

**AFFORDABLE HOUSING AGREEMENT**

**by and between**

**THE HUNTINGTON BEACH HOUSING AUTHORITY,**

**and**

**AMERICAN FAMILY HOUSING, A CALIFORNIA NONPROFIT PUBLIC BENEFIT  
CORPORATION, AND NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA,  
A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION  
(17251 Beach Boulevard)**

**May 17, 2022**

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## **AFFORDABLE HOUSING AGREEMENT**

**(17251 Beach Boulevard)**

THIS AFFORDABLE HOUSING AGREEMENT (“**Agreement**”) is dated for reference purposes as of May 17, 2022 and is being entered into by and between THE HUNTINGTON BEACH HOUSING AUTHORITY, a public body, corporate and politic (the “**Authority**”), on the one hand, and AMERICAN FAMILY HOUSING, a California nonprofit public benefit corporation, and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation (together, “**Borrower**”), on the other hand. The Authority and Borrower agree as follows:

### PART 1. SUBJECT OF AGREEMENT

#### Section 101 Purpose of this Agreement

On September 9, 2021, the California Department of Housing and Community Development (“**HCD**”) issued a Notice of Funding Availability (Round 2) for Project Homekey (“**Homekey Program**”) to sustain and rapidly expand the inventory of housing for people experiencing homelessness or are at-risk of homelessness.

The purpose of this Agreement is to provide for the Authority’s financing of a portion of rehabilitation costs for Interim Housing for a Homekey Program project consisting of the acquisition and rehabilitation of a fully operational motel located at the hereinafter defined Property into a 64-unit residence, 31 units for people experiencing chronic homelessness, 31 units for people experiencing homelessness, and 2 units for staff (“**Project**”). The Project will initially be developed as hereinafter defined Interim Housing and thereafter converted to hereinafter defined Permanent Housing. Whenever the term “Project” is used herein, except as otherwise expressly provided, it means and includes both the Interim Housing phase and the Permanent Housing phase. The County of Orange will ground lease the Property to Borrower to develop and operate the Project.

Immediately following the date of this Agreement, Borrower shall perform necessary rehabilitation or other construction activities to the Improvements in order for the Improvements to be used as Interim Housing. The Interim Housing shall be permitted for a period of not more than five (5) years following the date of this Agreement, which 5-year period may be extended with the prior written approval of the Authority, which approval may be withheld if the hereinafter defined Permanent Housing Construction Financing Event has not occurred by the time set forth therefor in the Schedule of Performance; provided that such extension may not exceed a period of three (3) years for a total period of eight (8) years of Interim Housing use. For the avoidance of doubt, references in this Agreement to rehabilitation of the Improvements shall, unless otherwise expressly noted, refer both to the rehabilitation or other construction activities in order for the Improvements to be used as Interim Housing and the substantial rehabilitation or other construction work that comprises the Project after the Interim Housing to convert the Interim Housing to Permanent Housing.

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The development of the Project pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of Huntington Beach and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

## Section 102 Definitions

For purposes of this Agreement, the following capitalized terms not defined elsewhere in this Agreement shall have the following meanings:

**“Affiliate”** means (1) any Person directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, any company for which such Person acts in any such capacity. The term “control” as used in the immediately preceding sentence, shall mean the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation, limited liability company or limited partnership is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation, limited liability company or limited partnership, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity.

**“Affordable Rent”** has the meaning set forth in California Health and Safety Code section 50053(b)(1) for Extremely Low Income households.

**“Affordable Units”** means the 62 housing units to be developed as part of the Project, 31 of which shall be used for people experiencing chronic homelessness and 31 of which shall be used for people experiencing homelessness.

**“Agreement Containing Covenants”** means the Agreement Containing Covenants (Including Rental Restrictions) to be recorded against Borrower’s leasehold interest in the Property substantially in the form attached to this Agreement as Attachment No. 8.

**“Area Median Income”** means the area median income for Orange County as published annually by California’s Housing and Community Development Department pursuant to Health and Safety Code section 50093.

**“Assignment of Agreements”** means an instrument substantially in the form attached to this Agreement as Attachment No. 7.

**“Authority Deed of Trust”** means the leasehold deed of trust securing the Authority Loan, to be recorded against Borrower’s leasehold interest in the Property substantially in the form attached to this Agreement as Attachment No. 6.

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**“Authority Loan”** shall mean the loan from the Authority to Borrower pursuant to the terms and conditions described in this Agreement in the original principal amount of Two Million Four Hundred Thousand Dollars (\$2,400,000) from the Authority’s Low and Moderate Income Housing Asset Fund, secured by the Authority Deed of Trust and the other Authority Loan Documents and having a lien on the Property that is first in priority over any other loans.

**“Authority Loan Documents”** means the Authority Note, Authority Deed of Trust, and Assignment of Agreements.

**“Authority Note”** means the promissory note evidencing the Authority Loan substantially in the form attached to this Agreement as Attachment No. 5.

**“Chronically Homeless”** is defined in accordance with Part 578.3 of Title 24 of the Code of Federal Regulations.

**“Completion – Interim Housing”** means the point in time when the rehabilitation or other construction work for the Interim Housing portion of the Project has been completed in accordance with this Agreement as determined by the Executive Director.

**“Completion – Permanent Housing”** means the point in time when all of the following shall have occurred: (1) issuance of a certificate of occupancy by the City of Huntington Beach for the Permanent Housing portion of the Project, if applicable; (2) recordation of a Notice of Completion by Borrower or its contractor for the substantial rehabilitation or other construction work for the Permanent Housing portion of the Project; (3) certification by the project architect that the substantial rehabilitation or other construction work for the Permanent Housing portion of the Project (with the exception of minor “punchlist” items) has been completed in a good and workmanlike manner in accordance with the approved plans and specifications; (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against of all mechanic’s liens that have been recorded or stop notices that have been delivered for the substantial rehabilitation or other construction work for the Permanent Housing portion of the Project; and (5) the substantial rehabilitation or other construction work for the Permanent Housing portion of the Project has been completed in accordance with this Agreement.

**“Conversion Date”** means the date of the conversion of any conventional financing for the Permanent Housing phase of the Project to the permanent phase following the occurrence of Completion-Permanent Housing.

**“County”** means the County of Orange.

**“Development Costs”** means all hard and soft costs which are actually incurred by Borrower for the development and construction of the Interim Housing use of the Property.

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**“Environmental Indemnity”** means an instrument substantially in the form attached to this Agreement as Attachment No. 9.

**“Escrow”** shall mean that certain escrow with Escrow Agent, which has been established to close the Authority Loan.

**“Escrow Agent”** means Commonwealth Land Title Company or another escrow agent mutually acceptable to Authority and Borrower.

**“Extremely Low Income”** means persons and families whose income, determined in accordance with section 6914 of Title 25 of the California Code of Regulations, does not exceed the income limits for Extremely Low Income households in Orange County, adjusted for family size, published approximately annually by HCD. If HCD discontinues publishing such income limits, the term “Extremely Low Income” shall mean a household income that does not exceed 30% of the Area Median Income, adjusted for family size.

**“Executive Director”** means the Executive Director of the Authority, or designee.

**“Force Majeure Event”** has the meaning set forth in Section 602a.

**“Hazardous Materials”** has the meaning set forth in the Environmental Indemnity.

**“Homeless”** is defined in accordance with Part 578.3 of Title 24 of the Code of Federal Regulations.

**“Improvements”** means and includes all buildings (including above-ground and below ground portions thereof, and all foundations and supports), building systems and equipment (such as HVAC, electrical and plumbing equipment), physical structures, fixtures, hardscape, paving, curbs, gutters, sidewalks, fences, landscaping and all other improvements of any type or nature whatsoever now or hereafter made, constructed and/or rehabilitated on the Property.

**“Interim Housing”** means temporary shelter or lodging for the Target Population, and which does not require occupants to sign leases or occupancy agreements, or to pay any rent, fees, or charges. Except as may be required by applicable law, no occupant of the Interim Housing shall be considered a tenant, renter, or permanent resident.

**“Legal Description”** means the legal description of the Property attached to this Agreement as Attachment No. 2.

**“Loan Closing”** means the point in time when (i) all conditions precedent to the Loan Closing as set forth in this Agreement have been satisfied; and (ii) the Authority Loan Documents, Environmental Indemnity, Notice of Affordability Restrictions, and Agreement Containing Covenants are executed (and recorded against Borrower’s leasehold interest in the Property as applicable) in accordance with all of the terms and conditions of this Agreement.

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**“Loan Closing Date”** means the date on which the Loan Closing is scheduled to take place.

**“Notice of Affordability Restrictions”** means the Notice of Affordability Restrictions Upon Transfer of Property to be recorded against Borrower’s leasehold interest in the Property substantially in the form attached to this Agreement as Attachment No. 10.

**“Permanent Housing”** or **“Permanent Supportive Housing”** as used herein means both (i) housing, dwellings, or other living accommodations where the landlord does not limit the tenant’s length of tenancy, the landlord does not restrict the tenant’s movements, and the tenant has a lease and is subject to the rights and responsibilities of tenancy; and (ii) the same meaning as “supportive housing,” as defined at Health and Safety Code section 50675.14, subdivision (b)(2), except that it shall include associated facilities if used to provide services to housing residents.

**“Permanent Housing Construction Financing Event”** shall mean the point in time when all of the following events have occurred or have been satisfied as determined by the Executive Director:

(i) Borrower shall have complied with all applicable provisions of federal, state, and local laws pertaining to the Permanent Housing phase of the Project, including the obligation to comply with environmental laws, including but not limited to the applicable requirements of CEQA and NEPA (if applicable);

(ii) Borrower has prepared and submitted for approval by the Authority a reasonably detailed scope of development for the Permanent Housing phase of the Project which is consistent with the terms of this Agreement;

(iii) Borrower has prepared and submitted for approval by the Authority a reasonably detailed schedule of performance for the Permanent Housing phase of the Project which is consistent with the terms of this Agreement;

(iv) Borrower has prepared and submitted for approval by the Authority a reasonably detailed sources and uses project budget for the Permanent Housing phase of the Project;

(v) Borrower has prepared and submitted for approval by the Authority a reasonably detailed method of financing for the Permanent Housing phase of the Project setting forth the financing for the Permanent Housing phase for the Project including the form, amount, and terms of financing for the Permanent Housing phase of the Project, including without limitation repayment terms, security, and priority of any financing. Authority shall have the right to review and approve the form and content of all agreements and documentation for any such financing, which approval shall not be unreasonably withheld;

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(vi) Borrower has prepared and submitted for approval by the Authority new or revised Project operating budgets, management plan, maintenance plan, social services plan, and any other plans or documents requested by the Authority related to the Permanent Housing phase of the Project;

(vii) Borrower has submitted for approval by the Authority evidence of financing, including without limitation bond, grant, and/or loan documents, consistent with the approved scope of development, approved project budget, and approved method of financing sufficient to completely finance the development, construction and operation of the Permanent Housing phase of the Project, including the financing required to convert from the construction to the permanent phase of the Permanent Housing phase of the Project;

(viii) Borrower has prepared and submitted for Authority review and approval all corporate and partnership or limited liability formation documents for any entity to be formed by the Borrower for the performance of the Permanent Housing phase of the Project and its constituent general partners or members, certificates of good standing and/or other evidence of current authority for all such entities to conduct business within the State of California, agreements with tax credit investors (if any), and express consents and resolutions consenting to this transaction, as the Authority may determine to be applicable;

(ix) Borrower has obtained and provided evidence to the Authority of all policies of insurance in the form and in the amounts as may be required by this Agreement;

(x) Borrower has submitted evidence that the final working drawings for the Permanent Housing phase of the Project have been approved by the Authority as to the extent required by this Agreement and the City in connection with the permitting and project approvals of the Permanent Housing phase of the Project;

(xi) Borrower has submitted a copy of the fully executed general construction contract with a licensed general contractor, covering all construction work for the Permanent Housing phase of the Project; and

(xii) Borrower has submitted evidence satisfactory to the Executive Director that Borrower has satisfied all conditions precedent to the issuance of all permits and entitlements necessary for the Permanent Housing phase of the Project, other than payment of fees (for which funds have been budgeted in the project budget).

**“Permitted Transfer”** means any of the following:

- a. An assignment of this Agreement and all of Borrower’s interests in the Property to an Affiliate or a conveyance back from the Affiliate to Borrower, including a

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limited partnership in which Borrower and/or Affiliates thereof are general partners;

- b. The lease for occupancy of all or any part of the Improvements on the Property in accordance with this Agreement;
- c. The granting of easements or permits to facilitate the development of the Property in accordance with this Agreement;
- d. A transfer otherwise approved in writing by the Executive Director in his or her sole discretion; and
- e. Transfers of limited partnership interests in the Borrower, if Borrower is a limited partnership.

“**Person**” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, domestic or foreign.

“**Plans**” means the architectural and construction plans and drawings prepared on behalf of Borrower for the Project in accordance with this Agreement.

“**Property**” means the real property described in Attachment No. 2.

“**Schedule of Performance**” means the document attached to this Agreement as Attachment No. 4.

“**Scope of Development**” means the document attached to this Agreement as Attachment No. 3.

“**Site Map**” means the document which is attached to this Agreement as Attachment No. 1.

“**Standard Agreement**” mean the HCD Standard Agreement (Contract 21-HK-17099, HB Oasis) to be entered into with respect to the Project.

“**Target Population**” means individuals and families who are “homeless” or “at risk of homelessness,” as those terms are defined in Part 578.3 of Title 24 of the Code of Federal Regulations, and who are inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases.

“**Title Company**” means Commonwealth Land Title Company or another title insurance company mutually acceptable to the Authority and Borrower.

“**Transfer**” means:

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a. the sale, agreement to sell, transfer or conveyance of the Property, the Project, or any portion thereof or interest therein (including, without limitation, a beneficial interest), whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment sale contract or similar instrument affecting all or a portion of the Property or Project, or the lease of all or substantially all of the Property or Project.

b. "Transfer" also includes the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in Borrower in the event Borrower is a limited partnership, or any conversion of Borrower to an entity form other than that of Borrower at the time of execution of this Agreement, except that, a cumulative change in ownership interest of any general partner of Borrower, in the event Borrower is a limited partnership, of forty-nine percent (49%) or less will not be deemed a "Transfer" for purposes of this Agreement.

c. Notwithstanding paragraphs a and b, "Transfer" will not include Permitted Transfers.

Section 103 Reserved

Section 104 Reserved

Section 105 The Property

The "**Property**" is that certain property in the City of Huntington Beach, illustrated on the "Site Map" (Attachment No. 1) and as described in the "Legal Description of the Property" (Attachment No. 2). As of the Loan Closing, Borrower shall have a leasehold interest in the Property.

Section 106 Authority

a. Authority is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Housing Authorities Law of the State of California.

b. The address of the Authority for purposes of receiving notices pursuant to this Agreement is:

Huntington Beach Housing Authority  
2000 Main Street  
Huntington Beach, CA 92648  
Attn: Executive Director

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With a copy to: City Attorney's Office  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

c. "Authority" as used in this Agreement includes the Huntington Beach Housing Authority, and any assignee or successor to its rights, power and responsibilities.

Section 107 Borrower

a. The Borrower is together, American Family Housing, a California nonprofit public benefit corporation, and National Community Renaissance of California, a California nonprofit public benefit corporation.

b. The address of Borrower for purposes of receiving notices pursuant to this Agreement is:

American Family Housing  
15161 Jackson Street  
Midway City, CA 92655  
Attn: Myles A. Peinemann II  
Chief Executive Officer

National Community Renaissance of California  
9421 Haven Avenue  
Rancho Cucamonga, CA 91730  
Attention: General Counsel

With a copy to:

Gubb & Barshay LLP  
235 Montgomery Street, Suite 1110  
San Francisco, CA 94104  
Attention: Lauren B. Fechter

c. Whenever the term "**Borrower**" is used herein, such term shall mean and include: (1) the Borrower as of the date hereof; and (2) an assignee of or successor to its rights, powers and responsibilities permitted by this Agreement.

Section 108 Assignments and Transfers

a. Borrower represents and agrees that its undertakings pursuant to this Agreement are for the purpose of developing and operating the Project and providing affordable

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housing on the Property and not for speculation in land holding. Borrower further recognizes that the qualifications and identity of Borrower are of particular concern to the Authority, in light of the following: (1) the importance of the improvement of the Property to the general welfare of the community; (2) the public assistance that has been made available by law and by the Authority for the purpose of making such development possible; and (3) the fact that a change in ownership or control of Borrower or any other act or transaction involving or resulting in a significant change in ownership or control of Borrower, is for all practical purposes a transfer or disposition of the property then owned by Borrower. Borrower further recognizes that it is because of such qualifications and identity that the Authority is entering into this Agreement with Borrower. Therefore, no voluntary or involuntary successor in interest of Borrower shall acquire any rights or powers under this Agreement except as expressly set forth herein.

b. For the reasons cited above, Borrower represents and agrees for itself and every successor in interest that prior to the full reconveyance of the Authority Deed of Trust, Borrower shall not assign all or any part of this Agreement, or any interest herein, without the prior written approval of the Authority, which approval shall not be unreasonably withheld; provided, however, that with respect to Permitted Transfers, Borrower shall provide notice to Authority of any Permitted Transfer, and shall provide to Authority documentation for Authority's files effectuating any such assignment or transfer.

c. For the reasons cited above, Borrower represents and agrees for itself and every successor in interest that prior to the full reconveyance of the Authority Deed of Trust, without the prior written approval of the Authority, there shall be no significant change in the ownership of Borrower or in the relative proportions thereof, or with respect to the identity of the parties in control of Borrower or the degree thereof, by any method or means, except Permitted Transfers.

d. Any assignment or transfer of this Agreement or any interest herein or significant change in ownership of Borrower, other than a Permitted Transfer, shall require the approval of the Authority, which may be withheld in its sole and absolute discretion. To the extent the Authority's approval of an assignment or transfer is required by this Agreement, in granting or withholding its approval, the Authority shall base its decision upon the relevant experience, financial capability and reputation of the proposed assignee or transferee, and the effect, if any, of such proposed transfer on the public purposes of this Agreement. In addition, the Authority shall not have any obligation to approve any assignment or transfer of this Agreement, or any interest herein, or significant change in ownership of Borrower that would result in payment of consideration to any Person from the net proceeds of a sale or refinance of the Property or the Project, or any portion thereof or interest therein, if at the time of such assignment or transfer there remains an outstanding balance on the Authority Note.

e. Borrower shall promptly notify the Authority of any and all changes whatsoever in the identity of the parties in control of Borrower or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. This Agreement may be terminated by the Authority if there is any significant change (voluntary or involuntary) in membership, management or control, of Borrower (other than such changes

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occasioned by the death or incapacity of any individual) prior to the full reconveyance of the Authority Deed of Trust, if such change is not a Permitted Transfer.

f. The restrictions of this Section 108 shall terminate upon full reconveyance of the Authority Deed of Trust.

## PART 2. FINANCING

### Section 201 Method of Financing

Borrower will develop and operate the Interim Housing phase of Project with Homekey Program funds, the County operating grant, a grant of funds from the City of Huntington Beach of HOME ARP funds for supportive services costs in year 5 (as set forth in the terms and conditions of that grant), and the Authority Loan. Borrower is responsible for all additional costs to complete the development of the Project pursuant to this Agreement and the Scope of Development and operate the Project. Borrower may utilize other financing sources approved by the Authority, so long as such alternative financing does not result in increased costs or reduced revenue to the Authority, provided, however, notwithstanding the foregoing, Authority shall work together with Borrower in good faith to secure additional financing in order to maintain long-term Project feasibility. Borrower hereby warrants and agrees that the Authority Loan to be disbursed pursuant to this Agreement shall be used by Borrower solely for the purpose of paying a portion of the Development Costs for the Affordable Units and for no other purpose.

Prior to and as condition of the Permanent Housing Construction Financing Event, Borrower shall provide Authority, for Authority's review and approval, all of the following: a sources and uses project budget for the Permanent Housing phase of the Project; the form, amount, and terms of financing for the Permanent Housing phase of the Project, including without limitation repayment terms, security, and priority of any financing; a scope of development and schedule of performance for the Permanent Housing phase of the Project; a method of financing the Permanent Housing phase of the Project; and new or revised Project operating budgets, management plan, maintenance plan, social services plan, and any other plans or documents requested by the Authority.

### Section 202 Authority Loan

a. In accordance with and subject to the terms and conditions of this Agreement, the Authority agrees to lend to the Borrower, and the Borrower agrees to borrow from the Authority, the Authority Loan for the purpose of payment of a portion of the Development Costs. At or prior to the Loan Closing, the Authority and Borrower shall execute and deliver such instruments and documents as may be necessary to evidence and secure the Authority Loan, consistent with the terms of this Agreement, each substantially in the form attached to this Agreement.

b. Subject to the terms and conditions of the Agreement, the Authority Loan in the principal amount of \$2,400,000 will be funded at the Loan Closing and will convert to

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permanent financing at the Conversion Date. The Authority Loan, including accrued interest from the date of disbursement, will be repaid following the Conversion Date from “Residual Receipts” according and subject to the terms and conditions of the Authority Note.

c. Upon the Loan Closing, the Title Company shall record the Authority Loan recordable documents in accordance with instructions provided by the Authority, and shall be prepared to issue, at Borrower’s cost, to the Authority an ALTA lender’s policy of title insurance, insuring the priority of the Authority Deed of Trust as a first priority, senior lien in the amount of the Authority Loan with endorsements as the Authority may determine is appropriate.

At the Permanent Housing Construction Financing Event, the lien of the Authority Deed of Trust, but not the Agreement Containing Covenants or Notice of Affordability Restrictions, will be subordinated to the lien created by a conventional senior construction loan Deed of Trust and conventional senior permanent loan Deed of Trust that have been approved by the Authority as set forth herein. The Executive Director or designee shall have the authority to execute a Subordination Agreement that is consistent with applicable laws and regulations governing subordination of the Authority Deed of Trust and this Agreement, and is mutually acceptable to the Executive Director or designee and the construction lender. The Subordination Agreement will subordinate the Authority Deed of Trust, but not the Agreement Containing Covenants or the Notice of Affordability Restrictions, to such construction loan and permanent loan Deeds of Trust and other senior loan documents. The Subordination Agreement must provide the Authority with all rights under California Civil Code Section 2924b and 2924c and must contain written commitments reasonably designed to protect the Authority’s investment in the event of a default. Such written commitments will provide for, but not necessarily be limited to: (i) a right to cure a default on the senior loan deed of trust; (ii) a right to negotiate with senior lender after notice of default and prior to senior lender commencing foreclosure proceedings; (iii) a right to purchase Borrower’s interest in the Property at any time after a default on the senior loan; and (iv) an agreement that if prior to foreclosure of the senior loan, the Authority takes title to Borrower’s interest in the Property and cures the default on the senior loan, the senior lender will not exercise any right it may have to accelerate the senior loan by reason of the transfer of title to the Authority.

d. The Authority Loan will be funded and disbursed at Loan Closing as may be agreed upon by the Executive Director and legal counsel for the Authority. The Authority Loan funds are not pledged to any lender, nor will they constitute security for any loan.

e. The repayment terms of the Authority Loan are set forth in the Authority Note attached to this Agreement as Attachment No. 5.

f. The funding of the Authority Loan is conditioned upon each of the following conditions occurring to the satisfaction of the Authority (collectively, the “**Loan Closing Conditions**”):

(1) Borrower submits a copy of the fully executed Ground Lease by and between County and Borrower whereby Borrower ground leases the Property from County in a form approved by the Authority;

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- (2) Borrower submits a copy of the fully executed Standard Agreement;
- (3) Borrower submits evidence that Homekey Program funds in the amount of at least \$10,800,000 have been received for the Project;
- (4) Borrower submits a copy of the fully executed general construction contract with a licensed general contractor approved by the Authority in Authority's reasonable discretion, covering the rehabilitation of the Property for the Interim Housing use;
- (5) Borrower submits a final project budget demonstrating to the reasonable satisfaction of the Authority the availability of sufficient funds to pay all Development Costs for the rehabilitation of the Property for the Interim Housing use;
- (6) Borrower submits for Authority review and approval corporate articles of incorporation for each Borrower entity, certificates of good standing within 30 days of closing for each Borrower entity, and express consents or resolutions consenting to this transaction, as the Authority may determine to be applicable;
- (7) Borrower submits evidence of the insurance policies and endorsements required by this Agreement;
- (8) The terms for disbursement of the Authority Loan to pay Development Costs have been agreed upon by the Executive Director and legal counsel for the Authority;
- (9) Borrower submits evidence reasonably satisfactory to the Authority that Borrower has satisfied all conditions precedent to the issuance of all permits necessary for the rehabilitation and construction of the Project for the Interim Housing use, other than payment of fees (for which funds have been budgeted in the project budget);
- (10) Borrower submits for Authority review and reasonable approval a Management Plan and Management Agreement for the Project in accordance with the Agreement Containing Covenants;
- (11) Borrower submits for Authority review and reasonable approval a Social Services Plan, including a proposed budget, describing the social service programs to be provided to the Project and identifying the service providers;
- (12) Title Insurance Company is prepared to issue the title insurance policy required by the Authority;
- (13) Borrower duly executes and delivers this Agreement, the Authority Note, the Authority Deed of Trust, the Assignment of Agreements, the Environmental Indemnity, the Agreement Containing Covenants, and the Notice of Affordability Restrictions;

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(14) The Agreement Containing Covenants and Notice of Affordability Restrictions shall be recorded against Borrower's leasehold interest in the Property senior to any liens and encumbrances or otherwise be in senior position and unsubordinated to any lien or encumbrance. The Agreement Containing Covenants and Notice of Affordability Restrictions may be junior to the Homekey Program regulatory agreement;

(15) The Authority Deed of Trust shall be recorded against Borrower's leasehold interest in the Property senior to any liens and encumbrances and otherwise be in senior position and unsubordinated to any lien or encumbrance and junior only to the Agreement Containing Covenants and Notice of Affordability Restrictions, the Homekey Program regulatory agreement, or other recorded regulatory agreements; and

(16) Authority determines that Borrower is not in default of its obligations to the Authority under this Agreement.

Notwithstanding the foregoing, the Authority may waive any of the foregoing conditions precedent. A waiver of any of the foregoing conditions will not operate in any way as a waiver or estoppel with respect to any subsequent or other failure to comply with such condition, or any other condition.

### PART 3. IMPROVEMENT OF THE PROPERTY

#### Section 301 Land Use Approvals

It is the responsibility of Borrower, without cost to the Authority, to ensure that zoning of the Property and all applicable City of Huntington Beach land use requirements will be such as to permit construction and completion of the Project and the use, operation, and maintenance of the Project in accordance with the provisions of this Agreement. The review and approval rights set forth in this Part 3 are for the benefit of the Authority acting in its capacity as a lender to the Project, and will not be deemed to waive, limit or condition in any way the power and authority of the City of Huntington Beach, acting in its governmental capacity. Nothing contained herein shall be deemed to entitle Borrower to any City of Huntington Beach permit or other City land use approval necessary for the development of the Property, or waive any applicable governmental requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Borrower, (b) supersede, nullify or amend any condition which may be imposed by the City of Huntington Beach in its governmental capacity in connection with approval of the improvements described herein, (c) guarantee to Borrower or any other party any profits from the development of the Property, or (d) amend any City laws, codes or rules. This is not a Development Agreement under Government Code Section 65864.

#### Section 302 Condition of the Property

a. The Authority makes no representation or warranty, express or implied regarding any condition of the Property. It shall be the sole responsibility of Borrower, at Borrower's expense, to investigate and determine all conditions of the Property and its suitability for the uses

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to which the Property is to be put in accordance with this Agreement. If the conditions of the Property are not in all respects entirely suitable for the use or uses to which the Property will be put, then it is the sole responsibility and obligation of Borrower, without cost to the Authority, to take such action as may be necessary to place the Property in all respects in a condition entirely suitable for its development and use in accordance with this Agreement.

b. Borrower agrees to perform and be solely responsible for all required clean-up of any Hazardous Materials on, in, under or within the Property, at the sole cost, risk and expense of Borrower. Borrower shall defend, indemnify and hold harmless the Authority and the hereinafter defined Indemnified Parties from any claims, liability, injury, damages, costs and expenses (including, without limiting the generality of the foregoing, the cost of any required clean up of Hazardous Materials, and the cost of reasonable attorneys' fees) which may be sustained as the result of the presence or clean up of Hazardous Materials on, in, or under the Property. As a condition precedent to the Loan Closing, Borrower shall execute and deliver to the Authority the Environmental Indemnity attached hereto as Attachment No. 9.

#### Section 303 Scope of Development

The Interim Housing phase of the Project shall be developed in accordance with and within the limitations established in the Scope of Development attached to this Agreement as Attachment No. 3. The Permanent Housing phase of the Project shall be developed in accordance with a scope of development submitted by Borrower to and approved by Authority prior to the Permanent Housing Construction Financing Event. Borrower shall carry out the development, management, and operation of the Property and Project in conformity with all applicable requirements of the Homekey Program, including, without limitation HCD's Notice of Funding Availability for the Homekey Program and the Standard Agreement.

#### Section 304 Basic Concept and Schematic Drawings – Permanent Housing Phase

a. Borrower shall prepare and submit Basic Concept and Schematic Drawings and related documents for the Permanent Housing improvements to the Property to the Authority for review and approval. Basic Concept and Schematic Drawings shall include a site plan, elevations and sections of the improvements as they are to be developed on the Property for the Permanent Housing improvements.

b. The Property shall be improved as established in the Basic Concept and Schematic Drawings and related documents, except as material changes may be mutually agreed upon between Borrower and the Authority, provided, however, the Authority's approval hereunder shall not be unreasonably withheld, conditioned or delayed.

#### Section 305 Landscaping and Grading Plans - Permanent Housing Phase

a. Borrower shall prepare and submit to the Authority for its review and approval preliminary and final landscaping and preliminary and finish grading plans for the Permanent Housing improvements for the Property.

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b. The landscaping plans shall be prepared by a professional landscape architect and the grading plans shall be prepared by a licensed civil engineer. Such landscape architect and/or civil engineer may be the same firm as Borrower's architect. Borrower shall submit to the Authority for approval (such approval not to be unreasonably withheld, conditioned or delayed) the name and qualifications of its architect, landscape architect and civil engineer.

Section 306 Construction Drawings and Related Documents – Permanent Housing Phase

a. Borrower shall prepare and submit construction drawings and related documents for the Permanent Housing improvements (collectively called the “**Plans**”) to the Authority for review (including but not limited to architectural review). Such construction drawings and related documents shall be submitted as 50% and Final Construction Drawings. Final Construction Drawings are hereby defined as those in sufficient detail to obtain all building permits.

b. The Plans must comply with the applicable requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), and federal regulations issued pursuant thereto.

c. Approval of progressively more detailed Plans will be granted by the Authority if developed as a logical evolution of Plans theretofore approved. Any items so submitted and approved by the Authority shall not be subject to subsequent disapproval.

d. During the preparation of all Plans, the Authority and Borrower shall hold regular progress meetings to coordinate the preparation of, submission to, and review of Plans and related documents by the Authority. The Authority and Borrower shall communicate and consult informally as frequently as is necessary to facilitate the prompt consideration of documents submitted to the Authority.

e. If any revisions or corrections of Plans approved by the Authority in its capacity as lender to the Project shall be required by any government official, agency, department, or bureau having jurisdiction over the development of the Property, Borrower and the Authority shall cooperate in efforts to obtain waiver of such requirements or to develop a mutually acceptable alternative, provided, however, adherence to the requirements of the California Tax Credit Allocation Committee shall be deemed to satisfy the Authority requirements set forth herein.

Section 307 Authority Approval of Plans – Permanent Housing Phase

a. Subject to the terms of this Agreement, the Authority shall have the right of review (including without limitation architectural review) of all Plans and submittals, including any proposed substantial changes to any such Plans or submittals previously approved by the Authority. Borrower, upon receipt of a disapproval, shall revise the Plans, and shall resubmit to the Authority as soon as possible after receipt of the notice of disapproval. The Authority shall

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approve or disapprove, in its reasonable discretion, the revised Plans within twenty (20) days after receipt. Disapprovals shall state in writing the reasons for disapproval and changes to submitted Plans which the Authority determines must be made in order to obtain approval. Such reasons and such changes shall be consistent with all items previously approved hereunder. The Authority's failure to notify Borrower of approval or disapproval within twenty (20) days shall not be deemed to be approval of any matter.

b. If Borrower desires to make a substantial change in the Final Construction Drawings after their approval, such proposed change must be submitted to the Authority for approval, which approval the Authority will not unreasonably withhold, condition, or delay.

#### Section 308 Cost of Construction

a. The development costs of the Project, including all offsite or onsite improvements required by the City of Huntington Beach in connection therewith, and the cost of relocation claims (if any) shall be the responsibility of Borrower, without any cost to the Authority except as expressly set forth in this Agreement.

b. Borrower will establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner. When procuring for goods and services to be provided under this Agreement, Borrower will comply with the procurement standards at 2 CFR Part 200 §200.318 - §200.326.

#### Section 309 Schedule of Performance

a. Each party to this Agreement shall perform the obligations to be performed by such party pursuant to this Agreement within the respective times provided in the Schedule of Performance, and if no such time is provided, within a reasonable time, all subject to force majeure delays. The Schedule of Performance shall be subject to amendment from time to time upon the mutual agreement of the Executive Director and Borrower.

b. After the Loan Closing, Borrower shall promptly begin and thereafter diligently prosecute to completion Interim Housing portion of the Project described in the Scope of Development and any Plans approved by the Authority. Borrower shall begin and complete all construction within the times specified in the Schedule of Performance with such reasonable extensions of said dates as may be granted by the Executive Director, provided Borrower has submitted a timely written request with substantiating documentation that establishes good cause for such an extension, and provided such an extension will not have a detrimental effect on the Authority's interests.

c. During periods of construction, Borrower shall submit to the Authority a written report of the progress of construction when and as reasonably requested by the Authority, but not more frequently than once every quarter. The report shall be in such form and detail as may be reasonably required by the Authority and shall include a reasonable number of construction photographs (if requested) taken since the last report by Borrower.

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Section 310 Indemnification and Insurance

a. Borrower's Indemnity. To the maximum extent permitted by law, Borrower agrees to and shall defend, indemnify and hold harmless the Authority and its officers, employees, contractors, attorneys, agents, insurers and volunteers (collectively, the "**Indemnified Parties**") from and against all claims, liabilities, losses, damages, costs or expenses (including reasonable attorneys' fees and court costs) ("**Claims**") arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person resulting or arising from or in any way connected with the following, provided Borrower shall not be responsible for, and such indemnity shall not apply, to the extent any such Claims arise from the gross negligence or willful misconduct of the Authority or the Indemnified Parties:

(1) The existence, release, presence or disposal on, in, under, about or adjacent to the Property of any Hazardous Materials;

(2) The development, construction, marketing, use, operation or condition of the Property and the Improvements by Borrower, its contractors, subcontractors, agents, employees or other persons acting on Borrower's behalf;

(3) Any accident, personal injury or casualty on the Property or the Improvements;

(4) All Plans or designs for improvements prepared by or on behalf of Borrower or its contractors, subcontractors, agents, employees or other persons acting on Borrower's behalf, including without limitation all errors or omissions with respect to such Plans or designs;

(5) All loss or damage to Authority resulting from any material inaccuracy in or material breach of any representation or warranty of Borrower, or resulting from any material breach or default by Borrower, under this Agreement;

(6) Any and all actions, claims, damages, injuries, challenges and/or costs or liabilities arising from the approval of any and all entitlements or permits for the Project.

The obligation to indemnify will not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to the Indemnified Parties. The foregoing indemnification will apply to the extent of the violation of a legal duty, including but not limited to active or passive negligence, strict liability, breach of contract, or intentional or willful misconduct, by Borrower or its contractors, suppliers, or vendors, of any contracting tier, or anyone directly or indirectly employed by any of them, or anyone for whose acts Borrower may be responsible. The Indemnified Parties will be entitled to recover reasonable attorney's fees incurred as a result of Borrower's failure to provide the defense and indemnity required by this Section 310. The foregoing indemnity shall survive termination of this Agreement.

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b. Insurance Policies.

(1) Commencing upon the Loan Closing, and until the full reconveyance of the Authority Deed of Trust, Borrower shall maintain in effect and deliver to the Authority duplicate originals or appropriate certificates of the following insurance policies (the “**Insurance Policies**”) naming the Authority and the Indemnified Parties as additional insureds or loss payees, as their interests may appear:

(A) All-Risk Policies: Borrower shall maintain or cause to be maintained coverage of the type now known as All Risk insurance. Such insurance shall insure against direct physical loss or damage by fire, lightning, wind, storm, explosion, collapse, underground hazards, vandalism, malicious mischief, glass breakage and such other causes as are covered by such form of insurance. Such policy shall include (1) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (2) a “Replacement Cost Endorsement” in an amount sufficient to prevent Borrower from becoming a co-insurer under the terms of the policy, but in any event in an amount not less than 100% of the then full replacement cost, to be determined at least once annually and subject to reasonable approval by Authority, and (3) an endorsement to include coverage for budgeted soft costs. The replacement cost coverage shall be for work performed and equipment, supplies and materials furnished to the Property or any adjoining sidewalks, streets and passageways, or to any bonded warehouse for storage pending incorporation into the work, without deduction for physical depreciation and with a deductible not exceeding \$25,000 per occurrence (except that earthquake coverage, if required by the Authority, shall carry a deductible not to exceed 25% of the policy amount, or such other deductible amount as Authority may reasonably determine is acceptable, in light of the cost of the premium for such insurance);

(B) Liability Insurance: Liability Insurance: Borrower will maintain or cause to be maintained general liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of Borrower on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Borrower, or any person acting for Borrower, or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Borrower or any person acting for Borrower, or under its control or direction. Such property damage and personal injury insurance will also provide for and protect the Indemnified Parties against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance will be maintained in the following amounts: commercial general liability in a general aggregate amount of not less than Two Million Dollars (\$2,000,000), Products and Completed Operations Aggregate of not less than Two Million Dollars (\$2,000,000) and One Million Dollars (\$1,000,000) each occurrence. Borrower agrees that provisions of this paragraph as to maintenance of insurance will not be construed as limiting in any way the extent to which Borrower may be held responsible for the indemnification of the Indemnified Parties or the payment of damages to persons or property

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resulting from Borrower's activities or the activities of any other person or persons for which Borrower is otherwise responsible.

(C) Automobile Insurance: During all times that Borrower has owned vehicles or has employees, then Borrower will maintain or cause to be maintained Commercial Automobile Liability insurance in an amount of not less than Three Million Dollars (\$3,000,000) combined single limit, including owned, non-owned and hired automobile coverage. These limits can be provided by a combination of a primary Auto policy and Excess or Umbrella Liability policy

(D) Workers' Compensation Insurance: During all times that Borrower has employees, Borrower shall maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Borrower in connection with the Property and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Borrower. Notwithstanding the foregoing, Borrower may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Borrower shall deliver to Authority evidence that such self-insurance has been approved by the appropriate State authorities.

(2) All policies or certificates of insurance shall provide that such policies shall not be canceled, reduced in coverage or limited in any manner without at least thirty (30) days prior written notice to Authority. All fire and liability insurance policies (not automobile and Workers' Compensation) shall name the Authority, the Indemnified Parties, and Borrower as insureds, additional insureds, and/or loss payable parties as their interests may appear.

(3) The Insurance Policies shall name as additional insureds the following:

"The Huntington Beach Housing Authority and its officers, employees, contractors, agents and attorneys."

(4) Borrower agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Borrower agrees to submit endorsements and binders or certificates evidencing such insurance to Authority at least 15 days prior to the Loan Closing. Within thirty (30) days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Authority. All insurance herein provided for under this Section shall be provided by insurers licensed to do business in the State of California and rated A-VII or better.

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(5) Borrower must cause all contractors and subcontractors performing work relating to the Project to maintain insurance of the types and in the amount described in this Section 310. In addition, Borrower must cause its architects and engineers to maintain Architects and Engineers Professional Liability (Errors and Omissions) insurance on a “claims made basis” in an amount of not less One Million Dollars (\$1,000,000). When coverage is provided on a “claims made basis”, Borrower must cause all contractors and subcontractors to continue to renew the insurance, with the same coverage and limits, for a period of ten (10) years after Completion-Permanent Housing, providing coverage for all claims arising out of any acts or omissions of Borrower, or its officers, employees or agents.

(6) If Borrower fails or refuses to procure or maintain insurance as required by this Agreement, Authority shall have the right, but not the obligation, at Authority’s election, and upon ten (10) days prior notice to Borrower, to procure and maintain such insurance. The premiums paid by Authority shall be treated as a loan, due from Borrower, to be paid on the first day of the month following the date on which the premiums were paid. Authority shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

(7) Borrower shall have the right in its discretion to provide the insurance coverage required by this Section 310 through one or more umbrella policies, so long as the type and level of insurance protection to be maintained by Borrower in accordance with this Section 310 is not diminished by so doing (as reasonably determined by the Authority).

#### Section 311 Nondiscrimination

Borrower shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of any contractors or consultants, to participate in subcontracting/subconsulting opportunities. Borrower understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in termination, debarment or other sanctions. This language shall be incorporated into all contracts between Borrower and any contractor, consultant, subcontractor, subconsultants, vendors and suppliers.

#### Section 312 Local, State and Federal Laws

a. Borrower hereby agrees to carry out construction, development (as defined by applicable law) and operation of the Improvements on the Property, including, without limitation, any and all public works (as defined by applicable law), in conformity with all applicable federal and state labor laws, including, without limitation, the payment of state prevailing wages for the Project. Borrower also covenants and warrants that it will comply with all applicable requirements of the Homekey Program, including, without limitation the HCD’s Notice of Funding Availability for the Homekey Program and the Standard Agreement.

b. Borrower hereby agrees that Borrower shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended

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from time to time, or any other applicable provision of law. Borrower hereby agrees that Borrower shall have the obligation to provide and maintain any and all bonds to secure the payment to contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other applicable provision of law. Borrower hereby agrees that Borrower shall have the obligation, at Borrower's sole cost, risk and expense, to obligate any party as may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other applicable provision of law. Borrower shall indemnify, protect, defend and hold harmless the Authority and the Indemnified Parties, with counsel reasonably acceptable to Authority, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the construction, development (as defined by applicable law) and/or operation of the Project, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Borrower of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, the requirement to pay state prevailing wages); (2) the implementation of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other applicable law; (3) failure by Borrower to provide any required disclosure, representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other applicable provision of law; (4) failure by Borrower to provide and maintain any and all bonds to secure the payment to contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of applicable law; and/or (5) failure by Borrower to obligate any party as may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other applicable provision of law.

c. It is agreed by the parties that, in connection with the construction, development (as defined by applicable law) and operation of the Project, including, without limitation, any public work (as defined by applicable law), Borrower shall bear all risks of payment or non payment of state prevailing wages and/or the implementation of Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other applicable provision of law. "Increased costs" as used in this Section shall have the meaning ascribed to it in Labor Code Section 1781.

d. The foregoing indemnity shall survive termination of this Agreement.

#### Section 313 Permits

Before commencement of construction of any buildings, structures or other work of improvement upon any portion of the Property, the Borrower shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the City of Huntington Beach, acting in its governmental capacity, or any other governmental agency with jurisdiction over such

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work. The disbursement of the Authority Loan is subject, among other conditions, to the issuance of all building permits required by the Authority for the development and construction of the Interim Housing phase of the Project.

#### Section 314 Disclaimer of Responsibility by Authority

The Authority neither undertakes nor assumes nor will have any responsibility or duty to Borrower or to any third party to review, inspect, supervise, pass judgment upon or inform Borrower or any third party of any matter in connection with the construction or development of the Project, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Property, any person furnishing the same, or otherwise. Borrower and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Borrower or to any third party by the Authority in connection with such matter is for the public purpose of providing financial assistance for developing the Project for use as affordable housing, and neither Borrower (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. The Authority shall not be responsible for any of the work of development of the Project.

#### Section 315 Taxes, Assessments, Encumbrances and Liens

Borrower shall pay prior to delinquency, but not later than the imposition of any penalty, all real estate taxes and assessments assessed and levied on or against the Property. Prior to the full reconveyance of the Authority Deed of Trust, Borrower shall not place, or allow to be placed, on title to the Property or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Agreement. In addition, Borrower shall remove, or shall have removed, any levy or attachment made on title to the Property (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Nothing herein contained will be deemed to prohibit Borrower from contesting in good faith the validity or amount of any tax assessment, or to limit the remedies available to Borrower in respect thereto. The covenants of the Borrower set forth in this Section 315 shall remain in effect until full reconveyance of the Authority Deed of Trust.

#### Section 316 Prohibition against Transfer

a. Prior to the full reconveyance of the Authority Deed of Trust, Borrower shall not, except for Permitted Transfers or as otherwise permitted by this Agreement, assign or attempt to assign this Agreement or any right herein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property or the improvements thereon, without prior written approval of the Authority.

b. In the event Borrower does or attempts to assign this Agreement or any of the rights herein, or does or attempts to sell, transfer, convey or assign the Property or the buildings or structures thereon prior to the full reconveyance of the Authority Deed of Trust, other than a Permitted Transfer, without the approval of the Authority in violation of this Agreement, subject

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to the notice and cure provisions of Section 501, the Authority shall have the right to terminate this Agreement.

c. In the absence of a specific written agreement by the Authority (not to be unreasonably withheld or conditioned), and except as otherwise provided in this Agreement, no such sale, transfer, conveyance or assignment of this Agreement or the Property (or any portion thereof), or approval by the Authority of any such sale, transfer, conveyance or assignment, shall be deemed to relieve Borrower or any other party from any obligations under this Agreement.

#### Section 317 Removal of Liens and Encumbrances

Borrower shall not allow any liens or encumbrances to be placed on the Property, except as expressly provided by this Agreement or otherwise approved in writing by the Authority, and shall promptly take all necessary actions to remove any such liens or encumbrances. Nothing herein contained will be deemed to prohibit Borrower from contesting in good faith the validity or amount of any encumbrance or lien, or to limit the remedies available to Borrower in respect thereto.

#### Section 318 Copeland Anti-Kick-Back Act

Borrower shall comply with the provisions of the Copeland Anti-Kick-Back Act (18 U.S.C. 874) as supplemented in the Department of Labor regulations (29 CFR Part 3), as amended. Borrower warrants and agrees to include, or cause to be included, this requirement in every nonexempt subcontract. Borrower also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.

#### Section 319 Contract Work Hours and Safety Standard Act

Borrower shall comply with the provisions of sections 103 and 107 of the Contract Work Hours and Safety Standard Act (40 U.S.C. 327-330) as supplemented by the Department of Labor regulations (29 CFR, Part 5), as amended. Borrower warrants and agrees to include or cause to be included this requirement in every nonexempt contract. Borrower also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.

### PART 4. USE OF THE PROPERTY

#### Section 401 Uses

Borrower, its successor and assigns shall use the Property only for the uses specified in the Agreement Containing Covenants and this Agreement, specifically including the following:

a. The Property shall be improved for the purpose of creating a 64-unit interim housing project and ancillary facilities, described in the Scope of Development for the Interim Housing phase and creating a 64-unit permanent supportive housing project and ancillary facilities,

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all as subject to the occupancy and rent restrictions set forth in the Agreement Containing Covenants and other regulatory agreements recorded against the Property. No change in the use of the Property shall be permitted without the prior written approval of the Authority.

b. Borrower shall comply with all applicable requirements of the Homekey Program, including, without limitation the HCD's Notice of Funding Availability for the Homekey Program and the Standard Agreement.

c. The maximum incomes of participants in the Interim Housing program and residential tenants eligible to rent the Affordable Units in the Permanent Housing phase shall not exceed Extremely Low Income except as set forth in the Agreement Containing Covenants.

d. Until the Conversion Date, the Affordable Units shall be used for Interim Housing for the Target Population.

e. After the Conversion Date, the 62 Affordable Units must be rented and available to Extremely Low Income households of the Target Population at an Affordable Rent, subject to the terms of the Agreement Containing Covenants.

f. Fifty percent (50%) of the Project's Affordable Units shall be restricted to occupancy by the Chronically Homeless and fifty percent (50%) of the Project's Affordable Units are restricted to occupancy by the Homeless. The unit mix and rent restrictions are as follows, provided, however, the rent and income restrictions applicable to the Project shall be set forth in and subject to the terms of the Agreement Containing Covenants:

[remainder of page left intentionally blank]

# of Bedrooms	Units	Non-Homekey Units	Homekey-Assisted Units	AMI Income Limit	Restriction to Subset of Target Population
Manager Unit	2	0	0	N/A	N/A
0 (Studio)	31	0	31	30%	
0 (Studio)	31	0	31	30%	Chronically Homeless
Totals:	64		62		

Note: The number of units and the unit mix may change in the Permanent Supportive Housing phase.

g. The Conversion Date shall occur within five (5) years following the date of this Agreement or such extended date as may be approved by the Authority pursuant to Section 101 above.

h. Following the Conversion Date, Borrower shall submit its rent schedule and utility allowances thirty (30) days prior to initial rental of the units and on an annual basis thereafter. The Authority shall review and approve or disapprove the proposed rent schedule and utility allowances for compliance with the maximum rent limitations contained in this Agreement.

i. Failure to comply with the affordability requirements of this Agreement, subject to the Agreement Containing Covenants, is an event of default under the terms of the Authority Loan. Pursuant to the Authority Note evidencing the Authority Loan, the Authority Loan will be due and payable immediately if the Project does not meet the affordability requirements of this Agreement and the Agreement Containing Covenants, following written notice and expiration of the applicable cure period.

j. The Authority, and its successors and assigns, shall have the right, but not the obligation, to monitor and enforce the covenants contained in this Section 401 and the Agreement Containing Covenants. Borrower covenants that it shall comply with the monitoring program set up by the Authority to enforce said covenants. In complying with such monitoring program, Borrower or its agent shall annually prepare and submit to the Authority an occupancy report and financial information and income verification documents for each tenant of the Affordable Units, and all supporting documentation, on forms provided or approved by the Authority, setting forth

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the required information for the preceding year. The Authority shall review such reports to confirm the continuing affordability of the Affordable Units and the eligibility of tenants required by this Agreement. To defray the Authority's cost of monitoring the Affordable Units, Borrower shall pay to the Authority, beginning on the Conversion Date, an annual monitoring fee of \$1,600, increasing annually at a rate of three percent (3%).

k. No officer, employee, agent, official or consultant of Borrower may occupy any of the Affordable Units.

#### Section 402 Maintenance of the Property

Borrower shall maintain the Property in accordance with the requirements of this Agreement and the Agreement Containing Covenants.

#### Section 403 Obligation to Refrain from Discrimination

Borrower covenants and agrees for itself, its successors and its assigns in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Borrower itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

#### Section 404 Equal Employment Opportunity

During the term of this Agreement, Borrower agrees as follows:

a. Borrower will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin(s). Borrower will take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin(s). Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer of the Authority setting forth the provisions of this nondiscrimination clause.

b. Borrower will, in all solicitations or advertisements for employees placed by or on behalf of Borrower, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

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Section 405 Effect and Duration of Covenants

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Authority for such periods as set forth herein. Those certain covenants contained in the Agreement Containing Covenants shall remain in effect for the periods specified therein.

Section 406 Reserved

PART 5. DEFAULTS AND REMEDIES

Section 501 Defaults - General

a. Subject to the extensions of time set forth in Section 602, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who fails or delays must commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

b. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

c. If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default written notice of such default. The party in default shall have a period of fifteen (15) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the injured party.

d. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the party in default shall have such period to effect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the party in default (1) initiates corrective action within said period, and (2) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party. In no event shall the injured party be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default.

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Section 502 Institution of Legal Actions

In addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy 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, in any other appropriate court of that county.

Section 503 Applicable Law

The internal laws of the State of California shall govern the interpretation and enforcement of this Agreement, without giving effect to the principles governing conflicts of laws.

Section 504 Acceptance of Service of Process

a. In the event that any legal action is commenced by the Borrower against the Authority, service of process on the Authority shall be made by personal service upon the Executive Director or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the Authority against the Borrower, service of process on the Borrower shall be made by personal service upon the Borrower (or upon a general partner, managing member or officer of the Borrower) and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

Section 505 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, 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.

Section 506 Damages

Subject to the notice and cure provisions of Section 501, 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 501, 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.

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#### Section 507 Specific Performance

Subject to the notice and cure provisions of Section 501, if either party defaults with regard to any of the provisions of this Agreement (except with respect to monetary defaults), 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 501, 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.

#### Section 508 Non-Recourse Obligation

The obligation to repay the Authority Loan are nonrecourse obligations of Borrower and its partners. Neither Borrower nor any of its general or limited partners, nor any other party, shall have any personal liability for repayment of the loans. The sole recourse of the Authority with respect to repayment of the Authority Loan shall be the exercise of its rights against the Property and the Improvements and any related security for the loans. Notwithstanding the foregoing, the Authority may:

a. obtain a judgment or order (including, without limitation, an injunction) requiring Borrower or any other party to perform (or refrain from) specified acts other than repayment of the Authority Loan; and

b. recover directly from Borrower or any other party:

1. all damages, costs and expenses incurred by the Authority as a result of fraud or any criminal act or acts of Borrower or any partner, shareholder, officer, director or employee of Borrower or of any general partner of Borrower or of any member of a general partner of Borrower;

2. all damages, costs and expenses incurred by the Authority as a result of misappropriation of funds provided for the construction of the Improvements, as described in this Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds;

3. all amounts owing by Borrower pursuant to Borrower's indemnification regarding Hazardous Substances provided to the Authority in connection with this Agreement; and

4. all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that the Authority shall pay Borrower's reasonable court costs and attorneys' fees if Borrower is the prevailing party in such enforcement or collection action).

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Section 509 Termination by Authority

a. Reserved.

b. Subject to the notice and cure provisions of Section 501, the Authority shall have the right to terminate this Agreement prior to Loan Closing by providing written notice to Borrower in the event any of the following occurs:

(1) failure of any condition precedent to the occurrence of the Loan Closing; or

(2) Except for a Permitted Transfer, Borrower (or any successor in interest) assigns or attempts to assign the Agreement or any right therein, or transfers the Property (or any portion thereof or interest therein), in violation of this Agreement; or

(3) there is substantial change in the ownership of the Borrower, or with respect to the identity of the parties in control of Borrower, or the degree thereof in violation of this Agreement; or

(3) Borrower is in default with any requirements in the Schedule of Performance.

c. After the Loan Closing, subject to the notice and cure provisions of Section 501, the Authority shall have the right to terminate this Agreement by providing written notice to Borrower, and all outstanding amounts due under the Authority Note, including accrued interest, shall become immediately due and payable by Borrower in the event of a default by Borrower, including but not limited to the following:

(1) Commencement of the rehabilitation of the Interim Housing portion of the Project does not occur within the time provided in the Schedule of Performance, subject to Force Majeure delays; or

(2) Completion-Interim Housing does not occur within the time provided in the Schedule of Performance, subject to Force Majeure delays; or

(3) Completion-Permanent Housing does not occur within the time provided in the Schedule of Performance, subject to Force Majeure delays; or

(4) The Conversation Date does not occur within five (5) years following the date of this Agreement or such extended date as may be approved by the Authority pursuant to Section 101 above; or

(4) Borrower abandons or suspends the Project for a period of thirty (30) days, subject to Force Majeure Delays; or

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(5) except for a Permitted Transfer, there is substantial change in the ownership of the Borrower, or with respect to the identity of the parties in control of Borrower, or the degree thereof in violation of this Agreement; or

(6) except for a Permitted Transfer, Borrower assigns or attempts to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of the Property, or any part thereof, in violation of this Agreement; or

(7) Borrower otherwise materially breaches this Agreement.

## PART 6. GENERAL PROVISIONS

### Section 601 Notices

Formal notices, demands and communications between the Authority and Borrower shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a “hard” copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of the Authority and Borrower as set forth in Sections 106 and 107 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a “hard” copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

### Section 602 Enforced Delay: Extension of Time of Performance

a. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics or pandemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, subcontractor or supplier, acts of the other party, or acts or failure to act of the City of Huntington Beach in its governmental capacity or any other public or governmental agency or entity (except that acts or failure to act of the Authority in its capacity as lender to the Project shall not excuse performance of the Authority).

b. An extension of time for any such cause (a “**Force Majeure Delay**”) shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none

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of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by the Authority and Borrower.

Section 603 Conflict of Interest

a. No member, official, or employee of the Authority 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 or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested.

b. Borrower warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

Section 604 Nonliability of Authority Officials and Employees

No member, official, agent, legal counsel or employee of the Authority shall be personally liable to Borrower, or any successor in interest in the event of any default or breach by the Authority or for any amount which may become due to Borrower or successor or on any obligation under the terms of this Agreement.

Section 605 Inspection of Books and Records

a. Borrower shall maintain complete, accurate, and current records pertaining to the Property for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the Authority to inspect and copy records, during regular business hours upon reasonable advance notice. Records must be kept accurate and current.

b. The Authority reserves the right to inspect, monitor, and observe work and services performed by Borrower at any and all reasonable times upon reasonable advance notice, provided that, if any such inspection, monitoring, or observation shall occur during the period of construction, Borrower shall have the right to require that a representative of Borrower be present.

c. The Authority reserves the right to audit the records of Borrower any time during the performance of this Agreement and for a period of five years after final payment is made under this Agreement.

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## Section 606 Approvals

a. Except as otherwise expressly provided in this Agreement, approvals required of the Authority or Borrower in this Agreement, including the attachments to this Agreement, shall not be unreasonably withheld or delayed. All approvals shall be in writing. Failure by either party to approve a matter within the time provided for approval of the matter shall not be deemed a disapproval, and failure by either party to disapprove a matter within the time provided for approval of the matter shall not be deemed an approval.

b. Except as otherwise expressly provided in this Agreement, approvals required of the Authority shall be deemed granted by the written approval of the Executive Director or designee. The Authority agrees to provide notice to Borrower of the name of the Executive Director's designee on a timely basis and to provide updates from time to time. Notwithstanding the foregoing, the Executive Director may, in his or her sole discretion, refer to the Authority Board any item requiring Authority approval; otherwise, "Authority approval" means and refers to approval by the Executive Director or designee.

c. The Executive Director or designee shall have the authority, without further action of the Authority Board, to execute any and all documents and instruments necessary to implement this Agreement and to make non-substantive changes to this Agreement and the Attachments hereto as may be agreeable to the Executive Director and legal counsel for the Authority.

d. Additional financing that may be necessary to fund any rehabilitation and construction of the Improvements that may be necessary for the Permanent Housing phase of the Project is unknown as of the date of this Agreement. Such financing may include a construction and permanent loan, bond financing, tax credits, and/or other funding sources. The Executive Director or designee shall have the authority, without further action of the Authority Board, to make any agreement or acknowledgment related to this Agreement or any Attachment hereto on behalf of the Authority reasonably necessary to facilitate such financing (as determined by the Executive Director) so long as such agreement or acknowledgment: (i) is consistent with the purposes of this Agreement and the Attachments hereto; (ii) complies with prevailing standards and terms and conditions for such funding sources; (iii) does not result in any increased financial risk to Authority, does not change the obligations of Borrower or rights of or protections afforded the Authority under this Agreement or any Attachment hereto, or does not otherwise impair Authority's interests; and (iv) is agreeable to the Executive Director and legal counsel for the Authority, all as determined by the Executive Director. Any agreement or acknowledgment that does not comply with the requirements set forth in the preceding sentences shall be submitted to the Authority Board for approval as determined by the Executive Director.

## Section 607 Real Estate Commissions

Neither Borrower nor the Authority shall be liable for any real estate commissions or brokerage fees which may arise from this Agreement. Borrower and the Authority each represents that it has engaged no broker, agent or finder in connection with this Agreement.

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#### Section 608 Construction and Interpretation of Agreement

a. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

b. If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

c. The captions of the articles, sections, and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

d. References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

e. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

#### Section 609 Time of Essence

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

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Section 610 No Partnership

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or any other similar relationship between the parties hereto or cause the Authority to be responsible in any way for the debts or obligations of Borrower or any other Person.

Section 611 Compliance with Law

Borrower agrees to comply with all applicable laws and regulations of all municipal, county, state and federal authorities, pertaining to the Project. The judgment of any court of competent jurisdiction, or the admission of Borrower or any lessee or permittee in any action or proceeding against them, or any of them, whether the Authority be a party thereto or not, that Borrower, lessee or permittee has violated any such ordinance or statute in the development and use of the Property shall be conclusive of that fact as between the Authority and Borrower.

Section 612 Binding Effect

This Agreement, together with the agreements, covenants and warranties contained herein, shall be binding on and shall inure to the benefit of the parties hereto and all of their respective successors and assigns, whether voluntary or involuntary or by agreement or operation of law.

Section 613 No Third Party Beneficiaries

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of the Authority and Borrower, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

Section 614 Authority to Sign

Borrower hereby represents that the persons executing this Agreement on behalf of Borrower have full authority to do so and to bind Borrower to perform pursuant to the terms and conditions of this Agreement.

Section 615 Incorporation by Reference

Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

Section 616 Counterparts

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

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Section 617 Severability

If any provision of this Agreement shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein, and the remainder of this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

Section 618 Joint and Several Liability

If more than one person or entity is executing this Agreement as Borrower, then each such person or entity that executes this Agreement shall be jointly and severally responsible for any and all obligations of Borrower hereunder.

PART 7. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

a. This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement, including all of the Attachments appended to this Agreement, constitutes the entire understanding and agreement of the parties.

b. This Agreement integrates all of the terms and conditions mentioned herein or incidental to this Agreement, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Authority or Borrower, and all amendments to this Agreement must be in writing and signed by the appropriate authorities of the Authority and Borrower.

PART 8. TIME FOR ACCEPTANCE OF AGREEMENT BY AUTHORITY

This Agreement, when executed by Borrower and delivered to the Authority, must be authorized, executed and delivered by the Authority within sixty (60) days after date of signature by Borrower or this Agreement may be terminated by Borrower upon written notice to the Authority.

[Remainder of page left intentionally blank]

[Signatures on following page]

05.09.22

**IN WITNESS WHEREOF**, the Authority and Borrower have signed this Agreement as of the date set forth above.

**“AUTHORITY”**

HUNTINGTON BEACH HOUSING  
AUTHORITY

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

Sean Joyce  
Interim Executive Director


ATTEST:

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

Robin Estanislau  
Authority Secretary

APPROVED AS TO FORM:

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

Michael Gates   
Authority Counsel

APPROVED AS TO FORM:

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

Susan Apy  
Kane, Ballmer & Berkman  
Special Legal Counsel

**“OWNER”**

American Family Housing, a California  
nonprofit public benefit corporation

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

Myles A. Peinemann II,  
Chief Executive Officer

National Community Renaissance of  
California, a California nonprofit public benefit  
corporation

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

Michael Finn,  
Chief Financial Officer

AFFORDABLE HOUSING AGREEMENT

HB OASIS

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IN WITNESS WHEREOF, the Authority and Borrower have signed this Agreement as of the date set forth above.

**"AUTHORITY"**

HUNTINGTON BEACH HOUSING  
AUTHORITY

By: \_\_\_\_\_  
Sean Joyce  
Interim Executive Director

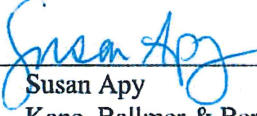
ATTEST:

By: \_\_\_\_\_  
Robin Estanislau  
Authority Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michael Gates  
Authority Counsel

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
Susan Apy  
Kane, Ballmer & Berkman  
Special Legal Counsel

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American Family Housing, a California  
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By: \_\_\_\_\_  
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National Community Renaissance of  
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By: \_\_\_\_\_  
Michael Finn,  
Chief Financial Officer

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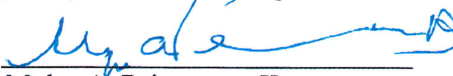
**"AUTHORITY"**

HUNTINGTON BEACH HOUSING  
AUTHORITY

By: \_\_\_\_\_  
Sean Joyce  
Interim Executive Director

**"OWNER"**

American Family Housing, a California  
nonprofit public benefit corporation

By:  \_\_\_\_\_  
Myles A. Peinemann II,  
Chief Executive Officer

ATTEST:

By: \_\_\_\_\_  
Robin Estanislau  
Authority Secretary

National Community Renaissance of  
California, a California nonprofit public benefit  
corporation

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michael Gates  
Authority Counsel

By: \_\_\_\_\_  
Michael Finn,  
Chief Financial Officer

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Susan Apy  
Kane, Ballmer & Berkman  
Special Legal Counsel



IN WITNESS WHEREOF, the Authority and Borrower have signed this Agreement as of the date set forth above.

**"AUTHORITY"**

HUNTINGTON BEACH HOUSING  
AUTHORITY

By: \_\_\_\_\_  
Sean Joyce  
Interim Executive Director

ATTEST:

By: \_\_\_\_\_  
Robin Estanislau  
Authority Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michael Gates  
Authority Counsel

APPROVED AS TO FORM:


By: \_\_\_\_\_  
Susan Apy  
Kane, Ballmer & Berkman  
Special Legal Counsel

**"OWNER"**

American Family Housing, a California  
nonprofit public benefit corporation

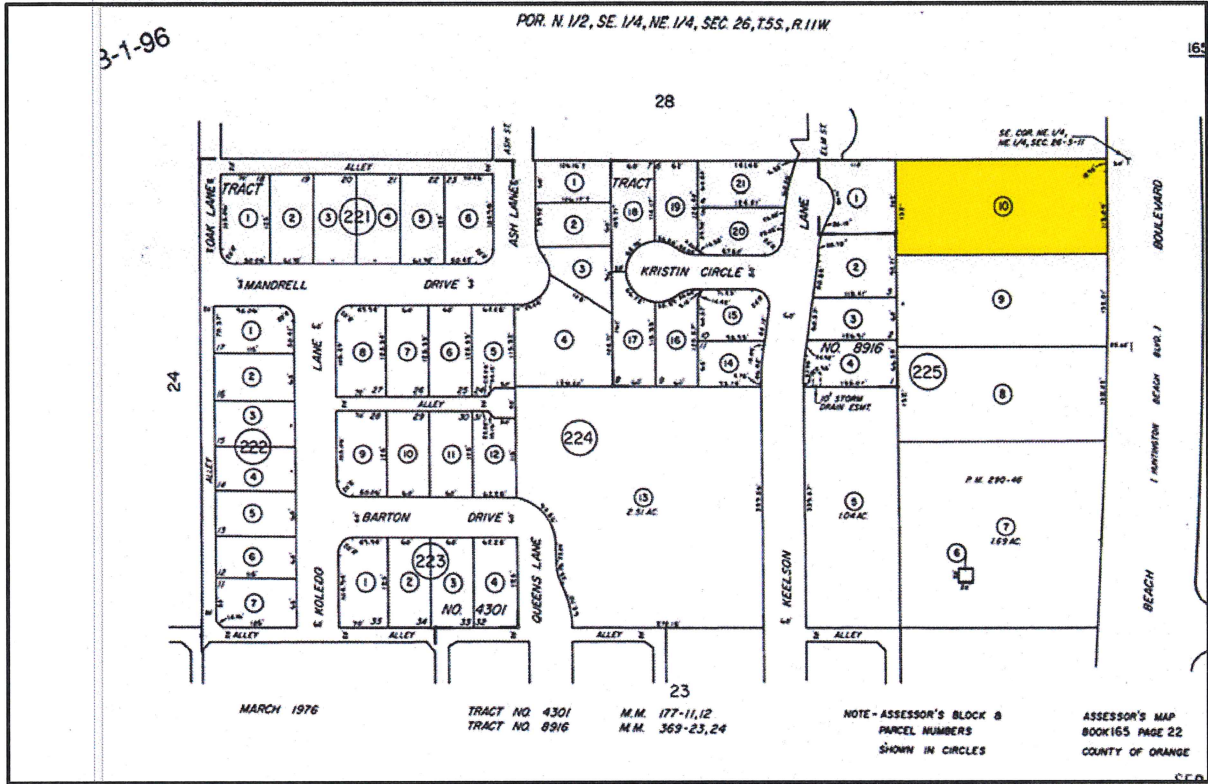
By: \_\_\_\_\_  
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Chief Executive Officer

National Community Renaissance of  
California, a California nonprofit public benefit  
corporation

By:  \_\_\_\_\_  
Michael Finn,  
Chief Financial Officer

# ATTACHMENT NO. 1

## SITE MAP



AFFORDABLE HOUSING AGREEMENT  
HB OASIS  
ATTACHMENT NO. 1 – SITE MAP

## **ATTACHMENT NO. 2**

### **LEGAL DESCRIPTION**

All that certain real property situated in the County of Orange, State of California, described as follows:

The North 132 feet of the East 330 feet of the North Half of the Southeast Quarter of the Northeast Quarter of section 26, in the Township 5 South, Range 11 West, in the Rancho Las Bolas, in the City of Huntington Beach, County of Orange, State of California, as per map recorded in Book 51, Page 13 of Miscellaneous Maps, in the Office of the County Recorder of said County.

Excepting therefrom that portion described as follows:

Beginning at the Northeast Corner of said Southeast Quarter of the Southeast Quarter thence along the East line of said Section, South  $0^{\circ} 40' 28''$  East, 132.00 Feet to the South line of the North 132.00 feet of said Southeast Quarter; thence along said South line, South  $89^{\circ} 29' 54''$  West, 30.65 feet to a curve, concave Westerly, having a radius of 9,934.00 feet; thence Northerly along said curve from a tangent bearing North  $0^{\circ} 01' 21''$  West, an arc distance of 113.04 feet, thence tangent North  $0^{\circ} 40' 28''$  West, 18.98 feet to the North line of said Southeast quarter of the Northeast quarter; thence along said North line, North  $89^{\circ} 29' 54''$  East, 30.00 feet to the point of beginning, as conveyed to the State of California by deed recorded in Book 2442, Pages 491 Official records.

Assessor's Parcel Number: **165-225-10**  
(End of Legal Description)

### **ATTACHMENT NO. 3**

#### **SCOPE OF DEVELOPMENT - INTERIM HOUSING PHASE**

The Property is developed with an existing three-story motel (Oasis fka the Quality Inn & Suites) building with sixty-five (65) units with approximately 36,651 square feet (to be verified by the architect). The Interim Housing includes the redevelopment of the property to make immediate necessary repairs to the building and grounds that comprises the motel so that sixty-two (62) units can be rapidly occupied and operated as Interim Housing (for a maximum period of a five (5) years except as extended as set forth in Section 101 of the Affordable Housing Agreement) until tax credits and project-based vouchers can be secured to further improve the Property and convert it into Permanent Supportive Housing.

Based on the contractor's initial assessment of the existing motel building, approximately \$3,700,000 in repairs and upgrades are needed for the Interim Housing. Improvements to the Property shall include voluntary improvements to provide an ADA accessible path of travel, converting four units to be ADA mobility accessible and two units to be ADA communication accessible, adding site fencing and secure gated entry, upgraded lighting and security system, roof repairs, repairing walkways, drywall, paint, as needed, improving fire and safety components, upgrading the laundry facility, and modifying site office work and community meeting areas.

During the conversion process to Permanent Supportive Housing, Borrower shall ensure compliance with all applicable laws, the Homekey Program, and the Standard Agreement including, without limitation, with regard to replacement of units and relocation assistance and benefits.

The Permanent Supportive Housing design could result in a change to the unit count and unit mix but shall provide approximately the same square footage of space for the Target Population as the Interim Housing did.

**ATTACHMENT NO. 4**

**SCHEDULE OF PERFORMANCE**

**\*\*All dates in this Schedule of Performance are subject to Force Majeure Delays**

<b>Performance Milestones</b>	<b>Milestone Completion Date</b>
The Borrower and County shall have entered into the ground lease with respect to the Property and commencement of the rehabilitation of the Interim Housing portion of the Project shall have occurred.	<b>On or before October 16, 2022</b>
Completion-Interim Housing shall have occurred.	<b>On or before February 16, 2023 (subject to extension if and as granted by HCD)</b>
Full occupancy by the Target Population must be accomplished in accordance with the descriptions and representations set forth in the Standard Agreement.	<b>On or before October 16, 2022 (subject to extension if and as granted by HCD)</b>
The Permanent Housing Construction Financing Event shall have occurred.	<b>On or before May 17, 2025 (subject to extension set forth in Section 101 of the Affordable Housing Agreement)</b>
Completion-Permanent Housing shall have occurred.	<b>On or before May 17, 2027 (subject to extension set forth in Section 101 of the Affordable Housing Agreement)</b>
The Conversion Date shall have occurred.	<b>On or before May 17, 2027 (subject to extension set forth in Section 101 of the Affordable Housing Agreement)</b>
A regulatory agreement/use restriction must be recorded against the Project as specified and described in the Standard Agreement.	<b>Within three (3) months following the Conversion Date.</b>

**ATTACHMENT NO. 5**

**AUTHORITY NOTE**

(behind this page)

**PROMISSORY NOTE  
TO THE HUNTINGTON BEACH HOUSING AUTHORITY  
[LOW AND MODERATE INCOME HOUSING ASSET FUND]**

3% Interest  
\$2,400,000

Huntington Beach, California  
\_\_\_\_\_, 2022

FOR VALUE RECEIVED, AMERICAN FAMILY HOUSING, a California nonprofit public benefit corporation, and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation (jointly, the “Borrower”), hereby promises to pay to the HUNTINGTON BEACH HOUSING AUTHORITY (“Authority”), a public body, corporate and politic, or order, a principal amount of TWO MILLION FOUR HUNDRED THOUSAND DOLLARS (\$2,400,000) (the “Authority Loan”). This Note is given pursuant to that certain Affordable Housing Agreement dated May 17, 2022, between Borrower and Authority (the “Loan Agreement”) and evidences the Authority Loan to Borrower, which provides part of the financing for the rehabilitation of that certain real property in the City of Huntington Beach legally described in the Deed of Trust securing this Note (the “Property”), as more particularly set forth in the Loan Agreement. The obligation of Borrower to Authority hereunder is subject to the terms of the Loan Agreement, this Note and the following instruments, each dated on or about the date hereof, and, where applicable, executed and delivered by Borrower for the purpose of securing this Note: a Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) (“Authority Loan Deed of Trust”) and an Assignment of Agreements (“Assignment of Agreements”). Said documents are public records on file in the offices of Authority, and the provisions of said documents are incorporated herein by this reference. The Borrower shall pay interest at the rate, in the amount and at the time hereinafter provided.

1. Definitions. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Loan Agreement. In addition, the following terms shall have the following meanings:

“Agreement Containing Covenants” means the Agreement Containing Covenants (Including Rental Restrictions) between the Authority and Borrower dated on or about the date hereof and recorded against Borrower’s leasehold interest in the Property.

“Assignment of Agreements” means the assignment by Borrower to Authority of plans, contracts and permits, dated around the date hereof and securing the Authority Loan.

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“Authority” means the Huntington Beach Housing Authority and any assignee of or successor to its rights, powers and responsibilities.

“Authority’s Share of Residual Receipts” has the meaning given to it in Paragraph 7(b) of this Note.

“County” means the County of Orange.

“Interest Rate” shall mean the lower of: (a) the reference or prime rate of Bank of America, National Association, in effect from time to time, plus three percent (3%); or (b) the highest rate of interest permissible under the then applicable laws not to exceed the rate of twelve percent (12%) per annum.

“Maturity Date” means the earlier of May 17, 2082 or the fifty-fifth (55th) anniversary of the Conversion Date.

“Net Proceeds” means the proceeds of any refinancing, less the customary and reasonable costs of the transaction.

“Note” means this promissory note evidencing the Authority Loan.

“Residual Receipts” shall mean, in a particular calendar year, the amount by which Gross Revenue (as defined below) exceeds the sum of Annual Operating Expenses (as defined below), as determined by an audit to be completed not later than ninety (90) days after the end of each calendar year by an independent certified public accountant first approved in writing by the Authority, using generally accepted accounting principles and based on the accrual method (the “Audit”).

(i) Gross Revenue. “Gross Revenue,” with respect to a particular calendar year, shall mean all revenue, income, receipts, and other consideration actually received from operation or leasing of the Project. “Gross Revenue” shall include, but not be limited to: all rents, fees and charges paid by tenants, rental subsidy payments received for the dwelling units, deposits forfeited by tenants, cancellation fees, price index adjustments and other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Project; and condemnation awards for a taking of part or all of the Project for a temporary period. “Gross Revenue” shall also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Project, except that the value of services provided by the on-site manager(s)



shall not be treated as “Gross Revenue” so long as no more than two dwelling units are leased to or otherwise used by on-site manager(s). “Gross Revenue” shall not include tenants’ security deposits, capital contributions or similar advances, or interest that is earned on and allocated to reserve accounts.

(ii) Annual Operating Expenses. “Annual Operating Expenses” with respect to a particular calendar year means the following costs reasonably and actually incurred for operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property and other taxes and assessments imposed on the Project; premiums for property damage and liability insurance; utility services not paid for directly or reimbursed by tenants, including but not limited to water, sewer, trash collection, gas and electricity and similar customary utility services; maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial, supplies; any annual lease payment, license or certificate of occupancy fees required for operation of the Project; general administrative expenses including but not limited to advertising and marketing, security services and systems, professional fees for legal, audit, accounting and tax returns for the limited partnership, and similar customary administrative expenses; property management fees, expenses and costs, not to exceed six percent (6%) of Gross Revenue, pursuant to a management contract approved by the Authority in Authority’s reasonable discretion; resident supportive services fees as may be required by Project lenders; partnership management fees payable to Borrower’s managing general partner, deferred developer fees, and asset management fees, each in an amount pre-approved in writing by the Authority as part of the evidence of financing for the Permanent Housing Construction Financing Event; cash deposited into a replacement reserve in the amount of \$300 per unit or such higher amounts as are required by Project lenders from time to time; cash deposited into an operating reserve in such reasonable amounts as are required by Project lenders from time to time, and approved by the Authority; a monitoring fee to the Authority in an amount equal to \$1,600, to be increased at an annual rate of three percent (3%), and fixed debt service payments (excluding debt service contingent upon the availability of residual receipts or surplus cash of the Project) on loans associated with the Project and approved by the Authority. “Annual Operating Expenses” shall not include the following: depreciation, amortization, depletion or other non-cash expenses or amounts expended from a reserve account. Annual Operating Expenses will be subject to the reasonable approval of the Authority.

2. This Note evidences the obligation of the Borrower to the Authority for the repayment of the Authority Loan.

3. This Note is payable at the principal office of Authority, 2000 Main Street, Huntington Beach, CA 92648, Attn: Executive Director, or at such other place as the holder hereof may inform the Borrower in writing, in lawful money of the United States.

4. This Note shall be secured by the Authority Loan Deed of Trust.

5. This Note shall bear simple interest at the rate of three percent (3%) per annum, which shall begin to accrue upon the earlier to occur of the Conversion Date or five (5) years from the date of this Note.

6. The entire unpaid principal balance of this Note and all accrued but unpaid interest shall be due and payable upon the Maturity Date, or upon the earliest occurrence of any of the following:

(a) the date the Property or the Improvements or any portion thereof or interest therein is sold, transferred, assigned or refinanced, without the prior written approval of the Authority, except as permitted by the Loan Agreement; or

(b) the date on which there is a default by the Borrower under the terms of this Note, the Loan Agreement, the Authority Deed of Trust, the Agreement Containing Covenants, any other agreement between Authority and Borrower, or any deed of trust or other instrument securing the County Loan, which is not cured or waived within the respective time period provided herein and therein; or

(c) The Conversion Date does not occur within five (5) years following the date of the Loan Agreement or such extended date as may be approved by the Authority pursuant to Section 101 of the Loan Agreement.

7. Payments will be due and payable under this Note as follows:

(a) Prior to the Conversion Date. Prior to the Conversion Date, except as set forth in Section 6, above, or in the event of a default described in Section 12, below, no payments are due and payable under this Note except to the extent of any refinancing or Cost Savings as set forth in Sections 7(c) and (d), below.

(b) Following the Conversion Date. Following the Conversion Date, except as set forth in Section 6, above, or in the event of a default described in Section 12, below, no payments are due and payable under this Note except to the extent of (a) the Authority's Share of Residual Receipts, and (b) any refinancing or Cost Savings as set forth in Sections 7(c) and (d), below. Borrower shall be obligated to pay the Authority's Share of Residual Receipts as follows:

(i) Annually, not later than the thirtieth (30th) day of April, beginning with the year following the year in which the Conversion Date occurs, Borrower shall submit to the Authority an audited Annual Financial Statement for the preceding calendar year, prepared by a certified public accountant reasonably acceptable to the Authority, determining the amount of Residual Receipts, if any, generated in that year, together with payment of the Authority's Share of Residual Receipts. The first such Annual Financial Statement shall be for the partial year beginning on the Conversion Date and ending on December 31 of that year. The Authority shall review and approve such Annual Financial Statement, or request revisions, within 30 days after receipt. If there is an increase in the amount of any payment due and payable to the Authority (as the result, for example, of a determination that the actual amount of Residual Receipts to which the Authority is entitled exceeds the amount of Authority's Share of Residual Receipts shown in the Annual Financial Statement submitted by Borrower), Borrower shall promptly pay to the Authority the difference, with interest, from the date on which such payment was due, at the then Interest Rate, but in any event within ten (10) days of notice of such increase.

(ii) Borrower shall repay the Authority Loan with annual payments equal to the Authority's Share of Residual Receipts. The Authority's Share of Residual Receipts will be calculated as follows: a percentage derived from a fraction in which the principal amount of the Authority Loan upon final disbursement is the numerator and the sum of the Authority Loan plus the amount of any "soft" loans approved by the Authority as set forth in the Loan Agreement plus the percentage share of Residual Receipts to be paid as "rent" under the Ground Lease in an amount verified by the Authority is the denominator, multiplied by fifty percent (50%).

(c) If, upon completion of the rehabilitation of the Property for the Permanent Housing phase of the Project, there are "Cost Savings" as defined below, Borrower will be entitled to retain fifty percent (50%) of the Cost Savings. A share of the Cost Savings in a percentage equal to the Authority's Share of Residual Receipts calculated as set forth in paragraph (b) of this Section 7 will be applied to the repayment of the Authority Loan. "Cost Savings", as that term is used in this Note, is the difference between the total sources of funds for the rehabilitation of the Property for the Permanent Housing phase of the Project and the total development costs as shown in a cost certification to be prepared, upon the request of the Authority, by a certified public accountant reasonably acceptable to the Authority, at Borrower's cost and expense, to the satisfaction of the Authority. The amount payable to the Authority under this paragraph will be paid within sixty (60) days following written request therefor from the Authority. Such amounts will accrue at the then Interest Rate from the date due and payable until paid in full. The Authority will be entitled to review and approve the cost certification and to require appropriate revisions to assure that Cost Savings have not been minimized or reallocated.

(d) Borrower will apply any Net Proceeds to pay an amount equal to the Authority's Share of Residual Receipts calculated as set forth in paragraph (b) of this Section 7 to the Authority to pay accrued interest on, and then reduce the principal amount of the Authority Loan.

(e) All payments to the Authority shall be applied first to amounts owed under this Note other than principal and interest, then to accrued interest, and then to reduce the principal amount owed.

8. Borrower may prepay this Note, or any part hereof, without penalty. However, prepayment of the obligation evidenced by this Note prior to the expiration of the term of the Agreement Containing Covenants will not entitle Borrower to a reconveyance of the Authority Deed of Trust.

9. The Authority Loan is funded from the Authority's Low and Moderate Income Housing Asset Fund. Accordingly, Borrower agrees for itself, its successors and assigns that the use of the Property shall be subject to the restrictions on rent and occupancy set forth in the Agreement Containing Covenants.

10. Borrower waives presentment for payment, demand, protest, and notices of dishonor and of protest; the benefits of all waivable exemptions; and all defenses and pleas on the ground of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice. Borrower hereby agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the holder hereof, in the enforcement of this Note.

11. Upon the failure of Borrower to perform or observe any term or provision of this Note, subject to notice and a reasonable opportunity to cure, the holder may exercise its rights or remedies hereunder.

12. (a) Failure or delay by Borrower to perform or a breach or threatened breach of any term or provision of this Note constitutes a default under this Note.

(b) Authority shall give written notice of default to Borrower, specifying the default complained of by the Authority. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Any failures or delays by Authority in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by Authority in asserting any of its rights and remedies shall not deprive

Authority of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(d) If a monetary event of default occurs under the terms of this Note, prior to exercising any remedies hereunder Authority shall give Borrower written notice of such default. Borrower shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by Authority under this Note. In no event shall Authority be precluded from exercising remedies if its security becomes or is about to become materially impaired by any failure to cure a default or the default is not cured within fifteen (15) calendar days after the notice of default is received or deemed received.

(e) If a non-monetary event of default occurs under the terms of this Note, prior to exercising any remedies hereunder, Authority shall give Borrower notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Borrower shall have such period to effect a cure prior to exercise of remedies by the Authority under this Note. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Borrower (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Authority. In no event shall Authority be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within sixty (60) days after the notice of default is received or deemed received.

(f) Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed received upon its transmission; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by Owner; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof. Notices hereunder shall be sent to the address(es) set forth in the Loan Agreement.

13. If the rights created by this Note shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the remaining obligations shall be completely performed and paid.

14. If more than one person or entity is executing this Note as Borrower, then each such person or entity that executes this Note shall be jointly and severally responsible for any and all obligations of Borrower hereunder.

15. Nonrecourse Obligation. Subject to the provisions and limitations of this Section 15, the obligation to repay the Authority Loan is a nonrecourse obligation of the Borrower. Borrower and each general partner or limited partner of Borrower will not have any personal liability for repayment of the Authority Loan, except as provided in this Section 15. The sole recourse of Authority will be the exercise of its rights against Borrower's leasehold interest in the Property and other security for the Authority Loan. Provided, however, that the foregoing will not (a) constitute a waiver of an obligation evidenced by this Note or the Authority Loan Deed of Trust; (b) limit the right of the Authority to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Note and the Authority Loan Deed of Trust or any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment will be asked for or taken against Borrower; (c) release or impair this Note or the Authority Loan Deed of Trust; (d) prevent or in any way hinder the Authority from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or other instrument securing the Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder the Authority from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing this Note; (f) relieve Borrower of its obligations under an indemnity delivered by Borrower to Authority; or (g) affect in any way the validity of a guarantee or indemnity from any person of all or any of the obligations evidenced and secured by this Note and the Authority Loan Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of a default, Borrower and its successors and assigns will have personal liability hereunder for any deficiency judgment, but only if and to the extent Borrower, its principals, shareholders, partners or its successors and assigns received rentals, other revenues, or other payments or proceeds in respect of the mortgaged Property after the occurrence of such default, which rentals, other revenues, or other payments or proceeds have not been used for the payment of ordinary and reasonable operating expenses of the mortgaged Property, ordinary and reasonable capital improvements to the mortgaged Property, debt service, real estate taxes in respect of the mortgaged Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Borrower in connection with the operation of the mortgaged Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, Authority may recover directly from Borrower or from any other party:

(i) damages, costs and expenses incurred by the Authority as a result of fraud or criminal act or acts of Borrower or a partner, shareholder, officer, director or employee of Borrower, or of a member or general or limited partner of Borrower, or of a general or limited partner of such member or general or limited partner;

(ii) damages, costs and expenses incurred by Authority as a result of misappropriation of funds provided for the payment of Acquisition Costs, as described in the Loan Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds;

(iii) all amounts owing by Borrower pursuant to the indemnification regarding Hazardous Substances under the Environmental Indemnity, and

(iv) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions.

[Remainder of page left intentionally blank; signatures on following page]

IN WITNESS WHEREOF Borrower has executed this Note as of the day and year set forth above.

American Family Housing, a California nonprofit  
public benefit corporation

By: \_\_\_\_\_  
Myles A. Peinemann II,  
Chief Executive Officer

National Community Renaissance of California, a  
California nonprofit public benefit corporation

By: \_\_\_\_\_  
Michael Finn,  
Chief Financial Officer



**ATTACHMENT NO. 6**  
**AUTHORITY DEED OF TRUST**

(behind this page)

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

HUNTINGTON BEACH HOUSING AUTHORITY  
2000 Main Street  
Huntington Beach, CA 92648  
Attn: Executive Director

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 165-225-10

FREE RECORDING REQUESTED  
(Gov't Code Section 27383)

**LEASEHOLD DEED OF TRUST,  
SECURITY AGREEMENT AND FIXTURE FILING  
(WITH ASSIGNMENT OF RENTS)  
BY AMERICAN FAMILY HOUSING and NATIONAL COMMUNITY RENAISSANCE  
OF CALIFORNIA FOR THE BENEFIT OF  
THE HUNTINGTON BEACH HOUSING AUTHORITY  
[LOW AND MODERATE INCOME HOUSING ASSET FUND]**

This Leasehold Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents) (this **"Deed of Trust"**), dated as of \_\_\_\_\_, 2022, is made by AMERICAN FAMILY HOUSING, a California nonprofit public benefit corporation, and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation, whose address is 15161 Jackson Street, Midway City, CA 92655, Attention: Miles Peinemann, II (together, the **"Trustor"**), in favor of Commonwealth Land Title Insurance Company (the **"Trustee"**), and the Huntington Beach Housing Authority, a public body, corporate and politic, whose address is 2000 Main Street, Huntington Beach, CA 92648, Attn: Executive Director (the **"Beneficiary"**), and is executed to secure that certain Promissory Note to the Huntington Beach Housing Authority [Low and Moderate Income Housing Asset Fund] dated on or about the date hereof in a principal amount of up to \$2,400,000 executed by the Trustor in favor of the Beneficiary (such Promissory Note, as it may from time to time be supplemented, amended, extended, renewed or otherwise modified from time to time being referred to in this Deed of Trust as the **"Promissory Note"**), the provisions of which are incorporated in this Deed of Trust by this reference.

1. Grant in Trust and Security Agreement. For valuable consideration, the Trustor irrevocably grants, transfers and assigns to the Trustee, in trust, with power of sale, for the benefit of the Beneficiary, the following property (the **"Trust Estate"**):

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- (a) the real property described in Exhibit A attached to this Deed of Trust and incorporated herein by this reference (the “**Land**”); and
- (b) all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the “**Improvements**”); and
- (c) all tenements, hereditaments, appurtenances, privileges and other rights and interests now or in the future benefitting or otherwise relating to the Land or the Improvements, including easements, rights-of-way, development rights, mineral rights, water rights and water stock (the “**Appurtenances**”). The Appurtenances, together with the Land and the Improvements, shall be referred to as the “**Property**”.

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of the following (collectively, the “**Secured Obligations**”): (a) all present and future indebtedness evidenced by the Promissory Note, including principal and all other amounts payable under the terms of the Promissory Note; (b) all present and future obligations of the Trustor to the Beneficiary under this Deed of Trust; (c) present and future obligations of the Trustor to the Beneficiary under that certain Affordable Housing Agreement dated as of May 17, 2022 entered into by and between the Trustor (the “Borrower” therein) and the Beneficiary (the “Authority” therein) (the “**Agreement**”); and (d) all additional present and future obligations of the Trustor to the Beneficiary under any other agreement or instrument (whether existing now or in the future) which states that it is, or such obligations are, secured by this Deed of Trust; in each case as such indebtedness and other obligations may from time to time be supplemented, modified, amended, renewed and extended, whether evidenced by new or additional documents or otherwise.

3. Trustor’s Covenants. To protect the security of this Deed of Trust, the Trustor agrees as follows:

(a) Payment and Performance of Secured Obligations. The Trustor shall pay and perform all Secured Obligations in accordance with the respective terms of such Secured Obligations, whether evidenced by or arising under this Deed of Trust or the Promissory Note.

(b) Liens and Taxes. The Trustor shall pay, prior to delinquency, all taxes, if any, which are or may become a lien affecting any part of the Trust Estate, and the Trustor shall pay and perform when due all other obligations secured by or constituting a lien affecting any part of the Trust Estate, provided that the Trustor shall not be in violation of this provision if the Trustor is protesting or contesting such taxes in good faith and by legal means.

4. Obligations With Respect to Trust Estate. Neither the Beneficiary nor the Trustee shall be under any obligation to preserve, maintain or protect the Trust Estate or any of the Trustor’s rights or interests in the Trust Estate, or make or give any presentments, demands for

performance, protests, notices of nonperformance, protest or dishonor or other notices of any kind in connection with any rights, or take any other action with respect to any other matters relating to the Trust Estate. The Beneficiary and the Trustee do not assume and shall have no liability for, and shall not be obligated to perform, any of the Trustor's obligations with respect to any rights or any other matters relating to the Trust Estate, and nothing contained in this Deed of Trust shall release the Trustor from any such obligations.

5. Remedies Upon Event of Default. Upon the occurrence of any Event of Default (as hereinafter defined): (a) the Trustor shall be in default under this Deed of Trust, and upon acceleration of the payment of any Secured Obligations in accordance with the terms of the Promissory Note, all Secured Obligations shall immediately become due and payable without further notice to the Trustor; (b) upon demand by the Beneficiary, the Trustor shall pay to the Beneficiary, in addition to all other payments specifically required under the Promissory Note, at the times and in the amounts required by the Beneficiary from time to time, sums which when cumulated will be sufficient to pay one month prior to the time the same become delinquent, all taxes which are or may become a lien affecting the Trust Estate and the premiums for any policies of insurance to be obtained hereunder (all such payments to be held in a cash collateral account as additional security for the Secured Obligations over which the Beneficiary shall have sole and exclusive control and right of withdrawal); and (c) the Beneficiary may, without notice to or demand upon the Trustor, which are expressly waived by the Trustor (except for notices or demands otherwise required by applicable laws to the extent not effectively waived by the Trustor and any notices or demands specified below), and without releasing the Trustor from any of its Secured Obligations, exercise any one or more of the following remedies as the Beneficiary may determine.

The Beneficiary may, either directly or through an agent or court-appointed receiver, and without regard to the adequacy of any security for the Secured Obligations:

(i) enter, take possession of, manage, operate, protect, preserve and maintain, and exercise any other rights of an owner of the Trust Estate, and use any other properties or facilities of the Trustor relating to the Trust Estate, all without payment of rent or other compensation to the Trustor;

(ii) enter into such contracts and take such other action as the Beneficiary deems appropriate to complete all or any part of any construction which may have commenced on the Land, subject to such modifications and other changes in the plan of development as the Beneficiary may deem appropriate;

(iii) conduct any business of the Trustor in relation to the Trust Estate and deal with the Trustor's creditors, debtors, agents and employees and any other persons having any relationship with the Trustor in relation to the Trust Estate, and amend any contracts between them, in any manner the Beneficiary may determine;

(iv) endorse, in the name of the Trustor, all checks, drafts and other evidences of payment relating to the Trust Estate, and receive, open and dispose of all mail addressed to the Trustor and notify the postal authorities to change the address for delivery of such mail to such address as the Beneficiary may designate; and

(v) take such other action as the Beneficiary deems appropriate to protect the security of this Deed of Trust.

The Beneficiary's agent or court-appointed receiver shall hold all monies and proceeds, including, without limitation, proceeds from the sale of the Property or any portion thereof, for the benefit of the Trustor and shall not disburse the monies or proceeds for the satisfaction of the Secured Obligations without the prior written consent of the Beneficiary. The Beneficiary's agent or court-appointed receiver may, but without any obligation to do so and without notice to or demand upon the Trustor and without releasing the Trustor from any Secured Obligations under this Deed of Trust, and at the expense of the Trustor, follow the written instruction of the Beneficiary under this Section 5.

The Beneficiary may execute and deliver to the Trustee written declaration of default and demand for sale and written notice of default and of election to cause all or any part of the Trust Estate to be sold, which notice the Trustee shall cause to be filed for record; and after the lapse of such time as may then be required by law following the recordation of such notice of default, and notice of sale having been given as then required by law, the Trustee, without demand on the Trustor, shall sell such Property at the time and place fixed by it in such notice of sale, either as a whole or in separate parcels and in such order as the Beneficiary may direct (the Trustor waiving any right to direct the order of sale), at public auction to the highest bidder for cash in lawful money of the United States (or cash equivalents acceptable to the Trustee to the extent permitted by applicable law), payable at the time of sale. The Trustee may postpone the sale of all or any part of the Trust Estate by public announcement at such time and place of sale, and from time to time after any such postponement may postpone such sale by public announcement at the time fixed by the preceding postponement. The Trustee shall deliver to the purchaser at such sale its deed conveying the property so sold, but without any covenant or warranty, express or implied, and the recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Trustee or the Beneficiary, may purchase at such sale, and any bid by the Beneficiary may be, in whole or in part, in the form of cancellation of all or any part of the Secured Obligations. Any such sale shall be free and clear of any interest of the Trustor and any lease, encumbrance or other matter affecting the property so sold which is subject or subordinate to this Deed of Trust, except that any such sale shall not result in the termination of any such lease (i) if and to the extent otherwise provided in any estoppel or other agreement executed by the tenant and the Beneficiary (or executed by the tenant in favor of, and accepted by, the Beneficiary), or (ii) if the purchaser at such sale gives written notice to the tenant, within 30 days after date of sale, that the lease will continue in effect.

The Beneficiary may proceed to protect, exercise and enforce any and all other remedies provided under the Agreement, the Promissory Note, this Deed of Trust or by applicable laws.

All proceeds of collection, sale or other liquidation of the Trust Estate shall be applied first to all costs, fees, expenses and other amounts payable by the Trustor under this Deed of Trust and to all other Secured Obligations not otherwise repaid in such order and manner as the Beneficiary may determine, and the remainder, if any, to the person or persons legally entitled thereto.

Each of the remedies provided in this Deed of Trust is cumulative and not exclusive of, and shall not prejudice, any other remedy provided in this Deed of Trust or by applicable laws. Each remedy may be exercised from time to time as often as deemed necessary by the Trustee and the Beneficiary, and in such order and manner as the Beneficiary may determine. This Deed of Trust is independent of any other security for the Secured Obligations, and upon the occurrence of an Event of Default, the Trustee or the Beneficiary may proceed in the enforcement of this Deed of Trust independently of any other remedy that the Trustee or the Beneficiary may at any time hold with respect to the Trust Estate or the Secured Obligations or any other security. The Trustor, for itself and for any other person claiming by or through the Trustor, waives, to the fullest extent permitted by applicable laws, all rights to require a marshaling of assets by the Trustee or the Beneficiary or to require the Trustee or the Beneficiary to first resort to any particular portion of the Trust Estate or any other security (whether such portion shall have been retained or conveyed by the Trustor) before resorting to any other portion, and all rights of redemption, stay and appraisal.

6. Event of Default. An “**Event of Default**” shall be deemed to occur if the Trustor is in default of any provision of the Promissory Note, this Deed of Trust or the Agreement and fails to cure such default subject to the notice and cure provisions thereof.

7. Costs, Fees and Expenses. The Trustor shall pay, on demand, all reasonable costs, fees, expenses, advances, charges, losses and liabilities of the Trustee and the Beneficiary under or in connection with this Deed of Trust or the enforcement of, or the exercise of, any remedy or any other action taken by the Trustee or the Beneficiary under this Deed of Trust or the collection of the Secured Obligations, in each case including, without limitation, (a) reconveyance and foreclosure fees of the Trustee, (b) costs and expenses of the Beneficiary or the Trustee or any receiver appointed under this Deed of Trust in connection with the operation, maintenance, management, protection, preservation, collection, sale or other liquidation of the Trust Estate or foreclosure of this Deed of Trust, (c) advances made by the Beneficiary to complete or partially construct all or any part of any construction which may have commenced on the Land or otherwise to protect the security of this Deed of Trust, (d) cost of evidence of title, and (e) the reasonable fees and disbursements of the Trustee’s and the Beneficiary’s legal counsel and other out-of-pocket expenses, and the reasonable charges of the Beneficiary’s legal counsel.

8. Late Payments. By accepting payment of any part of the Secured Obligations after its due date, the Beneficiary does not waive its right either to require prompt payment when due of all other Secured Obligations or to declare a default for failure to so pay.

9. Action by Trustee. At any time and from time to time upon written request of the Beneficiary and presentation of this Deed of Trust for endorsement, and without affecting the personal liability of any person for payment of the Secured Obligations or the security of this Deed of Trust for the full amount of the Secured Obligations on all Property remaining subject to this Deed of Trust, the Trustee may, without notice and without liability for such action, and notwithstanding the absence of any payment on the Secured Obligations or any other consideration: (a) reconvey all or any part of the Trust Estate, (b) consent to the making and recording, or either, of any map or plat of the Land, (c) join in granting any easement affecting the Land, or (d) join in or consent to any extension agreement or any agreement subordinating the lien of this Deed of Trust. The Trustee is not obligated to notify the Trustor or the Beneficiary of any pending sale under any other deed of trust or of any action or other proceeding in which the Trustor, the Beneficiary or the Trustee is a party unless brought by the Trustee.

10. Reconveyance. Upon written request of the Beneficiary and surrender of this Deed of Trust and the Promissory Note to the Trustee for cancellation or endorsement, and upon payment of its fees and charges, the Trustee shall reconvey, without warranty, all or any part of the Property then subject to this Deed of Trust. Any reconveyance, whether full or partial, may be made in terms to "the person or persons legally entitled thereto", and the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Beneficiary shall not be required to cause any Property to be released from this Deed of Trust until final payment and performance in full of all Secured Obligations and termination of all obligations of the Beneficiary under or in connection with the Promissory Note or until the Secured Obligations are forgiven.

11. Substitution of Trustee. The Beneficiary may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust, which instrument, when executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Land is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees who shall, without conveyance from the predecessor Trustee, succeed to all of its title, estate, rights, powers and duties. Such instrument must contain the name of the original Trustor, the Trustee and the Beneficiary, the book and page where this Deed of Trust is recorded (or the date of recording and instrument number) and the name and address of the new Trustee.

12. Successors and Assigns. This Deed of Trust applies to and shall be binding on and inure to the benefit of all parties to this Deed of Trust and their respective successors and permitted assigns.

13. Acceptance. Notice of acceptance of this Deed of Trust by the Beneficiary or the Trustee is waived by the Trustor. The Trustee accepts this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

14. Beneficiary's Statements. For any statement regarding the Secured Obligations, the Beneficiary may charge the maximum amount permitted by law at the time of the request for such statement.

15. Governing Law. This Deed of Trust shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

16. Recording. The Trustee shall record this Deed of Trust against the Property in the Orange County's Recorder's office.

17. Joint and Several Liability. If more than one person or entity is executing this Deed of Trust as Trustor, then each such person or entity that executes this Deed of Trust shall be jointly and severally responsible for any and all obligations of Deed of Trust hereunder.

[Signature on Following Page]

[Remainder of Page Intentionally Left Blank]



IN WITNESS WHEREOF, the Trustor has executed this Deed of Trust as of the day and year set forth above.

American Family Housing, a California nonprofit  
public benefit corporation

By: \_\_\_\_\_  
Myles A. Peinemann II,  
Chief Executive Officer

National Community Renaissance of California, a  
California nonprofit public benefit corporation

By: \_\_\_\_\_  
Michael Finn,  
Chief Financial Officer

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

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

Signature\_\_\_\_\_ (Seal)

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

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

Signature \_\_\_\_\_ (Seal)

Exhibit "A"

LEGAL DESCRIPTION

A leasehold interest created by that certain Ground Lease between the County of Orange and AMERICAN FAMILY HOUSING, a California nonprofit public benefit corporation, and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation, dated as of \_\_\_\_\_, 2022 in the real property described as follows:

The North 132 feet of the East 330 feet of the North Half of the Southeast Quarter of the Northeast Quarter of section 26, in the Township 5 South, Range 11 West, in the Rancho Las Bolas, in the City of Huntington Beach, County of Orange, State of California, as per map recorded in Book 51, Page 13 of Miscellaneous Maps, in the Office of the County Recorder of said County.

Excepting therefrom that portion described as follows:

Beginning at the Northeast Corner of said Southeast Quarter of the Southeast Quarter thence along the East line of said Section, South 0° 40' 28" East, 132.00 Feet to the South line of the North 132.00 feet of said Southeast Quarter; thence along said South line, South 89° 29' 54" West, 30.65 feet to a curve, concave Westerly, having a radius of 9,934.00 feet; thence Northerly along said curve from a tangent bearing North 0° 01' 21 West, an arc distance of 113.04 feet, thence tangent North 0° 40' 28" West, 18.98 feet to the North line of said Southeast quarter of the Northeast quarter; thence along said North line, North 89° 29' 54" East, 30.00 feet to the point of beginning, as conveyed to the State of California by deed recorded in Book 2442, Pages 491 Official records.

Assessor's Parcel Number: **165-225-10**  
(End of Legal Description)

**ATTACHMENT NO. 7**  
**ASSIGNMENT OF AGREEMENTS**

(behind this page)

## ASSIGNMENT OF AGREEMENTS

FOR VALUE RECEIVED, the undersigned, AMERICAN FAMILY HOUSING, a California nonprofit public benefit corporation, and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation (together, “Borrower”), assigns to THE HUNTINGTON BEACH HOUSING AUTHORITY (“Authority”), all of its right, title and interest in and to:

1. All architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, “Architectural Agreements”); and
2. All plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively “Plans and Specifications”)

heretofore or hereafter into or prepared by any architect, engineer or other person or entity (collectively “Architect”), for or on behalf of Borrower in connection with the development and construction of the Project. The Plans and Specifications, as of the date hereof, are those which Borrower has heretofore, or will hereafter deliver to Authority.

This ASSIGNMENT OF AGREEMENTS AND PLANS AND SPECIFICATIONS (“Assignment”) constitutes a present and absolute assignment to Authority as of the date of this Assignment; provided, however, Authority confers upon Borrower the right to enforce the terms of the Architectural Agreements and Borrower’s rights to the Plans and Specifications so long as no default has occurred and is continuing under that certain Affordable Housing Agreement dated as of May 17, 2022, between Authority and Borrower (the “Affordable Housing Agreement”), as well as any future amendments and implementation agreements between Borrower and Authority which refer to this Assignment. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Affordable Housing Agreement. Upon the occurrence of a default under the Affordable Housing Agreement, following written notice thereof and the expiration of the applicable cure period, Authority may, in its sole discretion, give notice to Architect of its intent to enforce the rights of Borrower under the Architectural Agreements and of its rights to the Plans and Specifications and may initiate or participate in any legal proceedings respecting the enforcement of said rights. Borrower acknowledges that by accepting this Assignment, Authority does not assume any of Borrower’s obligations under the Architectural Agreements or with respect to the Plans and Specifications.

Borrower represents and warrants to Authority that: (a) any Architectural Agreements entered into by Borrower are in full force and effect and are enforceable in accordance with their terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Architectural Agreements; (b) any copies of the Architectural

Agreements and Plans and Specifications delivered to Authority are complete and correct; and (c) Borrower has not assigned any of its rights under the Architectural Agreements or with respect to the Plans and Specifications except to the Authority under the Affordable Housing Agreement.

Borrower agrees: (a) to pay and perform all obligations of Borrower under the Architectural Agreements; (b) to enforce the payment and performance of all obligations of any other person or entity under the Architectural Agreements; (c) not to modify the existing Architectural Agreements nor to enter into any future Architectural Agreements without Authority's prior written approval except as otherwise may be permitted in the Affordable Housing Agreement; and (d) not to further assign (other than assignment in connection with any additional loans from the Authority), for security or any other purposes, its rights under the Architectural Agreements or with respect to the Plans and Specifications without Authority's prior written consent.

This Assignment secures performance by Borrower of all obligations of Borrower under the Affordable Housing Agreement. This Assignment is supplemented by the provisions of the Affordable Housing Agreement and said provisions are incorporated herein by reference.

This Assignment shall be governed by the laws of the State of California, except to the extent that Federal laws preempt the laws of the State of California, and Borrower consents to the jurisdiction of any Federal Court in the Central District of California, or State Court within the County of Orange having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorney's fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of Borrower and Authority; provided, however, this shall not be construed and is not intended to waive any restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation or encumbrance by Borrower contained in the Affordable Housing Agreement.

If more than one person or entity is executing this Assignment as Borrower, then each such person or entity that executes this Assignment shall be jointly and severally responsible for any and all obligations of Borrower hereunder.

The attached Architect's Consent, Schedule 1, and Exhibit A are incorporated by reference.

[Remainder of Page Intentionally Left Blank; Signatures on Following Page]

Executed as of \_\_\_\_\_ 2022.

**“BORROWER”**

American Family Housing, a California nonprofit  
public benefit corporation

By: \_\_\_\_\_  
Myles A. Peinemann II,  
Chief Executive Officer

National Community Renaissance of California, a  
California nonprofit public benefit corporation

By: \_\_\_\_\_  
Michael Finn,  
Chief Financial Officer



## ARCHITECT'S CONSENT

The undersigned architect ("Architect") hereby consents to the foregoing Assignment to which this Architect's Consent ("Consent") is part, and acknowledges that there presently exists no unpaid claims due to the Architect except as set forth on Schedule 1 attached hereto, arising out of the preparation and delivery of the Plans and Specifications to Borrower and/or the performance of the Architect's obligations under the Assignment.

Architect agrees that if, at any time, Authority shall become the owner of Borrower's leasehold interest in said Property, or, pursuant to its rights under the Affordable Housing Agreement, elects to undertake or cause the completion of construction of the Project on any portion of the Property, in accordance with the Plans and Specifications, and gives Architect written notice of such election; THEN, so long as Architect has received, receives or continues to receive the compensation called for under the Architectural Agreements, Authority may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Architect will continue to perform its obligations under the Architectural Agreements for the benefit and account of Authority in the same manner as if performed for the benefit or account of Borrower in the absence of the Assignment.

Architect further agrees that, in the event of a breach by Borrower of the Architectural Agreements, or any agreement entered into with Architect in connection with the Plans and Specifications, so long as Borrower's interest in the Architectural Agreements and Plans and Specifications is assigned to Authority, Architect will give written notice to Authority of such breach at the address shown below. Authority shall have thirty (30) days from the receipt of such written notice of default to remedy or cure said default. Nothing herein shall require Authority to cure said default or to undertake completion of construction of the Project.

Architect warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in the Plans and Specifications and/or the Architectural Agreements, except to Authority under the Affordable Housing Agreement. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

Executed as of \_\_\_\_\_, 2022.

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

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

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

Architect's Address:

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

HB Oasis  
Assignment of Agreements  
Architect's Consent  
S-1

## **SCHEDULE OF UNPAID CLAIMS**

Schedule 1 to Assignment of Architectural Agreements and Plans and Specifications dated as of \_\_\_\_\_, 2022 between AMERICAN FAMILY HOUSING, a California nonprofit public benefit corporation, and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation, jointly as Borrower, and HUNTINGTON BEACH HOUSING AUTHORITY, as Authority.

Unpaid claims, if any:

[List unpaid claims, if any]

HB Oasis  
Assignment of Agreements  
Architect's Consent  
Schedule of Unpaid Claims

## **EXHIBIT A**

### **PROPERTY DESCRIPTION**

A leasehold interest created by that certain Ground Lease between the County of Orange and AMERICAN FAMILY HOUSING, a California nonprofit public benefit corporation, and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation, dated as of \_\_\_\_\_, 2022 in the real property described as follows:

The North 132 feet of the East 330 feet of the North Half of the Southeast Quarter of the Northeast Quarter of section 26, in the Township 5 South, Range 11 West, in the Rancho Las Bolas, in the City of Huntington Beach, County of Orange, State of California, as per map recorded in Book 51, Page 13 of Miscellaneous Maps, in the Office of the County Recorder of said County.

Excepting therefrom that portion described as follows:

Beginning at the Northeast Corner of said Southeast Quarter of the Southeast Quarter thence along the East line of said Section, South 0° 40' 28" East, 132.00 Feet to the South line of the North 132.00 feet of said Southeast Quarter; thence along said South line, South 89° 29' 54" West, 30.65 feet to a curve, concave Westerly, having a radius of 9,934.00 feet; thence Northerly along said curve from a tangent bearing North 0° 01' 21 West, an arc distance of 113.04 feet, thence tangent North 0° 40' 28" West, 18.98 feet to the North line of said Southeast quarter of the Northeast quarter; thence along said North line, North 89° 29' 54" East, 30.00 feet to the point of beginning, as conveyed to the State of California by deed recorded in Book 2442, Pages 491 Official records.

Assessor's Parcel Number: **165-225-10**  
(End of Legal Description)

**ATTACHMENT NO. 8**  
**AGREEMENT CONTAINING COVENANTS**

(behind this page)

AFFORDABLE HOUSING AGREEMENT  
HB OASIS  
ATTACHMENT NO. 8 – AGREEMENT CONTAINING COVENANTS

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

HUNTINGTON BEACH HOUSING AUTHORITY  
2000 Main Street  
Huntington Beach, CA 92648  
Attn: Executive Director

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 165-225-10

FREE RECORDING REQUESTED  
(Gov't Code Section 27383)

AGREEMENT CONTAINING COVENANTS  
(INCLUDING RENTAL RESTRICTIONS)  
(17251 Beach Boulevard)

THIS AGREEMENT CONTAINING COVENANTS (INCLUDING RENTAL RESTRICTIONS) ("Agreement") dated as of \_\_\_\_\_, 2022 is entered into by and between AMERICAN FAMILY HOUSING, a California nonprofit public benefit corporation, and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation (together "Borrower"), and THE HUNTINGTON BEACH HOUSING AUTHORITY, a public body, corporate and politic ("Authority").

WHEREAS, pursuant to that certain Ground Lease by and between the County of Orange and Borrower dated as of \_\_\_\_\_, 2022 ("Ground Lease") Borrower has a leasehold interest in that certain real property (the "Property") located in the City of Huntington Beach more particularly described in Exhibit "A" which is attached hereto and incorporated herein by this reference;

WHEREAS, for the purpose of providing housing that will be affordable to Extremely Low Income households, Borrower and Authority have entered into that certain Affordable Housing Agreement, dated as of May 17, 2022 (as amended from time to time, the "Affordable Housing Agreement") to which this Agreement is attached as Attachment No. 8, which is incorporated herein by this reference (any capitalized term that is not otherwise defined in this Agreement shall have the meaning ascribed to such term in the Affordable Housing Agreement);

WHEREAS, pursuant to the Affordable Housing Agreement, the Authority has provided financial assistance to Borrower to rehabilitate the Property, using Low and Moderate Income Housing Asset Funds ("Authority Loan"); and

WHEREAS, the Affordable Housing Agreement contains certain provisions relating to the restricted use of the Property for affordable housing purposes.

05 09 22

NOW, THEREFORE, THE BORROWER AND THE AUTHORITY COVENANT AND AGREE AS FOLLOWS:

1. Affordable Units. For the Term of this Agreement, Borrower covenants and agrees for itself, its successors, its assigns and every successor in interest to Borrower's interest in the Property or any part thereof or any interest therein, that:

a. The Property shall be improved for the purpose of creating a 64-unit interim housing project and ancillary facilities, described in the Scope of Development - Interim Housing Phase, and after the Interim Housing phase, for the purpose of creating a permanent supportive affordable housing project and ancillary facilities subject to the occupancy and rent restrictions set forth in this Agreement and other regulatory agreements recorded against the Property. No change in the use of the Property shall be permitted without the prior written approval of the Authority;

b. Borrower shall comply with all applicable requirements of the Homekey Program, including, without limitation the HCD's Notice of Funding Availability for the Homekey Program and the Standard Agreement;

c. The maximum incomes of residential tenants eligible to rent the Affordable Units shall not exceed Extremely Low Income except as set forth in this Agreement;

d. Until the Conversion Date, the Affordable Units shall be used for Interim Housing for the Target Population;

e. After the Conversion Date, the 62 Affordable Units must be rented and available to Extremely Low Income households of the Target Population at an Affordable Rent except as set forth in this Agreement;

f. Fifty percent (50%) of the Project's Affordable Units shall be restricted to occupancy by the Chronically Homeless and fifty percent (50%) of the Project's Affordable Units are restricted to occupancy by the Homeless unless otherwise permitted by the prior written approval of the Authority. The unit mix and rent restrictions are as follows, provided, however, the rent and income restrictions applicable to the Project shall be set forth in and subject to the terms of this Agreement:

The Parties hereto acknowledge and agree that although it is anticipated that following Conversion the Project will have 64 units, the unit count may change to ensure Project feasibility and the City will meet and confer in good faith with Borrower to address amending this Agreement if and as required to modify the number of units as may be agreed upon by the Authority.

[reminder of page left intentionally blank]

# of Bedrooms	Units	Non- Homekey Units	Homekey - Assisted Units	AMI Limit	Income Restriction to Subset of Target Population
Manager Unit 0 (Studio)	2	0	0	N/A	N/A
0 (Studio)	31	0	31	30%	
0 (Studio)	31	0	31	30%	Chronically Homeless
Totals:	64		62		

Note: The number of units and the unit mix may change in the Permanent Supportive Housing phase.

g. The Conversion Date shall take place no later than set forth in the Affordable Housing Agreement; and

h. Following the Conversion Date, Borrower shall submit its rent schedule and utility allowances thirty (30) days prior to initial rental of the units and on an annual basis thereafter. The Authority shall review and approve or disapprove the proposed rent schedule and utility allowances for compliance with the maximum rent limitations contained in this Agreement.

The term “Affordable Unit” and “Affordable Units” shall be used as the context mandates and shall be reasonably interpreted in light of the context in which the term appears.

## 2. Household Incomes.

“Extremely Low Income Household” shall mean persons and families whose income, determined in accordance with section 6914 of Title 25 of the California Code of Regulations, does not exceed the income limits for Extremely Low Income households in Orange County, adjusted for family size, published approximately annually by California’s Housing and Community Development Department. If California’s Housing and Community Development Department discontinues publishing such income limits, the term “Extremely Low Income” shall mean a household income that does not exceed 30% of the Area Median Income, adjusted for family size.

3. Affordable Rent. “Affordable Rent” shall mean rental rates not to exceed the product of 30 percent times 30 percent of the Area Median Income adjusted for household size appropriate to the unit.

a. For purposes of determining Affordable Rent, the phrase “household size appropriate to the unit” shall mean the number of bedrooms in the unit plus one. Affordable Rent shall include a reasonable utility allowance for tenant-paid utilities based on the Orange County Housing Authority’s published utility schedules.

b. “Area Median Income” shall mean the area median income of the Orange County metropolitan statistical area (PMSA), with adjustments for household size, as estimated annually by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 as amended and published by California’s Housing and Community Development Department pursuant to Health and Safety Code Section 50093.

c. Loss of Project Based Voucher Subsidy. If, after the date of this Agreement, the Project is awarded rental subsidies such as Project-Based Section 8 Vouchers, it is anticipated that the Affordable Units will be supported by this rental subsidy (the “Rental Subsidy”). If, during the Term, any change in federal law or regulations occurs, or any action (or inaction) by Congress or any federal or State agency occurs, which results in a reduction, termination, or nonrenewal of the Rental Subsidy through no fault of Borrower, such that the Rental Subsidy as it exists as of the date it first is used to support the Project is no longer available (or available in a lesser amount), Borrower may request approval of the Authority to (i) allow households with adjusted incomes that do not exceed fifty percent (50%) of Area Median Income, adjusted for actual household size, to occupy the Affordable Units, and (ii) increase the rent on one or more of the Affordable Units, to rents that are affordable to households with an adjusted income that does not exceed fifty percent (50%) of Area Median Income, adjusted for actual household size, as outlined in this Section 3.c so long as the Authority, in its reasonable discretion, finds that the proposed number of Affordable Units subject to the rent increase does not disrupt the Authority’s ability to meet its Housing Successor Agency expenditure reporting requirements found in Health and Safety Code section 34176.1(a). Notwithstanding Section 34176.1(a), any proposed Affordable Unit rent change may only be increased to an adjusted income that does not exceed fifty percent (50%) of Area Median Income, adjusted for actual household size.

The rent increase is subject to the following requirements: concurrently with the request, Borrower shall provide the Authority with (a) evidence of the anticipated reduction, termination, or nonrenewal of the Rental Subsidy, (b) a Management Plan (as defined herein) for the Project for the Authority’s approval (such approval not to be unreasonably withheld or delayed), showing the impact of the loss or reduction of the Rental Subsidy, (c) a proposed operating budget reflecting the rent increases (the “Revised Operating Budget”), and (d) a description of efforts to obtain alternate sources of rent, and, if the foregoing requirements are completed to the Authority’s reasonable satisfaction, subject to the limitations set forth in the immediately succeeding sentence, the Authority shall approve Borrower’s request to increase the income limits and rent restrictions applicable to the Affordable Units. The number of Affordable Units subject to the rent increase and the amount of the proposed increase may not be greater than (i) the number or amount required



to ensure that the Project generates sufficient income to cover its operating costs, required deposits to replacement reserves, and debt service payments on approved financing as shown on the Revised Operating Budget, and (ii) such amount as is necessary for the Project to maintain a Debt Service Coverage Ratio of at least 1.15 to 1.00. As used herein, "Debt Service Coverage Ratio" means, for any period, the ratio of (a) net operating income for such period to (b) all principal and interest payments due and payable during such period, regardless of whether the Project is generating sufficient cash flow. In addition, upon a reduction, termination, or nonrenewal of the Rental Subsidy as described above, Borrower hereby agrees to the following:

i. Borrower shall use good faith commercially reasonable efforts to obtain alternative sources of rental subsidies and shall provide the Authority with annual progress reports on efforts to obtain alternative sources of rental subsidies that would allow the rents to be reduced. Upon receipt of any alternative rental subsidies, Borrower shall reduce the rents back to the original restrictions set forth in this Section 3 to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs, required replacement reserves, and debt service of the Project as shown on the Revised Operating Budget;

ii. Borrower shall provide tenants in the Affordable Units with notice of any rent increase and shall notify the tenant that if they have received a tenant-based voucher they may use the tenant-based voucher for their Affordable Unit;

iii. All rent increases are subject to Authority approval pursuant to the terms of this Section 3.c. No later than sixty (60) days prior to the proposed implementation of any rent increase, Borrower shall submit to the Authority a schedule of any proposed increase in the rent. The Authority will disapprove a rent increase if it does not comply with the restrictions set forth in this Section 3.c. Notwithstanding the foregoing, rent increases for the Affordable Units shall be subject to review and approval of the Authority (such approval not to be unreasonably withheld or delayed) as described above;

iv. Borrower shall give tenants of all Affordable Units written notice at least sixty (60) days prior to any rent increase; and

v. With respect to any Affordable Units for which Authority has authorized Borrower to increase rents pursuant to this Section 3.c., all special and/or target population requirements shall automatically terminate; provided, however, that any such special and/or target population requirements shall be reinstated with respect to any such Affordable Units for which, pursuant to Section 3.c.(i) above, Borrower reduces rents back to the original restrictions found in this Agreement.

d. Notwithstanding the foregoing or anything else to the contrary contained herein or in the Affordable Housing Agreement, following foreclosure upon any deed of trust securing a loan senior in priority to the Authority Loan, the following changes in affordability restrictions set forth in this Agreement shall occur without the need for any amendment or modification to this Agreement: (i) households with adjusted incomes that do not exceed fifty percent (50%) of Area Median Income, adjusted for actual household size, shall be permitted to occupy the Affordable

Units; and (ii) rents on such Affordable Units shall be adjusted to rental rates not to exceed the product of 30 percent times 50 percent of the Area Median Income, adjusted for household size appropriate to the unit.

4. Failure to Comply. Subject to the notice and cure provisions herein, failure to comply with the covenants in this Agreement is an event of default under the terms of the promissory note evidencing the Authority Loan. Pursuant to said promissory note, upon a default under this Agreement not cured within the notice and cure period provided herein, the Authority Loan will become immediately due and payable.

5. Nondiscrimination. The Borrower covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, to the fullest extent applicable to senior housing, there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, national origin, religion or sex in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Borrower itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

6. Management and Maintenance Requirements.

a. Borrower covenants and agrees (for itself, its successors, its assigns, and every successor in interest to Borrower's interest in the Property or any part thereof) that Borrower, its successors and assigns shall use the Property exclusively to provide affordable housing as provided in the Affordable Housing Agreement.

b. Prior to the Loan Closing or such later date as may be agreeable to the Authority in its sole discretion, Borrower shall submit to the Authority a Management Plan describing the proposed plans for managing and operating the Property. Approval of the Management Plan by the Authority Executive Director or designee shall be a condition precedent to the Loan Closing unless waived in writing by the Authority. Borrower shall manage and operate the Property in accordance with the approved Management Plan, including such amendments as may be approved in writing from time to time by Borrower and the Authority Executive Director or designee, for the entire Term of this Agreement.

The Management Plan, including such amendments as may be approved in writing by the Authority, shall remain in effect for the term of this Agreement. The Borrower shall not amend the Management Plan or any of its components without the prior written consent of the Authority, which consent shall not be unreasonably withheld. The components of the Management Plan shall include, as applicable during the Interim Housing and Permanent Supportive Housing as determined by the Authority Executive Director:

(1) Management Agent. The name and qualifications of the proposed management agent for the Project ("Management Agent"). The Authority shall approve or disapprove the proposed Management Agent, in writing based on the experience and qualifications

of the Management Agent (such approval not to be unreasonably withheld, conditioned, or delayed). National Community Renaissance of California, a California nonprofit public benefit corporation, is approved as the Management Agent in the Permanent Supportive Housing phase of the Project.

(2) Management Program. A description of the proposed management, maintenance, tenant selection and occupancy policies and procedures for the Units, which shall include procedures to assure that advertising of the units will reach a broad cross-section of Huntington Beach residents.

(3) Management Agreement. A copy of the proposed management agreement specifying the amount of the management fee and the relationship and division of responsibilities between the Borrower and the Management Agent. The Borrower's agreement with the Management Agent shall provide that it is subject to termination by the Borrower without penalty, upon thirty (30) calendar days' prior written notice. The Borrower hereby covenants and agrees that, if the Authority determines in its reasonable judgment that the Project is not being operated and managed in accordance with the Management Plan, the Authority may deliver notice to the Borrower of the Authority's determination that the Project's management practices do not conform to the Management Plan ("Authority Notice"), including a reasonably detailed explanation of such non-conformance. The Authority and the Borrower shall meet and confer in good faith to identify actions to be taken by the Borrower to bring its management practices into conformance with the Management Plan, which could include replacing the Management Agent. The Borrower shall have thirty (30) calendar days after receipt of the Authority Notice (or such longer time as may be granted by the Authority in Authority's reasonable discretion) to either change its management practices to conform to the Management Plan or replace the Management Agent with a Management Agent approved by the Authority (such approval not to be unreasonably withheld, conditioned, or delayed). The Borrower shall promptly notify the Authority upon learning that there is a change in the management or control of the Management Agent, and, if the change is unsatisfactory to the Authority, the Authority shall be entitled to require the Borrower to replace the Management Agent in accordance with the terms of this paragraph.

(4) Tenant Lease or Rental Agreement. A copy of the proposed tenant lease or rental agreement to be used in renting the Units, which shall be in a form approved by the Authority (such approval not to be unreasonably withheld, conditioned, or delayed).

(5) Annual Operating Budget. Annually not later than fifteen (15) calendar days prior to the beginning of each fiscal or calendar year of the Project, the Borrower shall submit to the Authority for review and approval (such approval not to be unreasonably withheld, conditioned, or delayed) a projected operating budget that shall include all necessary operating expenses, current maintenance charges, expenses of reasonable upkeep and repairs, taxes and special assessment levies, monitoring fees charged by the Authority and other lenders, prorated amount required for insurance and all other expenses incident to the operation of the Project; and shall show the expected revenues to pay such expenses, including annual debt service requirements and reserve fund deposits and balances. After the Borrower's initial projected operating budget submittal, the Borrower shall annually reconcile each previous year's projected budget with actual

operating results for the Project (“Budget Reconciliation”). In each Budget Reconciliation, the Borrower shall set forth an explanation for any major discrepancies between projected and actual budgets. For purposes of this Agreement, a “major discrepancy” shall mean a line item difference between projected and actual budgets of twenty percent (20%) or more.

(6) Social Services Program. A description of the proposed social services to be provided to the tenants, including the proposed scheduling of any classes or programs that will be offered on a regular basis, a description of any selection criteria for determining who will be eligible to receive the services, and a description of the proposed staffing level and qualifications of the providers of the services.

c. The Authority shall not unreasonably withhold, condition or delay its approval of any matter for which its approval is required hereunder. Any express disapproval shall be in writing and contain the Authority’s reasons for disapproval. Notwithstanding the foregoing, if the Authority has not expressly approved or disapproved the Borrower’s projected operating budget within thirty (30) calendar days after its submittal to the Authority, then the Borrower shall provide a written notice to the Authority that it intends to operate pursuant to the projected operating budget and the Authority shall have an additional fifteen (15) calendar days within which to approve or disapprove such budget. If the Authority has not expressly approved or disapproved the projected operating budget by the end of such additional 15-calendar day period, then the Borrower may operate the Project under its projected operating budget so long as discretionary amounts do not exceed one hundred ten percent (110%) of the amount of that line item in the previous year’s approved operating budget.

d. Beginning on the date of first occupancy, for each fiscal year following the Conversion Date, Borrower shall also submit on a quarterly basis a quarterly report for the management of the Project (the “Quarterly Report”) in a form that is reasonably acceptable to the Authority Executive Director or designee. The Quarterly Report shall include a profit and loss statement, budget to date figures, and occupancy report. The Authority Executive Director or designee, in his or her sole discretion may waive the requirement of the Quarterly Report for one or more quarterly reporting periods. However, such waiver shall not operate to waive any subsequent requirement of the Quarterly Report for the Restricted Period upon the Authority’s written notice to Borrower.

e. Prior to the Loan Closing, Borrower shall prepare and submit to the Authority for review and approval a program (the “Maintenance Program”) for the exterior and interior maintenance of the Project. The Maintenance Program shall describe in reasonable detail the standards to be followed in maintaining the interior and exterior of the improvements, including a schedule indicating the proposed frequency of each element of maintenance, and shall include, at a minimum, the following: periodic cleaning of the interior and exterior of the improvements, including windows; removing graffiti; removing debris and waste materials and otherwise maintaining indoor and outdoor areas of the Property; maintaining any lawns, plants, shrubs and trees or other landscaping planted on the Property; performing inspections of all exterior features to determine whether repairs are required; conducting periodic protective treatments such as rust removal and caulking; conducting repairs to facades, roof, doors, windows and other exterior

features; maintaining fencing and other security devices and systems; periodic repainting of the exterior; periodic repainting of the interior units and common areas; periodic replacing of the interior unit carpets; checking building systems, including, but not limited to the heating and cooling systems, smoke alarms and water heaters; checking interior unit appliances; and monitoring interior unit bathrooms for mold/mildew. The Maintenance Program, including any amendments proposed by Borrower, shall be subject to the reasonable approval of the Authority Executive Director or designee.

f. At all times during the term of this Agreement, Borrower shall maintain the Property and the improvements in accordance with the approved Maintenance Program. To implement this requirement, Borrower agrees to budget sufficient funds to pay for all reasonably anticipated costs (as indicated in the Annual Maintenance Budget). If Borrower fails to maintain the Property and the improvements in accordance with the approved Maintenance Program, and does not cure such failure within thirty (30) days following notice from the Authority, the Authority shall have the right, but not the obligation, to enter the Property at all reasonable times and upon reasonable notice (except in the case of an emergency), correct any violation, and hold Borrower responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the Property; provided, however, Borrower shall have such additional time as may be reasonably necessary to cure such default provided that Borrower has commenced to cure within such thirty (30) day period and is diligently prosecuting the cure to completion. Prior to undertaking any work to correct any such maintenance deficiency, the Authority shall provide written notice that Borrower must correct the deficiency within a reasonable time. Borrower shall have a reasonable time in which to comply following such notice from the Authority.

6. Term of Covenants. The covenants established in this Agreement and any amendments hereto approved by the parties hereto shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Authority, its successors and assigns, and the Authority and its successors and assigns. The covenants in this Agreement shall remain in effect for the longest feasible time, but at least until the earlier of May 17, 2082 or the fifty-fifth (55th) anniversary of the Conversion Date (the "Term").

7. Enforcement of Covenants. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that Authority shall be deemed a beneficiary of the covenants and agreements provided hereinabove both for and in their own rights 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 Authority, and such covenants shall run in favor of Authority for the entire period during which such covenants shall be in force and effect, without regard to whether Authority is or remains an owner of any land or interest therein to which such covenants relate. Authority and its successors or assigns shall have the right, in the event of any breach (or threatened breach) of any covenant or agreement, to exercise all the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach of covenant or agreement including, without limitation, enjoining any actions that would or do violate the covenants.

8. Covenants Run with the Land. The covenants established in this Agreement, shall,

without regard to technical classification or designation, run with the land, and shall be enforceable against and be binding on Borrower and any successor in interest to the Property or any part thereof or any interest therein for the benefit and in favor of Authority and its successors and assigns.

9. Amendments. Only Authority, its successors and assigns, and Borrower, and the successors and assigns of Borrower in and to leasehold title to the Property, shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, easements, or other restrictions contained in this Agreement, or to subject the Property to additional covenants, easements or other restrictions.

10. Notice and Cure. Failure or delay by Borrower to perform, or a breach or threatened breach of, any term or provision of this Agreement constitutes a default under this Agreement. Authority shall give written notice of default to Borrower, specifying the default complained of by the Authority. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default. Any failures or delays by Authority in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by Authority in asserting any of its rights and remedies shall not deprive Authority of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

If the default is reasonably capable of being cured within thirty (30) calendar days after a written notice of default is received or deemed received, Borrower shall have such period to effect a cure prior to exercise of remedies by the Authority under this Agreement. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Borrower (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Authority. In no event shall Authority be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default.

Any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by Borrower; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof. Notices hereunder shall be sent to the address(es) set forth in the Affordable Housing Agreement.

11. Severability; Waiver.

a. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

b. A waiver by any party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other

covenants or conditions, nor shall the delay or forbearance by any party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

12. Governing Law. This Agreement shall be governed by the internal laws of the State of California and without regard to the principles relating to conflicts of law.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument. This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

14. Attorneys' Fees. If any action or proceeding arising out of or relating to this Agreement is commenced by any party to this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs and expenses incurred in the action or proceeding by the prevailing party.

15. Joint and Several Liability. If more than one person or entity is executing this Agreement as Borrower, then each such person or entity that executes this Agreement shall be jointly and severally responsible for any and all obligations of Borrower hereunder.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, Borrower and Authority have entered into this Agreement as of the dates set forth below.

**“AUTHORITY”**

HUNTINGTON BEACH HOUSING  
AUTHORITY

By: \_\_\_\_\_  
Sean Joyce  
Interim Executive Director

ATTEST:

By: \_\_\_\_\_  
Robin Estanislau  
Authority Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michael Gates *mw*  
Authority Counsel

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Susan Apy  
Kane, Ballmer & Berkman  
Special Legal Counsel

**“BORROWER”**

American Family Housing, a California  
nonprofit public benefit corporation

By: \_\_\_\_\_  
Myles A. Peinemann II,  
Chief Executive Officer

National Community Renaissance of California,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Michael Finn,  
Chief Financial Officer



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 \_\_\_\_\_ )

On \_\_\_\_\_, \_\_\_\_ before me, \_\_\_\_\_,  
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.

Signature \_\_\_\_\_ (Seal)

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 \_\_\_\_\_ )

On \_\_\_\_\_, \_\_\_\_\_ before me, \_\_\_\_\_, 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.

Signature \_\_\_\_\_ (Seal)

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 \_\_\_\_\_ )

On \_\_\_\_\_, \_\_\_\_\_ before me, \_\_\_\_\_, 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.

Signature \_\_\_\_\_ (Seal)

Exhibit "A"

LEGAL DESCRIPTION

A leasehold interest created by that certain Ground Lease between the County of Orange and AMERICAN FAMILY HOUSING, a California nonprofit public benefit corporation, and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation, dated as of \_\_\_\_\_, 2022 in the real property described as follows:

The North 132 feet of the East 330 feet of the North Half of the Southeast Quarter of the Northeast Quarter of section 26, in the Township 5 South, Range 11 West, in the Rancho Las Bolas, in the Authority of Huntington Beach, County of Orange, State of California, as per map recorded in Book 51, Page 13 of Miscellaneous Maps, in the Office of the County Recorder of said County.

Excepting therefrom that portion described as follows:

Beginning at the Northeast Corner of said Southeast Quarter of the Southeast Quarter thence along the East line of said Section, South 0° 40' 28" East, 132.00 Feet to the South line of the North 132.00 feet of said Southeast Quarter; thence along said South line, South 89° 29' 54" West, 30.65 feet to a curve, concave Westerly, having a radius of 9,934.00 feet; thence Northerly along said curve from a tangent bearing North 0° 01' 21" West, an arc distance of 113.04 feet, thence tangent North 0° 40' 28" West, 18.98 feet to the North line of said Southeast quarter of the Northeast quarter; thence along said North line, North 89° 29' 54" East, 30.00 feet to the point of beginning, as conveyed to the State of California by deed recorded in Book 2442, Pages 491 Official records.

Assessor's Parcel Number: **165-225-10**  
(End of Legal Description)

**ATTACHMENT NO. 9**  
**ENVIRONMENTAL INDEMNITY**

(behind this page)

## ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this "Indemnity"), dated as of \_\_\_\_\_, 2022 made by AMERICAN FAMILY HOUSING, a California nonprofit public benefit corporation, and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation (together referred to as "Borrower"), in favor of the HUNTINGTON BEACH HOUSING AUTHORITY, a public body corporate and politic (the "Authority").

### WITNESSETH

WHEREAS, Borrower is has a leasehold interest in certain real property in the City of Huntington Beach, as more particularly described on Exhibit A attached hereto and made a part hereof, and the real property improvements thereon (collectively referred to as the "Property");

WHEREAS, Borrower and Authority entered into that certain Affordable Housing Agreement, dated as of May 17, 2022 (the "Loan Agreement"), pursuant to which the Authority a agreed to make a loan (collectively, the "Loan") to Borrower for the purposes of providing financing for the rehabilitation of the Property for affordable housing purposes (the Loan Agreement and the documents and instruments referred to therein which are being executed by Borrower concurrently herewith are referred to collectively as the "Loan Documents");

WHEREAS, Borrower has agreed to execute and deliver to the Authority this Indemnity to induce the Authority to make the Loan.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Borrower hereby agrees with the Authority as follows:

#### Section 1. DEFINITIONS

For the purpose of this Indemnity, "Hazardous Materials" or "Hazardous Substances" shall include, but not be limited to, substances defined as "extremely hazardous substances," "hazardous substances," "hazardous materials," "hazardous waste" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 11001-11050; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; and those substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code, as "infectious waste" in Section 25117.5 of the California Health and Safety Code, or as "hazardous substances" in Section 25316 of the California Health and Safety Code or "hazardous materials" as defined in Section 353 of the California Vehicle Code; and in the regulations adopted and publications promulgated pursuant to said laws. Other capitalized terms used in this Indemnity shall have the meanings ascribed to them in the Loan Agreement with the same force and effect as if set forth in full below. Notwithstanding anything to the contrary contained herein, "Hazardous Materials" or "Hazardous Substances" shall not include

substances typically used in the ordinary course of developing, operating and maintaining apartment complexes provided that such substances are used in accordance with all applicable laws.

## Section 2. COVENANTS AND INDEMNITY

The following covenants and indemnities are hereby given and made by Borrower:

### 2.1 Covenants.

(a) Borrower covenants that it shall comply with any and all applicable laws, regulations, and/or orders which may be promulgated, from time to time, with respect to the discharge and/or removal of Hazardous Materials, to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any such Hazardous Materials, and to keep the Property free of any lien imposed pursuant to any such laws, regulations, or orders.

(b) Borrower covenants that the Property will not, while Borrower is the owner thereof, be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials, except for de minimis quantities used at the Property in compliance with all applicable environmental laws and required in connection with the routine construction, operation and maintenance of the Property.

(c) Borrower further agrees that Borrower shall not release or dispose of any Hazardous Materials at the Property without the express written approval of the Authority and that any such release or disposal shall be effected in strict compliance with all applicable laws, and all conditions, if any, established by the Authority.

(d) The Authority has the right, at any time, to conduct an environmental audit of the Property at the Authority's expense, unless Hazardous Materials are found, then at Borrower's sole cost and expense, and Borrower shall cooperate in the conduct of any such environmental audit but in no event shall such audit be conducted unless the Authority reasonably believes that such audit is warranted. Other than in an emergency, such audit shall be conducted only after prior written notice has been given to Borrower and only in the presence of a representative of Borrower. Borrower shall give the Authority and its agents and employees access to the Property to remove, or otherwise to mitigate against the effects of, Hazardous Materials, with any and all of such activities to be conducted in accordance with all applicable laws.

(e) Borrower shall not install, or permit to be installed, on the Property friable asbestos or any substance containing asbestos and deemed hazardous by applicable federal or state regulations respecting such material, and, with respect to any such material currently present in the Property, Borrower shall promptly either (i) remove or cause to be removed any material that such applicable regulations deem hazardous and require to be removed, or (ii)

otherwise comply with such applicable federal and state regulations, at Borrower's sole cost and expense. If Borrower shall fail to so do within the cure period permitted under applicable law, regulation, or order, the Authority may do whatever is necessary to eliminate said substances from the premises or to otherwise comply with the applicable law, regulation, or order, and the costs thereof shall be added to the Obligations (as hereinafter defined) of Borrower under this Section 2.

(f) Borrower shall promptly advise the Authority in writing of any of the following: (i) any pending or threatened environmental claim against Borrower or the Property, (ii) any condition or occurrence on the Property that (A) results in noncompliance by Borrower with any applicable environmental law, (B) could reasonably be anticipated to cause the Property to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any environmental law, or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property or Borrower.

2.2 Indemnity. Borrower shall indemnify, protect, and hold the Authority harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses (including, without limitation, reasonable attorneys' and experts' fees and disbursements) of any kind or of any nature whatsoever (collectively, the Obligations) which may at any time be imposed upon, incurred by or asserted or awarded against the Authority and arising from or out of:

- (a) The presence of any Hazardous Materials on, in, under, or affecting all or any portion of the Property or any surrounding areas;
- (b) The breach of any covenant made by Borrower in Section 2.1 hereof; or
- (c) The enforcement by the Authority of any of the provisions of this Section 2.2 or the assertion by Borrower of any defense to its obligations hereunder.

Subject to the qualifications set forth in Section 2.3, below, Borrower shall be liable for payment and performance of the Obligations to the full extent (but only to the extent) of the property and assets (including the Property) which constitute security for such Obligations. If default occurs in the timely and proper payment and performance of any such Obligations (after notice and reasonable opportunity to cure), any judicial proceedings brought by the Authority against Borrower shall be limited to the protection and preservation of the Property, the preservation, enforcement and foreclosure of the liens, mortgages, assignments, rights and security interests securing such Obligations and enforcement and collection of such Obligations for which Borrower remains directly liable as provided in this Section. If there is a foreclosure of any such liens, mortgages, assignments, rights and security interests by power of sale or otherwise, no personal judgment for any deficiency thereon shall be sought or obtained by the Authority against Borrower, or its officers, directors, agents, attorneys, servants or employees.



2.3 Exceptions to Non-Recourse Liability. Notwithstanding the foregoing provisions of Section 2.2 or any other agreements,

(a) the Authority may proceed against any other person or entity whatsoever with respect to the enforcement of any guarantees, surety bonds, letters of credit, reimbursement agreements or similar rights to payment or performance; and

(b) The Authority may recover personally from any person or entity other than Borrower's Managing General Partner and Limited Partners:

(1) any damages, costs and expenses incurred by the Authority as a result of the negligence of such person or entity, involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials by such person or entity or by others; provided, however, that neither Borrower nor any officer, partner, agent, attorney, servant or employee of Borrower shall have any personal liability if the act or omission complained of was performed in good faith and was not reckless, wanton, intentional or grossly negligent;

(2) any damages, costs and expenses incurred by Authority as a result of fraud or any criminal act or acts of Borrower or any partner, shareholder, officer, director or employee of Borrower, or of any general or limited partner of Borrower; and

(3) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that Authority shall pay Borrower's reasonable court costs and attorneys' fees if Borrower is the prevailing party in any such enforcement or collection action).

### Section 3. BORROWER'S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations. Borrower hereby agrees that the Obligations will be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law, regulation, or order now or hereafter in effect in any jurisdiction affecting any of the Loan Documents or affecting any of the rights of the Authority with respect thereto. The obligations of Borrower hereunder shall be absolute and unconditional irrespective of:

(a) The validity, regularity, or enforceability of the Loan Documents or any other instrument or document executed or delivered in connection therewith;

(b) Any alteration, amendment, modification, release, termination, or cancellation of any of the Loan Documents, or any change in the time, manner, or place of payment of, or in any other term in respect of, all or any of the obligations of Borrower contained in any of the Loan Documents;

(c) Any extension of the maturity of the Loan or any waiver of, or consent to any departure from, any provision contained in any of the Loan Documents;

(d) Any exculpatory provision in any of the Loan Documents limiting the Authority's recourse to property encumbered by the Deed of Trust securing the Loan, or to any other security, or limiting the Authority's rights to a deficiency judgment against Borrower;

(e) Any exchange, addition, subordination, or release of, or nonperfection of any lien on or security interest in, any collateral for the Loan, or any release, amendment, waiver of, or consent to any departure from any provision of, any other Borrower or guarantee given in respect of the Loan;

(f) The insolvency or bankruptcy of Borrower, Borrower, or of any indemnitor or guarantor under any other indemnity or guarantee given in respect of the Loan; or

(g) Any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower, Borrower, or any other indemnitor or guarantor with respect to the Loan or any or all of the Obligations.

3.2 Continuation. This Indemnity (a) is a continuing indemnity and shall remain in full force and effect until the satisfaction in full of all of the Obligations (notwithstanding the payment in full of the Loan or the release or other extinguishment of any security for the Loan); and (b) shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Authority upon the insolvency, bankruptcy, or reorganization of Borrower, Borrower or otherwise, all as though such payment had not been made.

3.3 Termination. Notwithstanding the payment (and performance) in full of all of the Obligations and the payment (or performance) in full of all of Borrower's obligations under the Loan Documents, this Indemnity shall not terminate if any of the following shall have occurred:

(a) The Authority has at any time or in any manner participated in the management or control of, taken possession of (whether personally, by agent or by appointment of a receiver), or taken title to the Property or any portion thereof, whether by foreclosure, deed in lieu of foreclosure, sale under power of sale or otherwise; or

(b) There has been a change, between the date hereof and the date on which all of the Obligations are paid and performed in full, in any Hazardous Materials laws, the effect of which may be to make a lender or mortgagee liable in respect of any of the Obligations, notwithstanding the fact that no event, circumstance, or condition of the nature described in paragraph (a) above ever occurred.

#### Section 4. WAIVER

Borrower hereby waives the following:

- (a) Promptness and diligence;
- (b) Notice of acceptance and notice of the incurrence of any obligation by Borrower;
- (c) Notice of any action taken by the Authority, Borrower, or any other interested party under any Loan Document or under any other agreement or instrument relating thereto;
- (d) All other notices, demands, and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Borrower of its Obligations hereunder;
- (e) The right to a trial by jury with respect to any dispute arising under, or relating to, this Indemnity;
- (f) Any requirement that the Authority protect, secure, perfect, or insure any security interest or lien in or on any property subject thereto;
- (g) Any requirement that the Authority exhaust any right or take any action against Borrower or any other person or collateral; and
- (h) Any defense that may arise by reason of:
  - (1) The incapacity, lack of authority, death or disability of, or revocation hereof by, any person or persons;
  - (2) The failure of the Authority to file or enforce any claim against the estate (in probate, bankruptcy, or any other proceedings) of any person or persons; or
  - (3) Any defense based upon an election of remedies by the Authority, including, without limitation, an election to proceed by nonjudicial foreclosure or which destroys or otherwise impairs the subrogation rights of the Authority or any other right of the Authority to proceed against Borrower.

#### Section 5. NOTICES

Any notice, demand, statement, request, or consent made hereunder shall be in writing and shall be personally served, mailed by first-class registered mail, return receipt requested, to

the address set forth in the first paragraph of this Indemnity, above, of the party to whom such notice is to be given (or to such other address as the parties hereto, shall designate in writing):

In the case of the Authority:

Huntington Beach Housing Authority  
2000 Main Street  
Huntington Beach, CA 92648  
Attn: Executive Director

With a copy to:  
City Attorney's Office  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

In the case of Borrower:

American Family Housing  
15161 Jackson Street  
Midway City, CA 92655  
Attn: Myles A. Peinemann II, Chief Executive Officer

National Community Renaissance of California  
9421 Haven Avenue  
Rancho Cucamonga, CA 91730  
Attention:

With a copy to:

Gubb & Barshay LLP  
235 Montgomery Street, Suite 1110  
San Francisco, CA 94104  
Attention: Lauren B. Fechter

Any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

## Section 6. MISCELLANEOUS

6.1 Borrower shall make any payment required to be made hereunder in lawful money of the United States of America, and in same day funds, to the Authority at its address specified in the first paragraph hereof.

6.2 No amendment of any provision of this Indemnity shall be effective unless it is in writing and signed by Borrower and the Authority, and no waiver of any provision of this Indemnity, and no consent to any departure by Borrower from any provision of this Indemnity, shall be effective unless it is in writing and signed by the Authority, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of the Authority to exercise, and no delay in exercising, any right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Authority provided herein and in the other Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Authority under any Loan Document against any party thereto are not conditional or contingent on any attempt by the Authority to exercise any of its rights under any other Loan Document against such party or against any other person or collateral.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity shall (a) be binding upon Borrower, and Borrower's successors and assigns; and (b) inure, together with all rights and remedies of the Authority hereunder, to the benefit of the Authority and its directors, officers, employees, and agents, any successors to the Authority's interest in the Property, any other person who acquires any portion of the Property at a foreclosure sale or otherwise through the exercise of the Authority's rights and remedies under the Loan Documents, any successors to any such person, and all directors, officers, employees, and agents of all of the aforementioned parties. Without limiting the generality of clause (b) of the immediately preceding sentence, the Authority may, subject to, and in accordance with, the provisions of the Loan Documents, assign or otherwise transfer all or any portion of its rights and obligations under any other Loan Document, to any other person, and such other person shall thereupon become vested with all of the rights and obligations in respect thereof that were granted to the Authority herein or otherwise. None of the rights or obligations of Borrower hereunder may be assigned or otherwise transferred without the prior written consent of the Authority.

6.6 Borrower hereby (a) irrevocably submits to the jurisdiction of any California or federal court sitting, in each instance, in Orange County in any action or proceeding arising out of or relating to this Indemnity, (b) waives any defense based on doctrines of venue or forum non convenient or similar rules or doctrines, and (c) irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such California or federal court. Borrower irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. Borrower agrees that a final judgment in any such action or proceeding shall be inclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit, or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity shall be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein, except to the extent that the laws of the United States preempt the laws of the State of California.

6.9 This Indemnity may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one agreement.

6.10 If more than one person or entity is executing this Indemnity as Borrower, then each such person or entity that executes this Indemnity shall be jointly and severally responsible for any and all obligations of Borrower hereunder.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, Borrower has duly executed this Indemnity as of the date first set forth above.

American Family Housing, a California nonprofit  
public benefit corporation

By: \_\_\_\_\_  
Myles A. Peinemann II,  
Chief Executive Officer

National Community Renaissance of California, a  
California nonprofit public benefit corporation

By: \_\_\_\_\_  
Michael Finn,  
Chief Financial Officer

Exhibit A

**LEGAL DESCRIPTION**

A leasehold interest created by that certain Ground Lease between the County of Orange and AMERICAN FAMILY HOUSING, a California nonprofit public benefit corporation, and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation, dated as of \_\_\_\_\_, 2022 in the real property described as follows:

The North 132 feet of the East 330 feet of the North Half of the Southeast Quarter of the Northeast Quarter of section 26, in the Township 5 South, Range 11 West, in the Rancho Las Bolas, in the City of Huntington Beach, County of Orange, State of California, as per map recorded in Book 51, Page 13 of Miscellaneous Maps, in the Office of the County Recorder of said County.

Excepting therefrom that portion described as follows:

Beginning at the Northeast Corner of said Southeast Quarter of the Southeast Quarter thence along the East line of said Section, South 0° 40' 28" East, 132.00 Feet to the South line of the North 132.00 feet of said Southeast Quarter; thence along said South line, South 89° 29' 54" West, 30.65 feet to a curve, concave Westerly, having a radius of 9,934.00 feet; thence Northerly along said curve from a tangent bearing North 0° 01' 21" West, an arc distance of 113.04 feet, thence tangent North 0° 40' 28" West, 18.98 feet to the North line of said Southeast quarter of the Northeast quarter; thence along said North line, North 89° 29' 54" East, 30.00 feet to the point of beginning, as conveyed to the State of California by deed recorded in Book 2442, Pages 491 Official records.

Assessor's Parcel Number: **165-225-10**  
(End of Legal Description)



**ATTACHMENT NO. 10**

**NOTICE OF AFFORDABILITY RESTRICTIONS**

(behind this page)

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN  
TO:

HUNTINGTON BEACH HOUSING AUTHORITY  
2000 Main Street  
Huntington Beach, CA 92648  
Attn: Executive Director

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 165-225-10

FREE RECORDING REQUESTED  
(Gov't Code Section 27383)

**Notice of Affordability Restrictions on Transfer of Property**

NOTICE IS HEREBY GIVEN that pursuant to Health & Safety Code Section 33334.3(f), AMERICAN FAMILY HOUSING, a California nonprofit public benefit corporation, and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation (together, "Borrower") is recording this Notice of Affordability Restrictions on Transfer of Property (hereinafter the "**Notice**") with regard to certain real property located in the City of Huntington Beach more particularly described in Exhibit "A" which is attached hereto and incorporated herein by this reference (the "**Property**").

The Property is subject to the Agreement Containing Covenants (the "**Covenants**") recorded concurrently herewith, which restricts the use of the Property as follows. Terms not defined herein shall have the meaning given them in the Covenants.

The Property shall be improved for the purpose of creating a 64-unit interim housing project and ancillary facilities, described in the Scope of Development - Interim Housing Phase, and after the Interim Housing phase, for the purpose of creating a permanent supportive

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affordable housing project and ancillary facilities subject to the occupancy and rent restrictions set forth in the Covenants and other regulatory agreements recorded against the Property.

The maximum incomes of residential tenants eligible to rent the Affordable Units shall not exceed Extremely Low Income except as set forth in the Covenants.

Until the Conversion Date, the Affordable Units shall be used for Interim Housing for the Target Population.

After the Conversion Date, the 62 Affordable Units must be rented and available to Extremely Low Income households of the Target Population at an Affordable Rent except as set forth in the Covenants.

Fifty percent (50%) of the Project's Affordable Units shall be restricted to occupancy by the Chronically Homeless and fifty percent (50%) of the Project's Affordable Units are restricted to occupancy by the Homeless except as set forth in the Covenants.

"Extremely Low Income" shall mean a household income that does not exceed 30% of the Area Median Income, adjusted for family size.

"Affordable Rent" shall mean rental rates not to exceed the product of 30 percent times 30 percent of the Area Median Income adjusted for family size appropriate for the unit.

"Area Median Income" shall mean the area median income of the Orange County metropolitan statistical area (PMSA), with adjustments for household size, as estimated annually by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 as amended and published by California's Housing and Community Development Department pursuant to Health and Safety Code Section 50093.

The affordability restrictions imposed on the Property by the Covenants are scheduled to expire on the date that is the earlier of May 17, 2082 or the fifty-fifth (55th) anniversary of the Conversion Date.

This Notice is recorded for the purpose of providing notice only and it in no way modifies the provisions of the Covenants. In the event of a conflict between the terms of this Notice and the Covenants, the terms of the Covenants shall govern.

[Remainder of Page Intentionally Left Blank; Signatures on Following Page]

American Family Housing, a California  
nonprofit public benefit corporation

By: \_\_\_\_\_  
Myles A. Peinemann II,  
Chief Executive Officer

National Community Renaissance of  
California, a California nonprofit public  
benefit corporation

By: \_\_\_\_\_  
Michael Finn,  
Chief Financial Officer

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 \_\_\_\_\_ )

On \_\_\_\_\_, \_\_\_\_\_ before me, \_\_\_\_\_, 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.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

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

Signature \_\_\_\_\_ (Seal)

## **Exhibit "A"**

### **LEGAL DESCRIPTION**

A leasehold interest created by that certain Ground Lease between the County of Orange and AMERICAN FAMILY HOUSING, a California nonprofit public benefit corporation, and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation, dated as of \_\_\_\_\_, 2022 in the real property described as follows:

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Assessor's Parcel Number: **165-225-10**