

AFFORDABLE HOUSING AGREEMENT

by and among

**THE CITY OF HUNTINGTON BEACH, CALIFORNIA,
THE HUNTINGTON BEACH HOUSING AUTHORITY,**

and

**BEACH HOUSING PARTNERS LP
A California Limited Partnership**

(18431 Beach Boulevard)

January 5, 2021

TABLE OF CONTENTS

	Page
PART 1. SUBJECT OF AGREEMENT	1
Section 101 Background	1
Section 102 Purpose of this Agreement	2
Section 103 Conditional Commitment	2
Section 104 Definitions	3
Section 105 The Property	10
Section 106 City	10
Section 107 Owner	10
Section 108 Assignments and Transfers	11
PART 2. FINANCING	12
Section 201 Method of Financing	12
Section 202 HOME Loan	12
PART 3. IMPROVEMENT OF THE PROPERTY	13
Section 301 Land Use Approvals	13
Section 302 Condition of the Property	14
Section 303 Scope of Development	14
Section 304 Basic Concept and Schematic Drawings	14
Section 305 Landscaping and Grading Plans	15
Section 306 Construction Drawings and Related Documents	15
Section 307 City Approval of Plans	15
Section 308 Cost of Construction	16
Section 309 Schedule of Performance	16
Section 310 Indemnification and Insurance	17
Section 311 Nondiscrimination	20
Section 312 Local, State and Federal Laws	20
Section 313 Permits	21
Section 314 Disclaimer of Responsibility by City	21
Section 315 Taxes, Assessments, Encumbrances and Liens	22
Section 316 Prohibition against Transfer	22
Section 317 Removal of Liens and Encumbrances	22
Section 318 Copeland Anti-Kick-Back Act	23
Section 319 Contract Work Hours and Safety Standard Act	23
Section 401 Uses	23
Section 402 Maintenance of the Property	25
Section 403 Obligation to Refrain from Discrimination	25
Section 404 Equal Employment Opportunity	25
Section 405 Effect and Duration of Covenants	26
Section 406 HOME Regulatory Agreement	27
Section 407 Labor, Training and Business Opportunity	27
PART 5. DEFAULTS AND REMEDIES	27

Section 501	Defaults - General	27
Section 502	Institution of Legal Actions	28
Section 503	Applicable Law	28
Section 504	Acceptance of Service of Process	28
Section 505	Rights and Remedies Are Cumulative	28
Section 506	Damages	28
Section 507	Specific Performance	29
Section 508	Non-Recourse Obligation	29
Section 509	Termination by City	29
PART 6.	GENERAL PROVISIONS	31
Section 601	Notices	31
Section 602	Enforced Delay: Extension of Time of Performance	31
Section 603	Conflict of Interest	31
Section 604	Nonliability of City Officials and Employees	32
Section 605	Inspection of Books and Records	32
Section 606	Approvals	32
Section 607	Real Estate Commissions	33
Section 608	Construction and Interpretation of Agreement	33
Section 609	Time of Essence	34
Section 610	No Partnership	34
Section 611	Compliance with Law	34
Section 612	Binding Effect	34
Section 613	No Third Party Beneficiaries	34
Section 614	Authority to Sign	34
Section 615	Incorporation by Reference	34
Section 616	Counterparts	34
Section 617	Severability	35
PART 7.	ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS	35
PART 8.	TIME FOR ACCEPTANCE OF AGREEMENT BY CITY	S-1

ATTACHMENTS

ATTACHMENT NO. 1	-	SITE MAP
ATTACHMENT NO. 2	-	LEGAL DESCRIPTION
ATTACHMENT NO. 3	-	SCOPE OF DEVELOPMENT
ATTACHMENT NO. 4	-	SCHEDULE OF PERFORMANCE
ATTACHMENT NO. 5	-	PROJECT BUDGET
ATTACHMENT NO. 6	-	METHOD OF FINANCING
ATTACHMENT NO. 7	-	HOME REGULATORY AGREEMENT
ATTACHMENT NO. 8	-	HOME NOTE
ATTACHMENT NO. 9	-	HOME DEED OF TRUST
ATTACHMENT NO. 10	-	INCLUSIONARY NOTE
ATTACHMENT NO. 11	-	INCLUSIONARY DEED OF TRUST
ATTACHMENT NO. 12	-	ASSIGNMENT OF AGREEMENTS
ATTACHMENT NO. 13	-	ENVIRONMENTAL INDEMNITY
ATTACHMENT NO. 14	-	WAIVER AND CONCESSION AGREEMENT
ATTACHMENT NO. 15	-	AMENDED AND RESTATED COVENANTS
ATTACHMENT NO. 16	-	AMENDED AND RESTATED NOTICE OF RESTRICTIONS

AFFORDABLE HOUSING AGREEMENT

(18431 Beach Boulevard)

THIS AFFORDABLE HOUSING AGREEMENT (“**Agreement**”) is dated for reference purposes as of January 5, 2021 and is being entered into by and among THE CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (the “**City**”), THE HUNTINGTON BEACH HOUSING AUTHORITY, a public body, corporate and politic (the “**Authority**”), and BEACH HOUSING PARTNERS LP, a California limited partnership (“**Owner**”). The City, Authority, and Owner agree as follows:

PART 1. SUBJECT OF AGREEMENT

Section 101 Background

The City, Authority, and Owner previously entered into an Acquisition Loan Agreement dated as of January 23, 2020 (“**Acquisition Loan Agreement**”), which provided for two loans to Owner for the purpose of acquiring the Property located at 18431 Beach Boulevard, Huntington Beach, California for the development of affordable rental housing. Pursuant to the Acquisition Loan Agreement, the City provided a loan to Owner of Affordable Housing Trust Funds in the original principal amount of \$2,100,000 (“**Inclusionary Acquisition Loan**”) and the Authority provided a loan to Owner of Low and Moderate Income Housing Asset Funds in the original principal amount of \$900,000 (“**LMIHAF Acquisition Loan**”). Both acquisition loans accrue interest at the rate of 3% annually and both have a maturity date of February 28, 2022. The City and the Authority funded the acquisition loans and Owner acquired title to the Property from Five Points Plaza, LLC, which is an unaffiliated third party, on January 29, 2020. The Inclusionary Acquisition Loan is evidenced by a promissory note dated January 28, 2020 (“**Inclusionary Acquisition Note**”) and secured by a Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) dated as of January 28, 2020 and recorded in the official records of Orange County, California (“**Official Records**”) on January 29, 2020 as Instrument No. 2020000038045 (“**Inclusionary Acquisition Trust Deed**”). The LMIHAF Acquisition Loan is evidenced by a promissory note dated January 28, 2020 (“**LMIHAF Acquisition Note**”) and secured by a Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) dated as of January 28, 2020 and recorded in the Official Records on January 29, 2020 as Instrument No. 2020000038044 (“**LMIHAF Acquisition Trust Deed**”). As additional security for the acquisition loans, the City, the Authority, and Owner entered into an Option Agreement and Joint Escrow Instructions dated as of January 28, 2020 (“**Option Agreement**”) and a Memorandum of Option dated as of January 28, 2020 was recorded in the Official Records on January 29, 2020 as Instrument No. 2020000038043 (“**Memorandum of Option**”).

In connection with the Inclusionary Acquisition Loan and the LMIHAF Acquisition Loan, the City, the Authority, and Owner entered into an Agreement Containing Covenants dated as of January 28, 2020 and recorded in the Official Records on January 29, 2020 as Instrument No.

2020000038042 (“**Agreement Containing Covenants**”), which restricts the use of the Property as affordable rental housing for Extremely Low Income Households and Very Low Income Households. In connection with the LMIHAF Acquisition Loan, a Notice of Affordability Restrictions on Transfer of Property was also recorded in the Official Records on January 29, 2020 as Instrument No. 2020000038046 (“**Notice of Restrictions**”). The Acquisition Loan Agreement provided that, if the City, Authority and Owner enter into an Affordable Housing Agreement, then the Agreement Containing Covenants will be replaced and superseded by an amended and restated agreement setting forth the specific affordability requirements for the Property and the Notice of Restrictions will be replaced and superseded by a new notice, each of which will be recorded at the Construction Financing Event for the Project.

Section 102 Purpose of this Agreement

The City, the Authority, and Owner wish to set forth the terms and conditions for Owner’s payment of a portion of the principal amount of the Inclusionary Acquisition Loan and Owner’s payment in full of the LMIHAF Acquisition Loan and to set forth the terms and conditions for a new loan from the City of HOME Investment Partnerships Program (“**HOME Program**”) funds in the amount of Two Million Eight Hundred Thirty Thousand Six Hundred Ninety-Seven Dollars (\$2,830,697) (the “**HOME Loan**”) to pay costs of the acquisition and development of the property located at 18431 Beach Boulevard, Huntington Beach, California (as shown on the Site Map attached as Attachment No. 1 and more specifically described in Attachment No. 2, the “**Property**”), in accordance with the terms and conditions of this Agreement. The loan will assist the development of the Property and its use as an affordable residential rental development for extremely low and very low income households, consisting of 43 units, including one manager unit. The project includes 42 one-bedroom units and 1 two-bedroom manager unit, together with ancillary facilities, as described in more detail in the Scope of Development attached as Attachment No. 3 (the “**Project**”). One hundred percent (100%) of the units, except for the 1 two-bedroom manager unit, will be operated as affordable rental housing under regulatory agreements required by the financing for the Project, and a portion of the units in the number required for compliance with the HOME Regulations (determined in accordance with Section 92.250 of the HOME Regulations) will be designated as HOME-assisted units to be rented to HOME Very Low Income tenants at HOME Rent, as set forth in the HOME Regulatory Agreement. The development of the Project and use of the Property 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 the HOME Regulations and applicable federal, state, and local laws and requirements.

Section 103 Conditional Commitment

a. This Agreement does not constitute a commitment of funds or site approval, and the commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the City of an approval of the request for release of funds and certification from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The provision of any funds to the project is conditioned on the City’s determination to proceed with, modify or cancel the project based on the results of the environmental review. Owner must not undertake or unconditionally commit any funds to physical or choice-limiting actions, including property

acquisition in addition to the Property previously acquired by Owner, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance. A violation of this provision may result in the denial of any funds under this Agreement.

Section 104 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” means the lesser of the HOME Rent (if applicable to the unit) and the Inclusionary Rent for that unit.

“Affordable Units” means the Inclusionary Units and the HOME Units.

“Amended and Restated Covenants” means the Amended and Restated Agreement Containing Covenants (Including Rental Restrictions) substantially in the form attached to this Agreement as Attachment No. 15, which will replace and supersede the Agreement Containing Covenants dated as of January 28, 2020 and recorded in the Official Records on January 29, 2020 as Instrument No. 2020000038042.

“Amended and Restated Notice of Restrictions”) means the Amended and Restated Notice of Affordability Restrictions Upon Transfer of Property substantially in the form attached to this Agreement as Attachment No. 16, which will replace and supersede the Notice of Affordability Restrictions Upon Transfer of Property recorded in the Official Records on January 29, 2020 as Instrument No. 2020000038046.

“Approved Title Conditions” means title that is subject only to current property taxes and assessments and any easements and other encumbrances specifically approved in writing by the City Manager.

“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. 12.

“Bond Construction Loan” means a loan of construction funds from [_____] in the original principal amount of \$14,000,000, funded with proceeds of the Bonds.

“Bond Permanent Loan” means a loan of permanent funds from [_____] in the original principal amount of \$3, 812,690, funded with proceeds of the Bonds.

“Bonds” shall mean the mortgage revenue bonds to be issued for the Project by the California Housing Finance Agency as described in the Method of Financing.

“City Manager” means the City Manager of the City of Huntington Beach, or designee.

“Closing” means the point in time when (i) all conditions precedent to the Closing as set forth in this Agreement, including the Method of Financing, have been satisfied; and (ii) the HOME Loan Documents and HOME Regulatory Agreement and the Inclusionary Loan Documents and Amended and Restated Covenants are executed (and recorded against the Property as applicable) in accordance with all of the terms and conditions of this Agreement.

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

“Completion” 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 Project; (2) recordation of a Notice of Completion by Owner or its contractor for the Project; (3) certification by the project architect that construction 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 Project; (5) the Project has been constructed in accordance with this Agreement, the Scope of Development and Plans approved by the City in its independent regulatory capacity and in its capacity as lender pursuant to this Agreement; (6) Owner has submitted all documentation of the final Development Costs; and (7) Owner has submitted to the City the information needed by the City to complete the Rental Set Up and Completion Form – HOME Program required by HUD.

“Development Costs” means all costs which are actually incurred by Owner for the acquisition of the Property and the financing, development and construction of the Project, and includes, without limitation, all of the items of cost set forth in the Project Budget and similar costs, fees and expenses approved by the City Manager, but not including Operating Costs as defined in the HOME Note.

“Environmental Indemnity” means an instrument substantially in the form attached to this Agreement as Attachment No. 13.

“Escrow Agent” means First American Title Insurance Company or another escrow agent mutually acceptable to the City and Owner.

“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 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.

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

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

“HOME Deed of Trust” means the deed of trust securing the HOME Loan, to be recorded against the Property upon the Closing substantially in the form attached to this Agreement as Attachment No. 9.

“HOME Loan” means the loan by the City to Owner in the amount and pursuant to the terms and conditions of this Agreement, which shall be evidenced by the HOME Note and secured by the HOME Deed of Trust and the other HOME Loan Documents. The HOME Loan shall be funded from the City’s allocation of federal HOME Program funds.

“HOME Loan Documents” means the HOME Note, HOME Deed of Trust, Assignment of Agreements, and Environmental Indemnity.

“HOME Note” means the promissory note evidencing the HOME Loan substantially in the form attached to this Agreement as Attachment No. 8.

“HOME Regulations” means 24 CFR Part 92, as amended from time to time.

“HOME Regulatory Agreement” means the Agreement Containing HOME Program Requirements to be recorded upon the Closing, substantially in the form attached to this Agreement as Attachment No. 7.

“HOME Rent” means maximum rents for the HOME Units to be restricted to Low HOME Income households, including a reasonable utility allowance for utilities and services (excluding telephone), that meets either (a) or (b) of the following rent requirements:

(a) The rent does not exceed the lesser of (1) 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, as provided by HUD; (2) the fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or (3) 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit; or

(b) The rent does not exceed 30 percent of the family’s adjusted income. If the unit receives Federal or State project-based rental subsidy and the Very Low Income family pays as contribution toward rent an amount that is not more than 30 percent of the family’s

adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

“HOME Units” means the HOME-assisted units described in the HOME Regulatory Agreement, which units are a subset of and included in the Inclusionary Units and which units must be rented and available to households with incomes that do not exceed Low HOME Income at rents that do not exceed HOME Rents.

“HUD” means the United States Department of Housing and Urban Development.

“Improvements” means the improvements to be constructed on the Property in accordance with this Agreement, including but not limited to the Scope of Development.

“Inclusionary Deed of Trust” means the deed of trust securing the Inclusionary Loan, to be recorded against the Property upon the Closing substantially in the form attached to this Agreement as Attachment No. 11.

“Inclusionary Loan” means a loan of Affordable Housing Trust Funds from the City to Owner in an amount equal to the unpaid principal balance of the Inclusionary Acquisition Loan plus the unpaid interest accrued on the Inclusionary Acquisition Loan from January 29, 2020 through the Closing.

“Inclusionary Loan Documents” means the Inclusionary Note, Inclusionary Deed of Trust, Assignment of Agreements, and Environmental Indemnity.

“Inclusionary Note” means the promissory note evidencing the Inclusionary Loan substantially in the form attached to this Agreement as Attachment No. 10.

“Inclusionary Rent” has the meaning set forth in California Health and Safety Code section 50053(b)(1) for Extremely Low Income households and section 50053(b)(2) for Very Low Income households. The parties have agreed that rents for the Inclusionary Units will not exceed the respective amounts set forth in the Amended and Restated Covenants.

“Inclusionary Units” means the forty-two (42) units that must be rented and available to Extremely Low Income and Very Low Income households at Inclusionary Rents.

“Investor Limited Partner” collectively refers to the entities identified as the “Limited Partner” and “Special Limited Partner” (if any) in Owner’s Limited Partnership Agreement and the related contribution agreement, and their successors and assigns.

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

“Low HOME Income” means household income that does not exceed 50% of the area median income adjusted for household size, as determined annually by the United States Department of Housing and Urban Development.

“Managing General Partner” means the managing general partner of the Owner, which will be Jamboree Housing Corporation, unless and until removed or replaced pursuant to the terms of this Agreement and Owner’s Limited Partnership Agreement.

“NPLH Loan” means a loan of No Place Like Home funds from Orange County Housing and Community Development to Owner in the original principal amount of \$5,875,538.

“OCHFT Loan” means a loan of Orange County Housing Finance Trust Funds from Orange County Housing and Community Development to Owner in the original principal amount of \$1,900,000.

“Owner” means Beach Housing Partners LP, a California limited partnership, or a permitted assignee or nominee.

“Owner’s Limited Partnership Agreement” means that certain Amended and Restated Agreement of Limited Partnership by and between the Managing General Partner and the Investor Limited Partner dated on or around the Closing Date.

“Permitted Transfer” means any of the following:

- a. An assignment of this Agreement and all of Owner’s interests in the Property to an Affiliate or a conveyance back from the Affiliate to Owner;
- b. A conveyance of a security interest in the Property or any portion thereof or interest therein in connection with a Senior Loan or any refinancing of any such Senior Loan that does not increase the outstanding principal balance of the Senior Loan or impose an interest rate greater than the prevailing rate of interest for similar refinancing loans, require a balloon payment or change the loan’s maturity date, or the conveyance of title to the Property or Project in connection with a foreclosure, a deed in lieu of foreclosure or similar conversion of such loan;
- c. The inclusion of equity participation by Owner by addition of limited partners or similar mechanism, and any transfers of limited partnership interests in Owner;
- d. The pledge by a General Partner to the Investor Limited Partner of the General Partner’s interest in Owner, as security for the performance of all of the General Partner’s obligations under the Limited Partnership Agreement.
- e. The sale, transfer or pledge of a limited partnership interest in Owner or of a partnership interest in the Investor Limited Partner.
- f. The lease for occupancy of all or any part of the improvements on the Property;
- g. The granting of easements or permits to facilitate the development of the Property in accordance with this Agreement;

- h. The withdrawal, removal and/or replacement of a general partner of Owner pursuant to the terms of Owner's Limited Partnership Agreement, or a transfer of a general partner's interest to the limited partner pursuant to the option provided to it in connection with Owner's Limited Partnership Agreement, or a conveyance of Owner's interest in the Property and the improvements or a transfer of limited partnership interests to a general partner pursuant to the option provided to that partner in Owner's Limited Partnership Agreement, will not constitute a default under this Agreement or any of the HOME Loan Documents or Inclusionary Loan Documents, nor will such actions accelerate the maturity of the HOME Loan or Inclusionary Loan, provided that any required substitute general partner is reasonably acceptable to City, as evidenced by the City's written consent, and is selected with reasonable promptness (except that no such consent shall be required if the substitute general partner is an Affiliate of the Investor Limited Partner);
- i. Any dilution of a General Partner's interest in Owner in accordance with Owner's Limited Partnership Agreement
- j. The transfer of all or any part of the Project or Property to Jamboree Housing Corporation, or an entity controlled by Jamboree Housing Corporation, or an entity in which Jamboree Housing Corporation is a general partner or managing member;
- k. A transfer otherwise approved in writing by the City Manager or designee, at his or her sole discretion.

"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 Owner for the Project in accordance with this Agreement.

"Project" means the financing, planning, construction and use of the Property and the improvements as described in 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.

"Senior Lender" means the maker of a Senior Loan.

"Senior Loan" means such loans as the City reasonably determines are necessary to be senior in priority to the HOME Loan and the Inclusionary Loan. With regard to the HOME Loan, the term "Senior Loan" includes the Bond Construction Loan, the Bond Permanent Loan, the NPLH Loan,

and the SNHP Loan, as described in the Method of Financing. With regard to the Inclusionary Loan, the term “Senior Loan” includes the Bond Construction Loan, the Bond Permanent Loan, the NPLH Loan, the SNHP Loan, the HOME Loan, and the OCHFT Loan.

“**Senior Loan Documents**” means the loan agreements, promissory notes, financing statements, guaranties, security agreements, assignments, and similar documents and instruments to be executed by Owner in connection with a Senior Loan.

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

“**SNHP Loan**” means a loan of Special Needs Housing Program funds from the California Housing Finance Agency to Owner in the original principal amount of \$3,603,160.

“**Subordination Agreement**” means an instrument in a form approved by the City Manager or designee, subordinating the lien of the HOME Loan and the Inclusionary Loan (but not the HOME Regulatory Agreement or Amended and Restated Covenants) to a Senior Loan.

“**Title Company**” means First American Title Insurance Company or another title insurance company mutually acceptable to the City and Owner.

“**Transfer**” means:

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 Owner, or any conversion of Owner to an entity form other than that of Owner at the time of execution of this Agreement, except that, a cumulative change in ownership interest of any general partner of Owner 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.

“**Very 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 Very 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 “Very Low Income” shall mean a household income that does not exceed 50% of the Area Median Income, adjusted for family size.

“**Waiver and Concession Agreement**” means an agreement between the City and Owner substantially in the form attached to this Agreement as Attachment No. 14, which sets forth the terms and conditions for certain waivers and concessions requested by Owner under Government Code section 65915.

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). Owner is the owner of fee title to the Property and will continue to own and have control of the Property as of the Closing.

Section 106 City

a. The City is a municipal corporation, organized and existing under the laws of the State of California and the Huntington Beach Municipal Code.

b. The address of the City for purposes of receiving notices pursuant to this Agreement shall be c/o City Manager, City of Huntington Beach, 2000 Main Street, Huntington Beach, California 92648.

c. “**City**” as used in this Agreement includes the City of Huntington Beach, California, and any assignee or successor to its rights, power and responsibilities.

Section 107 Owner

a. The Owner is Beach Housing Partners LP, a California limited partnership.

b. Jamboree Housing Corporation, a California nonprofit public benefit corporation (“**Jamboree**”) is a Community Housing Development Organization (“**CHDO**”) and either Jamboree or an affiliate of Jamboree will serve as Owner’s managing general partner. The Project is eligible for HOME funds that are reserved for CHDOs because of Jamboree’s affiliation with the Project.

c. The address of Owner for purposes of receiving notices pursuant to this Agreement shall be c/o Jamboree Housing Corporation, 17701 Cowan, Suite 200, Irvine, California 92614, Attention: Michael Massie, Chief Development Officer, with a copy to: Rutan & Tucker, LLP, 18575 Jamboree Road, 9th Floor, Irvine, California 92612, Attn: Patrick D. McCalla, Esq.

c. Copies of notices to Owner will be delivered at the same time to the Investor Limited Partner at the address provided by Owner to the City.

d. Whenever the term “**Owner**” is used herein, such term shall mean and include: (1) the Owner 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. Owner represents and agrees that its undertakings pursuant to this Agreement are for the purpose of developing and operating the Project and providing affordable housing on the Property and not for speculation in land holding. Owner further recognizes that the qualifications and identity of Owner are of particular concern to the City, 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 City for the purpose of making such development possible; and (3) the fact that a change in ownership or control of Owner or any other act or transaction involving or resulting in a significant change in ownership or control of Owner, is for all practical purposes a transfer or disposition of the property then owned by Owner. Owner further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with Owner. Therefore, no voluntary or involuntary successor in interest of Owner shall acquire any rights or powers under this Agreement except as expressly set forth herein.

b. For the reasons cited above, Owner represents and agrees for itself and every successor in interest that prior to the full reconveyance of the HOME Deed of Trust and the Inclusionary Deed of Trust, other than in connection with a foreclosure, a deed in lieu of foreclosure or similar conversion of a Senior Loan; Owner shall not assign all or any part of this Agreement, or any interest herein, without the prior written approval of the City; provided, however, that with respect to Permitted Transfers, Owner shall provide notice to City of any Permitted Transfer, and shall provide to City documentation for City's files effectuating any such assignment or transfer.

c. For the reasons cited above, Owner represents and agrees for itself and every successor in interest that prior to the full reconveyance of the HOME Deed of Trust and the Inclusionary Deed of Trust, without the prior written approval of the City, there shall be no significant change in the ownership of Owner or in the relative proportions thereof, or with respect to the identity of the parties in control of Owner 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 Owner, other than a Permitted Transfer, shall require the approval of the City, which may be withheld in its sole and absolute discretion. To the extent the City's approval of an assignment or transfer is required by this Agreement, in granting or withholding its approval, the City 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 City shall not have any obligation to approve any assignment or transfer of this Agreement, or any interest herein, or significant change in ownership of Owner 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 HOME Note or Inclusionary Note.

e. Owner shall promptly notify the City of any and all changes whatsoever in the identity of the parties in control of Owner 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 City if there is any significant change (voluntary or involuntary) in membership, management or control, of Owner (other than such changes occasioned by the death or incapacity of any individual)

prior to the full reconveyance of the HOME Deed of Trust and the Inclusionary 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 HOME Deed of Trust and the Inclusionary Deed of Trust.

PART 2. FINANCING

Section 201 Method of Financing

Owner will develop the Project with financing as provided in the Method of Financing attached as Attachment No. 6. Owner is responsible for all additional costs to complete the development of the Project pursuant to this Agreement and the Scope of Development. Owner hereby warrants and agrees that the HOME Loan to be disbursed pursuant to this Agreement shall be used by Owner solely for the purpose of paying a portion of the Development Costs for the Affordable Units and for no other purpose.

Section 202 HOME Loan

a. In accordance with and subject to the terms and conditions of this Agreement, including the Method of Financing, the City agrees to lend to Owner, and Owner agrees to borrow from the City, the HOME Loan. At or prior to the Closing, the City and Owner shall execute and deliver such instruments and documents as may be necessary to evidence and secure the HOME Loan, consistent with the terms of this Agreement, each substantially in the form attached to this Agreement.

b. The HOME Loan shall be disbursed based on vouchers for actual expenses incurred or paid. Requests for payment must be submitted by Owner on forms specified by the City, with adequate and proper documentation of eligible costs incurred in compliance with 24 CFR 92.206 and necessary for HUD IDIS disbursement requirements. The HOME Loan shall be disbursed pursuant to a detailed schedule approved in writing by the City Manager in his or her reasonable discretion, and based upon City's receipt of invoices and other information and documentation (e.g., lien releases) requested or reasonably required by the City Manager. The City shall have the right to condition any disbursement upon receipt and reasonable approval of such documentation, evidence or information that the City may reasonably request, including, but not limited to, vouchers, invoices, and architect's, inspector's and/or engineer's periodic certifications of the percentage and/or stage of construction that has been completed.

c. If any portion of the HOME Loan is to be used for payment of construction costs, then disbursements shall be made upon Applications for Payment and shall be subject to a ten percent (10%) retention. The City shall have the right in its sole discretion to make disbursements of funds directly to third parties entitled to such payment. Owner may submit a final invoice upon Completion. Final payment, including retention previously withheld, shall be made upon Completion.

d. The City shall have the right to review and audit all records of Owner pertaining to any payment by the City. Said records shall be maintained for a period of five years after Completion.

e. Each of the HOME Loan Documents and Inclusionary Loan Documents, but not the HOME Regulatory Agreement or the Amended and Restated Covenants, will be subordinate to: the lien created by a Deed of Trust securing a Senior Loan; provided, that the Subordination Agreements contain written commitments reasonably designed to protect the City's investment in the event of a default. Such written commitments will provide for one or more of the following rights: (i) a right to cure a default on the senior loan; (ii) a right to negotiate with the senior lender after notice of default and prior to senior lender commencing foreclosure proceedings; (iii) a right to purchase Owner's interest in the Property and Project at any time after a default on the senior loan; and/or (iv) an agreement that if prior to foreclosure of the senior loan, the City takes title to the Owner's interest in the Property and Project 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 City. At the Closing, the City Manager or designee will execute a subordination agreement in a form that is consistent with applicable laws and regulations governing subordination of City loans and mutually acceptable to the City Manager or designee, the applicable senior lender, and Owner to subordinate the HOME Loan Documents and the Inclusionary Loan Documents, but not the HOME Regulatory Agreement or the Amended and Restated Covenants, to the senior Deed of Trust and other Senior Loan documents.

f. Prior to Closing, the City Manager may, and is hereby authorized to, determine that, if there is a foreclosure of a Senior Loan or if Owner no longer receives some or all of the rental subsidy payments that were committed to the Project at Closing, then following such foreclosure or loss of subsidy, some portion of the Inclusionary Units would be rented to persons and families with household incomes greater than Extremely Low Income or Very Low Income at Rents that exceed Inclusionary Rent. The City Manager shall base his or her determination on Owner's demonstration to the City Manager's reasonable satisfaction that, in order to obtain the necessary financing for payment of Development Costs, such an adjustment to Inclusionary Units' affordability will be required. The City Manager will consider appropriate factors such as, but not limited to, the underwriting standards used by Senior Lender(s), the availability of operating reserves, Owner's financial capability, and the continuance of affordability restrictions imposed by other lenders to the Project. If the City Manager determines, in his or her reasonable discretion, that it is necessary to allow the affordability of a portion of the Inclusionary Units to be adjusted in the event of foreclosure of a Senior Loan or the loss of rental subsidy payments, then the Amended and Restated Covenants attached to this Agreement as Attachment No. 15 will be revised at Closing to incorporate appropriate language that is acceptable to the City, the Authority, Owner, and the Senior Lenders, including a description of the circumstances that would trigger a change in affordability, the number of Inclusionary Units that would be affected, and the maximum household income and maximum Rents to be imposed following a foreclosure or a loss of rental subsidy. The affordability of the HOME Units under the HOME Regulatory Agreement attached to this Agreement as Attachment No. 7 will be determined at Closing and will not be subject to change.

PART 3. IMPROVEMENT OF THE PROPERTY

Section 301 Land Use Approvals

It is the responsibility of Owner, without cost to the City, 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 City 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 Owner 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 Owner, (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 Owner 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. In making the HOME Loan, the City makes no representation or warranty, express or implied regarding any condition of the Property. It shall be the sole responsibility of Owner, at Owner's expense, to investigate and determine all conditions of the Property and its suitability for the uses 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 Owner, without cost to the City, 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. Owner 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 Owner. Owner shall defend, indemnify and hold harmless the City and the 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 Closing, Owner shall execute and deliver to the City the Environmental Indemnity attached hereto as Attachment No. 13.

Section 303 Scope of Development

The Property shall be developed in accordance with and within the limitations established in the Scope of Development attached to this Agreement as Attachment No. 3. Owner shall carry out the development and management of the Property in conformity with all applicable requirements of the HOME Program.

Section 304 Basic Concept and Schematic Drawings

a. Owner shall prepare and submit Basic Concept and Schematic Drawings and related documents for the improvements to the Property to the City for review and written approval within the time established in the Schedule of Performance. 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.

b. The Property shall be improved as established in the Basic Concept and Schematic Drawings and related documents, except as changes may be mutually agreed upon between Owner and the City. All such changes shall be within the limitations of the Scope of Development.

Section 305 Landscaping and Grading Plans

a. Owner shall prepare and submit to the City for its approval preliminary and final landscaping and preliminary and finish grading plans for the Property. The plans shall be prepared and submitted within the times established in the Schedule of Performance.

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 Owner's architect. Within the times established in the Schedule of Performance, Owner shall submit to the City 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

a. Owner shall prepare and submit construction drawings and related documents (collectively called the "**Plans**") to the City for review (including but not limited to architectural review), and written approval in the times established in the Schedule of Performance. 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 City if developed as a logical evolution of Plans theretofore approved. Any items so submitted and approved by the City shall not be subject to subsequent disapproval.

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

e. If any revisions or corrections of Plans approved by the City 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, Owner and the City shall cooperate in efforts to obtain waiver of such requirements or to develop a mutually acceptable alternative.

Section 307 City Approval of Plans

a. Subject to the terms of this Agreement, the City 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 City. The City shall approve or disapprove the Plans referred to in Sections 304, 305 and 306 of this

Agreement within the times established in the Schedule of Performance. Owner, upon receipt of a disapproval, shall revise the Plans, and shall resubmit to the City as soon as possible after receipt of the notice of disapproval. The City shall 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 City determines must be made in order to obtain approval. Such reasons and such changes shall be consistent with the Scope of Development and all items previously approved hereunder. The City's failure to notify Owner of approval or disapproval within twenty (20) days shall not be deemed to be approval of any matter.

b. If Owner desires to make a substantial change in the Final Construction Drawings after their approval, such proposed change must be submitted to the City for approval, which approval the City 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 in connection therewith, and the cost of relocation claims (if any) shall be the responsibility of Owner, without any cost to the City except as expressly set forth in this Agreement.

b. Owner 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, Owner 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. The Schedule of Performance shall be subject to amendment from time to time upon the mutual agreement of the City Manager and Owner.

b. After the Closing, Owner shall promptly begin and thereafter diligently prosecute to completion the Project described in the Scope of Development and the Plans approved by the City. Owner 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 City Manager, provided Owner 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 City's interests.

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

Section 310 Indemnification and Insurance

a. Owner's Indemnity. To the maximum extent permitted by law, Owner agrees to and shall defend, indemnify and hold harmless the City and its officers, employees, contractors, attorneys, agents, insurers and volunteers (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 Owner 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 City 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 thereon by Owner, its contractors, subcontractors, agents, employees or other persons acting on Owner's behalf;

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

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

(5) All loss or damage to City resulting from any material inaccuracy in or material breach of any representation or warranty of Owner, or resulting from any material breach or default by Owner, 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 Owner 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 Owner may be responsible. The Indemnified Parties will be entitled to recover attorney's fees incurred as a result of Owner's failure to provide the defense and indemnity required by this Section 310. The foregoing indemnity shall survive termination of this Agreement.

b. Insurance Policies.

(1) Commencing upon the Closing, and until the full reconveyance of the HOME Deed of Trust and the Inclusionary Deed of Trust, Owner shall maintain in effect and deliver to the City duplicate originals or appropriate certificates of the following insurance policies (the

“Insurance Policies”) naming the City and the Indemnified Parties as additional insureds or loss payees, as their interests may appear:

(A) All-Risk Policies: Owner 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, flood, 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 Owner 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 City, 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 City, shall carry a deductible not to exceed 25% of the policy amount, or such other deductible amount as City may reasonably determine is acceptable, in light of the cost of the premium for such insurance);

(B) Liability Insurance: Liability Insurance: Owner 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 Owner on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Owner, or any person acting for Owner, 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 Owner or any person acting for Owner, 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 full force and effect until Completion of the Project 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. Owner agrees that provisions of this paragraph as to maintenance of insurance will not be construed as limiting in any way the extent to which Owner may be held responsible for the indemnification of the Indemnified Parties or the payment of damages to persons or property resulting from Owner’s activities or the activities of any other person or persons for which Owner is otherwise responsible.

(C) Automobile Insurance: During all times that Owner has owned vehicles or has employees, then Owner 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 Owner has employees, Owner 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 Owner 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 Owner. Notwithstanding the foregoing, Owner 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 Owner shall deliver to City 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 City. All fire and liability insurance policies (not automobile and Workers' Compensation) shall name the City, the Indemnified Parties, and Owner 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 City of Huntington Beach and its officers, employees, contractors, agents and attorneys."

(4) Owner 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. Owner agrees to submit endorsements and binders or certificates evidencing such insurance to City at least 15 days prior to the 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 City. 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.

(5) Owner 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, Owner 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", Owner 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 of the Project, providing coverage for all claims arising out of any acts or omissions of Owner, or its officers, employees or agents.

(6) If Owner fails or refuses to procure or maintain insurance as required by this Agreement, City shall have the right, but not the obligation, at City's election, and upon ten (10) days prior notice to Owner, to procure and maintain such insurance. The premiums paid by City shall be treated as a loan, due from Owner, to be paid on the first day of the month following the date on

which the premiums were paid. City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

(7) Owner 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 Owner in accordance with this Section 310 is not diminished by so doing (as reasonably determined by the City).

Section 311 Nondiscrimination

Owner 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. Owner 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 Owner and any contractor, consultant, subcontractor, subconsultants, vendors and suppliers.

Section 312 Local, State and Federal Laws

a. Owner 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 if applicable, the payment of state prevailing wages for the Project. Owner also covenants and warrants that it will comply with all applicable laws, ordinances, codes, rules and regulations of the state local and federal governments, including, but not limited to; Title 8 of the Civil Rights Act of 1968 PL.90-284; Executive Order 11063 on Equal Opportunity and Housing Section 3 of the Housing and Urban Development Act of 1968; Housing and Community Development Act of 1974, as well as all requirements set forth in 24 CFR 92 of the HOME Program. Owner agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). Owner further warrants and agrees to include or cause to be included the criteria and requirements of this paragraph in every non-exempt contract in excess of \$100,000.

b. Owner hereby agrees that Owner 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 from time to time, or any other applicable provision of law. Owner hereby agrees that Owner 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. Owner hereby agrees that Owner shall have the obligation, at Owner'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. Owner shall indemnify, protect, defend and hold harmless the City and the Indemnified Parties, with counsel reasonably acceptable to City, 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 Owner 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 Owner 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 Owner 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 Owner 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), Owner 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 Owner shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the City, acting in its governmental capacity, or any other governmental agency with jurisdiction over such work. The disbursement of the HOME Loan is subject, among other conditions, to the issuance of all building permits required by the City for the development and construction of the Project.

Section 314 Disclaimer of Responsibility by City

The City neither undertakes nor assumes nor will have any responsibility or duty to Owner or to any third party to review, inspect, supervise, pass judgment upon or inform Owner 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. Owner 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 Owner or to any third party by the City 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 Owner (except for the purposes set

forth in this Agreement) nor any third party is entitled to rely thereon. The City shall not be responsible for any of the work of development of the Project.

Section 315 Taxes, Assessments, Encumbrances and Liens

Owner 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 HOME Deed of Trust and the Inclusionary Deed of Trust, Owner 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, Owner 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 Owner from contesting in good faith the validity or amount of any tax assessment, or to limit the remedies available to Owner in respect thereto. The covenants of the Owner set forth in this Section 315 shall remain in effect until full reconveyance of the HOME Deed of Trust and the Inclusionary Deed of Trust.

Section 316 Prohibition against Transfer

a. Prior to the full reconveyance of the HOME Deed of Trust and the Inclusionary Deed of Trust, Owner 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 City.

b. In the event Owner 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 HOME Deed of Trust and the Inclusionary Deed of Trust, other than a Permitted Transfer, without the approval of the City in violation of this Agreement, subject to the notice and cure provisions of Section 501, the City shall have the right to terminate this Agreement.

c. In the absence of a specific written agreement by the City (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 City of any such sale, transfer, conveyance or assignment, shall be deemed to relieve Owner or any other party from any obligations under this Agreement.

Section 317 Removal of Liens and Encumbrances

Owner 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 City, and shall promptly take all necessary actions to remove any such liens or encumbrances. Nothing herein contained will be deemed to prohibit Owner from contesting in good faith the validity or amount of any encumbrance or lien, or to limit the remedies available to Owner in respect thereto.

Section 318 Copeland Anti-Kick-Back Act

Owner 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. Owner warrants and agrees to include, or cause to be included, this requirement in every nonexempt subcontract. Owner 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

Owner 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. Owner warrants and agrees to include or cause to be included this requirement in every nonexempt contract. Owner 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

Owner, its successor and assigns shall use the Property only for the uses specified in the HOME Regulatory Agreement, the Amended and Restated Covenants, and this Agreement, specifically including the following:

a. The Property shall be improved for the purpose of creating a 43-unit affordable housing project and ancillary facilities, described in the Scope of Development and subject to the occupancy and rent restrictions set forth in the HOME Regulatory Agreement, the Amended and Restated 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 City.

b. The maximum incomes of residential tenants eligible to rent the Affordable Units shall not exceed the lesser of Low HOME Income (if applicable to the unit) and Extremely Low Income or Very Low Income as those terms may apply to the unit.

c. The maximum monthly rent (including a reasonable utility allowance) that may be charged to tenants of the Affordable Units shall be the lesser of the HOME Rent (if applicable to the unit) and the Inclusionary Rent.

d. The HOME rent limits published by HUD will include average occupancy per unit and adjusted income assumptions.

e. In accordance with the formula set forth in 24 CFR 92.252(e) and as required by 24 CFR 92.504 (c)(3)(ix), rents charged to tenants of the HOME Units will remain affordable to Low HOME Income households pursuant to this Agreement for not less than twenty (20) years following the date of issuance of a final Certificate of Occupancy by the City of Huntington Beach.

f. Failure to comply with the affordability requirements of this Agreement is an event of default under the terms of the HOME Loan. Pursuant to the HOME Note evidencing the HOME Loan, the HOME Loan will be due and payable immediately if the Project does not meet the

affordability requirements of this Agreement and the HOME Regulatory Agreement, following written notice and expiration of the applicable cure period.

g. Owner 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 City shall review and approve or disapprove the proposed rent schedule and utility allowances for compliance with the maximum rent limitations contained in 24 CFR 92.252.

h. The City will provide updated HUD income and rent limits to Owner as they become available. As of the date of this Agreement, the applicable income and rent limits are as follows:

Orange County
2020 HOME Program Income Limits

Household Size	Low HOME Income (Very Low Income)	High HOME Income (Low Income)
1	\$44,850	\$71,750
2	\$51,250	\$82,000
3	\$57,650	\$92,250
4	\$64,050	\$102,450
5	\$69,200	\$110,650
6	\$74,300	\$118,850
7	\$79,450	\$127,050

Orange County
2020 HOME Program Rent Limits

	1-Bedroom	2-Bedroom	3-Bedroom
Low HOME Rent (Very Low Income)	\$1,201	\$1,441	\$1,665
High HOME Rent (Low Income)	\$1,541	\$1,852	\$2,131

For comparison purposes:

Fair Market Rent	\$1,785	\$2,216	\$3,098
65% Rent Limit	\$1,541	\$1,852	\$2,131

i. Owner shall be responsible for ensuring that the current operative HOME income and rent limits in effect at the time of the tenant's rental application will be used to determine initial tenant eligibility and conformance with HOME affordability requirements and that each tenant recertification is conducted using current HOME income and rent limits to assure compliance with HOME Regulations.

j. Income recertification and rental rate adjustments for the HOME Units shall occur not more frequently than once per year upon HUD's annual determination of maximum HOME rent

limits and in accordance with 24 CFR part 92.252(f) and (g). Any increase in rents for the HOME Units is subject to the provisions of existing leases. Owner must provide tenants with not less than thirty (30) days prior written notice before implementing an increase in rents.

k. Owner agrees that, prior to the initial lease-up of the Project, Owner shall consult with and obtain the approval of the City in developing a fair marketing plan for the Affordable Units.

l. The City, and its successors and assigns, shall have the right, but not the obligation, to monitor and enforce the covenants contained in this Section 401, the HOME Regulatory Agreement, and the Amended and Restated Covenants. Owner covenants that it shall comply with the monitoring program set up by the City to enforce said covenants. In complying with such monitoring program, Owner or its agent shall annually prepare and submit to the City 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 City, setting forth the required information for the preceding year. The City 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 City's cost of monitoring the Affordable Units, Owner shall pay to the City an annual monitoring fee of \$1,075, increasing annually at a rate of three percent (3%).

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

Section 402 Maintenance of the Property

Owner shall maintain the Property in accordance with the requirements of this Agreement, the HOME Regulatory Agreement and the Amended and Restated Covenants.

Section 403 Obligation to Refrain from Discrimination

Owner 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 Owner itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

Section 404 Equal Employment Opportunity

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

a. Owner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin(s). Owner 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. Owner agrees to post in conspicuous places, available to

employees and applicants for employment, notices to be provided by the contracting officer of the City setting forth the provisions of this nondiscrimination clause.

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

c. Owner will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City's contracting officer, advising the labor union or worker's representative of Owner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. Owner will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. Owner will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the City and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and order.

f. In the event Owner is found to be in noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and Owner may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulations, or order of the Secretary of Labor or as otherwise provided by law.

g. Owner will include the provisions of paragraphs (a) through (g) of this Section 404 in every contract or purchase order related to the Project unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each contractor or vendor providing services related to the Project. Owner will take such action with respect to any contract or purchase order as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance.

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 City for such periods as set forth herein. Those certain covenants contained in the HOME Regulatory Agreement and the Amended and Restated Covenants shall remain in effect for the periods specified therein.

Section 406 HOME Regulatory Agreement

Concurrently with the Closing, Owner and City shall execute and cause the recordation of a HOME Regulatory Agreement substantially in the form attached to this Agreement as Attachment No. 7.

Section 407 Labor, Training and Business Opportunity

Owner agrees to comply with the federal regulations governing training, employment and business opportunities, including but not limited to Section 3 of the Housing and Urban Development Act of 1968, to the extent such regulations apply to Owner. Compliance with the provisions of Section 3, the regulations set forth in 24 Code of Federal Regulations and all applicable rules and orders of the Department of Housing and Urban Development issued thereunder prior to the execution of this Agreement shall be a condition precedent to federal financial assistance being provided to the Project as well as a continuing condition, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject Owner, its contractors and subcontractors, its successors, and assigns to those sanctions specified by 24 Code of Federal Regulations as well as with any and all applicable amendments thereto.

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 twenty (20) 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.

e. In the event of a default by Owner, the Investor Limited Partner shall have the cure rights set forth in the HOME Note and the Inclusionary Note.

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 Owner against the City, service of process on the City shall be made by personal service upon the City Manager or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the City against the Owner, service of process on the Owner shall be made by personal service upon the Owner (or upon a general partner, managing member or officer of the Owner) 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.

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 HOME Loan and the Inclusionary Loan are nonrecourse obligations of Owner and its partners. Neither Owner 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 City with respect to repayment of the HOME Loan and the Inclusionary 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 City may:

- a. obtain a judgment or order (including, without limitation, an injunction) requiring Owner or any other party to perform (or refrain from) specified acts other than repayment of the HOME Loan and Inclusionary Loan; and
- b. recover directly from Owner or any other party:
 1. all damages, costs and expenses incurred by the City as a result of fraud or any criminal act or acts of Owner or any partner, shareholder, officer, director or employee of Owner or of any general partner of Owner or of any member of a general partner of Owner;
 2. all damages, costs and expenses incurred by the City 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 Owner pursuant to Owner's indemnification regarding Hazardous Substances provided to the City 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 City shall pay Owner's reasonable court costs and attorneys' fees if Owner is the prevailing party in such enforcement or collection action).

Section 509 Termination by City

- a. In accordance with 24 CFR 85.43 and subject to applicable notice and cure periods, suspension or termination of this Agreement may occur if Owner materially fails to comply with any

term of the award, and the award may be terminated for convenience in accordance with 24 CFR 85.44, subject to applicable notice and cure periods.

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

- (1) failure of any condition precedent to the occurrence of the Closing; or
- (2) Owner fails to submit to the City the evidence of financing within the time established therefor in the Schedule of Performance, and has failed to cure such default within thirty (30) days after receiving written notice from the City; or
- (3) Except for a Permitted Transfer, Owner (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
- (4) there is substantial change in the ownership of the Owner, or with respect to the identity of the parties in control of Owner, or the degree thereof in violation of this Agreement; or
- (5) Owner fails to submit any of the plans, drawings and related documents required by this Agreement by the respective dates provided in Schedule of Performance therefor, and has failed to cure such default within thirty (30) days after receiving written notice from the City.

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

- (1) Owner fails to commence construction of the Project within the time provided in the Schedule of Performance, subject to Force Majeure delays; or
- (2) Owner abandons or suspends the Project for a period of thirty (30) days; or
- (3) except for a Permitted Transfer, there is substantial change in the ownership of the Owner, or with respect to the identity of the parties in control of Owner, or the degree thereof in violation of this Agreement; or
- (4) except for a Permitted Transfer, Owner 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
- (5) Owner otherwise materially breaches this Agreement.

PART 6. GENERAL PROVISIONS

Section 601 Notices

Formal notices, demands and communications between the City and Owner 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 City and Owner 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 City in its capacity as lender to the Project shall not excuse performance of the City).

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 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 City and Owner.

Section 603 Conflict of Interest

a. No member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested.

b. Owner 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 City Officials and Employees

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

Section 605 Inspection of Books and Records

a. Owner 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 City to inspect and copy records, during regular business hours upon reasonable advance notice. Records must be kept accurate and current.

b. The City reserves the right to inspect, monitor, and observe work and services performed by Owner 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, Owner shall have the right to require that a representative of Owner be present.

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

d. If required, Owner will provide the City with a certified audit of Owner's records representing the July 1 – June 30 fiscal year during which the Project becomes Complete, pursuant to the requirements of OMB Circular A-133.

e. Access shall be immediately granted to the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of Owner or its contractors which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

Section 606 Approvals

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

approval” means and refers to approval by the City Manager or designee. The City Manager shall have the authority to execute any and all documents and instruments necessary to implement this Agreement.

Section 607 Real Estate Commissions

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

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.

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 City to be responsible in any way for the debts or obligations of Owner or any other Person.

Section 611 Compliance with Law

Owner 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 Owner or any lessee or permittee in any action or proceeding against them, or any of them, whether the City be a party thereto or not, that Owner, 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 City and Owner.

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 City and Owner, 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

Owner hereby represents that the persons executing this Agreement on behalf of Owner have full authority to do so and to bind Owner 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.

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.

PART 7. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

a. This Agreement is executed in three (3) 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 City or Owner, and all amendments to this Agreement must be in writing and signed by the appropriate authorities of the City and Owner.

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

PART 8. TIME FOR ACCEPTANCE OF AGREEMENT BY CITY

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

IN WITNESS WHEREOF, the City, Authority, and Owner have signed this Agreement as of the dates set opposite their signatures.

“CITY”

CITY OF HUNTINGTON BEACH

By: _____
Oliver Chi Dated _____
City Manager

ATTEST:

By: _____
Robin Estanislau
City Clerk

APPROVED AS TO FORM:

By: _____
Michael Gates
City Attorney


“OWNER”

BEACH HOUSING PARTNERS LP
a California limited partnership

By: JHC-Beach LLC, a California limited
liability company
Its: Managing General Partner

By: Jamboree Housing Corporation,
a California nonprofit public
benefit corporation

Its: Manager

By:  _____
Michael Massie Dated _____
Chief Development Officer

[SIGNATURES CONTINUE ON NEXT PAGE]

PART 8. TIME FOR ACCEPTANCE OF AGREEMENT BY CITY

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

IN WITNESS WHEREOF, the City, Authority, and Owner have signed this Agreement as of the dates set opposite their signatures.

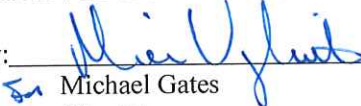
"CITY"
CITY OF HUNTINGTON BEACH

By: _____
Oliver Chi Dated _____
City Manager

ATTEST:

By: _____
Robin Estanislau
City Clerk

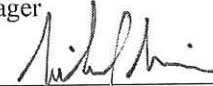
APPROVED AS TO FORM:

By:  _____
Michael Gates
City Attorney

"OWNER"
BEACH HOUSING PARTNERS LP
a California limited partnership

By: JHC-Beach LLC, a California limited
liability company
Its: Managing General Partner

By: Jamboree Housing Corporation,
a California nonprofit public
benefit corporation

Its: Manager
By:  _____
Michael Massie Dated _____
Chief Development Officer

[SIGNATURES CONTINUE ON NEXT PAGE]

"AUTHORITY"

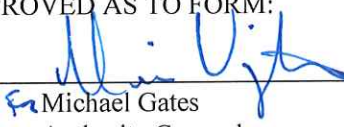
HUNTINGTON BEACH HOUSING AUTHORITY

By: _____
Oliver Chi Dated _____
Executive Director

ATTEST:

By: _____
Robin Estanislau
Authority Secretary

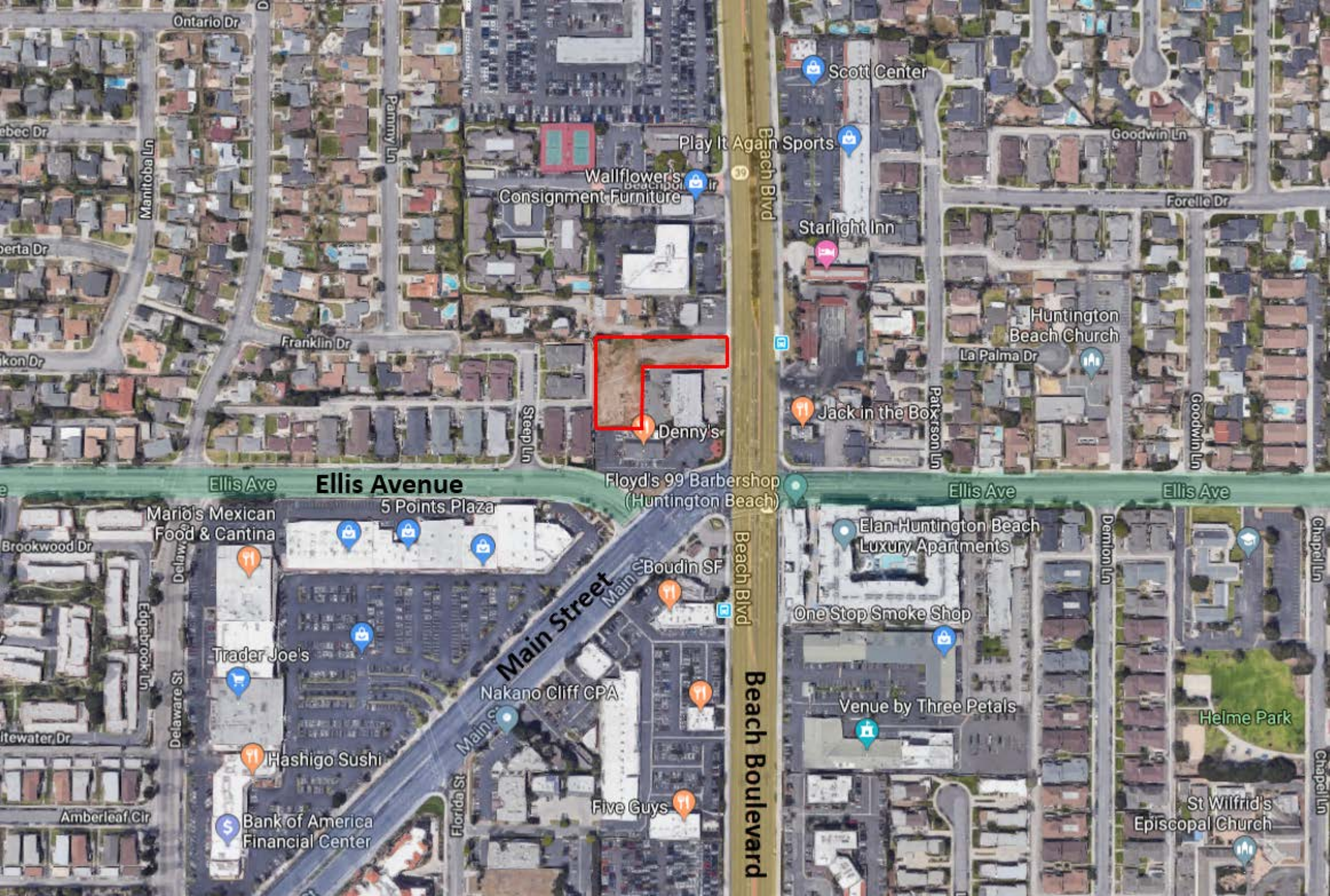
APPROVED AS TO FORM:

By:  _____
Michael Gates
Authority Counsel

ATTACHMENT NO. 1

SITE MAP

(behind this page)



Ontario Dr

Manitoba Ln

Pammy Ln

Franklin Dr

Steep Ln

Beach Blvd
39

Scott Center

Play It Again Sports

Goodwin Ln

Forelle Dr

Huntington Beach Church

La Palma Dr

Goodwin Ln

Paterson Ln

Jack in the Box

Denny's

Floyd's 99 Barbershop
(Huntington Beach)

Ellis Avenue

Ellis Ave

Ellis Ave

Ellis Ave

Mario's Mexican Food & Cantina

5 Points Plaza

Brookwood Dr

Delaware St

Edgebrook Ln

Trader Joe's

Main Street

C' Boudin SF

Beach Blvd

Beach Boulevard

Elan Huntington Beach Luxury Apartments

One Stop Smoke Shop

Venue by Three Petals

Denison Ln

Helme Park

St Wilfrid's Episcopal Church

Chapell Ln

Chapell Ln

Amberleaf Cir

Water Dr

Bank of America Financial Center

Hashigo Sushi

Nakano Cliff CPA

Five Guys

ATTACHMENT NO. 2

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 2, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 76, PAGE 4 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN:159-031-18

ATTACHMENT NO. 3
SCOPE OF DEVELOPMENT

(behind this page)

ATTACHMENT NO. 3 SCOPE OF DEVELOPMENT

1. General

The Property is located on approximately 0.78 acre with a wide array of nearby amenities, including a grocery store, bus stop, park, schools, medical clinic and pharmacy. The Project will consist of 43 units of multifamily housing to be developed on the Property, comprising 42 one-bedroom/one-bathroom units and 1 two-bedroom/one-bathroom manager unit, common areas, and associated parking. The Project's common areas will include a management office, an outdoor courtyard area and open space, and 3,800 square feet of community space, including a community room, full kitchen, TV lounge, computer room, individual counseling offices, and multi-purpose gathering and meeting rooms.

The building will consist of one level of Type I partial subterranean parking garage with 4-stories of Type V residential above. The one-bedroom units will be at least 572 square feet. Each residential unit will have individual heating and cooling controls, separate living, eating, sleeping, bathroom and cooking areas, and private patios or balconies. Parking will be provided on-site and will consist of 35 spaces, including 5 handicap spaces.

The Project will be designed and developed to promote safety and accessibility for residents and their guests. The Project will be planned to promote "natural surveillance" of parking, pathways and other common areas and of entrances to individual residential units. Exterior lighting will be provided to offer the greatest degree of security without intruding into adjacent properties.

The plans and specifications for the Project shall be subject to the City's approval. Development of the Property in accordance with this Agreement is subject to the City of Huntington Beach Site Plan Review, and the City's post approval plan check, the issuance of permits and all other applicable City of Huntington Beach approvals and permit requirements.

2. Standards, Controls and Restrictions

Standards, controls and restrictions regarding construction and development including, but not limited to, maximum land coverage, setbacks, and building construction shall be as required by the Huntington Beach General Plan, Zoning Ordinance, and Municipal Code, and shall be as mutually agreed upon by the City and Owner in the approved construction drawings, plans and specifications, and shall be consistent with the approved conceptual development standards and the Site Plan Review plans and standards, including conditions of approval and environmental mitigation measures. The following standards shall apply to the Project.

a. Architectural Standards

The architecture of all structures shall maintain a high quality of architectural design and establish visual continuity with existing and proposed developments surrounding the Property.

(1) Form and Scale

The structures on the Property shall combine a form and scale which are compatible with the adjoining land uses and the street environment.

(2) Street Level Design

The facade as seen from the street shall be such that the shape, exterior design and exterior finish of the structures are consonant with and visually related to each other and surrounding developments.

(3) Building Materials

Building materials shall be subject to the City's approval, which approval shall not be unreasonably withheld or delayed.

(4) Sustainability

Energy efficient features shall be incorporated into the design of the development including passive energy conservation methods. Developer will be required to demonstrate consideration of energy features as a part of the design review and building permit process. Specifically, the Project shall utilize Energy Star certified appliances exceeding California Code of Regulations Title 24 standards by at least 15%. Low water landscaping will be used throughout the Project.

b. Siting and Land Use Standards

(1) Building Location

The location of the building shall relate to and take advantage of developments and attractions surrounding the Property.

(2) Building Height

The height of the building shall be as permitted by the Huntington Beach Zoning Ordinance and the Waiver and Concession Agreement attached to the Agreement as Attachment No. 14.

(3) Views

The structures shall be sited to minimize the impact on the views from existing and proposed structures surrounding the Property. To the extent possible, structures shall face open space.

(4) Open Space

Patios, plazas, gardens and other pedestrian oriented open spaces shall be located throughout the Project with as much open space as practicable in areas where greater use will be encouraged.

(5) Rooftops

On all buildings whose roof is visible from surrounding structures or proposed structures, pedestrian ways, streets, etc., exposed duct work for heating and cooling, mechanical equipment and other roof structures shall be screened from the direct view of adjacent property or buildings by the building parapets or in a manner approved by the City in the City's reasonable discretion.

(6) Parking

All parking for the Project shall be located within the boundaries of the Property.

c. Streetscape Design Standards

(1) Landscaping

Owner shall provide and maintain landscaping within setback areas along all street frontages. All landscaping shall be integrated with the existing or proposed landscaping for adjacent sites in the Project area. Landscaping includes such materials as paving, trees, shrubs, and other plant materials, landscape containers, top soil, soil preparation, automatic irrigation, and landscape and pedestrian lighting.

Landscaping shall carry out the objectives and principles of the Project and the City's desire to accomplish an aesthetically superior environment. Developer shall maintain the landscape free from debris and accumulation of rubble and shall maintain all plant materials in a manicured condition.

(2) Vehicular Access

Vehicular access shall be as required by the City's Municipal Code and Zoning Ordinance. Driveways for parking shall be coordinated with the design of pedestrian spaces. The City will determine the number and location of curb breaks for access to the Property, pursuant to the City's Municipal Code and Zoning Ordinance,.

d. On-Site Public Improvements and Utilities

Owner shall construct and install all utilities on the Property required by the City's Municipal Code and Zoning Ordinance, and all other on-site public improvements necessary for the Project, including, but not limited to:

- (1) sewers
- (2) storm drains
- (3) electricity
- (4) gas
- (5) telephone
- (6) water
- (7) curbs
- (8) gutters
- (9) sidewalks and pavement

3. City Requirements

Owner shall be responsible for complying with all permit and fee requirements of the City of Huntington Beach and compliance with all conditions of approval for the Project, including the construction of any required off-site public improvements.

4. Accessibility

At a minimum, the Project shall comply with the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and, if applicable, the design and construction requirements at 24 CFR 100.205 for covered multifamily dwellings, as defined at 24 CFR 100.201, which implements the Fair Housing Act (42 U.S.C. 3601-3619).

ATTACHMENT NO. 4
SCHEDULE OF PERFORMANCE

(behind this page)

ATTACHMENT NO. 4
SCHEDULE OF PERFORMANCE

- | | |
|---|--|
| 1. <u>Submittal - Basic Concept/Schematic Drawings.</u> Owner will submit to the City for approval the Basic Concept/Schematic Drawings and related documents (site plans, elevations and preliminary floor plans). | Before the City Council's consideration of the Affordable Housing Agreement. |
| 2. <u>Approval - Basic Concept/Schematic Drawings.</u> The City will approve or disapprove the Basic Concept/Schematic Drawings and related documents. | Within thirty days after submittal by Owner and before the City Council's consideration of the Affordable Housing Agreement. |
| 3. <u>Execution of Affordable Housing Agreement by City.</u> The City will authorize the City Manager to execute and deliver the Affordable Housing Agreement to Owner. | As soon as feasible after submission of executed Agreement by Owner and approval by City Council. |
| 4. <u>Low Income Housing Tax Credits.</u> Owner will have been awarded a preliminary allocation of Low Income Housing Tax Credits for the Project. | No later than November 30, 2021. |
| 5. <u>Submittal - Annual Project Operating Budget.</u> Owner will submit to the City for approval the Annual Project Operating Budget for the first year of operation. | Not later than thirty days before the Closing. |
| 6. <u>Submittal – Final Construction Drawings and Specifications.</u> The Owner will prepare and submit to the City for approval the Final Construction Drawings and Specifications. | Not later than thirty days before the Closing. |
| 7. <u>Approval - Final Construction Drawings and Specifications.</u> The City will approve or disapprove the Final Construction Drawings and Specifications. | Within fifteen business days after submittal to the City. |
| 8. <u>Submittal - Management Plan.</u> Owner will submit to the City for approval the proposed Management Plan for the Project. | Not less than thirty days before the Closing. |

SCHEDULE OF PERFORMANCE

- | | |
|---|--|
| 1. <u>Submittal - Basic Concept/Schematic Drawings.</u> Owner will submit to the City for approval the Basic Concept/Schematic Drawings and related documents (site plans, elevations and preliminary floor plans). | Before the City Council's consideration of the Affordable Housing Agreement. |
| 2. <u>Approval - Basic Concept/Schematic Drawings.</u> The City will approve or disapprove the Basic Concept/Schematic Drawings and related documents. | Within thirty days after submittal by Owner and before the City Council's consideration of the Affordable Housing Agreement. |
| 3. <u>Execution of Affordable Housing Agreement by City.</u> The City will authorize the City Manager to execute and deliver the Affordable Housing Agreement to Owner. | As soon as feasible after submission of executed Agreement by Owner and approval by City Council. |
| 4. <u>Low Income Housing Tax Credits.</u> Owner will have been awarded a preliminary allocation of Low Income Housing Tax Credits for the Project. | No later than November 30, 2021. |
| 5. <u>Submittal - Annual Project Operating Budget.</u> Owner will submit to the City for approval the Annual Project Operating Budget for the first year of operation. | Not later than thirty days before the Closing. |
| 6. <u>Submittal – Final Construction Drawings and Specifications.</u> The Owner will prepare and submit to the City for approval the Final Construction Drawings and Specifications. | Not later than thirty days before the Closing. |
| 7. <u>Approval - Final Construction Drawings and Specifications.</u> The City will approve or disapprove the Final Construction Drawings and Specifications. | Within fifteen business days after submittal to the City. |
| 8. <u>Submittal - Management Plan.</u> Owner will submit to the City for approval the proposed Management Plan for the Project. | Not less than thirty days before the Closing. |

- | | | |
|-----|---|---|
| 9. | <u>Submittal - Maintenance Program and Annual Maintenance Budget.</u> Owner will submit to the City for approval the proposed Maintenance Program and Annual Maintenance Budget for the Project. | Not less than thirty days before the Closing. |
| 10. | <u>Submittal - Evidence of Financing.</u> Owner will submit to the City substantially final Loan Documents for the construction financing, a written commitment for the Permanent Loan and documentation of Owner Equity, as provided in the Method of Financing. | Not less than twenty days before the Closing. |
| 11. | <u>Approval of Financing.</u> The City will approve or disapprove the evidence of financing. | Within ten days after the City's receipt of such evidence of financing. |
| 12. | <u>Closing.</u> All conditions precedent to the Closing will have been satisfied. | Not later than 180 days after the Owner receives a preliminary allocation of Low Income Housing Tax Credits. |
| 13. | <u>Commencement of Construction.</u> The Owner will commence construction of the improvements on the Property. | Within thirty days after the Closing. |
| 14. | <u>Completion of Construction.</u> The Owner will complete construction of the improvements on the Property. | Not later than twenty-four months after commencement of construction or such later date as may be approved by the California Tax Credit Allocation Committee. |
| 15. | <u>Submittal - Tenant Lease.</u> Owner will prepare and submit to the City for approval a proposed tenant lease for the Project that conforms to the requirements of the HOME Regulatory Agreement and the Agreement Containing Covenants. | At least two months before beginning tenant selection for lease up of the Project. |
| 16. | <u>Submittal-Tenant Selection and Eligibility Plan.</u> Owner will prepare and submit to the City for approval the proposed tenant selection and eligibility plan for the Project. | At least two months before beginning tenant selection for lease up of the Project. |

17. Lease-Up. The Owner will have achieved lease-up of at least 90% of the units in the Project. Not later than six months after completion of construction.

NOTES:

1. Deadlines set forth in this Schedule of Performance are subject to the enforced delay provisions of Section 602 of the Agreement.
2. Extensions may be approved in writing pursuant to Section 309 of the Agreement.
3. Descriptions of items of performance and deadlines in this Schedule of Performance are not intended to supersede more complete descriptions in the text of the Agreement; and in the event of any conflict between the text of the Agreement and this Schedule, the text of the Agreement will govern.

ATTACHMENT NO. 5

PROJECT BUDGET

(behind this page)

**ATTACHMENT NO. 5
PROJECT BUDGET**

<u>Sources of Funds</u>	<u>Construction</u>	<u>Permanent</u>
Bank Loan	\$ 14,000,000	\$ 3,812,690
NPLH Loan		5,875,538
SNHP Loan	3,603,160	3,603,160
HOME Loan	2,830,697	2,830,697
OCHFT Loan	1,900,000	1,900,000
Inclusionary Loan	295,303*	295,303*
Tax Credit Equity (Federal)	2,434,212	8,114,041
Deferred Developer Fee	1,511,159	143,102
TOTAL SOURCES	\$26,574,531	\$ 26,574,531

DEVELOPMENT COSTS:

Property Acquisition	\$ 3,180,000**
Construction Costs	14,707,125
Hard Cost Contingency	719,175
Loan Interest and Fees	826,947
Soft Costs	4,085,440
Soft Cost Contingency	375,844
Developer Fee	2,680,000
TOTAL DEVELOPMENT COSTS:	\$ 26,574,531

* Includes approx. \$126,000 in interest accrued on \$2,100,000 Inclusionary Acquisition Loan from January 29, 2020 to Closing (to be added to principal amount of new Inclusionary Note).

** Includes approx. \$54,000 in interest accrued on LMIHAF Acquisition Loan from January 29, 2020 to Closing (to be paid at Closing) plus approx. \$126,000 interest on Inclusionary Acquisition Loan (to be added to principal at Closing).

ATTACHMENT NO. 6
METHOD OF FINANCING

(behind this page)

ATTACHMENT NO. 6 METHOD OF FINANCING

This Method of Financing is Attachment No. 6 to the Affordable Housing Agreement dated as of January 5, 2021 (“**Agreement**”), among the City of Huntington Beach (“**City**”), the Huntington Beach Housing Authority (“**Authority**”) and Beach Housing Partners LP (“**Owner**”), relating to Owner’s construction of a 43-unit multifamily housing project (one of which units will be a manager unit), to be rented, at affordable rents, to extremely low and very low income households.

The Project will be financed using the HOME Loan and the Inclusionary Loan from the City and the additional sources described in Sections 3 and 4 below. Owner may utilize other financing sources approved by the City, so long as such alternative financing does not result in increased costs or reduced revenue to the City.

a. Subject to the terms and conditions of the Agreement and this Method of Financing, the HOME Loan in the anticipated principal amount of \$2,830,697 will be funded at Closing and will convert to permanent financing at Conversion. The Agreement is intended to outline the general terms, conditions, structure, and pricing of the contemplated transaction. Based upon a preliminary review of the Development Costs and financing sources proposed by Owner, the City anticipates that it would provide a loan of HOME Program funds in the amount of \$2,830,697. However, this conditional commitment of HOME Program funds is expressly subject to the City’s completion of the loan underwriting and subsidy-layering analysis required pursuant to Section 92.250 of the HOME Regulations. In no event will the HOME Loan amount exceed \$2,830,697. A portion of the HOME Loan in the amount of \$900,000 will be used to repay the principal balance of the LMIHAF Acquisition Loan in full at Closing and the remainder of the HOME Loan in the amount of \$[1,930,697] will be applied to repayment of the principal balance of the Inclusionary Acquisition Loan at Closing. The HOME Loan will be repaid during the Permanent Period from Residual Receipts according to the terms and conditions of the HOME Note.

The interest accrued on the LMIHAF Acquisition Loan from its funding on January 20, 2020 through Closing will be paid in full at Closing from Owner’s other financing sources.

The interest accrued on the \$2,100,000 Inclusionary Acquisition Loan from its funding on January 20, 2020 through Closing will be added to the \$[169,303] in unpaid principal balance of the Inclusionary Acquisition Loan at Closing, which total amount will become the original principal amount of the Inclusionary Loan. The Inclusionary Loan will be repaid during the Permanent Period from Residual Receipts according to the terms and conditions of the Inclusionary Note.

1. **Definitions.** Any capitalized term not otherwise defined herein has the meaning ascribed to such term in the Agreement.

“**Construction Period**” means the time period that begins at Closing and ends at Conversion.

“**Conversion**” means the date on which the conditions for funding of the Bond Permanent Loan have been met or waived by the Bank, and the outstanding balance of the Bond Construction Loan has been paid in full.

“**Permanent Period**” means the time period that begins at Conversion.

2. **Total Development Costs.** The parties estimate that the total Development Costs for the Project will be approximately \$26,574,531.

3. **Sources of Construction Financing.**

The Parties anticipate that the Development Costs for the Project will be financed during the Construction Period with the following combinations of funds. Owner must make every reasonable effort to structure the terms of the construction financing in a way that will minimize the amount of the HOME Loan needed to fill the financing gap.

- (a) A construction loan from [_____] to Owner, in the approximate original principal amount of \$14,000,000, to be secured by a first deed of trust (“**Bond Construction Loan**”).
- (b) A loan of Special Needs Housing Program funds (“**SNHP Loan**”) from the California Housing Finance Agency to Owner in the original principal amount of \$3,603,160, to be secured by a second deed of trust.
- (c) The HOME Loan from the City to Owner in the original principal amount of \$2,830,697 (“**HOME Loan**”), to be secured by a third deed of trust.
- (d) A loan of Orange County Housing Finance Trust Funds (“**OCHFT Loan**”) from Orange County Housing and Community Development to Owner in the original principal amount of \$1,900,000, to be secured by a fourth deed of trust.
- (e) The loan of Affordable Housing Trust Funds from the City to Owner in the approximate principal amount of \$295,303 (“**Inclusionary Loan**”), to be secured by a fifth deed of trust.
- (f) Costs deferred to payment at Conversion, consisting of a portion of the Developer Fee in the amount of \$1,368,057.

- (g) Owner Equity consisting of: (i) advances and capital contributions made by Owner's Limited Partner, in the approximate amount of \$2,434,212 and (ii) the deferral of a portion of the Developer Fee in the amount of \$143,102 ("**Deferred Developer Fee**"), which will be paid from the cash flow of the Project.
- (h) Owner will be solely responsible during the Construction Period to provide funds if and as needed to pay for cost overruns and contingencies not otherwise funded by the sources of funds as described herein.

4. **Sources of Permanent Financing.**

The Parties anticipate that the Development Costs of the Project will be financed during the Permanent Period with the following combinations of funds. Owner must make every reasonable effort to structure the terms of the permanent financing in a way that will minimize the amount of the HOME Loan needed to fill the financing gap.

- (a) A permanent loan from [_____], in the approximate original principal amount of \$3,812,690, to be secured by a first deed of trust ("**Bond Permanent Loan**").
- (b) A loan of No Place Like Home funds ("**NPLH Loan**") from Orange County Housing and Community Development to Owner in the original principal amount of \$5,875,538, to be secured by a second deed of trust.
- (c) The SNHP Loan described in paragraph 3(b) above, to be secured by a third deed of trust.
- (d) The HOME Loan described in paragraph 3(c) above, to be secured by a fourth deed of trust.
- (e) The OCHFT Loan described in paragraph 3(d) above, to be secured by a fifth deed of trust.
- (f) The Inclusionary Loan described in paragraph 3(e) above, to be secured by a sixth deed of trust.
- (g) Owner Equity, consisting of (1) the Deferred Developer Fee described in paragraph 3(g) above (to be paid by Owner to the extent available from the cash flow of the Project) plus (2) the initial Limited Partner's Capital Contribution described in paragraph 3(g) above and an additional Limited Partner's Capital Contribution in the approximate amount of \$5,679,829.

5. **Project Budget.** The Parties anticipate that all Development Costs for the Project will be as set forth in the Project Budget attached to the Agreement as Attachment No. 5. The Project Budget will be subject to change from time to time, subject to the prior written approval of the City, which approval shall not be unreasonably withheld or delayed, upon which approval the Project Budget will be replaced by the approved revised Project Budget. Within the time provided in the Schedule of Performance, Owner will obtain a written commitment for the Bond Permanent Loan reasonably acceptable to the City and will demonstrate, to the satisfaction of the City, that all Owner Equity will be available for payment of Development Costs when and as required by this Method of Financing.

6. **Evidence of Financing.** The sum of the financing sources described in Section 3 above must, at all times, be sufficient to pay all Development Costs as set forth in the most recently approved Project Budget. Before the Closing, Owner will submit for City review and approval evidence of such financing, including: (a) copies of all documents required by the Bank to obtain the Bond Construction Loan; (b) the Limited Partnership Agreement and all amendments thereto, and other documentation necessary to evidence the availability of the Owner Equity; (c) a written commitment for the Bond Permanent Loan; and, (d) all other documents reasonably required by the City. The City will not unreasonably withhold its approval of Owner's evidence of financing.

7. **HOME Loan.**

(a) In accordance with and subject to the terms and conditions of the Agreement and this Method of Financing, the City agrees to make the HOME Loan to Owner and Owner agrees to borrow such funds for the payment of Development Costs.

(b) Owner hereby acknowledges that the HOME Loan is a "gap" loan, the amount of which will be confirmed following completion of the subsidy layering analysis required by the HOME Regulations and is not to exceed the amount needed to bridge the gap between the total Development Costs and the maximum construction financing set forth in Section 3 above, but in any event not to exceed \$2,830,697. If at any time Owner obtains additional financial assistance, Owner will promptly notify the City. The City will determine in City's reasonable discretion if such additional assistance would result in an over-subsidy of the Project, in which case, the City and Owner will mutually agree upon appropriate procedures for reducing the HOME Loan to eliminate the over-subsidy.

(c) Owner must use the HOME Loan exclusively to pay Development Costs identified in the Project Budget.

(d) At the Closing for the Project, the City and Owner will execute and deliver such instruments and documents as may be necessary to evidence and secure the HOME Loan consistent with the terms of the Agreement and this Method of Financing, and in a form that is acceptable to the City, including the following instruments:

- (1) the HOME Regulatory Agreement;
- (2) the HOME Note;
- (3) the HOME Deed of Trust;
- (4) the Assignment of Agreements; and
- (5) the Environmental Indemnity.

8. **Subordination.**

(a) Each of the HOME Loan documents, but not the HOME Regulatory Agreement, will be subordinate to the Bond Construction Loan, the Bond Permanent Loan, the NPLH Loan, and the SNHP Loan and each of the Inclusionary Loan Documents, but not the Amended and Restated Agreement Containing Covenants, will be subordinate to the Bond Construction Loan, the Bond Permanent Loan, the NPLH Loan, the SNHP Loan, and the OCHFT Loan; provided, that the subordination agreements contain written commitments reasonably designed to protect the City's investment in the event of a default. Such written commitments will provide for one or more of the following rights: (i) a right to cure a default on the Senior Loan; (ii) a right to negotiate with the senior lender after notice of default and prior to the senior lender commencing foreclosure proceedings; (iii) a right to purchase the Property at any time after a default on the Senior Loan; and/or (iv) an agreement that if prior to foreclosure of the Senior Loan, the City takes title to 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 City.

(b) At the Closing, the City Manager or designee will execute subordination agreements in a form that is consistent with applicable laws and regulations governing subordination of City loans and this Method of Financing and that is mutually acceptable to the City Manager or designee.

9. **Recordation.** Upon the Closing, the Title Company shall record the HOME Loan recordable documents and the Inclusionary Loan recordable documents in accordance with instructions provided by the City, and shall be prepared to issue to the City ALTA lender's policies of title insurance, insuring the priority of the HOME Deed of Trust and the Inclusionary Deed of Trust in amounts and with endorsements as the City may determine is appropriate.

10. **Disbursement of HOME Loan.** The HOME Loan will be disbursed at Closing for repayment of the principal balance of the LMIHAF Acquisition Loan and repayment of a portion of the principal balance of the Inclusionary Acquisition Loan as described earlier in this Method of Financing. The HOME Loan funds will be held by the City, to be disbursed as provided in this Method of Financing. The HOME Loan funds are not pledged to the Bank or any other lender, nor will they constitute security for the Bond Construction Loan or any other loan.

11. **Repayment Terms**. The repayment terms of the HOME Loan and the Inclusionary Loan are set forth in the form of HOME Note and the form of Inclusionary Note attached to the Agreement as Attachments No. 8 and 10, respectively.

12. **Conditions Precedent to Closing**

(a) The Closing is conditioned upon each of the following occurring to the satisfaction of the City prior to the time for the Closing set forth in the Schedule of Performance:

(i) Owner submits evidence that the final working drawings have been approved by the City;

(ii) Owner submits a copy of the fully executed Development Agreement between Owner and Jamboree Housing Corporation.

(iii) Owner submits a copy of the fully executed general construction contract with a licensed general contractor approved by the City in City's reasonable discretion, covering all construction required by the Agreement and the approved final working drawings;

(iv) Owner submits a final Project Budget, current as of the Closing date, demonstrating to the reasonable satisfaction of the City the availability of sufficient funds to pay all Development Costs, including the City's reasonable legal fees;

(v) Owner submits evidence reasonably satisfactory to the City that Owner has firm financing commitments sufficient to pay all Development Costs in accordance with this Method of Financing;

(vi) Owner submits copies of final loan documents for each of the loans described in Section 3 above;

(vii) Owner submits fully executed copies of the Amended and Restated Limited Partnership Agreement (admitting Investor Limited Partner) or other final limited partnership agreement, all amendments thereto, and related documents;

(viii) Owner submits evidence of the insurance policies and endorsements required by Section 310b of the Loan Agreement;

(ix) Owner submits evidence reasonably satisfactory to the City that Owner has satisfied all conditions precedent to the issuance of all permits necessary for the construction of the Project, other than payment of fees (for which funds have been budgeted in the Project Budget);

(x) Owner submits an estimated draw schedule for the funding of Development Costs in accordance with the Agreement and this Method of Financing;

(xi) Owner deposits into Escrow payment and performance bonds, including a multiple-obligee rider naming the City of Huntington Beach, in a form approved by the City in City's reasonable discretion;

(xii) Owner submits for City review and reasonable approval a Maintenance Program for the Project in accordance with the HOME Regulatory Agreement, including a Maintenance Budget;

(xiii) Owner submits for City review and reasonable approval an Annual Project Budget for the Project's first year of operation;

(xiv) Owner submits for City review and reasonable approval a Management Plan and Management Agreement for the Project in accordance with the HOME Regulatory Agreement;

(xv) Owner submits for City 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;

(xvi) Each of the lenders and the City agree on a form of Subordination Agreement for the HOME Loan Documents and the Inclusionary Loan Documents;

(xvii) Title Insurance Company is prepared to issue the title insurance policy required by the City;

(xviii) Owner duly executes and delivers to the City all of the HOME Loan documents required by Section 7 of this Method of Financing;

(xix) Owner duly executes and delivers to the City the Inclusionary Note, the Inclusionary Deed of Trust, the Assignment of Agreements, the Environmental Indemnity, and the Amended and Restated Agreement Containing Covenants;

(xx) The City deposits into Escrow the LMIHAF Acquisition Note and the Inclusionary Acquisition Note to be marked as cancelled by Escrow Agent at Closing, reconveyances of the LMIHAF Acquisition Trust Deed and the Inclusionary Acquisition Trust Deed, a release of the Memorandum of Option, a release of the Agreement Containing Covenants, a release of the Notice of Restrictions, a termination of the Assignment of Agreements from Owner to the City dated January 23, 2020, a termination of the Assignment of Agreements from Owner to the Authority dated January 23, 2020, and a termination of the Option Agreement and Joint Escrow Instructions among the Owner, City and Authority dated January 28, 2020; and

(xxi) The City determines that Owner is not in default of its obligations to the City under the Agreement.

Notwithstanding the foregoing, the City may waive any of the foregoing conditions precedent to the Closing. 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 contained in this Section 12, the Agreement or any of the HOME Loan or Inclusionary Loan documents.

ATTACHMENT NO. 7
HOME REGULATORY AGREEMENT

(behind this page)

Recording Requested by
and When Recorded Return to:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GOVERNMENT BUSINESS
Free Recording Requested
(Govt. Code §27383)

APN: 159-031-18

**AGREEMENT CONTAINING HOME PROGRAM REQUIREMENTS
(24 CFR § 92.504)**

THE CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (“City”) and BEACH HOUSING PARTNERS LP, a California limited partnership (“Owner”), in furtherance of the regulations issued by the United States Department of Housing and Urban Development set forth in 24 CFR Part 92 (the “HOME Regulations”), hereby agree as follows as of January 5, 2021.

WHEREAS, City is responsible for administering the use of certain funds made available to the City of Huntington Beach by the United States Department of Housing and Urban Development (“HUD”) under the HOME Investment Partnerships Program (the “HOME Program”); and

WHEREAS, Owner is the owner of that certain real property (the “Property”) located at 18431 Beach Boulevard, Huntington Beach, California, more particularly described in Exhibit “A” which is attached hereto and incorporated herein by this reference; and

WHEREAS, pursuant to an Affordable Housing Agreement between the City and Owner dated as of January 5, 2021, as amended from time to time (the “Affordable Housing Agreement”), the City has agreed to use its HOME Funds to fund a loan to Owner (the “HOME Loan”), for payment of a portion of the development costs for the construction on the Property of a 43-unit multi-family housing project to be used as affordable rental housing, one of which units will be an on-site manager unit (the “Project”); and

WHEREAS, the parties mutually desire to comply with all applicable HOME Regulations.

AFFORDABLE HOUSING AGREEMENT
BEACH HOUSING PARTNERS LP
ATTACHMENT NO. 7 – HOME REGULATORY AGREEMENT

NOW, THEREFORE, the City and Owner hereby agree as follows:

1. Term of this Agreement. In accordance with the formula set forth in 24 CFR 92.252(e) and as required by 24 CFR 92.504 (c)(3)(ix), this Agreement shall remain in effect for twenty (20) years following the date the City of Huntington Beach issues a certificate of occupancy for the Project (the “Affordability Period”).

2. Affordable Housing Agreement. The Affordable Housing Agreement, as it may be amended from time to time, including all the attachments appended thereto, is incorporated herein by this reference. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Affordable Housing Agreement.

3. Use of HOME Funds. 24 CFR 92.504(c)(3)(i).

The HOME Funds shall be used exclusively for the payment of costs incurred in connection with the development of the Project (sometimes referred to herein as the “Project Activities”) in accordance with the Affordable Housing Agreement.

(A) Schedule. The development of the Project shall be accomplished within the time provided in the Schedule of Performance, which is attached to the Affordable Housing Agreement as Attachment No. 4.

(B) Tasks and Budget. The tasks to be performed with the use of the HOME Funds, and the Project Budget, which specifies the line items for which HOME Funds will be used, are set forth in the Project Budget attached to the Affordable Housing Agreement as Attachment No. 5.

4. Affordability. 24 CFR 92.252; 92.504(c)(3)(ii).

a. The Project will be used exclusively as affordable rental housing as required by the various regulatory agreements relating to the Project. _____ (___) units shall be designated as floating HOME units (“HOME-assisted Units”) and restricted as follows:

_____ (___) one-bedroom units for Very Low Income (Low HOME Income) with income not to exceed fifty (50%) of median family income as determined by the United States Department of Housing and Urban Development.

b. The maximum rents, including a reasonable utility allowance for utilities and services (excluding telephone) to be paid by Very Low Income Households must meet either (a) or (b) of the following rent requirements:

(a) The rent does not exceed the lesser of (1) 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, as provided by HUD; (2) the fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or (3) 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit; or

(b) The rent does not exceed 30 percent of the family's adjusted income. If the unit receives Federal or State project-based rental subsidy and the Very Low Income family pays as contribution toward rent an amount that is not more than 30 percent of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

c. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

d. The parties agree that if the Project were placed in service on the date of this Agreement, the maximum gross rents that would be paid by, and the HOME-assisted Units that would be occupied by, Very Low Income households pursuant to Section 4.b. would be as set forth in the table of rents appended as Exhibit B. The HOME rents provided in Exhibit B will be adjusted to not exceed the maximum rent limits provided by HUD at the date of initial occupancy and will be adjusted thereafter not more frequently than once per year upon HUD's annual determination of maximum HOME rent limits and in accordance with 24 CFR part 92.252(f) and (g).

e. Rents for the HOME-assisted Units will remain affordable to Very Low Income Households pursuant to this Agreement for the term set forth in Section 1 of this Agreement.

f. Failure to comply with the affordability requirements of this Agreement is an event of default under the terms of the HOME Loan. Pursuant to the HOME Note evidencing the HOME Loan, subject to the right to cure, the HOME Loan will be due and payable immediately if the rents for HOME-assisted Units do not meet the affordability requirements of this Agreement.

5. Project Requirements. 24 CFR 92 Subpart F (92.250 - 92.258, 92.504(c)(3)(iii)).

Owner shall comply with all applicable requirements set forth in Subpart F of the HOME Regulations, as provided elsewhere in this Agreement and also including the following:

a. Maximum Per-Unit Subsidy. 24 CFR 92.250. The amount of the HOME loan does not exceed the per unit dollar limits established by HUD pursuant to section 221(d)(3)(ii) of the National Housing Act, as implemented in regulations issued by HUD, 24 CFR 221.514(b)(1) and (c).

b. Property Standards. 24 CFR 92.251.

(i) The development of the Property shall comply with the City's building code and all other applicable local codes, rehabilitation standards, ordinances and zoning ordinances in effect at the time of project completion, and the Property shall be decent, safe and sanitary shall conform to the following codes that have been adopted by the City of Huntington Beach: Uniform Building Code (UBC) as adopted by the State of California (California Building Code [Title 24 Part 2], National Electrical Code (NEC), Uniform Plumbing Code (UPC), Uniform Mechanical Code (UMC) and California Energy Code (CEC).

(ii) The Property shall comply with the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and, if applicable, the design and construction requirements at 24 CFR 100.205 for covered multifamily dwellings, as defined at 24 CFR 100.201, which implements the Fair Housing Act (42 U.S.C. 3601-3619).

c. Rental Housing Affordability. 24 CFR 92.252. Any rent charged to a tenant of HOME-assisted Units shall be affordable to Very Low Income tenants, as provided in Section 4, above.

d. Tenant and Participant Protections. 24 CFR 92.253. The Owner shall comply with the tenant protection provisions of 24 CFR 92.253.

e. Homeownership Requirements. 24 CFR 92.254. Not applicable to this project.

f. Converting Rental Units to Homeownership Units for Existing Tenants. 24 CFR 92.255. Not applicable to this project.

g. Faith Based Activities. 24 CFR 92.257. Owner will comply with the restrictions on the use of HOME Funds for faith based activities as set forth in Section 92.257. Owner hereby certifies that HOME Funds will not be used for the acquisition, construction or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Owner shall use the HOME Funds for the construction of structures only to the extent the structures are used for conducting eligible activities under 24 CFR Part 92.

h. Elder Cottage Housing Opportunity Units. 24.CFR 92.258. Not applicable to this project.

6. Property Standards. 24 CFR 92.504 (c)(3)(iv).

a. Housing Quality Standards. Owner shall maintain the housing in compliance with applicable property standards as required by Section 92.251.

b. Lead-based Paint. The Project shall comply with the lead-based paint standards in Section 92.355. Housing assisted with HOME Program funds constitutes HUD-associated housing for the purpose of Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Section 4821, et seq.) and is, therefore, subject to 24 Code of Federal Regulations Part 35. Accordingly, and pursuant to Section 92.355 of the Regulations, the Owner hereby agrees to and shall be responsible for testing and abatement activities specified in the Lead-Based Paint Poisoning Prevention Act and the regulations set forth at 24 Code of Federal Regulations Part 25 with respect to the construction of the Property, if applicable.

7. Affirmative Marketing Requirements. 24 CFR 92.351; 92.504(c)(3)(v).

Owner hereby agrees to comply with the City's minority and women business outreach program in accordance with 24 CFR 92.504 (c)(3)(v).

8. Records and Reports. 24 CFR 92.504(c)(3)(vi); 92.508; 92.61.

To assist the City in meeting its recordkeeping and reporting requirements, Owner shall prepare, maintain and submit to the City, as appropriate, the following records and reports:

a. Records which demonstrate that the Property meets the property standard specified in 24 CFR 92.251 and the lead-based paint requirements of 24 CFR 92.355;

b. Records which demonstrate that each family occupying HOME-assisted Units is income eligible in accordance with 24 CFR 92.203;

c. Records which demonstrate that with respect to the HOME-assisted Units the Property meets the affordability and income targeting requirements of 24 CFR 92.252 for the Term of this Agreement. Records shall be kept for each family in HOME-assisted Units;

d. Records which demonstrate that each lease for HOME-assisted Units complies with the tenant and participant protections, as specified in 24 CFR 92.253. Records shall be kept for each such family;

e. Equal opportunity and fair housing records, including, as applicable:

(i) data on the extent to which each racial and ethnic group and single-headed household (by gender of household head) have applied for, participated in, or benefitted from, any program or activity funded in whole or in part with HOME funds;

(ii) documentation of actions undertaken to meet the requirements of 24 CFR Part 135 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u);

(iii) documentation of the actions the City has taken to affirmatively further fair housing;

f. Affirmative Marketing and MBE/WBE records, including, as applicable:

(i) if applicable, records documenting compliance with the affirmative marketing procedures and requirements of 24 CFR 92.351;

(ii) if applicable, documentation and data on the steps taken by Owner to implement the City's outreach programs to minority-owned and female-owned businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract, and documentation of the Owner's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services;

(iii) if applicable, records which demonstrate compliance with the requirements of 24 CFR 92.353 relating to displacement, relocation and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying or moving into the Property on and after the date on which Owner obtained site control;

(iv) if applicable, records demonstrating compliance with the labor requirements of 24 CFR 92.354, including contract provisions and payroll records;

(v) if applicable, records demonstrating compliance with the lead-based paint requirements of 24 CFR 92.355;

(vi) if applicable, records which support any exceptions to the conflict of interest prohibition pursuant to 24 CFR 92.356;

(vii) debarment and suspension certifications required by 24 CFR Parts 24 and 91.

g. Records, data and documentation as required for the City's performance of its reporting obligations under the Federal Funding Accountability and Transparency Act of 2006 (FFATA), to the full extent applicable to the Project, which may include but is not necessarily limited to reporting of executive compensation received by executives of Owner and/or executives of Owner's partners or members and/or executives of partners or members of any of Owner's partners or members.

h. Owner shall retain all books and records relevant to the Affordable Housing Agreement for a minimum of five years after the project completion date, except that records of individual tenant income verifications, project rents and project inspections shall be retained for the most recent five-year period until five years after the affordability period terminates, or until the conclusion or resolution of any and all audits or litigation relevant to the Affordable Housing Agreement, whichever is later. The City, HUD and the Comptroller General of the United States, and any of their representatives, shall have the right of access to any pertinent books, documents, papers or other records of the Owner, in order to make audits, examinations, excerpts and transcripts.

i. Owner shall retain at all times the documentation submitted pursuant to 24 C.F.R. 92.203(a)(1), which provided the basis for determining income eligibility.

9. Enforcement of the Agreement. 24 CFR 92.504(c)(3)(vii).

The Affordable Housing Agreement and all of its attachments, shall be enforceable by the City in accordance with the terms thereof. Each of the Affordable Housing Agreement, this Agreement, the HOME Note and the HOME Deed of Trust provide a means of enforcement if the Owner is in breach of its obligations hereunder and thereunder, including liens on the Property, deed restrictions and covenants running with the land. Subject to applicable notice and cure provisions, the City, at its option, may commence an action for specific performance of the terms of this Agreement pertaining to such default. Failure to comply with the requirements of this Agreement is an event of default under the terms of the Affordable Housing Agreement, HOME Note and the HOME Deed of Trust. Notwithstanding anything to the contrary stated herein, a breach of this Agreement by Owner or its successors and assigns shall in no way defeat, invalidate or impair the obligation or priority of any mortgage or deed of trust encumbering the Property.

10. Requests for Disbursement of Funds. 24 CFR 92.504(c)(3)(viii).

Owner shall not request disbursement of HOME funds until the funds are needed to pay eligible costs. The amount of each disbursement request shall be limited to the amount needed. The City shall have the right to disapprove any request if the City reasonably determines the request is for

an ineligible item or is otherwise not in compliance with or inconsistent with the Loan Agreement and this Agreement.

11. Duration of Agreement. 24 CFR 92.504(c)(3)(ix). The Agreement shall remain in effect for the period of affordability required pursuant to 92.252 as set forth in Section 1 of this Agreement.

12. Other Program Requirements. 24 CFR 92, Subpart H (92.350 - 92.358).

Owner shall comply with all applicable federal requirements set forth in Subpart H of the HOME regulations, including the following:

a. Other Federal Requirements and Nondiscrimination. 24 CFR 92.350. Owner acknowledges that 24 CFR 92.350 provides that the Federal requirements set forth in 24 CFR Part 5, subpart A, are applicable to participants in the HOME program, and that these Federal requirements include the following:

(i) Nondiscrimination and Equal Opportunity.

(a) Civil Rights, Fair Housing, and Age and Disability Discrimination Acts Assurances:

During the performance of the Affordable Housing Agreement and to the fullest extent applicable to senior housing, Owner shall assure that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, actual or perceived sexual orientation, gender identity, marital status, age, handicap, religion, religious preference or source of income (including but not limited to Section 8 Rental Assistance, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI) or earnings from seasonal employment), under any program or activity funded by this Agreement, as required by state law, the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 et seq., Executive Order 11063 as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d- 2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1, the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 U.S.C. 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975, and all implementing regulations.

(b) Training, Employment, and Contracting Opportunities
Assurance of Compliance:

The Project Activities to be performed under the Agreement are on a project assisted under a program providing direct federal financial assistance from HUD which is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (“Section 3”), and the regulations issued by HUD to implement Section 3 (24 CFR Part 135) (the “Section 3 Regulations”). Pursuant to 24 CFR 135.3, the requirements of the Section 3 Regulations apply to the recipient of such financial assistance only where the amount of federal assistance exceeds \$200,000, and apply to a contractor or subcontractor of such recipient only where the amount of assistance exceeds \$200,000 and the amount of the contract or subcontract exceeds \$100,000. Owner shall provide, to the greatest extent feasible, training, employment and contracting opportunities generated by the financial assistance to low- and very-low income persons and business concerns owned by low- or very-low income persons, or which employ low- or very-low income persons.

(c) MBE/WBE Affirmative Action Outreach Program:

Owner hereby agrees to comply with the City’s minority and women business outreach program in accordance with Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women’s Business Enterprise).

(ii) Disclosure Requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 CFR Part 87; and the requirements for funding competitions established by the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 et seq.).

(iii) Debarred, Suspended or Ineligible Contractors. The prohibitions at 24 CFR Part 24 on the use of debarred, suspended or ineligible contractors.

(iv) Drug-free Workplace. The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) and HUD’s implementing regulations at 24 CFR Part 24.

b. Affirmative Marketing. 24 CFR 92.351. Owner shall comply with the City’s Affirmative Marketing requirements.

c. Displacement, Relocation and Acquisition. 24 CFR 92.353. Does not apply to this Project.

d. Labor. 24 CFR 92.354. Does not apply to this Project.

e. Lead-based Paint. 24 CFR 92.355. The Property shall comply with the lead-based paint standards in 92.355, as provided in Section 6.b., above.

f. Conflict of Interest. 24 CFR 92.356.

(i) Interest of Employees, Officers and Officials. No employee, agent, consultant, officer or elected official or appointed official of the City, or employee, agent, consultant or officer of Owner, and no other public official of the City who exercises any functions or responsibilities with respect to the activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, during their tenure and for one year thereafter, may obtain a financial interest or benefit from a HOME assisted activity or have an interest in any contract or subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties. Owner shall incorporate, or cause to be incorporated, in all such contractors or subcontracts a provision prohibiting such interest pursuant to the purposes of this Section. Fulfillment of “sweat equity” obligations as defined in Section 8201 of the HOME regulations shall not be considered a violation of this prohibition.

(ii) Prohibition Against Occupying HOME-Assisted Units. No officer, employee, agent, official or consultant of Owner may occupy a HOME-assisted Unit.

(iii) Consultant Activities. 24 CFR 92.358. No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid for with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provisions of any applicable statute (e.g., annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level IV of the Executive Schedule). Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule.

13. Lobbying Prohibition. 24 CFR 91.225. Owner hereby certifies to City, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of this Agreement, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; and

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress

in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

c. Owner will require that the above stated language in paragraphs a. and b. be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement; and

d. Further, Owner and all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement, at all times, shall certify compliance with the provisions of 31 U.S.C. §1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

14. Management and Maintenance Requirements.

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

b. Prior to the Closing, Owner shall submit to the City a Management Plan describing the proposed plans for managing and operating the Property. Approval of the Management Plan by the City Manager or designee shall be a condition precedent to the Closing. Owner 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 Owner and the City Manager or designee, for the entire Affordability Period.

The Management Plan, including such amendments as may be approved in writing by the City, shall remain in effect for the term of this Agreement. The Owner shall not amend the Management Plan or any of its components without the prior written consent of the City. The components of the Management Plan shall include:

(1) Management Agent. The name and qualifications of the proposed management agent for the Project ("Management Agent"). The City 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).

(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 Owner and the Management Agent. The Owner's agreement with the Management Agent shall provide that it is subject to termination by the Owner without penalty, upon thirty (30) calendar days' prior written notice. The Owner hereby covenants and agrees that, if the City determines in its reasonable judgment that the Project is not being operated and managed in accordance with the Management Plan, the City may deliver notice to the Owner of the City's determination that the Project's management practices do not conform to the Management Plan ("City Notice"), including a reasonably detailed explanation of such non-conformance. The City and the Owner shall meet and confer in good faith to identify actions to be taken by the Owner to bring its management practices into conformance with the Management Plan, which could include replacing the Management Agent. The Owner shall have thirty (30) calendar days after receipt of the City Notice (or such longer time as may be granted by the City in City'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 City (such approval not to be unreasonably withheld, conditioned, or delayed). The Owner shall promptly notify the City upon learning that there is a change in the management or control of the Management Agent, and, if the change is unsatisfactory to the City, the City shall be entitled to require the Owner 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. The tenant lease for the HOME-Assisted Units shall include a HOME addendum in a form approved by the City (such approval not to be unreasonably withheld, conditioned, or delayed).

(5) Annual Operating Budget. Within the time set forth in the Schedule of Performance attached to the Affordable Housing Agreement and annually thereafter not later than fifteen (15) calendar days prior to the beginning of the next fiscal or calendar year of the Project, the Owner shall submit to the City 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 City 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 Owner's initial projected operating budget submittal, the Owner shall annually reconcile each previous year's projected budget with actual operating results for the Project ("Budget Reconciliation"). In each Budget Reconciliation, the Owner 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 City 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 City’s reasons for disapproval. Notwithstanding the foregoing, if the City has not expressly approved or disapproved the Owner’s projected operating budget within thirty (30) calendar days after its submittal to the City, then the Owner shall provide a written notice to the City that it intends to operate pursuant to the projected operating budget and the City shall have an additional fifteen (15) calendar days within which to approve or disapprove such budget. If the City has not expressly approved or disapproved the projected operating budget by the end of such additional 15-calendar day period, then the Owner 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 of the Affordability Period, Owner 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 City Manager or designee. The Quarterly Report shall include a profit and loss statement, budget to date figures, and occupancy report. The City Manager 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 City’s written notice to Owner.

e. Prior to the Closing, Owner shall prepare and submit to the City 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 Owner, shall be subject to the reasonable approval of the City Manager or designee.

f. At all times during the Affordability Period, Owner shall maintain the Property and the improvements in accordance with the approved Maintenance Program. To implement this requirement, Owner agrees to budget sufficient funds to pay for all reasonably anticipated costs (as indicated in the Annual Maintenance Budget). If Owner 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 City, the City shall have the right, but not the obligation, to enter the Property, correct any violation, and hold Owner responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the Property; provided, however, Owner shall have such additional time as may be reasonably necessary to cure such default provided that Owner 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 City shall provide written notice that Owner must correct the deficiency within a reasonable time. Owner shall have a reasonable time in which to comply following such notice from the City.

(Remainder of page left intentionally blank.)

IN WITNESS WHEREOF, the City and Owner have executed this Agreement. This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

“CITY”

CITY OF HUNTINGTON BEACH

By: _____
Oliver Chi Dated _____
City Manager

ATTEST:

By: _____
Robin Estanislau
City Clerk

APPROVED AS TO FORM:

By: _____
Michael Gates
City Attorney

“OWNER”

BEACH HOUSING PARTNERS LP
a California limited partnership

By: JHC-Beach LLC, a California limited
liability company
Its: Managing General Partner

By: Jamboree Housing Corporation,
a California nonprofit public
benefit corporation

Its: Manager

By: _____
Michael Massie Dated _____
Chief Development Officer

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 2, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 76, PAGE 4 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN:159-031-18

Exhibit B

Affordability Requirements
(24 CFR 92.252; 92.504(c)(3)(iii))

Owner shall submit its rent schedule and utility allowances thirty (30) days prior to initial lease-up of the Project and on an annual basis thereafter. The City shall review and approve or disapprove the proposed rent schedule and utility allowances for compliance with the maximum rent limitations contained in 24 CFR 92.252.

The City will provide updated HUD income and rent limits to Owner as they become available. As of the date of this Agreement, the applicable income and rent limits are as follows:

Orange County
2020 HOME Program Income Limits

Household Size	Low HOME Income (Very Low Income)	High HOME Income (Low Income)
1	\$44,850	\$71,750
2	\$51,250	\$82,000
3	\$57,650	\$92,250
4	\$64,050	\$102,450
5	\$69,200	\$110,650
6	\$74,300	\$118,850
7	\$79,450	\$127,050

Orange County
2020 HOME Program Rent Limits

	1-Bedroom	2-Bedroom	3-Bedroom
Low HOME Rent (Very Low Income)	\$1,201	\$1,441	\$1,665
High HOME Rent (Low Income)	\$1,541	\$1,852	\$2,131

For comparison purposes:

Fair Market Rent	\$1,785	\$2,216	\$3,098
65% Rent Limit	\$1,541	\$1,852	\$2,131

Owner shall be responsible for ensuring that the current operative HOME income and rent limits in effect at the time of the tenant's rental application for a HOME-Assisted Unit will be used to

determine initial tenant eligibility and conformance with HOME affordability requirements and that each tenant recertification is conducted using current HOME income and rent limits to assure compliance with HOME Regulations.

Income determination and rental rate adjustments shall occur not more frequently than once per year upon HUD's annual determination of maximum HOME rent limits and in accordance with 24 CFR part 92.252(f) and (g). Any increase in rents for HOME-assisted Units is subject to the provisions of existing leases. Owner must provide tenants with not less than thirty (30) days prior written notice before implementing any increase in rents.

ATTACHMENT NO. 8

HOME NOTE

(behind this page)

**RESIDUAL RECEIPTS PROMISSORY NOTE
SECURED BY DEED OF TRUST
TO THE CITY OF HUNTINGTON BEACH, CALIFORNIA**

3%
\$[2,830,697]

Huntington Beach, California
_____, 202_

FOR VALUE RECEIVED, BEACH HOUSING PARTNERS LP, a California limited partnership (“Borrower”), hereby promises to pay to THE CITY OF HUNTINGTON BEACH, a municipal corporation of the state of California (“City”), or order, a principal amount of [Two Million Eight Hundred Thirty Thousand Six Hundred Ninety-Seven Dollars (\$2,830,697)], or so much thereof as may be advanced by the City to Borrower as the HOME Loan pursuant to the Affordable Housing Agreement dated as of January 5, 2021, (the “Affordable Housing Agreement”) between Borrower (“Owner” therein) and the City, incorporated herein by this reference. 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 Affordable Housing Agreement. In addition, the following terms shall have the following meanings:

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

“Borrower’s Limited Partnership Agreement” shall mean that certain Amended and Restated Agreement of Limited Partnership by and between, Borrower’s Managing General Partner and Investor Limited Partner dated as of [_____, 202_].

“City” means the City of Huntington Beach, California, a municipal corporation, and any assignee of or successor to its rights, powers and responsibilities.

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

“Construction Lender” means [_____,], or another institutional lender reasonably approved by the City.

“Construction Loan” means the loan from Construction Lender to pay a portion of the Development Costs, secured by the Construction Loan Deed of Trust.

“Construction Loan Deed of Trust” means the deed of trust dated around the date hereof given by Borrower for the benefit of Construction Lender, securing the Construction Loan.

“Deferred Developer Fee” means the portion of the Developer Fee to be paid from the cash flow of the Project as provided in the final Project Budget approved by the City at the conversion from construction financing to permanent financing.

“HOME Deed of Trust” means the Deed of Trust given by Borrower for the benefit of the City dated around the date hereof, securing the HOME Loan.

“HOME Loan” means the loan from the City to Borrower, in the amount and pursuant to the terms and conditions set forth in this Note and the other HOME Loan Documents.

“HOME Loan Documents” means the Affordable Housing Agreement, this Note, the HOME Deed of Trust, the Assignment of Agreements, and the Environmental Indemnity.

“HOME Regulatory Agreement” means the Agreement Containing HOME Program Requirements dated around the date hereof, between the City and Borrower, recorded against the Property.

“Improvements” means the improvements to be constructed on the Property in accordance with the Affordable Housing Agreement, including but not limited to the Scope of Development attached as Attachment No. 3 to the Affordable Housing Agreement.

“Inclusionary Loan” means a loan of Affordable Housing Trust Funds from the City to Owner in the amount of [\$_____].

“Investor Limited Partner” collectively refers to the entities identified as the “Limited Partner” and “Special Limited Partner” in Borrower’s Limited Partnership Agreement and the related contribution agreement, and their successors and assigns.

“Maturity Date” means the sixtieth (60th) anniversary of the Occupancy Date.

“Net Proceeds” means the amount, if any, by which a refinancing exceeds the amount needed to repay a Senior Loan in full, including principal and interest, any early redemption or prepayment penalty, and customary and reasonable fees and costs of the transaction, the costs incurred by Owner to perform repairs or maintenance to the Project, amounts required by a Senior Lender to be

AFFORDABLE HOUSING AGREEMENT

BEACH HOUSING PARTNERS LP

ATTACHMENT NO. 8 – HOME NOTE

PAGE 2

deposited into a reserve fund, and the amount paid (excluding voluntary payments) towards the then-outstanding balance of a Senior Loan.

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

“NPLH Assisted Units” means the residential units in the Project that are designated as such by Orange County Housing and Community Development.

“NPLH Flexible Operating Reserve Deposits” means deposits, in the amounts and at the times required by Orange County Housing and Community Development, into a cash-flow funded reserve established by Borrower to provide a reserve for shortfalls in operations, supportive services, furnishings, or replacement reserves associated with the NPLH Assisted Units. The amount of the NPLH Flexible Operating Reserve Deposits is calculated based on the NPLH Loan amount divided by the total amounts of the NPLH Loan plus the Residual Receipts Loans, multiplied by fifty percent (50%). For example, if the NPLH Loan amount is \$5,875,538 and the total amount of the NPLH Loan plus the Residual Receipts Loans is [\$_____], then the NPLH Flexible Operating Reserve Deposits will be equal to [_____%] of the cash flow remaining after payment of Annual Operating Expenses and the theretofore unpaid portion of the Deferred Developer Fee described in paragraph 7(d) below. The NPLH Flexible Operating Reserve Deposits have priority of payment over the distribution of Residual Receipts for payment of the Residual Receipts Loans.

“NPLH Loan” means a loan of No Place Like Home funds from Orange County Housing and Community Development to Borrower in the original principal amount of \$5,875,538. The NPLH Loan is non-amortizing and due in full at maturity

“NPLH Transition Reserve” means funds reserved to fund the Project’s operating expenses allocable to the NPLH Assisted Units and subject to the requirements of Orange County Housing and Community Development.

“Occupancy Date” means the date on which the City of Huntington Beach issues a Certificate of Occupancy for the Project.

“OCHFT Loan” means a loan of Orange County Housing Finance Trust Funds from Orange County Housing and Community Development to Owner in the original principal amount of \$1,900,000.

“Permanent Loan” shall mean the permanent loan from [_____] or another institutional lender approved by the City, to assist in Borrower’s repayment of the construction financing for the Project and secured by a first priority Deed of Trust on the Property.

“Project” shall mean the financing, planning, construction and use of the Property and the Improvements as provided in the Affordable Housing Agreement.

“Property” shall mean the real property, including all improvements thereon, legally described as set forth in Attachment No. 2 to the Affordable Housing Agreement.

“Residual Receipts” shall mean, in a particular calendar year, the amount by which Gross Revenue (as defined below) exceeds the sum of (i) Annual Operating Expenses (as defined below) plus (ii) the NPLH Flexible Operating Reserve Deposits, 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 City, 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, proceeds from the loans described in Sections 3 and 4 of the Method of Financing attached to the Affordable Housing Agreement as Attachment No. 6, capital contributions or similar advances, or interest that is earned on and allocated to reserve accounts.

(ii) “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] of Gross Revenue, pursuant to a management contract approved by the City in City's reasonable discretion; resident supportive services fees as required by Project lenders and the California Tax Credit Allocation Committee; partnership management fees payable to Borrower's managing general partner in an amount not to exceed [_____ Dollars (\$_____)] in the first year and increased thereafter at an annual rate of [three percent (3%)]; a cumulative asset management fee to be paid to the Borrower's Investor Limited Partner in an amount not to exceed [_____ Dollars (\$_____)] in the first year and increased thereafter at an annual rate of [three percent (3%)]; cash deposited into a replacement reserve in the amount of [Five Hundred Dollars (\$500)] per unit or such higher amounts as are required by Project lenders, the California Tax Credit Allocation Committee, and the Investor Limited Partner from time to time; cash deposited into an operating reserve in such reasonable amounts as are required by Project lenders, the Tax Credit Allocation Committee, and the tax credit investor from time to time, and approved by the City; cash deposited into the NPLH Transition Reserve in amounts (if any) required by Orange County Housing and Community Development; a monitoring fee to the City in an amount equal to \$1,075, to be increased at an annual rate of three percent, 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 City; all other payments, charges and other amounts becoming due under the Permanent Deed of Trust; and, payments on loans made by the Investor Limited Partner to Borrower. "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 City.

"Residual Receipts Loans" means the HOME Loan, the Inclusionary Loan, the SNHP Loan, and the OCHFT Loan.

"Senior Lender" means the maker of a Senior Loan, including but not limited to [_____] as the Construction Lender and the Permanent Lender.

"Senior Loan" means the Construction Loan, the Permanent Loan, the NPLH Loan, the SNHP Loan, and any other loan secured by a deed of trust or other instrument to which the City agrees to subordinate this Note and the other HOME Loan Documents.

"SNHP Loan" means a loan of Special Needs Housing Program funds from the California Housing Finance Agency to Owner in the original principal amount of \$3,603,160.

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

3. This Note is payable at the principal office of City, 2000 Main Street, Huntington Beach, California 92648, 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 HOME Deed of Trust.

5. This Note shall accrue simple interest at the rate of three percent (3%) per annum on the principal amount outstanding, from the date of disbursement.

6. The entire unpaid principal balance of this Note and all accrued but unpaid interest shall be due and payable upon the Maturity Date, and upon the earlier occurrence 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 City, except as permitted by the provisions of Section 108 (titled "Assignments and Transfers") of the Affordable Housing Agreement; or

(b) the date on which there is a default by the Borrower under the terms of this Note, the Affordable Housing Agreement, the HOME Deed of Trust, the HOME Regulatory Agreement, or any deed of trust or other instrument securing a Senior Loan or the Inclusionary Loan, which is not cured or waived within the respective time period provided herein and therein.

7. Except in the event of a default described in Section 12 hereof, no payments will be due and payable under this Note except to the extent of (a) the City's Share of Residual Receipts, and (b) any refinancing or Cost Savings, subject to the limitations set forth below. Prior to the Maturity Date, Borrower shall be obligated to repay the HOME Loan as follows:

(a) Annually, not later than the thirtieth (30th) day of April, beginning with the year following the year in which the Occupancy Date occurs, Borrower shall submit to the City an audited Annual Financial Statement for the preceding calendar year, prepared by a certified public accountant reasonably acceptable to the City, determining the amount of Residual Receipts, if any, generated in that year, together with payment of the City's Proportionate Share of such Residual Receipts. The first such Annual Financial Statement shall be for the partial year beginning on the Occupancy Date and ending on December 31 of that year. The City 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 City (as the result, for example, of a determination that the actual amount of Residual Receipts to which the City is entitled exceeds the amount of City's share of Residual Receipts shown in the Annual Financial Statement submitted by Borrower), Borrower shall promptly pay to the City the difference, with interest, from the date on which such payment was due, at the rate of one percent (1%) over the Prime Rate announced by the Permanent Lender, but in any event within ten (10) days of notice of such increase.

(b) Borrower will repay the HOME Loan with annual payments equal to the City's Share of Residual Receipts. The City's Share of Residual Receipts will be calculated as follows: a percentage derived from a fraction in which the principal amount of the HOME Loan upon final disbursement is the numerator and the sum of the HOME Loan plus all other Residual Receipts Loans is the denominator, multiplied by fifty percent (50%). For example, assuming the principal amount of the HOME Loan is [\$2,830,697], and the total principal amount of the Residual Receipts Loans is [\$_____], the City's Share would be [\$2,830,697] divided by [\$_____], or [_____]%, multiplied by fifty percent (50%), which would equal [_____]%.

(c) All payments to the City 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.

(d) If a portion of the Developer Fee is to be paid from the cash flow of the Project ("Deferred Developer Fee"), then notwithstanding paragraph (b) of this Section 7, Borrower may first utilize one hundred percent (100%) of the cash flow remaining after payment of Annual Operating Expenses with respect to a particular calendar year to pay the sponsors of the Project the theretofore unpaid portion of the Deferred Developer Fee.

(e) If, upon completion 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 City's Share of Residual Receipts calculated as set forth in paragraph (b) of this Section 7 will be applied to the repayment of the HOME Loan; provided that, if the makers of the NPLH Loan and the Residual Receipts Loans other than the HOME Loan do not require that they receive a share of Cost Savings, then the City's Proportionate Share of the Cost Savings will be determined by the formula set forth in paragraph (b) of this Section 7, without consideration of the amount of such other Residual Receipts Loans or the NPLH Loan, as applicable. "Cost Savings", as that term is used in this Note, is the difference between the total sources of funds and the total cost of development as shown in the Borrower's cost certification contained in Borrower's application to the California Tax Credit Allocation Committee for a Form 8609 for the Project ("**Tax Credit Report**"); provided, however, the Cost Savings will be adjusted to take into account (i) the loss of any equity investment due to an adjustment in the allowable tax credits;

provided that the tax credit factor applied to the required equity contribution will be as set forth in Borrower's limited partnership agreement; and (ii) any reduction in the first mortgage loan required by the Construction Loan Documents. The amount payable to the City under this paragraph will be paid within sixty (60) days following submittal of the Tax Credit Report to the California Tax Credit Allocation Committee. Such amounts will accrue interest at the default rate of ten percent (10%) from the date due and payable until paid in full. If Borrower does not obtain tax credit financing for this Project, Borrower will submit to the City a report that substantially complies with the Tax Credit Report required by the California Tax Credit Allocation Committee. Such report will be submitted to the City within one year following completion of construction of the Project. The amount payable to the City hereunder will be paid within sixty (60) days following submittal of the report to the City. The City will be entitled to review and approve the report and to require appropriate revisions to assure that Cost Savings have not been minimized or reallocated. The requirements in the foregoing paragraph will be applied to the fullest extent permitted by applicable requirements and restrictions of California's Tax Credit Allocation Committee.

(f) If at any time Borrower refinances the Senior Loan, Borrower will apply the Net Proceeds of any such refinancing first to pay previously incurred Operating Expenses still owing, then a share of the Net Proceeds equal to the City's Share of Residual Receipts calculated as set forth in paragraph (b) of this Section 7 will be paid to the City to pay accrued interest on, and then reduce the principal amount of the HOME Loan; provided that, if the makers of the NPLH Loan and the Residual Receipts Loans other than the HOME Loan do not require that they receive a share of Net Proceeds, then the City's proportionate share of Net Proceeds will be determined by the formula set forth in paragraph (b) of this Section 7, without consideration of the amount of such other Residual Receipts Loans or the NPLH Loan, as applicable.

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 HOME Regulatory Agreement will not entitle Borrower to a reconveyance of the HOME Deed of Trust.

9. Prohibition Against Transfer.

(a) Prior to the repayment in full of the City Loan, the Borrower will not assign or attempt to assign the Affordable Housing Agreement or any right therein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property, the Improvements thereon, or any portion thereof or interest therein (referred to hereinafter as a "**Transfer**"), without prior written approval of the City, except as otherwise permitted in this Note or the Affordable Housing Agreement. Consent to one such transaction will not be deemed to be a waiver of the right to require consent to future or successive transactions. The City will not unreasonably withhold or delay its consent. If consent is given, any such transfer will be subject to

this Section 9, and any such transferee must assume all obligations hereunder and agree to be bound by all provisions contained herein.

(b) In connection with any assignment that requires City consent, any such proposed transferee must have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the City, to fulfill the obligations undertaken by Borrower in the Affordable Housing Agreement, the HOME Regulatory Agreement, and this Note. Any such proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the official records of Orange County, for itself and its successors and assigns, and for the benefit of the City must expressly assume all of the obligations of the Borrower under the Affordable Housing Agreement, the HOME Regulatory Agreement, and this Note, and agree to be subject to all conditions and restrictions applicable to the Borrower in this Note. There will be submitted to the City for review all instruments and other legal documents proposed to effect any such transfer; and if approved by the City, which approval shall not be unreasonably withheld, conditioned, or delayed, its approval will be indicated to the Borrower in writing.

(c) In the absence of specific written agreement by the City, which agreement will not be unreasonably withheld, no Transfer, or approval thereof by the City, will be deemed to relieve the Borrower or any other party from any obligations under the Affordable Housing Agreement or the HOME Regulatory Agreement.

(d) In the event of a Transfer prior to the time the HOME Loan is paid in full without the prior written consent of the City (if such consent is required), the remaining principal balance of the HOME Loan and all accrued but unpaid interest will be immediately due and payable.

(i) As used herein, "Transfer" includes the sale, transfer or conveyance of the Property, the Improvements, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, or any agreement to do so; the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property or the Improvements; or the lease of all or substantially all of the Property or Improvements, except the lease for occupancy of all or any part of the Improvements on the Property.

(ii) "Transfer" will also include the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in Borrower, or any conversion of Borrower to an entity form other than that of Borrower at the time of execution of this Note, except for the following: (A) a cumulative change in the ownership interests of any individual limited liability company member of forty-nine percent or less will not be deemed a "Transfer" for purposes of this Note; and (B) a transfer of a portion or a majority of stock of any corporation to a trust formed in connection with a qualified employee ownership plan will not, by itself, be deemed to constitute a change in ownership for purposes of this Note.

(iii) Notwithstanding paragraphs (i) and (ii), “Transfer” will not include any Permitted Transfers, as defined in the Affordable Housing Agreement.

(e) The City will not unreasonably withhold, condition or delay its approval of any matter for which its approval is required hereunder. Disapprovals will be in writing and contain the City’s reasons for disapproval.

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, the HOME Deed of Trust or any term or provision of either.

11. Upon the failure of Borrower to perform or observe any term or provision of this Note, or upon the occurrence of any event of default under the terms of the Affordable Housing Agreement, the HOME Deed of Trust, or the HOME Regulatory Agreement, which remains uncured after the required notice and expiration of the applicable cure period, the holder may exercise its rights or remedies hereunder or thereunder.

12. Subject to the extensions of time set forth in Section 13, and subject to the further provisions of this Section 12, failure or delay by Borrower to perform any material term or provision of this Note, the Affordable Housing Agreement, the HOME Deed of Trust, or the HOME Regulatory Agreement constitutes a default under this Note.

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

(b) Any failures or delays by the City 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 City in asserting any of its rights and remedies shall not deprive the City 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 City shall give the Borrower written notice of such default. The Borrower shall have a period of twenty (20) days after such notice is given within which to cure the default prior to exercise of remedies by the City.

(d) If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the City shall give Borrower notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Borrower shall have such period to effect a cure prior to exercise of remedies by the City. 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, continually, 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 the City.

(e) If Borrower fails to take corrective action or cure the default within a reasonable time, the City will give the Senior Lender and, as provided in paragraph (f), below, the Investor Limited Partner, notice thereof. Subject to the terms of Borrower's partnership agreement, the Investor Limited Partner may take such action, including removing and replacing the general partner or managing member of Borrower with a substitute general partner or member, who will effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. The City agrees to accept cures tendered by a Senior Lender or the Investor Limited Partner within the cure periods provided herein. Additionally, if the Senior Lender or Investor Limited Partner is precluded from curing a non-monetary default due to a bankruptcy, injunction, or similar proceeding by or against Borrower or the general partner of Borrower, the City agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Senior Lender or Investor Limited Partner is so precluded from acting, not to exceed ninety days, provided such Investor Limited Partner and Senior Lender are otherwise in compliance with the foregoing provisions. In no event will the City be precluded from exercising remedies if its rights become or are about to become materially jeopardized by a failure to cure a default or if the default is not cured within one hundred eighty (180) days after the first notice of default is given.

(f) After Borrower gives written notice to the City that the Investor Limited Partner has been admitted to the Limited Partnership, the City shall send to the Investor Limited Partner a copy of all notices of default and all other notices that City sends to Borrower, at the address for the Investor Limited Partner given in Section 17 of this Note.

(g) A notice of default shall be deemed given only if either (i) dispatched by first class mail, registered or certified, postage prepaid, return receipt requested, to the addresses specified for the Borrower and the Investor Limited Partner in Section 17 of this Note, or (ii) by electronic facsimile transmission to the facsimile numbers specified for the Borrower and the Investor Limited Partner in Section 17 of this Note, followed by delivery by the method described in clause (i), or (iii) by personal delivery (including by means of professional messenger or courier service such as United Parcel Service or Federal Express) to the addresses specified for the Borrower and the Investor Limited Partner in Section 17 of this Note. Receipt shall be deemed to have occurred on the earlier of (i) the date of successfully completed electronic facsimile transmission or (ii) the date marked on a

AFFORDABLE HOUSING AGREEMENT

BEACH HOUSING PARTNERS LP

ATTACHMENT NO. 8 – HOME NOTE

PAGE 11

written postal service or messenger or courier service receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable). If either party gives notice of a change of address in the manner specified in this paragraph, all notices, demands and communications originated after receipt of the change of address (or the effective date specified in the notice of change of address, if later) shall be transmitted, delivered or sent to the new address.

13. Notwithstanding specific provisions of this Note, non-monetary performance hereunder shall not be deemed to be in default where delays are due to causes beyond the control and without the fault of the party claiming an extension of time to perform (an “Enforced Delay”), provided that they actually delay and interfere with the timely performance of the matter to which they would apply and despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such interference, including: war; insurrection; strikes; lock-outs; 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; litigation including litigation challenging the validity of this transaction or any element thereof; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers; acts of the other party; acts or failure to act of any governmental agency (except acts or failure to act of the City in its capacity as maker of the HOME Loan shall not excuse performance by the City); the imposition of an applicable moratorium by a governmental agency; or any other cause which despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such delay and interference. Notwithstanding the foregoing, none of the foregoing events shall constitute an Enforced 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 the event commenced, and the estimated delay resulting therefrom. The party claiming an Enforced Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event.

14. If the rights created by this Note are 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.

15. The HOME Deed of Trust securing this Note shall be subordinate and junior to the Senior Loans, to the extent and in the manner provided in the applicable subordination agreement(s) dated around the date hereof.

16. The City agrees that the lien of the HOME Deed of Trust will be subordinate to the extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the “Extended Use Agreement”) recorded against the Project; provided that

such Extended Use Agreement, by its terms, shall terminate upon foreclosure under the HOME Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure or comparable conversion of the Loan, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, will also apply: for a period of three years from the date of foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the tenants occupying those units at the time of foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code. Borrower acknowledges and agrees that a default, event of default, or breach (however such terms may be defined) under the Extended Use Agreement will be an event of default under this Note and the HOME Deed of Trust and that all costs, damages or other amounts, including reasonable attorneys' fees incurred by the City as a result of an event of default by Borrower, and all amounts paid by the City to cure any default under the Extended Use Agreement will be an obligation of Borrower and become a part of the debt evidenced by this Note and secured by the HOME Deed of Trust.

17. (a) The obligation to repay the HOME Loan is a nonrecourse obligation of the Borrower and its partners. Neither the Borrower nor any of its general or limited partners, nor any other party, shall have any personal liability for repayment of the loan. The sole recourse of the City with respect to repayment of the HOME Loan shall be the exercise of its rights against the Property and the Improvements and any related security for the HOME Loan. Notwithstanding the foregoing, the City may:

(i) 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 HOME Loan; and

(ii) recover directly from Borrower or any other party:

(A) all damages, costs and expenses incurred by the City 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;

(B) all damages, costs and expenses incurred by the City as a result of misappropriation of funds provided for the construction of the Improvements, as described in the Affordable Housing Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds;

(C) all amounts owing by Borrower pursuant to Borrower's indemnification regarding Hazardous Substances provided to the City in connection with the Affordable Housing Agreement; and

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

18. (a) The address of Borrower for purposes of receiving notices pursuant to this Note is as follows: c/o Jamboree Housing Corporation, 17701 Cowan, Suite 200, Irvine, CA 92614, Attention: Michael Massie, Chief Development Officer. Borrower's facsimile number is [_____]. The addresses for copies of notices delivered to Borrower pursuant to this Note are as follows:

With a copy to:

Rutan & Tucker, LLP
Attn: Patrick D. McCalla, Esq.
18575 Jamboree Road, 9th Floor
Irvine, California 92612

(b) The address of Investor Limited Partner for purposes of receiving notices pursuant to this Note is as follows: [_____].

19. In addition to the other terms of this Note, Borrower hereby agrees and acknowledges that, notwithstanding any internal accounting procedures or provision pertaining to the use of receipts, payments, reserves and distributions contained in its Limited Partnership Agreement or other organizational document, the terms of this Note and the Affordable Housing Agreement shall control as to the use of the HOME funds provided under the Affordable Housing Agreement and all operating income from the Project.

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

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

“BORROWER”

BEACH HOUSING PARTNERS LP

a California limited partnership

By: JHC-Beach LLC, a California limited liability company

Its: Managing General Partner

By: Jamboree Housing Corporation,
a California nonprofit public benefit corporation

Its: Manager

By _____

Name: Michael Massie

Title: Chief Development Officer

ATTACHMENT NO. 9
HOME DEED OF TRUST

(behind this page)

Recording Requested by
and When Recorded Return to:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GOVERNMENT BUSINESS
Free Recording Requested
(Govt. Code §27383)

APN: 159-031-18

**DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING
(WITH ASSIGNMENT OF RENTS)
(HOME LOAN)**

This Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) is given by BEACH HOUSING PARTNERS LP, a California limited partnership (hereinafter referred to as "Trustor") (whose address is c/o Jamboree Housing Corporation, 17701 Cowan, Suite 200, Irvine, California 92614, Attention: Michael Massie, Chief Development Officer; with a copy to Rutan & Tucker, LLP, 18575 Jamboree Road, 9th Floor, Irvine, California 92612, Attn: Patrick D. McCalla, Esq., to FIRST AMERICAN TITLE INSURANCE COMPANY, (hereinafter called "Trustee"), for the benefit of THE CITY OF HUNTINGTON BEACH, a municipal corporation of the state of California (hereinafter called "Beneficiary"), whose address is City of Huntington Beach, 2000 Main Street, Huntington Beach, California 92648, Attention: City Manager.

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION all present and future right, title and interest of Trustor in and to the following property (the "Trust Estate"):

(a) That certain real property in the City of Huntington Beach, County of Orange, State of California more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereafter referred to as the "Subject Property");

AFFORDABLE HOUSING AGREEMENT
BEACH HOUSING PARTNERS LP
ATTACHMENT NO. 9 – HOME DEED OF TRUST

(b) All buildings, structures and other improvements now or in the future located or to be constructed on the Subject Property (the “Improvements”);

(c) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefiting or otherwise relating to the Subject Property or the Improvements, including easements, rights-of-way and development rights (the “Appurtenances”). (The Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to as the “Real Property”);

(e) subject to the terms of the assignment to Beneficiary set forth in Paragraph 4 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate or the ownership, use, management, operation leasing or occupancy of the Trust Estate, including those past due and unpaid (the “Rents”);

(f) all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code (the “UCC”), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property, but not including personal property that is donated to Trustor (the “Goods,” and together with the Real Property, the “Property”); and

(g) all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate) (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and

unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustor under any such agreements, (viii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types on intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (the "Intangibles").

Trustor further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustor in and to all Goods and Intangibles and all of the Trust Estate described above in which a security interest may be created under the UCC (collectively, the "Personal Property"). This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Trustee and Beneficiary. Trustee and Beneficiary shall have, in addition to all rights and remedies provided herein, all the rights and remedies of a "secured party" under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Sections 9502(c) and 9604 of the UCC.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may elect, the following:

- (1) due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained herein or contained in the following:
 - (a) a promissory note in the original principal amount of [\$2,830,697], payable from the residual receipts of the Project ("Residual Receipts"), executed by Trustor ("Borrower" therein) of approximately even date herewith (the "HOME Note");
 - (b) the Affordable Housing Agreement dated as of January 5, 2021 (the "Agreement"), between Trustor and the Beneficiary;
 - (c) the Agreement Containing HOME Program Requirements between Trustor and Beneficiary recorded concurrently herewith ("HOME Regulatory Agreement"); and

(2) payment of indebtedness of the Trustor to the Beneficiary in the principal sum of [\$2,830,697] or so much thereof as shall be advanced, evidenced by the HOME Note, with interest, according to the terms of the HOME Note.

The Agreement, including all Attachments thereto, and the documents and instruments executed by Trustor in connection with the Project, including the HOME Regulatory Agreement, the HOME Note, the Assignment of Rents, the Assignment of Agreements, and the UCC1 Financing Statement, all as described in the Agreement (collectively referred to as the “Secured Obligations”) and all of their terms are incorporated herein by reference and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances evidenced by any note reciting that it is secured hereby. Any capitalized term that is not otherwise defined in this Deed of Trust shall have the meaning ascribed to such term in the Agreement.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. That Trustor shall pay the HOME Note at the time and in the manner provided therein, and perform the obligations of the Developer as set forth in the Secured Obligations at the time and in the manner respectively provided therein;

2. That Trustor shall not permit or suffer the use of any of the Property for any purpose other than the uses permitted by the HOME Regulatory Agreement;

3. That the Secured Obligations are incorporated in and made a part of this Deed of Trust. Upon default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable.

4. That, subject to the prior rights, if any, of a lender whose lien is senior to this Deed of Trust (“Senior Lender”), all rents, profits and income from the Trust Estate are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the Agreement.

5. That upon default hereunder or under the aforementioned agreements, and after the giving of notice and the expiration of any applicable cure period, Beneficiary shall be entitled to the

appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the Trust Estate and operate same and collect the rents, profits and income therefrom;

6. That Trustor will keep the improvements hereafter constructed on the Subject Property in accordance with the Agreement insured against loss by fire and such other hazards, casualties, and contingencies as required by the Agreement and/or the HOME Regulatory Agreement, and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies. In no event shall the amounts of coverage be less than 100 percent of the insurable value of the Property. Such policies shall be endorsed with standard mortgage clause with loss payable to the Beneficiary and certificates thereof together with copies of original policies shall be deposited with the Beneficiary;

7. To pay, at least 10 days before delinquency, all taxes and assessments affecting the Property; to pay, when due, all encumbrances, charges and liens, with interest, on the Property or any part thereof which appear to be prior or superior hereto; and to pay all costs, fees, and expenses of this Trust. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as Trustor is contesting the legality thereof in good faith and by appropriate proceedings, and Trustor has adequate funds to pay any liabilities contested pursuant to this Section 7.

8. To keep the Property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon (subject to Trustor's right to contest the validity or applicability of laws or regulations); not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law and/or covenants, conditions and/or restrictions affecting the Property; not to permit or suffer any material alteration of or addition to the buildings or improvements hereafter constructed in or upon the Property without the consent of the Beneficiary;

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

10. Should Trustor fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing

Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Following default, after the giving of notice and the expiration of any applicable cure period, Beneficiary or Trustee being authorized to enter upon said property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the reasonable judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay his reasonable fees. Notwithstanding the foregoing, in the event of default under this Deed of Trust, the Beneficiary may also require Trustor to maintain and submit additional records. Beneficiary shall specify in writing the particular records that must be maintained and the information or reports that must be submitted;

11. Beneficiary shall have the right to pay fire and other property insurance premiums when due should Trustor fail to make any required premium payments after the giving of notice and the expiration of any applicable cure period. All such payments made by the Beneficiary shall be added to the principal sum secured hereby;

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in the HOME Note;

13. That the funds to be advanced hereunder are to be used in accordance with the Secured Obligations and upon the failure of Trustor, after the giving of notice and the expiration of any applicable cure period, to keep and perform all the covenants, conditions, and agreements of said agreements, the principal sum and all arrears of interest, and other charges provided for in the HOME Note shall at the option of the Beneficiary of this Deed of Trust become due and payable, anything contained herein to the contrary notwithstanding;

14. Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the property subject to this Deed of Trust any lien or liens except as permitted by the Secured Obligations or otherwise approved by Beneficiary in Beneficiary's reasonable discretion, and further that it will keep and maintain the Property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be obligated to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting, provided that Trustor shall, at Beneficiary's written request, within thirty (30) days after the filing of any claim or lien (but in any event, and without any requirement that Beneficiary must first provide a written request, prior to foreclosure) record in the Office of the Recorder of Orange County, a surety bond in an amount one-

and-one-half (1 1/2) times the amount of such claim item to protect against a claim of lien, or provide such other security reasonably satisfactory to Beneficiary;

15. That any and all improvements made or about to be made upon the premises covered by the Deed of Trust, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other applicable regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;

16. Trustor herein agrees to pay to Beneficiary or to the authorized loan servicing representative of the Beneficiary a reasonable charge for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2 Title 14, Division 3, of the California Civil Code.

IT IS MUTUALLY AGREED THAT:

17. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, subject to the rights of the beneficiary of any other lien on the Property that is senior to the lien of this Deed of Trust ("Senior Lender"), Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor which are not used to reconstruct, restore or otherwise improve the Property or part thereof that was taken or damaged, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. Subject to the rights of the Senior Lenders, all such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the Property or part thereof that was taken or damaged, including the proceeds of any policies of fire and other insurance affecting the Property, are hereby assigned to Beneficiary. After deducting therefrom all its expenses, including attorney's fees, the balance of the proceeds which are not used to reconstruct, restore or otherwise improve the Property or part thereof that was taken or damaged, shall be applied to the amount due under the HOME Note secured hereby. No amount applied to the reduction of the principal shall relieve the Trustor from making regular payments as required by the HOME Note;

18. Upon default by Trustor in making any payments provided for in the HOME Note secured hereby or in this Deed of Trust, or in performing any obligation set forth in any of the Secured Obligations, and if such default is not cured within the respective time provided therefor in Section 34 of this Deed of Trust, below, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for

sale, and of written notice of default and of election to cause the property to be sold, which notice Trustee shall cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary shall also deposit with Trustee this Deed, the Note and all documents evidencing expenditures secured hereby;

19. a. Prior to the repayment in full of the HOME Loan, the Trustor shall not assign or attempt to assign the Agreement or any right therein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property, the Project thereon, or any portion thereof or interest therein (referred to hereinafter as a "Transfer"), without prior written approval of the Beneficiary, except as otherwise permitted in the HOME Note. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary shall not unreasonably withhold or delay its consent. If consent is given, any such transfer shall be subject to this Section 19, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein, subject to the provisions of paragraph e(3) of this Section 19.

b. In connection with any assignment that requires Beneficiary consent, any such proposed transferee shall have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the Beneficiary, to fulfill the obligations undertaken by Trustor in the Agreement and the HOME Loan Documents. Any such proposed transferee, by instrument in writing satisfactory to the Beneficiary and in form recordable among the land records of Orange County, for itself and its successors and assigns, and for the benefit of the Beneficiary shall expressly assume all of the obligations of the Trustor under the Agreement and the HOME Loan Documents, and agree to be subject to all conditions and restrictions applicable to the Trustor in this Deed of Trust, subject to the provisions of paragraph e(3) of this Section 19. There shall be submitted to the Beneficiary for review all instruments and other legal documents proposed to effect any such transfer; and if approved by the Beneficiary, which approval shall not be unreasonably withheld, conditioned, or delayed, its approval shall be indicated to the Trustor in writing.

c. In the absence of specific written agreement by the Beneficiary, which agreement will not be unreasonably withheld, no Transfer, or approval thereof by the Beneficiary, shall be deemed to relieve the Trustor or any other party from any obligations under the Agreement or any other HOME Loan Document.

d. In the event of a Transfer prior to the time the HOME Loan is paid in full and without the prior written consent of the Beneficiary (if such consent is required), the net proceeds (after repayment in full of the loan from the proceeds of the Permanent Loan and the reconveyance of the Permanent Deed of Trust), shall be paid to the Beneficiary to the extent necessary to pay in full the accrued interest, if any, current interest and remaining principal balance of the HOME Loan.

e. (1) As used herein, “Transfer” includes the sale, agreement to sell, transfer or conveyance of the Property, the Project, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land 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, except as provided in subparagraph e(3) of this Section 19, below.

(2) “Transfer” shall also include the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in Trustor, or any conversion of Trustor to an entity form other than that of Trustor at the time of execution of the Agreement, except that a cumulative change in ownership interest of any general partner of forty-nine percent (49%) or less shall not be deemed a “Transfer” for purposes of this Deed of Trust.

(3) Notwithstanding paragraphs (1) and (2), above, “Transfer” shall not include any of the following Permitted Transfers:

(a) a conveyance of a security interest to the beneficiary of a deed of trust securing a loan approved by the City to be prior in right to the HOME Loan, or the conveyance of title to the Property or Project in connection with a foreclosure, a deed in lieu of foreclosure or similar conversion of such loan;

(b)(i) Subject to subparagraph (b)(ii), below, a conveyance of the Property or Project to a limited partnership in which the managing general partner is Trustor or Trustor’s General Partner, or a sale back from such partnership to Trustor or such General Partner, or the substitution of such General Partner as directed by the Investor Limited Partner in accordance with the terms of the Limited Partnership Agreement.

(ii) Notwithstanding any provision to the contrary contained herein, any event described in subparagraph (b)(i) shall not be deemed to be a Permitted Transfer unless Beneficiary reasonably determines, which determination shall not be unreasonably withheld, that Trustor’s General Partner remains, or another entity reasonably acceptable to Beneficiary (which shall not be unreasonably withheld) becomes, the controlling and managing general partner of Trustor.

(c) The leasing for occupancy of all or any part of the Property or Project in accordance with the Agreement and the HOME Regulatory Agreement.

(d) The inclusion of equity participation by Trustor by transfer or addition of limited partners to Trustor or similar mechanism.

(e) The pledge by a General Partner to the Investor Limited Partner of the General Partner's interest in Trustor, as security for the performance of all of the General Partner's obligations under the Limited Partnership Agreement.

(f) The sale, transfer or pledge of a limited partnership interest in Trustor or of a partnership interest in the Investor Limited Partner.

(g) The appointment by the Investor Limited Partner, in accordance with the Limited Partnership Agreement, of an additional or substitute General Partner that is an Affiliate of the Investor Limited Partner or, if not an Affiliate of the Investor Limited Partner, is reasonably acceptable to Beneficiary.

(h) The withdrawal, removal and/or replacement of a general partner of Trustor pursuant to the terms of Trustor's Limited Partnership Agreement, provided that any required substitute general partner is reasonably acceptable to Beneficiary, as evidenced by the Beneficiary's written consent, and is selected with reasonable promptness (except that no such consent shall be required if the substitute general partner is an Affiliate of the Investor Limited Partner).

(i) A transfer of a general partner's interest to the limited partner pursuant to the option provided to it in connection with Trustor's Limited Partnership Agreement, or a conveyance to a general partner of Trustor of Trustor's interest in the Property and the improvements or a transfer of limited partnership interests to a general partner of Trustor pursuant to the option provided to that general partner in Trustor's Limited Partnership Agreement.

(j) The transfer of all or any part of the Project or Property to Jamboree Housing Corporation, or an entity directly controlled by Jamboree Housing Corporation, or an entity in which Jamboree Housing Corporation is the general partner or managing member.

(k) Any dilution of a General Partner's interest in Trustor in accordance with the Limited Partnership Agreement.

f. Beneficiary shall not unreasonably withhold, condition or delay its approval of any matter for which its approval is required hereunder. Any disapproval shall be in writing and contain Beneficiary's reasons for disapproval.

20. After the lapse of such time as may then be required by law following the recordation of a notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee's fees or attorney's fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the HOME Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto;

21. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee;

22. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law;

23. Upon written request of Beneficiary stating that all sums secured hereby have been paid and all obligations secured hereby have been satisfied, and upon surrender of this Deed of Trust and the HOME Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto";

24. The trust created hereby is irrevocable by Trustor;

25. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term “Beneficiary” shall include not only the original Beneficiary hereunder but also any future owner and holder including pledgees, of the HOME Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustor hereunder are joint and several;

26. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee. Beneficiary, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law;

27. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address set forth on the first page of this Deed of Trust. After Trustor gives written notice to Beneficiary that the Investor Limited Partner has been admitted to the Trustor, Beneficiary shall send to the Investor Limited Partner a copy of all notices of default and all other notices that Beneficiary sends to Trustor, at the address for the Investor Limited Partner as provided by written notice to Beneficiary by Trustor.

28. Trustor agrees at any time and from time to time upon receipt of a written request from Beneficiary, to furnish to Beneficiary detailed statements in writing of income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the premises and their use as may be requested by Beneficiary.

29. Trustor agrees that the loan secured by this Deed of Trust is made expressly for the purpose of financing the construction of improvements on the Property, including 42 dwelling units of affordable housing for extremely low, very low, and low income households, and such dwelling units shall be occupied exclusively by such persons as set forth in the Secured Obligations.

30. Trustor agrees that, except as otherwise provided in the HOME Note, upon sale or refinancing of the property, the entire principal balance of the debt secured by this Deed of Trust,

plus any accrued but unpaid interest thereon, shall at the option of Beneficiary be immediately due and payable.

31. The obligation to repay the HOME Loan is a nonrecourse obligation of the Trustor and its partners. Neither Trustor nor any of its general or limited partners, nor any other party, shall have any personal liability for repayment of the loan. The sole recourse of Beneficiary shall be the exercise of its rights against the Property and any related security for the HOME Loan. Notwithstanding the foregoing, Beneficiary may recover directly from Trustor or from any other party:

- (a) all damages, costs and expenses incurred by Beneficiary as a result of fraud or any criminal act or acts of Trustor or any partner, shareholder, officer, director or employee of Trustor, or of any general partner of Trustor, or of any member of a general partner of Trustor;
- (b) all damages, costs and expenses incurred by Beneficiary as a result of misappropriation of funds provided for the construction of the Project, as described in the Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds;
- (c) any and all amounts owing by Trustor pursuant to the indemnification regarding Hazardous Substances pursuant to the Environmental Indemnity; and
- (d) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that Beneficiary shall pay Trustor's reasonable court costs and attorneys' fees if Trustor is the prevailing party in such enforcement or collection action).

32. Notwithstanding specific provisions of this Deed of Trust, non-monetary performance hereunder shall not be deemed to be in default where delays or defaults are proximately caused by any of the following Force Majeure events, provided such event actually delays and interferes with the timely performance of the matter, and, despite the exercise of diligence and good business practices, such event is beyond the reasonable control of Trustor: War; insurrection; strikes; lock-outs; 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; litigation including litigation challenging the validity of this transaction or any element thereof; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers; acts of the other party; acts or failure to act of any Governmental Authority (except acts or failure to act of the Beneficiary in its capacity as lender

shall not excuse performance by the Beneficiary); the imposition of any applicable moratorium by a Governmental Authority; or any other causes which despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such delay and interference. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Event unless and until Trustor delivers to Beneficiary written notice describing the event, its cause, when and how Trustor obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Trustor shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event.

33. If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the Secured Obligations, the unsecured portion of such obligations shall be completely performed and paid prior to the performance and payment of the remaining and secured portion of the obligations, and all performance and payments made by Trustor shall be considered to have been performed and paid on and applied first to the complete payment of the unsecured portion of the obligations.

34. (a) Subject to the extensions of time set forth in Section 32, and subject to the further provisions of this Section 34, failure or delay by Trustor to perform any term or provision respectively required to be performed under the Secured Obligations or this Deed of Trust constitutes a default under this Deed of Trust.

(b) Beneficiary shall give written notice of default to Trustor, specifying the default complained of by the Beneficiary. Failure or 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 Beneficiary 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 Beneficiary in asserting any of its rights and remedies shall not deprive Beneficiary 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, prior to exercising any remedies hereunder, Beneficiary shall give Trustor written notice of such default. Trustor shall have a period of twenty (20) days after such notice is given within which to cure the default prior to exercise of remedies by Beneficiary.

(e) If a non-monetary event of default occurs, prior to exercising any remedies hereunder, Beneficiary shall give Trustor notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Trustor shall have such period to effect a cure prior to exercise

of remedies by Beneficiary. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Trustor (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary. If Trustor fails to take corrective action or cure the default within a reasonable time, Beneficiary shall give Trustor and, as provided in paragraph (f), below, the Investor Limited Partner notice thereof, whereupon the Investor Limited Partner may remove and replace the general partner with a substitute general partner, who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. Beneficiary agrees to accept cures tendered by the Investor Limited Partner within the cure periods provided in this Deed of Trust or within the time periods provided in Civil Code Section 2924c, whichever is longer. Additionally, in the event the Investor Limited Partner is precluded from curing a non-monetary default due to an inability to remove the general partner as a result of a bankruptcy, injunction, or similar proceeding by or against Trustor or its general partner, Beneficiary agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Investor Limited Partner is so precluded from acting, not to exceed 90 days, provided such limited partner is otherwise in compliance with the foregoing provisions. In no event shall Beneficiary 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 one hundred eighty (180) days after the first notice of default is given.

(f) After Trustor gives written notice to Beneficiary that the Investor Limited Partner has been admitted to the Trustor, Beneficiary shall send to the Investor Limited Partner a copy of all notices of default and all other notices that Beneficiary sends to Trustor, at the address for the limited partner as provided by written notice to Beneficiary by Trustor.

(g) Except as otherwise required to comply with the provisions of California Civil Code Section 2924 et seq. that are applicable thereto, any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered 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 Trustor; 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.

35. This Deed of Trust shall be subordinate and junior to each deed of trust securing a Senior Loan ("Senior Deed of Trust") The term "Senior Loan" shall have the meaning given to it in the HOME Note. Following the reconveyance of a Senior Deed of Trust, this Deed of Trust will be subordinate and junior to the deed of trust in favor of the maker of the permanent or take-out loan replacing such Senior Loan (each of which permanent or take-out loans is referred to herein as a

“Senior Loan”). Beneficiary shall execute such instruments as may be necessary to subordinate the lien of this Deed of Trust, to the deed of trust securing a Senior Loan and any regulatory agreement recorded in connection with the Four Percent Tax Credit (as defined in Section 36 below). In the event of a default or breach by Trustor of a security instrument securing a Senior Loan described in this Section 35, Beneficiary shall have the right to cure the default prior to completion of any foreclosure. In such event, Beneficiary shall be entitled to reimbursement by Trustor of all costs and expenses incurred by Beneficiary in curing the default. The amount of all such disbursements shall be a lien against the Property and added to the obligation secured by this Deed of Trust until repaid, with interest at the highest rate permitted by law.

36. Trustor has informed Beneficiary that Trustor intends that the Project qualify for an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code (“Four Percent Tax Credit”). Beneficiary acknowledges that Trustor and the Tax Credit Allocation Committee have or intend to enter into an Extended Use Agreement. Beneficiary acknowledges and agrees that, in the event of a foreclosure of its interest under this Deed of Trust or delivery by Trustor of a deed in lieu thereof (collectively, a “Foreclosure”), the following rule contained in Section 42(h)(6)(E)(ii) of the Code shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the eligible tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

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

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

“TRUSTOR”

BEACH HOUSING PARTNERS LP
a California limited partnership

By: JHC-Beach LLC, a California limited liability company
Its: Managing General Partner

By: Jamboree Housing Corporation,
a California nonprofit public benefit corporation

Its: Manager

By: _____
Michael Massie
Chief Development Officer

Exhibit A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 2, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 76, PAGE 4 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN:159-031-18

ATTACHMENT NO. 10

INCLUSIONARY NOTE

(behind this page)

**RESIDUAL RECEIPTS PROMISSORY NOTE
SECURED BY DEED OF TRUST
TO THE CITY OF HUNTINGTON BEACH**

3%
\$[TBD – unpaid principal + interest]

Huntington Beach, California
_____, 202_

FOR VALUE RECEIVED, BEACH HOUSING PARTNERS LP, a California limited partnership (“Borrower”), hereby promises to pay to THE CITY OF HUNTINGTON BEACH, a municipal corporation of the state of California (“City”), or order, a principal amount of [_____] (\$_____), or so much thereof as may be advanced by the City to Borrower as the Inclusionary Loan pursuant to the Affordable Housing Agreement dated as of January 5, 2021, (the “Affordable Housing Agreement”) between Borrower (“Owner” therein) and the City, incorporated herein by this reference. 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 Affordable Housing Agreement. In addition, the following terms shall have the following meanings:

“Amended and Restated Covenants” means the Amended and Restated Agreement Containing Covenants (Including Rental Restrictions) between the City, the Huntington Beach Housing Authority, and Borrower, dated as of January 5, 2021 and recorded against the Property.

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

“Borrower’s Limited Partnership Agreement” shall mean that certain Amended and Restated Agreement of Limited Partnership by and between, Borrower’s Managing General Partner and Investor Limited Partner dated as of [_____, 202_].

“City” means the City of Huntington Beach, California, a municipal corporation, and any assignee of or successor to its rights, powers and responsibilities.

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

“Construction Lender” means [_____], or another institutional lender reasonably approved by the City.

“Construction Loan” means the loan from Construction Lender to pay a portion of the Development Costs, secured by the Construction Loan Deed of Trust.

“Construction Loan Deed of Trust” means the deed of trust dated around the date hereof given by Borrower for the benefit of Construction Lender, securing the Construction Loan.

“Deferred Developer Fee” means the portion of the Developer Fee to be paid from the cash flow of the Project as provided in the final Project Budget approved by the City at the conversion from construction financing to permanent financing.

“HOME Loan” means a loan of HOME Program funds from the City to Borrower in the amount of [\$2,830,697].

“Improvements” means the improvements to be constructed on the Property in accordance with the Affordable Housing Agreement, including but not limited to the Scope of Development attached as Attachment No. 3 to the Affordable Housing Agreement.

“Inclusionary Deed of Trust” means the Deed of Trust given by Borrower for the benefit of the City dated around the date hereof, securing the Inclusionary Loan.

“Inclusionary Loan” means the loan from the City to Borrower, in the amount and pursuant to the terms and conditions set forth in this Note and the other Inclusionary Loan Documents.

“Inclusionary Loan Documents” means the Affordable Housing Agreement, this Note, the Inclusionary Deed of Trust, the Assignment of Agreements, and the Environmental Indemnity.

“Inclusionary Loan” means the loan of Affordable Housing Trust Funds from the City to Borrower in the amount and pursuant to the terms and conditions set forth in this Note and the other Inclusionary Loan Documents. in the face amount of this Note.

“Investor Limited Partner” collectively refers to the entities identified as the “Limited Partner” and “Special Limited Partner” in Borrower’s Limited Partnership Agreement and the related contribution agreement, and their successors and assigns.

“Maturity Date” means the sixtieth (60th) anniversary of the Occupancy Date.

“Net Proceeds” means the amount, if any, by which a refinancing exceeds the amount needed to repay a Senior Loan in full, including principal and interest, any early redemption or prepayment penalty, and customary and reasonable fees and costs of the transaction, the costs incurred by Owner to perform repairs or maintenance to the Project, amounts required by a Senior Lender to be deposited into a reserve fund, and the amount paid (excluding voluntary payments) towards the then-outstanding balance of a Senior Loan.

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

“NPLH Assisted Units” means the residential units in the Project that are designated as such by Orange County Housing and Community Development.

“NPLH Flexible Operating Reserve Deposits” means deposits, in the amounts and at the times required by Orange County Housing and Community Development, into a cash-flow funded reserve established by Borrower to provide a reserve for shortfalls in operations, supportive services, furnishings, or replacement reserves associated with the NPLH Assisted Units. The amount of the NPLH Flexible Operating Reserve Deposits is calculated based on the NPLH Loan amount divided by the total amounts of the NPLH Loan plus the Residual Receipts Loans, multiplied by fifty percent (50%). For example, if the NPLH Loan amount is \$5,875,538 and the total amount of the NPLH Loan plus the Residual Receipts Loans is [\$_____], then the NPLH Flexible Operating Reserve Deposits will be equal to [_____%] of the cash flow remaining after payment of Annual Operating Expenses and the theretofore unpaid portion of the Deferred Developer Fee described in paragraph 7(d) below. The NPLH Flexible Operating Reserve Deposits have priority of payment over the distribution of Residual Receipts for payment of the Residual Receipts Loans.

“NPLH Loan” means a loan of No Place Like Home funds from Orange County Housing and Community Development to Borrower in the original principal amount of \$5,875,538. The NPLH Loan is non-amortizing and due in full at maturity

“NPLH Transition Reserve” means funds reserved to fund the Project’s operating expenses allocable to the NPLH Assisted Units and subject to the requirements of Orange County Housing and Community Development.

“Occupancy Date” means the date on which the City of Huntington Beach issues a Certificate of Occupancy for the Project.

“OCHFT Loan” means a loan of Orange County Housing Finance Trust Funds from Orange County Housing and Community Development to Owner in the original principal amount of \$1,900,000.

“Permanent Loan” shall mean the permanent loan from [_____] or another institutional lender approved by the City, to assist in Borrower’s repayment of the construction financing for the Project and secured by a first priority Deed of Trust on the Property.

“Project” shall mean the financing, planning, construction and use of the Property and the Improvements as provided in the Affordable Housing Agreement.

“Property” shall mean the real property, including all improvements thereon, legally described as set forth in Attachment No. 2 to the Affordable Housing Agreement.

“Residual Receipts” shall mean, in a particular calendar year, the amount by which Gross Revenue (as defined below) exceeds the sum of (i) Annual Operating Expenses (as defined below) plus (ii) the NPLH Flexible Operating Reserve Deposits, 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 City, 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, proceeds from the loans described in Sections 3 and 4 of the Method of Financing attached to the Affordable Housing Agreement as Attachment No. 6, capital contributions or similar advances, or interest that is earned on and allocated to reserve accounts.

(ii) “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] of Gross Revenue, pursuant to a management contract approved by the City in City's reasonable discretion; resident supportive services fees as required by Project lenders and the California Tax Credit Allocation Committee; partnership management fees payable to Borrower's managing general partner in an amount not to exceed [_____ Dollars (\$_____)] in the first year and increased thereafter at an annual rate of [three percent (3%)]; a cumulative asset management fee to be paid to the Borrower's Investor Limited Partner in an amount not to exceed [_____ Dollars (\$_____)] in the first year and increased thereafter at an annual rate of [three percent (3%)]; cash deposited into a replacement reserve in the amount of [Five Hundred Dollars (\$500)] per unit or such higher amounts as are required by Project lenders, the California Tax Credit Allocation Committee, and the Investor Limited Partner from time to time; cash deposited into an operating reserve in such reasonable amounts as are required by Project lenders, the Tax Credit Allocation Committee, and the tax credit investor from time to time, and approved by the City; cash deposited into the NPLH Transition Reserve in amounts (if any) required by Orange County Housing and Community Development; a monitoring fee to the City in an amount equal to \$1,075, to be increased at an annual rate of three percent, 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 City; all other payments, charges and other amounts becoming due under the Permanent Deed of Trust; and, payments on loans made by the Investor Limited Partner to Borrower. "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 City.

"Residual Receipts Loans" means the Inclusionary Loan, the HOME Loan, the SNHP Loan, and the OCHFT Loan.

"Senior Lender" means the maker of a Senior Loan, including but not limited to [_____] as the Construction Lender and the Permanent Lender.

"Senior Loan" means the Construction Loan, the Permanent Loan, the NPLH Loan, the SNHP Loan, the HOME Loan, the OCHFT Loan, and any other loan secured by a deed of trust or

other instrument to which the City agrees to subordinate this Note and the other Inclusionary Loan Documents.

“SNHP Loan” means a loan of Special Needs Housing Program funds from the California Housing Finance Agency to Owner in the original principal amount of \$3,603,160.

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

3. This Note is payable at the principal office of City, 2000 Main Street, Huntington Beach, California 92648, 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 Inclusionary Deed of Trust.

5. This Note shall accrue simple interest at the rate of three percent (3%) per annum on the principal amount outstanding, from the date of disbursement.

6. The entire unpaid principal balance of this Note and all accrued but unpaid interest shall be due and payable upon the Maturity Date, and upon the earlier occurrence 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 City, except as permitted by the provisions of Section 108 (titled “Assignments and Transfers”) of the Affordable Housing Agreement; or

(b) the date on which there is a default by the Borrower under the terms of this Note, the Affordable Housing Agreement, the Inclusionary Deed of Trust, the Amended and Restated Covenants, or any deed of trust or other instrument securing a Senior Loan or the Inclusionary Loan, which is not cured or waived within the respective time period provided herein and therein.

7. Except in the event of a default described in Section 12 hereof, no payments will be due and payable under this Note except to the extent of (a) the City’s Share of Residual Receipts, and (b) any refinancing or Cost Savings, subject to the limitations set forth below. Prior to the Maturity Date, Borrower shall be obligated to repay the Inclusionary Loan as follows:

(a) Annually, not later than the thirtieth (30th) day of April, beginning with the year following the year in which the Occupancy Date occurs, Borrower shall submit to the City an audited Annual Financial Statement for the preceding calendar year, prepared by a certified public

accountant reasonably acceptable to the City, determining the amount of Residual Receipts, if any, generated in that year, together with payment of the City's Proportionate Share of such Residual Receipts. The first such Annual Financial Statement shall be for the partial year beginning on the Occupancy Date and ending on December 31 of that year. The City 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 City (as the result, for example, of a determination that the actual amount of Residual Receipts to which the City is entitled exceeds the amount of City's share of Residual Receipts shown in the Annual Financial Statement submitted by Borrower), Borrower shall promptly pay to the City the difference, with interest, from the date on which such payment was due, at the rate of one percent (1%) over the Prime Rate announced by the Permanent Lender, but in any event within ten (10) days of notice of such increase.

(b) Borrower will repay the Inclusionary Loan with annual payments equal to the City's Share of Residual Receipts. The City's Share of Residual Receipts will be calculated as follows: a percentage derived from a fraction in which the principal amount of the Inclusionary Loan upon final disbursement is the numerator and the sum of the Inclusionary Loan plus all other Residual Receipts Loans is the denominator, multiplied by fifty percent (50%). For example, assuming the principal amount of the Inclusionary Loan is [\$_____], and the total principal amount of the Residual Receipts Loans is [\$_____], the City's Share would be [\$_____] divided by [\$_____], or [_____]%, multiplied by fifty percent (50%), which would equal [_____]%.

(c) All payments to the City 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.

(d) If a portion of the Developer Fee is to be paid from the cash flow of the Project ("Deferred Developer Fee"), then notwithstanding paragraph (b) of this Section 7, Borrower may first utilize one hundred percent (100%) of the cash flow remaining after payment of Annual Operating Expenses with respect to a particular calendar year to pay the sponsors of the Project the theretofore unpaid portion of the Deferred Developer Fee.

(e) If, upon completion 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 City's Share of Residual Receipts calculated as set forth in paragraph (b) of this Section 7 will be applied to the repayment of the Inclusionary Loan; provided that, if the makers of the NPLH Loan and the Residual Receipts Loans other than the Inclusionary Loan do not require that they receive a share of Cost Savings, then the City's Proportionate Share of the Cost Savings will be determined by the formula set forth in paragraph (b) of this Section 7,

without consideration of the amount of such other Residual Receipts Loans or the NPLH Loan, as applicable. “**Cost Savings**”, as that term is used in this Note, is the difference between the total sources of funds and the total cost of development as shown in the Borrower’s cost certification contained in Borrower’s application to the California Tax Credit Allocation Committee for a Form 8609 for the Project (“**Tax Credit Report**”); provided, however, the Cost Savings will be adjusted to take into account (i) the loss of any equity investment due to an adjustment in the allowable tax credits; provided that the tax credit factor applied to the required equity contribution will be as set forth in Borrower’s limited partnership agreement; and (ii) any reduction in the first mortgage loan required by the Construction Loan Documents. The amount payable to the City under this paragraph will be paid within sixty (60) days following submittal of the Tax Credit Report to the California Tax Credit Allocation Committee. Such amounts will accrue interest at the default rate of ten percent (10%) from the date due and payable until paid in full. If Borrower does not obtain tax credit financing for this Project, Borrower will submit to the City a report that substantially complies with the Tax Credit Report required by the California Tax Credit Allocation Committee. Such report will be submitted to the City within one year following completion of construction of the Project. The amount payable to the City hereunder will be paid within sixty (60) days following submittal of the report to the City. The City will be entitled to review and approve the report and to require appropriate revisions to assure that Cost Savings have not been minimized or reallocated. The requirements in the foregoing paragraph will be applied to the fullest extent permitted by applicable requirements and restrictions of California’s Tax Credit Allocation Committee.

(f) If at any time Borrower refinances the Senior Loan, Borrower will apply the Net Proceeds of any such refinancing first to pay previously incurred Operating Expenses still owing, then a share of the Net Proceeds equal to the City’s Share of Residual Receipts calculated as set forth in paragraph (b) of this Section 7 will be paid to the City to pay accrued interest on, and then reduce the principal amount of the Inclusionary Loan; provided that, if the makers of the NPLH Loan and the Residual Receipts Loans other than the Inclusionary Loan do not require that they receive a share of Net Proceeds, then the City’s proportionate share of Net Proceeds will be determined by the formula set forth in paragraph (b) of this Section 7, without consideration of the amount of such other Residual Receipts Loans or the NPLH Loan, as applicable.

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 Amended and Restated Covenants will not entitle Borrower to a reconveyance of the Inclusionary Deed of Trust.

9. Prohibition Against Transfer.

(a) Prior to the repayment in full of the City Loan, the Borrower will not assign or attempt to assign the Affordable Housing Agreement or any right therein, nor make any total or

partial sale, transfer, conveyance or assignment of the whole or any part of the Property, the Improvements thereon, or any portion thereof or interest therein (referred to hereinafter as a “**Transfer**”), without prior written approval of the City, except as otherwise permitted in this Note or the Affordable Housing Agreement. Consent to one such transaction will not be deemed to be a waiver of the right to require consent to future or successive transactions. The City will not unreasonably withhold or delay its consent. If consent is given, any such transfer will be subject to this Section 9, and any such transferee must assume all obligations hereunder and agree to be bound by all provisions contained herein.

(b) In connection with any assignment that requires City consent, any such proposed transferee must have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the City, to fulfill the obligations undertaken by Borrower in the Affordable Housing Agreement, the Amended and Restated Covenants, and this Note. Any such proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the official records of Orange County, for itself and its successors and assigns, and for the benefit of the City must expressly assume all of the obligations of the Borrower under the Affordable Housing Agreement, the Amended and Restated Covenants, and this Note, and agree to be subject to all conditions and restrictions applicable to the Borrower in this Note. There will be submitted to the City for review all instruments and other legal documents proposed to effect any such transfer; and if approved by the City, which approval shall not be unreasonably withheld, conditioned, or delayed, its approval will be indicated to the Borrower in writing.

(c) In the absence of specific written agreement by the City, which agreement will not be unreasonably withheld, no Transfer, or approval thereof by the City, will be deemed to relieve the Borrower or any other party from any obligations under the Affordable Housing Agreement or the Amended and Restated Covenants.

(d) In the event of a Transfer prior to the time the Inclusionary Loan is paid in full without the prior written consent of the City (if such consent is required), the remaining principal balance of the Inclusionary Loan and all accrued but unpaid interest will be immediately due and payable.

(i) As used herein, “Transfer” includes the sale, transfer or conveyance of the Property, the Improvements, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, or any agreement to do so; the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property or the Improvements; or the lease of all or substantially all of the Property or Improvements, except the lease for occupancy of all or any part of the Improvements on the Property.

(ii) “Transfer” will also include the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in Borrower, or any conversion of Borrower to an entity form other than that of Borrower at the time of execution of this Note, except for the following: (A) a cumulative change in the ownership interests of any individual limited liability company member of forty-nine percent or less will not be deemed a “Transfer” for purposes of this Note; and (B) a transfer of a portion or a majority of stock of any corporation to a trust formed in connection with a qualified employee ownership plan will not, by itself, be deemed to constitute a change in ownership for purposes of this Note.

(iii) Notwithstanding paragraphs (i) and (ii), “Transfer” will not include any Permitted Transfers, as defined in the Affordable Housing Agreement.

(e) The City will not unreasonably withhold, condition or delay its approval of any matter for which its approval is required hereunder. Disapprovals will be in writing and contain the City’s reasons for disapproval.

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, the Inclusionary Deed of Trust or any term or provision of either.

11. Upon the failure of Borrower to perform or observe any term or provision of this Note, or upon the occurrence of any event of default under the terms of the Affordable Housing Agreement, the Inclusionary Deed of Trust, or the Amended and Restated Covenants, which remains uncured after the required notice and expiration of the applicable cure period, the holder may exercise its rights or remedies hereunder or thereunder.

12. Subject to the extensions of time set forth in Section 13, and subject to the further provisions of this Section 12, failure or delay by Borrower to perform any material term or provision of this Note, the Affordable Housing Agreement, the Inclusionary Deed of Trust, or the Amended and Restated Covenants a default under this Note.

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

(b) Any failures or delays by the City 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 City in asserting any of its rights and remedies shall not deprive the City 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 City shall give the Borrower written notice of such default. The Borrower shall have a period of twenty (20) days after such notice is given within which to cure the default prior to exercise of remedies by the City.

(d) If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the City shall give Borrower notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Borrower shall have such period to effect a cure prior to exercise of remedies by the City. 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, continually, 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 the City.

(e) If Borrower fails to take corrective action or cure the default within a reasonable time, the City will give the Senior Lender and, as provided in paragraph (f), below, the Investor Limited Partner, notice thereof. Subject to the terms of Borrower's partnership agreement, the Investor Limited Partner may take such action, including removing and replacing the general partner or managing member of Borrower with a substitute general partner or member, who will effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. The City agrees to accept cures tendered by a Senior Lender or the Investor Limited Partner within the cure periods provided herein. Additionally, if the Senior Lender or Investor Limited Partner is precluded from curing a non-monetary default due to a bankruptcy, injunction, or similar proceeding by or against Borrower or the general partner of Borrower, the City agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Senior Lender or Investor Limited Partner is so precluded from acting, not to exceed ninety days, provided such Investor Limited Partner and Senior Lender are otherwise in compliance with the foregoing provisions. In no event will the City be precluded from exercising remedies if its rights become or are about to become materially jeopardized by a failure to cure a default or if the default is not cured within one hundred eighty (180) days after the first notice of default is given.

(f) After Borrower gives written notice to the City that the Investor Limited Partner has been admitted to the Limited Partnership, the City shall send to the Investor Limited

Partner a copy of all notices of default and all other notices that City sends to Borrower, at the address for the Investor Limited Partner given in Section 17 of this Note.

(g) A notice of default shall be deemed given only if either (i) dispatched by first class mail, registered or certified, postage prepaid, return receipt requested, to the addresses specified for the Borrower and the Investor Limited Partner in Section 17 of this Note, or (ii) by electronic facsimile transmission to the facsimile numbers specified for the Borrower and the Investor Limited Partner in Section 17 of this Note, followed by delivery by the method described in clause (i), or (iii) by personal delivery (including by means of professional messenger or courier service such as United Parcel Service or Federal Express) to the addresses specified for the Borrower and the Investor Limited Partner in Section 17 of this Note. Receipt shall be deemed to have occurred on the earlier of (i) the date of successfully completed electronic facsimile transmission or (ii) the date marked on a written postal service or messenger or courier service receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable). If either party gives notice of a change of address in the manner specified in this paragraph, all notices, demands and communications originated after receipt of the change of address (or the effective date specified in the notice of change of address, if later) shall be transmitted, delivered or sent to the new address.

13. Notwithstanding specific provisions of this Note, non-monetary performance hereunder shall not be deemed to be in default where delays are due to causes beyond the control and without the fault of the party claiming an extension of time to perform (an “Enforced Delay”), provided that they actually delay and interfere with the timely performance of the matter to which they would apply and despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such interference, including: war; insurrection; strikes; lock-outs; 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; litigation including litigation challenging the validity of this transaction or any element thereof; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers; acts of the other party; acts or failure to act of any governmental agency (except acts or failure to act of the City in its capacity as maker of the Inclusionary Loan shall not excuse performance by the City); the imposition of an applicable moratorium by a governmental agency; or any other cause which despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such delay and interference. Notwithstanding the foregoing, none of the foregoing events shall constitute an Enforced 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 the event commenced, and the estimated delay resulting therefrom. The party claiming an Enforced Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event.

14. If the rights created by this Note are 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.

15. The Inclusionary Deed of Trust securing this Note shall be subordinate and junior to the Senior Loans, to the extent and in the manner provided in the applicable subordination agreement(s) dated around the date hereof.

16. The City agrees that the lien of the Inclusionary Deed of Trust will be subordinate to the extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "Extended Use Agreement") recorded against the Project; provided that such Extended Use Agreement, by its terms, shall terminate upon foreclosure under the Inclusionary Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure or comparable conversion of the Loan, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, will also apply: for a period of three years from the date of foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the tenants occupying those units at the time of foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code. Borrower acknowledges and agrees that a default, event of default, or breach (however such terms may be defined) under the Extended Use Agreement will be an event of default under this Note and the Inclusionary Deed of Trust and that all costs, damages or other amounts, including reasonable attorneys' fees incurred by the City as a result of an event of default by Borrower, and all amounts paid by the City to cure any default under the Extended Use Agreement will be an obligation of Borrower and become a part of the debt evidenced by this Note and secured by the Inclusionary Deed of Trust.

17. (a) The obligation to repay the Inclusionary Loan is a nonrecourse obligation of the Borrower and its partners. Neither the Borrower nor any of its general or limited partners, nor any other party, shall have any personal liability for repayment of the loan. The sole recourse of the City with respect to repayment of the Inclusionary Loan shall be the exercise of its rights against the Property and the Improvements and any related security for the Inclusionary Loan. Notwithstanding the foregoing, the City may:

(i) 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 Inclusionary Loan; and

(ii) recover directly from Borrower or any other party:
AFFORDABLE HOUSING AGREEMENT
BEACH HOUSING PARTNERS LP
ATTACHMENT NO. 10 – INCLUSIONARY NOTE
PAGE 13

(A) all damages, costs and expenses incurred by the City 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;

(B) all damages, costs and expenses incurred by the City as a result of misappropriation of funds provided for the construction of the Improvements, as described in the Affordable Housing Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds;

(C) all amounts owing by Borrower pursuant to Borrower's indemnification regarding Hazardous Substances provided to the City in connection with the Affordable Housing Agreement; and

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

18. (a) The address of Borrower for purposes of receiving notices pursuant to this Note is as follows: c/o Jamboree Housing Corporation, 17701 Cowan, Suite 200, Irvine, CA 92614, Attention: Michael Massie, Chief Development Officer. Borrower's facsimile number is [_____]. The addresses for copies of notices delivered to Borrower pursuant to this Note are as follows:

With a copy to:

Rutan & Tucker, LLP
Attn: Patrick D. McCalla, Esq.
18575 Jamboree Road, 9th Floor
Irvine, California 92612

(b) The address of Investor Limited Partner for purposes of receiving notices pursuant to this Note is as follows: [_____].

19. In addition to the other terms of this Note, Borrower hereby agrees and acknowledges that, notwithstanding any internal accounting procedures or provision pertaining to the use of receipts, payments, reserves and distributions contained in its Limited Partnership Agreement or other organizational document, the terms of this Note and the Affordable Housing Agreement shall

control as to the use of the City's Affordable Housing Trust Fund provided under the Affordable Housing Agreement and all operating income from the Project.

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

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

“BORROWER”

BEACH HOUSING PARTNERS LP

a California limited partnership

By: JHC-Beach LLC, a California limited liability company

Its: Managing General Partner

By: Jamboree Housing Corporation,
a California nonprofit public benefit corporation

Its: Manager

By _____

Name: Michael Massie

Title: Chief Development Officer

ATTACHMENT NO. 11
INCLUSIONARY DEED OF TRUST

(behind this page)

Recording Requested by
and When Recorded Return to:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GOVERNMENT BUSINESS
Free Recording Requested
(Govt. Code §27383)

APN: 159-031-18

**DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING
(WITH ASSIGNMENT OF RENTS)
(INCLUSIONARY LOAN)**

This Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) is given by BEACH HOUSING PARTNERS LP, a California limited partnership (hereinafter referred to as "Trustor") (whose address is c/o Jamboree Housing Corporation, 17701 Cowan, Suite 200, Irvine, California 92614, Attention: Michael Massie, Chief Development Officer; with a copy to Rutan & Tucker, LLP, 18575 Jamboree Road, 9th Floor, Irvine, California 92612, Attn: Patrick D. McCalla, Esq., to FIRST AMERICAN TITLE INSURANCE COMPANY, (hereinafter called "Trustee"), for the benefit of THE CITY OF HUNTINGTON BEACH, a municipal corporation of the state of California (hereinafter called "Beneficiary"), whose address is City of Huntington Beach, 2000 Main Street, Huntington Beach, California 92648, Attention: City Manager.

Witneseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION all present and future right, title and interest of Trustor in and to the following property (the "Trust Estate"):

(a) That certain real property in the City of Huntington Beach, County of Orange, State of California more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereafter referred to as the "Subject Property");

AFFORDABLE HOUSING AGREEMENT
BEACH HOUSING PARTNERS LP
ATTACHMENT NO. 11 – INCLUSIONARY DEED OF TRUST

(b) All buildings, structures and other improvements now or in the future located or to be constructed on the Subject Property (the “Improvements”);

(c) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefiting or otherwise relating to the Subject Property or the Improvements, including easements, rights-of-way and development rights (the “Appurtenances”). (The Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to as the “Real Property”);

(e) subject to the terms of the assignment to Beneficiary set forth in Paragraph 4 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate or the ownership, use, management, operation leasing or occupancy of the Trust Estate, including those past due and unpaid (the “Rents”);

(f) all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code (the “UCC”), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property, but not including personal property that is donated to Trustor (the “Goods,” and together with the Real Property, the “Property”); and

(g) all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate) (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and

unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustor under any such agreements, (viii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types on intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (the “Intangibles”).

Trustor further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustor in and to all Goods and Intangibles and all of the Trust Estate described above in which a security interest may be created under the UCC (collectively, the “Personal Property”). This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Trustee and Beneficiary. Trustee and Beneficiary shall have, in addition to all rights and remedies provided herein, all the rights and remedies of a “secured party” under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Sections 9502(c) and 9604 of the UCC.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may elect, the following:

- (1) due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained herein or contained in the following:
 - (a) a promissory note in the original principal amount of [\$_____], payable from the residual receipts of the Project (“Residual Receipts”), executed by Trustor (“Borrower” therein) of approximately even date herewith (the “Inclusionary Note”);
 - (b) the Affordable Housing Agreement dated as of January 5, 2021 (the “Agreement”), between Trustor and the Beneficiary;
 - (c) the Amended and Restated Agreement Containing Covenants (Including Rental Restrictions) between Trustor, the Huntington Beach Housing Authority, and

Beneficiary recorded concurrently herewith (“Amended and Restated Covenants”);
and

- (2) payment of indebtedness of the Trustor to the Beneficiary in the principal sum of [\$_____] or so much thereof as shall be advanced, evidenced by the Inclusionary Note, with interest, according to the terms of the Inclusionary Note.

The Agreement, including all Attachments thereto, and the documents and instruments executed by Trustor in connection with the Project, including the Amended and Restated Covenants, the Inclusionary Note, the Assignment of Rents, the Assignment of Agreements, and the UCC1 Financing Statement, all as described in the Agreement (collectively referred to as the “Secured Obligations”) and all of their terms are incorporated herein by reference and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances evidenced by any note reciting that it is secured hereby. Any capitalized term that is not otherwise defined in this Deed of Trust shall have the meaning ascribed to such term in the Agreement.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. That Trustor shall pay the Inclusionary Note at the time and in the manner provided therein, and perform the obligations of the Developer as set forth in the Secured Obligations at the time and in the manner respectively provided therein;
2. That Trustor shall not permit or suffer the use of any of the Property for any purpose other than the uses permitted by the Amended and Restated Covenants;
3. That the Secured Obligations are incorporated in and made a part of this Deed of Trust. Upon default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable.
4. That, subject to the prior rights, if any, of a lender whose lien is senior to this Deed of Trust (“Senior Lender”), all rents, profits and income from the Trust Estate are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the Agreement.

5. That upon default hereunder or under the aforementioned agreements, and after the giving of notice and the expiration of any applicable cure period, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the Trust Estate and operate same and collect the rents, profits and income therefrom;

6. That Trustor will keep the improvements hereafter constructed on the Subject Property in accordance with the Agreement insured against loss by fire and such other hazards, casualties, and contingencies as required by the Agreement and the Amended and Restated Covenants, and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies. In no event shall the amounts of coverage be less than 100 percent of the insurable value of the Property. Such policies shall be endorsed with standard mortgage clause with loss payable to the Beneficiary and certificates thereof together with copies of original policies shall be deposited with the Beneficiary;

7. To pay, at least 10 days before delinquency, all taxes and assessments affecting the Property; to pay, when due, all encumbrances, charges and liens, with interest, on the Property or any part thereof which appear to be prior or superior hereto; and to pay all costs, fees, and expenses of this Trust. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as Trustor is contesting the legality thereof in good faith and by appropriate proceedings, and Trustor has adequate funds to pay any liabilities contested pursuant to this Section 7.

8. To keep the Property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon (subject to Trustor's right to contest the validity or applicability of laws or regulations); not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law and/or covenants, conditions and/or restrictions affecting the Property; not to permit or suffer any material alteration of or addition to the buildings or improvements hereafter constructed in or upon the Property without the consent of the Beneficiary;

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

10. Should Trustor fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Following default, after the giving of notice and the expiration of any applicable cure period, Beneficiary or Trustee being authorized to enter upon said property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the reasonable judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay his reasonable fees. Notwithstanding the foregoing, in the event of default under this Deed of Trust, the Beneficiary may also require Trustor to maintain and submit additional records. Beneficiary shall specify in writing the particular records that must be maintained and the information or reports that must be submitted;

11. Beneficiary shall have the right to pay fire and other property insurance premiums when due should Trustor fail to make any required premium payments after the giving of notice and the expiration of any applicable cure period. All such payments made by the Beneficiary shall be added to the principal sum secured hereby;

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in the Inclusionary Note;

13. That the funds to be advanced hereunder are to be used in accordance with the Secured Obligations and upon the failure of Trustor, after the giving of notice and the expiration of any applicable cure period, to keep and perform all the covenants, conditions, and agreements of said agreements, the principal sum and all arrears of interest, and other charges provided for in the Inclusionary Note shall at the option of the Beneficiary of this Deed of Trust become due and payable, anything contained herein to the contrary notwithstanding;

14. Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the property subject to this Deed of Trust any lien or liens except as permitted by the Secured Obligations or otherwise approved by Beneficiary in Beneficiary's reasonable discretion, and further that it will keep and maintain the Property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be obligated to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting, provided that Trustor shall, at

Beneficiary's written request, within thirty (30) days after the filing of any claim or lien (but in any event, and without any requirement that Beneficiary must first provide a written request, prior to foreclosure) record in the Office of the Recorder of Orange County, a surety bond in an amount one-and-one-half (1 1/2) times the amount of such claim item to protect against a claim of lien, or provide such other security reasonably satisfactory to Beneficiary;

15. That any and all improvements made or about to be made upon the premises covered by the Deed of Trust, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other applicable regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;

16. Trustor herein agrees to pay to Beneficiary or to the authorized loan servicing representative of the Beneficiary a reasonable charge for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2 Title 14, Division 3, of the California Civil Code.

IT IS MUTUALLY AGREED THAT:

17. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, subject to the rights of the beneficiary of any other lien on the Property that is senior to the lien of this Deed of Trust ("Senior Lender"), Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor which are not used to reconstruct, restore or otherwise improve the Property or part thereof that was taken or damaged, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. Subject to the rights of the Senior Lenders, all such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the Property or part thereof that was taken or damaged, including the proceeds of any policies of fire and other insurance affecting the Property, are hereby assigned to Beneficiary. After deducting therefrom all its expenses, including attorney's fees, the balance of the proceeds which are not used to reconstruct, restore or otherwise improve the Property or part thereof that was taken or damaged, shall be applied to the amount due under the Inclusionary Note secured hereby. No amount applied to the reduction of the principal shall relieve the Trustor from making regular payments as required by the Inclusionary Note;

18. Upon default by Trustor in making any payments provided for in the Inclusionary Note secured hereby or in this Deed of Trust, or in performing any obligation set forth in any of the

Secured Obligations, and if such default is not cured within the respective time provided therefor in Section 34 of this Deed of Trust, below, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the property to be sold, which notice Trustee shall cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary shall also deposit with Trustee this Deed, the Note and all documents evidencing expenditures secured hereby;

19. a. Prior to the repayment in full of the Inclusionary Loan, the Trustor shall not assign or attempt to assign the Agreement or any right therein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property, the Project thereon, or any portion thereof or interest therein (referred to hereinafter as a "Transfer"), without prior written approval of the Beneficiary, except as otherwise permitted in the Inclusionary Note. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary shall not unreasonably withhold or delay its consent. If consent is given, any such transfer shall be subject to this Section 19, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein, subject to the provisions of paragraph e(3) of this Section 19.

b. In connection with any assignment that requires Beneficiary consent, any such proposed transferee shall have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the Beneficiary, to fulfill the obligations undertaken by Trustor in the Agreement and the Inclusionary Loan Documents. Any such proposed transferee, by instrument in writing satisfactory to the Beneficiary and in form recordable among the land records of Orange County, for itself and its successors and assigns, and for the benefit of the Beneficiary shall expressly assume all of the obligations of the Trustor under the Agreement and the Inclusionary Loan Documents, and agree to be subject to all conditions and restrictions applicable to the Trustor in this Deed of Trust, subject to the provisions of paragraph e(3) of this Section 19. There shall be submitted to the Beneficiary for review all instruments and other legal documents proposed to effect any such transfer; and if approved by the Beneficiary, which approval shall not be unreasonably withheld, conditioned, or delayed, its approval shall be indicated to the Trustor in writing.

c. In the absence of specific written agreement by the Beneficiary, which agreement will not be unreasonably withheld, no Transfer, or approval thereof by the Beneficiary, shall be deemed to relieve the Trustor or any other party from any obligations under the Agreement or any other Inclusionary Loan Document.

d. In the event of a Transfer prior to the time the Inclusionary Loan is paid in full and without the prior written consent of the Beneficiary (if such consent is required), the net

proceeds (after repayment in full of the loan from the proceeds of the Permanent Loan and the reconveyance of the Permanent Deed of Trust), shall be paid to the Beneficiary to the extent necessary to pay in full the accrued interest, if any, current interest and remaining principal balance of the Inclusionary Loan.

e. (1) As used herein, “Transfer” includes the sale, agreement to sell, transfer or conveyance of the Property, the Project, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land 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, except as provided in subparagraph e(3) of this Section 19, below.

(2) “Transfer” shall also include the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in Trustor, or any conversion of Trustor to an entity form other than that of Trustor at the time of execution of the Agreement, except that a cumulative change in ownership interest of any general partner of forty-nine percent (49%) or less shall not be deemed a “Transfer” for purposes of this Deed of Trust.

(3) Notwithstanding paragraphs (1) and (2), above, “Transfer” shall not include any of the following Permitted Transfers:

(a) a conveyance of a security interest to the beneficiary of a deed of trust securing a loan approved by the City to be prior in right to the Inclusionary Loan, or the conveyance of title to the Property or Project in connection with a foreclosure, a deed in lieu of foreclosure or similar conversion of such loan;

(b)(i) Subject to subparagraph (b)(ii), below, a conveyance of the Property or Project to a limited partnership in which the managing general partner is Trustor or Trustor’s General Partner, or a sale back from such partnership to Trustor or such General Partner, or the substitution of such General Partner as directed by the Investor Limited Partner in accordance with the terms of the Limited Partnership Agreement.

(ii) Notwithstanding any provision to the contrary contained herein, any event described in subparagraph (b)(i) shall not be deemed to be a Permitted Transfer unless Beneficiary reasonably determines, which determination shall not be unreasonably withheld, that Trustor’s General Partner remains, or another entity reasonably acceptable to Beneficiary (which shall not be unreasonably withheld) becomes, the controlling and managing general partner of Trustor.

(c) The leasing for occupancy of all or any part of the Property or Project in accordance with the Agreement and the Amended and Restated Covenants.

(d) The inclusion of equity participation by Trustor by transfer or addition of limited partners to Trustor or similar mechanism.

(e) The pledge by a General Partner to the Investor Limited Partner of the General Partner's interest in Trustor, as security for the performance of all of the General Partner's obligations under the Limited Partnership Agreement.

(f) The sale, transfer or pledge of a limited partnership interest in Trustor or of a partnership interest in the Investor Limited Partner.

(g) The appointment by the Investor Limited Partner, in accordance with the Limited Partnership Agreement, of an additional or substitute General Partner that is an Affiliate of the Investor Limited Partner or, if not an Affiliate of the Investor Limited Partner, is reasonably acceptable to Beneficiary.

(h) The withdrawal, removal and/or replacement of a general partner of Trustor pursuant to the terms of Trustor's Limited Partnership Agreement, provided that any required substitute general partner is reasonably acceptable to Beneficiary, as evidenced by the Beneficiary's written consent, and is selected with reasonable promptness (except that no such consent shall be required if the substitute general partner is an Affiliate of the Investor Limited Partner).

(i) A transfer of a general partner's interest to the limited partner pursuant to the option provided to it in connection with Trustor's Limited Partnership Agreement, or a conveyance to a general partner of Trustor of Trustor's interest in the Property and the improvements or a transfer of limited partnership interests to a general partner of Trustor pursuant to the option provided to that general partner in Trustor's Limited Partnership Agreement.

(j) The transfer of all or any part of the Project or Property to Jamboree Housing Corporation, or an entity directly controlled by Jamboree Housing Corporation, or an entity in which Jamboree Housing Corporation is the general partner or managing member.

(k) Any dilution of a General Partner's interest in Trustor in accordance with the Limited Partnership Agreement.

f. Beneficiary shall not unreasonably withhold, condition or delay its approval of any matter for which its approval is required hereunder. Any disapproval shall be in writing and contain Beneficiary's reasons for disapproval.

20. After the lapse of such time as may then be required by law following the recordation of a notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee's fees or attorney's fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the Inclusionary Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto;

21. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee;

22. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law;

23. Upon written request of Beneficiary stating that all sums secured hereby have been paid and all obligations secured hereby have been satisfied, and upon surrender of this Deed of Trust and the Inclusionary Note to Trustee for cancellation and retention and upon payment of its fees,

Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as “the person or persons legally entitled thereto”;

24. The trust created hereby is irrevocable by Trustor;

25. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term “Beneficiary” shall include not only the original Beneficiary hereunder but also any future owner and holder including pledgees, of the Inclusionary Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustor hereunder are joint and several;

26. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee. Beneficiary, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law;

27. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address set forth on the first page of this Deed of Trust. After Trustor gives written notice to Beneficiary that the Investor Limited Partner has been admitted to the Trustor, Beneficiary shall send to the Investor Limited Partner a copy of all notices of default and all other notices that Beneficiary sends to Trustor, at the address for the Investor Limited Partner as provided by written notice to Beneficiary by Trustor.

28. Trustor agrees at any time and from time to time upon receipt of a written request from Beneficiary, to furnish to Beneficiary detailed statements in writing of income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the premises and their use as may be requested by Beneficiary.

29. Trustor agrees that the loan secured by this Deed of Trust is made expressly for the purpose of financing the construction of improvements on the Property, including 42 dwelling units

of affordable housing for extremely low, very low, and low income households, and such dwelling units shall be occupied exclusively by such persons as set forth in the Secured Obligations.

30. Trustor agrees that, except as otherwise provided in the Inclusionary Note, upon sale or refinancing of the property, the entire principal balance of the debt secured by this Deed of Trust, plus any accrued but unpaid interest thereon, shall at the option of Beneficiary be immediately due and payable.

31. The obligation to repay the Inclusionary Loan is a nonrecourse obligation of the Trustor and its partners. Neither Trustor nor any of its general or limited partners, nor any other party, shall have any personal liability for repayment of the loan. The sole recourse of Beneficiary shall be the exercise of its rights against the Property and any related security for the Inclusionary Loan. Notwithstanding the foregoing, Beneficiary may recover directly from Trustor or from any other party:

- (a) all damages, costs and expenses incurred by Beneficiary as a result of fraud or any criminal act or acts of Trustor or any partner, shareholder, officer, director or employee of Trustor, or of any general partner of Trustor, or of any member of a general partner of Trustor;
- (b) all damages, costs and expenses incurred by Beneficiary as a result of misappropriation of funds provided for the construction of the Project, as described in the Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds;
- (c) any and all amounts owing by Trustor pursuant to the indemnification regarding Hazardous Substances pursuant to the Environmental Indemnity; and
- (d) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that Beneficiary shall pay Trustor's reasonable court costs and attorneys' fees if Trustor is the prevailing party in such enforcement or collection action).

32. Notwithstanding specific provisions of this Deed of Trust, non-monetary performance hereunder shall not be deemed to be in default where delays or defaults are proximately caused by any of the following Force Majeure events, provided such event actually delays and interferes with the timely performance of the matter, and, despite the exercise of diligence and good business practices, such event is beyond the reasonable control of Trustor: War; insurrection; strikes; lock-outs; 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; litigation including litigation challenging the validity of this transaction or any element thereof; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers; acts of the other party; acts or failure to act of any Governmental Authority (except acts or failure to act of the Beneficiary in its capacity as lender shall not excuse performance by the Beneficiary); the imposition of any applicable moratorium by a Governmental Authority; or any other causes which despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such delay and interference. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Event unless and until Trustor delivers to Beneficiary written notice describing the event, its cause, when and how Trustor obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Trustor shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event.

33. If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the Secured Obligations, the unsecured portion of such obligations shall be completely performed and paid prior to the performance and payment of the remaining and secured portion of the obligations, and all performance and payments made by Trustor shall be considered to have been performed and paid on and applied first to the complete payment of the unsecured portion of the obligations.

34. (a) Subject to the extensions of time set forth in Section 32, and subject to the further provisions of this Section 34, failure or delay by Trustor to perform any term or provision respectively required to be performed under the Secured Obligations or this Deed of Trust constitutes a default under this Deed of Trust.

(b) Beneficiary shall give written notice of default to Trustor, specifying the default complained of by the Beneficiary. Failure or 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 Beneficiary 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 Beneficiary in asserting any of its rights and remedies shall not deprive Beneficiary 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, prior to exercising any remedies hereunder, Beneficiary shall give Trustor written notice of such default. Trustor shall have a period

of twenty (20) days after such notice is given within which to cure the default prior to exercise of remedies by Beneficiary.

(e) If a non-monetary event of default occurs, prior to exercising any remedies hereunder, Beneficiary shall give Trustor notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Trustor shall have such period to effect a cure prior to exercise of remedies by Beneficiary. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Trustor (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary. If Trustor fails to take corrective action or cure the default within a reasonable time, Beneficiary shall give Trustor and, as provided in paragraph (f), below, the Investor Limited Partner notice thereof, whereupon the Investor Limited Partner may remove and replace the general partner with a substitute general partner, who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. Beneficiary agrees to accept cures tendered by the Investor Limited Partner within the cure periods provided in this Deed of Trust or within the time periods provided in Civil Code Section 2924c, whichever is longer. Additionally, in the event the Investor Limited Partner is precluded from curing a non-monetary default due to an inability to remove the general partner as a result of a bankruptcy, injunction, or similar proceeding by or against Trustor or its general partner, Beneficiary agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Investor Limited Partner is so precluded from acting, not to exceed 90 days, provided such limited partner is otherwise in compliance with the foregoing provisions. In no event shall Beneficiary 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 one hundred eighty (180) days after the first notice of default is given.

(f) After Trustor gives written notice to Beneficiary that the Investor Limited Partner has been admitted to the Trustor, Beneficiary shall send to the Investor Limited Partner a copy of all notices of default and all other notices that Beneficiary sends to Trustor, at the address for the limited partner as provided by written notice to Beneficiary by Trustor.

(g) Except as otherwise required to comply with the provisions of California Civil Code Section 2924 et seq. that are applicable thereto, any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered 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 Trustor; 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.

35. This Deed of Trust shall be subordinate and junior to each deed of trust securing a Senior Loan (“Senior Deed of Trust”) The term “Senior Loan” shall have the meaning given to it in the Inclusionary Note. Following the reconveyance of a Senior Deed of Trust, this Deed of Trust will be subordinate and junior to the deed of trust in favor of the maker of the permanent or take-out loan replacing such Senior Loan (each of which permanent or take-out loans is referred to herein as a “Senior Loan”). Beneficiary shall execute such instruments as may be necessary to subordinate the lien of this Deed of Trust, to the deed of trust securing a Senior Loan and any regulatory agreement recorded in connection with the Four Percent Tax Credit (as defined in Section 36 below). In the event of a default or breach by Trustor of a security instrument securing a Senior Loan described in this Section 35, Beneficiary shall have the right to cure the default prior to completion of any foreclosure. In such event, Beneficiary shall be entitled to reimbursement by Trustor of all costs and expenses incurred by Beneficiary in curing the default. The amount of all such disbursements shall be a lien against the Property and added to the obligation secured by this Deed of Trust until repaid, with interest at the highest rate permitted by law.

36. Trustor has informed Beneficiary that Trustor intends that the Project qualify for an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code (“Four Percent Tax Credit”). Beneficiary acknowledges that Trustor and the Tax Credit Allocation Committee have or intend to enter into an Extended Use Agreement. Beneficiary acknowledges and agrees that, in the event of a foreclosure of its interest under this Deed of Trust or delivery by Trustor of a deed in lieu thereof (collectively, a “Foreclosure”), the following rule contained in Section 42(h)(6)(E)(ii) of the Code shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the eligible tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

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

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

“TRUSTOR”

BEACH HOUSING PARTNERS LP
a California limited partnership

By: JHC-Beach LLC, a California limited liability company
Its: Managing General Partner

By: Jamboree Housing Corporation,
a California nonprofit public benefit corporation

Its: Manager

By: _____
Michael Massie
Chief Development Officer

Exhibit A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 2, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 76, PAGE 4 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN:159-031-18

ATTACHMENT NO. 12
ASSIGNMENT OF AGREEMENTS

(behind this page)

ASSIGNMENT OF AGREEMENTS

FOR VALUE RECEIVED, the undersigned, BEACH HOUSING PARTNERS LP, a California limited partnership (“Borrower”), assigns to THE CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (“City”), 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 City.

This ASSIGNMENT OF AGREEMENTS AND PLANS AND SPECIFICATION (“Assignment”) constitutes a present and absolute assignment to City as of the date of this Assignment; provided, however, City 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 January 5, 2021, between City, Borrower, and the Huntington Beach Housing Authority (“Authority”) (the “Affordable Housing Agreement”), as well as any future amendments and implementation agreements between City, 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, City 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, City 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 City 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 City 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 City and each Senior Lender 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 City'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 City), for security or any other purposes, its rights under the Architectural Agreements or with respect to the Plans and Specifications without City'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 City; 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.

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 _____202_.

“BORROWER”

BEACH HOUSING PARTNERS LP
a California limited partnership

By: JHC-Beach LLC, a California limited liability
company

Its: Managing General Partner

By: Jamboree Housing Corporation,
a California nonprofit public benefit
corporation

Its: Manager

By: _____
Name: Michael Massie
Title: Chief Development 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, City shall become the owner of 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, City 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 City 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 City, Architect will give written notice to City of such breach at the address shown below. City shall have thirty (30) days from the receipt of such written notice of default to remedy or cure said default. Nothing herein shall require City 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 City and each Senior Lender 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 _____, 20____.

By: _____

Name:

Title:

City's Address:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: City Manager

SCHEDULE OF UNPAID CLAIMS

Schedule 1 to Assignment of Architectural Agreements and Plans and Specifications dated as of _____, 20____ between BEACH HOUSING PARTNERS LP, a California limited partnership, as Borrower, and CITY OF HUNTINGTON, as City.

EXHIBIT A

PROPERTY DESCRIPTION

REAL PROPERTY IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 2, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF
CALIFORNIA, AS PER MAP RECORDED IN BOOK 76, PAGE 4 OF PARCEL MAPS, IN
THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 159-031-18

ATTACHMENT NO. 13
ENVIRONMENTAL INDEMNITY

(behind this page)

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this “Indemnity”), dated as of _____, 202_ is made by BEACH HOUSING PARTNERS LP, a California limited partnership (referred to as “Borrower”), in favor of the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (“City”).

WITNESSETH

WHEREAS, Borrower is the owner of 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, City, and the Huntington Beach Housing Authority entered into that certain Affordable Housing Agreement, dated as of January 5, 2021 (the “Affordable Housing Agreement”), pursuant to which the City agreed to make a loan of HOME Funds and a loan of Affordable Housing Trust Funds (collectively, the “Loans”) to Borrower for the purpose of providing financing for the payment of development costs, including property acquisition, for affordable housing purposes (the Affordable Housing 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 City this Indemnity to induce the City to make the Loans.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Borrower hereby agrees with the City 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 Affordable Housing Agreement with the same force and effect as if set forth in full below.

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, except for de minimis quantities used at the Property in compliance with all applicable environmental laws and commonly used in connection with the routine construction, operation and maintenance of the Property, without the express written approval of the City 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 City.

(d) The City shall have the right, at any time, to conduct an environmental audit of the Property at the City'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 City 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 City 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 City 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 must promptly advise the City in writing of any of the following, upon Borrower's knowledge of the same: (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 City and its officials, officers, employees and agents 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, 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 City 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 material breach of any covenant made by Borrower in Section 2.1 hereof; or
- (c) The enforcement by the City 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 City 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 City 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 City 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 City 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 City 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 the City 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 the City 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 City 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 Loans 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 City's recourse to property encumbered by the Deed of Trust securing the Loans,

or to any other security, or limiting the City'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 Loans, 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 Loans;

(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 Loans; 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 Loans 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 Loans or the release or other extinguishment of any security for the Loans); 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 City 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 City 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 City, 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 City protect, secure, perfect, or insure any security interest or lien in or on any property subject thereto;
- (g) Any requirement that the City 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 City 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 City, including, without limitation, an election to proceed by nonjudicial foreclosure or which destroys or otherwise impairs the subrogation rights of the City or any other right of the City 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 City:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: City Manager

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

In the case of Borrower:

Beach Housing Partners LP
c/o Jamboree Housing Corporation
17701 Cowan, Suite 200
Irvine, CA 92614
Attention: Michael Massie, Chief Development Officer

With a copy to:
Rutan & Tucker, LLP
Attn: Patrick D. McCalla, Esq.
18575 Jamboree Road, 9th Floor
Irvine, California 92612

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 City 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 City, 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 City, 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 City 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 City 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 City under any Loan Document against any party thereto are not conditional or contingent on any attempt by the City 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 City hereunder, to the benefit of the City, and its directors, officers, employees, and agents, any successors to the City'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 City'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 City 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 City herein or otherwise. Other than a Permitted Transfer, none of the rights or obligations of Borrower hereunder may be assigned or otherwise transferred without the prior written consent of the City.

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.

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

“BORROWER”

BEACH HOUSING PARTNERS LP
a California limited partnership

By: JHC-Beach LLC, a California limited liability
company

Its: Managing General Partner

By: Jamboree Housing Corporation,
a California nonprofit public benefit
corporation

Its: Manager

By: _____
Name: Michael Massie
Title: Chief Development Officer

Exhibit A

LEGAL DESCRIPTION

REAL PROPERTY IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 2, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF
CALIFORNIA, AS PER MAP RECORDED IN BOOK 76, PAGE 4 OF PARCEL MAPS, IN
THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 159-031-18

ATTACHMENT NO. 14
WAIVER AND CONCESSION AGREEMENT

(behind this page)

Recording Requested by
and When Recorded Return to:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GOVERNMENT BUSINESS

Free Recording Requested

(Govt. Code §27383)

APN: 159-031-18

**DENSITY BONUS LAW
WAIVER AND CONCESSION AGREEMENT**

THIS DENSITY BONUS LAW WAIVER AND CONCESSION AGREEMENT (“Agreement”) dated as of _____] 202_, is entered into by and between THE CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (“City”), and BEACH HOUSING PARTNERS LP, a California Limited Partnership and its successors and assigns (“Owner”), as follows.

RECITALS

A. Owner is the owner of a fee interest in certain real property located in the City of Huntington Beach, County of Orange, State of California, identified as APN 159-031-18, located at 18431 Beach Boulevard, Huntington Beach, California and legally described in Exhibit “A” attached hereto and incorporated by reference (“Property”).

B. Owner proposes to construct a 43-unit rental housing development, consisting of one 4-story Type V residential building above a partially subterranean parking garage plus associated amenities (“Residential Development”). The project will include 42 one-bedroom resident units and 1 two-bedroom manager’s unit.

C. One hundred percent (100%) of the 42 resident units will be available to and occupied by senior households whose incomes do not exceed the maximum income of low income households in Orange County as determined by the California Department of Housing and Community Development.

D. The Beach and Edinger Corridors Specific Plan (BESCP) imposes a Special Building Height Limit (BECSP 2.3.1.3 Building Height) that restricts the height of new developments that are adjacent to an existing residential building that is three floors or less.

E. Because 100% of the resident units in the Residential Development will be affordable to low income senior households, Government Code section 65915(d)(2)(D) entitles the Residential Development to four incentives or concessions. Pursuant to Government Code section 65915(d)(1) and Huntington Beach Zoning Code, Section 230.14D, Owner has requested that the City grant a concession on the Special Building Height Limit with respect to the Residential Development, which would result in identifiable and actual cost reductions to provide for affordable units and has demonstrated such cost reductions to the satisfaction of the City.

F. City and Owner enter into this Agreement pursuant to and in accordance with Government Code Section 65915, *et seq.*, and Section 230.14 of the Huntington Beach Zoning Code, in order to assure that the Residential Development will provide the required number of units affordable to low income households and that those units will remain affordable for at least fifty-five (55) years.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties agree as follows:

AGREEMENT

1. Recitals. The Recitals set forth above are true and correct, and incorporated herein.
2. Definitions. For purposes of this Agreement, the terms listed below shall have the meanings thereafter specified:
 - a. “Adjusted for Household Size Appropriate for the Unit” means a household of two persons in the case of a one-bedroom unit and a household of three persons in the case of a two-bedroom unit.
 - b. “Affordable Rent” means a rent that, when added to the Utility Allowance, does not exceed thirty (30) percent of sixty (60) percent of the Orange County median income as determined annually by the California Department of Housing and Community Development, Adjusted for Household Size Appropriate for the Unit.
 - c. “Affordable Unit” means a dwelling unit that will be offered for rent exclusively to an Income Eligible Household at an Affordable Rent pursuant to this Agreement.

d. “Director” means City’s Director of Community Development, or his or her designee.

e. “Income Eligible Household” means a Low Income Household which is eligible to rent a particular Affordable Unit.

f. “Low Income Household” shall have the meaning ascribed to “lower income households” under California Health and Safety Code Section 50105. The upper income limit for Low Income Households shall be the income limits for such households published annually by the California Department of Housing and Community Development with adjustments for household size.

g. “Management Plan” means a plan prepared by the Owner and approved by the Director describing in detail the management of the Affordable Units, including marketing of the Affordable Units, tenant selection criteria and process, waiting list management, application of Utility Allowances in setting Affordable Rents, and similar details of the operation, annual monitoring inspections and file review, and a schedule of initial rents.

h. “Occupancy Date” means the issuance of a Certificate of Occupancy by the City.

i. “Owner” means the person or entity defined as such in the introductory paragraph of this Agreement, and includes all successors and assigns of that person or entity.

j. “Property” shall have the meaning defined in Recital “A,” as more particularly described in Exhibit “A” attached hereto and incorporated herein.

k. “Residential Development” shall have the meaning given in Recital “B”.

l. “Utility Allowance” means an amount designated annually by the City as a reasonable estimate of the cost of utilities for the Affordable Unit, for purposes of calculating Affordable Rent.

3. Approvals. The Residential Development shall be developed in accordance with all applicable provisions of the Huntington Beach Zoning Code and the Huntington Beach Municipal Code.

4. Affordable Units. Owner hereby covenants and agrees that one hundred percent (100%) of the resident units in the Residential Development (42 units) shall be rented exclusively to Low Income Households, at an Affordable Rent.

5. Affordable Rents. Affordable Rents for Affordable Units, including Utility Allowances, shall be based on the Orange County Area Median Income published by the

California Department of Housing and Community Development, as may be adjusted from time to time. Affordable Rents may not be increased more frequently than annually to reflect increases in Area Median Income.

6. Term of Affordability Covenants. The covenants to restrict the rental of the Affordable Units in accordance with this Agreement shall remain in effect for a term commencing on the Occupancy Date and continuing for fifty-five (55) years (“Term”). Prior to recording of this Agreement, Owner must deliver to the City a Lenders Consent and Subordination Agreement (“Lender Consent”), in the form appended to this Agreement, from each lender that will hold a security interest in the Property. Such Lender Consents shall be recorded as a substantive part of this Agreement.

7. Management Plan. The Owner shall submit the Management Plan for the Director’s consideration and approval at least one hundred eighty (180) days prior to the date that the Owner applies for a Certificate of Occupancy for the Residential Development. Such approval shall not be unreasonably withheld. In addition to other components, the Management Plan shall contain the following:

a. Selection of Tenants.

i. Owner shall conduct affirmative marketing of the Affordable Units, as they become available from time to time, including wide circulation of information and public notice of the availability of Affordable Units for rent during the marketing period required by the Management Plan.

ii. Owner shall determine eligibility of Low Income Households that may lease the Affordable Units in accordance with 25 CCR 6914 and the Management Plan.

8. Changes in Tenant Income. A tenant who initially qualified as a Low Income Household, but who, due to an increase in income, no longer qualifies as a Low Income Household shall pay as rent an amount that is the lower of the amount that would be payable by the tenant under (i) low income housing tax credit regulations, or (ii) State law.

9. Utilization of Affordable Rental Units. All Affordable Units required by this Agreement shall be leased or rented and fully utilized in accordance with this Agreement; notwithstanding any other provision of law to the contrary, no Affordable Unit shall be withdrawn from the market or otherwise held vacant, except during reasonable periods of maintenance and/or rehabilitation.

10. No Sublease. A tenant occupying an Affordable Unit may not sublet the unit without the written permission of both Owner and City. The City shall not grant permission to lease, rent, or sublet the unit if it finds that the prospective tenant or occupant is not an Income

Eligible Household. Any individual who subleases an Affordable Unit in violation of the provisions of this Agreement shall be required to forfeit to City all monetary amounts so obtained.

11. Lease Agreement. Owner's proposed lease agreement for the Affordable Units shall be provided to the City for approval at the same time as Owner's proposed Management Plan. Once approved, Owner shall not substantially modify the terms of the lease agreement without prior City approval. City approvals required by this Section shall not be unreasonably withheld.

12. Maintenance of Units. Owner shall: (a) maintain and operate all units on the Property so as to provide decent, safe and sanitary housing consistent with federal housing quality standards and the Huntington Beach Municipal Code; (b) make any required repairs or provide any required cleanup; and (c) provide the Affordable Units with the same levels of services and maintenance as are provided to any of the other dwelling units on the Property.

13. Annual Report. Owner shall maintain complete and accurate records pertaining to the Affordable Units, and shall prepare and provide the Director with a written annual report commencing one year after the Occupancy Date and continuing every year for fifty-five (55) years, regarding the rental and occupancy status of the units. The report shall include information regarding the name, address and income of each resident of the Affordable Units, identify the number of bedrooms of the unit and the monthly rent paid by the tenant.

14. Federal and State Laws. Notwithstanding the above provisions, nothing contained herein shall require Owner or City to do anything contrary to or refrain from doing anything required by Federal and State laws and regulations promulgated thereunder applicable to the construction, management, maintenance, and rental of Affordable Units in the City of Huntington Beach.

15. Prohibition Against Discrimination. Except as legally permitted to determine eligibility for senior housing, Owner shall not discriminate against any tenant or potential tenant on the basis of sex, color, race, ethnicity, religion, ancestry, national origin, age, pregnancy, marital status, family composition, sexual orientation, or the potential or actual occupancy of minor children. Owner further agrees to take affirmative action to ensure that no such person is discriminated against for any of the above mentioned reasons.

16. Indemnification. Owner shall defend, indemnify and hold harmless the City of Huntington Beach and its officers, agents, employees, representatives and volunteers from and against any loss, liability, claim or judgment relating solely to this Agreement, including those Claims that arise out of either: (a) a breach of this Agreement by Owner; or (b) related in any manner to the Owner's administration of this Agreement. This indemnification shall not apply to Claims to the extent arising out of the negligence or willful misconduct of the City, its officers, agents, employees, representatives or volunteers.

17. City's Right to Inspect Units and Documents. The City may inspect the Affordable Units (subject to the tenant's privacy rights and lease provisions) and any documents or records relating thereto, at any reasonable time and after providing reasonable prior written notice to Owner in order to determine Owner's compliance with this Agreement.

18. Successors and Assigns. This Agreement and its covenants and conditions shall run with the land and be binding upon and inure to the benefit of City and Owner, and their respective successors, owners by deed, deed-in-lieu of foreclosure, foreclosure or otherwise, and assigns. City reserves the right to designate another public agency within the City of Huntington Beach to perform City's obligations or to exercise City's rights under this Agreement.

19. Notices. All notices required herein shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt and shall be deemed to be effective on the date received or the date delivery was refused as indicated on the return receipt, as follows:

To Owner: Beach Housing Partners LP
c/o Jamboree Housing Corporation
17701 Cowan, Suite 200
Irvine, CA 92614
Attention: Michael Massie, Chief Development Officer

With a copy to: Rutan & Tucker, LLP
Attn: Patrick D. McCalla, Esq.
18575 Jamboree Road, 9th Floor
Irvine, California 92612

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

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

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section.

20. Governing Law. The laws of the State of California shall govern this Agreement, without giving effect to the principles governing conflicts of laws. Any legal action brought under this Agreement must be instituted in the Superior Court of the County of Orange, State of

California, in an appropriate Superior court in that County, or in Federal District Court in the Southern District of California.

21. Default. If a party fails to perform any term or provision of this Agreement, 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. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. City agrees to accept cures tendered by the Investor Limited Partner of Owner within the cure periods provided in this Agreement.

22. Remedies.

a. If Owner or a tenant of an Affordable Unit rents (including subleasing) an Affordable Unit in violation of the provisions of this Agreement limiting the amount of rent to be charged for such unit, then such person shall be required to forfeit to City all monetary amounts in excess of Affordable Rent that were so obtained and that had not been refunded to the person from whom the rents were collected.

b. City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Agreement, including but not limited to actions for injunctive relief or damages.

c. It is agreed and understood that the covenants to maintain the Affordable Units as set forth herein are a requirement of the Huntington Beach Zoning Code and as a condition to receiving waivers and concessions/incentives under the Huntington Beach Zoning Code. Owner agrees that a breach of the covenants to maintain the Affordable Units as affordable housing for the Term specified herein constitutes a violation of the Huntington Beach Zoning Code, subject to enforcement by all legally available means.

23. Attorney's Fees. In any action brought to declare the rights granted herein or to enforce or to interpret any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs in an amount determined by the court.

24. Non-Waiver. Failure to exercise any right either Party may have or be entitled to, in the event of default hereunder shall not constitute a waiver of such right or any other right in the event of a subsequent default.

25. Further Assurances and Recordation. The parties shall cause this Agreement to be recorded in the Official Records of the County of Orange. Owner shall execute any further documents consistent with the terms of this Agreement, including documents in recordable form and do such further acts as the City reasonably determines necessary to effectuate City's purpose in entering into this Agreement.

26. Entire Agreement. This Agreement, including any Lender's Consent and Subordination Agreements, and all attached Exhibits, constitutes the entire agreement between the parties. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement, statement or promise not contained in this Agreement shall not be valid or binding. This Agreement may be amended only by written instrument signed by both City and Owner.

27. Third Party Beneficiaries. There are no third party beneficiaries of or to this Agreement.

28. Amendment of This Agreement.

a. Generally. This Agreement may be amended in writing from time to time in whole or in part by mutual consent of the original parties or their successors in interest, in accordance with this Agreement, the Huntington Beach Zoning Code and the State Density Bonus Law.

b. Administrative Amendments. Notwithstanding subdivision a. of this Section, any amendment to this Agreement, whether requested by Owner or City, which does not relate to the Term; the number, percentage or type of Affordable Units; or the number or type of any incentives or concessions given by the City, may be determined by the Director to be an Administrative Amendment and if so, the Director shall approve the Administrative Amendment without notice or hearing, and this Agreement and its pertinent exhibits shall be automatically amended upon mutual written consent of the parties, without further action by the parties. A memorandum of the amendment shall be executed and recorded to reflect such Administrative Amendment.

29. 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.

[signatures follow]

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

“CITY”

CITY OF HUNTINGTON BEACH

By: _____

Oliver Chi
City Manager

ATTEST:

By: _____

Robin Estanislau
City Clerk

APPROVED AS TO FORM:

By: _____

Michael Gates
City Attorney

“OWNER”

BEACH HOUSING PARTNERS LP
a California limited partnership

By: JHC-Beach LLC, a California limited
liability company

Its: Managing General Partner

By: Jamboree Housing Corporation,
a California nonprofit public
benefit corporation

Its: Manager

By: _____
Michael Massie
Chief Development Officer

LENDER'S CONSENT AND SUBORDINATION AGREEMENT

NOTICE: THIS LENDER'S CONSENT AND SUBORDINATION RESULTS IN YOUR SECURITY INTERESTS IN THE PROPERTY BECOMING SUBJECT TO AND OF A LOWER PRIORITY THAN THIS DENSITY BONUS LAW WAIVER AND CONCESSION AGREEMENT

The undersigned ("Lender"), as owner and holder of security interests ("Security Interests") evidenced by that certain [Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing] made by Borrower as trustor in favor of _____ as beneficiary, dated as of _____ and recorded on _____ as Instrument No. _____ in the Official Records of the County of Orange, State of California, hereby acknowledges its consent to the terms and provisions of this Density Bonus Law Waiver and Concession Agreement ("Agreement"). The undersigned further agrees that its Security Interests are and shall unconditionally be and remain at all times junior, subordinate and subject to the terms, covenants, conditions and restrictions of this Agreement, provided that in consideration of Lender's covenants and agreements contained in this Agreement, City and its designated agencies hereby agree for the benefit of Lender that concurrently with any notice from City to the Owner that a default or breach exists under the terms of the Agreement, City shall send a copy of such notice to Lender and Lender shall have the right, but not the obligation to cure any defaults within thirty (30) days after the expiration of any cure period set forth in the notice from City to Borrower regarding such Owner default. Lender intentionally and unconditionally subordinates the lien or charge of the Security Interests in favor of the Agreement.

AGREED AND ACKNOWLEDGED:

Dated as of: _____

"LENDER"

Name:

Title:

[jurats must be included]

EXHIBIT A

Legal Description of Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 2, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 76, PAGE 4 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN:159-031-18

ATTACHMENT NO. 15
AMENDED AND RESTATED COVENANTS

(behind this page)

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

THE CITY OF HUNTINGTON BEACH
2000 Main Street
Huntington Beach, CA 92648
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 159-031-18

FREE RECORDING REQUESTED
(Gov't Code Section 27383)

AMENDED AND RESTATED AGREEMENT CONTAINING COVENANTS
(INCLUDING RENTAL RESTRICTIONS)
(18431 Beach Boulevard)

THIS AMENDED AND RESTATED AGREEMENT CONTAINING COVENANTS (INCLUDING RENTAL RESTRICTIONS) ("Agreement") dated as of December 21, 2020 is entered into by and between BEACH HOUSING PARTNERS LP, a California limited partnership ("Owner"), THE HUNTINGTON BEACH HOUSING AUTHORITY, a public body, corporate and politic ("Authority"), and THE CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California ("City").

WHEREAS, Owner is the owner of 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 and Very Low Income Households, the Owner, the Authority, and the City entered into that certain Acquisition Loan Agreement, dated as of January 23, 2020 (the "Acquisition Loan Agreement"), whereby the Authority provided financial assistance to Owner to acquire the Property, using Low and Moderate Income Housing Asset Funds ("Authority LMIHAF Loan"), and the City provided financial assistance to Owner to acquire the Property, using Affordable Housing Trust Funds ("City Inclusionary Loan");

WHEREAS, the Acquisition Loan Agreement contained certain provisions relating to the restricted use of the Property for affordable housing purposes and an Agreement Containing Covenants (Including Rental Restrictions) was entered into between the Owner and the Authority on January 28, 2020 and recorded in the official records of Orange County on January 29, 2020 as Instrument No. 2020000038042 ("Acquisition Covenants");

AFFORDABLE HOUSING AGREEMENT
BEACH HOUSING PARTNERS LP
ATTACHMENT NO. 15 – AMENDED AND RESTATED COVENANTS

WHEREAS, the Owner, the Authority, and the City entered into that certain Affordable Housing Agreement between the Owner, the Authority, and the City dated as of January 5, 2021 (as amended from time to time, the “Affordable Housing Agreement”);

WHEREAS, the Affordable Housing Agreement provides for a loan from the City to the owner of HOME Program funds for repayment at construction financing of the Authority LMIHAF Loan and partial repayment of the City Inclusionary Loan;

WHEREAS, the Owner has proposed a change in the affordability mix, and sizes of the rental units, and the Affordable Housing Agreement restricts the use of the Property accordingly, consisting of 42 units of one-bedroom affordable rental housing for seniors and one two-bedroom manager unit; and

WHEREAS, the Owner, the Authority, and the City desire to amend and restate the Acquisition Covenants in their entirety, in order to reflect the change in size, and affordability of the units and to extend the affordability period to conform to the City Inclusionary Loan requirements. Upon the recordation hereof in the Official Records of the County of Orange, the Acquisition Covenants are hereby replaced and superseded, in their entirety, by this Agreement.

NOW, THEREFORE, THE OWNER, THE AUTHORITY, AND THE CITY COVENANT AND AGREE AS FOLLOWS:

1. Affordable Units. For the Term of this Agreement, Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof or any interest therein, that Owner, its successors and assigns shall use the Property exclusively to provide forty-two (42) one bedroom Affordable Units (hereinafter defined) that are reserved for occupancy by Extremely Low Income Households and Very Low Income Households (hereinafter defined) at an Affordable Rent (hereinafter defined).

“Affordable Unit” shall mean one of the thirty-three (33) one-bedroom rental dwelling units developed on the Property and restricted to occupancy by Extremely Low Income Households and one of the nine (9) one-bedroom rental dwelling units developed on the Property and restricted to occupancy by Very Low Income Households, all at an Affordable Rent. 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. Maximum 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.

“Very Low Income Households” 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 Very 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 “Very Low Income” shall mean a household income that does not exceed 50% of the Area Median Income, adjusted for family size.

3. Maximum Rents. “Affordable Rent” shall mean:

a. For Extremely Low Income Households, 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.

b. For Very Low Income Households, 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.

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, being two persons in the case of a 1-bedroom unit. Affordable Rent shall include a reasonable utility allowance for tenant-paid utilities based on the Orange County Housing Authority’s published utility schedules.

“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.

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

5. Nondiscrimination. The Owner 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 Owner itself or any person claiming under or through it establish or permit any such practice or practices of

discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

14. Management and Maintenance Requirements.

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

b. Prior to the Closing, Owner shall submit to the City a Management Plan describing the proposed plans for managing and operating the Property. Approval of the Management Plan by the City Manager or designee shall be a condition precedent to the Closing. Owner 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 Owner and the City Manager or designee, for the entire term of this Agreement.

The Management Plan, including such amendments as may be approved in writing by the City, shall remain in effect for the term of this Agreement. The Owner shall not amend the Management Plan or any of its components without the prior written consent of the City. The components of the Management Plan shall include:

(1) Management Agent. The name and qualifications of the proposed management agent for the Project (“Management Agent”). The City 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).

(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 Owner and the Management Agent. The Owner’s agreement with the Management Agent shall provide that it is subject to termination by the Owner without penalty, upon thirty (30) calendar days’ prior written notice. The Owner hereby covenants and agrees that, if the City determines in its reasonable judgment that the Project is not being operated and managed in accordance with the Management Plan, the City may deliver notice to the Owner of the City’s determination that the Project’s management practices do not conform to the Management Plan (“City Notice”), including a reasonably detailed explanation of such non-conformance. The City and the Owner shall meet and confer in good faith to identify actions to be taken by the Owner to bring its management practices into conformance with the Management Plan, which could include replacing the Management Agent. The Owner shall have thirty (30) calendar days after receipt of the City Notice (or such longer time as may be granted by the City in City’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 City (such approval not to be unreasonably withheld, conditioned, or delayed). The Owner shall promptly notify the City upon learning that there is a change in the management or control of the Management Agent, and, if the change is unsatisfactory to the City, the City shall be entitled to require the Owner 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 City (such approval not to be unreasonably withheld, conditioned, or delayed).

(5) Annual Operating Budget. Within the time set forth in the Schedule of Performance attached to the Affordable Housing Agreement and annually thereafter not later than fifteen (15) calendar days prior to the beginning of the next fiscal or calendar year of the Project, the Owner shall submit to the City 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 City 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 Owner's initial projected operating budget submittal, the Owner shall annually reconcile each previous year's projected budget with actual operating results for the Project ("Budget Reconciliation"). In each Budget Reconciliation, the Owner 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 City 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 City's reasons for disapproval. Notwithstanding the foregoing, if the City has not expressly approved or disapproved the Owner's projected operating budget within thirty (30) calendar days after its submittal to the City, then the Owner shall provide a written notice to the City that it intends to operate pursuant to the projected operating budget and the City shall have an additional fifteen (15) calendar days within which to approve or disapprove such budget. If the City has not expressly approved or disapproved the projected operating budget by the end of such additional 15-calendar day period, then the Owner 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 of the Affordability Period, Owner 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 City Manager or designee. The Quarterly Report shall include a profit and loss statement, budget to date figures, and occupancy report. The City Manager 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 City's written notice to Owner.

e. Prior to the Closing, Owner shall prepare and submit to the City 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 Owner, shall be subject to the reasonable approval of the City Manager or designee.

f. At all times during the term of this Agreement, Owner shall maintain the Property and the improvements in accordance with the approved Maintenance Program. To implement this requirement, Owner agrees to budget sufficient funds to pay for all reasonably anticipated costs (as indicated in the Annual Maintenance Budget). If Owner 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 City, the City shall have the right, but not the obligation, to enter the Property, correct any violation, and hold Owner responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the Property; provided, however, Owner shall have such additional time as may be reasonably necessary to cure such default provided that Owner 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 City shall provide written notice that Owner must correct the deficiency within a reasonable time. Owner shall have a reasonable time in which to comply following such notice from the City.

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 City and its successors and assigns. The covenants in this Agreement shall remain in effect for the longest feasible time, but not less than sixty (60) years from the date the City of Huntington Beach issues a certificate of occupancy for the Project (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 and City shall each be deemed beneficiaries 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 City, and such covenants shall run in favor of Authority and City for the entire period during which such covenants shall be in force and effect, without regard to whether Authority or City is or remains an owner of any land or interest therein to which such covenants relate. Authority and City and their respective successors or assigns shall each 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 Owner and any successor in interest to the Property or any part thereof or any interest therein for the benefit and in favor of Authority, City and their respective successors and assigns.

9. Amendments. Only Authority, its successors and assigns, City, its successors and assigns, and Owner, and the successors and assigns of Owner in and to fee 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 Owner to perform, or a breach or threatened breach of, any term or provision of this Agreement constitutes a default under this Agreement. Authority or City shall give written notice of default to Owner, specifying the default complained of by the Authority or City, as applicable. 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 or City 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 or City in asserting any of its rights and remedies shall not deprive Authority or City 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, Owner shall have such period to effect a cure prior to exercise of remedies by the Authority or City under this Agreement. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Owner (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Owner shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Authority or City. In no event shall Authority or City 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 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 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.

[Signatures on Following Page]

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

“CITY”

CITY OF HUNTINGTON BEACH

By: _____
Oliver Chi Dated _____
City Manager

ATTEST:

By: _____
Robin Estanislau
City Clerk

APPROVED AS TO FORM:

By: _____
Michael Gates
City Attorney

“AUTHORITY”

HUNTINGTON BEACH HOUSING
AUTHORITY,
a public body corporate and politic

By: _____
Oliver Chi Dated _____
Executive Director

ATTEST:

By: _____
Robin Estanislau
Authority Secretary

APPROVED AS TO FORM:

By: _____
Michael Gates
Authority Counsel

“OWNER”

BEACH HOUSING PARTNERS LP
a California limited partnership

By: JHC-Beach LLC, a California limited
liability company
Its: Managing General Partner

By: Jamboree Housing Corporation,
a California nonprofit public
benefit corporation

Its: Manager

By: _____
Michael Massie Dated _____
Chief Development Officer

Exhibit "A"

LEGAL DESCRIPTION

REAL PROPERTY IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 2, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF
CALIFORNIA, AS PER MAP RECORDED IN BOOK 76, PAGE 4 OF PARCEL MAPS, IN
THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 159-031-18

ATTACHMENT NO. 16

AMENDED AND RESTATED NOTICE OF RESTRICTIONS

(behind this page)

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

THE CITY OF HUNTINGTON BEACH
2000 Main Street
Huntington Beach, CA 92648
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 159-031-18

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 27383

**Amended and Restated Notice of Affordability Restrictions
on Transfer of Property**

NOTICE IS HEREBY GIVEN that pursuant to Health & Safety Code Section 33334.3(f), BEACH HOUSING PARTNERS LP, a California limited partnership is recording this Amended and Restated 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 Amended and Restated Agreement Containing Covenants (the “**Covenants**”) recorded concurrently herewith, which restricts the use of the Property as follows:

Forty-two (42) one-bedroom Affordable Units (hereinafter defined) that are reserved for occupancy by Extremely Low Income Households and Very Low Income Households (hereinafter defined) at an Affordable Rent (hereinafter defined).

AFFORDABLE HOUSING AGREEMENT
BEACH HOUSING PARTNERS LP
ATTACHMENT NO. 16 – AMENDED AND RESTATED NOTICE OF RESTRICTIONS

“Affordable Unit” shall mean one of the thirty-three (33) rental dwelling units developed on the Property and restricted to occupancy by Extremely Low Income Households and one of the nine (9) one-bedroom rental dwelling units developed on the Property and restricted to occupancy by Very Low Income Households, all at an Affordable Rent. 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.

“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.

“Very Low Income Households” 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 Very 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 “Very Low Income” shall mean a household income that does not exceed 50% of the Area Median Income, adjusted for family size.

“Affordable Rent” shall mean:

- a. For Extremely Low Income Households, 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.

- b. For Very Low Income Households, 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.

For purposes of determining Affordable Rent, household size appropriate to the unit shall mean the number of bedrooms in the unit plus one, being two persons in the case of a 1-bedroom unit. Affordable Rent shall include a reasonable utility allowance for tenant-paid utilities based on the Orange County Housing Authority's published utility schedules.

"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 sixty (60) years from the date the City of Huntington Beach issues a certificate of occupancy for the Project.

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

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

BEACH HOUSING PARTNERS LP,
a California limited partnership

By: JHC-Beach LLC, a California limited
liability company

Its: Managing General Partner

By: Jamboree Housing Corporation,
a California nonprofit public
benefit corporation

Its: Manager

By: _____
Name: Michael Massie
Title: Chief Development
Officer

Exhibit “A”

LEGAL DESCRIPTION

REAL PROPERTY IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 2, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 76, PAGE 4 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 159-031-18