


7.1
SAN SEBASTIAN CONDOMINIUM
DEVELOPMENT

**City of Laguna Woods
Agenda Report**

DATE: December 16, 2009, City Council Meeting
TO: Honorable Mayor and Councilmembers
FROM: Leslie A. Keane, City Manager 
AGENDA ITEM: San Sebastian Condominium Development

Recommendation (Staff and Land Use and Design Review Committee)

- A. Receive Staff Report.
- B. Open Public Hearing.
- C. Receive Public Comment.
- D. Close Public Hearing.
- E. Approve the Amended and Restated Density Bonus Housing Agreement with Standard Pacific Homes, and authorize the Mayor to execute the amended agreement subject to approval as to form by the City Attorney.

AND

- F. Approve the Regulatory Agreement and Declaration of Covenants and Restrictions between the City of Laguna Woods and property owner of Record, and authorize the City Manager to execute the agreement subject to approval as to form by the City Attorney.

AND

- G. Approve a resolution modifying conditions of approval for the San Sebastian Project, entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LAGUNA WOODS, CALIFORNIA, APPROVING AN

AMENDMENT TO CONDITIONAL USE PERMIT (CUP-243)
AND SITE DEVELOPMENT PERMIT (SP-242) FOR A 134
UNIT SENIOR RESIDENTIAL CONDOMINIUM
DEVELOPMENT WITH 17 AFFORDABLE UNITS
DESIGNATED FOR LOWER INCOME RESIDENTS
LOCATED AT 23522 PASEO DE VALENCIA (LOT 1 TRACT
16835)

Background

In October 2005, the City Council approved resolutions certifying a mitigated negative declaration (MND 05-02), amending the City's General Plan (GPA 05-01), approving a tentative tract map (TM 16835) and approving a conditional use permit (CUP 243) and site development permit (SP 242) for a proposed 134 residential condominium project at the western terminus of Calle de la Plata, off of Paseo de Valencia. The Council approved a zone change (ZC 05-01) for the project in November of the same year.

Although this project was proposed as a senior development, with the exception of 15 low income units, it was not so restricted. In general, the decision to build and maintain housing restricted for senior citizens is reserved to property owners unless the local government agency is an equity partner in the project or the property owner requests a density bonus related to senior housing. The City has no financial interest in this project and the applicant requested and received a density bonus (additional units) based on affordable housing, not senior occupancy.

The subject property is 3.05 acres and was rezoned from professional and administrative office to high density residential. This zoning designation allowed 35 units per acre for a total of 107. State law requires local governments to grant a 20% density bonus for residential projects that restrict 10% of their units to low or very-low income residents and increases this bonus by 1.5% for every 1% of additional low income units. Providing 15 low income units entitled San Sebastian to a 26% density bonus for a maximum total of 135 units on the site.

The property is located at 23522 Paseo de Valencia, the former Laguna Woods Village Administrative Building, southwest of the Valencia Shopping Center.

Discussion

Standard Pacific Homes, the property owner/developer of the San Sebastian condominium project, has submitted an application for a modification to its conditional

use permit and site development plan. The property owner is requesting the flexibility to either sell or lease all units in the project. Since there are currently no restrictions that would prohibit the lease of 119 of the units in the development, the proposed change relates only to the 15 low income units which are currently restricted as “low income, senior owner occupied.”

Per the property owner, potential sales at the San Sebastian development have been exceedingly slow, mirroring the overall lack of a market for condominiums in this region. The property owner has been aggressively marketing the units since June 2009 when the models first opened. Unfortunately, sales have been inferior and, therefore, the owner is requesting the ability to convert the for-sale project to a rental project on an interim basis. The property owner is seeking the ability to lease units for a period of time and then sell them when the housing market improves. They would like to maintain all existing entitlements to avoid going through a condominium conversion process if they decide to sell units in the future. In return for this flexibility, the applicant is proposing to either deed restrict the property or establish CC&R's that restrict the entire project for 30 years for senior occupancy.

As originally approved, the for-sale requirements for the low income units in this project specify that housing costs may not exceed 35% of the maximum low income limits, as defined by the state. Housing cost is defined as mortgage payment, insurance, taxes and homeowner's association dues. The City's current Housing Element, adopted after the San Sebastian project was approved, specifies a 30% figure for affordable housing, which is a more traditional number and consistent with statewide housing goals. The applicant has agreed to lower the rent rate to reflect the 30%; the 35% factor would remain in place if units are actually sold.

Because there is a concern about the process by which the low income units might be sold after they have been occupied by lease tenants, the property owner has agreed to allow low income rental tenants to either: 1) have first right to purchase their units, or 2) to stay on as tenants until they voluntarily terminate their lease arrangement.

The applicant has also agreed to market low income units at the same time market rate units are offered for sale (Condition 17g); and to provide a revised market plan at least 30 days prior to any rental or sale of the low income units (Condition 17e).

Number and Type of Affordable Units

The requirement for senior occupancy of the low income units is a condition of the current conditional use permit and is related to the Council's discretionary approval of

the zone change and general plan amendment. Current project conditions require the 15 low income units to be owner occupied by qualified senior residents for a period of 30 years. Staff is recommending that the number of low income units be increased from 15 to 17 (Condition 17b). Per the City's Inclusionary Housing Regulations, Section 13.25.050, at least 15% of the dwelling units of a new residential development project (excluding additional units authorized as a density bonus under California Government Code Section 65915) shall be set aside as affordable units. This agreement would require a total of 17 units in a project similar to San Sebastian. It should be noted, that the Inclusionary Housing Regulations was adopted January 2009 after the original approval of the San Sebastian Condominium project.

Occupancy of the low income for-sale units in the development is set using a two person household. The number of persons in a household for the for sale units is used to define the maximum qualifying income and subsequent purchase price of the units. The low income units are sized between 700 and 830 square feet. Since the availability of small rental units may attract single occupants, Standard Pacific has agreed that the household size for the six smallest units be set at either one or two persons depending on the actual lease occupancy (Condition 17c).

Occupancy Restrictions

Standard Pacific is proposing to deed restrict the entire project for 30 years for senior occupancy, consistent with the original timeframe requirement for the owner occupied senior units. Again, the City's Inclusionary Housing Regulations, which were adopted after the San Sebastian project was approved, specify that rents on affordable units are to be restricted to ensure that the units remain affordable to low income households, as applicable, for a term of no less than 45 years. Staff is recommending that the entire project be restricted to senior occupancy for 45 years, and that the low income units also be restricted for a 45 year period (Condition 17d).

Amended and Restated Density Bonus Housing Agreement

In addition to amending the conditional use permit and site development permit, the proposal to rent units at San Sebastian requires an amendment to the existing Density Bonus Housing Agreement. The Density Bonus Housing Agreement requires that the affordable units be owner occupied by a low income senior household and sets forth the terms and conditions by which the property owner shall implement the Affordable Housing Plan. Likewise, the Agreement formalizes the granting of the density bonus, the description of the units that will be offered for sale or lease, if amended, as affordable and the specific terms of the Agreement.

The proposed changes to the Density Bonus Housing Agreement relate to the ability to rent units and the definition of affordable rent for low income units. Affordable rent is defined as rent and a reasonable utility allowance that does not exceed the maximum amount calculated by the state for Lower Income Households (Definition 1.1.4). No change is proposed for the calculation of income if units are sold.

In addition, as noted above, staff is recommending that the agreement be amended to 1) increase the number of low income units from 15 to 17; and 2) revise the Term of Affordability Covenants for Affordable Units to reflect a 45 year term instead of the current 30 year term.

Regulatory Agreement and Declaration of Covenants and Restrictions

The applicant has drafted a Regulatory Agreement and Declaration of Covenants and Restrictions which, as proposed, provides the requirements that the property owner must implement when selling or leasing the affordable units to low income households. The Regulatory Agreement restricts the occupancy limit per household and imposes the process for determining the annual income computation and age eligibility for the rental of the low income units. Likewise, the Regulatory Agreement formalizes the process for which the property shall be managed.

Per the Regulatory Agreement, the City Manager will approve the rental form and the deposits required for the rental of the low income units.

As previously noted, staff is recommending that the proposed Regulatory Agreement be amended to 1) increase the number of low income units from 15 to 17; and 2) revise the Term of Affordability Covenants for Affordable Units to reflect a 45 year term instead of the current 30 year term.

Impact of Proposed Modifications on City

There is no difference in the basic requirements for a lease vs. a for-sale condominium project. The property has already been subdivided and the infrastructure requirements are identical. The project includes 301 onsite parking spaces; the Municipal Code requirement for this type of multifamily residential development – regardless of whether units are for rental or for-sale is 297 spaces. The requirements for multifamily developments are based on unit sizes with additional requirements for guest parking.

Summary of the Residential Units/Parking

As Built Residential Dwelling Units				
Type	Configuration	Square Footage	No. of Units	Parking Spaces Req'd.
A	1 Bedroom / 1 Bath	700	6	6.00
B	1 Bedroom / 1 Bath + Den	830	11	14.74
C	2 Bedroom / 2 Bath	1,100	39	65.13
D	2 Bedroom / 2 Bath + Den	1,300	12	24.00
E	2 Bedroom / 2 Bath + Den	1,400	16	34.88
F	2 Bedroom / 2 Bath + Den	1,500	47	109.88
G	3 Bedroom / 2 Bath + Den	1,900	3	7.50
H	Guest Parking			34.00
Total			134	297.00

Traffic and municipal service impacts were analyzed in the initial submission and the temporary or permanent lease of units will not change these impacts. With the exception of the 15 units restricted to low income owner-occupants, units in the development could have always been purchased by individuals who intended to lease them.

The lease of affordable housing units places the majority of the qualification and re-qualification responsibility on the property owner. The City would be provided qualification documents on all low income tenants on an annual basis. The currently approved sale of units, however, places the ongoing responsibility for qualification after initial sale solely on the City. The City executes an agreement with the buyer and any subsequent resale of units must be monitored and approved by the City. The proposal to lease units will reduce the City's project administration costs.

Fiscal Impact

There is no known negative fiscal impact associated with approving the amendment to CUP 243 and SP 242 and allowing the sale and/or lease of the low income senior residential condominium units. The City recovers staff's cost associated with processing the planning entitlements and building permits through the collection of processing fees paid by the applicant. The proposal to lease units will actually reduce the City's project administration costs since qualification and re-qualification of the affordable housing units will be for the most part the responsibility of the property owner. The fiscal analysis completed for this project in 2005 estimated that sales and property taxes would increase sufficiently to cover the cost to provide services. If the property remains vacant

these revenues will not be realized, but some of the services (public safety, code enforcement and fire suppression) may actually be required. If the units are rented rather than sold, the total estimated property taxes may not be realized and the same level of services will be required. However, the City's share of the property tax is less than 1% of the 1% assessed value of the property and the amount is not expected to be significant.

Environmental Review

The City has determined that the procedures of the California Environmental Quality Act have been met with respect to this project in that Mitigated Negative Declaration MND 05-02 previously approved for the project continues to adequately address the environmental effects of the project because the changes to the project to permit the rental of the affordable units to low income seniors will not involve new environmental impacts or an increase in previously identified impacts.

Land Use and Design Review Committee

At the December 10, 2009 Land Use and Design Review Committee meeting, staff presented the requested amendment and the unresolved issues as discussed. The presentation was followed by a discussion with the applicant, Committee members and the residents in the audience. Following this interchange, the applicant agreed to revise the income calculations for six of the smallest low income units to one or two person depending on the actual lease. They did not agree to the 45 year restrictions or the increase in the number of low income units.

Upon a motion, the committee voted unanimously to recommend that Standard Pacific's application if: 1) the number of low income units was increased to 17; 2) the entire project was restricted to senior occupancy for 45 years; 3) and the low income units also be restricted for a 45 year period.

Conclusion

The applicant is requesting a modification to an existing conditional use permit and site development plan to allow the property owner flexibility to either sell or lease all units in the project. In return for this flexibility, the applicant is proposing to restrict the entire project for senior occupancy for 30 years. Included in the proposal is an Amended and Restated Density Bonus Housing Agreement between the City and the property owner setting forth the terms and conditions by which the affordable low income units can be sold and/or leased and a Regulatory Agreement and Declaration of Covenants and

Restrictions which becomes the enforceable document that imposes the process for determining the annual income computation and age eligibility for the rental of the low income units as well as the process for which the property shall be managed. Staff is suggesting three modifications to the applicant's proposal.

If the Council wishes to proceed with this project, following the public hearing and consideration of the information presented, it should approve the resolution amending the existing CUP, approve the amended and restated density bonus agreement and approve the regulator agreement – all either as presented or as amended during its consideration.

Report Prepared by: Leslie Keane, City Manager and Deborah Drasler, City 
Planner

Attached: Resolution
Amended and Restated Density Bonus Housing Agreement with
attachments.
Regulatory Agreement and Declaration of Covenants and Restrictions

RESOLUTION NO. 09-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING AN AMENDMENT TO CONDITIONAL USE PERMIT (CUP 243) AND SITE DEVELOPMENT PERMIT (SP 242) FOR A 134 UNIT SENIOR RESIDENTIAL CONDOMINIUM DEVELOPMENT WITH 15 AFFORDABLE UNITS DESIGNATED FOR LOWER INCOME RESIDENTS LOCATED AT 23522 PASEO DE VALENCIA (LOT 1 OF TRACT 16835).

WHEREAS, the project applicant received approval of Conditional Use Permit CUP 243 and Site Development Permit SP 242 on October 19, 2005; and

WHEREAS, the project has been completed and units offered to sale to the public but market conditions currently inhibit the ability of the applicant to sell units to the public and the applicant has indicated an intention to rent the project units until such time as market conditions improve; and

WHEREAS, the existing conditions of approval contemplate that the affordable senior units approved as part of the project would be sold to low income senior households. Due to market conditions, sales of the affordable units are not feasible and the applicant has requested an amendment to the Conditional Use Permit and Site Development Permit to permit the rental of the affordable units to low income senior households until such time as market conditions improve; and

WHEREAS, a Mitigated Negative Declaration (MND05-02) was prepared in connection with the original approval of Conditional Use Permit (CUP 243) and Site Development Permit (SP 242). The City has determined that the procedures of the California Environmental Quality Act have been met with respect to this project in that the Mitigated Negative Declaration MND 05-02 previously approved for the project, continues to adequately address the environmental effects of the project because the changes to the project to permit the rental of the affordable units to low income seniors will not involve new environmental impacts or an increase in previously identified impacts of the project; and

WHEREAS, the Land Use and Design Review Committee, in a public meeting on December 9, 2009 reviewed the proposed project and considered the

amendments to the Conditional Use Permit and Site Development Permit and recommended City Council approval of the amendments; and

WHEREAS, the amended Use Permit and Site Development Permit will allow the leasing of lower income affordable units, and will help meet the Regional Housing Needs Assessment (RHNA) for the City of Laguna Woods; and

WHEREAS, the applicant has submitted an Amended and Restated Density Bonus Housing Agreement and related documents; and

WHEREAS, the applicant has submitted a Regulatory Agreement and Declaration of Covenants and Restrictions; and

WHEREAS, the City Council, at a duly noticed public hearing on December 16, 2009, considered the amendments to the Conditional Use Permit and Site Development Permit; and

WHEREAS, the City Council at such public hearing received comments from all those in attendance wishing to speak; and

WHEREAS, the City Council has considered the information and public testimony presented in the public hearings and in the proposed documents and staff reports, all of which are included in the public record and incorporated herein by reference; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Findings

City Council makes the following findings subject to the conditions of approval:

1. The proposed use and project, as amended, is consistent with the City of Laguna Woods General Plan in that it will further the original intent of the Affordable Housing Plan for the project and further the goals of the City set forth in the City's General Plan Housing Element

to the extent that State law permits a density bonus in excess of local land use standards in exchange for providing affordable units standards; and

2. The proposed use and project, as amended, is consistent with the City of Laguna Woods Inclusionary Housing Regulations in that it will meet the requirements as adopted on January 21, 2009; and
3. The use, activity or improvements as proposed by the amendments is consistent with the provisions of the City Zoning Code that State law permits a density bonus and development incentives in excess of local land use standards in exchange for providing affordable units standards; and
4. The approval of the permit application is in compliance with the requirements of the California Environmental Quality Act; and
5. The location, size, design and operating characteristics of the proposed use will not create conditions or situations that may be incompatible with other permitted uses in the vicinity; and
6. The approval of the permit application will not result in conditions or circumstances contrary to the public health, safety and the general welfare; and
7. The approval of the permit application is in compliance with all City-required public facilities regulations,

SECTION 2. Amended Conditions

The following conditions of Exhibit "B" per Resolution 05-20 (CUP 243 and SP 242) is hereby amended to read as follows. All remaining conditions shall apply and are attached.

"Condition No. 13. The applicant or successor in interest shall allocate 17 affordable units to meet the City's Regional Housing Needs Assessment for very low and low income households as outlined in the City of Laguna Woods Housing Element.

Condition No. 15. Affordable Units shall be rented or sold only to eligible lower income senior households.

Condition No. 16. Affordable Units shall be owner or renter occupied by eligible lower income senior households.

Condition No. 17. The initial purchaser of each Affordable Unit shall execute an instrument or agreement approved by the City restricting the sale or lease of the affordable units in accordance with the amended Density Bonus Housing Agreement during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the unit and shall contain such provisions as the City may require ensuring continued compliance with City Requirements and the State Density Bonus Law.

SECTION 3. New Conditions

Condition No. 17a. The project shall be an age restricted project in accordance with the provisions of Civil Code Section 51.3. The applicants shall document the restrictions in a manner required by the City.

Condition No. 17b. The applicant shall increase the affordable units from the originally entitled 15 low income dwelling units to a total of 17 low income dwelling units.

Condition No. 17c. The six smallest units shall be designated for one or two person household depending upon the size and whether the unit is for sale or lease

Condition No. 17d. The applicant shall provide either a Deed Restriction or CC&R's approved by the City Manager and recorded against the applicable property with the revision that all rents on affordable units are to be restricted to ensure that the units remain affordable to low income senior households for a term of no less than 45 years, and that all 134 units are restricted to senior occupancy for a term of no less than 45 years.

Condition No. 17e. The applicant shall provide the City with a new Marketing Plan at least 30 days prior to any rental or sale of the lower income units.

Condition No. 17g. When units are leased, lower income units must be available for rent at the same time market rate units are advertised.

Condition No. 17h. The property owner shall provide the City 90 days notice before there is a conversion from lease to for sale of any units in the project.

Condition No. 17i. Regular income lease tenants (not lower income tenants) must sign a statement at time of lease acknowledging that their unit may be sold at the end of their lease.

SECTION 4. Effective Date

The amendments approved herein shall become effective at such time as the applicant executes a revised Density Bonus Housing Agreement and related documents, as approved by City, and delivers the executed agreements to the City Clerk.

PASSED, APPROVED AND ADOPTED ON this ____ day of _____ 2009.

BOB RING, Mayor

ATTEST:

YOLINDA TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLINDA TRIPPY, City Clerk of the City of Laguna Woods, do
HEREBY CERTIFY that the foregoing **Resolution No. 09-xx** was duly adopted by
the City Council of the City of Laguna Woods at a regular meeting thereof, held on
the ____ day of _____ 2009, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

YOLINDA TRIPPY, Deputy City Clerk

AMENDED AND RESTATED DENSITY BONUS HOUSING AGREEMENT

This Amended and Restated Density Bonus Housing Agreement (the “**Amended Agreement**”) is entered into effective as of the [_____] day of [_____], 20__ (the “**Effective Date**”) by and among the City of Laguna Woods, a California municipal corporation (“**City**”), and _____ (“**Owner**”).

RECITALS

WHEREAS, Owner owns that certain 3.05 acres of real property in the City described in Exhibit A attached hereto and depicted on Exhibit B attached hereto (the “**Property**”); and

WHEREAS, Owner has developed 134 condominiums on the Property (the “**Project**”); and

WHEREAS, Owner’s predecessor in interest, Standard Pacific Corp. entered into a Density Bonus Housing Agreement with the City on March 22, 2007 (the “**Original Agreement**”).

WHEREAS, market conditions have made it impractical to sell the units as originally contemplated in the Original Agreement and the City has approved an amendment to the Project entitlements to permit Owner to own some or all of the units in the Project and operate the Project as a rental community and then from time to time Owner may elect to sell individual units to individual owners;

WHEREAS, the amendments to the conditions of approval of the Project require Owner to rent or sell fifteen (15) units within the Project to qualifying seniors as defined in California Civil Code Section 51.3 who qualify as a low income household as defined in this Amended Agreement; and

WHEREAS, City has determined that the procedures of the California Environmental Quality Act have been met with respect to this Amended Agreement in that Mitigated Negative Declaration MND 05-02 previously approved for the Project continues to adequately address the environmental effects of the Project because the changes to the Project to permit the rental of the affordable units will not involve new environmental impacts or an increase in previously identified impacts of the Project; and

WHEREAS, the this Amended Agreement is consistent with the intent of the previously approved Affordable Housing Plan for the Project and will provide substantial benefits to City and enable the City to meet the City’s regional housing needs for low income families as set forth in the City’s Housing Element in these difficult economic times.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency

of which is hereby acknowledged, the parties agree to amend and restate the Original Agreement in its entirety as follows:

1. DEFINITIONS AND EXHIBITS

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

1.1.1 “*Adjusted for family size appropriate to the unit*” means a household of one (1) two (2) persons depending upon the size and whether the unit is for sale or lease.

1.1.2 “*Affordable Housing Cost*” means that purchase price for an Affordable Housing Unit designated to be sold to, and occupied by, a Low Income Senior Household shall mean a price that does not exceed the Affordable Housing Cost for a family size appropriate for the unit for Low Income Senior Households. Affordable Housing Cost for an Affordable Housing Unit shall be calculated as of the date of sale or resale of the Affordable Housing Unit.

1.1.3 “*Affordable Housing Cost for Low Income Senior Households*” means the cost calculated as the product of thirty five percent (35%) times eighty percent (80%) of the Orange County Annual Median Income, adjusted for family size appropriate to the unit for Low Income Senior Households as defined in the Affordable Housing Plan.

1.1.4 “*Affordable Housing Covenant*” means the covenant attached hereto as Exhibit C.

1.1.5 “*Affordable Housing Plan*” means the affordable housing plan approved for the Project by the City Council of City.

1.1.6 “*Affordable Housing Plan and Density Bonus Application*” means the application submitted to the City by Owner, dated March 26, 2005.

1.1.7 “*Affordable Rent*” means annual rent that does not exceed the amount of rent (including a reasonable utility allowance) calculated as the product of thirty percent (30%) times eighty percent of the Orange County Annual Median Income, adjusted for family size appropriate to the unit, as reflected in the State Income Limits for Lower Income Households.

1.1.8 “*Affordable Unit*” means individually and “*Affordable Units*” means collectively the Units within the Project to be rented by Owner to a Low Income Senior Household at Affordable Rent or sold by Owner to a Low Income Senior Household at an Affordable Housing Cost in accordance with this Amended Agreement.

1.1.9 “*Amended Agreement*” means this Amended and Restated Density Bonus Housing Agreement

1.1.10 “**City**” means the City of Laguna Woods, and the City’s successors and assigns.

1.1.11 “**Effective Date**” means the date the City Council of City approves this Amended Agreement.

1.1.12 “**Existing Tenant**” means any lawful occupant of a Residential Unit, either Market Rate or Affordable Unit, during the Project Rental Period as that term is defined in the Regulatory Agreement.

1.1.13 “**For Rent Affordable Units**” means the Units designated by Owner and rented to or available for rental to Low Income Senior Households at Affordable Rent.

1.1.14 “**For Sale Affordable Units**” means the Units designated by Owner pursuant to Section 6 of this Amended Agreement that shall be conveyed to Low Income Senior Households at an Affordable Housing Cost.

1.1.15 “**Household**” means all persons residing in a unit.

1.1.16 “**Project**” means that certain housing development in which the Unit is located.

1.1.17 “**Low Income Senior Household**” means a Household including a senior citizen or citizens as defined by Civil Code Section 51.3 whose gross income does not exceed the State Income Limits for Lower Income Households, adjusted for family size appropriate to the unit.

1.1.18 “**Market Rate Units**” means the Units within the Project to be rented or sold by Owner to a any person or entity without restriction. The real property owned by the owner’s association of the Project shall be deemed to be a Market Rate Unit.

1.1.19 “**Owner**” means the persons and entities listed as Owner on page 1 of this Amended Agreement and their permitted successors in interest to all or any part of the Property.

1.1.20 “**Project Rental Period**” means the period commencing on the Effective Date and ending on the earliest to occur of (a) the date on which the fifteenth (15th) Affordable Unit is sold by Owner to a Low Income Senior Household at an Affordable Housing Cost in accordance with this Amended Agreement, (b) the date Owner conveys fee title to the final Unit to an Individual Unit Owner and (c) the expiration date of this Amended Agreement.

1.1.21 “**Qualified Purchaser**” means a person or family who complies with all income verification requirements in this Amended Agreement, and earns less than the State Income Limits for Lower Income Households, adjusted for family size appropriate to the Unit.

1.1.22 **“Regulatory Agreement”** means that certain Regulatory Agreement and Declaration of Covenants and Restrictions attached to this Amended Agreement as Exhibit E.

1.1.23 **“State Income Limits for Lower Income Households”** means the Orange County, California area State Income Limits for Lower Income Households, adjusted for family size appropriate to the unit, as established by the United States Department of Housing and Urban Development, and as published periodically by the State of California Department of Housing and Community Development. Upon request by Owner, City shall provide to Owner the amount of the State Income Limits for Lower Income Households.

1.1.24 **“Termination and Release of Regulatory Agreement”** means that certain instrument attached to this Amended Agreement as Exhibit F.

1.1.25 **“Total Affordability Term”** means the thirty (30) year period for which an Affordable Unit shall be restricted for use and occupancy by a Low Income Senior Household.

1.1.26 **“Total Density Bonus Agreement Term”** means the total period during which this Amended Agreement shall be in full force and effect.

1.1.27 **“Unit”** means any residential unit in the Project.

1.1.28 **“Unit Release from Regulatory Agreement”** means that certain instrument to be recorded for the benefit of a Unit no longer subject to this Amended Agreement and the Regulatory Agreement, in the form of Exhibit G of this Amended Agreement.

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

Exhibit “A” — Legal Description of the Property.

Exhibit “B” — Map showing Property and its location.

Exhibit “C” — Affordable Housing Covenant

Exhibit “D” — Sample Floor Plans

Exhibit “E” – Regulatory Agreement

Exhibit “F” — Termination and Release of Regulatory Agreement

Exhibit “G” – Unit Release from Regulatory Agreement

2. AMENDED AFFORDABLE HOUSING AGREEMENT

2.1 This Amended Agreement sets forth the terms upon which Owner shall implement the provisions of the Affordable Housing Plan in conjunction with residential development pursuant to the Project.

2.2 Subject to the provisions of this Amended Agreement, Owner shall construct on the Property fifteen (15) Affordable Units. Owner may, in its sole and absolute discretion sell or lease any of the Units from time to time. If Owner elects to initially operate the Project as a rental project, Owner may later elect to convey title to the individual Units to Low Income Senior Households as provided in Section 6 below.

2.3 The Affordable Units shall be constructed with the same exterior appearance, use of materials and quality of materials as provided for the balance of the Units in the Project. The Affordable Units will consist of one bedroom and one bedroom plus den units ranging in size from approximately 660 feet to 780 feet. The Affordable Units will feature spacious living areas, walk in closets and well-equipped kitchens. Sample floor plans for the Affordable Units are attached as Exhibit E.

2.4 Location of Onsite Units. The Affordable Units shall be disbursed throughout both buildings within the Project.

2.5 Amendment of Affordable Housing Plan. The Affordable Housing Plan may be amended by the mutual agreement of the City and Owner.

2.6 Indemnification. Owner agrees to defend, indemnify and hold harmless City and its respective officers, officials, agents, employees, representatives, and volunteers from and against any loss, liability, claim, or judgment relating in any manner to this Amended Agreement. Notwithstanding the foregoing, the Owner shall not be obligated to indemnify or hold harmless the City, its respective officers, officials, agents, employees, representatives and volunteers, with respect to the actions of City in administering the Affordable Housing Plan and the agreements related thereto, including, but not limited to, the Affordable Housing Covenant, following the initial sale of the Affordable Units to qualifying Low Income Senior Households. This indemnity does not apply to any act or omission by City and its respective officers, officials, agents, employees, representatives, and volunteers that is grossly negligent or intentional.

3. DENSITY BONUS.

3.1 Density Bonus. In consideration for this Amended Agreement, City has agreed to provide the density bonus as required by Government Code Section 65915 of twenty seven (27) units as described in the Affordable Housing Plan and Density Bonus Application.

3.2 Development Incentive. The parties agree that the City's agreement to waive the minimum lot coverage ratio for the Project as described in the Affordable Housing Plan and Density Bonus Application meets the requirements of California Government Code Section 65915. In addition, City agrees to consider in good faith the provision of Community Development Block Grant funds and HOME funds, to the extent available, to provide down payment assistance to qualified Low Income Senior Households seeking to purchase Affordable Units.

4. AFFORDABILITY

4.1 Term. Each Affordable Unit shall be restricted to use and occupancy by a Low Income Senior Household for a total period of thirty (30) years (the “**Total Affordability Term**”). The Total Affordability Term for an Affordable Unit shall commence on the date that the Affordable Unit receives a temporary certificate of occupancy permit from the City. By way of explanation of the foregoing two sentences, it is possible that the Total Affordability Period for one Affordable Unit will neither commence on the same date nor terminate on the same date as another Affordable Unit, and it is possible that the Total Affordability Terms for all Affordable Units will commence on different days and terminate on different days. At any time and from time to time during the Project Rental Period, Owner may elect to substitute an equivalent Unit in terms of number of bedrooms (the “**Substitute Affordable Unit**”) for an Affordable Unit and thereafter, the substituted unit shall be the Affordable Unit and the previously designated Affordable Unit shall be an unrestricted Unit. In that event, the remaining portion of the Total Affordability Term for the Affordable Unit shall be transferred to the Substitute Affordable Unit.

4.2 Carryover of Total Affordability Term. In the event the Total Affordability Term for an Affordable Unit commences during the Project Rental Period and Owner subsequently conveys fee title to such Affordable Unit to a qualified purchaser pursuant to Section 6 below, the Total Affordability Term for such Affordable Unit shall not begin anew. For example, if Owner rents a particular Affordable Unit to a Low Income Senior Household for three (3) years and then conveys fee title of that Affordable Unit to the same or different Low Income Senior Household, there would be twenty-seven (27) years remaining on the Total Affordability Term for such Affordable Unit.

4.3 Memorializing Commencement of Total Affordability Term. Owner shall keep detailed records of the commencement date of the Total Affordability Term for each Affordable Unit and each Substitute Affordable Unit.

5. OWNERSHIP AND OPERATION OF THE PROJECT BY OWNER

5.1 Recording of Documents. This Amended Agreement shall not be recorded. Prior to the rental of any Unit in the Project, Owner shall record or cause to be recorded in the Official Records for Orange County, California, an original of the Regulatory Agreement. City shall cooperate with Owner in promptly executing in recordable form the Regulatory Agreement. Upon the date of recording, the terms and conditions of the Regulatory Agreement shall be binding upon and run with the Property and the Project. It is the express intent and agreement between the Parties that the Regulatory Agreement shall remain binding and enforceable against the Property, the Project, and the units to ensure compliance with the State Density Bonus Law, and to ensure the continued supply of Affordable Units in the Project.

5.2 Rental of Units. Until such time as Owner decides to sell any or all Affordable Units to Individual Unit Owners in accordance with Section 6 below, upon the completion of construction of the Project and receipt by Owner of all required permits for the occupancy of the Affordable Units, Owner shall offer to rent or cause to be rented for the Project Rental Period the For Rent Affordable Units, in accordance with terms and conditions set forth in

the Regulatory Agreement. The required number of For Rent Affordable Units shall be reduced by the number of Affordable Units sold by Owner to a Low Income Senior Household at an Affordable Housing Cost in accordance with this Amended Agreement.

5.3 Income Verification. During the Project Rental Period, Owner shall, at Owner's sole cost and expense, determine and verify the eligibility of Low Income Senior Households for the rental of the For Rent Affordable Units in accordance with the terms and conditions set forth in the Regulatory Agreement.

5.4 Location of Affordable Units. During the Project Rental Period, the For Rent Affordable Units shall be disbursed throughout the Project in accordance with the terms and conditions set forth in the Regulatory Agreement.

6. SALE OF UNITS TO INDIVIDUAL OWNERS

6.1 Conveyance of Units. Owner may convey title to the Units to individual unit owners at any time after the Effective Date, in accordance with any and all federal, state, and local laws and regulations. Owner may offer to sell some or all units to individual unit owners in phases or all at one time in Owner's discretion; provided that each sale of a Unit complies with any and all federal, state, and local laws and regulations.

6.2 Notice to City. In the event that Owner decides to sell any or all of the Affordable Units, Owner shall provide to City no less than ninety (90) days written notice prior to the conversion of any Unit within the project from a rental to a for sale Unit.

6.3 Designation of For Sale Affordable Units. Prior to the commencement of any activities to market, offer, and/or sell the Units, Owner shall designate fifteen (15) Units as For Sale Affordable Units. Owner shall disclose to City the units that are designated as For Sale Affordable Units prior to the commencement of any activities to market, offer, and/or sell the For Sale Affordable Units. At Owner's sole discretion, the designated For Sale Affordable Units may, but need not be the same units designated by Owner as the For Rent Affordable Units; provided, however, that an occupant of a For Rent Affordable Unit shall have the right of first refusal to purchase a comparable For Sale Affordable Unit pursuant to this Amended Agreement and any other applicable laws and regulations. Owner may change the designation of For Sale Affordable Units from time to time and shall notify City of the change of designation prior to the offering for sale of the substituted For Sale Affordable Unit. The For Sale Affordable Units shall be disbursed throughout the Project in a manner similar to that provided for in the Regulatory Agreement.

6.4 Sale of Affordable Units. The sale price of each For Sale Affordable Unit shall be the Affordable Housing Cost. So that City may verify the proposed sale price of a For Sale Affordable Unit is not more than the Affordable Housing Cost for such Unit, Owner shall provide written notice to City of the sale price of each For Sale Affordable Unit prior to offering for sale such Unit. City verification shall be provided within fifteen (15) business days of City's receipt of Owner's written notice of the proposed sale price. Owner shall sell each For Sale Affordable Unit only to an individual unit owner who qualifies as a Qualified Purchaser. Owner shall not convey title to any For Sale Affordable Unit to an individual unit owner and his or her

Household that does not qualify as a Low Income Senior Household, and Owner shall not convey fee title to any For Sale Affordable Unit to a Low Income Senior Household at a price that exceeds the Affordable Housing Cost for that Affordable Unit.

6.4.1 Agreement to Assume the Obligations of the Covenant. The grant deed or other document effectuating the conveyance of each For Sale Affordable Unit shall include the following covenants which will each endure for the duration of the Total Affordability Term: (A) references to the Affordable Housing Covenant and the obligation of the Qualified Purchaser to be bound by all the obligations set forth in the Affordable Housing Covenant, (B) references to the Affordable Housing Trust Deed, the Affordable Housing Option Agreement, and the Reimbursement Agreement (all as defined in the Affordable Housing Covenant), and (C) a covenant that will require the Qualified Purchaser, and any successor or assign, to include in any document transferring any interest in the For Sale Affordable Unit a reference to the Affordable Housing Covenant, the Affordable Housing Trust Deed, the Affordable Housing Option Agreement, the Reimbursement Agreement, and the obligation of the transferee to be bound by the obligations set forth in the Affordable Housing Covenant, the Affordable Housing Trust Deed, the Affordable Housing Option Agreement and the Reimbursement Agreement.

6.4.2 Execution and Recording of Covenant. At the close of escrow for each For Sale Affordable Unit, Owner shall cause to be executed in a recordable form (where appropriate) the Affordable Housing Covenant and the attachments thereto. At the close of escrow, Owner shall record or cause to be recorded the instruments effectuating the conveyance of the For Sale Affordable Unit in the Official Records for Orange County, California, in the following order: (i) the grant deed conveying title to the Qualified Purchaser; (ii) the Affordable Housing Covenant; (iii) the deed of trust securing the First Lien (as defined in the Affordable Housing Covenant); (iv) the Affordable Housing Trust Deed securing the Affordable Housing Covenant and Reimbursement Agreement (in the forms attached to the Affordable Housing Covenant); (v) the Affordable Housing Option Agreement (in the form attached to the Affordable Housing Covenant); and (vi) the Request for Notice (in the form attached to the Affordable Housing Covenant). Upon the date of recording, the terms and conditions of the Affordable Housing Covenant and the attachments thereto shall be binding upon and run with title to the For Sale Affordable Unit for the balance of the Total Affordability Term, which remaining portion of such term shall be specified in the Affordable Housing Covenant. City shall cooperate with Owner and each Qualified Purchaser to execute an Affordable Housing Covenant and the attachments thereto for each For Sale Affordable Unit so that the Affordable Housing Covenant may be recorded before the close of escrow for that particular For Sale Affordable Unit.

6.5 Termination and Release from Regulatory Agreement.

6.5.1 Entire Property and Project. Upon the completion of the recording of Affordable Housing Covenants against each For Sale Affordable Unit, and no sooner than the recording of the last Affordable Housing Covenant against the last For Sale Affordable Unit purchased by a Qualified Purchaser, Owner and City shall cooperate to execute and record or cause to be recorded for the benefit of the Property and the Project an executed original of the Termination and Release of Regulatory Agreement. Notwithstanding the preceding sentence, in

no event shall City have an obligation to execute and record or cause to be recorded the Termination and Release of Regulatory Agreement during any period of time that Owner has been notified by City of a breach or default of this Amended Agreement and such breach or default remains uncured (which includes by reference all exhibits and attachments hereto). Owner shall provide upon City's request evidence that Affordable Housing Covenants have been recorded against all of the For Sale Affordable Units. City shall cooperate with Owner to timely execute and deliver to Owner the Termination and Release of Regulatory Agreement for prompt recording when due. Upon recording of the Termination and Release of Regulatory Agreement, the Property and the Project shall be released from the terms and conditions of the Regulatory Agreement, and Owner shall be released from its obligations under this Amended Agreement. Each and every individual owner of an Affordable Unit, however, shall not be released from the restrictions set forth in this Amended Agreement upon the recordation of the Termination and Release of Regulatory Agreement. Rather, each and every individual owner of an Affordable Unit shall be bound by the terms and conditions of the Affordable Housing Covenant recorded against title to such Affordable Unit, until the expiration of the Total Affordability Term for that For Sale Affordable Unit.

6.5.2 Sale of Individual Units. In the event that Owner decides to sell any of the Units and designates fifteen (15) Units as For Sale Affordable Units pursuant to Section 6.3 of this Amended Agreement, then Owner shall have the right to request that City execute a Unit Release from Regulatory Agreement for any and all Market Rate Units to be sold. Owner's request for a Unit Release of Regulatory Agreement shall be in writing and shall specify the Units that have been designated Market Rate Units and For Sale Affordable Units. Upon City's receipt of a request by Owner to execute a Unit Release from Regulatory Agreement, City shall have the right to verify that the sale of Market Rate Units will not result in less than fifteen (15) of the Units being designated as For Sale Affordable Units. If City determines the proposed sale of the Market Rate Units will not result in less than fifteen (15) of the Units being designated as For Sale Affordable Units, then City shall deliver to Owner an executed and notarized Unit Release from Regulatory Agreement for the Market Rate Units. City shall have no obligation to pay any recording fees or escrow costs that may be incurred in connection with the recording of the Unit Release from Regulatory Agreement or the closing of an escrow for any Market Rate Unit or For Sale Affordable Unit.

6.6 Right of First Refusal for Existing Tenants of Affordable Units. Provided an Existing Tenant of a For Rent Affordable Unit is not in default of any of the terms and conditions of the lease agreement for such For Rent Affordable Unit, including but not limited to those terms required to be in the lease agreement pursuant to the Regulatory Agreement, said Existing Tenant shall have a right of first refusal to purchase one of the For Sale Affordable Units; provided that there remains unsold at such time a For Sale Affordable Unit that is comparable in size and value to that Existing Tenant's For Rent Affordable Unit. Such right of first refusal shall be on the terms set forth below in Section 6.6.1.

6.6.1 Notice to Existing Tenants of Affordable Units. No later than thirty (30) days prior to the date that Owner commences the activities to market, offer, and/or sell a For Sale Affordable Unit, subject to the availability of unsold For Sale Affordable Unit that are comparable in size and value to that Existing Tenant's For Rent Affordable Unit, Owner shall deliver to each Existing Tenant of a For Rent Affordable Unit a written notice (a "**Right of First**

Refusal Notice”) that states the following: (a) the Existing Tenant of the For Rent Affordable Unit has a right of first refusal to purchase a For Sale Affordable Unit comparable to the currently-occupied For Rent Affordable Unit, and that the right must be exercised within thirty (30) days of delivery of the notice; (b) the manner by which said Existing Tenant must exercise the right of first refusal; (c) the purchase price, which shall not exceed the Affordable Housing Cost, for a For Sale Affordable Unit that is comparable to said Existing Tenant’s For Rent Affordable Unit; and (d) the address or number of the comparable For Sale Affordable Unit. Upon the delivery date of the Right of First Refusal Notice, an Existing Tenant shall have thirty (30) days to exercise the option to purchase the comparable For Sale Affordable Unit in the manner prescribed therein. In addition to the requirements set forth above, Owner shall comply with all federal and state laws and regulations regarding notice requirements and rights of first refusal for existing tenants of rental dwelling units that will be conveyed as separate, individually owned dwelling units.

6.6.2 Conveyance of Title to Existing Tenants of Affordable Units. In the event that an Existing Tenant of a For Rent Affordable Unit timely exercises its right of first refusal, and that Existing Tenant is a Qualified Purchaser, Owner shall sell the specified For Sale Affordable Unit to that Existing Tenant. Owner shall comply with terms and conditions set forth in this Section 6 to verify that the Existing Tenant is a Qualified Purchaser unless, upon Owner’s request, City expressly waives the income verification procedures.

6.6.3 Estoppel from Existing Tenants of Affordable Units. In the event that an Existing Tenant of a For Rent Affordable Unit does not timely or properly exercise its right of first refusal, or otherwise declines Owner’s offer to purchase said Existing Tenant’s For Rent Affordable Unit or a comparable For Sale Affordable Unit, Owner shall, upon City’s request, make a reasonable effort to obtain an estoppel certificate or similar acknowledgement for the benefit of City and Owner from the Existing Tenant that the Existing Tenant has declined or failed to exercise its right of first refusal.

6.6.4 Rights of Existing Tenants of Affordable Units. In the event that an Existing Tenant of a For Rent Affordable Unit either (i) fails to timely, properly, or otherwise declines to exercise its right to purchase a For Sale Affordable Unit, or (ii) fails to qualify as a Qualified Purchaser, then Owner shall continue to rent the Affordable Unit to the Existing Tenant at an Affordable Rent until such time as the Existing Tenant terminates the tenancy of the Affordable Unit, the Existing Tenant fails to qualify as a Low Income Senior Household or the Existing Tenant defaults under the terms of the lease and is evicted by the Owner. Following the termination of the tenancy of the Affordable Unit, Owner may sell the Affordable Unit as provided in this Section 6.

6.7 Qualified Purchaser Marketing and Orientation. Owner shall be responsible for marketing the For Sale Affordable Units to Qualified Purchasers in accordance with a marketing plan reasonably approved by the City.

7. TERM OF THIS AMENDED AGREEMENT

7.1 Term. The term of this Amended Agreement shall commence on the Effective Date and shall continue until the earlier of either: (i) all of the Affordable Units have

been conveyed to Low Income Senior Households and the executed Termination and Release of Regulatory Agreement has been recorded pursuant to Section 6.6 above; or (ii) expiration of the Total Affordability Terms for all of the Affordable Units.

8. ASSIGNMENT

8.1 Assignment.

8.1.1 Right to Assign. Owner shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.) to any person, partnership, joint venture, firm, corporation or other legal entity at any time during the term of this Amended Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations of Owner arising under or from this Amended Agreement.

8.1.2 Release of Transferring Owner. Upon any sale, transfer or assignment, a transferring Owner shall be given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring Owner of the following conditions:

(a) Owner no longer has a legal or equitable interest in all or any part of the Affordable Units.

(b) Owner is not then in default under this Amended Agreement; provided that Owner may cure any uncured default and consummate such transfer.

(c) Owner has provided City with written evidence of the assignment and assumption by the transferee of the rights, duties and obligations of Owner arising under or from this Amended Agreement.

8.1.3 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 8.1.

9. MISCELLANEOUS

9.1 Notices

9.1.1 As used in this Amended Agreement, “notice” includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

9.1.2 All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid,

and addressed to the recipient named below; or (iii) on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below. All notices shall be addressed as follows:

If to City:

City of Laguna Woods
24264 El Toro Road
Laguna Woods California, California 92637

with a copy to:

If to Owner:

with a copy to:

Roger A. Grable
Manatt, Phelps and Phillips
695 Town Center Drive, Suite 1400
Costa Mesa, CA 92626

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

9.2 Entire Amended Agreement. This Amended Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Amended Agreement.

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

9.4 Interpretation and Governing Law. This Amended Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Amended Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Amended Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

9.6 Singular and Plural. As used herein, the singular of any word includes the plural.

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

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

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

9.10 No Third Party Beneficiaries. This Amended Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Amended Agreement.

9.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Amended Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Amended Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Amended Agreement shall not be extended under any circumstances for more than five (5) years.

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

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

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

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

9.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Amended Agreement. No partnership, joint venture or other association of any kind is formed by this Amended Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the Owner of such property.

9.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Amended Agreement and the satisfaction of the conditions of this Amended Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Amended Agreement to carry out the intent and to fulfill the provisions of this Amended Agreement or to evidence or consummate the transactions contemplated by this Amended Agreement. The City Manager may delegate her or his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the City.

9.18 Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Amended Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Amended Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Amended Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable

information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Amended Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. Owner shall pay to City all costs incurred by City in connection with the issuance of estoppel certificates under this Section 9.18 prior to City's issuance of such certificates.

9.19 Attorneys' Fees and Costs. If any party to this Amended Agreement institutes any action, suit, counterclaim, appeal or arbitration for any relief against another party, declaratory or otherwise (collectively an "**Action**"), to enforce the terms hereof or to declare rights hereunder or with respect to any inaccuracies or material omissions in connection with any of the covenants, representations or warranties on the part of the other party to this Amended Agreement, then the prevailing party in such Action, whether by arbitration or final judgment, shall be entitled to have and recover of and from the other party all costs and expenses of the Action, including reasonable attorneys' fees and costs (at the prevailing party's attorneys' then-prevailing rates as increased from time to time by the giving of advanced written notice by such counsel to such party) incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling or award (collectively, a "**Decision**") granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in such Action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such Decision. A court or arbitrator shall fix the amount of reasonable attorneys' fees and costs upon the request of either party. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including reasonable attorneys' fees and expert fees and costs (collectively "**Costs**") incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include, without limitation, in addition to Costs incurred in prosecution or defense of the underlying action, reasonable attorneys' fees, costs, expenses and expert fees and costs incurred in the following: (a) post-judgment motions and collection actions; (b) contempt proceedings; (c) garnishment, levy, debtor and third party examinations; (d) discovery; (e) bankruptcy litigation; and (f) appeals of any order or judgment. For the purposes of this Amended Agreement the term "prevailing party" shall have the meaning set forth in the California Code of Civil Procedure Section 1032(a)(4).

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

IN WITNESS WHEREOF, the parties hereto have executed this Amended Agreement on the day and year set forth below.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO AMENDED AGREEMENT**

“OWNER”

By: _____

By: _____

“CITY”

CITY OF LAGUNA WOODS

By: _____
Mayor

Date: _____

ATTEST:

City Clerk, Laguna Woods

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A"
TO DENSITY BONUS HOUSING AMENDED AGREEMENT

Legal Description of Property

CERTAIN REAL PROPERTY IN THE CITY OF LAGUNA WOODS, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL A:

PARCEL 1, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT LL2003-1 RECORDED JULY 30, 2004 AS INSTRUMENT NO. 2004000694981 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA, AND RE-RECORDED AUGUST 10, 2004 AS INSTRUMENT NO. 2004000724468 OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING ALL REMAINING GAS, OIL, HYDROCARBONS, MINERALS AND OTHER SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, BUT WITHOUT THE RIGHT TO ENTER UPON THE SURFACE OR SUB-SURFACE OF THE PROPERTY ABOVE A DEPTH OF 500 FEET FOR ANY PURPOSE WHATSOEVER, AS RESERVED BY ROSSMOOR CORPORATION, A CALIFORNIA CORPORATION, IN DEED RECORDED SEPTEMBER 30, 1964 IN BOOK 7241, PAGE 170 OF OFFICIAL RECORDS.

PARCEL B:

AN APPURTENANT NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS PURPOSES, AS SAID EASEMENT IS SET FORTH IN THAT CERTAIN ACCESS AND UTILITY EASEMENT AGREEMENT RECORDED JULY 22, 2004 AS INSTRUMENT NO. 2004000666297 OF OFFICIAL RECORDS.

PARCEL C:

AN APPURTENANT NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS PURPOSES, AS SAID EASEMENT IS SET FORTH IN THAT CERTAIN ACCESS EASEMENT AGREEMENT RECORDED JULY 22, 2004 AS INSTRUMENT NO. 2004000666298 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

APN: 621-191-02

EXHIBIT A

EXHIBIT "B"
TO DENSITY BONUS HOUSING AGREEMENT

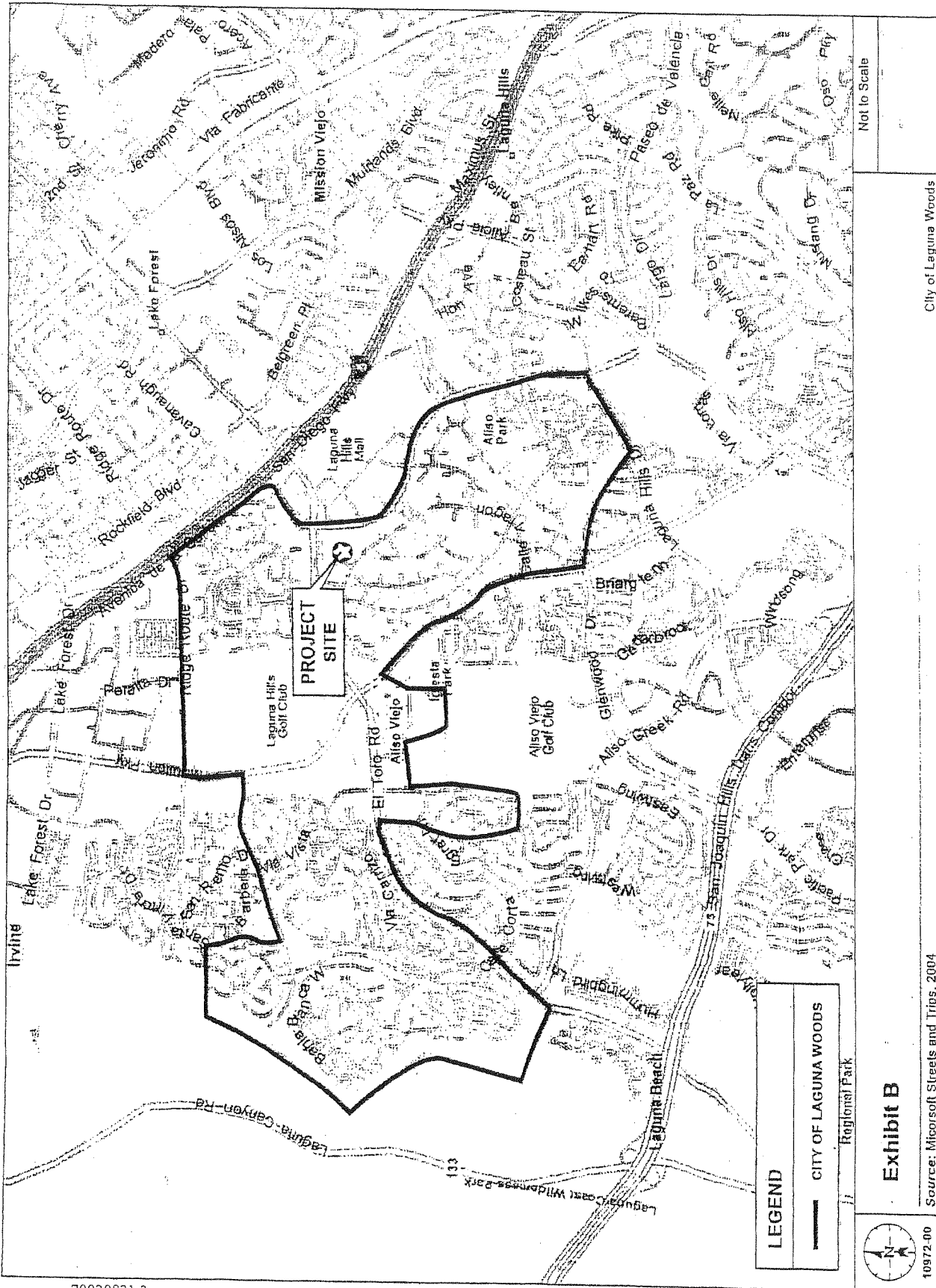


EXHIBIT "C"
TO DENSITY BONUS HOUSING AMENDED AGREEMENT
Affordable Housing Covenant

EXHIBIT C

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Laguna Woods
24264 El Toro Road
Laguna Woods, California 92637
Attention: City Clerk

Exempt From Recording Fee Pursuant to Government Code Section 27383

AFFORDABLE HOUSING COVENANT
(Low Income)

THIS AFFORDABLE HOUSING COVENANT (this "Covenant") is made as of _____, 200_, by _____ (the "Homeowner") in favor of the CITY OF LAGUNA WOODS, a municipal corporation (together with its successors and assigns, the "City").

RECITALS

A. Homeowner has purchased a condominium located at _____ Laguna Woods, California, as such real property is more particularly described in Exhibit "A" attached hereto (the "Unit"). The Unit is part of that certain housing development known as "_____" (the "Project").

B. Pursuant to the Density Bonus Housing Agreement between the City and Mayer Financial, L.P., a California limited partnership, (the "Developer"), the Developer is required to transfer certain of the homes in the Project to senior families which qualify as "Low Income Senior Households", at an "Affordable Housing Cost for Low Income Households."

C. The Unit has been designated by the Developer as a Unit that is to be sold to a Low Income Senior Household.

D. Homeowner has represented to the Developer and the City that Homeowner and Homeowner's household intend to reside in the Unit as the Homeowner's principal residence at all times during the Homeowner's ownership of the Unit, that they will not rent the Unit to others, and that they are a Low Income Senior Household.

E. The City owns that certain parcel of land adjacent to the Project that is more particularly described on Exhibit "B" attached hereto.

F. This Covenant is intended to benefit the parcel of land described on Exhibit "B", and the obligations and rights contained herein are intended to run with the land.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **DEFINITIONS.**

"Affordability Period" means that period of time commencing upon the Date of this Covenant and terminating on the thirtieth (30th) anniversary of such date.

"Affordable Housing Cost" for an Affordable Housing Unit designated to be sold to, and occupied by, a Low Income Household shall mean a price that does not exceed the Affordable Housing Cost for a family size appropriate for the Unit for Low Income Households. Affordable Housing Cost for an Affordable Housing Unit shall be calculated as of the date of sale or resale of the Unit. For purposes of this Covenant, "family size appropriate for the Unit" means two persons for a one bedroom unit.

"Affordable Housing Cost for Low Income Households" means the cost per Unit for Low Income Households as more particularly defined in the Affordable Housing Plan and as generally described herein as a price per Unit which results in Monthly Housing Costs for the purchaser which shall not exceed one-twelfth of thirty-five percent (35%) times eighty percent (80%) of the annual Orange County Median Income, adjusted for family size appropriate for the unit.

"Affordable Housing Option Agreement" means the agreement attached hereto as Exhibit "F", that provides an option to purchase in favor of the City as provided in Section 7, which option shall be exercisable in the event that the Homeowner of a Unit is in breach of the Homeowner's obligations in this Covenant.

"Affordable Housing Trust Deed" means that certain deed of trust executed by Homeowner which encumbers the Unit and secures the obligations of Homeowner and his or her successors and assigns as provided in (a) this Covenant, and (b) the Reimbursement Agreement attached hereto as Exhibit "E."

"City" means the City of Laguna Woods, and the City's successors and assigns.

"County" means the County of Orange, California.

"Covenant" means this Affordable Housing Covenant.

"Date of this Covenant" means the date in the first paragraph of this Covenant.

"Default" means the failure of a party to perform any action or covenant required by this Covenant within the time periods provided herein following notice and opportunity to cure.

"Developer" means Mayer Financial, LP, a California limited partnership.

"First Lien" means the lien of a purchase money Lender which secures the obligations of the Homeowner to repay amounts owed to the Lender.

"Homeowner" means the person or persons set forth in the first paragraph of this Covenant, and his, her or their successors and assigns.

"Household" means all persons residing in a Unit.

“Legal Description” means the legal description of the Unit which is attached hereto as Exhibit “A”.

“Lender” means an institution making a purchase money loan to the Homeowner for the purchase of the Unit.

“Monthly Housing Cost” means, for a Low Income Household purchasing the Unit, all of the following associated with the Unit, estimated or known as of the date of the proposed sale of the Unit: (i) principal and interest payments on a fixed interest rate mortgage loan, and any loan insurance fees associated therewith; (ii) property taxes and assessments; and (iii) any homeowner association fees. Monthly housing cost of a purchaser shall be an average of estimated costs for the next twelve (12) month period.

“Notice of Intent to Transfer” means the Notice of Intent to Transfer attached hereto as Exhibit “C”.

“Permitted Transfer” means any Transfer which is permitted pursuant to Section 4 hereof.

“Permitted Transferee” means a Transferee from the Homeowner or from any Permitted Transferee who acquires ownership of the Unit in full compliance with Section 4 hereof.

“Prohibited Transfer” means any Transfer which is not permitted pursuant to Section 4 hereof.

“Project” means that certain housing development in which the Unit is located.

“Reimbursement Agreement” means the Reimbursement Agreement to be executed by the Homeowner in favor of the City, in the form attached hereto as Exhibit “E”.

“Request for Notice” means the Request for Notice under Civil Code Section 2924b attached hereto as Exhibit “D”.

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

“Transferee” shall mean any natural person or entity who obtains ownership rights in the Unit pursuant to a Transfer.

“Unit” means that certain real property located at the street address set forth in Recital A and legally described in the Legal Description.

“Low Income Senior Household” means a Household including a senior citizen or citizens as defined by Civil Code Section 51.3 whose gross income does not exceed the qualifying limits for Low income families set forth in the Affordable Housing Plan.

2. **COVENANT RE: SALES OF UNIT.** Homeowner covenants and agrees that, during the Affordability Period, each subsequent resale of the Unit by the then-Homeowner thereof shall be to a Low Income Senior Household, at an Affordable Housing Cost for Low Income Households. Homeowner further covenants and agrees that, during the Affordability Period, each Homeowner shall abide by and be bound by all the obligations of Homeowner set forth in this Covenant. Homeowner agrees that the obligations of Homeowner set forth in this Covenant shall be secured by the Affordable Housing Trust Deed recorded concurrently with the recordation of this Covenant.

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

Homeowner's Initials

3. **HOMEOWNER'S REPRESENTATIONS AND WARRANTIES AS TO THE SALE OF THE UNIT TO HOMEOWNER.** Homeowner represents and warrants to the Developer and the City that the financial and other information which Homeowner has provided to the Developer and the City with respect to Homeowner's income and the purchase price of the Unit was true and correct at the time such information was provided, and remains true and correct as of the date of this Covenant.

4. **PERMITTED TRANSFERS OF THE UNIT.**

a. **Notice Required for a Transfer.** During the Affordability Period, the Unit, and any interest therein, shall not be Transferred by the Homeowner except with the express written consent of the City, which consent shall be given only if the Transfer is in strict compliance with the provisions of this Section 4. During the Affordability Period, in the event the then-Homeowner of the Unit desires to Transfer the Unit, then prior to the Transfer such Homeowner shall notify the City by delivering a Notice of Intent to Transfer to the City. City hereby agrees to permit Transfers of the Unit to proposed Transferees ("**Permitted Transferees**") provided the Transfer satisfies all of the following conditions:

i. **Notice to City.** The Homeowner shall send the Notice of Intent to Transfer to the City at the address set forth in Section 21 hereof. The Notice of Intent to Transfer shall identify the proposed Transferee, certify that to the best knowledge of the Homeowner the Transferee is a Low Income Senior Household, certify that the sales price is no more than an Affordable Housing Cost for Low Income Households, and shall include copies of the sales contract, the grant deed or other document that is proposed to be used to effectuate the Transfer, copies of documents verifying that the proposed Transferee is a Low Income Senior Household (including, but not limited to, documents verifying the income of the proposed Transferee) and all other material documents related to the proposed Transfer.

ii. **Qualification of Proposed Transferee.** The proposed Transferee shall provide and certify to the City such information as the City may request related to the proposed Transfer in the form provided by the City, including without limitation: the Social Security Number of the proposed Transferee; copies of the federal income tax returns filed by the proposed Transferee for the prior two (2) calendar years; copies of the two most current wage earning statements of the proposed Transferee; a certification as to the income and family size of the proposed Transferee; the purchase price the Proposed Transferee intends to pay for the Unit; and a current appraisal reflecting the fair market value of the Unit on the assumption that the Unit is free from the restrictions provided for in this Covenant. The proposed Transferee shall also submit to the City an agreement by the Transferee to assume the obligations of an Homeowner of the Unit as set forth in this Covenant in such form as the City may request.

iii. **Certificates from Parties.** The Homeowner and proposed Transferee each shall certify in writing, in a form acceptable to the City, that the Transfer shall be closed in accordance with, and only with, the terms of the sales contract and other documents submitted to and approved by the City and that all consideration delivered by the proposed Transferee to Homeowner has been fully disclosed to the City. The written certificate shall also include a provision that in the event a Transfer is made in violation of the terms of this Covenant or false or misleading statements are made in any documents or certificate submitted to the City for its approval of the Transfer, the City shall have the right to file an action at law or in equity to make the parties terminate and/or rescind the sales contract and/or declare the sale void notwithstanding the fact that the Transfer may have closed and become final as between Homeowner and its transferee.

iv. **Agreement to Assume the Obligations of This Covenant.** The grant deed or other document effectuating the Transfer of the Unit shall include the following: (a) references to this Covenant and the obligation of the Transferee to be bound by all the obligations of Homeowner set forth in this Covenant, (b) a reference to the Affordable Housing Trust Deed, (c) a reference to the Affordable Housing Option Agreement, (d) a reference to the Reimbursement Agreement and (e) a covenant that will require the Transferee, and any successor or assign of the Transferee, to include in any document Transferring the Unit a reference to this Covenant, the Affordable Housing Trust Deed, the Affordable Housing Option Agreement, the Reimbursement Agreement, and the obligation of the Transferee to be bound by the obligations set forth in this Covenant, the Affordable Housing Trust Deed, the Affordable Housing Option Agreement and the Reimbursement Agreement.

v. **The City's Title Policy.** The City must receive a title policy, in an amount equal to the amount then due on the Affordable Housing Note as increased as provided in this Section 4, insuring the Affordable Housing Trust Deed as a monetary lien of second priority, i.e., subordinate in priority among monetary liens only to the monetary lien of any First Lien recorded at the time of sale which First Lien shall secure an amount not in excess of the then Affordable Housing Cost of the Unit.

vi. **Spousal Transfers.** Notwithstanding the foregoing provisions of Section 4(a)(v), in the event of a transfer to a spouse in a dissolution proceeding, the City shall not require a new title policy, nor shall the City require reimbursement for its costs.

vii. **Transfer By Devise, Inheritance Or Intestacy.** In the event of a transfer by devise, inheritance or intestacy which would result in the transfer of the Unit to a person or persons who are not eligible to occupy the unit in accordance with the terms of this Covenant, the transferee shall have 180 days within which to transfer the Unit to a Permitted Transferee in accordance with the provisions of this Section 4. In the event, the transferee fails to transfer the Unit to a Permitted Transferee with 180 days of acquiring title to the Unit, the transferee shall be deemed to be in default under the terms of this Covenant and City may exercise its option to purchase the Unit pursuant to the terms of the Option Agreement attached hereto as Exhibit F.

b. **Notice of Prohibited Transfer.** Within fifteen (15) calendar days after the receipt by the City of the notices, documents and agreements referred to in Section 4(a), the City shall determine and give notice to the Homeowner as to whether the proposed Transfer is a Permitted Transfer or Prohibited Transfer. In the event that the proposed Transfer is a Prohibited Transfer, such notice to the Homeowner shall specify why the Transfer is a Prohibited Transfer. If the violation is not corrected to the satisfaction of the City within ten (10) calendar days after the date of the notice, or within such further time as the City determines is necessary to correct the violation, the City may declare a Default under this Covenant. Upon the declaration of a Default, the City may apply to a court of competent jurisdiction for specific performance of this Covenant, for an injunction prohibiting a proposed sale or Transfer in violation of this Covenant, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate.

c. **Delivery of Documents After the Closing.** Upon the close of the proposed Transfer, the transferor and the Transferee, as applicable, shall provide the City with a copy of the final sales contract, settlement statement, escrow instructions, all certificates required by this Section 4 and any other documents which the City may reasonably request.

d. **Financings on Transfer.** This Section 4 shall not prohibit the encumbering of title for the sole purpose of securing financing of the purchase price of the Unit upon a Transfer thereof; however, any such financing (i) must be a First Lien, (ii) must not be in excess of the Affordable Housing Cost of such Unit as of date of the financing, (iii) must be in compliance with the Affordable Housing Trust Deed, and (iv) shall be subordinate to this Covenant.

5. ENCUMBRANCES.

a. **Subordination.** The provisions of the Affordable Housing Trust Deed and the Affordable Housing Option Agreement and the Reimbursement Agreement shall be subordinate to any First Lien on the Unit that secures the payment of a principal amount that is not in excess, as of the time the First Lien is recorded against the Unit, of the Affordable Housing Cost of the Unit. The City shall execute a written instruments for the subordination of its rights under the Affordable Housing Trust Deed, the Affordable Housing Option Agreement and the Reimbursement Agreement in the form attached hereto as Exhibit G or as may reasonably be requested by the Lender. The City's agreement to so subordinate its rights is subject to agreement in writing by the Lender providing the City the following rights:

i. Upon the occurrence of a Default under any of the First Lien documents, the holder of the First Lien shall promptly notify the City of the occurrence of such Default, which notification shall be provided to the City contemporaneously with the delivery to Homeowner of any notice of Default under any of the First Lien documents;

ii. The City shall have the right, during the cure periods which apply to the Homeowner pursuant to the First Lien documents and any cure period which may apply to the City under applicable law, to cure the Homeowner's Default relative to the First Lien, and

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

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

c. **Further Encumbrances Prohibited.** Homeowner agrees that he or she shall not record or cause or permit the recordation of any deed of trust, mortgage, lien or other instrument creating a security interest in or to the Unit (a "**Further Encumbrance**") other than a First Lien, the Affordable Housing Trust Deed and the Affordable Housing Option Agreement.

6. **REIMBURSEMENT AGREEMENT.** Homeowner covenants and agrees to pay timely any and all amounts due and payable on the obligations secured by the First Lien. At the time of the close of escrow with respect to any Transfer, each Homeowner shall enter into a Reimbursement Agreement, in the form attached hereto as Exhibit "E", which provides that the City may make payments to cure a Default or delinquency of any obligation secured by the First Lien, on the condition that the Homeowner agrees to reimburse the City for any payments made to cure such Default or delinquency together with any costs incurred by City in making such payments including costs of staff time and interest on the sums advanced by City at the current rate received by City on the investment of City funds. The Homeowner's repayment obligations

pursuant to the Reimbursement Agreement shall be secured by the Affordable Housing Trust Deed.

7. **OPTION TO ACQUIRE UNIT UPON DEFAULT OF OBLIGATIONS UNDER THIS COVENANT.** At the time of the close of escrow with respect to any Transfer, each Homeowner shall enter into an Option Agreement, in the form attached hereto as Exhibit "F", which grants to City an option to purchase the Unit in the event that the Homeowner is in Default of any of his or her obligations under this Covenant.

8. **USES.** Homeowner covenants and agrees to devote, use and maintain the Unit in accordance with this Covenant. All uses conducted on the Unit, including, without limitation, all activities undertaken by the Homeowner pursuant to this Covenant, shall conform to all applicable provisions of the Laguna Woods Municipal Code, and the recorded documents pertaining to and running with the Unit.

9. **MAINTENANCE OF UNIT.** Homeowner shall maintain the improvements on the Unit in a manner consistent with community standards which will uphold the value of the Unit, in accordance with the Laguna Woods Municipal Code. Homeowner also agrees to comply with all applicable federal, state and local laws.

10. **OCCUPANCY STANDARDS.** The Unit shall be used as the principal residence of Homeowner and Homeowner's family and for no other purpose. Homeowner shall not enter into an agreement for the rental or lease of the Unit, and Homeowner shall not otherwise rent or lease the Unit. The City may grant a temporary waiver of the above requirements for good cause, in the City's sole and absolute discretion. The maximum occupancy of the Unit shall not exceed three persons if the Unit is a one bedroom home, five persons if the Unit is a two bedroom home, or seven persons if the Unit is a three bedroom home. Homeowner shall, commencing upon the first anniversary of the date of this Covenant first set forth above and on each succeeding anniversary thereafter, submit to the City an affidavit of occupancy in the form provided by the City.

11. **EFFECT OF VIOLATION OF THE TERMS AND PROVISIONS OF THIS COVENANT.**

a. **In General.** The covenants established in this Covenant shall, without regard to technical classification and designation, be binding upon the Unit against which it is recorded and the Homeowner thereof and its successors and/or assigns owning all or any interest therein, (a) for the benefit and in favor of the City, its successors and assigns and (b) for the benefit of the property described on Exhibit "B" to this Covenant, and the City, as the owner thereof and its successors and assigns owning all, or any portion of such property. The covenants contained in this Covenant shall remain in effect for the periods of time specified herein. The City is deemed the beneficiary of the terms and provisions of this Covenant and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Covenant and the covenants running with the land have been provided. This Covenant and the covenants herein shall run in favor of the City, without regard to whether the City has been, remains or is a Homeowner of any land or interest therein in the Unit or in the

Project Area. The City shall have the right, if the Covenant or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Covenant and covenants may be entitled.

b. **Notice of Default.** Failure or delay by Homeowner to perform any term or provision of this Covenant which is not cured within thirty (30) days after receipt of notice from the City constitutes a Default under this Covenant; provided, however, if such Default is of the nature requiring more than thirty (30) days to cure, Homeowner may avoid Default hereunder by immediately commencing to cure within such thirty (30) day period, and thereafter diligently pursuing such cure to completion. Failure or delay in giving notice by the City shall not constitute a waiver of any Default, nor shall it change the time of Default.

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

d. **Prohibited Transfers Void.** Any attempt by the Homeowner to make a Prohibited Transfer of title to or any interest in the Unit in violation of this Covenant shall be voidable by City.

12. **INDEMNIFICATION.** Homeowner shall defend, indemnify and hold harmless the City and its officers, officials, agents, employees, representatives, and volunteers from and against any loss, liability, claim, or judgment relating in any manner to the Homeowner's use of the Unit or Homeowner's violation of this Covenant. The Homeowner shall remain fully obligated for the payment of taxes, liens and assessments related to the Unit. There shall be no reduction in taxes for Homeowner, nor any transfer of responsibility to the City to make such payments, by virtue of this Covenant.

13. **INSURANCE.** Homeowner shall maintain or cause the homeowners association for the Project to maintain, during the term of this Covenant, an all-risk property insurance policy insuring the Unit in an amount equal to the full replacement value of the structures on the Unit. The policy shall contain a statement of obligation on behalf of the carrier to notify the City of any material change, cancellation or termination of coverage at least thirty (30) days in advance of the effective date of such material change, cancellation or termination. Homeowner shall transmit a copy of the certificate of insurance to the City within thirty (30) days of the effective date of this Covenant, and Homeowner shall annually transmit to the City a copy of the certificate of insurance, signed by an authorized agent of the insurance carrier setting forth the general provisions of coverage. The copy of the certificate of insurance shall be transmitted to the City at the address set forth in Section 21 hereof. Any certificate of insurance must be in a form, content and with companies approved by the City.

14. **TIME OF THE ESSENCE.** Time is of the essence with respect to all provisions of this Covenant in which a definite time for performance is specified; provided, however, that

the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Covenant.

15. **NO WAIVER.** No waiver of any provision or consent to any action under this Covenant shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically set forth in writing. Any waiver given by a party shall be null and void if the party requesting such waiver has not provided a full and complete disclosure of all material facts relevant to the waiver requested.

16. **FURTHER ASSURANCES.** Homeowner shall execute any further documents consistent with the terms of this Covenant, including documents in recordable form, as the City shall from time to time find necessary or appropriate to effectuate its purposes in entering into this Covenant.

17. **GOVERNING LAW.** Homeowner hereby agrees to comply with all ordinances, rules and regulations of the City. Nothing in this Covenant is intended to be, nor shall it be deemed to be, a waiver of any City ordinance, rule or regulation. This Covenant shall be governed by the laws of the State of California. Any legal action brought under this Covenant must be instituted in the Superior Court of the County of Orange, State of California, or in the Federal District Court in the Central District of California.

18. **AMENDMENT OF COVENANT.** No modification, rescission, waiver, release or amendment of any provision of this Covenant shall be made except by a written agreement executed by Homeowner and the City.

19. **CITY MAY ASSIGN.** The City may, at its option, assign its rights hereunder without obtaining the consent of the Homeowner.

20. **HOMEOWNER ASSIGNMENT PROHIBITED.** In no event shall Homeowner assign or transfer any portion of this Covenant without the prior express written consent of the City, which consent shall be given by the City only in the event that the City determines the Transfer fully complies with Section 4. This section shall not affect or diminish the City's right to assign all or any portion of its rights hereunder.

21. **NOTICES.** All notices, demands, consents, requests and other communications required or permitted to be given under this Covenant shall be in writing and shall be deemed conclusively to have been duly given (a) when hand delivered to the other party; (b) three (3) business days after such notice has been sent by United States mail via certified mail, return receipt requested, postage prepaid, and addressed to the other party as set forth below; or (c) the next business day after such notice has been deposited with a national overnight delivery service reasonably approved by the parties (Federal Express and Airborne Express are deemed approved by the parties), postage prepaid, addressed to the party to whom notice is being sent as set forth below with next-business-day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery service provider. Unless otherwise provided in writing, all notices hereunder shall be addressed as follows:

To Homeowner:

To City:

City of Laguna Woods
24264 El Toro Road
Laguna Woods, California 92637
Attention: City Manager

Either party may change its address for notice by giving written notice thereof to the other party.

22. **ATTORNEYS' FEES AND COSTS.** If any party to this Covenant institutes any action, suit, counterclaim, appeal or arbitration for any relief against another party, declaratory or otherwise (collectively an **"Action"**), to enforce the terms hereof or to declare rights hereunder or with respect to any inaccuracies or material omissions in connection with any of the covenants, representations or warranties on the part of the other party to this Agreement, then the prevailing party in such Action, whether by arbitration or final judgment, shall be entitled to have and recover of and from the other party all costs and expenses of the Action, including reasonable attorneys' fees and costs (at the prevailing party's attorneys' then-prevailing rates as increased from time to time by the giving of advanced written notice by such counsel to such party) incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling or award (collectively, a **"Decision"**) granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in such Action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such Decision. A court or arbitrator shall fix the amount of reasonable attorneys' fees and costs upon the request of either party. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including reasonable attorneys' fees and expert fees and costs (collectively **"Costs"**) incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include, without limitation, in addition to Costs incurred in prosecution or defense of the underlying action, reasonable attorneys' fees, costs, expenses and expert fees and costs incurred in the following: (a) postjudgment motions and collection actions; (b) contempt proceedings; (c) garnishment, levy, debtor and third party examinations; (d) discovery; (e) bankruptcy litigation; and (f) appeals of any order or judgment. For the purposes of this Agreement the term **"prevailing party"** shall have the meaning set forth in the California Code of Civil Procedure Section 1032(a)(4).

23. **ENTIRE AGREEMENT.** This Covenant, together with all attachments hereto, constitutes the entire understanding and agreement of the parties. This Covenant integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between the City and the Homeowner concerning all or any part of the subject matter of this Covenant.

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

25. **COUNTERPARTS.** This Covenant may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and shall be one and the same instrument. This Covenant shall not be effective until the execution and delivery by the parties of at least one set of counterparts. The parties hereunder authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Covenant.

26. **EXHIBITS.** Each of the exhibits referenced in this Covenant and attached hereto is incorporated into this Covenant by this reference as though fully set forth in this Section.

IN WITNESS WHEREOF, the parties have executed this Covenant as of the date set forth above.

HOMEOWNER:

By: _____
Printed Name: _____

By: _____
Printed Name: _____

CITY:

CITY OF LAGUNA WOODS, a municipal corporation

By: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF UNIT

[To Be Inserted]

EXHIBIT "B"

LEGAL DESCRIPTION OF CITY'S PROPERTY

THE BENEFITED PROPERTY

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, DESCRIBED AS FOLLOWS:

PARCEL 2 AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT LL 94-028 RECORDED SEPTEMBER 3, 1996 AS INSTRUMENT NO. 19960448212 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING ALL GAS, OIL, HYDROCARBONS, MINERALS AND OTHER SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, BUT WITHOUT THE RIGHT TO ENTER UPON THE SURFACE OR SUBSURFACE OF THE PROPERTY ABOVE A DEPTH OF 500 FEET FOR ANY PURPOSE WHATSOEVER, AS RESERVED IN DEEDS OF RECORD.

ALSO EXCEPTING ALL REMAINING GAS, OIL, HYDROCARBONS, MINERALS AND OTHER SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, BUT WITHOUT THE RIGHT TO ENTER UPON THE SURFACE OR SUBSURFACE OF THE PROPERTY ABOVE A DEPTH OF 500 FEET FOR ANY PURPOSE WHATSOEVER, AS RESERVED BY ROSSMOOR CORPORATION IN THE DEED RECORDED FEBRUARY 16, 1973 IN BOOK 10559, PAGE 356 OF OFFICIAL RECORDS.

EXHIBIT "C"

NOTICE OF INTENT TO TRANSFER

NOTICE OF INTENT TO TRANSFER MUST BE DELIVERED TO THE CITY OF LAGUNA WOODS PRIOR TO PROCEEDING WITH ANY TRANSFER OF THE PROPERTY.

From: _____ ("Homeowner")

To: City of Laguna Woods
24264 El Toro Road
Laguna Woods, California 92637
Attn: City Manager

Re: _____ (street address)
Laguna Woods, California (the "Unit")

Circle appropriate words: Homeowner desires to [sell, convey, transfer by inheritance or devise, lease, gift, otherwise transfer] the Unit.

Proposed Transferee: _____

Ages of Proposed Transferee: _____

Income of Proposed Transferee: _____

Household Size of Proposed Transferee: _____

Proposed Transfer Price: _____

If the City has a program to help locate a Low Income purchaser, does the Homeowner want the City to help look for a Low Income purchaser to buy the Unit?

Yes: _____ No: _____

Date _____

Signature of Homeowner

(_____) _____
daytime telephone number of Homeowner

EXHIBIT "D"

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: City of Laguna Woods 24264 El Toro Road Laguna Woods, California 92637 Attention: City Manager	
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SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Exempt from recording fees pursuant to
Government Code §27383

Request for Notice Under Civil Code Section 2924b

In accordance with Section 2924b of the California Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust recorded as instrument No. _____ on _____, 200_, in Book ____, Page _____, Official Records of Orange County, California, and describing land therein as

See Exhibit A attached hereto

executed by _____, as Trustor, in
which _____ is named as
Beneficiary, and _____, as Trustee, be

mailed to CITY OF LAGUNA WOODS, at 24264 El Toro Road, Laguna Wood, California 92637, Attention:

City Manager.

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

CITY OF LAGUNA WOODS

By: _____

EXHIBIT A TO EXHIBIT D

LEGAL DESCRIPTION

(same as Exhibit A to the Covenant)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

- personally known to me
- or-
- 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.

WITNESS my hand and official seal.

Signature Of Notary

EXHIBIT "E"

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT, dated as of _____, 200_ (the "Reimbursement Agreement"), is hereby entered into by and between the CITY OF LAGUNA WOODS, a municipal corporation (the "City"), and _____ (the "Homeowner").

RECITALS

- A. The Homeowner is purchasing a condominium located at _____, Laguna Woods, California (the "Unit").
- B. The City and the Homeowner have executed an Affordable Housing Covenant (the "Covenant") which requires for a thirty (30) year period commencing _____ that the Unit be sold only to Low Income Households at an affordable housing cost, which may result in purchase prices which are substantially less than the current fair market value of the Unit.
- C. The Homeowner is obtaining a purchase money loan (the "Loan") from a private lender (the "Lender") for a portion of the costs of acquisition of the Unit which loan shall be secured by a First Lien (as defined in the Covenant) against the Unit. A description of the Loan is set forth in Exhibit "T" hereto, which is incorporated herein.
- D. The Homeowner may Transfer his, her or their interests in the Unit to a Permitted Transferee who may in turn obtain a First Lien purchase money loan from an institutional lender for a portion of the costs of acquisition of the Unit. This subsequent lender and loan are also hereinafter referred to as the "Lender" and the "Loan".
- E. Pursuant to the Covenant, the City has the right to acquire the Unit in the event, among other things, that it becomes subject to a foreclosure proceeding, and the City has the right to make payments to cure a Default or delinquency on the Loan.
- F. The right to make payments to cure a Default or delinquency on the Loan will be of benefit to the City by allowing the City to prevent the foreclosure of the Unit, which will prevent the possible early termination of the Covenant.
- G. The City's right to make payments to cure a Default or delinquency on the Loan will also be of benefit to the Homeowner, by allowing the Homeowner to retain ownership of the Unit and to avoid foreclosure.
- H. The City desires to obtain the authority to make payments to cure a Default or delinquency on the Loan, on the condition that the Homeowner agrees to reimburse the City for any payments made to cure a Default or delinquency on the Loan and any costs incurred in making such payments including but not limited to the cost of staff time and interest on the sums advanced by City at the rate earned by the City for the investment of City funds during the period of such advance. In order to induce the City to obtain the authority to make payments to cure a Default or delinquency on the Loan, the Homeowner is willing to agree to reimburse the City for

any payments made to cure a Loan Default or delinquency together with any costs incurred in making such payments including but not limited to the cost of staff time and interest on the sums advanced by City at the rate earned by the City for the investment of City funds during the period of such advance. The Homeowner understands and acknowledges that the City would not make payments to cure a Loan Default or delinquency but for the Homeowner's agreement to make such reimbursements to the City, as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

1. **Cure of Loan Default.** The City hereby has the right, but not the obligation, to make payments to the Lender to fully or partially cure any Default or delinquency in payments of the Loan.

2. **Reimbursement Obligation of Homeowner.** The Homeowner hereby agrees to reimburse the City for any and all payments made by the City to fully or partially cure any Default or delinquency in payments of the Loan and for any costs incurred by the City in making such payments including but not limited to the cost of staff time and interest on the sums advanced by City at the rate earned by the City for the investment of City funds during the period of such advance. Such payments shall be made within thirty (30) days after written demand is made therefor from the City to the Homeowner. The City may make such written demand to the Homeowner at any time after making such payments. If such written demand is made by personal delivery of such demand given to the Homeowner, or left at the Unit, such demand shall be deemed given immediately upon such delivery. If such written demand is made by reliable overnight delivery service (such as FedEx), such demand shall be deemed given one business day after deposit of the written demand with the overnight delivery service. If such written demand is made by registered or certified U.S. Mail, such demand shall be deemed given three business days after deposit of the written demand with the U.S. Postal Service.

3. **Security for Reimbursement.** The obligation of the Homeowner to make the reimbursement payments to the City required under Section 2 shall be secured by the Affordable Housing Deed of Trust which shall encumber the Homeowner's fee title to the Unit. Such deed of trust shall be executed by the Homeowner and shall be recorded in the official records of Orange County, California, at the time Homeowner acquires title to the Unit. The Homeowner consents to recordation of such deed of trust in the official records of Orange County, California. The Affordable Housing Deed of Trust shall secure all amounts due from the Homeowner and/or his, her or their successors and assigns as provided in this Reimbursement Agreement.

4. **Notice of Default and Delinquency.** The Homeowner agrees to deliver to the City a copy of any notice of Default or delinquency in repayment of the Loan which Homeowner receives from or on behalf of the Lender. Such notices shall be delivered to the City within five (5) days of Homeowner's receipt of such notice from the Lender.

5. **Waivers.**

(a) The Homeowner expressly agrees that any payment due hereunder may be extended from time to time at the City's sole and absolute discretion and that the City may

accept security in consideration for any such extension or release any security for this Reimbursement Agreement at its sole discretion all without in any way affecting the liability of the Homeowner.

(b) No extension of time for payment of the amounts due pursuant to this Reimbursement Agreement made by agreement by the City with any person now or hereafter liable for the payment of this Reimbursement Agreement shall operate to release, discharge, modify, change or affect the original liability of the Homeowner under this Reimbursement Agreement, either in whole or in part.

(c) The obligations of the Homeowner under this Reimbursement Agreement shall be absolute and the Homeowner waives any and all rights to offset, deduct or withhold any payments or charges due under this Reimbursement Agreement for any reasons whatsoever.

(d) The Homeowner 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 Reimbursement Agreement, and the benefit of any exemption under any homestead exemption laws, if applicable.

(e) No previous waiver and no failure or delay by the City in acting with respect to the terms of this Reimbursement Agreement shall constitute a waiver of any breach, Default, or failure or condition under this Reimbursement Agreement. A waiver of any term of this Reimbursement Agreement must be made in writing and shall be limited to the express written terms of such waiver.

6. Attorneys' Fees and Costs. The Homeowner agrees that if any amounts due under this Reimbursement Agreement are not paid when due, the Homeowner shall 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 Reimbursement Agreement, whether or not suit is filed. The Homeowner further agrees that the provisions of Section 22 of the Covenant regarding attorneys fees and costs shall be equally applicable to this Reimbursement Agreement.

7. Miscellaneous.

(a) **Term of Agreement.** This Reimbursement Agreement shall take effect upon the date set forth in the first paragraph hereof and shall terminate concurrently with the termination of the Covenant.

(b) **Successor is Deemed Included in All References to Predecessor.** Whenever in this Reimbursement Agreement either the Homeowner or the City is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Reimbursement Agreement contained by or on behalf of the Homeowner or the City shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

(c) **Amendment.** No modification, rescission, waiver, release or amendment of any provision of this Covenant shall be made except by a written agreement executed by Homeowner and the City.

(d) **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received in the manner and to the addresses set forth in Section 21 of the Covenant.

(e) **Further Assurances and Corrective Instruments.** Homeowner shall execute any further documents consistent with the terms of this Covenant, including documents in recordable form, as the City shall from time to time find necessary or appropriate to effectuate its purposes in entering into this Covenant.

(f) **Execution in Counterparts.** This Reimbursement Agreement may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and shall be one and the same instrument. This Agreement shall not be effective until the execution and delivery by the parties of at least one set of counterparts. The parties hereunder authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

(g) **Applicable Law.** This Reimbursement Agreement shall be governed by and construed in accordance with the laws of the State of California.

(h) **Captions.** The captions or headings in this Reimbursement Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Reimbursement Agreement.

(i) **Definition of Terms.** Terms not otherwise defined in this Reimbursement Agreement are defined in the Covenant.

IN WITNESS WHEREOF, the Homeowner and the City have duly executed this Reimbursement Agreement, all as of the date first above written.

CITY OF LAGUNA WOODS:

By: _____
Name: _____
Title: _____

HOMEOWNER:

Name: _____

Name: _____

EXHIBIT "A" TO EXHIBIT E

Name of Homeowner: _____

Address of Unit: _____

Name of Lender: _____

Amount of Loan: _____

EXHIBIT "F"

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Laguna Woods
24264 El Toro Road
Laguna Woods, California 92637
Attention: City Manager

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

AFFORDABLE HOUSING OPTION AGREEMENT

THIS AFFORDABLE HOUSING OPTION AGREEMENT ("Option Agreement") is entered into as of _____, 200__, by and between the **CITY OF LAGUNA WOODS**, a municipal corporation (the "City"), and _____ (the "Homeowner").

RECITALS

A. Homeowner has purchased a condominium located at _____, Laguna Woods, California, as such real property is more particularly described in Exhibit "A" attached hereto and incorporated herein (the "**Unit**").

B. Homeowner and the City have entered into an Affordable Housing Covenant dated concurrently herewith (the "**Covenant**"). Under the terms of the Covenant, the parties have agreed that for a thirty (30) year period commencing _____ the Unit shall be sold only to Lower Income Senior Households at an Affordable Housing Cost and that the Unit may be sold or otherwise transferred only as provided in Section 4 of the Covenant.

C. Pursuant to Section 7 of the Covenant, the Homeowner has agreed to grant to the City an option to purchase the Unit in the event Homeowner is in Default of any of his, her or their obligations set forth in the Covenant.

D. Homeowner desires to grant to City an option to purchase the Unit on the terms and conditions set forth hereinbelow. For purposes of this Option Agreement, "**Unit**" shall also be deemed to include any and all improvements located on the real property.

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

1. Grant of Option.

(a) Homeowner grants to City an option (the "**Option**") to purchase the Unit on the terms and conditions set forth in this Option Agreement. The Option may be exercised only upon the occurrence of an event of Default under the Covenant.

(b) The purchase price payable by the City to the Homeowner for the Unit shall be the Affordable Housing Cost of the Unit for Low Income Households (as defined in the Covenant), as of the date of the close of escrow for the City's acquisition of the Unit (the "**Option Price**"). Homeowner agrees that this Option may be specifically enforced.

(c) For purposes of this Option Agreement, the Affordable Housing Cost of the Unit shall be reasonably determined the City by assuming (a) a 30 year, fully amortized, level payment mortgage loan for 50% of the price of the Unit, at currently prevailing mortgage rates, (b) the prevailing cost of mortgage insurance payments for the loan described in subparagraph (a), but only if mortgage insurance would customarily be charged for such loan, (c) property taxes and assessments based on the reassessment of the Unit as of the closing date of the City's acquisition of the Unit, assuming the Unit is not exempt from such taxes and assessments, (d) current homeowner's association fees, and (e) the prevailing cost for fire and casualty insurance, however, if the homeowner's association carries fire and casualty insurance with respect to the exterior of the Unit, then no additional cost shall be assigned to fire and casualty insurance.

(d) The Option created hereby shall be irrevocable by Homeowner and shall be binding upon the successors and assigns of Homeowner. The City shall have the right of specific performance to enforce the terms of this Option Agreement.

2. Term and Consideration for Option. The term of the Option ("**Option Term**") shall commence on the date of this Option Agreement, and shall expire upon the expiration or termination of the Covenant.

3. Exercise of Option. The Option may be exercised by City's delivery to Homeowner of written notice of such exercise (the "**Exercise Notice**"). In the event that the City exercises the Option, but, prior to the sale of the Unit to the City, the Homeowner cures the event that gave rise to the right of the City to exercise the Option, the City's exercise of the Option shall be deemed revoked. The revocation of the exercise of the Option shall not terminate this Option Agreement or preclude the City from subsequently exercising the Option upon a later occurrence of an event giving rise to the right of the City to exercise the Option.

4. Escrow and Completion of Sale. Within five (5) days after City has exercised the Option, or as soon thereafter as reasonably practicable, an escrow shall be opened with an escrow company mutually acceptable to City and Homeowner for the conveyance of the Unit to the City. The City shall deposit in escrow not later than one (1) business day prior to the anticipated close of escrow date ("**Close of Escrow**") cash in an amount equal to the Option Price. The City's obligation to close escrow shall be subject to the City's approval of a then current preliminary title report and, at City's option, environmental and other site testing. Any exceptions shown on such preliminary title report created on or after the Homeowner's acquisition of the Unit shall be removed by Homeowner at its sole expense prior to the close of escrow pursuant to this Section 4 unless such exception(s) is (are) accepted by City in its reasonable discretion; provided, however, that City shall accept the following exceptions to title: (i) current taxes not yet delinquent, (ii) matters affecting title existing on the date of Homeowner's acquisition of the Unit, (iii) liens and encumbrances in favor of the City, and (iv) matters shown as printed exceptions in the standard form CLTA Homeowner'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 Homeowner shall be responsible for the cost of a CLTA Homeowner's policy of title insurance. The City shall have thirty (30) days after exercise of the Option to enter upon the Unit to conduct any tests, inspections, investigations, or studies of the condition of the Unit. Homeowner shall permit the City access to the Unit for such purposes. The City shall indemnify, defend, and hold harmless Homeowner and its officers, directors, shareholders, partners, employees, agents, and representatives from and against all claims, liabilities, or damages, and including expert witness fees and reasonable attorney's fees and costs, caused by City's activities with respect to or arising out of such testing, inspection, or investigatory activity on the Unit. Close of Escrow shall take place promptly after acceptance by City of the condition of title and the physical and environmental condition of the Unit. Until the Close of Escrow, the terms of the Covenant and the documents executed and recorded pursuant thereto shall remain in full force and effect.

5. Failure to Exercise Option. If the Option is not exercised in the manner provided in Section 3 above before the expiration of the Option Term, the Option shall terminate. Upon receipt of the written request of Homeowner, City shall cause a quitclaim deed terminating or releasing any and all rights City may have to acquire the Unit (the "**Quitclaim Deed**") to be recorded in the Official Records of Orange County, California.

6. Assignment and Nomination. The City may, at its option, assign its rights hereunder without obtaining the consent of the Homeowner, and the City may nominate another person or entity to acquire the Unit, and the identity of such nominee shall not be subject to the approval of the Homeowner. In no event shall Homeowner, without the prior express written consent of the City, which consent shall be given by the City only in the event that the City determines the Transfer fully complies with Section 4 of the Covenant, assign or transfer its obligations of this Option to any person other than a Permitted Transferee as provided in the Covenant.

7. Title. Following the date hereof, except as permitted by the Covenant, Homeowner agrees not to cause, and shall use commercially reasonable efforts not to permit, any lien, easement, encumbrance or other exception to title to be recorded against the Unit without City's prior written approval, such approval not to be unreasonably withheld.

8. Representations and Warranties of Homeowner. Homeowner hereby represents, warrants and covenants to City as follows, which representations and warranties shall survive the exercise of the Option and the Close of Escrow:

(a) that this Option Agreement and the other documents to be executed by Homeowner hereunder, upon execution and delivery thereof by Homeowner, will have been duly entered into by Homeowner, and will constitute legal, valid and binding obligations of Homeowner;

(b) neither this Option Agreement, nor anything provided to be done under this Option Agreement, violates or shall violate any contract, document, understanding, agreement or instrument to which Homeowner is a party or by which it is bound; and

(c) Homeowner shall pay, prior to delinquency, any and all real property taxes and assessments which affect the Unit.

Homeowner agrees to indemnify, protect, defend, and hold City and the Unit harmless from and against any damage, claim, liability, or expense of any kind whatsoever (including, without limitation, reasonable attorneys' fees and fees of expert witnesses) arising from or in connection with any breach of the foregoing representations, warranties and covenants. Such representations and warranties of Homeowner, shall be true and correct on and as of the date of this Option Agreement and on and as of the date of the Close of Escrow.

9. Representations and Warranties of City. City hereby represents and warrants and covenants to Homeowner, as follows, which representations and warranties shall survive the Close of Escrow:

(a) that this Option Agreement and the other documents to be executed by City hereunder, upon execution and delivery thereof by City, will have been duly entered into by City, and will constitute legal, valid and binding obligations of City, and

(b) neither this Option Agreement, nor anything provided to be done under this Option Agreement, violates or shall violate any contract, document, understanding, agreement or instrument to which City is a party or by which it is bound.

City agrees to indemnify, protect, defend, and hold Homeowner and the Unit harmless from and against any damage, claim, liability, or expense of any kind whatsoever (including, without limitation, reasonable attorneys' fees and fees of expert witnesses) arising from or in connection with any breach of the foregoing representations, warranties and covenants. Such representations and warranties of City, and any other representations and warranties of City contained elsewhere in this Option Agreement shall be true and correct on and as of the date of this Option Agreement and on and as of the date of the Close of Escrow.

10. General Provisions.

10.1 Paragraph Readings. The paragraph headings used in this Option Agreement are for purposes of convenience only. They shall not be construed to limit or extend the meaning of any part of this Option Agreement.

10.2 Notices. All notices, demands, consents, requests and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed conclusively to have been duly given (a) when hand delivered to the other party; (b) three (3) business days after such notice has been sent by United States mail via certified mail, return receipt requested, postage prepaid, and addressed to the other party as set forth below; or (c) the next business day after such notice has been deposited with a national overnight delivery service reasonably approved by the parties (Federal Express and Airborne Express are deemed approved by the parties), postage prepaid, addressed to the party to whom notice is being sent as set forth below with next-business-day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery service provider. Unless otherwise provided in writing, all notices hereunder shall be addressed as follows:

To Homeowner:

To City:

City of Laguna Woods
24264 El Toro Road
Laguna Woods, California 92637
Attention: City Manager

10.3 Binding Effect. Subject to the provisions of Section 6, the terms, covenants and conditions of this Option Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and transferees.

10.4 Entire Agreement. This Option Agreement sets forth the entire agreement between the parties hereto respecting the Option, and supersedes all prior negotiations and agreements, written or oral, concerning or relating to the subject matter of this Option Agreement.

10.5 California Law. This Option Agreement shall be governed by the laws of the State of California and any question arising hereunder shall be construed or determined according to such laws.

10.6 Time of the Essence. Time is of the essence with respect to each and every provision of this Option Agreement.

10.7 Counterparts. This Option Agreement may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and shall be one and the same instrument. This Option Agreement shall not be effective until the execution and delivery by the parties of at least one set of counterparts. The parties hereunder authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Option Agreement.

10.8 Attorneys' Fees. If any party to this Agreement institutes any action, suit, counterclaim, appeal or arbitration for any relief against another party, declaratory or otherwise (collectively an "**Action**"), to enforce the terms hereof or to declare rights hereunder or with respect to any inaccuracies or material omissions in connection with any of the covenants, representations or warranties on the part of the other party to this Agreement, then the prevailing party in such Action, whether by arbitration or final judgment, shall be entitled to have and recover of and from the other party all costs and expenses of the Action, including, without limitation, reasonable attorneys' fees and costs (at the prevailing party's attorneys' then-prevailing rates as increased from time to time by the giving of advanced written notice by such counsel to such party) incurred in bringing and prosecuting such Action and/or enforcing any

judgment, order, ruling or award (collectively, a "**Decision**") granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in such Action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such Decision. A court or arbitrator shall fix the amount of reasonable attorneys' fees and costs upon the request of either party. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including, without limitation, reasonable attorneys' fees and expert fees and costs (collectively "**Costs**") incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include, without limitation, in addition to Costs incurred in prosecution or defense of the underlying action, reasonable attorneys' fees, costs, expenses and expert fees and costs incurred in the following: (a) postjudgment motions and collection actions; (b) contempt proceedings; (c) garnishment, levy, debtor and third party examinations; (d) discovery; (e) bankruptcy litigation; and (f) appeals of any order or judgment. For the purposes of this Agreement the term "**prevailing party**" shall have the meaning set forth in the California Code of Civil Procedure Section 1032(a)(4).

10.9 Computation of Time. All periods of time referred to in this Option Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time is specified as business days (which shall not include Saturdays, Sundays and state or national holidays), provided that if the date or last date to perform any act or give any notice with respect to this Option Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Agreement.

10.10 Definition of Terms. Terms not otherwise defined in this Option Agreement are defined in the Covenant.

10.11 Further Assurances. Each of the parties hereto shall execute and deliver at their own cost and expense, any and all additional papers, documents, or instruments, and shall do any and all acts and things reasonably necessary or appropriate in connection with the performance of their respective obligations hereunder in order to carry out the intent and purposes of this Agreement.

IN WITNESS WHEREOF, this Option Agreement is executed by the parties hereto as of the date first above written.

HOMEOWNER:

By: _____
Printed Name: _____

By: _____
Printed Name: _____

CITY:

CITY OF LAGUNA WOODS, a municipal
corporation

By: _____

EXHIBIT "A" TO EXHIBIT F
LEGAL DESCRIPTION

[Same as Exhibit A to the Covenant]

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

- personally known to me
- OR-**
- 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.

WITNESS my hand and official seal.

Signature Of Notary

Signer(s) Other Than Named Above

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

City of Laguna Woods
24264 El Toro Road
Laguna Woods, California 92637
Attention: City Manager

Exempt From Recording Fee Pursuant to Government Code Section 27383

AFFORDABLE HOUSING DEED OF TRUST WITH ASSIGNMENT OF RENTS

This AFFORDABLE HOUSING DEED OF TRUST WITH ASSIGNMENT OF RENTS, made _____, between _____ herein called Trustor, whose address is _____, _____ herein called TRUSTEE, and CITY OF LAGUNA WOODS, a municipal corporation, herein called BENEFICIARY,

WITNESSETH: That Trustor grants, transfers and assigns to Trustee in trust, with power of sale, that property in the City of Laguna Woods, County of Orange, State of California, described as:

See Exhibit "A" attached hereto

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of any sums advanced on behalf of Trustor according to the terms of a reimbursement agreement of even date herewith ("Reimbursement Agreement") made by Trustor and Beneficiary, and extensions and renewals thereof, (2) the performance of each agreement and obligation of Trustor according to the terms of an affordable housing covenants, conditions and restrictions of even date herewith ("Affordable Housing Covenant") made by Trustor in favor of Beneficiary, and extensions and renewals thereof, (3) the performance of each agreement of Trustor incorporated by reference or contained herein, and (4) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

A. To protect the security of this Deed of Trust, Trustor agrees:

1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefore, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon, not to commit or permit

waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonable necessary, the specific enumerations herein not excluding the general.

2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

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

4) To pay, at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may, make or do the same in such manner or to such extent as either may deem necessary to protect the security thereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3) That at any time or from time to time, without liability therefor and without notice, upon written request of beneficiary and presentation of this Deed, or a copy thereof; and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed, or a copy thereof; and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof; in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder (including, without limitation, any default under the Reimbursement Agreement or Affordable Housing Covenant), Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place affixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to

payment of all sums expended under the terms hereof; not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7) Beneficiary, or any successor in interest to any obligation secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

8) That this Deed applies to, inures to the benefit of; and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assign. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

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

10) All capitalized terms used in this Section 10 and which are not defined shall have the meaning ascribed to such terms under the Affordable Housing Covenant. Trustor agrees for itself and its successors and assigns, and every successor to Trustor's interest in said property, or any part thereof, to abide by the terms of the Affordable Housing Covenant during the Affordability Period, including, without limitation, that

(a) Said property shall not be Transferred except to Permitted Transferees in accordance with the requirements of Section 3 of the Affordable Housing Covenant; and

(b) Said property shall be subject to (i) the Further Encumbrance limitations set forth under Section 5.3 of the Affordable Housing Covenant, and (ii) the terms and conditions of the Reimbursement Agreement and the Option Agreement.

The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

Signature of Trustor

Signature of Trustor

STATE OF CALIFORNIA)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

- personally known to me
- or-
- 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.

WITNESS my hand and official seal.

Signature Of Notary

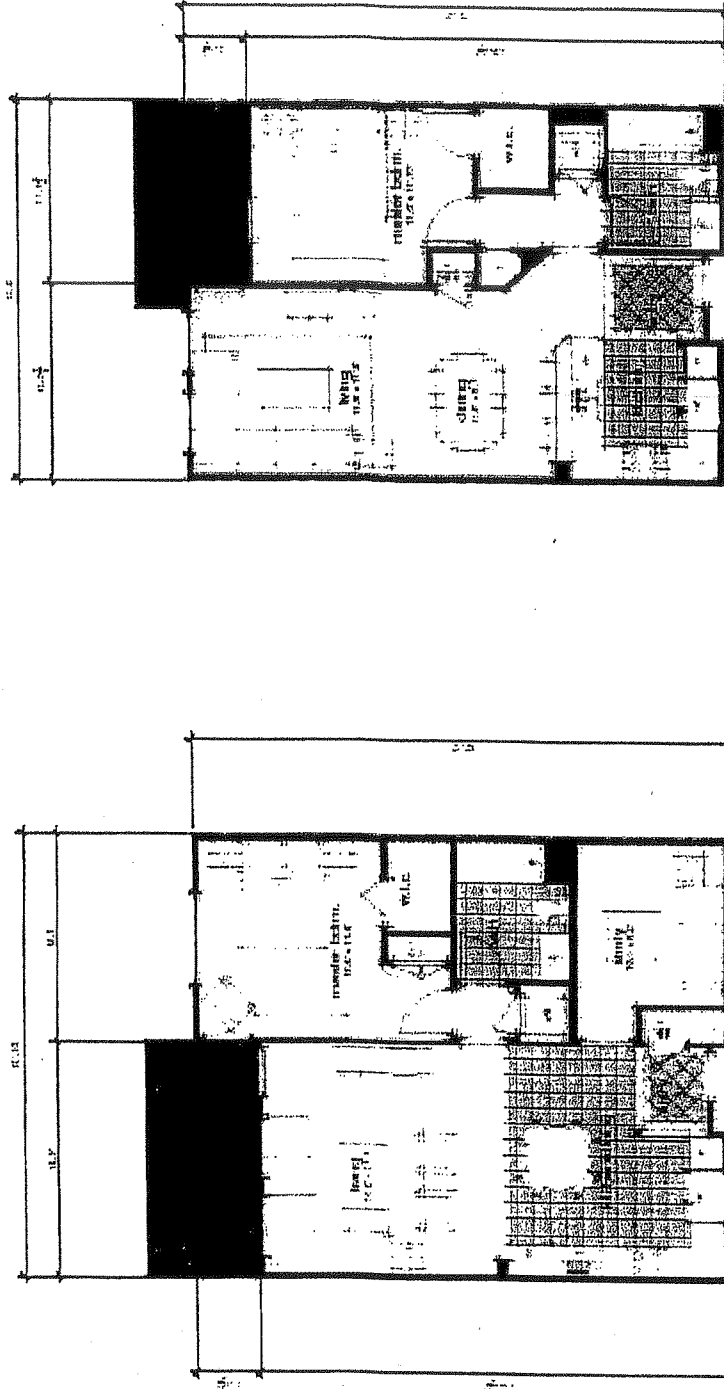
Signer(s) Other Than Named Above

EXHIBIT "D"
TO DENSITY BONUS HOUSING AMENDED AGREEMENT

Sample Floor Plans

EXHIBIT D

Figure 4
Affordable Housing Plan
Affordable Unit Floor Plans



UNIT B floor plan
1 BEDROOM, 1 BATH
KITCHEN, LIVING ROOM,
BED ROOM, HALL

UNIT A floor plan
1 BEDROOM, 1 BATH
KITCHEN, LIVING ROOM,
BED ROOM, HALL

EXHIBIT "E"
TO DENSITY BONUS HOUSING AMENDED AGREEMENT
Regulatory Agreement

EXHIBIT E

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Laguna Woods
City Clerk
24264 El Toro Road
Laguna Woods, CA 92637

(Space Above For Recorder's Use)

This Regulatory Agreement and Declaration of Covenants and Restrictions is recorded at the request and for the benefit of the City of Laguna Woods and is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

**REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS**

This REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS (“**Agreement**”) is entered into as of this _____ day of _____, 200___, by and between the CITY OF LAGUNA WOODS, a California municipal corporation (“**City**”), and _____, a _____ (“**Owner**”) (hereinafter, City and Owner are sometimes referred to collectively as “**Parties**” and individually as a “**Party**”).

R E C I T A L S

A. Owner is the owner in fee of that certain real property in the City of Laguna Woods, consisting of approximately 3.05 acres of land, and more particularly described in the legal description attached hereto as Attachment 1 (the “**Property**”) and incorporated by this reference; and

B. City has granted Owner entitlements to develop on the Property up to a one hundred thirty four (134) unit residential community (the “**Project**”). Owner has reserved the ability to own all of the units in the Project and operate the Project as a rental community until such time as Owner elects to sell individual units to individual owners; and

C. On or about _____, 20___, City and Owner entered into that certain Amended and Restated Density Bonus Housing Agreement (the “**Amended Density Bonus Agreement**”), which (i) sets forth the terms and conditions under which fifteen (15) residential units in the Project will be rented and/or sold as affordable housing units in compliance with the Affordable Housing Plan and (ii) grants Owner twenty-seven (27) density bonus units in accordance with the provisions of Government Code Section 65915 (the “**State Density Bonus Law**”);

D. Pursuant to the Amended and Restated Density Bonus Agreement, City and Owner desire to enter into this Agreement to place certain covenants and restrictions on the

Property and use and operation of the Project, including the imposition of the affordability covenants set forth in this Agreement.

E. It is the intent of the City and Owner that Owner's fee interest in the Property shall be subject to this Regulatory Agreement and that the terms hereof shall be binding on the Owner and its successors in interest in the Property for so long as this Regulatory Agreement shall remain in effect.

A G R E E M E N T

Based upon the foregoing Recitals, which are hereby incorporated by this reference, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. Definitions and Exhibits.

1.1 Definitions. In addition to the terms that may be defined elsewhere in this Agreement, the following terms when used in this Agreement shall be defined as follows:

1.1.1 "*Adjusted for family size appropriate to the unit*" means a household of two (2) persons in the case of a one-bedroom Residential Unit.

1.1.2 "*Affordable Housing Cost*" means that purchase price for a Residential Unit which would result in a Monthly Housing Cost (as defined below) which does not exceed the product of (i) thirty five percent (35%) multiplied by (ii) the State Income Limits for Lower Income Households adjusted for family size appropriate to the unit, multiplied by (iii) one-twelfth (1/12). Affordable Housing Cost for an Affordable Unit shall be calculated as of the date of the sale or resale of the Affordable Unit.

1.1.3 "*Affordable Housing Plan*" means that certain affordable housing program approved for the Project by the City Council of City on March 26, 2005.

1.1.4 "*Affordable Rent*" means annual rent that does not exceed the amount of rent (including a reasonable utility allowance) calculated as the product of thirty percent (30%) times eighty percent of the Orange County Annual Median Income, adjusted for family size appropriate to the unit as reflected in the State Income Limits for Lower Income Households.

1.1.5 "*Affordable Unit*" means individually and "*Affordable Units*" means collectively the Residential Units within the Project to be either (i) rented by Owner to a Low Income Senior Household at an Affordable Rent in accordance with this Agreement or (ii) sold by Owner to a Low Income Senior Household at an Affordable Housing Cost in accordance with the Density Bonus Agreement.

1.1.6 "*Agreement*" and "*Regulatory Agreement*" means this Agreement and all attachments hereto.

1.1.7 “*City*” means the City of Laguna Woods, California, and the City’s successors and assigns.

1.1.8 “*City Attorney*” means the City Attorney for the City of Laguna Woods.

1.1.9 “*City Council*” means the City Council of the City of Laguna Woods.

1.1.10 “*City Manager*” means the City Manager for the City of Laguna Woods.

1.1.11 “*City’s Planning Commission*” means the Planning Commission for the City of Laguna Woods.

1.1.12 “*Density Bonus Agreement*” means the Amended and Restated Density Bonus Housing Agreement referenced in Recital C of this Agreement.

1.1.13 “*Effective Date*” means the date the City Council of City approves this Agreement.

1.1.14 “*Eligible Tenant*” means a Low Income Senior Household who complies with all income verification requirements in this Agreement and the Density Bonus Agreement, and earns less than the State Income Limits for Lower Income Households, adjusted for family size appropriate to the unit.

1.1.15 “*For Rent Affordable Units*” means the Residential Units designated by Owner and rented to (or available for rental by) Low Income Senior Households at an Affordable Rent.

1.1.16 “*Home Office*” means a separate area or room in a For Rent Affordable Unit used for business purposes and claimed as a business expense pursuant to federal and state income tax laws. Any room used for business purposes shall not reduce the number of bedrooms that are required to be within a For Rent Affordable Unit pursuant to this Agreement when such Residential Unit is initially leased to an Eligible Tenant.

1.1.17 “*Household*” means all persons residing in a Residential Unit.

1.1.18 “*Income Computation and Certification Form*” means the form used to determine and certify whether a person who applies to be a tenant in the Project is an Eligible Tenant, in a form approved by City (which may be the form attached hereto as Attachment 2).

1.1.19 “*Individual Unit Owner*” means any owner of the fee title to a Residential Unit other than Owner or any Subsequent Project Owner. The owner’s association of the Project shall be deemed to be an Individual Unit Owner.

1.1.20 “*Low Income Senior Household*” means a Household consisting of qualifying seniors as defined in Civil Code Section 51.3, who also qualify as low income households, which is those households earning less than the State Income Limits for Lower Income Households, adjusted for family size appropriate to the unit.

1.1.21 “*Market Rate Units*” means the Residential Units within the Project to be rented or sold by Owner to any person or entity without restriction. Any real property owned by the homeowner’s association of the Project shall be deemed to be a Market Rate Unit.

1.1.22 “*Monthly Housing Cost*” shall include all of the following associated with the Residential Unit, estimated or known as of the date of the proposed sale of the Residential Unit: (i) principal and interest payments on a mortgage loan not exceeding the prevailing conventional home mortgage lending rates applied by any reputable home mortgage lender, or the lending rates of any government-subsidized or special mortgage program for which a Qualified Purchaser qualifies and has obtained a first trust deed loan for the acquisition of the Residential Unit; (ii) property taxes and assessments; (iii) the cost of fire and casualty insurance covering replacement value of property improvements; (iv) homeowner’s association fees; and (v) a reasonable utility allowance. Monthly Housing Cost for a Residential Unit shall be calculated as the monthly average of estimated costs for the next twelve (12) months for such Residential Unit (as reasonably determined by the City).

1.1.23 “*Owner*” is the party executing this Agreement (and Subsequent Project Owners during their respective periods of ownership of the Project).

1.1.24 “*Project*” means that certain housing development more particularly described in Recital B of this Agreement.

1.1.25 “*Project Rental Period*” means the period commencing on the Effective Date and ending on the earliest to occur of (a) the date on which the fifteenth (15th) Affordable Unit is sold by Owner to a Low Income Senior Household at an Affordable Housing Cost in accordance with the Density Bonus Agreement, (b) the date Owner conveys fee title to the final Residential Unit to an Individual Unit Owner or (c) the expiration date of the Density Bonus Agreement.

1.1.26 “*Qualified Purchaser*” means a person or family who complies with all income verification requirements in this Agreement and the Density Bonus Agreement, and earns less than the State Income Limits for Lower Income Households, adjusted for family size appropriate to the unit.

1.1.27 “*Residential Unit*” means a residential dwelling unit within the Project.

1.1.28 “*State Density Bonus Law*” means Government Code Section 65915 et seq.

1.1.29 “*State Income Limits for Lower Income Households*” means the Orange County, California area State Income Limits for Lower Income Households, adjusted for

family size appropriate to the unit, as established by the United States Department of Housing and Urban Development, and as published periodically by the State of California Department of Housing and Community Development. Upon request by Owner, City shall provide to Owner the amount of the State Income Limits for Lower Income Households.

1.1.30 “*Subsequent Project Owner*” means any person or entity who acquires fee title to substantially all of the Project from Owner then owned by Owner, after taking into consideration any Residential Units sold by Owner to Individual Unit Owners; provided that Subsequent Project Owner shall not include any purchaser of a single Residential Unit.

1.1.31 “*Total Affordability Term*” with respect to each Affordable Unit means the thirty (30) year period during which such Affordable Unit shall be restricted for use and occupancy by only a Low Income Senior Household.

1.1.32 “*Total Density Bonus Agreement Term*” means the term that shall commence on the Effective Date and shall continue until the earlier of either: (i) all of the Affordable Units have been conveyed to Low Income Senior Households and the executed Termination and Release of Regulatory Agreement has been recorded pursuant to Section 6.6 of the Density Bonus Agreement; or (ii) expiration of the Total Affordability Terms for all of the Affordable Units.

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

- Attachment 1 – Legal Description of the Property;
- Attachment 2 – Income Computation and Certification Form.

2. Development of the Project. Owner has completed the construction and development of the Project on the Property subject to the terms and conditions set forth in the Density Bonus Agreement.

3. Affordability.

3.1 Term of Affordability Covenants for Affordable Units. The Total Affordability Term for each Affordable Unit shall be a period of thirty (30) years. During the Total Affordability Term for an Affordable Unit, such Affordable Unit shall be restricted to use and occupancy by only a Low Income Senior Household. The Total Affordability Term for an Affordable Unit shall commence on the date of the rental of the Affordable Unit or close of escrow for the Affordable Unit, whichever occurs first. By way of explanation of the foregoing two sentences, it is possible that the Total Affordability Period for one Affordable Unit will neither commence on the same date nor terminate on the same date as another Affordable Unit, and it is possible that the Total Affordability Terms for all Affordable Units will commence on different days and terminate on different days. At any time and from time to time during the Project Rental Period, Owner may elect to substitute an equivalent Residential Unit in terms of number of bedrooms (the “**Substitute Affordable Unit**”) for an Affordable Unit and thereafter, the substituted unit shall be the Affordable Unit and the previously designated Affordable Unit

shall be an unrestricted Residential Unit. In that event, the remaining portion of the Total Affordability Term for the Affordable Unit shall be transferred to the Substitute Affordable Unit.

3.2 Carryover of Total Affordability Term. In the event the Total Affordability Term for an Affordable Unit commences during the Project Rental Period and Owner subsequently conveys fee title to such Affordable Unit to a Qualified Purchaser pursuant to Section 6 of the Density Bonus Agreement, the Total Affordability Term for such Affordable Unit shall not begin anew. For example, if Owner rents a particular Affordable Unit to a Low Income Senior Household for three (3) years and then conveys fee title of that Affordable Unit to the same or different Low Income Senior Household, there would be twenty-seven (27) years remaining on the Total Affordability Term for such Affordable Unit.

3.3 Memorializing Commencement of Total Affordability Term. Pursuant to Section 6 of the Density Bonus Agreement, Owner shall keep detailed records of the commencement date of the Total Affordability Term for each Affordable Unit and each Substitute Affordable Unit.

3.4 Total Regulatory Agreement Term. The term of this Agreement shall coincide and run concurrently with the Total Density Bonus Agreement Term. This Agreement shall remain binding and in full force and effect until the expiration of the Total Density Bonus Agreement Term.

4. Use; Affordability Covenants. For the entirety of the Project Rental Period, Owner shall own, operate, and maintain the Project by offering to rent and leasing For Rent Affordable Units in accordance with the covenants and conditions of this Section 4.

4.1 General. Owner shall initially cause fifteen (15) of the Residential Units to be For Rent Affordable Units. Owner may re-designate which Residential Units shall be For Rent Affordable Units; provided that Owner complies with the covenants and conditions of this Agreement and the Density Bonus Agreement. The leases that Owner executes with Eligible Tenants leasing For Rent Affordable Units shall prohibit the occupants from using the Residential Units for any non-residential uses (other than to maintain a Home Office). The required number of For Rent Affordable Units shall be reduced by the number of For Rent Affordable Units sold by Owner to a Qualified Purchaser.

4.2 Occupancy by Eligible Tenants. The lease for each For Rent Affordable Unit shall provide that it is to be used as the principal residence of that For Rent Affordable Unit's Eligible Tenant and for no other purpose. The lease for a For Rent Affordable Unit may allow an Eligible Tenant to have a Home Office so long as the Affordable Unit is the Eligible Tenant's principal residence. The lease shall further provide that an Eligible Tenant shall not assign its lease or sublease its For Rent Affordable Unit or otherwise grant to others any right of occupancy in the For Rent Affordable Unit, except as permitted by Civil Code Section 51.3.

4.3 Occupancy Limits. The number of persons permitted to occupy each For Rent Affordable Unit shall not exceed the occupancy permitted pursuant to the general requirements of the United States Department of Housing and Urban Development.

4.4 Determination of Eligible Tenant Status. Immediately prior to Owner leasing any For Rent Affordable Unit, Owner shall obtain an Income Computation and Certification Form from each applicant for occupancy of a For Rent Affordable Unit, dated immediately prior to the date of initial occupancy of the For Rent Affordable Unit by such applicant. Owner shall also use good faith efforts to confirm the age of the prospective tenant to determine if such tenant meets the age requirements for Eligible Tenants. In addition, Owner shall provide such further information as may be reasonably required by City for purposes of verifying a tenant's status as an Eligible Tenant. Owner shall use good faith efforts to verify that the income information provided by an applicant is accurate by obtaining the following as a part of the verification process: (a) the Social Security Number (if available) of the proposed tenant; (b) copies of the federal and state income tax returns filed by the proposed tenant for the prior two (2) calendar years (if filing required); (c) copies (if available) of the two most current wage earning statements of the proposed tenant; (d) a certification as to the income and family size of the proposed tenant; and (e) any other information that City may reasonably require to verify the income of the proposed tenant. Owner shall maintain in its records each Income Computation and Certification Form obtained pursuant to this Section and Section 4.5 for a minimum period of five (5) years. The City shall be provided a copy of all Income Computation and Certification Forms.

4.5 Recertification. Within sixty (60) days prior to the first anniversary date of the occupancy of a For Rent Affordable Unit by an Eligible Tenant, and on each anniversary date thereafter, Owner shall recertify the income of such Eligible Tenant by obtaining a completed Income Computation and Certification Form based upon the current income of each occupant of the For Rent Affordable Unit. In the event that recertification demonstrates that the Household that is occupying a For Rent Affordable Unit has income that exceeds the income permitted for Eligible Tenant status, Owner shall perform either of the following: (i) to the extent permitted by applicable law, the occupants' lease shall not be renewed and said occupants shall be required to vacate the unit within one hundred eighty (180) days after the recertification; or (ii) the next available Market Rate Unit with the same number of bedrooms shall be leased as a For Rent Affordable Unit at Affordable Rent to an Eligible Tenant so that the Project will be in compliance with the covenants and conditions of this Agreement, and the previous For Rent Affordable Unit shall be redesignated as a Market Rate Unit and the occupants thereof may be charged the amount of rent for a Market Rate Unit.

4.6 Leasing Affordable Units. The For Rent Affordable Units shall be available for rental on a continuous basis and Owner shall not give preference to any particular class or group in renting For Rent Affordable Units, except to the extent that the For Rent Affordable Units are required to be rented to Eligible Tenants. Owner shall maintain a list of persons who have applied to lease For Rent Affordable Units and, should multiple tenants be equally eligible (as to income, credit history, and other nondiscriminatory criteria) and qualified to lease a For Rent Affordable Unit, Owner shall rent available For Rent Affordable Units to Eligible Tenants on a first qualified (with reasonable efforts made to qualify applicants in the order that the applications are received), first offered basis, or pursuant to a lottery system. Owner shall use commercially reasonable efforts to lease For Rent Affordable Units that become available as quickly as reasonably possible. Owner shall market the For Rent Affordable Units to the citizens of the City of Laguna Woods on a nonexclusive basis.

4.7 Rental Agreement and Rental Deposit. The form of the lease agreement and required rental deposit that will be entered into between Owner and Eligible Tenants shall be reasonably approved by City prior to the rental or leasing of any of the For Rent Affordable Units. Once approved, no material changes shall be made to the form of the lease agreement or rental deposit relating to the total rent to be paid by an Eligible Tenant, the qualification of an Eligible Tenant, or usage of the Affordable Unit, without City's prior written approval, which shall not be unreasonably withheld. The lease agreement shall obligate the Eligible Tenants to comply with the provisions set forth in this Agreement, and an Eligible Tenant who violates such requirements shall be in default under the lease agreement. Each lease agreement with an Eligible Tenant shall include a provision to the effect that the Owner has relied on the information provided by the Eligible Tenant on the Income Computation and Certification Form and all other supporting information supplied by the Eligible Tenant in determining qualification for occupancy of the applicable For Rent Affordable Unit, and that any material misstatement in such certification (whether or not intentional) shall be cause for immediate termination of such lease agreement. In addition, each lease agreement shall contain a provision that failure to cooperate with the annual recertification process may disqualify the Eligible Tenant as such and will be cause for immediate termination of such lease agreement. Any termination of a lease for a For Rent Affordable Unit shall be subject to fair housing laws and other laws designed to protect the rights of tenants.

4.8 Time Line of Leasing Low Income Units.

When units are available for lease, the lower income affordable units shall also be available for rent at the same time market rate units are advertised.

5. Termination and Release from Regulatory Agreement and Memorandum. The covenants set forth in this Agreement shall remain binding and in effect from the date of its recording until the date the executed Termination and Release of Regulatory Agreement is recorded for the benefit of the Property in the Official Records for Orange County, California for all of the Affordable Units. The Termination and Release of Regulatory Agreement shall be executed and recorded pursuant to the terms and conditions set forth in the Density Bonus Agreement. Owner may elect to designate the Affordable Units which shall continue to be the subject of this Regulatory Agreement, in which event a termination and release of this Regulatory Agreement substantially in the form of the Unit Release from Regulatory Agreement (in the form attached to the Density Bonus Agreement) shall be executed and recorded for the Market Rate Units.

6. No Discrimination. Owner shall not discriminate against, or segregate, any person or group of persons on account of race, color, creed, national origin, ancestry, sex, marital status, or religion in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Owner for itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.

7. Maintenance of Property. For the Project Rental Period, Owner shall maintain (or cause to be maintained) the Property and all improvements on the Property in a good condition

and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction. City places prime importance on quality maintenance to ensure that affordable housing projects within the City of Laguna Woods are not allowed to deteriorate due to substandard maintenance. In addition, Owner shall keep the Property free from all graffiti and any accumulation of debris or waste material. Owner shall make all repairs and replacements necessary to keep the improvements in good condition and repair and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable materials. In the event that Owner breaches any of the covenants contained in this Section 7, and such default continues for a period of fifteen (15) days after written notice from a City (which notice shall contain a reasonably detailed identification of the purported breach) or such longer period of time as is reasonably necessary to correct the condition (with respect to landscaping, graffiti, debris, waste material, and general maintenance) or thirty (30) days after written notice from City or such longer period of time as is reasonably necessary to correct the condition (with respect to building improvements), then City in addition to whatever other remedy it may have at law or in equity shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, City shall be permitted (but not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure, including a ten percent (10%) administrative charge, which amount shall be promptly paid by Owner to City upon demand.

8. Management. For the Total Density Bonus Agreement Term, Owner shall manage or cause to be managed the Project in accordance with this Section 8.

8.1 Property Manager. Owner shall manage (or shall cause to be managed) those Residential Units that are leased by Owner to tenants in accordance with the terms of this Agreement.

8.2 Gross Mismanagement. In the event of "Gross Mismanagement" (as that term is defined below), City shall have the authority to require that such Gross Mismanagement cease immediately and that management of the Property comply with this Agreement and the Density Bonus Agreement. City shall provide written notice to Owner of the event(s) of Gross Mismanagement occurring (which notice shall contain a reasonably detailed identification of the matters purportedly constituting Gross Mismanagement) and Owner shall have thirty (30) days after receipt of such notice (or such longer period as is reasonably necessary to correct the condition) to cure, correct, or remedy the event(s) of Gross Mismanagement identified in City's notice and to notify City of the cure, correction, or remedy. For purposes of this Agreement the term "**Gross Mismanagement**" shall mean management of the Project in a manner which violates the material terms of this Agreement and/or the Density Bonus Agreement and shall include, but is not limited to, the following:

- i. Knowingly allowing a For Rent Affordable Unit to be occupied by a person who does not qualify as an Eligible Tenant (except for the

limited period of time that such For Rent Affordable Unit may be occupied by persons other than Eligible Tenants in accordance with Section 4.5 above in this Agreement);

- ii. Knowingly renting a For Rent Affordable Unit for more than Affordable Rent;
- iii. Allowing the prescribed occupancy levels to be exceeded without taking prompt action to stop such overcrowding; or
- v. Failure to maintain the Property in the manner prescribed in Section 7.

9. Records. Owner shall maintain complete and accurate records pertaining to the For Rent Affordable Units for a period of no less than five (5) years (unless a longer period of time is expressly set forth herein), and shall permit any duly authorized representative of City to inspect the books and records of Owner pertaining to the Affordable Units.

10. Right to Inspect. City shall have the right to inspect the Property and the For Rent Affordable Units for purposes of assuring compliance with this Agreement during normal business hours on not less than seventy-two (72) hours written notice.

11. Sale of Affordable Units. The conveyance of title to the Residential Units, including For Rent Affordable Units, shall be pursuant to the terms and conditions set forth in Section 6 of the Density Bonus Agreement.

12. Indemnification. Owner shall defend, indemnify and hold harmless City and its officers, officials, agents, employees, representatives, and volunteers from and against any loss, damage, costs, expenses, liability, claim, or judgment (collectively, “**claims**”) relating in any manner to the Property and the operation of the Project and Residential Units as rental properties thereon, or Owner’s performance under this Agreement, except to the extent claims are caused by the negligence or misconduct of City.

13. Insurance. Owner shall procure and keep in full force and effect or cause to be procured and kept in full force and effect for the mutual benefit of Owner and City, and shall provide City evidence reasonably acceptable to City, of insurance policies meeting the minimum requirements set forth in this Section 13.

13.1 Types of Insurance Policies. The insurance policies to be maintained by Owner upon the date specified above and for the duration of the term of this Agreement are as follows:

- i. Commercial General Liability insurance with respect to the Property and the operations of or on behalf of Owner, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence combined single limit including products, completed operations, contractual, bodily injury, personal injury, death and property damage liability, subject to such increases in amount as City may

reasonably require from time to time; provided, that the percentage increase in coverage shall not be required to exceed the percentage increase in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for Urban Wage Earners and Clerical Workers, Los Angeles-Long Beach-Anaheim Average, All Items (1984 = 100) (the "Index"), from and after the date of this Agreement, or, if said Index is discontinued, such official index as may then be in existence and which is most nearly equivalent to said Index (the "CPI Adjustment"). Unless otherwise approved in advance by the City, the insurance to be provided by Owner may provide for a deductible or self-insured retention of not more than Ten Thousand Dollars (\$10,000.00), with such maximum amount to increase at the same rate as the periodic increases in the minimum amount of total insurance coverage set forth above. City and its officers, officials, employees, volunteers, agents, and representatives shall be named as additional insureds under such policy or policies.

- ii. With respect to the improvements and any fixtures and furnishings to be owned or leased by Owner on the Property, all risk property insurance against fire, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in the standard "all risk" form in general use in Orange County, California, with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance policy or policies shall include coverage for earthquakes to the extent generally and commercially available at commercially reasonable rates, if such insurance is generally obtained for rental apartment projects of this size and type in Orange County, California. City shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement.

13.2 Policy Requirements. A copy of each paid-up policy evidencing such insurance (appropriately authenticated by the insurer) or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required herein, and containing the provisions specified herein, shall be delivered to City on or prior to the date specified in Section 13 above, and thereafter, upon renewals, not less than thirty (30) days prior to the expiration of coverage. City may, at any time, and from time to time, inspect and/or copy any and all insurance policies required to be procured by Owner hereunder. In no event shall the limits of any policy be considered as limiting the liability of Owner hereunder. In addition to the requirements set forth in Section 13.1, each insurance policy required to be carried by Owner pursuant to this Agreement:

- i. shall be primary insurance and not contributory with any other insurance which City or its officers, officials, employees, volunteers, agents, or representatives may have;

- ii. shall contain no special limitations on the scope of protection afforded to City or its officers, officials, employees, volunteers, agents, and representatives;
- iii. shall be “per occurrence” rather than “claims made” insurance;
- iv. shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability;
- v. shall provide that the policy will not be cancelled by the insurer or Owner unless there is a minimum of thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested to City;
- vi. shall be written by a California licensed insurer with a Best rating of not less than A:VII;
- vii. shall be endorsed to state that any failure to comply with the reporting provisions of the policies shall not affect coverage provided to City and its officers, officials, employees, volunteers, agents, and representatives; and
- viii. shall contain a waiver by the insurer of any right to subrogation against City, and its officers, officials, employees, volunteer and agents, which arises or might arise by reason of any payment under such policy or policies or by reason of any act or omission of City or its officers, officials, members, employees, agents, or representatives.

14. Repair of Damage. If any improvements on the Property shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty, Owner shall promptly proceed to obtain insurance proceeds and, provided the insurance proceeds are sufficient to restore the Project and the insurance proceeds are made available to Owner therefor by the secured lenders, take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the improvements to substantially the same condition as the improvements are required to be maintained pursuant to this Agreement, and Owner shall complete the same as soon as reasonably possible thereafter so that the Project can continue to be operated and occupied in accordance with this Agreement. In no event shall the repair, replacement, or restoration period exceed three (3) years from the date of the destruction (subject to events of force majeure) unless City, in its sole and absolute discretion, approves a longer period of time.

15. Defaults and Remedies.

15.1 Defaults. Other than the specific notice and cure periods for specific defaults by Owner set forth above in this Agreement, failure or delay by any Party to perform any term or provision of this Agreement which is not cured within thirty (30) days after receipt

of notice from the other Party specifying in reasonable detail the purported breach of this Agreement constitutes a default under this Agreement; provided, however, if such breach is of the nature requiring more than thirty (30) days to cure, the breaching Party shall avoid default hereunder by commencing to cure within such thirty (30) day period, and thereafter diligently pursuing such cure to completion within an additional sixty (60) days following the conclusion of such thirty (30) day period (for a total of ninety (90) days). Except as required to protect against further damages, the injured Party may not institute proceedings against the Party in breach until the time for cure has expired and a default has occurred. Failure or delay by a Party in giving a notice of breach shall not constitute a waiver of any breach.

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

16. Miscellaneous.

16.1 Entire Agreement. This Agreement and the Density Bonus Agreement and all of the exhibits and attachments thereto set forth contain the entire understanding and agreement of the Parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein or therein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

16.2 Attorneys' Fees and Costs. If any party to this Agreement institutes any action, suit, counterclaim, appeal or arbitration for any relief against another party, declaratory or otherwise (collectively an "**Action**"), to enforce the terms hereof or to declare rights hereunder or with respect to any inaccuracies or material omissions in connection with any of the covenants, representations or warranties on the part of the other party to this Agreement, then the prevailing party in such Action, whether by arbitration or final judgment, shall be entitled to have and recover of and from the other party all costs and expenses of the Action, including reasonable attorneys' fees and costs (at the prevailing party's attorneys' then-prevailing rates as increased from time to time by the giving of advanced written notice by such counsel to such party) incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling or award (collectively, a "**Decision**") granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in such Action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such Decision. A court or arbitrator shall fix the amount of reasonable attorneys' fees and costs upon the request of either party. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including reasonable attorneys' fees and expert fees and costs (collectively "**Costs**") incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include, without limitation, in addition to Costs incurred in prosecution or defense of the underlying action, reasonable attorneys' fees, costs, expenses and expert fees and costs incurred in the following: (a) post-judgment motions and collection actions; (b) contempt proceedings; (c) garnishment,

levy, debtor and third party examinations; (d) discovery; (e) bankruptcy litigation; and (f) appeals of any order or judgment. For the purposes of this Agreement the term “prevailing party” shall have the meaning set forth in the California Code of Civil Procedure Section 1032(a)(4).

16.3 Assignment and Transfer by Owner.

16.3.1 Right to Assign. Owner shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.) to any person, partnership, joint venture, firm, corporation or other legal entity at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption by the Subsequent Project Owner of the rights, duties and obligations of Owner arising under or from this Agreement.

16.3.2 Release of Transferring Owner. Upon any sale, transfer or assignment, the Owner or Subsequent Project Owner transferring its interest in the Property (the “**Transferring Owner**”) shall be given a release in writing by City, which release shall be provided by City upon the full satisfaction by such Transferring Owner of the following conditions:

(a) Transferring Owner no longer has a legal or equitable interest in all or any part of the Affordable Units.

(b) Transferring Owner is not then in default under this Agreement; provided that Transferring Owner may cure any uncured default and consummate such transfer.

(c) Transferring Owner has provided City with written evidence of the assignment and assumption by the Subsequent Project Owner of the rights, duties and obligations of the Transferring Owner arising under or from this Agreement.

16.3.3 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 16.

16.3.4 Subsequent Assignment. As used in this Agreement, the term “Owner” shall be deemed to include any transferee or assignee after the date such sale, transfer, or assignment occurs in compliance with this Agreement.

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

16.4 Assignment by City. City shall have the right, without Owner’s approval, to assign in its sole and absolute discretion all or any part of its interests in this Agreement to the Laguna Woods Redevelopment Agency, a public agency duly authorized and established

With a copy to

Roger A. Grable, Esq.
Manatt, Phelps and Phillips
695 Town Center Drive, Suite 1400
Costa Mesa, CA 92626

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

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

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

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

16.12 Computation of Days. Unless otherwise specified in this Agreement, the term "days" shall mean calendar days. For purposes of this Agreement, "business days" shall mean every day of the week except Saturdays, Sundays, and official State holidays as recognized in Government Code Section 19853(c)(1) or successor statute.

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

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

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

each assignee and successor in interest during ownership of the Property and the Project or any portion thereof; provided that the Individual Unit Owner of a Market Rate Unit shall not be subject to the terms or provisions of this Agreement.

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

16.17 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. City hereby authorizes City Manager to take such other actions and negotiate and execute any additional agreements as may be necessary or proper to fulfill the City's obligations under this Agreement. The City Manager may delegate her or his powers and duties under this Agreement to an authorized management level employee of the City.

16.18 Covenants Run with the Land. This Agreement is designed to create equitable servitudes and covenants running with the Property, in accordance with the provisions of Civil Code Section 1468. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein (i) shall run with the Property and shall be binding upon all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns; (ii) shall inure to the benefit of the City and its successors and assigns, (iii) shall be binding upon Owner, and its successors and assigns; and (iv) may be enforced by City and its successors and assigns. Owner hereby declares its understanding and intent that the burden of the covenants set forth in this Agreement touch and concern the land and that the Owner's ownership interest in the Property and the Project is rendered less valuable thereby. Owner hereby declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by Eligible Tenants, and by furthering public purposes for City.

In amplification and not in restriction of the provisions hereinabove, it is intended and agreed that City is deemed a beneficiary of the agreements and covenants provided herein both for and in its own right and also for the purposes of protecting the interests of the community. All covenants, without regard to technical classification or designation, shall be binding on Owner for the benefit of City and such covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect and Owner acknowledges that no real property owned by City is intended to be benefitted by any such covenants. Furthermore, all of the covenants, conditions, and restrictions contained herein shall also constitute easements in gross running in favor of the City. City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to

maintain any action at law or suit in equity or other proper proceedings to enforce the curing of any default under this Agreement.

16.19 Subordination. City's approval of the necessary land use entitlements that authorize Owner to develop, operate, and maintain the Project was based upon Owner's obligation to provide no less than the fifteen (15) Affordable Units pursuant to the State Density Bonus Law and the terms and conditions of this Agreement. For the Project Rental Period, this Agreement and the Regulatory Agreement shall have priority over any and all mortgages, deeds of trust, and other similar forms of secured financing (each a "**Deed of Trust**") recorded against the Property or any portion thereof. Notwithstanding the preceding sentence, a Deed of Trust that secures a loan (a "**Priority Obligation**") made to Owner by a reputable lender (collectively, "**Lenders**") that is regularly engaged in the business of making or owning loans of similar types shall, upon request of Owner or the beneficiary of a Deed of Trust securing any Priority Obligation (hereinafter, the "Holder"), have priority over this Agreement if: (i) Holder obtains City's approval, which shall not be unreasonably withheld or delayed, prior to executing the Deed of Trust securing a Priority Obligation, and (ii) Holder and City execute in recordable form a subordination agreement (or other necessary document) confirming subordination of this Agreement to the lien of the Deed of Trust securing the Priority Obligation. The City Manager shall have the authority on behalf of City to execute a subordination agreement in such form as reasonably approved by the City Attorney. Any such subordination agreement shall be reasonably designed to allow the Holder or its successors in interest to obtain title to the Property, subject to the obligations of Owner with respect to the Affordable Units. Owner acknowledges and agrees that state law requires preservation of affordability covenants in connection with the approval of the Project.

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

[signatures on next page]

IN WITNESS WHEREOF, City and Owner have caused this instrument to be executed on their behalf by their respective officers or agents herein duly authorized as of the date set forth above.

“CITY”

CITY OF LAGUNA WOODS,
a California municipal corporation

By: _____

Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

“OWNER”

By: _____

Its: _____

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____,
personally appeared _____

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

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

Witness my hand and official seal.

Notary Public

[SEAL]

**ATTACHMENT 1
To Regulatory Agreement**

LEGAL DESCRIPTION OF PROPERTY

[Attached]

ATTACHMENT 2
To Regulatory Agreement
INCOME CERTIFICATION FORM

[Attached]

TENANT INCOME CERTIFICATION

Effective Date: _____
 Move-in Date: _____
 (MM/DD/YYYY)

Initial Certification Recertification Other

PART I - DEVELOPMENT DATA

Property Name: _____ County: _____ BIN #: _____

Address: _____ Unit Number: _____ # Bedrooms: _____

PART II. HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Social Security or Alien Reg. No.
1			HEAD			
2						
3						
4						
5						
6						
7						

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	\$ _____	\$ _____	\$ _____	\$ _____
Add totals from (A) through (D), above			TOTAL INCOME (E):	\$ _____

PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
TOTALS:			\$ _____	\$ _____
Enter Column (H) Total		Passbook Rate	=	(J) Imputed Income
If over \$5000 \$ _____ X		2.00%		\$ _____
Enter the greater of the total of column I, or J: imputed income				TOTAL INCOME FROM ASSETS (K)
				\$ _____
(L) Total Annual Household Income from all Sources [Add (E) + (K)]				\$ _____

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature

(Date)

Signature

(Date)

PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page 1

\$

Current Income Limit per Family Size: \$ _____

Household Income at Move-in: \$ _____

Household Meets Income Restriction at:

- 60% 50%
 40% 30%
 _____%

Household Size at Move-in: _____

RECERTIFICATION ONLY:

Current Income Limit x 140%:

\$ _____

Household Income exceeds 140% at recertification:

- Yes No

PART VI. RENT

Tenant Paid Rent \$ _____

Utility Allowance \$ _____

GROSS RENT FOR UNIT: (Tenant paid rent plus Utility Allowance & other non-optional charges)

\$

Maximum Rent Limit for this unit: \$ _____

Rent Assistance: \$ _____

Other non-optional charges: \$ _____

Unit Meets Rent Restriction at:

- 60% 50% 40% 30% _____%

PART VII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

a. Tax Credit

See Part V above.

b. HOME

Income Status

- ≤ 50% AMGI
 ≤ 60% AMGI
 ≤ 80% AMGI
 OI**

c. Tax Exempt

Income Status

- 50% AMGI
 60% AMGI
 80% AMGI
 OI**

d. AHDP

Income Status

- 50% AMGI
 80% AMGI
 OI**

e. _____

(Name of Program)

Income Status

- _____

 OI**

** Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE

DATE

INSTRUCTIONS FOR COMPLETING TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I - Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Move-in Date Enter the date the tenant has or will take occupancy of the unit.

Effective Date Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.

Property Name Enter the name of the development.

County Enter the county (or equivalent) in which the building is located.

BIN # Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).

Address Enter the address of the building.

Unit Number Enter the unit number.

Bedrooms Enter the number of bedrooms in the unit.

Part II - Household Composition

List all occupants of the unit. State each household member's relationship to the head of household by using one of the following coded definitions:

H	-	Head of Household	S	-	Spouse
A	-	Adult co-tenant	O	-	Other family member
C	-	Child	F	-	Foster child(ren)/adult(s)
L	-	Live-in caretaker	N	-	None of the above

Enter the date of birth, student status, and social security number or alien registration number for each occupant.

If there are more than 7 occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Part III - Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the twelve months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

Column (A) Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.

Column (B) Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement,

etc.

- Column (C) Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.).
- Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
- Row (E) Add the totals from columns (A) through (D), above. Enter this amount.

Part IV - Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the twelve months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

- Column (F) List the type of asset (i.e., checking account, savings account, etc.)
- Column (G) Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
- Column (H) Enter the cash value of the respective asset.
- Column (I) Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
- TOTALS Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

- Row (K) Enter the greater of the total in Column (I) or (J)
- Row (L) Total Annual Household Income From all Sources Add (E) and (K) and enter the total

HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than 5 days prior to the effective date of the certification.

Part V – Determination of Income Eligibility

- Total Annual Household Income from all Sources Enter the number from item (L).
- Current Income Limit per Family Size Enter the Current Move-in Income Limit for the household size.
- Household income at move-in Household size at move-in For recertifications, only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.

Household Meets Income Restriction Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.

Current Income Limit x 140% For recertifications only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

Part VI - Rent

Tenant Paid Rent Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).

Rent Assistance Enter the amount of rent assistance, if any.

Utility Allowance Enter the utility allowance. If the owner pays all utilities, enter zero.

Other non-optional charges Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.

Gross Rent for Unit Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.

Maximum Rent Limit for this unit Enter the maximum allowable gross rent for the unit.

Unit Meets Rent Restriction at Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

Part VII - Student Status

If all household members are full time* students, check "yes". If at least one household member is not a full time student, check "no".

If "yes" is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

**Full time is determined by the school the student attends.*

Part VIII – Program Type

Mark the program(s) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit See Part V above.

HOME If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household's designation.

Tax Exempt If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household's designation.

AHDP If the property participates in the Affordable Housing Disposition Program (AHDP), and this household's unit will count towards the set-aside requirements, mark the appropriate box indicating the household's designation.

Other If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER/REPRESENTATIVE

It is the responsibility of the owner or the owner's representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.

300022500.2

EXHIBIT "F"
TO DENSITY BONUS HOUSING AMENDED AGREEMENT
Termination and Release of Regulatory Agreement

EXHIBIT F

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Laguna Woods
24264 El Toro Road
Laguna Woods, CA 92637
Attn: City Clerk

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Release of Regulatory Agreement is recorded at the request and for the benefit of the City of Laguna Woods and is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

TERMINATION AND RELEASE OF REGULATORY AGREEMENT

This TERMINATION AND RELEASE OF REGULATORY AGREEMENT (the "Termination and Release of Regulatory Agreement") is being entered into by and between the CITY OF LAGUNA WOODS, a California municipal corporation (the "City"), and _____ (the "Owner"). City and Owner are hereinafter sometimes referred to collectively as the "Parties" and individually as a "Party."

RECITALS:

A. Owner is the owner in fee of that certain real property located in the City of Laguna Woods, consisting of [insert description of completed project and number of condos to be released], and more particularly described in the legal description attached hereto as Attachment 1 (the "Property") and incorporated by this reference.

B. On or about _____, 2009, Owner and City entered into that certain unrecorded Amended and Restated Density Bonus Housing Agreement (the "Density Bonus Agreement") relating to the Property. The Density Bonus Agreement is a public record and is available for inspection and copying in the office of the City Clerk of City located at 24264 El Toro Road, Laguna Woods, California 92637. Any capitalized terms not defined herein shall have the meanings ascribed to such terms in the Density Bonus Agreement.

C. The Property is part of a development project that includes one hundred thirty four (134) residential units within two buildings located on a parcel of land described in the legal description attached hereto as Attachment 2 (the "Project"). Pursuant to a City condition of approval for the Project and the Density Bonus Agreement, the Project contains fifteen (15) residential units (the "Affordable Units") to be rented at Affordable Rent or sold at Affordable Housing Cost to Low Income Senior Households.

D. Pursuant to Section 5.1 of the Density Bonus Agreement, Owner executed that certain Regulatory Agreement and Declaration of Covenants and Restrictions (the "Regulatory Agreement"), which was recorded on _____, 200_, as Instrument No. _____ in the Official Records for Orange County, California. The Regulatory Agreement was recorded against the Property to memorialize the terms of the Density Bonus

Agreement, to provide constructive notice thereof to any successors or assigns of Owner's fee interest of the Property, and to memorialize and impose the restrictive covenants on the Project, including the affordability covenants that (15) Units were to be either: (i) rented at Affordable Rent to Low Income Senior Households during the Project Rental Period, or (ii) sold to Low Income Senior Households at Affordable Housing Cost.

E. Pursuant to Section 6.6 of the Density Bonus Agreement and Section 5 of the Regulatory Agreement, upon the completion of the recording of Affordable Housing Covenants against each For Sale Affordable Unit, and no sooner than the recording of the last Affordable Housing Covenant against the last For Sale Affordable Unit purchased by a Qualified Purchaser, Owner and City are required to execute and record or cause to be executed and recorded for the benefit of the Property this Termination and Release of Regulatory Agreement, whereupon the Property and Project would be released from the terms and conditions of the Regulatory Agreement, and Owner would be released from its obligations under the Density Bonus Agreement.

C O V E N A N T S :

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

1. From and after the date that this Termination and Release of Regulatory Agreement is recorded, neither the Property nor the Project shall be bound or burdened by any of the provisions set forth or referred to in the Regulatory Agreement or the Density Bonus Agreement.

2. City shall cooperate in executing any further or additional documents, in recordable form if necessary, as may be reasonably requested by any existing or prospective owner or holder of a mortgage or deed of trust of, in, or to any of the Property and/or Project to confirm said Termination and Release of Regulatory Agreement. The form of any such additional documents shall be prepared by such existing or prospective owner or holder at no cost to City.

3. City does hereby certify that Owner has conveyed fee title to all For Sale Affordable Units to Qualified Purchasers at an Affordable Housing Cost and that Owner is in full compliance with the Density Bonus Agreement and the Property and Owner are hereby released from any further obligations set forth in the Density Bonus Agreement.

4. Nothing in this Termination and Release of Regulatory Agreement terminates or releases, or shall be deemed or construed to terminate or release, the Affordable Housing Covenant recorded against each For Sale Affordable Unit owned in fee by a Qualified Purchaser or said Qualified Purchaser's successor in interest or assignee.

5. This Termination and Release of Regulatory Agreement shall not constitute evidence of compliance with or satisfaction of any obligation of Owner to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the construction or operation of work on the Property, or any part thereof.

[signatures on next page]

IN WITNESS WHEREOF, City has executed this Termination and Release of Regulatory Agreement as of this ____ day of _____, _____.

CITY OF LAGUNA WOODS,
a California municipal corporation

By: _____
Its: _____

ATTEST:

City Clerk

On behalf of _____, **[OR PERMITTED SUCCESSOR OR ASSIGNEE]** I hereby consent to the recordation of this Termination and Release of Regulatory Agreement for the benefit of the Property described herein.

Dated: _____

“OWNER”

[OR PERMITTED SUCCESSOR OR ASSIGNEE]

By: _____
Its: _____

Notary Public

[SEAL]

EXHIBIT 1
TO TERMINATION AND RELEASE
OF REGULATORY AGREEMENT
LEGAL DESCRIPTION OF PROPERTY

[Attached]

**EXHIBIT 2
TO TERMINATION AND RELEASE
OF REGULATORY AGREEMENT**

LEGAL DESCRIPTION OF LAND

[Attached]

300022509.1

EXHIBIT "G"
TO DENSITY BONUS HOUSING AMENDED AGREEMENT

Unit Release from Regulatory Agreement

EXHIBIT G

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Laguna Woods
24264 El Toro Road
Laguna Woods, CA 92637
Attn: City Clerk

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Release of Regulatory Agreement is recorded at the request and for the benefit of the City of Laguna Woods and is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

UNIT RELEASE FROM REGULATORY AGREEMENT

This UNIT RELEASE FROM REGULATORY AGREEMENT (the "Unit Release from Regulatory Agreement") is being entered into by and between the CITY OF LAGUNA WOODS, a California municipal corporation (the "City"), and _____ ("Owner"). City and Owner are hereinafter sometimes referred to collectively as the "Parties" and individually as a "Party."

RECITALS:

A. Owner is the owner in fee of that certain residential unit(s) number(s) _____ [INSERT MARKET RATE UNIT(S)], located at _____ in the City of Laguna Woods, and said residential unit(s) are more particularly described in the legal description attached hereto as Attachment 1 (the "Released Unit(s)") and incorporated by this reference.

B. On or about _____, 2009, Owner and City entered into that certain unrecorded Amended and Restated Density Bonus Housing Agreement (the "Density Bonus Agreement") relating to the Released Units. The Density Bonus Agreement is a public record and is available for inspection and copying in the office of the City Clerk of City located at 24264 El Toro Road, Laguna Woods, California 92637. Any capitalized terms not defined herein shall have the meanings ascribed to such terms in the Density Bonus Agreement.

C. That certain real property more particularly described in the legal description attached hereto as Attachment 2 (the "Land") has been improved with two buildings and other facilities containing one hundred thirty four (134) residential units (the "Project"), which includes the Released Unit(s). Pursuant to a City condition of approval for the Project and the Density Bonus Agreement, Owner was required to allocate fifteen (15) of said residential units (the "Affordable Units") to be rented at Affordable Rent or sold at Affordable Housing Cost to Low Income Senior Households. Other than the Affordable Units, the remaining units in the Project may be rented or sold without restriction (the "Market Rate Units"). All of the Released Units are Market Rate Units.

D. Pursuant to Section 5.1 of the Density Bonus Agreement, Owner executed that certain Regulatory Agreement and Declaration of Covenants and Restrictions (the "Regulatory Agreement"), which was recorded on _____, 200_, as Instrument No. _____ in the Official Records for Orange County, California. The Regulatory Agreement was recorded against the Land and the entire Project to memorialize the terms of the Density Bonus Agreement, to provide constructive notice thereof to any successors or assigns of Owner's fee interest of the property, and to memorialize and impose the restrictive covenants, including the affordability covenants that fifteen (15) Units were to be either: (i) rented at Affordable Rent to Low Income Senior Households during the Project Rental Period, or (ii) sold to Low Income Senior Households at Affordable Housing Cost.

E. Pursuant to Section 6.6 of the Density Bonus Agreement and Section 5 of the Regulatory Agreement, in the event that Owner decides to sell any of the Market Rate Units in the Project and Owner has designated fifteen (15) units as For Sale Affordable Units pursuant to the terms and conditions of the Density Bonus Agreement, Owner and City are required to execute and record or cause to be executed and recorded for the benefit of the Released Unit(s) this Unit Release from Regulatory Agreement, whereupon the Released Unit(s) would be released from the terms and conditions of the Regulatory Agreement and the Density Bonus Agreement.

C O V E N A N T S :

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

1. From and after the date that this Unit Release from Regulatory Agreement is recorded, the Released Unit(s) shall not be bound or burdened by any of the provisions set forth or referred to in the Regulatory Agreement and the Density Bonus Agreement.

2. City shall cooperate in executing any further or additional documents, in recordable form if necessary, as may be reasonably requested by any existing or prospective owner or holder of a mortgage or deed of trust of, in, or to any of the Released Unit(s) to confirm that each Released Unit is fully and completely released from the Regulatory Agreement. The form of any such additional documents shall be prepared by such existing or prospective owner or holder at no cost to City.

3. Nothing in this Unit Release from Regulatory Agreement terminates or releases, or shall be deemed or construed to terminate or release, the Affordable Housing Covenant recorded against each For Sale Affordable Unit owned in fee by a Qualified Purchaser or said Qualified Purchaser's successor in interest or assignee.

4. This Unit Release from Regulatory Agreement shall not constitute evidence of compliance with or satisfaction of any obligation of Owner to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the construction or operation of work on the Released Unit(s), or any part thereof.

[signatures on next page]

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

CITY OF LAGUNA WOODS,
a California municipal corporation

By: _____
Its: _____

ATTEST:

City Clerk

On behalf of _____, **[OR PERMITTED SUCCESSOR OR ASSIGNEE]** I hereby consent to the recordation of this Unit Release from Regulatory Agreement for the benefit of the Released Unit(s) described herein.

Dated: _____

“OWNER”

[OR PERMITTED SUCCESSOR OR ASSIGNEE]

By: _____
Its: _____

WITNESS my hand and official seal.

Notary Public

[SEAL]

**EXHIBIT 1
TO UNIT RELEASE
FROM REGULATORY AGREEMENT**

LEGAL DESCRIPTION OF RELEASED UNIT(S)

[Attached]

**EXHIBIT 2
TO UNIT RELEASE
FROM REGULATORY AGREEMENT
LEGAL DESCRIPTION OF LAND**

[Attached]