

RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:

City Clerk
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

(Space Above For Recorder's Use)

This Affordable Housing Agreement is recorded at the
request and for the benefit of the City of Huntington Beach
and is exempt from the payment of a recording fee
pursuant to Government Code Sections 6103 and 27383.

**AFFORDABLE HOUSING AGREEMENT FOR
TRACT NO. 18147 (WINDBOURNE
RESIDENTIAL DEVELOPMENT)**

BY AND BETWEEN

**CITY OF HUNTINGTON BEACH,
a California Municipal Corporation,**

**HOUSING AUTHORITY OF THE
CITY OF HUNTINGTON BEACH, a
public agency,**

and

**FRANKLIN SCHOOL – HUNTINGTON BEACH,
a Delaware Limited Partnership**

**AFFORDABLE HOUSING AGREEMENT
FOR TRACT NO. 18147 (WINDBOURNE
RESIDENTIAL DEVELOPMENT)**

This AFFORDABLE HOUSING AGREEMENT (“Agreement”) is entered into as of the ____ day of _____, 2019 (“Effective Date”) by and between the City of Huntington Beach, a California municipal corporation, and the Housing Authority of the City of Huntington Beach, a public agency (collectively, “City”), on the one hand, and Franklin School – Huntington Beach, a Delaware Limited Partnership (“Developer”), on the other hand. City and Developer are hereinafter sometimes referred to collectively as the “Parties” and individually as a “Party.”

RECITALS

- A. The City of Huntington Beach is a municipal corporation and charter city organized and existing pursuant to the Constitution and laws of the State of California.
- B. The Housing Authority of the City of Huntington Beach is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California at *Health and Safety Code* Section 34240.
- C. Developer seeks to develop a project upon the former Franklin School property located at 14422 Hammon Lane, Huntington Beach, CA, consisting of fifty one (51) lot, single family home subdivision on approximately 8.75 acres of land, as more particularly described in the legal description attached hereto as Exhibit “A” (the “Property”).
- D. On September 11, 2018, the Planning Commission approved Developer’s application for Tentative Tract Map No. 18147, and CUP No. 16-031 (the “Project”). In accordance with HBZSO Section 230.26, the purpose and intent of this Agreement is to implement the goals, objectives and policies of the City’s Housing Element and encourage housing affordable to low- and moderate-income households. In compliance with Section 230.26 of the Huntington Beach Zoning and Subdivision Ordinance (“HBZSO”) and Condition 7 of Tentative Tract No. 18147, ten percent (10%) of the Units of the Project, amounting to five and one-tenth (5.1) units, shall be affordable housing.
- E. On November 5, 2018, the City Council approved Developer’s application for General Plan Amendment No. 16-001, and Zoning Map Amendment No. 16-002.
- F. HBZSO Section 230.26(B)(5), specifies that developments of residential projects may elect to provide the affordable units at an off-site location, provided that the affordable units are under the full control of the applicant, or other approved party. As such, Developer is proposing to provide one moderate-income unit on-site and funding for at least four very low

income units at an off-site project for a total of five (5.0) affordable units.

G. Pursuant to Condition 7 of Tentative Tract No. 18147, the Developer shall pay the City Two Million, Ninety Eight Thousand, Four Hundred Fifty-Six Dollars (\$2,098,456.00) for the four off-site units, plus Fifty Two Thousand, Four Hundred Sixty Dollars (\$52,460) for the fractional one-tenth percent (0.1%) of an affordable unit, amounting to a total payment to the City of Two Million, One Hundred Fifty Thousand, Nine Hundred Sixteen Dollars (\$2,150,916.00) (the "Developer Funds"). The City, together with the Housing Authority, shall utilize the Developer Funds to purchase, rehabilitate and operate at least four (4) off-site, two-bedroom rental units for very low or extremely low-income persons for a term of not less than fifty-five (55) years. The rental units shall be owned by the Housing Authority or by a non-profit pursuant to an agreement with the Housing Authority.

H. Also pursuant to Condition 7 of Tentative Tract No. 18147, the City and Developer shall enter into an Affordable Housing Agreement identifying one (1) four bedroom home on the Property to be sold at a Moderate Income Price, subject to a forty-five (45) year Affordable Housing Covenant enforceable by the City. The on-site unit shall be affordable to a family earning no more than 110% of the Orange County median income for a family of five, with the buyer earning no more than 120% of the Orange County median income.

I. The development of the Project on the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of City and the welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements.

COVENANTS

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

1. DEFINITIONS AND EXHIBITS

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Adjusted For Family Size Appropriate To The Unit" means a household of one person in the case of a studio unit, a household of two persons in the case of a one-bedroom unit, a household of three persons in the case of a two-bedroom unit, a household of four persons in the case of a three-bedroom unit, and a household of five persons in the case of a four-bedroom unit.

1.1.2 "Affordable Housing Cost for an Extremely Low Income Household" means that rent which is no more than the Affordable Housing Cost for an Extremely Low Income Household, as adjusted for family size, as annually determined by the California Department of

Housing and Community Development for Orange County.

1.1.3 "Affordable Housing Cost for a Moderate Income Household" means that purchase price which would result in an annual Monthly Housing Cost which does not exceed Thirty-Five Percent (35%) of One Hundred Ten Percent (110%) of the current Orange County monthly median income for a household adjusted for family size appropriate to the Unit. In determining monthly housing payments, the City will assume principal and interest payments on a conventional home mortgage after paying a ten percent (10%) down payment. Monthly housing costs will also include home Developer association dues, utilities, home Developer's insurance, maintenance costs and property taxes. Affordable Housing Cost shall be calculated pursuant to the City Housing Regulations.

1.1.4 "Affordable Housing Cost for a Very Low Income Household" means that rent which would result in an annual Monthly Housing Cost which does not exceed Thirty Percent (30%) of Fifty Percent (50%) of the current Orange County monthly median income for a household adjusted for family size appropriate to the Unit, as annually determined by the California Department of Housing and Community Development for Orange County.

1.1.5 "Affordable Housing Covenant" means the Declaration of Conditions, Covenants and Restrictions for Moderate Income Affordable Housing to be recorded against the Moderate Income Affordable Unit in the form attached hereto as Exhibit "B."

1.1.6 "Affordable Housing Trust Fund" shall mean the fund held by the City for expenditure in accordance with Section 230.26(E)(6) of the Zoning Code.

1.1.7 "City Housing Regulations" means the "Affordable Housing Regulations-Home Developer Requirements of the City of Huntington Beach," dated August 15, 2011, as they exist now, and as they may be amended in the future.

1.1.8 "Developer Funds" shall mean the Two Million, One Hundred Fifty Thousand, Nine Hundred Sixteen Dollars (\$2,150,916.00) that Developer shall pay the City for development of the four off-site affordable housing units, plus the fractional one-tenth percent (0.1%) of an affordable unit.

1.1.9 "Effective Date" means the date the City Council of City approves this Agreement, which date shall be inserted in the preamble to this Agreement.

1.1.10 "Extremely Low Income Household" means a Household whose income does not exceed the qualifying limits for extremely low income households pursuant to Health and Safety Code Section 50093, as annually determined by the California Department of Housing and Community Development for Orange County.

1.1.11 "Household" means all persons residing in a Unit.

1.1.12 "Market Rate Units" means the Units within the Project to be rented or sold by Developer to a Household without restriction as to income levels, rental rate or sales price.

1.1.13 "Median Income" means the Orange County area median income, adjusted for household size, as established by the United States Department of Housing and Urban Development, and as published periodically by the California Department of Housing and Community Development.

1.1.14 "Moderate Income Affordable Unit" means the one (1) unit, consisting of a four (4) bedroom home, designated pursuant to Section 3.2 to be sold to and occupied by a Moderate Income household in the Project.

1.1.15 "Moderate Income Household" means a Household whose income does not exceed the qualifying limits for moderate income households pursuant to Health and Safety Code Section 50093, which is those Households whose income does not exceed one hundred twenty percent (120%) of Median Income, adjusted for family size. The income level of a Household shall be determined in accordance with the City Housing Regulations.

1.1.16 "Moderate Income Affordable Unit" means a residential dwelling unit within the Project to be sold by Developer pursuant to this Agreement.

1.1.17 "Monthly Housing Cost" shall include all of the following associated with the Moderate Income Affordable Unit: (i) principal and interest payments on a mortgage loan; (ii) property taxes and assessments; (iii) the cost of fire and casualty insurance covering replacement value of property improvements; (iv) home Developer's association fees; (v) reasonable Unit maintenance and repair costs; and (vi) reasonable utility allowance, all as determined according to the City Housing Regulations.

1.1.18 "Monthly Rental Cost" shall include all of the following associated with the Affordable Unit: (i) principal and interest payments on a mortgage loan; (ii) property taxes and assessments; (iii) the cost of fire and casualty insurance covering replacement value of property improvements; (iv) home Developer's association fees; (v) reasonable Unit maintenance and repair costs; and (vi) reasonable utility allowance, all as determined according to the City Housing Regulations.

1.1.19 "Project" shall mean the fifty-one single family unit subdivision Developer shall construct and sell on the Property, inclusive of the on-site, single Moderate Income Affordable Unit.

1.1.20 "Qualified Purchaser" means a Moderate Income Household that complies with all income verification requirements in this Agreement, and earns not more than one hundred twenty percent (120%) of the Median Income, adjusted for family size, to be determined in accordance with the City Housing Regulations.

1.1.21 "Unit Release" means that certain instrument to be recorded for the benefit of a Market Rate Unit no longer subject to this Agreement, in the form of Exhibit "C" of this Agreement.

1.1.22 "Very Low Income Household" means a Household whose income does not exceed the

qualifying limits for very low income households pursuant to Health and Safety Code Section 50093, as annually determined by the California Department of Housing and Community Development for Orange County.

1.1.23 "Very Low Income Affordable Units" means the off-site rental housing the City and/or Housing Authority will develop with Developer Funds for very low or extremely low-income persons for a term of not less than fifty-five (55) years.

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

Exhibit "A"	Legal Description of the Property.
Exhibit "B"	Declaration of Conditions, Covenants and Restrictions for Moderate Income Affordable Housing, with attachments.
Exhibit "C"	Unit Release Agreement.
Exhibit "D"	Release of Affordable Housing Agreement

2. DEVELOPMENT OF THE PROPERTY

2.1 Project. Developer shall develop the Project as a fifty-one (51) unit residential subdivision in accordance with and subject to all applicable entitlements and permits. The Project shall have fifty (50) Market Rate Units, and one (1) four-bedroom Moderate Income Affordable Unit.

2.2 Compliance with Laws. Developer at its sole cost and expense shall secure or cause to be secured all permits that may be required by City or any other federal, state, or local governmental entity having or claiming jurisdiction over the Property or Project. Upon securing all permits, Developer shall carry out and perform the development, and marketing of the Project in conformity with all applicable federal, state, and local laws and regulations, and all conditions of approval of Tentative Map No. 18147.

2.3 Mechanic's Liens; Indemnification. Developer shall take all actions reasonably necessary to prevent and remove any mechanic's liens or other similar liens (including design professional liens) against the Property or Project, or any part thereof, by reason of work, labor, services, or materials supplied or claimed to have been supplied to Developer or anyone holding the Property or Project, or any part thereof, through or under Developer. Upon request by the City, Developer shall provide to the City updated information from Developer's title insurer. City hereby reserves all rights to post notices of non-responsibility and any other notices as may be appropriate upon a filing of a mechanic's lien. Developer shall indemnify, defend (with counsel of City's choosing and the consent of Developer, which shall not be unreasonably withheld, and which may be joint defense counsel upon City's and Developer's consent), and hold harmless City and all of its officials, officers, employees, representatives, volunteers and agents from any and all alleged or actual claims, causes of action, liabilities, and damages from any third party by reason of a mechanic's lien or work, labor, services, or materials supplied or claimed to have been supplied to Developer or anyone holding the Property or Project, or any part thereof, through or under Developer.

2.4 Execution and Recording of This Agreement. Developer shall execute this Agreement

prior to City Council consideration of approval of this Agreement. No later than thirty (30) days after the Effective Date of this Agreement, Developer shall record an executed original of this Agreement against the Property in the Official Records for Orange County, California.

3. MODERATE INCOME AFFORDABLE UNIT

3.1 Designation of Affordable Unit. Within thirty (30) days after execution of this Agreement, Developer shall obtain the approval from the City's Housing Manager of the designation of the one (1) Moderate Income Affordable Unit within the Property. Immediately following the approval of the Housing Manager, Developer shall record the Affordable Housing Covenant (Ex. C to this Agreement) against the designated Moderate Income Affordable Unit.

3.2 Development of Affordable Unit. The square footage of the Moderate Income Affordable Unit shall be approximately the same as the average square footage of the Market Rate Units with the same number of bedrooms. Developer shall construct the Moderate Income Affordable Unit with the same exterior appearance and interior features, fixtures, and amenities, and shall use the same type and quality of materials as the base model features of the Market Rate Units in the Project. Developer shall construct the Moderate Income Affordable Unit concurrently with the surrounding Market Rate Units.

3.3 Term of Affordable Unit Covenant. The Affordable Unit designated for Moderate Income Households shall be restricted for use and occupancy by a Moderate Income Household, for a total period of forty-five (45) years, commencing on the date that the Developer conveys title to the first purchaser of the Affordable Unit.

3.4 Memorializing Commencement of Affordability Term. The Notice of Affordability Restrictions is attached as an exhibit to Exhibit C, the Declaration of Conditions, Covenants, and Restrictions for Moderate Income Affordable Housing. The Notice of Affordability Restrictions shall be recorded concurrently with conveyance of title to the first buyer of each Affordable Unit and the affordability term for each Affordable Unit shall begin as of the recordation date of the Notice.

3.5 Sale of Moderate Income Affordable Unit to Moderate Income Household. When marketing the Moderate Income Affordable Unit, Developer shall comply with the City Housing Regulations. Developer shall not convey title to any Affordable Unit to a Household that the City has not verified as a Moderate Income Household, as determined pursuant the City Housing Regulations. Developer shall not convey title to the Moderate Income Affordable Unit to a Moderate Income Household at a price that exceeds the Affordable Housing Cost for that Affordable Unit as established by the City.

4. DEVELOPMENT OF VERY-LOW INCOME AFFORDABLE UNITS

4.1 Funding of Affordable Very-Low Income Affordable Units. The City shall use at least TWO MILLION NINETY EIGHT THOUSAND FOUR HUNDRED FIFTY SIX DOLLARS (\$2,098,456.00) of the Developer Funds for development of at least four, two-bedroom off-site rental units affordable to Very Low or Extremely Low Income Households.

4.2 Development of Very Low and Moderate Income Affordable Units. Pursuant to Condition 7 of the Tentative Tract Map, the Very Low Income Affordable Units shall be constructed prior to or concurrent with the Project. Accordingly, prior to the issuance of the first building permit and later the first certificate of occupancy for a dwelling unit in the Project, all of the following shall have occurred:

- a. Prior to the first production unit building permit, Developer shall have paid the Developer Funds to the City.
- b. Prior to the first production unit building permit, Developer shall have recorded the Affordable Housing Covenant (Ex. B) to this Agreement against the designated Moderate Income Affordable Unit within the Project.
- c. Prior to the issuance of the first Certificate of Occupancy for a dwelling unit in the Project, the Housing Authority, or non-profit entity in contract with the City or the Housing Authority, shall have (i) opened escrow on the purchase of the property for the Very Low Income Affordable Units; and, (ii) submitted to the City all necessary land use applications for the development of the Very Low Income Affordable Units.

5. TERM OF THIS AGREEMENT

5.1 Unit Release. Developer shall have the right at the time that it enters into a sales agreement for each of the Units to request that City execute a Unit Release for the Unit in the form of Exhibit D to this Agreement.

5.2 Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue until the date all the following events have occurred:

- a. Developer pays the Developer Funds to the City.
- b. Developer conveys fee title to buyer of the Moderate Income Affordable Unit.
- c. The Housing Authority or a non-profit entity shall have entered into an agreement with the City providing for the development and operation for at least fifty-five (55) years of the Very Low Income Affordable Units.
- d. The Housing Authority or a non-profit entity shall have entered into a purchase and sale agreement for acquisition of the property for the Very Low Income Affordable Unit.

5.3. Release of Agreement. Upon conclusion of the Term of this Agreement, City shall, at the request of Developer, record a Release of this Agreement in the form of Exhibit C to this Agreement. The recording of such a Release shall remove this Agreement as an encumbrance upon title to the Property. Notwithstanding any other provision herein to the contrary, Developer's indemnity obligations under Sections 2.4 (Mechanic's Liens) and 6.3 (Indemnification) hereof shall survive the termination of this Agreement.

6. DEFAULTS AND TERMINATION & INDEMNIFICATION

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

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

6.3 Indemnification. In addition to any other indemnity specifically provided in this Agreement, Developer shall defend (with counsel of City's choosing and the consent of Developer, which shall not be unreasonably withheld, and which may be joint defense counsel upon City's and Developer's consent), indemnify and hold harmless City and its officers, officials, agents, employees, representatives, and volunteers from and against any loss, liability, claim, or judgment arising from any act or omission of Developer in connection with its obligations under this Agreement.

6.4 Institution of Legal Actions. Subject to the notice and cure provisions of Section 3.1, in addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to obtain the specific performance of obligations hereunder, to enjoin, abate or prevent any further violation or default, or to obtain any other remedy allowed at law or equity consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Orange, State of California.

6.5 Applicable Law. The internal laws of the State of California, without reference to the principles governing conflicts of laws, shall govern the interpretation and enforcement of this Agreement.

6.6 Rights and Remedies Are Cumulative. The rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

6.7 Damages. If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 3.1, the defaulting party shall be

liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

6.8 Specific Performance. If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 3.1, the non-defaulting party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

6.9 Attorney's Fees and Costs. If any action or proceeding is brought by either party against the other under this Agreement, whether for interpretation, enforcement or otherwise, each party shall pay for its own costs and expenses, including the fees of its attorney and any expert witnesses in such action or proceeding. This provision shall also apply to any post judgment action by either party, including without limitation efforts to enforce a judgment.

7. ASSIGNMENT

7.1 Assignment by Developer. The qualifications and identity of Developer are of particular concern to City. It is because of those qualifications and identity that City has entered into this Agreement. Accordingly, except as authorized in Section below, Developer shall not sell, transfer, or assign the Property or Project in whole or in part, or transfer or assign Developer's rights and obligations in this Agreement, without City's prior written approval, which shall not be unreasonably withheld. In considering whether to grant its approval of any proposed transfer or assignment by Developer of its interest in the Property, Project, or this Agreement, City shall consider factors such as the financial strength and capacity of the proposed transferee or assignee to perform Developer's obligations in this Agreement, and the proposed transferee's or assignee's experience and expertise in the planning, financing, development, and operation of similar projects.

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

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

8. GENERAL PROVISIONS

8.1 Notices. Formal notices, demands and communications between the City and Developer shall be sufficiently given if delivered personally, or dispatched by registered or certified mail, postage prepaid, return receipt requested, to the respective addresses of the City and Developer. Such notices, demands and communications, if given in person, shall be deemed given when delivered, and, if given by mail, shall be deemed given three (3) business days after deposit in the mail. Such written notices, demands and communications may be sent to the following addresses unless either

party designates by notice a different address:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: City Manager
Tel. No.: (714) 536-5575
Fax No.: (714) 536-5233

with a copy to:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: City Attorney
Tel. No.: (714) 536-5555
Fax No.: (714) 374-1590

Housing Authority of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: Kellee Fritzel
Tel. No.: (714) 536-5555
Fax No.: (714) 374-1590

Franklin School -- Huntington Beach, LP
Steven C. Porath
24151 Ventura Blvd.
Calabasas, CA 91302
Tel. No. (818) 385-3697
Fax No. () _____

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

8.3 Conflicts of Interest.

8.3.1 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 personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested.

8.3.2 Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement, other than normal fees paid to Developer's independent contractors, attorneys, and consultants.

8.4 Non-liability of City/City Officials and Employees. No member, official, employee, attorney or consultant of the City or the Authority shall be personally liable to Developer, or any successor in interest of Developer, in the event of any default or breach by the City or for any amount which may become due to Developer or to its successor, or on any obligations under the terms of this Agreement.

8.5 Consents and Approvals. Except where this Agreement expressly provides that a party may withhold its approval in its sole and absolute discretion, approvals required of the City or the Developer shall not be unreasonably withheld or delayed. Except as otherwise expressly provided in this Agreement, approvals or consents required of the City shall be deemed granted by the written approval of the City Manager or designee. Notwithstanding the foregoing, the City Manager or designee may, in his or her sole and absolute discretion, refer to the City Council any item requiring City approval.

8.6 Amendments. The terms of this Agreement may only be modified or amended by an instrument in writing executed by each of the parties hereto; provided, however, the City Manager shall have the authority to issue interpretations, waive provision and enter into amendments of this Agreement on behalf of City so long as such actions do not substantially change the users or development permitted on the Property.

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

8.8 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California without regard to conflict of law principles. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation hereof.

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

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

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

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

8.13 Days. Unless otherwise specified in this Agreement or any Exhibit attached hereto, use of the term "days" shall mean calendar days. For purposes of this Agreement and all Exhibits attached hereto, "business days" shall mean every day of the week that City Hall of the City is open for business to the general public.

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

8.15 Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the Party's control (including the Party's employment force), court actions (such as restraining orders or injunctions), government regulations or other causes beyond the Party's control. If any such events shall occur, the term of this Agreement and the time for performance by either Party of any of its obligations hereunder may be extended by the written agreement of the Parties for the period of time that such events prevented such performance.

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

8.17 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof.

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

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

Agreement. The only relationship between City and Developer is that of a government entity regulating the development of private property and the Developer of such property.

8.20 Attorney's Fees and Costs. If either Party to this Agreement commences an action against the other Party to this Agreement arising out of or in connection with this Agreement, each party shall bear its own attorneys' fees and costs of suit.

8.21 Authority to Execute. The person or persons executing this Agreement on behalf of either Party warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their agency, corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind the Party to the performance of its obligations hereunder.

8.22 Counterparts. This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

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9. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Developer. This Agreement and any provisions hereof may be amended by mutual written agreement by Developer and City and such amendment shall not require the consent of any other fee Developer, tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust, or any other person or entity having an interest in the Property, except as otherwise expressly provided in this Agreement.

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

CITY OF HUNTINGTON
BEACH, a California municipal
corporation

HOUSING AUTHORITY OF
THE CITY OF HUNTINGTON
BEACH, a Public Agency

Mayor

Chairperson

ATTEST:

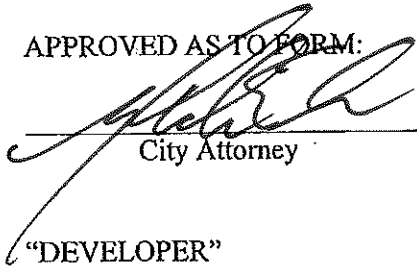
ATTEST:

City Clerk

Secretary

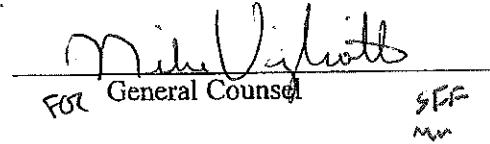
APPROVED AS TO FORM:

APPROVED AS TO FORM:



City Attorney

SFF
MV



General Counsel

FOL

SFF
MV

“DEVELOPER”
FRANKLIN SCHOOL – HUNTINGTON BEACH
a Delaware Limited Partnership

By:  _____

By: _____

Its: AUTHORIZED REP _____

Its: _____

INITIATED AND APPROVED:

City Manager

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

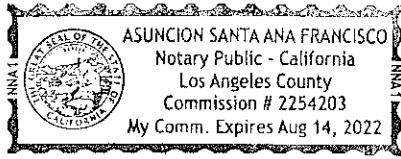
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Los Angeles }

On May 09, 2019 before me, Asuncion Santa Ana Francisco, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Steven C. Porath
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Asuncion Santa Ana Francisco*
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: _____

EXHIBIT A

(Legal Description)

LEGAL DESCRIPTION

Real property in the City of Huntington Beach, County of Orange, State of California, described as follows:

BEING THAT PORTION OF THE NORTH HALF OF FRACTIONAL SECTION 9, TOWNSHIP 5 SOUTH, RANGE 11 WEST, SAN BERNARDINO BASE AND MERIDIAN IN THE RANCHO LA BOLSA CHICA, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, PER MAP IN BOOK 51, PAGE 7 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID FRACTIONAL SECTION 9, SAID CORNER BEING THE CENTERLINE INTERSECTION OF BOLSA AVENUE 80.00 FEET WIDE AND SPRINGDALE STREET 60.00 FEET WIDE; THENCE, NORTH 0° 39' 26" WEST ALONG THE EAST LINE OF SAID FRACTIONAL SECTION 9 AND SAID CENTERLINE OF SPRINGDALE STREET, A DISTANCE OF 2387.94 FEET TO THE INTERSECTION WITH THE EASTERLY EXTENSION OF THE NORTH LINE OF THE UNITED STATES RAILROAD RIGHT OF WAY; THENCE, SOUTH 89° 35' 34" WEST ALONG SAID EASTERLY EXTENSION, AND SAID NORTH LINE OF THE UNITED STATES RAILROAD RIGHT OF WAY, 75 FEET WIDE, A DISTANCE OF 770.00 FEET; THENCE NORTH 0° 39' 26" WEST, A DISTANCE OF 260.78 FEET TO THE TRUE POINT OF BEGINNING; THENCE, CONTINUING ALONG SAID COURSE NORTH 0° 39' 26" WEST, A DISTANCE OF 605.63 FEET; THENCE NORTH 73° 00' 24" WEST, A DISTANCE OF 136.42 FEET; THENCE SOUTH 89° 30' 00" WEST, A DISTANCE OF 520.00 FEET; THENCE SOUTH 0° 39' 26" EAST, PARALLEL WITH THE EAST LINE OF SAID FRACTIONAL SECTION 9 AND SAID CENTERLINE OF SPRINGDALE STREET, A DISTANCE OF 645.59 FEET; THENCE, NORTH 89° 35' 34" EAST PARALLEL WITH THE NORTH LINE OF SAID UNITED STATES RAILROAD RIGHT OF WAY, A DISTANCE OF 650.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING ALL OIL, GAS, HYDROCARBONS, MINERALS AND OTHER SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, TOGETHER WITH THE RIGHT TO ENTER, EXPLORE FOR AND REMOVE THE SAME, BUT WITHOUT THE RIGHT TO ENTER UPON THE SURFACE OR SUBSURFACE OF THE PROPERTY ABOVE A DEPTH OF 500 FEET FOR ANY PURPOSE, AS RESERVED BY DOROTHY T. PECK, INDIVIDUALLY; DOROTHY T. PECK, AS TRUSTEE UNDER THE WILL OF ALDRICH R. PECK, DECEASED; DOROTHY THAYER PECK, CHARLES H. THATCHER AND TITLE INSURANCE AND TRUST COMPANY, A CORPORATION, AS TRUSTEES OF THE TRUST UNDER WRITTEN DECLARATION THEREOF, BY CARRIE A. PECK, DATED DECEMBER 18, 1936, IN DEED RECORDED OCTOBER 04, 1960, IN BOOK 5445, PAGE 332, OF OFFICIAL RECORDS.

APN: 195-214-23

EXHIBIT B

(Affordable Housing Covenant For
Moderate Income Home-In Project)

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City Clerk
City of Huntington
Beach 2000 Main Street
Huntington Beach, CA 92648

SPACE ABOVE THIS LINE FOR RECORDERS' USE ONLY

**DECLARATION OF CONDITIONS, COVENANTS AND
RESTRICTIONS FOR MODERATE INCOME AFFORDABLE HOUSING
[_____ Street Address _____], HUNTINGTON BEACH**

This Declaration Of Conditions, Covenants And Restrictions For Moderate Income Affordable Housing ("Resale Restrictions") is made as of _____, 20__, by and between Franklin School-Huntington Beach, a Delaware Limited Partnership, ("Owner"), on the one hand and the CITY OF HUNTINGTON BEACH, a California municipal corporation ("City"), and the HOUSING AUTHORITY OF THE CITY OF HUNTINGTON BEACH, a public body corporate and politic ("Authority") on the other hand. At the option of the City and Authority, the Authority may enforce these Resale Restrictions in place of the City.

RECITALS

A. Owner is the owner in fee of that certain real property consisting of Lot No. ___ of Final Tract Map No. 18147, located at __[Street Address]__, Huntington Beach (APN _____), as more particularly described in the legal description attached hereto as Exhibit "A" (the "Property").

B. Owner submitted to the City plans to develop Tract Map No. 18147 as a fifty-one (51) lot residential subdivision (the "Project"). On September 11, 2018, the Huntington Beach Planning Commission approved the Project pursuant to Tentative Tract Map No. 181475 and CUP No. 16-031 (the "Project").

C. Pursuant to Condition 7 of Tentative Tract No. 18147, the City and Owner entered the "Affordable Housing Agreement For Tract No. 18147 (Sea Dance Residential Development)," which was recorded as Instrument No. _____ in the Records of Orange County, California (the "Affordable Housing Agreement"). The Affordable Housing Agreement provides that one four-bedroom home of the Tract No. 18147 shall be a price restricted home for a term of forty-five (45) years, to be affordable to a family earning no more than 110% of the Orange County median income for a family of four, with the buyer earning no more than 120%

of the Orange County median income to be sold at a price. Pursuant to the Affordable Housing Agreement, Owner has designated Unit ___ as the affordable, four-bedroom unit (the "Restricted Unit."). Owner is the owner of record of the Restricted Unit, which is legally described in the attached Exhibit "A."

NOW, THEREFORE, the Parties hereto agree and covenant as follows:

1. **Affordability Covenant.** Owner agrees for itself and the successors and assigns to Owner's interest in the Restricted Unit, including each Moderate Income Household purchasing the Restricted Unit, that for a term of forty-five (45) years from the date of the close of escrow for the initial sale of the Restricted Unit:

1.1 The Restricted Unit shall only be owned and occupied by Owner or by a Moderate Income Household, which shall mean persons or families earning not more than 120% of the Orange County median income, adjusted for household size as appropriate to the Unit.

1.2 The Restricted Unit shall only be sold at an Affordable Housing Cost to Moderate Income Households.

2. **Definitions and Exhibits.**

2.1 **Definitions.** In addition to the terms that may be defined elsewhere in this Covenant, the following terms when used in these Resale Restrictions shall be defined as follows:

2.1.1 **"Adjusted for family size appropriate to the Unit"** means a household of one person in the case of a studio unit, a household of two persons in the case of one-bedroom unit, a household of three persons in the case of a two-bedroom unit, a household of four persons in the case of a three-bedroom unit, and a household of five persons in the case of a four-bedroom unit.

2.1.2 **"Affordable Housing Cost"** for a Moderate Income Household means that purchase price which would result in an annual Monthly Housing Cost which does not exceed Thirty-Five Percent (35%) of One Hundred Ten Percent (110%) of the current Orange County monthly median income for a household adjusted for family size appropriate to the Unit. In determining monthly housing payments, the City will assume principal and interest payments on a conventional home mortgage after paying a ten percent (10%) down payment. Monthly housing costs will also include monthly homeowner's association dues, utilities, homeowner's insurance, maintenance costs and property taxes. The Affordable Housing Cost shall be calculated pursuant to the City Housing Regulations.

2.1.3 **"City Housing Regulations"** means the "Affordable Ownership Housing Regulations-Homeowner Requirement of the City of Huntington Beach," dated August 15, 2011, as they exist now, and as they may be amended in the future.

2.1.34 **"Default"** means the failure of a Party to perform any action or covenant required by these Resale Restrictions within the time periods provided herein following notice and opportunity to cure.

2.1.5 “**First Lien**” means the lien of a primary Lender which secures the obligations of the Owner to repay amounts owed to the Lender.

2.1.6. “**Owner**” means initially, Franklin School-Huntington Beach, a Delaware Limited Partnership, and later its successors and assigns, each owner of any legal or equitable interest in the Restricted Unit.

2.1.7. “**Lender**” means a lender making a purchase money loan to the Owner for the purchase of the Affordable Unit.

2.1.8 “**Median Income**” means the Orange County, California area median income, adjusted for household size, as established by the United States Department of Housing and Urban Development, and as published periodically by the State of California Department of Housing and Community Development.

2.1.9 “**Moderate Income Household**” means a Household whose income does not exceed one hundred twenty percent (120%) of Median Income, adjusted for family size. The income level of a Household shall be determined in accordance with the City Housing Regulations.

2.1.10 “**Monthly Housing Cost**” shall include all of the following associated with the Restricted Unit: (i) principal and interest payments on a mortgage loan; (ii) property taxes and assessments; (iii) the cost of fire and casualty insurance covering replacement value of property improvements; (iv) homeowner's association fees; (v) reasonable maintenance and repair costs; and (vi) reasonable utility allowance. All Monthly Housing costs shall be determined by the City according to the City Housing Regulations.

2.1.11 “**Qualified Purchaser**” Means a person or family who complies with all income verification requirements of these Resale Restrictions, and earns not more than one hundred twenty percent (120%) of the Median Income, adjusted for family size, to be determined in accordance with the City Housing Regulations.

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

3. **Attachments**. The following documents are attached to, and by this reference made a part of, these Resale Restrictions:

Exhibit A – Legal Description of Restricted Unit

Exhibit B – Notice of Affordability Restriction

Exhibit C – Promissory Note

Exhibit D – Affordable Housing Deed of Trust

4. **Term of Resale Restrictions.**

4.1 The term of these Resale Restrictions shall commence on the date of the initial sale of the Restricted Unit from Owner to a Qualified Purchaser as evidenced by a deed recorded with the Orange County Recorder's Office and shall continue for forty-five (45) years from said date (the "**Affordability Period**"). The Covenant contained in this Section shall run with the Restricted Unit and shall automatically terminate and be of no further force or effect upon the expiration of the Affordability Period. The beginning and expiration dates of the Affordability Period for the Restricted Unit shall be established by the City in the Notice of Affordability Restriction (Ex. B) recorded in connection with each sale of the Restricted Unit.

4.2 The Qualified Purchaser of the Restricted Unit shall enter into a Notice of Affordability Restriction, Promissory Note and Deed of Trust in the forms attached as Exhibits B, C, and D to these Resale Restrictions.

5. **Covenant Regarding Use and Sale of Restricted Unit.** For the Affordability Period, the Restricted Unit shall be owned and occupied as the principal residence of a Moderate Income Household, **and in no event may the Restricted Unit be leased to a third party.** No transfer of the Restricted Unit shall occur until the City determines that: (a) the proposed purchaser intends to occupy the Restricted Unit as the proposed purchaser's principal residence; (b) the proposed purchaser is a Moderate Income Household; and (c) the proposed transfer occurs at an Affordable Housing Cost.

6. **Permitted and Prohibited Transfers of Restricted Unit.**

6.1 The following Transfers, made in compliance with the terms and conditions of these Resale Restrictions and the City Housing Regulations, shall constitute "Permitted Transfers": (i) a Transfer to a surviving joint tenant or other permitted co-Owner of the Restricted Unit by devise, descent, or operation of law on the death of an Owner; (ii) a Transfer to a spouse such that the spouses become co-Owners of the Restricted Unit; (iii) a Transfer by decree of dissolution, legal separation agreement, or from an incidental property settlement by which the spouse becomes an Owner of the Restricted Unit, provided that in each case the transferee spouse occupies or will occupy the Restricted Unit; (iv) a Transfer to an inter vivos trust in which Owner is and remains the beneficiary and occupant of the Restricted Unit; and (v) a Transfer to a Moderate Income Household at Affordable Housing Cost. A Transfer that is not a Permitted Transfer specified above is a "Prohibited Transfer." The occurrence of a Prohibited Transfer is a Default under these Resale Restrictions.

6.2 **All Transfers Prohibited Without City Approval.** During the Affordability Period, Owner shall not sell, transfer, use as security for any loan, or convey any interest in the Restricted Unit, except with the express written consent of the City, which consent shall be given only if the Transfer is a Permitted Transfer and in strict compliance with the provisions of this Section 6.

6.3 **Maximum Sale Price of Restricted Unit.** In the event that Owner decides to sell or otherwise transfer the Restricted Unit, Owner shall contact the City to obtain

the current Affordable Housing Cost, which shall be the maximum sales price of the Restricted Unit. City shall provide the Affordable Housing Cost pursuant to its current Affordable Housing Regulations. Regarding the Affordable Housing Cost, Owner acknowledges that:

OWNER, AND EACH SUCCESSOR, HEIR OR ASSIGN OF OWNER, UNDERSTANDS THAT THE DETERMINATION OF THE AFFORDABLE HOUSING COST CAN BE MADE ONLY AT THE TIME OF A PROPOSED SALE OR OTHER TRANSFER OF THE RESTRICTED UNIT, TAKING INTO CONSIDERATION PREVAILING INTEREST RATES, THE OFFERED TERMS OF SALE, THE ECONOMIC CIRCUMSTANCES OF THE PROPOSED PURCHASER AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED, AND THAT THE TRANSFER PRICE PERMITTED HEREUNDER MAY BE LESS THAN THE FAIR MARKET VALUE OF THE SAME OR OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS COVENANT. OWNER, AND EACH SUCCESSOR, HEIR OR ASSIGN OF OWNER, FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE TRANSFER PRICE, THE PRIMARY OBJECTIVE OF THE CITY AND THESE RESALE RESTRICTIONS IS TO PROVIDE HOUSING TO MODERATE INCOME HOUSEHOLDS AT AN AFFORDABLE HOUSING COST.

SP
Owner's Initials

6.4 Procedure to Verify a Proposed Transfer. In the event that Owner desires to sell the Restricted Unit, Owner shall send written notice thereof to the City at the following address:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attention: Director of Economic Development

City shall process the sale of the Restricted Unit pursuant to the City Housing Regulations. The City shall not be obligated to approve a transfer unless and until the proposed purchaser has submitted to the City such information and completed such forms as necessary to verify the proposed purchaser's intent with respect to his/her/its residency of the Restricted Unit, his/her/its gross income, and an affidavit of the proposed purchaser disclosing and certifying the amount of the proposed purchase price.

Prior to conveyance of the Restricted Unit, each approved purchaser shall also submit to the City an executed disclosure statement which certifies that the purchaser is aware that: (i) the purchaser buying the Restricted Unit may only sell the Restricted Unit at an Affordable Housing Cost to a Moderate-Income Household as provided in Section 1 above, (ii) the maximum

permitted sales price may be less than fair market value and (iii) the Restricted Unit must be owner-occupied at all times and cannot be rented or leased. The approved purchaser shall also submit an executed Promissory Note, Deed of Trust Notice of Affordability Restriction, and any other documentation reasonably required by the City to effectuate the Affordable Housing Program. Owner shall cooperate with the City in providing such forms to proposed purchasers and in assisting proposed purchasers to prepare such forms and to provide any required information to the City in connection with only the Owner's sale of the Restricted Unit.

7. **Non-Discrimination Covenants.** Owner covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, in the sale, transfer, use, occupancy, tenure or enjoyment of the Restricted Unit, nor shall Owner 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, subtenants, or vendees in the Restricted Unit.

Owner and its successors and assigns shall refrain from restricting the sale of the Restricted Unit on the basis of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, of any person. All such deeds or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clause:

(a) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, in the sale, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, in the sale, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferor himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with

reference to the selection, location, number, use of occupancy of tenants, subtenants or vendee of the premises.”

(c) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assignees, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, sublessees, subtenants, or vendedes in the premises herein leased.”

Nothing in this Section 7 shall be construed to authorize the rental or lease of the Restricted Unit if such rental or lease is not otherwise permitted.

8. Encumbrances.

8.1 **Financings on Transfer.** This Section 8 shall not prohibit the encumbering of title for the sole purpose of securing financing of the purchase price of the Restricted Unit upon a Transfer thereof; however, any such financing shall be for the Owner and (i) shall be a First Lien, (ii) shall not be in excess of the Affordable Housing Cost of the Restricted Unit as of date of approval for the financing, (iii) shall be in compliance with these Resale Restrictions and the Affordable Housing Deed of Trust, and (iv) shall be subordinate to these Resale Restrictions.

8.2 **Subordination.** These Resale Restrictions shall have priority over all monetary liens and encumbrances for the Affordability Period. However, the Affordable Housing Deed of Trust only may be subordinated to a First Lien on the Restricted Unit that secures the payment of a principal amount that is not in excess, as of the date of approval for said financing, of the Affordable Housing Cost of the Restricted Unit. The City shall execute a written instrument for the subordination of its rights under the Affordable Housing Deed of Trust in the form approved by the City Attorney as may reasonably be requested by the Lender. The City's agreement to so subordinate its rights is subject to agreement in writing by the Lender providing the City the following rights:

(a) Upon the occurrence of a Default under any of the First Lien documents, the holder of the First Lien shall promptly notify the City of the occurrence of such Default, which notification shall be provided to the City

contemporaneously with the delivery to Owner of any notice of Default under any of the First Lien documents; and

(b) The City shall have the right, during the cure periods which apply to the Owner pursuant to the First Lien documents and any cure period which may apply to the City under applicable law, to cure the Owner's Default relative to the First Lien; and

(c) After a Default on any of the First Lien documents but prior to a foreclosure sale or deed in lieu assignment of the Restricted Unit, the City shall have the right to take title to the Restricted Unit and cure the Default relative to the First Lien documents, without the holder of the First Lien exercising any right it might otherwise have to accelerate the obligations secured by the First Lien by reason of such title transfer, so long as the City promptly cures any such Default upon taking title to the Restricted Unit.

8.3 **Request for Notice of Default.** The City may cause a Request for Notice to be recorded on the Restricted Unit subsequent to the recordation of the First Lien deed of trust or mortgage requesting a statutory notice of Default as set forth in California Civil Code Section 2924b.

8.4 **Further Encumbrances Prohibited.** Owner shall not record or cause or permit the recordation of any deed of trust, mortgage, lien or other instrument creating a security interest in or to the Restricted Unit (a "Further Encumbrance") other than these Resale Restrictions, the First Lien and the Affordable Housing Deed of Trust.

9. **Uses.** The Restricted Unit shall be used as the principal residence of Owner and owner's family and may not be rented or leased. Owner covenants and agrees to devote, use, and maintain the Restricted Unit in accordance with these Resale Restrictions. All uses conducted on the Restricted Unit, including, without limitation, all activities undertaken by the Owner pursuant to these Resale Restrictions, shall conform to all applicable provisions of federal, state, and local laws, including the Huntington Beach Municipal Code, and the City Housing Regulations.

10. **Maintenance of Unit.** Owner shall maintain the Restricted Unit in a manner consistent with community standards which will uphold the value of the Restricted Unit, in accordance with the Huntington Beach Municipal Code. Owner also shall comply with all applicable federal, state and local laws.

11. **Effect of Violation of the Terms and Provisions of These Resale Restrictions.**

11.1 **Covenants Run with the Land.** These Resale Restrictions are designed to create equitable servitudes and covenants running with the Restricted Unit, in accordance with the provisions of Civil Code Section 1468, and the Huntington Beach Zoning and Subdivision Ordinance. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein shall run with the Restricted Unit and shall be binding upon all persons having any right, title or interest in the leasehold interest in the Restricted Unit, or any part thereof, their heirs, successive owners and assigns; shall inure to the

benefit of the City and its successors and assigns, shall be binding upon Owner, and its successors and assigns; and may be enforced by City and its successors and assigns. Owner hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land and that the Owner's interest in the Restricted Unit is rendered less valuable thereby. Owner hereby further declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Restricted Unit by Owner, and by furthering public purposes for City.

In amplification and not in restriction of the provisions hereinabove, it is intended and agreed that City is deemed a beneficiary of the agreements and covenants provided herein both for and in its own right and also for the purposes of protecting the interests of the community. All covenants **without** regard to technical classification or designation shall be binding for the benefit of City and such covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect, without regard to whether City is or remains an owner of any land or interest therein to which such covenants relate. However, all such covenants and restrictions shall be deemed to run in favor of all real property owned by the City which real property shall be deemed the benefited property of such covenants. Furthermore, all of the covenants, conditions, and restrictions contained herein shall also constitute easements in gross running in favor of the City. City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any action at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

11.2 **Notice of Default.** Failure or delay by Owner to perform any term or provision of these Resale Restrictions which is not cured within thirty (30) days after receipt of notice from the City constitutes a Default under these Resale Restrictions; provided, however, if such Default is of the nature requiring more than thirty (30) days to cure, Owner may avoid Default hereunder by immediately commencing to cure within such thirty (30) day period, and thereafter diligently pursuing such cure to completion within sixty (60) days after the expiration of the initial thirty (30) day period, for a total of ninety (90) days. Failure or delay in giving notice by the City shall not constitute a waiver of any Default, nor shall it change the time of Default.

11.3 **City's Remedies.** Upon the declaration of a Default, the City may (i) apply to a court of competent jurisdiction for specific performance, for an injunction prohibiting any act or omission in violation of these Resale Restrictions, or for any such other relief as may be appropriate, (ii) exercise the City's rights under these Resale Restrictions and the Affordable Housing Deed of Trust, including, without limitation, foreclosure of the Restricted Unit, and (iii) pursue such other rights and remedies permitted under these Resale Restrictions and by applicable law.

11.4 **Prohibited Transfers Void.** Any attempt by the Owner to make a Prohibited Transfer of title to or any interest in the Restricted Unit in violation of these Resale Restrictions shall be void and subject to rescission, specific performance, or any other right or remedy available at law or in equity.

12. **Governing Law.** Owner hereby agrees to comply with all ordinances, rules and regulations of the City, including the City Housing Regulations. Nothing in these Resale Restrictions is intended to be, nor shall it be deemed to be, a waiver of any City ordinance, rule or regulation. These Resale Restrictions shall be governed by the laws of the State of California without regard to conflict of law principles. Any legal action brought under these Resale Restrictions must be instituted in the Superior Court of the County of Orange, State of California, or in the Federal District Court in the Central District of California.

13. **Attorneys' Fees and Costs.** If either Party to these Resale Restrictions institutes any action against the other Party arising out of or in connection with to these Resale Restrictions, each Party shall bear its own attorney's fees and costs of suit.

14. **Severability.** So long as the material bargain of the Parties may be preserved, any provision of these Resale Restrictions that is deemed to be illegal, invalid or unenforceable by an arbitrator or court of competent jurisdiction shall be ineffective to the extent of the invalidity or unenforceability of such provision and shall be deemed stricken from these Resale Restrictions. Any stricken provision shall not affect the legality, enforceability or validity of the remainder of these Resale Restrictions. If any provision of these Resale Restrictions is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor and intent to the stricken provision as is legally possible. Any such invalidity or unenforceability of any provision in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

15. **Exhibits.** Each of the Attachments referenced in these Resale Restrictions and attached hereto is incorporated into these Resale Restrictions by this reference as though fully set forth in this Section.

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized as of the date set forth above.

CITY:

CITY OF HUNTINGTON BEACH,
a California municipal corporation

Mayor

ATTEST:

City Clerk

INITIATED AND APPROVED:

City Manager

AUTHORITY:

HOUSING AUTHORITY OF THE CITY OF
HUNTINGTON BEACH,
a public body corporate and politic

Chairperson

ATTEST:

Authority Secretary

APPROVED AS TO FORM:

City Attorney/Authority Counsel

SFF
NV

OWNER:

Franklin School – Huntington Beach, LP
a Delaware limited partnership corporation

By: _____

Its: _____

By: _____

Its: _____

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized as of the date set forth above.

CITY:

CITY OF HUNTINGTON BEACH,
a California municipal corporation

AUTHORITY:

HOUSING AUTHORITY OF THE CITY OF
HUNTINGTON BEACH,
a public body corporate and politic

Mayor

Chairperson

ATTEST:

ATTEST:

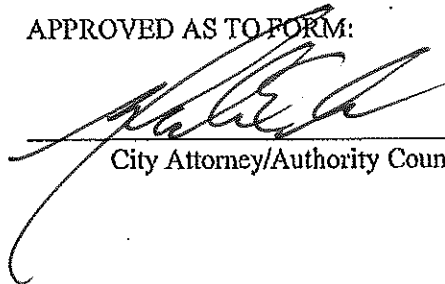
City Clerk

Authority Secretary

INITIATED AND APPROVED:

APPROVED AS TO FORM:

City Manager



City Attorney/Authority Counsel

OWNER:

Franklin School – Huntington Beach, LP
a Delaware limited partnership corporation

By: 

Its: AUTHORIZED REP

By: _____

Its: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

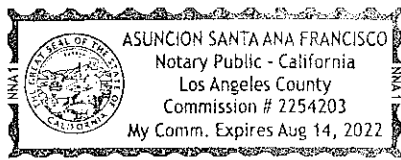
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Los Angeles }

On May 23, 2019 before me, Asuncion Santa Ana Francisco, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Steven C. Porath
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~~~they~~ executed the same in his/~~her~~~~their~~ authorized capacity(ies), and that by his/~~her~~~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature *Asuncion Santa Ana Francisco*
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: _____

EXHIBIT A
LEGAL DESCRIPTION OF RESTRICTED UNIT

EXHIBIT B TO MODERATE INCOME AFFORDABLE HOUSING DECLARATION

NOTICE OF AFFORDABILITY RESTRICTION

Recording Requested By:
City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648
Attention: Economic Development Dept./Housing Div.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

(_____, HUNTINGTON BEACH)

NOTICE IS HEREBY GIVEN by _____ ("Owner"), owner of the property located at _____, Huntington Beach, California _____, and more particularly described in Exhibit "A" attached hereto (the "Property"), that:

1. The Property is subject to a "Declaration of Covenants, Conditions and Restrictions for Moderate Income Affordable Housing" recorded on _____, 20__ as Instrument Number No. _____ in the Office of the County Recorder of the County of Orange, California (the "Resale Restrictions"). Among other things, the Resale Restrictions limit the price that the Property may be sold to an "Affordable Housing Cost" for "Moderate Income Households." Concurrently with executing this Notice, Owner has executed a Promissory Note and a Deed of Trust securing the Resale Restrictions.

2. The administration of the Resale Restrictions shall be governed by the Affordable Housing Regulations of the City of Huntington Beach, dated August 15, 2011, as they exist now and may be amended in the future.

3. In summary, the term "Affordable Housing Cost" means the purchase price that would result in monthly housing payments that do not exceed Thirty-Five Percent (35%) of One Hundred Ten Percent (110%) of the current Orange County monthly median income for a household adjusted for family size appropriate to the Unit. Family size is one plus the number of bedrooms; for example, a household of four persons is the family size of a three-bedroom unit. In determining monthly housing payments, the City will assume principal and interest payments on a conventional home mortgage after paying a ten percent (10%) downpayment. Monthly housing costs will also include homeowner's association dues, utilities, homeowner's insurance, maintenance costs and property taxes.

The effect of relying on prevailing interest rates to determine the Affordable Sales Price is to make the resale price of the Property sensitive to interest rates. For example, if interest rates rise, the resale price will fall, and if interest rates fall, the resale price will rise. This could result in the Affordable Housing Cost decreasing below the original purchase price.

5. In the event that Owner decides to sell or otherwise Transfer of the Property, Owner shall contact the City to obtain the current Affordable Housing Cost, which shall be the maximum sales price of the Property. City shall provide the Affordable Housing Cost pursuant

to its current Affordable Housing Regulations. Regarding the Affordable Housing Cost, Owner acknowledges that:

OWNER, AND EACH SUCCESSOR, HEIR OR ASSIGN OF OWNER, UNDERSTANDS THAT THE DETERMINATION OF THE AFFORDABLE HOUSING COST CAN BE MADE ONLY AT THE TIME OF A PROPOSED SALE OR OTHER TRANSFER OF THE RESTRICTED UNIT, TAKING INTO CONSIDERATION PREVAILING INTEREST RATES, THE OFFERED TERMS OF SALE, THE ECONOMIC CIRCUMSTANCES OF THE PROPOSED PURCHASER AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED, AND THAT THE TRANSFER PRICE PERMITTED HEREUNDER MAY BE LESS THAN THE FAIR MARKET VALUE OF THE SAME OR OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS COVENANT. OWNER, AND EACH SUCCESSOR, HEIR OR ASSIGN OF OWNER, FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE TRANSFER PRICE, THE PRIMARY OBJECTIVE OF THE CITY AND THESE RESALE RESTRICTIONS IS TO PROVIDE HOUSING TO MODERATE INCOME HOUSEHOLDS AT AN AFFORDABLE HOUSING COST.

Owner's Initials

6. The Resale Restrictions imposed on the Property began on _____, 20____, and expire forty-five (45) years later, on _____, 20____.

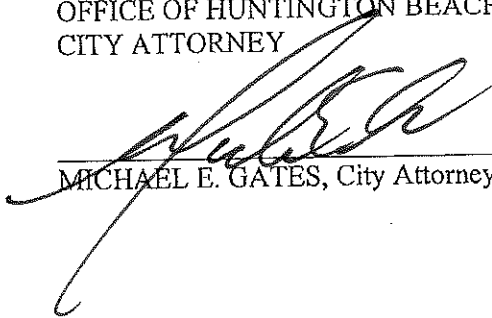
This Notice is recorded for the purpose of providing notice only and it in no way modifies the provisions of the Resale Restrictions.

Dated: _____, 20____ _____

APPROVED AS TO FORM:

OFFICE OF HUNTINGTON BEACH
CITY ATTORNEY

Dated: 5/29, 2019



MICHAEL E. GATES, City Attorney *MW*

Exhibit "A"
Legal Description

ACKNOWLEDGMENT

State of California)
) ss
County of _____)

On _____, _____ before me, _____,
(Here Insert Name and Title of the Notary
Officer)

personally appeared _____, who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing is true and correct.

WITNESS my hand and official seal.

(Signature of Notary Public) [Seal]

EXHIBIT C TO MODERATE INCOME AFFORDABLE HOUSING DECLARATION

PROMISSORY NOTE

**PROMISSORY NOTE TO SECURE
AFFORDABILITY RESTRICTIONS ON
TRANSFER OF PROPERTY
(_____, HUNTINGTON BEACH)**

THIS PROMISSORY NOTE (the "Note") is dated this ___ day of _____, 20___, between _____ ("Promissor") and the City of Huntington Beach ("City") with reference to the following facts:

A. This Promissory Note is made in reference to that property in the City of Huntington Beach, County of Orange, State of California, with the street address _____ Huntington Beach, California _____ and the Assessor's Parcel Map No. _____ (the "Property").

B. The Property is subject to a "Declaration of Covenants, Conditions and Restrictions for Moderate Income Affordable Housing" recorded on _____, 20__ as Instrument Number No. _____ in the Office of the County Recorder of the County of Orange, California (the "Resale Restrictions"). Among other things, the Resale Restrictions limit the price that the Property may be sold to an "Affordable Housing Cost" for "Moderate Income Households."

C. In summary, the term "Affordable Housing Cost" means the purchase price that would result in monthly housing payments that do not exceed Thirty-Five Percent (35%) of One Hundred Ten Percent (110%) of the current Orange County monthly median income for a household adjusted for family size appropriate to the Unit. Family size is one plus the number of bedrooms; for example, a household of four persons is the family size of a three-bedroom unit. In determining monthly housing payments, the City will assume principal and interest payments on a conventional home mortgage after paying a ten percent (10%) downpayment. Monthly housing costs will also include homeowner's association dues, utilities, homeowner's insurance, maintenance costs and property taxes.

The effect of relying on prevailing interest rates to determine the Affordable Sales Price is to make the resale price of the Property sensitive to interest rates. For example, if interest rates rise, the resale price will fall, and if interest rates fall, the resale price will rise. This could result in the Affordable Housing Cost decreasing below the original purchase price.

D. The Resale Restrictions imposed on the Property began on _____, 20___, and expire forty-five (45) years later, on _____, 20__.

E. The administration of the Resale Restrictions shall be governed by the Affordable Housing Regulations of the City of Huntington Beach, dated August 15, 2011, as they exist now and may be amended in the future.

F. Concurrently with executing this Note, Promissor has executed a Deed of Trust securing and modifying the Resale Restrictions (the "City of Deed of Trust").

G. Pursuant to the Resale Restrictions, the City approved the sale of the Property to Promissor at an Affordable Housing Cost. To insure that any further sale, transfer or assignment of the Property occurs with the City's approval and at an Affordable Sales Price, the City has required as a condition of the Promissor's purchase of the Property that Promissor execute this Note.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Incorporation of Recitals. The recitals set forth above are incorporated by reference as though fully set forth herein.

2. Amount of the Note. The Amount of this Note is the "Transfer Price" of the Property, less the then current "Affordable Housing Cost." The Transfer Price shall be determined according to the circumstances that cause the Amount of the Note to become due pursuant to Section 3 of this Note. In the case of the sale of the Property without the City's consent, the Transfer Price shall be the market sales price. In the case of the financing or refinancing of the Property without the City's consent, the Transfer Price shall be the loan amount in excess of the last loan balance on the First Mortgage that the City previously approved. In all other cases, the Transfer Price shall be the fair market value of the Property as established by the Director of Economic Development of the City pursuant to an appraisal. The term "Affordable Housing Cost" shall be defined according to the Resale Restrictions.

Promissor promises to pay the Amount of this Note when due to the City at 2000 Main Street, P.O. Box 190, Huntington Beach, California 92648, or at such other address as City may direct from time to time in writing. All sums hereunder shall be payable in lawful money of the United States of America and all sums shall be credited first to interest then due and the balance to principal.

3. Due on Sale, Transfer or Refinancing. Promissor agrees to notify the City not less than thirty (30) days prior to (i) the sale or transfer of the Property or (ii) any financing or refinancing of the Property. This Note shall be due and payable upon (i) such sale or transfer without the City's consent, (ii) the financing or refinancing of the Property without the City's consent, (iii) Promissor is no longer an occupant of the Property, or (iv) Promissor is in material default of any other obligation under the Resale Restrictions, or the City Deed of Trust.

4. Expiration of the Note Obligation. In the event Promissor does not sell or transfer the Property, does not fail to occupy the Property, does not refinance, or is not in material breach of any other provision of the Resale Restrictions or the City Deed of Trust before _____, 20___, the expiration of the Affordability Period, as that term is established under the Resale Restrictions, Promissor shall have no obligation to pay the Note Amount to City upon later sale, transfer or refinancing of the Property.

5. Default. The entire unpaid Amount of this Note shall be due and payable in full in the event of a default.

a. Events of Default. The following shall be deemed to be an event of default:

i. Failure of Promissor to pay any real property taxes or insurance premiums on the Property as they become due; or

ii. Any material breach of the Resale Restrictions or the City Deed of Trust, following the City giving notice of the breach and an opportunity to cure; or

iii. Failure of Promissor to pay the Note Amount when due.

6. This Note is secured by a Deed of Trust, dated _____, 20____, to the Housing Authority of the City of Huntington Beach, as Trustee, executed by Promissor in favor of the City.

7. Notice. All payments, notices, consents, waivers and other communications under this Agreement must be in writing and shall be deemed to have been given when (a) delivered by hand, or, (b) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case addressed as set forth below:

If to PROMISSOR: _____
Huntington Beach, CA

If to CITY: City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attention: City Clerk

and,

Economic Development Deputy Director
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

8. Governing Law. This Note is governed by and shall be construed in accordance with the laws of the State of California without giving effect to the conflict of laws principles thereof. The parties agree to personal jurisdiction in the State Courts in Orange County, California and specifically waive any claims of forum non conveniens.

9. Modification. This Note shall not be amended or modified, except in writing, signed by both parties.

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns under this Note. This Note shall not be assigned without the express written consent of City.

PROMISSOR:

Dated: _____, 20__

FOR THE CITY OF HUNTINGTON BEACH:

Dated: _____, 20__

By: _____
City Manager

APPROVED AS TO FORM

OFFICE OF HUNTINGTON BEACH CITY
ATTORNEY

Dated: 5/29, 2019

By:  _____
City Attorney *NW*

EXHIBIT D TO MODERATE INCOME AFFORDABLE HOUSING DECLARATION

AFFORDABLE HOUSING DEED OF TRUST

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Sections 6103 and 27383

Recording Requested By:
City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648
Attention: Economic Development Dept./Housing Div.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST WITH ASSIGNMENTS OF RENTS TO SECURE
AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY
(_____, Huntington Beach)

THIS DEED OF TRUST is made this ____ day of _____, 20__, by and among _____ (the "Trustor"), whose address is _____, Huntington Beach _____ and the HOUSING AUTHORITY OF THE CITY OF HUNTINGTON BEACH, a municipal corporation (the "Trustee") and the CITY OF HUNTINGTON BEACH, a public body corporate and politic (the "Beneficiary" or the "City"), both whose address is 2000 Main Street, Huntington Beach, California 92648, with reference to the following facts:

A. This Deed of Trust is made in reference to that property in the City of Huntington Beach, County of Orange, State of California, described legally in the Legal Description attached hereto as Exhibit "A" and incorporated herein with the street address _____, Huntington Beach, California _____ and the Assessor's Parcel Map No. ____ - ____ - ____ (the "Property").

B. A "Declaration of Covenants, Conditions and Restrictions for Moderate Income Affordable Housing" was recorded on _____, 20__ as Instrument Number No. _____ in the Office of the County Recorder of the County of Orange, California (the "Resale Restrictions"). The Resale Restrictions limit the price that the Property may be sold to an "Affordable Housing Cost" for "Moderate Income Households." The Affordable Housing Cost pursuant to the Resale Restrictions shall be the purchase price that would result in monthly housing payments that do not exceed Thirty-Five Percent (35%) of One Hundred Ten Percent (110%) of the current Orange County monthly median income for a household adjusted for family size appropriate to the Unit. Family size is one plus the number of bedrooms; for example, a household of four persons is the family size of a three-bedroom unit. In determining monthly housing payments, the City will assume principal and interest payments on a conventional home mortgage after paying a ten percent (10%) downpayment. Monthly housing costs will also include homeowner's association dues, utilities, homeowner's insurance, maintenance costs and property taxes. In determining monthly housing payments, the City will assume principal and interest payments on a conventional home mortgage after paying a ten percent (10%) downpayment.

C. The effect of relying on prevailing interest rates to determine the Affordable Housing Cost is to make the resale price of the Property sensitive to interest rates. For example, if interest rates rise, the resale price will fall, and if interest rates fall, the resale price will rise. This could result in the Affordable Housing Cost decreasing below the original purchase price.

D. The administration of the Resale Restrictions shall be governed by the Affordable Housing Regulations of the City of Huntington Beach as they exist now and may be amended in the future.

E. The Resale Restrictions imposed on the Property began on _____, 20__ , and expire forty-five (45) years later, on _____, 20__ (the "Affordability Period").

NOW, THEREFORE, TRUSTOR HEREBY irrevocably grants, transfers and assigns, to Trustee, in trust, with power of sale of the Property, together with (a) all buildings, improvements and fixtures, now or hereafter placed thereon, it being understood and agreed that all classes of property attached or unattached used in connection herewith shall be deemed fixtures, (b) rents, issues and profits thereof, (c) any water rights and/or stock are appurtenant or pertain to said land, and (d) all sums of money payable on the purchase price of the Property secured by a lien thereon or payable under any agreement for the sale thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits, and all sums of money payable on the purchase price of the Property secured by a lien thereon or payable under any agreement.

A. FOR THE PURPOSE OF SECURING:

1. Payment of the indebtedness evidenced by a promissory note (the "Note") executed by Trustor concurrently with this Deed of Trust. The Amount of the indebtedness is the "Transfer Price" of the Property, less the "Affordable Housing Cost." The calculation of the Amount of the indebtedness is set forth with specificity in the Note, which is on file with the Economic Development Department of the City of Huntington Beach.

2. Performance of each and every obligation, covenant, promise and agreement of the Resale Restrictions.

B. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

1. Trustor agrees for itself, and its successors and assigns, and every successor to Trustor's interest in the Property, or any part thereof throughout the Affordability Term, to perform all obligations due under the Resale Restrictions, as set forth below:

(a) The Property shall only be owned and occupied by persons or families of "Moderate Income." "Moderate Income" shall mean persons or families earning no more than one hundred twenty percent (120%) of the Orange County median income, adjusted for appropriate family size.

(b) The Property may only be sold at an "Affordable Housing Cost" to households of "Moderate Income," as those terms are defined in current Affordable Housing Regulations as adopted by the City of Huntington Beach. Generally, those Regulations define Affordable Housing Cost to mean that purchase price which would result in monthly housing payments which do not exceed Thirty-Five Percent (35%) of One Hundred Ten Percent (110%) of the current Orange County monthly median income for a household equal to the number of bedrooms in the unit plus one (1) person. In determining monthly housing payments, the Regulations assume principal and interest payments on a conventional home mortgage after paying a ten percent (10%) downpayment. The mortgage interest rate will be the prevailing Fannie Mae or Freddie Mac thirty (30) year mortgage rate, or a City-selected equivalent. Monthly housing costs will also include homeowner's association dues, utilities, homeowner's insurance, maintenance costs and property taxes.

(c) The Trustor shall further comply with the Affordable Housing Regulations of the City of Huntington Beach as they exist now and may be amended in the future.

(d) No transfer of the Property shall occur until the City of Huntington Beach determines (a) that the proposed purchaser intends to occupy the Property as the proposed purchaser's principal residence, (b) that the proposed purchaser is a person or family of Moderate Income, and (c) that the proposed transfer occurs at an Affordable Housing Cost. The City of Huntington Beach shall not be obligated to approve a transfer until and unless the proposed purchaser has submitted to the City of Huntington Beach such information and completed such forms as the City of Huntington Beach shall request to certify the proposed purchaser's intent with respect to its residency of the Property and its gross income, and the proposed purchaser has submitted an affidavit disclosing and certifying the amount of the proposed purchase price. Prior to conveyance of the Property, each approved purchaser shall submit to the City of Huntington Beach an executed disclosure statement which certifies that the purchaser is aware that the purchaser may only sell the unit at an Affordable Housing Cost to a Moderate Income person or family, that the maximum permitted sales price may be less than fair market value and that the unit must be owner-occupied at all times and cannot be rented or leased.

TRUSTOR AND EACH SUCCESSOR, HEIR OR ASSIGN OF TRUSTOR UNDERSTANDS THAT THE DETERMINATION OF THE AFFORDABLE HOUSING COST CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION INTEREST RATES, THE TERMS OF SALE OFFERED TO AND THE ECONOMIC CIRCUMSTANCES OF THE PROPOSED PURCHASER AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED, AND THAT THE TRANSFER PRICE PERMITTED HEREUNDER MAY BE LESS THAN THE FAIR MARKET VALUE OF THE PROPERTY AND MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS RESTRICTION. TRUSTOR AND EACH SUCCESSOR, HEIR OR ASSIGN OF TRUSTOR FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE

TRANSFER PRICE THE PRIMARY OBJECTIVE OF THE BENEFICIARY
AND THIS DEED OF TRUST IS TO PROVIDE HOUSING TO ELIGIBLE
PERSONS OR FAMILIES AT AN AFFORDABLE HOUSING COST.

Trustor Initials

(e) The City of Huntington Beach may impose any conditions on the approval of any transfer of the Property as it determines are reasonably necessary for the effective administration of its Affordable Housing Program.

2. Trustor covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the said property, nor shall Trustor 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 in said property.

Trustor and its successors and assigns, shall refrain from restricting the rental or lease (if permitted by Trustor) or sale of said property on the basis of race, color, religion, sex, marital status, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessee or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under to through him or her, establish or permit any such

practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.”

(c) In contracts: “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, religion, sex, marital status, ancestry or national origin, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessee or vendees of the premises.”

Nothing in this Section 2 shall be construed to authorize the rental or lease of the Property if such rental or lease is not otherwise permitted by the Resale Restrictions.

3. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Deed of Trust shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest.

4. Trustor has made certain representations and disclosures as a requirement under the Resale Restrictions in order to induce Beneficiary to approve the sale of the Property to Trustor. In the event that Trustor has made any material misrepresentation or failed to disclose any material fact regarding said transaction, Beneficiary at its option and without notice, shall have the right to declare a material breach of the Resale Restrictions and the Note. Beneficiary may make a written declaration of default and demand for sale as in paragraph No. 6 herein set forth. Trustee, upon presentation to it of an affidavit signed by Beneficiary setting forth facts showing a default by Trustor under this paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

5. All covenants without regard to technical classification or designation shall be binding for the benefit of the Beneficiary and such covenants shall run in favor of the Beneficiary for the entire period during which such covenants shall be in force and effect, without regard to whether the Beneficiary is or remains an owner of any land or interest therein to which such covenants relate. The Beneficiary, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any action at law or suits in equity or other proper legal proceedings to enforce and to cure such breach to which it or any other beneficiaries of these covenants may be entitled during the term specified for such covenants, except the covenants against discrimination which may be enforced at law or in equity at any time in perpetuity.

6. Upon default by Trustor in the obligations of the Note, in the performance of any obligation under this Deed of Trust or under the terms of any First Lender’s Deed of Trust which is or appears to be prior or superior to this Deed of Trust, Beneficiary may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee of a written declaration of default and demand for sale and a written notice of default and election to sell the Property. Default in the payment of any indebtedness secured by this Deed of Trust, in the

obligation of the Note, or in the performance of any agreement under this Deed of Trust constitutes a default only under this Deed of Trust and the Note and does not constitute a default under the First Deed of Trust. Trustee shall cause the notice of default to be recorded. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note, and all documents evidencing any additional expenditures secured by this Deed of Trust. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in such notice of sale, whether as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder qualified under the Resale Restrictions and this Deed of Trust in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its Deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recital in such Deed of any matters of fact shall be conclusive of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale. Trustee may also sell at any such sale and as part thereof any shares of corporate stock securing the obligations secured hereby, and Trustor waives demand and notice of such sale. (Beneficiary at its option may also foreclose on such shares by independent pledge sale, and Trustor waives demand and notice of such sale.) After deducting all costs, fees and expenses of Trustee, and of this Trust, including cost of evidence of title in connection with this sale, Trustee shall apply the proceeds of sale to payment, first; all sums expended under the terms hereof, not then repaid, with accrued interest at the rate then payable under the First Lender Deed of Trust secured hereby, and then of all other sums secured hereby, and, if there are any proceeds remaining, shall distribute them to the person or persons legally entitled thereto.

7. Trustor shall keep the Property in good condition and repair; to allow Beneficiary or its representatives to enter and inspect the Property at all reasonable times and access thereto, shall be permitted for that purpose; not to remove or demolish any building thereon; not to make alterations thereto without the consent of the Beneficiary; to suffer or permit no change in the general nature of the occupancy of the Property without Beneficiary's written consent; to complete or restore promptly and in good workmanlike manner any building which may be constructed, damaged or destroyed thereon, including, without restricting the generality of the foregoing, damage from termites and dry-rot; to pay when due all claims for labor performed and materials furnished in connection with the Property and not to permit any mechanic's lien against the Property; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon; not to initiate or acquiesce in any zoning reclassification without Beneficiary's written consent; not to commit or permit waste thereon; not to commit, suffer or permit any act upon the Property in violation of the law; to paint, cultivate, irrigate, fertilize, fumigate, prune, and do all other acts that from the character or use of the Property may be reasonably necessary; and to promptly pay all amounts due others upon agreements of lease or conditional sale of all fixtures, furnishings and equipment located thereon.

8. Trustor shall provide, and maintain in force at all times with respect to the Property, fire and other types of insurance as may be required by Beneficiary. All of such insurance shall have a loss payable endorsement in favor of Beneficiary, shall be for a term and in

form, content, amount and in such companies as may be satisfactory to Beneficiary, and the policies therefore shall be delivered to and remain in possession of Beneficiary as further security for the faithful performance of these trusts. At least thirty (30) days prior to the expiration of any such insurance policy, a policy or policies renewing or extending such expiring insurance shall be delivered to Beneficiary together with written evidence showing payment of the premium therefore and, in the event any such insurance policy and evidence of the payment of the premium therefore are not so delivered by Trustor to Beneficiary, Trustor by executing this Deed of Trust specifically requests Beneficiary to obtain such insurance and Beneficiary, without obligation to do so, without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may obtain such insurance through or from any insurance agency or company acceptable to it, pay the premium thereof, and may add the amount thereof to the indebtedness secured hereby, which amount shall bear a like rate of interest. Beneficiary may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy delivered to Beneficiary pursuant hereto and any information concerning the loan secured hereby. Neither Trustee nor Beneficiary shall be responsible for such insurance or for the collection of any insurance monies, or for any insolvency of any insurer or insurance underwriter. In case of insurance loss, Beneficiary is hereby authorized either (a) to settle and adjust any claim under the insurance policies provided for in this document without the consent of the Trustor, or (b) to allow Trustor to agree with the insurance company or companies on the amount to be paid upon the loss. In either case, the Beneficiary is authorized to collect and make receipt of any such insurance money. If Trustor is obligated to restore or replace the damaged or destroyed buildings or improvements under the terms of any lease or leases which are or may be prior to the lien of this Deed of Trust and such damage or destruction does not result in cancellation or termination of such lease, such proceeds, after deducting therefrom any expenses incurred in the collection thereof, shall be used to reimburse the Trustor for the cost of rebuilding or restoring the buildings or improvements on said premises. In all other cases, such insurance proceeds shall either be applied for the cost of the rebuilding or restoring the buildings or improvements on said premises. Such buildings and improvements shall be so restored or rebuilt as to be of at least equal value and substantially the same character as prior to the damage or destruction, and shall be in a condition satisfactory to Beneficiary. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Any and all unexpired insurance shall inure to the benefit of, and pass to the purchaser of, the property conveyed at any Trustee sale held hereunder.

9. Trustor shall pay: (a) at least ten (10) days before delinquency, all general and special City and County taxes, and all assessments on appurtenant water stock, affecting the Property, (b) when done, all special assessments for public improvements, without permitting any improvement bond to issue for any special assessment, (c) when done, all encumbrances, charges and lines, with interest, on the Property, or any part thereof, which are or appears to be prior to superior hereto, (d) if the security of this Deed of Trust is leasehold estate, to make any payment or do any act required of the Lessee or its successor in interest under the terms of the instrument or instruments creating said leasehold, (e) all costs, fees and expenses of this trust, (f) for any statement regarding the obligation secured hereby any amount demanded by Beneficiary not to exceed the maximum allowed by law thereof at the time when such request is made, (g) such other charges for services rendered by Beneficiary and furnished at Trustor's request or that of any successor in interest to Trustor as the Beneficiary may deem reasonable.

10. Should Trustor fail to make any payment or do any act as provided in this Deed of Trust, the Beneficiary or Trustee, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes, (b) commence, appear in, or defend any action or proceeding purporting to affect the security hereof or the property covered by this Deed of Trust, or the rights or powers of Beneficiary or Trustee, (c) pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either is or appears to be prior or superior hereto, and (d) in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees. Trustor agrees to repay any amount so expended on demand of Beneficiary, and any amount so expended may be added by Beneficiary to the indebtedness secured hereby and shall bear a like rate of interest.

11. Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof or the Property which is covered by this Deed of Trust, or the rights or powers of Beneficiary or Trustee, and whether or not Trustor so appears or defends, to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear by virtue of being made a party defendant or otherwise irrespective of whether the interest of Beneficiary or Trustee in the Property is directly questioned by such action, including any action for the condemnation or partition of said premises, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

12. Trustor shall pay immediately and without demand, all sums expended under the terms of this Deed of Trust by Beneficiary or Trustee, with interest from the date of expenditure at the rate which the principal obligation secured hereby bears at the time such payment is made, and the repayment of such sums shall be secured hereby.

13. Should Trustor or any successor in interest to Trustor in the Property drill or extract, or enter into a lease for drilling or extraction of oil, gas or other hydrocarbon substances or any mineral of any kind or character, or sell, convey, further encumber, or alienate the Property, or any party thereof, or any interest therein, or be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, Beneficiary shall have the right, at its option, to declare any obligations secured hereby irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable, and no waiver of this right shall be effective unless in writing.

14. Any award, settlement or damages for injury or damages to the Property, or in construction with the transaction financed by such loan, and any award of damages in connection with any condemnation for public use of or injury to the Property, or any part thereof, is hereby assigned and shall be paid to Beneficiary, who may apply or release such monies received by it in such manner and with the same effect as above provided for the disposition of proceeds of fire or other insurance.

15. By accepting payment of any sums secured by this Deed of Trust after its due date, or by making any payment, performing any act on behalf of Trustor, that Trustor was obligated hereunder, but failed, to make, or perform, or by adding any payment so made by Beneficiary to the indebtedness secured hereby, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare a default for failure so to pay.

16. At any time, or from time to time, without liability of the Beneficiary or Trustee thereof, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, or the lien of the Deed of Trust upon the remainder of the Property for the full amount of the indebtedness then or thereafter secured hereby, or the rights or powers of Beneficiary or the Trustee with respect to the remainder of the Property, Trustee may: (a) reconvey any part of the Property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon, (d) join in any agreement subordinating the lien or charge hereof.

17. The lien hereof shall remain in full force and effect during any postponement or extension of time of payment of the indebtedness secured hereby, or any part thereof.

18. As additional security, Trustor irrevocably assigns to Beneficiary the rents, issues, and profits of the Property for the purposes and upon the terms and conditions set forth below. This assignment shall not impose upon Beneficiary any duty to produce rents from the property affected by this Deed of Trust, or cause Beneficiary to be (a) "mortgages in possession" for any purpose; (b) responsible for performing any of the obligations of the lessor under any lease; or (c) responsible for any waste committed by lessees or any other parties, for any dangerous or defective condition of the property affected by this Deed of Trust, or for any negligence in the management, upkeep, or control of such rights to rents, issues and profits is not contingent upon, and may be exercised without possession of, the property affected by this Deed of Trust.

Beneficiary confers upon Trustor a license ("License") to collect and retain the rents, issues and profits of the property affected by this Deed of Trust as they become due and payable, until the occurrence of a default hereunder. Upon such default, the License shall be automatically revoked and Beneficiary may collect and retain the rents, issues and profits without notice and without taking possession of the property affected by this Deed of Trust. This right to collect rents, issues and profits shall not grant to Beneficiary or Trustee the right to possession, except as otherwise provided herein; and neither said right, nor termination of the License, shall impose upon Beneficiary or Trustee the duty to produce rents, issues or profits or maintain all or any part of the Property affected by this Trust Deed. If Trustor shall default as aforesaid, Trustor's right to collect any such money shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, issues, royalties and profits and shall be authorized to, and may, without notice and irrespective of whether declaration of default has been delivered to Trustee and without regard to the adequacy of the security for the indebtedness secured hereby, either personally or by attorney or agent without bringing any action or proceeding, or by receiver to be appointed by the Court, enter into possession and hold, occupy,

possess and enjoy the Property, make, cancel, enforce and modify leases, obtain and eject tenants, and set and modify rents and terms of rents, and to sue, and to take, receive and collect all or any part of the said rents, issues, and profits of the property affected hereby, and after paying such costs of maintenance, operation of the Property, and of collection including reasonable attorneys' fees, as in its judgment it may deem proper, to apply the balance upon any indebtedness then secured hereby, the rents, issues, royalties and profits of the Property being hereby assigned to Beneficiary for said purposes. The acceptance of such rents, issues, royalties and profits shall not constitute a waiver of any other right which Trustee or Beneficiary may enjoy under this Deed of Trust or under the laws of California. Failure of or discontinuance by Beneficiary at any time, or from time to time, to collect any such rents, issues, royalties or profits shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power and authority to collect the same. The receipt and application by said Beneficiary of all such rents, issues, royalties and profits pursuant hereto, after execution and delivery of declaration of default and demand for sale as hereinafter provided, or during the pendency of Trustee's sale proceedings hereunder, shall not cure such breach or default nor affect sale proceedings, or any sale made pursuant thereto, but such rents, issues, royalties and profits, less all costs of operation, maintenance, collection and reasonable attorneys' fees, when received by Beneficiary, shall be applied in reduction of the indebtedness secured hereby, from time to time, in such order as Beneficiary may determine. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor subordination of the lien or charge of this Deed of Trust to, any such tenancy, lease or option.

19. If the security of this Deed of Trust is a leasehold estate, the Trustor agrees that: (a) the term "Lease" as used herein shall mean the lease creating the "leasehold estate" (b) Trustor shall not amend, change or modify his leasehold interest, or the Lease, or agree to do so, without the written consent of the Beneficiary; (c) Trustor will promptly advise Beneficiary regarding any notice, request or demand received by him from the lessor under the Lease and promptly furnish Beneficiary with a copy of any such notice, request or demand; (d) as long as any of the indebtedness secured hereby shall remain unpaid, unless the Beneficiary shall otherwise consent thereto in writing, the leasehold estate shall not merge with the fee title but shall always be kept separate and distinct, notwithstanding the union of said estates in any party; (e) Trustor agrees that it will promptly, strictly, and faithfully perform, fulfill, and comply with all covenants, agreements, terms, conditions and provisions under any lease affecting the premises and to neither do anything, nor to permit anything to be done which may cause modification or termination of any such lease or of the obligations of any lessee or person claiming through such lease or the rents provided for therein or the interest of the lessor or the Beneficiary therein or thereunder. Trustor further agrees he will not execute a Deed of Trust or mortgage which may be or become superior to any leasehold estate that is security for this Deed of Trust. In the event of a violation of any of the covenants set forth in this paragraph, Beneficiary shall have the right, at its option, to declare all sums secured hereby immediately due and payable. Consent to or waiver of one of said violations shall not be deemed to be a consent to or waiver of any other violation. If the security for this Deed of Trust is a leasehold estate, the term "property" as used in this Deed of Trust shall be deemed to mean the leasehold estate whenever the context so requires for the protection of the Beneficiary.

20. Trustor waives, to the fullest extent permissible by law, the right to plead any statute of limitations as a defense to any demand secured hereby.

21. Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of property substitution of such successor Trustee or Trustees, who shall, without conveyances from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties, including but not limited to the power to reconvey the whole or any part of the property covered by this Deed of Trust. Such instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded. If notice of default shall have been recorded, this power of substitution cannot be exercised until after the costs, fees and expenses of the then acting Trustee shall have been paid to such Trustee, who shall endorse receipt thereof upon such instrument. The procedures herein provided for substitution of Trustee shall not be exclusive of other provisions for substitution provided by law.

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

23. That in the event of a demand for, and the preparation and delivery of a written statement regarding the obligations secured by this Deed of Trust pursuant to Sections 2943 and 2954 of the *Civil Code* of California, Beneficiary shall be entitled to make a reasonable charge, not exceeding the maximum amount which is permitted by law at the time the statement is furnished. Beneficiary may also charge Trustor a reasonable fee for any other services rendered to Trustor or rendered in Trustor's behalf in connection with the Property of this Deed of Trust, including changing Beneficiary's records, pertaining to this Deed of Trust in connection with the transfer of the Property, or releasing an existing policy of fire insurance or other casualty insurance held by Beneficiary and replacing the same with another such policy.

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

25. Any notice which any party hereto may desire or be required to give to the other party shall be in writing. The mailing thereof must be certified mail addressed to the Trustor at his address hereinabove set forth or to the Beneficiary at his office or at such other place as such parties hereto may designate in writing.

THE UNDERSIGNED REQUEST that a copy of any notice of default and of any notice of sale hereunder be mailed to the parties' respective addresses hereinbefore set forth.

TRUSTOR

Dated: _____

By: _____

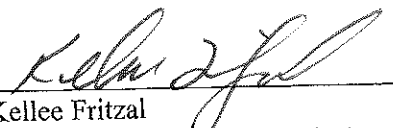
CITY OF HUNTINGTON BEACH

Dated: _____

By: _____
_____, City Manager

HOUSING AUTHORITY OF THE CITY OF HUNTINGTON BEACH

Dated: 5/29/2019

By: 
Kellee Fritzel
Deputy Director of Economic Development

APPROVED AS TO FORM:

OFFICE OF HUNTINGTON BEACH CITY ATTORNEY

Dated: 5/29/2019


By: 
MICHAEL E. GATES, City Attorney

Exhibit "A"

ACKNOWLEDGMENT

State of California)
) ss
County of _____)

On _____, _____ before me,
_____,
(Here Insert Name and Title of the Notary Officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

_____[Seal]
(Signature of Notary Public)

EXHIBIT C
(Unit Release Agreement)

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City Clerk
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Unit Release is recorded at the request and for the benefit of the City of Huntington Beach and is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 27383.

UNIT RELEASE AGREEMENT

This UNIT RELEASE (the "Unit Release") is being entered into by and between the City of Huntington Beach, a California municipal corporation, ("City"), and Franklin School – Huntington Beach, a Delaware Limited Partnership ("Owner"). City and Owner are hereinafter sometimes referred to collectively as the "Parties" and individually as a "Party."

RECITALS:

A. Owner is the owner in fee of that certain Lot No(s) within Tract No. 18147 located at _____ Street in the City of Huntington Beach, Irvine, and said residential unit(s) are more particularly described in the legal description attached hereto as Attachment 1 (the "Released Unit(s)") and incorporated by this reference.

B. On or about _____, 2019, Owner and City entered into that certain Affordable Housing Agreement for Tract No. 18147 relating to the Tract. The Affordable Housing Agreement is recorded against the Tract. Any capitalized terms not defined herein shall have the meanings ascribed to such terms in the Affordable Housing Agreement.

C. Pursuant to the Affordable Housing Agreement, when Owner sells any of the Lots in Tract No. 18147, and Owner is otherwise in compliance with the Affordable Housing Agreement, City shall execute and record or cause to be executed and recorded for the benefit of the Released Unit(s) this Unit Release, whereupon the Released Unit(s) would be released from the terms and conditions of the Affordable Housing Agreement.

D. Pursuant to the Affordable Housing Agreement, owner recorded against Lot No. _____ a covenant restricting the sale of the designated three bedroom home on the Lot to be sold at a Moderate Income Price for, subject to a forty-five (45) year term the ("Restricted Unit").

E. Pursuant to the Affordable Housing Agreement, when the Owner sells each of the Market Rate Units on the Property pursuant to the terms and conditions of the Affordable Housing Agreement, Owner and City may execute and record or cause to be executed and recorded for the benefit of each Market Unit this Unit Release, whereupon the Market Unit(s) would be released from the terms and conditions of the Affordable Housing Agreement.

COVENANTS:

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, Owner and City agree as follows:

1. From and after the date that this Unit Release is recorded, the Released Unit (5) shall be released from and not be burdened by any of the provisions of the Affordable Housing Agreement.

2. City shall cooperate in executing any further or additional documents, in recordable form if necessary, as may be reasonably requested by any existing or prospective owner or holder of a mortgage or deed of trust of, in, or to any of the Released Unit(s) to confirm said Unit Release. The form of any such additional documents shall be prepared by such existing or prospective owner or holder at no cost to City, and shall be in a form approved by the City Attorney.

3. Nothing in this Unit Release terminates or releases, or shall be deemed or construed to terminate or release, the Affordable Housing Covenant recorded against the Restricted Unit.

4. No later than ten (10) days after receipt by Owner of a conformed copy of the executed Unit Release from the Orange County Recorder's Office, Owner shall deliver a copy of said conformed copy to City at the address identified in the Affordable Housing Agreement for delivery of notices.

IN WITNESS WHEREOF, City has executed this Unit Release from as of this ____ day of _____, _____.

CITY OF HUNTINGTON BEACH,
a California municipal corporation

By: _____

Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY


MV MICHAEL E. GATES, City Attorney
Dated: 5/29, 2019

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On _____, before me, _____,
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public (Seal)

ATTACHMENT 1
TO UNIT RELEASE

LEGAL DESCRIPTION OF RELEASED UNIT(S)

EXHIBIT D

(Release of Affordable Housing Agreement)

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City Clerk
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Release is recorded at the request and for the benefit of the City of Huntington Beach and is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 27383.

**RELEASE OF AFFORDABLE HOUSING
AGREEMENT FOR TRACT NO. 18147
(SEA DANCE RESIDENTIAL
DEVELOPMENT)**

This RELEASE is being entered into as of _____, 20__ by and between the City of Huntington Beach, a California municipal corporation, and the Housing Authority of the City of Huntington Beach, a public agency (collectively, "City"), on the one hand, and Franklin School – Huntington Beach, a Delaware Limited Partnership ("Owner"), on the other hand. City and Owner are hereinafter sometimes referred to collectively as the "Parties" and individually as a "Party."

RECITALS:

- A. City is a municipal corporation and charter city organized and existing pursuant to the Constitution and laws of the State of California.
- B. The Housing Authority of the City of Huntington Beach is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California at *Health and Safety Code* Section 34240.
- C. Owner was the owner and developer of the former Franklin School property known as Tract Map No. 18147, more particularly described in the legal description attached hereto as Exhibit "A" (the "Property").
- D. Pursuant to the Condition No. 7 of Tentative Tract Map No. 18147, on or about _____, 2019, Owner and City entered into that certain Affordable Housing Agreement for Tract No. 18147 (the "Affordable Housing Agreement") relating to the Property, recorded on _____, 2019, as Instrument No. _____ of the Official Records for Orange County, California.
- E. Pursuant to Tentative Tract Map No. 18147, Owner has developed the Property as a fifty one (51) lot, single family home subdivision. Further, Owner has met all the terms and conditions of the Affordable Housing Agreement, including the following:
 1. Owner has paid the City Two Million, One Hundred Fifty Thousand, Nine Hundred Sixteen Dollars (\$2,150,916.00) for development of at least four (4) off-site, two-bedroom rental units for very low or extremely low-income persons.

2. Owner has recorded against one three-bedroom unit on the Property a covenant limiting the sales price of the unit to a price affordable for moderate income households for a term of forty-five (45) years.
3. The Housing Authority, or non-profit entity has purchased the property for the Very Low Income Affordable Units.
4. The City has approved all discretionary land use entitlements for development of the Very Low Income Affordable Units.

F. Pursuant to the Affordable Housing Agreement, when the Owner has complied with all the terms and conditions of the Affordable Housing Agreement, City and Housing Authority shall execute for recordation a Release of the Affordable Housing Agreement.

COVENANTS:

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, Owner and City agree as follows:

1. From and after the date that this Release is recorded, the Property shall be released from, not be burdened by any of the provisions of the Affordable Housing Agreement.
2. Nothing in this Release terminates or releases, or shall be deemed or construed to terminate or release, the Affordable Housing Covenant recorded against the Affordable Unit within Tract No. 18147 owned in fee by a Qualified Purchaser or said Qualified Purchaser's successor in interest or assignee.
3. No later than ten (10) days after receipt by Owner of a conformed copy of the recorded Release from the Orange County Recorder's Office, Owner shall deliver a copy of said conformed copy to City at the address identified in the Affordable Housing Agreement for delivery of notices.

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

CITY OF HUNTINGTON BEACH,
a California municipal corporation

By: _____

Its: _____

ATTEST:

APPROVED AS TO FORM:
CITY ATTORNEY

City Clerk

Dated: 5/29, 2019


MICHAEL E. GATES, City Attorney

ATTACHMENT 1 TO AFFORDABLE HOUSING AGREEMENT RELEASE

LEGAL DESCRIPTION OF TRACT NO. 18147

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On _____, before me, _____, Notary Public
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

(Seal)