

**DEVELOPMENT AGREEMENT
FOR
THE MULBERRY VILLAGE DEVELOPMENT PROJECT**

(2825-2841 Mulberry Street)

**U.S. Department of Housing and Urban Development (HUD)
HOME Investment Partnerships Act Funded Project**

This Development Agreement for the Mulberry Village Development Project (“Agreement”) is entered into on this _____ day of _____, 20____, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation (“City”), the HOUSING AUTHORITY OF THE CITY OF RIVERSIDE, a public agency (“Authority”), and HABITAT FOR HUMANITY RIVERSIDE, INC., a California non-profit public benefit corporation (“Habitat for Humanity”), DUNS No. 123200250. Hereinafter, the City, the Authority, and Habitat for Humanity may be referred to individually as “Party” or collectively as the “Parties.”

RECITALS

A. The City is a municipal corporation, incorporated as a charter city under the laws of the State of California. The City has adopted a Housing Element to its General Plan pursuant to Government Code Section 65580, et seq., which sets forth the City’s policies, goals and objectives to provide housing to all economic segments of the community, including the preservation and development of rental housing affordable to very low income, low income and moderate income households.

B. On March 13, 2018, the City Council adopted a series of homeless service initiatives, which set forth the City’s policies, goals, and objectives in addressing homeless issues through the strategic alignment of municipal and regional resources, with an emphasis on providing homeless individuals with housing first and then wrap-around services.

C. The Authority is a public agency established by action of the City Council of the City pursuant to Resolution No. 21275 for the purpose of providing affordable housing opportunities through a variety of programs within the City and exercising governmental functions and powers pursuant to the California Housing Authorities Law (California Health and Safety Code § 34200, et seq., “Housing Authority Law”).

D. In furtherance of the City’s goals, the Authority has developed a long-term strategy for creating permanent supportive housing units through “scattered site” programs and “single site” housing projects.

E. The City has received HOME Investment Partnerships Act funds from the United States Department of Housing and Urban Development (“HUD”) pursuant to the Cranston-

Gonzales National Housing Act of 1990 ("HOME Funds"). The HOME Funds must be used in accordance with the HOME Regulations in order to increase housing for very low and low-income households. At least 15 percent of HOME Funds must be set aside for specific activities to be undertaken by a special type of nonprofit called a Community Housing Development Organization (CHDO). A CHDO is a private nonprofit, community-based organization that has staff with the capacity to develop affordable housing for the community it serves. In order to qualify for designation as a CHDO, the organization must meet certain requirements pertaining to their legal status, organizational structure, and capacity and experience.

F. The Authority currently owns properties in the City, located at 2825 Mulberry Street, 2831 Mulberry Street, and 2841 Mulberry Street, identified with Assessor Parcel Numbers 209-222-026, 209-222-027, and 209-222-015 (collectively "Site") that was acquired through funds received from HUD pursuant to the federal Housing and Economic Recovery Act of 2008 and Neighborhood Stabilization Program for the purpose of redevelopment of abandoned and foreclosed homes and residential properties to provide decent, safe, sanitary and affordable housing for low and moderate income households in the City.

G. Habitat for Humanity is a California nonprofit public benefit corporation organized under the Internal Revenue Code of 1986 at § 501(c)(3), whose purpose is to acquire and construct residential properties and who is an experienced affordable housing developer certified by the City as a CHDO and has demonstrated effective development of projects similar in size, scope, and level of complexity as the project herein.

H. Parties desire to enter into this Agreement for the purpose of developing ten (10) small cottage homes for lease to very low income households, with a common open space area and garden for the residents ("Mulberry Village Development Project" or "Project"), and the Parties intend that by this Agreement:

(i) Habitat for Humanity, as an experienced affordable housing developer, will perform the development services associated with the Project;

(ii) The Authority, as the owner of the Site, will allow the development of the Site and will retain ownership, control, and management of the Site and the Project before, during, and after development; and

(iii) The City will provide Eight Hundred Eighty-Four Thousand Two Hundred Fifty Dollars (\$884,250.00) in HOME CHDO Funds to Habitat for Humanity for Project Costs (as defined below) in accordance with this Agreement.

I. The implementation of the Project pursuant to the terms and conditions of this Agreement are in the vital and best interest of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, Parties agree as follows:

1. DEFINITIONS

1.1. Defined Terms

As used in this Agreement, the following capitalized terms shall have the following meanings:

“Affordable Rent” means the amount of monthly rent, including a reasonable utility allowance, that does not exceed the lesser of the maximum allowable rent to be charged by the Authority and paid by the Very Low Income Household, occupying the Affordable Units, as set forth in § 92.252 of the HOME Regulations and California Health and Safety Code Section § 50053 or any successor regulation.

“Affordable Units” means the ten (10) single family residences, at 2825-2841 Mulberry Street, required to be maintained and available to, occupied by, or held vacant for occupancy to Very Low Income Households. Preference shall be given to households as identified in Section 5.2.

“Agreement” means this Development Agreement, including all of the Attachments hereto, by and among the Parties.

“AMI” or “Area-wide Median Income” means the lesser of the median family income (adjusted for family size) for Riverside County promulgated and published annually by the California Department of Housing and Community Development (“HCD”) pursuant to Title 25, § 6932 of the California Code of Regulations and the HOME Program Part 92 § 92.203(a)(1)(i). If HCD and HUD ceases annually to publish median incomes, the Parties will agree upon an adequate substitute manner for determining Area-wide Median Income.

“Authority” means the Housing Authority of the City of Riverside, a public entity.

“Authority Affordability Period” means the period commencing upon the recordation of the Notice of Completion and terminating on the fifty fifth (55th) anniversary thereof.

“Bonds” means the two (2) duly executed surety bonds provided by Habitat for Humanity, one (1) as security for the faithful performance of the Agreement and one (1) as security for the payment of all persons performing labor and furnishing materials in connection with the Agreement, attached hereto as Attachment No. 9.

“City” means the City of Riverside, a California charter city and municipal corporation.

“City Affordability Period” means the period commencing upon the recordation of

the Notice of Completion and terminating on the twentieth (20th) anniversary thereof.

“City Manager” means the City Manager of the City or his/her designated representative.

“Effective Date” means the date upon which this Agreement was approved by the Authority and the City.

“Environmental Laws” means any and all present and future federal, state and local laws (whether under common law, statute, ordinance, rule, regulation or otherwise), court or administrative orders or decrees, requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to the environment or to any Hazardous Substance or Hazardous Substance Activity (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601, et seq.), as heretofore or hereafter amended from time to time (“CERCLA”), and the applicable provisions of the California Health and Safety Code and the California Water Code, and any and all successor statutes and regulations, orders, decrees, guidelines, or pronouncements promulgated thereunder).

“Event of Default” means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 7.1.

“Executive Director” means the Executive Director of the Authority or his/her designated representative.

“Governmental Regulations” means any local, state, and federal laws, ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, environmental, labor relations, prevailing wage, notification of sale to employees, Hazardous Substance, occupational health and safety, water, earthquake hazard reduction and building and fire codes) bearing on the demolition, alteration, replacement, repair, refurbishing, improvement, construction, maintenance, management, use, or operation of the Project.

“Hazardous Substance” means (i) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101), as amended from time to time, or now or hereafter otherwise classified or regulated pursuant to any Environmental Laws as a “hazardous substance,” “hazardous material,” “hazardous waste,” “extremely hazardous waste,” “infectious waste,” “toxic substance,” “toxic pollutant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or “EP toxicity,” (ii) any asbestos or asbestos containing material, (iii) any polychlorinated biphenyls (PCBs), (iv) any urea formaldehyde, and (v) any petroleum, natural gas, natural gas liquid, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil,

natural gas, or geothermal resources. Notwithstanding the foregoing, "Hazardous Substances" shall not include any chemical, compound, material, mixture or substance used in the normal course of operating an apartment complex, so long as such chemical, compound, material, mixture or substance is used in accordance with Environmental Laws.

"Hazardous Substance Activity" means any actual, proposed or threatened storage, holding, existence or suspected existence, release or suspected release, emission, discharge, generation, processing, abatement, removal, disposition, treatment, handling or transportation of any Hazardous Substance from, under, into, on, above, around or across the Site or surrounding property or any other use of or operation on the Site or the surrounding property that creates a risk of Hazardous Substance contamination of the Site.

"HOME Program" shall mean the HOME Investment Partnerships Act program, pursuant to the Cranston-Gonzales National Housing Act of 1990.

"HOME Funds", as referenced in Recital E, shall mean the Eight Hundred Eighty Four Thousand Two Hundred Fifty Dollars (\$884,250.00) that Habitat for Humanity receives from the City for development as part of the HOME Investment Partnerships Act program.

"HOME Regulatory Agreement" means the regulatory agreement, attached hereto as Attachment No. 6.

"Household" means one or more persons occupying an Affordable Unit.

"Local Preference" means providing preference to City of Riverside residents.

"NSP" shall mean the Neighborhood Stabilization Program under the Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 - Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes.

"NSP Regulatory Agreement" means the regulatory agreement, attached hereto as Attachment No. 7.

"Notice" means a notice in the form prescribed by Section 8.1.

"Parties" means the City, the Authority, and Habitat for Humanity.

"Project," as referenced in Recital H and described in Attachment No. 3, shall mean and include any predevelopment activities related to the Site, as well as the construction, demolition, remediation and grading done on the Site, as well as all buildings, structures, fixtures, foundations, excavation, parking, landscaping, underground installations, and other work, construction and improvement of whatsoever character undertaken or constructed on, around, under or over the Site by Habitat for Humanity for the development of ten (10) small cottage homes required to be maintained and available to, occupied by, or held vacant for occupancy to Very Low Income Households, and any other activities undertaken in connection therewith in accordance with all regulations referenced herein, including the HOME Regulations.

“Project Budget” means the budget for the Project, attached hereto as Attachment No. 5.

“Project Costs” means all costs and expenses reasonably approved pursuant to this Agreement which are customarily incurred and shall have been actually incurred by Habitat for Humanity for the development of the Project and shall include, without limitation, the following: Predevelopment Costs, construction costs, construction and design fees, architectural and engineering costs and fees (if any); a construction management fee as set forth in the Project Budget; security services; offsite improvements and permits (if any); building permits; utility fees; insurance; legal and accounting fees; tests to determine the condition of the Site; and such other costs, fees, and expenses, as agreed to by the City; provided, however, that payment to Parties related to Habitat for Humanity must not exceed reasonable and customary market rates.

“Project Description” means the description of the Project, attached hereto as Attachment No. 3.

“Rent Schedule” means the rent schedule, attached hereto as Attachment No. 8.

“Schedule of Performance” means that certain Schedule of Performance attached hereto as Attachment No. 4, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Habitat for Humanity, the City, and the Authority. The Authority authorizes the Executive Director to make such revisions to the Schedule of Performance as he/she deems reasonably necessary to effectuate the purposes of this Agreement. Likewise, the City authorizes the City Manager, or his or her designee, to make such revisions to the Schedule of Performance as he/she deems reasonably necessary to effectuate the purposes of this Agreement.

“Site” means that certain real property referenced in Recital F above as delineated on the Site Plan (Attachment No. 1) and more particularly described in the Site Legal Description (Attachment No. 2).

“Site Legal Description” means the description of the Site which is attached hereto as Attachment No. 2.

“Site Plan” means the map of the Site and the proposed Project, attached hereto as Attachment No. 1.

“Very Low-Income Household” means a Household whose gross annual income does not exceed fifty percent (50%) of the Riverside County median income adjusted for family size as set forth from time to time by regulation of the U.S. Department of Housing and Urban Development and California Department of Housing and Community Development.

1.2. Singular and Plural Terms

Any defined term used in the plural herein shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

1.3. Accounting Principles

Any accounting term used and not specifically defined herein shall be construed in conformity with and all financial data required to be submitted herein shall be prepared in conformity with generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to the City.

1.4. References and Other Terms

Any reference to any document shall include such document both as originally executed and as it may from time to time be modified. References herein to Sections and Attachments shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term "document" is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms "including" and "include" mean "including (include), without limitation."

1.5. Attachments Incorporated

All attachments to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

2. FUNDING

2.1 Sources of Funding

As set forth in the Project Budget, the Parties anticipate that Project Costs will be financed exclusively with HOME Funds. The City shall distribute the HOME Funds to Habitat for Humanity pursuant to the HOME Program. The HOME Funds shall then be used for Project Costs as approved by the City. City shall disburse the HOME Funds to Habitat for Humanity not later than thirty (30) days after receipt by the City of a written disbursement request from Habitat for Humanity (each, a "Disbursement Request"). HOME Funds are provided on a reimbursement basis. The Disbursement Request shall (a) set forth the amount of the requested reimbursement of HOME Funds, specifically, and identify the nature of each expense for which the disbursement is being requested by reference to items in the approved final Project Budget and Construction Contract, (b) proof of payment, (c) identify the percentage of the Project that has been completed as of the date of the Disbursement Request, and (d) certify that all applicable conditions precedent to disbursement of the HOME Funds have been and remain satisfied and that no Event of Default has occurred and is continuing under this Agreement. The City shall use commercially reasonable efforts to wire transfer such disbursements when requested by Habitat for Humanity. All disbursements of HOME Funds shall be recorded by the City and acknowledged by Habitat for Humanity.

2.2 Retention

Except as provided herein, as to each Disbursement Request made to the City for Project Costs, disbursements of HOME Funds shall be made for such item in the amount of ninety percent (90%) of the costs for such item properly incurred and substantiated by Habitat for Humanity during the course of the Project. City shall disburse HOME Funds in the amount of Ninety Percent (90%) of each Disbursement Request for Project Costs, provided, however, that the amounts so retained on account of rough grading, wet and dry utilities, concrete foundations, and framing shall be released on a trade by trade basis, so long as (a) the construction of the trade improvements has been completed substantially in accordance with the Development Plans and has been fully paid for and is lien free, and (b) all work requiring inspection or certification by any governmental agency has been completed and all requisite certificates, approvals and other necessary authorizations have been obtained.

Notwithstanding the foregoing, as to each Disbursement Request made to the City for Project Costs that constitute payment of City permits and development impact fees related to the Project or the payment of "soft costs," disbursements of HOME Funds shall be made for such item in the amount of one-hundred percent (100%) of the costs for such item properly incurred and substantiated by Habitat for Humanity during the course of the Project.

2.3 Obligation to Update Project Budget

Habitat for Humanity shall update the Project Budget in the event of a proposed material change to the Project Budget. In the event of a proposed material change to the Project Budget, Habitat for Humanity shall notify the City in writing of the nature of the proposed change, including a detailed description of the effect of such change, and submit a revised Project Budget reflecting such change to the City. The City shall have the right to approve such change prior to Habitat for Humanity taking any action in furtherance of such change.

2.4 Notice of Completion

Final payment of all sums invoiced and unpaid, including all retentions, shall be made within thirty-five (35) days after the Project is fully performed and accepted by the City and the Authority, and the City or the Authority files a Notice of Completion, except such sums thereof which are required by law or authorized by the Agreement to be further retained.

3. CONDITIONS PRECEDENT FOR COMMENCEMENT OF DEVELOPMENT

Habitat for Humanity shall only commence development of the Site upon the prior satisfaction by Habitat for Humanity, or waiver by the City and the Authority, of the following conditions precedent:

3.1. Approved Final Project Budget

Habitat for Humanity shall have submitted to the City and the Authority for their approval an updated and final pro forma and detailed final Project Budget for the development (consistent with the Project Description), and the City shall have approved the final Project Budget in the City's reasonable discretion with the Authority's concurrence. The use of HOME Funds shall be consistent with the approved final Project Budget.

3.2. Environmental Compliance

All Governmental Requirements including all Environmental Laws applicable to the Project, including without limitation, the National Environmental Policy Act of 1969, Public Law 91-190 as amended, 42 U.S.C. Sections 4321-4347, the California Environmental Quality Act, Public Resources Code Section 21000, et seq., and §92.352 and 92.355 of the HOME Regulations, shall have been satisfied if and to the extent such satisfaction is required prior to disbursement of HOME Funds. The City shall have conducted its environmental review in accordance with 24 CFR Part 58 before any HOME Funds are released to Habitat for Humanity.

3.3. Environmental Condition

The environmental condition of the Site shall be reasonably acceptable to Habitat for Humanity.

3.4. Approval of Development Plans, Construction Contract, and General Contractor

City and the Authority shall have approved the Development Plans for the Site prepared and submitted by Habitat for Humanity as being in substantial conformity with the Project Description, this Agreement, and the City of Riverside Municipal Code ("Riverside Municipal Code"). In addition, Habitat for Humanity shall have submitted to the City and the Authority detailed information regarding its methodology for the abatement of asbestos, lead based paint, and other required Hazardous Substances remediation at the Site, if any, and such methodology shall be reasonably satisfactory to the City and the Authority. In the time set in the Schedule of Performance, Habitat for Humanity shall have submitted a true and complete copy of the Construction Contract to the City, and the Authority, and both the Construction Contract and the identity of the General Contractor as well as all engineers and architects shall be reasonably acceptable to the City and the Authority.

3.5. Building Permits

Habitat for Humanity shall have obtained all Building Permits and other permits required for the full Project, and shall have provided true, correct and complete copies of all such Building Permits to the City and the Authority. Habitat for Humanity shall not commence any portion of the development until all applicable Building Permits and other permits required for such portion of the development have been obtained, with true, correct and complete copies of such Building Permits delivered to the City and the Authority.

(a) Habitat for Humanity acknowledges and agrees that the Development Plans shall be subject to the City's normal development services, planning, and building review process, as applicable.

(b) To the extent any decision relating to such permits is a discretionary decision of the City or any of its commission(s), administrator(s), or employee(s), then this Agreement does not, nor shall it be construed to, pre-approve any discretionary decision relating to any Building Permit or other approval necessary to commence and complete the development of the Site.

3.6. Pre-Construction Meeting of General Contractor, City Representative(s), Authority Representatives, and Habitat for Humanity

Habitat for Humanity shall have attended pre-construction meeting(s) or conference(s), as arranged by the City or the Authority, among General Contractor, Habitat for Humanity, the City staff, and the Authority staff, relating to the commencement of the development, compliance with the Section 3 Clause (as required and hereinbefore described), and other issues related to undertaking and completing the development in conformity with this Agreement and all applicable local, state, and federal laws.

3.7. Insurance

Habitat for Humanity shall have furnished the City and the Authority with proper evidence of insurance as required by Section 4.12.

3.8. Representations and Warranties

The representations and warranties of Habitat for Humanity contained in this Agreement shall be correct in all material respects as of the commencement of the development as though made on and as of that date, and the City and the Authority shall have received a certificate to that effect signed by an authorized officer of Habitat for Humanity.

3.9. No Default

No Event of Default by Habitat for Humanity shall have occurred, and no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Habitat for Humanity, and the City and the Authority shall have received a certificate to that effect signed by an officer of Habitat for Humanity.

3.10. Performance and Payroll Bonds

Habitat for Humanity shall have furnished the City and the Authority with the Bonds as required by Section 4.13.

4. DEVELOPMENT OF THE SITE

4.1 Development Plans

Within the time set forth in the Schedule of Performance, Habitat for Humanity shall submit to the City detailed plans, specifications, materials, and drawings describing the development of the Site (collectively, "Development Plans") pursuant to the Project, which are in conformity with the Project Description.

4.2 Submittal of Development Plans

Habitat for Humanity shall submit to the City the Development Plans which may be required by the City to be obtained with respect to, among other things, evaluation of the quality, type, specifications, and materials for all of the development and any other improvements to the Site. Within ten (10) days after the City's disapproval or conditional approval of such plans, which approval shall be in the City's sole and absolute discretion, Habitat for Humanity shall revise the portions of such plans identified by the City as requiring revisions and resubmit the revised Development Plans to the City. City shall have all rights to review and approve or disapprove all Development Plans and other required submittals in accordance with the Riverside Municipal

Code, and nothing set forth in this Agreement shall be construed as the City's approval of any or all of the Development Plans. Any and all change orders or revisions required by the City and its inspectors which are required under the Riverside Municipal Code and all other applicable Uniform Codes (e.g., Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by Habitat for Humanity in its Development Plans and other required submittals and shall be completed during the development of the Site.

4.3 Approval of Development Plans

Habitat for Humanity acknowledges and agrees that the City is entitled to approve or disapprove the Development Plans in order to satisfy the City's obligation to promote the sound development of housing units, to promote a high level of design which will impact the surrounding development, and to provide an environment for the social, economic and psychological growth and well-being of the citizens of the City and all residents of the Project. Habitat for Humanity shall perform all development at the Site in compliance with the approved Development Plans.

4.4 Consultation and Coordination

During the preparation of the Development Plans, City staff, Authority staff, and authorized representatives of Habitat for Humanity shall hold joint progress meetings to coordinate the preparation and submission to the City of the Development Plans by Habitat for Humanity and the City's review of the Development Plans. City staff, Authority staff, and representatives of Habitat for Humanity shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to the City can receive prompt and thorough consideration. City shall designate a Housing Authority employee to serve as the project manager for this Project, and such project manager shall be responsible for the coordination of the City's activities under this Agreement and for coordinating the land use approval and permitting process under this Agreement and for coordinating the land use approval and permitting process.

4.5 Revisions

If Habitat for Humanity desires to propose any substantial revisions to the approved Development Plans, it shall submit such proposed changes to the City and the Authority, and shall also proceed in accordance with any and all state and local laws and regulations regarding such revisions, within the time frame set forth in the Schedule of Performance for the submittal of the Development Plans. Any such change proposed in the approved Development Plans may be disapproved by the City or the Authority through the City in the City's sole and reasonable discretion or the Authority in the Authority's sole and reasonable discretion.

4.6 Defects in Plans

Neither the City nor the Authority shall be responsible either to Habitat for Humanity or to any third parties in any way for any defects in the Development Plans, or for any structural or other defects in any work done according to the approved Development Plans, or for any delays reasonably caused by the review and approval processes established by this Section 4, *et seq.* Habitat for Humanity shall hold harmless, indemnify and defend the Indemnitees from and against any claims or suits for damages to property or injuries to persons (including death) arising out of or in any way relating to defects, latent or patent, in the Development Plans, or the actual construction work or other improvements comprising the development and the Site, including

without limitation the violation of any laws, or arising out of or in any way relating to any defects in any work done and/or improvements completed according to the approved Development Plans.

4.7 City and Other Governmental Permits

Before commencement of any portion of the development of the Site, Habitat for Humanity shall secure or shall cause its General Contractor to secure any and all permits and land use entitlements which may be required by the City or any other governmental authority with jurisdiction over such construction of the applicable portion of the development, including without limitation applicable building permits.

4.8 Construction Contract

Prior to the commencement of construction of the Project, Habitat for Humanity agrees to deliver to the City and the Authority, for its review and approval, a fixed price or guaranteed maximum cost construction contract(s) ("Construction Contract") for all of the improvements necessary to complete the Project, which Construction Contract shall obligate a reputable and financially responsible general contractor(s) ("General Contractor"), capable of being bonded and licensed in California and with experience in completing the type of Project contemplated by this Agreement, to commence and complete the construction of those improvements in accordance with this Agreement and under the terms provided therein. Habitat for Humanity shall verify that the General Contractor is eligible to participate in Federal programs. The Construction Contract shall contain a schedule of values in such form as is reasonably satisfactory to the City and the Authority. City shall not unreasonably withhold its approval of the Construction Contract provided that such contract conforms to the requirements of this Agreement.

Each Construction Contract shall give the City and the Authority the right, but not the obligation, to cure defaults thereunder and to assume Habitat for Humanity's obligations and rights under the contract; provided that such right to cure and assume that contract shall be subject to the right, if any, of the Construction Loan lender. In addition, each Construction Contract shall provide, among other matters, that all change orders in excess of Fifty Thousand Dollars (\$50,000) must be approved by the City and the Authority within five (5) Business Days. Further, each Construction Contract shall set forth a reasonably detailed schedule for completion of each stage of construction.

City and the Authority's approval of the Construction Contract shall not constitute a waiver by the City or the Authority of any breach or violation of this Agreement that is a result of acts that are or purport to be in compliance with or in furtherance of said Construction Contract.

4.9 Change Orders

Habitat for Humanity shall submit all proposed change orders (including change orders proposed by Habitat for Humanity and any contractor) to the City for the City's approval, disapproval, or conditional approval, which shall be in the City's sole and absolute discretion. Likewise, Habitat shall submit all proposed change orders (including change orders proposed by Habitat for Humanity and any contractor) to the Authority for the Authority's approval, disapproval, or conditional approval, which shall be in the Authority's sole and absolute discretion.

4.10 Rights of Access

The Authority and the City shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Project to ensure the work is completed within established standards and to monitor the progress of the work. While conducting such inspections, the Authority and the City representatives shall comply with all safety rules.

4.11 Completion of Project

Not later than the Outside Completion Date as set forth in the Schedule of Performance, Habitat for Humanity shall commence and diligently proceed through completion the development of the Project. Habitat for Humanity's agreement to complete the development of the Project in accordance with the Project Description, approved Development Plans, and all applicable provisions of law and this Agreement within the time set forth in the Schedule of Performance is a substantial part of the consideration for the City's agreement to fund the development of the Project with HOME funds. In the event that Habitat for Humanity fails to satisfactorily perform the development in accordance with the Project Description, the approved Development Plans, and all other applicable requirements within the time set forth in the Schedule of Performance, the City shall be entitled to exercise any and all remedies available to it under applicable laws and/or this Agreement. Likewise, in the event Habitat for Humanity fails to satisfactorily perform the development in accordance with the Project Description, the approved Development Plans, and all other applicable requirements within the time set forth in the Schedule of Performance, the Authority also shall be entitled to exercise any and all remedies available to it under applicable laws and/or this Agreement.

4.12 Bodily Injury and Property Damage Insurance; Indemnity

4.12.1 Insurance

Except as provided herein, prior to the commencement of any development, or any other work of improvement upon the Site and without limiting Habitat for Humanity's indemnity obligations set forth in the Agreement, Habitat for Humanity shall procure and maintain in full force during the term of this Agreement, the following forms of insurance coverage:

a. Workers' Compensation Insurance as required by California statutes and Employers' Liability Insurance in an amount not less than One Million Dollars (\$1,000,000);

b. Commercial General Liability Insurance, including coverage for Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, Broad-Form Property Damage, and Independent Contractor's Liability, in an amount of not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit, Two Million Dollars (\$2,000,000) annual aggregate, written on an occurrence form;

c. Comprehensive Automobile Liability coverage, including - as applicable - owned, non-owned and hired autos, in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form; and

d. Prior to commencement of the development, "All risk" builder's risk

(course of construction) insurance covering one hundred percent (100%) of the replacement cost of the improvements and equipment in the event of fire, lightning, windstorm, vandalism, earthquake (if available at commercially reasonable rates), off-site storage loss, transportation loss, malicious mischief and all other risks normally covered by "all risk" builder's risk policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to danger of flood).

e. Prior to commencement of the development, "Professional Liability" insurance, which must 1) Include professional malpractice, errors and omissions; and 2) Provide coverage for claims arising from acts, errors or omissions from professional services performed by or on behalf of Habitat for Humanity, its Design Consultants, Subcontractors, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including liability assumed under and arising from the Agreement. Habitat for Humanity's professional liability policy must provide limits of liability in an amount not less than: one million dollars (\$1,000,000) per claim; and two million dollars (\$2,000,000) in the aggregate. Habitat for Humanity shall be responsible for the full amount of all deductibles/self-insured retention per claim for coverage under the Professional Liability Insurance policy. These minimum amounts of coverage shall not constitute any limitation or cap on Habitat for Humanity's indemnification obligation.

f. Prior to commencement of the development, "Pollution Liability and Excess Liability" insurance, which shall thereafter be maintained without lapse of coverage until completion of the Agreement, in the minimum amount of \$1,000,000. Habitat for Humanity's Pollution Liability and Excess/Umbrella Liability coverages shall be maintained continuously for a minimum of five (5) years after final completion and acceptance of all work under this Agreement.

g. Habitat for Humanity shall cause the general contractor to maintain insurance of the types and in at least the minimum amounts described in subsections a, b, c, d, e, and f above, and shall require that such insurance shall meet all of the general requirements of subsections i, j, k, and l -below. Unless waived by the City, liability insurance to be maintained by the general contractors pursuant to this subsection shall name as additional insured the City and the Authority, and the City and the Authority's respective officers, agents, employees and representatives.

h. Habitat for Humanity shall require that each Design Consultant maintain professional liability coverage. Each Design-Consultant's professional liability policy must provide coverage for claims arising from the negligent acts, errors or omissions from professional design services performed by Design Consultant, including liability assumed under and arising from the Agreement. Each Design-Consultant's professional liability policy must provide limits of liability in an amount not less than: one million dollars (\$1,000,000) per claim; and two million dollars (\$2,000,000) in the aggregate. Design Consultant shall be responsible for the full amount of all deductibles/self-insured retention per claim for coverage under the Professional Liability Insurance policy.

i. The required insurance shall be provided under an occurrence form, and Habitat for Humanity shall maintain such coverage continuously throughout the term of this Agreement. Should any of the required insurance be provided under a form of coverage that

includes an annual aggregate limit or provides that claims investigation or legal defense costs to be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

j. Each insurance policy required by this Agreement shall contain the following clauses:

(1) "This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days' prior written notice has been given to the City of Riverside and the Housing Authority of the City of Riverside."

(2) "It is agreed that the City of Riverside and the Housing Authority of the City of Riverside are self-insured and any insurance maintained by them shall apply in excess of and not contribute with insurance provided by this policy."

(3) "The City of Riverside and the Housing Authority of the City of Riverside, and their officers, agents, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured, performed under contract with the City of Riverside and the Housing Authority of the City of Riverside."

k. Prior to the disbursement of any portion of the HOME Funds, Habitat for Humanity shall deliver to the City insurance endorsements evidencing the existence of the insurance policies required by this Agreement, and including the applicable clauses referenced above. Such endorsements shall be signed by an authorized representative of the insurance company and shall include the signator's company affiliation and title. Should it be deemed necessary by City, it shall be Habitat for Humanity's responsibility to see that the City receives documentation acceptable to the City which demonstrates that the individual signing said endorsements is indeed authorized to do so by the insurance company. Also, the City has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.

l. In addition to any other remedies the City and the Authority may have if Habitat for Humanity fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, that City and the Authority may at its sole option:

(1) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from the HOME Funds.

(2) Withhold any disbursement of the HOME Funds until Habitat for Humanity demonstrates compliance with the requirements hereof.

(3) In the event Habitat for Humanity has failed to commence curing such default within thirty (30) days of notice or thereafter fails to diligently pursue such cure, declare Habitat for Humanity to be in default, terminate this Agreement and declare that prior disbursements of the HOME Funds are due and payable.

Exercise of any of the above remedies, however, is an alternative to other remedies the City may have, or that the Authority may have, and is not the exclusive remedy for Habitat for Humanity's failure to maintain insurance or secure appropriate endorsements. Nothing herein

contained shall be construed as limiting in any way the extent to which Habitat for Humanity may be held responsible for payments of damages to persons or property resulting from Habitat for Humanity's performance of the work covered under this Agreement.

4.12.2 Habitat for Humanity's Indemnity

To the full extent permitted by law, Habitat for Humanity shall indemnify, defend and hold harmless the City and the Authority, and any and all of their employees, officials and agents (the Indemnitees) from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or cost of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest or defense costs, including expert witness fees), where the same arise out of, are a consequence of, or are in any attributable to, in whole or in part, to: (i) Habitat for Humanity's compliance with or failure to comply with all applicable laws, including all applicable federal and state labor standards, including, without limitation, the requirements of Labor Code § 1720 and the Davis Bacon Act; (ii) defects in the design of the Project, including (without limitation) the violation of any laws, and for defects in any work done according to the approved plans, or (iii) any other performance or act or failure to perform or act pursuant to this Agreement by Habitat for Humanity, or by any individual or entity that Habitat for Humanity shall bear the legal liability thereof including but not limited to officers, agents, employees, or contractors of Habitat for Humanity.

Without affecting the rights of Indemnitees under any provisions of this Agreement, Habitat for Humanity shall not be required to indemnify and hold harmless Indemnitees for liability attributable to the active negligence of Indemnitees, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where Indemnitees are shown to have been actively negligent and where Indemnitees' active negligence accounts for only a percentage of the liability involved, the obligation of Habitat for Humanity will be for that entire portion or percentage of liability not attributable to the active negligence of Indemnitees.

Failure of Indemnitees to monitor compliance with these requirements imposes no additional obligations on Indemnitees and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend Indemnitees as set forth here is binding on the successors, assigns or heirs of Habitat for Humanity and shall survive the termination of this Agreement.

This indemnification provision supplements and in no way limits the scope of the indemnification set out elsewhere in this Agreement. The indemnity obligation of Habitat for Humanity under this Section shall survive the expiration or termination, for any reason, of this Agreement excluded, however, from this Section 4.12.2 is any indemnity by Habitat for Humanity in favor of the City and/or the Authority for claims arising from Hazardous Substances on the Site except for Hazardous Substances introduced onto the Site by Habitat for Humanity.

4.13 Performance and Payment Bonds

Prior to the commencement of the Project, Habitat for Humanity shall furnish to the City and the Authority two (2) duly executed surety bonds using the forms included within the Bidding Requirements, one (1) as security for the faithful performance of the Agreement and one

(1) as security for the payment of all persons performing labor and furnishing materials in connection with the Contract. Both bonds shall be in the amount of one hundred percent (100%) of the amount of the HOME Funds and shall be subscribed by an Admitted Surety Insurer which is authorized to transact surety insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger. Should any bond or surety become insufficient, Habitat for Humanity shall furnish the City and the Authority a new bond within ten (10) days after receiving notice from the City or the Authority. No payments will be due or paid under the Agreement until any and all bond deficiencies have been remedied. Habitat for Humanity, by execution of this Agreement acknowledges that the bonds are separate obligations.

4.14 Federal, State, and Local Laws

Habitat for Humanity shall comply with all Governmental Regulations in the construction, use and operation of the Project, including all applicable federal, state and local statutes, ordinances, regulations and laws, including without limitation, the HOME Program, the statutes, regulations and Executive Orders set forth in Section 6, *et al.*, all applicable federal, state, and local labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Riverside Municipal Code.

4.15 Nondiscrimination During Construction

Habitat for Humanity, for itself and its successors and assigns, agrees that, in the development and construction of the Site provided for in this Agreement, Habitat for Humanity will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, national origin or ancestry.

4.16 Liens and Stop Notices

Habitat for Humanity shall not allow to be placed on the Site or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Project, Habitat for Humanity shall within thirty (30) days of such recording or service or within five (5) days of the Authority's demand or the City's demand, whichever last occurs:

- a. pay and discharge the same; or
- b. effect the release thereof by recording and delivering to the City and the Authority a surety bond in sufficient form and amount, or otherwise; or
- c. provide such other assurances which the City and the Authority deem, in their sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of the City and the Authority from the effect of such lien or bonded stop notice.

5. AFFORDABLE HOUSING COVENANTS; MAINTENANCE, PROPERTY MANAGEMENT, OPERATION OF PROJECT

Authority owns the Site and will at all times maintain ownership and control of the Site.

5.1 Duration of Affordability Requirements; Affordability Period

The HOME-Assisted Units shall be subject to the requirements of this Section 5 for the full term of twenty (20) years and the Housing Authority-Assisted Units shall be subject to the requirements of this Section 5 for the full term of fifty-five (55) years.

5.2 Tenant Selection Covenants

5.2.1 Selection of Tenants

Authority shall be responsible for the selection of tenants for the HOME- and Housing Authority-Assisted Units in compliance with the HOME and NSP Programs and California Housing Authority Law, and all lawful and reasonable criteria, as set forth in the Management Plan that is required to be submitted by the Authority to and approved by the City pursuant to this Agreement. To the extent HOME- and Housing Authority-Assisted Units are available, the Authority shall not refuse to lease to a holder of a certificate of family participation under 24 CFR Part 882 (Rental Certificate Program) or a rental voucher under 24 CFR Part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME Program, Section 8 program or other tenant-based assistance program solely on the basis of such certificate, voucher, or comparable document, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria. Notwithstanding anything to the contrary in this Agreement, the Authority's selection of tenant households to occupy the HOME- and Housing Authority-Assisted Units shall be performed in accordance with all applicable fair housing laws.

5.2.2 Income and Occupancy Restrictions

As included in the annual income certification provided by the Authority or as otherwise reasonably requested by the City, the Authority shall endeavor to make available for City's review and approval such information as the Authority has reviewed and considered in its selection process, together with the statement by the Authority that the Authority has determined that each selected tenant will comply with all applicable terms and conditions of this Agreement in each tenant's occupancy of a HOME- and Housing Authority-Assisted Unit, including without limitation, that each corresponding household satisfies the income eligibility requirements, Affordable Rent requirements, and other requirements of this Agreement.

In this regard, the Authority covenants and agrees that (i) each tenant of a HOME- and Housing Authority-Assisted Unit shall and will be a Very Low Income Household as defined herein, (ii) the cost to each tenant household for the corresponding HOME- and Housing Authority-Assisted Unit on the Site shall be at and within the defined Affordable Rent for Very Low Income Households, (iii) each tenant household shall meet Uniform Physical Condition Standards (UPCS)(24 CFR 5.703) for the HOME-Assisted Unit, and (iv) the occupancy and use of the Site shall comply with all other covenants and obligations of this Agreement (collectively, "Tenant Selection Covenants").

5.3 Income Certification Requirements

Upon the initial occupancy of the HOME- and Housing Authority-Assisted Units, and annually thereafter (on or before March 31st of each year), the Authority shall submit to the

City, a written summary of the income, household size and rent payable by each of the tenants of the HOME- and Housing Authority-Assisted Units. Authority shall also provide to the City completed income computation, asset evaluation, rent calculations, and certification forms for any such tenant or tenants. Authority shall obtain, or shall cause to be obtained, an annual certification from each household leasing a HOME- and Housing Authority-Assisted Unit demonstrating that such household is a Very Low Income Household and meets the eligibility requirements established for the HOME- and Housing Authority-Assisted Unit. Authority shall verify, or shall cause to be verified, the income certification of each tenant household.

5.3.1 Verification of Income of New and Continuing Tenants

Gross income calculations for prospective (and continuing) tenants shall be determined in accordance with Sections 92.203 and 92.252(h) of the HOME Regulations. Authority shall verify the income and information provided in the income certification of the proposed tenant as set forth below.

(a) Authority shall verify the income of each proposed tenant of the HOME-Assisted Units pursuant to the Tenant Selection Covenants set forth in Section 5.2 herein, and by at least one of the following methods as appropriate to the proposed tenant:

(i) obtain two (2) paycheck stubs from the person's two (2) most recent pay periods.

(ii) obtain two (2) months of most recent bank statements.

(iiI) obtain a true copy of an income tax return from the person for the most recent tax year in which a return was filed.

(iv) obtain an income verification certification from the employer of the person.

(v) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the person receives assistance from such agencies.

(vi) obtain an alternate form of income verification reasonably requested by City, if none of the above forms of verification is available to the Authority.

5.4 Affordable Rent

5.4.1 Maximum Monthly Rent

The maximum monthly rent chargeable for the HOME- and Housing Authority-Assisted Units shall be annually determined by the City in accordance the following: for a Very Low Income Household, the lessor of the Low HOME Rent and Very Low Income rent established by the California Housing and Community Development.

For purposes of calculating Affordable Rent a "reasonable utility allowance" shall be the allowance calculated in accordance with 24 CFR 92.252(d)(1).

For purposes of this Agreement, "Affordable Rent" means the total of

monthly payments for (a) use and occupancy of each HOME- and Housing Authority-Assisted Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Authority which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, or cable TV or internet services, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than the Authority.

5.4.2 Annual Rent Adjustment

City will review and approve the Affordable Rents proposed by the Authority for the HOME- and Housing Authority-Assisted Units together with the monthly allowances proposed by the Housing Authority for utilities and services to be paid by the tenant. Authority must annually reexamine the income of each tenant household living in the HOME-Assisted Units in accordance with Section 5.3.1. The maximum monthly rent must be recalculated by the Authority and reviewed and approved by the City annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rents for the HOME-Assisted Units is subject to the provisions of outstanding leases. Authority must provide all tenants not less than thirty (30) days' prior written notice before implementing any increase in rents.

5.4.3 Increases in Tenant Income

Units shall qualify as HOME- and Housing Authority-Assisted Units as required despite a temporary noncompliance with this Section 5.4 if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this Section until the noncompliance is corrected.

A Household occupying an HOME- and Housing Authority-Assisted Unit whose income increases to an amount that exceeds the maximum qualifying income of a Qualified Tenant may continue to occupy his or her Unit subject to the requirements of Section 92.252(i) of the HOME Regulations.

5.4.4 Most Restrictive Affordable Rent Covenants Govern

To the extent of an inconsistency between or among the foregoing covenants relating to Affordable Rent and other covenants or agreements applicable to the Site, the most restrictive covenants or agreement regarding the Affordable Rent for the HOME- and Housing Authority-Assisted Units in the Site shall prevail.

5.5 Lease Agreements for HOME- and Housing Authority-Assisted Units

Authority shall submit a standard lease form, which shall comply with HOME Regulations (including Section 92.253), and all requirements of this Agreement, to the City for approval. City shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement and contains all of the provisions required pursuant to the HOME Program and the HOME Regulations. Authority shall enter into a written lease, in the form

approved by the City, with each tenant/tenant household of a HOME- and Housing Authority-Assisted Unit. No lease shall contain any of the provisions that are prohibited pursuant to Section 92.253 of the HOME Regulations.

5.6 Maintenance

5.6.1 General Maintenance

Authority shall maintain the Site and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with the Riverside Municipal Code and HUD's Uniform Physical Conditions Standards ("UPCS", 24 CFR, Part 5 and 200). Authority shall maintain the improvements and landscaping on the Site in accordance with the Maintenance Standards (as hereinafter defined). Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site. To accomplish the maintenance, the Authority shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement. Authority and its maintenance staff, contractors or subcontractors shall comply with the following standards (collectively, "Maintenance Standards"):

(a) The Site shall be maintained in conformance and in compliance with the approved Development Plans, as finalized, and reasonable maintenance standards for comparable first quality affordable housing projects, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curblin. The Site shall be maintained in good condition and in accordance with the custom and practice generally applicable to comparable first quality affordable apartment complexes in the City.

(b) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

6. HOME PROGRAM LIMITATIONS; COMPLIANCE WITH LAWS

6.1 HOME Program

Because development and construction services will be paid for with HOME Program funds, Habitat for Humanity shall carry out the development and construction of the HOME-Assisted Units in conformity with all requirements of the HOME Program. In the event Habitat for Humanity desires to change the requirements for the Site from the specific requirements set forth in this Agreement in order to comply with a subsequently enacted amendment to the HOME Program, Habitat for Humanity shall notify the City in writing of such proposed change and the amendment related thereto at least thirty (30) days prior to implementing such change. In the event the City disapproves of such change and Habitat for Humanity's interpretation of the amendment related thereto, the City shall notify Habitat for Humanity of its disapproval in writing and the parties shall seek clarification from the appropriate HUD Field Office. Only if HUD concurs with Habitat for Humanity's interpretation of the HOME Program shall Habitat for Humanity be permitted to implement the proposed change.

Authority, as the owner and manager of the Site, shall carry out the management of the HOME-Assisted Units in conformity with all requirements of the HOME Program.

6.2 HOME Laws and Regulations

Authority shall comply with all applicable laws and regulations governing the HOME Program and the use of the HOME Funds, including but not limited to, the requirements set forth in the Regulatory Agreement. In the event of any conflict between this Agreement and applicable laws and regulations governing the HOME Program and the use of the HOME Funds, the applicable HOME Program laws and regulations shall govern. Authority agrees to enter into any modification of this Agreement and/or the City Regulatory Agreement reasonably required by the City to attain compliance with the requirements of the HOME Program. Authority acknowledges and agrees that it has received and reviewed a copy of the regulations regarding the HOME Program in effect as of the date of execution of this Agreement.

6.3 Specific Requirements

The laws and regulations governing the HOME Program and the use of the HOME Funds include (but are not limited to) the following, as may be amended from time to time:

6.3.1 Miscellaneous Federal Mandates

- i. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-20 (Public Law 90-284) and implementing regulations at 24 CFR Part 107;
- ii. Executive Order 11063 and regulations at 24 CFR Part 107;
- iii. Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and regulations at 24 CFR Part 107;
- iv. The Age Discrimination Act of 1975, 42 U.S.C. 6101-07, and regulations at 24 CFR Part 146;

v. The Violence Against Women Act (VAWA), 42 U.S.C. 12291, *et seq*, and regulations at 24 CFR 92.359;

vi. Part 8 of 24 CFR Subtitle A regarding Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development;

vii. Executive Order 12372 and implementing regulations at 24 CFR Part 52, regarding intergovernmental review of federal programs;

viii. Flood Disaster Act of 1973, 42 U.S.C. 4001, *et seq.*;

ix. Drug Free Workplace Act of 1988, P.L. 100-690, Title V, Subtitle D.

x. The Fair Housing Act (42 U.S.C. 3601-3620)(Pub. L. 90-284) as it ensures fair housing practices and prohibits housing discrimination based on race, color, religion, sex, national origin, disability, or familial status;

xi. Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto at 24 CFR Section 470.601 as it relates to prohibiting discriminatory actions in activities funded by Community Development Funds;

xii. Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107 (Equal Employment Opportunity) and implementing regulations issued at 41 CFR Chapter 60 and Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as amended and implementing regulations at 24 CFR Part 135 as they relate to equal employment opportunities;

xiii. Executive Orders 11625 and 12432 (concerning minority business enterprise) and 12138 (concerning women's business enterprise) to encourage the use of women and minority owned businesses to the maximum extent possible.

xiv. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102 (Revised), A-110, A-122, and A-128, or successor regulations.

6.3.2 Environment and Historic Preservation

Section 104(f) of the Housing and Community Residence Act of 1974 and 24 CFR Part 58, which proscribe procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5.

6.3.3 Architectural Barriers

The requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157).

6.3.4 Americans With Disabilities Act

The requirements of the Americans with Disabilities Act (42 U.S.C 12131; 47 U.S.C. 155, 201, 218 and 255) which protects the comprehensive civil rights of individuals with disabilities.

6.3.5 Relocation

The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655), and similar state laws. If and to the extent that development of the Project results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then the Authority shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. Authority shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws.

6.3.6 Disabled Discrimination

The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), and federal regulations issued pursuant thereto (24 CFR Part 8), which prohibit discrimination against the disabled in any federally assisted program.

6.3.7 Future HOME Regulations

Any other U.S. Department of Housing and Urban Development regulations currently in effect or as may be amended or added in the future pertaining to the HOME Program.

6.3.8 Ineligible Contractors

Use of debarred, suspended, or ineligible contractors or subrecipients is prohibited directly or indirectly as part of this award as set forth in 24 CFR Part 5.

6.3.9 Conflict of Interest

No member, officer or employee of the organization, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the HOME Funds, and Habitat for Humanity, as developer, shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of the certification.

6.3.10 Affirmative Marketing

The requirements of the City's affirmative marketing policies and procedures as set forth in Exhibit B to the City Regulatory Agreement, and as may be amended, in accordance with Section 92.351 of the HOME Regulations.

6.3.11 Property Standards

The HOME-Assisted Units must meet all applicable federal, state and local housing quality standards and code requirements, including the Uniform Physical Conditions Standards ("UPCS", 24 CFR, Part 5 and 200) established by HUD for housing that is decent, safe, sanitary, and in good repair.

6.3.12 HUD Regulations

Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the use of HOME Funds, including but not limited to HUD regulations as may be promulgated regarding subrecipients.

6.3.13 Successor Rules

In the event HUD ceases to provide definitions, determinations and calculations under the HOME Program related to Income Eligible Households or Annual Income, or both, the provisions of this Section shall be performed in accordance with definitions, determinations and calculations related to such matters as established by the City with a view toward establishing such definitions, determinations and calculations in a manner consistent, as nearly as possible, with those formerly promulgated by HUD under the HOME Program.

6.3.14 Violence Against Women Act (VAWA)

The requirements of the Violence Against Women Act (VAWA) (42 U.S.C. § 12291 *et seq.*) which provides protections for victims of domestic violence, dating violence, sexual assault, and stalking.

6.4 Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

ii. If any funds other than federally appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL. "Disclosure form to Report Lobbying" in accordance with its instructions.

6.5 Religious Activity

In addition to, and not in substitution for, other provisions of this Agreement regarding the provision of services with funds, pursuant to Title II of the Housing and Community

Development Act of 1990, as amended, Habitat for Humanity and the Authority, each:

i. Represents that it is not, or may not be deemed to be, a religious or denominational institution or organization or an organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization; and,

ii. Agrees that, in connection with such services:

(a) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(b) It will not discriminate against any person applying for housing on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

(c) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence on or in the Project; and,

(d) The common portion of the Site shall contain no sectarian or religious symbols or decorations.

6.6 Disclosure of Confidential Tenant Information

To the extent allowed by law, the Parties agree to maintain the confidentiality of any information regarding Tenants or applicants for residency under this Project, or their immediate families, pursuant to this Agreement, which may be obtained through application forms, interviews, tests, reports, from public agencies or counselors, or any other source. Without the written permission of the applicant, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to this Agreement, and then only to persons having responsibilities under the Agreement, including those furnishing services under the Project through subcontracts.

6.7 Layering Review

The amount of HOME funds provided in this agreement is contingent on a HOME Subsidy Layering analysis completed by City. The purpose of the layering analysis is to demonstrate that the HOME funds are reasonable and necessary to the Project and that federal sources of funds do not over-subsidize the Project. Habitat for Humanity and the Authority shall notify the City promptly in writing should other local, state or federal government assistance be obtained in the future other than that contemplated under the existing Project Budget.

6.8 Compliance with Federal, State and Local Laws

Habitat for Humanity and the Authority shall comply with all applicable federal, state and local statutes, ordinances, regulations and laws, (including the Governmental Requirements) with respect to the development and the operation and management of the Site by Habitat for Humanity and the Authority (all of which comprises the Project hereunder). Habitat

for Humanity shall carry out the design, construction, rehabilitation and completion of improvements, and operation and management of the Project, in conformity with all applicable laws, including all applicable federal, state, and local labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Riverside Municipal Code.

6.8.1 Prevailing Wage Laws

Habitat for Humanity shall carry out the development through completion of the Project and the overall construction on the Site in conformity with all applicable federal, state and local labor laws and regulations, including without limitation, if and to the extent applicable, the requirements to pay prevailing wages under federal law (the Davis Bacon Act, 40 U.S.C. § 3141, *et seq.*, and the regulations promulgated thereunder set forth at 29 CFR Part 1 (collectively, "Davis Bacon") and, if and to the extent applicable, California law (Labor Code § 1720, *et seq.*).

Habitat for Humanity shall be solely responsible, expressly or impliedly, for determining and effectuating compliance with all applicable federal, state and local public works requirements, prevailing wage laws, labor laws and standards, and neither the City nor the Authority makes any representations, either legally or financially, as to the applicability or non-applicability of any federal, state or local laws to the Project or any part thereof, either onsite or offsite. Habitat for Humanity expressly, knowingly and voluntarily acknowledges and agrees that neither the City nor the Authority has previously represented to Habitat for Humanity or to any representative, agent or affiliate of Habitat for Humanity, or its General Contractor or any subcontractor(s) for the construction or development of the Project, in writing or otherwise, in a call for bids or otherwise, that the work and construction undertaken pursuant to this Agreement is (or is not) a "public work," as defined in Section 1720 of the Labor Code or under Davis Bacon.

6.8.2 Section 3 Compliance

Habitat for Humanity agrees to comply with and to cause the general contractor, each subcontractor, and any other contractors and/or subcontractors or agents of Habitat for Humanity to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701u, and the implementing regulations, in connection with the construction on the Site. Habitat for Humanity shall submit to the City each Construction Contract with appropriate provisions providing for the development of the Site in conformance with the terms of this Agreement, including the Section 3 Clause, in accordance with Section 206(d). The General Contractor, each subcontractor, and any other contractors or subcontractors or agents of Habitat for Humanity (subject to compliance with 24 CFR Part 135) shall have provided to the City the certification in appendix B of 24 CFR Part 24 that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from this Project, and the City shall be responsible for determining whether each contractor has been debarred.

City has prepared a Section 3 "checklist" and other forms related to Section 3 compliance; and as provided by the City to Habitat for Humanity, and its contractor(s) or subcontractor(s), if any, and as applicable, such forms shall be utilized in all contracts and subcontracts to which Section 3 applies. Habitat for Humanity hereby acknowledges and agrees

to take all responsibility for compliance with all Section 3 Clause federal requirements as to Habitat for Humanity, general contractor, subcontractors, or other contractor(s), subcontractor(s), and other agents. Habitat for Humanity shall provide or cause to be provided to the General Contractor and each subcontractor, and each of its other contractor(s), subcontractor(s) and agents the checklist for compliance with the Section 3 Clause federal requirements provided by the City, to obtain from the General Contractor, each subcontractor, and other contractor(s), subcontractor(s), and agents all applicable items, documents, and other evidence of compliance with the items, actions, and other provisions within the checklist, and to submit all such completed Section 3 Clause documentation and proof of compliance to the City. To the extent applicable, Habitat for Humanity shall comply and/or cause compliance with all Section 3 Clause requirements for the Project. For example, when and if Habitat for Humanity or its contractor(s) hire(s) full time employees, rather than volunteer labor or materials, Section 3 is applicable and all disclosure and reporting requirements apply.

6.8.3 Labor Standards

The Construction Contract for the Project, as well as any other contract for the development work, shall be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §3701, *et seq.*). Participating contractors, subcontractors, and other participants must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Habitat for Humanity shall supply to City certification, in form and substance satisfactory to HUD and the City, as to compliance with the provisions of this Section before receiving any disbursement of federal funds for the development work.

6.9 Lead-Based Paint

City and the Authority, as recipient(s) of federal funds, have modified and conformed all of their federally funded housing programs to the Lead-Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. §4800, *et seq.*, specifically §§4821-4846, and the implementing regulations thereto, which are aimed to take advantage of rehabilitation events as a cost-effective opportunity to reduce lead based paint and lead based paint hazards (LBP) in existing housing.

The implementing regulations to Title X, set forth in 24 CFR Part 35 (LBP Regs), were adopted by HUD on September 15, 1999 and are now effective for compliance by all recipients and subrecipients of federal funds. Subpart J of the LBP Regs focuses on the requirements for programs that provide assistance for housing rehabilitation. In this regard, Habitat for Humanity shall comply with the requirements, as and to the extent applicable, of Title X and the implementing LBP Regs for the Project.

The development of the Site comprising the Project shall be undertaken and completed by qualified contractor(s) selected by Habitat for Humanity and, if applicable, meeting the requirements of the LBP Regs. All work relating to LBP and LBP hazards and the reduction and clearance thereof shall be undertaken using safe work practices and shall be conducted by qualified contractor(s) and inspectors(s) meeting the requirements of the LBP Regs. Under the LBP Regs, treatment and clearance shall be conducted by separate contractors. All treatment and

clearance using safe work practices of LBP and LBP hazards at the Site shall be completed first and prior to any other part of the development work.

Prior to commencing any part of the development, if applicable, Habitat for Humanity shall cause each household in occupancy at the Site to receive (and shall obtain proof of receipt through signature) (1) a complete copy of the HUD issued informational pamphlet/brochure about LBP and LBP hazards, (2) any necessary disclosure forms relating to information about LBP and LBP Hazards, and (3) the results of any evaluation for LBP or LBP hazards at the applicable Unit within the Site.

6.10 Duty to Prevent Release of Hazardous Substances

During the development of the Site, Habitat for Humanity shall take all necessary precautions to prevent the release of any Hazardous Substances (with particular regard to any asbestos, or asbestos-containing materials, or lead-based paint or other lead containing products which are regulated by the HOME Program) into the environment or onto or under the Site. Such precautions shall include compliance with all Environmental Laws with respect to Hazardous Substances. In addition, Habitat for Humanity shall install and utilize such equipment and implement and adhere to such procedures as are consistent with applicable Environmental Laws and then-prevailing industry standards as respects the disclosure, storage, use, abatement, removal and disposal of Hazardous Substances.

7. DEFAULTS, REMEDIES AND TERMINATION

7.1 Defaults – General

Failure or delay by any Party to perform, comply with or observe any of the conditions, provisions, terms, covenants or representations of this Agreement, including any of the Attachments hereto, constitutes a default under this Agreement. As provided herein below, the Party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. The injured Party shall give written notice of default to the Party in default, specifying the default complained of by the injured Party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the date of default.

Except as required to protect against further damages, the injured Party may not institute legal proceedings against the party in default until an "Event of Default" (as such term is hereinafter defined) has occurred. For purposes of this Agreement, an "Event of Default" for purposes of instituting legal proceedings by a non-defaulting Party against the defaulting Party shall mean a failure to satisfy, perform, comply with or observe any of the conditions, provisions, terms, covenants or representations contained in this Agreement, including any Attachment hereto, and such failure having continued uncured or without the defaulting party commencing to diligently cure for thirty (30) days after notice thereof in writing is mailed by the injured party to the defaulting party; provided, however, that if such event of default cannot be cured within such thirty (30) day period and Habitat for Humanity has diligently commenced efforts to cure, Habitat for Humanity shall have such reasonable time to diligently prosecute such cure to completion. If a different period or notice requirement is specified for any particular default under any other provision of this Agreement, including any of the Attachments hereto, the specific provision shall

control.

7.2 Legal Actions

7.2.1 Institution of Legal Actions

In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, any Party may institute an action at law or equity to cure, correct or remedy any Event of Default, to recover damages as provided herein for any Event of Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions may be instituted in the Superior Court of the County of Riverside, State of California.

7.2.2 Applicable Law

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

7.2.3 Acceptance of Service of Process

In the event that any legal action is commenced by Habitat for Humanity against the City or the Authority, service of process on the City and the Authority shall be made by personal service upon the City's Clerk and the Authority's Secretary, respectively, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City or the Authority against Habitat for Humanity, service of process on Habitat for Humanity shall be made by personal service upon any owner, general partner, officer or manager of Habitat for Humanity or in such other manner as may be provided by law, whether made within or without the State of California.

7.3 Rights and Remedies are Cumulative

To the extent permitted by law and except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same Event of Default or any other Event of Default by the other Party.

7.4 Inaction Not a Waiver of Default

Any failures or delays by any Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

7.5 Specific Performance

Upon an Event of Default, the non-defaulting Party, at its option, may thereafter (but not before) commence an action seeking specific performance and/or other equitable relief to enforce the terms of this Agreement pertaining to such default.

7.6 Rights of Termination and Damages

7.6.1 Termination by Habitat for Humanity

Provided Habitat for Humanity is not in default of any of the terms and conditions of this Agreement, then in the Event of Default by the City or the Authority, Habitat for Humanity shall have the right to terminate this Agreement by written notice to both in accordance with the provisions of Section 8.1. Upon termination by Habitat for Humanity pursuant to this Section 7.6.1, the Authority and the City may enter into a new agreement with respect to the development of the Site and, except as expressly provided to the contrary herein with respect to obligations that survive the termination of this Agreement, there shall be no further rights or obligations between the Parties.

7.6.2 Termination by the Authority or the City

Provided the Authority is not in default of any of the terms and conditions of this Agreement, then upon an Event of Default by Habitat for Humanity, the Authority shall have the right to terminate this Agreement by written notice to Habitat for Humanity in accordance with the provisions of Section 8.1. In addition, the Authority may apply to a court of competent jurisdiction for relief at law or in equity as may be appropriate and permissible. Likewise, provided the City is not in default of any of the terms and conditions of this Agreement, then upon an Event of Default by Habitat for Humanity, the City shall have the right to terminate this Agreement by written notice to Habitat for Humanity in accordance with the provisions of Section 8.1. The City may apply to a court of competent jurisdiction for relief at law or in equity as may be appropriate and permissible.

7.7 Limitation on Damages

Without limiting the generality of the foregoing, the Parties shall not in any event be entitled to, and the Parties hereby waive, any right to seek consequential damages of any kind or nature from any other Party or Parties arising out of or in connection with this Agreement, and in connection with such waiver, the Parties are familiar with and hereby waive the provision of § 1542 of the California Civil Code which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HIS SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

8. GENERAL PROVISIONS

8.1. Notices, Demands and Communications Between the Parties

Unless otherwise specified in this Agreement, it shall be sufficient service or giving of any notice, request, certificate, demand or other communication if the same is sent by (and all notices required to be given by mail will be given by) first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery. Unless a different address is given by any party as provided in this Section, all such communications will be addressed as follows:

To Habitat for Humanity:

Habitat for Humanity Riverside, Inc.
Attn: Executive Director
2180 Iowa Avenue
Riverside, CA 92507

To Authority: Housing Authority of the City of Riverside
Attn: Executive Director
3900 Main Street
Riverside, California 92522

To City: City of Riverside
Attn: City Manager
3900 Main Street
Riverside, California 92522

Any Notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third (3rd) day from the date it is postmarked if delivered by registered or certified mail.

8.2. Conflicts of Interest

No member, official or employee of Habitat for Humanity shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

8.3. Warranty Against Payment of Consideration for Agreement

Habitat for Humanity warrants that it has not paid or given and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as project managers, architects, engineers, attorneys, and public relations consultants.

8.4. Nonliability of Authority Officials and Employees

No member, official, employee, representative or agent of the Authority shall be

personally liable to Habitat for Humanity, or any successor in interest, in the event of any default or breach by the Authority or for any amount which may become due to Habitat for Humanity or successor, or on any obligation under the terms of this Agreement.

8.5. Nonliability of City Officials and Employees

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

8.6. Approval by Parties

Approvals required of the Parties shall be given within the time set forth in the Schedule of Performance or, if no time is given, within a reasonable time. Wherever this Agreement requires the Parties to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not be unreasonably withheld or delayed. In the event that a Party declines to approve any contract, document, plan, proposal, specification, drawing or other matter, such denial shall be in writing and shall include the reasons for such denial. The Party considering the request for such approval shall use commercially reasonable efforts to respond to such request for approval within fifteen (15) days of receipt unless expressly provided to the contrary herein.

8.7. Plans and Data

If this Agreement is terminated, the City shall have the right but not the obligation to purchase from Habitat for Humanity all plans, drawings, studies and related documents concerning the Project within Habitat for Humanity's possession and control, without representation or warranty. The purchase price for all or any part of such materials shall be their cost to Habitat for Humanity, less amounts already disbursed to Habitat for Humanity from the City HOME Funds for such purposes.

8.8. Force Majeure

In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God or any other deity; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation including litigation challenging the validity of this transaction or any element thereof including the acquisition of the Site, or any portion thereof, unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers; acts of another party; acts or failure to act of any other public or governmental agency or entity; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform or relief from default, including without limitation the allocation of Authority revenues to the State of California by a legislative act to fund deficits in the state budget. An extension of time for any such cause shall be for the period of the

enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by mutual agreement among the Parties. That notwithstanding, if said prevention or delay extends for one (1) year, any party, by notice in writing to the other, may terminate this Agreement.

8.9. Applicable Law; Interpretation

The laws of the State of California shall govern the interpretation and enforcement of this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and as though both of the parties participated equally in its drafting. Captions and organizations are for convenience only and shall not be used in construing meaning.

8.10. Records

Habitat shall comply with 24 CFR Section 570.506 regarding records that must be maintained for the Project. Habitat shall maintain all Project financial records, including source documentation to support how NSP funds loaned to Borrower hereunder were expended, which includes, but is not limited to, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, and other documentation as may be required by Grantee or HUD to support the expenditures for this Project. All supporting documents shall be maintained for three years following completion of the project. The records shall be made available to Grantee and HUD and/or any of their authorized representatives, who shall have access to and the right to examine any of the Project records during such period. All record keeping requirements set forth in this Agreement or any record keeping requirements mandated by NSP regulations shall survive termination of this Agreement.

8.11. Inspection of Books and Records, Reports

The City and the Authority, and their respective designees, have the right at all reasonable times, and upon reasonable advance notice of not less than 48 hours, to inspect the books and records and other related documents of Habitat for Humanity pertaining to the satisfaction of their obligations hereunder as reasonably necessary for purposes of enforcing the provisions of this Agreement. Such books, records and related documents shall be maintained by Habitat for Humanity at locations as agreed by the parties. Throughout the term of this Agreement, Habitat for Humanity shall submit to the Authority and the City reasonable written progress reports as and when reasonably requested by the Authority or the City on all matters pertaining to the Project of the Site.

8.12. Mutual Cooperation

Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement.

8.13. Groundbreaking and Grand Openings

To insure proper protocol and recognition of the Authority Board, Habitat for Humanity shall cooperate with Authority staff and City staff in the organization of any Project-related groundbreaking, grand openings or any other such inaugural events/ceremonies celebrating the development which is the subject of this Agreement.

8.14. Independent Contractor

The parties agree that Habitat for Humanity in the performance of this Agreement shall act as and be an independent contractor and shall not act in the capacity of an agent, employee or partner of the Authority or the City.

9. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement includes thirty-seven (37) pages and Attachment Nos. 1 through 9 which constitute the entire understanding and agreement of the Parties. Two (2) duplicate originals of this Agreement shall be executed each of which shall be deemed to be an original. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterpart shall constitute one and the same instrument.

Except as otherwise provided herein, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Parties and all amendments hereto must be in writing and signed by the appropriate authorities of the Parties.

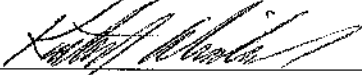
(SIGNATURES ON NEXT TWO PAGES)

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set opposite their signatures.

"HABITAT FOR HUMANITY"

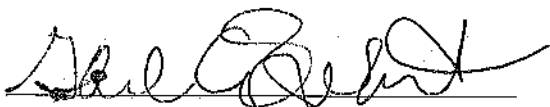
HABITAT FOR HUMANITY RIVERSIDE, INC.,
A California Not-For-Profit Corporation

Dated: 5/20/19

By: 

Name: KATHY MICHALAK

Its: EXECUTIVE DIRECTOR

By: 

Name: GAIL A. STEWART

Its: BOARD PRESIDENT

ATTEST: _____

"AUTHORITY"

HOUSING AUTHORITY OF THE CITY OF RIVERSIDE, a public entity


Dated: _____

By: _____
Executive Director

ATTESTED TO:

By: _____
Authority Secretary

APPROVED AS TO FORM:

By:  _____
Authority General Counsel

"CITY"

THE CITY OF RIVERSIDE, a California charter city and municipal corporation

Dated: _____

By: _____
City Manager


ATTESTED TO:

By: _____
City Clerk

CERTIFIED AS TO FUNDS AVAILABILITY:

BY:  _____
Chief Financial Officer/City Treasurer

APPROVED AS TO FORM:

By:  _____
Deputy City Attorney

18-1763 LMS 03/19/19