructed on the Premises. The term Improvements shall mean the Initial Improvements and any replacement improvements constructed in accordance with the terms of this Lease. During the entire Term, the Improvements will be restricted to the following uses:

(a) single-family affordable housing (ownership, rental or lease-to-own) restricted to and affordable to qualifying moderate income families (up to 120% of Area Median Income) or below; and

(b) related community-serving uses as needed for the siting of the affordable housing units, as approved by the Lessor.

1.1.16. “**Includes**” shall mean “includes but is not limited to” and “**including**” shall mean “including but is not limited to.”

1.1.17. “**Initial Improvements**” shall mean the Improvements (including the homes) that Developer intends to construct on the Premises during this Lease pursuant to the terms and provisions of the Inclusionary Grant Agreement.

1.1.18. “**Laws**” shall mean all laws, codes, ordinances, statutes, orders and regulations now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity that are binding on and applicable to the Premises and Improvements.

1.1.19. “**Lease**” shall mean this Ground Lease (including any and all addenda, amendments and exhibits hereto), as now or hereafter amended.

1.1.20. “**Leasehold Estate**” is defined in Section 15.1.1.

1.1.21. “**Leasehold Foreclosure Transferee**” is defined in Section 15.1.2.

1.1.22. “**Leasehold Mortgage**” is defined in Section 15.1.3.

1.1.23. “**Leasehold Mortgagee**” is defined in Section 15.1.4.

1.1.24. “**Lender**” shall mean: (a) a bank, savings bank, investment bank, savings and loan association, mortgage company, insurance company, trust company, commercial credit corporation, real estate investment trust, pension trust or real estate mortgage investment conduit; or (b) some other type of lender engaged in the business of making commercial loans, provided

that such other type of lender has total assets of at least \$2,000,000 and capital/statutory surplus or shareholder's equity of at least \$500,000,000 (or a substantially similar financial capacity if the foregoing tests are not applicable to such type of lender); or (c) a local, state or federal governmental entity, including but not limited to HCD, which provides predevelopment, acquisition, construction and/or permanent financing for Tenant's acquisition and development of the Property.

1.1.25. **"Lessor's Interest"** shall mean all of the Agency's interests in the real property, the Premises, this Lease and the existing and reversionary interest in the real property, Premises, as well as the Improvements upon the expiration of the Term or earlier termination thereof.

1.1.26. **"Lessor Parties"** shall mean, collectively and individually, the Agency and its respective Affiliates, governing boards, agents, employees, members, officers, directors and attorneys.

1.1.27. **"Median Income for the Area"** means the median income for the Orange County, California PMSA as most recently determined by HUD. Also may be referred to interchangeably in the Inclusionary Grant Documents as "Area Median Income" or "AMI".

1.1.28. **"New Lease"** is defined in Section 15.7.1.

1.1.29. **"Person"** shall include firms, associations, partnerships, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

1.1.30. **"Premises"** shall mean the Vance Street Parcel, and as more particularly described in the Legal Description attached to this Lease as Exhibit "A" and incorporated herein by reference certain real property containing approximately 8,843 square feet of undeveloped land in the City, together with all easements, rights and privileges appurtenant thereto, to be leased to Tenant pursuant to this Lease and on which Developer intends to construct the Improvements. The legal description of the Premises is attached hereto as **Exhibit A**. A rendering showing the approximate boundaries of the Premises is attached hereto as **Exhibit A-1**.

1.1.31. **"Project"** shall mean the Initial Improvements, and all related appurtenances, to be constructed by Developer on the Premises pursuant to the Inclusionary Grant Agreement as described in Exhibit A thereof.

1.1.32. **"Rent"** shall mean and includes the Ninety-Nine Dollars of prepaid rent under this Lease and any additional sums payable to Habitat for the maintenance reserve fund.

1.1.33. **"Risk Manager"** shall mean the Risk Manager for the City, or designee, or upon written notice to Tenant, such other person as may be designated by the City Council.

1.1.34. **"Term"** is defined in Section 2.2.

1.1.35. “**Transfer**” is defined in Section 10.1.

1.1.36. “**Transfer Notice**” is defined in Section 10.4.

1.1.37. “**Work**” shall mean both Developer’s construction activity with respect to the Initial Improvements and also permitted future changes, alterations and renovations by Tenant to the Improvements, including, without limiting the generality of the foregoing, site preparation, landscaping, installation of utilities, street construction or improvement and grading or filling in or on the Premises.

ARTICLE II

LEASE OF PROPERTY

2.1 Lease of Premises.

2.1.1. Lessor hereby leases the Premises to Tenant for the Term, and Tenant hereby leases the Premises from Lessor for the Term, subject to the terms, conditions, covenants, restrictions and reservations of this Lease.

2.1.2. Warranty of Peaceful Possession. Except for Lessor inspections authorized by the Inclusionary Grant Agreement while Developer is in possession of the Premises as the Tenant, Lessor covenants and warrants that, subject to the Tenant’s performance and observation of all of the covenants, obligations and agreements herein contained and provided to Tenant, Tenant shall and may peaceably and quietly have, hold, occupy, use and enjoy the Premises during the Term and may exercise all of their rights hereunder. Except as otherwise set forth herein, Lessor covenants and agrees that Lessor shall not grant any mortgage or lien on or in respect of its fee interest in the Premises unless the same is expressly subject and subordinate to this Lease and to any Leasehold Mortgage.

2.2 **Term.** The “**Term**” of this Lease shall commence on the Effective Date of this Lease, and shall expire at 12:00 midnight Pacific Standard Time on the ninety-nine (99) year anniversary of the Effective Date, unless sooner terminated as a result of Tenant’s non-compliance with any terms, conditions, covenants, restrictions or reservations of this Lease.

2.3 **Termination at End of Term.** This Lease shall terminate without need of further actions of any Party at 12:00 midnight Pacific Standard Time on the last day of the Term.

2.4 **Condition of the Premises.** **TENANT HEREBY ACCEPTS THE PREMISES “AS IS”, AND ACKNOWLEDGES THAT THE PREMISES IS IN SATISFACTORY CONDITION. AGENCY MAKES NO WARRANTY, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR TENANT’S PROPOSED USES. AGENCY MAKE NO COVENANTS OR WARRANTIES, IMPLIED OR OTHERWISE, RESPECTING THE CONDITION OF THE SOIL, SUBSOIL, OR ANY OTHER CONDITIONS OF THE PREMISES OR THE PRESENCE OF HAZARDOUS MATERIALS, NOR DOES AGENCY COVENANT OR WARRANT, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR THE PROPOSED**

DEVELOPMENT, CONSTRUCTION OR USE BY TENANT. AGENCY SHALL NOT BE REQUIRED OR OBLIGATED TO MAKE ANY CHANGES, ALTERATIONS, ADDITIONS, IMPROVEMENTS OR REPAIRS TO THE PREMISES. TENANT SHALL RELY ON ITS OWN INSPECTION AS TO THE SUITABILITY OF THE PREMISES FOR THE INTENDED USE.

2.5 Limitations of the Leasehold. This Lease and the rights and privileges granted Tenant in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record as of the date hereof or otherwise disclosed to Tenant prior to the date hereof, including those contained in the Inclusionary Grant Agreement applicable to Developer while Developer is the Tenant. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to Tenant of rights in the Premises which exceed those owned by Lessor, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or Agency's interest therein.

2.6 Tenant's Investigation. Tenant acknowledges that it is solely responsible for investigating the Premises to determine the suitability thereof for the uses contemplated by Tenant. Tenant further acknowledges by executing this Lease that it has completed its investigation and has made such determinations as Tenant believes may be required under the circumstances.

ARTICLE III

RENT

3.1 Base Rent. Throughout the ninety-nine (99) year Term of this Lease, regardless of an earlier termination date, Lessor shall lease the Premises to the Tenant and Tenant's authorized assignees pursuant to the terms and conditions of this Lease, and the Tenant shall accept the lease of the Premises from the Lessor, at a base rent of one dollar and zero cents (\$1.00) per year, the total amount of which base rent for the entire Term is ninety-nine dollars (\$99.00), which total amount has been pre-paid upon the signing of this Lease by Tenant.

3.2 Triple Net Rent. It is the intent of the Parties that all rent shall be absolutely net to Lessor and that, except as otherwise provided herein, Tenant will pay all costs, charges, insurance premiums, taxes, utilities, expenses and assessments of every kind and nature incurred for, against or in connection with the Premises which arise or become due during the Term as a result of Tenant's use and occupancy of the Premises. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the Parties, shall Lessor be obligated or required to make any payment of any kind whatsoever or be under any other obligation or liability under this Lease except as expressly provided herein.

3.2.1. Taxes. During the Term, Tenant and Tenant's authorized assignees shall pay directly to the taxing authorities all Taxes (as herein defined) at least ten (10) days prior to delinquency thereof. For purposes hereof, "Taxes" shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, penalty, sewer use fee, real property tax, charge, possessory interest tax, tax or similar imposition (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage, flood control, water pollution control,

public transit or other special district thereof, as against any legal or equitable interest of Agency in the Premises or any payments in lieu of taxes required to be made by Agency, including, but not limited to, the following:

(a) Any assessment, tax, fee, levy, improvement district tax, charge or similar imposition in substitution, partially or totally, of any assessment, tax, fee, levy, charge or similar imposition previously included within the definition of Taxes. It is the intention of Tenant and Lessor that all such new and increased assessments, taxes, fees, levies, charges and similar impositions be included within the definition of “**Taxes**” for the purpose of this Lease.

(b) Any assessment, tax, fee, levy, charge or similar imposition allocable to or measured by the area of the Premises or the rent payable hereunder, including, without limitation, any gross income tax or excise tax levied by the city, county, state or federal government, or any political subdivision thereof, with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof;

(c) Any assessment, tax, fee, levy, charge or similar imposition upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises, including any possessory interest tax levied on the Tenant’s interest under this Lease;

(d) Any assessment, tax, fee, levy, charge or similar imposition by any governmental agency related to any transportation plan, fund or system instituted within the geographic area of which the Premises are a part.

The definition of “**Taxes**,” including any additional tax the nature of which was previously included within the definition of “**Taxes**,” shall include any increases in such taxes, levies, charges or assessments occasioned by increases in tax rates or increases in assessed valuations, whether occurring as a result of a sale or otherwise.

3.2.2. Contest of Taxes. Tenant and Tenant’s authorized assignees shall have the right to contest, oppose or object to the amount or validity of any Taxes or other charge levied on or assessed against the Premises and/or Improvements or any part thereof; provided, however, that the contest, opposition or objection must be filed before such time the Taxes or other charge at which it is directed becomes delinquent. Furthermore, no such contest, opposition or objection shall be continued or maintained after the date the tax, assessment or other charge at which it is directed becomes delinquent unless Tenant has either: (i) paid such tax, assessment or other charge under protest prior to its becoming delinquent; or (ii) obtained and maintained a stay of all proceedings for enforcement and collection of the tax, assessment or other charge by posting such bond or other matter required by law for such a stay; or (iii) delivered to Lessor a good and sufficient undertaking in an amount specified by Lessor and issued by a bonding corporation authorized to issue undertakings in California conditioned on the payment by Tenant of the tax, assessments or charge, together with any fines, interest, penalties, costs and expenses that may have accrued or been imposed thereon within thirty (30) days after final determination of Tenant’s contest, opposition or objection to such tax, assessment or other charge.

3.2.3. Payment by Lessor. Should Tenant and Tenant’s authorized assignees fail to pay any Taxes required by this Article III to be paid by Tenant and Tenant’s authorized assignees within the time specified herein, subject to Tenant’s right to contest such Taxes in accordance with Section 3.2.2, and if such amount is not paid by Tenant and Tenant’s authorized assignees within fifteen

(15) days after receipt of Lessor's written notice advising Tenant of such nonpayment, Agency may, without further notice to or demand on Tenant, pay, discharge or adjust such tax, assessment or other charge for the benefit of Tenant. In such event Tenant shall promptly on written demand of Agency reimburse Agency for the full amount paid by Agency in paying, discharging or adjusting such tax, assessment or other charge, together with interest at the Interest Rate from the date advanced until the date repaid.

3.2.4. Operating Costs. Tenant and Tenant's authorized assignees shall pay all Operating Costs during the Term prior to delinquency. As used in this Lease, the term "**Operating Costs**" shall mean all charges, costs and expenses related to the Premises, including, but not limited to, management, operation, maintenance, overhaul, improvement, replacement or repair of the Improvements and/or the Premises.

3.2.5. Utility Costs. Tenant and Tenant's authorized assignees shall pay all Utility Costs during the Term prior to delinquency. As used in this Lease, the term "**Utility Costs**" shall include all charges, surcharges, taxes, connection fees, service fees and other costs of installing and using all utilities required for or utilized in connection with the Premises and/or the Improvements, including without limitation, costs of heating, ventilation and air conditioning for the Premises, costs of furnishing gas, electricity and other fuels or power sources to the Premises, and the costs of furnishing water and sewer services to the Premises. Tenant and Tenant's authorized assignees agrees to indemnify and hold harmless the Agency against any liability, claim, or demand for the late payment or non-payment of Utility Costs.

ARTICLE IV

USE OF PREMISES

4.1 Permitted Use of Premises. Developer may use the Premises for the authorized construction, development and entitlement of the Initial Improvements as set forth in the Inclusionary Grant Agreement. Upon issuance of the Certificate of Occupancy, or similar document as applicable, as set forth in the Inclusionary Grant Agreement, Tenant may use the Premises for residential occupancy, subject to Agent's rights to enforce the Affordability and Maintenance Restriction. Tenant use of the Premises may include:

4.1.1. Required Services and Uses. Lessor's primary purpose for entering into this Lease is to promote the development of the Improvements consistent with this Lease. In furtherance of that purpose, Tenant shall construct and during the entire Term operate, maintain, replace and repair the Improvements in a manner consistent with the Laws and for the following uses:

(a) single-family affordable housing restricted to and affordable to qualifying moderate income families (up to 120% of Area Median Income) or below; and

(b) related community-serving uses as needed for the siting of the affordable housing units, as approved by the Lessor.

4.1.2. Ancillary Services and Uses. Subject to the prior written approval of Lessor, which approval may be granted or withheld in the sole discretion of the Lessor, those additional services and uses which are ancillary to and compatible with the required services and uses set forth in Section 4.1.1., above.

4.1.3. Additional Concessions or Services. Such other additional facilities, concessions, and services as Tenant and Lessor may jointly from time to time reasonably determine to be reasonably necessary for the use of the Premises and which are otherwise permitted by Law for the sole purpose to provide affordable housing and/or emergency shelter.

4.1.4. Restricted Use. The services and uses listed in this Section 4.1, both required and optional, shall be the only services and uses permitted. Tenant agrees not to use the Premises for any other purpose or engage in or permit any other activity within or from the Premises unless approved in writing by the Lessor, which approval may be granted or withheld in the sole discretion of the Lessor.

4.1.5. Continuous Use. Upon receiving a Certificate of Occupancy, or similar document as applicable, for the Initial Improvements, Agent shall use good faith efforts to sell the homes and assign the Lease to qualifying families. Agent shall thereafter seek to obtain continuing possession and use of the Premises by qualifying Tenants. Agent shall not allow the Premises to be vacant for any significant period of time except as may reasonably be required upon termination of an assignment to qualify another Tenant or in the case of a Force Majeure Event or as permitted in advance and in writing by the Lessor.

4.1.6. Permits and Licenses. Tenant shall be solely responsible to obtain, at its sole cost and expense, any and all permits, licenses or other approvals required for the uses permitted herein and shall maintain such permits, licenses or other approvals.

4.2 Nuisance; Waste. Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises and Improvements or any part thereof. Tenant shall not commit or allow to be committed any waste in or upon the Premises or Improvements and shall keep the Premises and the Improvements thereon in good condition, repair and appearance.

4.3 Compliance with Laws. Tenant shall not use or permit the Premises or the Improvements or any portion thereof to be used in any manner or for any purpose that violates any applicable Laws. Tenant shall have the right to contest, in good faith, any such Laws, and to delay compliance with such Laws during the pendency of such contest (so long as there is no material threat to life, health or safety that is not mitigated by Tenant to the satisfaction of the applicable authorities). Lessor may cooperate with Tenant in all reasonable respects in such contest, including joining with Tenant in any such contest if Agency's joinder is required in order to maintain such contest; provided, however, that any such contest shall be without cost to Lessor, and Tenant shall indemnify, defend (with attorneys acceptable to Lessor), and hold harmless the Lessor from any and all claims, liabilities, losses, damages, or actions of any kind and nature, including reasonable attorneys' fees, arising or related to Tenant's failure to observe or comply with the contested Law during the pendency of the contest.

4.4 Hazardous Materials.

4.4.1. Definition of Hazardous Materials. For purposes of this Lease, the term “**Hazardous Material**” or “**Hazardous Materials**” shall mean any hazardous or toxic substance, material, product, byproduct, or waste, which is or shall become regulated by any governmental entity, including, without limitation, the Lessor acting in their governmental capacity, the State of California or the United States government.

4.4.2. Use of Hazardous Materials. Except for those Hazardous Materials which are customarily used in connection with any permitted use of the Premises and Improvements under this Lease or during construction of the Initial Improvements by Developer as authorized in the Inclusionary Grant Agreement (which Hazardous Materials shall be used in compliance with all applicable Laws), Tenant or Tenant’s employees, agents, independent contractors or invitees (collectively “**Tenant Parties**”) shall not cause or permit any Hazardous Materials to be brought upon, stored, kept, used, generated, released into the environment or disposed of on, under, from or about the Premises (which for purposes of this Section shall include the subsurface soil and ground water).

4.4.3. Tenant Obligations. If the presence of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant Parties, and excluding Hazardous Materials existing on the Premises prior to the Effective Date (the “**Existing Hazardous Materials**”), results in (i) injury to any person, (ii) injury to or contamination of the Premises (or a portion thereof), or (iii) injury to or contamination of any real or personal property wherever situated, Tenant, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of Agency under this Lease, Tenant shall pay the cost of any cleanup or remedial work performed on, under, or about the Premises as required by this Lease or by applicable Laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or permitted by Tenant or Tenant Parties, excluding the Existing Hazardous Materials. Notwithstanding the foregoing, Tenant shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant Parties, or enter into any settlement agreement, consent decree or other compromise with any governmental or quasi-governmental entity without first obtaining the prior written consent of the Lessor. All work performed or caused to be performed by Tenant as provided for above shall be done in good and workmanlike manner and in compliance with plans, specifications, permits and other requirements for such work approved by Lessor.

4.4.4. Indemnification for Hazardous Materials.

(a) To the fullest extent permitted by law, Tenant hereby agrees to indemnify, hold harmless, protect and defend (with attorneys acceptable to Lessor) Lessor, its elected officials, officers, employees, agents, independent contractors, and the Premises, from and against any and all liabilities, losses, damages (including, but not limited, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises or damages arising from any adverse impact on marketing and diminution in the value of the Premises), judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), whether foreseeable

or unforeseeable (collectively, “**Liabilities**”), arising out of the presence, use, generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials on, into, from, under or about the Premises by Tenant or Tenant Parties, and excluding all Existing Hazardous Materials.

(b) The foregoing indemnity shall also specifically include the cost of any required or necessary repair, restoration, clean-up or detoxification of the Premises and the preparation of any closure or other required plans.

(c) The foregoing indemnity and defense obligations of this Lease shall survive its expiration or termination; provided, however, that the indemnity contained in this Section 4.4.4 shall not apply to any Liabilities arising or occurring (a) prior to the Effective Date of this Ground Lease, (b) after the expiration or earlier termination of the Term of this Ground Lease, (c) as a result of the grossly negligent or wrongful acts or omissions of Lessor, or (d) prior to assignment of the Lease to Tenant and following Tenant’s assignment of the Lease to a new Tenant.

4.5 Access by Lessor. Lessor reserves the right for Agency and their authorized representatives to enter the Premises to inspect the land only, but not any Improvements constructed thereon, upon two (2) business days’ prior written notice to Tenant, during normal business hours, in order to determine whether Tenant is complying with Tenant’s obligations hereunder, or to enforce any rights given to Agency under this Lease. Lessor and its representatives must be accompanied by a representative of Tenant at all times while on the Property and obey Tenant’s rules and regulations. Tenant acknowledges Lessor has the authority to enter the Premises land only and perform work on the Premises land only at any time as needed to provide immediate or necessary protection for the general public. Lessor shall indemnify and hold Tenant harmless from and against any loss, cost, damage or liability, including, without limitation, attorneys’ fees, which results from Lessor’s negligence, willful misconduct or gross negligence committed by any party acting under Lessor’s authority, arising from Lessor’s exercise of the rights granted by this Section 4.5. Upon reasonable belief that a violation of this section may be occurring, tenant shall allow the City to conduct an inspection of the Property after the date of construction completion, with reasonable notice. Tenant shall 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.

4.6 Recorded Covenant for Affordability and Maintenance Restrictions. Tenant agrees and covenant for the entire Term of this Lease, which covenant shall run with the Premises, that Agent shall have the rights to: (a) approve and limit future Tenants to moderate income households selected and approved by Agent; (b) limit the sale/resale price of the home at a price affordable to such moderate income households; (c) impose and collect a monthly capital improvements maintenance reserve fee to be kept in a segregated maintenance reserve account; (d) use funds contained in the maintenance reserve account from time to time for capital improvements to the Premises and to enter onto the Premises to carry out such works of improvements, all as set forth in the Affordability and Maintenance Restrictions (“**Restrictions**”) attached hereto as Exhibit “B”. The Restrictions shall have priority over and be senior to any and all Leasehold Mortgages.

4.6.1 Reserved.

4.6.2 **Maintenance Restrictions.** The Restrictions require that Agent shall have the right to require, and that Tenants shall be obligated to pay to Agent monthly payments established by Agent sufficient to fund a maintenance reserve for the ongoing maintenance of capital improvements required to preserve the home, including the roof, landscape and painting of the home, which funds Agent shall apply for those purposes as may become necessary, in Agent's reasonable discretion.

ARTICLE V

CONSTRUCTION OF IMPROVEMENTS

5.1 Construction of Improvements.

5.1.1. **Initial Improvements.** Developer shall be governed by the provisions of the Inclusionary Grant Agreement entered into concurrently with this Lease with respect to construction of the Initial Improvements.

5.1.2. **Compliance with Laws and Permits.** Tenant shall cause all Improvements made by Tenant after the Initial Improvements to be constructed in substantial compliance with all applicable Laws, including all applicable grading permits, building permits, and other permits and approvals issued by governmental agencies and bodies having jurisdiction over the construction thereof.

5.2 Ownership of Improvements.

5.2.1. For purposes of this Section 5.5, "**Term**" shall have the meaning stated in Section 2.2.

5.2.2. **During Term.** Title to the Improvements constructed or placed on the Premises by Developer are and shall be vested in Developer during the Term of this Lease, until the expiration or earlier termination thereof. Any and all depreciation, amortization and tax credits for federal or state purposes relating to the Improvements located on the Premises and any and all additions thereto shall be deducted or credited exclusively by Developer during the Term. The Parties agree for themselves and all persons claiming under them that the Improvements are real property.

5.2.3. **Upon Expiration or Earlier Termination of Term.** All Improvements on the Premises at the expiration or earlier termination of the Term of this Lease shall, without additional payment to Tenant, then become Lessor's property free and clear of all claims to or against them by Tenant and free and clear of all Leasehold Mortgages and any other liens and claims arising from Tenant's use and occupancy of the Premises, and with Taxes paid current as of the expiration or earlier termination date. Tenant shall upon the expiration or earlier termination of the Term deliver possession of the Premises and the Improvements to Lessor.

ARTICLE VI

REPAIRS, MAINTENANCE, ADDITIONS AND RECONSTRUCTION

6.1 Maintenance by Tenant. Throughout the Term of this Lease, Tenant shall, at Tenant's sole cost and expense, keep and maintain the Premises and any and all Improvements now or hereafter constructed and installed on the Premises in good order, condition and repair (i.e., so that the Premises does not deteriorate more quickly than its age and reasonable wear and tear would otherwise dictate) and in a safe and sanitary condition and in compliance with all applicable Laws in all material respects. Tenant shall not be obligated to pay for the repair or replacement of capital Improvements not covered by Property Insurance required by this Lease; provided, however, Tenant shall pay a monthly maintenance reserve fee to Agent to provide a sufficient reserve for capital improvements to the Premises in the event of repair or damage to the roof, landscape and paint, which amount shall be calculated by Agent, approved and set forth in the assignment of this Lease and sale of the home. Tenant shall maintain the Property (and all abutting grounds, sidewalks, roads, parking and landscape areas which Tenant is otherwise required to maintain) in good condition and repair; shall prudently preserve and protect its own as well as the City's interests in connection with the Property; shall not commit or permit any waste or deterioration of the Property (except for normal wear and tear); shall not abandon any portion of the Property or leave the Property unguarded or unprotected; and shall not otherwise act, or fail to act, in such a way as to unreasonably increase the risk of any damage to the Property or of any other impairment of City's interests.

6.2 Interior Improvements and Reconstruction of Improvements. Following the completion of construction of the Initial Improvements, Tenant shall have the right from time to time to make any interior improvements to the Improvements that are consistent with the Lessor's approved use of the Premises as reflected in this Lease, without Lessor's prior written consent, but with prior written notice to the Lessor (except in the event of an emergency, in which case no prior written notice shall be required but Tenant shall notify Lessor of any emergency work done as soon as practicable). Any additions or structural changes to the Improvements will require the approval of Agent. With prior written approval of Lessor, Tenant may restore and reconstruct the Improvements, and in that process make any modifications otherwise required by changes in Laws, following any damage or destruction thereto (whether or not required to do so under Article VII); and/or to make changes, revisions or improvements to the Improvements for uses consistent with the Lessor approved use of the Premises as reflected in this Lease. Tenant shall perform all work authorized by this Section at its sole cost and expense, including, without limitation, with insurance proceeds approved for such use in accordance with Article VII, if any, and in compliance with all applicable Laws in all material respects.

6.3 All Other Construction, Demolition, Alterations, Improvements and Reconstruction. Following the completion of construction of the Initial Improvements, and except as specified in Sections 6.1 and 6.2, any construction, alterations, additions, major repairs, demolition, improvements or reconstruction of any kind shall require the prior written consent of the Lessor. Tenant shall perform all work authorized by this Section at its sole cost and expense, including, without limitation, with insurance proceeds approved for such use in accordance with Article VII, if any, and in compliance with all applicable Laws in all material respects.

6.4 Requirements of Governmental Agencies. At all times during the Term of this Lease, Tenant, at Tenant's sole cost and expense, shall: (i) make all alterations, improvements, demolitions,

additions or repairs to the Premises and/or the Improvements required to be made by any law, ordinance, statute, order or regulation now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity; (ii) observe and comply in all material respects with all Laws now or hereafter made or issued respecting the Premises and/or the Improvements; (iv) indemnify, defend and hold Agency, the Premises and the Improvements free and harmless from any and all liability, loss, damages, fines, penalties, claims and actions resulting from Tenant's failure to comply with and perform the requirements of this Article VI.

6.5 Lessor Obligations. Tenant specifically acknowledges and agrees that Agency and Lessor Parties do not and shall not have any obligations with respect to the maintenance, alteration, improvement, demolition, replacement, addition or repair of any Improvements, except as set forth herein with respect to the maintenance reserve fund and the repairs to roofing, painting and landscape undertaken by Agent as set forth herein.

6.6 Lessor Reservations. Without limiting Lessor's rights with respect to the Premises, Lessor reserves for themselves, their successors and assigns those rights necessary to assure proper maintenance and operation of the Premises and to permit any steps to be taken which the Lessor deems necessary or desirable to maintain, repair, improve, modify or reconstruct the Premises. The rights reserved to Lessor in this section or any other section of this Lease shall be exercised by the Lessor at their sole discretion, unless otherwise provided herein.

ARTICLE VII

DAMAGE AND RESTORATION

7.1 Damage and Restoration. In the event the whole or any part of the Improvements shall be damaged or destroyed by fire or other casualty, damage or action of the elements which is fully covered by insurance required to be carried by Tenant pursuant to this Lease or in fact caused by Tenant, at any time during the Term, Tenant shall with all due diligence, at Tenant's sole cost and expense, repair, restore and rebuild the Improvements on substantially the same plan and design as existed immediately prior to such damage or destruction and to substantially the same condition that existed immediately prior to such damage, with any changes made by Tenant to comply with then applicable Laws and with any upgrades or improvements that Tenant may determine in its reasonable discretion. If Tenant desires to change the use of the Premises following such casualty, then Tenant may make appropriate changes to the Premises to accommodate such changed use after approval of such change of use by the Lessor pursuant to Article IV above. This Article shall not apply to cosmetic damage or alterations. In the event that Tenant shall determine, subject to the rights of the Leasehold Mortgagees, if applicable, by notice to the Lessor given by the later of ninety (90) days after the date of the damage or destruction or thirty (30) days after receipt by Tenant of any such insurance proceeds, that there are not adequate proceeds to restore the Improvements and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such damage or destruction, then Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. Notwithstanding Section 15.9, if Tenant terminates this Lease pursuant to this Section 7.1, Tenant shall surrender possession of the Premises to the Lessor immediately and assign to the Lessor (or, if same has already been received by Tenant, pay to the Lessor) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises.

7.2 Restoration. In the event of any restoration or reconstruction pursuant to this Section, all such work performed by Tenant shall be constructed in a good and workmanlike manner according to

and in conformance with the Laws, rules and regulations of all governmental bodies and agencies and the requirements of this Lease applicable to the construction of the Initial Improvements.

7.3 No Rental Abatement. Tenant shall not be entitled to any abatement, allowance, reduction, or suspension of Rent because part or all of the Improvements become untenable as a result of the partial or total destruction of the Improvements, and Tenant's obligation to keep and perform all covenants and agreements on its part to be kept and performed hereunder, shall not be decreased or affected in any way by any destruction of or damage to the Improvements; except as otherwise provided herein.

7.4 Application of Insurance Proceeds. If following the occurrence of damage or destruction to the Premises or Improvements, Tenant is obligated to or determines that there are adequate proceeds to restore the Premises and Improvements pursuant to this Article VII, then all proceeds from the insurance required to be maintained by Tenant on the Premises and the Improvements shall be applied to fully restore the same, and, subject to the rights of the Leasehold Mortgagees, if applicable, any excess proceeds shall be paid to Tenant and any deficit in necessary funds plus the amount of any deductible shall be paid by Tenant. If Tenant after commencing or causing the commencement of the restoration of Premises and Improvements shall determine that the insurance proceeds are insufficient to pay all costs to fully restore the Improvements, Tenant shall pay the deficiency and shall nevertheless proceed to complete the restoration of Premises and the Improvements and pay the cost thereof. Upon lien free completion of the restoration, subject to the rights of the Leasehold Mortgagees, if applicable, any balance of the insurance proceeds remaining over and above the cost of such restoration shall be paid to Tenant.

7.5 Exclusive Remedies. Notwithstanding any destruction or damage to the Premises and/or the Improvements, Tenant shall not be released from any of its obligations under this Lease, except to the extent and upon the conditions expressly stated in this Article VII. Agency and Tenant hereby expressly waive the provisions of California Civil Code Sections 1932(2) and 1933(4) with respect to any damage or destruction of the Premises and/or the Improvements and agree that their rights shall be exclusively governed by the provisions of this Article VII.

7.6 Damage Near End of Term. If, during the last three (3) years of the Term, as applicable, the Improvements shall be damaged or destroyed for which the repair and/or replacement cost is fifty percent (50%) or more of then replacement cost of the Improvements, then Tenant shall have the option, to be exercised within ninety (90) days after such damage or destruction:

7.6.1. to notify the Lessor of its election to repair or restore the Improvements as provided in this Article VII; or

7.6.2. subject to the rights of Leasehold Mortgagees and such provisions of this Lease that survive termination, to terminate this Lease by notice to the Lessor, which termination shall be deemed to be effective as of the date of the damage or destruction. If Tenant terminates this Lease pursuant to this Section 7.6.2, Tenant shall surrender possession of the Leased Premises to the Lessor immediately and assign to the Lessor (or, if same has already been received by Tenant, pay to the Lessor) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises less (i) any costs, fees, or expenses incurred by Tenant in connection with the adjustment of the loss or collection of the proceeds, (ii) any reasonable costs incurred by Tenant in connection with the Premises after the damage or destruction, which costs are eligible for reimbursement from such

insurance proceeds, and (iii) the proceeds of any rental loss or business interruption insurance applicable prior to the date of surrender of the Premises to the Lessor.

ARTICLE VIII

INSURANCE AND INDEMNITY

8.1 **Insurance.** Prior to sale of the home and Developer assignment of the Tenant interest in the Lease to the home purchaser, Developer shall maintain the insurance required by the Inclusionary Grant Agreement. Thereafter, following assignment of the Lease by Developer to the home purchaser, to protect the Lessor against any and all claims and liability for death, injury, loss and damage resulting from the Tenant's actions in connection with this Lease and the Premises, the Tenant shall, at the Tenant's sole cost and expense, throughout the term of the Lease of the Premises, maintain the following insurance (or its then reasonably available equivalent), as applicable: (a) Liability Insurance in amounts reasonably required by City from time to time, and in no event less than \$300,000 for "single occurrence"; (b) Property Insurance in amounts reasonably required by Lessor from time to time, and in no event less than \$700,000; (c) Builder's Risk Insurance (during construction of Improvements only); and (d) Worker's Compensation Insurance (during construction of Improvements only). Additionally, the Tenant, to protect the Lessor, shall cause its contractors and subcontractors, at their sole cost and expense, to maintain Contractor's Insurance until issuance of a Certificate of Completion for the Project.

8.1.1 Nature of Insurance. All Liability Insurance, Property Insurance, Automobile Liability Insurance and Contractor's Insurance policies this Lease requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A" and a minimum financial size category of "VII"; and (b) are admitted to do business in the State of California by the California Department of Insurance. The Tenant may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Premises, which amount(s) shall equal or exceed the amount(s) required by this Lease and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Lease.

8.1.2 Policy Requirements and Endorsements. All insurance policies this Lease requires shall contain (by endorsement or otherwise) the following provisions:

(a) **Insured.** Liability Insurance, Automobile Liability Insurance and Contractor's Insurance policies shall name the Lessor as "additional insured." The coverage afforded to the Lessor shall be at least as broad as that afforded to the Tenant and may not contain any terms, conditions, exclusions, or limitations applicable to the Lessor that do not apply to the Tenant.

(b) Primary Coverage. All policies shall be written as primary policies, not contributing to or in excess of any coverage that the Lessor may carry.

(c) Contractual Liability. Liability Insurance policies shall contain contractual liability coverage, for the Tenant's indemnity obligations under this Lease. The Tenant's obtaining such contractual liability coverage shall satisfy any indemnity obligation of the Tenant under this Lease.

(d) Deliveries to the Lessor. Within thirty (30) days following assignment of this Lease, and no later than twenty (20) days before any insurance required by this Lease expires, is cancelled or its liability limits are reduced or exhausted, the Tenant shall deliver to the Lessor certificates of insurance evidencing the Tenant's maintenance of all insurance this Lease requires. Each insurance carrier shall give the Lessor no less than thirty (30) calendar days' advance written Notice of any cancellation, non-renewal, material change in coverage or available limits of liability under any insurance policy required by this Lease. Also, phrases such as "endeavor to" and "but failure to mail such Notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates of insurance or any coverage for the Lessor.

(e) Waiver of Certain Claims. The Tenant shall attempt in good-faith to cause the insurance carrier for each Liability Insurance, Automobile Liability Insurance and Property Insurance policy to agree to a Waiver of Subrogation, if not already in the policy. To the extent that the Tenant actually obtains insurance with a Waiver of Subrogation, the Parties release each other, and their respective authorized representatives, from any claims for damage to any Person or property that are caused by or result from risks insured against under such insurance policies.

(f) No Representation. Neither Party makes any representation that the limits, scope, or forms of insurance coverage this Lease requires are adequate or sufficient.

(g) No Claims Made Coverage. None of the insurance coverage required under this Lease may be written on a claims-made basis.

(h) Fully Paid and Non-Assessable. All insurance obtained and maintained by the Tenant in satisfaction of the requirements of this Lease shall be fully paid for and non-assessable.

(i) Lessor Option to Obtain Coverage. During the continuance of an Event of Default arising from the Tenant's failure to carry any insurance required by this Lease, the Lessor may, at its sole option, purchase any such required insurance coverage and the Lessor shall be entitled to immediate payment from the Tenant of any premiums and associated costs paid by the Lessor for such insurance coverage. Any amount becoming due and payable to the Lessor under this Section that is not paid within fifteen (15) calendar days after written demand from the Lessor or for payment of such amount, with an explanation of the amounts demanded, will bear interest from the date of the demand at the rate of ten percent (10%) per annum or the maximum rate allowed by California law, whichever is less. Any election by the Lessor to purchase or not to purchase insurance otherwise required by the terms of this Lease to be carried by the Tenant

shall not relieve the Tenant of its obligation to obtain and maintain any insurance coverage required by this Lease.

(j) **Cross-Liability; Severability of Interests.** All Liability Insurance and Contractor's Insurance shall be endorsed to provide cross-liability coverage for the Tenant and the Lessor and to provide severability of interests.

(k) **Deductibles and Self-Insured Retentions.** The Tenant shall pay or cause to be paid any and all deductibles and self-insured retentions under all insurance policies issued in satisfaction of the terms of this Lease regarding any claims relating to the Lessor.

8.2 Indemnification.

8.2.1 **Obligations.** The Lessor shall Indemnify the Tenant and the Tenant shall Indemnify the Lessor against any wrongful intentional act or negligence of the Indemnitor. The Tenant shall also Indemnify the Lessor against any and all of the following: (a) any license or permit or other use application made at the Tenant's request; (b) use, occupancy, management or operation of the Premises; (c) any agreements that the Tenant (or anyone claiming through the Tenant) makes regarding the Project; and, (d) any accident, injury or damage whatsoever caused to any Person in or on the Premises or the Project, except when resulting from Lessor entry onto the Premises. Notwithstanding anything to the contrary in this Lease, no Indemnitor shall be required to Indemnify any Indemnitee to the extent of the Indemnitee's wrongful intentional acts or negligence.

8.2.2 **Limitation on Liability of the Lessor.** Following the execution of the Lease, the Tenant is and shall be responsible for operation of the Premises and the Project, and the Lessor shall not be liable for any injury or damage to any property (of the Tenant or any other Person) or to any Person occurring on or about the Premises or the Project, except when resulting from Lessor entry onto the Premises and except to the extent caused by the Lessor's wrongful intentional act or negligence.

8.2.3 **Strict Liability.** The indemnification obligations of an Indemnitor shall apply regardless of whether liability without fault or strict liability is imposed or sought to be imposed on one or more Indemnitees.

8.2.4 **Survival of Indemnification and Defense Obligations.** The indemnity and defense obligations under this Lease shall survive the expiration or earlier termination of this Lease, until all claims against any of the Indemnitees involving any of the indemnified matters are fully, finally, absolutely and completely barred by applicable statutes of limitations, provided however, the indemnity and defense obligations shall not survive Tenant's assignment of the Lease obligations to a new Tenant, and the new Tenant shall thereafter be subject to those obligations.

8.2.5 **Independent Duty to Defend.** The duty to defend under this Lease is separate and independent of the duty to Indemnify. The duty to defend includes claims for which an Indemnitee may be liable without fault or strictly liable. The duty to defend applies immediately upon notice of a Claim, regardless of whether the issues of negligence, liability, fault, default or other obligation on the part of the Indemnitor or the Indemnitee have been determined. The duty to defend applies immediately, regardless of whether the Indemnitee has paid any amounts or

incurred any detriment arising out of or relating (directly or indirectly) to any claims. It is the express intention of the Parties that an Indemnitee be entitled to obtain summary adjudication or summary judgment regarding an Indemnitor's duty to defend the Indemnitee, at any stage of any claim or suit, within the scope of the Indemnitor's indemnity obligations under this Lease.

8.3 Indemnification Procedures. Wherever this Lease requires any Indemnitor to Indemnify any Indemnitee:

8.3.1 Prompt Notice. The Indemnitee shall promptly Notify the Indemnitor of any claim. To the extent, and only to the extent, that the Indemnitee fails to give prompt Notice of a Claim and such failure materially prejudices the Indemnitor in providing indemnity for such claim, the Indemnitor shall be relieved of its indemnity obligations for such claim.

8.3.2 Selection of Counsel. The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a claim shall be deemed reasonably satisfactory. Even though the Indemnitor shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel. The Indemnitor and its counsel shall, however, fully control the defense, except to the extent that the Indemnitee waives its rights to indemnity and defense for such claim.

8.3.3 Cooperation. The Indemnitee shall reasonably cooperate with the Indemnitor's defense of the Indemnitee, provided the Indemnitor reimburses the Indemnitee's actual out of pocket expenses (including Legal Costs) of such cooperation.

8.3.4 Settlement. The Indemnitor may, with the Indemnitee's consent, not to be unreasonably withheld, settle a claim. The Indemnitee's consent shall not be required for any settlement by which all of the following occur: (a) the Indemnitor procures (by payment, settlement, or otherwise) a release of the Indemnitee from the subject claim(s) by which the Indemnitee need not make any payment to the claimant; (b) neither the Indemnitee nor the Indemnitor on behalf of the Indemnitee admits liability; (c) the continued effectiveness of this Lease is not jeopardized in any way; and (d) the Indemnitee's interest in the Project is not jeopardized in any way.

8.3.5 Insurance Proceeds. The Tenant's Indemnitor obligations shall be reduced by net insurance proceeds the Indemnitee actually receives for the matter giving rise to indemnification obligation.

ARTICLE IX

CONDEMNATION

9.1 Definitions.

9.1.1. "**Condemnation**" means (i) the taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute, whether by legal proceedings or otherwise, by a Condemnor (hereinafter defined), and (ii)

a voluntary sale or transfer to a Condemnor, either under threat of condemnation or while condemnation legal proceedings are pending.

9.1.2. **“Date of Taking”** means the later of (i) the date actual physical possession is taken by the Condemnor; or (ii) the date on which the right to compensation and damages accrues under the law applicable to the Premises.

9.1.3. **“Award”** means all compensation, sums or anything of value awarded, paid or received for a Total Taking, a Substantial Taking or a Partial Taking (hereinafter defined), whether pursuant to judgment or by agreement or otherwise.

9.1.4. **“Condemnor”** means any public or quasi-public authority or private corporation or individual having the power of condemnation.

9.1.5. **“Total Taking”** means the taking by Condemnation of all of the Premises and all of the Improvements.

9.1.6. **“Substantial Taking”** means the taking by Condemnation of so much of the Premises or Improvements or both that one or more of the following conditions results, as reasonably determined by Tenant: (i) The remainder of the Premises would not be economically and feasibly usable by Tenant; and/or (ii) A reasonable amount of reconstruction would not make the Premises and Improvements a practical improvement and reasonably suited for the uses and purposes for which the Premises were being used prior to the Condemnation; and/or (iii) The conduct of Tenant’s business on the Premises would be materially and substantially prevented or impaired.

9.1.7. **“Partial Taking”** means any taking of the Premises or Improvements that is neither a Total Taking nor a Substantial Taking.

9.1.8. **“Notice of Intended Condemnation”** means any notice or notification on which a reasonably prudent person would rely and which he would interpret as expressing an existing intention of Condemnation as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to service of a Condemnation summons and complaint on a Party hereto. The notice is considered to have been received when a Party receives from the Condemnor a notice of intent to condemn, in writing, containing a description or map reasonably defining the extent of the Condemnation.

9.2 Notice and Representation.

9.2.1. **Notification.** The Party receiving a notice of one or more of the kinds specified below shall promptly notify the other Party of the receipt, contents and dates of such notice: (i) a Notice of Intended Condemnation; (ii) service of any legal process relating to the Condemnation of the Premises or Improvements; (iii) any notice in connection with any proceedings or negotiations with respect to such a Condemnation; (iv) any notice of an intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of Condemnation.

9.2.2. **Separate Representation.** Agency and Tenant each have the right to represent its respective interest in each Condemnation proceeding or negotiation and to make full proof of his claims. No agreement, settlement, sale or transfer to or with the Condemnor shall be made without the consent of Agency and Tenant. Agency and Tenant shall each execute and deliver to the other any

instruments that may be required to effectuate or facilitate the provisions of this Lease relating to Condemnation.

9.3 Total or Substantial Taking.

9.3.1. Total Taking. On a Total Taking, this Lease shall terminate on the Date of Taking.

9.3.2. Substantial Taking. If a taking is a Substantial Taking, Tenant may, with the consent of each Leasehold Mortgagee, to the extent required, by notice to Lessor given within ninety (90) days after Tenant receives a Notice of Intended Condemnation, elect to treat the taking as a Total Taking. If Tenant does not so notify Lessor, the taking shall be deemed a Partial Taking.

9.3.3. Early Delivery of Possession. Tenant may continue to occupy the Premises and Improvements until the Condemnor takes physical possession. At any time following Notice of Intended Condemnation, Tenant may in its sole discretion, with the consent of each Leasehold Mortgagee, to the extent required, elect to relinquish possession of the Premises to Lessor before the actual Taking. The election shall be made by notice declaring the election and agreeing to pay all Rent required under this Lease to the Date of Taking. Tenant's right to apportionment of or compensation from the Award shall then accrue as of the date that the Tenant relinquishes possession.

9.3.4. Apportionment of Award. On a Total Taking all sums, including damages and interest, awarded for the fee or leasehold or both shall be distributed and disbursed as finally determined by the court with jurisdiction over the Condemnation proceedings in accordance with applicable law. Notwithstanding anything herein to the contrary, Tenant shall be entitled to receive compensation for the value of its leasehold estate under this Lease including its fee interest in all Improvements, personal property and trade fixtures located on the Premises, its relocation and removal expenses, its loss of business goodwill and any other items to which Tenant may be entitled under applicable law.

9.4 Partial Taking.

9.4.1. Effect on Rent. On a Partial Taking this Lease shall remain in full force and effect covering the remainder of the Premises and Improvements, and Tenant shall not be entitled to any refund of the Base Rent.

9.4.2. Restoration of Improvements. Promptly after a Partial Taking, Tenant shall repair, alter, modify or reconstruct the Improvements ("**Restoring**") so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased.

9.4.3. Apportionment of Award. On a Partial Taking, Lessor shall be entitled to receive the entire award for such Partial Taking, except that (i) the proceeds of such Partial Taking shall first be applied towards the cost of Restoring the Premises pursuant to Section 9.4.2 and (ii) Tenant shall be entitled to receive any portion of such award allocated to Tenant's interest in any of Tenant's Improvements, Personal property and trade fixtures taken, and any part of the award attributable to the low income housing tax credits.

9.5 Waiver of Termination Rights. Both Parties waive their rights under Section 1265.130 of the California Code of Civil Procedure (and any successor provision) and agree that the right to

terminate this Lease in the event of Condemnation shall be governed by the provisions of this Article IX.

ARTICLE X

ASSIGNMENT AND ENCUMBERING

10.1 General. Except for assignment to Affiliates of Habitat, Habitat shall not assign its interest as Tenant under the Lease until the Certificate of Occupancy for the Initial Improvements, but may encumber the Premises with a Leasehold Mortgage to finance the Initial Improvements. Upon Certificate of Occupancy, or similar document as applicable, for the Initial Improvements, in order to enforce the Restrictions, Agent shall by means of an Agent right of first refusal to be contained in the Lease assignment and home purchase agreements consent to all assignment of the Tenant interest in the Lease and resale of the home (“**Transfer**,” except for Leasehold Mortgages). Upon issuance of the Certificate of Completion, or similar document as applicable, Agent shall promptly seek to qualify and approve assignment of the Tenant interest in the Lease to a home purchaser who qualifies under and agrees to abide by the Restrictions. Agent’s consent for Transfers shall be based upon compliance of the Transfer with the Affordability and Maintenance Restrictions, including those for Affordable Housing and Affordable Mortgage.

10.1.1. Such terms conditions, covenants, restrictions and reservations shall apply to each and every Transfer hereunder and shall be severally binding upon each and every party thereto. Any document regarding the Transfer of the Premises or any part thereof shall not be inconsistent with the provisions of this Lease and in the event of any such inconsistency, the provisions of this Lease shall control.

10.1.2. Subleases from Tenants are absolutely prohibited Transfers. Assignments of Tenant Lease interests and sale of the home must be approved in writing and be in a form and with terms consented to by Agent, and in amount subject to the Affordability and Maintenance Restrictions.

10.2 Leasehold Mortgage. Under no circumstances may Tenant mortgage, encumber or hypothecate Lessor’s Fee Interest, if any.

10.3 Transfer Procedure. If Tenant desires at any time to enter into a Transfer for which Agent’s consent is required hereunder, Tenant shall provide Agent with written notice (“**Transfer Notice**”) at least ninety (90) days prior to the proposed effective date of the Transfer. The Transfer Notice shall include (i) the name and address of the proposed transferee, (ii) the nature of the Transfer (*e.g.*, whether an assignment, etc.), (iii) the proposed effective date of the Transfer, (iv) proposed terms of sale/assignment and compliance with the Affordability and Maintenance Restriction, (v) such financial information, including income and asset statements, as Agent may require to determine qualification of the transferee under the Restrictions, and (vi) a bank or other credit reference. Thereafter, Tenant and the proposed transferee shall furnish such supplemental information as Agent may reasonably request concerning the proposed transferee. Agent shall, no later than ninety (90) days after Lessor’s receipt of the information specified above, deliver written notice to Tenant which shall (i) indicate whether Agent will give or withhold consent to the proposed Transfer, and (ii) if Agent withholds consent to the proposed Transfer, set forth a detailed

explanation of Agent's grounds for doing so. If Agent consents to a proposed Transfer, then Tenant may thereafter effectuate such Transfer to the proposed transferee based upon the specific terms of the Agent's approval and after execution of a consent to assignment by Agent in a form approved by the Agent, which approval shall not be unreasonably withheld, conditioned or delayed in the event that the assignment is consistent with the terms of this Lease; provided, however, that the provisions of this Section 10.3 shall not apply to any Transfer to a Foreclosure Transferee.

10.4 Liability of Transferors/Transferees For Lease Obligations. In the case of an assignment, including an assignment pursuant to Section 15.6.5, each assignee or transferee of this Lease shall assume in writing all of Tenant's obligations thereafter arising under this Lease. All assignees or transferees of any interest in this Lease or the Premises or Improvements (whether or not directly liable on this Lease) shall be subject to the terms, conditions, covenants, restrictions and reservations of this Lease. Except as otherwise provided in Section 15.6.5, the transferor may be released from all liability under this Lease only if the Permitted Transferee or other transferee agrees in writing to assume all of transferor's obligations and liabilities and provides to Lessor evidence of sufficient and adequate assets, including any required insurance policies, subject to approval by Habitat, which approval shall not be unreasonably withheld, that evidence said transferees' financial and otherwise competence to assume transferor's obligations and liability (an "**Approved Release**"). Except as otherwise provided in Section 15.6.5 and except for an Approved Release, for all other Transfers, any transferor of any interest in this Lease or the Premises or Improvements shall remain primarily liable for all obligations hereunder and shall be subject to the terms, conditions, covenants, restrictions and reservations of this Lease. Except as otherwise provided in Section 15.6.5 and except for an Approved Release, the Lessor may proceed directly against the transferor in its sole and absolute discretion, with no obligation to exhaust its remedies against the transferee.

10.5 Conditions of Certain Lessor Consent.

10.5.1. Lessor and Agent may withhold consent to a Transfer at its sole and absolute discretion if any of the following conditions exist:

- (a) An Event of Default exists under this Lease.
- (b) The prospective transferee has not agreed in writing to keep, perform, and be bound by all the terms conditions, covenants, restrictions and reservations of this Lease.
- (c) In the case of an assignment, the prospective transferee has not agreed in writing to assume all of transferor's obligations and liabilities.
- (d) All the material terms, covenants, and conditions of the Transfer that are relevant to the Agent's approval of the Transfer have not been disclosed in writing to the Lessor.

10.6 Transfer of Mortgages of Lessor's Interest. Notwithstanding anything to the contrary set forth in this Ground Lease, unless required by statute, court order or operation of law, Lessor shall not transfer, assign, pledge or hypothecate its fee interest in the Premises (other than to entities under common control with Lessor or other governmental entities under applicable law) without the prior written notice to Tenant and Leasehold Mortgagee. Any and all mortgages or liens placed or suffered by the Lessor encumbering the Lessor's fee interest in the Premises shall

be expressly subject and subordinate to this Lease, to all obligations of Lessor hereunder, to all of the rights, titles, interests, and estates of the Tenant created or arising hereunder, to each New Lease and to each Leasehold Mortgage. Furthermore, any Person succeeding to the Lessor's fee interest as a consequence of any conveyance, foreclosure or other transfer shall succeed to all of the obligations of the Lessor hereunder.

ARTICLE XI

DEFAULT AND REMEDIES

11.1 Event of Default. Each of the following events shall constitute an “Event of Default” by Tenant:

11.1.1. Failure to Pay. Tenant's failure or omission to pay any Rent or other sum payable hereunder on or before the date due where such failure shall continue for a period of five (5) days after written notice thereof from Lessor to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 *et seq.*

11.1.2. Failure to Perform. The failure or inability by Tenant to observe or perform any of its obligations under this Lease (other than those specified in Sections 11.1.2, 11.1.3, or 11.1.4, or 11.1.5 herein, which have their own notice and cure periods), where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Tenant or past any such longer period as reasonably agreed upon by the Tenant, Lessor in writing as may be necessary for completion of its cure; provided, however, that any such notice by Lessor shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 *et. seq.*; provided, further, that if the nature of such failure is such that it can be cured by Tenant but that more than thirty (30) days are reasonably required for its cure (for any reason other than financial inability), then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) days, and thereafter diligently pursues such cure to completion.

11.1.3. Abandonment. The abandonment (as defined in California Civil Code Section 1951.3) or vacation of the Premises by Tenant for a period of thirty (30) days or more.

11.1.4. Assignments.

(a) The making by Tenant of any assignment of its leasehold estate under this Lease without Lessor's consent, as set forth in Article X;

(b) A case is commenced by or against Tenant under Chapters 7, 11 or 13 of the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter amended and if so commenced against Tenant, the same is not dismissed within ninety (90) days of such commencement;

(c) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within sixty (60) days; or

(d) Tenant's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts. In the event of any such default, neither this Lease nor any interests of Tenant in and to the Premises shall become an asset in any of such proceedings.

11.1.5. Termination of and Failure to Reinstate Insurance Coverage. Termination of Tenant's insurance coverage and lack of reinstatement within ten (10) business days after notice from Lessor of such termination.

11.1.6. Failure to Provide Evidence of Insurance. Tenant's failure to provide Lessor with a valid and adequate certificate of insurance and endorsements, or binder, at any time during the Term of the Lease, within the time period required under Section 8.1.3.

11.1.7. Lessor's Consent and Approval of Transfer. Occupancy of the Premises by a prospective transferee, sublessee, or assignee which requires Lessor's consent or approval, before Lessor's written consent and approval of a Transfer is obtained as required in Section 10.1.

11.1.8. Tenant's failure to make any payment(s) as set forth in Sections 11.9.

11.2 Lessor's Remedies. If an Event of Default occurs, Lessor shall have the following remedies in addition to all rights and remedies provided by law or equity to which Lessor may resort cumulatively or in the alternative:

11.2.1. Termination of Lease. Subject to Article 15, as applicable, Lessor shall have the right to terminate this Lease and all rights of Tenant hereunder including Tenant's right to possession of the Premises. In the event that Lessor shall elect to so terminate this Lease then Lessor may recover from Tenant:

(a) The worth at the time of award of the unpaid Rent and other charges, which had been earned as of the date of the termination hereof; plus

(b) The worth at the time of award of the amount by which the unpaid Rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent and other charges for the balance of the Term hereof after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) Any other amount necessary to compensate Lessor for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys' fees, expert witness costs; plus

(e) Any other amount which Lessor may by law hereafter be permitted to recover from Tenant to compensate Lessor for the detriment caused by Tenant's default as permitted under applicable California law.

11.2.2. Continue Lease in Effect. Lessor may continue this Lease in effect without terminating Tenant's right to possession and to enforce all of Lessor's rights and remedies under this Lease; provided, however, that Lessor may at any time thereafter elect to terminate this Lease for the underlying Event(s) of Default by notifying Tenant in writing that Tenant's right to possession of the Premises has been terminated.

11.2.3. Removal of Personal Property Following Termination of Lease. Lessor shall have the right, following a termination of this Lease and Tenant's rights of possession of the Premises under Section 11.2.1 above, to re-enter the Premises and, subject to applicable law, to remove Tenant's personal property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant, or disposed of without such storage, in accordance with applicable California law.

11.3 Lessor's Right to Cure Tenant Defaults. If Tenant shall have failed to cure, after expiration of the applicable time for curing, a particular default under this Lease, Lessor may at their election, but are not obligated to, make any payment required of Tenant under this Lease or perform or comply with any term, agreement or condition imposed on Tenant hereunder, and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the Interest Rate from the date of payment, performance or compliance until reimbursed shall be deemed to be Additional Rent payable by Tenant on Lessor's demand. Tenant's failure to reimburse the Lessor within 30 days of Lessor's demand shall constitute an Event of Default under this Lease. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default, or render Lessor liable for any loss or damage resulting from the same.

11.4 Lessor's Default. Lessor shall not be considered to be in default under this Lease unless Tenant has given Lessor written notice specifying the default, and either (i) as to monetary defaults, Lessor have failed to cure the same within ten (10) business days after written notice from Tenant, or (ii) as to nonmonetary defaults, Lessor have failed to cure the same within thirty (30) days after written notice from Tenant, or if the nature of Lessor's nonmonetary default is such that more than thirty (30) days are reasonably required for its cure, then such thirty (30) day period shall be extended automatically so long as Lessor commences a cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. Tenant shall have no right to offset or abate alleged amounts owing by Lessor under this Lease against any amounts owing by Tenant under this Lease. Additionally, Tenant's sole remedy for any monetary default shall be towards the Lessor's interest in the property and not to any other assets. Any and all claims or actions accruing hereunder shall be absolutely barred unless such action is commenced within six (6) months of the event or action giving rise to the default.

11.5 Remedies Cumulative. All rights and remedies of Lessor contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease..

11.6 Waiver by Lessor. No delay or omission of Lessor to exercise any right or remedy shall be construed as a waiver of such right or remedy or any default by Tenant hereunder. No act or thing done by Agency's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by Lessor.

11.7 Conditions Deemed Reasonable. Tenant acknowledges that each of the conditions to a Transfer, and the rights of Lessor set forth in Article X in the event of a Transfer is a reasonable restriction for the purposes of California Civil Code Section 1951.4.

11.8 Waiver by Tenant. Tenant's waiver of any breach by Lessor of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

11.9 Tenant Covenants and Agreements. All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expenses and without any abatement of Rent. If Tenant shall fail to pay any sum of money, other than Rent required to be paid by it hereunder, or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by Tenant within the time period required under this Lease, then in addition to any other remedies provided herein, Lessor may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed as provided in this Lease or to provide such insurance. Any payment or performance of any act or the provision of any such insurance by Lessor on Tenant's behalf shall not give rise to any responsibility of Lessor to continue making the same or similar payments or performing the same or similar acts. All costs, expenses, and other sums incurred or paid by Lessor in connection therewith, together with interest at the Interest Rate from the date incurred or paid by Lessor, shall be deemed to be Additional Rent hereunder and shall be paid by Tenant within thirty (30) days of receipt of a demand and invoice from Lessor, and Tenant's failure to pay the Lessor, as stated herein, shall constitute an Event of Default under this Lease.

ARTICLE XII

HOLDING OVER

If Tenant holds over after the expiration or earlier termination of the Term hereof without the express written consent of Lessor, Tenant shall become a Tenant at sufferance only. If Tenant fails to surrender the Premises and the Improvements as stated herein, and Lessor shall take legal action to cause Tenant's eviction from the Premises and is successful in such action, Tenant shall be responsible for all costs and expenses, including reasonable attorney's fees and costs, incurred by Lessor in connection with such eviction action; Tenant shall also indemnify and hold Lessor harmless from all loss or liability or reasonable attorney's fees and costs, including any claim made by any succeeding tenant, incurred by Lessor founded on or resulting from such failure to surrender.

ARTICLE XIII

ESTOPPEL CERTIFICATES

At any time and from time to time, within ten (10) business days after written request by either Agency or Tenant (the "**requesting party**"), the other Party (the "**responding party**") shall execute, acknowledge and deliver an estoppel certificate addressed to the requesting party, and/or

to such other beneficiary (as described below) as the requesting party shall request, certifying (i) that this Lease is in full force and effect, (ii) that this Lease is unmodified, or, if there have been modifications, identifying the same, (iii) the dates to which Rent has been paid in advance, (iv) that, to the actual knowledge of the responding party, there are no then existing and uncured defaults under the Lease by either Agency or Tenant, or, if any such defaults are known, identifying the same, and (v) any other factual matters (which shall be limited to the actual knowledge of the responding party) as may be reasonably requested by the requesting party. Such certificate may designate as the beneficiary thereof the requesting party, and/or any third party having a reasonable need for such a certificate (such as, but not limited to, a prospective purchaser, transferee or lender) and any such certificate may be relied upon by the Parties.

ARTICLE XIV

FORCE MAJEURE

Unless otherwise specifically provided herein, the period for performance of any nonmonetary obligation by either Party shall be extended by the period of any delay in performance caused by Acts of God, strikes, boycotts, lock-outs, epidemic or pandemic, inability to procure materials not related to the price thereof, failure of electric power, riots, civil unrest, acts of terrorism, insurrection, war, declaration of a state or national emergency, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Premise from being operated in accordance with this Lease, or other reasons beyond the reasonable control of Agency, Tenant, or their respective agents or representatives (collectively, “**Force Majeure Events**”). In no event, however, shall Force Majeure Events include the financial inability of a Party to this Lease to pay or perform its obligations hereunder. Further, nothing herein shall extend the time for performance of any monetary obligation owing under this Lease (including Tenant’s obligation to pay Rent owing hereunder).

ARTICLE XV

The Tenant shall be obligated by the separate Maintenance and Affordability Restrictions executed separately between the parties in regards to their operational obligations.

ARTICLE XVI

LEASEHOLD MORTGAGES

16.1 Definitions. The following definitions are used in this Article (and in other Sections of this Lease):

16.1.1. “**Leasehold Estate**” shall mean Tenant’s leasehold estate in and to the Premises, including Tenant’s rights, title and interest in and to the Premises and the Improvements, or any applicable portion thereof or interest therein.

16.1.2. “**Leasehold Foreclosure Transferee**” shall mean any person (which may, but need not be, a Leasehold Mortgagee) which acquires the Leasehold Estate pursuant to a

foreclosure, assignment in lieu of foreclosure or other enforcement of remedies under or in connection with a Leasehold Mortgage.

16.1.3. **“Leasehold Mortgage”** shall mean and includes a mortgage, deed of trust, security deed, conditional deed, deed to secure debt or any other security instrument (including any assignment of leases and rents, security agreement and financing statements) held by a Lender by which Tenant’s Leasehold Estate is mortgaged to secure a debt or other obligation, including a purchase money obligation.

16.1.4. **“Leasehold Mortgagee”** shall mean a Lender which is the holder of a Leasehold Mortgage.

16.1.5. **“Tenant”** shall mean all of the following: (i) the Tenant under this Lease; (ii) an approved assignee or transferee of the Tenant under this Lease who is or becomes directly and primarily liable to Lessor; and (iii) any further assignee, transferee of any of the parties listed in (ii) who is or becomes directly and primarily liable to Lessor.

16.2 Tenant’s Right to Encumber Leasehold Estate; No Right to Encumber Lessor’s Fee Interest. Provided that an Event of Default has not occurred and is continuing, Tenant may, at any time during the Term of this Lease (with consent of Lessor after prior written notice providing evidence that all requirements of this Lease have been complied with, which consent shall not be unreasonably withheld, conditioned or delayed), encumber all or any portion of Tenant’s Leasehold Estate with one (1) or more Leasehold Mortgages; provided, however:

16.2.1. Such Leasehold Mortgage(s) (as of the date recorded) shall not exceed (a) if recorded before completion of the Initial Improvements, One Hundred Percent (100%) of the costs of the Initial Improvements, or (b) if recorded after completion of the Initial Improvements, eighty percent (80%) of the Leasehold Estate value (including the value of all improvements) after completion;

16.2.2. That Tenant shall not have the power to encumber, and no Leasehold Mortgage shall encumber, Lessor’s Fee Interest;

16.2.3. Except as expressly provided in this Lease, the Leasehold Mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of Lessor hereunder; and

16.2.4. Nothing in this Lease shall be construed so as to require or result in a subordination in whole or in part in any way of the Lessor’s Fee Interest to any Leasehold Mortgage, and;

16.2.5. Except as otherwise expressly provided herein, in the event of any conflict between the provisions of this Lease and the provisions of any such Leasehold Mortgage, the provisions of this Lease shall control.

Tenant’s encumbrance of its Leasehold Estate with a Leasehold Mortgage, as provided in this Section 15.2, shall not constitute an assignment or other Transfer under Article X or otherwise, nor shall any Tenant Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of

this Lease or of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume the Tenant's obligations and liabilities under this Lease.

Notwithstanding the foregoing, if any Leasehold Mortgagee (or its nominee) acquires title to the Premises by foreclosure or deed in lieu thereof, any required consent of the Lessor under this Section 15.2 shall not be unreasonably withheld.

16.3 Notification to Lessor of Leasehold Mortgage. Tenant or any Leasehold Mortgagee shall, prior to making any Leasehold Mortgage, provide Lessor with written notice of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee. At the time of notice, Tenant or such Leasehold Mortgagee shall furnish to Lessor a complete copy of any trust deed and note to be secured thereby, together with the name and address of the holder thereof. Thereafter, Tenant or any Leasehold Mortgagee shall notify Lessor of any change in the identity or address of such Leasehold Mortgagee. Lessor shall be entitled to rely upon the addresses provided pursuant to this Section for purposes of giving any notices required by this Article XV.

16.4 Notice and Cure Rights of Leasehold Mortgagees With Respect to Tenant Defaults. Lessor, upon delivery to Tenant of any notice of a default or demand for payment by Tenant under this Lease or a matter as to which Lessor may predicate or claim a default, will promptly deliver a copy of such notice to each Leasehold Mortgagee. Each notice or demand required to be given by Lessor to a Leasehold Mortgagee under this Lease shall be in writing and shall be given by certified or registered mail, postage prepaid, return receipt requested, to such Leasehold Mortgagee at the address(es) provided by such Leasehold Mortgagee, as applicable, to Lessor from time to time in writing and shall be effective upon receipt (or refusal to accept receipt). No notice or demand given by Lessor to Tenant shall be effective until the duplicate copy of such notice or demand to the Tenant shall have been effectively given to each Leasehold Mortgagee in accordance with this Lease. From and after the date such notice has been given to any Leasehold Mortgagee, such Leasehold Mortgagee shall have the same cure period for such default (or act or omission which is the subject matter of such notice) that is provided to Tenant under this Lease or as otherwise agreed upon by Agency and the Tenant, to commence and/or complete a cure of such default (or act or omission which is the subject matter of such notice). Lessor shall accept any and all performance by or on behalf of any Leasehold Mortgagee(s), including by any receiver obtained by any Leasehold Mortgagee(s), as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option, and hereby authorizes any Leasehold Mortgagee (or any receiver or agent) to enter upon the Premises for such purpose.

16.5 Limitation on Lessor's Termination Right. If following the delivery of notice pursuant to Section 15.4, above, the default by Tenant continues and is not cured by Tenant (or any Leasehold Mortgagee as allowed under Section 15.4, above), and such failure entitles Lessor to terminate this Lease, Lessor shall have no right to terminate this Lease unless Lessor shall notify in writing each and every Leasehold Mortgagee who has complied with Section 15.3 of Lessor's intent to so terminate at least sixty (60) days in advance of the proposed effective date of such termination. If any Leasehold Mortgagee, within such sixty (60) day period, (i) notifies Lessor of such Leasehold Mortgagee's desire to cure such default and initiates such cure and (ii) pays or cause to be paid the amount that is necessary to cure any monetary default as stated in such notice, if any, then Section 15.6 shall apply. The Lessor, at its sole discretion, may permit such additional

time as necessary for any Leasehold Mortgagee to commence the cure or make payment(s), as stated herein. If any Leasehold Mortgagee fails to respond to said notice of termination within the allotted sixty (60) days as consistent with the conditions of this Section 15.5, Lessor is entitled to immediately terminate this Lease.

16.6 Leasehold Mortgagee Foreclosure Period. If any Leasehold Mortgagee complies with Section 15.5 above, then the following provisions shall apply:

16.6.1. If Lessor's notice under Section 15.5 specifies only monetary Events of Default as the basis for Lessor's election to terminate this Lease, and Leasehold Mortgagee has fully paid the monetary amount designated by Lessor in its notice, then such payment shall be deemed to have cured the Event of Default. If Lessor's notice under Section 15.5 specifies both monetary and non-monetary Events of Default or non-monetary Events of Default as the basis for Lessor's election to terminate this Lease, and Leasehold Mortgagee has fully paid the monetary amount designated by Lessor in its notice, as applicable, then the date of termination specified in Lessor's notice shall be extended for a period of twelve (12) months, provided that such Leasehold Mortgagee shall, during such twelve (12) month period:

(a) pay or cause to be paid all Rent under this Lease as the same becomes due (subject to the notice and cure rights expressly set forth herein); and

(b) continue (subject to any stay as described in Section 15.6.2 below) its good faith efforts to perform (and complete performance of) all of Tenant's nonmonetary obligations under this Lease, excepting nonmonetary obligations (whether or not a default exists with respect thereto) that are not then reasonably susceptible of being cured by Leasehold Mortgagee; and

(c) commence and pursue with reasonable diligence until completion (subject to any stay as described in Section 15.6.2 below) a judicial or nonjudicial foreclosure or other enforcement of remedies under its Leasehold Mortgage.

16.6.2. In the event of a judicial or non-judicial foreclosure, the twelve (12) month period described in Section 15.6.1, above, shall automatically be extended by the length of any delay caused by any stay (including any automatic stay arising from any bankruptcy or insolvency proceeding involving Tenant), injunction or other order arising under applicable Laws or issued by any court (which term as used herein includes any other governmental or quasi-governmental authority having such power) (the foregoing being collectively referred to as a "Stay"). Further, Leasehold Mortgagee's obligations stated in Section 15.6.1(b) and (c) shall be automatically suspended during any period that any Stay prevents Leasehold Mortgagee from taking any such actions. Nothing herein, however, shall be construed to extend this Lease beyond the Term hereof nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after the Event of Default has been cured. If the Event of Default has been cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

16.6.3. In the event the Leasehold Mortgage requires a new lease between the Lessor and the Leasehold Mortgagee, Lessor shall enter into such new lease with the Leasehold

Mortgagee pursuant to Section 15.7, below, provided Lessor are provided with the necessary and adequate documents related to the new lease requirements in the Leasehold Mortgage as described in Section 15.7.

16.6.4. So long as any Leasehold Mortgagee is complying with Sections 15.6.1 and 15.6.2 above, then upon the acquisition of Tenant's Leasehold Estate by a Leasehold Foreclosure Transferee, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease; provided that no Leasehold Foreclosure Transferee shall have any liability for the performance of any of the Tenant's obligations under this Lease until the Leasehold Foreclosure Transferee has acquired the Tenant's interest under the Lease, and then the Leasehold Foreclosure Transferee shall be liable for the performance of only those obligations of the Tenant arising from and after the effective date of the Leasehold Foreclosure Transferee's acquisition of the Tenant's Leasehold Estate. Any such Leasehold Foreclosure Transferee shall be deemed to be an assignee or transferee and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the effective date on which such Leasehold Foreclosure Transferee acquires title to the Leasehold Estate, but only for so long as such purchaser or assignee is the owner of the leasehold estate.

16.6.5. Any Leasehold Mortgagee (or its designee) that becomes a Leasehold Foreclosure Transferee, upon acquiring title to Tenant's Leasehold Estate without obtaining Lessor's consent and provided it is not in default of any of the provisions of this Lease, shall have a one-time right to assign the Leasehold Estate to Habitat. Upon such assignment, the Leasehold Foreclosure Transferee shall automatically be released of all obligations thereafter accruing under this Lease. Any subsequent Transfers occurring except for the one-time assignment permitted under this Section shall be subject to Article X.

16.7 Leasehold Mortgagee's Right to New Lease.

16.7.1. In the event of any termination of this Lease (including any termination because of an Event of Default, or because of any rejection or disaffirmance of this Lease pursuant to bankruptcy law or any other law affecting creditor's rights, but other than by reason of a Total Taking), Lessor shall give prompt written notice of such termination to each Leasehold Mortgagee and shall (subject to Section 15.8 below if more than one Leasehold Mortgagee then exists) enter into a new lease ("**New Lease**") of the Premises with the Leasehold Mortgagee holding the Leasehold Mortgage that has the most senior lien priority, in accordance with Section 15.8 below, or its designee, upon notice to Lessor by such Leasehold Mortgagee. The New Lease shall commence as of its effective date and shall continue for the remainder of the scheduled Term of this Lease, at the same Rent that is payable under this Lease, and on the same terms, conditions, covenants, restrictions and reservations that are contained in this Lease (including any extension options, purchase options and rights of first refusal, if any, provided for in this Lease), and subject to the rights of any tenants under residential subleases or other subtenants then in valid occupancy of the Premises and Improvements and further subject to any then existing senior Leasehold Mortgagees; provided that, substantially concurrently with the delivery of a notice by Leasehold Mortgagee requiring Lessor to enter into a New Lease, Leasehold Mortgagee shall pay to Lessor all Rent or any other amounts payable by Tenant hereunder which are then due and shall commence and proceed with diligence to cure all nonmonetary defaults under this Lease, other than those

nonmonetary defaults which are personal to the foreclosed tenant and impossible for the Leasehold Mortgagee to remedy.

16.7.2. If such Leasehold Mortgagee elects to enter into a New Lease pursuant to Section 15.7.1 above, then Agency and the Leasehold Mortgagee (or its designee) shall promptly prepare and enter into a written New Lease; but until such written New Lease is mutually executed and delivered, this Lease shall govern, from and after the giving of notice pursuant to Section 15.7.1 but prior to the execution of the New Lease, the Lessor's and Leasehold Mortgagee's relationship with respect to the Premises and the Improvements and the Leasehold Mortgagee shall (i) be entitled to possession of the Premises and to exercise all rights of Tenant hereunder, (ii) pay to Lessor any Rent accruing under the New Lease as it becomes owing, and (iii) perform or cause to be performed all of the other covenants and agreements under this Lease. Further, at such time as the written New Lease is mutually executed and delivered, Leasehold Mortgagee (or its designee) shall pay to Lessor its reasonable expenses, including reasonable attorneys' fees and costs, incurred in connection with the preparation, execution and delivery of such written New Lease. In addition, upon execution of any such New Lease, Lessor shall execute, acknowledge and deliver to such Leasehold Mortgagee (or its designee) a grant deed, in recordable form, conveying to such Leasehold Mortgagee (or its designee) fee title to all Improvements in the event that title to such Improvements have vested with the City.

16.7.3. In the event that Lessor receives any net income (*i.e.*, gross income less gross expenses on a cash basis), if any, from the Premises and Improvements during any period that Lessor may control the same, then the Leasehold Mortgagee under the New Lease shall be entitled to such net income received by Lessor except to the extent that it was applied to cure any default of Tenant.

16.7.4. All rights and claims of Tenant under this Lease shall be subject and subordinate to all right and claims of the tenant under the New Lease.

16.8 Multiple Leasehold Mortgages. If more than one Leasehold Mortgagee shall make a written request upon Lessor for a New Lease in accordance with the provisions of Section 17.7, then such New Lease shall be entered into pursuant to the request of the Leasehold Mortgagee holding the Leasehold Mortgage that has the most senior lien priority.

Notwithstanding anything herein to the contrary, Lessor shall have no duty or obligation to resolve any disputes or conflicting demands between Leasehold Mortgagees. In the event of any conflicting demands made upon Lessor by multiple Leasehold Mortgagees, Lessor may (subject to any applicable court orders to the contrary) rely on the direction of the Leasehold Mortgagee whose Leasehold Mortgage is recorded first in time in the Official Records of the County, as determined by any national title company.

16.9 Condemnation and Insurance Proceeds. Notwithstanding anything to the contrary contained herein, all condemnation proceeds (other than proceeds payable on account of the value of the Lessor's Fee Interest as encumbered by this Lease) or insurance proceeds shall be subject to and paid in accordance with the requirements of the most senior (in order of lien priority) Leasehold Mortgage, subject, however, to any requirement in this Lease that, to the extent not in conflict with the terms of the applicable Leasehold Mortgage, such proceeds must be used to repair

and restore the Improvements to the Premises which were damaged or destroyed by such condemnation or casualty (including, without limitation, as requires I Article VII following a casualty and in Section 9.4.3 following a condemnation). The handling and disbursement of any such proceeds used to repair or restore the Improvements to the Premises shall be subject to the requirements of such senior Leasehold Mortgage.

16.10 Mortgagee Clauses. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Tenant hereunder, provided that any such Leasehold Mortgagee shall hold and apply such insurance proceeds subject to the provisions of this Lease.

16.11 No Waiver. No payment made to Lessor by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to Lessor pursuant to Lessor's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof.

16.12 Fees and Costs. Tenant agrees to reimburse Lessor for its reasonable attorneys' fees and costs incurred in connection with Lessor's review and/or approval of any documentation which may be required in connection with any Leasehold Mortgage by Tenant as provided herein.

16.13 No Termination, Cancellation, Surrender or Modification. Without the prior written consent of each Leasehold Mortgagee, (a) this Lease may not be terminated or cancelled by mutual agreement of Agency and Tenant, (b) Lessor may not accept the surrender of this Lease or the Leasehold Estate created hereunder without the consent of each Leasehold Mortgagee, and (c) this Lease may not be amended, modified or supplemented (and any action taken in furtherance of any of the foregoing without the required consent of each Leasehold Mortgagee shall be void and of no effect). In addition, if any term or provision of this Lease gives Tenant the right to terminate or cancel this Lease, in whole or in part, no such termination or cancellation shall be or become effective unless Tenant has first received approval in writing by each Leasehold Mortgagee.

ARTICLE XVII

GENERAL CONDITIONS & MISCELLANEOUS PROVISIONS

17.1 Signs. Tenant agrees not to construct, maintain, or allow billboards or outdoor advertising signs upon the Premises. Unapproved billboards or advertising signs may be removed by Lessor without prior notice to Tenant.

17.2 Nondiscrimination. Tenant agrees not to discriminate against any person or class of persons by reason of sex, age (except as permitted by law), race, color, creed, physical handicap, or national origin in the activities conducted pursuant to this Lease. **17.3 Taxes and Assessments.** Pursuant to California Revenue and Taxation Code Section 107.6, Tenant is specifically informed that this Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Premises or upon fixtures,

equipment, or other property installed or constructed thereon, shall be the full responsibility of Tenant, and Tenant shall cause said taxes and assessments to be paid promptly.

17.4 Quitclaim of Interest upon Termination. Upon termination of this Lease for any reason whatsoever in accordance with the terms of the Lease, Tenant shall execute, acknowledge, and deliver to Lessor, within five (5) business days, a good and sufficient deed, in a form as approved by the Lessor, whereby all right, title, and interest of Tenant in the Premises is quitclaimed back to Lessor (“**Quitclaim Deed**”). The Quitclaim Deed shall then be recorded by Lessor to remove any cloud on title created by this Lease.

17.5 Public Records. Tenant acknowledges that any written information submitted to and/or obtained by Lessor from Tenant or any other person or entity having to do with or related to this Lease and/or the Premises, either pursuant to this Lease or otherwise, is a “public record” open to inspection and copying by the public pursuant to the California Public Records Act (Government Code §6250, *et seq.*) (“**CPRA**”) as now in force or hereafter amended, or any Law in substitution thereof, or otherwise made available to the public, unless such information is exempt from disclosure pursuant to the applicable sections of CPRA. In the event that a CPRA request is made for any financial statements and records of Tenant and the Lessor determines that the records must be turned over, the Lessor will give Tenant written notice prior to turning over such records so that Tenant can take any necessary action, including, but not limited to, injunctive relief, to prevent Lessor from turning over such Tenant financial statements and records. However, failure to provide such written notice would not preclude production of the documents as required by the CPRA or other pertinent Law, and would not constitute a breach of this Lease Agreement.

17.6 Attorney’s Fees. In any action or proceeding brought to enforce or interpret any provision of this Lease, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys’ fees and costs.

17.7 Reserved.

17.8 Declaration of Knowledge by Tenant. Tenant warrants that Tenant has carefully examined this Lease and by investigation of the site and of all matters relating to the Lease arrangements has fully informed itself as to all existing conditions and limitations affecting the construction of the Lease improvements and of the uses contemplated hereunder.

17.9 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California and of the City.

17.10 Venue. The Parties hereto agree that this Lease has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Lease, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

17.11 Headings and Titles. The captions of the Articles or Sections of this Lease are only to assist the Parties in reading this Lease and shall have no effect upon the construction or interpretation of any part hereof.

17.12 Interpretation. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term “**Tenant**” shall include Tenant’s agents, employees, contractors, invitees, successors or others using the Premises with Tenant’s expressed or implied permission. In any provision relating to the conduct, acts or omissions of Agency, the term “**Agency**” or “**Lessor**” shall include Agency’s agents, employees, contractors, invitees, successors or others using the Premises with Agency’s expressed or implied permission.

17.13 Ambiguities. Each Party hereto has reviewed this Lease with legal counsel, and has revised (or requested revisions of) this Lease based on the advice of counsel, and therefore any rules of construction requiring that ambiguities are to be resolved against a particular Party shall not be applicable in the construction and interpretation of this Lease or any exhibits hereto.

17.14 Successors and Assigns. Except as otherwise specifically provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns.

17.15 Time is of the Essence. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

17.16 Severability. If any term or provision of this Lease is held invalid or unenforceable to any extent under any applicable law by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each remaining term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

17.17 Integration. This Lease together with the Inclusionary Grant Agreement, along with any exhibits, attachments or other documents affixed hereto or referred to herein and related Agency permits, constitute the entire agreement between Agency and Tenant relative to the leasing of the Premises. This Lease and such exhibits, attachments and other documents may be amended or revoked only by an instrument in writing signed by Agency and Tenant. Agency and Tenant hereby agree that no prior agreement, understanding or representation pertaining to any matter covered or mentioned in this Lease and Inclusionary Grant Agreement shall be effective for any purpose.

17.18 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or electronic mail, shall be deemed received upon the earlier of (a) if personally delivered, the date of delivery to the address of the person to receive such notice, (b) if mailed, three (3) business days after the date of posting by the United States post office, (c) if given by electronic mail, when sent if before 5:00 p.m., otherwise on the next business day, or (d) if delivered by overnight delivery, one (1) business day after mailing.

Either Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

If to Lessor: Housing Authority of the City of Santa Ana
20 Civic Center Plaza (M-26)
P.O. Box 1988
Santa Ana, California 92702
Attn: 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 Tenant: c/o Habitat for Humanity of Orange County
2200 S. Ritchey Street
Santa Ana, CA 92705
Attention: Executive Director or Chief Executive Officer

With a copy to:

17.19 Amendments. Any changes to this Lease shall be in writing and shall be properly executed by all Parties.

17.20 Dispositions of Abandoned Property. If Tenant abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to and left on the Premises thirty (30) days after such event shall, at Lessor's option, be deemed to have been transferred to Lessor. Lessor shall have the right to remove and to dispose of such property at Tenant's cost, including the cost of labor, materials, equipment and an administrative fee equal to fifteen percent (15%) of the sum of such costs without liability therefor to Tenant or to any person claiming under Tenant, and shall have no need to account therefor. At Lessor's option, Lessor may provide Tenant with an invoice for such costs, which invoice Tenant agrees to pay within fifteen (15) days of receipt.

17.21 No Partnership. This Lease shall not be construed to constitute any form of partnership or joint venture between Agency and Tenant. Except with respect to Agent's role as Lessor's agent in enforcing the Restrictions as to subsequent Tenants, Agency and Tenant mutually acknowledge that no business or financial relationship exists between them other than as Lessor and Tenant, and that Agency is not responsible in any way for the debts of Tenant or any other Party.

17.22 Authorization. Agency and Tenant (each, a "**signing party**") each represents and warrants to the other that the person or persons signing this Lease on behalf of the signing party has full authority to do so and that this Lease binds the signing party. Concurrently with the execution of this Lease, the Tenant shall deliver to the Lessor a certified copy of a resolution of

the signing party's board of directors or other governing board authorizing the execution of this Lease by the signing party.

17.23 Recording. This Lease itself shall not be recorded, but in the event that the Tenant encumbers the leasehold as set forth in Article XVII, a memorandum hereof may be recorded in the form of **Exhibit C** attached hereto (the "**Memorandum**"). The Memorandum may be executed concurrently with this Lease and thereafter recorded in the Official Records of the County Recorder on the Effective Date of this Lease has occurred. Tenant shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.

17.24 Exhibits. This Lease contains the following exhibits, schedules and addenda, each of which is attached to this Lease and incorporated herein in its entirety by this reference:

Exhibit A: Legal Description of the Premises

Exhibit A-1: Rendering of the Premises

Exhibit B: Affordability and Maintenance Restrictions

Exhibit C: Form of Memorandum of Lease

17.25 Consent/Duty to Act Reasonably. Except as otherwise expressly provided herein, whenever this Lease grants Agency, Habitat and/or Tenant the right to take any action, grant any approval or consent, or exercise any discretion, Agency, Habitat and/or Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the other Party's reasonable expectations concerning the benefits to be enjoyed under this Lease.

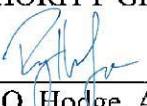
17.26 Counterparts. For the convenience of the Parties to this Lease, this Lease may be executed in several original counterparts, each of which shall together constitute but one and the same agreement. Original executed pages may be assembled together into one fully executed document.

17.27. No Merger. The interests created by this Lease shall not be extinguished by merger of any or all of the ownership interests the Premises or the Improvements in one person or entity.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the Parties have executed this Lease on the date first written above.

	<p><u>TENANT</u></p> <p>HABITAT FOR HUMANITY OF ORANGE COUNTY, a nonprofit organization</p> <p>By: _____ Sharon Ellis, Executive Director</p>
--	--

<p>APPROVED AS TO FORM: SONIA CARAVALHO AUTHORITY GENERAL COUNSEL</p> <p>By:  Ryan O. Hodge, Assistant City Attorney</p> <p>Date <u>10/29/2020</u></p>	<p><u>LESSOR</u></p> <p>HOUSING AUTHORITY OF THE CITY OF SANTA ANA ACTING AS THE HOUSING SUCCESSOR AGENCY a public body, corporate and politic</p> <p>By: _____ Steven A. Mendoza, Executive Director</p> <p>Date _____</p>
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*HABITAT WILL REQUIRE NO ADDITIONAL
CHANGES FOR THE GROUND LEASE FOR
416 VAUGHN STREET*



TROY HENDRICKSON
V.P. HFHOC

Exhibit A

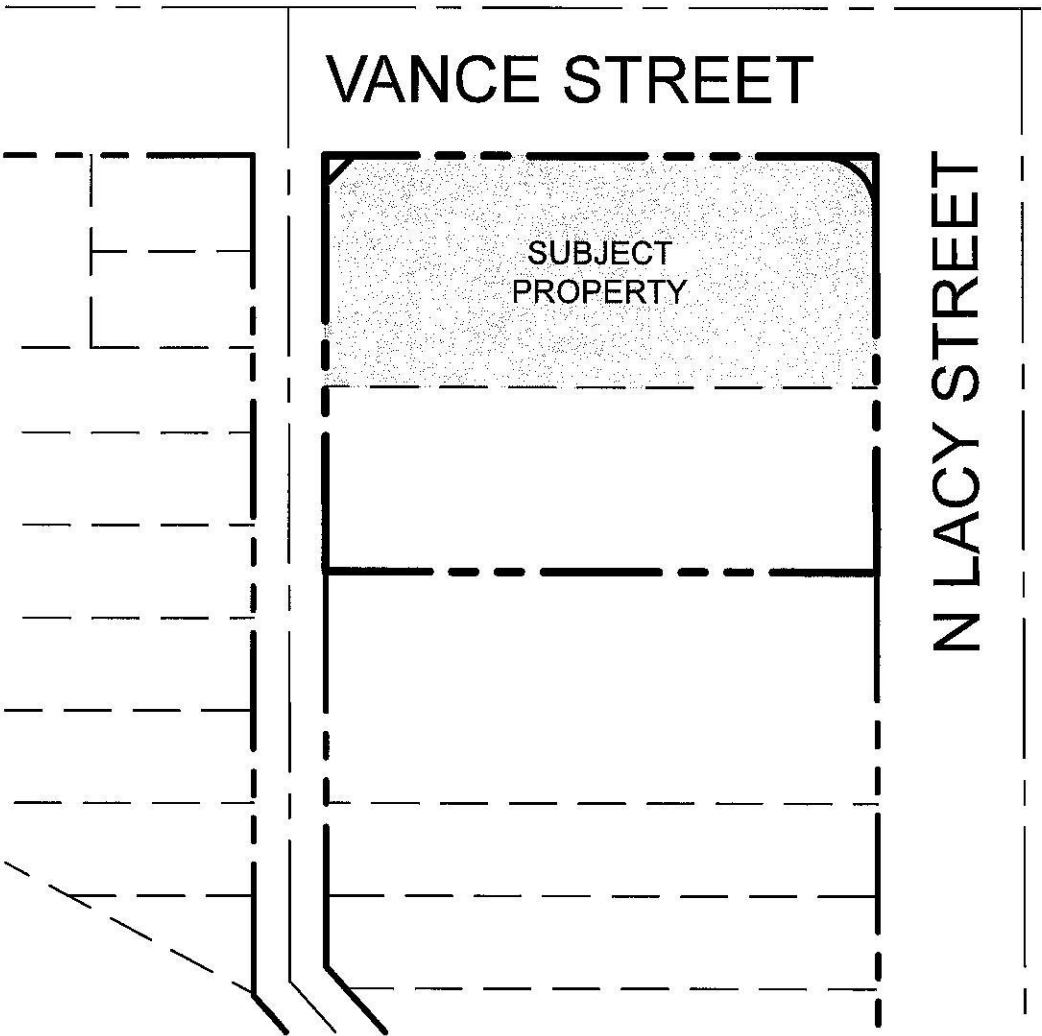
Legal Description

Lots 31 and 32 in Block 83 of the Town of Santa Ana East, as per map recorded in Book 10, Pages 43 and 44 of Miscellaneous Records, in the office of the County Recorder of said County.

EXHIBIT A-1
RENDERING OF THE PREMISES

EXHIBIT A-1

416 VANCE STREET
SANTA ANA, CA



SAVE DATE: 10/25/20 ~ PLOT DATE: 10/25/20 ~ FILE NAME: J:\Active Jobs\3268 H4I SANTA ANA\CIVIL\DRAWING\EXHIBITS\Subject Property Exhibits\416 Vance Street\3268-Exhibit, Subject Property - 416 Vance Street.dwg

PASCO LARET SUITER
& ASSOCIATES
San Diego | Solana Beach | Orange County
Phone 949.661.6695 | www.plsaengineering.com

EXHIBIT
SCALE = 1" = 50'

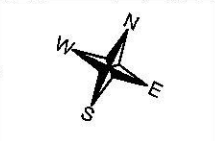


EXHIBIT A-1
416 VANCE STREET
SHEET 1 OF 1

EXHIBIT B

FORM OF AFFORDABILITY AND MAINTENANCE RESTRICTIONS

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 6103 & 27383

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

AFFORDABILITY AND MAINTENANCE RESTRICTIONS

{Address: 416 Vance Street (APN 398-041-22)}

THESE AFFORDABILITY AND MAINTENANCE RESTRICTIONS (the “Restrictions”) are entered into by and between Habitat for Humanity of Orange County, a nonprofit organization (“Habitat”), as the “Tenant” under the Ground Lease for each of two parcels of Property (defined below), and the Housing Authority of the City of Santa Ana, a public body, corporate and politic (“City” and/or “Agency”) as the “Lessor” under the Ground Lease for the above-referenced Premises.

RECITALS:

A. The City’s Housing Opportunity 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”). The Ordinance was amended by the City Council on September 1, 2015 (Ordinance No. NS-2881), on October 6, 2015 (Ordinance No. NS-2885), and on September 1, 2020 (Ordinance No. NS-2994). 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. Habitat requested financial assistance in connection with the proposed development of two (2) single-family detached homes (“Restricted Units”) restricted for sale to moderate income families earning no more than 120% of the Orange County Area Median Income (“Project”) to be located at 416 Vance Street (APN 398-041-22) and 826 N. Lacy Street (APN 398-041-22 (“Property”). The two (2) Restricted Units will be affordable to family households earning no more than 120% of the Area Median Income (“AMI”).

C. On March 5, 2019, the City of Santa Ana authorized the City Manager and the Clerk of the Council to execute a pre-loan commitment letter with Habitat for \$231,494 in Inclusionary

Housing Funds for the development of the Project at the Property, subject to non-substantive changes approved by the City Manager and City Attorney.

D. On November 17, 2020, the City of Santa Ana agreed to change the terms of the pre-loan commitment from a loan to a conditional grant.

E. The amount of the Conditional Inclusionary Grant was determined based upon the City's review of the Habitat's request for the receipt of the Conditional Inclusionary Grant and the development proforma and projected cash flows for the Project submitted by the Habitat to the City ("Proforma"). The City Project Manager has authority to approve revised development proformas and projected cash flows for the Project; provided, however, that the Conditional Inclusionary Grant is not materially increased or extended.

F. In furtherance of the Inclusionary Housing Program, Habitat applied to the City for a grant with which to:

1. Develop and construct the Project.

G. The City, on certain terms and conditions, made such Inclusionary Grant to Developer in order to make possible the development and construction of the Project, thereby expanding the supply of decent, safe, sanitary and affordable housing within the City.

H. If there is any inconsistency between Federal, State, and local guidelines with regard to any of the terms and conditions contained herein, the more stringent shall apply.

I. The Inclusionary Grant Agreement and Ground Leases for the two parcels of the Property are entered into for the purpose of providing for affordable residential ownership units in the City of Santa Ana pursuant to the Inclusionary Housing Fund regulations and guidance.

J. These Restrictions empower Habitat, as Lessor's Agent, following construction of the homes, to maintain the affordability of the Restricted Units and to maintain the certain components of the Premises that may not be covered by Tenant insurance under the Ground Lease for the Premises.

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

1. Definitions:

"**Affordable Housing**" means the total housing costs paid by a qualifying household, which shall not exceed the fraction of gross income specified, as follows, in accordance with the State of California Department of Housing and Community Development pursuant to Health and Safety Code Section 50052.5(b)(4) and the U.S. Department of Housing and Urban Development (HUD):

Moderate-Income Households. Thirty (30) percent of the income of a household earning one hundred and twenty (120) percent of the Median Income for the Area for for-sale units, adjusted for family size appropriate for the unit.

“Affordable Mortgage” means the monthly mortgage payment, which does not exceed the maximum amount applicable to Moderate Income Households.

“Agent” shall mean, with respect to Habitat’s rights and responsibilities under this Restriction, Habitat or similarly situated non-profit public benefit organization assisting with providing housing for moderate-income persons as Habitat’s successors and assigns, subject to the City’s right to approve the agreement to effect such assignment or transfer. City shall permit Habitat assignments or transfers of Habitat’s interests under the Restriction to an Affiliate nonprofit public benefit corporation or for-profit corporation of Habitat, or to a limited partnership whose general partner is a nonprofit corporation, for-profit corporation or limited liability company is an Affiliate of Habitat or Habitat’s general partner

"Applicable Law" shall mean those federal, state and local laws, ordinances, regulations, policies and procedures applicable to the Inclusionary Housing Funds.

"City" means the City of Santa Ana, California, a charter city and municipal corporation. “City” shall also refer to the Housing Authority of the City of Santa Ana where the context dictates, to the effect that the Housing Authority of the City shall have all the rights granted to the City hereunder.

"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.

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

"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.

“Inclusionary Grant” or “Conditional Inclusionary City Grant” means a grant in the original principal amount of up to two hundred, thirty-one thousand, four hundred and ninety-four dollars (\$231,494) to be made to Developer by the City to be funded exclusively from the Inclusionary Housing Fund.

"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.

"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.

"Median Income for the Area" means the median income for Orange County, California PMSA as most recently determined by HUD. Also may be referred to interchangeably in the Inclusionary Grant Documents as "Area Median Income" or "AMI".

"Premises" means that portion of the Property and any Improvements thereon that is located at 416 Vance Street (APN 398-041-22), Santa Ana, CA 92701, as more fully described in the "Legal Description" attached to the Agreement as **Exhibit A** and incorporated herein by reference.

"Project" means the construction of the Improvements upon the Property by Developer pursuant to the Agreement.

"Property" means the property that is located at 416 Vance Street (APN 398-041-22), Santa Ana, CA 92701 in the City of Santa Ana.

"Restricted Units" means the two (2) "Housing Units" at the Project, which shall and will be restricted to an affordable home purchase price based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD for a period of not less than ninety-nine (99) years recorded against the Premises in the Official Records, County of Orange, California.

"Term of Affordability" or "Affordability Period" means the terms and conditions contained herein shall remain in effect for ninety-nine (99) years from the date of the Ground Lease.

2. Use of the Premises. Except while Habitat is the initial Tenant under the Ground Lease, Tenant covenants and agrees, for itself, its successors, its assigns, and every successor in interest to the Premises any part thereof, that Tenant is a Moderate-Income Household, as provided in these Restrictions. Tenant agrees that during the Term of Affordability, the Premises shall be used only for decent, safe, sanitary and Affordable Housing pursuant to the affordability requirements of California Health and Safety Code ("H&S") sections 50052.5 and 33334.3, as applicable.

3. Premises Affordability and Maintenance Restrictions.

3.1 Affordability Restrictions:

A. Tenant agrees and covenants, which covenants shall run with the land and bind Tenant, its successors, its assign and every successor in interest to the Property that Tenant will only enter into Affordable Mortgages and only make the Restricted Unit on the Premises available for resale to Moderate Income Households at an Affordable Housing purchase price based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD during the Term of Affordability. Tenant agrees that, upon

termination of Tenant's right in the Lease and/or resale of the Restricted Unit, Agent shall have the exclusive right to approve any assignment of the Lease and re-sale of the Restricted Unit, and that Tenant (other than Habitat) have no right to assign its interests in the Lease and/or to sell the Restricted Unit without such Agent approval other than to a Leasehold Mortgage lenders as a pledge to finance an Affordable Mortgage. Agent shall take all necessary steps to review the income of all homeowners prior to selling to them. Agent shall allow the City to conduct periodic reviews of homeowner files and files relating to affirmative marketing and outreach to ensure the Project's compliance with applicable regulations and guidelines. The interests of Leasehold Mortgage Lenders shall be subordinate to the Restrictions and to Agent's right to approve assignment of the Tenant Leasehold interest and resale of the home to Qualifying Purchasers following foreclosure by the Leasehold Mortgage lenders.

- (1) Local Preference. Local preference for Santa Ana residents and workers in homebuyer selection shall be a requirement of the Project. Subject to the prohibition of discrimination and the granting of preferences in housing occupancy imposed by federal laws and regulations, the State of California, and by the City of Santa Ana Affordable Housing Funds Policies and Procedures, when selling the Restricted Unit and assigning its interests in the Lease, Tenant, with the assistance of Agent shall use its best efforts to sell the Restricted Unit and assign its interests in the Lease in the following order of priority:

- First priority shall be given to persons who have been permanently displaced or face permanent displacement from housing in Santa Ana as a result of any of the following:
 - A redevelopment project undertaken pursuant to California's Community Redevelopment Law (Health & Safety Code Sections 33000, et seq.) -- applicable only to projects funded by the Low and Moderate Income Housing Asset Fund.
 - Ellis Act, owner-occupancy, or removal permit eviction;
 - Earthquake, fire, flood, or other natural disaster;
 - Cancellation of a Housing Choice Voucher HAP Contract by property owner; or
 - Governmental Action, such as Code Enforcement.
- Second priority shall be given to persons who are either:
 - a. Residents of Santa Ana and/or
 - b. Working in Santa Ana at least 32 hours per week for at

least the last 6 months.

B. The two (2) single-family detached homes will be restricted for sale to moderate income families earning no more than 120% of the Orange County Area Median Income based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD.

C. These Restrictions shall be recorded in the Official Records of the County, and shall remain in first position on title and shall not be subordinated.

3.2 Maintenance of the Property:

A. Maintenance Reserve Fee. Tenant agrees and covenants, which covenants shall run with the land and bind Tenant, its successors, its assign and every successor in interest to the Property that Tenant will pay to Habitat, as Agent for Lessor, a monthly maintenance reserve fee in an amount established by Habitat sufficient to maintain a reserve fund to pay for any required roof repairs, re-painting, landscaping and pest control/remediation for the Restricted Unit on the Premises, which amount shall be established by Habitat, in its sole discretion, and which fees shall be maintained by Habitat in a separate account and used as needed by Habitat for the purpose of paying for any required roof repairs, re-painting, landscaping and pest control/remediation, as determined to be necessary by Habitat and/or the City. Tenant shall allow Habitat and its agents and contractors access to the Premises at reasonable hours to carry out such maintenance by Habitat as Habitat may determine, in its sole discretion.

B. Maintenance. Tenant agrees to maintain the roofing, exterior paint, and the landscaping in a clean and good condition and repair in compliance with all applicable housing quality standards and state and local code requirements, and keep the Property free from any accumulation of debris and waste materials. If at any time Tenant fails to maintain, or cause to be maintained, the roofing, exterior paint, and landscaping as required, 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 Tenant shall have such additional time as reasonably necessary to complete such cure, the City may perform the necessary maintenance and Tenant shall pay all reasonable costs incurred for such maintenance from the maintenance reserve fund detailed in section 3.2(A) above.

C. Monitoring. Tenant shall allow the City to conduct periodic inspections of the roof, exterior paint, or landscaping after the date of construction completion, with reasonable notice. Tenant shall cure any defects or deficiencies found by the City while conducting such inspections within thirty (30) days of written notice thereof, or such longer period as is reasonable within the sole discretion of the City.

3.3 Obligation to Refrain from Discrimination:

A. In Use of Property. Any party subject to the terms of these Affordability and Maintenance Restrictions covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, disability,

sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Habitat itself or any person claiming under or through it 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, subtenants, sublessees or vendees of the Property, as required by the Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 U.S.C. 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975, and all implementing regulations.

B. In Affordable Housing Restrictions. Any party subject to the terms of these Affordability and Maintenance Restrictions shall not refuse to sell a unit to a holder of a rental voucher under 24 CFR part 887 (Housing Choice Voucher Program) or to a holder of a comparable document evidencing participation in a federally funded tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable tenant-based assistance document.

4. Miscellaneous Provisions:

A. Any sales prices of any of the Restricted Units must be for an amount not more than what is affordable to a moderate income family earning no more than 120% of the Orange County Area Median Income based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD.

B. The covenants established in these Restrictions shall be binding for the benefit of and in favor of the City and its respective successors and assigns, without regard to technical classification and designation. These Restrictions shall remain in effect for the Term of Affordability. The covenants against discrimination shall remain in effect for the period of these Restrictions.

C. The City is the beneficiary of the terms and provisions of these Restrictions and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit these Restrictions and the covenants running with the land have been provided. The City shall have the right if the 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 they or any other beneficiaries of these Restrictions and covenants are entitled.

D. The covenants and agreements contained herein shall run with the land and shall remain in effect for the Term of Affordability.

E. Upon a Transfer of the Property, the transferee will be obligated to meet with the Agent prior to closing of the Transfer to review the terms of these Restrictions and requirements of the transferee therein. Any failure of transferee to meet with the Agent as required would constitute a default under these Restrictions.

F. The Ground Lease and all of its attachments, including these Affordability Restrictions, shall be enforceable by the City in accordance with the default and remedy terms and procedures detailed in the Ground Lease.

G. Reserved

{Signatures on following page}

IN WITNESS WHEREOF, the parties hereto have caused these Affordability Restrictions on Transfer of Property to be executed on the date set forth at the beginning of these Restrictions.

ATTEST:

HOUSING AUTHORITY OF THE CITY OF
SANTA ANA, ACTING AS THE HOUSING
SUCCESSOR AGENCY

Daisy Gomez
Recording Secretary

Steven A. Mendoza
Executive Director

APPROVED AS TO FORM
Sonia R. Carvalho
Authority General Counsel

By: Ryan O. Hodge
Assistant City Attorney

{Signatures continue on following page}

DEVELOPER:

Habitat for Humanity of Orange County

By: _____
Sharon Ellis
Its: Executive Director

Exhibit A

Legal Description

Lots 31 and 32 in Block 83 of the Town of Santa Ana East, as per map recorded in Book 10, Pages 43 and 44 of Miscellaneous Records, in the office of the County Recorder of said County.

EXHIBIT D**FORM OF MEMORANDUM OF LEASE
MEMORANDUM OF LEASE**

This is a Memorandum of Lease (“**Memorandum**”) made and entered into as of this _____ day of _____, 20____, by and between the Housing Authority of the City of Santa Ana, a public body, corporate and politic (collectively, the “**Lessor**”) and Habitat for Humanity of Orange County, a nonprofit organization, (“**Tenant**”), residing at _____, upon the following terms:

1. **Lease.** The provisions set forth in a written lease between the parties hereto dated _____ (“**Lease**”), are hereby incorporated by reference into this Memorandum.

2. **Subject Premises.** The Premises which are the subject of the Lease are more particularly described as on **Exhibit A**, attached hereto

3. **Effective Date of Lease.** The Lease shall be deemed to have commenced on _____ (the “**Effective Date**”) as set forth within the terms of the Lease.

4. **Term.** The Term of the Lease shall be Ninety-Nine (99) years from the Effective Date as stated in the written Lease. The Term shall commence on the date hereof and terminate Ninety-Nine (99) years from the Effective Date.

5. **Duplicate Copies** of the originals of the Lease are in the possession of the Lessor and Tenant and reference should be made thereto for a more detailed description thereof and for resolution of any questions pertaining thereto. The addresses for Lessor and Tenant are as follows:

If to Lessor:	Housing Authority of the City of Santa Ana 20 Civic Center Plaza (M-26) P.O. Box 1988 Santa Ana, California 92702 Attn: Housing Manager
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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
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If to Tenant:	c/o Habitat for Humanity of Orange County 2200 S. Ritchey Street Santa Ana, CA 92705 Attention: Executive Director or Chief Executive Officer
---------------	--

With a copy to:

6. Purpose. It is expressly understood and agreed by all Parties that the sole purpose of this Memorandum is to give record notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between Lessor and Tenant with respect to the Premises and is hereby incorporated by reference. The Lease contains and sets forth additional rights, terms, conditions, duties, and obligations not enumerated within this instrument which govern the Lease. This Memorandum is for informational purposes only and nothing contained herein may be deemed in any way to modify or vary any of the terms or conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall control. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, representatives, successors, and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum pursuant to due authorization on the dates herein acknowledged.

AGENCY:

By: _____

Name: _____

Title: _____

TENANT:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

**HOUSING AUTHORITY OF THE CITY OF SANTA ANA****GROUND LEASE—LACY STREET PARCEL**

Habitat for Humanity Affordable Housing Project at
826 N. Lacy Street (APN 398-041-22)

THIS GROUND LEASE ("**Lease**") is made and effective as of the 17th day of November, 2020 ("**Effective Date**") by and between the HOUSING AUTHORITY OF THE CITY OF SANTA ANA, a public body, corporate and politic, ("**Lessor,**" "**City**" and/or "**Agency**") and HABITAT FOR HUMANITY OF ORANGE COUNTY, a nonprofit organization specializing in the construction of affordable housing for purchase by qualifying families ("**Habitat,**" hereinafter called "**Tenant**" when referring to tenancy obligations of Habitat and its assigns, "**Developer**" when referring to Habitat obligations during Habitat's tenancy herein to develop Initial Improvements defined herein as those obligations are more particularly described in the Inclusionary Grant Agreement, or "**Agent**" when referring to Habitat obligations after Habitat's tenancy herein as Lessor's agent for enforcing the Restrictions defined herein) (also referred to hereinafter each as "**Party**" or collectively as the "**Parties**").

RECITALS

A. Lessor owns that certain real property generally located at 416 Vance Street ("**Vance Street Parcel**" APN 398-041-22) and 826 N. Lacy Street ("**Lacy Street Parcel**" APN 398-041-22), Santa Ana, CA 92701 (the Vance Street Parcel and the Lacy Street Parcel, collectively as the "**Property**").

B. Developer proposes to develop on the two Property parcels two (2) single-family detached homes ("**Project**") as generally described in Exhibit "A" to the concurrently executed Inclusionary Grant Agreement between Developer and the City. The homes will be made available for purchase and occupancy by qualifying moderate income families (up to 120% of Area Median Income) pursuant to assignment of this Lease and of the companion ground lease for the Lacy Street Parcel.

C. On March 5, 2019, the Agency authorized the Executive Director of the Agency and the Recording Secretary to execute a pre-commitment letter with Tenant for a 99-year ground-lease of the Property for the development of the Project, subject to non-substantive changes approved by the Executive Director of the Housing Authority and Authority General Counsel.

D. On March 5, 2019, the City authorized the City Manager and the Clerk of the City Council to execute a pre-loan commitment letter with Developer for \$231,494 in Inclusionary Housing Funds for the development of the Project located at the Property, subject to non-substantive changes approved by the City Manager and City Attorney. The City has subsequently determined that instead of a loan, the funds will be disbursed as a grant.

E. The proposed Project will result in the redevelopment of underutilized land owned by the Agency, development of two affordable single-family homes for the benefit of local residents, and increased homeownership opportunities within the City produced by the Project. The proposed Project is intended to be developed by Developer pursuant to the terms and conditions for development of the Project contained in the Inclusionary Grant Agreement.

F. Based on the reasons identified in Recital E, above, together with the commitments and obligations of Developer to develop the Property according to the Project as contained in the Inclusionary Grant Agreement, Lessor has determined that the lease of the Vance Street and Lacy Street Parcels to Habitat and its assigns as Tenant for occupancy of the homes is in the best interest of the Lessor.

G. Lessor desires to lease the Lacy Street Parcel as more particularly described in the Legal Description attached to this Lease as Exhibit “A” and incorporated herein by reference (“**Premises**”), and the Tenant desires to enter into a lease of the Premises for the purposes of development of the Project and subsequent occupancy of the two homes on the Premises for Affordable Housing on the terms and conditions set forth in this Lease.

H. Lessor and Tenant have jointly agreed to enter into this Lease as of the date set forth above.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH THE PARTIES ACKNOWLEDGE, AND PURSUANT TO THE PROMISES AND COVENANTS SET FORTH IN THIS AGREEMENT, THE PARTIES AGREE, AS FOLLOWS:

ARTICLE I

DEFINITIONS

1.1 **Definitions:** The following defined terms used in this Lease shall have the meanings set forth below. Other terms are defined in other provisions of this Lease, and shall have the definitions given to such terms in such other provisions.

1.1.1. “**Affiliate**” shall mean, with respect to any person (which as used herein includes an individual, trust or entity), any other person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such person.

1.1.2. “**Affordability and Maintenance Restrictions**” or “**Restrictions**” means that certain document affecting real property benefiting the Lessor, attached hereto and incorporated herein as **Exhibit B**.

1.1.3. “**Affordable Housing**” means the total housing costs paid by a qualifying household, which shall not exceed the fraction of gross income specified, as follows, in accordance with the State of California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093(e): Moderate-Income Households. Thirty-Five (35) percent

of the income of a household earning one hundred and twenty (120) percent of the Median Income for the Area for for-sale units, adjusted for family size appropriate for the unit.

1.1.4. “**Affordable Mortgage**” means the monthly mortgage payment which does not exceed the maximum amount applicable to Moderate Income Households.

1.1.5. “**Agency**” shall mean the Housing Authority of the City of Santa Ana, acting as the Housing Successor Agency, a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the California Redevelopment Law. The principal office of the Agency is located at 20 Civic Center Plaza, Santa Ana, California 92702. “Agency” shall also refer to the City of Santa Ana where the context dictates, to the effect that the City of Santa Ana shall have or succeed to all rights granted to the Agency hereunder.

1.1.6. “**Agent**” shall mean, with respect to Habitat’s rights and responsibilities under the Restriction, Habitat or similarly situated non-profit public benefit organization assisting with providing housing for low income persons as Habitat’s successors and assigns, subject to the Agency’s right to reasonably approve the agreement to effect such assignment or transfer. Agency may permit Habitat assignments or transfers of Habitat’s interests under the Restriction to an Affiliate nonprofit public benefit corporation or for-profit corporation of Habitat, or to a limited partnership whose general partner is a nonprofit corporation, for-profit corporation or limited liability company is an Affiliate of Habitat or Habitat’s general partner, which shall not be unreasonably withheld.

1.1.7. “**Certificate of Occupancy**” shall mean a temporary or final certificate of occupancy (or other equivalent entitlement, however designated) for the Initial Improvements.

1.1.8. “**City**” shall mean the City of Santa Ana, California, a charter city and municipal corporation. “City” shall also refer to the Agency where the context dictates, to the effect that the Agency shall have all the rights granted to the City hereunder. “**City Council**” shall mean the City Council of the City of Santa Ana.

1.1.9. “**Claims**” shall mean liens, claims, demands, suits, judgments, liabilities, damages, fines, losses, penalties, costs and expenses (including without limitation reasonable attorneys' fees and expert witness costs, and costs of suit), and sums reasonably paid in settlement of any of the foregoing.

1.1.10. “**Effective Date**” is defined in the introductory paragraph to this Lease, and shall be the date on which Tenant takes possession of the Premises and is entitled to commence construction pursuant to Article V, below.

1.1.11. “**Event of Default**” is defined in Section 11.1.

1.1.12. “**Force Majeure Event**” is defined in Article XIV.

1.1.13. “**Hazardous Material(s)**” is defined in Section 4.4.

1.1.14. “**HCD**” shall mean the California Department of Housing and Community Development.

1.1.15. “**Improvements**” shall mean and includes all buildings (including above-ground and below ground portions thereof, and all foundations and supports), building systems and equipment (such as HVAC, electrical and plumbing equipment), physical structures, fixtures, hardscape, paving, curbs, gutters, sidewalks, fences, landscaping and all other improvements of any type or nature whatsoever now or hereafter made or constructed on the Premises. The term Improvements shall mean the Initial Improvements and any replacement improvements constructed in accordance with the terms of this Lease. During the entire Term, the Improvements will be restricted to the following uses:

(a) single-family affordable housing (ownership, rental or lease-to-own) restricted to and affordable to qualifying moderate income families (up to 120% of Area Median Income) or below; and

(b) related community-serving uses as needed for the siting of the affordable housing units, as approved by the Lessor.

1.1.16. “**Includes**” shall mean “includes but is not limited to” and “**including**” shall mean “including but is not limited to.”

1.1.17. “**Initial Improvements**” shall mean the Improvements (including the homes) that Developer intends to construct on the Premises during this Lease pursuant to the terms and provisions of the Inclusionary Grant Agreement.

1.1.18. “**Laws**” shall mean all laws, codes, ordinances, statutes, orders and regulations now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity that are binding on and applicable to the Premises and Improvements.

1.1.19. “**Lease**” shall mean this Ground Lease (including any and all addenda, amendments and exhibits hereto), as now or hereafter amended.

1.1.20. “**Leasehold Estate**” is defined in Section 15.1.1.

1.1.21. “**Leasehold Foreclosure Transferee**” is defined in Section 15.1.2.

1.1.22. “**Leasehold Mortgage**” is defined in Section 15.1.3.

1.1.23. “**Leasehold Mortgagee**” is defined in Section 15.1.4.

1.1.24. “**Lender**” shall mean: (a) a bank, savings bank, investment bank, savings and loan association, mortgage company, insurance company, trust company, commercial credit corporation, real estate investment trust, pension trust or real estate mortgage investment conduit; or (b) some other type of lender engaged in the business of making commercial loans, provided

that such other type of lender has total assets of at least \$2,000,000 and capital/statutory surplus or shareholder's equity of at least \$500,000,000 (or a substantially similar financial capacity if the foregoing tests are not applicable to such type of lender); or (c) a local, state or federal governmental entity, including but not limited to HCD, which provides predevelopment, acquisition, construction and/or permanent financing for Tenant's acquisition and development of the Property.

1.1.25. **"Lessor's Interest"** shall mean all of the Agency's interests in the real property, the Premises, this Lease and the existing and reversionary interest in the real property, Premises, as well as the Improvements upon the expiration of the Term or earlier termination thereof.

1.1.26. **"Lessor Parties"** shall mean, collectively and individually, the Agency and its respective Affiliates, governing boards, agents, employees, members, officers, directors and attorneys.

1.1.27. **"Median Income for the Area"** means the median income for the Orange County, California PMSA as most recently determined by HUD. Also may be referred to interchangeably in the Inclusionary Grant Documents as "Area Median Income" or "AMI".

1.1.28. **"New Lease"** is defined in Section 15.7.1.

1.1.29. **"Person"** shall include firms, associations, partnerships, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

1.1.30. **"Premises"** shall mean the Lacy Street Parcel, and as more particularly described in the Legal Description attached to this Lease as Exhibit "A" and incorporated herein by reference certain real property containing approximately 7,405 square feet of undeveloped land in the City, together with all easements, rights and privileges appurtenant thereto, to be leased to Tenant pursuant to this Lease and on which Developer intends to construct the Improvements. The legal description of the Premises is attached hereto as **Exhibit A**. A rendering showing the approximate boundaries of the Premises is attached hereto as **Exhibit A-1**.

1.1.31. **"Project"** shall mean the Initial Improvements, and all related appurtenances, to be constructed by Developer on the Premises pursuant to the Inclusionary Grant Agreement as described in Exhibit A thereof.

1.1.32. **"Rent"** shall mean and includes the Ninety-Nine Dollars of prepaid rent under this Lease and any additional sums payable to Habitat for the maintenance reserve fund.

1.1.33. **"Risk Manager"** shall mean the Risk Manager for the City, or designee, or upon written notice to Tenant, such other person as may be designated by the City Council.

1.1.34. **"Term"** is defined in Section 2.2.

1.1.35. “**Transfer**” is defined in Section 10.1.

1.1.36. “**Transfer Notice**” is defined in Section 10.4.

1.1.37. “**Work**” shall mean both Developer’s construction activity with respect to the Initial Improvements and also permitted future changes, alterations and renovations by Tenant to the Improvements, including, without limiting the generality of the foregoing, site preparation, landscaping, installation of utilities, street construction or improvement and grading or filling in or on the Premises.

ARTICLE II

LEASE OF PROPERTY

2.1 Lease of Premises.

2.1.1. Lessor hereby leases the Premises to Tenant for the Term, and Tenant hereby leases the Premises from Lessor for the Term, subject to the terms, conditions, covenants, restrictions and reservations of this Lease.

2.1.2. Warranty of Peaceful Possession. Except for Lessor inspections authorized by the Inclusionary Grant Agreement while Developer is in possession of the Premises as the Tenant, Lessor covenants and warrants that, subject to the Tenant’s performance and observation of all of the covenants, obligations and agreements herein contained and provided to Tenant, Tenant shall and may peaceably and quietly have, hold, occupy, use and enjoy the Premises during the Term and may exercise all of their rights hereunder. Except as otherwise set forth herein, Lessor covenants and agrees that Lessor shall not grant any mortgage or lien on or in respect of its fee interest in the Premises unless the same is expressly subject and subordinate to this Lease and to any Leasehold Mortgage.

2.2 **Term.** The “**Term**” of this Lease shall commence on the Effective Date of this Lease, and shall expire at 12:00 midnight Pacific Standard Time on the ninety-nine (99) year anniversary of the Effective Date, unless sooner terminated as a result of Tenant’s non-compliance with any terms, conditions, covenants, restrictions or reservations of this Lease.

2.3 **Termination at End of Term.** This Lease shall terminate without need of further actions of any Party at 12:00 midnight Pacific Standard Time on the last day of the Term.

2.4 **Condition of the Premises.** **TENANT HEREBY ACCEPTS THE PREMISES “AS IS”, AND ACKNOWLEDGES THAT THE PREMISES IS IN SATISFACTORY CONDITION. AGENCY MAKES NO WARRANTY, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR TENANT’S PROPOSED USES. AGENCY MAKE NO COVENANTS OR WARRANTIES, IMPLIED OR OTHERWISE, RESPECTING THE CONDITION OF THE SOIL, SUBSOIL, OR ANY OTHER CONDITIONS OF THE PREMISES OR THE PRESENCE OF HAZARDOUS MATERIALS, NOR DOES AGENCY COVENANT OR WARRANT, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR THE PROPOSED**

DEVELOPMENT, CONSTRUCTION OR USE BY TENANT. AGENCY SHALL NOT BE REQUIRED OR OBLIGATED TO MAKE ANY CHANGES, ALTERATIONS, ADDITIONS, IMPROVEMENTS OR REPAIRS TO THE PREMISES. TENANT SHALL RELY ON ITS OWN INSPECTION AS TO THE SUITABILITY OF THE PREMISES FOR THE INTENDED USE.

2.5 Limitations of the Leasehold. This Lease and the rights and privileges granted Tenant in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record as of the date hereof or otherwise disclosed to Tenant prior to the date hereof, including those contained in the Inclusionary Grant Agreement applicable to Developer while Developer is the Tenant. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to Tenant of rights in the Premises which exceed those owned by Lessor, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or Agency's interest therein.

2.6 Tenant's Investigation. Tenant acknowledges that it is solely responsible for investigating the Premises to determine the suitability thereof for the uses contemplated by Tenant. Tenant further acknowledges by executing this Lease that it has completed its investigation and has made such determinations as Tenant believes may be required under the circumstances.

ARTICLE III

RENT

3.1 Base Rent. Throughout the ninety-nine (99) year Term of this Lease, regardless of an earlier termination date, Lessor shall lease the Premises to the Tenant and Tenant's authorized assignees pursuant to the terms and conditions of this Lease, and the Tenant shall accept the lease of the Premises from the Lessor, at a base rent of one dollar and zero cents (\$1.00) per year, the total amount of which base rent for the entire Term is ninety-nine dollars (\$99.00), which total amount has been pre-paid upon the signing of this Lease by Tenant.

3.2 Triple Net Rent. It is the intent of the Parties that all rent shall be absolutely net to Lessor and that, except as otherwise provided herein, Tenant will pay all costs, charges, insurance premiums, taxes, utilities, expenses and assessments of every kind and nature incurred for, against or in connection with the Premises which arise or become due during the Term as a result of Tenant's use and occupancy of the Premises. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the Parties, shall Lessor be obligated or required to make any payment of any kind whatsoever or be under any other obligation or liability under this Lease except as expressly provided herein.

3.2.1. Taxes. During the Term, Tenant and Tenant's authorized assignees shall pay directly to the taxing authorities all Taxes (as herein defined) at least ten (10) days prior to delinquency thereof. For purposes hereof, "Taxes" shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, penalty, sewer use fee, real property tax, charge, possessory interest tax, tax or similar imposition (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage, flood control, water pollution control,

public transit or other special district thereof, as against any legal or equitable interest of Agency in the Premises or any payments in lieu of taxes required to be made by Agency, including, but not limited to, the following:

(a) Any assessment, tax, fee, levy, improvement district tax, charge or similar imposition in substitution, partially or totally, of any assessment, tax, fee, levy, charge or similar imposition previously included within the definition of Taxes. It is the intention of Tenant and Lessor that all such new and increased assessments, taxes, fees, levies, charges and similar impositions be included within the definition of “**Taxes**” for the purpose of this Lease.

(b) Any assessment, tax, fee, levy, charge or similar imposition allocable to or measured by the area of the Premises or the rent payable hereunder, including, without limitation, any gross income tax or excise tax levied by the city, county, state or federal government, or any political subdivision thereof, with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof;

(c) Any assessment, tax, fee, levy, charge or similar imposition upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises, including any possessory interest tax levied on the Tenant’s interest under this Lease;

(d) Any assessment, tax, fee, levy, charge or similar imposition by any governmental agency related to any transportation plan, fund or system instituted within the geographic area of which the Premises are a part.

The definition of “**Taxes**,” including any additional tax the nature of which was previously included within the definition of “**Taxes**,” shall include any increases in such taxes, levies, charges or assessments occasioned by increases in tax rates or increases in assessed valuations, whether occurring as a result of a sale or otherwise.

3.2.2. Contest of Taxes. Tenant and Tenant’s authorized assignees shall have the right to contest, oppose or object to the amount or validity of any Taxes or other charge levied on or assessed against the Premises and/or Improvements or any part thereof; provided, however, that the contest, opposition or objection must be filed before such time the Taxes or other charge at which it is directed becomes delinquent. Furthermore, no such contest, opposition or objection shall be continued or maintained after the date the tax, assessment or other charge at which it is directed becomes delinquent unless Tenant has either: (i) paid such tax, assessment or other charge under protest prior to its becoming delinquent; or (ii) obtained and maintained a stay of all proceedings for enforcement and collection of the tax, assessment or other charge by posting such bond or other matter required by law for such a stay; or (iii) delivered to Lessor a good and sufficient undertaking in an amount specified by Lessor and issued by a bonding corporation authorized to issue undertakings in California conditioned on the payment by Tenant of the tax, assessments or charge, together with any fines, interest, penalties, costs and expenses that may have accrued or been imposed thereon within thirty (30) days after final determination of Tenant’s contest, opposition or objection to such tax, assessment or other charge.

3.2.3. Payment by Lessor. Should Tenant and Tenant’s authorized assignees fail to pay any Taxes required by this Article III to be paid by Tenant and Tenant’s authorized assignees within the time specified herein, subject to Tenant’s right to contest such Taxes in accordance with Section 3.2.2, and if such amount is not paid by Tenant and Tenant’s authorized assignees within fifteen

(15) days after receipt of Lessor's written notice advising Tenant of such nonpayment, Agency may, without further notice to or demand on Tenant, pay, discharge or adjust such tax, assessment or other charge for the benefit of Tenant. In such event Tenant shall promptly on written demand of Agency reimburse Agency for the full amount paid by Agency in paying, discharging or adjusting such tax, assessment or other charge, together with interest at the Interest Rate from the date advanced until the date repaid.

3.2.4. Operating Costs. Tenant and Tenant's authorized assignees shall pay all Operating Costs during the Term prior to delinquency. As used in this Lease, the term "**Operating Costs**" shall mean all charges, costs and expenses related to the Premises, including, but not limited to, management, operation, maintenance, overhaul, improvement, replacement or repair of the Improvements and/or the Premises.

3.2.5. Utility Costs. Tenant and Tenant's authorized assignees shall pay all Utility Costs during the Term prior to delinquency. As used in this Lease, the term "**Utility Costs**" shall include all charges, surcharges, taxes, connection fees, service fees and other costs of installing and using all utilities required for or utilized in connection with the Premises and/or the Improvements, including without limitation, costs of heating, ventilation and air conditioning for the Premises, costs of furnishing gas, electricity and other fuels or power sources to the Premises, and the costs of furnishing water and sewer services to the Premises. Tenant and Tenant's authorized assignees agrees to indemnify and hold harmless the Agency against any liability, claim, or demand for the late payment or non-payment of Utility Costs.

ARTICLE IV

USE OF PREMISES

4.1 Permitted Use of Premises. Developer may use the Premises for the authorized construction, development and entitlement of the Initial Improvements as set forth in the Inclusionary Grant Agreement. Upon issuance of the Certificate of Occupancy, or similar document as applicable, as set forth in the Inclusionary Grant Agreement, Tenant may use the Premises for residential occupancy, subject to Agent's rights to enforce the Affordability and Maintenance Restriction. Tenant use of the Premises may include:

4.1.1. Required Services and Uses. Lessor's primary purpose for entering into this Lease is to promote the development of the Improvements consistent with this Lease. In furtherance of that purpose, Tenant shall construct and during the entire Term operate, maintain, replace and repair the Improvements in a manner consistent with the Laws and for the following uses:

(a) single-family affordable housing restricted to and affordable to qualifying moderate income families (up to 120% of Area Median Income) or below; and

(b) related community-serving uses as needed for the siting of the affordable housing units, as approved by the Lessor.

4.1.2. Ancillary Services and Uses. Subject to the prior written approval of Lessor, which approval may be granted or withheld in the sole discretion of the Lessor, those additional services and uses which are ancillary to and compatible with the required services and uses set forth in Section 4.1.1., above.

4.1.3. Additional Concessions or Services. Such other additional facilities, concessions, and services as Tenant and Lessor may jointly from time to time reasonably determine to be reasonably necessary for the use of the Premises and which are otherwise permitted by Law for the sole purpose to provide affordable housing and/or emergency shelter.

4.1.4. Restricted Use. The services and uses listed in this Section 4.1, both required and optional, shall be the only services and uses permitted. Tenant agrees not to use the Premises for any other purpose or engage in or permit any other activity within or from the Premises unless approved in writing by the Lessor, which approval may be granted or withheld in the sole discretion of the Lessor.

4.1.5. Continuous Use. Upon receiving a Certificate of Occupancy, or similar document as applicable, for the Initial Improvements, Agent shall use good faith efforts to sell the homes and assign the Lease to qualifying families. Agent shall thereafter seek to obtain continuing possession and use of the Premises by qualifying Tenants. Agent shall not allow the Premises to be vacant for any significant period of time except as may reasonably be required upon termination of an assignment to qualify another Tenant or in the case of a Force Majeure Event or as permitted in advance and in writing by the Lessor.

4.1.6. Permits and Licenses. Tenant shall be solely responsible to obtain, at its sole cost and expense, any and all permits, licenses or other approvals required for the uses permitted herein and shall maintain such permits, licenses or other approvals.

4.2 Nuisance; Waste. Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises and Improvements or any part thereof. Tenant shall not commit or allow to be committed any waste in or upon the Premises or Improvements and shall keep the Premises and the Improvements thereon in good condition, repair and appearance.

4.3 Compliance with Laws. Tenant shall not use or permit the Premises or the Improvements or any portion thereof to be used in any manner or for any purpose that violates any applicable Laws. Tenant shall have the right to contest, in good faith, any such Laws, and to delay compliance with such Laws during the pendency of such contest (so long as there is no material threat to life, health or safety that is not mitigated by Tenant to the satisfaction of the applicable authorities). Lessor may cooperate with Tenant in all reasonable respects in such contest, including joining with Tenant in any such contest if Agency's joinder is required in order to maintain such contest; provided, however, that any such contest shall be without cost to Lessor, and Tenant shall indemnify, defend (with attorneys acceptable to Lessor), and hold harmless the Lessor from any and all claims, liabilities, losses, damages, or actions of any kind and nature, including reasonable attorneys' fees, arising or related to Tenant's failure to observe or comply with the contested Law during the pendency of the contest.

4.4 Hazardous Materials.

4.4.1. Definition of Hazardous Materials. For purposes of this Lease, the term “**Hazardous Material**” or “**Hazardous Materials**” shall mean any hazardous or toxic substance, material, product, byproduct, or waste, which is or shall become regulated by any governmental entity, including, without limitation, the Lessor acting in their governmental capacity, the State of California or the United States government.

4.4.2. Use of Hazardous Materials. Except for those Hazardous Materials which are customarily used in connection with any permitted use of the Premises and Improvements under this Lease or during construction of the Initial Improvements by Developer as authorized in the Inclusionary Grant Agreement (which Hazardous Materials shall be used in compliance with all applicable Laws), Tenant or Tenant’s employees, agents, independent contractors or invitees (collectively “**Tenant Parties**”) shall not cause or permit any Hazardous Materials to be brought upon, stored, kept, used, generated, released into the environment or disposed of on, under, from or about the Premises (which for purposes of this Section shall include the subsurface soil and ground water).

4.4.3. Tenant Obligations. If the presence of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant Parties, and excluding Hazardous Materials existing on the Premises prior to the Effective Date (the “**Existing Hazardous Materials**”), results in (i) injury to any person, (ii) injury to or contamination of the Premises (or a portion thereof), or (iii) injury to or contamination of any real or personal property wherever situated, Tenant, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of Agency under this Lease, Tenant shall pay the cost of any cleanup or remedial work performed on, under, or about the Premises as required by this Lease or by applicable Laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or permitted by Tenant or Tenant Parties, excluding the Existing Hazardous Materials. Notwithstanding the foregoing, Tenant shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant Parties, or enter into any settlement agreement, consent decree or other compromise with any governmental or quasi-governmental entity without first obtaining the prior written consent of the Lessor. All work performed or caused to be performed by Tenant as provided for above shall be done in good and workmanlike manner and in compliance with plans, specifications, permits and other requirements for such work approved by Lessor.

4.4.4. Indemnification for Hazardous Materials.

(a) To the fullest extent permitted by law, Tenant hereby agrees to indemnify, hold harmless, protect and defend (with attorneys acceptable to Lessor) Lessor, its elected officials, officers, employees, agents, independent contractors, and the Premises, from and against any and all liabilities, losses, damages (including, but not limited, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises or damages arising from any adverse impact on marketing and diminution in the value of the Premises), judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), whether foreseeable

or unforeseeable (collectively, “**Liabilities**”), arising out of the presence, use, generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials on, into, from, under or about the Premises by Tenant or Tenant Parties, and excluding all Existing Hazardous Materials.

(b) The foregoing indemnity shall also specifically include the cost of any required or necessary repair, restoration, clean-up or detoxification of the Premises and the preparation of any closure or other required plans.

(c) The foregoing indemnity and defense obligations of this Lease shall survive its expiration or termination; provided, however, that the indemnity contained in this Section 4.4.4 shall not apply to any Liabilities arising or occurring (a) prior to the Effective Date of this Ground Lease, (b) after the expiration or earlier termination of the Term of this Ground Lease, (c) as a result of the grossly negligent or wrongful acts or omissions of Lessor, or (d) prior to assignment of the Lease to Tenant and following Tenant’s assignment of the Lease to a new Tenant.

4.5 Access by Lessor. Lessor reserves the right for Agency and their authorized representatives to enter the Premises to inspect the land only, but not any Improvements constructed thereon, upon two (2) business days’ prior written notice to Tenant, during normal business hours, in order to determine whether Tenant is complying with Tenant’s obligations hereunder, or to enforce any rights given to Agency under this Lease. Lessor and its representatives must be accompanied by a representative of Tenant at all times while on the Property and obey Tenant’s rules and regulations. Tenant acknowledges Lessor has the authority to enter the Premises land only and perform work on the Premises land only at any time as needed to provide immediate or necessary protection for the general public. Lessor shall indemnify and hold Tenant harmless from and against any loss, cost, damage or liability, including, without limitation, attorneys’ fees, which results from Lessor’s negligence, willful misconduct or gross negligence committed by any party acting under Lessor’s authority, arising from Lessor’s exercise of the rights granted by this Section 4.5. Upon reasonable belief that a violation of this section may be occurring, tenant shall allow the City to conduct an inspection of the Property after the date of construction completion, with reasonable notice. Tenant shall 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.

4.6 Recorded Covenant for Affordability and Maintenance Restrictions. Tenant agrees and covenant for the entire Term of this Lease, which covenant shall run with the Premises, that Agent shall have the rights to: (a) approve and limit future Tenants to moderate income households selected and approved by Agent; (b) limit the sale/resale price of the home at a price affordable to such moderate income households; (c) impose and collect a monthly capital improvements maintenance reserve fee to be kept in a segregated maintenance reserve account; (d) use funds contained in the maintenance reserve account from time to time for capital improvements to the Premises and to enter onto the Premises to carry out such works of improvements, all as set forth in the Affordability and Maintenance Restrictions (“**Restrictions**”) attached hereto as Exhibit “B”. The Restrictions shall have priority over and be senior to any and all Leasehold Mortgages.

4.6.1 Reserved.

4.6.2 **Maintenance Restrictions.** The Restrictions require that Agent shall have the right to require, and that Tenants shall be obligated to pay to Agent monthly payments established by Agent sufficient to fund a maintenance reserve for the ongoing maintenance of capital improvements required to preserve the home, including the roof, landscape and painting of the home, which funds Agent shall apply for those purposes as may become necessary, in Agent's reasonable discretion.

ARTICLE V

CONSTRUCTION OF IMPROVEMENTS

5.1 Construction of Improvements.

5.1.1. **Initial Improvements.** Developer shall be governed by the provisions of the Inclusionary Grant Agreement entered into concurrently with this Lease with respect to construction of the Initial Improvements.

5.1.2. **Compliance with Laws and Permits.** Tenant shall cause all Improvements made by Tenant after the Initial Improvements to be constructed in substantial compliance with all applicable Laws, including all applicable grading permits, building permits, and other permits and approvals issued by governmental agencies and bodies having jurisdiction over the construction thereof.

5.2 Ownership of Improvements.

5.2.1. For purposes of this Section 5.5, "**Term**" shall have the meaning stated in Section 2.2.

5.2.2. **During Term.** Title to the Improvements constructed or placed on the Premises by Developer are and shall be vested in Developer during the Term of this Lease, until the expiration or earlier termination thereof. Any and all depreciation, amortization and tax credits for federal or state purposes relating to the Improvements located on the Premises and any and all additions thereto shall be deducted or credited exclusively by Developer during the Term. The Parties agree for themselves and all persons claiming under them that the Improvements are real property.

5.2.3. **Upon Expiration or Earlier Termination of Term.** All Improvements on the Premises at the expiration or earlier termination of the Term of this Lease shall, without additional payment to Tenant, then become Lessor's property free and clear of all claims to or against them by Tenant and free and clear of all Leasehold Mortgages and any other liens and claims arising from Tenant's use and occupancy of the Premises, and with Taxes paid current as of the expiration or earlier termination date. Tenant shall upon the expiration or earlier termination of the Term deliver possession of the Premises and the Improvements to Lessor.

ARTICLE VI

REPAIRS, MAINTENANCE, ADDITIONS AND RECONSTRUCTION

6.1 Maintenance by Tenant. Throughout the Term of this Lease, Tenant shall, at Tenant's sole cost and expense, keep and maintain the Premises and any and all Improvements now or hereafter constructed and installed on the Premises in good order, condition and repair (i.e., so that the Premises does not deteriorate more quickly than its age and reasonable wear and tear would otherwise dictate) and in a safe and sanitary condition and in compliance with all applicable Laws in all material respects. Tenant shall not be obligated to pay for the repair or replacement of capital Improvements not covered by Property Insurance required by this Lease; provided, however, Tenant shall pay a monthly maintenance reserve fee to Agent to provide a sufficient reserve for capital improvements to the Premises in the event of repair or damage to the roof, landscape and paint, which amount shall be calculated by Agent, approved and set forth in the assignment of this Lease and sale of the home. Tenant shall maintain the Property (and all abutting grounds, sidewalks, roads, parking and landscape areas which Tenant is otherwise required to maintain) in good condition and repair; shall prudently preserve and protect its own as well as the City's interests in connection with the Property; shall not commit or permit any waste or deterioration of the Property (except for normal wear and tear); shall not abandon any portion of the Property or leave the Property unguarded or unprotected; and shall not otherwise act, or fail to act, in such a way as to unreasonably increase the risk of any damage to the Property or of any other impairment of City's interests.

6.2 Interior Improvements and Reconstruction of Improvements. Following the completion of construction of the Initial Improvements, Tenant shall have the right from time to time to make any interior improvements to the Improvements that are consistent with the Lessor's approved use of the Premises as reflected in this Lease, without Lessor's prior written consent, but with prior written notice to the Lessor (except in the event of an emergency, in which case no prior written notice shall be required but Tenant shall notify Lessor of any emergency work done as soon as practicable). Any additions or structural changes to the Improvements will require the approval of Agent. With prior written approval of Lessor, Tenant may restore and reconstruct the Improvements, and in that process make any modifications otherwise required by changes in Laws, following any damage or destruction thereto (whether or not required to do so under Article VII); and/or to make changes, revisions or improvements to the Improvements for uses consistent with the Lessor approved use of the Premises as reflected in this Lease. Tenant shall perform all work authorized by this Section at its sole cost and expense, including, without limitation, with insurance proceeds approved for such use in accordance with Article VII, if any, and in compliance with all applicable Laws in all material respects.

6.3 All Other Construction, Demolition, Alterations, Improvements and Reconstruction. Following the completion of construction of the Initial Improvements, and except as specified in Sections 6.1 and 6.2, any construction, alterations, additions, major repairs, demolition, improvements or reconstruction of any kind shall require the prior written consent of the Lessor. Tenant shall perform all work authorized by this Section at its sole cost and expense, including, without limitation, with insurance proceeds approved for such use in accordance with Article VII, if any, and in compliance with all applicable Laws in all material respects.

6.4 Requirements of Governmental Agencies. At all times during the Term of this Lease, Tenant, at Tenant's sole cost and expense, shall: (i) make all alterations, improvements, demolitions,

additions or repairs to the Premises and/or the Improvements required to be made by any law, ordinance, statute, order or regulation now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity; (ii) observe and comply in all material respects with all Laws now or hereafter made or issued respecting the Premises and/or the Improvements; (iv) indemnify, defend and hold Agency, the Premises and the Improvements free and harmless from any and all liability, loss, damages, fines, penalties, claims and actions resulting from Tenant's failure to comply with and perform the requirements of this Article VI.

6.5 Lessor Obligations. Tenant specifically acknowledges and agrees that Agency and Lessor Parties do not and shall not have any obligations with respect to the maintenance, alteration, improvement, demolition, replacement, addition or repair of any Improvements, except as set forth herein with respect to the maintenance reserve fund and the repairs to roofing, painting and landscape undertaken by Agent as set forth herein.

6.6 Lessor Reservations. Without limiting Lessor's rights with respect to the Premises, Lessor reserves for themselves, their successors and assigns those rights necessary to assure proper maintenance and operation of the Premises and to permit any steps to be taken which the Lessor deems necessary or desirable to maintain, repair, improve, modify or reconstruct the Premises. The rights reserved to Lessor in this section or any other section of this Lease shall be exercised by the Lessor at their sole discretion, unless otherwise provided herein.

ARTICLE VII

DAMAGE AND RESTORATION

7.1 Damage and Restoration. In the event the whole or any part of the Improvements shall be damaged or destroyed by fire or other casualty, damage or action of the elements which is fully covered by insurance required to be carried by Tenant pursuant to this Lease or in fact caused by Tenant, at any time during the Term, Tenant shall with all due diligence, at Tenant's sole cost and expense, repair, restore and rebuild the Improvements on substantially the same plan and design as existed immediately prior to such damage or destruction and to substantially the same condition that existed immediately prior to such damage, with any changes made by Tenant to comply with then applicable Laws and with any upgrades or improvements that Tenant may determine in its reasonable discretion. If Tenant desires to change the use of the Premises following such casualty, then Tenant may make appropriate changes to the Premises to accommodate such changed use after approval of such change of use by the Lessor pursuant to Article IV above. This Article shall not apply to cosmetic damage or alterations. In the event that Tenant shall determine, subject to the rights of the Leasehold Mortgagees, if applicable, by notice to the Lessor given by the later of ninety (90) days after the date of the damage or destruction or thirty (30) days after receipt by Tenant of any such insurance proceeds, that there are not adequate proceeds to restore the Improvements and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such damage or destruction, then Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. Notwithstanding Section 15.9, if Tenant terminates this Lease pursuant to this Section 7.1, Tenant shall surrender possession of the Premises to the Lessor immediately and assign to the Lessor (or, if same has already been received by Tenant, pay to the Lessor) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises.

7.2 Restoration. In the event of any restoration or reconstruction pursuant to this Section, all such work performed by Tenant shall be constructed in a good and workmanlike manner according to

and in conformance with the Laws, rules and regulations of all governmental bodies and agencies and the requirements of this Lease applicable to the construction of the Initial Improvements.

7.3 No Rental Abatement. Tenant shall not be entitled to any abatement, allowance, reduction, or suspension of Rent because part or all of the Improvements become untenable as a result of the partial or total destruction of the Improvements, and Tenant's obligation to keep and perform all covenants and agreements on its part to be kept and performed hereunder, shall not be decreased or affected in any way by any destruction of or damage to the Improvements; except as otherwise provided herein.

7.4 Application of Insurance Proceeds. If following the occurrence of damage or destruction to the Premises or Improvements, Tenant is obligated to or determines that there are adequate proceeds to restore the Premises and Improvements pursuant to this Article VII, then all proceeds from the insurance required to be maintained by Tenant on the Premises and the Improvements shall be applied to fully restore the same, and, subject to the rights of the Leasehold Mortgagees, if applicable, any excess proceeds shall be paid to Tenant and any deficit in necessary funds plus the amount of any deductible shall be paid by Tenant. If Tenant after commencing or causing the commencement of the restoration of Premises and Improvements shall determine that the insurance proceeds are insufficient to pay all costs to fully restore the Improvements, Tenant shall pay the deficiency and shall nevertheless proceed to complete the restoration of Premises and the Improvements and pay the cost thereof. Upon lien free completion of the restoration, subject to the rights of the Leasehold Mortgagees, if applicable, any balance of the insurance proceeds remaining over and above the cost of such restoration shall be paid to Tenant.

7.5 Exclusive Remedies. Notwithstanding any destruction or damage to the Premises and/or the Improvements, Tenant shall not be released from any of its obligations under this Lease, except to the extent and upon the conditions expressly stated in this Article VII. Agency and Tenant hereby expressly waive the provisions of California Civil Code Sections 1932(2) and 1933(4) with respect to any damage or destruction of the Premises and/or the Improvements and agree that their rights shall be exclusively governed by the provisions of this Article VII.

7.6 Damage Near End of Term. If, during the last three (3) years of the Term, as applicable, the Improvements shall be damaged or destroyed for which the repair and/or replacement cost is fifty percent (50%) or more of then replacement cost of the Improvements, then Tenant shall have the option, to be exercised within ninety (90) days after such damage or destruction:

7.6.1. to notify the Lessor of its election to repair or restore the Improvements as provided in this Article VII; or

7.6.2. subject to the rights of Leasehold Mortgagees and such provisions of this Lease that survive termination, to terminate this Lease by notice to the Lessor, which termination shall be deemed to be effective as of the date of the damage or destruction. If Tenant terminates this Lease pursuant to this Section 7.6.2, Tenant shall surrender possession of the Leased Premises to the Lessor immediately and assign to the Lessor (or, if same has already been received by Tenant, pay to the Lessor) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises less (i) any costs, fees, or expenses incurred by Tenant in connection with the adjustment of the loss or collection of the proceeds, (ii) any reasonable costs incurred by Tenant in connection with the Premises after the damage or destruction, which costs are eligible for reimbursement from such

insurance proceeds, and (iii) the proceeds of any rental loss or business interruption insurance applicable prior to the date of surrender of the Premises to the Lessor.

ARTICLE VIII

INSURANCE AND INDEMNITY

8.1 **Insurance.** Prior to sale of the home and Developer assignment of the Tenant interest in the Lease to the home purchaser, Developer shall maintain the insurance required by the Inclusionary Grant Agreement. Thereafter, following assignment of the Lease by Developer to the home purchaser, to protect the Lessor against any and all claims and liability for death, injury, loss and damage resulting from the Tenant's actions in connection with this Lease and the Premises, the Tenant shall, at the Tenant's sole cost and expense, throughout the term of the Lease of the Premises, maintain the following insurance (or its then reasonably available equivalent), as applicable: (a) Liability Insurance in amounts reasonably required by City from time to time, and in no event less than \$300,000 for "single occurrence"; (b) Property Insurance in amounts reasonably required by Lessor from time to time, and in no event less than \$700,000; (c) Builder's Risk Insurance (during construction of Improvements only); and (d) Worker's Compensation Insurance (during construction of Improvements only). Additionally, the Tenant, to protect the Lessor, shall cause its contractors and subcontractors, at their sole cost and expense, to maintain Contractor's Insurance until issuance of a Certificate of Completion for the Project.

8.1.1 Nature of Insurance. All Liability Insurance, Property Insurance, Automobile Liability Insurance and Contractor's Insurance policies this Lease requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A" and a minimum financial size category of "VII"; and (b) are admitted to do business in the State of California by the California Department of Insurance. The Tenant may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Premises, which amount(s) shall equal or exceed the amount(s) required by this Lease and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Lease.

8.1.2 Policy Requirements and Endorsements. All insurance policies this Lease requires shall contain (by endorsement or otherwise) the following provisions:

(a) **Insured.** Liability Insurance, Automobile Liability Insurance and Contractor's Insurance policies shall name the Lessor as "additional insured." The coverage afforded to the Lessor shall be at least as broad as that afforded to the Tenant and may not contain any terms, conditions, exclusions, or limitations applicable to the Lessor that do not apply to the Tenant.

(b) Primary Coverage. All policies shall be written as primary policies, not contributing to or in excess of any coverage that the Lessor may carry.

(c) Contractual Liability. Liability Insurance policies shall contain contractual liability coverage, for the Tenant's indemnity obligations under this Lease. The Tenant's obtaining such contractual liability coverage shall satisfy any indemnity obligation of the Tenant under this Lease.

(d) Deliveries to the Lessor. Within thirty (30) days following assignment of this Lease, and no later than twenty (20) days before any insurance required by this Lease expires, is cancelled or its liability limits are reduced or exhausted, the Tenant shall deliver to the Lessor certificates of insurance evidencing the Tenant's maintenance of all insurance this Lease requires. Each insurance carrier shall give the Lessor no less than thirty (30) calendar days' advance written Notice of any cancellation, non-renewal, material change in coverage or available limits of liability under any insurance policy required by this Lease. Also, phrases such as "endeavor to" and "but failure to mail such Notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates of insurance or any coverage for the Lessor.

(e) Waiver of Certain Claims. The Tenant shall attempt in good-faith to cause the insurance carrier for each Liability Insurance, Automobile Liability Insurance and Property Insurance policy to agree to a Waiver of Subrogation, if not already in the policy. To the extent that the Tenant actually obtains insurance with a Waiver of Subrogation, the Parties release each other, and their respective authorized representatives, from any claims for damage to any Person or property that are caused by or result from risks insured against under such insurance policies.

(f) No Representation. Neither Party makes any representation that the limits, scope, or forms of insurance coverage this Lease requires are adequate or sufficient.

(g) No Claims Made Coverage. None of the insurance coverage required under this Lease may be written on a claims-made basis.

(h) Fully Paid and Non-Assessable. All insurance obtained and maintained by the Tenant in satisfaction of the requirements of this Lease shall be fully paid for and non-assessable.

(i) Lessor Option to Obtain Coverage. During the continuance of an Event of Default arising from the Tenant's failure to carry any insurance required by this Lease, the Lessor may, at its sole option, purchase any such required insurance coverage and the Lessor shall be entitled to immediate payment from the Tenant of any premiums and associated costs paid by the Lessor for such insurance coverage. Any amount becoming due and payable to the Lessor under this Section that is not paid within fifteen (15) calendar days after written demand from the Lessor or for payment of such amount, with an explanation of the amounts demanded, will bear interest from the date of the demand at the rate of ten percent (10%) per annum or the maximum rate allowed by California law, whichever is less. Any election by the Lessor to purchase or not to purchase insurance otherwise required by the terms of this Lease to be carried by the Tenant

shall not relieve the Tenant of its obligation to obtain and maintain any insurance coverage required by this Lease.

(j) **Cross-Liability; Severability of Interests.** All Liability Insurance and Contractor's Insurance shall be endorsed to provide cross-liability coverage for the Tenant and the Lessor and to provide severability of interests.

(k) **Deductibles and Self-Insured Retentions.** The Tenant shall pay or cause to be paid any and all deductibles and self-insured retentions under all insurance policies issued in satisfaction of the terms of this Lease regarding any claims relating to the Lessor.

8.2 Indemnification.

8.2.1 **Obligations.** The Lessor shall Indemnify the Tenant and the Tenant shall Indemnify the Lessor against any wrongful intentional act or negligence of the Indemnitor. The Tenant shall also Indemnify the Lessor against any and all of the following: (a) any license or permit or other use application made at the Tenant's request; (b) use, occupancy, management or operation of the Premises; (c) any agreements that the Tenant (or anyone claiming through the Tenant) makes regarding the Project; and, (d) any accident, injury or damage whatsoever caused to any Person in or on the Premises or the Project, except when resulting from Lessor entry onto the Premises. Notwithstanding anything to the contrary in this Lease, no Indemnitor shall be required to Indemnify any Indemnitee to the extent of the Indemnitee's wrongful intentional acts or negligence.

8.2.2 **Limitation on Liability of the Lessor.** Following the execution of the Lease, the Tenant is and shall be responsible for operation of the Premises and the Project, and the Lessor shall not be liable for any injury or damage to any property (of the Tenant or any other Person) or to any Person occurring on or about the Premises or the Project, except when resulting from Lessor entry onto the Premises and except to the extent caused by the Lessor's wrongful intentional act or negligence.

8.2.3 **Strict Liability.** The indemnification obligations of an Indemnitor shall apply regardless of whether liability without fault or strict liability is imposed or sought to be imposed on one or more Indemnitees.

8.2.4 **Survival of Indemnification and Defense Obligations.** The indemnity and defense obligations under this Lease shall survive the expiration or earlier termination of this Lease, until all claims against any of the Indemnitees involving any of the indemnified matters are fully, finally, absolutely and completely barred by applicable statutes of limitations, provided however, the indemnity and defense obligations shall not survive Tenant's assignment of the Lease obligations to a new Tenant, and the new Tenant shall thereafter be subject to those obligations.

8.2.5 **Independent Duty to Defend.** The duty to defend under this Lease is separate and independent of the duty to Indemnify. The duty to defend includes claims for which an Indemnitee may be liable without fault or strictly liable. The duty to defend applies immediately upon notice of a Claim, regardless of whether the issues of negligence, liability, fault, default or other obligation on the part of the Indemnitor or the Indemnitee have been determined. The duty to defend applies immediately, regardless of whether the Indemnitee has paid any amounts or

incurred any detriment arising out of or relating (directly or indirectly) to any claims. It is the express intention of the Parties that an Indemnatee be entitled to obtain summary adjudication or summary judgment regarding an Indemnitor's duty to defend the Indemnatee, at any stage of any claim or suit, within the scope of the Indemnitor's indemnity obligations under this Lease.

8.3 Indemnification Procedures. Wherever this Lease requires any Indemnitor to Indemnify any Indemnatee:

8.3.1 Prompt Notice. The Indemnatee shall promptly Notify the Indemnitor of any claim. To the extent, and only to the extent, that the Indemnatee fails to give prompt Notice of a Claim and such failure materially prejudices the Indemnitor in providing indemnity for such claim, the Indemnitor shall be relieved of its indemnity obligations for such claim.

8.3.2 Selection of Counsel. The Indemnitor shall select counsel reasonably acceptable to the Indemnatee. Counsel to Indemnitor's insurance carrier that is providing coverage for a claim shall be deemed reasonably satisfactory. Even though the Indemnitor shall defend the action, Indemnatee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. The Indemnatee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnatee's separate counsel. The Indemnitor and its counsel shall, however, fully control the defense, except to the extent that the Indemnatee waives its rights to indemnity and defense for such claim.

8.3.3 Cooperation. The Indemnatee shall reasonably cooperate with the Indemnitor's defense of the Indemnatee, provided the Indemnitor reimburses the Indemnatee's actual out of pocket expenses (including Legal Costs) of such cooperation.

8.3.4 Settlement. The Indemnitor may, with the Indemnatee's consent, not to be unreasonably withheld, settle a claim. The Indemnatee's consent shall not be required for any settlement by which all of the following occur: (a) the Indemnitor procures (by payment, settlement, or otherwise) a release of the Indemnatee from the subject claim(s) by which the Indemnatee need not make any payment to the claimant; (b) neither the Indemnatee nor the Indemnitor on behalf of the Indemnatee admits liability; (c) the continued effectiveness of this Lease is not jeopardized in any way; and (d) the Indemnatee's interest in the Project is not jeopardized in any way.

8.3.5 Insurance Proceeds. The Tenant's Indemnitor obligations shall be reduced by net insurance proceeds the Indemnatee actually receives for the matter giving rise to indemnification obligation.

ARTICLE IX

CONDEMNATION

9.1 Definitions.

9.1.1. "**Condemnation**" means (i) the taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute, whether by legal proceedings or otherwise, by a Condemnor (hereinafter defined), and (ii)

a voluntary sale or transfer to a Condemnor, either under threat of condemnation or while condemnation legal proceedings are pending.

9.1.2. **“Date of Taking”** means the later of (i) the date actual physical possession is taken by the Condemnor; or (ii) the date on which the right to compensation and damages accrues under the law applicable to the Premises.

9.1.3. **“Award”** means all compensation, sums or anything of value awarded, paid or received for a Total Taking, a Substantial Taking or a Partial Taking (hereinafter defined), whether pursuant to judgment or by agreement or otherwise.

9.1.4. **“Condemnor”** means any public or quasi-public authority or private corporation or individual having the power of condemnation.

9.1.5. **“Total Taking”** means the taking by Condemnation of all of the Premises and all of the Improvements.

9.1.6. **“Substantial Taking”** means the taking by Condemnation of so much of the Premises or Improvements or both that one or more of the following conditions results, as reasonably determined by Tenant: (i) The remainder of the Premises would not be economically and feasibly usable by Tenant; and/or (ii) A reasonable amount of reconstruction would not make the Premises and Improvements a practical improvement and reasonably suited for the uses and purposes for which the Premises were being used prior to the Condemnation; and/or (iii) The conduct of Tenant’s business on the Premises would be materially and substantially prevented or impaired.

9.1.7. **“Partial Taking”** means any taking of the Premises or Improvements that is neither a Total Taking nor a Substantial Taking.

9.1.8. **“Notice of Intended Condemnation”** means any notice or notification on which a reasonably prudent person would rely and which he would interpret as expressing an existing intention of Condemnation as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to service of a Condemnation summons and complaint on a Party hereto. The notice is considered to have been received when a Party receives from the Condemnor a notice of intent to condemn, in writing, containing a description or map reasonably defining the extent of the Condemnation.

9.2 Notice and Representation.

9.2.1. **Notification.** The Party receiving a notice of one or more of the kinds specified below shall promptly notify the other Party of the receipt, contents and dates of such notice: (i) a Notice of Intended Condemnation; (ii) service of any legal process relating to the Condemnation of the Premises or Improvements; (iii) any notice in connection with any proceedings or negotiations with respect to such a Condemnation; (iv) any notice of an intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of Condemnation.

9.2.2. **Separate Representation.** Agency and Tenant each have the right to represent its respective interest in each Condemnation proceeding or negotiation and to make full proof of his claims. No agreement, settlement, sale or transfer to or with the Condemnor shall be made without the consent of Agency and Tenant. Agency and Tenant shall each execute and deliver to the other any

instruments that may be required to effectuate or facilitate the provisions of this Lease relating to Condemnation.

9.3 Total or Substantial Taking.

9.3.1. **Total Taking.** On a Total Taking, this Lease shall terminate on the Date of Taking.

9.3.2. **Substantial Taking.** If a taking is a Substantial Taking, Tenant may, with the consent of each Leasehold Mortgagee, to the extent required, by notice to Lessor given within ninety (90) days after Tenant receives a Notice of Intended Condemnation, elect to treat the taking as a Total Taking. If Tenant does not so notify Lessor, the taking shall be deemed a Partial Taking.

9.3.3. **Early Delivery of Possession.** Tenant may continue to occupy the Premises and Improvements until the Condemnor takes physical possession. At any time following Notice of Intended Condemnation, Tenant may in its sole discretion, with the consent of each Leasehold Mortgagee, to the extent required, elect to relinquish possession of the Premises to Lessor before the actual Taking. The election shall be made by notice declaring the election and agreeing to pay all Rent required under this Lease to the Date of Taking. Tenant's right to apportionment of or compensation from the Award shall then accrue as of the date that the Tenant relinquishes possession.

9.3.4. **Apportionment of Award.** On a Total Taking all sums, including damages and interest, awarded for the fee or leasehold or both shall be distributed and disbursed as finally determined by the court with jurisdiction over the Condemnation proceedings in accordance with applicable law. Notwithstanding anything herein to the contrary, Tenant shall be entitled to receive compensation for the value of its leasehold estate under this Lease including its fee interest in all Improvements, personal property and trade fixtures located on the Premises, its relocation and removal expenses, its loss of business goodwill and any other items to which Tenant may be entitled under applicable law.

9.4 Partial Taking.

9.4.1. **Effect on Rent.** On a Partial Taking this Lease shall remain in full force and effect covering the remainder of the Premises and Improvements, and Tenant shall not be entitled to any refund of the Base Rent.

9.4.2. **Restoration of Improvements.** Promptly after a Partial Taking, Tenant shall repair, alter, modify or reconstruct the Improvements ("**Restoring**") so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased.

9.4.3. **Apportionment of Award.** On a Partial Taking, Lessor shall be entitled to receive the entire award for such Partial Taking, except that (i) the proceeds of such Partial Taking shall first be applied towards the cost of Restoring the Premises pursuant to Section 9.4.2 and (ii) Tenant shall be entitled to receive any portion of such award allocated to Tenant's interest in any of Tenant's Improvements, Personal property and trade fixtures taken, and any part of the award attributable to the low income housing tax credits.

9.5 **Waiver of Termination Rights.** Both Parties waive their rights under Section 1265.130 of the California Code of Civil Procedure (and any successor provision) and agree that the right to

terminate this Lease in the event of Condemnation shall be governed by the provisions of this Article IX.

ARTICLE X

ASSIGNMENT AND ENCUMBERING

10.1 General. Except for assignment to Affiliates of Habitat, Habitat shall not assign its interest as Tenant under the Lease until the Certificate of Occupancy for the Initial Improvements, but may encumber the Premises with a Leasehold Mortgage to finance the Initial Improvements. Upon Certificate of Occupancy, or similar document as applicable, for the Initial Improvements, in order to enforce the Restrictions, Agent shall by means of an Agent right of first refusal to be contained in the Lease assignment and home purchase agreements consent to all assignment of the Tenant interest in the Lease and resale of the home (“**Transfer**,” except for Leasehold Mortgages). Upon issuance of the Certificate of Completion, or similar document as applicable, Agent shall promptly seek to qualify and approve assignment of the Tenant interest in the Lease to a home purchaser who qualifies under and agrees to abide by the Restrictions. Agent’s consent for Transfers shall be based upon compliance of the Transfer with the Affordability and Maintenance Restrictions, including those for Affordable Housing and Affordable Mortgage.

10.1.1. Such terms conditions, covenants, restrictions and reservations shall apply to each and every Transfer hereunder and shall be severally binding upon each and every party thereto. Any document regarding the Transfer of the Premises or any part thereof shall not be inconsistent with the provisions of this Lease and in the event of any such inconsistency, the provisions of this Lease shall control.

10.1.2. Subleases from Tenants are absolutely prohibited Transfers. Assignments of Tenant Lease interests and sale of the home must be approved in writing and be in a form and with terms consented to by Agent, and in amount subject to the Affordability and Maintenance Restrictions.

10.2 Leasehold Mortgage. Under no circumstances may Tenant mortgage, encumber or hypothecate Lessor’s Fee Interest, if any.

10.3 Transfer Procedure. If Tenant desires at any time to enter into a Transfer for which Agent’s consent is required hereunder, Tenant shall provide Agent with written notice (“**Transfer Notice**”) at least ninety (90) days prior to the proposed effective date of the Transfer. The Transfer Notice shall include (i) the name and address of the proposed transferee, (ii) the nature of the Transfer (*e.g.*, whether an assignment, etc.), (iii) the proposed effective date of the Transfer, (iv) proposed terms of sale/assignment and compliance with the Affordability and Maintenance Restriction, (v) such financial information, including income and asset statements, as Agent may require to determine qualification of the transferee under the Restrictions, and (vi) a bank or other credit reference. Thereafter, Tenant and the proposed transferee shall furnish such supplemental information as Agent may reasonably request concerning the proposed transferee. Agent shall, no later than ninety (90) days after Lessor’s receipt of the information specified above, deliver written notice to Tenant which shall (i) indicate whether Agent will give or withhold consent to the proposed Transfer, and (ii) if Agent withholds consent to the proposed Transfer, set forth a detailed

explanation of Agent's grounds for doing so. If Agent consents to a proposed Transfer, then Tenant may thereafter effectuate such Transfer to the proposed transferee based upon the specific terms of the Agent's approval and after execution of a consent to assignment by Agent in a form approved by the Agent, which approval shall not be unreasonably withheld, conditioned or delayed in the event that the assignment is consistent with the terms of this Lease; provided, however, that the provisions of this Section 10.3 shall not apply to any Transfer to a Foreclosure Transferee.

10.4 Liability of Transferors/Transferees For Lease Obligations. In the case of an assignment, including an assignment pursuant to Section 15.6.5, each assignee or transferee of this Lease shall assume in writing all of Tenant's obligations thereafter arising under this Lease. All assignees or transferees of any interest in this Lease or the Premises or Improvements (whether or not directly liable on this Lease) shall be subject to the terms, conditions, covenants, restrictions and reservations of this Lease. Except as otherwise provided in Section 15.6.5, the transferor may be released from all liability under this Lease only if the Permitted Transferee or other transferee agrees in writing to assume all of transferor's obligations and liabilities and provides to Lessor evidence of sufficient and adequate assets, including any required insurance policies, subject to approval by Habitat, which approval shall not be unreasonably withheld, that evidence said transferees' financial and otherwise competence to assume transferor's obligations and liability (an "**Approved Release**"). Except as otherwise provided in Section 15.6.5 and except for an Approved Release, for all other Transfers, any transferor of any interest in this Lease or the Premises or Improvements shall remain primarily liable for all obligations hereunder and shall be subject to the terms, conditions, covenants, restrictions and reservations of this Lease. Except as otherwise provided in Section 15.6.5 and except for an Approved Release, the Lessor may proceed directly against the transferor in its sole and absolute discretion, with no obligation to exhaust its remedies against the transferee.

10.5 Conditions of Certain Lessor Consent.

10.5.1. Lessor and Agent may withhold consent to a Transfer at its sole and absolute discretion if any of the following conditions exist:

- (a) An Event of Default exists under this Lease.
- (b) The prospective transferee has not agreed in writing to keep, perform, and be bound by all the terms conditions, covenants, restrictions and reservations of this Lease.
- (c) In the case of an assignment, the prospective transferee has not agreed in writing to assume all of transferor's obligations and liabilities.
- (d) All the material terms, covenants, and conditions of the Transfer that are relevant to the Agent's approval of the Transfer have not been disclosed in writing to the Lessor.

10.6 Transfer of Mortgages of Lessor's Interest. Notwithstanding anything to the contrary set forth in this Ground Lease, unless required by statute, court order or operation of law, Lessor shall not transfer, assign, pledge or hypothecate its fee interest in the Premises (other than to entities under common control with Lessor or other governmental entities under applicable law) without the prior written notice to Tenant and Leasehold Mortgagee. Any and all mortgages or liens placed or suffered by the Lessor encumbering the Lessor's fee interest in the Premises shall

be expressly subject and subordinate to this Lease, to all obligations of Lessor hereunder, to all of the rights, titles, interests, and estates of the Tenant created or arising hereunder, to each New Lease and to each Leasehold Mortgage. Furthermore, any Person succeeding to the Lessor's fee interest as a consequence of any conveyance, foreclosure or other transfer shall succeed to all of the obligations of the Lessor hereunder.

ARTICLE XI

DEFAULT AND REMEDIES

11.1 Event of Default. Each of the following events shall constitute an “**Event of Default**” by Tenant:

11.1.1. Failure to Pay. Tenant's failure or omission to pay any Rent or other sum payable hereunder on or before the date due where such failure shall continue for a period of five (5) days after written notice thereof from Lessor to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 *et seq.*

11.1.2. Failure to Perform. The failure or inability by Tenant to observe or perform any of its obligations under this Lease (other than those specified in Sections 11.1.2, 11.1.3, or 11.1.4, or 11.1.5 herein, which have their own notice and cure periods), where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Tenant or past any such longer period as reasonably agreed upon by the Tenant, Lessor in writing as may be necessary for completion of its cure; provided, however, that any such notice by Lessor shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 *et. seq.*; provided, further, that if the nature of such failure is such that it can be cured by Tenant but that more than thirty (30) days are reasonably required for its cure (for any reason other than financial inability), then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) days, and thereafter diligently pursues such cure to completion.

11.1.3. Abandonment. The abandonment (as defined in California Civil Code Section 1951.3) or vacation of the Premises by Tenant for a period of thirty (30) days or more.

11.1.4. Assignments.

(a) The making by Tenant of any assignment of its leasehold estate under this Lease without Lessor's consent, as set forth in Article X;

(b) A case is commenced by or against Tenant under Chapters 7, 11 or 13 of the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter amended and if so commenced against Tenant, the same is not dismissed within ninety (90) days of such commencement;

(c) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within sixty (60) days; or

(d) Tenant's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts. In the event of any such default, neither this Lease nor any interests of Tenant in and to the Premises shall become an asset in any of such proceedings.

11.1.5. Termination of and Failure to Reinstate Insurance Coverage. Termination of Tenant's insurance coverage and lack of reinstatement within ten (10) business days after notice from Lessor of such termination.

11.1.6. Failure to Provide Evidence of Insurance. Tenant's failure to provide Lessor with a valid and adequate certificate of insurance and endorsements, or binder, at any time during the Term of the Lease, within the time period required under Section 8.1.3.

11.1.7. Lessor's Consent and Approval of Transfer. Occupancy of the Premises by a prospective transferee, sublessee, or assignee which requires Lessor's consent or approval, before Lessor's written consent and approval of a Transfer is obtained as required in Section 10.1.

11.1.8. Tenant's failure to make any payment(s) as set forth in Sections 11.9.

11.2 Lessor's Remedies. If an Event of Default occurs, Lessor shall have the following remedies in addition to all rights and remedies provided by law or equity to which Lessor may resort cumulatively or in the alternative:

11.2.1. Termination of Lease. Subject to Article 15, as applicable, Lessor shall have the right to terminate this Lease and all rights of Tenant hereunder including Tenant's right to possession of the Premises. In the event that Lessor shall elect to so terminate this Lease then Lessor may recover from Tenant:

(a) The worth at the time of award of the unpaid Rent and other charges, which had been earned as of the date of the termination hereof; plus

(b) The worth at the time of award of the amount by which the unpaid Rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent and other charges for the balance of the Term hereof after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) Any other amount necessary to compensate Lessor for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys' fees, expert witness costs; plus

(e) Any other amount which Lessor may by law hereafter be permitted to recover from Tenant to compensate Lessor for the detriment caused by Tenant's default as permitted under applicable California law.

11.2.2. Continue Lease in Effect. Lessor may continue this Lease in effect without terminating Tenant's right to possession and to enforce all of Lessor's rights and remedies under this Lease; provided, however, that Lessor may at any time thereafter elect to terminate this Lease for the underlying Event(s) of Default by notifying Tenant in writing that Tenant's right to possession of the Premises has been terminated.

11.2.3. Removal of Personal Property Following Termination of Lease. Lessor shall have the right, following a termination of this Lease and Tenant's rights of possession of the Premises under Section 11.2.1 above, to re-enter the Premises and, subject to applicable law, to remove Tenant's personal property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant, or disposed of without such storage, in accordance with applicable California law.

11.3 Lessor's Right to Cure Tenant Defaults. If Tenant shall have failed to cure, after expiration of the applicable time for curing, a particular default under this Lease, Lessor may at their election, but are not obligated to, make any payment required of Tenant under this Lease or perform or comply with any term, agreement or condition imposed on Tenant hereunder, and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the Interest Rate from the date of payment, performance or compliance until reimbursed shall be deemed to be Additional Rent payable by Tenant on Lessor's demand. Tenant's failure to reimburse the Lessor within 30 days of Lessor's demand shall constitute an Event of Default under this Lease. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default, or render Lessor liable for any loss or damage resulting from the same.

11.4 Lessor's Default. Lessor shall not be considered to be in default under this Lease unless Tenant has given Lessor written notice specifying the default, and either (i) as to monetary defaults, Lessor have failed to cure the same within ten (10) business days after written notice from Tenant, or (ii) as to nonmonetary defaults, Lessor have failed to cure the same within thirty (30) days after written notice from Tenant, or if the nature of Lessor's nonmonetary default is such that more than thirty (30) days are reasonably required for its cure, then such thirty (30) day period shall be extended automatically so long as Lessor commences a cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. Tenant shall have no right to offset or abate alleged amounts owing by Lessor under this Lease against any amounts owing by Tenant under this Lease. Additionally, Tenant's sole remedy for any monetary default shall be towards the Lessor's interest in the property and not to any other assets. Any and all claims or actions accruing hereunder shall be absolutely barred unless such action is commenced within six (6) months of the event or action giving rise to the default.

11.5 Remedies Cumulative. All rights and remedies of Lessor contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease..

11.6 Waiver by Lessor. No delay or omission of Lessor to exercise any right or remedy shall be construed as a waiver of such right or remedy or any default by Tenant hereunder. No act or thing done by Agency's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by Lessor.

11.7 Conditions Deemed Reasonable. Tenant acknowledges that each of the conditions to a Transfer, and the rights of Lessor set forth in Article X in the event of a Transfer is a reasonable restriction for the purposes of California Civil Code Section 1951.4.

11.8 Waiver by Tenant. Tenant's waiver of any breach by Lessor of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

11.9 Tenant Covenants and Agreements. All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expenses and without any abatement of Rent. If Tenant shall fail to pay any sum of money, other than Rent required to be paid by it hereunder, or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by Tenant within the time period required under this Lease, then in addition to any other remedies provided herein, Lessor may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed as provided in this Lease or to provide such insurance. Any payment or performance of any act or the provision of any such insurance by Lessor on Tenant's behalf shall not give rise to any responsibility of Lessor to continue making the same or similar payments or performing the same or similar acts. All costs, expenses, and other sums incurred or paid by Lessor in connection therewith, together with interest at the Interest Rate from the date incurred or paid by Lessor, shall be deemed to be Additional Rent hereunder and shall be paid by Tenant within thirty (30) days of receipt of a demand and invoice from Lessor, and Tenant's failure to pay the Lessor, as stated herein, shall constitute an Event of Default under this Lease.

ARTICLE XII

HOLDING OVER

If Tenant holds over after the expiration or earlier termination of the Term hereof without the express written consent of Lessor, Tenant shall become a Tenant at sufferance only. If Tenant fails to surrender the Premises and the Improvements as stated herein, and Lessor shall take legal action to cause Tenant's eviction from the Premises and is successful in such action, Tenant shall be responsible for all costs and expenses, including reasonable attorney's fees and costs, incurred by Lessor in connection with such eviction action; Tenant shall also indemnify and hold Lessor harmless from all loss or liability or reasonable attorney's fees and costs, including any claim made by any succeeding tenant, incurred by Lessor founded on or resulting from such failure to surrender.

ARTICLE XIII

ESTOPPEL CERTIFICATES

At any time and from time to time, within ten (10) business days after written request by either Agency or Tenant (the "**requesting party**"), the other Party (the "**responding party**") shall execute, acknowledge and deliver an estoppel certificate addressed to the requesting party, and/or

to such other beneficiary (as described below) as the requesting party shall request, certifying (i) that this Lease is in full force and effect, (ii) that this Lease is unmodified, or, if there have been modifications, identifying the same, (iii) the dates to which Rent has been paid in advance, (iv) that, to the actual knowledge of the responding party, there are no then existing and uncured defaults under the Lease by either Agency or Tenant, or, if any such defaults are known, identifying the same, and (v) any other factual matters (which shall be limited to the actual knowledge of the responding party) as may be reasonably requested by the requesting party. Such certificate may designate as the beneficiary thereof the requesting party, and/or any third party having a reasonable need for such a certificate (such as, but not limited to, a prospective purchaser, transferee or lender) and any such certificate may be relied upon by the Parties.

ARTICLE XIV

FORCE MAJEURE

Unless otherwise specifically provided herein, the period for performance of any nonmonetary obligation by either Party shall be extended by the period of any delay in performance caused by Acts of God, strikes, boycotts, lock-outs, epidemic or pandemic, inability to procure materials not related to the price thereof, failure of electric power, riots, civil unrest, acts of terrorism, insurrection, war, declaration of a state or national emergency, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Premise from being operated in accordance with this Lease, or other reasons beyond the reasonable control of Agency, Tenant, or their respective agents or representatives (collectively, “**Force Majeure Events**”). In no event, however, shall Force Majeure Events include the financial inability of a Party to this Lease to pay or perform its obligations hereunder. Further, nothing herein shall extend the time for performance of any monetary obligation owing under this Lease (including Tenant’s obligation to pay Rent owing hereunder).

ARTICLE XV

The Tenant shall be obligated by the separate Maintenance and Affordability Restrictions executed separately between the parties in regards to their operational obligations.

ARTICLE XVI

LEASEHOLD MORTGAGES

16.1 Definitions. The following definitions are used in this Article (and in other Sections of this Lease):

16.1.1. “**Leasehold Estate**” shall mean Tenant’s leasehold estate in and to the Premises, including Tenant’s rights, title and interest in and to the Premises and the Improvements, or any applicable portion thereof or interest therein.

16.1.2. “**Leasehold Foreclosure Transferee**” shall mean any person (which may, but need not be, a Leasehold Mortgagee) which acquires the Leasehold Estate pursuant to a

foreclosure, assignment in lieu of foreclosure or other enforcement of remedies under or in connection with a Leasehold Mortgage.

16.1.3. **“Leasehold Mortgage”** shall mean and includes a mortgage, deed of trust, security deed, conditional deed, deed to secure debt or any other security instrument (including any assignment of leases and rents, security agreement and financing statements) held by a Lender by which Tenant’s Leasehold Estate is mortgaged to secure a debt or other obligation, including a purchase money obligation.

16.1.4. **“Leasehold Mortgagee”** shall mean a Lender which is the holder of a Leasehold Mortgage.

16.1.5. **“Tenant”** shall mean all of the following: (i) the Tenant under this Lease; (ii) an approved assignee or transferee of the Tenant under this Lease who is or becomes directly and primarily liable to Lessor; and (iii) any further assignee, transferee of any of the parties listed in (ii) who is or becomes directly and primarily liable to Lessor.

16.2 Tenant’s Right to Encumber Leasehold Estate; No Right to Encumber Lessor’s Fee Interest. Provided that an Event of Default has not occurred and is continuing, Tenant may, at any time during the Term of this Lease (with consent of Lessor after prior written notice providing evidence that all requirements of this Lease have been complied with, which consent shall not be unreasonably withheld, conditioned or delayed), encumber all or any portion of Tenant’s Leasehold Estate with one (1) or more Leasehold Mortgages; provided, however:

16.2.1. Such Leasehold Mortgage(s) (as of the date recorded) shall not exceed (a) if recorded before completion of the Initial Improvements, One Hundred Percent (100%) of the costs of the Initial Improvements, or (b) if recorded after completion of the Initial Improvements, eighty percent (80%) of the Leasehold Estate value (including the value of all improvements) after completion;

16.2.2. That Tenant shall not have the power to encumber, and no Leasehold Mortgage shall encumber, Lessor’s Fee Interest;

16.2.3. Except as expressly provided in this Lease, the Leasehold Mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of Lessor hereunder; and

16.2.4. Nothing in this Lease shall be construed so as to require or result in a subordination in whole or in part in any way of the Lessor’s Fee Interest to any Leasehold Mortgage, and;

16.2.5. Except as otherwise expressly provided herein, in the event of any conflict between the provisions of this Lease and the provisions of any such Leasehold Mortgage, the provisions of this Lease shall control.

Tenant’s encumbrance of its Leasehold Estate with a Leasehold Mortgage, as provided in this Section 15.2, shall not constitute an assignment or other Transfer under Article X or otherwise, nor shall any Tenant Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of

this Lease or of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume the Tenant's obligations and liabilities under this Lease.

Notwithstanding the foregoing, if any Leasehold Mortgagee (or its nominee) acquires title to the Premises by foreclosure or deed in lieu thereof, any required consent of the Lessor under this Section 15.2 shall not be unreasonably withheld.

16.3 Notification to Lessor of Leasehold Mortgage. Tenant or any Leasehold Mortgagee shall, prior to making any Leasehold Mortgage, provide Lessor with written notice of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee. At the time of notice, Tenant or such Leasehold Mortgagee shall furnish to Lessor a complete copy of any trust deed and note to be secured thereby, together with the name and address of the holder thereof. Thereafter, Tenant or any Leasehold Mortgagee shall notify Lessor of any change in the identity or address of such Leasehold Mortgagee. Lessor shall be entitled to rely upon the addresses provided pursuant to this Section for purposes of giving any notices required by this Article XV.

16.4 Notice and Cure Rights of Leasehold Mortgagees With Respect to Tenant Defaults. Lessor, upon delivery to Tenant of any notice of a default or demand for payment by Tenant under this Lease or a matter as to which Lessor may predicate or claim a default, will promptly deliver a copy of such notice to each Leasehold Mortgagee. Each notice or demand required to be given by Lessor to a Leasehold Mortgagee under this Lease shall be in writing and shall be given by certified or registered mail, postage prepaid, return receipt requested, to such Leasehold Mortgagee at the address(es) provided by such Leasehold Mortgagee, as applicable, to Lessor from time to time in writing and shall be effective upon receipt (or refusal to accept receipt). No notice or demand given by Lessor to Tenant shall be effective until the duplicate copy of such notice or demand to the Tenant shall have been effectively given to each Leasehold Mortgagee in accordance with this Lease. From and after the date such notice has been given to any Leasehold Mortgagee, such Leasehold Mortgagee shall have the same cure period for such default (or act or omission which is the subject matter of such notice) that is provided to Tenant under this Lease or as otherwise agreed upon by Agency and the Tenant, to commence and/or complete a cure of such default (or act or omission which is the subject matter of such notice). Lessor shall accept any and all performance by or on behalf of any Leasehold Mortgagee(s), including by any receiver obtained by any Leasehold Mortgagee(s), as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option, and hereby authorizes any Leasehold Mortgagee (or any receiver or agent) to enter upon the Premises for such purpose.

16.5 Limitation on Lessor's Termination Right. If following the delivery of notice pursuant to Section 15.4, above, the default by Tenant continues and is not cured by Tenant (or any Leasehold Mortgagee as allowed under Section 15.4, above), and such failure entitles Lessor to terminate this Lease, Lessor shall have no right to terminate this Lease unless Lessor shall notify in writing each and every Leasehold Mortgagee who has complied with Section 15.3 of Lessor's intent to so terminate at least sixty (60) days in advance of the proposed effective date of such termination. If any Leasehold Mortgagee, within such sixty (60) day period, (i) notifies Lessor of such Leasehold Mortgagee's desire to cure such default and initiates such cure and (ii) pays or cause to be paid the amount that is necessary to cure any monetary default as stated in such notice, if any, then Section 15.6 shall apply. The Lessor, at its sole discretion, may permit such additional

time as necessary for any Leasehold Mortgagee to commence the cure or make payment(s), as stated herein. If any Leasehold Mortgagee fails to respond to said notice of termination within the allotted sixty (60) days as consistent with the conditions of this Section 15.5, Lessor is entitled to immediately terminate this Lease.

16.6 Leasehold Mortgagee Foreclosure Period. If any Leasehold Mortgagee complies with Section 15.5 above, then the following provisions shall apply:

16.6.1. If Lessor's notice under Section 15.5 specifies only monetary Events of Default as the basis for Lessor's election to terminate this Lease, and Leasehold Mortgagee has fully paid the monetary amount designated by Lessor in its notice, then such payment shall be deemed to have cured the Event of Default. If Lessor's notice under Section 15.5 specifies both monetary and non-monetary Events of Default or non-monetary Events of Default as the basis for Lessor's election to terminate this Lease, and Leasehold Mortgagee has fully paid the monetary amount designated by Lessor in its notice, as applicable, then the date of termination specified in Lessor's notice shall be extended for a period of twelve (12) months, provided that such Leasehold Mortgagee shall, during such twelve (12) month period:

(a) pay or cause to be paid all Rent under this Lease as the same becomes due (subject to the notice and cure rights expressly set forth herein); and

(b) continue (subject to any stay as described in Section 15.6.2 below) its good faith efforts to perform (and complete performance of) all of Tenant's nonmonetary obligations under this Lease, excepting nonmonetary obligations (whether or not a default exists with respect thereto) that are not then reasonably susceptible of being cured by Leasehold Mortgagee; and

(c) commence and pursue with reasonable diligence until completion (subject to any stay as described in Section 15.6.2 below) a judicial or nonjudicial foreclosure or other enforcement of remedies under its Leasehold Mortgage.

16.6.2. In the event of a judicial or non-judicial foreclosure, the twelve (12) month period described in Section 15.6.1, above, shall automatically be extended by the length of any delay caused by any stay (including any automatic stay arising from any bankruptcy or insolvency proceeding involving Tenant), injunction or other order arising under applicable Laws or issued by any court (which term as used herein includes any other governmental or quasi-governmental authority having such power) (the foregoing being collectively referred to as a "Stay"). Further, Leasehold Mortgagee's obligations stated in Section 15.6.1(b) and (c) shall be automatically suspended during any period that any Stay prevents Leasehold Mortgagee from taking any such actions. Nothing herein, however, shall be construed to extend this Lease beyond the Term hereof nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after the Event of Default has been cured. If the Event of Default has been cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

16.6.3. In the event the Leasehold Mortgage requires a new lease between the Lessor and the Leasehold Mortgagee, Lessor shall enter into such new lease with the Leasehold

Mortgagee pursuant to Section 15.7, below, provided Lessor are provided with the necessary and adequate documents related to the new lease requirements in the Leasehold Mortgage as described in Section 15.7.

16.6.4. So long as any Leasehold Mortgagee is complying with Sections 15.6.1 and 15.6.2 above, then upon the acquisition of Tenant's Leasehold Estate by a Leasehold Foreclosure Transferee, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease; provided that no Leasehold Foreclosure Transferee shall have any liability for the performance of any of the Tenant's obligations under this Lease until the Leasehold Foreclosure Transferee has acquired the Tenant's interest under the Lease, and then the Leasehold Foreclosure Transferee shall be liable for the performance of only those obligations of the Tenant arising from and after the effective date of the Leasehold Foreclosure Transferee's acquisition of the Tenant's Leasehold Estate. Any such Leasehold Foreclosure Transferee shall be deemed to be an assignee or transferee and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the effective date on which such Leasehold Foreclosure Transferee acquires title to the Leasehold Estate, but only for so long as such purchaser or assignee is the owner of the leasehold estate.

16.6.5. Any Leasehold Mortgagee (or its designee) that becomes a Leasehold Foreclosure Transferee, upon acquiring title to Tenant's Leasehold Estate without obtaining Lessor's consent and provided it is not in default of any of the provisions of this Lease, shall have a one-time right to assign the Leasehold Estate to Habitat. Upon such assignment, the Leasehold Foreclosure Transferee shall automatically be released of all obligations thereafter accruing under this Lease. Any subsequent Transfers occurring except for the one-time assignment permitted under this Section shall be subject to Article X.

16.7 Leasehold Mortgagee's Right to New Lease.

16.7.1. In the event of any termination of this Lease (including any termination because of an Event of Default, or because of any rejection or disaffirmance of this Lease pursuant to bankruptcy law or any other law affecting creditor's rights, but other than by reason of a Total Taking), Lessor shall give prompt written notice of such termination to each Leasehold Mortgagee and shall (subject to Section 15.8 below if more than one Leasehold Mortgagee then exists) enter into a new lease ("**New Lease**") of the Premises with the Leasehold Mortgagee holding the Leasehold Mortgage that has the most senior lien priority, in accordance with Section 15.8 below, or its designee, upon notice to Lessor by such Leasehold Mortgagee. The New Lease shall commence as of its effective date and shall continue for the remainder of the scheduled Term of this Lease, at the same Rent that is payable under this Lease, and on the same terms, conditions, covenants, restrictions and reservations that are contained in this Lease (including any extension options, purchase options and rights of first refusal, if any, provided for in this Lease), and subject to the rights of any tenants under residential subleases or other subtenants then in valid occupancy of the Premises and Improvements and further subject to any then existing senior Leasehold Mortgagees; provided that, substantially concurrently with the delivery of a notice by Leasehold Mortgagee requiring Lessor to enter into a New Lease, Leasehold Mortgagee shall pay to Lessor all Rent or any other amounts payable by Tenant hereunder which are then due and shall commence and proceed with diligence to cure all nonmonetary defaults under this Lease, other than those

nonmonetary defaults which are personal to the foreclosed tenant and impossible for the Leasehold Mortgagee to remedy.

16.7.2. If such Leasehold Mortgagee elects to enter into a New Lease pursuant to Section 15.7.1 above, then Agency and the Leasehold Mortgagee (or its designee) shall promptly prepare and enter into a written New Lease; but until such written New Lease is mutually executed and delivered, this Lease shall govern, from and after the giving of notice pursuant to Section 15.7.1 but prior to the execution of the New Lease, the Lessor's and Leasehold Mortgagee's relationship with respect to the Premises and the Improvements and the Leasehold Mortgagee shall (i) be entitled to possession of the Premises and to exercise all rights of Tenant hereunder, (ii) pay to Lessor any Rent accruing under the New Lease as it becomes owing, and (iii) perform or cause to be performed all of the other covenants and agreements under this Lease. Further, at such time as the written New Lease is mutually executed and delivered, Leasehold Mortgagee (or its designee) shall pay to Lessor its reasonable expenses, including reasonable attorneys' fees and costs, incurred in connection with the preparation, execution and delivery of such written New Lease. In addition, upon execution of any such New Lease, Lessor shall execute, acknowledge and deliver to such Leasehold Mortgagee (or its designee) a grant deed, in recordable form, conveying to such Leasehold Mortgagee (or its designee) fee title to all Improvements in the event that title to such Improvements have vested with the City.

16.7.3. In the event that Lessor receives any net income (*i.e.*, gross income less gross expenses on a cash basis), if any, from the Premises and Improvements during any period that Lessor may control the same, then the Leasehold Mortgagee under the New Lease shall be entitled to such net income received by Lessor except to the extent that it was applied to cure any default of Tenant.

16.7.4. All rights and claims of Tenant under this Lease shall be subject and subordinate to all right and claims of the tenant under the New Lease.

16.8 Multiple Leasehold Mortgages. If more than one Leasehold Mortgagee shall make a written request upon Lessor for a New Lease in accordance with the provisions of Section 17.7, then such New Lease shall be entered into pursuant to the request of the Leasehold Mortgagee holding the Leasehold Mortgage that has the most senior lien priority.

Notwithstanding anything herein to the contrary, Lessor shall have no duty or obligation to resolve any disputes or conflicting demands between Leasehold Mortgagees. In the event of any conflicting demands made upon Lessor by multiple Leasehold Mortgagees, Lessor may (subject to any applicable court orders to the contrary) rely on the direction of the Leasehold Mortgagee whose Leasehold Mortgage is recorded first in time in the Official Records of the County, as determined by any national title company.

16.9 Condemnation and Insurance Proceeds. Notwithstanding anything to the contrary contained herein, all condemnation proceeds (other than proceeds payable on account of the value of the Lessor's Fee Interest as encumbered by this Lease) or insurance proceeds shall be subject to and paid in accordance with the requirements of the most senior (in order of lien priority) Leasehold Mortgage, subject, however, to any requirement in this Lease that, to the extent not in conflict with the terms of the applicable Leasehold Mortgage, such proceeds must be used to repair

and restore the Improvements to the Premises which were damaged or destroyed by such condemnation or casualty (including, without limitation, as requires I Article VII following a casualty and in Section 9.4.3 following a condemnation). The handling and disbursement of any such proceeds used to repair or restore the Improvements to the Premises shall be subject to the requirements of such senior Leasehold Mortgage.

16.10 Mortgagee Clauses. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Tenant hereunder, provided that any such Leasehold Mortgagee shall hold and apply such insurance proceeds subject to the provisions of this Lease.

16.11 No Waiver. No payment made to Lessor by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to Lessor pursuant to Lessor's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof.

16.12 Fees and Costs. Tenant agrees to reimburse Lessor for its reasonable attorneys' fees and costs incurred in connection with Lessor's review and/or approval of any documentation which may be required in connection with any Leasehold Mortgage by Tenant as provided herein.

16.13 No Termination, Cancellation, Surrender or Modification. Without the prior written consent of each Leasehold Mortgagee, (a) this Lease may not be terminated or cancelled by mutual agreement of Agency and Tenant, (b) Lessor may not accept the surrender of this Lease or the Leasehold Estate created hereunder without the consent of each Leasehold Mortgagee, and (c) this Lease may not be amended, modified or supplemented (and any action taken in furtherance of any of the foregoing without the required consent of each Leasehold Mortgagee shall be void and of no effect). In addition, if any term or provision of this Lease gives Tenant the right to terminate or cancel this Lease, in whole or in part, no such termination or cancellation shall be or become effective unless Tenant has first received approval in writing by each Leasehold Mortgagee.

ARTICLE XVII

GENERAL CONDITIONS & MISCELLANEOUS PROVISIONS

17.1 Signs. Tenant agrees not to construct, maintain, or allow billboards or outdoor advertising signs upon the Premises. Unapproved billboards or advertising signs may be removed by Lessor without prior notice to Tenant.

17.2 Nondiscrimination. Tenant agrees not to discriminate against any person or class of persons by reason of sex, age (except as permitted by law), race, color, creed, physical handicap, or national origin in the activities conducted pursuant to this Lease. **17.3 Taxes and Assessments.** Pursuant to California Revenue and Taxation Code Section 107.6, Tenant is specifically informed that this Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Premises or upon fixtures,

equipment, or other property installed or constructed thereon, shall be the full responsibility of Tenant, and Tenant shall cause said taxes and assessments to be paid promptly.

17.4 Quitclaim of Interest upon Termination. Upon termination of this Lease for any reason whatsoever in accordance with the terms of the Lease, Tenant shall execute, acknowledge, and deliver to Lessor, within five (5) business days, a good and sufficient deed, in a form as approved by the Lessor, whereby all right, title, and interest of Tenant in the Premises is quitclaimed back to Lessor (“**Quitclaim Deed**”). The Quitclaim Deed shall then be recorded by Lessor to remove any cloud on title created by this Lease.

17.5 Public Records. Tenant acknowledges that any written information submitted to and/or obtained by Lessor from Tenant or any other person or entity having to do with or related to this Lease and/or the Premises, either pursuant to this Lease or otherwise, is a “public record” open to inspection and copying by the public pursuant to the California Public Records Act (Government Code §6250, *et seq.*) (“**CPRA**”) as now in force or hereafter amended, or any Law in substitution thereof, or otherwise made available to the public, unless such information is exempt from disclosure pursuant to the applicable sections of CPRA. In the event that a CPRA request is made for any financial statements and records of Tenant and the Lessor determines that the records must be turned over, the Lessor will give Tenant written notice prior to turning over such records so that Tenant can take any necessary action, including, but not limited to, injunctive relief, to prevent Lessor from turning over such Tenant financial statements and records. However, failure to provide such written notice would not preclude production of the documents as required by the CPRA or other pertinent Law, and would not constitute a breach of this Lease Agreement.

17.6 Attorney’s Fees. In any action or proceeding brought to enforce or interpret any provision of this Lease, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys’ fees and costs.

17.7 Reserved.

17.8 Declaration of Knowledge by Tenant. Tenant warrants that Tenant has carefully examined this Lease and by investigation of the site and of all matters relating to the Lease arrangements has fully informed itself as to all existing conditions and limitations affecting the construction of the Lease improvements and of the uses contemplated hereunder.

17.9 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California and of the City.

17.10 Venue. The Parties hereto agree that this Lease has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Lease, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

17.11 Headings and Titles. The captions of the Articles or Sections of this Lease are only to assist the Parties in reading this Lease and shall have no effect upon the construction or interpretation of any part hereof.

17.12 Interpretation. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term “**Tenant**” shall include Tenant’s agents, employees, contractors, invitees, successors or others using the Premises with Tenant’s expressed or implied permission. In any provision relating to the conduct, acts or omissions of Agency, the term “**Agency**” or “**Lessor**” shall include Agency’s agents, employees, contractors, invitees, successors or others using the Premises with Agency’s expressed or implied permission.

17.13 Ambiguities. Each Party hereto has reviewed this Lease with legal counsel, and has revised (or requested revisions of) this Lease based on the advice of counsel, and therefore any rules of construction requiring that ambiguities are to be resolved against a particular Party shall not be applicable in the construction and interpretation of this Lease or any exhibits hereto.

17.14 Successors and Assigns. Except as otherwise specifically provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns.

17.15 Time is of the Essence. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

17.16 Severability. If any term or provision of this Lease is held invalid or unenforceable to any extent under any applicable law by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each remaining term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

17.17 Integration. This Lease together with the Inclusionary Grant Agreement, along with any exhibits, attachments or other documents affixed hereto or referred to herein and related Agency permits, constitute the entire agreement between Agency and Tenant relative to the leasing of the Premises. This Lease and such exhibits, attachments and other documents may be amended or revoked only by an instrument in writing signed by Agency and Tenant. Agency and Tenant hereby agree that no prior agreement, understanding or representation pertaining to any matter covered or mentioned in this Lease and Inclusionary Grant Agreement shall be effective for any purpose.

17.18 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or electronic mail, shall be deemed received upon the earlier of (a) if personally delivered, the date of delivery to the address of the person to receive such notice, (b) if mailed, three (3) business days after the date of posting by the United States post office, (c) if given by electronic mail, when sent if before 5:00 p.m., otherwise on the next business day, or (d) if delivered by overnight delivery, one (1) business day after mailing.

Either Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

If to Lessor: Housing Authority of the City of Santa Ana
 20 Civic Center Plaza (M-26)
 P.O. Box 1988
 Santa Ana, California 92702
 Attn: 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 Tenant: c/o Habitat for Humanity of Orange County
 2200 S. Ritchey Street
 Santa Ana, CA 92705
 Attention: Executive Director or Chief Executive Officer

With a copy to:

17.19 Amendments. Any changes to this Lease shall be in writing and shall be properly executed by all Parties.

17.20 Dispositions of Abandoned Property. If Tenant abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to and left on the Premises thirty (30) days after such event shall, at Lessor's option, be deemed to have been transferred to Lessor. Lessor shall have the right to remove and to dispose of such property at Tenant's cost, including the cost of labor, materials, equipment and an administrative fee equal to fifteen percent (15%) of the sum of such costs without liability therefor to Tenant or to any person claiming under Tenant, and shall have no need to account therefor. At Lessor's option, Lessor may provide Tenant with an invoice for such costs, which invoice Tenant agrees to pay within fifteen (15) days of receipt.

17.21 No Partnership. This Lease shall not be construed to constitute any form of partnership or joint venture between Agency and Tenant. Except with respect to Agent's role as Lessor's agent in enforcing the Restrictions as to subsequent Tenants, Agency and Tenant mutually acknowledge that no business or financial relationship exists between them other than as Lessor and Tenant, and that Agency is not responsible in any way for the debts of Tenant or any other Party.

17.22 Authorization. Agency and Tenant (each, a "**signing party**") each represents and warrants to the other that the person or persons signing this Lease on behalf of the signing party has full authority to do so and that this Lease binds the signing party. Concurrently with the execution of this Lease, the Tenant shall deliver to the Lessor a certified copy of a resolution of

the signing party's board of directors or other governing board authorizing the execution of this Lease by the signing party.

17.23 Recording. This Lease itself shall not be recorded, but in the event that the Tenant encumbers the leasehold as set forth in Article XVII, a memorandum hereof may be recorded in the form of **Exhibit C** attached hereto (the "**Memorandum**"). The Memorandum may be executed concurrently with this Lease and thereafter recorded in the Official Records of the County Recorder on the Effective Date of this Lease has occurred. Tenant shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.

17.24 Exhibits. This Lease contains the following exhibits, schedules and addenda, each of which is attached to this Lease and incorporated herein in its entirety by this reference:

Exhibit A: Legal Description of the Premises

Exhibit A-1: Rendering of the Premises

Exhibit B: Affordability and Maintenance Restrictions

Exhibit C: Form of Memorandum of Lease

17.25 Consent/Duty to Act Reasonably. Except as otherwise expressly provided herein, whenever this Lease grants Agency, Habitat and/or Tenant the right to take any action, grant any approval or consent, or exercise any discretion, Agency, Habitat and/or Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the other Party's reasonable expectations concerning the benefits to be enjoyed under this Lease.

17.26 Counterparts. For the convenience of the Parties to this Lease, this Lease may be executed in several original counterparts, each of which shall together constitute but one and the same agreement. Original executed pages may be assembled together into one fully executed document.

17.27. No Merger. The interests created by this Lease shall not be extinguished by merger of any or all of the ownership interests the Premises or the Improvements in one person or entity.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the Parties have executed this Lease on the date first written above.

	<p><u>TENANT</u></p> <p>HABITAT FOR HUMANITY OF ORANGE COUNTY, a nonprofit organization</p> <p>By: _____ Sharon Ellis, Executive Director</p>
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<p>APPROVED AS TO FORM: SONIA CARVALHO AUTHORITY GENERAL COUNSEL</p> <p>By: _____ Ryan O. Hodge, Assistant City Attorney</p> <p>Date <u>10/29/2020</u></p>	<p><u>LESSOR</u></p> <p>HOUSING AUTHORITY OF THE CITY OF SANTA ANA ACTING AS THE HOUSING SUCCESSOR AGENCY a public body, corporate and politic</p> <p>By: _____ Steven A. Mendoza, Executive Director</p> <p>Date _____</p>
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*HABITAT WILL REQUIRE NO ADDITIONAL
CHANGES TO THE GROUND LEASE FOR
826 N. LACY STREET*

Troy Hendrickson
Troy Hendrickson
V.P. HFHOC

EXHIBIT A

Legal Description

Commonly known as: 826 N. Lacy Street, Santa Ana, CA

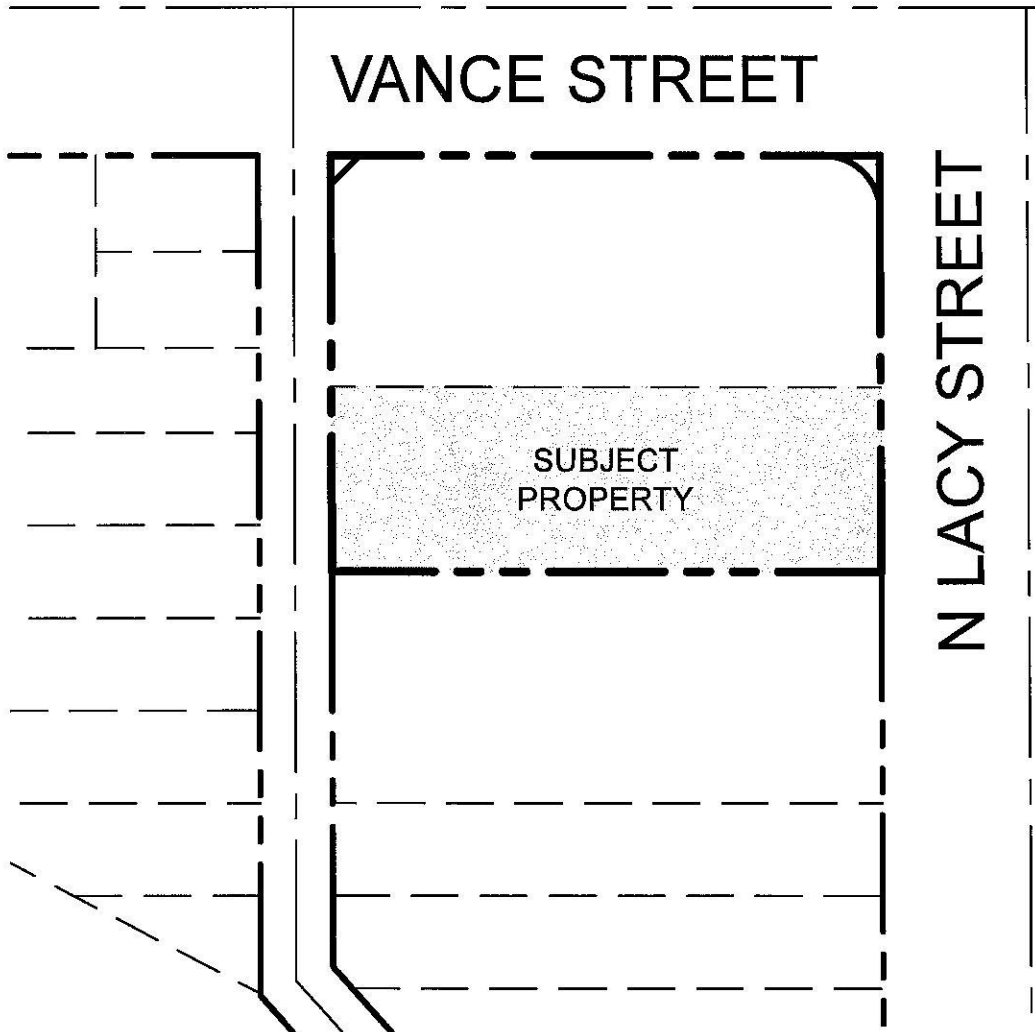
PARCEL 1 AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE
ADJUSTMENT 93-11 RECORDED JANUARY 7, 1994 AS INSTRUMENT NO. 94-
0016423 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXHIBIT A

EXHIBIT A-1
RENDERING OF THE PREMISES

EXHIBIT A-1

826 N. LACY STREET
SANTA ANA, CA



PASCO LARET SUITER
& ASSOCIATES
San Diego | Solana Beach | Orange County
Phone 949.661.6695 | www.plsaengineering.com

EXHIBIT

SCALE = 1" = 50'



EXHIBIT A-1
826 N. LACY STREET

SHEET 1 OF 1

SAVE DATE: 10/29/20 ~ PLOT DATE: 10/29/20 ~ FILE NAME: J:\Active Jobs\3268 H4H SANTA ANA\CIVIL\DRAWING\EXHIBITS\Subject Property Exhibit\826 N Lacy Street\3268-Exhibit, Subject Property - 826 N Lacy Street.dwg

80A-167

EXHIBIT B

FORM OF AFFORDABILITY AND MAINTENANCE RESTRICTIONS

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 6103 & 27383

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

AFFORDABILITY AND MAINTENANCE RESTRICTIONS

{Address: 826 N. Lacy Street (APN 398-041-22)}

THESE AFFORDABILITY AND MAINTENANCE RESTRICTIONS (the “Restrictions”) are entered into by and between Habitat for Humanity of Orange County, a nonprofit organization (“Habitat”), as the “Tenant” under the Ground Lease for each of two parcels of Property (defined below), and the Housing Authority of the City of Santa Ana, a public body, corporate and politic (“City” and/or “Agency”) as the “Lessor” under the Ground Lease for the above-referenced Premises.

RECITALS:

A. The City’s Housing Opportunity 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”). The Ordinance was amended by the City Council on September 1, 2015 (Ordinance No. NS-2881), on October 6, 2015 (Ordinance No. NS-2885), and on September 1, 2020 (Ordinance No. NS-2994). 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. Habitat requested financial assistance in connection with the proposed development of two (2) single-family detached homes (“Restricted Units”) restricted for sale to moderate income families earning no more than 120% of the Orange County Area Median Income (“Project”) to be located at 416 Vance Street (APN 398-041-22) and 826 N. Lacy Street (APN 398-041-22 (“Property”). The two (2) Restricted Units will be affordable to family households earning no more than 120% of the Area Median Income (“AMI”).

C. On March 5, 2019, the City of Santa Ana authorized the City Manager and the Clerk of the Council to execute a pre-loan commitment letter with Habitat for \$231,494 in Inclusionary

Housing Funds for the development of the Project at the Property, subject to non-substantive changes approved by the City Manager and City Attorney.

D. On November 17, 2020, the City of Santa Ana agreed to change the terms of the pre-loan commitment from a loan to a conditional grant.

E. The amount of the Conditional Inclusionary Grant was determined based upon the City's review of the Habitat's request for the receipt of the Conditional Inclusionary Grant and the development proforma and projected cash flows for the Project submitted by the Habitat to the City ("Proforma"). The City Project Manager has authority to approve revised development proformas and projected cash flows for the Project; provided, however, that the Conditional Inclusionary Grant is not materially increased or extended.

F. In furtherance of the Inclusionary Housing Program, Habitat applied to the City for a grant with which to:

1. Develop and construct the Project.

G. The City, on certain terms and conditions, made such Inclusionary Grant to Developer in order to make possible the development and construction of the Project, thereby expanding the supply of decent, safe, sanitary and affordable housing within the City.

H. If there is any inconsistency between Federal, State, and local guidelines with regard to any of the terms and conditions contained herein, the more stringent shall apply.

I. The Inclusionary Grant Agreement and Ground Leases for the two parcels of the Property are entered into for the purpose of providing for affordable residential ownership units in the City of Santa Ana pursuant to the Inclusionary Housing Fund regulations and guidance.

J. These Restrictions empower Habitat, as Lessor's Agent, following construction of the homes, to maintain the affordability of the Restricted Units and to maintain the certain components of the Premises that may not be covered by Tenant insurance under the Ground Lease for the Premises.

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

1. Definitions:

"**Affordable Housing**" means the total housing costs paid by a qualifying household, which shall not exceed the fraction of gross income specified, as follows, in accordance with the State of California Department of Housing and Community Development pursuant to Health and Safety Code Section 50052.5(b)(4) and the U.S. Department of Housing and Urban Development (HUD):

Moderate-Income Households. Thirty (30) percent of the income of a household earning one hundred and twenty (120) percent of the Median Income for the Area for for-sale units, adjusted for family size appropriate for the unit.

“Affordable Mortgage” means the monthly mortgage payment, which does not exceed the maximum amount applicable to Moderate Income Households.

“Agent” shall mean, with respect to Habitat’s rights and responsibilities under this Restriction, Habitat or similarly situated non-profit public benefit organization assisting with providing housing for moderate-income persons as Habitat’s successors and assigns, subject to the City’s right to approve the agreement to effect such assignment or transfer. City shall permit Habitat assignments or transfers of Habitat’s interests under the Restriction to an Affiliate nonprofit public benefit corporation or for-profit corporation of Habitat, or to a limited partnership whose general partner is a nonprofit corporation, for-profit corporation or limited liability company is an Affiliate of Habitat or Habitat’s general partner

"Applicable Law" shall mean those federal, state and local laws, ordinances, regulations, policies and procedures applicable to the Inclusionary Housing Funds.

"City" means the City of Santa Ana, California, a charter city and municipal corporation. “City” shall also refer to the Housing Authority of the City of Santa Ana where the context dictates, to the effect that the Housing Authority of the City shall have all the rights granted to the City hereunder.

"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.

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

"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.

“Inclusionary Grant” or “Conditional Inclusionary City Grant” means a grant in the original principal amount of up to two hundred, thirty-one thousand, four hundred and ninety-four dollars (\$231,494) to be made to Developer by the City to be funded exclusively from the Inclusionary Housing Fund.

"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.

"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.

"Median Income for the Area" means the median income for Orange County, California PMSA as most recently determined by HUD. Also may be referred to interchangeably in the Inclusionary Grant Documents as "Area Median Income" or "AMI".

"Premises" means that portion of the Property and any Improvements thereon that is located at 826 N. Lacy Street (APN 398-041-22), Santa Ana, CA 92701, as more fully described in the "Legal Description" attached to the Agreement as **Exhibit A** and incorporated herein by reference.

"Project" means the construction of the Improvements upon the Property by Developer pursuant to the Agreement.

"Property" means the property that is located at 826 N. Lacy Street (APN 398-041-22), Santa Ana, CA 92701 in the City of Santa Ana.

"Restricted Units" means the two (2) "Housing Units" at the Project, which shall and will be restricted to an affordable home purchase price based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD for a period of not less than ninety-nine (99) years recorded against the Premises in the Official Records, County of Orange, California.

"Term of Affordability" or "Affordability Period" means the terms and conditions contained herein shall remain in effect for ninety-nine (99) years from the date of the Ground Lease.

2. Use of the Premises. Except while Habitat is the initial Tenant under the Ground Lease, Tenant covenants and agrees, for itself, its successors, its assigns, and every successor in interest to the Premises any part thereof, that Tenant is a Moderate-Income Household, as provided in these Restrictions. Tenant agrees that during the Term of Affordability, the Premises shall be used only for decent, safe, sanitary and Affordable Housing pursuant to the affordability requirements of California Health and Safety Code ("H&S") sections 50052.5 and 33334.3, as applicable.

3. Premises Affordability and Maintenance Restrictions.

3.1 Affordability Restrictions:

A. Tenant agrees and covenants, which covenants shall run with the land and bind Tenant, its successors, its assign and every successor in interest to the Property that Tenant will only enter into Affordable Mortgages and only make the Restricted Unit on the Premises available for resale to Moderate Income Households at an Affordable Housing purchase price based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD during the Term of Affordability. Tenant agrees that, upon

termination of Tenant's right in the Lease and/or resale of the Restricted Unit, Agent shall have the exclusive right to approve any assignment of the Lease and re-sale of the Restricted Unit, and that Tenant (other than Habitat) have no right to assign its interests in the Lease and/or to sell the Restricted Unit without such Agent approval other than to a Leasehold Mortgage lenders as a pledge to finance an Affordable Mortgage. Agent shall take all necessary steps to review the income of all homeowners prior to selling to them. Agent shall allow the City to conduct periodic reviews of homeowner files and files relating to affirmative marketing and outreach to ensure the Project's compliance with applicable regulations and guidelines. The interests of Leasehold Mortgage Lenders shall be subordinate to the Restrictions and to Agent's right to approve assignment of the Tenant Leasehold interest and resale of the home to Qualifying Purchasers following foreclosure by the Leasehold Mortgage lenders.

- (1) Local Preference. Local preference for Santa Ana residents and workers in homebuyer selection shall be a requirement of the Project. Subject to the prohibition of discrimination and the granting of preferences in housing occupancy imposed by federal laws and regulations, the State of California, and by the City of Santa Ana Affordable Housing Funds Policies and Procedures, when selling the Restricted Unit and assigning its interests in the Lease, Tenant, with the assistance of Agent shall use its best efforts to sell the Restricted Unit and assign its interests in the Lease in the following order of priority:

- First priority shall be given to persons who have been permanently displaced or face permanent displacement from housing in Santa Ana as a result of any of the following:
 - A redevelopment project undertaken pursuant to California's Community Redevelopment Law (Health & Safety Code Sections 33000, et seq.) -- applicable only to projects funded by the Low and Moderate Income Housing Asset Fund.
 - Ellis Act, owner-occupancy, or removal permit eviction;
 - Earthquake, fire, flood, or other natural disaster;
 - Cancellation of a Housing Choice Voucher HAP Contract by property owner; or
 - Governmental Action, such as Code Enforcement.
- Second priority shall be given to persons who are either:
 - a. Residents of Santa Ana and/or
 - b. Working in Santa Ana at least 32 hours per week for at

least the last 6 months.

B. The two (2) single-family detached homes will be restricted for sale to moderate income families earning no more than 120% of the Orange County Area Median Income based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD.

C. These Restrictions shall be recorded in the Official Records of the County, and shall remain in first position on title and shall not be subordinated.

3.2 Maintenance of the Property:

A. Maintenance Reserve Fee. Tenant agrees and covenants, which covenants shall run with the land and bind Tenant, its successors, its assign and every successor in interest to the Property that Tenant will pay to Habitat, as Agent for Lessor, a monthly maintenance reserve fee in an amount established by Habitat sufficient to maintain a reserve fund to pay for any required roof repairs, re-painting, landscaping and pest control/remediation for the Restricted Unit on the Premises, which amount shall be established by Habitat, in its sole discretion, and which fees shall be maintained by Habitat in a separate account and used as needed by Habitat for the purpose of paying for any required roof repairs, re-painting, landscaping and pest control/remediation, as determined to be necessary by Habitat and/or the City. Tenant shall allow Habitat and its agents and contractors access to the Premises at reasonable hours to carry out such maintenance by Habitat as Habitat may determine, in its sole discretion.

B. Maintenance. Tenant agrees to maintain the roofing, exterior paint, and the landscaping in a clean and good condition and repair in compliance with all applicable housing quality standards and state and local code requirements, and keep the Property free from any accumulation of debris and waste materials. If at any time Tenant fails to maintain, or cause to be maintained, the roofing, exterior paint, and landscaping as required, 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 Tenant shall have such additional time as reasonably necessary to complete such cure, the City may perform the necessary maintenance and Tenant shall pay all reasonable costs incurred for such maintenance from the maintenance reserve fund detailed in section 3.2(A) above.

C. Monitoring. Tenant shall allow the City to conduct periodic inspections of the roof, exterior paint, or landscaping after the date of construction completion, with reasonable notice. Tenant shall cure any defects or deficiencies found by the City while conducting such inspections within thirty (30) days of written notice thereof, or such longer period as is reasonable within the sole discretion of the City.

3.3 Obligation to Refrain from Discrimination:

A. In Use of Property. Any party subject to the terms of these Affordability and Maintenance Restrictions covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, disability,

sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Habitat itself or any person claiming under or through it 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, subtenants, sublessees or vendees of the Property, as required by the Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 U.S.C. 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975, and all implementing regulations.

B. In Affordable Housing Restrictions. Any party subject to the terms of these Affordability and Maintenance Restrictions shall not refuse to sell a unit to a holder of a rental voucher under 24 CFR part 887 (Housing Choice Voucher Program) or to a holder of a comparable document evidencing participation in a federally funded tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable tenant-based assistance document.

4. Miscellaneous Provisions:

A. Any sales prices of any of the Restricted Units must be for an amount not more than what is affordable to a moderate income family earning no more than 120% of the Orange County Area Median Income based on the California Health and Safety Code Section 50052.5 calculation methodology and the median incomes distributed by HUD.

B. The covenants established in these Restrictions shall be binding for the benefit of and in favor of the City and its respective successors and assigns, without regard to technical classification and designation. These Restrictions shall remain in effect for the Term of Affordability. The covenants against discrimination shall remain in effect for the period of these Restrictions.

C. The City is the beneficiary of the terms and provisions of these Restrictions and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit these Restrictions and the covenants running with the land have been provided. The City shall have the right if the 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 they or any other beneficiaries of these Restrictions and covenants are entitled.

D. The covenants and agreements contained herein shall run with the land and shall remain in effect for the Term of Affordability.

E. Upon a Transfer of the Property, the transferee will be obligated to meet with the Agent prior to closing of the Transfer to review the terms of these Restrictions and requirements of the transferee therein. Any failure of transferee to meet with the Agent as required would constitute a default under these Restrictions.

F. The Ground Lease and all of its attachments, including these Affordability Restrictions, shall be enforceable by the City in accordance with the default and remedy terms and procedures detailed in the Ground Lease.

G. Reserved

{Signatures on following page}

IN WITNESS WHEREOF, the parties hereto have caused these Affordability Restrictions on Transfer of Property to be executed on the date set forth at the beginning of these Restrictions.

ATTEST:

HOUSING AUTHORITY OF THE CITY OF
SANTA ANA, ACTING AS THE HOUSING
SUCCESSOR AGENCY

Daisy Gomez
Recording Secretary

Steven A. Mendoza
Executive Director

APPROVED AS TO FORM
Sonia R. Carvalho
Authority General Counsel

By: Ryan O. Hodge
Assistant City Attorney

{Signatures continue on following page}

DEVELOPER:

Habitat for Humanity of Orange County

By: _____
Sharon Ellis
Its: Executive Director

EXHIBIT A

Legal Description

Commonly known as: 826 N. Lacy Street, Santa Ana, CA

PARCEL 1 AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE
ADJUSTMENT 93-11 RECORDED JANUARY 7, 1994 AS INSTRUMENT NO. 94-
0016423 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXHIBIT A

EXHIBIT D

FORM OF MEMORANDUM OF LEASE
MEMORANDUM OF LEASE

This is a Memorandum of Lease (“**Memorandum**”) made and entered into as of this _____ day of _____, 20____, by and between the Housing Authority of the City of Santa Ana, a public body, corporate and politic (collectively, the “**Lessor**”) and Habitat for Humanity of Orange County, a nonprofit organization, (“**Tenant**”), residing at _____, upon the following terms:

1. **Lease.** The provisions set forth in a written lease between the parties hereto dated _____ (“Lease”), are hereby incorporated by reference into this Memorandum.

2. Subject Premises. The Premises which are the subject of the Lease are more particularly described as on **Exhibit A**, attached hereto

3. Effective Date of Lease. The Lease shall be deemed to have commenced on _____ (the “Effective Date”) as set forth within the terms of the Lease.

4. Term. The Term of the Lease shall be Ninety-Nine (99) years from the Effective Date as stated in the written Lease. The Term shall commence on the date hereof and terminate Ninety-Nine (99) years from the Effective Date.

5. Duplicate Copies of the originals of the Lease are in the possession of the Lessor and Tenant and reference should be made thereto for a more detailed description thereof and for resolution of any questions pertaining thereto. The addresses for Lessor and Tenant are as follows:

If to Lessor: Housing Authority of the City of Santa Ana
20 Civic Center Plaza (M-26)
P.O. Box 1988
Santa Ana, California 92702
Attn: 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 Tenant: c/o Habitat for Humanity of Orange County
2200 S. Ritchey Street
Santa Ana, CA 92705
Attention: Executive Director or Chief Executive Officer

With a copy to:

6. Purpose. It is expressly understood and agreed by all Parties that the sole purpose of this Memorandum is to give record notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between Lessor and Tenant with respect to the Premises and is hereby incorporated by reference. The Lease contains and sets forth additional rights, terms, conditions, duties, and obligations not enumerated within this instrument which govern the Lease. This Memorandum is for informational purposes only and nothing contained herein may be deemed in any way to modify or vary any of the terms or conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall control. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, representatives, successors, and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum pursuant to due authorization on the dates herein acknowledged.

AGENCY:

By: _____

Name: _____

Title: _____

TENANT:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____