



DATE: June 10, 2009

TO: Honorable Mayor and Councilmembers

FROM: Economic and Community Development Department

SUBJECT: **LIBBY LAKE VILLAGE AFFORDABLE HOUSING**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 to the Development Agreement entered into on August 2, 2006, with San Diego Habitat for Humanity, Inc. ("Habitat"), for the development and construction of 20 single-family detached homes at Libby Lake Village and for the sale of the homes to low-income families and households. The Amendment extends the expiration date; changes the minimum household size for each unit type; updates the legal description of the site to reference the final map for the subdivision; amends the affordable-housing resale restrictions; amends the financing for the purchase of the homes by the qualified homebuyers, including no-interest first-position loan from Habitat at varying durations depending on household affordability, an assumable silent no-interest second-position loan from the City in the amount of \$135,000 for the 55-year term of the resale restriction, and provides for a recapture of the City's investment in the land costs. Staff also recommends that the City Council approve the Amended and Restated Loan Agreement to Habitat for the construction of the subdivision; authorize the Mayor to execute the Amended and Restated Loan Agreement; and authorize the City Manager to execute Amendment 1 to the Development Agreement. Staff further recommends that the City Council adopt a resolution designating the Neighborhood Services Director, or designee, as authorized signatory to the conveyance documents with the qualified homebuyers.

BACKGROUND

In August 2, 2006, the City entered into a Development Agreement (the "Agreement") with Habitat for the development and construction of Libby Lake Village, a planned development consisting of 20 single-family detached homes (the "Homes") with a mix of 3 to 4 bedrooms and 1¾ bathrooms that are to be sold to low-income first-time homebuyers.

Habitat has completed construction of the first 5 Homes and has screened and tentatively qualified households to purchase these Homes. The term "tentative" is used here because Habitat has been experiencing difficulty in finding qualified homebuyers fitting the minimum household size of 4 persons for a 3-bedroom Home and 5 persons

for a 4-bedroom Home as currently required under the Agreement. As provided in the Agreement, an exception has been granted for at least 1 of the families currently in line to purchase a Home. Foreseeing that waiving the household size requirements on a case-by-case basis was becoming the norm rather than the exception, it was determined that the Agreement should be amended to allow a minimum of 3 persons in a 3-bedroom Home and 4 persons in a 4-bedroom Home.

Another unforeseen catch, brought about by the downturn in the housing market, was determining an affordable purchase price. As originally contemplated in 2006, the property values for the homes were estimated to be about twice the current appraised values. The current loan structures were set up to recapture the City affordable housing funds invested into the project, and Habitat's recovery of costs to build the Homes; however, that structure cannot be supported by today's market prices for the Homes, as verified by an independent appraisal based on completed product.

It had been anticipated that the homebuyers would each assume a loan for \$135,000 representing 1/20th of the \$2,700,000 loan the City made to Habitat in 2006 for the development of the project, plus the appraised value of the land that each unit was built on at \$60,000/Home for a total City loan of \$195,000. Adding the Habitat loan of approximately \$160,000 to the overall loan package resulted in a price of about \$355,000. This loan amount, plus the household's monthly housing cost, puts the Homes out of the affordability range for low-income families.

ANALYSIS

Additional revisions to the Development Agreement are needed to adjust the disparity in the actual investments by the City and Habitat to develop the project and build the Homes and the need to keep the Homes affordable at a realistic cost to the homebuyers. The overall changes to the Agreement worked out between staff and Habitat to meet the affordability standards and address general housekeeping items are summarized below:

Extension of Term: Extends the expiration of the term from December 31, 2009 to March 31, 2011.

Use of Site:

- Retains the gross income requirement at not exceeding 80 percent of the Area Median Income ("AMI") and requires the homebuyer to be a first-time homebuyer;
- Changes the minimum household sizes from 4 to 3 persons for a 3-bedroom Home and from 5 to 4 persons for a 4-bedroom Home and eliminates the maximum size for each unit type;

- Lowers the maximum restricted resale price for the Home from 40 percent to 35 percent of the annual gross income of the purchaser having an income of 80 percent AMI;
- Maintains the requirement that the homebuyer contribute a \$5,000 cash down payment towards the purchase of the Home; and
- Maintains the 55-year affordability requirement.

Site Description (Attachment 1 to Development Agreement (“DA”)): Amends the site description to reference the Final Map designation of the lots as delineated on subdivision map for Libby Lake Village, Map No. 15696.

Affordable Housing Resale Restrictions (Attachment 9 to DA):

- Places restrictions on any subsequent sale of the property to maintain the affordability requirement through the 55-year affordability period. The affordability period will run separately with each Home individually rather than as an aggregate with the sale of the first Home, which will make it much easier to manage during resales of the Homes;
- Sets forth eligibility requirements for a subsequent homebuyer (80 percent AMI and a first-time homebuyer);
- States the amount of equity the homebuyer can accept upon a resale of the Home (formula based on initial loan amount from Habitat for the purchase of the Home, length of ownership, and outstanding balance on the loan) with the balance of the equity going to Habitat;
- Sets the maximum resale price of the Home at 35 percent of the purchaser’s actual annual household gross income;
- Provides Habitat with a first option and right of refusal and the City with a second option to repurchase the property or the right to designate a qualified purchaser;

(The Resale Restrictions, as revised, merge various provisions throughout other documents in the original attachments to the Development Agreement regarding the affordability requirements that could have been void or erased through a foreclosure proceeding. Once recorded as a standalone document the Resale Restrictions would prevent that from occurring.)

City Loan to Homebuyer (Attachments 10 and 12 to DA): The City will be providing the homebuyers with a silent second loan, bearing 0 percent interest, in the principal amount of \$135,000 for a term of 55 years that coincides with the term of the Resale Restrictions. These loans are to secure payment, upon default, of the City’s investment in the predevelopment and development costs for the project (see discussion on “Habitat Construction Loan”, below). The loans will be evidenced by a promissory note secured by a deed of trust. This loan will be fully assumable by subsequent purchasers. No payments will be required on this loan except in the event of a default by the

homebuyer under the terms of the City loan, the Habitat loan, or the Resale Restrictions.

(The Note Rider (Attachment 11 to DA) and Deed of Trust Rider (Attachment 13 to DA) have been eliminated and certain terms therein have been merged into the Resale Restrictions)

Purchase and Sale Agreement (Attachment 14 to DA): Minor modification to the Purchase and Sale Agreement were made to be consistent with the other documents' revisions.

Habitat Loan to Homebuyer (Attachments 15 and 16 to DA): Habitat will be providing the homebuyers with a first position loan, bearing 0 percent interest, which will vary in the principal amount and length of term depending upon the individual homebuyers' situation. The loan will be evidenced by a promissory note secured by a deed of trust. The homebuyer will be required to make monthly payments on this loan, a portion of the proceeds of which will be used to pay off the "new land loan" being made from the City to Habitat (see paragraph on Attachments 18 and 19, below). Interest will become due on this loan only in the event of a default by the homebuyer under the terms of the City loan, the Habitat loan, or the Resale Restrictions.

Grant Deed for City to Homebuyer (Attachment 17 to DA): Minor revisions were made to the grant deed to reflect the legal description per the Final Map and adding the covenants regarding discrimination.

Attachments 18 and 19 to DA: The last position Note and Deed of Trust with the homebuyer has been eliminated and replaced with the loan from the City to Habitat to recover the land value in the property ("Land Loan"). This loan to Habitat is in the principal amount of \$1,200,000 bearing 0 percent interest, except in an event of default, when interest will accrue at 6 percent and be repaid over a term of 20 years with 240 equal monthly payments of \$5,000. There will be no monetary disbursement of the loan proceeds to Habitat as this loan represents a recapture of the land value the City has previously invested in the project. This loan will be evidenced by a promissory note and secured by a Commercial Pledge Agreement collateralized by the assignment of 8 notes and deeds of trust held in properties in Habitat's projects in Escondido and National City.

In addition to the modifications to the Development Agreement and various related Attachments, it became necessary to amend certain provisions of the existing "**Construction Loan**" made by the City to Habitat on August 2, 2006. The modifications to the Amended and Restated Loan Agreement are summarized below:

- **Loan and Term:** The loan will be an unsecured loan in the principal amount of \$2,700,000 and will expire upon the sale of the last Home in the project.
- **Repayment:** The amount of the principal on this loan will be reduced by \$135,000 upon the sale of each Home and will convert to and be assumed as a silent second by each respective homebuyer.
- **Interest:** The loan shall bear 0 percent interest, except in an event of default when interest will accrue at 12 percent or the highest rate permitted under California law.

Staff believes that the modifications to the Development Agreement and related attachments and the amended Construction Loan meet the intention of the project contemplated in 2006 and are consistent with the City's affordable-housing goals. Therefore, staff recommends approval of the proposed amendments and modifications set forth in the various backup documents as summarized above.

Typically City Council approval of transactions to sell City-owned real property is sought on an individual basis and can add 30 to 45 days to the transaction timeline for each of the 20 pending sales. Libby Lake Village is rather unique in that the homebuyers, in addition to putting sweat equity toward the purchase of the Home, go through a rigorous screening and pre- and post-purchase counseling process in qualify to buy a Home. Once a Home is finished and ready to be moved into, having the homebuyers go through the formal City Council approval process could add a certain level of public scrutiny, anxiety and uncertainty in the minds of the homebuyers. Allowing the transactions to be handled administratively at the departmental level would help in streamlining the City's approval process and reduce time and paperwork related to the 20 pending transactions. For these reasons, staff recommends that the City Council adopt a resolution designating the Neighborhood Services Director, or designee, as the authorized signatory of the various documents and instruments to be executed by the City in the sale of the Homes to the qualified homebuyers.

FISCAL IMPACT

There is no additional fiscal impact associated with the action presented herein. Appropriations to fund the activities have previously been approved by the City Council and no additional funds are requested at this time.

COMMISSION OR COMMITTEE REPORT

The Housing Commission reviewed and considered the matters of this item at a special meeting on May 18, 2009, and recommended approval.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve Amendment 1 to the Development Agreement entered into on August 2, 2006, with San Diego Habitat for Humanity, Inc. ("Habitat"), for the development and construction of 20 single-family detached homes at Libby Lake Village and for the sale of the homes to low-income families and households;
2. Approve the Amended and Restated Loan Agreement to Habitat for the construction of the subdivision;
3. Authorize the Mayor to execute the Amended and Restated Loan Agreement and the City Manager to execute Amendment 1 to the Development Agreement; and
4. Adopt a resolution designating the Neighborhood Services Director, or designee, as authorized signatory to the conveyance documents with the qualified homebuyers.

PREPARED BY:


William F. Marquis
Senior Property Agent

SUBMITTED BY:

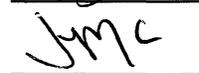

Peter A. Weiss
City Manager

REVIEWED BY:

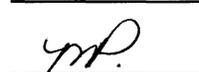
Michelle Skaggs Lawrence, Deputy City Manager



Jane McVey, Economic and Community Development Director



Margery M. Pierce, Neighborhood Services Director



Douglas E. Eddow, Real Property Manager



TO: CITY COUNCIL
FROM: HOUSING COMMISSION
RE: AMENDMENTS TO HABITAT FOR HUMANITY AGREEMENT
DATE: MAY 18, 2009

THE HOUSING COMMISSION RECOMMENDS THAT THE CITY COUNCIL APPROVE STAFF'S RECOMMENDED AMENDMENTS TO THE HABITAT FOR HUMANITY AGREEMENT FOR THE LIBBY LAKE VILLAGE.

CAMP	YES
COOPER	YES
CHRISTY	YES
DAVIS	YES
FARMER	YES
HUSKEY	YES
PARKER	YES
SORENSEN	ABSENT

ALTERNATE SAIZ	YES
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**AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT
(Libby Lake Village)**

THIS AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT (this "Amendment"), dated as of May 6, 2009, solely for identification purposes, is made and entered into by and between the City of Oceanside, a municipal corporation (the "City"), and San Diego Habitat for Humanity, Inc., a California nonprofit corporation (the "Developer"). The effective date of this Amendment shall be the date this Amendment is approved by the Oceanside City Council (the "Effective Date").

WHEREAS, In the furtherance of meeting goals of the City's Comprehensive Affordable Housing Strategy, City and Developer are the parties to that certain Agreement, dated June 27, 2006, having an effective date of August 2, 2006 (the "Agreement"), pertaining to the construction and development of 20 single-family detached homes and appurtenant works on that certain City owned real property commonly referred to as Libby Lake Village, located at 302 though 378 Libby Village Way, Oceanside, California (the "Site"), as more particularly described as being Lots 1 through 20 and Lots A and B, inclusive, of Libby Lake Village, according to Map thereof No. 15696 as filed in the Office of the County Recorder of San Diego County, June 26, 2008, and the sale of the completed homes to Qualified Homebuyers who are low-income first-time homebuyers, as more particularly set forth in the Agreement;

WHEREAS, Due to recent economic downturns and volatile market conditions, especially in the real estate sector, Developer has requested certain amendments to the Development Agreement to assist Developer in the selection and qualification of low-income families and households for the purchase and occupation of the completed Homes by Qualified Homebuyers and meet the goals and objectives of the Agreement; and

WHEREAS, City and Developer mutually desire to amend and modify certain terms and conditions of the Development Agreement as more particularly set forth in this Amendment.

AGREEMENT

NOW THEREFORE in consideration of the mutual covenants contained herein and other valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties do mutually agree that the Development Agreement be amended and modified as follows:

1. Section 1.1.1 (Term of Agreement) of the Agreement shall be and hereby is amended and modified to read in its entirety as follows:

"1.1.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date of this Agreement and expire upon the earlier of: i) March 31, 2011; or ii) the date of the sale of the last Home to a Qualified Homebuyer, unless terminated earlier as provided herein.

i. No later than ninety (90) days prior to the start of construction of a phase of the Improvements (including rough or finish grading), as shown on the "Schedule of Performance" (which is attached hereto as "Attachment No. 3" and incorporated herein by reference) the Developer shall provide proof to City that Developer has sufficient financing for the construction and completion of the Improvements and all on-site and off-site improvements appurtenant to the Activity. If City reasonably determines, at its

sole and absolute discretion, that Developer has not secured sufficient financing to complete the Activity, City may terminate this Agreement upon written notice to the Developer and upon such occurrence this Agreement shall be void and of no further force or effect.

Upon the earlier termination of the Term of this Agreement as set forth in Paragraph i, above, the Developer shall assign to City the ownership and use license of all products, plans, specifications, studies, and reports related to the Activity.

The termination provisions in this Section 1.1.1 shall not defeat or limit any other termination provisions set forth elsewhere in this Agreement.”

For the purpose of Section 1 of this Amendment the Schedule of Performance (Attachment No. 3) of the Agreement shall be and hereby is amended to reflect that the Project Completion shall be March 31, 2011, and the delivery of As-Built Drawings shall be April 30, 2011.

2. Sections 4.0 though 4.16, inclusive, (Use of Site) of the Agreement shall be and hereby is amended and modified to read in their entirety as follows:

“4.0 USE OF THE SITE

4.1 Limitations on Site Use. The Developer understands and agrees that the use of the Site is limited to only those uses specified in the City’s Municipal Code, Zoning Ordinance, and as set forth in this Agreement.

4.2 Development Program. The site will be developed with twenty (20) single-family detached homes, each with three- or four-bedrooms and a minimum of one full and one three quarter bathrooms. The distribution of three- and four-bedroom units will be mutually agreeable to the City and the Developer. For the purposes of this Agreement the term “Home” shall refer to dwelling unit, the parcel or lot on which the dwelling unit is situated, and the undivided interest in common area lots and improvements (if any).

4.3 Qualified Homebuyers. The Developer will sell the completed single-family Homes to qualified first-time low income homebuyers (“Qualified Homebuyer”) that meet and certify to the following criteria:

4.3.1 First-Time Homebuyer. Each Qualified Homebuyer must be a first-time homebuyer; that is, he or she has not owned a home within the three-year (3-year) period immediately preceding the date of the purchase of the Home;

4.3.2 Owner Occupant. Each Qualified Homebuyer must agree to occupy the Home as his/her or their principal place of residence, throughout his/her or their ownership of the Home during the “Affordable Term”, as defined below. The Qualified Homebuyer shall be considered as occupying the Home as a principal place of residence if the Qualified Homebuyer is living in the Home for at least ten (10) months out of each calendar year. The Qualified Homebuyer shall not lease or rent the Home.

4.3.3 Low Income. Each Qualified Homebuyer's annual gross income may not exceed eighty percent (80%) of the median income for the San Diego County metropolitan area, as adjusted for family size, as said median income is determined by the Department of Housing and Community Development, as amended from time to time ("Area Median Income"), on the date of the recordation of the first lender's deed of trust.

4.3.4 Household Size. Each home shall be sold to a Qualified Homebuyer within the following household size limits: three-bedroom homes - a minimum of three (3) people; four-bedroom homes - a minimum of four (4) people.

4.4 Monthly Housing Cost. As used herein "Monthly Housing Cost" means all of the following associated with the Home, estimated or known as of the date of the proposed Sale of the Home: (i) principal payments on a fully amortizing, no-interest mortgage loan, and any loan insurance fees associated therewith, (under no circumstances shall Qualified Homebuyer obtain a mortgage loan that contains an adjustable interest rate); (ii) property taxes, assessments; (iii) fire and casualty insurance covering the replacement value of property improvements (to the extent not covered by the homeowner association encompassing the Home); (iv) any homeowner association fees; and (v) private mortgage insurance, if applicable. Monthly Housing Cost of the Home shall be an average of estimated costs for the next twelve (12) month period after the anticipated date of purchase. The following are examples for determining Monthly Housing Cost:

FIGURE 1

Monthly Housing Cost

ASSUMPTIONS

2006 Income Limit, San Diego County, 80% AMI, Family of 4		\$55,200
Affordable Housing Cost As a % of Income		38%
No. of Bedrooms	3 Bedroom	4 Bedroom
Household Size, Health and Safety Code	4 Persons	5 Persons
Household Size Income Adjust. Factor	100%	108%
Owner Utility Allowance	\$0	\$0
Monthly HOA Fee/Maint. Cost	\$275	
Monthly Property Insurance	\$50	
Property Tax Rate	1.20%	
Monthly Maintenance Expense	\$0	
Mortgage Interest Rate	0.00%	
Term (Years)	30	

4.6 Purchase Down Payment and Closing Cost. Qualified Homebuyers shall contribute a minimum of \$5,000 of their own cash funds toward the Down Payment and closing cost on the Home (the "Down Payment"). If the Developer is unable to locate Qualified Homebuyers who can meet this cash requirement, the City and Developer will agree in writing upon an alternative Qualified Homebuyer Down Payment and closing cost amount.

4.7 Determination of Fair Market Value. If it is necessary to determine the Fair Market Value of the Home, it shall be determined by a certified MAI or other qualified real estate appraiser approved in advance by the City. If possible, the appraisal shall be based upon the sale prices of comparable properties sold in the market area during the preceding three (3) month period. The "comparables" shall include properties which are actually subject to similar resale restrictions as the Property. If "comparables" are not subject to similar resale restrictions as the Property, the appraised values of the "comparables" shall be adjusted to account hypothetically for similar resale restrictions as the Property. The cost of the appraisal shall be paid by the Qualified Homebuyer, unless the appraisal is obtained by Habitat, the City, or an Eligible Purchaser. Nothing in this section shall preclude the Owner, Habitat and the City from establishing the Fair Market Value of the Property by mutual agreement in lieu of an appraisal pursuant to this section.

4.8 Permanent Loan Amount. The maximum permanent first mortgage loan amount to the Qualified Homebuyer shall not exceed the amount affordable based on a fully-amortizing 30-year term (or at a term mutually agreed upon by City and Developer) mortgage at 0% interest such that the Monthly Housing Cost does not exceed the amount allowed in Section 4.4

4.9 Execution of Resale Restrictions. In order to maintain the affordability of all Homes developed on the Site, the Qualified Homebuyer must approve and sign the "Affordable Housing Resale Restrictions" (the form and substance of which is attached hereto as "Attachment No. 9" and incorporated herein by reference) (the "Resale Restriction"), which document shall secure the City's and Developer's investment in the land, the Home and the Improvements, reference the Developer's share of the Equity which, in the event of a subsequent sale of the Home, will be assumed by the Second Owner of the Home, and assumed by all purchasers thereafter for the remainder of the fifty-five (55) year Affordability Period. The Resale Restriction shall also set forth to what income category the Home can be sold, how the Home may be refinanced, improvements that can be made to the Home, and what procedures must be followed when the Home is sold, including the City's and Developer's option to repurchase the property upon a default by the Qualified Homebuyer.

4.10 Permanent Loan Financing and Conveyance. Permanent loan financing will be provided by:

4.10.1. First Mortgage: Developer will provide the Qualified Homebuyer with a zero percent (0%) interest first mortgage with the principal of which shall not exceed the amount allowed under Section 4.4, above, and in conformance with the terms of the First Promissory Note ("Habitat Note") (the form and substance of which is attached hereto as Attachment 15), and First Deed of Trust (the form and substance of which is attached hereto as Attachment 16) ("Habitat

Deed of Trust”) to be recorded as an encumbrance to the Homeowner’s fee simple interest in the property. The Monthly Housing Costs shall not exceed the amount allowed in Section 4.4.

4.10.2. Second Mortgage: The City will provide permanent financing to the Qualified Homebuyer in the form of a silent second mortgage in the principal amount of One Hundred Thirty-five Thousand Dollars (\$135,000.00), bearing zero percent (0%) interest, for a term of fifty-five (55) years. The Qualified Homebuyer will execute and provide the City a Promissory Note (the “City Note”) (the form and substance of which is attached hereto as Attachment No. 10) secured by the Second Deed of Trust (the “City Deed of Trust”) (the form and substance of which is attached hereto as Attachment No. 12). The homeowner will also execute and provide the Affordable Housing Resale Restriction (Attachment No. 9).

4.10.3. Conveyance: Upon the close of escrow for the initial purchase of the Home the City shall convey title in the Home to the Qualified Homebuyer by grant deed (the “Grant Deed”) (the form and substance of which is attached hereto as Attachment No. 17).

4.10.4. Permanent Loan to Developer: City will provide the Developer with a loan in the principal amount of One Million Two Hundred Thousand Dollars (\$1,200,000.00), bearing zero percent (0%) interest, for a term of twenty (20) years. The Developer will execute and provide the City a Promissory Note (the form and substance of which is attached hereto as Attachment No. 19) secured by a Commercial Pledge Agreement (the form and substance of which is attached hereto as Attachment No. 18). The loan shall be repaid in 240 equal monthly payments of Five Thousand Dollars (\$5,000.00) each commencing on the first day of the month of the first full month following the close of escrow for the sale of the first Home sold in the Subdivision. The purpose of this loan is to repay the City of its purchase of the Site, to that regard there shall be no monetary disbursement of the loan proceeds from City to the Developer and shall be a considered a paper only transaction.

4.11 Term of Affordability. The affordability restrictions will extend for fifty-five (55) years from the date of the initial sale of the respective Home to a Qualified Homebuyer (the “Affordability Period”).

4.12 Qualified Homebuyer Selection and Counseling. The Developer will perform Qualified Homebuyer screening and selection and will provide pre- and post-purchase counseling to the selected Qualified Homebuyers. The City will appoint one representative to the selection committee used by the Developer to screen and interview prospective Qualified Homebuyers. The City’s representative will be a non-voting member of the committee.

4.13 Maintenance of the Site. During development, construction and through the initial sales period of each Phase of Home construction to the selected Qualified Homebuyers, the Developer agrees, for itself, its successors and assigns, to maintain the Site in good condition and repair consistent with community standards and in compliance with the terms of all applicable provisions of the City Municipal Code and Zoning Ordinance.

4.14 Obligation to Refrain from Discrimination. The Developer covenants and agrees, for itself, its successors and assigns, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, familial status, handicap, national origin, ancestry or any other prohibited classification established by federal or state law in the sale, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer 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, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

4.15 Nondiscrimination Covenant. The Developer, its successors and assigns, and any other person claiming under or through them, shall refrain from restricting the rental or sale of the Site on the basis of race, color, creed, religion, sex, familial status, handicap, national origin, ancestry or any other prohibited classification established by federal or state law. All deeds or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of sex, familial status, race, color, creed, religion, national origin or ancestry in the sale, transfer, use, occupancy, tenure or enjoyment of the real property herein conveyed, nor shall the grantee 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 buyers of the real property herein conveyed. The foregoing covenants shall run with the land."

2. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of sex, familial status, race, color, religion, creed, national origin or ancestry in the sale, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the contractor 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 buyers of the real property."

4.16 Effect of Duration of Covenants. The covenants established in Section 4.0 of this Agreement shall, without regard to technical classification and designation, be binding on the Developer and any successors in interest to the Site, or any part thereof, for the benefit and in favor of the City, its successors and assigns, and shall, with respect to the construction of the Improvements, remain in effect until the recording of the Certificate of Completion (Attachment No. 5) for the Site, or any portion thereof, as provided for in Section 3.11 of this Agreement, sale of the Homes to Qualified Homebuyers as provided for in Section 4.3 of this Agreement, and the execution of the Affordable Housing Resale Restrictions (Attachment No. 9), City Note (Attachment No. 10) and City Deed of Trust (Attachment No. 12) for each Home as provided for in Section 4.9 and 10.2 of this Agreement."

3. Attachment No. 1 (Legal Description of Site) of the Agreement shall be and hereby is amended and modified to read in its entirety as set forth in Attachment No. 1, attached hereto and incorporated herein by reference.
4. Attachment No. 9 (Affordable Housing Resale Restrictions) of the Agreement shall be and hereby is amended and modified to read in its entirety as set forth in Attachment No. 9, attached hereto and incorporated herein by reference.
5. Attachment No. 10 (Promissory Note (City - Homebuyer)) of the Agreement shall be and hereby is amended and modified to read in its entirety as set forth in Attachment No. 10, attached hereto and incorporated herein by reference.
6. Attachment No. 11 (Note Rider (City – Homebuyer)) of the Agreement shall be and hereby is eliminated and removed from the Agreement in its entirety.
7. Attachment No. 12 (Deed of Trust (City – Homebuyer)) of the Agreement shall be and hereby is amended and modified to read in its entirety as set forth in Attachment No. 12, attached hereto and incorporated herein by reference.
8. Attachment No. 13 (Deed of Trust Rider (City – Homebuyer)) of the Agreement shall be and hereby is eliminated and removed from the Agreement in its entirety.
9. Attachment No. 14 (Purchase Agreement (City – Homebuyer)) of the Agreement shall be and hereby is amended and modified to read in its entirety as set forth in Attachment No. 14, attached hereto and incorporated herein by reference.
10. Attachment No. 15 (First Position Promissory Note (SDHFH – Homebuyer)) of the Agreement shall be and hereby is amended and modified to read in its entirety as set forth in Attachment No. 15, attached hereto and incorporated herein by reference.
11. Attachment No. 16 (First Position Deed of Trust (SDHFH – Homebuyer)) of the Agreement shall be and hereby is amended and modified to read in its entirety as set forth in Attachment No. 16, attached hereto and incorporated herein by reference.
12. Attachment No. 17 (Grant Deed (City – Homebuyer)) of the Agreement shall be and hereby is amended and modified to read in its entirety as set forth in Attachment No. 17, attached hereto and incorporated herein by reference.
13. Attachment No. 18 (Last Position Promissory Note (SDHFH – Homebuyer)) of the Agreement shall be and hereby is amended and modified to read in its entirety as set forth in Attachment No. 18 (Commercial Pledge Agreement (Land Loan SDHFH – City)), attached hereto and incorporated herein by reference.
14. Attachment No. 19 (Last Position Deed of Trust (SDHFH – Homebuyer)) of the Agreement shall be and hereby is amended and modified to read in its entirety as set forth in Attachment No. 19 (Promissory Note (Land Loan SDHFH – City)), attached hereto and incorporated herein by reference.
15. Unless otherwise defined, or the context otherwise indicates, the terms as used herein have the meaning defined in the Agreement.
16. The provisions, of this Amendment shall control over any inconsistent provisions of the Agreement.
17. All provisions in the Agreement, which are not addressed and amended in this Amendment shall remain in full force and effect, and are hereby ratified and reaffirmed.

18. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective entities of the City and Developer.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to Development Agreement as of (but not necessarily on) the day and year first written hereinabove.

DEVELOPER
San Diego Habitat for Humanity, Inc.,
a California nonprofit public Benefit corporation

CITY
City of Oceanside, a municipal corporation

By: 
Name: MICHAEL D. MALONE
Title: EXECUTIVE DIRECTOR

By: _____
Peter A. Weiss
City Manager

Dated: _____

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: 
City Attorney

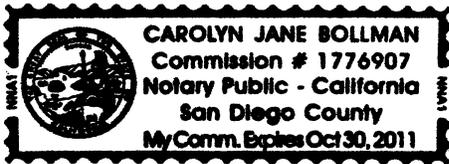
NOTARY ACKNOWLEDGMENT OF DEVELOPER SIGNATORY MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of SAN DIEGO

On MAY 12th, 2009 before me, CAROLYN JANE BOLLMAN, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer
 personally appeared MIKE MALONE
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature Carolyn Jane Bollman
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

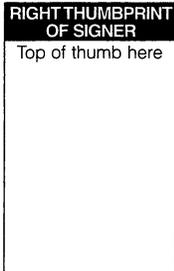
Description of Attached Document

Title or Type of Document: _____
 Document Date: _____ Number of Pages: _____
 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

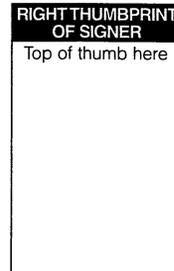
Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____

 Signer Is Representing: _____



Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____

 Signer Is Representing: _____



ATTACHMENT NO.1

Legal Description of the Site

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

BEING LOT 1 THROUGH 20, INCLUSIVE, OF LIBBY LAKE VILLAGE, ACCORDING TO MAP THEREOF NO. 15696, AS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JUNE 26, 2008.

TOGETHER WITH LOTS A AND B OF SAID MAP NO. 15696.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT AND RIGHT-OF-WAY FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AND UTILITY PURPOSES OVER THE WESTERLY PORTION OF LOT 21 AS SHOWN ON SAID MAP NO. 15696.

NO CHARGE ON THIS DOCUMENT FOR
THE BENEFIT OF
THE CITY OF OCEANSIDE

ATTACHMENT NO. 9

Recording Requested By
And When Recorded Mail To:

THE CITY OF OCEANSIDE
300 North Coast Highway
Oceanside, CA 92054
ATTN: City Clerk

**AFFORDABLE HOUSING RESALE RESTRICTIONS;
OPTION AGREEMENT AND OPTION TO DESIGNATE PURCHASER
(80% AMI)**

This Affordable Housing Resale Restrictions; Option Agreement and Option to Designate Purchaser ("Resale Restriction") is executed this _____ day of _____, 200__, by the City of Oceanside ("City"), San Diego Habitat for Humanity, Inc., a California nonprofit public benefit corporation ("Habitat") and by _____, as owner ("Owner"), of the real property located in the City of Oceanside, County of San Diego, State of California, more particularly described on Exhibit "A" attached hereto (the "Property").

RECITALS

WHEREAS, concurrently with the recordation of this Resale Restriction, Habitat is funding a loan (the "Habitat Loan"), as primary financing, evidenced by a secured promissory note (the "Habitat Note") and secured by a deed of trust (the "Habitat Deed of Trust"); and the City is funding a loan (the "City Loan"), as secondary financing, evidenced by a loan agreement (the "City Loan Agreement"), a promissory note (the "City Note") and secured by a deed of trust ("City Deed of Trust"), to aid Owner, who is a first-time homebuyer or displaced homemaker, in acquiring the Property. The City Deed of Trust and City Loan were conditioned in part upon the recordation of a document granting a purchase option to the City in the event that San Diego Habitat for Humanity, Inc. (hereinafter, "Habitat") chooses not to exercise a right of first refusal and setting forth certain restrictions upon the use and sale of the Property.

WHEREAS, the primary and substantial purpose of Habitat is the establishment, provision and preservation of housing for eligible Owners ("Owners") (defined in Section 1 below). It is also the intention of Habitat that, during the fifty-five (55) year affordable term ("Affordable Term") (defined in Section 3(b) below) of this Resale Restriction, each Owner or subsequent eligible Owner of the Property will occupy the Property as its principal place residence. Therefore, this Resale Restriction imposes restrictions and conditions on any resale or other Transfer of the Property and of any interest in the Property, and limits the right and ability of each Owner to receive a profit upon any resale of the Property or of any interest in the Property. This Resale Restriction shall automatically apply to and encumber the Property.

WHEREAS, each Owner of the Property or of any interest in the Property acknowledges and agrees that (i) Owner was selected by Habitat for the purchase of the Property and that

Owner had no right to require Habitat to select Owner; (ii) without the assistance of Habitat and the City, the Owner would never have acquired the Property; (iii) Habitat and the City had no obligation to provide the Owner with financing to purchase the Property, and that providing the financing to purchase the Property conferred an extraordinary benefit on the Owner; (iv) all the restrictions and conditions created by this Resale Restriction are required in order to preserve a stock of housing for Eligible Households (defined below), are reasonable and are approved and accepted in every respect by the Owner; (v) Owner's selection by Habitat to purchase the Property, which provides the Owner with decent and affordable shelter, is the sole benefit that Owner is bargaining for and which the Owner has obtained; (vi) selection of Owner by Habitat to purchase the Property is not intended to give to the Owner a business opportunity or right, expectation or entitlement to any profits or share in the appreciation of value from any sale or transfer of the Property; and (vii) the conditions and restrictions set forth in this Resale Restriction are not an unreasonable restraint on alienation or on any right to Transfer the Property, or the Owner's interest in the Property.

WHEREAS, in the event of a foreclosure of the Property, Habitat shall approve or disapprove in writing the transfer or sale price to ensure compliance with this Resale Restriction and other restrictions on occupancy, ownership, financing and transfer of the Property. The Notice of Default and the Notice of Sale in a foreclosure sale shall give notice of this Resale Restriction and the conditions and restrictions set forth therein, including the requirement that all bidders at a foreclosure sale be an Eligible Household. Habitat shall determine whether a prospective bidder is an Eligible Household based on an application submitted to Habitat for such determination.

WHEREAS, the purposes of this Resale Restriction are to (i) to grant Habitat the first right of refusal and option to acquire the Property, (ii) grant the City an option to acquire the Property in such case as Habitat fails or chooses not to exercise its right of first refusal, (iii) establish resale and occupancy restrictions for the Property, and (iv) restrict the Property with this Resale Restriction for a period of fifty-five (55) years following the recording date hereof. This Resale Restriction shall be binding on Owner and all subsequent purchasers of the Property.

NOW, THEREFORE, City and Owner hereby declare and restrict the Property as follows:

1. **Definition of Owner and Acknowledgment and Certification.** Any purchaser of the Property from Owner and any subsequent purchaser from such purchaser or successor are each referred to as "Owner" through the balance of this Resale Restriction. Each subsequent Owner shall certify his/her acknowledgment of this Resale Restriction and all the provisions and restrictions contained herein and shall certify his/her acknowledgment by executing the form attached as Exhibit "B," "Acknowledgment of Affordable Restrictive Covenants."

2. **Warranties of Owner.** Each Owner warrants to City and Habitat that Owner is an eligible purchaser as defined as follows:

(a) that he/she is a first-time homebuyer (for purposes of this Resale Restriction, the term "first-time homebuyer" shall mean that the Owner has not owned a home within the three-year (3-year) period immediately preceding the date of the Owner's purchase of the Property);

(b) that he/she will occupy the Property as his/her or their principal place of residence, throughout his/her or their ownership of the Property during the "Affordable Term," as defined below. The Owner shall be considered as occupying the Property as a principal place of residence if the Owner is living on the Property for at least ten (10) months out of each calendar year. Owner shall not lease or rent the Property;

(c) that Owner's annual gross income does not exceed eighty percent (80%) of the median income for the San Diego County metropolitan area, adjusted for family size, as said median income is determined by the Department of Housing and Community Development, as amended from time to time ("Area Median Income"), on the date of the recordation of the Lender Deed of Trust and

(d) the Owner's household meets the following household size limits: three-bedroom home - minimum of 3 persons; four-bedroom home - minimum of 4 persons.

3. Restrictions on Transfer.

(a) **Fifty-Five Year Affordable Term.** During the "Affordable Term," as defined below, any transfer of the Property or of any interest in the Property shall be subject to the provisions of this Resale Restriction. Any transfer by the Owner to a subsequent Owner, and any subsequent transfer by the subsequent Owner to another subsequent Owner, shall also be subject to the provisions of this Resale Restriction until the end of the Affordable Term. The parties intend to restrict the sale and occupancy of the Property for the "longest feasible time," as defined in California Health & Safety Code §§ 33334.3 and 33413, which sections define the "longest feasible time" to include "unlimited duration."

(b) **Affordable Term Defined.** The "Affordable Term" (sometimes referred to herein as the "Term") shall be the period of fifty-five (55) years commencing on the date this Resale Restriction is recorded in the Office of the County Recorder of San Diego County. This Resale Restriction shall apply to any transfer of ownership, or of any interest in the Property, that occurs prior to the expiration of the Affordable Term.

(c) **Transfer Defined.** The following shall all be considered transfers of the Property and shall be referred to herein generally as a "Transfer": (i) Owner voluntarily or involuntarily sells, conveys or transfers all or any part of the Property or any interest in the Property or all or any part of the Property or any interest in the Property is sold, conveyed or transferred by operation of law; (ii) if Owner is not a natural person, any beneficial interest in Owner is sold, conveyed or transferred; (iii) Owner refinances all or any part of the Property, except as provided in (d) below; (iv) Owner does not occupy the Property as his, he, or their primary residence; (v) Owner materially breaches the Habitat Note, the Habitat Deed of Trust, the City Note, the City Deed of Trust or this Resale Restriction, or (vi) Owner files for bankruptcy protection or an involuntary bankruptcy proceeding is commenced against Owner and is not dismissed within 90 days of the commencement of such involuntary bankruptcy proceeding.

(d) **Exclusions from Definition of Transfer.** Notwithstanding the foregoing, the granting of an easement to a governmental agency or quasi-public utility over a portion of the Property shall not be considered a Transfer.

(e) **Transfer to Only an Eligible Purchaser.** During the Term of this Resale

Restriction the Property may only be sold to Habitat, the City or an eligible purchaser (an "Eligible Purchaser") meeting the criteria set forth in Section 2, above, and only for an amount at or below the Maximum Restricted Resale Price defined in Section 6, below.

4. Maintenance and Inspection of Property. Owner shall maintain the Property and the improvements thereon in good condition and repair and in compliance with the standards promulgated from time to time by the City, throughout the Owner's period of ownership of the Property. In addition, upon City's receipt of a Notice of Intent to Transfer as detailed in Section 5 below, Habitat and/or City shall be given the right to enter and to inspect the Property to determine whether any violations of applicable building, plumbing, electric, fire, housing or other applicable codes exist and whether the Property has been maintained in good condition, upon reasonable written notice of not less than ten (10) days. Habitat or City shall notify Owner with regard to any noted code violations and maintenance deficiencies (collectively, the "Deficiencies"), and Owner shall cure the Deficiencies in a reasonable manner acceptable to Habitat or the City within sixty (60) days of being notified in writing of the result of the inspections.

5. Notice of Transfer. In the event the Owner intends to Transfer the Property, the Owner shall:

(a) Promptly notify the City and Habitat in writing of such intent prior to notifying the public of such intent, including, without limitation, prior to notifying real estate brokers or lenders of Owner's intent to Transfer the Property and prior to listing the Property on the Multiple Listing Service (hereinafter referred to as the "Notice of Intent to Transfer"). The Notice of Intent to Transfer shall be served by certified mail, return receipt requested, postage prepaid: (i) to the City of Oceanside, 300 North Coast Highway, Oceanside, CA 92054, Attention: Neighborhood Services Department, or such other address as the City may hereafter designate in writing, and (ii) to San Diego Habitat for Humanity Inc., Attention: Executive Director, 10222 San Diego Mission Rd., San Diego, CA 92108-2135, or such other address as Habitat may hereafter designate in writing. The Owner has the right to withdraw the Notice of Intent to Transfer prior to the opening of escrow relating to the Transfer of the Property;

(b) Within fifteen (15) days of the delivery of the Notice of Intent to Transfer, the Owner shall obtain and deliver to Habitat and the City a current written report of inspection of the Property by a licensed structural pest control operator;

(c) Prior to the close of escrow on the Transfer, the Owner shall repair all damage noted in the pest report, including, without limitation, damage caused by infestation or infection by wood-destroying pests and organisms;

(d) Within fifteen (15) days of delivery of the Notice of Intent to Transfer, the Owner shall allow Habitat or the City to inspect the Property to determine its physical condition;

(e) If the Property is vacant, the Owner shall maintain utility connections until the close of escrow on the Transfer; and

(f) In the event of a purchase of the Property by Habitat, the City or City's Designated Purchaser, the Owner shall permit a final walk-through of the Property by Habitat and/or the City.

6. **Determination of Maximum Restricted Resale Price.**

(a) **Calculation of Maximum Restricted Resale Price.** Except as otherwise provided herein, the purchase price that any Owner may accept for any Transfer of the Property shall be called the "Maximum Restricted Resale Price" and sometimes referred to herein as the "Affordable Purchase Price." The Maximum Restricted Resale Price shall be the lesser of: (i) the Fair Market Value of the Property, as defined in Section 6(e), below; and (ii) an amount which does not exceed the sum of: (A) the amount which would result in a Monthly Housing Cost not exceeding the product of one twelfth (1/12) of thirty-five percent (35%) of actual annual household gross income of the proposed purchaser applying substantially the same percentage of annual median income ("AMI") that had been applied to the Owner at the time of Owner's purchase (as determined by the City); plus (B) the purchaser's downpayment. Notwithstanding the foregoing or anything contained herein to the contrary, **under no circumstances shall the Maximum Restricted Resale Price be less than the sum of the current balance of the First Lien ("First Lien" means the lien of the Habitat Note and Habitat Deed of Trust (or that of the institution that made the purchase money loan to the Owner for the its purchase of the Property, if applicable) and/or any approved refinancings), plus the transferring Owner's share of escrow, title and other closing costs as set forth herein.**

(b) **Insurance Coverage.** Insurance premiums shall be the average of three quotes obtained by Habitat or the City for the coverage required for the First Lender Deed of Trust. The deductible for the insurance shall not exceed the sum of Five Hundred Dollars (\$500.00) per occurrence.

(c) **Monthly Housing Cost.** As used herein "Monthly Housing Cost" means all of the following associated with the Property, estimated or known as of the date of the proposed Transfer of the Property: (i) principal and interest payments on a fully-amortizing, thirty-year, fixed-rate mortgage loan at the then currently prevailing market rate of interest, and any loan insurance fees associated therewith, (under no circumstances shall any new purchaser of the Property obtain a mortgage loan that contains an adjustable interest rate); (ii) Property taxes and assessments, including Mello Roos fees, if applicable; (iii) fire and casualty insurance covering the replacement value of Property improvements (to the extent not covered by the homeowner association encompassing the Property); (iv) any homeowner association fees; and (v) private mortgage insurance, if applicable. Monthly Housing Cost of the new purchaser of the Property shall be an average of estimated costs for the next twelve (12) month period as of the date of the Notice of Intent to Transfer.

(d) **Maximum Restricted Resale Price Calculation Requests.** At any time during the term of this Resale Restriction, an Owner may obtain a written calculation showing the amount of the Maximum Restricted Resale Price for the Property and its method of calculation from Habitat or the City, by requesting the same in writing, provided that such calculation may not be obtained more frequently than once per calendar year during the Affordable Term.

(e) **Determination of Fair Market Value.** If it is necessary to determine the Fair Market Value of the Property, it shall be determined by a certified MAI or other qualified real estate appraiser approved in advance by Habitat or the City. If possible,

the appraisal shall be based upon the sale prices of comparable properties sold in the market area during the preceding three (3) month period. The "comparables" shall include properties which are actually subject to similar resale restrictions as the Property. If "comparables" are not subject to similar resale restrictions as the Property, the appraised values of the "comparables" shall be adjusted to account hypothetically for similar resale restrictions as the Property. The cost of the appraisal shall be paid by the Owner, unless the appraisal is obtained by Habitat, the City, or an Eligible Purchaser. Nothing in this Section 6(e) shall preclude the Owner, Habitat and the City from establishing the Fair Market Value of the Property by mutual agreement in lieu of an appraisal pursuant to this Section 6(e).

7. Grant of Option and Conditions on Transfer. The Owner hereby grants an option (the "Option") to Habitat and the City, individually, to purchase the Property on the following terms and conditions:

(a) **Grant of Option.** Owner hereby grants to Habitat the Option and first right of refusal, and grants to City the Option if Habitat does not exercise its option to purchase the Property on the terms and conditions set forth herein. The purchase price payable by the Habitat, City, or City's Designated Purchaser, to the Owner for the Property (the "Option Price") shall be the greater of (i) the Maximum Restricted Resale Price, as defined in Section 6 hereof, or (ii) the sum of the then current balance of the First Lien, plus the Owner's share of escrow, title and other closing costs. The Option created hereby shall be irrevocable by Owner and shall be binding upon the successors and assigns of Owner. Habitat and City shall have the right of specific performance to enforce the terms of this Option.

(b) **Term and Consideration for Option.** The term of the Option shall coincide with the Term of this Resale Restriction. Notwithstanding the foregoing, if ownership or any interest in the Property is transferred prior to expiration of such fifty-five (55) year period, the Term of the Option shall continue in the name of any subsequent Owner. The Option is given in consideration of the economic benefits received by the Owner resulting from ownership of the Property made possible by the financial assistance of Habitat and the City in developing or rehabilitating the Property.

(c) **Election to Exercise Option or Require Sale to a Designated Eligible Purchaser.** Within forty-five (45) days after receipt by Habitat and the City of the Notice of Intent to Transfer, and before Owner notifies the public of such intent, including, without limitation, prior to notifying real estate brokers or lenders of Owner's intent to Sale the Property and prior to listing the Property on the Multiple Listing Service and opening escrow with another buyer, Habitat shall either exercise its first right of refusal and notify both Owner and City, in writing, of its intent to exercise the Option or its refusal to purchase the Property, should Habitat fail or refuse to exercise the right of first refusal within said forty-five (45) days, City shall, within thirty (30) days thereafter, in its sole discretion notify the Owner of one of the following:

(1) notify the Owner regarding whether or not the City intends to exercise its Option to purchase the Property, as provided herein; or

(2) notify the Owner that the Owner may only Transfer the Property to an Eligible Purchaser designated by the City, in which event, such Eligible

Purchaser shall assume all of the obligations of Owner under the City Note, the City Deed of Trust, and this Resale Restriction.

The failure of Habitat or City to notify Owner of its intent to exercise the Option within the timeframes set forth above shall be deemed a waiver to exercise the Option. Notwithstanding the foregoing, a failure or waiver to exercise an Option on one or more Transfers shall not affect or invalidate the rights of either Habitat or the City from exercising the Option on any subsequent Transfer.

(d) Exercise of Option. The Option may be exercised by Habitat or by City, if Habitat fails to exercise its first right of refusal, by the delivery to Owner of written notice of such exercise (the "Exercise Notice") within the time frames specified in paragraph (c), above, after receipt by both Habitat and that City of the Notice of Intent to Transfer and before Owner has opened escrow with another Eligible Purchaser.

(e) Escrow and Completion of Sale. Within thirty (30) days after Habitat or City has provided Owner with the Exercise Notice or designation of Eligible Purchaser (the "Optionee") (for the purposes of this Section 8 the term "Eligible Purchaser" shall mean "Optionee"), or as soon thereafter as reasonably practicable, the Optionee and Owner ("Transferring Owner") shall execute escrow instructions for the Transfer of title to the Property to Optionee and an escrow shall be opened with an escrow company as determined by Optionee for the Owner's conveyance of the Property to Optionee. The funds required of Optionee the purchase of the Property and other costs shall deposited in escrow not later than one (1) business day prior to the anticipated close of escrow date. The Optionee's obligation to close escrow shall be subject to the Optionee's approval of a then current preliminary title report and the physical and environmental condition of the Property, as provided for in this Resale Restriction. Any exceptions shown on such preliminary title report created on or after the Owner's acquisition of the Property shall be removed by Owner at its sole expense prior to the close of escrow, unless such exception(s) is(are) accepted by Optionee in its reasonable discretion; provided, however, that Optionee shall accept the following exceptions to title: (i) current taxes not yet delinquent, (ii) matters affecting title existing on the date of Owner's acquisition of the Property, (iii) liens and encumbrances in favor of the City, (iv) the City Note and City Deed of Trust, and (v) matters shown as printed exceptions in Owner's standard form CLTA owner's policy of title insurance. The parties shall each be responsible for one-half of the escrow fees, documentary transfer taxes, recording fees and any other costs and expenses of the escrow, and the Optionee shall be responsible for the cost of a CLTA owner's policy of title insurance. Habitat and/or the City shall have fifteen (15) days after the opening of escrow to enter upon the Property to conduct a final walk through, any tests, inspections, investigations, or studies of the condition of the Property. Owner shall cooperate and permit access to the Property by the Optionee for such purposes. Owner shall within thirty (30) days after receipt of written notice from Optionee to remedy any Deficiencies noted on the Property during said walk through and/or inspections. Escrow shall close and the grant deed conveying title in the Property to Optionee shall be recorded promptly after acceptance by Optionee of the condition of title and the physical and environmental condition of the Property; the closing shall occur later than ninety (90) days after the date escrow is opened unless extended by the parties. Until such closing, the terms of the Habitat Note, the City Note, and the documents executed and recorded pursuant hereto shall remain in full force and effect.

(f) **Equity Sharing on Transfer.** Upon the closing on the Transfer of title to the Property to Optionee, the Transferring Owner shall be entitled to receive a portion of the "Equity" (defined below) in the Property (the "Owner's Shared Equity" defined below) which shall be calculated using the "Equity Sharing Formula" set forth and explained in Section 8(b) below. The Transferring Owner shall not be entitled to receive any other reimbursement, compensation or profit from the Transfer of title to the Property to Habitat. The Transferring Owner shall not receive any reimbursement or compensation for the payments Owner has made for real property taxes, interest, homeowners' association fees and assessments, or casualty insurance.

(g) **Delivery of Documents.** At the closing of the Transfer of the Property to Optionee, Habitat shall deliver to the Transferring Owner the Transferring Owner's original cancelled Habitat Note and a reconveyance of the Habitat Deed of Trust executed for the benefit of Habitat by the Transferring Owner at the time the Transferring Owner purchased the Property.

(h) **Assignment of City Note and City Deed of Trust.** If at any time during the Term of this Resale Restriction the Property is Transferred to Habitat or an Eligible Purchaser, the Transferring Owner shall assign its interest and obligations in and under the City Note and City Deed of Trust to the Eligible Purchaser, who shall accept said assignment, which assignment and acceptance shall be consented to by the City. The assignment shall be made in a form acceptable to City.

8. Equity Sharing Restrictions.

(a) **Equity.** Upon the Transfer of title to the Property to Habitat, City, or an Eligible Purchaser, the "Equity" in the Property shall be the difference between the Maximum Restricted Resale Price and the then current principal balance of the Transferring Owner's First Lien.

(b) **Equity Sharing Formula.**

(1) The Transferring "Owner's Shared Equity" shall be: (A) the difference between the (i) Affordable Transfer Price and (ii) the initial principal amount of the Transferring Owner's First Lien, multiplied by the number of months that the Transferring Owner has owned the Property and divided by the number of months in the term of the Transferring Owner's First Lien, plus (B) the difference between the initial principal amount of the Transferring Owner's First Lien and the then current principal balance of the Transferring Owner's First Lien

(2) Escrow shall deduct from the Transferring Owner's Shared Equity: the cost of repairing any damage to the Property caused by the Transferring Owner and/or the Transferring Owner's family, agents or invitees (ordinary wear and tear excluded) as evidenced by a repair estimate to be provided by Optionee to escrow from a licensed general contractor; and any delinquent payments and accrued charges for: (i) property taxes, (ii) property insurance, (iii) utilities, (iv) homeowners association fees, fines, late charges interest and assessments, and (v) escrow fees and closing costs and fees customarily paid by sellers in San Diego County (except title insurance).

(c) **Hypothetical Example.** The hypothetical example below illustrates how the Equity Sharing Formula functions. This example is not intended to represent any amount that may ever be a reality between the parties.

Assume that the Affordable Transfer Price is \$236,000.00.

Assume that the initial principal amount of the Transferring Owner's First Lien is \$210,000.00.

Assume that the Transferring Owner has owned the Property for 150 months.

Assume that the then current principal balance of the Transferring Owner's First Lien is \$105,000.00 (\$210,000.00 reduced by \$105,000.00 (150 payments of \$700.00 each)).

Assume that the term of the Transferring Owner's Note is 300 months.

Therefore, the "Owner's Shared Equity" is \$118,000.00. This sum was computed as follows: (A) \$13,000.00 (the difference between the (i) Affordable Transfer Price (\$236,000.00) and (ii) the initial principal balance of the Transferring Owner's First Lien (\$210,000.00), multiplied by 150 (the number of months that the Transferring Owner has owned the Property) and divided by 300 (the number of months in the term of the Transferring Owner's First Lien); plus (B) \$105,000.00 (the current payments made against the Transferring Owner's First Lien).

9. Transfers in Violation of Resale Restriction.

(a) Transfer or Lease of Property or Grant of a Security Interest in Property. No Owner shall engage in a voluntary Transfer of the Property or of any interest in the Property (including, without limitation, any sale, resale, lease, rental, assignment, pledge, grant of a security interest, transfer of any right of possession or other conveyance of the Property or of an interest in the Property) (a "Voluntary Transfer") without the prior express written consent of Habitat and/or the City. Habitat and City may withhold its consent, at its sole discretion.

(b) Voidable Transfers. If a Transferring Owner fails to provide Habitat and the City with a properly delivered Notice of Transfer or if a Transferring Owner engages and/or attempts to engage in any Voluntary Transfer of the Property or of any interest in the Property without the prior express written consent of Habitat: (i) any pending or actual Voluntary Transfer of the Property or of any interest in the Property shall, in Habitat's sole discretion, be voidable; (ii) Habitat shall have an automatic right to obtain title to the Property from the Transferring Owner and/or from the any new Owner, but neither the Transferring Owner nor the new Owner shall be entitled to receive any Owner's Shared Equity; and (iii) Habitat may also exercise any and all of its remedies available under applicable state, federal or local laws, including, without limitation, its power of termination under California law. Each Owner of the Property acknowledges that, but for the Shared Equity provisions, all of the Equity in the Property would belong to Habitat. Thus, an Owner's receipt of a portion of the Equity is a privilege, not an entitlement, and Habitat is not obligated to pay any portion of the Equity to an Owner who breaches this Agreement. Each Owner of the Property acknowledges that the fact

that such Owner may not receive any portion of the Equity is not a penalty, is not unreasonable and does not constitute a forfeiture.

(c) **Assignment of Excess Sale Proceeds.** If the Owner or any third party Transfers the Property or any interest in the Property in violation of this Resale Restriction, in Habitat's sole discretion, any proceeds of such Transfer in excess of the aggregate payments under the transferring Owner's Note shall be deemed assigned to Habitat. Habitat shall be entitled to bring legal action against any person or entity that has received any excess proceeds of such Transfer and shall be entitled to recover any such excess proceeds. There shall be established a lien on the title to the Property so that if such excess proceeds are not paid to Habitat upon its demand, then Habitat shall have the right to enforce said lien on the Property pursuant to California Civil Code sections 2924 et seq.

10. Sale of the Property to an Eligible Purchaser at or Below the Maximum Restricted Resale Price. Except as otherwise provided in this Resale Restriction, if a Transfer of the Property occurs during the Affordable Term, then said Transfer shall be subject to the following:

(a) The Property may only be Transferred to a subsequent purchaser (i) whose income is less than eighty percent (80%) of the Area Median Income, as verified and approved by Habitat, adjusted by household size, complying with the minimum and maximum household size requirements specified in Section 2 (d). If Habitat fails to verify the subsequent purchaser's income, the City shall retain the right to verify said income.

(b) The Property must be used only as the principal residence of the subsequent purchaser during the time of such subsequent purchaser's ownership.

(c) The Transfer price to the subsequent purchaser must be at or below the Maximum Restricted Resale Price.

(d) The subsequent purchaser must be a first-time homebuyer, as that term is defined in Section 2, above.

(e) This Resale Restriction shall remain in effect for fifty-five (55) years from the date title records in the name of the new Owner. Provided that such ownership or any interest in the Property is transferred prior to expiration of the Affordable Term, then the Affordable Term shall continue for the remainder of the fifty-five (55) year period beginning when title records from the initial sales of the Property from the subdivision.

(f) The purchaser of the Property must assume all of the obligations of Owner under the City Note, the City Deed of Trust and this Resale Restriction, in which event, the term of the City Note will continue for fifty-five (55) years from the date title records from the initial sale of the Property.

(g) Provided Owner Sells the Property to a person or persons meeting the requirements of paragraphs 10(a) through 10(f), inclusive (herein an "Eligible Purchaser"), before the end of the Affordable Term as defined in paragraph 3(a), Habitat shall recapture from such Sale a share of the Equity as provided in Section 8 hereof.

11. City's Right to Designate an Eligible Purchaser. Upon receipt of the Notice of Intent to Transfer, and if Habitat has not exercised its right of first refusal, the City shall have the

right, but not the duty, to designate an Eligible Purchaser to purchase the Property from the City's list of interested buyers. Within the timeframes set forth in Section 7, above, and before Owner has opened escrow with a proposed purchaser, the City shall notify the Owner regarding whether or not the City intends to exercise its right to designate an Eligible Purchaser. The notification to the Owner regarding the right to designate an Eligible Purchaser shall be sent by certified mail, return receipt requested. If the City exercises its right to designate an Eligible Purchaser, the City shall cause an escrow for the purchase of the Property to be opened within thirty (30) days following such notification to the Owner, and the designated Eligible Purchaser shall purchase the Property within ninety (90) days following the opening of escrow. The City's designated buyer shall be prequalified by a lender approved by the City.

12. Sale After Affordable Term. In the event that an Owner (or a succession of Eligible Owners) owns the Property for the fifty-five (55) years of the Affordable Term Owner may Transfer the property at will and shall be relieved of its obligation to share Equity in the Property with Habitat and City under this Resale Restriction and the Option granted to Habitat and City under Section 7, above, shall automatically terminate, become null and void, and of no further force or effect.

13. Defaults and Remedies. Upon a violation of any of the provisions of this Resale Restriction, Habitat shall give written notice to the Owner and the City by certified mail return receipt requested, postage prepaid, specifying the nature of the violation. If the violation is not corrected to the satisfaction of Habitat within a reasonable period of time, not longer than thirty (30) days after the date the notice is mailed, or within such further time as the Habitat determines is necessary to correct the violation, Habitat may declare a default under this Resale Restriction. Upon the declaration of a default, Habitat may apply to a court of competent jurisdiction for specific performance of the obligations of this Resale Restriction, for an injunction prohibiting a proposed Transfer in violation of this Resale Restriction, for a declaration that a Transfer in violation of the provisions of this Resale Restriction is void, or for any such other relief at law or in equity as may be appropriate. If Habitat fails to enforce the provisions of this Section 13, the City shall retain the right to enforce the same. In addition, Habitat may declare the Habitat Note immediately due and payable and if unpaid may foreclose under the Habitat Note and Habitat Deed of Trust, likewise, the City may declare the City Note immediately due and payable and if unpaid may foreclose under the City Note and City Deed of Trust, and/or either may exercise their option to acquire the Property. In the event of a default by the Owner, and/or by the Owner's transferee in those circumstances where a transfer has occurred in violation of this Resale Restriction, the Owner and/or the Owner's transferee shall hold Habitat and the City and their respective officers, members, employees or other agents harmless and reimburse the expenses, legal fees and costs for any action the either takes in enforcing the provisions of this Resale Restriction.

14. Notice of Default and Foreclosure. In the event Owner's First Lien is held by a party other than Habitat (an "Outside Lender"), a request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Property shall be recorded by Habitat and the City in the Office of the Recorder of San Diego County for the benefit of Habitat and the City. Habitat and/or the City may declare a default under this Agreement upon receipt of any notice given pursuant to Civil Code section 2924b, and may exercise its rights as provided in Sections 13 and 15.

In the event of default and foreclosure under a First Lien held by an Outside Lender, Habitat and/or the City shall have the same right as the Owner to cure defaults and redeem the Property prior to the foreclosure sale. Nothing herein shall be construed as creating any

obligation of Habitat or the City to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

If the Habitat and/or the City failed to file the request for notice of default, Habitat and the City's right to purchase the Property shall commence from the date the notice of default is given by the First Lien holder.

15. Purchase Option Upon Default Under Note or Deed of Trust Held by Outside Lender.

(a) **Purchase Option.** Notwithstanding, and in addition to, the remedies provided Habitat and the City in Section 13, the Owner hereby grants to Habitat the option, and in the event Habitat fails or refuses to exercise its option, Owner hereby grants to City the option to purchase the Property effective thirty (30) days after either Habitat or the City has given the Owner notice of the declaration of a default and the Owner has failed to cure the default. Said option to purchase is given in consideration of the economic benefits received by the Owner resulting from ownership of the Property made possible by the financial assistance of Habitat and the City in developing or rehabilitating the Property.

(b) **Exercise of Option.** The option to repurchase may be exercised upon a default under this Agreement or upon default under any promissory note, deed of trust or any other lien, including a judgment lien, recorded against the Property. The City shall have thirty (30) days after a default is declared to notify the Owner and the Outside Lender of its decision to exercise its option to purchase. Not later than ninety (90) days after the notice is given to exercise its option, the City shall purchase the Property for the Maximum Restricted Resale Price set forth in Section 6.

(c) **Non-liability of Habitat or the City.** In no event shall Habitat or the City become in any way liable or obligated to the Owner or to any successor-in-interest of the Owner by reason of Habitat's or the City's Option to purchase the Property, nor shall Habitat or the City be in any way obligated or liable to the Owner or any successor-in-interest of the Owner for Habitat's or the City's failure to exercise such Option to purchase the Property.

(d) **Affect of Agreement Upon Foreclosure.** The parties intend to restrict the sale and occupancy of the Property for the "longest feasible time," therefore, any sale of the Property through foreclosure under any deed of trust or mortgage with power of sale encumbering the Property by an Outside Lender shall not defeat or invalidate the covenants and provisions of this Resale Restriction and shall be binding upon any purchaser or entity who acquires title to the Property through foreclosure, a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise.

16. Restrictions on Foreclosure Proceeds. If a creditor acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the Owner shall not be entitled to the proceeds of sale to the extent that such proceeds otherwise payable to the Owner, when added to the proceeds paid or credited to the creditor, exceed the amount the Owner would have received by a Sale in accordance with Section 8. The Owner shall instruct the holder of such excess proceeds to pay such proceeds to Habitat as repayment

for, and in consideration of, the financial assistance provided in the development and purchase of the Property.

17. Binding on Successor and Assigns. This Resale Restriction shall bind, and the benefit hereof shall inure to, the Owner, subsequent Owners, and to their respective heirs, legal representatives, executors, successors in interest and assigns, and to Habitat and the City and their successors in interest and assigns.

18. Superiority of Agreement. The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that, in any event, this Resale Restriction is controlling as to the rights and obligations between and among the Owner, subsequent Owners, and to their respective heirs, legal representatives, executors, successors in interest and assigns, Habitat and the City and their respective successors in interest and assigns.

19. Subordination. This Resale Restriction may be recorded in second lien priority position subordinate to a first priority deed of trust for the benefit of Habitat or for the benefit of an institutional lender financing an Owner's purchase or refinancing of the Property conditioned upon City's prior written approval, which approval may be granted or denied at City's sole and absolute discretion.

20. Consent to Habitat's Assigning, Discounting or Pledging Owner's Promissory Note and Deed of Trust. Each Owner hereby consents to Habitat's assigning, discounting or pledging as security such Owner's promissory note, deed of trust and/or any other similar instruments that are a part of the overall transaction between Habitat and such Owner concerning the Property.

21. General Provisions.

(a) **Invalid Provisions.** If any one or more of the provisions contained in this Resale Restriction shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Resale Restriction, and this Resale Restriction shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If a court of competent jurisdiction determines, by way of final unappealable order or judgment, that the interest rate charged under the City Note secured by this Resale Restriction is usurious, then such rate shall automatically and retroactively be reduced to the maximum rate allowed under applicable law.

(b) **Controlling Law.** The terms of this Resale Restriction shall be interpreted under the laws of the State of California.

(c) **Notices.** All notices required herein shall be sent to the City and to Habitat by certified mail return receipt requested, postage prepaid, as follows:

City of Oceanside
c/o Neighborhood Services Department
300 North Coast Highway
Oceanside, CA 92054

Habitat for Humanity Inc.
Attn: Executive Director

10222 San Diego Mission Road
San Diego, CA 92108-2135

or to such other address that the City and Habitat may subsequently request in writing. Notices to the Owner shall be sent by certified mail, return receipt requested, postage prepaid, to the Property address.

(d) **Interpretation of Restriction Covenants.** The terms of this Resale Restriction shall be interpreted to ensure, to the extent possible, that the Maximum Restricted Resale Price of and mortgage payments for the Property remain affordable to households earning eighty percent (80%) of the Area Median Income, as adjusted annually and as further adjusted for household size.

(e) **Non-Discrimination Covenants.** The Owner covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Owner itself or any person claiming under or through the Owner 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. The foregoing covenants shall run with the land.

(f) **Written Consent of City Required Before Transfer.** During the Affordable Term, the Property, and any interest therein, shall not be Transferred, including, without limitation, refinanced, except as expressly provided in this Resale Restriction or except with the express prior written consent of the City.

(g) **Monitoring.** The Owner shall annually report to the City, in writing, confirming that the Owner continues to reside in the Property and has not leased or rented the Property, providing evidence of insurance and of the payment of taxes, if not impounded, and providing any and all other information reasonably needed by the City to assure compliance with the terms of this Resale Restriction on a form or forms prepared by the City. Within 15 days of a written request from the City to the Owner, Owner shall respond with all information requested to enable the City to complete its monitoring responsibilities under the terms of this Resale Restriction. Failure to completely and timely comply with requests shall be deemed a material default under the terms of this Resale Restriction.

IN WITNESS WHEREOF, the parties have executed this Resale Restriction on or as of the date first written above.

“City”
City of Oceanside

By: _____
Name:
Title:

“Habitat”

SAN DIEGO HABITAT FOR HUMANITY, INC., a
California Nonprofit Public Benefit Corporation

By: _____

Name:

Title:

“Owner”

Owner

By: _____

Name:

By: _____

Name:

ACKNOWLEDGMENTS

State of California)
County of San Diego) ss

On _____, 200____, before me, _____
personally appeared, _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument **"AFFORDABLE HOUSING RESALE
RESTRICTIONS; OPTION AGREEMENT AND OPTION TO DESIGNATE PURCHASER"** and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity
on behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____

(Seal)

State of California)
County of San Diego) ss

On _____, 200____, before me, _____
personally appeared, _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument **"AFFORDABLE HOUSING RESALE
RESTRICTIONS; OPTION AGREEMENT AND OPTION TO DESIGNATE PURCHASER"** and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity
on behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

State of California)
County of San Diego) ss

On _____, 200____, before me, _____
personally appeared, _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument **"AFFORDABLE HOUSING RESALE
RESTRICTIONS; OPTION AGREEMENT AND OPTION TO DESIGNATE PURCHASER"** and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity
on behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT "A"

Property Description

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

BEING LOT OF LIBBY LAKE VILLAGE, ACCORDING TO MAP THEREOF NO. 15696, AS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JUNE 26, 2008.

TOGETHER WITH AN UNDIVIDED 1/20TH INTEREST IN LOTS A AND B OF SAID MAP NO. 15696.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT AND RIGHT-OF-WAY FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AND UTILITY PURPOSES OVER THE WESTERLY PORTION OF LOT 21 AS SHOWN ON SAID MAP NO. 15696.

EXHIBIT "B"

City of Oceanside

**ACKNOWLEDGMENT OF
AFFORDABLE HOUSING RESALE RESTRICTIONS**

The undersigned ("Owner") acknowledges as follows:

1. I/We have purchased the property at ____ Libby Village Way, Oceanside, California.
2. There is recorded against the Property a certain Affordable Housing Resale Restrictions; Option Agreement and Option to Designate Purchaser recorded on _____ in the San Diego County Recorder's Office as Document No. _____ ("Resale Restriction").
3. I/We meet the current requirements established by the City in order to be deemed an "Eligible Purchaser" as defined in the Resale Restriction.
4. We have read and fully understand the Resale Restriction and have had the opportunity to ask City staff and my/our own attorney any questions we have about the Resale Restriction. I/We understand that I/we will not be able to sell the Property for its fair market value during the term of the Resale Restriction and that the Resale Restriction limits the price I/we can sell the Property for, and how much of the equity I/we will be able to receive.
5. We understand that the Resale Restriction runs with the land for a period of fifty-five (55) years, commencing on the recording date of the Resale Restriction, and is binding on me/us when I/we decide to transfer or sell the Property, or any interest in the Property, and I/we agree to comply fully with its terms.

"Owner"

Owner

By: _____

Name:

Dated: _____

By: _____

Name:

Dated: _____

ATTACHMENT NO. 10

**SECURED PROMISSORY NOTE
[SECOND PRIORITY]**

\$135,000.00

(Date), 2009

Oceanside, CA

1. Borrower's Promise to Pay:

FOR VALUE RECEIVED, _____ and _____ (jointly, "Borrower") unconditionally promise to pay CITY OF OCEANSIDE, a municipal corporation ("Lender"), or Order, the principal sum of One Hundred Thirty-five Thousand and 0/100 Dollars (\$135,000.00) (the "Principal Sum") in lawful money of the United States of America. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Holder." This Note will bear no interest unless Borrower defaults under the terms of this Note, the deed of trust ("City Deed of Trust") securing this Note of even date herewith, and/or the Affordable Housing Resale Restrictions; Option Agreement and Option to Designate Purchaser ("Resale Restriction") all of even date herewith, affecting the Property, except as provide elsewhere herein. The term of this Note shall be for **fifty-five (55) years** commencing upon the date of the filing of the City Deed of Trust and the Resale Restrictions in the Official Records of San Diego County and maturing on _____, 20__ (the "Maturity Date") (the "Term").

2. Security:

This Secured Promissory Note ("Note") is secured by a second priority Deed of Trust, Assignment of Rents and Security Agreement dated as of the date of this Note ("City Deed of Trust") in the principal amount of \$135,000.00 executed by Borrower in favor of City of Oceanside ("City"), as Trustee and as Beneficiary, encumbering the real property commonly known as _____ Libby Village Way, Oceanside, California 92057 (the "Property") and the rents and issues thereof (collectively the "Collateral"). The lien created by this Note and the City Deed of Trust is second in priority to the lien created by the note and deed of trust hold by San Diego Habitat for Humanity, Inc., (the "Habitat Note" and "Habitat Deed of Trust", respectively) of even date herewith securing the primary financing for Borrower's purchase of the Property.

3. Payments:

A. Time and Place of Payments

Borrower shall not be required to make any payments of the Principal Sum or accrued interest on the Principal Sum during the Term of this Note, unless Borrower defaults under the terms of this Note, the City Deed of Trust, the Habitat Deed of Note, the Habitat Deed of Trust, and/or the Affordable Housing Resale Restrictions; Option Agreement and Option to Designate Purchaser affecting the Property ("Resale Restriction"). Provided Borrower, its successors or assigns retains ownership and occupies the Property and does not Transfer the Property or any interest therein in violation of the terms of this Note, the City Deed

of Trust, the Resale Restrictions, the Habitat Note, and/or the Habitat Deed of Trust, for the fifty-five (55) year Term, this Note will be forgiven in full at the expiration of the Term. Should Borrower Transfer the Property to another Eligible Purchaser during the fifty-five (55) year Term of this Note, Borrower understands that this Note may be assigned to and assumed by the Eligible Purchaser. The term "Transfer" and any other capitalized term as used in this Note and not otherwise defined in this Note shall have the same meaning attributed to such terms in the Resale Restriction.

This Note is immediately due and payable, including the principal and interest thereon, if any, upon an Event of Default by Borrower.

Borrower shall send or deliver any and all payments due under this Note to City of Oceanside, 300 North Coast Highway, Oceanside, California 92054, Attention: Neighborhood Services Department, or to such other person and/or place as Holder may specify from time to time in writing.

4. Borrowers' Right to Prepay:

This Note may be prepaid in whole or part without penalty, provided Borrower gives the Holder at least thirty (30) days prior written notice of such prepayment. Any partial payment shall be credited first to interest then due, if any is due pursuant to the provisions of Section 5 below, and the remainder shall be credited to principal, and interest shall thereupon cease upon the principal so credited. Borrower has the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When making a prepayment, Borrower will tell the Note Holder in a letter that it is doing so. A prepayment of all unpaid principal is known as a "full prepayment"; a prepayment of only part of the unpaid principal is known as a "partial prepayment". Borrower may make a full prepayment or a partial prepayment, in such event the Note Holder will use all of Borrower's prepayments to reduce the amount of principal owed under this Note. Borrower may make a full prepayment at any time.

5. Borrower's Failure to Pay as Required and Other Defaults:

A. Default

At the option of Holder, this Note shall be immediately due and payable, without notice or demand, upon occurrence at any time, during the Term, of any of the following events of default (an "Event of Default"):

- (1) If Borrower defaults in the payment of any sum due hereunder or of any costs due hereunder, and if such default continues for a period of thirty (30) days after the due date thereof;
- (2) If Borrower fails to perform or observe any of the terms or conditions of the City Deed of Trust or of any other agreement or instrument securing or pertaining to this Note;
- (3) If Borrower defaults under any of the provisions of the Resale Restriction.

(4) If Borrower or any other person or entity liable for the payment of this Note make an assignment for the benefit of creditors, or if there is the appointment of a receiver for all or substantially all of Borrower's property, or if Borrower files a petition in bankruptcy or other similar proceeding under law for relief of debtors;

(5) If there is a filing against Borrower of a petition in bankruptcy or other similar proceeding under law for relief of debtors, and if such petition is not vacated or discharged within sixty (60) days after the filing thereof;

(6) If there is the occurrence of any event which would constitute a default under any other liability or obligation of one or more of Borrower to Habitat or any obligation of Borrower to any third party which is secured by the Collateral or any portion thereof;

(7) If Borrower sells, assign, convey, deliver, transfer, rent or lease to any third party any right, title or interest in the Collateral without the prior written consent of Holder;

(8) If Borrower grants any security interest in the Collateral without the prior written consent of Holder; or

(9) If Borrower finance or re-finance Borrower's interest in the Property without the prior written consent of Holder.

B. No Waiver by Holder

Even if, at a time when Borrower is in default, Holder does not require Borrower to pay the unpaid portion of the Principal Sum immediately in full as described in Paragraph 5(A) or grants Borrower an extension from time to time, Holder shall still have the right to make Borrower pay the unpaid portion of the Principal Sum immediately in full if Borrower is in default again at a later time.

C. Interest Upon Default

If Borrower defaults in the payment of any monthly payment, and if Holder decides, because of such default, to declare the unpaid Principal Sum to be immediately due and payable, Borrower shall pay interest on the unpaid Principal Sum at the rate of six percent (6%) per annum (the "Alternate Rate") from the date of the default until Borrowers pay the unpaid portion of the Principal Sum in full. Notwithstanding any of the foregoing which may be construed to the contrary, interest shall neither accrue nor be collected at a rate greater than the maximum rate permitted by law.

6. Due on Sale Clause:

Except as provided in Paragraphs 6A through 6B below, the entire unpaid balance of the Principal Sum and all accrued interest, if any, on this Note shall be all due and payable in the event of a voluntary or involuntary sale, resale, transfer, conveyance, alienation, lease, rental, assignment, pledge, grant of a security interest, transfer of any right of possession or other conveyance of the Property or of any interest in the Property, or in the event Borrower obtains any financing, loan or line of credit secured by a deed of trust encumbering the

Property. Notwithstanding the provisions of this "Due on Sale" clause, the following shall apply:

A. Transfers Exempt from "Due on Sale" Clause

The following Transfers shall be exempt from the "Due on Sale" clause:

- (1) A recorded Transfer of title to or an interest in the Property to a family trust created by one or more of the Borrowers for estate planning or tax purposes, provided Borrowers have obtained the prior written consent of City prior to such transfer;
- (2) A Transfer of title to or an interest in the Property by gift, devise or inheritance to Owner's spouse or child;
- (3) The taking of title to or an interest in the Property by a surviving joint tenant who is the Owner's spouse or child;
- (4) The Transfer of title to or an interest in the Property by a current or former spouse pursuant to divorce or dissolution proceedings;
- (5) The acquisition of title to or an interest in the Property in conjunction with marriage; and
- (6) A Transfer of title to or an interest in the Property with the prior written consent of City.

B. Transfer to Habitat

If Borrower Transfers title to the Property to Habitat pursuant to the terms of Section 7 of the Resale Restriction, this Note, the City Deed of Trust, the Resale Restriction, and any other agreement or instrument securing or pertaining to this Note shall be assigned to and assumed by Habitat as of the date title to the Property is transferred to Habitat. Upon the Transfer of title from Habitat to an Eligible Purchaser, this Note, the City Deed of Trust, the Resale Restriction, and any other agreement or instrument securing or pertaining to this Note shall be assigned to and assumed by the Eligible Purchaser and the obligations of Borrower shall remain though the expiration of the Term of this Note.

7. Obligations of Persons Under this Note:

Each person who signs this Note is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to pay the full amount owed. Any person who assumes obligations under this Note, including, without limitation, the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all the promises made in this Note.

Holder may enforce its rights under this Note against each person or entity liable for the payment of this Note, individually, or may enforce its rights under this Note against all persons and entities liable for the payment of this Note together.

8. Waivers:

Borrower hereby waives presentment, demand, protest, notices of protest, dishonor and non-payment of this Note, and all other notices of every kind. No single or partial exercise of, or forbearance from exercising, any power hereunder, under the City Deed of Trust, under the Resale Restriction or under any other agreement or instrument securing or pertaining to this Note shall preclude other or further exercises thereof or the exercise of any other power. Holder shall at all times have the right to proceed against any portion of the Collateral securing this Note in such order and in such manner as Holder may determine in its sole discretion, without waiving any rights with respect to any other security. No delay or omission on the part of Holder in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note. The release of any party liable on this Note shall not operate to release any other party liable hereon.

9. Payment of Holder's Costs:

If Holder retains counsel for the purpose of collecting any monies due hereunder, or of enforcing or preventing the breach of any rights hereunder, including, but not limited to, instituting any action or proceeding to enforce any provision hereof, for damages by reason of any alleged breach of any provision hereof, for a declaration of such party's rights or obligations hereunder or for any other remedy, and if said matter is settled by judicial determination (which term includes mediation and arbitration), the prevailing party (whether at trial or appeal) shall be entitled, in addition to such other relief as may be granted, to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, all attorneys' fees and costs incurred for the services rendered to such prevailing party. Further, the prevailing party shall be entitled to additional awards of attorneys' fees for services reasonably rendered and costs incurred in enforcing such judgment or award and/or in collecting any monies awarded therein.

10. Applicable Law:

This Note has been executed and delivered by Borrower in the State of California and shall be governed by and construed in accordance with the laws of the State of California. In any action brought under and/or arising out of this Note, Borrower hereby consent to the jurisdiction of any competent court within the State of California, with venue in San Diego County, and consents to service of process by any means authorized by California law.

11. Severability:

If any term or provision of this Note is deemed invalid, unlawful or unenforceable by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected thereby, and such remaining provisions shall remain in full force and effect.

"BORROWER"

Printed Name of Borrower:

Printed Name of Borrower:

NO CHARGE ON THIS DOCUMENT FOR
THE BENEFIT OF
THE CITY OF OCEANSIDE

ATTACHMENT NO. 12

Recording Requested By
And When Recorded Mail To:

THE CITY OF OCEANSIDE
300 North Coast Highway
Oceanside, CA 92054
ATTN: City Clerk

DEED OF TRUST
(80% AMI)

THIS DEED OF TRUST ("Lender Deed of Trust") is made this ____ day of _____
200__, among the Trustor, _____
("Borrower"), the trustee, **CITY OF OCEANSIDE**, a municipal corporation ("Trustee"), and the Beneficiary,
the **CITY OF OCEANSIDE** ("Lender"), whose address is 300 North Coast Highway, Oceanside, CA
92054, Attention: Neighborhood Services Department,

BORROWER HEREBY irrevocably grants, transfers, and assigns to Trustee, in trust, with
power of sale, all that property (the "Property") in the City of Oceanside, County of San Diego, State
of California, described as:

(See Legal Description - Exhibit "A")

which has the address of _____ Libby Village Way, Oceanside, California 92057 (herein "Property
Address");

TOGETHER with all the improvements now and hereafter erected on the Property, and all
easements, rights, appurtenances and rents (subject, however, to the rights and authorities given
herein to Lender to collect and apply such rents), all of which shall be deemed to be and remain part
of the property covered by this Lender Deed of Trust; and all of the foregoing, together with said
property, are hereinafter referred to as the "Property";

TO SECURE to Lender the repayment of the indebtedness evidenced by Borrower's secured
promissory note of even date herewith and extensions and renewals thereof, in the principal sum of One
Hundred Thirty-five Thousand U.S. Dollars (\$135,000.00) ("Note"), including without limitation the
performance of each agreement and covenant of Borrower under that certain Affordable Housing
Resale Restrictions; Option Agreement and Option to Designate Purchaser ("Resale Restriction") of even
date herewith and recorded concurrently herewith affecting the Property; the payment of all other
sums, with interest thereon, advanced in accordance herewith to protect the security of this Lender Deed
of Trust; and the performance of the covenants and agreements of Borrower contained herein.

THIS DEED OF TRUST is subordinate to the Habitat Note and Habitat Deed of Trust, as such
terms are defined in the Note.

BORROWER covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that Borrower is unencumbered except for encumbrances of record. Borrower covenants that Borrower warrants, and will defend generally, the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS

Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest, if any, evidenced by the Note.

2. **Funds for Taxes and Insurance.** To protect the security of the Lender Deed of Trust, Borrower agrees to pay, at least ten (10) days before delinquency, all taxes and assessments affecting the Property, including assessments on appurtenant water stock, all encumbrances, charges and liens, with interest, on the Property or any part thereof, which appear to be prior or superior hereto, and all costs, fees and expenses of this Lender Deed of Trust.

Should Borrower fail to make any payment or fail to do any act as herein provided, then Lender or Trustee, without obligation to do so and without notice to or demand upon Borrower and without releasing Borrower 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, Lender or Trustee being authorized to enter upon the Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either Lender or Trustee appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note shall be applied by Lender first in payment of amounts due to Lender by Borrower, then to interest payable on the Note, and then to the principal of the Note.

4. **Prior Mortgages and Deeds of Trust; Charges, Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Lender Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Lender Deed of Trust, and leasehold payments, if any.

5. **Hazard Insurance.** Borrower shall keep the improvement(s) now existing or hereinafter erected on the Property insured against loss by fire, hazards included within the terms "extended coverage," and such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender, provided that such approval will not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgagee clause in favor of and in a form acceptable to Lender. Lender has the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Lender Deed of Trust.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

If Property is abandoned by Borrower, or if Borrower fails to respond to Lender within thirty (30) days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Lender Deed of Trust.

6. Preservation and Maintenance of Property. Borrower will keep the Property in good repair and in compliance with the standards promulgated from time to time by the Lender, and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Lender Deed of Trust is on a leasehold. If this Lender Deed of Trust is on a unit in a condominium or planned unit development, Borrower shall perform all of Borrower's obligations under the declaration of covenants, conditions and restrictions creating or governing the condominium or planned unit development, the bylaws and regulations of the condominium or planned unit development, and constituent documents.

7. Protection of Lender Security. If Borrower fails to perform the covenants and agreements contained in this Lender Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender's required mortgage insurance is a condition of making the loan secured by this Lender Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph, with interest thereon, at the Note rate, will become additional indebtedness of Borrower secured by this Lender Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts will be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph will require Lender to incur any expense or take any action hereunder.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender will give Borrower notice prior to any such inspection, specifying reasonable cause therefor related to Lender's interest in the Property.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Lender Deed of Trust.

10. Borrower Not Released; Forbearance by Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Lender Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Lender Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. **Successors and Assigns Bound, Joint and Several Liability.** The covenants and agreements contained herein shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 15 hereof. All covenants and agreements of Borrower shall be joint and several.

12. **Notice.** Except for any notice required under applicable law to be given in another manner:

(a) any notice to Borrower provided for in this Lender Deed of Trust shall be given by delivering it or by mailing such notice by certified mail, addressed to Borrower at the Property Address or such other address as Borrower may designate by notice to Lender as provided herein; and

(b) any notice to Lender will be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein.

Any Notice provided for in this Lender Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. **Governing Law, Severability.** The state and local laws applicable to this Lender Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Lender Deed of Trust. In the event that any provision or clause of this Lender Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Lender Deed of Trust or the Note which can be given effect without the conflicting provision and, to this end, the provisions of this Lender Deed of Trust and the Note are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. **Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and this Lender Deed of Trust at the time of execution or after recordation hereof.

15. **Transfer and Affordable Term Defined.**

(a) **Definition of Transfer.** The following shall all be considered transfers or sales of the Property and shall be referred to herein generally as a "Transfer": (i) all or any part of the Property or any interest in the Property is sold, conveyed or transferred voluntarily or involuntarily or all or any part of the Property or any interest in the Property is sold, conveyed or transferred by operation of law, (ii) if Borrower is not a natural person and a beneficial interest in Borrower is sold, conveyed or transferred, (iii) all or any part of the Property is refinanced, except as provided in (b) below, (iv) Borrower does not occupy the Property as his, her, or their, primary residence, (v) any material breach of the Note, the Resale Restriction, this Lender Deed of Trust, the Habitat Note or the Habitat Deed of Trust, or (vi) filing for bankruptcy protection or an involuntary bankruptcy proceeding is commenced against Borrower and is not dismissed within 90 days of the commencement of such involuntary bankruptcy proceeding. The term "Sell," may be used herein in place of the term "Sale," where appropriate and as used herein shall mean a Transfer.

(b) **Exclusions from Definition of Sale.** Notwithstanding the foregoing, the

granting of an easement to a governmental agency or quasi-public utility over a portion of the Property shall not be considered a Sale.

(c) **Definition of Affordable Term.** The "Affordable Term" shall be the period of fifty-five (55) years measured from the date this Lender Deed of Trust is recorded in the Office of the County Recorder of San Diego County. During the Affordable Term any Transfer of the Property shall be subject to the provisions of the Resale Restriction. Any subsequent transfer by the Borrower to a subsequent Borrower shall also be subject to the provisions of the Resale Restriction until the end of the Affordable Term. The parties intend to restrict the Transfer and occupancy of the Property for the "longest feasible time," as defined in California Health & Safety Code §§33334.3 and 33413, which sections define the "longest feasible time" to include "unlimited duration."

NON-UNIFORM COVENANTS

Borrower and Lender further covenant and agree as follows:

16. **Acceleration, Remedies.** Upon Borrower's breach of any covenant or agreement of Borrower in this Lender Deed of Trust, including the covenants to pay when due any sums secured by this Lender Deed of Trust, Lender, prior to acceleration, shall give notice to Borrower as provided in paragraph 12 hereof specifying:

- (a) the breach;
- (b) the action required to cure such breach;
- (c) a date, not less than ten (10) days from the date the notice is mailed to Borrower, by which such breach must be cured; and
- (d) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Lender Deed of Trust and sale of the Property.

The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Lender Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Section 24, including, but not limited to, reasonable attorneys' fees.

If Lender invokes power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled

sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order:

- (1) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees and costs of title evidence;
- (2) to all sums secured by this Lender Deed of Trust; and
- (3) the excess, if any, to the person or persons legally entitled thereto.

17. **Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Lender Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Lender Deed of Trust discontinued at any time prior to five (5) days before the sale of the Property pursuant to the power of sale contained in this Lender Deed of Trust or at any time prior to entry of a judgment enforcing this Lender Deed of Trust if:

- (a) Borrower pays Lender all sums which would be then due under this Lender Deed of Trust and the Note had no acceleration occurred;
- (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Lender Deed of Trust;
- (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Lender Deed of Trust and in enforcing Trustee's remedies as provided in paragraph 24 hereof, including, but not limited to, reasonable attorneys' fees; and
- (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Lender Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Lender Deed of Trust shall continue unimpaired.

Upon such payment and cure by Borrower, this Lender Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

18. **Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, upon acceleration under paragraph 24 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the cost of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Lender Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

19. **Reconveyance.** Upon satisfaction of both of the following conditions: (i) payment of all sums secured by this Lender Deed of Trust and (ii) termination of the Resale Restriction, Lender shall request Trustee to reconvey the Property and will surrender this Lender Deed of Trust and all notes evidencing indebtedness secured by this Lender Deed of Trust to Trustee. Trustee shall reconvey the

Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

20. Substitute Trustee. Lender, at Lender's option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county where the Property is located. The instrument shall contain the name of the original lender, Trustee and Borrower, the book and page where this instrument is recorded, and the name and address of the successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

21. Request for Notices. Borrower requests that copies of the notice of sale be sent to Borrower's address which is the Property Address.

22. Statement of Obligation. Lender may charge a fee not to exceed Fifty Dollars (\$50.00) for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

23. Resale Restriction. The Property is subject to the Affordable Housing Resale Restrictions, Option Agreement, and Option to Designate Purchaser ("Resale Restriction") between Lender and Borrower, which are not attached hereto but are incorporated by reference. Borrower acknowledges receipt of said Resale Restriction and agrees, for himself, his heirs, successors and assigns to be bound by the same.

24. Warranties of Borrower. Borrower warrants to Lender that Borrower is a first-time home buyer; that is, he or she has not owned a home within the three-year (3-year) period immediately preceding the date of the Note.

25. Further Warranties of Borrower. Borrower further warrants to Lender as follows:

(a) That Borrower's annual gross income does not exceed eighty percent (80%) of the Area Median Income, as adjusted for family size, on the date of the recordation of this Lender Deed of Trust.

(b) That for so long as Borrower owns the Property during the Affordable Term, Borrower will reside in the Property as Borrower's principal place of residence. Borrower agrees not to sublet, lease or rent out the Property during the term of this Lender Deed of Trust.

26. Foreclosure by Holder of Senior Lender Deed of Trust. This Lender Deed of Trust is subordinate to any deed of trust or mortgage on the Property made by or held by an institutional lender or investor. Any party, and its successors and assigns, receiving title to the Property through a trustee's sale, a judicial foreclosure sale or deed in lieu of foreclosure of such deed of trust or mortgage, and any conveyance or transfer thereafter, shall receive title free and clear of the provisions of this Lender Deed of Trust, however, any such conveyance shall not defeat or invalidate the covenants and provisions of this Resale Restriction and shall be binding upon any purchaser or entity who acquires title to the Property through foreclosure, a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise.

IN THE EVENT OF SUCH SALE, TRUSTEE SHALL COMPLY WITH ALL OF THE COVENANTS, CONDITIONS, RESTRICTIONS, LIMITATIONS AND PROVISIONS CONTAINED IN THE RESALE RESTRICTION. ANY FORECLOSURE BIDDER SHALL ALSO BE SUBJECT TO ALL OF THE COVENANTS, CONDITIONS, RESTRICTIONS, LIMITATIONS AND PROVISIONS CONTAINED IN

THE RESALE RESTRICTION.

27. Request for Notice of Default. Lender requests that copies of notices of foreclosure from the holder of any lien which has priority over this Lender Deed of Trust be sent to Lender's address, as set forth on page 1 of this Lender Deed of Trust, as provided by Section 2924b of the Civil Code of California.

28. Usury. If a court of competent jurisdiction determines, by way of final unappealable order or judgment, that the interest rate charged under the Note secured by this Lender Deed of Trust is usurious, then such rate shall automatically and retroactively be reduced to the maximum rate allowed under applicable law.

IN WITNESS WHEREOF, Borrower has executed this Lender Deed of Trust.

Date: _____

Borrower: _____

Date: _____

Borrower: _____

EXHIBIT "A"

Legal Description of Property

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

BEING LOT X OF LIBBY LAKE VILLAGE, ACCORDING TO MAP THEREOF NO. 15696, AS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JUNE 26, 2008.

TOGETHER WITH AN UNDIVIDED 1/20TH INTEREST IN LOTS A AND B OF SAID MAP NO. 15696.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT AND RIGHT-OF-WAY FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AND UTILITY PURPOSES OVER THE WESTERLY PORTION OF LOT 21 AS SHOWN ON SAID MAP NO. 15696.

ATTACHMENT NO. 14

PURCHASE AND SALE AGREEMENT
[and Joint Escrow Instructions]

This PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of _____, 200__ ("Effective Date"), by and between the City of Oceanside, a municipal corporation, ("Seller") and _____, (collectively and individually "Buyer").

WHEREAS, Seller is the legal and equitable owner of that certain real property located at ~~XXX~~ Libby Village Way, Oceanside, California 92057 (the "Property"), as more particularly described herein below, and has determined that selling the property for purposes set forth herein would be a benefit to the public and in the furtherance of Seller's affordable housing goals;

WHEREAS, Buyer warrants that Buyer is a first time homebuyer who's annual gross income does not exceed eighty percent (80%) of the median income for the San Diego County metropolitan area, adjusted for family size, as said median income is determined by the Department of Housing and Community Development, as amended from time to time ("Area Median Income"), that Buyer's household meets the minimum household size for the housing unit being purchased, and that Buyer's financial worthiness has been evaluated and meets the requirements as a Qualified Homebuyer; and

WHEREAS, Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer for Buyer's primary residence in conformance with the affordability restrictions placed against the Property by that certain instrument titled "Affordable Housing Resale Restrictions; Option Agreement and Option to Designate Purchaser" (the "Resale Restriction") (the terms of which have been read and understood by Buyer and that Buyer shall execute along with Seller and San Diego Habitat for Humanity, Inc. ("Habitat") prior to the Close of Escrow) and compatible with the uses permitted and in compliance with the standards set forth by the Oceanside City Code, Planning Commission, and the Covenants, Conditions and Restrictions (the "CC&R's) of the Homeowners' Association which the Property is a part of.

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained and for other valuable consideration, the parties hereto agree as follows:

ARTICLE I
RECITALS

101. Description of Property. Seller is the owner of a fee interest in that certain real property situated in the City of Oceanside, County of San Diego, State of California, which is more particularly described in a legal description thereof marked Exhibit "A" attached hereto, incorporated herein and made a part hereof, together with all appurtenances thereto and all improvements located thereon. For the purposes of this Agreement said real property, appurtenances and improvements (including common areas) are collectively referred to as the ("Property").

102. Status and Powers of Seller. Seller is a California municipal corporation organized and existing pursuant to the Constitution and statutes of the State of California and is authorized to enter into this Agreement.

103. Status and Powers of Buyer. Buyer hereby certifies that:

(a) **Individual.** I am a citizen of the United States ____; an alien lawfully present in the United States ____.

(b) **Family.** That there are ____ persons in my household and that ____ are citizens of the United States, and ____ are aliens lawfully present in the United States.

(c) I/we are authorized by the laws of the State of California to purchase the Property from Seller and perform the actions and duties of the Buyer more particularly described in this Agreement.

Buyer certifies under the penalty of perjury under the laws of the State of California, that the foregoing information is correct; and that my/our signature on this Agreement constitutes certification.

104. Purpose of Agreement. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer on the terms and conditions in this Agreement.

105. Public Benefit. This Agreement is for the benefit of the public and is in the furtherance of the public purposes of Seller.

ARTICLE II DEFINITIONS AND GENERAL PROVISIONS

201. Agreement. For good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as set forth herein.

202. Definitions in General. The terms defined in Exhibit "B" attached hereto and by this reference incorporated herein, as used and capitalized herein, shall, for all purposes of this Agreement, have the meanings ascribed to them in said Exhibit "B", unless the context clearly requires some other meaning. In addition, the term "Agreement" as used herein means this Purchase and Sale Agreement.

203. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement.

**ARTICLE III
PURCHASE AND SALE OF PROPERTY**

301. Sale of Property. Seller agrees to sell and Buyer agrees to purchase the Property on the terms and conditions in this Agreement.

302. Purchase Price. The purchase price of the Property is _____ Dollars (\$____) the ("Purchase Price").

303. Payment of Purchase Price. Buyer shall pay the Purchase Price under the terms of this Agreement and the terms of: (a) the first position Promissory Note (the "Habitat Note") executed by Buyer in favor of Habitat, which shall be secured by a Deed of Trust (the "Habitat Deed of Trust"); and (b) the second position Promissory Note (the "City Note") executed by Buyer in favor of Seller, which shall be secured by a Deed of Trust (the "City Deed of Trust"). In addition to the execution and delivery of said Notes and Deeds of Trust, to the respective parties, Buyer shall deposit into the Escrow, as hereinafter set forth, a **cash down payment of Five Thousand Dollars (\$5,000.00)**, which shall be applied toward the Purchase Price and/or escrow closing costs.

**ARTICLE IV
CONDITIONS PRECEDENT**

401. Conditions Precedent to Closing. Buyer's obligation to purchase the Property from Seller and Seller's obligation to sell the Property to Buyer is subject to the following conditions precedent set forth in Sections 402 through 412 inclusive ("Conditions Precedent"). Subject to Buyer's rights under Article VII "ESCROW", if any of the Conditions Precedent have not been fulfilled within the applicable time periods or if Buyer disapproves, pursuant to this Article IV, matter for which Buyer's approval is required, Buyer may:

- (a) Waive the condition or disapproval and close escrow with respect to the Property in accordance with this Agreement, without adjustment or rebate in the Purchase Price; or
- (b) Terminate this Agreement by written notice to Seller.

402. Title. Unless otherwise specified in this Agreement, Seller shall convey title to the Property to Buyer by grant deed, free and clear of all liens and encumbrances, subject to the following: the Property is situated in a Planned Development Community and subject to the Covenants, Conditions and Restrictions ("CC&R's") and any Homeowners Association rules and regulations. Seller, upon written request from Buyer, will provide Buyer with access to all documents in its possession regarding the Property but makes no representations or warranties as to the accuracy or reliability thereof. Seller makes no representations or warranties, expressed or otherwise, regarding the condition of title to the Property or the condition of the Property. Buyer is obligated to investigate, inspect and analyze the condition of the Property and the condition of title to the Property to its own satisfaction and expressly agrees that in entering into the Agreement, it is relying on its own investigation as to the condition of the Property and condition of title to the Property, except as expressly provided herein.

403. Preliminary Title Report. Upon ordering the Escrow, Seller shall request a preliminary title report for the Property ("Preliminary Report") issued by Commonwealth Land Title Company or another title insurance company selected by Seller ("Title Company") containing such exceptions as the Title Company would specify in a California Land Title Association ("CLTA") standard policy of title insurance (or, provided Buyer so requests in writing, as the Title Company would specify in an American Land Title Association ("ALTA") extended owner's policy of title insurance), together with copies of all exceptions and plotted easements and the documents supporting the exceptions (hereinafter collectively called "supporting documents").

Within fifteen (15) days after receipt of legible copies of the Preliminary Report and supporting documents, Buyer shall give written notice to Seller of its disapproval of the Preliminary Report, any part thereof, or of any exceptions, or of the condition of title reflected in the Preliminary Report or the supporting documents. If Buyer gives written notice of disapproval as provided in this paragraph, Seller shall remove or otherwise cure, in a manner reasonably satisfactory to Buyer, the disapproved item or items at or before the Close of Escrow. The right of Buyer to disapprove the condition of title shall apply only to exceptions which materially and adversely limit or affect the use of the Property. Seller may elect not to remove or cure any disapproved item or items by delivering written notice thereof to Buyer within ten (10) days following the date of written notification of the disapproval. If Seller elects not to remove or cure any disapproved item or items, Buyer may terminate this Agreement by delivering a written notice of termination to Seller within five (5) days after the date that Buyer actually receives notice of Seller's election not to remove or cure any disapproved item.

This Agreement provides that Buyer will receive title free and clear of liens and encumbrances. Although it is recognized that Seller is a tax-exempt governmental agency, Seller shall be obligated to pay any property taxes and assessments to the date of the Close of Escrow. The parties recognize that certain encumbrances such as existing deeds of trust, tax liens, assessment liens, and the like will be discharged through Escrow as provided in this Agreement. Notwithstanding the giving of any notice or any failure to give any notice with respect to these items, they shall be discharged through Escrow as provided in this Agreement.

From and after the effective date of the Preliminary Report, Seller shall not alter the condition of title without the express written consent of Buyer.

404. Title Policies. On or before the Close of Escrow, Buyer shall have received evidence that Title Company is ready, willing, and able to issue, upon payment of the Title Company's regularly scheduled premium a California Land Title Association (CLTA) standard policy of title insurance in the face amount of the Purchase Price, showing title to the Property vested in the Buyer subject only to:

- (a) Non-delinquent general, special, and supplemental property taxes or assessments constituting a lien at Close of Escrow, except as set forth pursuant to Section 502 herein; and
- (b) The matters described in the printed form portion of the Policy of Title Insurance to the extent that such matters do not conflict with the provisions of this Agreement; and

(c) Covenants, conditions, reservations, restrictions, easements or other matters appearing as exceptions in the Preliminary Report as approved by Buyer pursuant to this Agreement; and

(d) Any lien voluntarily imposed by Buyer as of the Close of Escrow.

405. Execution of Purchase Price Securities. Buyer shall have executed the Habitat Note and Habitat Deed of Trust in favor of Habitat, the City Note and City Deed of Trust in favor of Seller, and the Affordable Housing Resale Restriction, and deposited said Notes, Deeds of Trust, and Restriction instrument into the Escrow.

406. Physical Condition of the Property. Within thirty (30) calendar days after the date of this Agreement, Buyer shall, pursuant to Section 801 herein, review and approve or disapprove of the physical condition of the Property. Seller shall not cause the physical condition of the Property to deteriorate or change after the date of the inspection, normal wear and tear excepted, without the prior written consent of Buyer. Buyer agrees that the Property is being sold in its "As-Is" and "Where-Is" condition, except as expressly provided for elsewhere herein.

407. Property Documents. Within ten (10) calendar days after receipt of written request from Buyer, Seller shall make available for Buyer's review, at Seller's Offices, current copies of all permits, soils tests, hazardous or toxic waste reports, geological studies, environmental impact studies, topographical maps, licenses, maintenance contracts, utility contracts, operating contracts, leases, maintenance contracts, service contracts, and other documents pertaining to the Property ("Property Documents"). Prior to the close of Feasibility Period pursuant to Section 801 herein, Buyer shall review and approve or disapprove each Property Document. On or before the Close of Escrow, Seller shall assign to Buyer all of Seller's rights and remedies under the Property Documents, to the extent assignable, pursuant to an assignment of contracts, warranties, guarantees, and other intangible property in form and substance satisfactory to Buyer. At the request of Buyer, the assignment of contracts shall exclude Seller's rights under any Property Documents designated by Buyer. At the request of Buyer, Seller shall use its best good faith efforts to obtain the consent to assignment of any other parties to the Property Documents as specified by Buyer. At the request of Buyer, Seller shall terminate any Property Document designated by Buyer as authorized by the Property Document, by delivering notices to the other party under the Property Document in sufficient time to terminate the Property Document prior to the Close of Escrow.

408. Non-foreign Affidavit. If applicable, on or before the Close of Escrow, Seller shall deliver to Buyer a non-foreign affidavit as required by the Foreign Investment In Real Property Tax Act (FIRPTA) [42 USC § 1445] executed by Seller.

409. Seller's Obligations. Seller is obligated to Buyer as to the performance by Seller of every material covenant, agreement, and promise to be performed by Seller pursuant to this Agreement and the related documents executed or to be executed by Seller.

410. Seller's Representations. Seller represents to Buyer the truth and accuracy of all Seller's representations and warranties as set forth in this Agreement or in documents provided by Seller under this Agreement.

4.11. Buyer's Obligations. Buyer is obligated to Seller as to the performance by Buyer of every material covenant, agreement, and promise to be performed by Buyer pursuant to this Agreement and the related documents executed or to be executed by Buyer.

4.12. Buyer's Representations. Buyer represents to Seller the truth and accuracy of all Buyer's certifications, representations and warranties as set forth in this Agreement or in documents provided by Buyer under this Agreement.

ARTICLE V SELLER'S REPRESENTATIONS AND WARRANTIES

501. Time. The representations and warranties by Seller in this Article are made as of the date of this Agreement and as of the Close of Escrow and will survive the Close of Escrow and the recording of the Grant Deed.

502. Title. As of the date of this Agreement, Seller is the legal and equitable owner of a fee interest in the Property, with full right to convey said interest. Seller has not previously conveyed title to the Property to any other person. Seller has not granted any options or rights of first refusal or rights of first offer to third parties to purchase or otherwise acquire an interest in the Property. The Property is free and clear of all liens, encumbrances, claims, demands, easements, leases, agreements, covenants, conditions, or restrictions of any kind, except for the easements shown on the Final Map for Libby Lake Village and liens to be placed against the Property contemplated under this Agreement and exceptions set forth in the Preliminary Report. Seller has obtained (or will obtain as of Close of Escrow) all required consents, permissions or releases to convey good and marketable title to Buyer.

503. Hazardous Substances. To the best of Seller's knowledge the Property is free and has always been free from Hazardous Substances and is not and has never been in violation of any Environmental Laws. Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property is or has been in violation of any Environmental Law, or informing Seller that the Property is subject to investigation or inquiry regarding Hazardous Substances on the Property or the potential violation of any Environmental Law.

504. Violation of Law. To the best of Seller's knowledge, no condition on the Property violates any health, safety, fire, environments, building, zoning or other federal, state, or local law, code, ordinance, or regulation.

505. Litigation. There is no pending or threatened litigation, administrative proceeding, or other legal or governmental action or condemnation with respect to the Property or which may adversely affect Seller's ability to fulfill the obligations of this Agreement.

506. Bankruptcy. No filing or petition under the United States Bankruptcy Law or any insolvency laws, or any laws for composition of indebtedness or for the reorganization of debtors has been filed with regard to Seller.

507. No Defaults. Seller is not in default of Seller's obligations or liabilities pertaining to the Property. There are no facts, circumstances, conditions or events, which

after notice or lapse of time would constitute default. Seller has not received any notice of any default and has no reason to believe that there is likely to be any breach or default of any of Seller's obligations or liabilities pertaining to the Property.

508. Special Studies Zone. The Property is not within a special studies zone under the Alquist-Priolo Geologic Hazard Act [Pub. Res. Code §§ 2621.9 et seq.] (which generally requires sellers to inform purchasers if property is within a special studies zone, which zones are generally near potentially or recently active earthquake faults).

509. Foreign Investment Real Property Tax Act. Seller is not a "foreign person" within the meaning of 42 USC § 1445(f)(3). Seller understands and agrees that the certification made in this section may be disclosed to the Internal Revenue Service by Buyer and that any false statement contained herein could be punished by fine, imprisonment or both. This certification is made under penalty of perjury under the laws of the State of California.

510. Disclosure. Any information that Seller has delivered to Buyer either directly or through Seller's agents or employees, is complete and accurate to Seller's actual knowledge. Seller has disclosed to Buyer all material facts with respect to the Property to which Seller has access and actual knowledge.

ARTICLE VI COVENANTS

601. Power to Enter into Agreements.

(a) Buyer is duly authorized to enter into this Agreement. The provisions of this Agreement are and will be the valid and legally enforceable obligations of Buyer in accordance with their terms and the terms of this Agreement.

(b) Seller is duly authorized to enter into this Agreement and to enter into the transactions contemplated by this Agreement. Seller has duly authorized and executed this Agreement.

602. No Violation of Other Agreements.

(a) Buyer hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Buyer is a party or by which Buyer is bound, or constitutes a default under any of the foregoing.

(b) Seller hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Seller is a party or by which Seller is bound, or constitutes a default under any of the foregoing.

603. Payment of Seller's Obligations. To the extent Seller is authorized by the Property Documents, Seller shall discharge all obligations and liabilities under the Property Documents before the Close of Escrow with respect to the Property.

604. Brokers. Seller and Buyer agree that there are no brokers or real estate agents involved in this transaction that would be entitled to a fee or commission. Buyer shall hold Seller harmless from any claims for such fees or commissions claimed by another broker, real estate agent or other third party claiming through Buyer.

605. Litigation. Seller shall immediately notify Buyer of any lawsuits, condemnation proceedings, rezoning, or other governmental order or action, or any threat thereof, of which Seller has actual knowledge, which might affect the Property or any interest of Buyer with respect to the Property.

606. Indemnification. Seller shall indemnify, defend and hold Buyer harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Seller's covenants under this Agreement and any other related documents, or from Seller's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole and active negligence or willful misconduct of Buyer or Buyer's officers or employees.

Buyer shall indemnify, defend and hold Seller harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Buyer's covenants under this Agreement and any other related documents, or from Buyer's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole and active negligence or willful misconduct of Seller or Seller's officers or employees.

The provisions of this Section 606 shall survive the Close of Escrow with respect to the Property.

ARTICLE VII ESCROW

701. Establishment of Escrow. Within two (2) business days after the Effective Date of this Agreement, Buyer and Seller shall establish an Escrow ("Opening of Escrow") for the close of the sale of the Property with the escrow department of the Title Company ("Escrow Agent"). If the Escrow Agent is unwilling or unable to perform, Seller shall designate another escrow agent. Escrow Agent shall notify both parties in writing of the specific date on which the Escrow has opened. This Agreement shall constitute Escrow Instructions, provided however, that Escrow Agent shall prepare general instructions as may be deemed necessary by the Escrow Agent for the fulfillment of this Agreement and deliver those general instructions to Seller and Buyer. Buyer and Seller shall each execute the general instructions, or propose changes thereto, within five (5) days after receipt of the instructions. If there is any conflict between the terms of the general instructions and this Agreement, the provisions of this Agreement shall prevail unless the conflicting provision is specifically identified as an amendment to this Agreement.

702. Opening Deposits. Concurrent with the execution of this Agreement, but no later than the establishment of Escrow pursuant to Section 701 herein, Buyer shall deposit with the Escrow Agent, for the immediate release to Seller, the sum of **Five Thousand Dollars (\$5,000.00)**. Said sum shall represent Buyer's Good Faith Deposit for the transaction contemplated under this Agreement (the "Good Faith Deposit"). Said deposit

shall be applied towards the Purchase Price for the Property and non-refundable to Buyer, except in the event of Seller's default or failure of a Condition Precedent under this Agreement. Buyer and Seller acknowledge that, pursuant to the terms of this Agreement, Seller is obligated to perform, and in the event Escrow fails to close by reason of default by Seller, Buyer shall be entitled to specific performance of Seller. Notwithstanding Seller's obligation herein, in the event Seller is prevented from closing the Escrow pursuant to the happening of an event, requirement or other impediment beyond the control of Seller, Buyer shall be entitled to the return of the Opening Deposits and all accrued interest, if any.

703. Closing. No later than sixty (60) days ("Closing Deadline") after the Opening of Escrow the grant deed shall be recorded and the Property transferred from Seller to Buyer ("Close of Escrow") after Buyer has either approved or waived each Condition Precedent.

704. Closing Deposits. On or before the Close of Escrow, Seller and Buyer shall deposit with Escrow Agent the following documents and shall close Escrow as follows:

(a) Seller shall deposit with Escrow Agent the following:

- (i)** The original executed and acknowledged Grant Deed conveying the Property from Seller to Buyer;
- (ii)** The original Non-Foreign Affidavit executed by Seller;
- (iii)** The originals of all Property Documents, except for those documents, which by law, Seller must keep in its custody;
- (iv)** A certificate acknowledging that all conditions to the Close of Escrow that Buyer was to satisfy or perform have been satisfied and performed, and that Seller's representations, covenants, and warranties made in or pursuant to this Agreement are correct as of the Close of Escrow;
- (v)** Any other documents or funds required of Seller to close Escrow in accordance with this Agreement;

(b) Buyer shall deposit with Escrow Agent the following:

- (i)** The original executed and acknowledged Affordable Housing Resale Restrictions, First Promissory Note, First Deed of Trust, Second Promissory Note, and Second Deed of Trust;
- (ii)** A certificate executed by Buyer providing that all conditions to Close of Escrow that Seller was to satisfy or perform have been satisfied and performed and Buyer's representations, covenants, and warranties made in and pursuant to this Agreement are correct as of the Close of Escrow;
- (iii)** Any other document or funds required of Buyer to close Escrow in accordance with this Agreement.

(c) The recording of the Grant Deed, Deeds of Trust, and other Instruments shall be in the following order: 1) the Grant Deed; 2) Affordable Housing Resale Restrictions; 3) First Deed of Trust (Habitat Deed of Trust); and 4) Second Deed of Trust (City Deed of Trust).

705. Closing Costs. Seller shall pay all of the Escrow Agent's fee, the premium for the Policy of Title Insurance, all of the real property transfer taxes and documentary transfer taxes (if any) payable upon recordation of the Grant Deed for the Property, and any sales, use or ad valorem taxes connected with the Close of Escrow for the Property (collectively the "Closing Costs"). Any funds remaining from the Good Faith Deposit after disbursement and payment of the Closing Costs shall be remitted to San Diego Habitat for Humanity, Inc., at 10222 San Diego Mission Road, San Diego, CA 92108-2135. Notwithstanding the foregoing, in the event Seller is required to place additional funds into Escrow to cover the Closing Costs, any funds remaining after the disbursement of the Closing Costs shall be credited and returned to Seller.

707. Property Taxes and Prorations. Although it is recognized that Seller is a tax-exempt governmental agency, Seller shall be solely responsible for bringing the Property's real property taxes current as of the Close of Escrow and Buyer shall have no liability for payment of said taxes. **Buyer recognizes that the purchase of the Property may cause the issuance of a Supplementary Property Tax Bill from the San Diego County Treasurer-Tax Collector and that Buyer shall be solely responsible for the payment of such tax bill.**

708. Possession. Right to possession of the Property, or the applicable parcel, shall transfer at Close of Escrow free of all tenancies.

ARTICLE VIII MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

801. Inspection and Feasibility Period. Seller hereby consents to entry upon the Property by Buyer or its contractors and agents for the purpose of conducting physical inspections and tests from the Effective Date of this Agreement to the Close of Escrow. Buyer shall have thirty (30) calendar days from the Effective Date of this Agreement ("Feasibility Period") in which to complete its inspections and testing of the Property ("Walk-Through"). If Buyer disapproves of the results of the inspection and review, Buyer may elect, prior to the last day of the Feasibility Period, to terminate this Agreement by giving Seller written notification prior to the last day of the Feasibility Period and the Opening Deposit, together with all interest, if any, shall be returned to Purchaser, less Escrow cancellation charges. If Buyer fails to properly notify Seller of the intent to terminate this Agreement, Buyer shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision.

Buyer agrees to defend, indemnify and hold Seller harmless from all liabilities, costs and expenses resulting directly from Buyer's or its contractors' or agents' inspections and tests. Buyer agrees that its independent inspection of the Property is its sole basis to determine the suitability of the Property for its purposes and Buyer acknowledges that it is not relying on any representations by Seller regarding suitability of the Property and by executing this Agreement, Buyer acknowledges that it has made or will make its own independent inspection of the Property. If Buyer alters the physical conditions of the

Property and Escrow does not close, Buyer shall restore the Property to the condition existing before Buyer's inspections or tests.

802. Further Assurances. Whenever requested by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, instruments of further assurance, approvals, consents and any other instrument or document as may be necessary, expedient or proper to complete the transaction contemplated by this Agreement, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this Agreement.

803. Assignment. Seller shall have no right, power, or authority to assign or mortgage this Agreement or any portion of this Agreement, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily, or by operation of law, without the prior written consent of Buyer. Buyer shall have no right, power, or authority to assign this Agreement or any portion of this Agreement or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily or by operation of law without Seller's prior written approval. Neither party shall unreasonably withhold approval to any assignment.

804. Preservation and Inspection of Documents. Documents received by Seller or Buyer under the provisions of this Agreement shall be retained in their respective possessions and shall be subject at all reasonable times to the inspection of the other party hereto and its assigns, agents and representatives, any of whom may make copies thereof.

805. Parties of Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or party other than Seller and Buyer (and Habitat, as applicable) any rights, remedies or claims under or by reason of this Agreement or any covenants, condition or stipulation hereof; and all covenants, stipulations, promises and agreements in this Agreement made by or on behalf of Seller or Buyer (and Habitat, as applicable) shall be for the sole and exclusive benefit of Seller and Buyer (and Habitat, as applicable).

806. No Recourse under Agreement. All covenants, stipulations, promises, agreements and obligations of the parties hereto contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the parties hereto, respectively, and not of any member, officer, employee or agent of the parties hereto in an individual capacity, and no recourse shall be had for any claim based on or under this Agreement against any member, officer, employee or agent of the parties hereto.

807. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid:

If to Seller:

CITY OF OCEANSIDE
Property Management Division
ATTN: William F. Marquis
300 North Coast Highway
Oceanside, CA 92054

Copy to:

City Attorney
CITY OF OCEANSIDE
ATTN: Barbara L. Hamilton
300 North Coast Highway
Oceanside, CA 92054

If to Buyer:

Copy to:

If to Habitat:

San Diego Habitat for Humanity, Inc.
ATTN: Executive Director
10222 San Diego Mission Road
San Diego, CA 92108

Copy to:

The parties hereto, by notice given hereunder, may, respectively designate different addresses to which subsequent notices, certificates or other communications will be sent.

808. Binding Effect. Without waiver of section 804, this Agreement shall inure to the benefit of and shall be binding upon Seller, Buyer, and their respective successors and assigns.

809. Severability. If any one or more of the covenants, stipulations, promises, agreements or obligations provided in this Agreement on the part of Seller or Buyer to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant, stipulation, promise, agreement or obligation shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, agreements and obligations herein contained and shall in no way affect the validity of the other provisions of this Agreement.

810. Headings. Any headings preceding the text of the several Articles and Sections hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience or reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

811. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

812. Seller and Buyer Representatives. Whenever under the provisions of this Agreement the approval of Seller or Buyer is required, or Seller or Buyer are required to take some action at the request of the other, such approval of such request may be given for Seller by an Authorized Officer/Representative of Seller and for Buyer by an Authorized Representative of Buyer, and any party hereto shall be authorized to rely upon any such approval or request.

813. Form of Certificate of Officers. Every certificate with respect to compliance with a condition or covenant provided for in this Agreement and which is precedent to the taking of any action under this Agreement shall include:

(a) A statement that the person making or giving such certificate has read such covenant or condition and the definitions herein relating thereto;

(b) A brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate are based;

(c) A statement that, in the opinion of the signer, he has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) A statement as to whether, in the opinion of the signer, such condition or covenant has been complied with.

A certificate may be based, insofar as its relates to legal matters, upon a certificate or opinion of or representations by counsel, unless the persons provided the certificate know that the certificate or representations with respect to the matters upon which the certificate may be based are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

814. Amendment. This Agreement may be amended, modified, or changed only in writing as mutually agreed to and duly executed by the parties hereto.

815. Counterpart. This Agreement may be executed in counterpart, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that the parties are not signatories to the original or the same counterpart.

816. Time of the Essence. Time is of the essence in this Agreement and every provision contained in this Agreement.

817. Integration. This Agreement, and all attachments and exhibits hereto constitute the entire agreement of the parties. There are no oral or parol agreements, which are not expressly set forth in the Agreement or the related documents being executed in connection with this Agreement.

818. Waivers. No waiver or breach of any provision shall be deemed a waiver of any other provision, and no waiver shall be valid unless it is in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

819. Attorney Fees, Litigation Costs and Related Matters. If any legal action or other proceeding, including arbitration or an action for declaratory relief, is brought to enforce this Agreement or because of a dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs in addition to any other relief. Venue for enforcement of this Agreement shall be in the Superior Court of San Diego County, North County Branch. The

parties agree that before either party commences any legal or equitable action, action for declaratory relief, suit, proceeding, or arbitration that the parties shall first submit the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or if a mediator cannot be agreed upon by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The cost of mediation shall be shared equally by the parties.

820. Exhibits. All exhibits referred to in this agreement and attached hereto are made a part hereof and are incorporated herein by this reference.

821. Survival. Seller's representations and warranties, Buyer's representations and warranties, all covenants and obligations to be performed at a time or times after Close of Escrow, and indemnities shall survive the Close of Escrow and delivery and recordation of the Grant Deed.

822. Merger. All of the terms, provisions, representations, warranties, and covenants of the parties under this Agreement shall survive the Close of Escrow and shall not be merged in the Deed or other documents.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY
[Signatures on Following Page]

IN WITNESS WHEREOF, this Agreement constitutes an offer to purchase the Property on the terms and conditions contained in this Agreement and the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized officers as of the date first above written.

Seller
City of Oceanside, a
California municipal corporation

Buyer

By: _____
Its:

By: _____

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: _____

By: _____
City Attorney

By: _____

Date: _____

**BUYER'S SIGNATURE(S) MUST BE NOTARIZED
(NOTARY USE CALIFORNIA ACKNOWLEDGEMENT FORM)**

Exhibit "A"

Legal Description of the Property

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

BEING LOT OF LIBBY LAKE VILLAGE, ACCORDING TO MAP THEREOF NO. 15696, AS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JUNE 26, 2008.

TOGETHER WITH AN UNDIVIDED 1/20TH INTEREST IN LOTS A AND B OF SAID MAP NO. 15696.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT AND RIGHT-OF-WAY FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AND UTILITY PURPOSES OVER THE WESTERLY PORTION OF LOT 21 AS SHOWN ON SAID MAP NO. 15696.

Exhibit "B"

DEFINITIONS

Seller. The term "Seller" means the City of Oceanside, California.

Buyer. The term "Buyer" means _____.

Authorized Officer. The term "Authorized Officer", when used with respect to Seller, means the Mayor, City Manager or any employee designated by the City Manager of Seller as an Authorized Officer. The term "Authorized Representative", when used with respect to Buyer, means anyone other than Buyer which has designated in writing by Buyer as its Authorized Representative.

Environmental Laws. The term Environmental Laws means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene, to the extent that such relate to matters on, under, or about the Property, occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USC § 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USC § 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 USC § 1251 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USC § 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC § 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USC § 6901 et seq.]; the Clean Air Act [42 USC § 7401 et seq.]; the Safe Drinking Water Act [42 USC § 300f et seq.]; the Surface Mining Control and Reclamation Act [30 USC § 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USC § 11001 et seq.]; the Occupational Safety and Health Act [29 USC § 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code § 25280 et seq.]; the California Hazardous Substances Account Act [Health and Safety Code § 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code § 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Water Code § 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to the protection of the environment as such apply to matters on, under, or about the Property.

Habitat. The term Habitat means San Diego Habitat for Humanity, Inc. a California nonprofit public benefit corporation.

Hazardous Substances. The term "Hazardous Substances" includes without limitation:

- (a) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste." or "pollutant or contaminant" in any Environmental Law;
- (b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFR Part 302];
- (c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and
- (d) Any material, waste, or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 USC § 1321 or listed pursuant to 33 USC § 1317, a hazardous substance or toxic material designated pursuant to any State Statute, a flammable explosive or a radioactive material.

Property. The term "Property" means that certain real property within the City of Oceanside, California (sometimes referred to herein as the "Land"), together with the improvements located thereon (sometimes referred to herein as the "Improvements") all as more fully described in Exhibit "A" attached hereto.

State. The term "State" means the State of California.

ATTACHMENT NO. 15

\$XXX,000.00

Oceanside, California

PROMISSORY NOTE

1. Borrower's Promise to Pay:

FOR VALUE RECEIVED, *Name* and *Name* Husband and Wife as Joint Tenants (the "Borrower"), promises to pay to the order of SAN DIEGO HABITAT FOR HUMANITY, INC., a California non-profit public benefit corporation ("Habitat") or anyone who takes this Promissory Note ("Note") by transfer and is entitled to receive payments under this Note (the "Holder"), the principal sum of One Hundred XX Thousand Dollars and No/100 (\$1XX,000.00) (the "Principal Sum"). There will be no interest charged on the unpaid Principal Sum from the date of this Note until the full amount of the unpaid Principal Sum has been paid, except that interest may be charged in accordance with the provisions of Section 5 of this Note.

2. Security:

This Note is secured by a deed of trust dated as of the date of this Note (the "Deed of Trust") executed by Borrower in favor of SAN DIEGO HABITAT FOR HUMANITY, INC., a California non-profit public benefit corporation ("Habitat") as Trustee, and as Beneficiary.

3. Payments:

A. Time and Place of Payments

Borrower will repay the Principal Sum by making monthly payments to San Diego Habitat for Humanity.

Borrower will make monthly payments on the first day of each month beginning on Month 1, 20XX. Payment is considered late if received after the 15th of the month and a late charge of 6% will be due on the entire payment amount. Borrower will make these monthly payments for XX hundred XX (XXX) months with the final monthly payment made on Month 1, 20XX, (the "Maturity Date").

Borrower will send or deliver monthly payments to San Diego Habitat for Humanity, 10222 San Diego Mission Road, San Diego, CA 92108, or such other place as San Diego Habitat for Humanity may specify from time to time in writing.

B. Amount of Monthly Payment

Borrower's monthly principal payment will be \$XXX.XX

4. Borrower's Right to Prepay:

This Note may be prepaid in whole or part on any monthly installment date without penalty, provided the Borrower gives Habitat or the Holder hereof at least thirty (30) days prior written notice of such prepayment. Borrower shall continue to make payments, at the times and in the amounts described above, until the principal has been repaid in full.

5. Borrower's Failure to Pay as Required:

A. Default

At the option of Habitat or the Holder hereof, this Note shall be immediately due and payable, without notice or demand, upon occurrence at any time of any of the following events of default (the "Events of Default"):

- (1) Default in the repayment of principal and costs due hereunder, and such default continues for a period of thirty (30) days after the due date thereof;
- (2) If Borrower fails to perform or observe any of the terms or conditions of the Deed of Trust, or any other agreement or instrument securing or pertaining to this Note;
- (3) The making of an assignment for the benefit of creditors by the Borrower or any other party liable for the payment of this Note, or the appointment of a receiver for all or substantially all of Borrower's property or the filing by Borrower of a petition in bankruptcy or other similar proceeding under law for relief of debtors;
- (4) The filing against Borrower of a petition in bankruptcy or other similar proceeding under law for relief of debtors, and such petition is not vacated or discharged within sixty (60) days after the filing thereof;
- (5) The occurrence of any event which would constitute a default under any other liability or obligation of Borrower to Habitat; or,
- (6) If Borrower sells, assigns, conveys, delivers, transfers or leases to any third party any right, title or interest in the Property (as defined in the Deed of Trust) without the written consent of Habitat.

B. No Waiver by Habitat

Even if, at a time when Borrower is in default, Habitat does not require Borrower to repay the principal immediately in full as described in Paragraph 5(A), or grants Borrower an extension from time to time, Habitat will still have the right to make Borrower pay the principal immediately in full if Borrower is in default again at a later time.

C. Interest Upon Default

If Borrower defaults in the payment of any monthly payments, and if Habitat decides, because of such default, to declare the unpaid Principal Sum to be due and immediately payable, Borrower will have to pay interest on the unpaid Principal Sum at the rate of six percent (6%) per year, (the "Alternate Rate") from the date of the default until Borrower pays the Principal Sum in full.

D. Payment of Habitat's Costs

If Habitat has required Borrower to pay immediately in full as described in this Paragraph 5 or must collect this Note by law, Habitat will have the right to make Borrower pay all the costs and expenses necessary to collect this Note or enforce this Note, to the extent not prohibited by applicable law.

6. Obligations of Persons Under this Note:

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed.

Any person who is a guarantor, surety, or endorser of this Note is also obligated to pay the full amount owed.

Any person who takes over these obligations, including the obligations of a guarantor, surety, or endorser of this Note, is also obligated to keep all the promises made in this Note.

Habitat or the Holder may enforce its rights under this Note against each person or entity individually or against all such persons and entities together.

7. Waivers:

Presentment, demand, protest, notices of protest, dishonor and non-payment of this Note and all notices of every kind are hereby waived. No single or partial exercise of, or forbearance from exercising, any power hereunder or under the Deed of Trust, or other agreement or instrument securing or pertaining to this Note shall preclude other or further exercises thereof or the exercise of any other power. Habitat or the Holder hereof shall at all times have the right to proceed against any portion of the property securing this Note in such order and in such manner as Habitat or the Holder may determine in its sole discretion, without waiving any rights with respect to any other security. No delay or omission on the part of Habitat or the Holder hereof in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note. The release of any party liable on this Note shall not operate to release any other party liable hereon.

8. Applicable Law:

The amounts owed under this Note are payable in lawful money of the United States. This Note has been executed and delivered by Borrower in the State of California and shall be governed by and construed in accordance with the laws of the State of California. In any action brought under or arising out of this Note, Borrower hereby consents to the jurisdiction of any competent court within the State of California and consents to service of process by any means authorized by California law.

9. Severability:

If any term or provision of this Note is deemed invalid, unlawful or unenforceable by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected thereby.

Dated this XX day of XXX, 20XX.

“BORROWER”

Homeowner’s Name

Homeowner’s Name

ATTACHMENT NO. 16

RECORDING REQUESTED BY:)
)
WHEN RECORDED MAIL TO:)
SAN DIEGO HABITAT FOR HUMANITY, INC.)
10222 San Diego Mission Road)
San Diego, CA 92108-2135)
ATTN: Executive Director)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TRUST DEED WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS TRUST DEED WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Trust Deed"), dated MONTH XX, 20XX is made by NAME and NAME, Husband and Wife as Joint Tenants ("Trustor") whose address is XXX NAME Street, Oceanside, CA 92057 in favor of SAN DIEGO HABITAT FOR HUMANITY, INC., a California non-profit public benefit corporation ("Trustee"), for the benefit of SAN DIEGO HABITAT FOR HUMANITY, INC., a California non-profit public benefit corporation ("Beneficiary"), whose address is 10222 San Diego Mission Road, San Diego, CA 92108-2135.

1. Grant in Trust and Security Agreement. For valuable consideration, Trustor irrevocably grants, transfers and assigns to Trustee, in trust with power of sale, for the benefit of Beneficiary, the following property (the "Property"): (a) the real property described in Exhibit "A" attached to this Trust Deed and incorporated in this Trust Deed by reference (the "Land"); (b) all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "Improvements"); (c) all tenements, hereditaments, appurtenances, privileges and other rights and interests now or in the future benefiting or otherwise relating to the Land or the Improvements, including easements, rights-of-way, development rights, mineral rights, water rights and water stock (the "Appurtenances") and together with the Land and the Improvements, the ("Real Property"); (d) subject to the assignment to Beneficiary set forth in 3.8 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Real Property or the ownership, use, management, operation, leasing or occupancy of the Real Property, including those past due and unpaid (the "Rents").

Trustor further grants to Beneficiary, pursuant to the California Uniform Commercial Code ("UCC"), a security interest in all present and future right, title and interest of Trustor in and to all goods ("Goods") and intangibles in which a security interest may be created under the UCC (the "Personal Property").

2. Obligations Secured. This Trust Deed is given for the purpose of securing payment and performance of the following (the "Secured Obligations"): (a) all present and future indebtedness evidenced by the Promissory Note (the "Note") dated the date of this Trust Deed in the face principal amount of \$XXX,000.00 executed by Trustor in favor of Beneficiary, including principal, and all other amounts payable under the terms of the Note; (b) all present and future obligations of Trustor under this Trust Deed; (c) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument (whether existing now

date _____

initials _____ / _____

or in the future) which states that it is, or such obligations are, secured by this Trust Deed; in each case as such indebtedness and other obligations may from time to time be supplemented, modified, amended, renewed and extended, whether evidenced by new or additional document or any indebtedness or otherwise.

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

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

3.2 Maintenance of Property. Unless Beneficiary otherwise consents in writing, Trustor shall: (a) keep the Property in good condition and repair, and promptly and in a good and workmanlike manner (and with new materials of good quality) complete any Improvements to be constructed on the Land, repair or restore any part of the Real Property that may be injured, damaged or destroyed, and repair, restore or replace any Goods that may be injured, damaged, destroyed or lost or that may be or become obsolete, defective or worn out (except that Trustor shall not be required to repair, restore or replace any such goods of insignificant value which are not reasonably necessary or appropriate to the efficient operation of the Real Property), and in each case pay when due all valid claims for labor, service, equipment and material and any other costs incurred in connection with any such action; (b) not remove, demolish or materially alter any Improvements; (c) not construct any Improvements on the Land or undertake any site development work unless approved by Beneficiary; (d) not commit or permit any waste of any part of the Real Property; (e) comply in all material respects with all laws and not commit or permit any material violation of any laws or other requirements, which affect any part of the Real Property or require any alterations or improvements to be made to any part of the Property; (f) not part with possession of or abandon any part of the Property or cause or permit any interest in any part of the Property to be sold, transferred, leased, encumbered, released, relinquished, terminated or otherwise disposed of (whether voluntarily, by operation of law or otherwise); and (g) take all other action which may be reasonably necessary or appropriate to preserve, maintain and protect the Property, including enforcement or performance of any rights or obligations of Trustor.

Without limitation on any obligations of Trustor under the preceding paragraph, in the event of (i) all or a substantial or material portion of the Real Property is injured, damaged or destroyed by fire or other casualty, or (ii) any of the Real Property is damaged, destroyed or lost and any Damage Proceeds (as defined in 3.3) are payable as a result of such occurrence or the cost of the repair, restoration or replacement is reasonably expected to exceed \$25,000.00, or (iii) any part (but less than all) of the Real Property is condemned, seized or appropriated by any Governmental Agency (or conveyed, with Beneficiary's consent, in lieu of any such action), the following additional provisions shall apply:

A. within 30 days (or such longer period as Beneficiary may approve in writing) after the date of such injury, damage, destruction, loss or other event, Trustor shall deliver to Beneficiary, in form and substance reasonably satisfactory to Beneficiary: (1) a written plan for the repair, restoration or replacement of the Property (any such repair, restoration or replacement being referred to as a "Restoration"), including the estimated cost of the Restoration and time of completion, (2) if requested by Beneficiary, a copy of the plans and specifications for the Restoration, and (3) such other Documents and information relating to the Restoration as Beneficiary may reasonably request;

B. if and to the extent required by Beneficiary, any contracts entered into by Trustor with architects, contractors, subcontractors or suppliers in connection with the Restoration shall be in form and substance and with a person reasonably satisfactory to beneficiary;

C. the Restoration shall be conducted in accordance with such procedures and requirements as Beneficiary may reasonably specify, and shall be in substantial conformity with the applicable plans and

specifications and the plan referred to in paragraph (A) above and in compliance in all material respects with all applicable laws and other requirements;

D. if Beneficiary reasonably determines at any time that any available Damage Proceeds that Beneficiary may be required to release to Trustor for the Restoration pursuant to 3.3 are or may be insufficient to pay for all costs of completing the Restoration, then Trustor shall deposit with Beneficiary, on demand, an amount deemed reasonably necessary by Beneficiary to cover such insufficiency (any such amount to be held and disbursed by Beneficiary in accordance with paragraph (E) below); and

E. any Damage Proceeds that Beneficiary may be required to release to Trustor for the Restoration pursuant to 3.3, together with any amounts deposited by Trustor with Beneficiary pursuant to paragraph (D) above, shall be held by Beneficiary in a cash collateral account (over which Beneficiary shall have sole and exclusive control and right of withdrawal), shall be used solely to pay the cost of the Restoration and shall be disbursed in accordance with such terms, conditions and procedures as Beneficiary may reasonably require (including compliance by Trustor with the provisions of paragraphs (A) thru (D) above), provided that (1) Beneficiary shall have no obligation to disburse any such amounts if an Event of Default has occurred and is continuing, and (2) if the amount of any such Damage Proceeds received by Beneficiary exceeds the cost of completing the Restoration, the excess may be applied by Beneficiary to the Secured Obligations in such order and manner as Beneficiary may determine or, at the option of beneficiary, may be released to Trustor.

Any application or release of Damage Proceeds or additional amounts deposited with Beneficiary pursuant to paragraph (D) above (whether under this or 3.2) shall not cure or waive any Event of Default or notice of Default or invalidate any act done pursuant to such notice.

3.3 Insurance, Condemnation and Damage Claims. Trustor shall provide and maintain fire and other insurance on the Property satisfactory to and with loss payable to Beneficiary. All proceeds of any claim, demand, award, settlement or other payment arising or resulting from or otherwise relating to any such insurance or any loss of destruction of, injury or damage to, trespass on or taking, condemnation (of conveyance in lieu of condemnation) or public use of any of the Property (a "Damage Claim") are assigned and shall be payable and delivered to Beneficiary (any such proceeds of any Damage Claim being referred to in this Trust Deed as "Damage Proceeds"). Trustor shall take all action reasonable necessary or required by Beneficiary in order to protect Trustor's and Beneficiary's rights and interests with respect to any Damage Claim, including the commencement of, appearance in and prosecution of any appropriate action or other proceeding, and Beneficiary may in its discretion participate in any such action or proceeding at the expense of Trustor.

So long as no Event of Default had occurred and is continuing, Trustor may settle, compromise or adjust any Damage Claim with the prior written consent of Beneficiary (which shall not be unreasonably withheld). Upon the occurrence and during the continuance of any Event of Default, Beneficiary shall have the sole right to settle, compromise or adjust any Damage Claim in such manner as Beneficiary may determine, and for this purpose Beneficiary may, in its own name or in the name of Trustor, take such action as Beneficiary deems appropriate to realize on any such Damage Claim. In either case, all Damage Proceeds payable in connection with any such Damage Claim shall be delivered directly to Beneficiary as provided in the preceding paragraph.

Any Damage Proceeds received by Beneficiary may be applied by Beneficiary in payment of the Secured obligations in such order and manner as Beneficiary may determine, provided that so long as no Event of Default has occurred and is continuing, Beneficiary shall release such Damage Proceeds to Trustor for the Restoration of the Property in the manner set forth in 3.2, except that Beneficiary shall not be required to release such Damage Proceeds (and may apply such Damage Proceeds to the secured Obligations as set forth above) to the extent that such Damage Proceeds relate to any condemnation seizure or other

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appropriation by any governmental agency of all or any portion of the Property (including Damage Proceeds payable in lieu of any such action), or if Beneficiary had reasonable determined that the security of this Trust Deed as been impaired, or will be impaired upon release of Damage Proceeds to Trustor.

3.4 Liens and Taxes. Trustor shall (a) pay, prior to delinquency, all taxes which are or may become a lien affecting any part of the Property, and (b) pay and perform when due all other obligations secured by or constituting a lien affecting any part of the Property. Subject to applicable law or to a written waiver by Beneficiary, Trustor shall pay to Beneficiary on the day monthly payments are due under the Note, until the note is paid in full, a sum (the "Funds") equal to one twelfth of: (a) yearly taxes and assessments which may attain priority over this Trust Deed; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard insurance premiums; and (d) yearly mortgage insurance premiums, if any. These items are called "escrow items". Beneficiary may estimate the funds due on the basis of current data and reasonable estimates of future escrow items. Unless prohibited by applicable law, the Funds may be commingled with Beneficiary's other funds. Beneficiary shall apply the Funds to pay the escrow items. Beneficiary will not charge Trustor for holding and applying the Funds, analyzing the account or verifying the escrow items. Unless otherwise required by applicable law, Beneficiary shall not be required to pay Trustor any interest or earnings on the Funds. Beneficiary shall give to Trustor, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. Trustor hereby grants to Beneficiary a security interest in the Funds, as additional security for the sums secured by this Trust Deed. If the amount of the funds held by Beneficiary, together with the future monthly payments of Funds payable prior to the due dates of the escrow items, shall exceed the amount required to pay the escrow items when due, the excess shall be, at Trustor's option, either promptly repaid to Trustor or credited to Trustor on monthly payment of Funds. If the amount of the Funds held by Beneficiary is not sufficient to pay the escrow items when due, Trustor shall pay to beneficiary any amount necessary to make up the deficiency in one or more payments as required by Beneficiary. Upon payment in full of all sums secured by this Trust Deed, Beneficiary shall promptly refund to Trustor any Funds held by Beneficiary. If the Property is sold or acquired by Beneficiary, Beneficiary shall apply, no later than immediately prior to the sale of the Property or its acquisition by Beneficiary, any Funds held by Beneficiary at the time of application as a credit against the sums secured by this Trust Deed.

3.5 Actions. Trustor shall appear in and defend any claim or any action or other proceeding purporting to affect title or other interests relating to any part of the Property, the security of this Trust Deed or the rights or powers of Beneficiary or Trustee, and give Beneficiary prompt written notice of any such claim, action or proceeding. Beneficiary and Trustee may, at the expense of Trustor, appear in and defend any such claim, action or proceeding and any claim, action or other proceeding asserted or brought against Beneficiary or Trustee in connection with or relating to any part of the Property or this Trust Deed.

3.6 Action by Beneficiary or Trustee. If Trustor fails to perform any of this obligations under this Trust Deed, Beneficiary or Trustee may, but without any obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligations under this Trust Deed, and at the expense of Trustor: (a) perform such obligations in such a manner and to such extent and make such payments and take such other action as either may deem necessary in order to protect the security of this Trust Deed, Beneficiary or Trustee being authorized to enter upon the Real Property for such purposes; (b) appear in and defend any claim or any action or other proceeding purporting to affect title or other interests relating to any part of the Property, the security of this Trust Deed or the rights or powers of Beneficiary or Trustee; and (c) pay, purchase, contest or compromise any lien or right of others which in the reasonable judgment of either is or appears to be or may for any reason become prior or superior to this Trust Deed. If Beneficiary or Trustee shall elect to pay any such lien or right of others or any taxes which are or may become a lien affecting any part of the Property or make any other payment to protect the security of this Trust Deed, Beneficiary or Trustee may do so without inquiring into the validity or enforceability of any apparent or threatened lien, right of others or taxes, and may pay any such taxes in reliance on information from the appropriate taxing authority or public office without further inquiry.

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3.7 Obligations with Respect to Property. Neither Beneficiary nor Trustee shall be under any obligation to preserve, maintain or protect the Property or any of Trustor's rights or interests in the Property, or make or give any presentments, demands for performance, protests, notices of nonperformance, protest or dishonor or other notices of any kind, or take any other action with respect to any other matters relating to the Property. Beneficiary and Trustee do not assume and shall have no liability for, and shall not be obligated to perform, any of Trustor's obligations with respect to any rights or any other matters relating to the Property, and noting contained in this Trust Deed shall release Trustor from any such obligations.

3.8 Assignment of Rents. Trustor irrevocably grants, transfers and assigns to Beneficiary, during the continuance of this Trust Deed, all of Trustor's right, title and interest in and to the Rents. Notwithstanding such assignment, so long as no Event of Default has occurred and is continuing, Trustor shall have the right to collect, receive, hold and dispose of the Rents as the same become due and payable, provided that unless Beneficiary otherwise consents in writing: (a) any such Rents paid more than thirty (30) days in advance of the date when due shall be delivered to Beneficiary and held by the Beneficiary in a cash collateral account (over which Beneficiary shall have sole and exclusive control and right of withdrawal), to be released and applied on the date when due (or, if an Event of Default has occurred and is continuing, at such other time or times and in such manner as Beneficiary may determine); and (b) if an Event of Default has occurred and is continuing, Trustor's right to collect and receive the Rents shall cease and Beneficiary shall have the sole right, with or without taking possession of the Real Property to collect all Rents, including those past due and unpaid. Any such collection of Rents by Beneficiary shall not cure or waive any Event of Default or notice of default or invalidate any act done pursuant to such notice. Failure or discontinuance of Beneficiary at any time, or from time to time, to collect the Rents shall not in any manner affect the subsequent enforcement by Beneficiary of the right to collect the same. Nothing contained in this Trust Deed, nor the exercise of the right by Beneficiary to collect the Rents, shall be deemed to make Beneficiary a "mortgagee in possession" or shall be, or be construed to be, an affirmation by Beneficiary of, or an assumption of liability by Beneficiary under, any tenancy, lease or option.

3.9 Default. Upon the occurrence of any Event of Default as defined in the note: (a) Trustor shall be in default under this Trust Deed and upon acceleration of the maturity of any Secured Obligations, all Secured Obligations shall immediately become due and payable without further notice to Trustor; and (b) Beneficiary may, without notice to or demand upon Trustor, which are expressly waived by Trustor (except for notices or demands specified below), and without releasing Trustor from any of its obligations, exercise any one or more of the following remedies as Beneficiary may determine ("Remedies"):

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

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

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

(C) make, cancel, enforce or modify leases, obtain and evict tenants, fix or modify rents and, in its own name or in the name of Trustor, otherwise conduct any business of Trustor in relation to the Property and deal with Trustor's creditors, debtors, tenants, and any other persons having any relationship with Trustor in relation to the Property, and amend any contracts between them, in any manner Beneficiary may determine;

(D) either with or without taking possession of the Property, notify obligors on any rights that all payments and other performances are to be made and rendered directly and exclusively to Beneficiary, and in its own name supplement, modify, amend, renew, extend, accelerate, accept partial payments or performance on, make allowances and adjustments and issue credits with respect to, give approvals, waivers and consents under, release, settle, compromise, compound, sue for, collect or otherwise liquidate, enforce or deal with any rights, including collection of amounts past due and unpaid (Trustor agreeing not to take any such action after the occurrence of an Event of Default without prior written authorization from Beneficiary);

(E) endorse, in the name of Trustor, all checks, drafts, and other evidences of payment relating to the Property; and

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

(ii) Beneficiary may execute and deliver to Trustee written declaration of default and demand for sale and written notice default and of election to cause all or any part of the Property to be sold, which notice Trustee shall cause to be filed for record; and after the lapse of such time as may then be required by law following the recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell such Property at the time and place and under the terms designated in such notice of sale, either as a whole or in separate parcels and in such order as Beneficiary may direct (Trustor waiving any right to direct the order of sale), at public auction to the highest bidder for cash in lawful money of the United States (or cash equivalents acceptable to Trustee to the extent permitted by applicable law), payable at the time of sale. **In the event of such sale, Trustee shall comply with the terms set forth in Affordable Housing Resale Restrictions; Option Agreement and Option to Designate Purchaser ("Resale Restriction") by and among the City of Oceanside, Trustee, and Trustor, dated the same date as this Trust Deed and recorded concurrently herewith. Any foreclosure bidder is subject to the "Resale Restriction.** Trustee may postpone the sale of all or any part of the Property by public announcement at such time and place of sale, and from time to time after any such postponement may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser at such sale its deed and the recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee or Beneficiary, may purchase at such sale, and any bid by Beneficiary may be, in whole or in part, in the form of cancellation of all or any part of the Secured Obligations. Any such sale shall be free and clear of any interest of Trustor and any lease, encumbrance or other matter affecting the Property so sold which is subject or subordinate to this Trust Deed, except that any such sale shall not result in the termination of any such lease (A) if and to the extent otherwise provided in any estoppel or other agreement executed by the tenant and Beneficiary (or executed by the tenant in favor of, and accepted by, Beneficiary), or (B) if the purchaser at such sale gives written notice to the tenant, within 30 days after date of sale, that the lease will continue in effect.

(iii) with respect to any Personal Property, Beneficiary shall have in any jurisdiction where enforcement of this Trust Deed is sought all Remedies of a secured party under the UCC and may require Trustor, on demand, to assemble all Personal Property and make it available to Beneficiary at places that Beneficiary may select that are reasonably convenient for both parties, whether at the premises of Trustor or elsewhere.

(iv) Beneficiary may proceed to protect, exercise and enforce any and all other remedies provided under applicable laws.

All proceeds of collection, sale or other liquidation of the Property shall be applied first to all costs, fees, expenses and other amounts (including interest) payable by Trustor under 3.11 of this Trust Deed and to all other Secured Obligations not otherwise repaid in such order and manner as Beneficiary may determine, and the remainder, if any, to the person or persons legally entitled thereto.

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

3.10 Costs, Fees and Expenses. Trustor shall pay, on demand, all costs, fees, expenses, advances, charges, losses and liabilities of Trustee and Beneficiary under or in connection with this Trust Deed or the enforcement of, or the exercise of any Remedy or any other action taken by Trustee or Beneficiary under this Trust Deed or the collection of the Secured Obligations, in each such case including but not limited to (a) reconveyance and foreclosure fees of Trustee, including advances made under Section 3.6 herein, (b) costs and expenses of Beneficiary or Trustee or any receiver appointed under this Trust Deed in connection with the operation, maintenance, management, protection, preservation, collection, sale or other liquidation of the Property or foreclosure of this Trust Deed, (c) advances made by Beneficiary to complete or partially construct all or any part of any construction which may have been commenced on the Land or otherwise to protect the security of this Trust Deed, (d) cost of evidence of title, and (e) the actual fees and disbursements of Trustee's and Beneficiary's legal counsel and other out-of-pocket expenses, and the reasonable charges of Beneficiary's internal legal counsel; together with interest on all such amounts until paid (i) at the Alternate Rate as defined in the Note in the case of any such interest payable to Beneficiary, and (ii) at the rate provided by law in the case of any such interest payable to Trustee.

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

3.12 Surrender of Note. Upon payment of all sums secured by this Deed of Trust and all fees and charges, Beneficiary shall request Trustee to surrender all Notes evidencing indebtedness secured by this Deed of Trust to the person or persons legally entitled thereto.

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

3.14 Reconveyance. Upon payment of all sums secured by this Deed of Trust; AND the first occurring of either (i) the expiration of the fifty five (55) year term of the "Resale Restriction" or (ii) the sale of the Property to a subsequent buyer, Beneficiary shall request Trustee to reconvey the Property and surrender this Deed of Trust to the person or persons legally entitled thereto. **BENEFICIARY SHALL NOT BE**

date _____

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REQUIRED TO CAUSE ANY PROPERTY TO BE RELEASED FROM THIS DEED OF TRUST UNTIL FINAL PAYMENT AND PERFORMANCE IN FULL OF ALL SECURED OBLIGATIONS, INCLUDING THOSE OBLIGATIONS WHICH ARE SET FORTH IN "RESALE RESTRICTION" BY AND AMONG THE CITY OF OCEANSIDE, TRUSTEE, AND TRUSTOR, DATED THE SAME DATE AS THIS TRUST DEED AND RECORDED CONCURRENTLY HERewith, AND WHICH WILL BE IN FULL FORCE AND EFFECT FOR THE FULL FIFTY FIVE (55) YEAR TERM THEREOF .

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

3.16 Attorney-in-Fact. Trustor appoints Beneficiary as Trustor's attorney-in-fact, with full authority in the place of Trustor and in the name of Trustor or Beneficiary, to take such action and execute such documents as Beneficiary may reasonably deem necessary or advisable in connection with the exercise of any Remedies or any other action taken by Beneficiary or Trustee under this Trust Deed.

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

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

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

3.20 Fixture Filing. This Trust Deed covers certain goods which are or are to become fixtures related to the Land and constitutes a "fixture filing" with respect to such goods executed by Trustor (as "debtor") in favor of Beneficiary (as "secured party").

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

3.22 Request for Notice. Trustor requests that a copy of any notice of default and a copy of any notice of sale be mailed to Trustor at Trustor's address set forth above.

3.23 Trustor Consents to Beneficiary's Sale, Pledge and All Other Transfers of This Trust Deed and Note as Collateral. Trustor's execution of this Trust Deed constitutes his/her/their consent to Beneficiary's future sale, pledge and all other transfers of this Trust Deed and the Note it secures as collateral, all in the sole discretion of Beneficiary.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
[Signatures on Following Page]**

IN WITNESS WHEREOF, this Trust Deed has been executed as of the date set forth above.

"TRUSTOR"

NAME OF HOME OWNER

NAME OF HOME OWNER

REQUEST FOR RECONVEYANCE

TO TRUSTEE:

The undersigned is the holder of the note or notes secured by this Trust Deed. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Trust Deed to the person or persons legally entitled thereto.

Dated: _____

Executive Director

EXHIBIT "A"

Legal Description of the Property

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

BEING LOT OF LIBBY LAKE VILLAGE, ACCORDING TO MAP THEREOF NO. 15696, AS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JUNE 26, 2008.

TOGETHER WITH AN UNDIVIDED 1/20TH INTEREST IN LOTS A AND B OF SAID MAP NO. 15696.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT AND RIGHT-OF-WAY FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AND UTILITY PURPOSES OVER THE WESTERLY PORTION OF LOT 21 AS SHOWN ON SAID MAP NO. 15696.

initials _____ / _____
date _____

ATTACHMENT NO. 17

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

Mail Tax Statements to the above listed address

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N.:

Documentary Transfer tax \$ _____

Computed on full value of property conveyed; or

Computed on full value less liens & encumbrances
remaining thereon at time of sale.

Signature of declarant or agent determining tax - firm name

Unincorporated area City of Oceanside

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF OCEANSIDE, a municipal corporation

hereby GRANT(S) to

that certain real property situated in the City of Oceanside, County of San Diego, State of California,
more particularly described as follows:

PARCEL 1:

Being Lot ~~X~~ Of Libby Lake Village, according to Map thereof No. 15696, as filed in the
Office of the County Recorder of San Diego County, June 26, 2008.

Together with an Undivided 1/20th interest in Lots A and B of said Map No. 15696.

Parcel 2:

A non-exclusive easement and right-of-way for vehicular and pedestrian ingress and
egress and utility purposes over the westerly portion of Lot 21 as shown on said Map
No. 15696.

Excepting therefrom all oil, gas, mineral and other hydrocarbon substances below a
depth of 500.00 feet from the surface of said land, but with no right of surface entry.

Further excepting therefrom, all water rights, but no right of surface entry.

This grant is made and accepted subject to the restrictive covenants contained in that certain
Affordable Housing Resale Restrictions; Option Agreement and Option to Designate Purchaser, of

the same date of this instrument, as filed in the Office of the County Recorder of San Diego County.

The Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of sex, familial status, race, color, creed, religion, national origin or ancestry in the sale, transfer, use, occupancy, tenure or enjoyment of the real property herein conveyed, nor shall the Grantee 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 buyers of the real property herein conveyed. The foregoing covenants shall run with the land.

Dated: _____

CITY OF OCEANSIDE, a municipal corporation

By: _____
Its:

ATTACHMENT NO. 17

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

Mail Tax Statements to the above listed address

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N.:

Documentary Transfer tax \$ _____
 Computed on full value of property conveyed; or
 Computed on full value less liens & encumbrances
remaining thereon at time of sale.

Signature of declarant or agent determining tax - firm name

Unincorporated area City of Oceanside

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF OCEANSIDE, a municipal corporation

hereby GRANT(S) to

that certain real property situated in the City of Oceanside, County of San Diego, State of California,
more particularly described as follows:

PARCEL 1:

Being Lot ~~X~~ Of Libby Lake Village, according to Map thereof No. 15696, as filed in the
Office of the County Recorder of San Diego County, June 26, 2008.

Together with an Undivided 1/20th interest in Lots A and B of said Map No. 15696.

Parcel 2:

A non-exclusive easement and right-of-way for vehicular and pedestrian ingress and
egress and utility purposes over the westerly portion of Lot 21 as shown on said Map
No. 15696.

Excepting therefrom all oil, gas, mineral and other hydrocarbon substances below a
depth of 500.00 feet from the surface of said land, but with no right of surface entry.

Further excepting therefrom, all water rights, but no right of surface entry.

This grant is made and accepted subject to the restrictive covenants contained in that certain
Affordable Housing Resale Restrictions; Option Agreement and Option to Designate Purchaser, of

the same date of this instrument, as filed in the Office of the County Recorder of San Diego County.

The Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of sex, familial status, race, color, creed, religion, national origin or ancestry in the sale, transfer, use, occupancy, tenure or enjoyment of the real property herein conveyed, nor shall the Grantee 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 buyers of the real property herein conveyed. The foregoing covenants shall run with the land.

Dated: _____

CITY OF OCEANSIDE, a municipal corporation

By: _____
Its:

ATTACHMENT NO. 17

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

Mail Tax Statements to the above listed address

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N.:

Documentary Transfer tax \$ _____
 Computed on full value of property conveyed; or
 Computed on full value less liens & encumbrances
remaining thereon at time of sale.

Signature of declarant or agent determining tax - firm name

Unincorporated area City of Oceanside

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF OCEANSIDE, a municipal corporation

hereby GRANT(S) to

that certain real property situated in the City of Oceanside, County of San Diego, State of California,
more particularly described as follows:

PARCEL 1:

Being Lot Of Libby Lake Village, according to Map thereof No. 15696, as filed in the
Office of the County Recorder of San Diego County, June 26, 2008.

Together with an Undivided 1/20th interest in Lots A and B of said Map No. 15696.

Parcel 2:

A non-exclusive easement and right-of-way for vehicular and pedestrian ingress and
egress and utility purposes over the westerly portion of Lot 21 as shown on said Map
No. 15696.

Excepting therefrom all oil, gas, mineral and other hydrocarbon substances below a
depth of 500.00 feet from the surface of said land, but with no right of surface entry.

Further excepting therefrom, all water rights, but no right of surface entry.

This grant is made and accepted subject to the restrictive covenants contained in that certain
Affordable Housing Resale Restrictions; Option Agreement and Option to Designate Purchaser, of

the same date of this instrument, as filed in the Office of the County Recorder of San Diego County.

The Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of sex, familial status, race, color, creed, religion, national origin or ancestry in the sale, transfer, use, occupancy, tenure or enjoyment of the real property herein conveyed, nor shall the Grantee 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 buyers of the real property herein conveyed. The foregoing covenants shall run with the land.

Dated: _____

CITY OF OCEANSIDE, a municipal corporation

By: _____
Its:

ATTACHMENT NO. 18

COMMERCIAL PLEDGE AGREEMENT

THIS COMMERCIAL PLEDGE AGREEMENT (the "Agreement") is made and entered into as of _____, 2009, by and between the **CITY OF OCEANSIDE**, a municipal corporation, ("City"), and **SAN DIEGO HABITAT FOR HUMANITY, INC.**, a California nonprofit public benefit corporation (the "Grantor") (a/k/a "Developer").

RECITALS

The following recitals are a substantive part of this Agreement:

A. The City is the lawful and equitable owner of that certain real property situated in the City of Oceanside, County of San Diego, State of California, being a subdivision consisting of 23 lots commonly referred to as Libby Lake Village according to Map thereof No. 15696, as filed in the Office of the County Recorder of San Diego County, June 26, 2008, that was acquired for the purpose of developing low and moderate income housing in the City.

B. The City has adopted a Housing Element to its General Plan pursuant to Government Code Section 65580, et seq., which sets forth the City's policies, goals and objectives to provide housing to all economic segments of the community.

C. The City and the Developer have entered into a Development Agreement, dated June 27, 2006 and having an Effective Date of August 2, 2006, as may be amended from time to time (the "DA"). Pursuant to the DA, (i) the City has agreed to provide Lots 1 through 20 and Lots A and B, inclusive, of said Map No. 15696, together with a non-exclusive easement and right-of-way for vehicular and pedestrian ingress and egress and utility purposes over the westerly portion of Lot 21 as shown on said Map No. 15696 (the "Site"), for the development of a 20 unit affordable detached single-family homes (the "Homes"), (ii) the City has agreed to provide certain financial assistance in the amount of Two Million Seven Hundred Thousand Dollars (\$2,700,000.00) to the Developer for the development of the Site in accordance with the DA and that certain Loan Agreement and Promissory Note dated August 2, 2006 and on file in the Office of the City Clerk as Document No. 06-D0492-1 (the "Construction Loan"), (iii) the Developer has agreed to develop the Site and construct the Homes, together with all onsite and offsite improvements appurtenant thereto in accordance with the terms, conditions and provisions of the DA, and (iv) the Developer has agreed to sell the Homes at restricted sale prices to low income families and households who are qualified first-time homebuyers (the "Qualified Homebuyers"). The City and the Developer have also agreed to require the Qualified Homebuyers to enter into with the City certain instruments which set forth specific obligations and restrictions with respect to the resale of the housing units to other low income homebuyers (the "Affordable Housing Resale Restrictions" [Attachment No. 9 to the DA]). The DA is hereby incorporated herein by reference.

D. Pursuant to the terms of the DA the Construction Loan shall convert to secondary financing to the Qualified Homebuyers as a "silent second" without the payment of principal or interest, and shall be forgivable upon the expiration of its term provided the Qualified Homebuyer (its successors in interest or assigns) is not in default of the terms of the Affordable Housing Resale Restrictions or any note or deed of trust held against the Qualified Homebuyer's Home and appurtenant real property.

E. City has agreed to lend the Developer and Developer has agreed to accept (without a monetary exchange) an additional sum of One Million Two Hundred Thousand Dollars (\$1,200,000.00), which represents the land value of the Site under the terms of the Note, as defined below, and secured by this Agreement.

F. The provision of financial assistance to the Developer and the Qualified Homebuyers pursuant to the terms and conditions of this Agreement are in the vital and best interest of the City.

NOW, THEREFORE, in consideration of the above recitals and for other valuable consideration, the City and the Grantor hereby agree as follows:

1. **Grant of Security Interest.** For valuable consideration, Grantor grants to City ("Lender") a security interest in the Collateral to secure the Indebtedness and agrees that City shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which City may have by law.

2. **Collateral Description.** The word "Collateral" as used in this Agreement means Grantor's present and future rights, title and interest in and to, together with any and all present and future additions thereto, substitutions therefore, and replacements thereof, and further together with all Income and Proceeds as described herein:

Promissory Note and Deed of Trust in the original principal amount of One Hundred Seventy-two Thousand Five Hundred Dollars (\$172,500.00) dated November 17, 2007 between Cheryl Dobrowolski and San Diego Habitat for Humanity, Inc. Property address 402 W 6th Avenue #1, Escondido, California 92025-4867

Promissory Note and Deed of Trust in the original principal amount of One Hundred Seventy-two Thousand Five Hundred Dollars (\$172,500.00) dated November 17, 2007 between Jose and Maria Zuniga and San Diego Habitat for Humanity, Inc. Property address 402 W 6th Avenue #2, Escondido, California 92025-4867

Promissory Note and Deed of Trust in the original principal amount of One Hundred Seventy-two Thousand Five Hundred Dollars (\$172,500.00) dated November 17, 2007 between Lidia Paramore and San Diego Habitat for Humanity, Inc. Property address 402 W 6th Avenue #3, Escondido, California 92025-4867

Promissory Note and Deed of Trust in the original principal amount of One Hundred Seventy-two Thousand Five Hundred Dollars (\$172,500.00) dated November 17, 2007 between Marcos and Perla Orozco and San Diego Habitat for Humanity, Inc. Property address 402 W 6th Avenue #4, Escondido, California 92025-4867

Promissory Note and Deed of Trust in the original principal amount of One Hundred Seventy-two Thousand Five Hundred Dollars (\$172,500.00) dated November 17, 2007 between Guadalupe and Ana Vazquez and San Diego Habitat for Humanity, Inc. Property address 402 W 6th Avenue #5, Escondido, California 92025-4867

Promissory Note and Deed of Trust in the original principal amount of One Hundred Seventy-two Thousand Five Hundred Dollars (\$172,500.00) dated November 17, 2007 between Kelly Vandervort and San Diego Habitat for Humanity, Inc. Property address 402 W 6th Avenue #6, Escondido, California 92025-4867

Promissory Note and Deed of Trust in the original principal amount of One Hundred Seventy-two Thousand Five Hundred Dollars (\$172,500.00) dated November 17, 2007 between Antonio and Ilda Guillen and San Diego Habitat for Humanity, Inc. Property address 402 W 6th Avenue #7, Escondido, California 92025-4867

Promissory Note and Deed of Trust in the original principal amount of One Hundred Forty-five Thousand Dollars (\$145,000.00) dated August 15, 2003 between Mireya Mejia and San Diego Habitat for Humanity, Inc. Property address 1410 Sheryl Lane, National City, California 91950-3736

3. **Cross-Collateralization.** In addition to the Note, this Agreement secures all obligations, debts and liabilities, plus interest thereon, of Grantor to City, or any one or more of them, as well as all claims by City against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

4. **Representations and Warranties with Respect to the Collateral.** Grantor represents and warrants to City that:

a. **Ownership.** Grantor is the lawful owner of the Collateral free and clear of all security interests, liens, encumbrances and claims of others except as disclosed to and accepted by City in writing prior to execution of this Agreement.

b. **Right to Pledge.** Grantor has the full right, power and authority to enter into this Agreement and to pledge the Collateral.

c. **Authority; Binding Effect.** Grantor has the full right, power and authority to enter into enter into this Agreement and to grant a security interest in the Collateral to City. This Agreement is binding upon Grantor as well as Grantor's successors and assigns, and is legally enforceable in accordance with its terms. The foregoing representations and warranties, and all other representation and warranties contained in this Agreement are and shall be continuing in nature and shall remain in full force and effect until such time as this Agreement is terminated or cancelled as provided herein.

d. **No Further Assignment.** Grantor has not, and shall not, sell, assign, transfer, encumber or otherwise dispose of any of Grantor's rights in the Collateral except as provided in this Agreement.

e. **Enforceability of Collateral.** To the extent the Collateral consists of promissory notes and other instruments, as defined in the Uniform Commercial Code, the Collateral is enforceable in accordance with its terms, is genuine, and fully complies with all applicable law and regulations concerning form, content and manner of preparation and execution, and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. There shall be no setoffs or counterclaims against the Collateral except those disclosed to City in writing.

f. **No Defaults.** There are no defaults existing under the Collateral, and there are no offsets or counterclaims to the same. Grantor will strictly and promptly perform each of the terms, conditions, covenants and agreements, if any, contained in the Collateral which are to be performed by Grantor.

g. **No Violation.** The execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party, and its certificate or articles of incorporation and bylaws do not prohibit any term or condition of this Agreement.

h. **Financing Statements.** Grantor authorizes City to file a UCC-1 financing statement, or alternatively, a copy of this Agreement to protect City's security interest. At City's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue City's security interest in the Property. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless City is required by

law to pay such fees and costs. Grantor irrevocably appoints City to execute financing statements and documents of title in the Grantor's name and to execute all documents necessary to transfer title if there is a default. City may file a copy of this Agreement as a financing statement. If Grantor changes Grantor's name or address, or the name or address of any person granting a security interest under this Agreement changes, Grantor will promptly notify City of such change.

5. **City's Right and Obligations with Respect to the Collateral.** City may hold the Collateral until all indebtedness has been paid and satisfied. Thereafter City may deliver the Collateral to Grantor or to any other owner of the Collateral. City shall have the following right in addition to all rights City may have by law:

a. **Maintenance and Protection of Collateral.** City may, but shall not be obligated to, take such steps necessary or desirable to protect, maintain, insure, store, or care for the Collateral, including paying of any liens or claims against the Collateral. This may include such things as hiring other people, such as attorneys, appraisers or other experts. City may charge Grantor for any cost incurred in so doing. When applicable law provides more than one method of perfection of City's security interest, City choose the method(s) to be used.

b. **Income and Proceeds from the Collateral.** City may receive all income and Proceeds and add it to the Collateral. Grantor agrees to deliver to City immediately upon receipt, in the exact form received and without commingling with other property, all Income and Proceeds from the Collateral which may be received by, paid, or delivered to Grantor or for Grantor's account, whether as an addition to, in discharge of, in substitution of, or in exchange for any of the Collateral.

c. **Application of Cash.** At City's option, City may apply any cash, whether included in the Collateral or received as Income and Proceeds or through liquidation, sale, or retirement, of the Collateral, to the satisfaction of the Indebtedness or such portion thereof as City shall choose, whether or not matured.

d. **Transactions with Others.** City may (1) extend time for payment or other performance, (2) grant a renewal or change in terms or conditions, or (3) compromise, compound or release any obligation, with any one or more Obligators, endorsers, or Guarantors of the Indebtedness as City deems advisable, without obtaining the prior written consent of Grantor, and no such act or failure to act shall affect City's rights against Grantor or the Collateral.

e. **All Collateral Secures Indebtedness.** All Collateral shall be security for the Indebtedness, whether the Collateral is located at one or more offices or departments of City. This will be the case whether or not the office or department where Grantor obtained Grantor's loan knows about the Collateral or relies upon the Collateral as security.

f. **Collection of Collateral.** City at City's option may, but need not, collect the Income and Proceeds directly from the Obligators. Grantor authorizes and directs the Obligators, if City decides to collect the Income and Proceeds, to pay and deliver to City all Income and Proceeds from the Collateral and to accept City's receipts for payment.

g. **Power of Attorney.** Grantor irrevocably appoints City as Grantor's attorney-in-fact, with full power of substitution, (a) to demand, collect, receive, receipt for, sue and recover all Income and Proceeds and other sums of money and other property which may now or hereafter become due, owing or payable from the Obligators in accordance with the terms of the Collateral; (b) to execute, sign and endorse any and all instruments, receipts, checks, drafts and warrants issued in payment for the Collateral; (c) to settle or compromise any and all claims arising under the Collateral, and in the place and stead of Grantor, execute and deliver

Grantor's release and acquittance for Grantor; (d) to file any claims or to take any action or institute or take part in any proceedings, either in City's own name or in the name of Grantor, or otherwise, which in the discretion of City may seem to be necessary or advisable; and (e) to execute in Grantor's name and to deliver to the Obligators on Grantor's behalf, at the time and in the manner specified by the Collateral, any necessary instruments or documents.

h. Perfection of Security Interest. Upon City's request, Grantor will deliver to City any and all of the documents evidencing or constituting the Collateral. When applicable law provides more than one method of perfection of City's security interest, City may choose the method(s) to be used. Upon City's request, Grantor will sign and deliver any writings necessary to perfect City's security interest. Grantor hereby appoints City as Grantor's irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect, amend, or to continue the security interest granted in this Agreement or to demand termination of filings of other secured parties. This is a continuing Security Agreement and will continue in effect even though all or any part of the Indebtedness is paid in full and even though for a period of time Grantor may not be indebted to City.

6. City's Expenditures. If any action or proceeding is commenced that would materially affect City's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or and Related Documents, City on Grantor's behalf may (but shall not be obligated to) take any action that City deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by City for such purposes will then bear interest at the rate charged under the Note (for a default under the Note) from the date incurred or paid by City to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at City's option, will (A) be payable on demand; (B) be added to the balance of the Note and apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedied to which City may be entitled upon Default.

7. Limitations on Obligations of City. City shall use ordinary reasonable care in the preservation and custody of the Collateral in City's possession, but shall have no other obligation to protect the Collateral or its value. In particular, but without limitation, City shall have no responsibility for (A) ant depreciation in value of the Collateral or for the collection or protection of any Income and Proceeds from the Collateral, (B) preservation of rights against parties to the Collateral or against third parties, (C) ascertaining any maturities, calls, conversions, exchanges, offers, tenders, or similar matters relating to any of the Collateral, or (D) informing Grantor about any if the above whether or not City has or is deemed to have knowledge of such matters. Except as provided above, City shall have no liability for the depreciation or deterioration of the Collateral.

8. Default. Each of the following shall constitute an Event of Default under this Agreement:

a. Payment Default. Grantor fails to make any payment when due under the Indebtedness.

b. Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition in any other agreement between City and Grantor.

c. **Defaults in Favor of Third Parties.** Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the indebtedness or perform its obligations under this Agreement or any of the Related Documents.

d. **False Statements.** Any warranty, representation or statement made or furnished to City by Grantor or on Grantor's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or become false or misleading at any time thereafter.

e. **Defective Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

f. **Insolvency.** The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditor, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

g. **Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with City. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives City written notice of the creditor or forfeiture proceeding and deposits with City monies or a security bond for the creditor or forfeiture proceeding, in an amount determined by City, in its sole discretion, as being an adequate reserve or bond for the dispute.

h. **Events Affecting Guarantor.** Any of the proceeding events occurs with respect to guarantor, endorser, surety, or accommodation party of any of the Indebtedness or guarantor, endorser, surety, or accommodation party dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

i. **Adverse Change.** A material adverse change occurs in Grantor's financial condition, or City believes the prospect of payment or performance of the Indebtedness is impaired.

j. **Cure Provisions.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Agreement within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Grantor, after receiving written notice from City demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which City deems, in City's sole discretion, to be sufficient to cure the default and thereafter continues all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

9. **Rights and Remedies on Default.** In the Event of Default occurs under this Agreement, at any time thereafter, City may exercise any one or more of the following rights and remedies:

a. **Accelerate Indebtedness.** Declare all Indebtedness, including any prepayment penalty which Grantor would be required to pay, immediately due and payable, without notice of any kind to Grantor.

- b. **Collect the Collateral.** Collect any of the Collateral and, at City's option and to the extent permitted by applicable law, retain possession of the Collateral while suing on the Indebtedness.
- c. **Sell the Collateral.** Sell the Collateral, at City's discretion, as a unit or in parcels, at one or more public or private sales. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, City shall give or mail to Grantor, and other persons as required by law, notice at least ten (10) days in advance of the time and place of any public sale, or of the time after which any private sale may be made. However, no notice need be provided to any person who, after an Event of Default occurs enters into and authenticates an agreement waiving that person's right to notification of sale. Grantor agrees that any requirement of reasonable notice as to Grantor is satisfied if City mails notice by ordinary mail addressed to Grantor at the last address Grantor has given City in writing. If a public sale is held, there shall be sufficient compliance with all requirements of notice to the public by a single publication in any newspaper of general circulation in the county where the Collateral is located, setting forth the time and place of sale and a brief description of the property to be sold. City may be a purchaser at any public sale.
- d. **Sell of Securities.** Sell any securities included in the Collateral in a manner consistent with applicable federal and state securities laws. If because of restrictions under such laws, City is unable, or believes City is unable, to sell the securities in an open market transaction, Grantor agrees that City will have no obligation to delay sale until the securities can be registered. Then City may make a private sale to one or more persons or to a restricted group of persons, even though such sale may result in a price that is less favorable than might be obtained in an open market transaction. Such a sale will be considered commercially reasonable. If any securities held as Collateral are "restricted securities" as defined in the Rules of the Securities and Exchange Commission (such as Regulation D or Rule 144) or the rules of the state securities departments under state "Blue Sky" laws, or if Grantor or any other owner of the Collateral is an affiliate of the issuer of the securities, Develop agrees that neither Grantor, nor a member of Grantor's family, nor any other person signing this Agreement will sell or dispose of any securities of such issuer without obtaining City's prior written consent.
- f. **Foreclosure.** Maintain a judicial suit for foreclosure and sale of the Collateral.
- g. **Transfer of Title.** Effect transfer of title upon sale of all or part of the Collateral. For this purpose, Grantor irrevocably appoints City as Grantor's attorney-in-fact to execute endorsements, assignments, and instruments in the name of Grantor and each of them (if more than one) as shall be necessary or reasonable.
- h. **Other Rights and Remedies.** Have and exercise any or all of the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, at law, in equity, or otherwise.
- i. **Application of Proceeds.** Apply any cash which is part of the Collateral, or which is received from the collection or sale of the Collateral, to reimbursement of any expenses, including any costs for registration of securities, commissions incurred in connection with a sale, attorneys' fees and court costs, whether or not there is a lawsuit and including any fees on appeal, incurred by City in connection with the collection and sale of such Collateral and to the payment of the Indebtedness of Grantor to City, with any excess funds to be paid to Grantor as the interests of Grantor may appear. Grantor agrees, to the extent permitted by law, to pay any deficiency after the application of the proceeds of the Collateral to the Indebtedness.
- j. **Election of Remedies.** Except as may be prohibited by applicable law, all of City's rights and remedies, whether evidenced by this Agreement, the Related Documents, or by any

other writing, shall be cumulative and may be exercised singularly or concurrently. Election by City to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect City's right to declare a default and exercise its remedies.

10. Definitions. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement or the Construction Loan shall have the meanings attributed to such terms in the Uniform Commercial Code:

Agreement. The word "Agreement" means this Commercial Pledge Agreement and Loan Modification Agreement, as this Commercial Pledge Agreement and Loan Modification Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to Commercial Pledge Agreement and Loan Modification Agreement from time to time.

Borrower. The word "Borrower" means San Diego Habitat for Humanity, Inc.

City. The word "City" means the City of Oceanside, a municipal corporation in and of the State of California.

Collateral. The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Default. The word "Default" means the Default set forth in this Agreement in the section titled "Default".

Grantor. The word "Grantor" means San Diego Habitat for Humanity, Inc. and includes all co-signatories or makers signing the Note, and also means "Borrower".

Event of Default. The words "Event of Default" means any of the events of default set forth in this Agreement in the Default section of this Agreement.

Guaranty. The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to City, including without limitation a guaranty of all or part of the Note.

Income and Proceeds. The words "Income and Proceeds" mean all present and future income, proceeds, earnings, increases, and substitutions from or for the Collateral of every kind and nature, including without limitation all payments, interest, profits, distributions, benefits, rights, options, warrants, dividends, stock dividends, stock splits, stock rights, regulatory dividends, subscriptions, monies, claims for money due and to become due, proceeds of any insurance on the Collateral, shares of stock of different par value or of no par value issued in substitution or exchange for shares included in the Collateral, and all other property Grantor is entitled to receive on account of such Collateral, including accounts, documents, instruments, chattel paper, and general intangibles.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means the City of Oceanside, its successors and assigns.

Note. The word "Note" means the Note executed by San Diego Habitat for Humanity, Inc. in the principal amount of \$1,200,000.00 dated the same date as this Agreement, together with all renewals of, extensions of, modification of, refinancing of, consolidations of, and substitutions for the Note or credit agreement.

Obligator. The word "Obligator" means without limitation any and all persons obligated to pay money or to perform some other act under the Collateral.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

Related Documents. The words "Related Documents" mean the DA, all promissory notes, credit agreements, loan agreements, environmental agreements, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

11. **Miscellaneous Provisions.** The following miscellaneous provisions are a part of this Agreement:

a. **Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effected unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

b. **Attorneys' Fees; Expenses.** Grantor agrees to pay upon demand all of City's costs and expenses, including City's attorneys' fees and City's legal expenses, incurred in connection with the enforcement of this Agreement. City may hire or pay someone else to help enforce this Agreement and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include City's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post judgment collection services. Grantor also shall pay all court and such additional fees as may be directed by the court.

c. **Governing Law.** This Agreement will be governed by, construed and enforced in accordance with federal law and the laws of the State of California. This Agreement has been accepted by City in the State of California.

d. **Choice of Venue.** If there is a lawsuit, Grantor agrees upon City's request to submit to the jurisdiction of the courts of San Diego County, State of California.

e. **No Waiver by City.** City shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by City. No delay or omission on the part of City in exercising any right shall operate as a waiver of such right or any other right. A waiver by City of a provision of this Agreement shall not prejudice or constitute a waiver of City's right otherwise to demand strict compliance with that provision of any other provision of this Agreement. No prior waiver by City, nor any course of dealing between City and Grantor, shall constitute a waiver of any of City's rights or of any of Grantors obligations as to any future transactions. Whenever the consent of City is required under this Agreement, the granting of such consent by City in any instance shall not constitute continuing consent to subsequent

instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of City.

f. Preference Payments. Any monies City pays because of an asserted preference claim in Grantor's bankruptcy will become a part of the Indebtedness and, at City's option, shall be payable by Grantor as provided in this Agreement.

g. Notices. Any notice required under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or if mailed, when deposited in the United States mail, as first class, certified mail, postage prepaid, directed to the to the addresses shown below:

If to City:

City of Oceanside
ATTN: Neighborhood Services Director
300 North Coast Highway
Oceanside, CA 92054

If to Grantor:

San Diego Habitat for Humanity, Inc.
ATTN: Executive Director
10222 San Diego Mission Road
San Diego, CA 92108-2135

With copy to:

City of Oceanside
ATTN: City Attorney
300 North Coast Highway
Oceanside, CA 92054

With copy to:

Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep City informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

h. Waiver of Co-Obligor's Rights. If more than one person is obligated for the Indebtedness, Grantor irrevocably waives, disclaims and relinquishes all claims against such other person which Grantor has or would otherwise have by virtue of payment of the Indebtedness or any part thereof, specifically including but not limited to all rights of indemnity, contribution or exoneration.

i. Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that find shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

j. Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. IF ownership of the Collateral becomes vested in a person other than Grantor, City, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension

without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

k. **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

l. **Waive Jury.** All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counteraction brought by any party against any other party.

m. **Acceptance of Service of Process.** In the event that any legal action is commenced by the Grantor against City, service of process on City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law. In the event that any legal action is commenced by City against the Grantor, service of process shall be made in such manner as may be provided by law and shall be effective whether served inside or outside of California.

n. **Non-Liability of Officials and Employees of City.** No member, official, officer or employee of City shall be personally liable to the Grantor, or any successor in interest, in the event of any Default or breach by City or for any amount which may become due to the Grantor or its successors, or on any obligations under the terms of this Agreement.

o. **Cooperation.** Each party shall cooperate with the other in this transaction and, in that regard, sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

DEVELOPER HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS COMMERCIAL PLEDGE AGREEMENT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED _____, 2009.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the date first set forth above.

GRANTOR:

San Diego Habitat for Humanity, Inc.

By: _____
Executive Director

ATTACHMENT NO. 19

Exhibit "A"
to Commercial Pledge Agreement

PROMISSORY NOTE

\$1,200,000.00
_____, 2009

Oceanside, California

FOR VALUE RECEIVED, SAN DIEGO HABITAT FOR HUMANITY, INC., a California nonprofit public benefit corporation (the "Borrower"), who's principal place of business is at 10222 San Diego Mission Road, San Diego, California 92108-2135, promises to pay to the **CITY OF OCEANSIDE**, a municipal corporation (the "City"), or order, at the City's office at 300 North Coast Highway, Oceanside, California 92054, or such other place as the City may designate in writing, the principal amount of One Million Two Hundred Thousand Dollars (\$1,200,000.00) (the "Note Amount"), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts, together with interest on the unpaid principal balance, until paid in full.

1. Agreement. This Promissory Note (the "Note") is given in accordance with that certain Development Agreement by and between City and Borrower (as "Developer") dated June 27, 2006, having an Effective Date of August 2, 2006 (the "DA"), and that certain Commercial Pledge Agreement, dated the same date as this Note, executed by Borrower in favor of City (the "Agreement") concerning the development and sell of 20 single family detached homes in the Libby Lake Village subdivision to Qualified Homebuyers (the "Subdivision"). The rights and obligations of the Borrower and the City under this Note shall be governed by the DA, the Agreement and by the additional terms set forth in this Note. In the event of any inconsistencies between the terms of this Note and the terms of the Agreement or any other document related to the Note Amount, the terms of this Note shall prevail.

2. Interest. Provided Borrower is not in default of any of the terms of this Note, the Agreement, or any Related Documents, the Note Amount shall bear 0% interest at the rate of zero percent (0%) per annum.

a. Interest After Default. In the event of an Event of Default under the DA, the Agreement or this Note, Borrower shall pay interest on the unpaid principal balance at a rate of six percent (6%) per annum, if permitted under applicable law. The City shall be entitled to add such amount to the amounts owing pursuant to this Note, and secured by the Agreement.

3. Payment of Note Amount. Borrower shall pay the loan in Two Hundred Forty (240) consecutive monthly principal payments of Five Thousand Dollars (\$5,000.00) total each, beginning on the first (1st) day of the first full month following the first sale of a home in the Subdivision to a Qualified Homebuyer, and monthly thereafter until the Note Amount and any other sums owed under this Note and the Agreement paid in full. Unless otherwise agreed or required by law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. Borrower will pay City at City's address shown above or at such other place as City may designate in writing. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of City's right to either require prompt payment when due of all other sums payable hereunder or to declare an Event of Default for failure to make prompt or complete payment.

4. Late Charges. If a payment is fifteen (15) days or more late, Borrower will be charged ten percent (10%) of the regularly scheduled payment.

5. Waivers

a. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time at the City's sole discretion and that the City may accept security in consideration for any such extension or release any security for this Note at its sole discretion, all without in any way affecting the liability of Borrower.

b. No extension of time for payment of this Note made by agreement by the City with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

c. Subject to the Provisions of Section 18 of this Note, the obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

d. Borrower waives presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights of interests in or to properties securing of this Note, and the benefit of any exemption under any homestead exemption laws, if applicable.

e. No previous waiver and no failure or delay by City in acting with respect to the terms of this Note shall constitute a waiver of any breach, default, or failure or condition under this Note or the obligations secured thereby. A waiver of any term of this Note or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

6. Joint and Several Obligation. This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, legal representatives, successors and assigns.

7. Amendments and Modifications. This Note may not be changed orally, but only by an amendment in writing signed by Borrower and by the City.

8. City May Assign. City may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Borrower.

9. Borrower Assignment Prohibited. In no event shall Borrower assign or transfer any portion of this Note without the prior express written consent of the City, which consent shall not unreasonably be withheld, except pursuant to a transfer which is permitted or approved under the Agreement or DA.

10. Terms. Any terms not separately defined herein shall have the same meanings as set forth in the Agreement.

11. Events of Default. Each of the following shall constitute an Event of Default under this Agreement:

a. **Payment Default.** Borrower fails to make any payment when due under the Indebtedness.

b. **Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note, the Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition in any other agreement between City and Borrower.

- c. **Defaults in Favor of Third Parties.** Should Borrower default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay the indebtedness or perform its obligations under this Agreement or any of the Related Documents.
- d. **False Statements.** Any warranty, representation or statement made or furnished to City by Borrower or on Borrower's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or become false or misleading at any time thereafter.
- e. **Insolvency.** The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditor, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.
- f. **Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with City. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives City written notice of the creditor or forfeiture proceeding and deposits with City monies or a security bond for the creditor or forfeiture proceeding, in an amount determined by City, in its sole discretion, as being an adequate reserve or bond for the dispute.
- g. **Events Affecting Guarantor.** Any of the proceeding events occurs with respect to guarantor, endorser, surety, or accommodation party of any of the Indebtedness or guarantor, endorser, surety, or accommodation party dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.
- h. **Adverse Change.** A material adverse change occurs in Borrower's financial condition, or City believes the prospect of payment or performance of the Indebtedness is impaired.
- i. **Insecurity.** City in good faith believes itself insecure.
- j. **Prohibited Transfer.** There is a sale or other transfer in violation of Section 1.5 in the DA.
- k. **Cure Provisions.** If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Agreement within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Borrower, after receiving written notice from City demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which City deems, in City's sole discretion, to be sufficient to cure the default and thereafter continues all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

12. Acceleration and Other Remedies. Upon: (a) the occurrence of an event of Default as defined in the Agreement, or (b) Borrower selling, contracting to sell, giving an option to purchase, conveying, leasing, further encumbering, mortgaging, assigning or alienating the Borrower's interest in the Collateral, whether directly or indirectly, whether voluntarily or involuntarily or by operation of law, or any interest in the Collateral, or suffering its title, or any interest in the Collateral to be divested, whether voluntarily or involuntarily, without the consent of the City or as otherwise permitted under the Agreement and the DA, City

may, at City's option, declare the outstanding principal amount of this Note, together with the then accrued and unpaid interest thereon and other charges to be immediately due and payable, and upon such declaration, such principal and interest and other sums shall immediately become and be due and payable without demand or notice, and then Borrower shall pay that amount. All costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred in connection with protection of, or realization on, the security for this Note, may be added to the principal hereunder, and shall accrue interest as provided herein. No single or partial exercise of any right or remedy hereunder or under the Agreement or any other document or agreement shall preclude other or further exercises thereof, or the exercise of any other right or remedy.

13. Consents. Borrower hereby consents to: (a) any renewal, extension or modification (whether one or more) of the terms of the Agreement or the terms or time of payment under this Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof, (c) the granting of any other indulgences to Borrower, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Any such renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to Borrower or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder.

14. Successors and Assigns. Whenever "City" is referred to in this Note, such reference shall be deemed to include the City and its successors and assigns, including, without limitation, any subsequent assignee or holder of this Note. All covenants, provisions and agreements by or on behalf of Borrower, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of the City and City's successors and assigns.

15. Usury. It is the intention of Borrower and City to conform strictly to the Interest Law, as defined below, applicable to this loan transaction. Accordingly, it is agreed that notwithstanding any provision to the contrary in this Note, or in any of the documents securing payment hereof or otherwise relating hereto, the aggregate of all interest and any other charges or consideration constituting interest under the applicable Interest Law that is taken, reserved, contracted for, charged or received under this Note, or under any of the other aforesaid agreements or otherwise in connection with this loan transaction, shall under no circumstances exceed the maximum amount of interest allowed by the Interest Law applicable to this loan transaction. If any excess of interest in such respect is provided for in this Note, or in any of the documents securing payment hereof or otherwise relating hereto, then, in such event:

- a. the provisions of this paragraph shall govern and control;
- b. neither Borrower nor Borrower's heirs, legal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest allowed by the Interest Law applicable to this loan transaction;
- c. any excess shall be deemed canceled automatically and, if theretofore paid, shall be credited on this Note by City or, if this Note shall have been paid in full, refunded to Borrower; and
- d. the effective rate of interest shall be automatically subject to reduction to the Maximum Legal Rate of Interest (as defined below), allowed under such Interest Law, as now or hereafter construed by courts of appropriate jurisdiction. To the extent permitted by the Interest Law applicable to this loan transaction, all sums paid or agreed to be paid to City for the use, forbearance or detention of the indebtedness evidenced hereby shall be amortized, prorated, allocated and spread throughout the full term of this Note. For purposes of this Note, "Interest Law" shall mean any present or future law of the State of California, the United States of America, or any other jurisdiction which has application to the interest and other charges under this Note. The "Maximum Legal Rate of Interest" shall mean the maximum rate of interest that City may from time to time charge Borrower, and under which Borrower would have no claim or defense of usury under the Interest Law.

16. Time is of the Essence. Time is of the essence in the performance of this Note.

17. No Personal Liability. In the event of any default under the terms of this Note, the sole recourse of the City for any and all such defaults shall be as set forth in the Section of the Agreement title "Rights and Remedies on Default", and Borrower and its partners shall not be personally liable for the payment of this Note or for the payment of any deficiency established after judicial foreclosure or trustee's sale; provided, however, that the foregoing shall not in any way affect any rights the City may have (as a secured party or otherwise) hereunder or under the Agreement to recover directly from Borrower any amounts, or any funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by City as a result of fraud, misrepresentation or waste, and any costs and expenses incurred by the City in connection thereof (including without limitation reasonable attorneys' fees and costs).

18. Attorneys' Fees; Expenses: City may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay City that amount. This includes, subject to any limits under applicable law, City's attorneys' fees, City's legal expenses, whether or not there is a law suit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. Borrower also shall pay any court costs, in addition to all other sums provided by law.

19. Jury Waiver. City and Borrower waive the right to any jury trial in any action, proceeding, or counteraction brought by any party against any other party.

20. Governing Law. This Note shall be governed by and construed under the laws of the State of California except to the extent Federal laws preempt the laws of the State of California.

21. Choice of Venue. Borrower irrevocably and unconditionally agrees with City's request to submit to the jurisdiction of the Superior Court of the State of California for the County of San Diego, North County Branch or the United States District Court of the Southern District of California, as City hereof may deem appropriate, or, if required, the Municipal Court of the State of California for the County of San Diego, in connection with any legal action or proceeding arising out of or relating to this Note. Borrower also waives any objection regarding personal or in rem jurisdiction or venue.

22. Collateral. Borrower acknowledges this Note is secured by Eight (8) Assignment of Notes and Deeds of Trust.

23. Deposit Agreement Security. Borrower hereby grants a security interest to City in any and all deposit accounts (checking, savings, money market or time) of Borrower at City, now existing or hereinafter opened, to secure the Indebtedness. This includes all deposit accounts Borrower holds jointly with someone else.

24. Financial Statement Certification. Borrower hereby certifies to City that all financial information ("Financial Information") submitted to City now and at all times during the term of the loan does, and will, fairly and accurately represent the financial condition of the Borrower, all Borrowers and Guarantors. Financial Information includes, but is not limited to all Business Financial Statements (including Interim and Year-End financial statements that the company prepared and/or CPA-prepared), Income Tax Returns, Borrowing Base Certificates, Accounts Receivable and Accounts Payable Aging, Personal Financial Statements and Personal Income Tax Returns. Borrower understands that City will rely on all Financial Information, whenever provided and that such information is a material inducement to City to make, to continue to make or otherwise extend credit accommodations to Borrower. Borrower covenants and agrees to notify City of any adverse material changes in its financial condition in the future. Borrower further understands and acknowledges that there are criminal penalties for giving false financial information to City.

25. Successor in Interest. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of City and its successors and assigns.

26. General Provisions. City may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, grantor, accommodation maker or endorser, shall be released from liability. All such parties agree that City may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or Collateral; or impair, fail to realize upon or perfect City's security interest in the Collateral; and take any other action deemed necessary by City without the consent of or notice to anyone. All such parties also agree that the City may modify this loan without the consent of or notice to anyone other than with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THIS NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTE.

BORROWER:

San Diego Habitat for Humanity, Inc., a California nonprofit public benefit corporation

By: _____
Executive Director

**AMENDED AND RESTATED
LOAN AGREEMENT**

THIS LOAN AGREEMENT (the "Agreement") is entered into as of _____, 2009, by and between the **CITY OF OCEANSIDE**, a municipal corporation, ("City"), and **SAN DIEGO HABITAT FOR HUMANITY, INC.**, a California nonprofit public benefit corporation (the "Developer" and at times referred to as the "Borrower").

RECITALS

The following recitals are a substantive part of this Agreement:

A. The City is a California municipal corporation which has received Inclusionary Housing In Lieu funds for the purpose of developing low and moderate income housing in the City.

B. The City has adopted a Housing Element to its General Plan pursuant to Government Code Section 65580, et seq., which sets forth the City's policies, goals and objectives to provide housing to all economic segments of the community.

C. The City and the Developer are the parties to that certain Agreement, dated as of June 27, 2006 and having an Effective Date of August 2, 2006, as amended by that certain Amendment No. 1 thereto dated the same date as this Agreement (collectively the "DA"). Pursuant to the DA, (i) the City has agreed to provide to the Developer for the development of 20 single-family homes, on an approximately 2.69 acres, more or less, vacant parcel of real property being Lots 1 through 20 and Lots A and B of Libby Lake Village according to Map thereof No. 15696 as filed in the Office of the County Recorder of San Diego County, June 26, 2008, located in the 300 Block of Libby Village Way, in the City of Oceanside (the "Site"), (ii) the City has agreed to provide certain financial assistance to the Developer, (iii) the Developer has agreed to develop the Site and construct 20 single-family detached homes (the "Subdivision"), and (iv) the Developer has agreed to sell those housing units to low income households who are qualified first-time homebuyers (the "Qualified Homebuyers") at restricted sale prices and (v) the City has agreed to sell a proportionate share of the Site to each Qualified Homebuyer at the time of the sale of each housing unit ("Home"). The DA is hereby incorporated herein by reference. The City and the Developer have also agreed to require the Qualified Homebuyers to enter into with the City certain instruments which set forth certain obligations and restrictions with respect to the resale of the housing units to other low income homebuyers (the "Affordable Housing Resale Restriction"[Attachment No. 9 to the DA]).

D. The City has agreed to provide a loan to the Developer (the "Construction Loan") to be used in connection with the development of the Subdivision. The amount of the loan equals Two Million Seven Hundred Thousand Dollars (\$2,700,000.00), inclusive of the Predevelopment Loan Financing provided by the City to the Developer pursuant to the DA Section 3.2.

E. Due to recent economic downturns and volatile market conditions, especially in the real estate sector, Developer has requested certain amendments to the

Construction Loan to assist Developer in the selection and qualification of low-income families and households for the purchase and occupation of the completed Homes by Qualified Homebuyers and meet the goals and objectives of the Agreement.

F. The provision of financial assistance to the Developer and the development of the Subdivision pursuant to the terms and conditions of this Agreement are in the vital and best interest of the City.

G. City and Developer mutually desire to amend and modify certain terms and conditions of the Construction Loan as more particularly set forth in this Amendment and that this Agreement supersede all prior written and/or oral agreements by and between the parties hereto regarding the Construction Loan.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties do mutually agree that the Construction Loan be amended and restated as follows:

1. Construction Loan. Subject to Developer's performance of all of the terms, covenants and conditions which are set forth herein, the City hereby agrees to loan to the Developer, and the Developer agrees to borrow from the City (the "Construction Loan"), the sum of Two Million Seven Hundred Thousand Dollars (\$2,700,000.00) (the "Principal"). City shall make the Construction Loan to the Developer from Inclusionary Housing In Lieu Fee funds which shall be disbursed to the Developer as provided herein.

1.1 Repayment of Construction Loan. The Developer's obligation to repay the Construction Loan shall be set forth in the Promissory Note in the form of Exhibit "A" attached hereto, which is incorporated herein (the "Note"). The Developer must repay the City Principal plus accrued interest upon the occurrence of an Event of Default by Borrower as defined in this Agreement during construction or prior to sale of all 20 Homes to Qualified Homebuyers. The amount of the Principal will be reduced by the amount of One Hundred Thirty-five Thousand Dollars (\$135,000.00) upon the sale of each Home to a Qualified Homebuyer and execution by the Qualified Homebuyer of the Resale Restriction, and Related Documents per the requirements of the DA. The amount of the reduced Principal shall be converted to loan (the "City Loan") to the Qualified Homebuyer bearing zero percent (0%) interest provided the Qualified Homebuyer, its successor or assigns are not in default under the City Loan, the Resale Restriction or any Related Documents, which shall be second position behind the financing provided by Developer to the Qualified Homebuyer for the purchase of the Home (the "Habitat Loan"). The entire Construction Loan shall be forgiven if all twenty (20) Homes are sold to Qualified Homebuyers in accordance with the Resale Restriction and if all terms and conditions set forth in this Agreement and the DA are met.

1.2 Interest. The Loan will bear zero percent (0%) interest except upon the occurrence of an Event of Default by Borrower as defined in this Agreement. In the Event of Default, interest shall accrue on the unpaid Principal balance of the Note at the rate of twelve percent (12%) per annum compounded annually from the date of default as determined by the City until the Note is paid in full; provided however, that if such rate of interest may not be collected under applicable law, interest shall accrue on the unpaid Principal balance of the Note at the highest rate permitted under the laws of the State of California.

1.3 Disbursement of Construction Loan. The proceeds ("Principal") of the Construction Loan shall be disbursed in periodic disbursements and only to pay for actual and reasonable hard and soft costs of the construction of the Subdivision, including without limitation costs of architectural, engineering, planning, legal and related professional services, construction labor, supervision, materials and supplies, and the costs of permits and fees required for the performance of the construction of the Subdivision, all in accordance with the Financing Plan which is approved by the City pursuant to Section 2.11.1 of the DA. City's obligation to commence disbursement of the Construction Loan proceeds is subject to the fulfillment or waiver by City of each and all of the conditions precedent (a) through (d), inclusive, described below ("Conditions Precedent to Loan"), which are solely for the benefit of City, any of which may be waived by the City Manager or designee in his or her sole and absolute discretion:

a. Execution of Documents. Developer shall have executed and delivered to the City the Promissory Note and any other documents required hereunder.

b. Evidence of Financing. Developer shall have provided written proof and in a form reasonably acceptable to City that the Developer has secured sufficient funds that, in combination with the Loan from the City, will be sufficient to complete construction of the Project. In addition, the Developer shall have certified in writing to the City that the Construction Loan, together with other sources of funding to be provided by the Developer are projected to be sufficient to pay for the development of the Development.

c. Proof of Insurance. Developer shall have provided to the City a certificate of insurance that satisfies the requirements of Section 3.5 of the DA.

d. No Default, Representations and Warranties. Developer shall not be in default in any of its obligations under the terms of this Agreement, or the DA. All representations and warranties of Developer contained herein and in the DA shall be true and correct in all material respects on and as of the date of the disbursement of the Construction Loan as though made at that time, and all covenants of Developer which are required to be performed prior to the disbursement of the Construction Loan shall have been performed by such date.

1.4 Conditions for Each Construction Loan Disbursement. City's obligation to disburse each individual disbursement of the Construction Loan proceeds is subject to the fulfillment or waiver by City of each and all of the following conditions described below:

a. Application for Payment. The Developer shall have submitted a request for payment to the City in the form of the Application for Disbursement, which is attached hereto as Exhibit "B" and incorporated herein, at least ten (10) business days prior to the requested disbursement. The Application for Disbursement shall be completed and certified to be accurate by the Developer. The Application for Disbursement shall specifically identify the nature of each expense, by reference to items in the Project Budget, and shall identify the status of completion of such activity. Each Application for Disbursement shall be accompanied by invoices from contractors and subcontractors and any other

requested information and documents, and lien releases from such contractors and subcontractors and/or mechanic's lien title endorsements reasonably acceptable to the City.

b. Inspection of Work. The City may designate a construction administrator that monitors the construction of the Subdivision (the "Construction Administrator"). The Construction Administrator shall have approved the Application for Disbursement and accompanying documents, and shall have inspected the work for which the Application for Disbursement is being requested and shall have certified to the City that (i) such work has been completed substantially in accordance with the DA, the Scope of Development and the approved Working Drawings, (ii) the amount requested corresponds with the percentage of work completed, (iii) there are adequate funds remaining from the Construction Loan proceeds and other approved funding to complete the construction of the Subdivision, (iv) the work for which payment is being requested has been completed in a good and workmanlike manner in accordance with the standards of the construction industry, and (v) the expenses are reasonable and in accordance with the Project Budget.

c. Lien Waivers. If requested by City Manager (or designee(s)) or the Construction Administrator, City shall have received appropriate conditional (conditioned solely on payment) waivers of mechanics' and materialmen's lien rights and stop notice rights executed by all contractors and other persons rendering services or delivering materials covered by requests made in the Request for Disbursement. Construction Loan proceeds used for hard construction costs may at the City's discretion be subject to a retention of ten percent (10%), with retained proceeds to be released thirty-five (35) days after lien-free completion of such items of construction.

d. Frequency. City shall not be obligated to make disbursements more frequently than twice per month.

e. Use of Disbursements. Developer shall use or apply all Construction Loan disbursements solely for the purposes described in the Application for Disbursement pursuant to which the disbursement was made

1.5 Assumption. This Agreement and the Note shall not be assumable by successors and assigns of Developer without the prior written consent of the City.

2. Development Requirements.

2.1 Development and Disposition of Subdivision in Compliance with DA. The Developer shall develop and maintain the Subdivision and assist City in selling the Homes within the Subdivision to Qualified Homebuyers in compliance with the requirements of the DA and the Financing Plan. Developer shall, no later than two (2) months after the start of construction on Phase One of the Homes, submit for the approval of the City, which approval shall not unreasonably be withheld, a plan for marketing the sale of the Homes within the Subdivision (the "Marketing Plan"). The Marketing Plan shall include affirmative marketing procedures.

2.2 Maintenance. During construction and through the initial sales period to Qualified Homebuyers the Developer shall maintain the Subdivision (excepting those Homes sold to the initial homebuyers) in good condition, free of debris, waste and graffiti, in a clean and presentable manner, and in compliance with this Agreement, the DA and all applicable provisions of the Oceanside Municipal Code. The Subdivision shall not be demolished or converted to another use without the prior written approval of the City. The Subdivision shall be maintained in accordance with this Section 2.2 until the Construction Loan is repaid in full or forgiven under the terms of this Agreement. If the Subdivision is not so maintained, and such condition is not corrected within a reasonable period after written notice thereof from the City, then the City may perform the necessary maintenance and Developer shall pay such costs as are reasonably incurred for such maintenance. All such expenditures incurred or paid by City for such purposes will then bear interest at the rate charged under the Note (for a Default under the Note) from the date incurred or paid by City to the date of repayment by Developer. All such expenses will become a part of the indebtedness under this Agreement and the Note and, at City's option, will (A) be payable on demand; (B) be added to the balance of the Note and apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. This Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedied to which City may be entitled upon Default.

2.3 Insurance. Developer shall furnish the City with proper evidence of the insurance that is required pursuant to Section 3.5 of the DA.

2.4 Indemnification and Hold Harmless. Developer shall, subject to Section 17 of the Note, indemnify, hold harmless and defend, with attorney(s) reasonably acceptable to the City, the City and its officers, elected and appointed boards and officials, employees, representatives and agents, from and against any and all liability, damages, costs, losses, claims and expenses, suits, actions, proceedings and judgments, including attorney's fees, however caused, resulting directly or indirectly from or connected with the Subdivision, the Site and/or the performance of this Agreement by Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf, except to the extent caused by the active and sole negligence or willful misconduct of the City or its officers, boards, officials, employees, representatives or agents.

2.5 Compliance with Laws. During construction and through the initial sales period to Qualified Homebuyers the Developer shall maintain the Subdivision (excepting those Homes sold to the initial homebuyers) and the Site in conformity with all applicable laws, including without limitation all applicable state labor standards, the zoning and development standards of the City of Oceanside, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, all applicable environmental laws, all state and federal fair housing laws, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

2.6 Nondiscrimination. Developer for itself and its successors and assigns, agrees that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, familial status, national origin, or ancestry in the leasing, subleasing, rental, transferring, use, occupancy, tenure, or enjoyment of the Site nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, contractors or vendees in the Site.

2.7 Condition of the Site.

a. Developer Precautions. Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials that may be located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

b. Environmental Indemnity. Developer shall indemnify, defend and hold City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the release from the Site, use on the Site, generation on the Site, discharge from the Site, storage on the Site, disposal on or from the Site, or transportation to or from the Site, of any Hazardous Materials during the term of this Agreement, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment; provided, however, under no circumstances shall these indemnity obligations of Developer include any obligation for payment of punitive damages assessed against City or its officers, employees, agents or representatives.

c. Definitions. For purposes of this Agreement, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, San Diego County, the State of California, regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous

Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903) or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.* Notwithstanding the foregoing, "Hazardous Materials" shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation or management of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Subdivision, including without limitation alcohol, aspirin, tobacco and saccharine.

2.8 Liens and Stop Notices. Developer shall use its best efforts to prevent any lien or stop notice from being placed on the Site or the Subdivision or any part thereof. If a claim of a lien or stop notice is given or recorded affecting the Site the Developer shall within thirty (30) days of such recording or service:

- a. pay and discharge the same; or
- b. effect the release thereof by recording and delivering to City a surety bond in sufficient form and amount, or otherwise; or
- c. provide City with indemnification from a title insurance company reasonably acceptable to the City against such lien or other assurance which City deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of City from the effect of such lien or bonded stop notice.

3. Developer's Representations and Warranties. Developer represents and warrants to City as follows:

3.1 Authority. Developer has full right, power and lawful authority to undertake all obligations as provided herein, and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of the Developer. The parties who have executed this Agreement on behalf of Developer are authorized to bind Developer by their signatures hereto.

3.2 Litigation. To the best of Developer's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Developer or any parties affiliated with Developer, at law or in equity before any court or governmental agency, domestic or foreign, which if adversely determined, would materially impair the right or ability of Developer to execute or perform its obligations under this Agreement or any documents required hereby to be executed by Developer, or which would materially adversely affect the financial condition of Developer or any parties affiliated with Developer.

3.3 No Conflict. To the best of Developer's knowledge, Developer's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer or any parties affiliated with Developer is a party or by which it is bound.

3.4 No Bankruptcy. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other proceedings have been filed or are pending or threatened against the Developer or any parties affiliated with Developer, nor are any of such proceedings contemplated by Developer or any parties affiliated with Developer.

3.5 Notice of Changed Conditions. Until the final disbursement of the Construction Loan, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3 not to be true in any material respect, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder, but shall constitute an exception which City shall have a right to approve or disapprove if such exception would have a material adverse effect on the development of the Subdivision and Developer's ability to carryout the Activity. If City elects to disburse the Construction Loan to the Developer following disclosure of such information, Developer's representations and warranties contained herein shall be deemed to have been made as of the date of the disbursement of the Construction Loan, subject to such exception(s). If following the disclosure of such information the Developer fails to cure such matter within the time set forth in Section 4 hereof for the cure of defaults, City may elect in its sole and exclusive discretion to terminate this Agreement by written notice to the Developer.

4. Events of Default. Subject to the extensions of time set forth in Section 6.3 of the DA, failure or delay by either party to perform, comply with or observe any of the conditions, provisions, terms, covenants or representations of this Agreement or of the Loan Documents constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. 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 date of default.

Except as required to protect against further damages, the injured party may not institute legal proceedings against the party in default until an Event of Default (as such term is hereinafter defined) has occurred. For purposes of this Agreement, an Event of Default for purposes of instituting legal proceedings by a non-defaulting party against the defaulting party shall be defined as a failure to satisfy, perform, comply with or observe any of the conditions, provisions, terms,

covenants or representations contained in this Agreement or any of the Construction Loan Documents, and such failure having continued uncured or without the defaulting party commencing to diligently cure for thirty (30) days after notice thereof in writing is mailed by the injured party to the defaulting party; provided, however, that if a different period or notice requirement is specified for any particular default under any other provision of this Agreement or of the Construction Loan Documents, the specific provision shall control.

In furtherance of the foregoing and by way of specific example, each of the following shall constitute an "Event of Default" by the Borrower under this Agreement.

a. Failure to Satisfy Conditions Precedent. Failure of the Borrower to satisfy the conditions precedent to the disbursement of Construction Loan proceeds as set forth in Section 1.4 of this Agreement within the time specified in the Schedule of Performance (Attachment No. 3 to the DA).

b. Material Misstatement or Omissions. If any omission, representation or warranty contained in this Agreement or in any application, evidence of financing or financial statement, certificate or report submitted to the City in connection with the Construction Loan proves to have been incorrect in any material respect when made, or becomes incorrect, and the Borrower fails to immediately notify the City in writing as required by this Agreement.

c. Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Borrower to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of the Borrower or seeking any arrangement for the Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of the Borrower in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of the Borrower if any such decree or order described in clauses (i) to (iv) inclusive shall have continued unstayed or undischarged for a period of forty-five (45) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection 4.c as well; or the Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv) inclusive. The occurrence of any of the Events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

d. Assignment: Attachment. The Borrower shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within forty-five (45) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection 4.d as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the Events of Default in this paragraph shall act to accelerate automatically, without the

need for any action by the City, the indebtedness evidenced by the Note representing the Construction Loan contemplated hereunder.

e. Suspension: Termination. The Borrower shall have voluntarily suspended its business or, if the Borrower is a partnership, the partnership shall have been dissolved or terminated.

f. Liens on Development and Land. A lien (other than liens approved in writing by the City) shall have been recorded against the Property or any part thereof, or any interest or right appurtenant thereto, or the service of any notice to withhold proceeds of the Construction Loan and the continued maintenance of said claim of lien or notices to withhold for a period of thirty (30) days without discharge or satisfaction thereof or provision therefore satisfactory to the City.

g. Prohibited Transfer. There is a sale or other transfer in violation of the Resale Restriction.

5. Remedies for Default. A failure by either party to perform any action or covenant required by this Agreement, the DA, or the Note, within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party cures such default within ten (10) days if the claimed Default is a failure to pay amounts due pursuant to the Note, or thirty (30) days from receipt of such notice for all other claimed Defaults hereunder, unless a longer cure period is provided in the DA, Note, or other applicable document. However, in the event that such Default is other than a failure to pay money and is of such a nature that it cannot reasonably be cured within thirty (30) days from receipt of such notice, the claimant shall not institute any proceeding against the other party, and the other party shall not be in Default if such party immediately upon receipt of such notice, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence as soon as reasonably possible thereafter. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses actually incurred by the City in curing such default, plus interest at the rate of twelve percent (12%) per annum. The City shall be entitled to add such amount to the amounts owing pursuant to the Note.

5.1 Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or 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. The City may also cause all indebtedness of the Developer under this Agreement and the Note to become immediately due and payable. Legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in an appropriate municipal court in that County, or in the United States District Court for the Southern District of California.

5.2 Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against City, service of process on City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law. In the event that any legal action is commenced by City against the Developer, service of process shall be made in such manner as may be provided by law and shall be effective whether served inside or outside of California.

5.3 Rights and Remedies Are Cumulative. Except as otherwise expressly stated 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.

5.4 Inaction Not a Waiver of Default. 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, or deprive either such 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.

5.5 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

6.0 General Provisions.

6.1 Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice:

To City: City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Attention: City Manager

With a copy to: City of Oceanside
City Attorney
300 North Coast Highway
Oceanside, CA 92054

To Developer: San Diego Habitat for Humanity
10222 San Diego Mission Road
San Diego, CA 92108-2135
Attention: Executive Director

With a copy to:

Any written notice, demand or communication shall be deemed received immediately upon receipt; provided, however, that refusal to accept delivery after reasonable attempts thereto shall constitute receipt. Any notices attempted to be delivered to an address from which the receiving party has moved without notice shall be effective on the third day from the date of the attempted delivery or deposit in the United States mail.

6.2 Non-Liability of Officials and Employees of City and City. No member, official, officer or employee of City or the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by City (or the City) or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

6.3 Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

6.4 Integration. This Agreement, together with the Note, DA, Financing Plan and other attachments to the DA, contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes Exhibits A (Promissory Note), and B (Application for Disbursement), which constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

6.5 No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

6.6 Modifications. Any alteration, change, or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

6.6 Severability. If any term, provision, condition, or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

6.7 Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters

set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

6.8 Time of Essence. Time is expressly made of the essence with respect to the performance by the parties of each and every obligation and condition of this Agreement.

6.9 Cooperation. Each party shall cooperate with the other in this transaction and, in that regard, sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

6.10 Definitions. Any terms used in this Agreement but not separately defined herein shall have the meaning given to such terms in the DA, as appropriate.

6.11 Supersede Prior Agreement. This Agreement and the Note supersede that certain loan agreement entered into by and between Borrower and City and the note made by Borrower both of which are dated as of August 2, 2009 and all prior written and/or oral agreements by and between the parties hereto regarding the Construction Loan.

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

IN WITNESS WHEREOF, City and the Developer have executed this Agreement as of the date first set forth above.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE


City Attorney

CITY:
CITY OF OCEANSIDE, a municipal corporation

By: _____
Mayor

DEVELOPER:
San Diego Habitat for Humanity, Inc., a California nonprofit public benefit corporation

By: 
Its: **EXECUTIVE DIRECTOR**
Dated: _____

By: _____
Its: _____
Dated: _____

Developer's Signature(s) Must be Notarized

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO

On MAY 12th, 2009 before me, CAROLYN JANE BOLLMAN, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

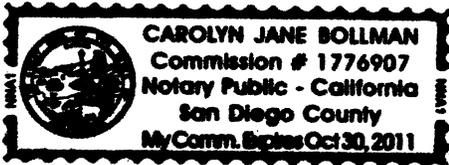
personally appeared MIKE MALONE
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature Carolyn Jane Bollman
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Exhibit "A"
to Loan Agreement

PROMISSORY NOTE

\$2,700,000.00
_____, 2009

Oceanside, California

FOR VALUE RECEIVED, SAN DIEGO HABITAT FOR HUMANITY, INC., a California nonprofit public benefit corporation (the "Borrower" and at times referred to as "Developer"), promises to pay to the **CITY OF OCEANSIDE**, a municipal corporation (the "City"), or order, at the City's office at 300 North Coast Highway, Oceanside, California, or such other place as the City may designate in writing, the sum of Two Million Seven Hundred Thousand Dollars (\$2,700,000.00) (the "Note Amount"), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

1. Agreement. This Promissory Note ("Note") is given in accordance with that certain Loan Agreement in the principal amount of \$2,700,000.00 executed by the City and Borrower, dated as of the same date as this Note (the "Agreement"). The rights and obligations of the Borrower and the City under this Note shall be governed by the Agreement and by the additional terms set forth in this Note. In the event of any inconsistencies between the terms of this Note and the terms of the Agreement or any other document related to the Note Amount, the terms of this Note shall prevail. This Note supersedes that certain note made by Borrower dated as of August 2, 2009, to this regard City shall cancel and return said note to Borrower.

2. Interest. The Note Amount shall bear interest at the rate of zero percent (0%) per annum. In the Event of Default, interest shall accrue on the unpaid Principal balance of the Note at the rate of twelve percent (12%) per annum compounded annually from the date of default as determined by the City until the Note is paid in full; provided however, that if such rate of interest may not be collected under applicable law, interest shall accrue on the unpaid Principal balance of the Note at the highest rate permitted under the laws of the State of California.

3. Repayment of Note Amount. The Developer must repay the Principal plus accrued interest upon the occurrence of an Event of Default by Borrower as defined in the Agreement during construction or prior to sale of all 20 Homes to Qualified Homebuyers. The amount of the Principal will be reduced by the amount of One Hundred Thirty-five Thousand Dollars (\$135,000.00) upon the sale of each Home to a Qualified Homebuyer and execution by the Qualified Homebuyer of the Resale Restriction, and Related Documents per the requirements of the DA. The amount of the reduced Principal shall be converted to a loan (the "City Loan") to the Qualified Homebuyer bearing zero percent (0%) interest provided the Qualified Homebuyer, its successor or assigns are not in default under the City Loan, the Resale Restriction or any Related Documents, which shall be second position behind the financing provided by Developer to the Qualified Homebuyer for the purchase of the Home (the "Habitat Loan"). The entire loan shall be forgiven if all twenty (20) homes are sold to Qualified Homebuyers in accordance with the Resale Restrictions and if all terms and conditions set forth in the Agreement and the DA are met.

4. Waivers

a. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time at the City's sole discretion and that the City may accept security in consideration for any such extension or release any security for this Note at its sole discretion, all without in any way affecting the liability of Borrower.

b. No extension of time for payment of this Note made by agreement by the City with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

c. Subject to the Provisions of Section 16 of this Note, the obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

d. Borrower waives presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights of interests in or to properties securing of this Note, and the benefit of any exemption under any homestead exemption laws, if applicable.

e. No previous waiver and no failure or delay by City in acting with respect to the terms of this Note shall constitute a waiver of any breach, default, or failure or condition under this Note or the obligations secured thereby. A waiver of any term of this Note or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

5. **Attorneys' Fees and Costs.** Borrower agrees that if any amounts due under this Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

6. **Joint and Several Obligation.** This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, successors and assigns.

7. **Amendments and Modifications.** This Note may not be changed orally, but only by an amendment in writing signed by Borrower and by the City.

8. **City May Assign.** City may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Borrower.

9. **Borrower Assignment Prohibited.** In no event shall Borrower assign or transfer any portion of this Note without the prior express written consent of the City, which consent shall not unreasonably be withheld, except pursuant to a transfer which is permitted or approved under the Agreement or DA.

10. **Terms.** Any terms not separately defined herein shall have the same meanings as set forth in the Agreement.

11. **Events of Default.** Subject to the extensions of time set forth in Section 6.3 of the DA, failure or delay by either party to perform, comply with or observe any of the conditions, provisions, terms, covenants or representations of this Agreement or of the Loan Documents constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. 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 date of default.

Except as required to protect against further damages, the injured party may not institute legal proceedings against the party in default until an Event of Default (as such term is hereinafter defined) has occurred. For purposes of this Agreement, an Event of Default for purposes of instituting legal proceedings by a non-defaulting party against the defaulting party shall be defined as a failure to satisfy, perform, comply with or observe any of the conditions, provisions, terms, covenants or representations contained in this Agreement or any of the Construction Loan Documents, and such failure having continued uncured or without the defaulting party commencing to diligently cure for thirty (30) days after notice thereof in writing is mailed by the injured party to the defaulting party; provided, however, that if a different period or notice requirement is specified for any particular default under any other provision of this Agreement or of the Construction Loan Documents, the specific provision shall control.

In furtherance of the foregoing and by way of specific example, each of the following shall constitute an "Event of Default" by the Borrower under this Agreement.

a. Failure to Satisfy Conditions Precedent. Failure of the Borrower to satisfy the conditions precedent to the disbursement of Construction Loan proceeds as set forth in Section 3.2 of the DA within the time specified in the Schedule of Performance (Attachment No. 3) of the DA.

b. Material Misstatement or Omissions. If any omission, representation or warranty contained in this Agreement or in any application, evidence of financing or financial statement, certificate or report submitted to the City in connection with the Construction Loan proves to have been incorrect in any material respect when made, or becomes incorrect, and the Borrower fails to immediately notify the City in writing as required by this Agreement.

c. Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Borrower to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of the Borrower or seeking any arrangement for the Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of the Borrower in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of the Borrower if any such decree or order described in clauses (i) to (iv) inclusive shall have continued unstayed or undischarged for a period of forty-five (45) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection 11.c as well; or the Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv) inclusive. The occurrence of any of the Events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

d. Assignment: Attachment. The Borrower shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within forty-five (45) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection 11.d as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the Events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note representing the Construction Loan contemplated hereunder.

e. Suspension: Termination. The Borrower shall have voluntarily suspended its business or, if the Borrower is a partnership, the partnership shall have been dissolved or terminated.

f. Liens on Development and Land. A lien (other than liens approved in writing by the City) shall have been recorded against the Property or any part thereof, or any interest or right appurtenant thereto, or the service of any notice to withhold proceeds of the Construction Loan and the continued maintenance of said claim of lien or notices to withhold for a period of thirty (30) days without discharge or satisfaction thereof or provision therefor satisfactory to the City.

g. Prohibited Transfer. There is a sale or other transfer in violation of Section 1.5 in the DA.

12. Acceleration and Other Remedies. Upon the occurrence of an event of Default as defined in the Agreement, City may, at City's option, declare the outstanding Principal amount of this Note, together with the then accrued and unpaid interest thereon and other charges to be due and payable immediately, and upon such declaration, such Principal and interest and other sums shall immediately become and be due and payable without demand or notice. All costs of collection, including, but not limited to, reasonable attorneys'

fees and all expenses incurred in connection with protection of, or realization on, the security for this Note, may be added to the Principal hereunder, and shall accrue interest as provided herein. No single or partial exercise of any right or remedy hereunder or under the Agreement or any other document or agreement shall preclude other or further exercises thereof, or the exercise of any other right or remedy. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of City's right to either require prompt payment when due of all other sums payable hereunder or to declare an Event of Default for failure to make prompt or complete payment.

13. Consents. Borrower hereby consents to: (a) any renewal, extension or modification (whether one or more) of the terms of the Agreement or the terms or time of payment under this Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof, (c) the granting of any other indulgences to Borrower, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Any such renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to Borrower or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder.

14. Successors and Assigns. Whenever "City" is referred to in this Note, such reference shall be deemed to include the City of Oceanside and its successors and assigns, including, without limitation, any subsequent assignee or holder of this Note. All covenants, provisions and agreements by or on behalf of Borrower, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of the City and City's successors and assigns.

15. Usury. It is the intention of Borrower and City to conform strictly to the Interest Law, as defined below, applicable to this loan transaction. Accordingly, it is agreed that notwithstanding any provision to the contrary in this Note, or in any of the documents securing payment hereof or otherwise relating hereto, the aggregate of all interest and any other charges or consideration constituting interest under the applicable Interest Law that is taken, reserved, contracted for, charged or received under this Note, or under any of the other aforesaid agreements or otherwise in connection with this loan transaction, shall under no circumstances exceed the maximum amount of interest allowed by the Interest Law applicable to this loan transaction. If any excess of interest in such respect is provided for in this Note, or in any of the documents securing payment hereof or otherwise relating hereto, then, in such event:

a. the provisions of this paragraph shall govern and control;

b. neither Borrower nor Borrower's heirs, legal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest allowed by the Interest Law applicable to this loan transaction;

c. any excess shall be deemed canceled automatically and, if theretofore paid, shall be credited on this Note by City or, if this Note shall have been paid in full, refunded to Borrower; and

d. the effective rate of interest shall be automatically subject to reduction to the Maximum Legal Rate of Interest (as defined below), allowed under such Interest Law, as now or hereafter construed by courts of appropriate jurisdiction. To the extent permitted by the Interest Law applicable to this loan transaction, all sums paid or agreed to be paid to City for the use, forbearance or detention of the indebtedness evidenced hereby shall be amortized, prorated, allocated and spread throughout the full term of this Note. For purposes of this Note, "Interest Law" shall mean any present or future law of the State of California, the United States of America, or any other jurisdiction which has application to the interest and other charges under this Note. The "Maximum Legal Rate of Interest" shall mean the maximum rate of interest that City may from time to time charge Borrower, and under which Borrower would have no claim or defense of usury under the Interest Law.

16. Miscellaneous. Time is of the essence hereof. This Note shall be governed by and construed under the laws of the State of California except to the extent Federal laws preempt the laws of the State of California.

California. Borrower irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of San Diego, North County Branch or the United States District Court of the Southern District of California, as City hereof may deem appropriate, or, if required, the Municipal Court of the State of California for the County of San Diego, in connection with any legal action or proceeding arising out of or relating to this Note. Borrower also waives any objection regarding personal or in rem jurisdiction or venue.

17. No Personal Liability. In the event of any default under the terms of this Note, the sole recourse of the City for any and all such defaults shall be by judicial foreclosure or by the exercise of the trustee's power of sale, and Borrower and its partners shall not be personally liable for the payment of this Note or for the payment of any deficiency established after judicial foreclosure or trustee's sale; provided, however, that the foregoing shall not in any way affect any rights the City may have (as a secured party or otherwise) hereunder or under the Agreement to recover directly from Borrower any amounts, or any funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by City as a result of fraud, misrepresentation or waste, and any costs and expenses incurred by the City in connection thereof (including without limitation reasonable attorneys' fees and costs).

BORROWER:

San Diego Habitat for Humanity, Inc., a California nonprofit public benefit corporation

By: *Mark A. [Signature]*
Its: EXECUTIVE DIRECTOR

By: _____
Its: _____

COPY

EXHIBIT "B"

APPLICATION FOR DISBURSEMENT
LIBBY LAKE VILLAGE SUBDIVISION

TO: City of Oceanside ("City")

FROM: San Diego Habitat for Humanity, Inc. ("Developer")

REQUEST NO. _____

DATE: _____, 200__

Pursuant to the Loan Agreement dated as of _____, 2009 (the "Agreement") between Developer and City, Developer hereby requests that City disburse \$_____ of the Construction Loan. This disbursement is requested to pay for various expenses incurred in connection with the Libby Lake Village Subdivision (the "Subdivision"), development of the land or construction of the improvements as summarized on the schedule attached hereto and detailed in the invoices submitted herewith. Developer hereby certifies that the amounts shown on the attached schedule and the accompanying invoices represent costs of designing, developing, and constructing improvements for the Subdivision that are eligible for reimbursement at this time in accordance with the provisions of the Agreement.

Developer acknowledges that any increased costs of construction arising out of change orders, or otherwise, are not included in, or provided for, in the Construction Contract budget, and cannot be invoiced on this Application for Disbursement unless and until such change orders and/or increases in costs have been approved in writing by the City, except as otherwise provided in the Agreement.

Developer certifies that there have been no change order or changes in the work of the Subdivision, except as previously expressly approved by City in writing, or as referenced below, with a copy of the appropriate documentation describing the change attached hereto (whether or not a disbursement is requested herein on account of such change). The following change orders, identified by number and date have been proposed and/or approved since the last Application for Disbursement: _____

SUBMITTED BY: _____

Date: _____, 200__

REVIEWED AND APPROVED BY: _____

City Inspector/Construction Administrator

Date: _____, 200__

DISBURSEMENT SCHEDULE

<u>Item of Cost</u>	<u>Budgeted Amount</u>	<u>Amount Previously Disbursed</u>	<u>Amount Requested this Disbursement</u>	<u>Remaining Balance</u>
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1 RESOLUTION NO. _____

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
3 OCEANSIDE DELEGATING SIGNATORY AUTHORIZATION
4 FOR REAL PROPERTY TRANSACTIONS RELATED TO THE
5 SALE OF INDIVIDUAL HOMES IN LIBBY LAKE VILLAGE

6 WHEREAS, the City of Oceanside ("City") owns that certain real property
7 situated in the City of Oceanside, County of San Diego, State of California, legally
8 described as being Lots 1 through 20 and Lots A and B, inclusive, of Libby Lake
9 Village, according to Map thereof No. 15696, filed in the Office of the County
10 Recorder of San Diego County, June 26, 2008 (the "Subdivision");

11 WHEREAS, City has entered into an agreement (the "Development
12 Agreement") with San Diego Habitat for Humanity, Inc. ("Habitat") for the
13 development of the improvements related to the Subdivision, including the
14 construction of 20 single-family detached homes (the "Homes") to be sold to low-
15 income families and households who are first time homebuyers ("Qualified
16 Homebuyer");

17 WHEREAS, prior to the close of escrow on the sale of each Home, the City, as
18 "Seller", will be executing certain documents and instruments including, but not
19 limited to, purchase and sale agreements, resale restrictions agreements, escrow
20 instructions, and grant deeds for the conveyance of the Homes to the Qualified
21 Homebuyers (collectively the "Conveyance Documents"); and

22 WHEREAS, this City Council desires to streamline the processing of the
23 transaction for the sale of the Homes by designating authorized signatory for
24 execution of the Conveyance Documents.

25 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of
26 Oceanside as follows:

- 27 1. That Margery Pierce, Neighborhood Services Director, or designee (as
28 named in writing), is hereby designated as the City's authorized signatory

1 ("Authorized Signatory") to the Conveyance Documents and to do any and all things
2 necessary or desirable under the circumstances to effectuate and accomplish the
3 sale and conveyance of the Homes to the Qualified Homebuyers, without further
4 action or approval by the City Council.

5 2. This authorization shall become effective upon the adoption of this
6 resolution and shall automatically terminate upon the close of escrow on the initial
7 sale of the last Home within the Subdivision to a Qualified Homebuyer.

8 PASSED AND ADOPTED by the City Council of the City of Oceanside,
9 California this ___ day of _____, 2009, by the following vote:

10 AYES:
11 NAYS:
12 ABSENT:
13 ABSTAIN:

Mayor

14 ATTEST:

15 APPROVED AS TO FORM:
16 OFFICE OF THE CITY ATTORNEY

17 _____
18 City Clerk

19 *Robert Hamilton*
20 _____
21 City Attorney

22 Resolution Designating Signatory
23 Approval for Libby Lake Village