



A G E N D A



**CITY OF IMPERIAL BEACH
CITY COUNCIL
PLANNING COMMISSION
PUBLIC FINANCING AUTHORITY
HOUSING AUTHORITY**

IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY

JUNE 28, 2013

**Council Chambers
825 Imperial Beach Boulevard
Imperial Beach, CA 91932**

SPECIAL MEETING – 7:30 A.M.

SPECIAL CLOSED SESSION MEETING – 7:31 A.M.

THE CITY COUNCIL ALSO SITS AS THE CITY OF IMPERIAL BEACH PLANNING COMMISSION, PUBLIC FINANCING AUTHORITY, HOUSING AUTHORITY AND IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY

The City of Imperial Beach is endeavoring to be in total compliance with the Americans with Disabilities Act (ADA). If you require assistance or auxiliary aids in order to participate at City Council meetings, please contact the City Clerk's Office at (619) 423-8301, as far in advance of the meeting as possible.

SPECIAL MEETING CALL TO ORDER

ROLL CALL BY CITY CLERK

PUBLIC COMMENT - *Each person wishing to address the City Council regarding items not on the posted agenda may do so at this time. In accordance with State law, Council may not take action on an item not scheduled on the agenda. If appropriate, the item will be referred to the City Manager or placed on a future agenda.*

PUBLIC HEARINGS

- RESOLUTION NO. HA-13-14 APPROVING AN AFFORDABLE HOUSING AGREEMENT AND THE SALE OF PROPERTY FOR THE DEVELOPMENT OF 6 FOR-SALE HOUSES LOCATED AT 776 10TH STREET (APN 626-282-12) AND ADOPTION OF RESOLUTION NO. 2013-7353 MAKING CERTAIN FINDINGS PURSUANT TO HEALTH AND SAFETY CODE SECTION 33433, APPROVING OF THE AFFORDABLE HOUSING AGREEMENT AND AUTHORIZING THE SALE OF THE 10TH & DONAX PROPERTY FROM THE HOUSING AUTHORITY TO THE DEVELOPER. (0412-50 & 0660-15)**

City Manager's Recommendation:

1. Declare the public hearing open;
2. Receive report and entertain testimony;
3. Close the public hearing;
4. That the City Council entertains a motion to adopt Resolution No. 2013-7353;
5. That the Housing Authority entertains a motion to adopt Resolution No. HA-13-14; and
6. That the Housing Authority authorize the Executive Director or designee to sign all documents necessary and appropriate to carry out and implement the Affordable Housing Agreement and to administer the Authority's obligations, responsibilities, and duties to be performed under said Agreement.

Any writings or documents provided to a majority of the City Council/Planning Commission/Public Financing Authority/Housing Authority/I.B. Redevelopment Agency Successor Agency regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.

I.B. REDEVELOPMENT AGENCY SUCCESSOR AGENCY REPORTS

2. **RESOLUTION NO. SA-13-26 APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH FRASER & ASSOCIATES TO PROVIDE FISCAL CONSULTANT SERVICES FOR THE POSSIBLE REFUNDING OF THE SERIES 2003A TAX ALLOCATION REVENUE BONDS. (0620-77)**

Executive Director: That the Successor Agency entertains a motion to adopt resolution.

ADJOURN SPECIAL MEETING AND CONVENE SPECIAL CLOSED SESSION MEETING

SPECIAL CLOSED SESSION MEETING CALL TO ORDER

ROLL CALL BY CITY CLERK

PUBLIC COMMENT Public comments on the Closed Session items will be taken during this portion of the agenda.

CLOSED SESSION

1. PUBLIC EMPLOYEE APPOINTMENT

Pursuant to Government Code Section 54957

Title: City Manager

2. CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6

Agency Representative: Mayor and City Attorney

Unrepresented Employee: City Manager

RECONVENE AND ANNOUNCE ACTION (IF APPROPRIATE)

ADJOURNMENT

The Imperial Beach City Council welcomes you and encourages your continued interest and involvement in the City's decision-making process.

FOR YOUR CONVENIENCE, A COPY OF THE AGENDA AND COUNCIL MEETING PACKET MAY BE VIEWED IN THE OFFICE OF THE CITY CLERK AT CITY HALL OR ON OUR WEBSITE AT

www.ImperialBeachCA.gov.

/s/
Jacqueline M. Hald, MMC
City Clerk



**STAFF REPORT
IMPERIAL BEACH HOUSING AUTHORITY**

TO: CHAIR AND BOARD MEMBERS OF THE IMPERIAL BEACH HOUSING AUTHORITY & MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GARY BROWN, EXECUTIVE DIRECTOR

MEETING DATE: JUNE 28, 2013

ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, DEPUTY DIRECTOR *GW*

SUBJECT: PUBLIC HEARING: ADOPTION OF RESOLUTION NO. HA-13-14 APPROVING AN AFFORDABLE HOUSING AGREEMENT AND THE SALE OF PROPERTY FOR THE DEVELOPMENT OF 6 FOR-SALE HOUSES LOCATED AT 776 10TH STREET (APN 626-282-12) AND ADOPTION OF RESOLUTION NO. 2013-7353 MAKING CERTAIN FINDINGS PURSUANT TO HEALTH AND SAFETY CODE SECTION 33433, APPROVING OF THE AFFORDABLE HOUSING AGREEMENT AND AUTHORIZING THE SALE OF THE 10TH & DONAX PROPERTY FROM THE HOUSING AUTHORITY TO THE DEVELOPER

BACKGROUND:

In November 2011, the Imperial Beach Housing Authority (“Authority”) authorized staff to issue a Request for Proposals (“RFP”) for a Real Estate Development Opportunity for the site located at 776 10th Street. The deadline for the submittal of responses was January 16, 2012, and the Agency received one proposal from San Diego Habitat for Humanity, Inc. (“Habitat”).

Habitat is the local affiliate of Habitat for Humanity International. It operates as an independent nonprofit organization, and is responsible for its own construction, family selection, fundraising and governance. Habitat’s mission is to work in partnership with families to strengthen communities and transform lives by building new homes, rehabilitating existing homes and providing affordable homeownership opportunities for people in need in our community. Habitat has built over 134 homes in San Diego County and has recently completed projects in the cities of National City, Carlsbad, and El Cajon.

Shortly after the RFP, Authority staff and special counsel negotiated an Affordable Housing Agreement (the “Original Agreement”) with Habitat in which the Authority would provide the now Authority-owned property at 776 10th Street (the “Property”) and up to \$500,000 to Habitat for the purpose of constructing 6 units of affordable, for-sale housing. The Original Agreement was approved by the Authority on March 21, 2012, but the pending adoption of Assembly Bill (AB) 1484 which occurred in June 2012 adding additional requirements for the dissolution of

redevelopment agencies including specific requirements for the disposition and distribution of available affordable housing assets, meant that the Original Agreement was never able to be executed.

Since that time, the Imperial Beach Redevelopment Agency Successor Agency (the "Successor Agency") and the Authority, acting as the successor housing entity, have successfully completed the procedures outlined in AB 1484 including the completion of a Due Diligence Review (DDR) audit of all Low and Moderate Income Housing Funds (LMIHF), the completion and submittal of a list of Housing Asset Transfers to the State Department of Finance (the "DOF") and the steps required to specifically designate available housing bond proceeds to the proposed Project discussed below. On November 7, 2012, the Successor Agency received a letter from the DOF concurring with the findings of the DDR of LMIHF that there were no funds available for distribution to other affected taxing entities. On February 25, 2013, the Successor Agency received a letter from the DOF rendering its determination on the Successor Agency's Housing Asset Transfers. In their letter, the DOF stated that we had "been approved to spend [our] housing bond proceeds through the Recognized Obligation Payment Schedule (ROPS) process."

Authority staff and special counsel have negotiated with Habitat for a proposed Affordable Housing Agreement (the "AHA") with Habitat in which the Authority would provide the now Authority-owned Property and financial assistance with the available housing bond proceeds of up to \$475,000 for development and sale of the "Project" as more particularly discussed below.

PROJECT/SITE DESCRIPTION:

The subject Property is comprised of a vacant, flat site, rectangular site of approximately 10,150 square feet located at 776 10th Street at the northwest corner of 10th Street and Donax Avenue as shown below.



Project Features

The approximately 10,150 square foot vacant project site fronts 10th Street and Donax Avenue and is located at 776 10th Street (APN 626-282-12-00) in the C-1 (General Commercial) Zone. The Project proposes six attached two-story residential condominium townhome units with no

commercial component. Each unit would be approximately 1,300 square feet in size and contain three bedrooms and an attached one-car garage, which would be accessible from a rear driveway located off of the alley east of the property. Ground floor porches and court yards for each unit would be provided along Donax Avenue with private yards provided on the ground floor adjacent to the rear drive aisle. The design of the building is conceptual at this time, but is designed to provide varied rooflines, a mixture of colors and materials, and building projections that should contribute positively to the aesthetic of the neighborhood and integrate well with the surrounding uses. Landscaping would be provided as a buffer between the building and Donax Avenue and 10th Street, which should enhance the view corridor of this intersection.

The six (6) for-sale units will be made affordable to low-income households earning up to 80% of Area Median Income (AMI). In addition, Habitat will construct off-site improvements to the 10th Street and Donax Avenue frontages and to the intersection of Donax Avenue and the alley to the west of the site.

General Plan/Zoning Consistency

New commercial zoning has been approved by the Imperial Beach City Council, but is still awaiting certification by the Coastal Commission. It is unknown which zoning requirements will be in place upon project submittal, but consistency with the existing and proposed zoning has generally been reviewed, and will be evaluated in greater detail when the project is formally submitted. Submittal of the development permit and tentative map applications are expected the week of June 24, 2013.

Existing Zoning

The proposed Project would be subject to the C-1 (General Commercial) zoning requirements. The intent of the C-1 zone is to provide areas for business to meet the local demand for commercial goods and services. Imperial Beach Municipal Code (IBMC) Section 19.26.010 states that the dominant type of commercial activity in the C-1 zone should be community and neighborhood serving retail and office uses, and requires residential dwelling units to locate above the first floor at a maximum density of one unit per one thousand square feet of lot area. The Project would propose six residential dwelling units with residential areas on the first and second floors, and would not provide a commercial component. In addition, IBMC 19.48.030 requires one and a half parking spaces per dwelling unit in the C-1 Zone, though the project proposes one parking space per dwelling unit.

Because the Project is for affordable housing, the Project applicant is allowed to request deviations from required provisions of the local zoning ordinance as incentives provided by California Government Code Section 65915. Though the Project is still in the conceptual design stage, deviations from the C-1 zoning requirements may be requested to relieve parking standards and to locate residential uses on the ground floor.

Proposed/Amended Zoning (pending Coastal Commission certification)

Upon certification by the California Coastal Commission of the recently adopted Commercial Zoning Amendments, the proposed Project would be subject to the C/MU-1 (General Commercial and Mixed-Use) zoning requirements. The purpose of the C/MU-1 zone is to provide areas for mixed-use development, multiple-family dwellings, and for businesses to meet the local demand for commercial goods and services. It is intended that the dominant type of commercial activity in the C/MU-1 zone will be community and neighborhood serving retail and office uses. The C/MU-1 Zone allows for multiple-family dwelling units subject to IBMC Section 19.26.020.A.1, which allows for residential uses without a commercial component for properties

that do not front or are further than twenty-five (25) feet from Palm Avenue. The Property would be subject to a maximum density of one dwelling unit for every one thousand square feet of lot area, and setbacks of fifteen feet on Donax Avenue (if Donax Avenue is considered the front yard), five feet for side yards, and ten feet for the rear yard. One and a half parking spaces per dwelling unit would be required, though only one parking space per dwelling unit is proposed.

As previously mentioned, the Project is allowed to request deviations from required provisions of the local zoning ordinance because it is for affordable housing. If reviewed under the new C/MU-1 zoning requirements the Project may request deviations from setback and parking standards.

ESSENTIAL TERMS AND CONDITIONS OF THE AGREEMENT

Proposed Financial Assistance

Under the terms of the proposed AHA with Habitat (the "Developer" therein), the financial assistance provided by the Authority to the Developer will be as follows:

- The Authority will convey fee interest in the Property (the land) to the Developer for one dollar (\$1.00).
- The Authority will provide to the Developer affordable housing bond proceeds in the amount of up to **four hundred seventy-five thousand dollars (\$475,000)** to pay for a portion of the Project Costs.
- The total Authority contribution of **eight hundred six thousand dollars (\$806,000)** will be in the form of a Developer Note, for the development of the Project. This equates to an Authority subsidy of approximately \$134,333 per unit, inclusive of land.
- The Developer Note will be 0% interest, except in the event of default by the Developer.
- In the event of a default by the Developer, principal and interest on the Developer Note will be immediately due. Interest will accrue from the date of the Developer Note at the lesser of 10% simple interest or the maximum rate allowed by law.
- The Developer will construct six (6) for-sale residential units affordable to low-income households earning up to 80% of the area median income ("Affordable Units").
- The Affordable Units will be restricted for low-income households for a minimum of forty-five (45) years.
- The Developer will be obligated to obtain all necessary land use entitlements, approvals and permits for completion of the Project and will be required to pay all applicable permit and fees.
- Upon completion of the Project, a portion of the Developer Note will be forgiven and the remaining balance of the Developer Note will convert to six (6) first-time homebuyer loans (First Time Homebuyer Note) for purchase of the Affordable Units to the extent the First Time Homebuyer Notes and the loans provided by the Developer to the first-time homebuyers equal the Maximum Purchase Price for a low-income household as defined in the AHA.

- To the extent permitted by law, Developer shall provide priority to purchasers of the Affordable Units who live or work in the City of Imperial Beach.
- Purchasers must qualify as a first-time homebuyer and purchased unit must be a primary residence.
- Habitat will have a Right of First Refusal to buy the house back from the homeowner and find another low income family if the original purchaser wished to sell the unit.
- If Habitat does not exercise their Right of First Refusal, the Authority has the option to purchase an Affordable Unit in the event of a default by the homebuyer or in the event the homebuyer would like to transfer the Affordable Unit.
- Developer shall have obtained commitments of financing from all financing sources, subject to approval by the Authority, to be used for financing the construction of the Project which are sufficient to complete construction of the Project.
- Prior to closing, Developer shall have obtained approval by the City of a final subdivision map allowing for the construction of at least six (6) two-story for-sale townhomes.
- In order to facilitate development of the Project, the Authority has agreed to subordinate its deed restrictions to the Developer's deed restrictions, both of which shall not be subordinated to either the Developer's or the Authority's financing. Further, the Authority has agreed to subordinate its financing to the Developer's. These subordinations will require the Authority to make a special finding in accordance with California Health and Safety Code Section 33334.14(a).

Financial Analysis

Keyser Marston Associates, Inc. ("KMA") has undertaken a detailed financial analysis of the proposed development and prepared a Summary Report as required by Section 33433 of the California Community Redevelopment Law (see Summary Report in Attachment 3). In estimating the direct costs of the development, KMA reviewed the financial pro forma submitted by the Developer. The development costs for the Project, excluding site acquisition, are estimated to total \$1,493,000. This equates to \$191 per square feet of total gross building area ("GBA") and approximately \$249,000 per dwelling unit.

Total development costs consist of the following:

- Direct construction costs, such as site preparation, parking, shell construction, furniture fixtures and equipment, and contingency are estimated to total \$1,236,000. This equates to \$158 per square feet of GBA.
- Indirect costs, such as architecture, engineering, permits and fees, legal and accounting, taxes and insurance, developer fee, marketing/sales, and contingency are projected to be \$232,000, or 18.8% of direct costs.
- Financing costs such as the closing costs related to the initial sale of the Affordable Units are estimated to total \$25,000, or \$4,000 per dwelling unit. The AHA provides that the Developer shall pay for the Authority's closing costs associated with the sale of each Affordable Unit to a first-time homebuyer.

Total Development costs are summarized as follows:

<u>Development Costs</u>	<u>Amount</u>
Direct Costs	\$1,236,000
Indirect Costs	\$232,000
Financing Cost	<u>\$25,000</u>
Total Development Costs	\$1,493,000

The gross sales proceeds of the Affordable Units are based on the affordable sales prices calculated in accordance with California Health and Safety Code (H&SC) Section 50052.5. The Maximum Purchase Price is based on the appropriate household size for a given unit size and specific income thresholds. Per H&SC 50052.5, a three-bedroom unit is assumed to house a four-person household.

Based on this information and AMI figures for the County of San Diego, as determined by HUD and published from time to time by the State of California Department of Housing and Community Development (HCD), the maximum unit sales price for a low-income three-bedroom unit is estimated to be \$273,000 (2013 figures). This maximum affordable sales price assumes that the Developer provides 30-year, 0% interest financing to each homebuyer. The maximum affordable sales price is determined as follows:

Assumed Family Size ⁽¹⁾	4
Household Income ⁽²⁾	\$53,130
Income Allocation to Housing	30%
Amount Available for Housing	\$15,939
Annual HOA ⁽³⁾	\$1,800
Annual Utilities ⁽⁴⁾	\$2,300
Property Tax Rate	1.00%
Annual Property Taxes ⁽⁵⁾	\$2,730
Available for Mortgage	\$9,109
Interest Rate ⁽⁶⁾	0.00%
Down Payment	0.00%
Supportable Mortgage	\$273,270
Add: Down Payment	\$0
Maximum Unit Price (Rounded)	\$273,000

(1) As assigned by California Redevelopment Law.

(2) State of California Department of Housing and Community Development (HCD) 2013 income limits.

(3) Allowance for structure insurance, maintenance, and reserves.

(4) Per the San Diego County Department of Housing and Community Development 2012 Utility Allowance Schedule, July 1, 2012. Reflects the following utility profile: gas heating, cooking, water heater, other electric, water, and sewer.

(5) Based on affordable unit price. Property tax assessment may be based on market value of actual unit.

(6) Assumes that the Developer will finance interest-free takeout loans for homebuyers.

The below-market financing offered to the homebuyers, however, substantially reduces the present value of the revenue stream received by the Developer. Assuming a 30-year term, the Developer is expected to receive monthly payments of \$758 for each unit. The present value of this stream of payments, discounted at 6.0%, is estimated to total \$126,500 per unit, or say total gross sales proceeds of \$759,000.

The gross sales proceeds for the Affordable Units are summarized in Table 5 in the Summary Report as follows:

Calculation of Loan Payments:

Affordable Sales Price per Unit	\$273,000
Interest Rate ⁽¹⁾	0.0%
Term (Years)	30
Annual Payment	\$9,100
Monthly	\$758

Present Value of Payments to Developer per Unit @ 6.0% Discount Rate	\$126,500 ⁽²⁾
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Gross Sales Proceeds

Present Value of Payments to Developer per Unit	\$126,500
Number of Units	6

Total Gross Sales Proceeds	\$759,000
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(1) Assumes that the Developer will finance interest-free takeout loans for homebuyers.

(2) Reflects the present value of homebuyer payments to the Developer assuming a 30-year, 0.0% interest loan, discounted at 6.0%.

Residual Land Value

Table 5 of the Summary Report also calculates the residual land value for the Project. The residual value supported by the Project can be estimated as the difference between the total development costs and the total gross sales proceeds, as shown below:

Total Gross Sales Proceeds	\$759,000
(Less) Cost of Sale	\$0
(Less) Target Developer Profit	0% of Value \$0
Net Sales Proceeds (Rounded)	\$759,000
(Less) Development Costs	(\$1,493,000)
Residual Land Value	(\$734,000)

Based on the above, therefore, KMA has concluded that the fair re-use value of the Property is **negative \$734,000**.

Housing Authority and Development Costs

The total costs incurred by the Authority for this Project are as follows:

<u>Authority Cost</u>	<u>Amount</u>
Site Acquisition	\$330,691
Demolition	\$15,600
Other Third-Party Costs (1)	\$58,000
Subtotal Authority Costs (rounded)	\$404,000
Add: Cash Portion of Developer Note	\$475,000
Total Authority Costs	\$879,000
Per Affordable Unit	\$147,000

(1) Includes legal, economic and other consulting services

Proposed Project Schedule

The following is a proposed schedule for approval of the AHA, Project entitlements, Project construction and sale of the Affordable Units:

Event:	Date:
Authority Approval of the Affordable Housing Agreement	June 28, 2013
Entitlement/Building Permit Approval Process	July to November 2013
Closing of Sale of Site to Developer	December 1, 2013
Commencement of Construction	January 1, 2014
Completion of Construction	June 1, 2015
Closing of Sales of Affordable Units	July 1, 2015

ENVIRONMENTAL IMPACT

The Project is categorically exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15332 as a Class 32 project (In-Fill Development Projects). Staff will issue a Notice of Exemption with the County of San Diego.

FISCAL IMPACT

Housing Bond Funds in the total amount of \$533,000 are available and have expressly been allocated to this Project. These funds would be used for Project costs as well as administrative, staff and legal costs in support of the project.

DEPARTMENT RECOMMENDATION

Staff recommends that the City Council and Housing Authority:

1. Declare the Public Hearing Open;
2. Receive report and entertain testimony;
3. Close the public hearing; and

4. That the City Council entertains a motion to adopt Resolution No. 2013-7353 making certain findings pursuant to Health and Safety Code Section 33433, approving of the Affordable Housing Agreement between the Housing Authority and San Diego Habitat for Humanity and authorizing the sale of the property located at 776 Donax Avenue (APN 626-282-12) for development of the 10th & Donax Affordable Housing Project; and
5. That the Housing Authority entertains a motion to adopt Resolution No. HA-13-14 approving an Affordable Housing Agreement between the Housing Authority and San Diego Habitat for Humanity for the 10th & Donax Affordable Housing Project and making certain findings related thereto; and
6. That the Housing Authority authorize the Executive Director or designee to sign all documents necessary and appropriate to carry out and implement the Affordable Housing Agreement and to administer the Authority's obligations, responsibilities, and duties to be performed under said Agreement.

EXECUTIVE DIRECTOR'S RECOMMENDATION

Approve Department Recommendation.

Attachments:

1. Housing Authority Resolution No. HA-13-14
2. City Council Resolution No. 2013-7353
3. Affordable Housing Agreement
4. Section 33433 Summary Report
5. Site Plan & Elevations

RESOLUTION NO. HA-13-14

A RESOLUTION OF THE IMPERIAL BEACH HOUSING AUTHORITY, APPROVING AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH HOUSING AUTHORITY AND SAN DIEGO HABITAT FOR HUMANITY, INC. FOR THE SALE OF LAND AND FINANCING FOR THE DEVELOPMENT OF SIX (6) ATTACHED FOR-SALE CONDOMINIUM RESIDENTIAL TOWNHOME UNITS LOCATED AT 776 10TH STREET (APN 626-282-12) AND MAKING CERTAIN FINDINGS RELATED THERETO

WHEREAS, the City Council of the City of Imperial Beach (the "City Council") adopted the redevelopment plan for the Palm Avenue/Commercial Redevelopment Project on February 6, 1996 (the "Project Area") by Ordinance No.96-901, as amended on July 18, 2001 by Ordinance No. 2011-70, on December 20, 2006 by Ordinance No. 2006-1050, and on March 5, 2008 by Ordinance No. 2008-1066 (collectively, as amended, the "Redevelopment Plan"); and

WHEREAS, the Imperial Beach Housing Authority ("Authority") is implementing certain proposed uses in the Project Area including low-income housing, which use will aid in carrying out the Redevelopment Plan pursuant to its obligations under Assembly Bill No. 26 (2011-2012 1st Ex. Sess.), as amended by Assembly Bill No. 1484 (2011-2012 Regular Session) (collectively, the "Dissolution Bills") wherein the Authority, as the designated entity, will perform the housing functions previously performed by the former Redevelopment Agency of the City of Imperial Beach, including to enforce existing covenants, contracts or other obligations, and for other municipal purposes benefiting the Project Area in accordance with the Redevelopment Plan and the implementation plan related thereto in accordance with California Health and Safety Code Section 33490 (the "Implementation Plan"); and

WHEREAS, in connection with the Redevelopment Plan, the Authority has established a Low and Moderate Income Housing Asset Fund pursuant to California Health and Safety Code Section 33176(d) and maintained by the Authority pursuant thereto and in accordance with California Health and Safety Code, Section 33334.2 et seq. (the "Housing Funds") to provide funding for housing within the City of Imperial Beach that is affordable to persons and families of very low, low and/or moderate income; and

WHEREAS, the California Government Code, Section 65864 et seq. authorizes local agencies to enter into a property development agreement with any person having a legal or equitable interest in real property for development of such real property in order to establish certain development rights in the real property; and

WHEREAS, the Authority owns certain real property, an approximately 10,150 square foot vacant lot fronting 10th Street and Donax Avenue, located at 776 10th Street (APN 626-282-12-00) (the "Property"); and

WHEREAS, San Diego Habitat for Humanity, Inc. (the "Developer") has proposed to develop the Property as six attached two-story residential condominium townhome units with no commercial component which shall be restricted for sale to low income, first time homebuyers (the "Project"); and

WHEREAS, in order to carry out and implement the Project, the Authority proposes to sell the Property to the Developer, and to use Housing Funds to make a loan to the Project in a total amount of assistance not to exceed \$475,000 pursuant to the terms and conditions of a

certain Affordable Housing Agreement (the "Agreement"), wherein upon completion of the Project and sale of all the affordable units to first time home buyers, the loan to Developer will be forgiven, in part, and the balance converted to individual second trust deed loans from the Authority to each first time home buyer; and

WHEREAS, pursuant to the California Community Redevelopment Law (California Health and Safety Code, Section 33000, et seq.) the Authority and the City Council held a joint public hearing on the proposed sale of the Property pursuant to such Agreement, having duly published notice of such public hearing and made copies of the proposed Agreement and other reports and documents available for public inspection and comment; and

WHEREAS, the Authority has duly considered all terms and conditions of the proposed sale of the Property and the information contained in the staff report and provided at the public hearing, and believes that the development of the Property and construction of the Project pursuant to the proposed Agreement is in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local law and requirements; and

WHEREAS, the Developer is a corporation organized under the laws of the State of California; and

WHEREAS, the Developer intends to develop the Property as six (6) attached two-story residential condominium townhome units with no commercial component in compliance with land use policies and regulations as set forth in the City's General Plan and with the terms and conditions set forth in the Agreement; and

WHEREAS, the Project is categorically exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15332 as a Class 32 project (In-Fill Development Projects); and

WHEREAS, Staff will issue a Notice of Exemption with the County of San Diego.

NOW, THEREFORE, BE IT RESOLVED, by the Authority, as follows:

1. The Authority recognizes that it has received and heard all oral and written objections to the proposed Agreement, to the proposed sale of the Property pursuant to the proposed Agreement, and to other matters pertaining to this transaction, and that all such oral and written objections are hereby overruled.
2. The Authority hereby finds and determines that the foregoing recitals are true and correct.
3. The Authority hereby finds and determines that the sale of the Property will assist in the elimination of blight and is consistent with the Implementation Plan adopted pursuant to California Health and Safety Code Section 33490.
4. The Authority hereby finds and determines that the consideration to be paid by the Developer for the sale of the Property as described in the Agreement is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the Agreement.

5. The Authority hereby finds pursuant to California Health and Safety Code Section 33334.14(a) that an economically feasible alternative method of financing or assisting the owner-occupied units or parcels on substantially comparable terms and conditions without subordinating the second mortgage trust deeds and covenants or restrictions to the lien, encumbrance, or regulatory agreement of a lender, is not reasonably available.
6. The use of Housing Funds in an amount not to exceed Four Hundred Seventy Five Thousand Dollars (\$475,000) by the Authority to the Developer in accordance with the terms of the final form of the Agreement is hereby approved.
7. The Agreement between the Authority and the Developer for the Project is approved, subject to any changes recommended by Authority Special Counsel and approved by the Authority General Counsel and Executive Director.
8. The Executive Director or designee, is authorized and empowered to execute, for and on behalf of the Authority, the final form of the Agreement with the Developer for the development of the Project and to sign all documents necessary and appropriate to carry out and implement the Agreement and to administer the Authority's obligations, responsibilities, and duties to be performed under said Agreement.

PASSED, APPROVED, AND ADOPTED by the Imperial Beach Housing Authority of the City of Imperial Beach at its meeting held on the 28th day of June 2013, by the following roll call vote:

AYES: BOARDMEMBERS:
NOES: BOARDMEMBERS:
ABSENT: BOARDMEMBERS:

JAMES C. JANNEY, CHAIR

ATTEST:

JACQUELINE M. HALD, MMC
SECRETARY

RESOLUTION NO. 2013-7353

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, APPROVING AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH HOUSING AUTHORITY AND SAN DIEGO HABITAT FOR HUMANITY, INC. FOR THE SALE OF LAND AND FINANCING FOR THE DEVELOPMENT OF SIX (6) ATTACHED FOR-SALE CONDOMINIUM RESIDENTIAL TOWNHOME UNITS LOCATED AT 776 10TH STREET (APN 626-282-12) AND MAKING CERTAIN FINDINGS RELATED THERETO

WHEREAS, the City Council of the City of Imperial Beach (the "City Council") adopted the redevelopment plan for the Palm Avenue/Commercial Redevelopment Project on February 6, 1996 (the "Project Area") by Ordinance No.96-901, as amended on July 18, 2001 by Ordinance No. 2011-70, on December 20, 2006 by Ordinance No. 2006-1050, and on March 5, 2008 by Ordinance No. 2008-1066 (collectively, as amended, the "Redevelopment Plan"); and

WHEREAS, the Imperial Beach Housing Authority ("Authority") is implementing certain proposed uses in the Project Area including low-income housing, which use will aid in carrying out the Redevelopment Plan pursuant to its obligations under Assembly Bill No. 26 (2011-2012 1st Ex. Sess.), as amended by Assembly Bill No. 1484 (2011-2012 Regular Session) (collectively, the "Dissolution Bills") wherein the Authority, as the designated entity, will perform the housing functions previously performed by the former Redevelopment Agency of the City of Imperial Beach, including to enforce existing covenants, contracts or other obligations, and for other municipal purposes benefiting the Project Area in accordance with the Redevelopment Plan and the implementation plan related thereto in accordance with California Health and Safety Code Section 33490 (the "Implementation Plan"); and

WHEREAS, in connection with the Redevelopment Plan, the Authority has established a Low and Moderate Income Housing Asset Fund pursuant to California Health and Safety Code Section 33176(d) and maintained by the Authority pursuant thereto and in accordance with California Health and Safety Code, Section 33334.2 et seq. (the "Housing Funds") to provide funding for housing within the City of Imperial Beach that is affordable to persons and families of very low, low and/or moderate income; and

WHEREAS, the California Government Code, Section 65864 et seq. authorizes local agencies to enter into a property development agreement with any person having a legal or equitable interest in real property for development of such real property in order to establish certain development rights in the real property; and

WHEREAS, the Authority owns certain real property, an approximately 10,150 square foot vacant lot fronting 10th Street and Donax Avenue, located at 776 10th Street (APN 626-282-12-00) (the "Property"); and

WHEREAS, San Diego Habitat for Humanity, Inc. (the "Developer") has proposed to develop the Property as six attached two-story residential condominium townhome units with no commercial component which shall be restricted for sale to low income, first time homebuyers (the "Project"); and

WHEREAS, in order to carry out and implement the Project, the Authority proposes to sell the Property to the Developer, and to use Housing Funds to make a loan to the Project in a total amount of assistance not to exceed \$475,000 pursuant to the terms and conditions of a

certain Affordable Housing Agreement (the "Agreement"), wherein upon completion of the Project and sale of all the affordable units to first time home buyers, the loan to Developer will be forgiven, in part, and the balance converted to individual second trust deed loans from the Authority to each first time home buyer; and

WHEREAS, pursuant to the California Community Redevelopment Law (California Health and Safety Code, Section 33000, et seq.) the Authority and the City Council held a joint public hearing on the proposed sale of the Property pursuant to such Agreement, having duly published notice of such public hearing and made copies of the proposed Agreement and other reports and documents available for public inspection and comment; and

WHEREAS, the City Council has duly considered all terms and conditions of the proposed sale of the Property and the information contained in the staff report and provided at the public hearing, and believes that the development of the Property and construction of the Project pursuant to the proposed Agreement is in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local law and requirements; and

WHEREAS, the Developer is a corporation organized under the laws of the State of California; and

WHEREAS, the Developer intends to develop the Property as six (6) attached two-story residential condominium townhome units with no commercial component in compliance with land use policies and regulations as set forth in the City's General Plan and with the terms and conditions set forth in the Agreement; and

WHEREAS, the Project is categorically exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15332 as a Class 32 project (In-Fill Development Projects); and

WHEREAS, Staff will issue a Notice of Exemption with the County of San Diego.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Imperial Beach, as follows:

1. The City Council recognizes that it has received and heard all oral and written objections to the proposed Agreement, to the proposed sale of the Property pursuant to the proposed Agreement, and to other matters pertaining to this transaction, and that all such oral and written objections are hereby overruled.
2. The City Council hereby finds and determines that the foregoing recitals are true and correct.
3. The City Council hereby finds and determines that the sale of the Property will assist in the elimination of blight and is consistent with the Implementation Plan adopted pursuant to California Health and Safety Code Section 33490.
4. The City Council hereby finds and determines that the consideration to be paid by the Developer for the sale of the Property as described in the Agreement is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the Agreement.

5. The Agreement between the Authority and the Developer for the Project is approved, subject to any changes recommended by Authority Special Counsel and approved by the Authority General Counsel and Executive Director.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 28th day of June 2013, by the following roll call vote:

AYES: BOARDMEMBERS:
NOES: BOARDMEMBERS:
ABSENT: BOARDMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, MMC
CITY CLERK

**AFFORDABLE HOUSING AGREEMENT
(776 10th Street)**

By and Between the

**HOUSING AUTHORITY
OF THE CITY OF IMPERIAL BEACH,**

Authority,

and

SAN DIEGO HABITAT FOR HUMANITY, INC.,

Developer

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AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT (“*Agreement*”) is entered into this 28th day of June, 2013 by and between the Housing Authority of the City of Imperial Beach, a public body, corporate and politic (“*Authority*”), and San Diego Habitat for Humanity, Inc., a California nonprofit corporation (“*Developer*”).

RECITALS

A. In furtherance of the objectives of the California Community Redevelopment Law, Authority and Developer desire to redevelop a certain approximately 0.23-acre parcel located in the Palm Avenue/Commercial Redevelopment Project (the “*Project*”) at 776 10th Street in the City of Imperial Beach, County of San Diego, California (the “*Site*”), which is more particularly described on the Site Legal Description, as defined below. The Authority currently owns the Site. The Site is unimproved.

B. Authority and Developer desire by this Agreement for Authority to agree to sell the Site to Developer and for Developer to agree to construct on the Site six (6) two-story for-sale townhomes (the “*Affordable Units*”), as set forth on the Site Plan attached hereto as Attachment No. 7, together with certain off-site improvements (collectively, the “*Improvements*”).

C. The Authority purchased the Site with certain tax-exempt bond funds to be used solely for the construction, use and occupancy of affordable housing in accordance with California Community Redevelopment Law. The Authority agrees to sell the Site to Developer for the sum of One and No/100 Dollars (\$1.00) (the “*Purchase Price*”) and to provide gap funding to assist in development of the Affordable Units, as defined below, in the original amount of Eight Hundred Six and No/100 Dollars (\$806,000.00) (the “*Developer Note*”), subject to the terms and conditions below.

D. Upon the timely completion of the Affordable Units in accordance with this Agreement, the Developer Note will be partially forgiven and the remaining balance will convert to first-time homebuyer loans to Low-Income Households to assist those Low-Income Households with the purchase of Affordable Units, as provided in more detail herein. A portion of the Developer Note will be assumed by each eligible low income purchaser of an Affordable Unit, concurrently with the purchase of an Affordable Unit. At such time the purchaser of the Affordable Unit shall execute a promissory note in favor of the Authority (the “*First-Time Homebuyer Note*”), secured by a deed of trust, in an amount to be determined as set forth in this Agreement. The Affordable Units shall also be subject to a Resale Restriction in the form set forth herein as Attachment 10, secured by a deed of trust. The First-Time Homebuyer Notes shall not require monthly payments and will be due and owing only upon sale, transfer, further encumbrance, refinancing, the failure of the Low-Income Households to occupy the Affordable Unit, or other transfer, as defined in the First-Time Homebuyer Note and Resale Restrictions. The initial sale price of the Affordable Units shall not exceed the Maximum Purchase Price, as defined below.

E. Authority's sale of the Site to Developer and Developer's purchase of the Site and construction of the Improvements on the Site pursuant to the terms of this Agreement, are in the vital and best interest of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the redevelopment of the Project has been undertaken.

F. The qualifications and identity of Developer, and its principals, are of particular concern to the community and Authority. Developer further recognizes that it is because of such qualifications and identity that Authority is entering into the Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Authority and Developer hereby agree as follows:

PART 1. DEFINITIONS

"Affordable Units" shall mean the six (6) two-story for-sale townhomes, whose sale and occupancy are restricted as specified in this Agreement and the Resale Restriction. Each of the Affordable Units shall initially be sold only to a First-Time Homebuyer that is a Low-Income Household for an amount less than or equal to the then applicable Maximum Purchase Price.

"Agreement" means this Affordable Housing Agreement between Authority and Developer.

"Agreement Affecting Real Property" shall mean the Agreement Affecting Real Property to be recorded against the Site upon Closing, substantially in the form attached to this Agreement as Attachment No. 11.

"Area Median Income" means the then current area median income for the San Diego Standard Metropolitan Statistical Area, adjusted for family size by the United States Department of Housing and Urban Development ("**HUD**") pursuant to Section 8 of the United States Housing Act of 1937, as determined by HUD and published from time to time by the California Department of Housing and Community Development.

"Authority" means the Housing Authority of the City of Imperial Beach, Authority, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Housing Authorities Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

"Authority's Conditions Precedent" means the conditions precedent to the Closing to the benefit of Authority, as set forth in Section 207.1 hereof.

"Authority Title Policy" is defined in Section 206.2 hereof.

“*City*” means the City of Imperial Beach, a California municipal corporation.

“*Closing*” means the close of Escrow for the conveyance of the Site from Authority to Developer, as set forth in Section 204.4 hereof.

“*Closing Date*” means the date of the Closing as set forth in Section 204.4 hereof.

“*Concept Drawings*” means the plans and drawings to be submitted and approved by Authority, as set forth in Section 302.1 hereof.

“*Conditions of Title*” is defined in Section 205 hereof.

“*Construction Deed of Trust*” means any deed of trust recorded against the Site for purposes of obtaining construction financing for the Site.

“*Construction Drawings*” means the plans and drawings to be submitted and approved by Authority, as set forth in Section 302.3 hereof.

“*Construction Lender*” means the beneficiary under the Construction Deed of Trust.

“*Date of Agreement*” means the date upon which this Agreement shall have been signed by Authority.

“*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 501 hereof.

“*Developer*” means San Diego Habitat for Humanity, Inc., a California nonprofit, public benefit corporation. Where the term Developer is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

“*Developer’s Conditions Precedent*” means the conditions precedent to the Closing to the benefit of Developer, as set forth in Section 207.2.

“*Developer Deed of Trust*” means the deed of trust securing the Developer Note, in the form and format attached hereto as Attachment No. 2.

“*Developer Note*” means the recourse promissory note, in the form and format attached hereto as Attachment No. 1, executed by Developer in favor of Authority.

“*Developer Title Policy*” is defined in Section 206.1 hereof.

“*Development Costs*” shall mean all costs which are actually incurred by the Developer for the acquisition and development of the Property as set forth in the Project Budget.

“Environmental Indemnity” shall mean the Unsecured Environmental Indemnity Agreement to be executed by Developer and Authority at Closing, substantially in the form attached to this Agreement as Attachment No. 12.

“Environmental Laws” means any federal, state or local law, statute, ordinance or regulation pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials, including, without limitation, (i) the California Hazardous Waste Control Act (California Health and Safety Code §25100 *et seq.*), (ii) the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code §25300 *et seq.*), (iii) the Hazardous Materials Release Response Plans and Inventory (California Health and Safety Code §25500 *et seq.*), (iv) Underground Storage of Hazardous Substances (California Health and Safety Code, §25280 *et seq.*), (v) Article 9 or Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (vi) the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code, §25249 *et seq.*), (vii) the Porter-cologne Water Quality Control Act (California Water Code, §13000 *et seq.*), (viii) the Federal Water Pollution Control Act (33 U.S.C. §1271 *et seq.*), (ix) the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*), (x) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 *et seq.*), (xi) the Safe Drinking Water Act (14 U.S.C. §300f *et seq.*), (xii) the Hazardous Materials Transportation Act (49 U.S.C. §5101 *et seq.*), (xiii) the Toxic Substances Control Act (15 U.S.C. §2601 *et seq.*), (xiv) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §136, *et seq.*), (xv) the Clean Air Act, 42 U.S.C. (§7401 *et seq.*) or (xvi) any state or federal lien or “superlien” law, any environmental cleanup statute or regulation, or any permit, approval, authorization, license, variance or permission required by any governmental authority having jurisdiction.

“Escrow” is defined in Section 204 hereof.

“Escrow Agent” is defined in Section 204 hereof.

“Exceptions” is defined in Section 205 hereof.

“First-Time Homebuyer” means a purchaser (a) that has not owned a home within the three-year (3-year) period immediately preceding the date of the purchase of the Affordable Unit, (b) a displaced homemaker; or (c) a single parent.

“First-Time Homebuyer Note” means the promissory note in favor of the Authority to be executed by each Low-Income Household purchaser of an Affordable Unit, which shall be on terms and conditions acceptable to the Authority in its sole discretion, in the form and format attached hereto as Attachment No. 13.

“First-Time Homebuyer Deed of Trust” means the deed of trust securing the First-Time Homebuyer Note and Resale Restriction, in the form and format attached hereto as Attachment No. 14.

“Governmental Requirements” means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Authority, Developer or the Site.

“Grant Deed” means the grant deed for the conveyance of the Site from Authority to Developer, in the form of Attachment No. 3 hereto which is incorporated herein.

“Hazardous Materials” means:

(a) Those substances included within the definitions of “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “solid waste,” “pollutant” or “contaminant” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*); the Clean Water Act (33 U.S.C. §2601 *et seq.*); the Toxic Substances Control Act (15 U.S.C. §9601 *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. §1801 *et seq.*); or under any other Environmental Laws;

(b) Those substances included within the definitions of “Extremely Hazardous Waste,” “Hazardous Waste,” or “Restricted Hazardous Waste,” under §§25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §§25140 or 44321 of the California Health and Safety Code;

(c) Those substances included within the definitions of “Hazardous Material”, “Hazardous Substance”, “Hazardous Waste”, “Toxic Air Contaminant”, or “Medical Waste” under §§25281, 25316, 25501, 25501.1, 25023.2 or 39655 of the California Health and Safety Code;

(d) Those substances included within the definitions of “Oil” or a “Hazardous Substance” listed or identified pursuant to §311 of the Federal Water Pollution Control Act, 33 U.S.C. §1321, as well as any other hydrocarbonic substance or by-product;

(e) Those substances included within the definitions of “Hazardous Waste,” “Extremely Hazardous Waste,” or an “Acutely Hazardous Waste” pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

(f) Those substances listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to §25249.9(a) of the California Health and Safety Code;

(g) Those substances or defined as a “Hazardous Waste,” “Extremely Hazardous Waste,” or an “Acutely Hazardous Waste” pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

(h) Any material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

(i) Any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;

(j) Pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 *et seq.*;

(k) Asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*;

(l) Any radioactive material including, without limitation, any “source material,” “special nuclear material,” “by-product material,” “low-level wastes,” “high-level radioactive waste,” “spent nuclear fuel” or “transuranic waste,” and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§2011 *et seq.*, the Nuclear Waste Policy Act, 42 U.S.C. §§10101 *et seq.*, or pursuant to the California Radiation Control Law, California Health and Safety Code §§25800 *et seq.*;

(m) Any material regulated under the Occupational Safety and Health Act, 29 U.S.C. §§651 *et seq.*, or the California Occupational Safety and Health Act, California Labor Code §§6300 *et seq.*;

(n) Any material regulated under the Clean Air Act, 42 U.S.C. §§7401 *et seq.* or pursuant to Division 26 of the California Health and Safety Code;

(o) Those substances listed in the United States Department of Transportation Table (49 CFR Part 172.101), or by the Environmental Protection Agency, or any successor agency, as hazardous substances (40 CFR Part 302);

(p) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; and

(q) Any material, waste or substance that is:

- (i) a petroleum or refined petroleum product;
- (ii) asbestos;
- (iii) polychlorinated biphenyl;
- (iv) designated as a hazardous substance pursuant to 33 U.S.C. §1321 or listed pursuant to 33 U.S.C. §1317;
- (v) a flammable explosive; or

(vi) a radioactive material.

“Improvements” means the new improvements to be constructed by Developer upon the Site and all approvals and permits required for completion of the Improvements, all more particularly described herein and in the Scope of Development.

“Landscape and Grading Plans” means the plans and drawings to be submitted and approved by Authority, as set forth in Section 302.2 hereof.

“Low Income Household” means persons and families whose income does not exceed eighty percent (80%) of the then current Area Median Income, provided that such persons or families meet the additional requirements set forth in Section 4 of the Agreement Affecting Real Property.

“Maximum Purchase Price” shall mean the maximum amount of consideration, of any kind whatsoever, that the Developer may receive for any Affordable Unit, which amount shall not exceed the sum of (A) the purchase price which would result in a Monthly Housing Cost, as determined by the Authority, which does not exceed the product of one twelfth (1/12) of thirty percent (30%) times seventy percent (70%) of the then Area Median Income as adjusted for household size appropriate for the unit, plus (B) the amount of the Developer Note assumed by the Low Income Household that purchases such Affordable Unit.

“Monthly Housing Cost” shall mean all of the following associated with the Affordable Unit, estimated or known as of the date of the close of escrow of the sale of the Affordable Unit: (i) principal and interest payments on the fully-amortizing twenty-five (25) to thirty-five (35)-year, fixed-rate mortgage loan actually obtained by the purchaser, and any loan insurance fees associated therewith; (ii) property taxes, assessments, including Mello Roos fees, if applicable; (iii) fire and casualty insurance covering replacement value of property improvements (to the extent not covered by the homeowner association encompassing the Site); (iv) any homeowner association fees; (v) private mortgage insurance, if applicable; and (vi) reasonable costs of utilities. Monthly Housing Cost shall be an average of estimated costs for the next twelve (12) month period as of the date of the close of escrow of the sale of the Affordable Unit.

“Notice” shall mean a notice in the form prescribed by Section 601 hereof.

“Notice of Affordability Restrictions” shall mean the Notice of Affordability Restrictions on Transfer of Real Property to be recorded against the Site upon Closing, substantially in the form attached to this Agreement as Attachment No. 15.

“Notice of Affordability Restrictions (Resale)” shall mean the Notice of Affordability Restrictions on Transfer of Real Property to be recorded as an encumbrance against each Affordable Unit, substantially in the form attached to this Agreement as Attachment No. 16.

“Outside Date” shall mean the last date the Closing shall occur, as set forth in Section 204.4 hereof.

“Palm Avenue/Commercial Redevelopment Project” means the Palm Avenue/Commercial Redevelopment Project, adopted by Authority pursuant to the Redevelopment Plan.

“Proforma” means the proforma which is attached hereto as Attachment No. 9 and incorporated herein.

“PTR” means the preliminary title report, as described in Section 205 hereof.

“Purchase Price” means the price to be paid by Developer to Authority in consideration for the conveyance of fee title to the Site, as provided in Section 201 hereof.

“Redevelopment Plan” means the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project on February 6, 1996, as amended on July 18, 2001 by Ordinance No. 2001-70 (the “First Amendment”), and on December 20, 2006 by Ordinance No. 2006-1050 (the “Second Amendment”), and on March 5, 2008 by Ordinance No. 2008-1066 (the “Third Amendment” and collectively the “Redevelopment Plan”) pursuant to California Health and Safety Code sections 33334.3 and 33334.6, and incorporated herein by reference.

“Release of Construction Covenants” means the document which evidences Developer’s satisfactory completion of Improvements, as set forth in Section 312 hereof, in the form of Attachment No. 4 hereto which is incorporated herein.

“Resale Restriction” means the Affordable Housing Resale Restrictions; Option to Designate Purchasers and Option to Purchase Upon Default that will be recorded as an encumbrance against each Affordable Unit, in the form attached hereto as Attachment 10.

“Schedule of Performance” means the Schedule of Performance attached hereto as Attachment No. 5 and incorporated herein, 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 Developer and Authority’s Executive Director, and Authority’s Executive Director is authorized to make such revisions as he or she deems reasonably necessary.

“Scope of Development” means the Scope of Development attached hereto as Attachment No. 6 and incorporated herein, which describes the scope, amount and quality of development Improvements to be constructed by Developer pursuant to the terms and conditions of this Agreement.

“Site” means the approximately 0.23-acre parcel located in the Palm Avenue/Commercial Redevelopment Project at 776 10th Street in the City of Imperial Beach, County of San Diego, California, which is more particularly described on the Site Legal Description.

“Site Legal Description” means the legal description of the Site, as described on Attachment 8.

“Site Plan” means the map of the Site, which shows the location of all dwelling units and roads to be constructed on the Site, and which is attached hereto as Attachment No. 7 and incorporated herein.

“Title Company” means First American Title Insurance Company, or another title insurance company mutually acceptable to Authority and Developer.

PART 2. CONVEYANCE OF THE SITE

201. Purchase Price. Subject to all of the terms and conditions of this Agreement, Authority shall sell the Site to Developer, and Developer shall purchase the Site from Authority for One and No/100 Dollar (\$1.00) (***“Purchase Price”***).

202. Authority Loan.

202.1 Developer Note. Concurrently herewith, the Authority is making a loan to Developer (***“Authority Loan”***) as set forth in more detail in the Developer Note. The Developer Note shall evidence Developer’s promise to pay the Authority the principal sum of Eight Hundred Six and No/100 Dollars (\$806,000.00), or so much as is advanced in accordance with the terms herein; provided, however, that the Developer and Authority acknowledge and agree that Three Hundred Thirty One and No/100 Dollars (\$331,000.00) evidences the consideration by the Authority to convey the Property to the Developer for the Purchase Price.

202.1 Disbursement of Authority Loan. The Authority Loan in an amount of up to Four Hundred Seventy Five Thousand and No/100 Dollars (\$475,000.00) shall be used to pay a portion of the Development Costs for the Improvements. The Authority Loan shall be disbursed based on vouchers for actual expenses incurred or paid. Requests for payment must be submitted by Developer on forms approved by the Executive Director. The Authority Loan shall be disbursed pursuant to a detailed schedule approved in writing by the Executive Director, and based upon Authority’s receipt of contractor invoices and other information and documentation (e.g., lien releases) requested or required by the Executive Director. Authority shall have the right to condition any disbursement upon receipt and approval of such documentation, evidence or information that Authority may request, including, but not limited to, vouchers, invoices, and architect’s, inspector’s and/or engineer’s periodic certifications of the percentage and/or stage of development that has been completed. The Authority shall have the right in its sole discretion to make disbursements of funds directly to third parties entitled to such payment. Developer may submit a final invoice upon completion of the Improvements. Final payment shall be made after the Authority has determined that Developer has submitted all documentation of the final cost of completing the Improvements, and proof of completion of the Improvements. The Authority shall have the right to review and audit all records of Developer pertaining to any payment by the Authority. Said records shall be maintained for a period of five years after completion of the Improvements.

202.3 Forgiveness of the Developer Note. Upon the timely completion of the Affordable Units in accordance with this Agreement, the Developer Note will be partially forgiven and the remaining balance will convert to first-time homebuyer loans to Low-Income Households to assist those Low-Income Households with the purchase of Affordable Units, as follows:

(a) Upon the closing of the initial sale of each Affordable Unit, the purchaser of such Affordable Unit shall execute a First-Time Homebuyer Note in an amount equal to the difference between original market value of the Affordable Unit, as determined by the Authority, and the Maximum Purchase Price. In the event the foregoing calculation results in an amount equal to zero or a negative number, then the requirement that the purchaser of the Affordable Unit execute a First-Time Homebuyer Note as set forth herein, shall be null and void.

(b) Any amount of the Developer Note that is not assumed by the purchasers of the Affordable Units as set forth in Section 202.2(a), above, shall be forgiven in its entirety.

(c) In addition Developer shall cause each purchaser of an Affordable Unit to execute a Resale Restriction (in addition to Developer) in the form attached hereto as Attachment No. 10, a Notice of Affordability Restriction (Resale) in the form attached hereto as Attachment No. 16, a First-Time Homebuyer Deed of Trust in the form attached hereto as Attachment No. 14 securing the Resale Restriction and the First-Time Homebuyer Note in the form attached hereto as Attachment No. 13, and any other instruments as the Authority may require in its reasonable discretion.

(d) The Authority shall partially reconvey the Developer Deed of Trust, with respect to each Affordable Unit, upon the last to occur of: (i) the sale of the Affordable Unit; (ii) the Low-Income Household's execution of the First-Time Homebuyer Note; (iii) the recordation against the individual Affordable Unit of the Resale Restriction; and (iv) the recordation against the individual Affordable Unit of the First-Time Homebuyer Deed of Trust securing the First-Time Homebuyer Note and the Resale Restriction.

(e) Developer shall be responsible for obtaining all source documentation evidencing income as required by this Agreement. Developer shall provide priority in the selection of purchasers of the Affordable Units to persons and families who have been displaced as a result of the acquisition of property by the Authority or by other redevelopment activities in the City of Imperial Beach. To the extent permitted by law, Developer shall provide priority to purchasers of the Affordable Units who live or work in the City of Imperial Beach ("*Imperial Beach Residents*"). Developer shall cooperate with the Authority prior to the initial sale of any Affordable Units to effectuate this provision. Developer must accept any Authority displacee or Imperial Beach Resident who meets Developer's selection criteria. To implement this provision, Developer agrees to provide notice to the Authority, in writing, prior to beginning to market the Affordable Units and shall have received Authority approval of a marketing plan ("*Marketing Plan*") consistent with the terms and

provisions of this Agreement. This requirement shall be deemed satisfied when Developer has sold all of the Affordable Units to qualified Low Income First-Time Homebuyers in accordance with this Agreement.

(f) Prior to initial sale and occupancy of any Affordable Unit, Developer shall prepare and submit to the Authority Executive Director or designee for approval (i) all documents required to be submitted by Developer to the California Department of Real Estate; and (ii) all documents required to be submitted pursuant to The Davis-Stirling Common Interest Development Act, including but not limited to articles of incorporation, the by-laws, the condo plan and the Homeowner Association's Covenants, Conditions and Restrictions ("*CC&Rs*"). The *CC&Rs* shall be recorded against the Property and run with the land. The Property shall be maintained in accordance with the *CC&Rs* approved by the Authority.

203. Default. Notwithstanding Section 202.3(b), above, or anything contained herein to the contrary, in the event of any default in the performance of any of the terms, covenants and conditions contained in: (i) this Agreement, the Developer Note, the Developer Deed of Trust, including without limitation the failure by Developer to complete all of the Improvements on or before June 1, 2014; (ii) any other instrument executed by the Developer in conjunction with this Agreement; (iii) any prior or junior note secured by an encumbrance on the Site or any portion of it; (iv) any note or deed of trust given in conjunction herewith; or (v) in the event of the filing of a Bankruptcy proceeding by or against Developer, then (w) at the option of the Authority the Site shall revert back to the Authority; (x) all sums owing by Developer to the Authority shall at the option of Authority immediately become due and payable; (y) Authority shall have no obligation to disburse any further funds to Developer or any other person; and (z) Authority shall be released from any and all obligations to Developer under the terms of this Agreement. These remedies shall be in addition to any and all other rights and remedies available to Authority, either at law or in equity. Further, default interest shall accrue on the principal balance of the Developer Note from the date of the Developer Note at the rate of ten percent (10%) simple interest per annum or the maximum rate than allowed by law, whichever is less.

204. Escrow. The parties shall open escrow ("*Escrow*") with Title Company, or another escrow company mutually satisfactory to both parties (the "*Escrow Agent*").

204.1 Costs of Escrow. Developer shall pay the premiums for the Title Policy, for the documentary transfer taxes, if any, due with respect to the conveyance of the Site, and all other fees, charges, and costs which arise from Escrow.

204.2 Escrow Instructions. This Agreement constitutes the joint escrow instructions of Developer and Authority, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts reasonably necessary to close this Escrow in the shortest possible time. Insurance policies for fire or casualty are not to be transferred, and Authority will cancel its own policies after the Closing, if any. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be

made by check from such account. If in the opinion of either party it is necessary or convenient in order to accomplish the Closing of this transaction, such party may require that the parties sign supplemental escrow instructions. The parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Closing shall take place when both Authority's Conditions Precedent and Developer's Conditions Precedent have been satisfied. Escrow Agent is instructed to release Authority's escrow closing statement and Developer's escrow closing statement to the respective parties.

204.3 Authority of Escrow Agent. Escrow Agent is authorized to, and shall:

(a) Pay, and charge Developer, for the amount equal to the premium for the Developer Title Policy and any amount necessary to place title in the condition necessary to satisfy Section 205 of this Agreement.

(b) Pay, and charge Developer for any escrow fees, charges, and costs payable under Section 204.1 of this Agreement.

(c) Pay, and charge Developer, for any endorsements to the Developer Title Policy which are requested by Developer.

(d) Disburse funds, and deliver and record the Grant Deed, Agreement Affecting Real Property, Notice of Affordability Restrictions, Environmental Indemnity and the Developer Deed of Trust, when both Developer's Conditions Precedent and Authority's Conditions Precedent have been fulfilled or waived by Developer and Authority.

(e) Do such other actions as necessary, including obtaining the Authority Title Policy and/or the Developer Title Policy, to fulfill its obligations under this Agreement.

(f) Within the discretion of Escrow Agent, direct Authority and Developer to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder. Authority agrees to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as may be required by Escrow Agent, on the form to be supplied by Escrow Agent.

(g) Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

(h) Pay, and charge Developer, for the amount equal to the premium for the Authority Title Policy.

(i) Pay, and charge Developer, for any endorsements to the Authority Title Policy which are requested by Authority.

204.4 Closing. This transaction shall close (“*Closing*”) within thirty (30) days of the parties’ satisfaction of all of Authority’s and Developer’s Conditions Precedent to Closing as set forth in Section 207 hereof, but in no event later than December 1, 2013 (the “*Outside Date*”). The Closing shall occur at a location within San Diego County at a time and place reasonably agreed on by the parties. The “*Closing*” shall mean the time and day the Grant Deed is filed for record with the San Diego County Recorder. The “*Closing Date*” shall mean the day on which the Closing occurs.

204.5 Termination. If Escrow is not in condition to close by the Outside Date, then either party which has fully performed under this Agreement may, in writing, demand the return of money or property and terminate this Agreement. If either party makes a written demand for return of documents or properties, this Agreement shall not terminate until five (5) days after Escrow Agent shall have delivered copies of such demand to all other parties at the respective addresses shown in this Agreement. If any objections are raised within said five (5) day period, Escrow Agent is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Termination of this Agreement shall be without prejudice as to whatever legal rights either party may have against the other arising from this Agreement. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible.

204.6 Closing Procedure. Escrow Agent shall close Escrow for the Site as follows:

(a) Record the Grant Deed with instructions for the Recorder of San Diego County, California to deliver the Grant Deed to Developer;

(b) Record the Developer Deed of Trust, the Agreement Affecting Real Property, and the Notice of Affordability Restrictions with instructions for the Recorder of San Diego County, California to deliver the same to the Authority;

(c) Instruct the Title Company to deliver the Developer Title Policy to Developer;

(d) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(e) Deliver the FIRPTA Certificate, if any, to Developer;

(f) Forward to both Developer and Authority a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon; and

(g) Instruct the Title Company to deliver the Authority Title Policy to Authority.

205. Review of Title. Authority shall cause Title Company, or another title company mutually agreeable to both parties, to deliver to Developer a standard preliminary title report (the "*PTR*") with respect to the title to the Site, together with legible copies of the documents underlying the exceptions ("*Exceptions*") set forth in the PTR, within thirty (30) days from the date of this Agreement. Developer shall have the right to reasonably approve or disapprove the Exceptions; provided, however, that Developer herein approves the following Exceptions:

- (a) The Palm Avenue/Commercial Redevelopment Project; and
- (b) Utility easements of record.

Developer shall have thirty (30) days from the date of its receipt of the PTR and Exceptions to give written notice to Authority and Escrow Holder of Developer's approval or disapproval of any of such Exceptions. Developer's failure to give written disapproval of the PTR within such time limit shall be deemed approval of the PTR by Developer. If Developer notifies Authority of its disapproval of any Exceptions in the PTR, Authority shall have the right, but not the obligation, to remove any disapproved Exceptions within sixty (60) business days after receiving written notice of Developer's disapproval or provide assurances satisfactory to Developer that such Exception(s) will be removed on or before the Closing. If Authority cannot or does not elect to remove any of the disapproved Exceptions within that period, Developer shall have ten (10) business days after the expiration of such sixty (60) business day period to either give Authority written notice that Developer elects to proceed with the purchase of the Site subject to all of the Exceptions or to give Authority written notice that Developer elects to terminate this Agreement. The Exceptions to title approved by Developer as provided herein shall hereinafter be referred to as the "*Conditions of Title.*" Developer shall have the right to approve or disapprove any additional Exceptions reported by the Title Company after Developer has approved the Conditions of Title for the Site (which are not created by Developer), in the same manner as stated above in this paragraph. Authority shall not voluntarily create any new exceptions to title following the Date of Agreement.

206. Title Insurance.

206.1 Developer Title Policy. Concurrently with recordation of the Grant Deed conveying title to the Site, there shall be issued to Developer a CLTA owner's policy of title insurance (the "*Developer Title Policy*"), together with such endorsements as are reasonably requested by Developer, issued by the Title Company, insuring that the title to the Site is vested in Developer in the condition required by Section 205 of this Agreement. The Title Company shall provide the Authority with a copy of the Developer Title Policy. The Developer Title Policy shall be for the amount of the Purchase Price. Developer shall pay for the Developer Title Policy.

206.2 Authority Title Policy. Concurrently with recordation of the Developer Deed of Trust against the Site, there shall be issued to Authority a CLTA lender's policy of title insurance (the "*Authority Title Policy*"), together with such endorsements as are reasonably requested by the Authority, issued by the Title Company, insuring that the Developer Deed of Trust is a valid encumbrance against the Site. The Title Company shall provide Developer with a copy of the Authority Title Policy. The Authority Title Policy shall be for the amount of the Developer Note. Developer shall pay for the Authority Title Policy.

207. Conditions of Closing. The Closing is conditioned upon the satisfaction of the following terms and conditions within the times designated below:

207.1 Authority's Conditions of Closing. Authority's obligation to proceed with the Closing of the sale of the Site is subject to the fulfillment by Developer or waiver by Authority of each and all of the conditions precedent (a) through (h), inclusive, described below ("*Authority's Conditions Precedent*"), which are solely for the benefit of Authority, and which shall be fulfilled or waived by the time periods provided for herein:

(a) No Default. Prior to the Closing, Developer is not in default in any of its obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

(b) Execution of Documents. Developer shall have executed any documents required hereunder and delivered such documents into Escrow, including without limitation the Developer Note, Environmental Indemnity, Agreement Affecting Real Property, Notice of Affordability Restrictions and the Developer Deed of Trust.

(c) Payment of Closing Costs. Prior to the Closing, Developer has paid all required costs of Closing into Escrow in accordance with Section 204.1 hereof.

(d) Design Approvals. Developer shall have obtained approval by Authority of the Concept Drawings, Landscape and Grading Plans and Construction Drawings as set forth in Section 302 hereof.

(e) Insurance. Developer shall have provided proof of insurance as required by Section 307 hereof.

(f) Other Financing. Developer shall have obtained commitments which meet the requirements of Section 313.1 of this Agreement, from all financing sources to be used for financing the construction of the Improvements which are sufficient to complete construction of the Improvements.

(g) Authority Title Policy. The Title Company shall, upon payment by Developer of Title Company's premium, have agreed to issue the Authority Title Policy to the Authority upon the Closing, in accordance with Section 206.2 hereof.

(h) Final Map. Developer shall have obtained approval by the City of a final subdivision map allowing for the construction of at least six (6) two-story for-sale townhomes.

(i) Completion of all City approvals and permits required for Developer to develop the Property in accordance with the terms of this Agreement and the Scope of Development (Attachment No. 6).

(j) Completion of all approvals and permits required from governmental entities other than the City, (exclusive of ministerial permits), including without limitation, the California Coastal Commission, required for Developer to develop the Property in accordance with the terms of this Agreement and the Scope of Development (Attachment No. 6).

In the event that one or more of the above conditions are not satisfied on or before the Closing Date then (i) the Authority can waive satisfaction of such condition or conditions in writing (delivered to Developer and Escrow Holder) on or prior to the Closing Date, and the Closing shall proceed, or (ii) the Authority can immediately terminate this Agreement in writing (delivered to Developer and Escrow Holder), and pursue all of its rights and remedies against the Developer as set forth herein, or as otherwise available at law or in equity.

207.2 Developer's Conditions of Closing. Developer's obligation to proceed with the purchase of the Site is subject to the fulfillment by Authority or waiver by Developer of each and all of the conditions precedent (a) through (d) inclusive, described below ("***Developer's Conditions Precedent***"), which are solely for the benefit of Developer, and which shall be fulfilled or waived by the time periods provided for herein:

(a) No Default. Prior to the Closing, Authority is not in default in any of its obligations under the terms of this Agreement and all representations and warranties of Authority contained herein shall be true and correct in all material respects.

(b) Execution of Documents. Authority shall have executed the Grant Deed and any other documents required hereunder, and delivered such documents into Escrow.

(c) Review and Approval of Title. Developer shall have reviewed and approved the Conditions of Title of the Site, as provided in Section 205 hereof.

(d) Developer Title Policy. The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to issue the Developer Title Policy for the Site upon the Closing, in accordance with Section 206.1 hereof.

In the event that one or more of the above conditions are not satisfied on or before the Closing Date then (i) the Developer can waive satisfaction of such condition or conditions in writing (delivered to the Authority and Escrow Holder) on or prior to the Closing Date, and the Closing shall proceed, or (ii) the Developer, provided the Developer is not then in default

hereunder, can immediately terminate this Agreement in writing, and neither Authority nor Developer shall have any further obligations to one another under this Agreement.

208. Representations and Warranties.

208.1 Authority Representations and Warranties. Authority represents and warrants to Developer as follows:

(a) Authority. Authority is a public body, corporate and politic, existing pursuant to the Housing Authorities Law of the State of California, which has been authorized to transact business pursuant to action of the City. Authority has full right, power and lawful authority to grant, sell and convey the Site as provided herein and the execution, performance and delivery of this Agreement by Authority has been fully authorized by all requisite actions on the part of Authority.

(b) FIRPTA. Authority is not a “foreign person” as defined by FIRPTA or any similar state statute, or is exempt from the provisions of FIRPTA and any similar state statute, or that Authority has complied and will comply with all the requirements under FIRPTA and any similar state statute.

Until the Closing, Authority shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 208.1 not to be true as of Closing, immediately give written notice of such fact or condition to Developer. Such representation(s) shall not be deemed a breach by Authority hereunder, but shall constitute an exception which Developer shall have a right to approve or disapprove. If Developer elects to close Escrow following disclosure of such information, Authority’s representations and warranties contained herein shall be deemed to have been made as of the closing, subject to such exception(s). If, following the disclosure of such information, Developer elects not to close Escrow, then this Agreement and the Escrow shall automatically terminate, in which event neither Authority nor Developer shall have any further obligations to one another under this Agreement. The representations and warranties set forth in this Section 208.1 shall survive the Closing.

208.2 Developer’s Representations and Warranties. Developer represents and warrants to Authority as follows:

(a) Authority. Developer is a California nonprofit, public benefit corporation. The persons executing this Agreement on behalf of the Developer have all necessary corporate authority to execute this Agreement on behalf of the Developer and this Agreement is a binding obligation of Developer. Copies of the Articles of Incorporation and bylaws of Developer will be delivered to Authority within sixty (60) days of final approval of the Agreement or prior to execution of the Grant Deed, whichever occurs first. These copies will be true, complete and fully-executed copies of the originals, as amended to the date of this Agreement. Developer will have full right, power and lawful authority to purchase and accept the conveyance of the Site and to undertake all obligations as provided herein and the execution, performance and delivery of

this Agreement by Developer has been fully authorized by resolution of and all requisite actions on the part of Developer.

(b) No Conflict. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(c) No Developer Bankruptcy. Developer is not the subject of a bankruptcy proceeding.

(d) Proforma. The proforma attached hereto as Attachment No. 10 ("Proforma"), is a true and correct copy of the Proforma. The amounts shown on the Proforma are accurate and are the amounts for which Developer is able to and shall design and construct all of the Improvements in a workmanlike and defect-free manner in accordance with the Scope of Development.

Until the Closing, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 208.2 not to be true as of Closing, immediately give written notice of such fact or condition to Authority. Such representation(s) shall not be deemed a breach by Developer hereunder, but shall constitute an exception which Authority shall have a right to approve or disapprove. If Authority elects to close Escrow following disclosure of such information, Developer's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, Authority elects to not close Escrow, then this Agreement and the Escrow shall automatically terminate, in which event the Authority may pursue all of its rights and remedies against the Developer as set forth herein, or as otherwise available at law or in equity. The representations and warranties set forth in this Section 208.2 shall survive the Closing and any termination or cancellation of this Agreement.

209. Studies and Reports. Prior to the Closing, representatives of Developer shall have the right of access to all portions of the Site for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. Any preliminary work undertaken on the Site by Developer prior to the Closing shall be done at the sole risk and expense of Developer. Any preliminary work shall be undertaken only after securing all necessary permits from the appropriate governmental agencies.

210. Condition of the Site.

210.1 Disclosure. The Authority has not investigated and makes no representations or warranties whatsoever regarding the condition of the Site. Developer hereby agrees to take title to the Site "as is". Developer further agrees to perform any and all investigation that it deems necessary with respect to the Site, including without limitation any and all soils testing "Phase 1" and/or "Phase 2" environmental investigations of the Site and hereby waives any and all claims Developer may have against Authority with respect to the condition of the Site.

210.2 No Further Warranties As To Site. Except as otherwise provided in this Agreement, the physical condition, possession or title of the Site is and shall be delivered from Authority to Developer in an "as-is" condition, with no warranty expressed or implied by Authority, including without limitation, the presence of Hazardous Materials on, in, under or adjacent to the Site or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Site for the development purposes intended hereunder.

210.3 Developer Precautions After Closing. Upon the Closing, Developer shall take all necessary precautions to prevent the release in, on or under the Site of any Hazardous Materials. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials. Developer's obligation to take such precautions with respect to the release of Hazardous Materials shall terminate with respect to each Unit, upon the sale of such Unit, and shall cease with respect to the entire Site following the sale of all of the Units, provided Developer is then not in possession of any portion of the Site.

210.4 Required Disclosures After Closing. After the Closing, Developer shall notify Authority, and provide to Authority a copy or copies, of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Site, including notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. Developer shall report to Authority, as soon as possible after each incident, any unusual or potentially important incidents with respect to the environmental condition of the Site. Developer's obligation to report such incidents shall terminate with respect to each Unit, upon the sale of such Unit, and shall cease with respect to the entire Site following sale of all of the Units, provided Developer is then not in possession of any portion of the Site. In the event of a release of any Hazardous Materials into the environment, Developer shall, as soon as possible after the release, furnish to Authority a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, Developer shall furnish to Authority a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

210.5 Developer Indemnity. Upon the Closing, Developer agrees to indemnify, defend and hold Authority harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon any of the following: (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit,

judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. This indemnity does not include any condition arising as a result of the negligence or willful misconduct of the Authority or its employees, agents, representatives, successors or assigns.

PART 3. DEVELOPMENT OF THE SITE

301. Scope of Development. Developer shall develop the Improvements as provided in Attachment No. 6 and in accordance with the plans, drawings and documents submitted by Developer and approved by Authority as set forth herein.

302. Design Review.

302.1 Concept Drawings. Developer shall prepare and submit conceptual drawings for the Improvements, including a site plan, floor plans, exterior elevations, materials, color board, and elevations of all four sides of Improvements (collectively, the “*Concept Drawings*”). The Concept Drawings shall be prepared and submitted within the times established in the Schedule of Performance.

302.2 Landscape and Grading Plans. The Developer shall prepare and submit to the Authority preliminary and final landscaping and preliminary and finish grading plans for the Site (collectively, the “*Landscape and Grading Plans*”). The Landscape and Grading Plans shall be prepared and submitted within the times established in the Schedule of Performance.

302.3 Construction Drawings. The Developer shall prepare and submit to the Authority 50% and final construction drawings and related documents (collectively called the “*Construction Drawings*”) to the Authority for review (including but not limited to architectural review). The Construction Drawings shall be prepared and submitted within the times established in the Schedule of Performance. Final construction drawings are hereby defined as those in sufficient detail to obtain a building permit.

303. Authority Review and Approval. Authority shall have the right to review and approve or disapprove all aspects of the Concept Drawings, Landscape and Grading Plans and Construction Drawings. Developer acknowledges and agrees that Authority is entitled to approve or disapprove the Concept Drawings, Landscape and Grading Plans or Construction Drawings in order to satisfy Authority’s obligation to promote the sound development and redevelopment of land within the Project, 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 the Project. Developer shall

not be entitled to any monetary damages or compensation as a result of Authority's disapproval or failure to approve or disapprove the Concept Drawings, Landscape and Grading Plans or Construction Drawings.

303.1 Standards for Disapproval. Authority shall have the right to disapprove in its reasonable discretion any of the Concept Drawings, Landscape and Grading Plans or Construction Drawings, as set forth in Section 303, above, including without limitation if the same do not conform to the Scope of Development or this Agreement, or are incomplete. In the event the Concept Drawings, Landscape or Grading Plans and Construction Drawings are not approved, the Authority shall state in writing provided to the Developer the reasons for disapproval. Developer, upon receipt of notice of disapproval from Authority, shall revise such portions and resubmit to Authority by the time established therefor in the Schedule of Performance. Authority and Developer agree to work together in good faith to resolve any disagreements and disputes regarding the Concept Drawings, Landscape and Grading Plans and Construction Drawings.

303.2 Revisions. If Developer desires to propose any revisions to Authority-approved Concept Drawings, Landscape and Grading Plans or Construction Drawings after approval, it shall submit such proposed changes to 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. At the reasonable discretion of Authority, if Developer proposes any change from the basic use of the Site for anything other than a residential development consisting of townhomes, as provided for in this Agreement, then this Agreement is subject to renegotiation of all terms and conditions, including without limitation, the economic terms of the Agreement. If the Concept Drawings, Landscape and Grading Plans or Construction Drawings, as modified by the proposed change, generally and substantially conform to the requirements of the Scope of Development and this Agreement, the Authority shall review the proposed change and notify Developer in writing within thirty (30) days after submission to Authority as to whether the proposed change is approved or disapproved. Authority's Executive Director is authorized to approve changes to Authority-approved Concept Drawings, Landscape and Grading Plans and Construction Drawings.

303.3 Defects in Plans. Authority shall not be responsible or liable in any way, either to Developer or to any third parties, for any defects in the Concept Drawings, Landscape and Grading Plans or Construction Drawings, or for any structural or other defects in any work done according to the approved Concept Drawings, Landscape and Grading Plans or Construction Drawings, or for any delays reasonably caused by the review and approval processes established by this Section 303. Developer shall hold harmless and indemnify Authority, the City and their officers, employees, agents and representatives from and against any and all claims, demands and suits for damages to property or injuries to persons arising out of or in any way relating to the Site, including without limitation any defects in the Concept Drawings, Landscape and Grading Plans or Construction Drawings, violation of any laws, and for defects in any work done according to the approved Concept Drawings, Landscape and Grading Plans or Construction Drawings or for defects in work performed by Developer or any contractor or subcontractor of Developer.

304. Land Use Approvals. Before the close of Escrow of the Improvements or other works of improvement upon the Site, Developer shall, at Developer's sole expense, secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required for the Improvements by the City or any other governmental agency affected by such construction or work, except for those which are the responsibility of Authority as set forth herein. Neither Authority, nor the City shall be responsible in any way for, the processing of Developer's building permits or other permit applications with the City and the execution of this Agreement does not constitute the granting of or a commitment to obtain any required land use permits, entitlements or approvals. This is not a Development Agreement as provided in Government Code Section 65864. Without cost to Authority, Authority shall provide appropriate technical assistance to Developer in connection with Developer's obtaining all necessary entitlements, permits and approvals for the development and construction of the Improvements.

305. Schedule of Performance. Developer shall submit all Concept Drawings, commence and complete all construction of Improvements, and satisfy all other obligations and conditions of this Agreement within the times established therefor in the Schedule of Performance (Attachment No. 5).

306. Cost of Construction. All costs whatsoever, except for costs of Escrow, as provided above, shall be borne by Developer, including without limitation the cost of planning, designing, developing and constructing of all of the Improvements, as well as site preparation and grading. In addition to the foregoing, the parties hereby acknowledge and agree that the Developer shall pay to Authority all reasonable administrative costs and fees (including attorneys fees) incurred by the Authority in order to sell each of the Affordable Units initially to a First-Time Homebuyer. The terms and conditions of this Section 306 shall survive termination of this Agreement and shall continue after recordation of this Release of Construction Covenants.

307. Insurance Requirements. Developer shall take out and maintain and shall cause its contractor and subcontractors to take out and maintain until the issuance of the Release of Construction Covenants pursuant to Section 312 of this Agreement, a comprehensive general liability policy in the amount of not less than \$2,000,000 combined single limit policy, and a comprehensive automobile liability policy in the amount of \$1,000,000 combined single limit, or such other policy limits as Authority may approve at its discretion, including contractual liability, as shall protect Developer, City and Authority from claims for such damages. Such policy or policies shall be written on an occurrence form. Developer shall also furnish or cause to be furnished to Authority evidence satisfactory to Authority that Developer, and any contractor with whom it has contracted for the performance of work on the Site or otherwise pursuant to this Agreement, carries workers' compensation insurance as required by law. Developer shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by Authority setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the City and Authority and their respective officers, agents, and employees as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the

part of the carrier to notify City and Authority of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by Developer shall be primary insurance and not be contributing with any insurance maintained by Authority or City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City and Authority. The required certificate shall be furnished by Developer at the time set forth therefor in the Schedule of Performance.

308. Developer's Indemnity. Developer shall be responsible for all injuries to persons and/or all damages to real or personal property of Authority or others, caused by or resulting from the negligence and/or breach of this Agreement, of itself, its employees, subcontractors and/or its agents during the construction of or arising out of the construction of the Project and/or the breach of this Agreement. Developer shall defend and hold harmless and indemnify Authority, the City, and all of their officers and employees from all costs, damages, judgments, expenses and claims to any third party resulting from the negligence and/or breach of this Agreement, by Developer, its employees, subcontractors and/or its agents, arising out of the construction of the Project and/or the breach of this Agreement, except those arising from the negligence or willful misconduct of Authority or the City.

309. Rights of Access. Prior to the issuance of a Release of Construction Covenants pursuant to Section 312 of this Agreement, for purposes of monitoring compliance with this Agreement, Authority and its representatives shall have the right of reasonable access to the Site, without charges or fees, at normal construction hours during the period of construction, including but not limited to, the inspection of the work being performed in constructing the Improvements.

310. Compliance With Laws. Developer shall carry out the design and construction of the Improvements in conformity with all applicable laws, including all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Title 24 of the California Code of Regulations, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* Developer hereby agrees to carry out development, construction (as defined by applicable law) and operation of the Improvements on the Site, including, without limitation, any and all public works (as defined by applicable law), in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, any requirement to pay state prevailing wages). Developer hereby expressly acknowledges and agrees that neither City nor Authority has ever previously affirmatively represented to the Developer or its contractor(s) for the Improvements in writing or otherwise, in a call for bids or otherwise, that the work to be covered by the bid or contract is not a "public work," as defined in Section 1720 of the Labor Code. Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer hereby agrees that Developer shall have the

obligation to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. The Developer hereby agrees that the Developer shall have the obligation, at the Developer's sole cost, risk and expense, to obligate any party as may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer shall indemnify, protect, defend and hold harmless the Authority, City and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to Authority and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (i) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (ii) the implementation of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; (iii) failure by Developer to provide any required disclosure, representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; (iv) failure by Developer to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; and/or (v) failure by the Developer to obligate any party as may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. It is agreed by the parties that, in connection with the development, construction (as defined by applicable law) and operation of the Improvements, including, without limitation, any public work (as defined by applicable law), Developer shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of law. "Increased costs" as used in this Section shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after recordation of the Release of Construction Covenants.

310.1 Nondiscrimination in Employment. Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration

Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Developer shall allow representatives of Authority access to its employment records related to this Agreement during regular business hours to verify compliance with these provisions when so requested by Authority.

310.2 Taxes and Assessments. After the Closing, Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site. Developer shall remove or have removed any levy or attachment made after the Closing on any of the Site or any part thereof, or assure the satisfaction thereof within a reasonable time. Developer shall not apply for or receive any exemption from the payment of property taxes or assessments on any interest in or to the Site or the Improvements. If the Terms and conditions of this Agreement are deemed to create a possessory interest in Developer such as to subject Developer to a Possessory Interest Tax pursuant to Revenue and Tax Code Section 107.6, then Developer shall be solely responsible for satisfying that obligation, and Developer shall not look to Authority or the City for reimbursement or set off.

310.3 Liens and Stop Notices. Developer 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 Improvements, Developer shall, within thirty (30) days of such recording or service or within five (5) days of Authority's demand, whichever last occurs:

- (a) pay and discharge the same;
- (b) effect the release thereof by recording and delivering to Authority a surety bond in sufficient form and amount as approved by Authority in its sole discretion; or
- (c) provide Authority with other assurance which Authority deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of Authority from the effect of such lien or bonded stop notice.

311. Completion of the Project. All of the Improvements shall be completed in accordance with the schedule attached hereto as Attachment 5. Failure to complete all of the Improvements in accordance with the schedule attached hereto as Attachment 5, shall be a default under the Developer Note entitling the Authority to exercise all of its rights and remedies, including without limitation foreclosure of the Developer Deed of Trust.

312. Release of Construction Covenants. Promptly after completion of the Improvements in conformity with this Agreement, Authority shall furnish Developer with a "Release of Construction Covenants," substantially in the form of Attachment No. 4 hereto, for the entire Site upon written request therefor by the Developer. The Authority shall not

unreasonably withhold any such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the applicable portion of the Improvements and the Release of Construction Covenants shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those continuing covenants as set forth in Sections 401 through 406 of this Agreement. If Authority refuses or fails to furnish the Release of Construction Covenants, after written request from Developer, Authority shall, within thirty (30) days of written request therefor, provide Developer with a written statement of the reasons Authority refused or failed to furnish the Release of Construction Covenants or partial reconveyance. The statement shall also delineate the actions Developer must take to obtain the Release of Construction Covenants or partial reconveyance. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Improvements, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.

313. Financing of the Improvements.

313.1 No Encumbrances Except Mortgages or Deeds of Trust. Mortgages and deeds of trust may be permitted prior to the issuance of a Release of Construction Covenants pursuant to Section 312 of this Agreement, only with Authority's prior written approval, and only for the purpose of securing loans of funds to be used for financing the acquisition of the Site, construction of the Improvements (including architecture, engineering, legal, and related direct costs as well as indirect costs) on or in connection with the Site, and any other purposes necessary and appropriate in connection with development under this Agreement. Developer shall notify Authority in advance of any mortgage or deed of trust, if Developer proposes to enter into the same before completion of the construction of the Improvements. Developer shall not enter into any such mortgage or deed of trust for financing without the prior written approval of Authority, which approval Authority agrees to give if any such mortgage or deed of trust for financing is given to a responsible financing lending institution or person or entity, as determined by Authority in its reasonable discretion. If Authority shall disapprove any such evidence of financing, Authority shall do so by Notice to Developer stating the reasons for such disapproval and Developer may elect either to obtain and submit to Authority new evidence of financing or to terminate this Agreement. Authority agrees that the Developer Deed of Trust shall be subordinated to any Construction Deed of Trust (if any), such subordination shall be in a form acceptable to the Authority in its reasonable discretion.

313.2 Right of Authority to Cure Mortgage or Deed of Trust Default. In the event of a mortgage or deed of trust default or breach by Developer prior to the issuance of a Release of Construction Covenants pursuant to Section 312 of this Agreement, Developer shall immediately deliver to Authority a copy of any mortgage holder's notice of default. Authority shall have the right but not the obligation to cure the default. In such event, Authority shall be entitled to

reimbursement from Developer of all costs and expenses incurred by Authority in curing such default, including without limitation attorneys' fees.

PART 4. COVENANTS AND RESTRICTIONS

401. Use in Accordance with Redevelopment Plan. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Site or any part thereof, that upon the Closing and during construction and thereafter, Developer shall devote the Site to the uses specified in the Redevelopment Plan, Agreement Affecting Real Property and this Agreement for the periods of time specified herein. All uses conducted on the Site, including, without limitation, all activities undertaken by Developer pursuant to this Agreement, shall conform to the Redevelopment Plan and all applicable provisions of the City of Imperial Beach Municipal Code. The foregoing covenants shall run with the land. Developer's obligations under this Section 401, shall terminate with respect to each Affordable Unit, upon the sale of such Affordable Unit, and shall cease with respect to the entire Site following the sale of all of the Affordable Units, provided Developer is then not in possession of any portion of the Site.

402. Affordable Units.

402.1 Developer Covenants Concerning Affordable Units. Developer covenants and agrees that it will construct the six (6) Affordable Units. Developer further covenants and agrees that it will sell the Affordable Units only to Low Income Households for a total consideration that does not exceed the Maximum Purchase Price.

402.2 Timing. Completion of construction of the Affordable Units shall occur on or before June 1, 2013.

402.3 Execution and Recordation of the Resale Restriction. The closing of the sale of each Affordable Unit shall not occur, unless at least fifteen (15) days prior to closing escrow for the sale of such Affordable Unit Developer shall cause the buyer of such Affordable Unit to execute, acknowledge and deliver to Authority the: (a) First Time Homebuyer Note, (b) the Resale Restriction and the Notice of Affordability Restriction (Resale), (c) the deed of trust securing the First Time Homebuyer Note and the Resale Restriction, and (d) any other documents required by the Authority in its sole discretion. Developer shall then cause that certain Declaration Regarding Affordable Housing Restrictions, Restrictions and Conditions on Transfer and Equity Sharing Restrictions by and between Developer and the buyer of such Affordable Unit (the "**Habitat Declaration**"), the Resale Restriction, the deed of trust securing financing provided by Developer to the purchaser, and the First-Time Homebuyer Deed of Trust to be recorded, in that order; provided, however, that the Habitat Declaration is in a form acceptable to the Authority and which provides notice and an opportunity to purchase the Affordable Unit under the terms therein. Under no circumstances shall Developer sell an Affordable Unit, unless the Resale Restriction and the First-Time Homebuyer Deed of Trust securing the First-Time Homebuyer Note and the Resale Restriction have been recorded as an encumbrance against such Affordable Unit.

402.4 45-Year Affordability. The Resale Restriction shall ensure that the Affordable Unit will be sold and resold to Low Income Households for a period of forty-five (45) years, measured from the date of the initial sale of the Affordable Unit to a Low Income Household as provided in the Resale Restriction.

402.5 No Sales to Related Parties. None of the Affordable Units shall be sold to:
(i) any person that is an employee, officer, director, investor, shareholder, partner, member, manager or other principal of Developer, or any divisions, subsidiaries or affiliates of Developer or
(ii) any person that is the spouse, mother, father, sister, brother, child, aunt, uncle, niece, nephew, stepchild, mother in-law, father in-law, brother in-law, sister in-law, ex-spouse, grandchild or grandparent of any employee, officer, director, investor, shareholder, partner, member, manager or other principal of Developer, or any parent companies, divisions, subsidiaries or affiliates of Developer.

402.6 Authority Consent to Sales. Developer shall not sell any Affordable Unit, unless and until, the Authority has consented in writing to all of the terms and conditions of such sale, including without limitation, the sales price of the Affordable Unit which amount shall not exceed the Maximum Purchase Price.

403. Maintenance Covenants. Throughout the sales period, Developer shall maintain the Site and all improvements of any unsold Affordable Units thereon, including all landscaping, in compliance with the terms of the Redevelopment Plan and with all applicable provisions of the City of Imperial Beach Municipal Code.

404. Obligation to Refrain from Discrimination.

404.1 State Requirements. Developer shall, at all times during the term of this AHA, comply with all of the provisions of the affirmative marketing procedures adopted by Authority (if any). Developer shall maintain records to verify compliance with the applicable affirmative marketing procedures and compliance. Such records are subject to inspection by Authority during regular business hours upon five (5) days written notice. Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Developer or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or the rental, lease sale of the Site and any dwelling unit thereon. The foregoing covenants shall run with the Site.

404.2 Additional Requirements. Developer hereby agrees to comply with the Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal and State laws and regulations.

405. Nondiscrimination Covenants. Developer shall refrain from restricting the rental, lease and sale of the Site and any dwelling unit thereon on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income or disability of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) Deeds. In deeds “The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, sexual orientation, disability, medical condition, familial status, source of income, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

(b) Leases. In leases “The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, sex, sexual orientation, disability, medical condition, familial status, source of income, marital status, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased.”

(c) Contracts. In contracts “There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, sexual orientation, disability, medical condition, familial status, source of income, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.”

406. Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction. Authority is deemed the beneficiary of the terms and provisions of

this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether Authority has been, remains or is an owner of any land or interest therein in the Site or in the Project. Authority shall have the right, if this Agreement or its covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

PART 5. DEFAULTS AND REMEDIES

501. Default Generally. Subject to the extensions of time set forth in Section 602 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party within thirty (30) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

502. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the County of San Diego, State of California, in an appropriate court in that county, or in the District of the United States District Court in which such county is located.

503. Termination by Developer. In the event that Developer is not in default under this Agreement and one or more of Developer's Conditions Precedent to the Closing is not fulfilled on or before the time set forth in the Schedule of Performance and such failure is not caused by Developer; or in the event any Default of Authority prior to the Closing is not cured within the time set forth in Section 501 hereof, or any such failure is not cured within the applicable time period after written demand by Developer, then this Agreement may, at the option of Developer be terminated by written notice thereof to Authority. From the date of the written notice of termination of this Agreement by Developer to Authority and thereafter this Agreement shall be terminated and there shall be no further rights or obligations between the parties, except that the parties may pursue any other remedies they may have hereunder.

504. Termination by Authority. In the event that Authority is not in Default under this Agreement and prior to the issuance of the Release of Construction Covenants Developer (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein or in the Site in violation of this Agreement; or one or more of Authority's Conditions Precedent to the

Closing is not fulfilled on or before the time set forth in the Schedule of Performance and such failure is not caused by Authority; or Developer is otherwise in Default of this Agreement and fails to cure such Default within the time set forth in Section 501 hereof, then this Agreement and any rights of Developer or any assignee or transferee with respect to or arising out of the Agreement or the Site, shall, at the option of Authority, be terminated by Authority by written notice thereof to Developer in addition to all other rights and remedies available to developer. From the date of the written notice of termination of this Agreement by Authority to Developer and thereafter this Agreement shall be terminated and there shall be no further rights or obligations between the parties, except that the parties may pursue any other remedies they may have hereunder.

505. Reentry and Revesting of Title in Authority After the Closing and Prior to Completion of Construction.

505.1 Right of Reentry. In addition to all other rights and remedies the Authority may have at law or in equity, the Authority has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest the Site in the Authority if after the Closing and prior to the issuance of the Release of Construction Covenants, Developer (or its successors in interest):

- (a) fails to start the construction of the Improvements as required by this Agreement for a period of thirty (30) days after written notice thereof from Authority; or
- (b) abandons or substantially suspends construction of the Improvements required by this Agreement for a period of thirty (30) days after written notice thereof from Authority; or
- (c) transfers or suffers any involuntary transfer of the Site or any part thereof in violation of contrary to the provisions of Section 603 or any other section of this Agreement.

505.2 Limitations on Right of Reentry. Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

- (a) Any mortgage or deed of trust permitted by this Agreement; or
- (b) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

505.3 Right of Reentry Referenced in Grant Deed. The Grant Deed shall contain appropriate reference and provision to give effect to Authority's rights as set forth in this Section 505, to reenter and take possession of the Site, with all improvements thereon, and to terminate and revest in Authority the estate conveyed to Developer.

505.4 Resale By Authority After Revesting. Upon the revesting in Authority of title to the Site as provided in this Section 505, Authority shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as Authority shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan, as it exists or may be amended, to a qualified and responsible party or parties (as determined by Authority) who will assume the obligation of making or completing the Improvements, or such improvements in their stead as shall be satisfactory to Authority and in accordance with the uses specified for the Site or part thereof in the Redevelopment Plan.

505.5 Application of Resale Proceeds. Upon such resale of the Site by Authority, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

(a) First, to reimburse Authority, on its own behalf or on behalf of the City, all costs and expenses incurred by Authority or the City, including, but not limited to: any expenditures by Authority or the City in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by Authority or the City from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which Developer has not paid (or, in the event that Site is exempt from taxation or assessment of such charges during the period of ownership thereof by Authority, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time of revesting of title thereto in Authority, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing Authority, and in the event thereafter available; and

(b) Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of (i) the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the reentry and possession, less (ii) any gains or income withdrawn or made by Developer from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by Authority as its property. The rights established in this Section 505 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. The rights are to be interpreted in light of the fact that Authority will have conveyed the Site to Developer for redevelopment purposes, particularly for development of the Project and not for speculation.

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

507. Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

508. Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies shall govern the interpretation and enforcement of this Agreement.

PART 6. GENERAL PROVISIONS

601. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("*Notice*") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To Authority: Housing Authority of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

To Developer: San Diego Habitat for Humanity, Inc.
10222 San Diego Mission Road
San Diego, CA 92108

Any written notice, demand or communication shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

602. Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority;

litigation; unusually severe weather; acts or omissions of the other party; or any other causes beyond the control and without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the 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 five (5) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Executive Director of the Authority and Developer.

603. Transfers of Interest in Site or Agreement.

603.1 Prohibition. The qualifications and identity of Developer are of particular concern to Authority. It is because of those qualifications and identity that Authority has entered into this Agreement with Developer. For the period commencing upon the date of this Agreement and until all Units are sold, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, nor shall Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the Improvements thereon without prior written approval of Authority, except as expressly set forth herein. Any proposed total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the Improvements, other than those permitted in Section 603.2, will entitle Authority to its right of reentry and revesting as set forth in Section 505 hereof.

For the reasons cited above, Developer represents and agrees for itself, each member and any successor in interest of itself and each member that prior to issuance by City of a Certificate of Completion and without the prior written approval of Authority, there shall be no significant change in the ownership of Developer or in the relative proportions thereof, or with respect to the identity of the parties in control of Developer or the degree thereof, by any method or means.

Developer shall promptly notify Authority of any and all changes whatsoever in the identity of the parties in control of Developer or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. This Agreement may be terminated by Authority if there is any significant change (voluntary or involuntary) in membership, management or control, of Developer or its associates (other than such changes occasioned by the death or incapacity of any individual prior to issuance of a Certificate of Completion).

603.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, Authority approval of an assignment of this Agreement or conveyance of the Site or Improvements, or any part thereof, will be granted in connection with any of the following, subject to Authority and Developer executing appropriate documents of transfer which contain any exceptions or reservation of rights permitted under this Agreement:

(a) Any transfers to an entity or entities in which Developer retains a minimum fifty-one percent (51%) of the ownership and beneficial interest and retains management and control of the transferee entity or entities.

(b) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements (as defined herein).

(c) Any requested assignment for financing purposes (subject to such financing being approved by Authority), including the grant of a deed of trust to secure the funds necessary for construction of the Improvements.

(d) Any sale of the Affordable Units as provided herein.

In the event of any assignment by Developer under subparagraphs (a) through (c), inclusive, above, not requiring Authority's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such assignment it shall give written notice to Authority of such assignment and satisfactory evidence that the assignee has assumed jointly with Developer the obligations of this Agreement.

603.3 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon Developer and its permitted successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

603.4 Assignment by Authority. Authority may assign or transfer this Agreement in its entirety, or any of its rights or obligations hereunder.

604. Non-Liability of Officials and Employees. No member, director, official or employee of either party to this Agreement or the City of Imperial Beach shall be personally liable to the other party, or any successor in interest, in the event of any Default or breach of this Agreement by such party or for any amount which may become due to such party or its successors, or on any obligations under the terms of this Agreement.

605. Relationship Between Authority and Developer. It is hereby acknowledged that the relationship between Authority and Developer is that of independent contractors and not that of a partnership or joint venture and that Authority and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, Authority shall have no rights, powers, duties or obligations with respect to the operation, maintenance or management of the Improvements. Developer agrees to indemnify, hold harmless and defend Authority from any claim made against Authority arising from a claimed relationship of partnership or joint venture between Authority and Developer with respect to the period of development through the sale of the units on the Site or the Improvements.

606. Authority Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by Authority, the Executive Director of Authority or his or her designee is authorized to act on behalf of Authority unless specifically provided otherwise or the context should require otherwise.

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

608. Integration. This Agreement contains the entire understanding between the parties relating to the subject matter of this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral and written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. All exhibits and attachments referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The Recitals to this Agreement are hereby incorporated in this Agreement by this reference.

609. No Real Estate Brokerage Commissions. Authority and Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with Developer's acquisition of the Site from Authority. The parties agree to defend and hold harmless the other party from any claim to any such commission or fee from any broker, agent or finder with respect to this Agreement which is payable by such party. With respect to the sale of individual units, however, Developer may employ brokers at its discretion.

610. Attorneys' Fees. The parties agree that the prevailing party in litigation for the breach and/or interpretation and/or enforcement of the terms of this Agreement shall be entitled to their expert witness fees, if any, as part of their costs of suit, and reasonable attorneys' fees as may be awarded by the court, pursuant to California Code of Civil Procedure ("CCP") Section 1033.5 and any other applicable provisions of California law, including, without limitation, the provisions of CCP Section 998.

611. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise.

612. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

613. No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be

construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

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

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

616. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

617. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

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

619. 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 including, but not limited to, releases or additional agreements.

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

621. Exhibits, Attachments and Recitals Incorporated. All exhibits and attachments referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The recitals to this Agreement are hereby incorporated in this Agreement by this reference.

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

623. Authority to Sign. All individuals signing this Agreement for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the Authority that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

**THE HOUSING AUTHORITY OF THE
CITY OF IMPERIAL BEACH, CALIFORNIA,**
a public body, corporate and politic

Dated: _____

By: _____

Gary Brown
Executive Director

APPROVED AS TO FORM AND LEGALITY:
JENNIFER LYON, CITY ATTORNEY
General Counsel to the Authority

By: _____

KANE, BALLMER & BERKMAN
Special Counsel to the Authority

By: _____
Theodore (Ted) M. Ballmer

[Signatures Continued on Following Page]

**SAN DIEGO HABITAT FOR HUMANITY,
INC.,**
a California non-profit public benefit corporation

Dated: _____

By: _____

Name: _____

Its: _____

ATTEST:

Dated: _____

By: _____

Name: _____

Its: _____

CONSENT OF ESCROW AGENT

The undersigned Escrow Agent hereby agree to (i) accept the foregoing Agreement, (ii) be Escrow Agent under said Agreement and (iii) be bound by said Agreement in the performance of its duties as Escrow Agent; provided, however, the undersigned shall have no obligation or liability or responsibility under (a) this Consent or otherwise unless and until said Agreement is fully signed by the parties and has been delivered to the undersigned or (b) any amendment to said Agreement unless and until the same shall be accepted by the undersigned in writing.

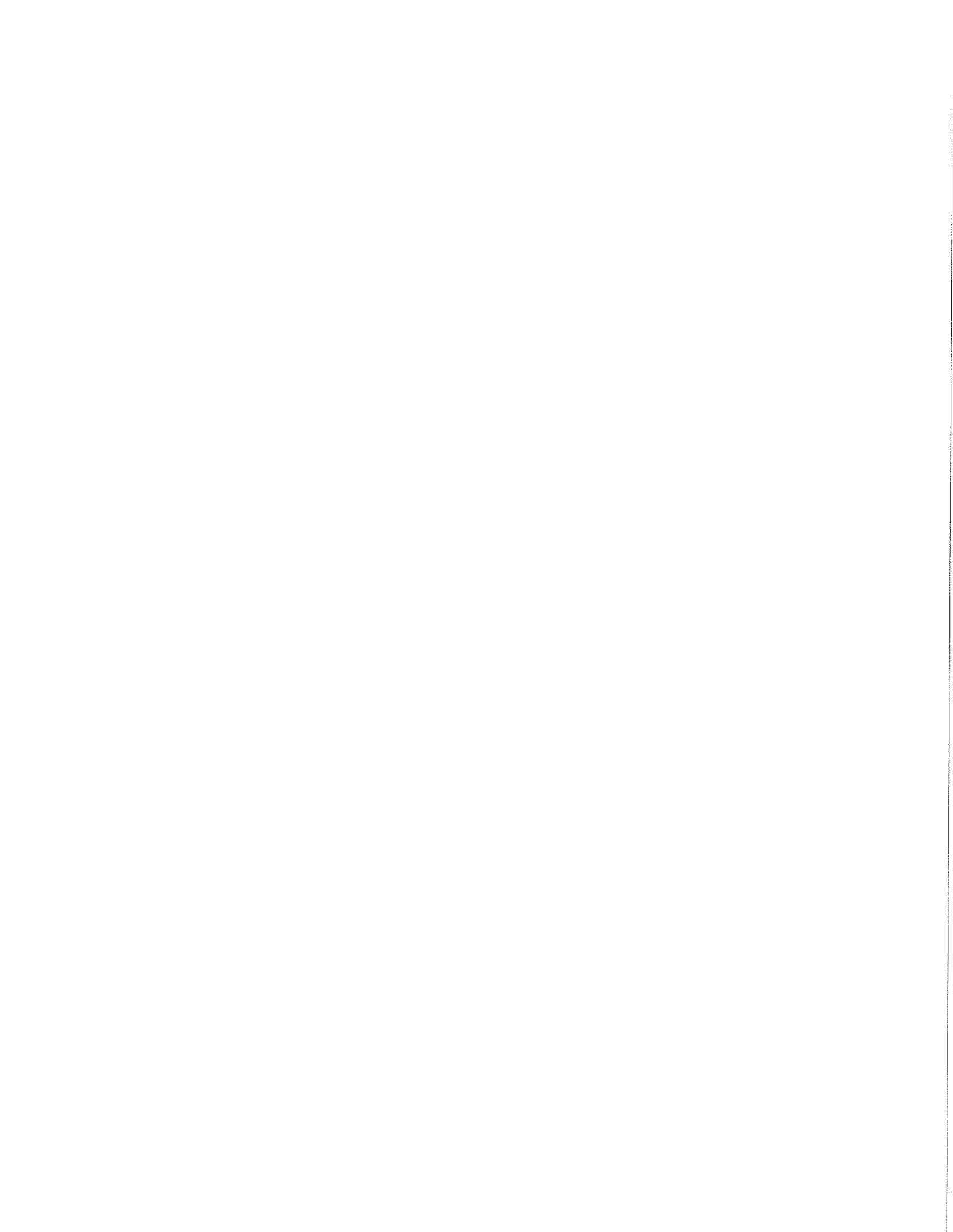
Dated: _____, 2013

_____ Title Company

By: _____

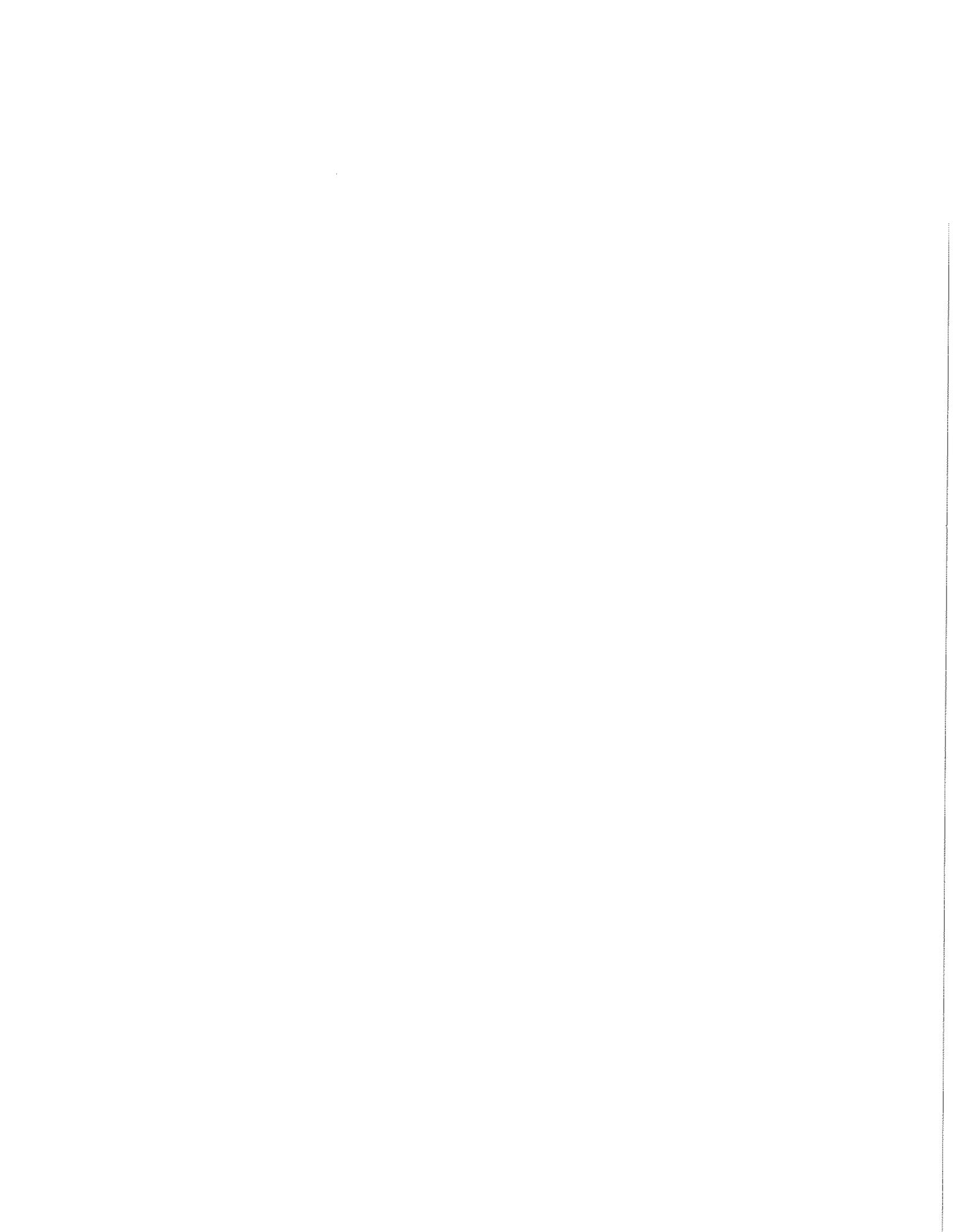
Print Name: _____

Its: _____



Attachment No. 1
Developer Note

[Behind this page.]



DO NOT DESTROY THIS NOTE: WHEN PAID, THIS NOTE AND THE DEED OF TRUST SECURING IT MUST BE SURRENDERED TO TRUSTEE FOR CANCELLATION BEFORE RECONVEYANCE WILL BE MADE.

**NOTE SECURED BY DEED OF TRUST
("Developer Note")**

Imperial Beach, California

_____, 2013

1. Principal; No Interest Except Upon Default. For value received and in consideration of the Affordable Housing Agreement dated June 28, 2013 ("**AHA**"), by and between the Housing Authority of the City of Imperial Beach ("**Authority**") and San Diego Habitat for Humanity, Inc., a California nonprofit corporation ("**Maker**"), Maker promises to pay to Authority, or order, at 825 Imperial Beach Boulevard, Imperial Beach, California 91932, or such other place as the holder may from time to time designate by written notice to Maker, the principal sum of Eight Hundred Six and No/100 Dollars (\$806,000.00), or so much as is advanced in accordance with the AHA; provided, however, that the Maker and Authority acknowledge and agree that Three Hundred Thirty One and No/100 Dollars (\$331,000.00) evidences the consideration by the Authority to convey the Property to the Maker for the Purchase Price. No interest shall be charged hereunder, except in the event of a default by Maker, in which case interest shall be deemed to have accrued beginning on the date first set forth above at the rate of 10% simple interest per annum or the maximum rate than allowed by law, whichever is less. This Note is issued pursuant to: (i) the AHA; (ii) the Deed of Trust (the "**Deed of Trust**") being executed concurrently herewith by Maker in favor of the Authority, to be recorded in the office of the County Recorder of San Diego County; and (iii) the Agreement Affecting Real Property (the "**AARP**") being executed concurrently herewith by Maker and the Authority, to be recorded in the office of the County Recorder of San Diego County. All capitalized terms which are not defined herein shall have the meaning ascribed to them in the AHA.

2. Terms.

(a) Term of Loan; Forgiveness. Upon the timely completion of the Affordable Units in accordance with the AHA, this Developer Note will be partially forgiven and the remaining balance will convert to first-time homebuyer loans to Low-Income Households to assist those Low-Income Households with the purchase of Affordable Units, as follows:

(1) Upon the closing of the sale of each Affordable Unit, as defined in the AHA, the purchaser of such Affordable Unit shall execute a First-Time Homebuyer Note in a form approved by the Authority in an amount equal to the difference between the original market value of the Affordable Unit determined by the Authority and the Maximum Purchase Price. In the event the foregoing calculation results in an amount equal to zero or a negative number, then the requirement

that the purchaser of the Affordable Unit execute a First-Time Homebuyer Note as set forth herein, shall be null and void.

(2) Any amount of this Developer Note that is not assumed by the purchasers of the Affordable Units as set forth in Section 2(a)(1), above, shall be forgiven in its entirety.

(b) No Prepayments. This Note may not be prepaid in whole or in part.

(c) No Transfers Without Authority Consent. Should the undersigned sell, convey, transfer, further encumber, or dispose of the real property described in the Deed of Trust (“**Property**”), or any part of it, or any interest in it, without first obtaining the written consent of Authority, or the then holder of this Developer Note, then all obligations secured by this Developer Note may be declared due and payable, at the option of Authority, or the then holder of this Developer Note, as provided in Section 4, below. Authority reserves the right to approve all sales, transfers, conveyances, additional encumbrances, or dispositions of the Property. Consent to one transaction of this type will not constitute a waiver of the right to require consent to future or successive transactions. If such a sale, transfer, further encumbrance, disposition, conveyance or transfer is approved by Authority, then upon the sale, transfer, further encumbrance, conveyance, transfer all accrued but unpaid interest on this Developer Note shall be paid to Authority, at Authority’s option.

3. Security for Note. This Note is secured by the Deed of Trust of even date herewith executed by Maker, which creates a lien on the Property. The Authority shall partially reconvey the Deed of Trust as provided therein.

4. Acceleration Upon Default. Notwithstanding Section 2(a), above, or anything contained herein to the contrary, in the event of any default in the performance of any of the terms, covenants and conditions contained in: (i) this Developer Note, the AHA, AARP or Deed of Trust, including without limitation the failure by Maker to complete all of the Improvements, as defined in the AHA, on or before June 1, 2015; (ii) any other instrument executed by the Maker in conjunction with this Developer Note; (iii) any prior or junior note secured by an encumbrance on the Property or any portion of it; or (iv) in the event of the filing of a Bankruptcy proceeding by or against Maker, then (w) at the option of the Authority the Property shall revert back to the Authority; (x) all sums owing by Maker to the Authority shall at the option of Authority immediately become due and payable; (y) Authority shall have no obligation to disburse any further funds to Maker or any other person; and (z) Authority shall be released from any and all obligations to Maker under the terms of this Developer Note. These remedies shall be in addition to any and all other rights and remedies available to Authority, either at law or in equity. Further, default interest shall accrue on the principal balance of this Developer Note from the date of this Developer Note at the rate of ten percent (10%) simple interest per annum or the maximum rate than allowed by law, whichever is less. Failure to exercise such option shall not constitute a waiver of the right to exercise it in the event of any subsequent default.

5. Costs Paid by Maker. Maker agrees to pay the following costs, expenses, and attorneys’ fees paid or incurred by the holder of this Developer Note, or adjudged by a court: (a) reasonable costs of

collection, costs, and expenses, and attorneys' fees paid or incurred in connection with the collection or enforcement of this Developer Note, whether or not suit is filed; and (b) costs of suit and such sum as the court may adjudge as attorneys' fees in any action to enforce payment of this Developer Note or any part of it.

6. Payment and Interest Calculation. Principal and interest shall be payable in lawful money of the United States of America. Interest shall be computed based on a 360-day year and 30-day month and the actual number of days elapsed. Payments shall be applied to interest first and then to any unpaid principal balance.

7. Incorporation of Documents. The provisions of the AHA, AARP and Deed of Trust are expressly incorporated in this Developer Note by this reference.

8. Waiver. Maker hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this Developer Note, and expressly agrees that, without in any way affecting the liability of Maker hereunder, Authority may extend any maturity date or the time for payment of any installment due hereunder, accept additional security, release any party liable hereunder and release any security now or hereafter securing this Developer Note. Maker further waives, to the full extent permitted by law, the right to plead any and all statutes of limitations as a defense to any demand on this Developer Note, or on any deed of trust, security agreement, guaranty or other agreement now or hereafter securing this Developer Note.

9. Recourse.

(a) With the exception of Three Hundred Thirty One and No/100 Dollars (\$331,000.00) which evidences the consideration by the Authority to convey the Property to the Maker for the Purchase Price, this Note is recourse to Maker.

(b) Maker shall indemnify, defend, protect and hold Authority harmless from and against any and all loss, damage, liability, action, cause of action, cost or expense (including, without limitation, reasonable attorneys' fees and expenses) incurred by Authority as a result of any (i) fraud or material misrepresentation under or in connection with the Loan or any Loan Document; (ii) intentional bad faith waste of the Property; (iii) losses resulting from Maker's failure to maintain insurance as required under the Deed of Trust; and (iv) misapplication of any rents, security deposits, insurance proceeds, condemnation awards or any other proceeds derived from the collateral security in a manner prohibited by the AHA, Deed of Trust or AARP. Authority shall promptly provide Maker with written notice of any event for which Maker has an indemnification obligation as provided in this Paragraph 9(b).

10. Late Charge. In addition to the foregoing, if any installment due hereunder, is not paid within fifteen (15) days from the date due, Maker promises to pay a "late charge" of five percent (5%) of the installment so overdue to defray the expense incident to handling any such delinquent payment or payments.

11. Severability. If any provision of this Developer Note is determined to be void by court of

competent jurisdiction, such determination shall not affect any other provision of this Developer Note, and such other provisions shall remain in full force and effect.

12. Non-Waiver. No delay in demanding or failure to demand performance hereunder shall constitute a waiver by holding of its right to subsequently demand such performance or to exercise any remedies for any default hereunder. Further, in order to be effective, any waiver of any of Authority's rights and remedies hereunder shall be expressed in a writing signed by Authority. Further waiver by Authority of any right hereunder shall not constitute a waiver of any other right, including but not limited to the right to exercise any and all remedies for a different or subsequent event of default hereunder.

13. Replacement Note. The undersigned agrees that, in the event that this Developer Note shall become lost or stolen, upon request of Authority, the undersigned shall execute a replacement Note incorporating the terms hereof, provided that Authority shall furnish a written agreement to indemnify the undersigned against all losses, costs, and damages arising from a duplicative demand for payment under this Developer Note.

14. Interpretation. This Note shall be governed and interpreted in accordance with applicable California law.

MAKER:
SAN DIEGO HABITAT FOR HUMANITY, INC.,
a California non-profit public benefit corporation

Dated: _____

By: _____

Name: _____

Its: _____

ATTEST:

Dated: _____

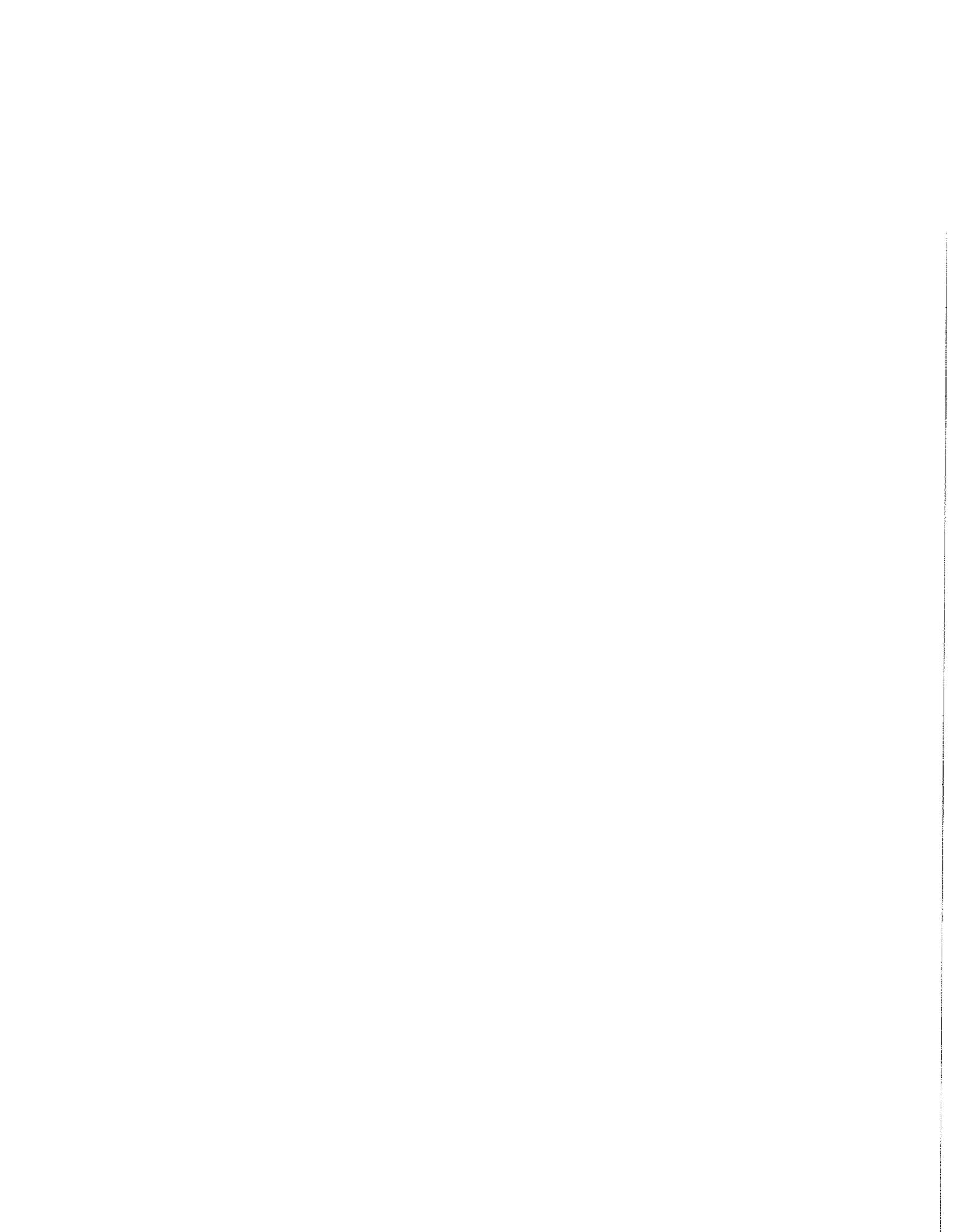
By: _____

Name: _____

Its: _____

**Attachment No. 2
Developer Deed of Trust**

[Behind this page.]



Recording Requested By:
Housing Authority
of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

And When Recorded Mail To:
Housing Authority
of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

DEED OF TRUST

THIS DEED OF TRUST is made this ___ day of _____, 2013, between San Diego Habitat for Humanity, Inc., a California nonprofit corporation, whose address is 10222 San Diego Mission Road, San Diego, CA 92108 ("**Trustor**"), Stewart Title Company ("**Trustee**"); and the Community Development Commission of the City of Imperial Beach ("**Beneficiary**"), whose address is 825 Imperial Beach Boulevard, Imperial Beach, California 91932;

TRUSTOR HEREBY irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, all that property in the City of Imperial Beach, County of San Diego, State of California, described as:

(See Legal Description - Exhibit "A")

FOR THE PURPOSE OF SECURING:

- (a) Payment of the indebtedness evidenced by that certain Promissory Note of even date herewith executed by Trustor, in the principal sum of Eight Hundred Six and No/100 Dollars (\$806,000.00), and any renewal, extension, or modification of the promissory note (the "**Note**");
- (b) Any additional sums and interest that may hereafter be loaned to the then record owner of the Property by Beneficiary, when evidenced by another note or notes reciting that it or they are so secured;
- (c) That certain Affordable Housing Agreement dated June 28, 2013 executed by Trustor and Beneficiary, and any renewal, amendment, extension, or modification of the Affordable Housing Agreement (the "**AHA**");

(d) That certain Agreement Affecting Real Property of even date herewith executed by Trustor and Beneficiary, and any renewal, amendment, extension, or modification of the Agreement Affecting Real Property (the “*AARP*”);

(e) The performance of each agreement contained in this Deed of Trust.

A. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

1. Maintenance and Repair. To keep the Property in good condition and repair; to pay when due all claims for labor performed and materials furnished for the Property; to comply with all laws affecting the Property or requiring any alterations or improvements to be made on the Property; not to commit or permit waste of the Property; not to commit, suffer, or permit any act upon the Property in violation of law; and to cultivate, maintain the landscaping, and do all other acts that from the character or use of the Property may be reasonably necessary.

2. Fire Insurance. To provide, maintain, and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary as its interest may appear. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured by this Deed of Trust and in any order determined by Beneficiary, or at the option of Beneficiary the entire amount so collected or any part of that amount may be released to Trustor, except that if the proceeds of the award for any taking or injury to the Property or the amount of such proceeds plus funds provided by Trustor is sufficient to allow for the repair and restoration of the Property and such repair and/or restoration is physically and legally possible, then the Trustor shall use the proceeds of the award to timely effectuate such repair and/or restoration. Upon receipt of such proceeds, Beneficiary may hold the proceeds as further security, or apply or release them in the same manner and with the same effect as provided in this Deed of Trust for the disposition of proceeds of fire or other insurance. This application or release shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice.

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

4. Payment of Liens and Taxes. To pay, at least ten (10) days before delinquency, all taxes and assessments affecting the Property, including assessments on appurtenant water stock, all encumbrances, charges, and liens, with interest, on the Property or any part of the Property, which appear to be prior or superior to this Deed of Trust; and all costs, fees, and expenses of this Trust. If Trustor fails to make any payment or to do any act as provided in this Deed of Trust, then Beneficiary or Trustee may (but is not obligated to) make the payment or do the act in the required manner and to the extent deemed necessary by Beneficiary or Trustee to protect the security of this Deed of Trust. The performance by Beneficiary or Trustee of such an act shall not require notice to or demand upon Trustor and shall not release Trustor from any obligation under this Deed of Trust. Beneficiary or Trustee shall also have the following related rights and powers: to enter upon the

Property for the foregoing purposes; to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee; to pay, purchase, contest, or compromise any encumbrance, charge, or lien that in the judgment of either appears to be prior or superior to this Deed of Trust; to employ counsel; and to pay necessary expenses and costs, including attorneys' fees.

5. Reimbursement of Costs. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest from date of expenditure at the amount allowed by law in effect at the date of this Deed of Trust, and to pay any reasonable amount demanded by Beneficiary (up to the maximum allowed by law at the time of the demand) for any beneficiary statement requested by Trustor or any other beneficiary of a Deed of Trust encumbering the Property regarding the obligation secured by this Deed of Trust.

6. Use. That Trustor will not permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.

7. Incorporation of AHA and AARP. That the AHA and AARP are incorporated herein by reference and made a part of this Deed of Trust.

8. Performance of Other Obligations. To perform, in a timely manner, each agreement and covenant by and between Trustor on any and all notes, loans and deeds of trust that are senior and/or junior to this Deed of Trust. A default in any of these obligations, beyond any applicable cure period, shall constitute a default under this Deed of Trust.

B. THE PARTIES AGREE THAT:

9. Waiver of Late Payments. By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any indebtedness secured by this Deed of Trust.

10. Trustee's Powers. Upon written request of Beneficiary and presentation of this Deed of Trust, Trustee may (a) reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of all or any part of the Property; (c) join in granting any easement on the Property; or (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge of this Deed of Trust. Trustee need not provide Trustor with notice before taking any of the foregoing actions, and shall not be liable for the proper performance of the act. The exercise by Trustee of any of the foregoing powers shall not affect the personal liability of any person for payment of the indebtedness secured by this Deed of Trust, or the lien of this Deed of Trust on the remaining property as security for the repayment of the full amount secured by this Deed of Trust.

11. Partial Reconveyance. Beneficiary shall cause Trustee to partially reconvey this Deed of Trust, with respect to each Affordable Unit, upon the last to occur of: (i) the sale of the Affordable Unit; (ii) the Low-Income Household's execution of the First-Time Homebuyer Note; (iii) the

recordation against the individual Affordable Unit of the Resale Restriction; and (iv) the recordation against the individual Affordable Unit of the deed of trust securing the First-Time Homebuyer Note and the Resale Restriction.

12. Full Reconveyance. Upon written request of Beneficiary stating that all obligations secured by this Deed of Trust have been performed in full, surrender of this Deed of Trust, any notes secured by this Deed of Trust to the Trustee for cancellation and retention, and payment of Trustee's fees and charges, Trustee shall reconvey, without warranty, the Property then subject to this Deed of Trust. Absent manifest error, the recitals in the reconveyance shall be conclusive proof of the truthfulness of the recitals. The grantee in the reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of the full reconveyance, Trustee may destroy the Note and this Deed of Trust, unless directed in the request to retain them.

13. Assignment of Rents. As additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority during the continuance of these Trusts, to collect the rents, issues, and profits of the Property, but reserves the right, prior to any default by Trustor in payment of any indebtedness secured by this Deed of Trust or in the performance of any agreement under this Deed of Trust, to collect and retain these rents, issues, and profits as they become due and payable. Upon any such default for which cure has not been commenced within thirty (30) days and thereafter completed with diligence, Beneficiary may, without notice and without regard to the adequacy of the security for the indebtedness secured by this Deed of Trust, either personally or by agent or court-appointed receiver, do the following: enter upon and take possession of the Property or any part of the Property; sue for or otherwise collect all rents, issues, and profits, including those past due and unpaid; and apply these rents, issues, and profits, less costs and expenses of operation and collection (including reasonable attorneys' fees), upon any indebtedness secured by this Deed of Trust, in any order determined by Beneficiary. The exercise of the foregoing rights by Beneficiary shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice.

14. Default in Foreclosure. Upon default by Trustor in the payment of any indebtedness secured by this Deed of Trust or in the performance of any obligation under this Deed of Trust, the AHA and/or the AARP for which cure has not been commenced within thirty (30) days and thereafter completed with diligence, Beneficiary may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee a written declaration of default and demand for sale and a written notice of default and election to sell the Property. Trustee shall cause the notice of default and election to sell to be recorded. Beneficiary also shall deposit with Trustee this Deed of Trust, a copy of the Agreement, and all other documents evidencing obligations secured by this Deed of Trust. After the required time period has lapsed following the recordation of the notice of default, and after notice of sale has been given as required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place specified in the notice of sale, either as a whole or in separate parcels, and in any order determined by Trustee, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser at the auction its deed conveying the Property

sold, but without any covenant or warranty, express or implied. Absent manifest error, the recital in the deed of any matter or fact shall be conclusive proof of the truthfulness of the recital. Any person, including Trustor, Trustee, or Beneficiary, may purchase at the sale. After deducting all costs, fees, and expenses of Trustee and Beneficiary under this paragraph, including costs of procuring evidence of title incurred in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms of this Deed of Trust, not then repaid, with accrued interest at the amount allowed by law in effect at the date of this Deed of Trust; all other sums then secured by this Deed of Trust; and the remainder, if any, to the person or persons legally entitled to the remaining proceeds.

15. Further Encumbrances. Should the undersigned agree to or actually sell, convey, transfer, or dispose of, or further encumber the Property, or any part of it, or any interest in it (each, a “*Transfer*”), without first obtaining the written consent of the Beneficiary, then all obligations secured by the Deed of Trust may be declared due and payable, at the option of the Beneficiary, unless such Transfer is permitted under Section 603 of the AHA. Consent to one transaction of this type will not constitute a waiver of the right to acquire consent to future or successive transactions.

16. General Provisions. This Deed of Trust applies to, inures to the benefit of, and binds all parties to this Deed of Trust and their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term “Beneficiary” shall mean the Housing Authority of the City of Imperial Beach, and the heirs, legatees, devisees, administrators, executors, and assigns of any such person. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

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

18. Substitution of Trustees. Beneficiary, or any successor in ownership of any indebtedness secured by this Deed of Trust, may from time to time, by written instrument, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust. The substitution instrument shall contain the name of the original Trustor, Trustee, and Beneficiary under this Deed of Trust, the book and page where this Deed is recorded, and the name and address of the new Trustee. When executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, the substitution instrument shall be conclusive proof of proper substitution of the successor Trustee or Trustees. Any successor Trustee or Trustees shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers, and duties.

19. Cumulative Powers and Remedies. The powers and remedies conferred in this Deed of Trust are concurrent and cumulative to all other rights and remedies provided in this Deed of Trust or given by law. These powers and remedies may be exercised singly, successively, or together, and as often as deemed necessary.

20. Conclusiveness of Recitals. The recitals contained in any reconveyance, trustee's deed, or any other instrument executed by the Trustee from time to time under the authority of this Deed of Trust or in the exercise of its powers or the performance of its duties under this Deed of Trust, shall be conclusive evidence of their truth, whether stated as specific and particular facts, or in general statements or conclusions absent manifest error. Further, the recitals shall be binding and conclusive upon the Trustor, its heirs, executors, administrators, successors, and assigns, and all other persons.

21. Attorneys' Fees. If any action is brought for the foreclosure of this Deed of Trust or for the enforcement of any provision of this Deed of Trust (whether or not suit is filed), Trustor agrees to pay all costs and expenses of Beneficiary and Trustee, including reasonable attorneys' fees; and these sums shall be secured by this Deed of Trust.

22. Co-trustees. If two or more persons are designated as Trustees in this Deed of Trust, any, or all, power granted in this Deed of Trust to Trustee may be exercised by any of those persons, if the other person or persons are unable, for any reason, to act. Any recital of this inability in any instrument executed by any of those persons shall be conclusive against Trustor and Trustor's heirs and assigns.

23. Request for Notices of Default and Sale. In accordance with Section 2924b of the California Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under that Deed of Trust executed by the Trustor concerning this Property be mailed to:

Housing Authority of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

The undersigned Trustor requests that a copy of any notice of default and of any notice of sale under this Deed of Trust be mailed to Trustor at the address of Trustor set forth above.

24. Inspections. Trustor shall permit Beneficiary and its agents or representatives, to inspect the Property at any and all reasonable times, with at least 24 hours advance notice. Inspections shall be conducted so as not to interfere with the tenants' use and enjoyment of the Property.

25. Hazardous Materials Defined. For purposes of this Deed of Trust, "Hazardous Materials" mean and include any hazardous, toxic or dangerous waste, substance or material including, without limitation, flammable explosives, radioactive materials, asbestos, hazardous wastes, toxic substances and any materials or substances defined as hazardous materials, hazardous substances or toxic substances in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended (42 U.S.C. §9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901, et seq.), and those substances defined as hazardous wastes in §25117 of the California

Health and Safety Code or as hazardous substances in §25316 of the California Health and Safety Code or in any regulations promulgated under either such law, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

26. Trustor's Hazardous Materials Representations and Warranties and Indemnity. In addition to the general and specific representations, covenants and warranties set forth in the Deed of Trust or otherwise, Trustor represents, covenants and warrants, with respect to Hazardous Materials, as follows:

(a) Neither Trustor nor, to the best knowledge of Trustor, any other person, has ever caused or permitted any Hazardous Materials to be manufactured, placed, held, located or disposed of on, under or at the Property or any part thereof, and neither the Property nor any part thereof, or any property adjacent thereto, has ever been used (whether by the Trustor or, to the best knowledge of the Trustor, by any other person) as a manufacturing site, dump site or storage site (whether permanent or temporary) for any Hazardous Materials;

(b) Trustor hereby agrees to indemnify Beneficiary, its officers, employees, contractors and agents, and hold Beneficiary, its officers, employees, contractors and agents harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Beneficiary, its officers, employees, contractors or agents for, with respect to, or as a direct or indirect result of, the presence or use, generation, storage, release, threatened release or disposal of Hazardous Materials on or under the Property or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials from the Property (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials) regardless of whether or not caused by or within the control of Trustor. Notwithstanding the foregoing, Trustor's obligations under this section shall not apply to any losses, liabilities, damages, injuries, costs, expenses, or claims which arise out of or relate to Hazardous Materials which (1) were present, generated, released, or stored on the Property on or before the date that Trustor acquired title to the Property or (2) are generated, released or stored on the Property after the date that Beneficiary takes possession thereof.

(c) Trustor has not received any notice of (i) the happening of any event involving the use, spillage, discharge, or cleanup of any Hazardous Materials ("Hazardous Discharge") affecting Trustor or the Property or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, noise emissions or any other environmental, health or safety matter affecting Trustor or the Property ("Environmental Complaint") from any person or entity, including, without limitation, the United States Environmental Protection Agency ("EPA"). If Trustor receives any such notice after the date hereof, then Trustor will give, within seven (7) business days thereafter, oral and written notice of same to Beneficiary.

(d) Without limitation of Beneficiary's rights under this Deed of Trust, Beneficiary shall have the right, but not the obligation, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Materials or Environmental Complaint upon its receipt of any notice from any person or entity, including without limitation, the EPA, asserting the existence of any Hazardous Materials or an Environmental Complaint on or pertaining to the Property which, if true, could result in an order, suit or other action against Trustor affecting any part of the Property by any governmental agency or otherwise which, in the sole opinion of Beneficiary, could jeopardize its security under this Deed of Trust. All reasonable costs and expenses incurred by Beneficiary in the exercise of any such rights shall be secured by this Deed of Trust and shall be payable by Trustor upon demand together with interest thereon at a rate equal to the highest rate payable under the note secured hereby.

(e) The foregoing representation, covenants, indemnities and warranties shall be continuing and shall be true and correct for the period from the date hereof to the release of this Deed of Trust (whether by payment of the indebtedness secured hereby or foreclosure or action in lieu thereof), and these representations, covenants, indemnities and warranties shall survive such release.

27. Choice of Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

28. Authority to Sign. All individuals signing this Deed of Trust for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the Beneficiary that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

TRUSTOR:SAN DIEGO HABITAT FOR HUMANITY, INC.,
a California non-profit public benefit corporation

Dated: _____

By: _____

Name: _____

Its: _____

ATTEST:

Dated: _____

By: _____

Name: _____

Its: _____

ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On _____, 200__ before me, _____,
personally appeared _____ who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit "A"

Legal Description

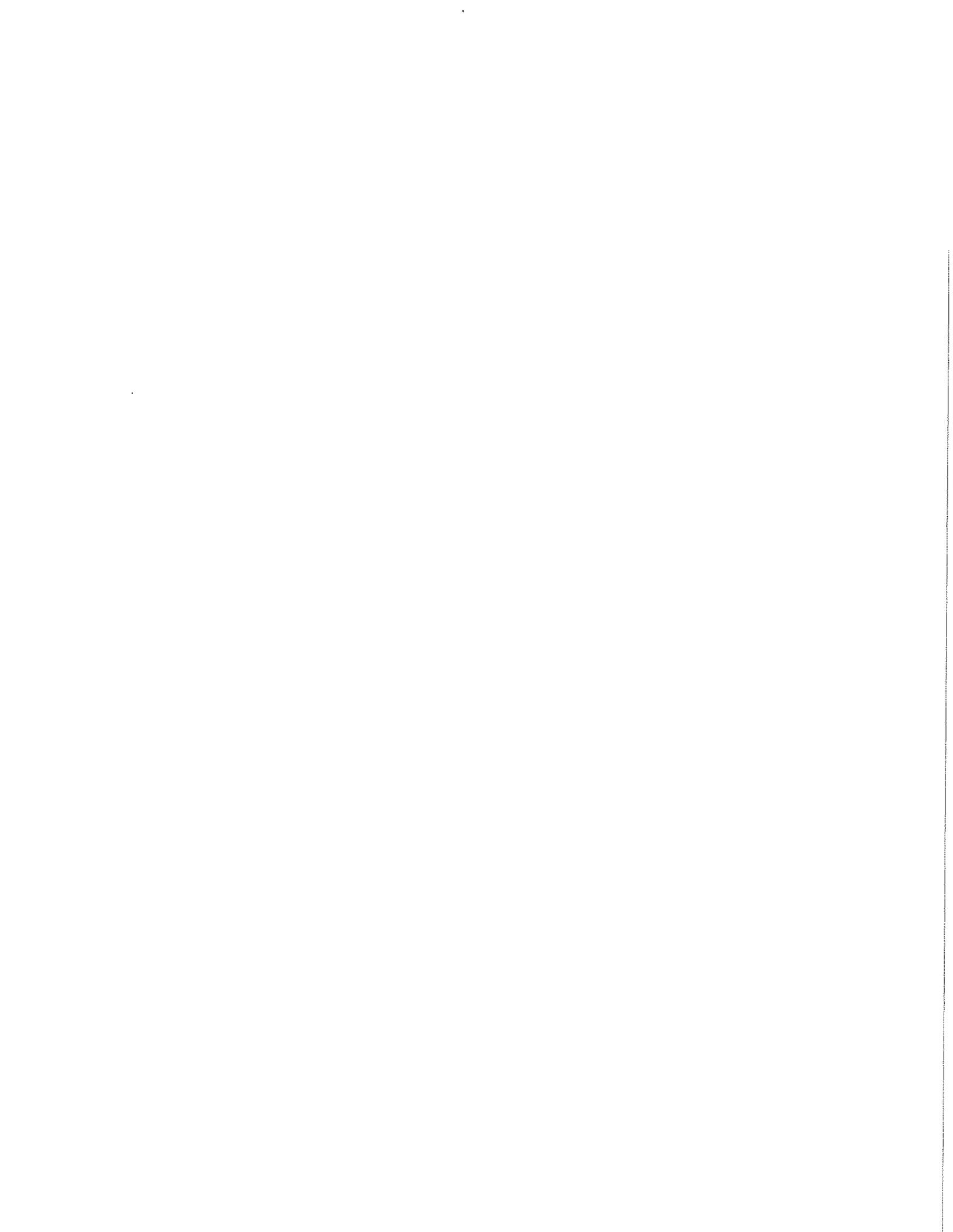
All that certain real property situated in the City of Imperial Beach, County of San Diego, State of California, described as follows:

LOTS 21 AND 22 AND THE SOUTH 12.50 FEET OF LOT 23, ALL BEING IN BLOCK 108 OF SOUTH SAN DIEGO COMPANY'S ADDITION TO SOUTH SAN DIEGO, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 497, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 4, 1887, TOGETHER WITH THAT PORTION OF THE NORTHERLY 10,000 FEET OF DONAX AVENUE LYING SOUTHERLY AND ADJACENT TO THE SOUTHERLY LINE OF SAID LOT 21 AS VACATED ON APRIL 2, 1979, BY RESOLUTION NO. 2543 OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH RECORDER APRIL 30, 1979, AS FILE NO. 79-177416 OF OFFICIAL RECORDS.

Also more commonly known as Assessor's Parcel Number 626-282-12.

Attachment No. 3
Grant Deed

[Behind this page.]



**Recording Requested By And When
Recorded Mail To And Mail Tax
Statements To:**

San Diego Habitat for Humanity, Inc.,
10222 San Diego Mission Road
San Diego, CA 92108

This document is exempt from payment of a recording fee
pursuant to government Code Section 6103.

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged,

The Housing Authority of the City of Imperial Beach (“*Authority*”), a public body, corporate and politic, acting to carry out the Redevelopment Plan (“*Redevelopment Plan*”) for the Palm Avenue/Commercial Redevelopment Project (the “*Project*”), under the Community Redevelopment Law of California, hereby grants to San Diego Habitat for Humanity, Inc., a California nonprofit corporation (“*Developer*”), the real property hereinafter referred to as the “*Site*,” described in Exhibit A attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record described there.

1. The Site is conveyed in accordance with and subject to the Redevelopment Plan which was approved and adopted by the City of Imperial Beach, California and an Affordable Housing Agreement entered into between Authority and Developer dated June 28, 2013 (the “*AHA*”), a copy of which is on file with the Authority at its offices as a public record and which is incorporated herein by reference. The AHA generally requires the Developer to construct six (6) two-story for-sale townhomes on the Site (the “*Improvements*”), and other requirements as set forth therein. All terms used herein shall have the same meaning as those used in the AHA.

2. The Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof, that upon the date of this Grant Deed and during construction and thereafter, the Developer shall devote the Site to the uses specified in the Redevelopment Plan and the AHA for the periods of time specified therein. All uses conducted on the Site, including, without limitation, all activities undertaken by the Developer pursuant to the AHA, shall conform to the Redevelopment Plan and all applicable provisions of the City of Imperial Beach Municipal Code. The foregoing covenants shall run with the land.

3. Except as provided in the AHA and Section 10 of this Grant Deed:

(a) The Developer shall not make any sale, transfer, conveyance, subdivision, refinancing or assignment of the Site or any part thereof or any interest therein, without the prior written consent of the Authority except as permitted by Section 603 of the AHA.

(b) The Developer shall not place or suffer to be placed on the Site any lien or encumbrance other than mortgages, deeds of trust, or any other form of conveyance required for financing of the construction of the Improvements on the Site, and any other expenditures necessary and appropriate to develop the Site pursuant to the AHA, except as provided in Section 313 of the AHA.

(c) All of the terms, covenants and conditions of this Grant Deed shall be binding upon the Developer and the permitted successors and assigns of the Developer. Whenever the term "Developer" is used in this Grant Deed, such term shall include any other permitted successors and assigns as herein provided.

4. All documents of transfer shall contain clauses that shall state that there will be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Developer himself or herself or any transferee in interest or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.

5. The Authority has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in the Authority the estate conveyed to the Developer if after the Closing and prior to the issuance of the Release of Construction Covenants, the Developer (or its successors in interest) shall:

(a) fail to start the construction of the Improvements as required by the AHA for a period of sixty (60) days after written notice thereof from the Authority;

(b) abandon or substantially suspend construction of the Improvements required by the AHA for a period of ninety (90) days after written notice thereof from the Authority;

(c) fail to complete construction of improvements as required by the AHA;

(d) contrary to the provisions of Section 603 of the AHA transfer or suffer any involuntary transfer of the Site or any part thereof in violation of the AHA; or

(e) file bankruptcy or an insolvency arrangement with creditors.

Such right to re-enter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

(1) Any mortgage or deed of trust permitted by the AHA; or

(2) Any rights or interests provided in the AHA for the protection of the holders of such mortgages or deeds of trust.

Upon the revesting in the Authority of title to the Site as provided in this Section 5, the Authority shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as the Authority shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan, as it exists or may be amended, to a qualified and responsible party or parties (as determined by the Authority) who will assume the obligation of making or completing the Improvements, or such improvements in their stead as shall be satisfactory to the Authority and in accordance with the uses specified for such Site or part thereof in the Redevelopment Plan. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by Grant Deed, shall be applied:

(i) First, to reimburse the Authority, on its own behalf or on behalf of the City, all reasonable costs and expenses incurred by the Authority, excluding City and Authority staff costs, but specifically, including, but not limited to, any expenditures by the Authority or the City in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by the Authority from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which the Developer has not paid; any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time of revesting of title thereto in the Authority, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing the Authority, and in the event additional proceeds are thereafter available, then

(ii) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by the Developer from Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by the Authority as its property. The rights established in this Section 5 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the Authority will have conveyed the Site to the Developer for redevelopment purposes, particularly for development of six (6) two-story for-sale townhomes and appurtenant uses, and not for speculation in undeveloped land.

6. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by paragraph 4 of this Grant Deed; provided, however, that any subsequent owner of the Site shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

7. All covenants contained in this Grant Deed are covenants running with the land and shall be included in all deeds.

8. All covenants without regard to technical classification or designation shall be binding for the benefit of the Authority, and such covenants shall run in favor of the Authority for the entire period during which such covenants shall be in force and effect, without regard to whether the Authority is or remains an owner of any land or interest therein to which such covenants relate. The Authority, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

9. Both Authority, its successors and assigns, and Developer and the successors and assigns of Developer in and to all or any part of the fee title to the Site shall have the right with the mutual consent of the Authority to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, easements or restrictions contained in this Grant Deed without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Site. However, Developer and Authority are obligated to give written notice to and obtain the consent of any first mortgagee prior to consent or agreement between the parties concerning such changes to this Grant Deed. The covenants contained in this Grant Deed, without regard to technical classification, shall not benefit or be enforceable by any owner of any other real property within or outside the Project Area, or any person or entity having any interest in any other such realty. Any amendment to the Redevelopment Plan which proposes to change the uses or development permitted on the Site, or otherwise proposes a change of any of the restrictions or controls that apply to the Site, shall require the written consent of the first mortgagee and the Developer or the successors and assigns of Developer in and to all or any part of the fee title to the Site, but any such amendment which proposes a change affecting the Site shall not require the consent of any tenant, lessee, easement holder, licensee, mortgagee (other than the first mortgagee), trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Site.

10. Notwithstanding anything contained herein to the contrary, all restrictions against and obligations of Developer set forth herein shall terminate with respect to Developer, but not its successors and assigns, with respect to any Unit upon the sale of such Unit for residential purposes and shall cease with respect to the entire Site following the sale of all of the Units.

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

**AUTHORITY:
THE HOUSING AUTHORITY OF THE
CITY OF IMPERIAL BEACH, CALIFORNIA,
a public body, corporate and politic**

Dated: _____

By: _____
Gary Brown
Executive Director

APPROVED AS TO FORM AND LEGALITY:
JENNIFER LYON, CITY ATTORNEY
General Counsel to the Authority

By: _____

KANE, BALLMER & BERKMAN
Special Counsel to the Authority

By: _____
Theodore (Ted) M. Ballmer

ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On _____, 200__ before me, _____,
personally appeared _____ who proved to me on
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

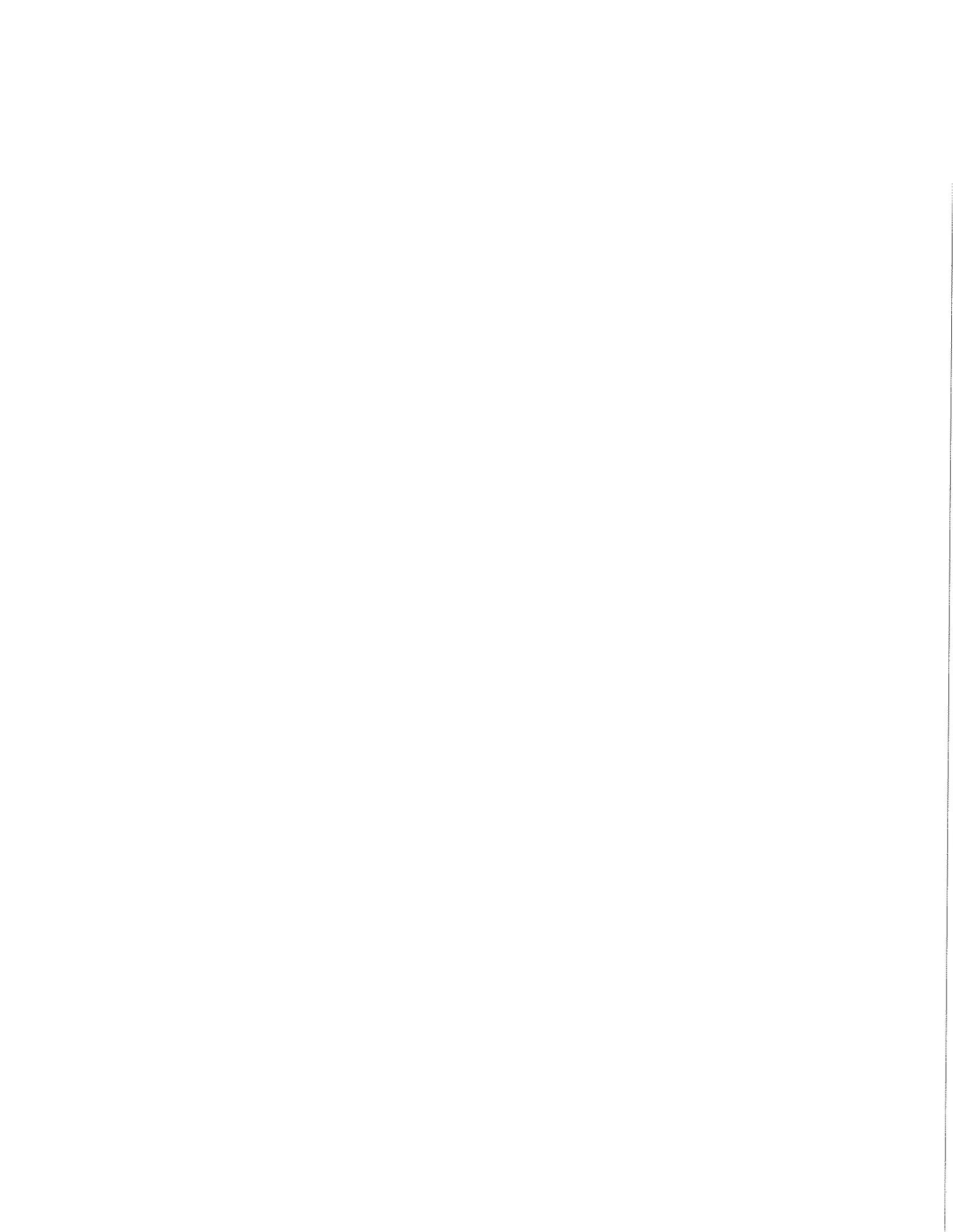
Exhibit "A"

Legal Description

All that certain real property situated in the City of Imperial Beach, County of San Diego, State of California, described as follows:

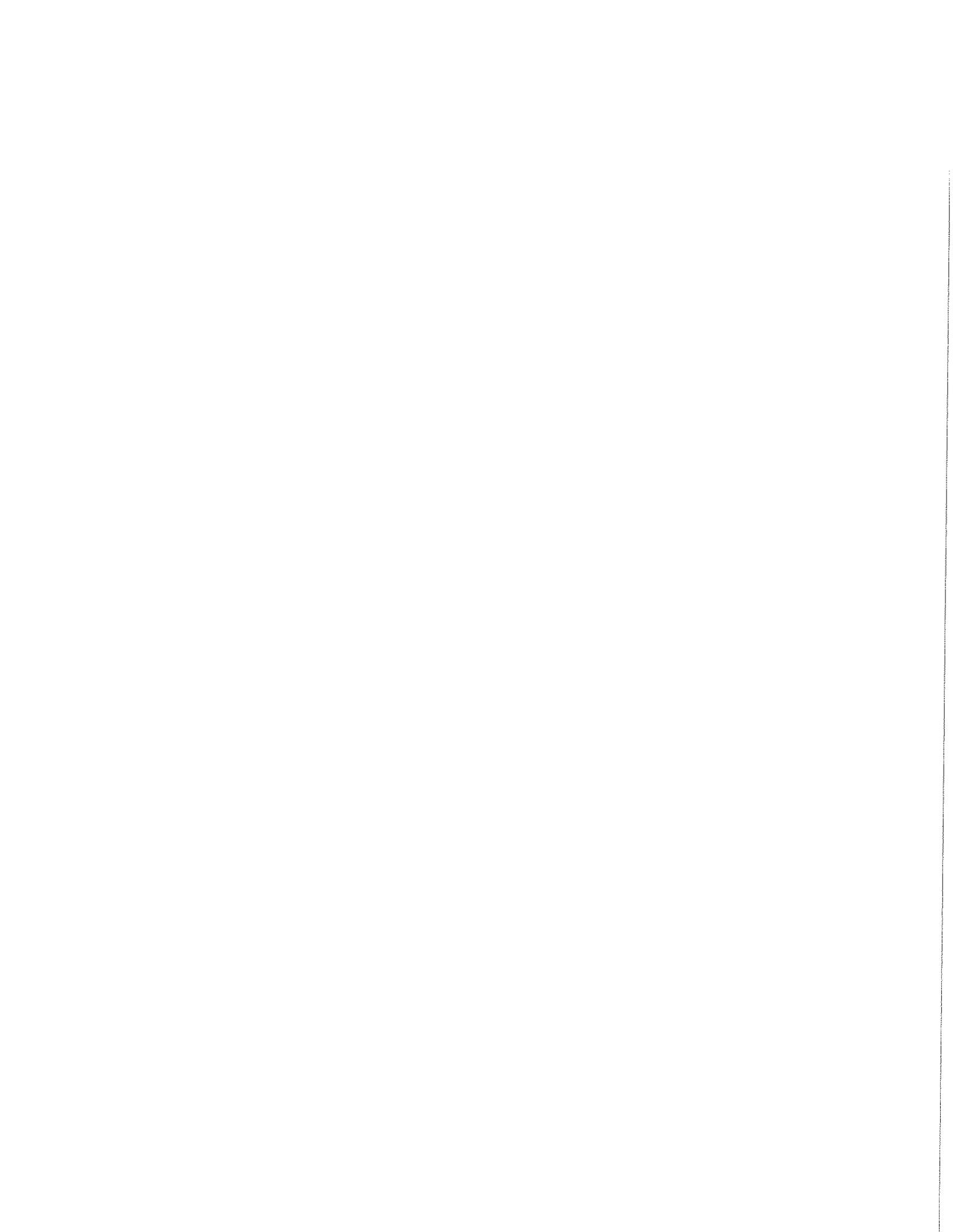
LOTS 21 AND 22 AND THE SOUTH 12.50 FEET OF LOT 23, ALL BEING IN BLOCK 108 OF SOUTH SAN DIEGO COMPANY'S ADDITION TO SOUTH SAN DIEGO, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 497, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 4, 1887, TOGETHER WITH THAT PORTION OF THE NORTHERLY 10,000 FEET OF DONAX AVENUE LYING SOUTHERLY AND ADJACENT TO THE SOUTHERLY LINE OF SAID LOT 21 AS VACATED ON APRIL 2, 1979, BY RESOLUTION NO. 2543 OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH RECORDER APRIL 30, 1979, AS FILE NO. 79-177416 OF OFFICIAL RECORDS.

Also more commonly known as Assessor's Parcel Number 626-282-12.



Attachment No. 4
Release of Construction Covenants

[Behind this page.]



Recording Requested By:
Housing Authority
of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

And When Recorded Mail To:
Housing Authority
of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

RELEASE OF CONSTRUCTION COVENANTS

THIS RELEASE OF CONSTRUCTION COVENANTS (“Release”) is made by the Housing Authority of the City of Imperial Beach, a public body corporate and politic (“**Authority**”), in favor of San Diego Habitat for Humanity, Inc., a California nonprofit corporation (“**Developer**”), as of this ___ day of _____, 201__.

RECITALS

A. Authority and Developer have entered into that certain Affordable Housing Agreement (the “**AHA**”) dated June 28, 2013 concerning the redevelopment of certain real property situated in the City of Imperial Beach, California as more fully described in Exhibit “A” attached hereto and made a part hereof (the “**Site**”).

B. As referenced in Section 312 of the AHA, Authority is required to furnish Developer or its successors with a Release of Construction Covenants upon completion of construction of the Improvements, as defined in the AHA, on the Site; which Release of Construction Covenants is required to be in such form as to permit it to be recorded in the Recorder’s Office of San Diego County. This Release is conclusive determination of satisfactory completion of the construction and development required by the AHA with respect the Site.

C. Authority has conclusively determined that such construction and development of the site has been satisfactorily completed.

NOW, THEREFORE, Authority hereby certifies as follows:

1. The Improvements have been fully and satisfactorily completed in conformance with the AHA. Any operating requirements and all use, maintenance or nondiscrimination covenants contained in the AHA shall remain in effect and enforceable according to their terms.

2. Nothing contained in this instrument shall modify in any other way any other provisions of the AHA.

**AUTHORITY:
THE HOUSING AUTHORITY OF THE
CITY OF IMPERIAL BEACH, CALIFORNIA,
a public body, corporate and politic**

Dated: _____

By: _____

Gary Brown
Executive Director

APPROVED AS TO FORM AND LEGALITY:
JENNIFER LYON, CITY ATTORNEY
General Counsel to the Authority

By: _____

KANE, BALLMER & BERKMAN
Special Counsel to the Authority

By: _____
Theodore (Ted) M. Ballmer

ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On _____, 200__ before me, _____, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

Exhibit "A"

Legal Description

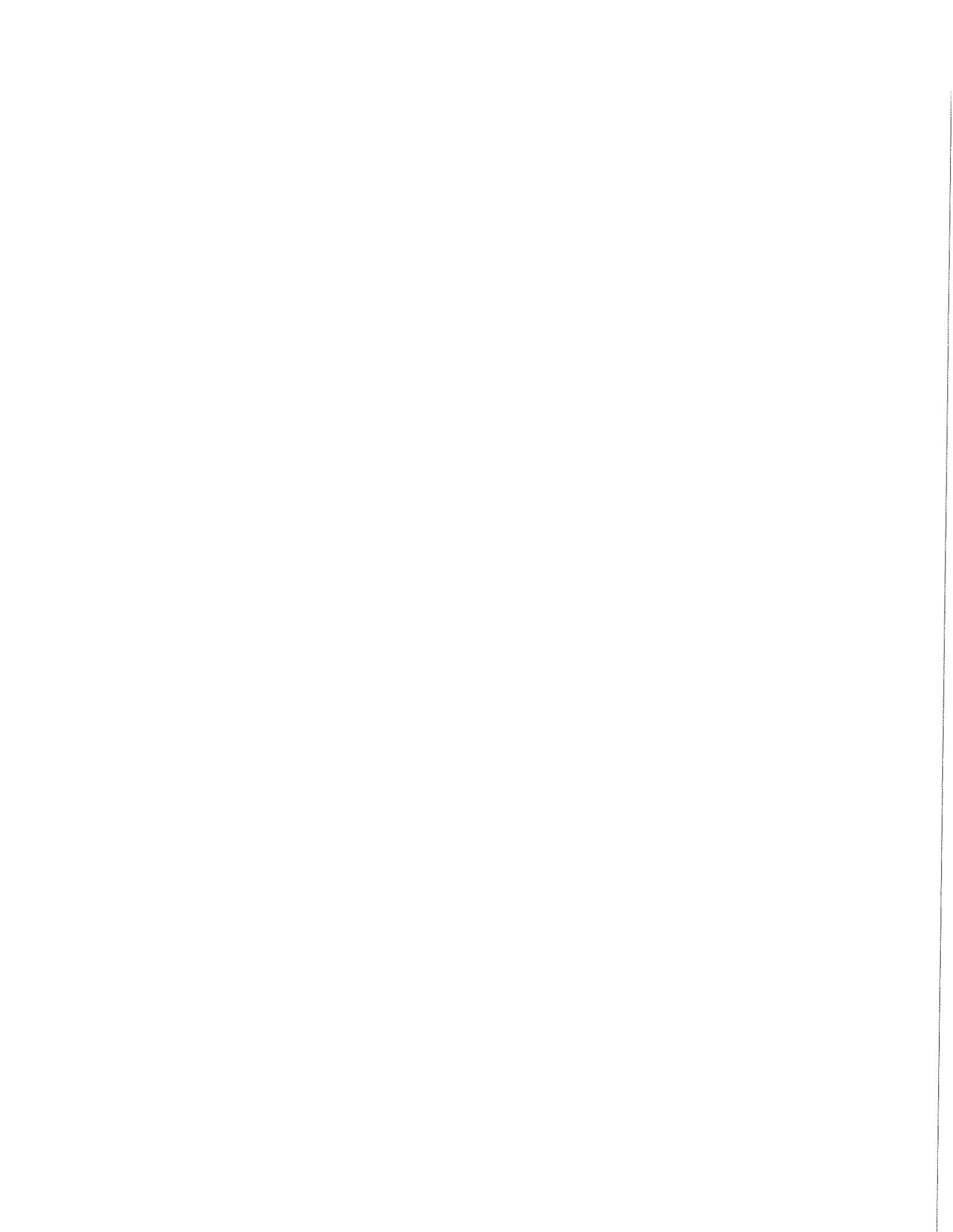
All that certain real property situated in the City of Imperial Beach, County of San Diego, State of California, described as follows:

LOTS 21 AND 22 AND THE SOUTH 12.50 FEET OF LOT 23, ALL BEING IN BLOCK 108 OF SOUTH SAN DIEGO COMPANY'S ADDITION TO SOUTH SAN DIEGO, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 497, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 4, 1887, TOGETHER WITH THAT PORTION OF THE NORTHERLY 10,000 FEET OF DONAX AVENUE LYING SOUTHERLY AND ADJACENT TO THE SOUTHERLY LINE OF SAID LOT 21 AS VACATED ON APRIL 2, 1979, BY RESOLUTION NO. 2543 OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH RECORDER APRIL 30, 1979, AS FILE NO. 79-177416 OF OFFICIAL RECORDS.

Also more commonly known as Assessor's Parcel Number 626-282-12.

Attachment No. 5
Schedule of Performance

[Behind this page.]



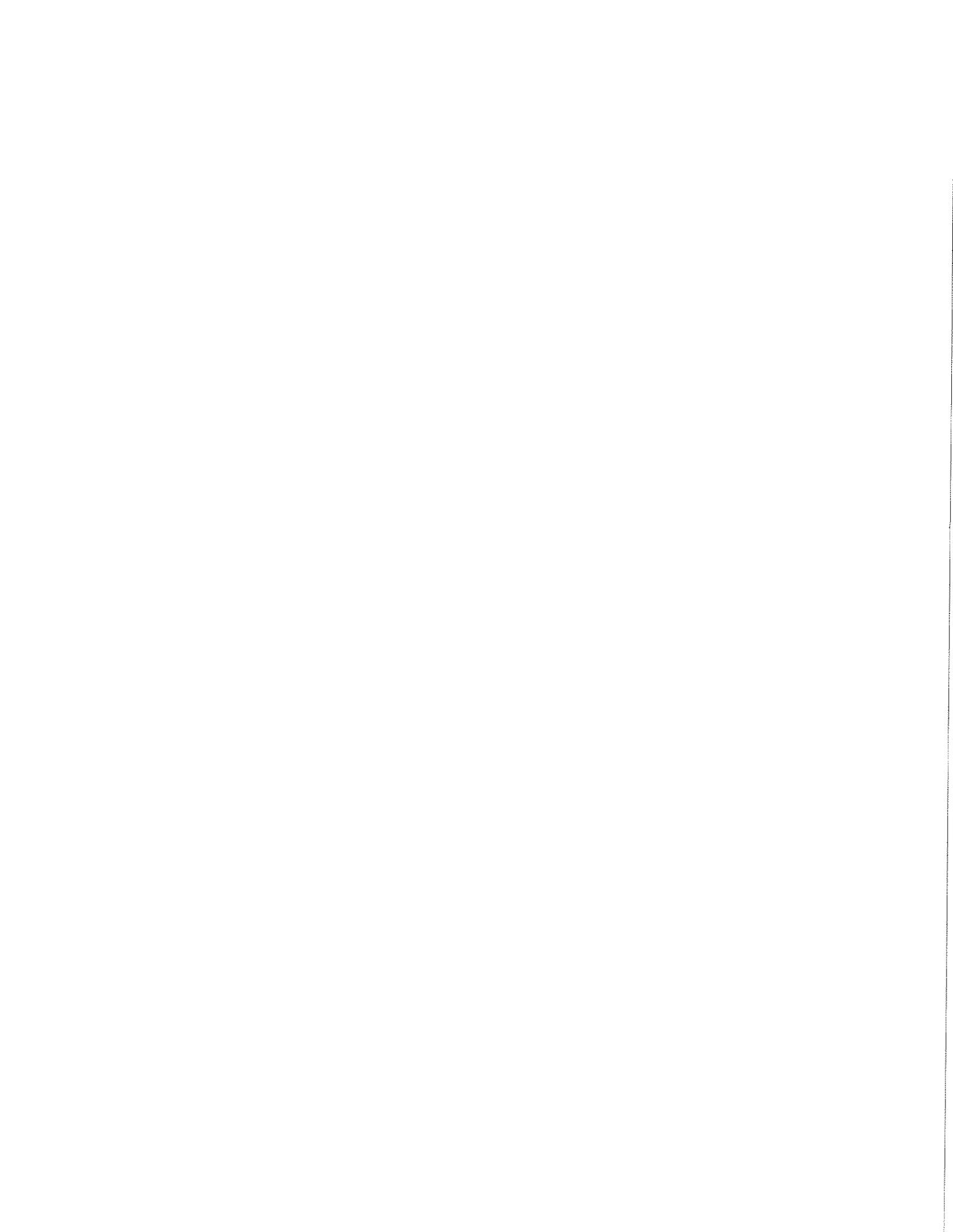
Attachment No. 5
Schedule of Performance

<u>Item</u>	<u>Completion Date</u>
AHA Executed by Developer	No later than June 28, 2013
AHA Approved by Authority Board	Within 30 days after submission of executed Agreement by Developer
Developer Submission of Concept Drawings	Not later than execution of Agreement by Developer
Developer Submission of Landscape and Grading Plans	Not later than execution of Agreement by Developer
Developer Submission of Construction Drawings	Not later than October 1, 2013
Closing of Sale of Site to Developer	Upon Satisfaction of All Conditions to Closing, not later than December 1, 2013
Commencement of Construction	January 1, 2014
Completion of Construction	June 1, 2015
Closing of Sales and Occupancy of Affordable Units	July 1, 2015



Attachment No. 6
Scope of Development

[Behind this page.]



ATTACHMENT 6

SCOPE OF DEVELOPMENT

This is the Scope of Development for that certain Affordable Housing Agreement by and between the Imperial Beach Housing Authority (Authority) and Habitat for Humanity (Developer) pursuant to which Developer will construct six attached residential condominium units at 776 10th Street (APN 626-282-12-00) (Property) for affordable housing.

A. Project Features

1. On-Site Improvements

- a. The approximately 10,150 square foot vacant project site fronts 10th Street and Donax Avenue. The project shall consist of six attached two-story residential condominium units with no commercial component.
- b. Each unit will contain three bedrooms and a one-car garage, which will be accessible from a rear driveway located off of the alley east of the property. No vehicular access shall be taken from 10th Street.
- c. Ground floor porches and court yards for each unit will be located along Donax Avenue, and private yards will be provided on the ground floor at the rear of each unit adjacent to rear drive aisle.
- d. The design of the project will provide varied rooflines, a mixture of colors and materials, and building projections that shall contribute positively to the aesthetic of the neighborhood and integrate with the surrounding uses, as reasonably determined by the Authority and the City of Imperial Beach.
- e. The site plan and building elevations of the project shall be as generally depicted in Exhibit "A" to this Scope of Development.
- f. Landscaping will be provided as a buffer between the units and along the Donax Avenue and 10th Street frontages, which will enhance the view corridor of this intersection. Additional landscaping will be provided in the form of private yards at the rear of each unit.

2. Off-Site Public Improvements

- a. The Developer will design and install off-site public improvements including new curb, gutters and sidewalks and Americans With Disability Act (ADA) improvements as necessary along Donax Avenue and 10th Street in compliance with requirements of the City of Imperial Beach.
- b. The Developer will design and install improvements for the intersection of Donax Avenue and the alley adjacent to and on the west side of the project site. These alley improvements shall be designed in compliance with ADA requirements and improvement standards of the City of Imperial Beach.

- c. The Developer will design and install public right-of-way improvements in compliance with design standards established by the City of Imperial Beach for Donax Avenue and 10th Street including, but not limited to, parking alignment, landscaping, irrigation, lighting and sidewalk configuration on Donax Avenue and 10th Street.
- d. Street trees shall be provided in the public right-of-way adjacent to the project site approved by the City of Imperial Beach. The location and species of these street trees shall be subject to the approval of the City of Imperial Beach.
- e. All landscaping provided in the public right-of-way shall be maintained by the Developer and irrigation of those trees shall be attached to on-site water service.
- f. If required, street lighting shall be installed within the public right-of-way as recommended by the City of Imperial Beach.

B. General Plan/Zoning Consistency & Required Approvals

1. Existing Zoning

- a. The project is subject to C-1 (General Commercial) zoning requirements. The intent of the C-1 zone is to provide areas for business to meet the local demand for commercial goods and services.
- b. Imperial Beach Municipal Code (IBMC) Section 19.26.010 states that the dominant type of commercial activity in the C-1 zone should be community and neighborhood serving retail and office uses, and requires residential dwelling units to locate above the first floor at a maximum density of one unit per one thousand square feet of lot area.
- c. The project shall be six residential dwelling units with residential areas on the first and second floors, and shall not provide a commercial component.
- d. Although IBMC Section 19.48.030 requires one and a half parking spaces per dwelling unit in the C-1 Zone, the project will provide one parking space per dwelling unit which will be subject to approval by the City of Imperial Beach.

2. Planning Approvals

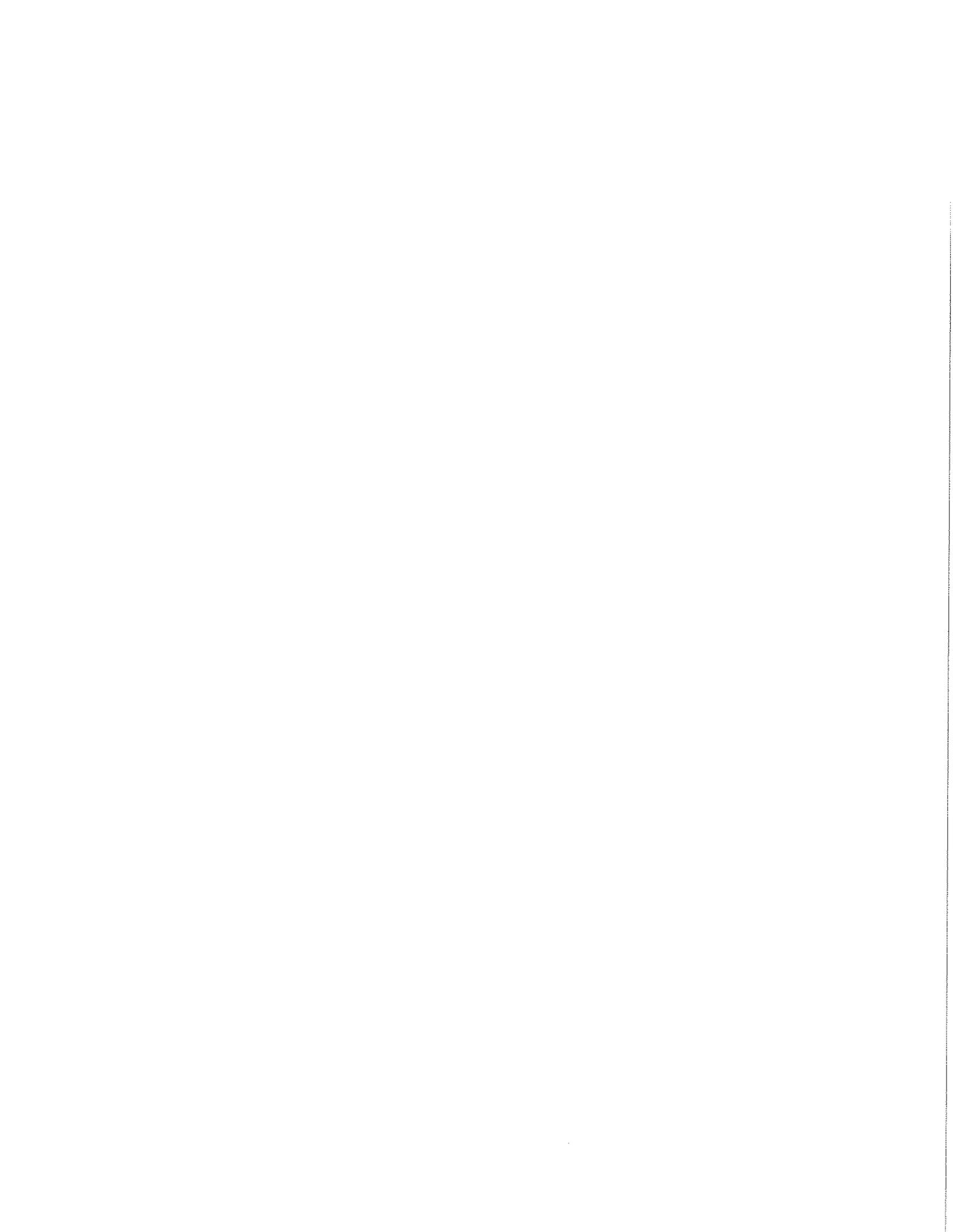
- a. The project shall be consistent with the existing zoning and shall obtain all necessary approvals and entitlements from the City of Imperial Beach and any other permits and entitlements as may be required by law.

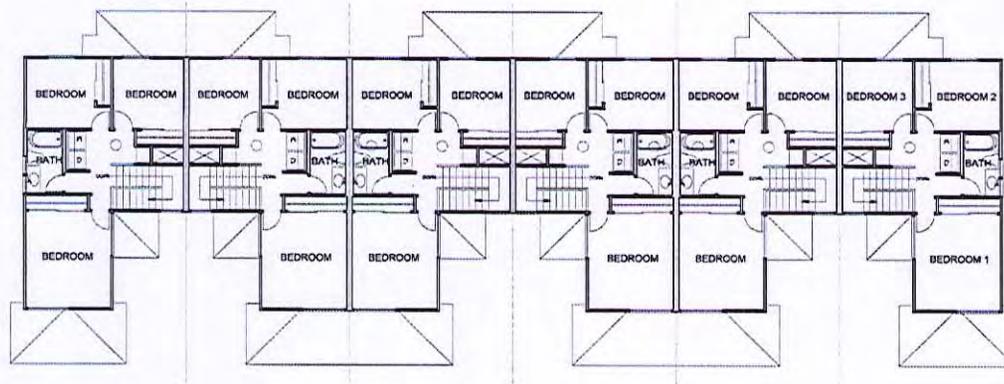
3. Building Permit Approvals

- a. The project shall obtain all required building permits as required by the City of Imperial Beach.

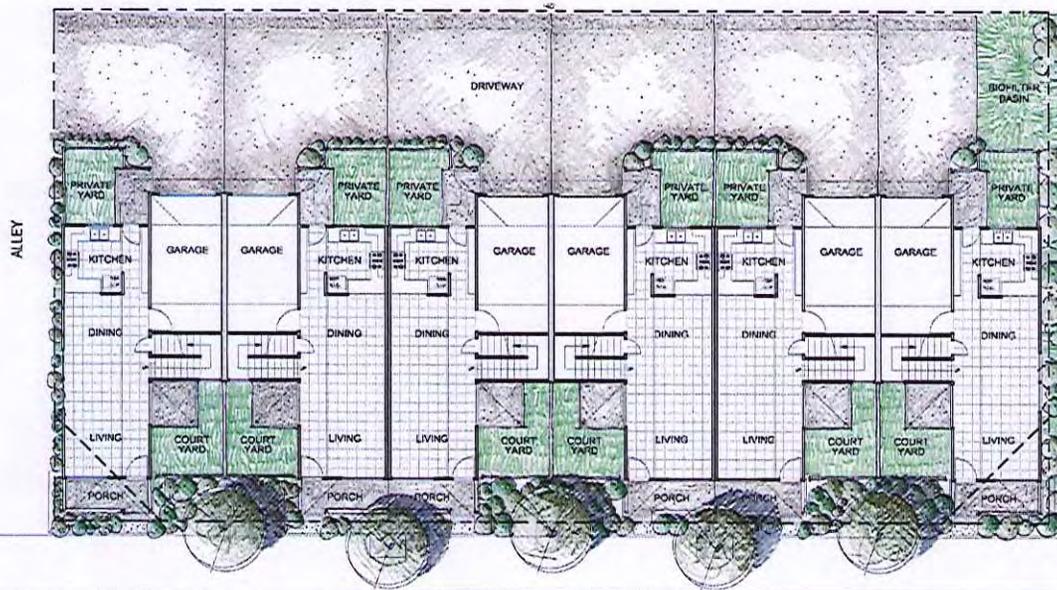
**SCOPE OF DEVELOPMENT
EXHIBIT "A"
CONCEPTUAL PROJECT PLANS**

[Behind this page]





SECOND FLOOR PLAN 1/8" = 1'-0"



SITE/GROUND FLOOR PLAN 1/8" = 1'-0"

Stephen
W
Hall
architect

PC 10/20
Cost, CA 0227
phone 762 533 1916



ALL RIGHTS RESERVED. THIS PLAN AND ALL RIGHTS THEREIN ARE THE PROPERTY OF STEPHEN W. HALL ARCHITECT. NO PART OF THIS PLAN OR ANY INFORMATION CONTAINED HEREIN MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF STEPHEN W. HALL ARCHITECT.

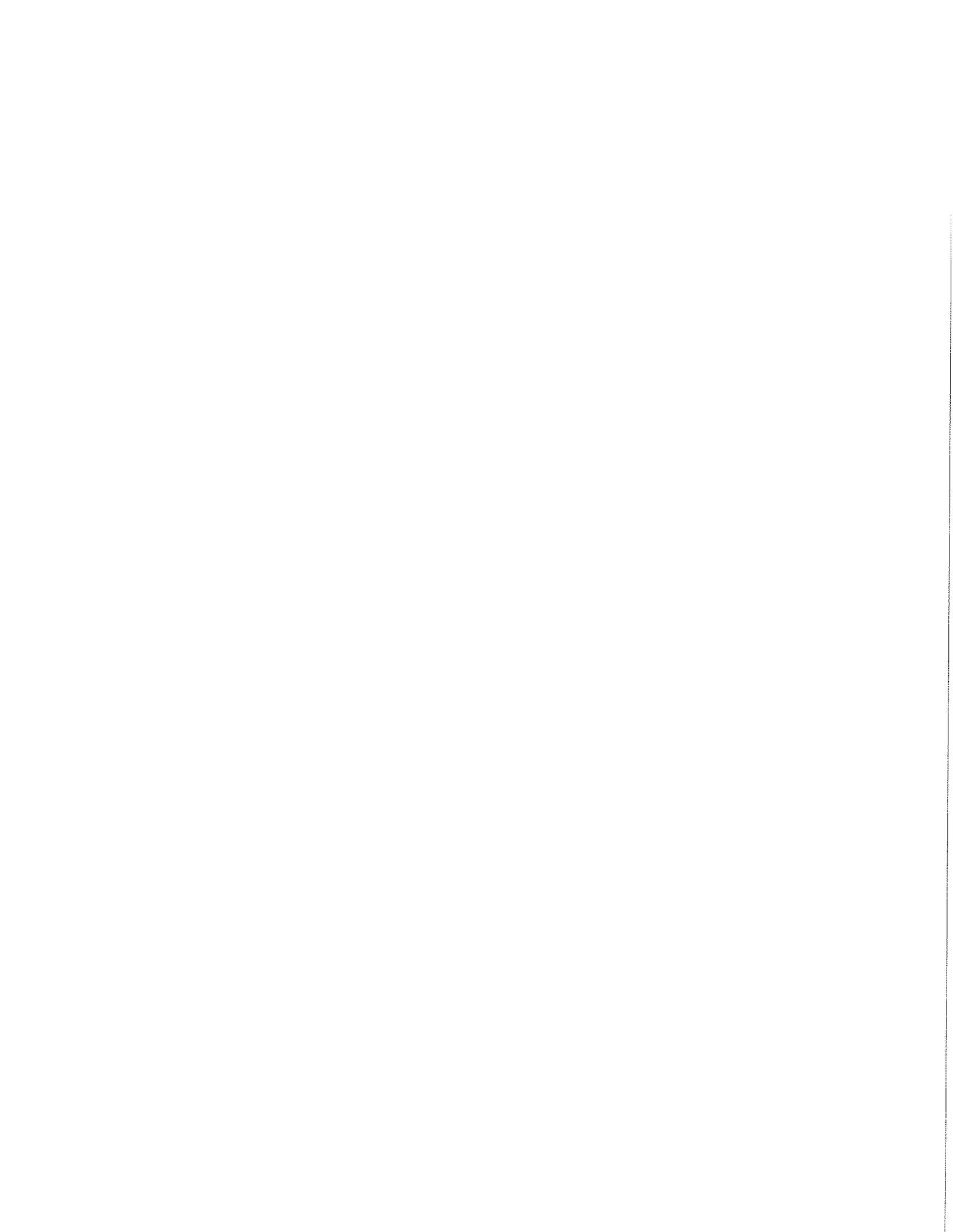
FOR CONSTRUCTION

HABITAT FOR HUMANITY

778 TENTH STREET
IMPERIAL BEACH, CALIFORNIA

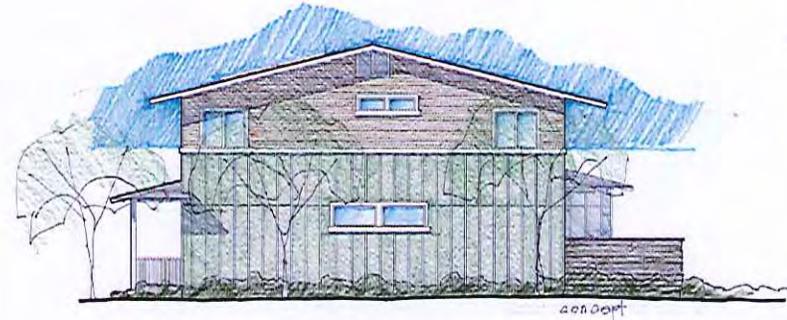
PROJECT NO. 2344
DATE 04 JUN 2015
SCHEMATIC PLANS

A.1



Stephen
W
Hall
architect

10/20/2014
10/21/2014
10/21/2014
phone 760 433 1515



Tenth Street
EAST ELEVATION
NOT TO SCALE

ALL RIGHTS RESERVED. NO PART OF THIS DOCUMENT MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT. THIS DOCUMENT IS THE PROPERTY OF THE ARCHITECT AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. ANY OTHER USE IS STRICTLY PROHIBITED. THE ARCHITECT ASSUMES NO LIABILITY FOR CONSTRUCTION DEFECTS OR OMISSIONS.



- PROTECTIVE FILM
- CONCRETE FINISHES
- DUAL GLAZED WINDOWS
- WOOD CLADDING - PAINTED
- WOOD TRIM - PAINTED
- WOOD TRIM PANELS - PAINTED
- WOOD TRIM PANELS - PAINTED
- WOOD TRIM PANELS - PAINTED
- DUAL GLAZED WINDOWS
- WOOD TRIM PANELS

Donax Avenue
SOUTH ELEVATION
NOT TO SCALE

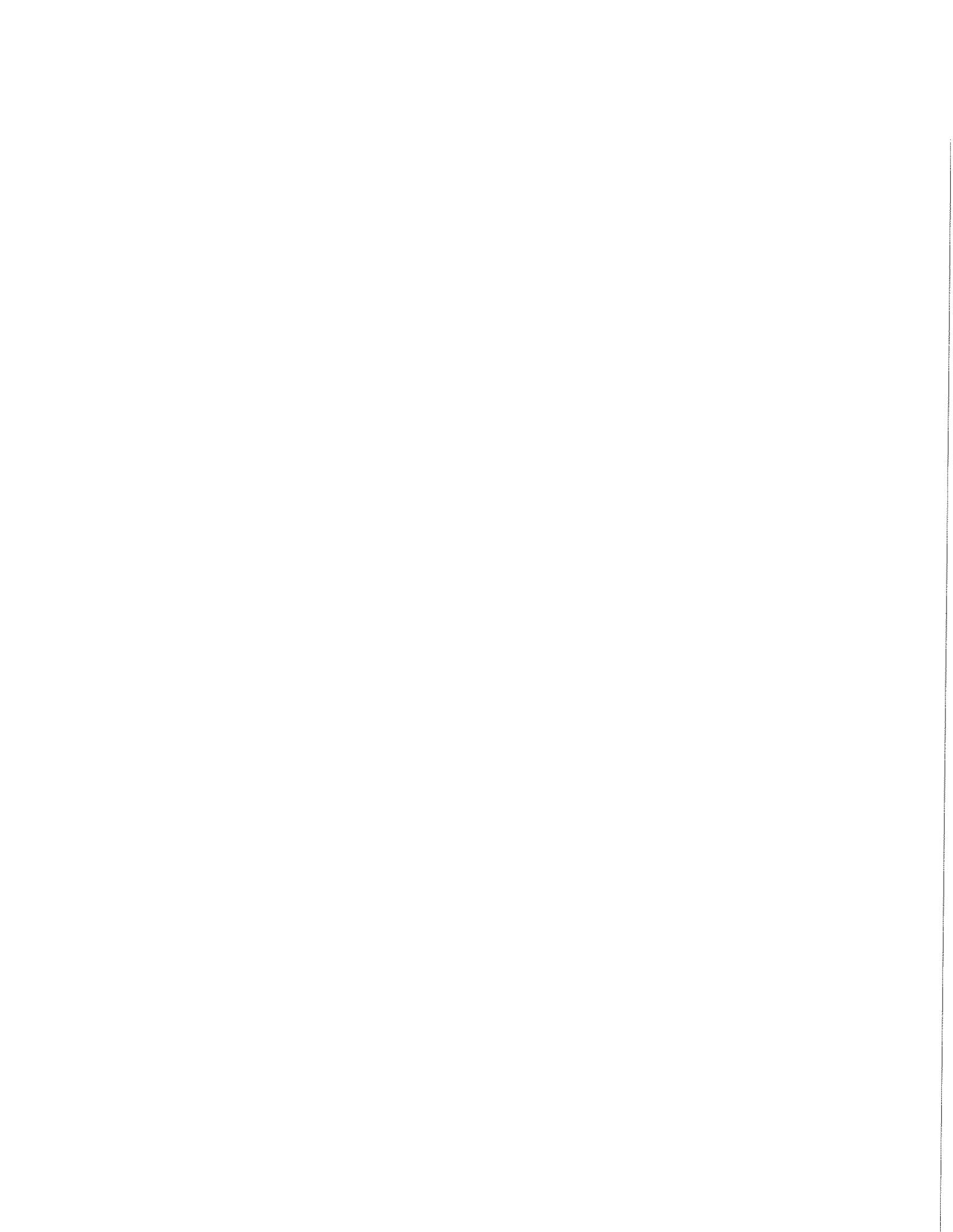
RIGHT SIGHTLINE -
SD -
FOR CONSTRUCTION -

HABITAT
FOR
HUMANITY
170 TENTH STREET
IMPERIAL BEACH, CALIFORNIA

RIGHT SCALE
1/2" = 1'-0"
DATE
10/21/2014
DRAWING
SCHEMATIC ELEVATIONS
REVISIONS

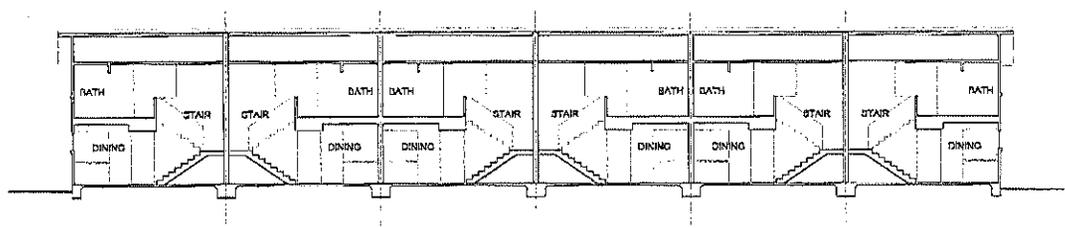
Attachment No. 7
Site Plan

[Behind this page.]

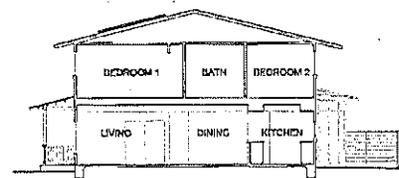


Stephen
W
Hall
architect

PO BOX 1
SANTA CLARA, CALIF. 95050
Phone 788.533.1818



East / West
SECTION
176' x 11'-0"

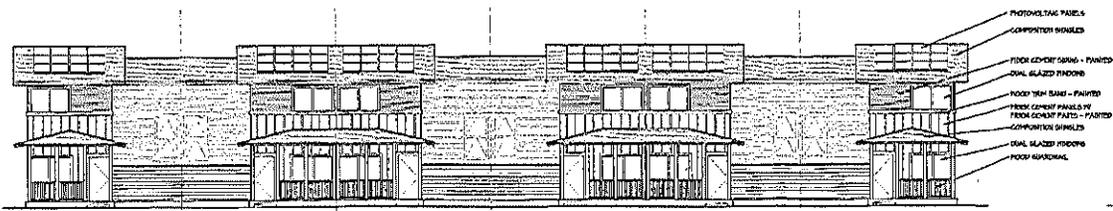


North / South
SECTION
176' x 11'-0"

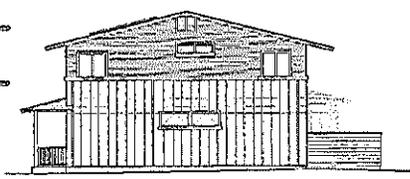


ALL RIGHTS RESERVED. THIS ARCHITECTURAL PLAN IS THE PROPERTY OF STEPHEN W. HALL ARCHITECT. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. NO PART OF THIS PLAN IS TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM. WITHOUT THE WRITTEN PERMISSION OF STEPHEN W. HALL ARCHITECT. ANY VIOLATION OF THIS AGREEMENT IS SUBJECT TO LEGAL ACTION.

POINT REDWOOD -
R2 -
FOR CONFORMANCE -



Donax Avenue
SOUTH ELEVATION
176' x 11'-0"

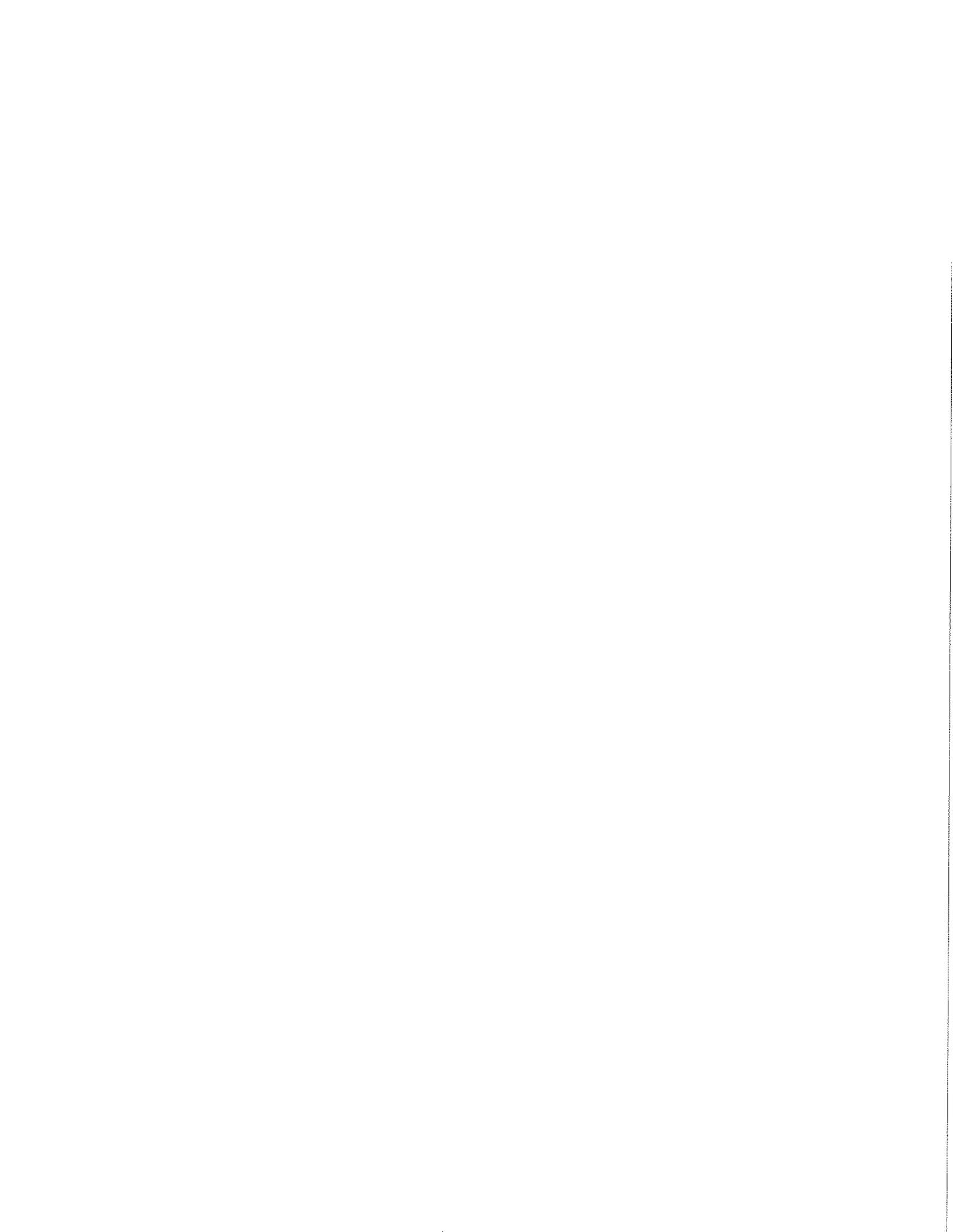


Tenth Street
EAST ELEVATION
176' x 11'-0"

- PHOTOVOLTAIC PANELS
- COMPOSITE SHINGLES
- FLOOR CEILING SIDING - PAINTED
- CEILING GLAZED WINDOWS
- WOOD TRIM SIDING - PAINTED
- ROUGH CEMENT PANELS w/
- ROUGH CEMENT FATS - PAINTED
- COMPOSITE SHINGLES
- CEILING GLAZED WINDOWS
- WOOD SIDING

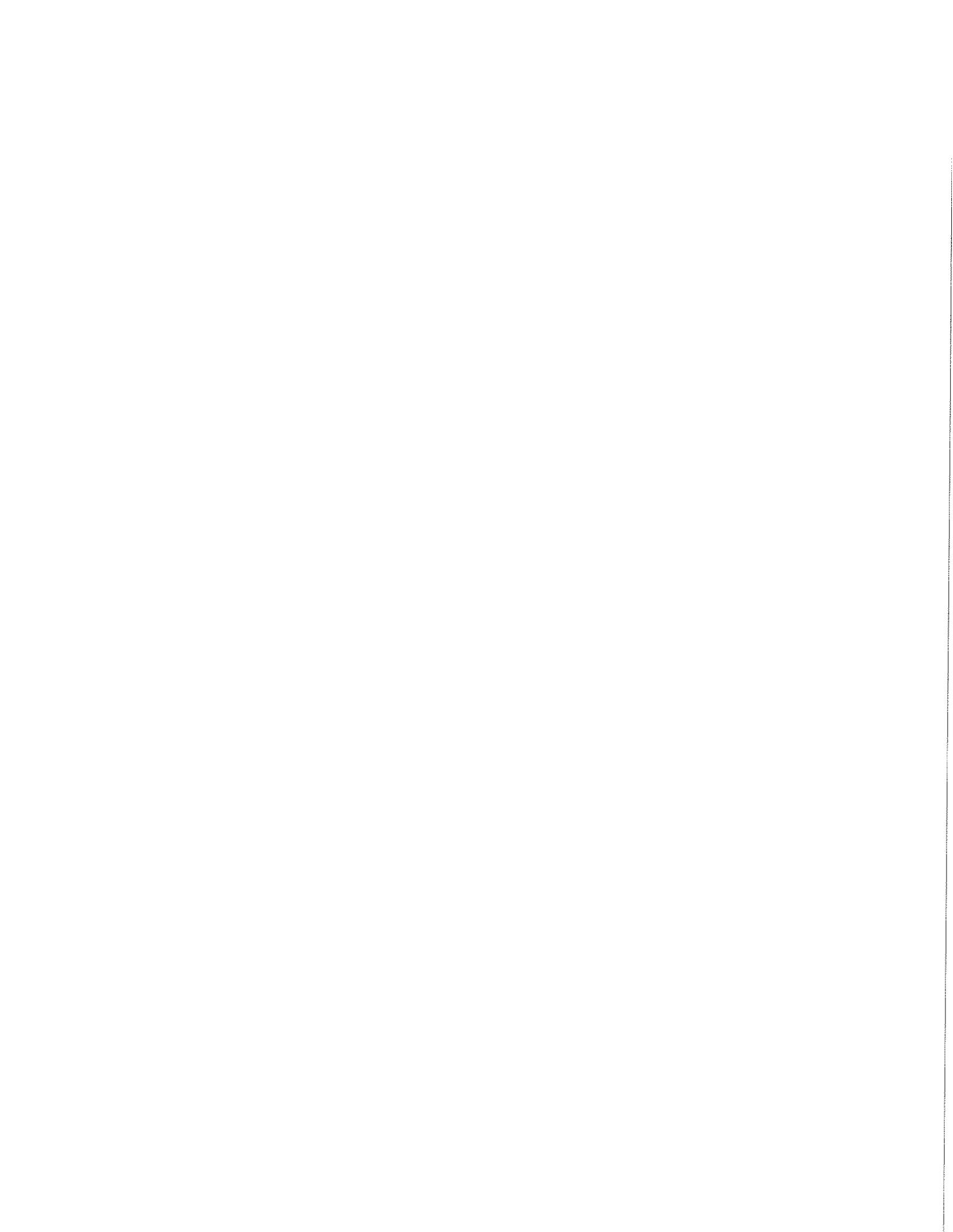
HABITAT
FOR
HUMANITY
775 TENTH STREET
IMPERIAL BEACH, CALIFORNIA

DATE: 02/04
BY: JWH
15 MAR 2002
SCHEMATIC ELEVATIONS



Attachment No. 8
Site Legal Description

[Behind this page.]

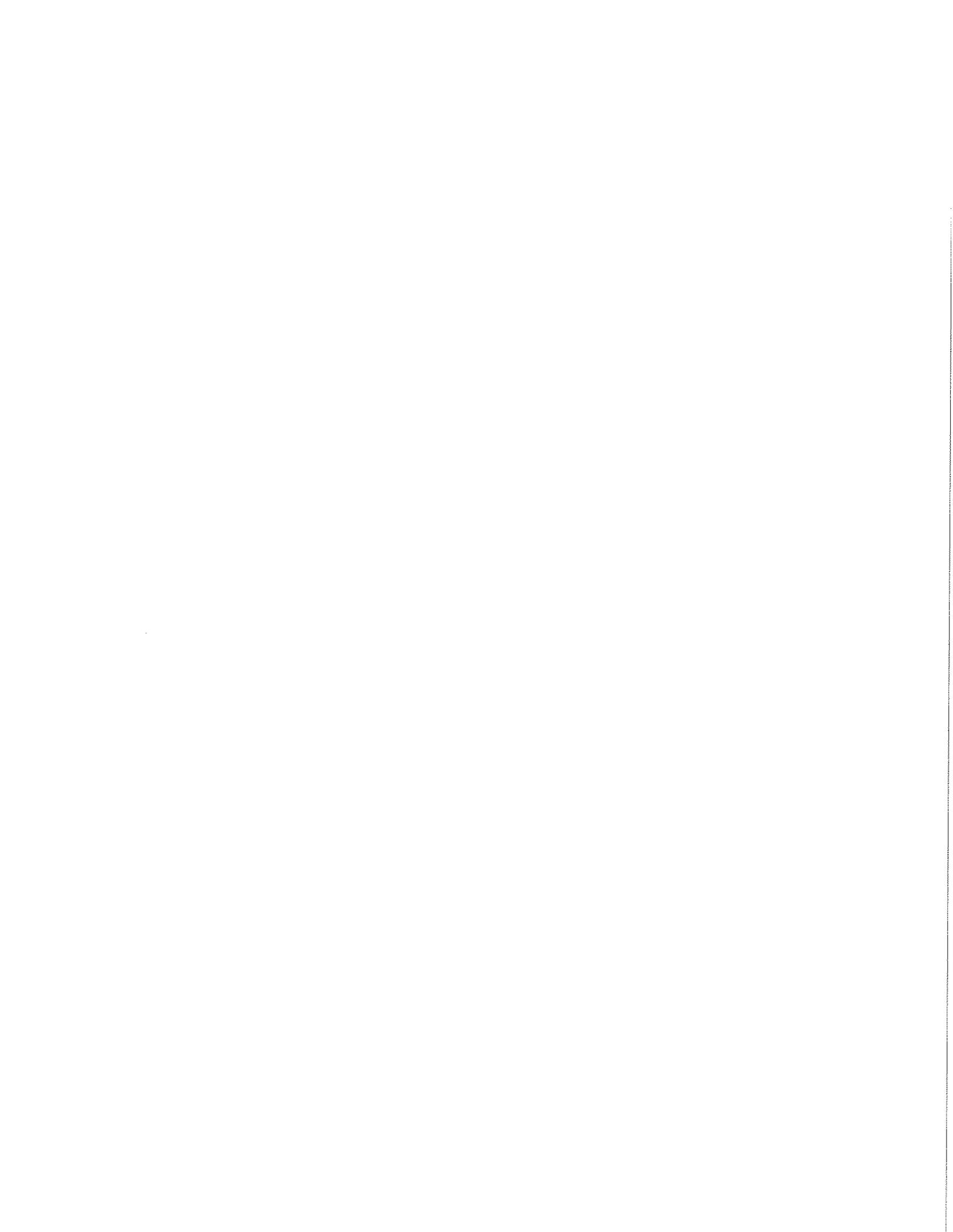


Attachment No. 8
Site Legal Description

All that certain real property located in the City of Imperial Beach, County of San Diego, State of California, more particularly described as follows:

LOTS 21 AND 22 AND THE SOUTH 12.50 FEET OF LOT 23, ALL BEING IN BLOCK 108 OF SOUTH SAN DIEGO COMPANY'S ADDITION TO SOUTH SAN DIEGO, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 497, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 4, 1887, TOGETHER WITH THAT PORTION OF THE NORTHERLY 10,000 FEET OF DONAX AVENUE LYING SOUTHERLY AND ADJACENT TO THE SOUTHERLY LINE OF SAID LOT 21 AS VACATED ON APRIL 2, 1979, BY RESOLUTION NO. 2543 OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH RECORDER APRIL 30, 1979, AS FILE NO. 79-177416 OF OFFICIAL RECORDS.

Also more commonly known as Assessor's Parcel Number 626-282-12.



Attachment No. 9
Proforma

[Behind this page.]

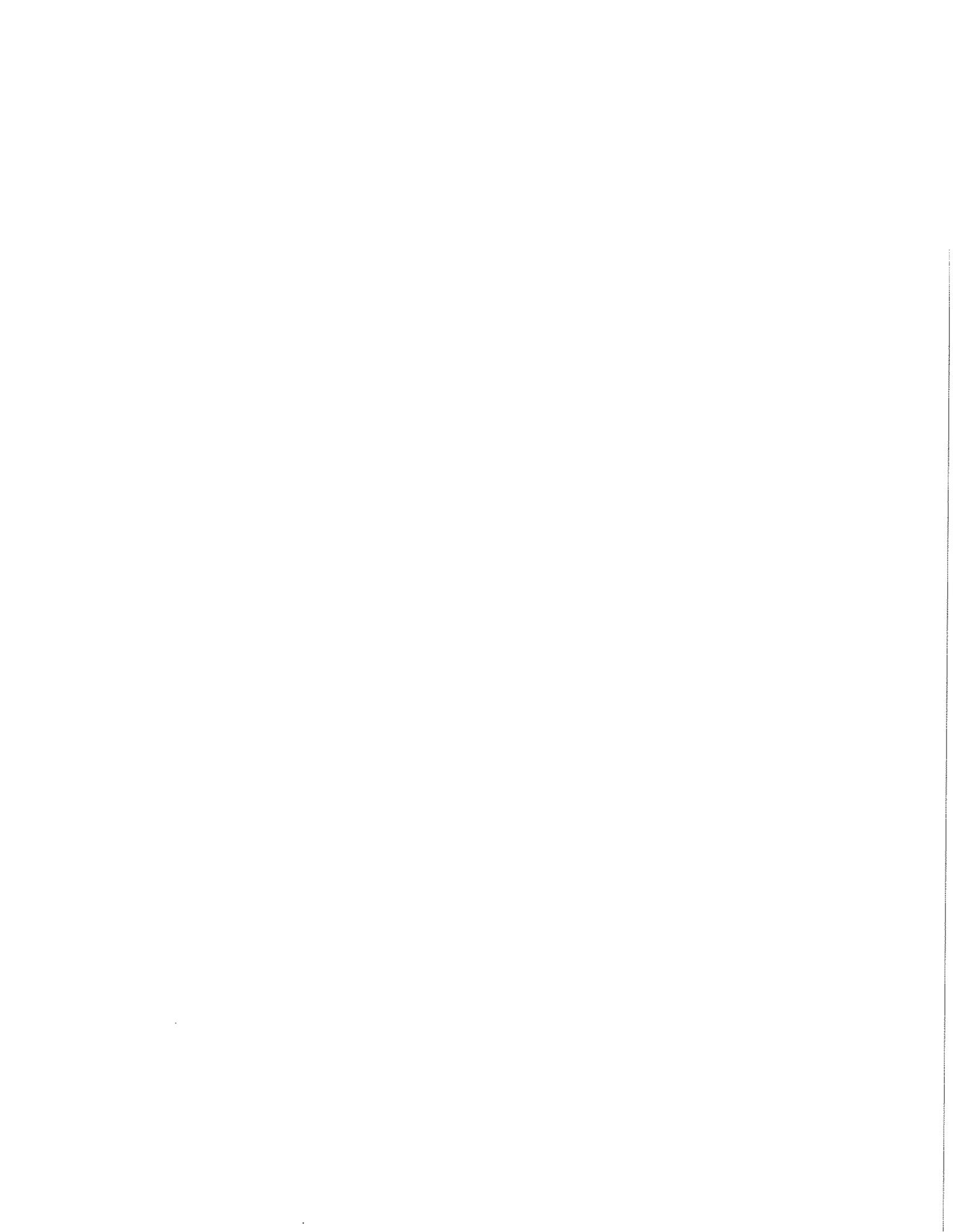


TABLE 3

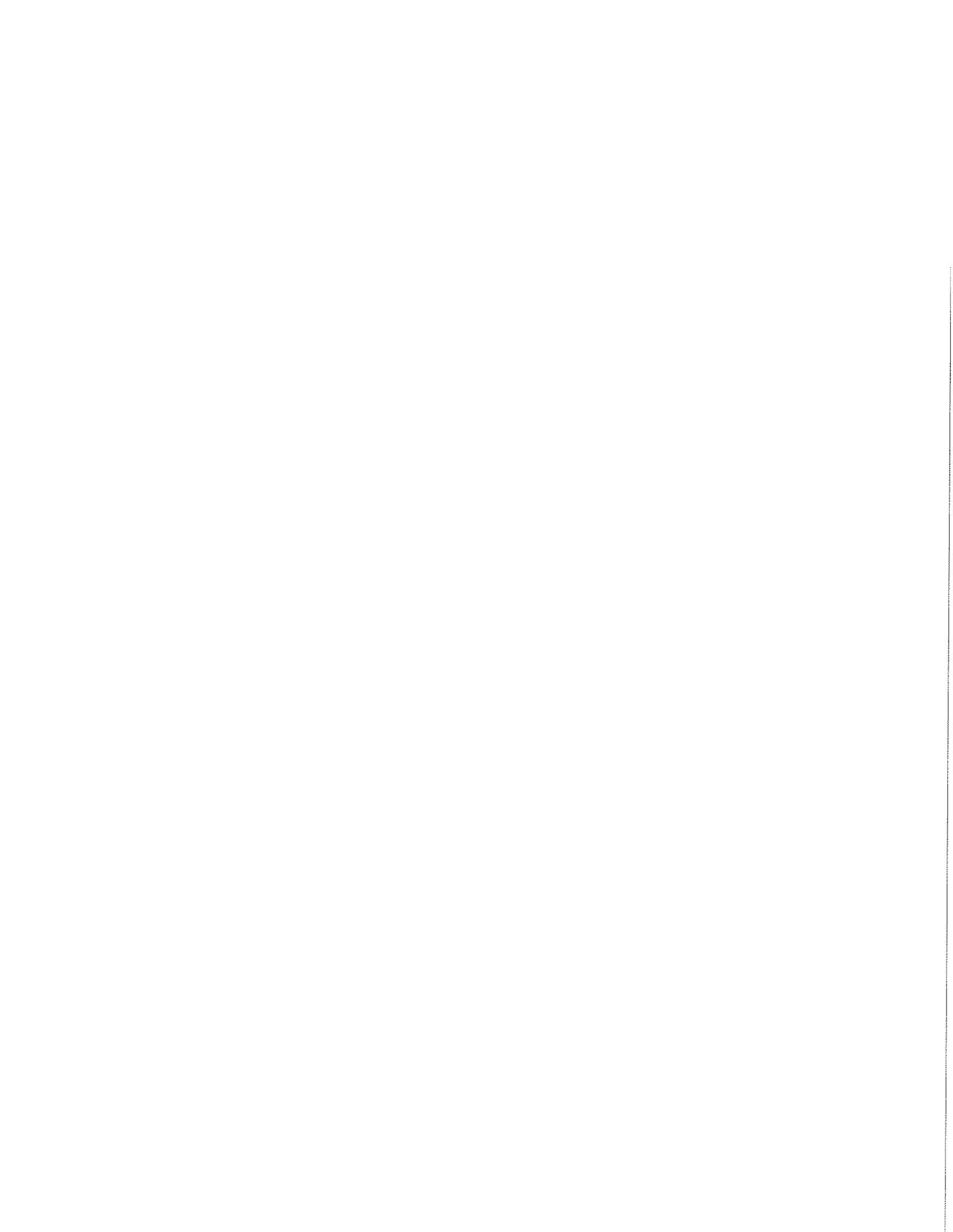
**ESTIMATED DEVELOPMENT COSTS
10TH STREET & DONAX AVENUE
CITY OF IMPERIAL BEACH**

	<u>Totals</u>	<u>Per Unit</u>	<u>Comments</u>
I. Direct Costs			
Off-Site Improvements (1)	\$61,000	\$10,200	\$6 Per SF Site
Demolition	\$0	\$0	\$0 Per SF Site
On-Sites/Landscaping	\$358,000	\$59,700	\$35 Per SF Site
Parking	\$0	\$0	Included above
Shell Construction	\$705,000	\$117,500	\$90 Per SF GBA
FF&E	\$0	\$0	Allowance
Contingency	<u>\$112,000</u>	<u>\$18,700</u>	10.0% of Directs
Total Direct Costs	\$1,236,000	\$206,000	\$158 Per SF GBA
II. Indirect Costs			
Architecture/Engineering	\$58,000	\$9,700	4.7% of Directs
Permits & Fees (1)	\$106,000	\$17,700	\$14 Per SF GBA
Legal & Accounting	\$25,000	\$4,200	2.0% of Directs
Taxes & Insurance	\$12,000	\$2,000	1.0% of Directs
Developer Fee	\$0	\$0	0.0% of Directs
Marketing/Sales (2)	\$24,000	\$4,000	Allowance
Contingency	<u>\$7,000</u>	<u>\$1,200</u>	3.0% of Indirects
Total Indirect Costs	\$232,000	\$38,700	18.8% of Directs
III. Financing Costs (3)	\$25,000	\$4,167	2.0% of Directs
IV. Total Costs (Excluding Land)	\$1,493,000	\$248,800	\$191 Per SF GBA

(1) Estimate; not verified by KMA or City.

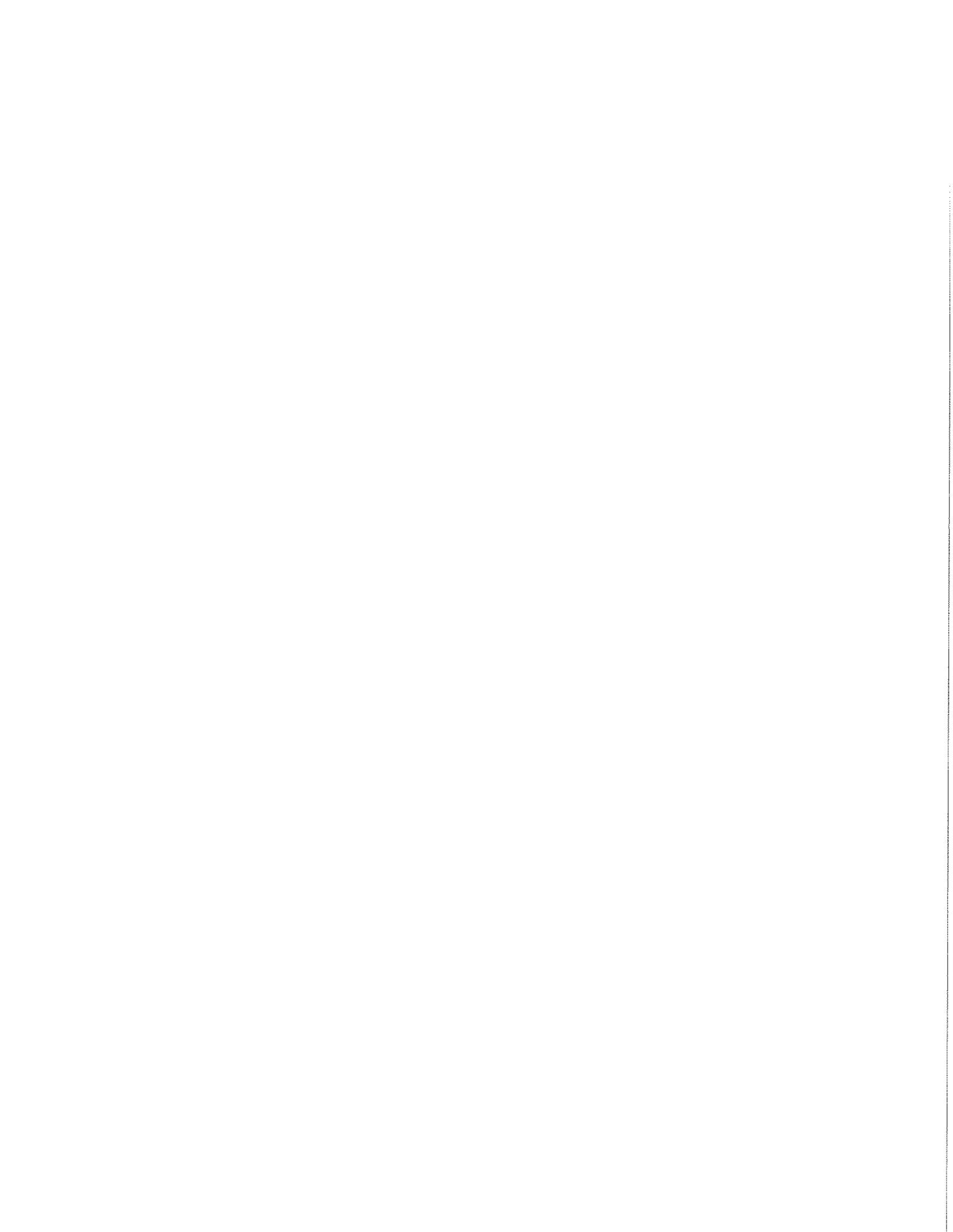
(2) Includes cost of sales to buyers.

(3) Reflects reimbursement of Authority closing costs for initial home sales.



Attachment No. 10
Resale Restriction

[Behind this page.]



**NO CHARGE ON THIS DOCUMENT
FOR THE BENEFIT OF
THE CITY OF IMPERIAL BEACH**

**Recording Requested By
And When Recorded Mail To:**
Community Development Commission of the
City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

**AFFORDABLE HOUSING RESALE RESTRICTIONS,
OPTION TO DESIGNATE ELIGIBLE PURCHASERS AND
OPTION TO PURCHASE UPON DEFAULT
(*Insert property/unit address*)**

This Affordable Housing Resale Restrictions, Option to Designate Eligible Purchasers and Option to Purchase Upon Default ("*Resale Restriction*") is executed this ____ day of _____, 201__, by the Housing Authority of the City of Imperial Beach ("*Authority*"), and _____, as owner (individually and collectively, "*Owner*") of the real property located in the City of Imperial Beach, County of San Diego, State of California, more particularly described on Exhibit "A" attached hereto (the "*Restricted Unit*"), with the consent of San Diego Habitat for Humanity, Inc., a California non-profit public benefit corporation ("*Habitat*").

RECITALS

A. Owner is purchasing the Restricted Unit from Habitat concurrently with the execution and delivery of this Resale Restriction. The Restricted Unit is part of a larger parcel of real property (the "*Habitat Property*") that was previously sold by Authority to Habitat. "Owner" as hereafter used means the person defined as such in the first paragraph of this Resale Restriction and that person's successors and assigns with respect to this Resale Restriction and/or the Restricted Unit.

B. Authority used funds from Authority's Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the California Health and Safety Code to prepare the site for development. Subsequently, Authority, pursuant to its obligations as the designated entity under Assembly Bill No. 26 (2011-2012 1st Ex. Sess.), as amended by Assembly Bill No. 1484 (2011-2012 Regular Session) (collectively, the "*Dissolution Act*"), made a loan to Habitat utilizing funds from Authority's Low and Moderate Income Housing Asset Fund established pursuant to Health and Safety Code Section 33176(d) of the Dissolution Act and maintained by the Authority pursuant thereto and in accordance with California Health and Safety Code Section

33334.2 *et seq.* (the “*Low-Mod Funds*”). Owner and Authority are executing this Resale Restriction and causing it to be recorded against the Restricted Unit in order to ensure compliance with (i) California Health and Safety Code Section 33000 *et seq.*; and (ii) the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project, adopted by the City Council of the City of Imperial Beach on February 6, 1996, as amended.

C. The purposes of this Resale Restriction include, without limitation: (i) to establish resale and occupancy restrictions for the Restricted Unit; (ii) to reserve to Authority an option to designate Eligible Purchasers, as hereafter defined, to acquire the Restricted Unit; (iii) to restrict the Restricted Unit with this Resale Restriction for a period of forty-five (45) years, and (iv) to grant to Authority an option to acquire the Restricted Unit in the event of a default by Owner of the terms of this Resale Restriction.

D. Concurrently herewith Owner is executing a promissory note in favor of Authority (the “*Authority Note*”). The Authority Note and the Resale Restriction shall be secured by a deed of trust (the “*Deed of Trust*”) executed by Owner in favor of Authority. The Deed of Trust shall be recorded in the Office of the County Recorder of San Diego County against the Restricted Unit, concurrently with recordation of this Resale Restriction.

NOW, THEREFORE, Authority and Owner hereby declare and restrict the Restricted Unit as follows:

1. Representations and Warranties of Owner. Owner declares, represents and warrants to Authority and agrees as follows:

(a) Annual Gross Income. Owner’s annual gross income, including the income of any co-purchasers, at the time of the execution of this Resale Restriction does not exceed eighty percent (80%) of the Area Median Income. “*Area Median Income*” means the then current area median income for the San Diego Standard Metropolitan Statistical Area, adjusted for family size by the United States Department of Housing and Urban Development (“*HUD*”) pursuant to Section 8 of the United States Housing Act of 1937, as determined by HUD and published from time to time by the California Department of Housing and Community Development.

(b) Principal Place of Residence. Owner will reside in the Restricted Unit as Owner’s principal place of residence until the earlier of: (i) the sale of the Restricted Unit in accordance with the terms of this Resale Restriction; or (ii) forty-five (45) years from the date this Resale Restriction is recorded in the Office of the County Recorder of San Diego County against the Restricted Unit. Owner shall be considered as occupying the Restricted Unit as a principal place of residence if Owner is living in the Restricted Unit for at least ten (10) months out of each calendar year. Owner shall not sublet, lease or rent out all or any portion of the Restricted Unit during the Affordable Term, as hereafter defined, of this Resale Restriction.

(c) Liquid Assets. At the time of the execution of this Resale Restriction, Owner does not hold, directly or indirectly, “liquid assets”, as defined below, whose aggregate value exceeds one hundred percent (100%) of the then-current annual Area Median Income. As used herein, the term “liquid assets” refers to cash and assets which are readily convertible to cash within a reasonable period, including but not limited to savings and checking accounts,

certificates of deposit of any term, marketable securities, money market and similar accounts, mutual fund shares, and insurance policy cash values. The term “liquid assets” shall not include retirement funds which are not readily accessible or which cannot be accessed by Owner without Owner incurring a penalty.

(d) Not a Full-Time Student. Owner is not a full-time student, or a household comprised exclusively of persons who are full-time students, unless such persons are married and eligible to file a joint federal income tax return. The term “full-time student” shall be defined as any person who will be or has been a full-time student during five calendar months of the calendar year in question at an educational institution (other than a correspondence school) with regular faculty and students.

(e) Not a Student Dependent. Owner is not, and none of co-tenants of Owner is, a student dependent as defined in the U.S. Internal Revenue Code, unless the taxpayer (upon whom the student in question is dependent) resides in the Restricted Unit.

(f) Not an Owner of Real Property. Owner does not own any real property at the time of escrow closing for the Restricted Unit.

(g) First-Time Home Buyer, Displaced Homemaker or Single Parent. Owner satisfies at least one of the following criteria:

(1) Owner is a first-time home buyer; that is, he or she has not owned a home within the three (3)-year period immediately preceding the date this Resale Restriction is recorded in the Office of the County Recorder of San Diego County against the Restricted Unit;

(2) Owner is a displaced homemaker; or

(3) Owner is a single parent.

2. Acknowledgment and Certification. Any purchaser of the Restricted Unit from Owner and any subsequent purchaser from such purchaser or successors (hereinafter each is referred to as “*Purchaser*”) shall certify his/her acknowledgment of receipt of this Resale Restriction and all the provisions and restrictions contained herein, on a form approved by Authority in its sole discretion. For purposes of clarification, in the event Habitat acquires the Restricted Unit in accordance with that certain Declaration Regarding Affordable Housing Restrictions, Restrictions on Conditions on Transfer and Equity Sharing Restrictions dated on or about of even date herewith (the “*Habitat Declaration*”) between Habitat and Owner, or otherwise, the term Purchaser shall include any such purchaser from Habitat or subsequent purchaser from such purchaser or successors and Habitat shall cause such purchaser to certify his/her acknowledgment of receipt of this Resale Restriction and all the provisions and restrictions contained herein.

3. Restrictions on Transfer.

(a) Forty-Five Year Affordable Term. For a period of forty-five (45) years commencing on the date this Resale Restriction is recorded in the Office of the County Recorder of San Diego County against the Restricted Unit (the "*Affordable Term*"), any transfer of the Restricted Unit shall be subject to the provisions of this Resale Restriction. Any subsequent transfer by a Purchaser to a subsequent Purchaser shall also be subject to the provisions of this Resale Restriction until the expiration of the Affordable Term.

(b) Transfer Defined. "*Transfer*" shall mean: (i) all or any part of the Restricted Unit or any interest in the Restricted Unit is sold, resold, conveyed, transferred, alienated, leased, rented or assigned; (ii) if Owner is not a natural person and a beneficial interest in Owner is sold, conveyed or transferred; (iii) all or any part of the Restricted Unit is refinanced or further encumbered, pledged, hypothecated, except as otherwise expressly permitted by law; (iv) Owner does not occupy the Restricted Unit as his, her, or their, primary residence; (v) the leasing of all or any part of the Restricted Unit; (vi) any material breach of this Resale Restriction; or (vii) any judicial or non-judicial foreclosure, attachment, insolvency, receivership or bankruptcy proceeding against Owner or the Restricted Unit. Notwithstanding the foregoing, a refinancing of the Restricted Unit shall not be considered a Transfer, provided Authority provides written consent to Owner prior to the refinancing, which consent may be granted or withheld in the sole and absolute discretion of Authority. "Transfer" shall not include (A) a transfer by gift, devise, or inheritance to Owner's spouse or to Owner's child, provided the child would qualify as an Eligible Purchaser; (B) taking of title by a surviving joint tenant who is Owner's spouse or Owner's child, provided the child would qualify as an Eligible Purchaser; (C) transfer of title to a current or former spouse pursuant to divorce or dissolution proceedings; (D) acquisition of title or interest to the Restricted Unit in conjunction with marriage after Owner acquired title to the Restricted Unit; and (E) a transfer specifically approved in writing by Authority and Habitat.

(c) Voidable Transfers. Any Transfer during the Affordable Term without the prior express written consent of the Authority is prohibited. If Owner fails to provide Authority with a properly delivered Notice of Intent to Transfer in accordance with Section 5 below, then: (i) any pending or actual transfer of the Restricted Unit or of any interest in the Restricted Unit shall, in Authority's sole discretion, be voidable; (ii) Authority shall have an automatic right to obtain title to the Restricted Unit from the Owner and/or transferee; and (iii) Authority may also exercise any and all of its remedies available under applicable state, federal or local laws, including, without limitation, its power of termination under California law.

4. Maintenance and Inspection of Restricted Unit. Owner shall maintain the Restricted Unit and the improvements thereon in good condition and repair throughout Owner's period of ownership of the Restricted Unit. In addition, upon Authority's receipt of a notice of intent to transfer as detailed in Section 5 below, Authority shall be given the right to enter and to inspect the Restricted Unit to determine whether any violations of applicable building, plumbing, electric, fire, housing or other applicable codes exist and whether the Restricted Unit has been maintained in good condition, upon reasonable written notice of not less than ten (10) days. Authority shall notify Owner with regard to any noted code violations and maintenance deficiencies (collectively, the "*Deficiencies*"), and Owner shall cure the Deficiencies in a reasonable manner acceptable to Authority within sixty (60) days of being notified in writing of the result of the inspections. Should Owner fail to cure all the Deficiencies prior to the

scheduled date for the close of escrow, at the option of Authority or an Eligible Purchaser as defined in Section 7 below, escrow may be closed, title passed and money paid to Owner subject to the condition that such funds as are necessary to pay for curing the Deficiencies, based upon written estimates obtained by Authority, shall be withheld from the money due Owner and held by the escrow holder for the purpose of curing the Deficiencies. Authority and/or the Eligible Purchaser shall cause the Deficiencies to be cured and, upon certification of completion of work by Authority, the escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to Owner.

5. Notice of Transfer. In the event Owner intends to transfer the Restricted Unit, Owner shall sixty (60) days prior to the opening of escrow notify Habitat and Authority in writing of such intent (the "*Notice of Intent to Transfer*"). The Notice of Intent to Transfer shall be sent by certified mail return receipt requested, to the Housing Authority of the City of Imperial Beach 825 Imperial Beach Blvd., Imperial Beach, California 91932, or such other address as Authority may designate. Owner has the right to withdraw the Notice of Intent to Transfer prior to the opening of escrow to purchase the Restricted Unit.

6. Authority's Option to Designate an Eligible Purchaser. Upon receipt of the Notice of the Intent to Transfer, Authority shall have the option, but not the duty, to designate an Eligible Purchaser to purchase the Restricted Unit in the manner set forth hereunder, if the proposed transferee is not approved for any reason. Within thirty (30) days of receipt by Authority of the Notice of Intent to Transfer, Authority shall: (1) notify Owner of the Maximum Sales Price, as defined in Section 8 herein, to be paid for the Restricted Unit; (2) inspect the Restricted Unit as described in Section 4, above; and (3) notify Owner regarding whether or not Authority intends to exercise its option to designate an alternate Eligible Purchaser. The notification to Owner regarding the option to designate an Eligible Purchaser shall be sent by certified mail, return receipt requested. If Authority exercises this option to designate an Eligible Purchaser, Authority shall cause an escrow to purchase the Restricted Unit to be opened within thirty (30) days following such notification to Owner, and Authority shall cause the Restricted Unit to be purchased by its designated Eligible Purchaser within the ninety (90) days following the receipt by Authority of Owner's Notice of Intent to Transfer.

7. Transfer to Eligible Purchaser. In the event Authority does not exercise its option to designate an Eligible Purchaser, the transfer of the Restricted Unit by Owner must be to an Eligible Purchaser. For purposes of this Agreement, the term "*Eligible Purchaser*" shall mean any household meeting the criteria set forth in Section 1(a)-(g), above.

8. Determination of Maximum Sales Price.

(a) Calculation of Maximum Sales Price. The maximum amount of money and/or other consideration, of any kind whatsoever, that Owner (or any subsequent Purchaser selling the Restricted Unit) may receive for any transfer of the Restricted Unit shall be called the "Maximum Sales Price." *Maximum Sales Price*" shall mean the lesser of; (i) the fair market value as reasonably determined by the Authority; and (ii) the sum of: (A) the purchase price which would result in a Monthly Housing Cost which does not exceed the product of one twelfth (1/12) of thirty percent (30%) times seventy percent (70%) of the then Area Median Income as

adjusted for household size appropriate for the unit; plus (B) the Purchaser's down payment; plus (C) the amount of any other downpayment assistance grant or a similar grant which is approved by Authority, provided that such assistance is a grant (i.e., no payments are required under such assistance and the assistance does not need to be repaid by the Purchaser). In the case where there is no Purchaser of the Restricted Unit, Authority shall calculate the principal and interest payments assuming a five (5%) percent down payment and that the annual interest rate is the then Fannie Mae 90-day delivery rate.

(b) Monthly Housing Cost. "*Monthly Housing Cost*" shall mean all of the following associated with the Restricted Unit, estimated or known as of the date of the close of escrow of the sale of the Restricted Unit: (i) principal and interest payments on a fully-amortizing twenty-five (25) to thirty-five (35)- year, fixed-rate mortgage loan actually obtained by the Purchaser, and any loan insurance fees associated therewith (under no circumstances shall any Purchaser of the Restricted Unit obtain a mortgage loan that contains an adjustable interest rate); (ii) property taxes and assessments, including Mello Roos fees, if applicable; (iii) fire and casualty insurance covering replacement value of Restricted Unit improvements (to the extent not covered by the homeowner association governing the Restricted Unit); (iv) any homeowner association fees; (v) private mortgage insurance, if applicable; and (vi) reasonable costs of utilities. Monthly Housing Cost shall be an average of estimated costs for the next twelve (12) month period as of the date of the close of escrow for the pending sale of the Restricted Unit.

9. Defaults and Remedies.

(a) Acceleration, Remedies. Upon Owner (or any Purchaser's) breach of this Resale Restriction, the Authority Note, the Deed of Trust or any other obligation or document secured by the Restricted Unit, Authority shall give notice to Owner (or the Purchaser, as applicable) prior to acceleration, such notice shall include:

- (1) a description of the breach;
- (2) the action required to cure such breach (if any);
- (3) a date, not less than ten (10) days from the date the notice is mailed to Owner, by which such breach must be cured; and
- (4) a statement that failure to cure such breach on or before the date specified in the notice may result in the acceleration of the sums secured by the Deed of Trust and the sale of the Restricted Unit.

The notice shall further inform Owner (or the Purchaser, as applicable) of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Owner to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Authority, at Authority's option, may declare all of the sums secured by the Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law, as provided in and pursuant to the procedure set forth in the Deed of Trust. Authority shall be

entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Section 9, including, but not limited to, reasonable attorneys' fees.

(b) Owner's Right to Reinstate.

(1) Curable Breach. Notwithstanding Authority's acceleration of the sums secured by the Deed of Trust due to Owner or a Purchaser's breach, Owner or any Purchaser shall have the right to have any proceedings begun by Authority to enforce the Deed of Trust discontinued at any time prior to five (5) days before the sale of the Restricted Unit pursuant to the power of sale contained in the Deed of Trust or at any time prior to entry of a judgment enforcing the Deed of Trust if:

(A) Owner or Purchaser pays to Authority all sums which would be then due under the Authority Note and the Deed of Trust had no acceleration occurred;

(B) Owner or Purchaser cures all breaches of any other covenants or agreements of Owner or Purchaser under this Resale Restriction and the Deed of Trust;

(C) Owner or Purchaser pays all reasonable expenses incurred by Authority and the trustee in enforcing the covenants and agreements of Owner or Purchaser contained in this Resale Restriction or the Deed of Trust, including, but not limited to, reasonable attorneys' fees; and

(D) Owner or Purchaser takes such action as Authority may reasonably require to assure that the lien of the Deed of Trust, Authority's interest in the Restricted Unit and Owner's or Purchaser's obligation to pay the sums secured by the Deed of Trust shall continue unimpaired.

Upon such payment and cure by Owner or Purchaser as set forth in this Section 9(b)(1), this Resale Restriction, the Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

(2) Non-Curable Breach.

(A) Failure to Occupy/Renting Out the Restricted Unit is a Violation of Law. Owner and each Purchaser hereby acknowledges that the loan evidenced by the Authority Note and secured by the Deed of Trust was funded by Authority using Low-Mod Funds (as described in Recital A, above). The California Community Redevelopment Law requires Owner and each Purchaser to occupy the Restricted Unit as their principal residence. Renting out the Restricted Unit and/or Owner or any Purchaser's failure to occupy the Restricted Unit as their principal residence is a violation of State of California (in addition to being a violation of this Resale Restriction). Authority is obligated by State of California to enforce the provisions of the California Community Redevelopment Law.

(B) Failure to Occupy/Renting Out the Restricted Unit Materially Impairs Authority's Security. Owner and each Purchaser hereby acknowledges and agrees that

renting out the Restricted Unit and/or Owner or any Purchaser's failure to occupy the Restricted Unit as their principal residence, materially impairs Authority's security for the Authority Note. Owner and each Purchaser further acknowledges that if the Restricted Unit is rented out and/or Owner or any Purchaser fails to occupy the Restricted Unit as their principal residence, then during any such period the Restricted Unit will not qualify as "affordable housing" and Authority may be in breach of its obligations under the California Community Redevelopment Law and therefore Authority's security for the loan will be materially impaired.

(C) Failure to Occupy/Renting Out the Restricted Unit is a Non-Curable Breach. Owner and each Purchaser hereby acknowledges and agrees that renting out the Restricted Unit and/or Owner or any Purchaser's failure to occupy the Restricted Unit as their principal residence, will be a non-curable breach and Authority shall have the right to accelerate the loan and foreclose on the Restricted Unit as provided herein. **Notwithstanding anything to the contrary set forth in this Resale Restriction, including, without limitation Authority's ability to approve certain transfers under Section 3(b), Owner and each Purchaser agrees that in the event Owner or any Purchaser rents out the Restricted Unit and/or fails to occupy the Restricted Unit as their principal residence, neither Owner nor any Purchaser shall have the right to cure the breach and reinstate this Resale Restriction, the loan, the Deed of Trust or the obligations secured thereby.**

(D) Owner's Waiver. Owner and each Purchaser hereby knowingly waives and relinquishes any and all legal and/or contractual rights Owner and any Purchaser may have to cure or otherwise reinstate the Deed of Trust and the obligations secured thereby, in the event the Restricted Unit is rented out and/or Owner or any Purchaser fails to occupy the Restricted Unit as their principal residence.

(E) Representation of Comprehension. Owner and each Purchaser hereby acknowledges and agrees that Authority has advised Owner and each Purchaser (and each of them if there is more than one Owner or Purchaser) to retain an attorney to represent them with respect to this Resale Restriction. By executing this Resale Restriction, Owner and each Purchaser (and each of them if there is more than one Owner or Purchaser) represents that: (i) each of them fully understands and accepts the terms of this Resale Restriction, the Authority Note and Deed of Trust; (ii) each of them has relied upon the legal advice of their attorneys or they have freely and independently chosen not to seek the advice of an attorney; (iii) that neither Authority nor its attorneys represents them; (iv) each of them has had a full and ample opportunity to consult with any other professionals of their choice in connection with the rights and liabilities created by this Resale Restriction, the Authority Note and Deed of Trust; (v) that none of them has any questions with regard to the legal import of any term, word, phrase, or portion of this Resale Restriction, the Authority Note and Deed of Trust, or any of the foregoing documents in their entireties; and (vi) each of them accepts the terms of this Resale Restriction, the Authority Note and Deed of Trust as written.

10. Authority's Option to Purchase Upon Default. In addition to the remedies provided Authority in Sections 3 and 9 above, the following terms and conditions shall apply:

(a) Grant of Option. Owner and all subsequent Purchasers hereby grant to Authority an option (the "**Option**") to purchase the Restricted Unit effective upon the written declaration by the Authority on the terms and conditions set forth herein. The purchase price payable by Authority to Owner for the Restricted Unit (the "**Option Price**") shall be the greater of (a) the Maximum Sales Price, as defined in Section 8 hereof, or (b) the sum of the current balance of the First Lien ("**First Lien**" means the lien of the institution making the purchase money loan to Owner for the purchase of the Restricted Unit and/or any acceptable refinancings), plus Owner's share of escrow, title and other closing costs as set forth in Section 4 hereof. The Option created hereby shall be irrevocable by Owner and shall be binding upon the successors and assigns of Owner. Authority shall have the right of specific performance to enforce the terms of this Option.

(b) Term and Consideration for Option. The term of the Option ("**Option Term**") shall commence on the date of this Resale Restriction, and shall expire upon the expiration or termination of the Affordable Term.

(c) Exercise of Option. The Option may be exercised by Authority's delivery to Owner of written notice of such exercise (the "**Exercise Notice**") only upon the occurrence of an event of default under this Resale Restriction, the Authority Note or the First Lien, and subject to any right or option of Habitat to acquire the Restricted Unit in the event of a Transfer or default by Owner in accordance with the Habitat Declaration. In the event that Authority exercises the Option, but Owner cures the default of this Resale Restriction, the Authority Note or the First Lien prior to the sale of the Restricted Unit to Authority, Authority's exercise of the Option shall be deemed revoked. The revocation of the exercise of the Option shall not terminate the Option or preclude Authority from subsequently exercising the Option upon a later event of default under this Resale Restriction, the Authority Note or the First Lien.

(d) Escrow and Completion of Sale. Within five (5) days after Authority has exercised the Option, or as soon thereafter as reasonably practicable, an escrow shall be opened with an escrow company mutually acceptable to Authority and Owner for the conveyance of the Restricted Unit to Authority. Authority shall deposit the Option Price in escrow not later than one (1) business day prior to the anticipated close of escrow date. Authority's obligation to close escrow shall be subject to Authority's approval of a then-current preliminary title report and, at Authority's option, environmental and other site testing. Any exceptions shown on such preliminary title report created on or after Owner's acquisition of the Restricted Unit shall be removed by Owner at its sole expense prior to the close of escrow pursuant to this Section 10(d) unless such exception(s) is(are) accepted by Authority in its reasonable discretion; provided, however, that Authority shall accept the following exceptions to title: (i) current taxes not yet delinquent, (ii) matters affecting title existing on the date of Owner's acquisition of the Restricted Unit, (iii) liens and encumbrances in favor of the City of Imperial Beach, (iv) the First Lien (if Authority is taking subject to the First Lien), (v) this Resale Restriction, and (vi) matters shown as printed exceptions in the standard form CLTA owner's policy of title insurance. The parties shall each be responsible for one-half of the escrow fees, documentary transfer taxes, recording fees and any other costs and expenses of the escrow, and Owner shall be responsible for the cost of a CLTA owner's policy of title insurance. Authority shall have thirty (30) days after exercise of the Option to enter upon the Restricted Unit to conduct any tests, inspections, investigations, or studies of the condition of the Restricted Unit. Owner shall permit Authority

access to the Restricted Unit for such purposes. Authority shall indemnify, defend, and hold harmless Owner and its officers, directors, shareholders, partners, employees, agents, and representatives from and against all claims, liabilities, or damages, and including expert witness fees and reasonable attorneys' fees and costs, caused by Authority's activities with respect to or arising out of such testing, inspection, or investigatory activity on the Restricted Unit. Escrow shall close promptly after acceptance by Authority of the condition of title and the physical and environmental condition of the Restricted Unit, and in no event later than ninety (90) days after the date that Authority has exercised the Option. Until the closing, the terms of this Resale Restriction and the documents executed and recorded pursuant thereto shall remain in full force and effect.

11. Non-liability of Authority. In no event shall Authority become in any way liable or obligated to Owner or to any successor-in-interest of Owner by reason of its option to purchase under either Section 6 or Section 10 herein nor shall Authority be in any way obligated or liable to the Purchaser or any successor-in-interest of the Purchaser for Authority's failure to exercise such option to purchase or to designate an Eligible Purchaser.

12. Binding on Successor and Assigns. This Resale Restriction shall bind, and the benefit hereof shall inure to, Owner, the Purchaser, and to their respective heirs, legal representative executors, successors in interest and assigns, and to Authority and its successors except as provided in Section 3. Provided, however, upon a release of this Resale Restriction, either through a foreclosure or the receipt of a deed in lieu of foreclosure by the holder of the First Lien, this Resale Restriction, shall not thereafter reattach.

13. Subordination. This Resale Restriction shall not be subordinated to any First Lien or any other lender financing on behalf of Owner and all subsequent Purchasers to purchase the Restricted Unit.

14. Invalid Provisions. If any one or more of the provisions contained in this Resale Restriction shall for any reason be held to be invalid, illegal or unenforceable in any respect then such provision or provisions shall be deemed severable from the remaining provisions contained in this Resale Restriction, and this Resale Restriction shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15. Controlling Law. The terms of this Resale Restriction shall be interpreted under the laws of the State of California.

16. Notices. All notices required herein shall be sent to Authority by certified mail return receipt requested, as follows:

Housing Authority of the City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 91932

or such other address that Authority may subsequently request in writing. Notices to Owner shall be sent by certified mail return receipt requested to the Restricted Unit address.

17. Interpretation of Restriction Covenants. The terms of this Resale Restriction shall be interpreted to encourage to the extent possible that the Maximum Sales Price of and mortgage payments for the Restricted Unit remain affordable to households earning eighty percent (80%) or less of the Area Medium Income as adjusted annually and as further adjusted for household size.

18. Non-Discrimination Covenants. Owner covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Restricted Unit. The foregoing covenants shall run with the land.

19. Promissory Note in Favor of Authority.

(a) Execution by Owner and Calculation of Principal Amount. During the Affordability Term, Owner and each Purchaser shall be obligated to execute the Authority Note which shall be in a form approved by Authority in its sole discretion, to ensure the continued affordability of the Restricted Unit. The principal of the Authority Note shall be an amount equal to the difference between the fair market value of the Restricted Unit determined by the Authority and the Maximum Sales Price. . Such amount will not actually be paid by Authority to Owner or Purchaser, but represents the subsidy constructively received by Owner or Purchaser as a result of purchasing the Restricted Unit at a price below its fair market value.

(b) Authority Note Secured by Deed of Trust. Owner's payment obligations pursuant to the Authority Note shall be secured by the Deed of Trust which shall be in a form approved by Authority in its sole discretion (the "*Deed of Trust*"), and which shall encumber the Restricted Unit in second lien priority position.

(c) Repayment of the Authority Note. No repayment of the Authority Note shall be due until the earliest to occur of the following events, at which time the entire principal balance of the Authority Note and unpaid and default interest thereon shall be due and payable, at the option of Authority: (i) a Transfer that is not approved by Authority in writing; (ii) Owner or any Purchaser's uncured default under the terms of this Resale Restriction, the Authority Note or the Deed of Trust; or (iii) any Owner or any Purchaser's default under the terms of the First Lien. In the event of a Transfer that is approved by Authority in writing, Owner's obligation to repay the Authority Note shall be assumed by the subsequent purchasers of the Restricted Unit. The Authority Note shall be deemed satisfied on the forty-fifth (45th) anniversary of the date this Resale Restriction is recorded against the Restricted Unit, provided that Owner and its successors in interest to the Restricted Unit remained in compliance with the terms of this Resale Restriction throughout the Affordability Term.

(d) Subordination of the Deed of Trust. Authority shall execute such subordination agreements subordinating the Deed of Trust securing the Authority Note as may be reasonably

requested by the holder of a First Lien. Any such subordination agreements shall be in a form approved by Authority in its reasonable discretion.

20. Written Consent of Authority Required Before Transfer. During the Affordability Period, the Restricted Unit, and any interest therein, shall not be conveyed by any Transfer or refinancing, except as expressly provided in this Resale Restriction, except with the express written consent of Authority.

21. Attorneys' Fees. The parties agree that the prevailing party in litigation for the breach and/or interpretation and/or enforcement of the terms of this Resale Restriction shall be entitled to their expert witness fees, if any, as part of their costs of suit, and reasonable attorneys' fees as may be awarded by the court, pursuant to California Code of Civil Procedure ("CCP") Section 1033.5 and any other applicable provisions of California law, including, without limitation, the provisions of CCP Section 998.

22. Monitoring. Owner shall annually report to Authority, in writing, confirming that they continue to reside in the Restricted Unit, have not leased or rented the Restricted Unit for more than the allowed period of time, providing evidence of insurance, evidence of the payment of taxes, if not impounded, and any and all other information reasonably needed by Authority to assure compliance with the terms of this Resale Restriction on a form or forms prepared by Authority. Within 15 days of a written request from Authority to Owner, Owner shall respond with all information requested by Authority for Authority to complete its monitoring responsibilities under the terms of this Resale Restriction. Failure to completely and timely comply with requests by Owner shall be deemed a material default under the terms of this Resale Restriction.

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

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

**THE HOUSING AUTHORITY OF THE
CITY OF IMPERIAL BEACH, CALIFORNIA,**
a public body, corporate and politic

Dated: _____

By: _____
Gary Brown
Executive Director

APPROVED AS TO FORM AND LEGALITY:
JENNIFER LYON, CITY ATTORNEY
General Counsel to the Authority

By: _____

KANE, BALLMER & BERKMAN
Special Counsel to the Authority

By: _____
Theodore (Ted) M. Ballmer

[Signatures Continued on Following Page]

OWNER:

Print Name: _____

Print Name: _____

[Signatures Continued on Following Page]

**CONSENT OF HABITAT TO AFFORDABLE HOUSING RESALE RESTRICTIONS,
OPTION TO DESIGNATE ELIGIBLE PURCHASERS
AND OPTION TO PURCHASE UPON DEFAULT
AND AGREEMENT BY HABITAT TO BE BOUND BY THE TERMS THEREIN**

The San Diego Habitat for Humanity, Inc., a California non-profit public benefit corporation ("*Habitat*") hereby acknowledges and consents to the above Resale Restriction and agrees to be bound by the provisions, terms and conditions therein.

**SAN DIEGO HABITAT FOR HUMANITY,
INC.,**
a California non-profit public benefit corporation

Dated: _____

By: _____

Name: _____

Its: _____

ATTEST:

Dated: _____

By: _____

Name: _____

Its: _____

ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On _____, 201__, before me, _____,
personally appeared _____ who proved to me on
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On _____, 201__, before me, _____,
personally appeared _____ who proved to me on
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On _____, 201__, before me, _____,
personally appeared _____ who proved to me on
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On _____, 201__, before me, _____,
personally appeared _____ who proved to me on
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

Legal Description of the Restricted Unit

[To be inserted.]

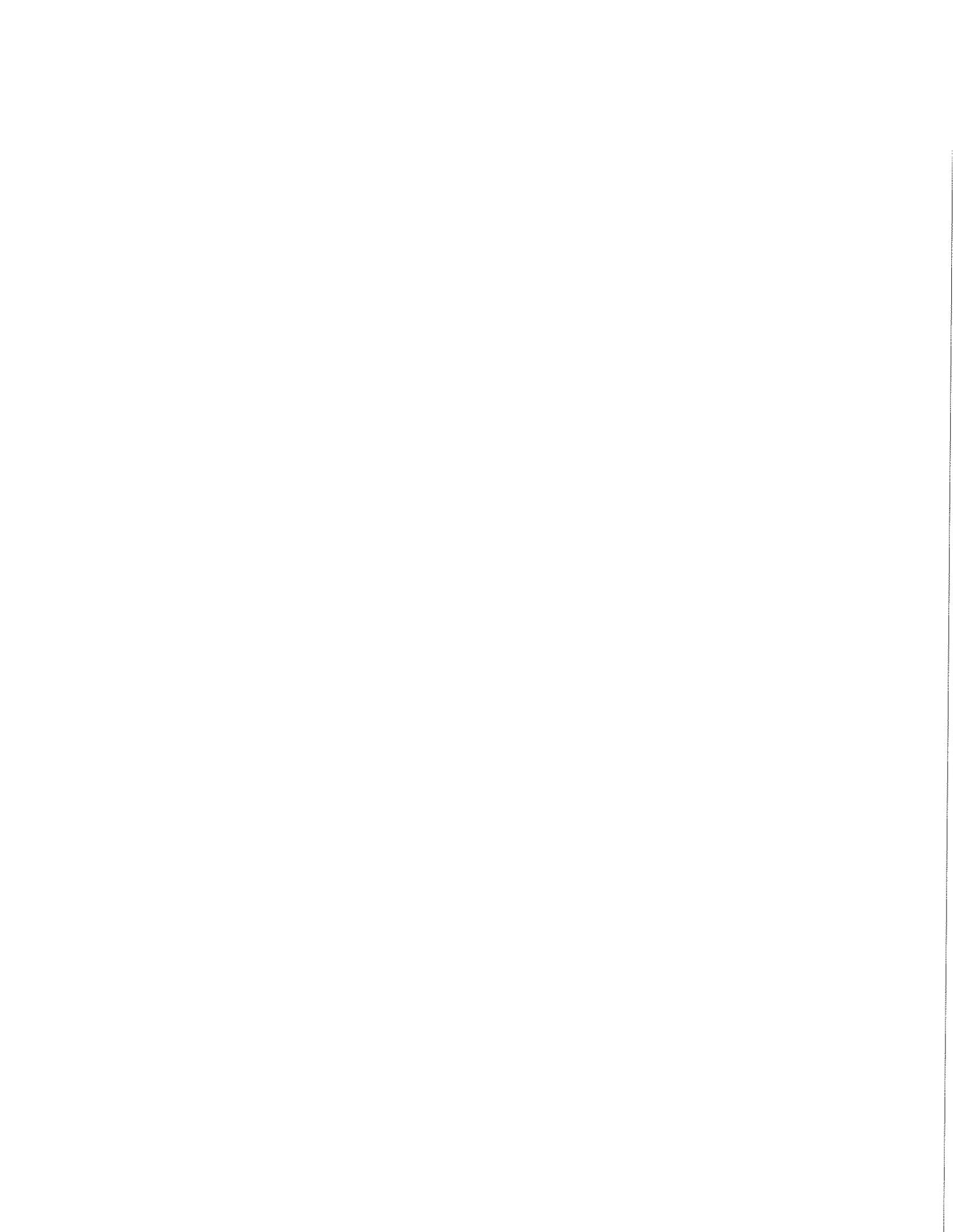


Exhibit "A"

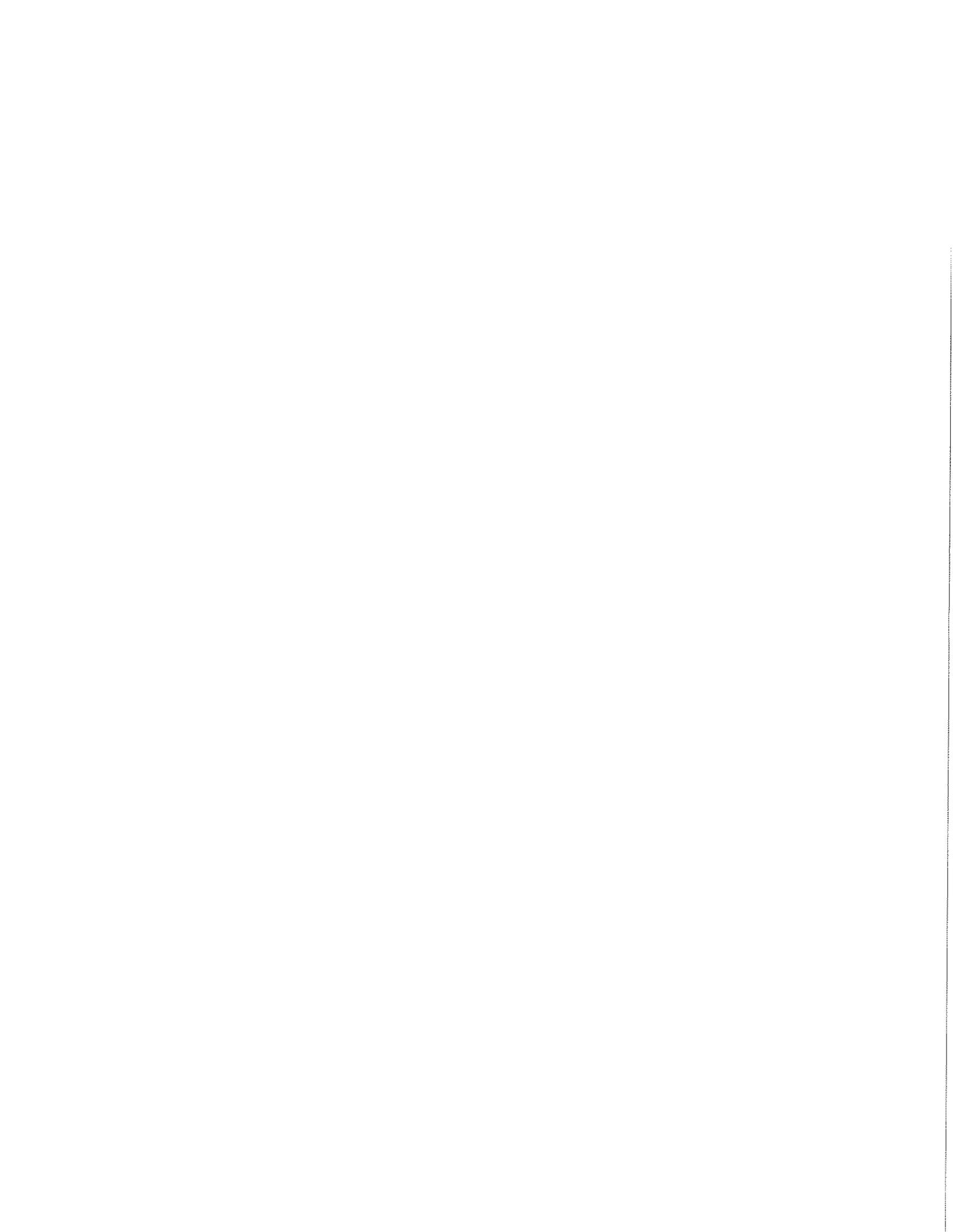
Legal Description

All that certain real property situated in the City of Imperial Beach, County of San Diego, State of California, described as follows:

All that certain real property situated in the City of Imperial Beach, County of San Diego, State of California, described as follows:

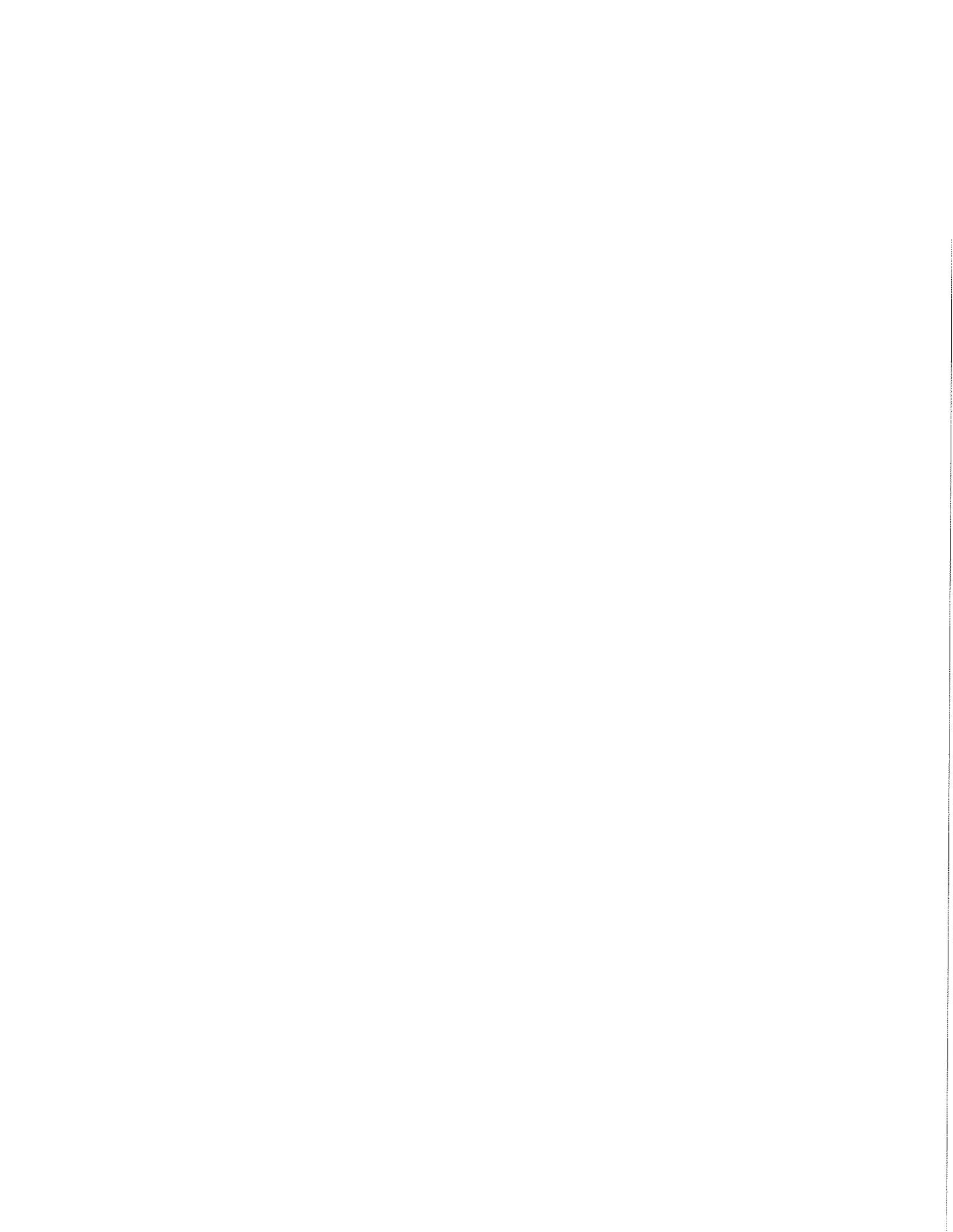
LOTS 21 AND 22 AND THE SOUTH 12.50 FEET OF LOT 23, ALL BEING IN BLOCK 108 OF SOUTH SAN DIEGO COMPANY'S ADDITION TO SOUTH SAN DIEGO, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 497, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 4, 1887, TOGETHER WITH THAT PORTION OF THE NORTHERLY 10,000 FEET OF DONAX AVENUE LYING SOUTHERLY AND ADJACENT TO THE SOUTHERLY LINE OF SAID LOT 21 AS VACATED ON APRIL 2, 1979, BY RESOLUTION NO. 2543 OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH RECORDER APRIL 30, 1979, AS FILE NO. 79-177416 OF OFFICIAL RECORDS.

Also more commonly known as Assessor's Parcel Number 626-282-12.



Attachment No. 11
Agreement Affecting Real Property

[Behind this page.]



Recording Requested By:
Housing Authority
of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

And When Recorded Mail To:
Housing Authority
of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

AGREEMENT AFFECTING REAL PROPERTY

THIS AGREEMENT AFFECTING REAL PROPERTY is made this ___ day of _____, 20_____, between San Diego Habitat for Humanity, Inc., a California nonprofit corporation ("*Developer*"), and the Housing Authority of the City of Imperial Beach ("*Authority*").

A. Developer is the owner of that certain real property located in the City of Imperial Beach, County of San Diego, State of California, described in Exhibit "A" attached hereto and made a part hereof (referred to herein as the "*Property*").

B. Developer has acquired the Property from the Authority pursuant to that certain Affordable Housing Agreement dated June 28, 2013 ("*AHA*"), in furtherance of the Redevelopment Plan for the for the Palm Avenue/Commercial Redevelopment Project on February 6, 1996, as amended on July 18, 2001 by Ordinance No. 2001-70 (the "First Amendment"), and on December 20, 2006 by Ordinance No. 2006-1050 (the "Second Amendment"), and on March 5, 2008 by Ordinance No. 2008-1066 (the "Third Amendment" and collectively the "Redevelopment Plan") pursuant to California Health and Safety Code sections 33334.3 and 33334.6, and incorporated herein by reference. One of the components of the Redevelopment Plan is to provide affordable housing opportunities for households earning eighty percent (80%) or less of the area medium income, adjusted for family size and revised annually by the U.S. Department of Housing and Urban Development for the San Diego Metropolitan Statistical Area.

C. In order to further assist in the development of below market rate affordable housing, the Authority and Owner have agreed to enter into this Agreement Affecting Real Property to be covenants, conditions and restrictions and equitable servitudes running with the land with respect to the Property.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Authority and Developer hereby agree and declare as follows and each subsequent owner of the Property and their successors are deemed to covenant and agree, that the Property shall be held, sold and conveyed subject to the following covenants and conditions which shall run with the land and be binding on all parties having any right, title or interest in the Property, their respective heirs, legatees, devisees, administrators, executors, successors and assigns, and shall inure to the benefit of the Authority, its successors and assigns:

1. Construction of Affordable Units. Under the terms of the AHA, Developer is obligated to construct on the Property a total of six (6) two-story for-sale townhomes (the "*Affordable Units*"), as set forth in more detail therein. No other dwelling units will be constructed on the Property.

2. Definitions. The following terms shall have the following meanings:

(a) Area Median Income. "*Area Median Income*" shall mean the area median income defined by the Department of Housing and Urban Development (HUD) as the then current area median income for the San Diego Standard Metropolitan Statistical Area, established periodically by HUD and published in the Federal Register, as adjusted for family size. In the event HUD ceases to publish an established area median income as aforesaid, Authority may, in its sole discretion, use any other reasonably comparable method of computing area median income.

(b) Low Income Household. "*Low Income Household*" means persons and families whose income does not exceed eighty percent (80%) of the then current Area Median Income, provided that such persons or families meet the additional requirements set forth in Section 4 of this Agreement Affecting Real Property.

(c) Maximum Sales Price. "*Maximum Sales Price*" shall mean the maximum amount of consideration, of any kind whatsoever, that the Developer may receive for any Affordable Unit, which amount shall not exceed the sum of (A) the purchase price which would result in a Monthly Housing Cost, as determined by the Authority, which does not exceed the product of one twelfth (1/12) of thirty percent (30%) times seventy percent (70%) of the then Area Median Income as adjusted for household size appropriate for the unit, plus (B) the amount of the Developer Note assumed by the Low Income Household that purchases such Affordable Unit.

3. Covenants Concerning Sales of Affordable Units. Developer represents and warrants to the Authority that Developer shall sell the six (6) Affordable Units (all of the units at the Property) only to Low Income Households for an amount that does not exceed the Maximum Sales Price and that future sales of the Affordable Units for a period of 45 years shall be only to Low Income Households for an amount that does not exceed the Maximum Sales Price. The Affordable Units will be restricted for 45 years from initial occupancy under the Redevelopment Plan and the California Community Redevelopment Law.

4. Additional Definition of Low Income Households.

(a) No Relationship With Developer. The term Low Income Household shall not include any person employed by Developer, or any individuals who are members, principals, officers, directors, partners, employees, agents or shareholders of Developer, or any entity having an ownership interest in the Property or in any Affordable Unit.

(b) No Full-Time Students. The term Low Income Household shall not include any person who is a full-time student, or a household comprised exclusively of persons who are full-time students, unless such persons are married and eligible to file a joint federal income tax return. The term “full-time student” shall be defined as any person who will be or has been a full-time student during five calendar months of the calendar year in question at an educational institution (other than a correspondence school) with regular faculty and students.

(c) No Student Dependents. Notwithstanding the provisions of subparagraph 4(b), the term Low Income Household shall not include any student dependent as defined in the U.S. Internal Revenue Code, unless the taxpayer (upon whom the student in question is dependent) will reside in the same Affordable Unit.

(d) No Owners of Real Property. The term Low Income Household shall not include any person or any household comprised of one or more persons who own real property.

(e) Liquid Asset Limitation. The term Low Income Household shall not include any person or household holding, directly or indirectly, liquid assets whose aggregate value exceeds, at the time of determination of eligibility, one hundred percent (100%) of the then-current annual Area Median Income. As used herein, the term “liquid assets” refers to cash and assets which are readily convertible to cash within a reasonable period, including but not limited to savings and checking accounts, certificates of deposit of any term, marketable securities, money market and similar accounts, mutual fund shares, and insurance policy cash values. The term “liquid assets” shall not include retirement funds which are not readily accessible or which cannot be accessed by the buyer without the buyer incurring a penalty.

(f) Income of Co-Purchasers. The income of all co-purchasers and/or occupants shall be taken into account in determining whether a household is a Low Income Household.

(g) Principal Place of Residence. A purchaser of an Affordable Unit shall not qualify as a Low Income Household, unless that purchaser agrees to reside in the Affordable Unit as such purchaser’s principal place of residence during the entire period that the Affordable Unit is owned by such purchaser.

5. Release and Termination. The Authority shall partially release and terminate this Agreement Affecting Real Property, with respect to each Affordable Unit, upon the last to occur of: (i) the sale of the Affordable Unit; (ii) the Low-Income Household’s execution of the First-Time Homebuyer Note, as defined in the AHA; (iii) the recordation against the individual Affordable Unit of the Resale Restriction, as defined in the AHA; and (iv) the recordation against the individual Affordable Unit of the deed of trust securing the First-Time Homebuyer Note and the Resale Restriction.

6. Foreclosure by Court Action. The Authority may in its sole and absolute discretion foreclose the lien created hereby by foreclosing on the Deed of Trust securing this Agreement Affecting Real Property or by court action in the manner provided by the laws then applicable to this Agreement Affecting Real Property, in either case the Developer agrees to pay all costs and expenses thereof, including reasonable attorneys' fees as the court may determine.

7. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and will be effectively served upon personal delivery or, if mailed, no later than 48 hours after deposit in first class or certified United States mail, postage prepaid, sent to:

To Authority: Housing Authority of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

To Developer: San Diego Habitat for Humanity, Inc.
10222 San Diego Mission Road
San Diego, CA 92108

which addresses may be changed by written notice.

8. Standing, Equitable Remedies; Cumulative Remedies. Developer expressly agrees and declares that the Authority or its successors shall be the proper party and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity, to enforce the provisions hereof and/or to recover damages for any default hereunder, notwithstanding the fact that such damages or the detriment arising from such a default may have actually been suffered by some other person or by the public at large. Further, Developer expressly agrees that receivership, injunctive relief and specific performance are proper pre-trial and/or post-trial remedies hereunder, and that, upon any default, and to assure compliance with this Agreement Affecting Real Property. Nothing in this paragraph, and no recovery to the Authority, shall restrict or limit the rights or remedies of persons or entities other than the Authority, against Developer in connection with the same or related acts by Developer, the Property or this Agreement Affecting Real Property.

9. General Provisions.

(a) Integration. The undersigned, and each of them, acknowledge and represent that no promise or inducement not expressed in this Agreement Affecting Real Property has been made in connection with this Agreement Affecting Real Property. This Agreement Affecting Real Property contains the entire agreement and understanding between the parties as to its subject matter.

(b) Waiver and Amendment. No provision of this Agreement Affecting Real Property, or breach of any provision, can be waived except in writing. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. Except as otherwise provided herein, this Agreement Affecting Real Property may be amended, modified or rescinded only in writing signed by Developer and the Authority.

(c) Time of Essence. Time is expressly declared to be of the essence in this Agreement Affecting Real Property, and of every provision in which time is an element.

(d) Captions. Paragraph titles and captions contained in this Agreement Affecting Real Property are inserted as a matter of convenience and for reference, and are not a substantive part of this Agreement Affecting Real Property.

(e) Further Assurances. The parties each agree to sign any additional documents, which are reasonably necessary to carry out this Agreement Affecting Real Property or to accomplish its intent.

(f) Benefit and Burden. This Agreement Affecting Real Property shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. This Agreement Affecting Real Property is not intended to benefit any person other than the parties hereto.

(g) Governing Law. This Agreement Affecting Real Property has been entered into in the State of California, and shall be interpreted and enforced under California law.

(h) Attorneys' Fees. The prevailing party in any action, including, but not limited to, arbitration, a petition for writ of mandate, and/or an action for declaratory relief, brought to enforce, interpret or reform the provisions of this Agreement Affecting Real Property shall be entitled to reasonable attorneys' fees and costs (including, but not limited to, experts' fees and costs and trustee's fees, and including "costs" regardless of whether recoverable as such under statute) incurred in such action.

(i) Exhibits and Recitals Incorporated. All exhibits referred to in this Agreement Affecting Real Property are hereby incorporated in this Agreement Affecting Real Property by this reference, regardless of whether or not the exhibits are actually attached to this Agreement Affecting Real Property. The Recitals to this Agreement Affecting Real Property are hereby incorporated in this Agreement Affecting Real Property by this reference.

(j) Signatures. This Agreement Affecting Real Property may be signed in counterparts. All individuals signing this Agreement Affecting Real Property for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the Authority that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

**THE HOUSING AUTHORITY OF THE
CITY OF IMPERIAL BEACH, CALIFORNIA,**
a public body, corporate and politic

Dated: _____

By: _____

Gary Brown
Executive Director

APPROVED AS TO FORM AND LEGALITY:
JENNIFER LYON, CITY ATTORNEY
General Counsel to the Authority

By: _____

KANE, BALLMER & BERKMAN
Special Counsel to the Authority

By: _____
Theodore (Ted) M. Ballmer

[Signatures Continued on Following Page]

SAN DIEGO HABITAT FOR HUMANITY, INC.,
a California non-profit public benefit corporation

Dated: _____

By: _____

Name: _____

Its: _____

ATTEST:

Dated: _____

By: _____

Name: _____

Its: _____

ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On _____, 200__ before me, _____,
personally appeared _____ who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On _____, 200__ before me, _____,
personally appeared _____ who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

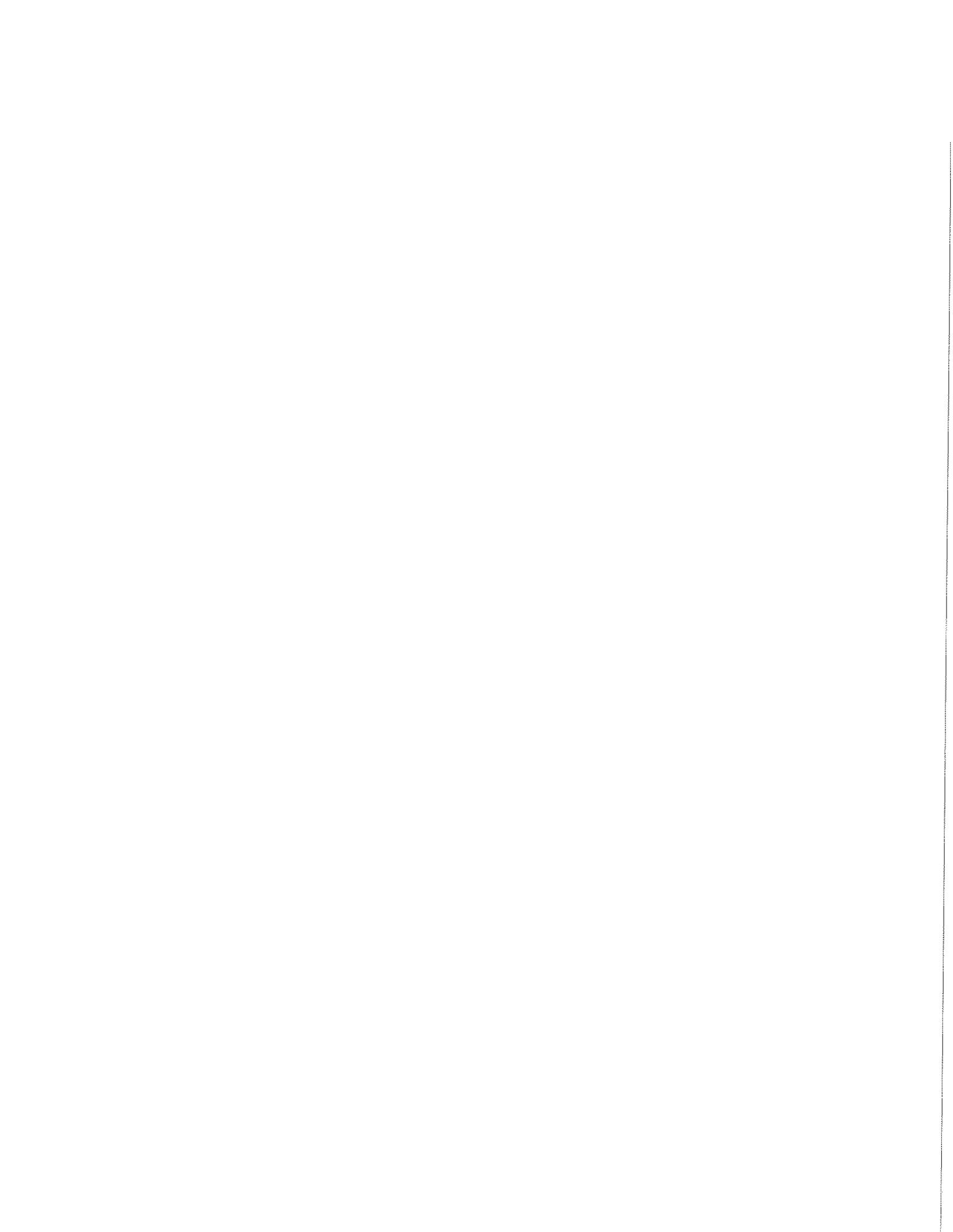
I certify under penalty of perjury under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Attachment No. 12
Environmental Indemnity

[Behind this page.]



UNSECURED ENVIRONMENTAL INDEMNITY AGREEMENT

THIS UNSECURED ENVIRONMENTAL INDEMNITY AGREEMENT (“*Indemnity*”) is dated as of this ____ day of _____, 201__, by San Diego Habitat for Humanity, Inc., a California nonprofit corporation (“*Indemnitor*”), to and for the benefit of the Housing Authority of the City of Imperial Beach (“*Authority*”), its successors and assigns and, to the extent not otherwise referenced, the Indemnified Parties (as hereinafter defined).

RECITALS

A. Authority has agreed to make a loan (the “*Loan*”) to Indemnitor as described in that certain Affordable Housing Agreement between Authority and Indemnitor, dated as of June 28, 2013 (the “*AHA*”) and that certain Note Secured by Deed of Trust made by Indemnitor in favor of Authority, dated on or of even date herewith (the “*Promissory Note*”), which Loan is secured by, among other things, a Deed of Trust executed by Indemnitor in favor of Authority (the “*Deed of Trust*”). The Deed of Trust encumbers the real property described on Exhibit A attached hereto (the “*Property*”).

B. It is a condition of Authority’s making the Loan that this Indemnity be executed and delivered by Indemnitor. Authority is making the Loan in reliance upon this Indemnity.

C. This Indemnity is unsecured and is separate from the security and other collateral being delivered by Indemnitor in connection with the making of the Loan.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of Authority making the Loan, and other valuable consideration, the receipt of which is hereby acknowledged, Indemnitor agrees as follows:

1. Indemnity.

(a) Subject to Sections 2, 3 and 4 below, Indemnitor hereby agrees to defend, protect, indemnify and hold harmless Authority, Authority’s affiliates, directors, officers, shareholders, agents and employees, and Authority’s participants, successors and assigns specified in Section 4 hereof (hereinafter, collectively, the “*Indemnified Parties*”), from and against, and shall reimburse the Indemnified Parties for, any and all actual out-of-pocket costs (including, without limitation, attorneys’ fees, expenses and court costs), expenses or losses arising from any claim, liability, damage, injunctive relief, injury to person, property or natural resources, fine, penalty, action or cause of action (collectively, “*Costs and Liabilities*”), incurred by or asserted against any Indemnified Party and arising directly or indirectly, in whole or in part, out of the release, discharge, deposit or presence, or alleged or suspected release, discharge, deposit or presence, of any Hazardous Materials at, on, within, under, about or from the Property, or in or adjacent to any part of the Property, or in the soil, groundwater or soil vapor on or under the Property, or elsewhere in

connection with the transportation of Hazardous Materials to or from the Property in violation of any Hazardous Materials Laws, whether or not known to Indemnitor or Indemnified Parties, whether foreseeable or unforeseeable, regardless of the source of such release, discharge, deposit or presence or, except as expressly provided to the contrary in Sections 2 and 4 hereof, regardless of when such release, discharge, deposit or presence occurred or is discovered. Without limiting the generality of the foregoing indemnity, such Costs and Liabilities shall include, without limitation, all actual out-of-pocket costs incurred by Indemnified Parties in connection with (i) determining whether the Property is in compliance with this Indemnity and with all applicable Hazardous Materials Laws or the amount of money required to remediate any environmental contamination, and causing the Property to be or become in compliance, with all applicable Hazardous Materials Laws, (ii) any removal or remediation of any kind and disposal of any Hazardous Materials present at, on, under or within the Property or released from the Property to the extent required by applicable Hazardous Materials Laws in effect at the time of such removal, remediation or disposal, and (iii) repair of any damage to the Property or any other property caused by any removal, remediation or disposal.

(b) Upon demand by any Indemnified Party, Indemnitor shall defend any investigation, action or proceeding in connection with any claim or liability, or alleged claim or liability, that would, if determined adversely to such Indemnified Party, be covered by the foregoing indemnification provisions, such defense to be at Indemnitor's sole cost and expense and by counsel reasonably approved by such Indemnified Party, which counsel may, without limiting the rights of an Indemnified Party pursuant to the next succeeding sentence of this Section 1(b), also represent Indemnitor in such investigation, action or proceeding. If any Indemnified Party determines reasonably and in good faith that its defense by Indemnitor is being conducted in a manner which is prejudicial to its interests, such Indemnified Party may elect to conduct its own defense through counsel of its own choosing and at the expense of Indemnitor.

(c) As used herein, the term "Hazardous Materials" means and includes any flammable, explosive, or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority or which, even if not so regulated, may or could pose a hazard to the health and safety of the occupants of the Property or of property adjacent to the Property, including, but not limited to, asbestos, PCBs, petroleum products and byproducts, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified in, pursuant to, or for purposes of, the California Solid Waste Management, Resource Recovery and Recycling Act (California Government Code §66700 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. §9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901, et seq.), Section 25117 or Section 25316 of the California Health & Safety Code; and any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; or any substances or mixture regulated under the Toxic Substance Control Act of 1976, as now or hereafter amended (15 U.S.C. §2601 et seq.); and any "toxic pollutant" under the Clean Water Act, as now or hereafter amended (33 U.S.C. §1251 et seq.); and any hazardous air pollutant under the Clean Air Act, as now or hereafter amended (42 U.S.C. §7901 et seq.).

Notwithstanding the above, the term “Hazardous Materials” shall not include small amounts of chemicals, cleaning agents and the like commonly employed in routine household uses in a manner typical of occupants in other similar residential properties provided they are used in compliance with applicable laws. The term “Hazardous Materials Laws” means any federal, state or local law, code, statute, ordinance, rule, regulation, rule of common law or guideline relating to Hazardous Materials now or hereafter enacted or promulgated (collectively, and including, without limitation, any such laws which require notice of the use, presence, storage, generation, disposal or release of any Hazardous Materials to be provided to any party).

2. Time Limits on Claims. Notwithstanding the foregoing provisions:

(a) No claim shall be made hereunder by any Indemnified Party unless and until any one of the following events shall have occurred: (i) repayment in full of the Loan (as evidenced by the release and reconveyance of the Deed of Trust); or (ii) vesting of title to the Property in Authority or any Indemnified Party through judicial or non-judicial foreclosure or acceptance of a deed in lieu thereof.

(b) Indemnitor shall not have any obligation under this Indemnity to an Indemnified Party with respect to any Costs and Liabilities that, prior to the first to occur of the events described in Section 2(a)(i) or (ii) above: (i) were actually known to Authority; (ii) were liquidated in amount, or were otherwise readily determinable in amount without undue delay; and (iii) would have been lawfully and properly includable as part of the secured indebtedness under the Deed of Trust in an action for a deficiency judgment following a judicial foreclosure sale of the Property.

(c) If any Indemnified Party or any affiliate of any Indemnified Party has acquired ownership of the Property through foreclosure or deed in lieu of foreclosure, the obligations of Indemnitor hereunder shall apply, without limitation, to all Costs and Liabilities that arise out of or are attributable to, whether directly or indirectly, ownership of the Property or any part thereof by any Indemnified Party or any such affiliate, or to the position of such Indemnified Party or such affiliate as an owner in the chain of title to the Property or any part thereof.

(d) If the Loan has been repaid in full, whether by voluntary payment or by foreclosure or deed in lieu of foreclosure, the obligations of Indemnitor hereunder shall continue to apply, without limitation, to all Costs and Liabilities that arise out of or are attributable to, whether directly or indirectly, any claim or allegation against an Indemnified Party relating to any act or omission of such Indemnified Party in respect of the Loan or the Property, or in connection with any exercise of such Indemnified Party’s rights under any of the Loan Documents.

3. Acts of Indemnified Parties.

(a) Notwithstanding anything to the contrary herein, Indemnitor shall not be liable hereunder to an Indemnified Party to the extent of that portion of any Costs and Liabilities which Indemnitor establishes is attributable to an affirmative act of such Indemnified Party, its agent or any successor in interest of an Indemnified Party at the Property which causes (i) the release, discharge, deposit or presence, or alleged or suspected release, discharge, deposit or presence of a Hazardous

Material at the Property, or (ii) material aggravation of a then existing Hazardous Material condition or occurrence at the Property, if and only if, in either such case referred to in (i) or (ii) above, such act was in violation of any Hazardous Materials Laws or was carried out without reasonable care under the circumstances.

(b) In addition, Indemnitor shall not be liable hereunder for that portion of any Costs and Liabilities which Indemnitor establishes is attributable to the introduction and initial release, discharge or deposit, or alleged or suspected introduction, initial release, discharge or deposit of a Hazardous Material at the Property by any party, other than Indemnitor or an affiliate of Indemnitor, at any time after Indemnitor's ownership interest in the Property terminates. Notwithstanding the foregoing, but subject to Sections 2 and 3(a) above and Section 4 below, the liability of Indemnitor hereunder shall otherwise remain in full force and effect after Authority or such affiliate of Authority so acquires title to the Property, including without limitation with respect to any Hazardous Materials which are discovered at the Property after the date Authority or such affiliate of Authority acquires title but which were actually introduced to the Property prior to the date of such acquisition.

4. Indemnified Parties. This Indemnity and Indemnitor's obligations hereunder shall inure to the benefit of and be enforceable only by (a) Authority, Authority's directors, officers, shareholders, agents and employees, (b) any person or entities to which any Authority participates, assigns or sells all or any portion of its interest in the Loan, or which otherwise succeeds to the interest of Authority under the Deed of Trust, whether by purchase or otherwise, and (c) any affiliate of Authority which acquires title to the Property at a foreclosure sale or by deed in lieu of foreclosure.

5. Unsecured Obligations. The obligations of Indemnitor hereunder are unsecured. This Indemnity is not intended to be, nor shall it be, secured by the Deed of Trust or any other instrument or agreement executed by Indemnitor or any other entity or person in favor of Authority or any Indemnified Party relating to the Loan (except for any guaranty) (such documents together with the Deed of Trust being referred to collectively herein as the "*Loan Documents*"). The obligations of Indemnitor under this Indemnity are independent of any indemnification or other obligations of Indemnitor under the Loan Documents with respect to any Hazardous Materials. The rights and remedies of the Indemnified Parties under this Indemnity shall be in addition to any other rights and remedies of such Indemnified Parties under the Loan Documents. In no event shall any provision of this Indemnity be deemed to be waiver of or to be in lieu of any right or claim, including without limitation any right of contribution or other right of recovery, that any person entitled to enforce this Indemnity might otherwise have against Indemnitor under any Hazardous Materials Laws. Any sums payable hereunder shall not be deemed to be based upon any diminution in or other impairment of the value of any collateral held by Authority to secure the Loan.

6. Interest on Unpaid Amounts. Any amount claimed hereunder by an Indemnified Party not paid by Indemnitor within thirty (30) days after written demand made by such Indemnified Party and accompanied by a reasonable summary of the amounts claimed, shall bear interest at the rate of ten percent (10%) per annum or the highest interest rate permitted by law, whichever is less.

7. Limitations on Liability. The liability of Indemnitor under this Indemnity shall in no way be limited or impaired by (a) any amendment or modification of the provisions of any of the Loan

Documents; (b) except as set forth in Sections 2, 3 and 4, any participation in or sale or assignment of the Loan Documents or any sale or transfer of all or part of the Property; (c) the release of Indemnitor or any person or entity from performance or observance of any of the agreements, covenants, terms, or conditions contained in any of the Loan Documents by operation of law; and, in any such case, whether with or without notice to Indemnitor and with or without consideration. Except as provided in Sections 2, 3 and 4, Indemnitor's obligations hereunder shall in no way be impaired, reduced or released by reason of (i) an Indemnified Party's omission or delay in exercising any right described herein or (ii) any act or omission of an Indemnified Party in connection with any notice, demand, warning, or claim regarding violations of codes, laws or ordinances governing the Property.

8. Recourse Obligations. Notwithstanding anything to the contrary in the Loan Documents, Indemnitor shall be personally liable on a recourse basis for the obligations of Indemnitor set forth herein.

9. Successors and Assigns. This Indemnity shall be continuing, irrevocable and binding upon each of the persons and entities comprising Indemnitor and their respective heirs, successors, and assigns.

10. Inconsistencies. In the event of any inconsistencies or conflicts between the terms of this Indemnity and the terms of the other Loan Documents (including any exculpatory language contained therein), the terms of this Indemnity shall control.

11. Separate Causes of Action. A separate right of action hereunder shall arise each time an Indemnified Party acquires knowledge of any matter described herein. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action.

12. Severability. If any provision of this Indemnity shall be determined to be unenforceable in any circumstances by a court of competent jurisdiction, then the balance of this Indemnity nevertheless shall be enforceable, and the subject provision shall be enforceable in all other circumstances.

13. Attorneys' Fees. In any action or proceeding brought by the Indemnified Parties to enforce any rights under this Indemnity, the prevailing party shall be entitled to all reasonable attorneys' fees and all costs, expenses and disbursements in connection with such action.

14. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and will be effectively served upon personal delivery or, if mailed, no later than 48 hours after deposit in first class or certified United States mail, postage prepaid, sent to:

To Authority: Housing Authority of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

To Developer: San Diego Habitat for Humanity, Inc.
10222 San Diego Mission Road
San Diego, CA 92108

which addresses may be changed by written notice.

15. Governing Law. This Indemnity shall be governed by and construed in accordance with the laws of the State of California.

16. Counterparts. This Indemnity may be executed in any number of counterparts and, as so executed, the counterparts shall constitute one and the same agreement. The parties agree that each such counterpart is an original and shall be binding upon all the parties, even though all of the parties are not signatories to the same counterpart.

17. Exhibits and Recitals Incorporated. All exhibits referred to in this Indemnity, if any, are hereby incorporated in this Indemnity by this reference, regardless of whether or not the exhibits are actually attached to this Indemnity. The Recitals to this Indemnity are hereby incorporated in this Indemnity by this reference.

18. Signature Authority. All individuals signing this Indemnity for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the Authority that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

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

IN WITNESS WHEREOF, this Indemnity is executed as of the day and year above written.

**THE HOUSING AUTHORITY OF THE
CITY OF IMPERIAL BEACH, CALIFORNIA,**
a public body, corporate and politic

Dated: _____

By: _____

Gary Brown
Executive Director

APPROVED AS TO FORM AND LEGALITY:
JENNIFER LYON, CITY ATTORNEY
General Counsel to the Authority

By: _____

KANE, BALLMER & BERKMAN
Special Counsel to the Authority

By: _____
Theodore (Ted) M. Ballmer

[Signatures Continued on Following Page]

SAN DIEGO HABITAT FOR HUMANITY, INC.,
a California non-profit public benefit corporation

Dated: _____

By: _____

Name: _____

Its: _____

ATTEST:

Dated: _____

By: _____

Name: _____

Its: _____

Exhibit "A"

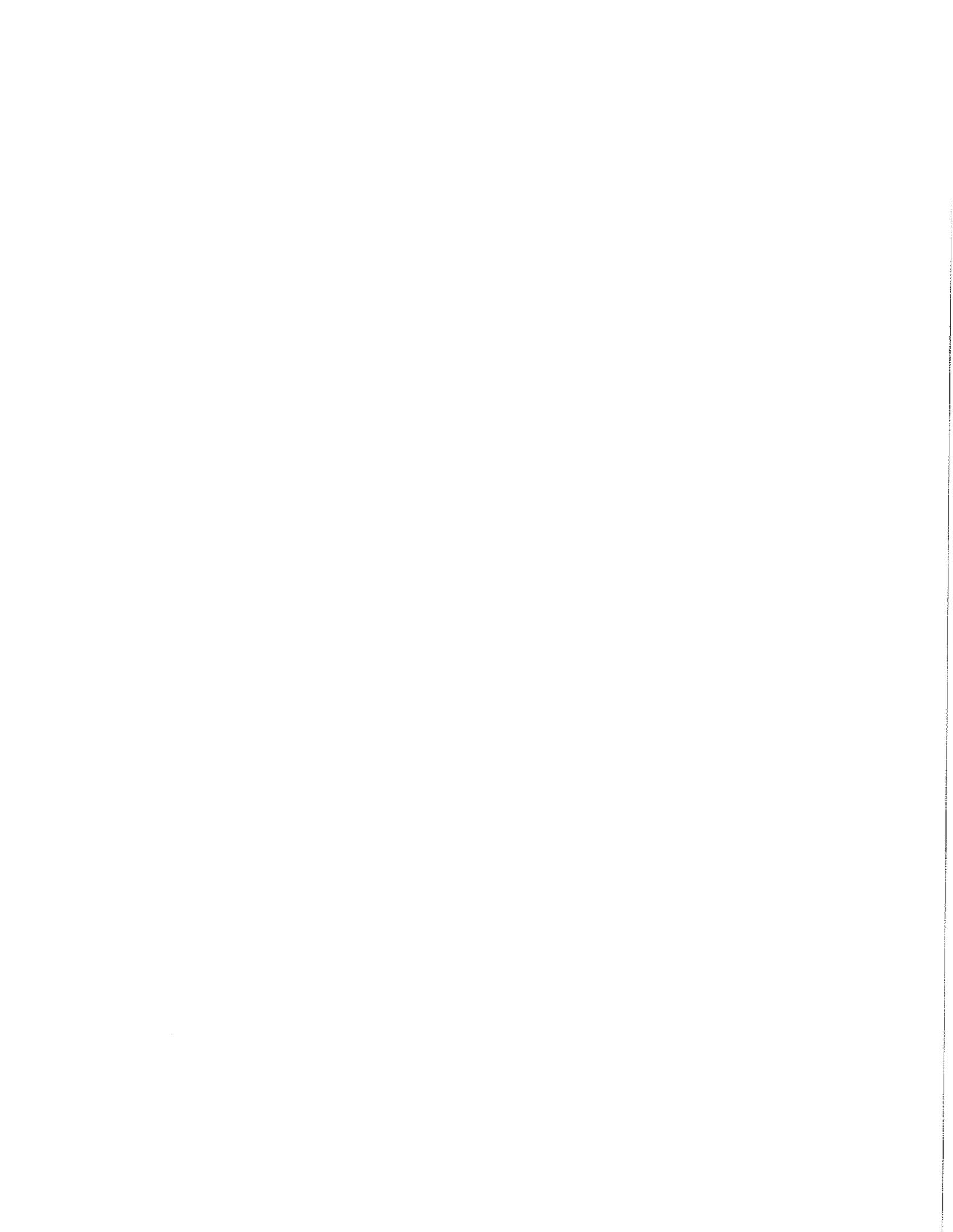
Legal Description

All that certain real property situated in the City of Imperial Beach, County of San Diego, State of California, described as follows:

All that certain real property situated in the City of Imperial Beach, County of San Diego, State of California, described as follows:

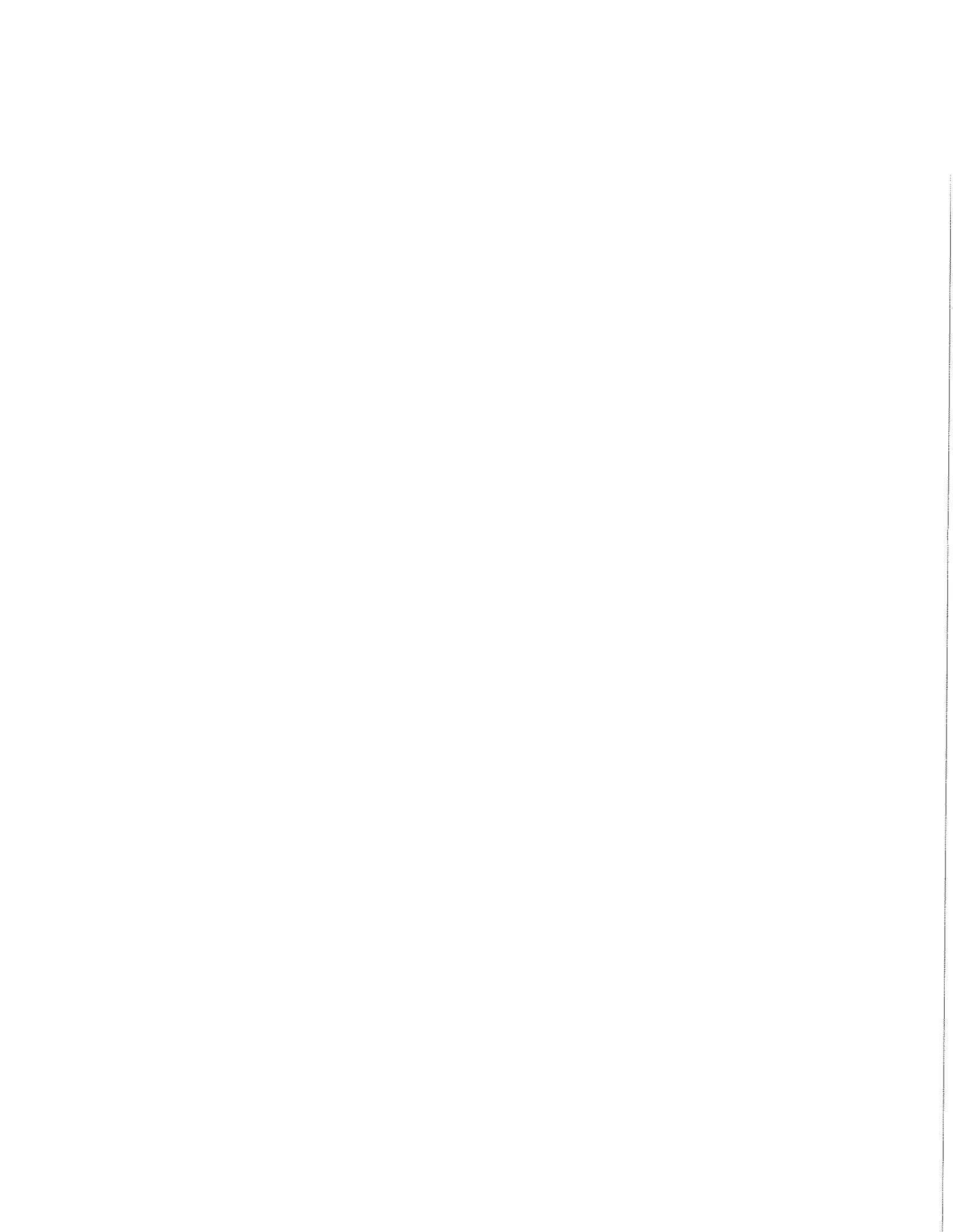
LOTS 21 AND 22 AND THE SOUTH 12.50 FEET OF LOT 23, ALL BEING IN BLOCK 108 OF SOUTH SAN DIEGO COMPANY'S ADDITION TO SOUTH SAN DIEGO, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 497, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 4, 1887, TOGETHER WITH THAT PORTION OF THE NORTHERLY 10,000 FEET OF DONAX AVENUE LYING SOUTHERLY AND ADJACENT TO THE SOUTHERLY LINE OF SAID LOT 21 AS VACATED ON APRIL 2, 1979, BY RESOLUTION NO. 2543 OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH RECORDER APRIL 30, 1979, AS FILE NO. 79-177416 OF OFFICIAL RECORDS.

Also more commonly known as Assessor's Parcel Number 626-282-12.



Attachment No. 13
First-Time Homebuyer Note

[Behind this page.]



APN:

FTHB # _____

PROMISSORY NOTE SECURED BY DEED OF TRUST

\$ _____, 201__

[Property Address]

1. Owner's Promise to Pay. For value received, the undersigned, _____ and _____, [[[Husband and Wife as Joint Tenants-if and as applicable]]] (collectively, along with all successors and assigns, the "**Owner**"), promise to pay to the Imperial Beach Housing Authority ("**Authority**"), or order, the sum of \$ _____ and 00/Cents (\$ _____) with interest accruing thereon as hereinafter provided, and payable as set forth below. It is understood that Authority may transfer this Note.

2. No Interest Except in the Event of a Default. This Note will bear no interest, except in the event of a Default. The following shall each be deemed "Defaults" under this Note: (i) an uncured Owner default under the terms of this Note, the Deed of Trust securing this Note and/or the Affordable Housing Resale Restrictions, Option to Designate Eligible Purchasers and Option to Purchase Upon Default ("**Resale Restriction**") affecting the Property; (ii) a Transfer (as defined in the Resale Restriction) that is not approved by the Authority in writing; or (iii) any Owner default under the terms of the First Lien (as defined in the Resale Restriction). In the event of a Default, the principal shall become due and immediately payable together with interest which shall be deemed to have accrued from the date of this Note at the greater of the following amounts:
 - a) The rate equal to the interest rate on the First Lien; or
 - b) ten percent (10%) per annum.

3. Assumption. In the event of a Transfer that is approved by the Authority in writing, the Owner's obligation to repay this Note shall be assumed by the subsequent purchasers of the Restricted Unit.

4. Deemed Satisfaction. This Note shall be deemed satisfied (no payments shall be due or owing) on the forty-fifth (45th) anniversary of the date the Resale Restriction is recorded against the Restricted Unit, provided that the Owner and its successors in interest to the Restricted Unit remained in compliance with the terms of the Resale Restriction throughout the Affordability Period. At such time, the Authority shall return the original of this Note to the then Owner of the Restricted Unit and the Deed of Trust securing this Note shall be fully-reconveyed by the Authority.

5. No Prepayment. Owner shall have no right to prepay this Note. FURTHERMORE, PAYMENT OF THIS NOTE SHALL NOT AFFECT THE OWNER'S OBLIGATION TO RESTRICT THE OCCUPANCY AND SALE OF THE RESTRICTED UNIT AS SET FORTH IN THE RESALE RESTRICTION.

6. Attorneys' Fees. The parties agree that the prevailing party in litigation for the breach and/or interpretation and/or enforcement of the terms of this Note shall be entitled to their expert witness fees, if any, as part of their costs of suit, and reasonable attorneys' fees as may be awarded by the court, pursuant to California Code of Civil Procedure ("CCP") Section 1033.5 and any other applicable provisions of California law, including, without limitation, the provisions of CCP Section 998.

7. Time. Time is of the essence herein.

8. Amendments. This Note may not be modified or amended except by an instrument in writing expressing such intention and signed by an authorized representative of Authority and Owner.

9. Severability. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity and binding effect of the remainder of this Note upon the parties.

10. Owner's Waivers. Owner waives any rights to require Authority to perform certain acts. Those acts are:

- (a) To demand payment of amounts due (known as "presentment").
- (b) To give notice that amounts due have not been paid (known as "notice of dishonor").
- (c) To obtain an official certification of non-payment (known as "protest").

11. Giving of Notices. Any party may change its address by a notice given to the other party in the manner set forth in this Section. Any notice that must be given to Owner under this Note will be given by personal delivery, first class mail or by certified mail, return receipt requested, addressed to Owner at the address set forth above. A notice that must be given to Authority under this Note will be given by personal delivery or certified mail, return receipt request, to:

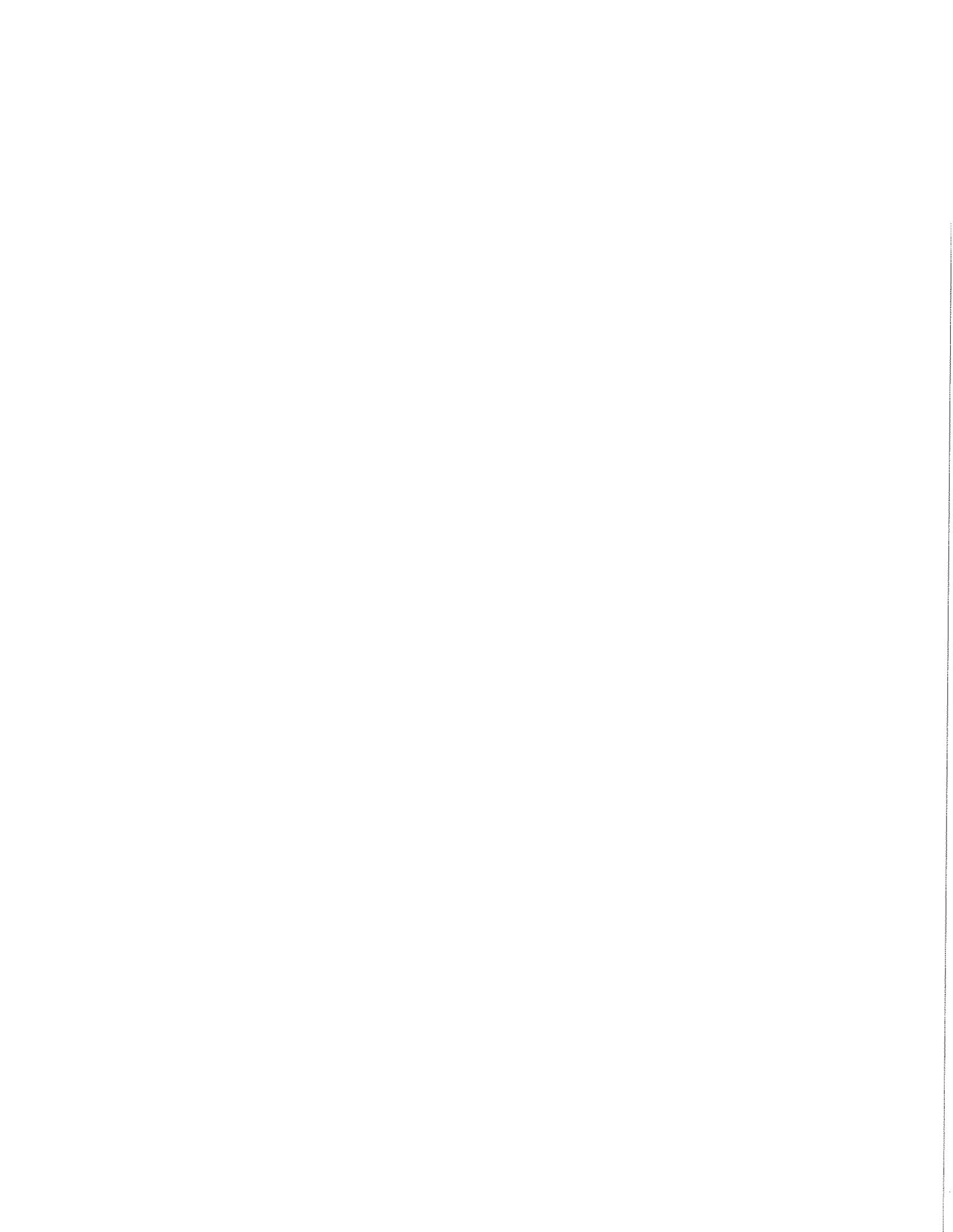
Housing Authority of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial City, CA 91932

12. Joint and Several Responsibility. If more than one person executes this Note, each is fully and personally obligated to pay the full amount owed and to keep all promises in this Note.

OWNER:

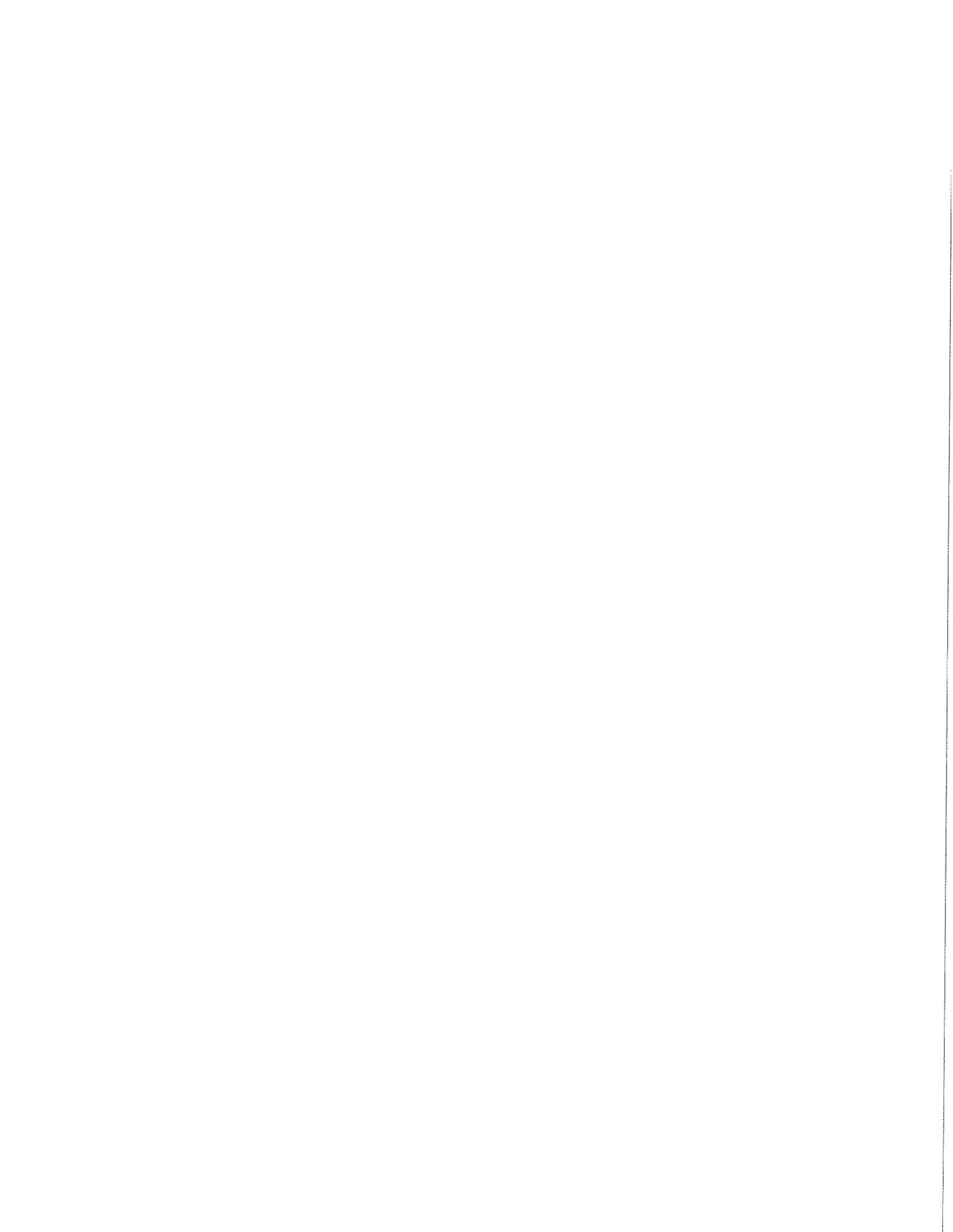
Print Name: _____

Print Name: _____



Attachment No. 14
First-Time Homebuyer Deed of Trust

[Behind this page.]



**NO CHARGE ON THIS DOCUMENT
FOR THE BENEFIT OF
THE CITY OF IMPERIAL BEACH**

**Recording Requested By
And When Recorded Mail To:**
Housing Authority
of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

**DEED OF TRUST
(Property Address)**

THIS DEED OF TRUST is made this _____ day of _____, 2014, among _____ and _____, [[[Husband and Wife as Joint Tenants-if and as applicable]]] ("**Trustor**"), the Housing Authority of the City of Imperial Beach ("**Trustee**"), and the Housing Authority of the City of Imperial Beach ("**Beneficiary**"), whose address is 825 Imperial Beach Boulevard, Imperial Beach, California 91932;

TRUSTOR HEREBY irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, all that property in the City of Imperial Beach, County of San Diego, State of California, described as:

(See Legal Description - Exhibit "A")

FOR THE PURPOSE OF SECURING:

- (a) Payment of the indebtedness evidenced by that certain Promissory Note Secured by Deed of Trust, of even date herewith executed by Trustor, in the principal sum of _____ and No/100 Dollars (\$ _____), and any renewal, extension, or modification of the promissory note (the "**Note**");
- (b) Any additional sums and interest that may hereafter be loaned to the then record owner of the Property by Beneficiary, when evidenced by another note or notes reciting that it or they are so secured;
- (c) That certain Affordable Housing Resale Restrictions, Option to Designate Eligible Purchasers and Option to Purchase Upon Default ("**Resale Restriction**"); and
- (d) The performance of each agreement contained in this Deed of Trust.

A. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

1. Maintenance and Repair. To keep the Property in good condition and repair; to pay when due all claims for labor performed and materials furnished for the Property; to comply with all laws affecting the Property or requiring any alterations or improvements to be made on the Property; not to commit or permit waste of the Property; not to commit, suffer, or permit any act upon the Property in violation of law; and to cultivate, maintain the landscaping, and do all other acts that from the character or use of the Property may be reasonably necessary.
2. Fire Insurance. To provide, maintain, and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary as its interest may appear. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured by this Deed of Trust and in any order determined by Beneficiary, or at the option of Beneficiary the entire amount so collected or any part of that amount may be released to Trustor, except that if the proceeds of the award for any taking or injury to the Property or the amount of such proceeds plus funds provided by Trustor is sufficient to allow for the repair and restoration of the Property and such repair and/or restoration is physically and legally possible, then the Trustor shall use the proceeds of the award to timely effectuate such repair and/or restoration. Upon receipt of such proceeds, Beneficiary may hold the proceeds as further security, or apply or release them in the same manner and with the same effect as provided in this Deed of Trust for the disposition of proceeds of fire or other insurance. This application or release shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice.
3. Defense of Security. To appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.
4. Payment of Liens and Taxes. To pay, at least ten (10) days before delinquency, all taxes and assessments affecting the Property, including assessments on appurtenant water stock, all encumbrances, charges, and liens, with interest, on the Property or any part of the Property, which appear to be prior or superior to this Deed of Trust; and all costs, fees, and expenses of this Trust. If Trustor fails to make any payment or to do any act as provided in this Deed of Trust, then Beneficiary or Trustee may (but is not obligated to) make the payment or do the act in the required manner and to the extent deemed necessary by Beneficiary or Trustee to protect the security of this Deed of Trust. The performance by Beneficiary or Trustee of such an act shall not require notice to or demand upon Trustor and shall not release Trustor from any obligation under this Deed of Trust. Beneficiary or Trustee shall also have the following related rights and powers: to enter upon the Property for the foregoing purposes; to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee; to pay, purchase, contest, or compromise any encumbrance, charge, or lien that in the judgment of either appears to be prior or superior to this Deed of Trust; to employ counsel; and to pay necessary expenses and costs, including attorneys' fees.

5. Reimbursement of Costs. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest from date of expenditure at the amount allowed by law in effect at the date of this Deed of Trust, and to pay any reasonable amount demanded by Beneficiary (up to the maximum allowed by law at the time of the demand) for any beneficiary statement requested by Trustor or any other beneficiary of a Deed of Trust encumbering the Property regarding the obligation secured by this Deed of Trust.

6. Use. That Trustor will not permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.

7. Incorporation of Note and Resale Restriction. That the Note and Resale Restriction are incorporated herein by reference and made a part of this Deed of Trust.

8. Performance of Other Obligations. To perform, in a timely manner, each agreement and covenant by and between Trustor on any and all notes, loans and deeds of trust that are senior and/or junior to this Deed of Trust. A default in any of these obligations, beyond any applicable cure period, shall constitute a default under this Deed of Trust.

B. THE PARTIES AGREE THAT:

9. Waiver of Late Payments. By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any indebtedness secured by this Deed of Trust.

10. Trustee's Powers. Upon written request of Beneficiary and presentation of this Deed of Trust, Trustee may (a) reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of all or any part of the Property; (c) join in granting any easement on the Property; or (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge of this Deed of Trust. Trustee need not provide Trustor with notice before taking any of the foregoing actions, and shall not be liable for the proper performance of the act. The exercise by Trustee of any of the foregoing powers shall not affect the personal liability of any person for payment of the indebtedness secured by this Deed of Trust, or the lien of this Deed of Trust on the remaining property as security for the repayment of the full amount secured by this Deed of Trust.

11. Assignment of Rents. As additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority during the continuance of these Trusts, to collect the rents, issues, and profits of the Property, but reserves the right, prior to any default by Trustor in payment of any indebtedness secured by this Deed of Trust or in the performance of any agreement under this Deed of Trust, to collect and retain these rents, issues, and profits as they become due and payable. Upon any such default, Beneficiary may, without notice and without regard to the adequacy of the security for the indebtedness secured by this Deed of Trust, either personally or by agent or court-appointed receiver, do the following: enter upon and take possession of the Property or any part of the Property; sue for or otherwise collect all rents, issues, and profits, including those past due and

unpaid; and apply these rents, issues, and profits, less costs and expenses of operation and collection (including reasonable attorneys' fees), upon any indebtedness secured by this Deed of Trust, in any order determined by Beneficiary. The exercise of the foregoing rights by Beneficiary shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice.

12. Default and Foreclosure. Upon default by Trustor in the payment of any indebtedness secured by this Deed of Trust or in the performance of any obligation under this Deed of Trust, the Resale Restriction and/or the Note, Beneficiary may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee a written declaration of default and demand for sale and a written notice of default and election to sell the Property. Trustee shall cause the notice of default and election to sell to be recorded. Beneficiary also shall deposit with Trustee this Deed of Trust, a copy of the Agreement, and all other documents evidencing obligations secured by this Deed of Trust. After the required time period has lapsed following the recordation of the notice of default, and after notice of sale has been given as required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place specified in the notice of sale, either as a whole or in separate parcels, and in any order determined by Trustee, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser at the auction its deed conveying the Property sold, but without any covenant or warranty, express or implied. Absent manifest error, the recital in the deed of any matter or fact shall be conclusive proof of the truthfulness of the recital. Any person, including Trustor, Trustee, or Beneficiary, may purchase at the sale. After deducting all costs, fees, and expenses of Trustee and Beneficiary under this paragraph, including costs of procuring evidence of title incurred in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms of this Deed of Trust, not then repaid, with accrued interest at the amount allowed by law in effect at the date of this Deed of Trust; all other sums then secured by this Deed of Trust; and the remainder, if any, to the person or persons legally entitled to the remaining proceeds.

13. Further Encumbrances. Should the undersigned agree to or actually sell, convey, Transfer (as defined in the Resale Restriction), dispose of, or further encumber the Property, or any part of it, without first obtaining the written consent of the Beneficiary, then all obligations secured by this Deed of Trust may be declared due and payable, at the option of the Beneficiary. Consent to one transaction of this type will not constitute a waiver of the right to acquire consent to future or successive transactions.

14. General Provisions. This Deed of Trust applies to, inures to the benefit of, and binds all parties to this Deed of Trust and their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall mean the Housing Authority of the City of Imperial Beach, and the heirs, legatees, devisees, administrators, executors, and assigns of any such person. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

15. Substitution of Trustees. Beneficiary, or any successor in ownership of any indebtedness secured by this Deed of Trust, may from time to time, by written instrument, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust. When executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, the substitution instrument shall be conclusive proof of proper substitution of the successor Trustee or Trustees. Any successor Trustee or Trustees shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers, and duties.

16. Cumulative Powers and Remedies. The powers and remedies conferred in this Deed of Trust are concurrent and cumulative to all other rights and remedies provided in this Deed of Trust or given by law. These powers and remedies may be exercised singly, successively, or together, and as often as deemed necessary.

17. Conclusiveness of Recitals. The recitals contained in any reconveyance, trustee's deed, or any other instrument executed by the Trustee from time to time under the authority of this Deed of Trust or in the exercise of its powers or the performance of its duties under this Deed of Trust, shall be conclusive evidence of their truth, whether stated as specific and particular facts, or in general statements or conclusions absent manifest error. Further, the recitals shall be binding and conclusive upon the Trustor, its heirs, executors, administrators, successors, and assigns, and all other persons.

18. Attorneys' Fees. If any action is brought for the foreclosure of this Deed of Trust or for the enforcement of any provision of this Deed of Trust (whether or not suit is filed), Trustor agrees to pay all costs and expenses of Beneficiary and Trustee, including reasonable attorneys' and experts' fees; and these sums shall be secured by this Deed of Trust.

19. Inspections. Trustor shall permit Beneficiary and its agents or representatives, to inspect the Property at any and all reasonable times, with at least 24 hours advance notice. Inspections shall be conducted so as not to interfere with the tenants' use and enjoyment of the Property.

20. Hazardous Materials Defined. For purposes of this Deed of Trust, "Hazardous Materials" mean and include any hazardous, toxic or dangerous waste, substance or material including, without limitation, flammable explosives, radioactive materials, asbestos, hazardous wastes, toxic substances and any materials or substances defined as hazardous materials, hazardous substances or toxic substances in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended (42 U.S.C. §9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901, et seq.), and those substances defined as hazardous wastes in §25117 of the California Health and Safety Code or as hazardous substances in §25316 of the California Health and Safety Code or in any regulations promulgated under either such law, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

21. Trustor's Hazardous Materials Representations and Warranties and Indemnity. In addition to the general and specific representations, covenants and warranties set forth in this Deed of Trust or otherwise, Trustor represents, covenants and warrants, with respect to Hazardous Materials, as follows:

(a) Neither Trustor nor, to the best knowledge of Trustor, any other person, has ever caused or permitted any Hazardous Materials to be manufactured, placed, held, located or disposed of on, under or at the Property or any part thereof, and neither the Property nor any part thereof, or any property adjacent thereto, has ever been used (whether by the Trustor or, to the best knowledge of the Trustor, by any other person) as a manufacturing site, dump site or storage site (whether permanent or temporary) for any Hazardous Materials;

(b) Trustor hereby agrees to indemnify Beneficiary, its officers, employees, contractors and agents, and hold Beneficiary, its officers, employees, contractors and agents harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Beneficiary, its officers, employees, contractors or agents for, with respect to, or as a direct or indirect result of, the presence or use, generation, storage, release, threatened release or disposal of Hazardous Materials on or under the Property or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials from the Property (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials) regardless of whether or not caused by or within the control of Trustor. Notwithstanding the foregoing, Trustor's obligations under this section shall not apply to any losses, liabilities, damages, injuries, costs, expenses, or claims which arise out of or relate to Hazardous Materials which (i) were present, generated, released, or stored on the Property on or before the date that Trustor acquired title to the Property or (ii) are generated, released or stored on the Property after the date that Beneficiary takes possession thereof.

(c) Trustor has not received any notice of (i) the happening of any event involving the use, spillage, discharge, or cleanup of any Hazardous Materials ("Hazardous Discharge") affecting Trustor or the Property or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, noise emissions or any other environmental, health or safety matter affecting Trustor or the Property ("Environmental Complaint") from any person or entity, including, without limitation, the United States Environmental Protection Agency ("EPA"). If Trustor receives any such notice after the date hereof, then Trustor will give, within seven (7) business days thereafter, oral and written notice of same to Beneficiary.

(d) Without limitation of Beneficiary's rights under this Deed of Trust, Beneficiary shall have the right, but not the obligation, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Materials or Environmental Complaint upon its receipt of any notice from any person or entity, including without limitation, the EPA, asserting the existence of any Hazardous Materials or an Environmental Complaint on or pertaining to the Property which, if true,

could result in an order, suit or other action against Trustor affecting any part of the Property by any governmental agency or otherwise which, in the sole opinion of Beneficiary, could jeopardize its security under this Deed of Trust. All reasonable costs and expenses incurred by Beneficiary in the exercise of any such rights shall be secured by this Deed of Trust and shall be payable by Trustor upon demand together with interest thereon at a rate equal to the highest rate payable under the note secured hereby.

(e) The foregoing representation, covenants, indemnities and warranties shall be continuing and shall be true and correct for the period from the date hereof to the release of this Deed of Trust (whether by payment of the indebtedness secured hereby or foreclosure or action in lieu thereof), and these representations, covenants, indemnities and warranties shall survive such release.

22 Authority to Sign. All individuals signing this Deed of Trust for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the Beneficiary that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

TRUSTOR:

Print Name: _____

Print Name: _____

ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On _____, 201__, before me, _____,
personally appeared _____ who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On _____, 201__, before me, _____,
personally appeared _____ who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Legal Description of the Property

[To be inserted.]

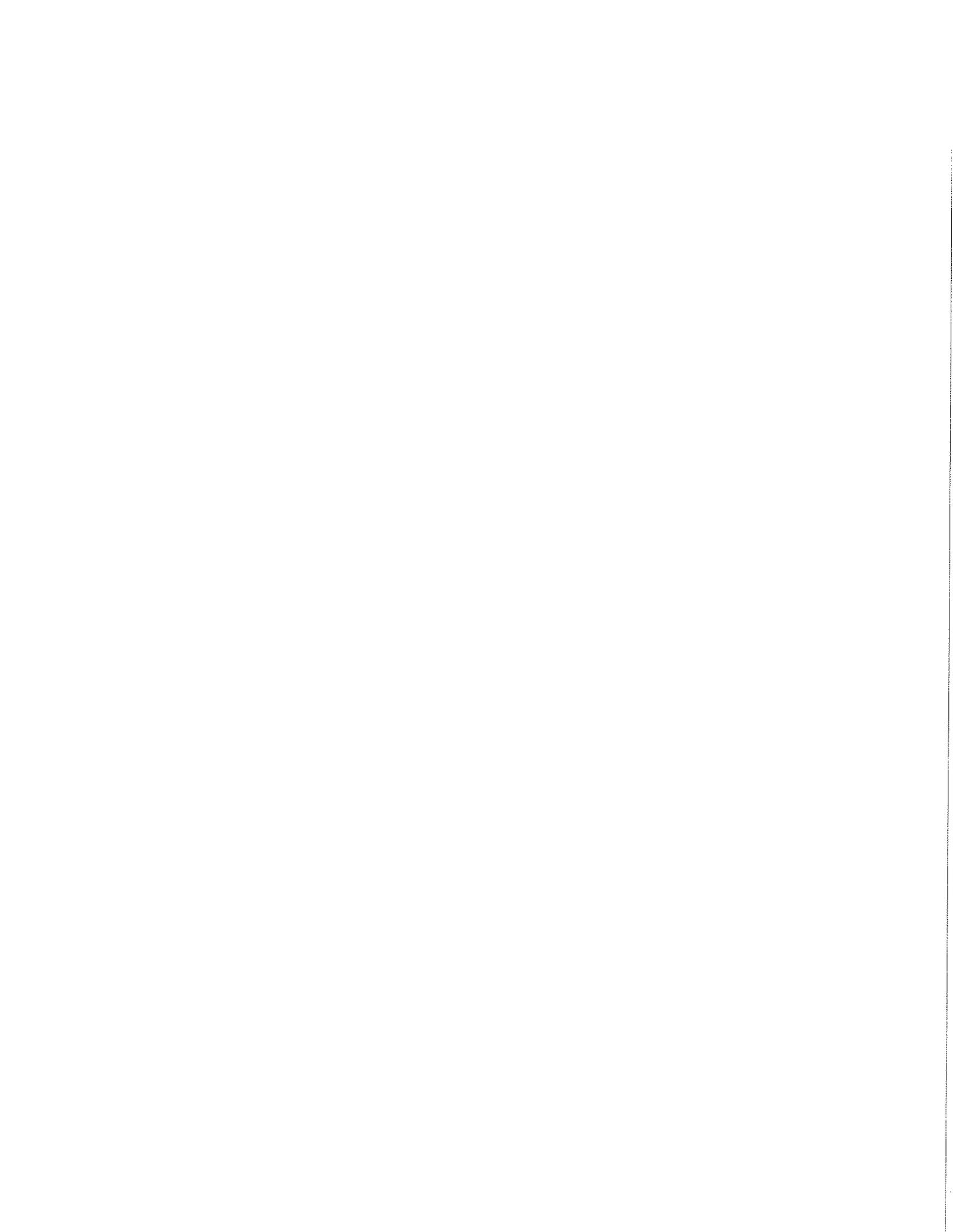


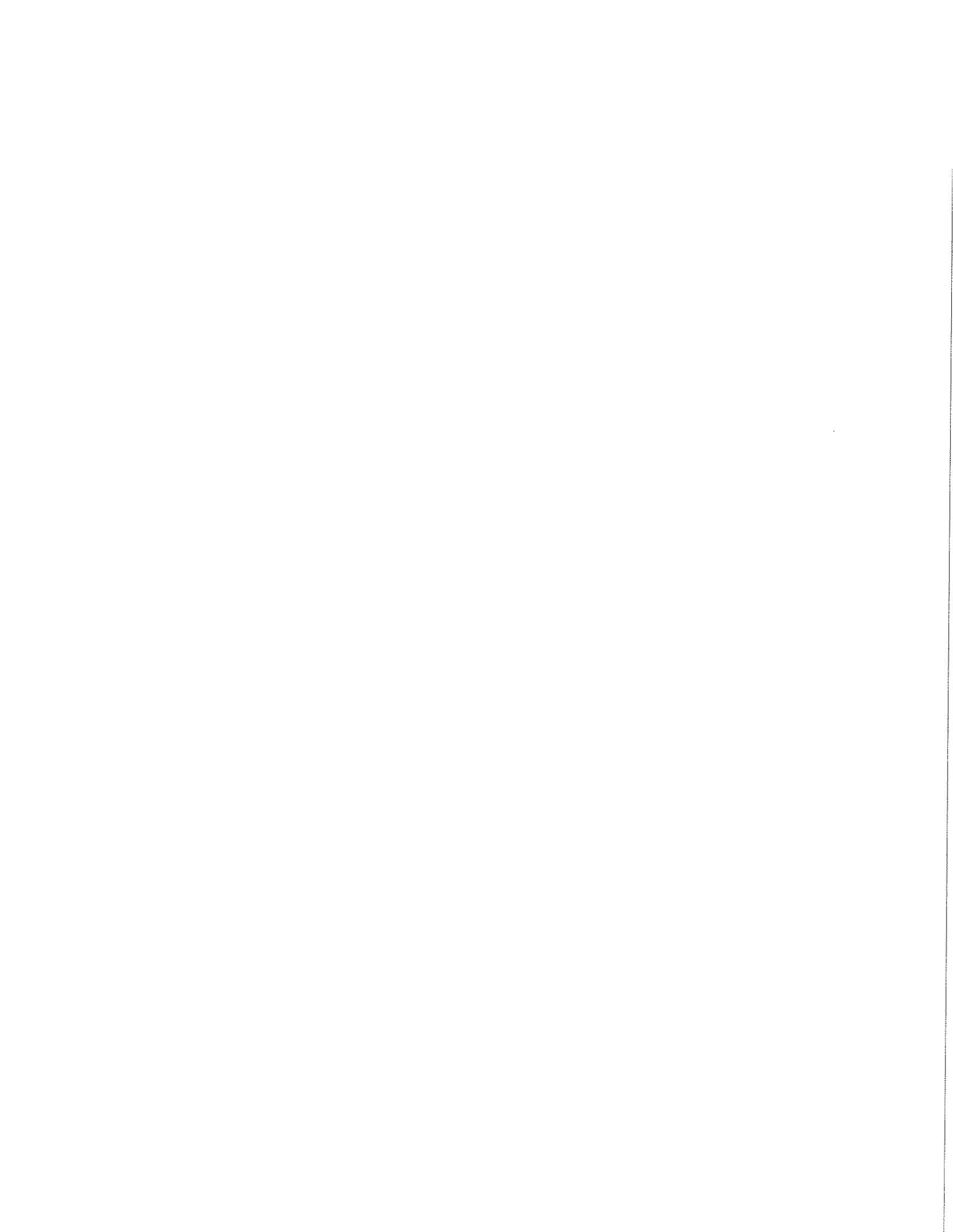
Exhibit "A"

Legal Description

All that certain real property situated in the City of Imperial Beach, County of San Diego, State of California, described as follows:

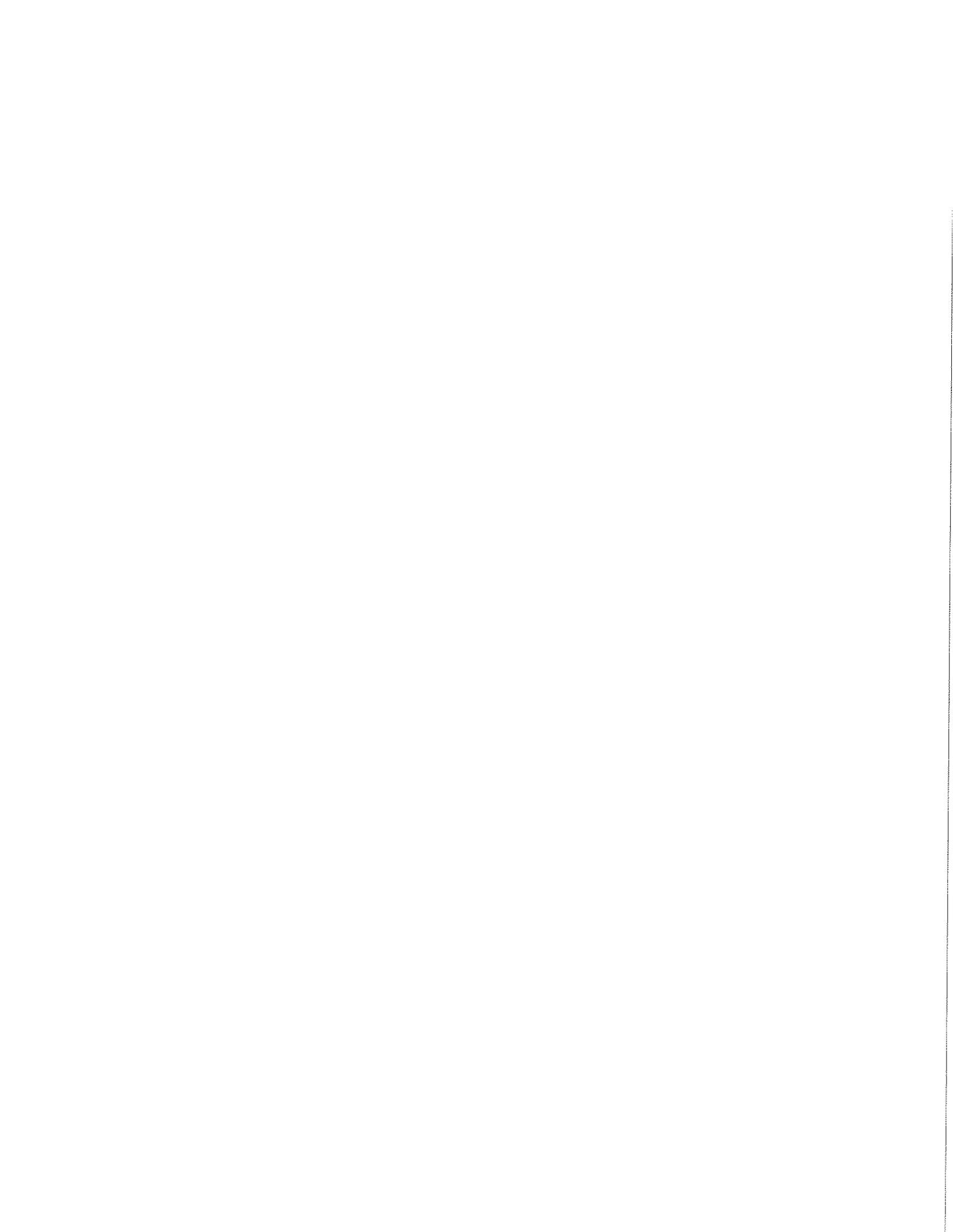
LOTS 21 AND 22 AND THE SOUTH 12.50 FEET OF LOT 23, ALL BEING IN BLOCK 108 OF SOUTH SAN DIEGO COMPANY'S ADDITION TO SOUTH SAN DIEGO, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 497, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 4, 1887, TOGETHER WITH THAT PORTION OF THE NORTHERLY 10,000 FEET OF DONAX AVENUE LYING SOUTHERLY AND ADJACENT TO THE SOUTHERLY LINE OF SAID LOT 21 AS VACATED ON APRIL 2, 1979, BY RESOLUTION NO. 2543 OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH RECORDER APRIL 30, 1979, AS FILE NO. 79-177416 OF OFFICIAL RECORDS.

Also more commonly known as Assessor's Parcel Number 626-282-12.



Attachment No. 15
Notice of Affordability Restrictions

[Behind this page.]



Recording Requested By:
Housing Authority
of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

And When Recorded Mail To:
Housing Authority
of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

**NOTICE OF AFFORDABILITY RESTRICTIONS
ON TRANSFER OF PROPERTY
(HEALTH AND SAFETY CODE §33334.3(f)(3)(B))**

NOTICE IS HEREBY PROVIDED AS FOLLOWS:

1. San Diego Habitat for Humanity, Inc., a California nonprofit corporation ("*Habitat*"), is the owner of that certain real property located in the City of Imperial Beach, California, more particularly described in the attached Exhibit "A" ("*Property*").

2. The Housing Authority of the City of Imperial Beach ("*Authority*") is providing partial financing for the Property with moneys from its Low and Moderate Income Housing Asset Fund.

3. Concurrently herewith Habitat and the Authority are causing the Property to be encumbered by that certain **AGREEMENT AFFECTING REAL PROPERTY** ("*Restrictions*"), which generally restrict the sale and occupancy of six (6) two-story townhomes at the Property to persons at or below 80% of AMI, as set forth in more detail therein.

4. The Restrictions expire forty-five (45) years from completion of construction of the Affordable Units as set forth in the Restrictions.

5. The Property is generally located at 776 10th Street, Imperial Beach, California.

6. The Property assessor's parcel number is 626-282-12.

7. In the event of any conflict between one or more provisions of this document and one or more provisions of the Restrictions, the provisions of the Restrictions shall apply.

This Notice is recorded for the purpose of providing notice only and it in no way modifies the provisions of the Restrictions.

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

Date: _____

By: _____

Gary Brown
Executive Director

APPROVED AS TO FORM AND LEGALITY:

JENNIFER LYON, CITY ATTORNEY
General Counsel to the Authority

By: _____

KANE, BALLMER & BERKMAN
Special Counsel to the Authority

By: _____

Theodore (Ted) M. Ballmer

CONSENT TO RECORDATION

The undersigned, owner of a fee interest in the real property legally described in Exhibit "A" hereto, hereby consents to the recordation of the foregoing Notice of Affordability Restrictions on Transfer of Property against said real property.

**SAN DIEGO HABITAT FOR
HUMANITY, INC.,**
a California nonprofit public benefit
corporation

Dated: _____

By: _____

Name: _____

Its: _____

ATTEST:

Dated: _____

By: _____

Name: _____

Its: _____

Exhibit "A"

Property Description

All that certain real property situated in the City of Imperial Beach, County of San Diego, State of California, described as follows:

LOTS 21 AND 22 AND THE SOUTH 12.50 FEET OF LOT 23, ALL BEING IN BLOCK 108 OF SOUTH SAN DIEGO COMPANY'S ADDITION TO SOUTH SAN DIEGO, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 497, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 4, 1887, TOGETHER WITH THAT PORTION OF THE NORTHERLY 10,000 FEET OF DONAX AVENUE LYING SOUTHERLY AND ADJACENT TO THE SOUTHERLY LINE OF SAID LOT 21 AS VACATED ON APRIL 2, 1979, BY RESOLUTION NO. 2543 OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH RECORDER APRIL 30, 1979, AS FILE NO. 79-177416 OF OFFICIAL RECORDS.

Also more commonly known as Assessor's Parcel Number 626-282-12.

State of California)

County of San Diego)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)

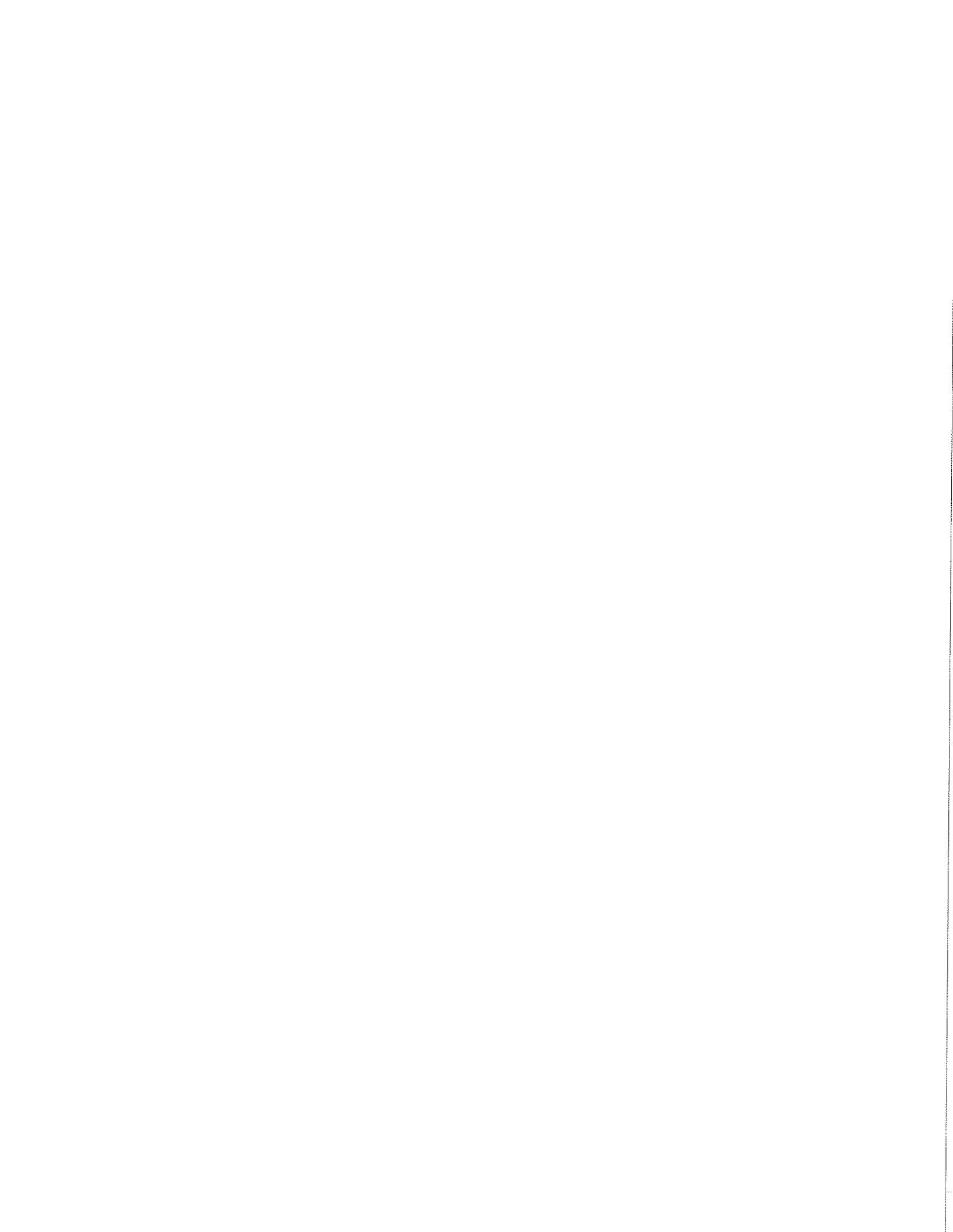
County of San Diego)

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

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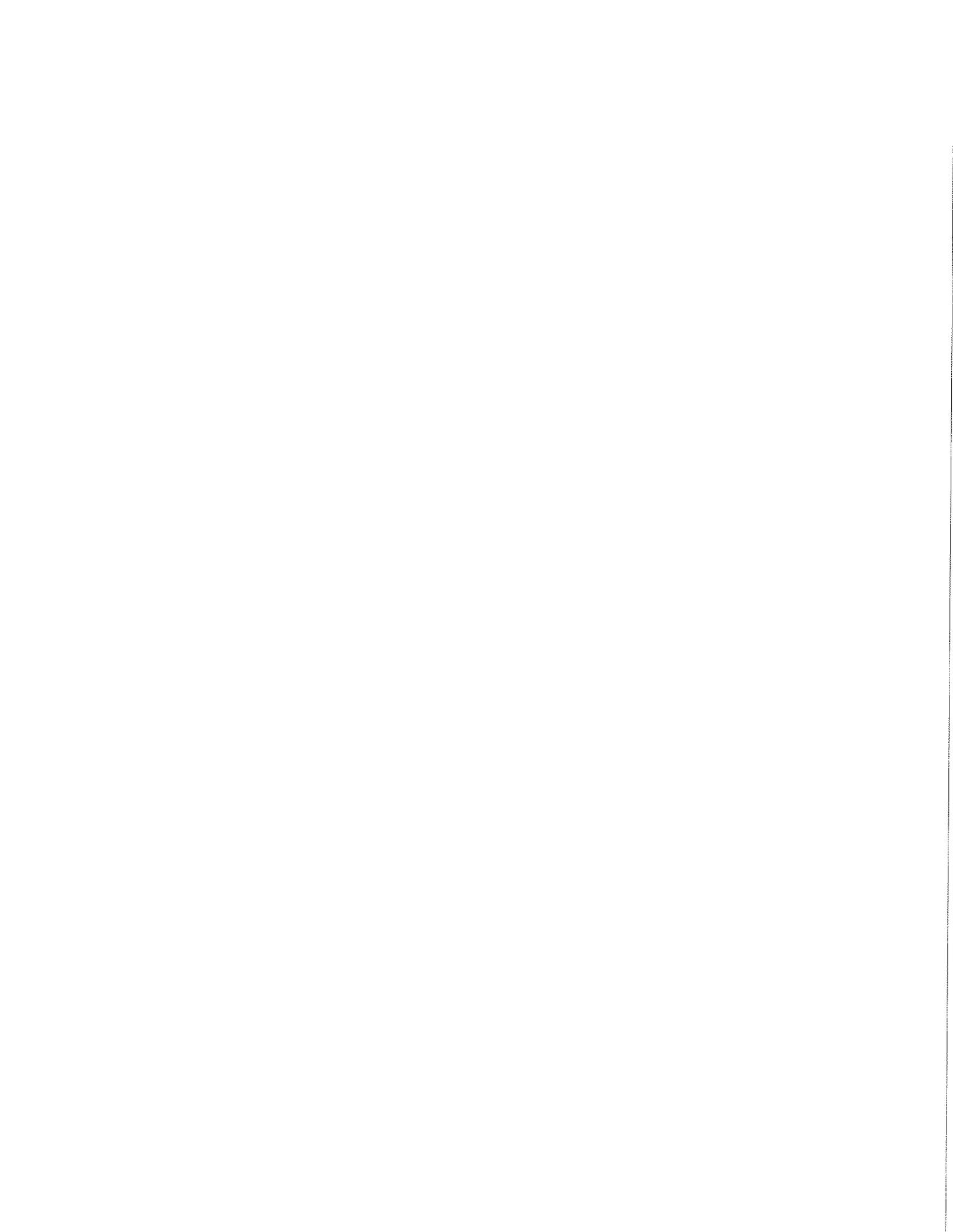
WITNESS my hand and official seal.

Signature _____ (Seal)



Attachment No. 16
Notice of Affordability Restrictions (Resale)

[Behind this page.]



**NO CHARGE ON THIS DOCUMENT
FOR THE BENEFIT OF
THE CITY OF IMPERIAL BEACH**

**Recording Requested By
And When Recorded Mail To:**

**Community Development Commission
of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932**

**NOTICE OF AFFORDABILITY RESTRICTIONS
ON TRANSFER OF PROPERTY
(HEALTH AND SAFETY CODE §33334.3(f)(3)(B))
([insert unit address])**

NOTICE IS HEREBY PROVIDED AS FOLLOWS:

1. _____ (“*Owner*”), is/are the owner of that certain real property located in the City of Imperial Beach, California, more particularly described in the attached Exhibit “A” (“*Property*”).

2. The Housing Authority the City of Imperial Beach (“*Authority*”) is providing partial financing for the Property with moneys from its Low and Moderate Income Housing Asset Fund.

3. Concurrently herewith Owner and the Authority are causing the Property to be encumbered by that certain **AFFORDABLE HOUSING RESALE RESTRICTIONS, OPTION TO DESIGNATE ELIGIBLE PURCHASERS AND OPTION TO PURCHASE UPON DEFAULT** (“*Resale Restrictions*”), which generally restricts the purchase to and occupancy of Property to persons at or below eighty percent (80%) of AMI, as set forth in more detail in the Resale Restrictions.

4. The Resale Restrictions expire forty-five (45) years from recordation thereof (except as otherwise provided therein).

5. The Property is generally located at 776 10th Avenue, Imperial Beach, California.

6. The Property assessor's parcel number is _____.

7. In the event of any conflict between one or more provisions of this document and one or more provisions of the Resale Restrictions, the provisions of the Resale Restrictions shall apply.

This Notice is recorded for the purpose of providing notice only and it in no way modifies the provisions of the Resale Restrictions.

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

Date: _____

By: _____

Gary Brown
Executive Director

APPROVED AS TO FORM AND LEGALITY:

JENNIFER LYON, CITY ATTORNEY
General Counsel to the Authority

By: _____

KANE, BALLMER & BERKMAN
Special Counsel to the Authority

By: _____

Theodore (Ted) M. Ballmer

CONSENT TO RECORDATION

The undersigned, owner of a fee interest in the real property legally described in Exhibit "A" hereto, hereby consents to the recordation of the foregoing Notice of Affordability Restrictions on Transfer of Property against said real property.

OWNER

Dated: _____

Name: _____

Dated: _____

Name: _____

EXHIBIT A

Legal Description of the Property

[To be inserted.]

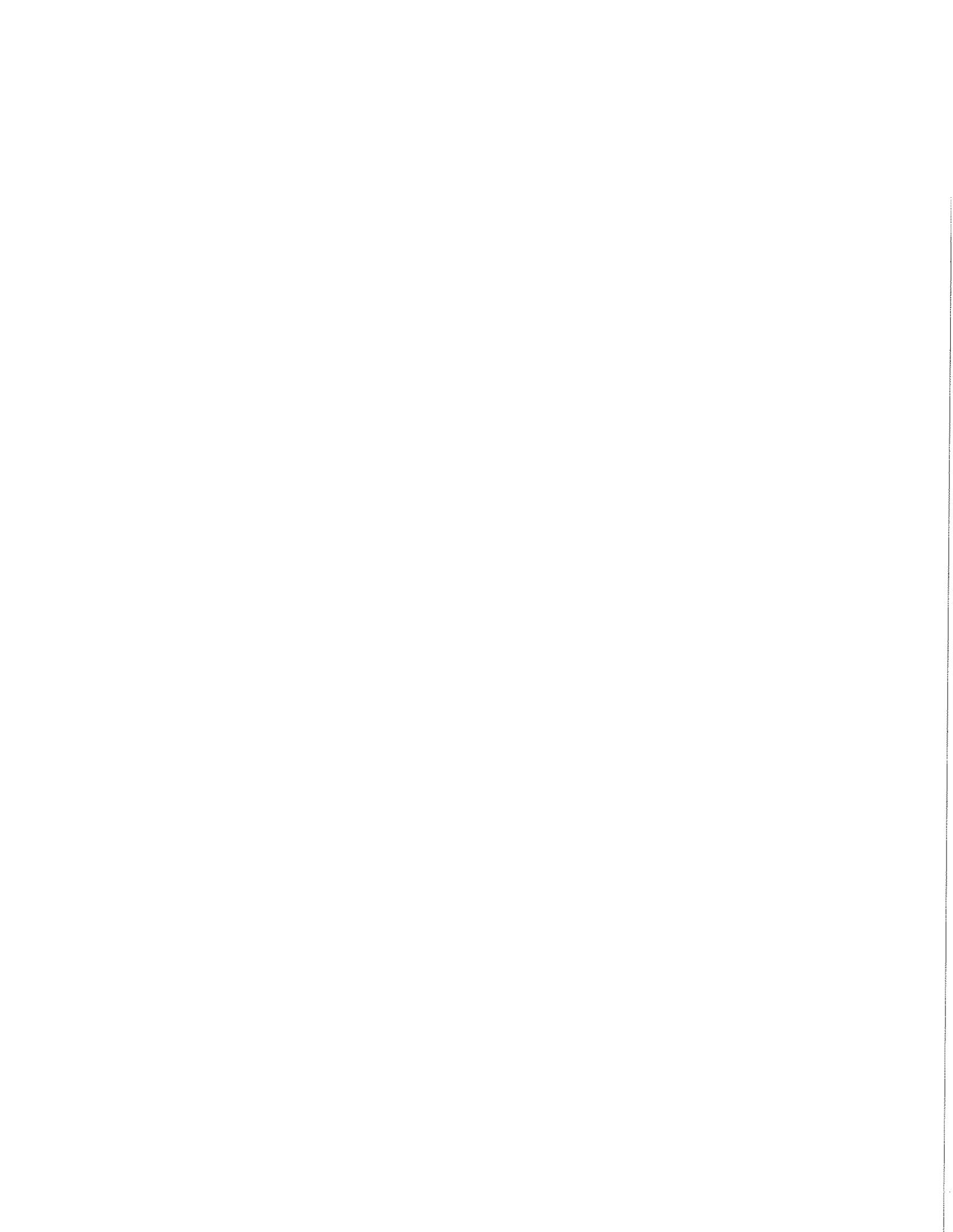
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All that certain real property situated in the City of Imperial Beach, County of San Diego, State of California, described as follows:

LOTS 21 AND 22 AND THE SOUTH 12.50 FEET OF LOT 23, ALL BEING IN BLOCK 108 OF SOUTH SAN DIEGO COMPANY'S ADDITION TO SOUTH SAN DIEGO, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 497, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 4, 1887, TOGETHER WITH THAT PORTION OF THE NORTHERLY 10,000 FEET OF DONAX AVENUE LYING SOUTHERLY AND ADJACENT TO THE SOUTHERLY LINE OF SAID LOT 21 AS VACATED ON APRIL 2, 1979, BY RESOLUTION NO. 2543 OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH RECORDER APRIL 30, 1979, AS FILE NO. 79-177416 OF OFFICIAL RECORDS.

Also more commonly known as Assessor's Parcel Number 626-282-12.



PALM/COMMERCIAL REDEVELOPMENT PROJECT AREA

IMPERIAL BEACH, CALIFORNIA

**SUMMARY REPORT PERTAINING TO THE PROPOSED CONVEYANCE
OF CERTAIN REAL PROPERTY WITHIN THE
REDEVELOPMENT PROJECT AREA**

**California Community Redevelopment Law
Section 33433**

**PURSUANT TO PROPOSED AFFORDABLE HOUSING AGREEMENT
BETWEEN
THE HOUSING AUTHORITY OF THE CITY OF IMPERIAL BEACH
AND
HABITAT FOR HUMANITY, INC.**

City of Imperial Beach, California

June 2013

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I. INTRODUCTION

A. Purpose of Report

This Summary Report was prepared in accordance with Section 33433 of the California Community Redevelopment Law in order to inform The Housing Authority of the City of Imperial Beach (Authority) and the public about the proposed Affordable Housing Agreement (Agreement) between the Authority and Habitat for Humanity, Inc. (Developer).

As described in Table 1, the Developer intends to construct six (6) residential units (Affordable Units) on a 0.23-acre site located at the corner of 10th Street and Donax Avenue (Site) in the City of Imperial Beach (City). The units will be approximately 1,300 square feet (SF) with a single-car garage (Project). The Developer will also construct adjacent off-site improvements along the 10th Street and Donax Avenue frontages.

This Report and attached tables describe the transaction between the Authority and the Developer. This Report specifies:

1. The costs to be incurred by the Authority under the Agreement;
2. The estimated value of the interest to be conveyed at the highest and best use permitted under the Redevelopment Plan;
3. The estimated value of the interest to be conveyed at the proposed use and with the conditions, covenants, and development costs required by the Agreement;
4. The compensation to be paid to the Authority pursuant to the proposed transaction;
5. An explanation of the difference, if any, between the compensation to be paid to the Authority under the proposed transaction, and the fair market value at the highest and best use consistent with the Redevelopment Plan; and
6. An explanation of why the Agreement will assist with the elimination of blight.

B. Summary of Findings

The Authority engaged its economic consultant, Keyser Marston Associates, Inc. (KMA), to analyze the proposed financial terms. The principal KMA conclusions are summarized as follows:

- The estimated costs of the Agreement to the Authority total \$879,000.
- The estimated fair market value of the Site at its highest and best use is \$203,000.
- The estimated re-use value of the interest to be conveyed is *negative* \$734,000.
- The estimated value of the compensation to be received by the Authority is *negative* \$475,000.

C. Description of Area and Proposed Project

Description of Environs and Surrounding Area

The City is located just north of the Mexico border in southwestern San Diego County. The City's boundaries encompass an area of 4.4 square miles. Over the past several years, the City has renewed itself as a popular destination due to the City's beachfront (including the Imperial Beach Pier), the Tijuana Estuary Natural Preserve, and San Diego Bay. The City continues to be proactive in its efforts to provide amenities for visitors while increasing the quality of life for residents. One such example is the new 78-room hotel, Pier South, located on Seacoast Drive. The boutique hotel is set to open in the summer of 2013.

Project Description

As shown in Table 1, the Developer plans to construct six (6) attached townhomes on a 0.23-acre Site located at the northwest corner of 10th Street and Donax Avenue. The Site is currently owned by the Authority. The Site is vacant, flat, and rectangular in shape, and located in an older single-family residential neighborhood. The proposed Project will be comprised of three-bedroom units, with an average unit size of approximately 1,300 SF. The entire Project will be affordable to low-income households, or households earning up to 80% of Area Median Income (AMI). In addition, the Developer will construct adjacent off-site improvements to the 10th Street and Donax Avenue frontages.

D. Proposed Transaction Terms

This section summarizes the salient aspects of the proposed Agreement between the Authority and the Developer.

- The Authority will convey the Site to the Developer.
- The Developer will pay the Authority \$1.00 (Purchase Price) for the Site.
- The Authority will contribute \$806,000, in the form of a Developer Note, for the development of the Project, comprised of the following:

Developer Note	Total
Cash Portion	\$475,000
Land Contribution	\$331,000
Total	\$806,000

- The Developer Note will be 0% interest, except in the event of default by the Developer.
- In the event of default by the Developer, principal and interest on the Developer Note will be immediately due. Interest will accrue from the date of the Developer Note at the lesser of 10% simple interest or the maximum rate allowed by law.
- The Developer will construct six (6) residential units (Affordable Units) affordable to low-income households earning up to 80% of AMI.
- The Affordable Units will be restricted for low-income households for a minimum of 45 years.
- The Developer will be obligated to obtain all necessary land use entitlements, approvals, and permits for completion of the Project and will be required to pay all City and California Coastal Commission fees, if any.
- Upon completion of the Project, the remaining balance of the Developer Note will convert to six (6) first-time homebuyer loans (First Time Homebuyer Note) for purchase of the Affordable Units.

- Each First Time Homebuyer Note will not exceed the difference between the original market value of the Affordable Unit (as determined by the Authority) and the Maximum Purchase Price for a low-income household (as determined by California Health and Safety Code (H&SC) §50052.5).
- The Authority has the option to purchase an Affordable Unit in the event of a default by the homebuyer or in the event the homebuyer would like to transfer the Affordable Unit.

II. COSTS OF THE AGREEMENT TO THE AUTHORITY

The estimated costs of the Agreement to the Authority total \$879,000, and include the following items:

Authority Costs (1)	Amount
Site Acquisition	\$330,691
Demolition	\$15,600
Other Third-Party Costs (2)	<u>\$58,000</u>
Subtotal Authority Costs (Rounded)	\$404,000
Add: Cash Portion of Developer Note	<u>\$475,000</u>
Total Authority Costs	\$879,000

(1) Per City.

(2) Includes appraisal, legal, economic, and other consulting costs.

III. ESTIMATED VALUE OF THE INTEREST TO BE CONVEYED AT THE HIGHEST AND BEST USE PERMITTED UNDER THE REDEVELOPMENT PLAN

This section presents an analysis of the fair market value of the Site at its highest and best use.

In appraisal terminology, the highest and best use is that use of the Site that generates the highest property value and is physically possible, financially feasible, and legally permitted. Therefore, value at highest and best use is based solely on the value created and not on whether or not that use carries out the redevelopment goals and policies for the City of Imperial Beach. By definition, the highest and best use is that use which is physically possible, financially feasible, and legally permitted.

In order to determine the fair market value of the Site, KMA reviewed land sales for in-fill residential development sites within South County from January 2012 to the present. The KMA survey included: the City of Imperial Beach; the cities of National City and Chula Vista west of Interstate 805; and the South San Diego communities of San Ysidro and Nestor. As shown in Table 2, surveyed land sales ranged from \$14 to \$29 per SF of land, with a median and average price of \$22 per SF.

The comparable sales vary by city, status of entitlements, and prevailing market conditions at time of sale. In KMA's opinion the Site falls toward the middle of the range of comparable sales, or say \$20 per SF. On this basis, then, KMA estimates that the fair market value of the Site at its highest and best use is \$203,000, or \$20 per SF.

IV. ESTIMATED VALUE OF THE INTEREST TO BE CONVEYED AT THE USE AND WITH THE CONDITIONS, COVENANTS, AND DEVELOPMENT COSTS REQUIRED BY THE AGREEMENT

This section explains the principal conditions and covenants which the Developer of the Site must meet in order to comply with the Redevelopment Plan (Plan). The Agreement contains specific covenants and conditions designed to ensure that the conveyance of the Site will be carried out in a manner to achieve the City's objectives, standards, and criteria under the Plan. Based on a detailed financial feasibility analysis of the proposed Project, KMA concludes that the fair re-use value of the Site is *negative* \$734,000.

KMA estimated the re-use value of the Site based on the anticipated income characteristics of the proposed Project. Re-use value is defined as the highest price in terms of cash or its equivalent which a property or development right is expected to bring for a specified use in a competitive open market, subject to the covenants, conditions, and restrictions imposed by the Agreement.

KMA solved for residual value based on the terms of the Agreement absent any Authority financial assistance. Tables 3 through 5 present KMA's residual value analysis for the proposed Project.

Development Costs

As shown in Table 3, total development costs for the Project, excluding acquisition, are estimated at \$1,493,000, or \$191 per SF of total gross building area (GBA), which equates to approximately \$249,000 per dwelling unit. Total development costs consist of the following:

- Direct construction costs, such as: site preparation; parking; shell construction; furniture, fixtures, and equipment (FF&E); and contingency. The total direct costs are estimated to be \$1,236,000, or \$158 per SF GBA. The estimate of direct costs does not assume the payment of prevailing wages.
- Indirect costs, such as architecture and engineering, permits and fees, legal and accounting, taxes and insurance, developer fee, marketing/sales, and contingency are projected to be \$232,000, or 18.8% of direct costs.
- Financing costs, such as the closing costs related to the initial sale of the Affordable Units. These closing costs are estimated to total \$25,000, or \$4,000 per dwelling unit.

Gross Sales Proceeds

Tables 4 and 5 present an estimate of the gross sales proceeds for the Project. Gross sales proceeds are based on the Maximum Purchase Price as calculated in accordance with California H&SC §50052.5. The Maximum Purchase Price (per-unit) is based on the appropriate household size for a given unit size and specific income thresholds. Per H&SC §50052.5, a three-bedroom unit is assumed to house a four-person household; see calculation in Table 4.

Based on this information and AMI figures for the County of San Diego, as determined by the State of California Department of Housing and Community Development (HCD), the maximum unit sales price for a low-income three-bedroom unit is estimated to be \$273,000 (2013 figures). This maximum affordable sales price assumes that the Developer provides 30-year, 0% interest financing to each homebuyer.

The below-market financing offered to the homebuyers substantially reduces the present value of the revenue stream received by the Developer. Assuming a 30-year term, the Developer is expected to receive monthly payments of \$758 for each unit. The present value of this stream of payments, discounted at 6.0%, is estimated to total \$126,500 per unit, or say total gross sales proceeds of \$759,000.

Residual Land Value

Table 5 calculates the residual land value for the Project. The residual land value supported by the Project can be estimated as the difference between the total development costs and the total gross sales proceeds, as shown below:

	Residual Land Value
Gross Sales Proceeds	\$759,000
(Less) Development Costs (1)	<u>(\$1,493,000)</u>
Residual Land Value	(\$734,000)

(1) Excludes acquisition costs.

Conclusion

Based on the foregoing, KMA concludes that the fair re-use value of the Site is *negative* \$734,000.

V. COMPENSATION WHICH THE DEVELOPER WILL BE REQUIRED TO PAY

The compensation to be received by the Authority for the Site under the terms of the Agreement is estimated to be *negative* \$475,000, reflecting the cash portion of the Developer Note which will be forgiven upon completion of the Project.

VI. EXPLANATION OF THE DIFFERENCE, IF ANY, BETWEEN THE COMPENSATION TO BE PAID TO THE AUTHORITY BY THE PROPOSED TRANSACTION AND THE FAIR MARKET VALUE OF THE INTEREST TO BE CONVEYED AT THE HIGHEST AND BEST USE CONSISTENT WITH THE REDEVELOPMENT PLAN

The Authority will receive compensation of *negative* \$475,000. The estimated fair market value at highest and best use of the interest to be conveyed is \$203,000. The compensation to the Authority is lower than the fair market value at highest and best use for the following reasons:

- The Project will consist of for-sale homes restricted to low-income households for 45 years.
- The Developer plans to provide below-market, long-term financing to the homebuyers.
- The Developer is required to adhere to the Schedule of Performance contained in the Agreement, notwithstanding current market and financing conditions for in-fill residential development.

VII. EXPLANATION OF WHY THE SALE OF THE SITE WILL ASSIST WITH THE ELIMINATION OF BLIGHT

The Palm/Commercial Redevelopment Plan contains the goals and objectives and the projects and expenditures proposed to eliminate blight within the Project Area. These blighting factors include:

- Areas suffering from economic dislocation and disuse.
- Areas which are stagnant or improperly utilized, and which the planning, redesign, or redevelopment could not be accomplished by private enterprises acting alone, without public participation.

Implementation of the proposed Agreement can be expected to assist in the alleviation of blighting conditions through the following:

- Elimination and prevention of blight and deterioration; and the conservation, rehabilitation, and redevelopment of the Project Area in accord with the General Plan, Redevelopment Plan, and local codes and ordinances.
- Expansion and upgrading of housing opportunities in the community to eliminate blight and improve housing stock and standards for the present population.
- Achievement of an environment reflecting a high level of concern for architectural, landscape, and urban design and land use principles appropriate to attainment of the objectives of the Redevelopment Plan.
- Elimination or amelioration of certain environmental deficiencies, including; inadequate water, sewer, and storm drain systems; insufficient off-street parking; and other similar public improvements, facilities, and utilities deficiencies adversely affecting the Project Area.

VIII. LIMITING CONDITIONS

The estimates of re-use and fair market value at the highest and best use contained in this Summary Report assume compliance with the following assumptions:

1. There are no known soil or subsoil problems, including toxic or hazardous conditions on the Site that need to be remediated in order to develop the Site.
2. The ultimate development will not vary significantly from that assumed in this Summary Report.
3. The title of the property is good and marketable; no title search has been made, nor have we attempted to determine the ownership of the property. The value estimates are given without regard to any questions of title, boundaries, encumbrances, liens or encroachments. It is assumed that all assessments, if any are paid.
4. The Site will be in conformance with the applicable zoning and building ordinances.
5. Information provided by such local sources as governmental agencies, financial institutions, realtors, buyers, sellers, and others was considered in light of its source, and checked by secondary means.
6. If an unforeseen change occurs in the economy, the conclusions herein may no longer be valid.
7. The development will adhere to the schedule of performance described in the Agreement.
8. Both parties are well informed and well advised and each is acting prudently in what he/she considers his/her own best interest.

TABLE 1

**PROJECT DESCRIPTION
10TH STREET & DONAX AVENUE
CITY OF IMPERIAL BEACH**

I. Site Area	0.23 Acres	10,150 SF
 II. Gross Building Area (GBA)		
Net Residential Area	7,800 SF	100%
Common Area/Circulation	0 SF	0%
Total Gross Building Area	7,800 SF	100%
 III. Construction Type		
	Type V	
 IV. Number of Stories		
	2 Stories	
 V. Unit Mix		
	<u>Number of Units</u>	<u>Average Unit Size</u>
Three Bedroom Homes	6 Units	1,300 SF
 VI. Parking		
Parking Type	Single-Car Garage	
Enclosed Parking Spaces	6 Spaces	
Parking Ratio	1.0 Space/Unit	

TABLE 2

**SELECTED IN-FILL RESIDENTIAL LAND SALES COMPARABLES, JANUARY 2012 TO PRESENT ⁽¹⁾
 10TH STREET & DONAX AVENUE
 CITY OF IMPERIAL BEACH**

<u>Sale Date</u>	<u>Address</u>	<u>City/Submarket</u>	<u>Sale Price</u>	<u>Acres</u>	<u>Land</u>	
					<u>SF</u>	<u>\$/SF</u>
01/24/13	140 National City Blvd.	National City	\$249,000	0.20	8,600	\$29
02/26/13	353 Roosevelt St.	Chula Vista	\$412,000	0.34	15,000	\$27
08/27/12	1368 14th St.	Imperial Beach	\$295,000	0.28	12,196	\$24
06/15/12	1101-1123 National City Blvd.	National City	\$1,115,000	1.24	54,014	\$21
11/01/12	817-825 C Avenue	National City	\$215,000	0.29	12,750	\$17
01/20/12	844-846 Palm Avenue	National City	\$400,000	0.68	29,621	\$14
		Minimum	\$215,000	0.20	8,600	\$14
		Maximum	\$1,115,000	1.24	54,014	\$29
		Median	\$347,500	0.32	13,875	\$22
		Average	\$447,667	0.51	22,030	\$22

(1) Selected land sales transactions for in-fill residential sites in Imperial Beach, National City, Chula Vista (west of I-805), and South San Diego County. Site sizes were restricted to 3.0 acres or less.

TABLE 3

**ESTIMATED DEVELOPMENT COSTS
10TH STREET & DONAX AVENUE
CITY OF IMPERIAL BEACH**

	<u>Totals</u>	<u>Per Unit</u>	<u>Comments</u>
I. Direct Costs			
Off-Site Improvements (1)	\$61,000	\$10,200	\$6 Per SF Site
Demolition	\$0	\$0	\$0 Per SF Site
On-Sites/Landscaping	\$358,000	\$59,700	\$35 Per SF Site
Parking	\$0	\$0	Included above
Shell Construction	\$705,000	\$117,500	\$90 Per SF GBA
FF&E	\$0	\$0	Allowance
Contingency	<u>\$112,000</u>	<u>\$18,700</u>	10.0% of Directs
Total Direct Costs	\$1,236,000	\$206,000	\$158 Per SF GBA
II. Indirect Costs			
Architecture/Engineering	\$58,000	\$9,700	4.7% of Directs
Permits & Fees (1)	\$106,000	\$17,700	\$14 Per SF GBA
Legal & Accounting	\$25,000	\$4,200	2.0% of Directs
Taxes & Insurance	\$12,000	\$2,000	1.0% of Directs
Developer Fee	\$0	\$0	0.0% of Directs
Marketing/Sales (2)	\$24,000	\$4,000	Allowance
Contingency	<u>\$7,000</u>	<u>\$1,200</u>	3.0% of Indirects
Total Indirect Costs	\$232,000	\$38,700	18.8% of Directs
III. Financing Costs (3)	\$25,000	\$4,167	2.0% of Directs
IV. Total Costs (Excluding Land)	\$1,493,000	\$248,800	\$191 Per SF GBA

(1) Estimate; not verified by KMA or City.

(2) Includes cost of sales to buyers.

(3) Reflects reimbursement of Authority closing costs for initial home sales.

TABLE 4

**AFFORDABLE SALES PRICE, 2013
10TH STREET AND DONAX AVENUE
CITY OF IMPERIAL BEACH**

I. Low Income - 70% AMI

Households Earning up to 80% of AMI

	<u>Three Bedroom</u>
Percent of AMI	70.00%
Assumed Family Size (1)	4
Household Income (2)	\$53,130
Income Allocation to Housing	30.00%
Amount Available for Housing	\$15,939
Annual HOA (3)	\$1,800
Annual Utilities (4)	\$2,300
Tax Rate	1.00%
Annual Taxes (5)	\$2,730
Available for Mortgage	\$9,109
Interest Rate (6)	0.00%
Down Payment	0.00%
Supportable Mortgage	\$273,270
Add: Down Payment	<u>\$0</u>
Maximum Unit Price (Rounded)	\$273,000

(1) As assigned by California Redevelopment Law.

(2) State of California Department of Housing and Community Development (HCD) 2013 income limits.

(3) Allowance for structure insurance, maintenance, and reserves.

(4) Per the San Diego County Department of Housing and Community Development 2012 Utility Allowance Schedule, July 1, 2012. Reflects the following utility profile: gas heating, cooking, water heater, other electric, water, and sewer.

(5) Based on affordable unit price. Property tax assessment may be based on market value of actual unit.

(6) Assumes that the Developer will finance interest-free takeout loans for homebuyers.

TABLE 5

**GROSS SALES PROCEEDS / RESIDUAL LAND VALUE
10TH STREET & DONAX AVENUE
CITY OF IMPERIAL BEACH**

I. Calculation of Loan Payments

Affordable Sales Price per Unit	\$273,000
Interest Rate (1)	0.0%
Term (Years)	30
Annual Payment	\$9,100
Monthly	\$758

Present Value of Payments to Developer per Unit @ 6.0% Discount Rate	\$126,500 (2)
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II. Gross Sales Proceeds

Present Value of Payments to Developer per Unit	\$126,500
Number of Units	6

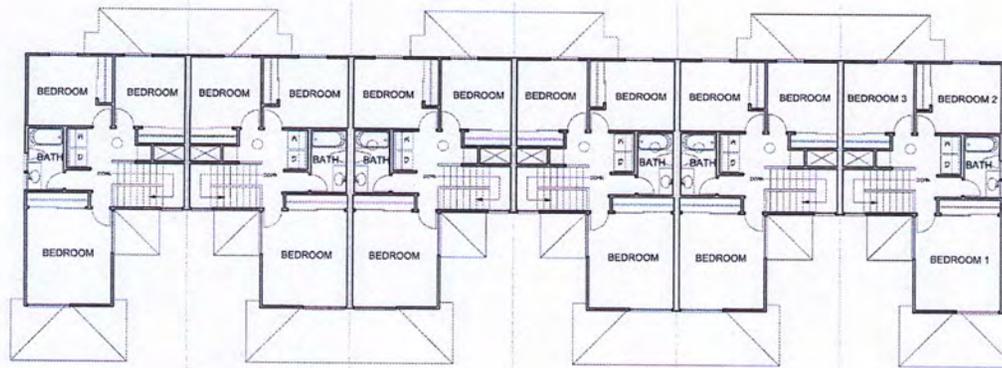
Total Gross Sales Proceeds	\$759,000
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III. Residual Land Value

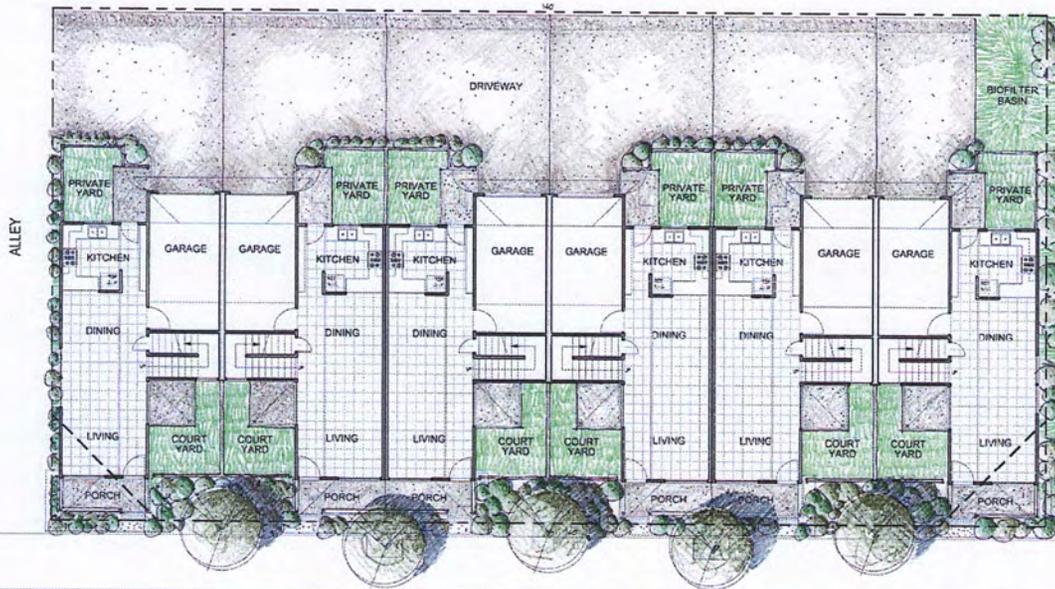
Total Gross Sales Proceeds	\$759,000
(Less) Cost of Sale (3)	\$0
(Less) Target Developer Profit	0.0% of Value \$0
Net Sales Proceeds (Rounded)	\$759,000
(Less) Development Costs	<u>(\$1,493,000)</u>

Residual Land Value	(\$734,000)
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- (1) Assumes that the Developer will finance interest-free takeout loans for homebuyers.
- (2) Reflects the present value of homebuyer payments to the Developer assuming a 30-year, 0.0% interest loan, discounted at 6.0%.
- (3) Included in the development budget (Table 3).



SECOND FLOOR PLAN
1/8" = 1'-0"



SITE / GROUND FLOOR PLAN
1/8" = 1'-0"

Stephen
W
Hall
architect

PO Box 10
Duff, CA 9020
phone 760.510.5915



ALL SERVICES SHALL BE PROVIDED BY THE ARCHITECT UNLESS OTHERWISE SPECIFIED IN THE CONTRACT DOCUMENTS. THE ARCHITECT SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE PROJECT. THE ARCHITECT SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE PROJECT. THE ARCHITECT SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE PROJECT.

PROJECT SUBMITTAL -
S.D. -
FOR CONSTRUCTION -

HABITAT
FOR
HUMANITY

776 TENTH STREET
IMPERIAL BEACH, CALIFORNIA

PLANS
DATE
BY
SCALE
REVISIONS

A.1

**STAFF REPORT
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY**

TO: CHAIR AND MEMBERS OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY

FROM: GARY BROWN, EXECUTIVE DIRECTOR *GB FOR G.B.*

MEETING DATE: JUNE 28, 2013

ORIGINATING DEPT.: ADMINISTRATIVE SERVICES DEPARTMENT *KV*
KATHLEEN VONACHEN, TREASURER/ ADMINISTRATIVE SERVICES DIRECTOR

SUBJECT: ADOPTION OF RESOLUTION NO. SA-13-26 APPROVING, AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO, A PROFESSIONAL SERVICES AGREEMENT WITH FRASER & ASSOCIATES TO PROVIDE FISCAL CONSULTANT SERVICES FOR THE POSSIBLE REFUNDING OF THE SERIES 2003A TAX ALLOCATION REVENUE BONDS

BACKGROUND:

On December 11, 2003, the former Imperial Beach Redevelopment Agency (the "Former Agency") and the Imperial Beach Public Financing Authority (the "Financing Authority"), a Joint Powers Authority between the City of Imperial Beach (the "City") and the Former Agency, issued Tax Allocation Revenue Bonds, Series 2003A (the "Series 2003A TABs") secured by the Former Agency's tax increment revenues as funding for the debt service obligations. The Series 2003A TABs were issued in order to finance redevelopment activities relating to improvements within the Original and Amended Redevelopment Project Areas ("Project Areas") including street improvements, public park capital improvements, construction of community facilities, and landscaping improvements, among others.

Debt service on the Series 2003A TABs has been and is repaid solely with tax increment revenues generated within the Project Areas. As of June 1, 2013, the Series 2003A TABs were outstanding in the amount of \$17,965,000, with annual principal maturities ranging from June 1, 2014 through June 1, 2033. These principal bond maturities can be prepaid on December 1, 2013, and on any subsequent date thereafter, without a prepayment penalty. The Series 2003A TABs have interest rates ranging from 5.00% to 6.00%.

Pursuant to Assembly Bill No. X1 26 ("AB 26") and Assembly Bill No. 1484 ("AB 1484") (collectively referred to herein as the "Dissolution Act"), the Imperial Beach Redevelopment Agency Successor Agency (the "Successor Agency") may cause the refinancing or refunding of the Series 2003A TABs for debt service savings by issuing, or causing the issuance of, Property Tax Revenue Refunding Bonds, (the "Refunding Bonds") in accordance with the Dissolution Act including, without limitation, Health and Safety Code ("HSC") Sections 34177.5 and 34180(b).

With a refunding of the outstanding principal of \$17,965,000 of the Series 2003A TABs, based

on interest rates in the current market, annual debt service savings are projected. With the City's share, as a taxing entity, of distributions from the Redevelopment Property Tax Trust Fund ("RPTTF"), approximately 26% of this projected refunding savings would be allocated to the City's General Fund, based on anticipated payments of RPTTF distributions to the City pursuant to HSC Section 34183(a) of the Dissolution Act.

On June 5, 2013, the Successor Agency Board of Directors approved Resolution Nos. SA-13-24 and SA-13-25 that approved, and authorized the Executive Director to enter into, professional services agreements with First Southwest Company and Jones Hall to provide bond financial advisory services and bond counsel/disclosure counsel services, respectively. On June 12, 2013, the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency (the "Oversight Board") approved Resolution No. OB-13-18 directing the Successor Agency to commence the refinancing or refunding of the Series 2003A TABs for debt service savings and authorizing the Successor Agency to recover its costs therefor. At the same meeting, the Oversight Board also approved Resolution Nos. OB-13-19 and OB-13-20 approving, and authorizing the Executive Director to enter into professional services agreements with First Southwest Company and Jones Hall to provide bond financial advisory services and bond counsel/disclosure counsel services, respectively. Both consultants would be part of the financing team that will be involved in the Refunding Bonds transaction.

DISCUSSION:

As previously presented in the June 5th and 12th staff reports, various financing team members are required in order to successfully analyze and prepare the debt financing plan of the Refunding Bonds and market the Refunding Bonds to investors. As is typical in a bond issuance or bond refinancing or refunding secured by a sole revenue source, such as property taxes (formerly tax increment), a fiscal consultant is required for the transaction.

As described in the proposed professional services agreement with Fraser & Associates, the need for, and services provided by, the Fiscal Consultant for the proposed Refunding Bonds includes:

- a) To prepare a report on the economic feasibility of the Project Areas providing the security for the debt issue.
- b) The views of the Fiscal Consultant on the economic feasibility of the security are taken into account by the credit rating agencies, underwriters and investors in the process of marketing the Refunding Bonds.

In evaluating the limited number of firms which provide this specialized service for California redevelopment successor agencies, Staff recommends Fraser & Associates to provide fiscal consultant services in relation to the refunding of the Series 2003A TABs.

Professional Services Agreement

The services provided under this Agreement would include preparation of a report on the economic feasibility of the Project Areas providing the security of the debt issue used in the preparation of bond documents and the preliminary official statement for future authorization by the Successor Agency, Oversight Board, the DOF if review requested, as well as the City. As is typical in municipal bond financing, the professional services fees of most of the financing team members are paid only if the bond deal is successfully completed, or closed. In other words,

payment of the fees of the financing team members, with a few exceptions, is generally made on a contingency basis. However, there are a few notable exceptions, including the retention of a fiscal consultant for redevelopment bond issuances whose services and expenses are compensated regardless of the successful sale of the refunded bonds. In this regard, Fraser & Associates would provide professional services to the Successor Agency and would be paid on a non-contingency basis, regardless of whether the Refunding Bonds transaction is successfully completed or closed. Such compensation for fees and expenses would be an obligation of the Successor Agency and paid by the Successor Agency as non-contingent costs. Therefore, if the refunding of the 2003A Series TABs is successful, the Fiscal Consultant's compensation would be considered a part of the cost of issuance, would be paid from the proceeds of the new Refunding Bonds issue, and would be deemed an enforceable obligation included within the financing documents to be submitted to the Successor Agency and Oversight Board for approval (with the Department of Finance's ("DOF") right to review). If the refunding is successful, these costs will likely not be included on the ROPS 13-14B because they would be encompassed within the refunding approvals and paid from the proceeds of the Refunding Bonds. However, if required by the DOF, such costs will be included on the ROPS 13-14B. If the proposed refunding of the 2003A Series TABs is not successfully closed, the Fiscal Consultant's compensation would be paid by the Successor Agency and will be included in the ROPS 13-14B for approval as a proposed enforceable obligation of the Successor Agency.

The professional services fees and expenses of Fraser & Associates as the Fiscal Consultant proposed in the attached proposal and as agreed upon by the Successor Agency staff are (a) not to exceed \$20,000 for the performance of certain services reflected as Items 1 through 9 in the proposal; (b) subject to the prior written approval of the Treasurer for any such work to be completed by CONSULTANT, an hourly rate of \$200 per hour on a time and materials basis but not to exceed a total amount of \$3,000 for the performance of additional services reflected in Items 10 and 11 in the Proposal (Exhibit A) relating to document review, bond rating agency presentation and other meetings; and (c) expenses not to exceed \$2,500. Combined compensation of fees and expenses payable to Fraser & Associates is a not to exceed amount of \$25,500.

This non-contingent compensation payable to Fraser & Associates as the Fiscal Consultant pursuant to the proposed Professional Services Agreement is above the \$15,000 threshold requirement to perform a formal competitive bid process for the procurement of professional services. Imperial Beach Municipal Code Section 3.04.160 (G) states that the City Council may waive the formal bid requirements for the procurement of professional services by resolution when it is necessary or convenient for the management of the City's affairs. (Ord. 2009-1084 § 2). Consistent with this authority provided to the City Council and based on the unique nature of the services to be rendered, the complexity of the proposed refinancing transaction, and the necessity and convenience for the management of the Successor Agency's affairs, staff recommends that the Successor Agency waive any applicable formal bid requirements for the selection of Fraser & Associates and authorize the Executive Director to enter into the Professional Services Agreement with Fraser & Associates under the terms discussed above. As mentioned above, if the Series 2003A TABs are refinanced, the entire cost for the Fiscal Consultant professional services of Fraser & Associates would be considered a "cost of issuance" and paid from the proceeds of Refunding Bonds.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

The potential fiscal impact to the Successor Agency pursuant to the Professional Services Agreement is (a) not to exceed \$20,000 for the performance of certain services reflected as Items 1 through 9 in the proposal; (b) subject to the prior written approval of the Successor Agency's Treasurer for any such work to be completed by Fraser & Associates, an hourly rate of \$200 per hour on a time and materials basis but not to exceed a total amount of \$3,000 for the performance of additional services reflected in Items 10 and 11 in the Proposal (Exhibit A) relating to document review, bond rating agency presentation and other meetings; and (c) expenses not to exceed \$2,500. Combined compensation of fees and expenses payable to Fraser & Associates is a not to exceed amount of \$25,500.

As stated in the Professional Services Agreement, if the Series 2003 TABs refunding is not completed, then accrued compensation of fees and expenses as detailed in the Agreement in a total amount not to exceed \$25,500 will be paid to Fraser & Associates. Successor Agency staff will, however, seek payment or reimbursement of this cost as an enforceable obligation of the Successor Agency as part of its ROPS 13-14B.

DEPARTMENT RECOMMENDATION:

Staff recommends the Successor Agency adopt Resolution No. SA-13-26 approving the Professional Services Agreement between the Successor Agency and Fraser & Associates and authorizing the Executive Director to enter into the Professional Services Agreement with Fraser & Associates to provide fiscal consultant services according to the terms contained in Exhibit A (Attachment 2).

EXECUTIVE DIRECTOR'S RECOMMENDATION:

Approve Department Staff recommendation.

Attachments:

1. Resolution No. SA-13-26
2. Exhibit A Draft Professional Services Agreement with Fraser & Associates
3. Fraser & Associates Proposal

RESOLUTION NO. SA-13-26

A RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING, AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH FRASER & ASSOCIATES FOR FISCAL CONSULTANT SERVICES RELATING TO THE POTENTIAL REFUNDING OF THE SERIES 2003A TAX ALLOCATION REVENUE BONDS

WHEREAS, the Imperial Beach Redevelopment Agency (“Redevelopment Agency”) was a redevelopment agency in the City of Imperial Beach (“City”), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) (“Redevelopment Law”); and

WHEREAS, the City Council has adopted redevelopment plans for Imperial Beach’s redevelopment project areas, and from time to time, the City Council has amended such redevelopment plans; and

WHEREAS, the Redevelopment Agency was responsible for the administration of redevelopment activities within the City; and

WHEREAS, Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.) (“AB 26”) was signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law and the California Health and Safety Code (“HSC”), including adding Part 1.8 (commencing with Section 34161) (“Part 1.8”) and Part 1.85 (commencing with Section 34170) (“Part 1.85”) to Division 24 of the HSC; and

WHEREAS, pursuant to AB 26, as modified by the California Supreme Court on December 29, 2011 by its decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment Agency, were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and expeditiously winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85 of AB 26, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 (“Successor Agency”); and

WHEREAS, on February 15, 2012, the Board of Directors of the Successor Agency, adopted Resolution No. SA-12-01 naming itself the “Imperial Beach Redevelopment Agency Successor Agency,” the sole name by which it will exercise its powers and fulfill its duties pursuant to Part 1.85 of AB 26, and establishing itself as a separate legal entity with rules and regulations that will apply to the governance and operations of the Successor Agency; and

WHEREAS, as part of the FY 2012-2013 State budget package, on June 27, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1484 (“AB 1484”, Chapter 26, Statutes 2012). Although the primary purpose of AB 1484 was to make technical and substantive amendments to AB 26 based on issues that have arisen in the implementation of AB 26, AB 1484 imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind down process of former redevelopment agencies, including without limitation refunding or refinancing bonds or other indebtedness; and

WHEREAS, HSC Section 34179 of AB 26 as amended by AB 1484 (collectively the

“Dissolution Act”) establishes a seven (7) member local entity with respect to each successor agency and such entity is titled the “oversight board.” The oversight board has been established for the Successor Agency (hereinafter referred to as the “Oversight Board”) and all seven (7) members have been appointed to the Oversight Board pursuant to HSC Section 34179 of the Dissolution Act. The duties and responsibilities of the Oversight Board are primarily set forth in HSC Sections 34179 through 34181 of the Dissolution Act; and

WHEREAS, pursuant to HSC Section 34179.7 of the Dissolution Act, the California Department of Finance (“DOF”) has issued a Finding of Completion to the Successor Agency; and

WHEREAS, on December 11, 2003, the former Redevelopment Agency and the Imperial Beach Public Financing Authority (the “Financing Authority”), a Joint Powers Authority of the City of Imperial Beach (the “City”) and the former Redevelopment Agency, issued Tax Allocation Revenue Bonds, Series 2003A (the “Series 2003A TABs”) secured by the former Redevelopment Agency’s tax increment revenues as funding for the debt service obligations. The Series 2003A TABs were issued in order to finance redevelopment activities relating to improvements within the Original and Amended Redevelopment Project Areas (“Project Areas”) including street improvements, public park capital improvements, construction of community facilities, and landscaping improvements, among others; and

WHEREAS, debt service on the Series 2003A TABs has been and is repaid solely with tax increment revenues generated within the Project Areas. As of June 1, 2013, the Series 2003A TABs are outstanding in the amount of \$17,965,000, with annual principal maturities ranging from June 1, 2014 through June 1, 2033. These principal bond maturities can be prepaid on December 1, 2013, and on any subsequent date thereafter, without a prepayment penalty. The Series 2003A TABs have interest rates ranging from 5.00% to 6.00%; and

WHEREAS, pursuant to the Dissolution Act, the Successor Agency may cause the refinancing or refunding of the Series 2003A TABs for debt service savings by issuing, or causing the issuance, of Property Tax Revenue Refunding Bonds (the “Refunding Bonds”) in accordance with the Dissolution Act including, without limitation, HSC Sections 34177.5 and 34180(b); and

WHEREAS, based on interest rates in the current market, refunding the Series 2003A TABs is projected to achieve annual debt service savings for the Successor Agency; and

WHEREAS, the Successor Agency desires to take advantage of the current low interest rate environment in order to minimize its total interest costs on outstanding debt by refinancing/refunding the Series 2003A TABs at a comparatively lower interest rate than the current bond issue’s average bond coupon rate and as low of a cost of issuance as possible; and

WHEREAS, on June 12, 2013, the Oversight Board approved Resolution No. OB-13-18 directing the Successor Agency to commence the refinancing or refunding of the Series 2003A TABs for debt service savings and authorizing the Successor Agency to recover its costs therefor. The DOF has requested review of this action; and

WHEREAS, in order to effectuate the refunding of the Series 2003A TABs, the Successor Agency desires to retain the services of Fraser & Associates for debt fiscal consultant services, including without limitation the following, to prepare a report on the economic feasibility of the Project Areas providing the security of the debt issue; and

WHEREAS, the Successor Agency staff has authorized the preparation of a

Professional Services Agreement (the "Agreement") to retain the services of Fraser & Associates as a "Fiscal Consultant" to the Successor Agency and recommends the Successor Agency's approval relating to same; and

WHEREAS, pursuant to the Agreement, and subject to the below, Fraser & Associates shall be compensated for work completed, not to exceed \$25,500 for basic services rendered under the Agreement and all accrued expenses. According to the Agreement, if the Refunding Bonds are issued, payment to Fraser & Associates for compensation and accrued expenses not to exceed \$25,500 will be made by the Successor Agency through the Refunding Bonds Trustee/Escrow Agent and from the proceeds of the Refunding Bonds within thirty (30) calendar days of receipt of the invoice. However, in the unlikely event that the Refunding Bonds are not issued, payment to Fraser & Associates for compensation and accrued expenses not to exceed \$25,500 is not contingent on the closing and bond issuance and will be made by the Successor Agency from available funds within thirty (30) calendar days of receipt of the invoice; and

WHEREAS, the non-contingent compensation payable to Fraser & Associates in the amount not to exceed \$25,500 pursuant to the Agreement is \$10,500 above the \$15,000 threshold requirement to perform a formal competitive bid process for the procurement of professional services. Imperial Beach Municipal Code ("Municipal Code") Section 3.04.160(G) states that the City Council may waive the formal bid requirements for the procurement of professional services by resolution when it is necessary or convenient for the management of the City's affairs. (Ord. 2009-1084 § 2). Due to the unique nature of the services rendered and complexity of the proposed refinancing transaction, staff recommends that the Successor Agency waive any applicable formal bid requirements for the selection of Fraser & Associates and to approve the Agreement and authorize the Executive Director to enter into the Agreement consistent with the authority provided to the City Council by Municipal Code Section 3.04.160(G); and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the Imperial Beach Redevelopment Agency Successor Agency, as follows:

- Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** Consistent with the authority provided to the City Council of the City pursuant to Municipal Code Section 3.04.160(G), the Successor Agency hereby waives any applicable formal bid requirements for the selection of Fraser & Associates based on the unique nature of the services to be rendered and the complexity of the proposed refinancing transaction and due to the necessity and convenience for the management of the Successor Agency's affairs in this matter.
- Section 3.** The Successor Agency hereby approves the Professional Services Agreement ("Agreement") with Fraser & Associates in substantial form as the Agreement attached as Exhibit "A", for bond fiscal consultant services for a total amount (i) not to exceed \$25,500 if the Refunding Bonds are issued, payment to Fraser & Associates will be made by the Successor Agency through the Refunding Bonds Trustee/Escrow Agent and from the proceeds of the Refunding Bonds; or (ii) not to exceed \$25,500 if the Refunding Bonds are not issued, payment to Fraser & Associates will be made by the Successor Agency from available funds including

Redevelopment Property Tax Trust Fund distributions pursuant to an approved Recognized Obligation Payment Schedule.

Section 4. The Executive Director, or designee, of the Successor Agency is hereby authorized and directed to execute the Agreement in substantial form as the Agreement attached as Exhibit "A", subject to the Oversight Board's approval of the Agreement as required by the Dissolution Act or desired by the Executive Director.

Section 5. The Executive Director, or designee, of the Successor Agency is hereby authorized to make non-substantive changes and amendments to the Agreement deemed necessary and as approved by the Executive Director of the Successor Agency and its legal counsel and to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Successor Agency.

Section 6. The Successor Agency determines that the activity approved by this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per Section 15378(b)(5) of the Guidelines.

Section 7. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Successor Agency declares that its board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 8. This Resolution shall take effect upon the date of its adoption

PASSED, APPROVED, AND ADOPTED by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 28th day of June 2013, by the following vote:

AYES: BOARD MEMBERS: NONE
NOES: BOARD MEMBERS: NONE
ABSENT: BOARD MEMBERS: NONE

JAMES C. JANNEY
CHAIRPERSON

ATTEST:

JACQUELINE M. HALD, MMC
SECRETARY

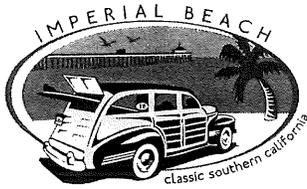


EXHIBIT "A"
Imperial Beach Redevelopment Agency Successor Agency
AGREEMENT FOR PROFESSIONAL SERVICES

**FOR FISCAL CONSULTANT SERVICES RELATED TO THE
POSSIBLE REFUNDING OF THE 2003A TAX ALLOCATION BONDS**

This Agreement, entered into this ___ day of July, 2013, by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, a public entity (hereinafter referred to as "AGENCY"), and FRASER & ASSOCIATES, a California LLC (hereinafter referred to as "CONSULTANT"), (collectively "PARTIES").

RECITALS

WHEREAS, AGENCY desires to take advantage of the current low interest rate environment in order to minimize its total interest costs on outstanding debt by refunding its Series 2003A Tax Allocation Bonds at a comparatively lower interest rates than the current bond issue's average bond coupon rate and at as low a cost of issuance as possible; and

WHEREAS, AGENCY desires to retain a debt fiscal feasibility consultant whose views are taken into account by the credit rating agencies, underwriters and investors in the process of marketing the bonds to accomplish the goal of minimizing the AGENCY's total interest costs on outstanding debt; and

WHEREAS, AGENCY desires to retain a debt fiscal consultant to provide services and advise on matters pertinent to the refinancing of its Series 2003A Tax Allocation Bonds, such as preparation of a report on the economic feasibility of the Project Areas providing the security of the debt issue; and

WHEREAS, AGENCY has authorized the preparation of an Agreement to retain the services of CONSULTANT as hereinafter set forth; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BY THE PARTIES THAT AGENCY DOES HEREBY RETAIN CONSULTANT ON THE FOLLOWING TERMS AND CONDITIONS:

Section 1. EMPLOYMENT OF CONSULTANT.

AGENCY hereby agrees to engage CONSULTANT, and CONSULTANT hereby agrees to perform the services hereinafter set forth, in accordance with all terms and conditions contained herein. CONSULTANT represents that all professional services required hereunder will be performed directly by CONSULTANT, or under direct supervision of CONSULTANT.

Section 2. SCOPE OF SERVICES AND COMPENSATION.

- A. CONSULTANT shall provide services as described in Exhibit "A" entitled "Proposal", attached hereto and made a part hereof.
- B. As additional consideration, CONSULTANT and AGENCY agree to abide by the terms and conditions contained in this Agreement.

- C. CONSULTANT will, in a professional manner, furnish all labor and all personnel; all supplies, materials, equipment, printing, vehicles, transportation, office space, and facilities; all testing, analyses, and calculations; and all other means, except as otherwise expressly specified to be furnished by AGENCY, that are necessary or proper to complete the work and provide the required professional services.
- D. CONSULTANT shall be compensated for work completed in accordance with this Section 2 as follows: (a) not to exceed \$20,000 for the performance of certain services reflected as Items 1 through 9 in the Proposal (Exhibit A); (b) subject to the prior written approval of the Treasurer for any such work to be completed by CONSULTANT, an hourly rate of \$200 per hour on a time and materials basis but not to exceed a total amount of \$3,000 for the performance of additional services reflected in Items 10 and 11 in the Proposal (Exhibit A) relating to document review, bond rating agency presentation and other meetings; and (c) expenses not to exceed \$2,500. Combined compensation of fees and expenses payable to Fraser & Associates is a not to exceed amount of \$25,500. . CONSULTANT shall be compensated for additional services only upon prior written approval of AGENCY.
- E. *If the 2013 Tax Allocation Bonds are not issued,* CONSULTANT shall submit a statement of accrued compensation for basic and additional services rendered in accordance with this Agreement and all accrued expenses, not to exceed **\$25,500**. Payments to CONSULTANT will be made by AGENCY within thirty (30) calendar days of receipt of invoice. AGENCY agrees that the CONSULTANT's billings are correct unless AGENCY, within ten (10) calendar days from the date of receipt of such billing, notifies CONSULTANT in writing of alleged inaccuracies, discrepancies, or errors in billing. In the event AGENCY disputes part or all of an invoice, AGENCY shall pay the undisputed portion of the invoice within the above mentioned thirty (30) calendar days.
- F. *If the 2013 Tax Allocation Bonds are issued,* CONSULTANT shall submit a statement for total accrued compensation for basic and additional services rendered in accordance with this Agreement and all accrued expenses, not to exceed **\$25,500**. Payments to CONSULTANT will be made by AGENCY through the 2013 Tax Allocation Bonds Trustee/Escrow Agent and from the proceeds of the 2013 Tax Allocation Bonds within thirty (30) calendar days of receipt of invoice. AGENCY agrees that the CONSULTANT's billings are correct unless AGENCY, within ten (10) calendar days from the date of receipt of such billing, notifies CONSULTANT in writing of alleged inaccuracies, discrepancies, or errors in billing. In the event AGENCY disputes part or all of an invoice, AGENCY shall pay the undisputed portion of the invoice within the above mentioned thirty (30) calendar days from the proceeds of the 2013 Tax Allocation Bonds.

Section 3. PROJECT COORDINATION AND SUPERVISION.

The AGENCY's Treasurer, currently Kathleen VonAchen, is hereby designated as the PROJECT COORDINATOR for AGENCY and will monitor the progress and execution of this Agreement.

Donald J. Fraser, President of CONSULTANT, is hereby designated as the contact for CONSULTANT and will monitor the progress and execution of this Agreement.

Section 4. LENGTH OF CONTRACT.

The contract between CONSULTANT and AGENCY will be terminated upon completion of the work as set forth in Section 2 above or in accordance with Section 16 below.

Should CONSULTANT begin work on any phase in advance of receiving written authorization to proceed, any professional services performed by CONSULTANT in advance of the said date of authorization shall be considered as having been done at CONSULTANT'S own risk and as a volunteer unless said professional services are so authorized.

Any delay occasioned by causes beyond the control of CONSULTANT may be reason for the granting of extension of time for the completion of the aforesaid services. When such delay occurs, CONSULTANT shall immediately notify the PROJECT COORDINATOR in writing of the cause and the extent of the delay, whereupon the PROJECT COORDINATOR shall ascertain the facts and the extent of the delay and determine whether an extension of time for the completion of the professional services is justified by the circumstances.

Section 5. CHANGES.

If changes in the work seem merited by AGENCY or CONSULTANT, and informal consultations with the other Party indicate that a change is warranted, it shall be processed by AGENCY in the following manner: a letter outlining the changes shall be forwarded to AGENCY by CONSULTANT with a statement of estimated changes in fee or time schedule. An amendment to the Agreement shall be prepared by AGENCY and executed, if approved, by both PARTIES before performance of such services or AGENCY will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

Section 6. OWNERSHIP OF DOCUMENTS.

All documents, data, studies, drawings, maps, models, photographs and reports prepared by CONSULTANT under this Agreement shall be considered the property of AGENCY. CONSULTANT may retain such copies of said documents and materials as desired, but shall deliver all original materials to AGENCY.

Section 7. AUDIT OF RECORDS.

7.1. At any time during normal business hours and as often as may be deemed necessary the CONSULTANT shall make available to a representative of AGENCY for examination all of its records with respect to all matters covered by this Agreement and shall permit AGENCY to audit, examine and/or reproduce such records. CONSULTANT shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2. The CONSULTANT shall include the AGENCY's right under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

Section 8. PUBLICATION OF DOCUMENTS.

Except as necessary for performance of service under this Agreement, no copies, sketches, or graphs of materials, including graphic art work, prepared pursuant to this Agreement shall be released by CONSULTANT to any other person or agency without AGENCY's prior written approval. All press releases, including graphic display information to be published in newspapers or magazines, shall be approved and distributed solely by AGENCY, unless otherwise provided by written agreement between the PARTIES. After project completion, CONSULTANT may list the project and the general details in its promotional materials.

Section 9. COVENANT AGAINST CONTINGENT FEES.

CONSULTANT declares that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach of violation of this warranty, AGENCY shall have the right to annul this Agreement without liability, or, at its sole discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

Section 10. NO ASSIGNMENTS.

Neither any part nor all of this Agreement may be assigned or subcontracted, except as otherwise specifically provided herein, or to which AGENCY, in its sole discretion, consents to in advance thereof in writing. Any assignment or subcontracting in violation of this provision shall be void.

Section 11. INDEPENDENT CONTRACTOR.

At all times during the term of this Agreement, CONSULTANT and any subcontractors employed by CONSULTANT shall be an independent contractor and shall not be an employee of the AGENCY. AGENCY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT'S services rendered pursuant to this Agreement; however, AGENCY shall not have the right to control the means by which CONSULTANT accomplishes its services. Any provision in this Agreement that may appear to give AGENCY the right to direct CONSULTANT or sub consultant as to the details of doing the work or to exercise a measure of control over the work means that CONSULTANT shall follow the direction of the AGENCY as to end results of the work only.

Neither CONSULTANT nor CONSULTANT's employees shall in any event be entitled to any benefits to which AGENCY employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, CONSULTANT being solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

Section 12. LICENSES, PERMITS, ETC.

CONSULTANT represents and declares to AGENCY that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. CONSULTANT represents and warrants to AGENCY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for CONSULTANT to practice its profession. CONSULTANT shall obtain and maintain a City of Imperial Beach business license during the term of this Agreement.

Section 13. INSURANCE.

CONSULTANT shall maintain, during the term of this Agreement, Employer's Liability Insurance as prescribed by applicable law. Upon request, AGENCY shall be provided with satisfactory evidence that premiums have been paid and CONSULTANT shall deliver to AGENCY certificates of insurance and endorsements as to each policy. Each certificate of insurance shall provide that the policy will not be materially altered or cancelled without first giving ten (10) calendar days written notice to the AGENCY by certified mail. Coverage shall include appropriate waivers of subrogation as to the City of Imperial Beach (the "City") and AGENCY. CONSULTANT agrees to this requirement

irrespective of any other similar obligation imposed on others and CONSULTANT agrees to do so in conformity with the requirements set forth herein including those requirements set forth for certificates of insurance.

Consultant is aware of the provisions of California Labor Code Section 3700 which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with the provisions of that code before commencing with and during the performance of the work of this contract."

CONSULTANT shall assume liability for the wrongful or negligent acts, errors and omissions of its officers, agents and employees and sub Contractors in regard to any functions or activity carried out by them on behalf of AGENCY pursuant to the terms of this Agreement.

Section 14. CONSULTANT NOT AN AGENT.

Except as AGENCY may specify in writing, CONSULTANT shall have no authority, expressed or implied, to act on behalf of AGENCY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, expressed or implied, pursuant to this Agreement to bind AGENCY to any obligation whatsoever.

Section 15. INDEMNITY.

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend, and hold harmless the AGENCY, the City, and their officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the active or sole negligence or willful misconduct by the AGENCY, the City or their elected officials, officers, agents, and employees. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this AGREEMENT. The PARTIES expressly agree that any payment, attorney's fees, costs or expense AGENCY or the City incurs or makes to or on behalf of an injured employee under the AGENCY's or City's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this AGREEMENT.

Section 16. TERMINATION.

AGENCY may terminate this Agreement at any time by giving ten (10) calendar days' written notice to CONSULTANT of such termination and specifying the effective date thereof at least ten (10) calendar days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials prepared by CONSULTANT shall, at the option of AGENCY, become the property of AGENCY. If this Agreement is terminated by AGENCY as provided herein, CONSULTANT will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of CONSULTANT covered by this Agreement, less payments of compensation previously made.

Should CONSULTANT be in default of any covenant or condition hereof, AGENCY may immediately terminate this AGREEMENT for cause if CONSULTANT fails to cure the default within ten (10) calendar days of receiving written notice of the default.

Section 17. NON-DISCRIMINATION.

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, nor shall CONSULTANT discriminate against any qualified individual with a disability. CONSULTANT will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by AGENCY setting forth the provisions of this non-discrimination clause.

Section 18. GENERAL CONDITIONS.

CONSULTANT agrees that it shall provide no services for any private client within the boundaries of AGENCY during the period that this Agreement is in effect, nor shall CONSULTANT, without, previous written permission from the PROJECT COORDINATOR, review any plan, map or other work which to the best of CONSULTANTS knowledge has been submitted by a private client for which the CONSULTANT has performed work within the previous 12 months or anticipates performing work in the succeeding 12 months. CONSULTANT shall immediately notify the PROJECT COORDINATOR in writing whenever CONSULTANT has reason to believe that aforementioned circumstance exists. CONSULTANT knows of no interests where it holds nor of any relationship it has or may have that would constitute a conflict of CONSULTANT performing the duties set forth in this Agreement solely in the best interest of CITY.

Section 19. OFFICE SPACE AND CLERICAL SUPPORT.

CONSULTANT shall provide its own office space and clerical support at its sole cost and expense.

Section 20. SUBCONTRACTORS.

20.1. The CONSULTANT's hiring or retaining of third parties (i.e. subcontractors) to perform services related to this Agreement is subject to prior approval by the AGENCY.

20.2. All contracts entered into between the CONSULTANT and its subcontractor shall also provide that each subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work related to this Agreement and for the duration of this Agreement. The CONSULTANT shall require the subcontractor to obtain all policies described in Section 13 above in the amounts required by the AGENCY, which shall not be greater than the amounts required of the CONSULTANT.

20.3. In any dispute between the CONSULTANT and its subcontractor, the AGENCY or the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The CONSULTANT agrees to defend and indemnify the AGENCY and the City as described in Section 15 of this Agreement should the AGENCY or the City be made a party to any judicial or administrative proceeding to resolve any such dispute.

Section 21. CONFIDENTIAL RELATIONSHIP.

AGENCY may from time to time communicate to CONSULTANT certain information to enable CONSULTANT to effectively perform the services. CONSULTANT shall treat all such information as confidential, whether or not so identified, and shall not disclose any part thereof without the prior written consent of AGENCY. CONSULTANT shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services. The foregoing obligation of this Section 21, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information (ii) is, through no fault of CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is now in the possession of CONSULTANT without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

CONSULTANT shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this contract without the prior written consent of AGENCY. In its performance hereunder, CONSULTANT shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

Section 22. MEDIATION.

In the event of a dispute between AGENCY and CONSULTANT concerning the terms of this Agreement or its performance, the PARTIES may, but are not required to, agree to submit such dispute to mediation. If both PARTIES agree to mediation, AGENCY and CONSULTANT agree to cooperate in good faith to promptly select a mediator, to schedule a mediation session, and to attempt to settle the claim or dispute through mediation.

Section 23. NOTICES.

All communications to either Party by the other Party shall be deemed made when received by such Party at its respective name and address, as follows:

Kathleen VonAchen
Treasurer
Imperial Beach Redevelopment Agency Successor Agency
825 Imperial Beach Blvd.
Imperial Beach, CA 91932

Donald Fraser
President
Fraser & Associates
225 Holmfirth Court
Roseville, CA 95661

Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) business days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above.

Section 24. CALIFORNIA LAW; VENUE.

This Agreement and its performance shall be governed, interpreted, construed, and regulated by the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. CONSULTANT hereby waives any and all rights it might have pursuant to California Code of Civil Procedure § 394.

Section 25. ENTIRE AGREEMENT.

This Agreement, and its Attachments and Exhibits, set forth the entire understanding of the PARTIES. There are no other understandings, terms or other agreements expressed or implied, oral or written. The following attachments are a part of this Agreement: **Proposal dated April 3, 2013**. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the PARTIES, their officers, agents, or employees shall be valid unless agreed to in writing by both PARTIES.

Section 26. SEVERABILITY.

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement shall continue in full force and effect.

Section 27. TIME IS OF ESSENCE.

Time is of the essence for each and every provision of this Agreement that states a time for performance and for every deadline imposed by the PROJECT COORDINATOR.

Section 28. COMPLIANCE WITH LAW.

CONSULTANT shall comply with applicable laws in effect at the time the services are performed hereunder which, to the best of its knowledge, information and belief, apply to its obligations under this Agreement.

Section 29. STATEMENT OF EXPERIENCE.

By executing this Agreement, CONSULTANT represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the Agreement in a manner satisfactory to AGENCY. CONSULTANT represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private owners, and experience in dealing with public agencies all suggest that CONSULTANT is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public agency.

Section 30. CONFLICTS OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.

During the term of this Agreement, CONSULTANT shall not act as consultant or perform services of any kind for any person or entity whose interests conflict in any way with those of the AGENCY. CONSULTANT shall at all times comply with the terms of the Political Reform Act and the local conflict of interest ordinance. CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the AGENCY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. CONSULTANT represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the AGENCY.

CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act and local ordinance. Specifically, CONSULTANT shall file Statements of Economic Interest with the City Clerk of the City of Imperial Beach in a timely manner on forms which CONSULTANT shall obtain from the City Clerk.

Section 31. RESPONSIBILITY FOR EQUIPMENT.

AGENCY or the City shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by CONSULTANT or any of CONSULTANT's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to CONSULTANT by AGENCY or the City. The acceptance or use of any such equipment by CONSULTANT, CONSULTANT's employees, or subcontractors shall be construed to mean that CONSULTANT accepts full responsibility for and agrees to exonerate, indemnify and hold harmless AGENCY and the City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

Section 32. NO WAIVER.

No failure of either the AGENCY or the CONSULTANT to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

Section 33. DRAFTING AMBIGUITIES.

The PARTIES agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

Section 34. CONFLICTS BETWEEN TERMS.

If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

Section 35. EXHIBITS INCORPORATED.

Exhibits "A" is incorporated into the Agreement by this reference.

Section 36. SIGNING AUTHORITY.

The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party hereto harmless if it is later determined that such authority does not exist.

*****SIGNATURES ON FOLLOWING PAGE*****

IN WITNESS WHEREOF the PARTIES hereto have executed this Agreement on the day and year first hereinabove written.

AGENCY:

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY,
a public entity

CONSULTANT:

FRASER & ASSOCIATES,
a California _____

Gary Brown, Executive Director

Donald J. Fraser, President

APPROVED AS TO CONTENT:

Kathleen VonAchen, Treasurer/
Administrative Services Director

APPROVED AS TO FORM:

Jennifer M. Lyon, General Counsel

FA FRASER & ASSOCIATES**Property Tax and Financial Consulting**

225 Holmfirth Court
Roseville CA 95661

Phone: (916) 791-8958
FAX: (916) 791-9234

April 3, 2013

Mr. Greg Wade
Assistant City Manager / Community Development Director
City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 91932

Dear Mr. Wade:

Per your request, Fraser & Associates is pleased to provide this proposal for financial and bond services to the Imperial Beach Successor Agency (Agency). The Agency is requesting that Fraser & Associates assist the Agency with the sale of refunding tax allocation bonds for the Imperial Beach Redevelopment Project Area (Project Area).

Scope of Services

Fraser & Associates is prepared to provide an in depth analysis of the tax increment revenues to be generated from the Project Area. In order to accomplish this, we recommend the following scope of services:

1. **Tax Increment Projection**: An estimate of the 2012-13 tax increment revenues expected to be received in the Project Area will be prepared, along with a projection showing the future tax increment revenues estimated to be annually allocated to the Agency. The tax increment projections will include an analysis of the impact of senior liens on revenue available for debt service, including pass through payments.
2. **Analysis of County Allocation Procedures**: A review of County procedures used for the calculation of tax increment, including tax increment from the application of tax rates to incremental value and unitary property taxes, will be prepared for the current year revenue estimate. This will include a review of distributions from the Redevelopment Property Tax Trust Fund prepared by the County. This analysis ensures that the current year revenue estimate is accurate.

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3. **Review of Historical Revenues**: Fraser & Associates will review the growth in taxable values over the past five fiscal years and provide a table showing such trends. In addition, an analysis will be prepared of the actual tax increment receipts to the initial County levy in order to determine collection trends.
4. **Appeals Analysis**: An analysis of recently resolved and open appeals will be prepared. The tax increment projections will be revised as needed for the potential impact of appeals.
5. **Housing Market Impact Analysis**: Recent volatility in the housing market has caused rating agencies to require additional information concerning housing prices and property transfers. As a result, the impact that housing price declines have had on the Project Area will be analyzed. We will also review recent sales data in order to determine whether housing price declines and Proposition 8 reductions may be leveling off.
6. **Plan Limits Review**: The Project Area's plan limits will be reviewed in order to determine any potential impact on the bond issue and on the tax increment revenue stream.
7. **Impacts of Redevelopment Dissolution Act**: We will review the impact of AB 26 and AB 1484 on the flow of revenues to the Agency.
8. **Fiscal Consultants Report**: A Fiscal Consultants Report (FCR) will be prepared summarizing the analysis of historical, current and projected tax increment revenues. The FCR will include our methodology in preparing the tax increment study. The FCR is typically included as an appendix to the Official Statement for the bond issue.
9. **Official Statement Tables**: Fraser & Associates will provide tables on the revenues in the Project Area for inclusion in the offering document based on the data utilized in the services described above.
10. **Document Review**: Other documents (Official Statement; Indenture of Trust; etc.) will be reviewed and commented on by Fraser & Associates.
11. **Bond Rating Agency and Other Meetings**: Fraser & Associates will be available to represent the Agency in meetings and presentations to the bond rating agencies (Moody's and Standard and Poor's). Other meetings will also be attended, as requested by the Agency.

Compensation

Services shall be compensated on the basis of a fixed fee of Twenty Thousand Dollars (\$20,000) for items one through nine above, inclusive of one meeting. Service items ten and eleven shall be compensated on a time and material basis in accordance with my standard hourly rate of \$200 per hour.

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Mr. Greg Wade

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It is estimated that hourly rate services will not exceed Three Thousand Dollars (\$3,000). Expenses are estimated at \$2,500. Expenses include, but are not limited to: authorized travel; mileage at the current IRS per mile rate or equivalent rental car fee; copy expenses; shipping and messenger services; long distance phone calls; the acquisition of property tax data (Top 10, etc.) and other similar expenses.

Payment for services can be made from the cost of issuance fund created as part of the bond issue, but the fee is not contingent upon a successful closing of the bond issue. If the bond issue is not completed, payment shall still be owed to Fraser & Associates.

Fraser & Associates appreciates the opportunity to submit this proposal and looks forward to with you again. Please let me know if you have any questions.

Sincerely,



Donald J. Fraser