



# Placentia Planning Commission

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## Agenda Staff Report

TO: PLANNING COMMISSION  
FROM: ASSISTANT CITY ADMINISTRATOR  
VIA: CONTRACT SENIOR PLANNER  
DATE: JULY 8, 2014

SUBJECT: General Plan Conformity Finding and Disposition and Development Agreement for six (6) parcels APNs 346-181-05, -06,-07,-30. -35.-37: 1617 fronting Oak Street (referred to as 1617 Oak Street) and Atwood Street.

### **SUMMARY:**

The City is considering entering into an agreement with Habitat for Humanity of Orange County, Inc., in order to dispose of the property at 1617 Oak Street and State law requires that in advance of the disposition, it must be determined that the intended use for the property conforms to the City's General Plan.

### **RECOMMENDATION:**

It is recommended that the Planning Commission take the following action:

1. Adopt Resolution PC-2014-09, **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PLACENTIA, CALIFORNIA RECOMMENDING THE CITY COUNCIL APPROVE THAT CERTAIN DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PLACENTIA AND HABITAT FOR HUMANITY OF ORANGE COUNTY AND FINDING THAT THE DISPOSITION OF SIX (6) PARCELS OF REAL PROPERTY (APNS 346-181-05,-06,-07,-30,-35,-37) COMMONLY REFERRED TO AS 1617 OAK STREET TO BE USED FOR RESIDENTIAL PURPOSES CONFORMS TO THE ADOPTED GENERAL PLAN;** and
2. Find that the proposed development is categorically exempt in conjunction with Class 32 of the California Environmental Quality Act guidelines.

### **DISCUSSION:**

California Government Code § 65402 requires that before a City acquires or disposes of specified real property, the Planning Commission must make a determination that the intended use for the property is in conformance with the City's General Plan.

On March 2, 2010 the City Redevelopment Agency took action to purchase the subject parcels using funds within the Low to Moderate Income Housing Fund of that Fiscal year and subsequently purchased the property for \$272,264.19. Article 2.5 of Chapter 4 of Division 1, Title 7 of the California Government Code, commencing at § 65864, *et seq.*, authorizes cities to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property. To further the City's goals of developing affordable housing, the City has negotiated a Disposition and Development Agreement ("Agreement") with Habitat for Humanity of Orange County, Inc. ("Habitat"), a California non-profit public benefit corporation. A copy of the Agreement can be found as Attachment No, 1 to this report.

The purpose of the Agreement is to provide an effective mechanism whereby the City of Placentia and Habitat are able to increase the availability of low to moderate cost housing stock within the City, by providing for the rehabilitation, construction, maintenance and use of that certain real property located at 1617 Oak Street ("Property"). The Project (as defined in the Agreement) consists of the construction on the Property of two (2) dwelling units to be sold to families of low to moderate income and is in the vital and best interests of the City, the health, safety, and welfare of City's residents and is in accord with the public purposes and provisions of applicable federal, state, and locals laws and requirements.

The basis for making the conformity finding required by State law is determining that a project advances a goal or implementation policy as outlined in the adopted General Plan. Section IV Alternative Housing Programs of the General Plan outlines various programs designed to provide housing to all economic segments of the community and meet or exceed the qualified objectives set forth in Section III of the Housing Element. Disposition of the subject property for the expressed purposes defined within the Agreement with Habitat advances the goals outlined in Section IV Alternative Housing Programs of the General Plan.

#### Community Meeting

On June 11, 2014 a community meeting was hosted by the City and Habitat regarding the proposed development. City staff and Habitat co-presented a PowerPoint presentation in which background information, site plan, renderings, developer history and a timeline were presented to attendees. Staff and Habitat fielded a few questions regarding the application process for the homes and the proposed timeframe for construction.

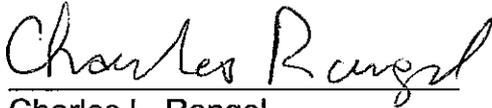
#### CEQA:

In accordance with the new State California Environmental Quality Act ("CEQA") Exemptions for In-Fill Developments, this project is consistent with the Class 32 CEQA Exemption in that:

- a) The project is consistent with applicable General Plan designations and policies as well as zoning regulations.

- b) The proposed development occurs within City limits on a project site of no more than five acres substantially surrounded by urban uses.
- c) The project site has no value as habitat for endangered, rare or threatened species.
- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or air quality.
- e) The site can be adequately served by all required utilities and public services.

**Prepared and submitted by:**



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Contract Senior Planner

**Review and approved by:**



Damien R. Arrula  
Assistant City Administrator

**Attachments:**

1. Disposition and Development Agreement
2. Resolution No. 2014-09
3. Site plan
4. Floor plan
5. Elevations

## **DISPOSITION AND DEVELOPMENT AGREEMENT**

This **DISPOSITION AND DEVELOPMENT AGREEMENT** (“Agreement”) is made and entered into as to this \_\_\_ day of \_\_\_\_\_, 2014, by and between THE CITY OF PLACENTIA, a Charter City and municipal corporation (“City”) and the HABITAT FOR HUMANITY OF ORANGE COUNTY, INC., a California non-profit public benefit corporation (“Habitat”).

### **1. SUBJECT OF AGREEMENT [§ 100].**

#### **A. Purpose of Agreement [§ 101].**

The purpose of this Agreement is to provide an effective mechanism whereby City and Habitat are able to increase the availability of low to moderate cost housing stock within the City, by providing for the rehabilitation, construction, maintenance and use of that certain real property located at 1617 Oak Street (“Property”). The Project (as defined below) is in the vital and best interests of the City, the health, safety, and welfare of City’s residents and is in accord with the public purposes and provisions of applicable federal, state, and locals laws and requirements. Habitat also agrees to improve, at its expense, certain real property consisting of two (2) parcels located on Atwood Street immediately north of the Property (“City Property”) as a community garden, except as otherwise provided for herein.

#### **B. The Project [§ 102].**

The “Project” consists of the construction on the Property of two (2) dwelling units to be sold to families with low incomes pursuant to this Agreement. In addition, except as otherwise provided for herein, Habitat will improve, at its expense, the City Property as a community garden (the “Community Garden”) with water meter and a decorative enclosure fence including an access gate at a cost of approximately Sixty Thousand and no/100 Dollars (\$60,000.00). The conceptual site plans for the Project and the Community Garden are depicted on Exhibit A. Notwithstanding the foregoing, City reserves the right to decline the development of the Community Garden as identified herein. Said determination by City shall be in writing and provided to Habitat prior to issuance of building permits for the structures to be constructed on the property. In the event City declines the development of the Community Garden as provided for herein, Habitat agrees, in lieu of development of the Community Garden to pay to City the sum of Thirty Thousand and No/100 Dollars (\$30,000.00) which sum shall be provided to City prior to issuance of the Certificate of Completion as provided for in § 314, below.

#### **C. The Property [§ 103].**

The Property is generally described as that parcel, together with improvements thereon, located at 1617 Oak Street, Placentia, California as depicted on the map attached hereto as Exhibit “B”. The Property is more particularly described on Exhibit “C” attached hereto.

#### **D. The City Property [§ 104].**

The City Property consists of the two (2) parcels immediately north of the Property, as depicted on the map attached hereto as Exhibit "D"

**E. Parties to Agreement [§ 105].**

**(1). City [§ 106].**

The City is a Charter City and municipal corporation, exercising governmental functions and powers and organized and existing under the California Constitution and its Charter. The principal office of City is located at 401 E. Chapman Avenue, Placentia, CA 92870. As used in this Agreement, the term "City" includes any assignee of or successor to its rights, powers and responsibilities.

**(2). Habitat [§ 107].**

Habitat represents and warrants that it is a non-profit public benefit corporation duly organized and existing under the laws of the State of California and that its officers executing this Agreement have the necessary authority to bind Habitat to all of the rights and obligations of this Agreement. The principal office of Habitat is 2200 S. Ritchey, Santa Ana, CA 92705. Whenever the term "Habitat" is used herein, such term shall include any permitted nominee or assignee as herein provided.

**2. DISPOSITION OF THE PROPERTY [§ 200].**

**A. Sale and Disposition Price [§ 201].**

In accordance with and subject to all the terms, covenants and conditions of this Agreement, City agrees to sell, and Habitat agrees to purchase, the Property for One Dollar (\$1.00) Dollar ("Disposition Price").

**B. Intentionally Deleted [§ 202].**

**C. Habitat Due Diligence Investigations. [§ 203]**

**(1). Time and Expense.** Habitat shall have a period of thirty (30) consecutive days commencing on the day immediately following the effective date of this Agreement ("Due Diligence Period") in which to perform a due diligence investigation ("Due Diligence Investigation") of the Property at its sole cost and expense to determine the suitability of the Property for development and construction of the dwelling units to be constructed hereunder, including investigation of the environmental and geotechnical suitability of the Property, as deemed appropriate in the reasonable discretion of Habitat.

**(2). Right to Enter.** City licenses Habitat to enter the Property and the City Property for the sole purpose of conducting the Due Diligence Investigation, subject to all of the terms and conditions of this Agreement. The license given in this § 203 shall terminate with the termination of this Agreement. Any Due Diligence Investigation by Habitat shall not

unreasonably disrupt any then existing use or occupancy of the Property. Habitat's exercise of the license provided in this § 203 shall not extend the Due Diligence Period.

**(3). Limitations.** Habitat shall not conduct any intrusive or destructive testing of any portion of the Property, other than low volume soil samples, without City's prior written consent. Habitat shall pay all of its vendors, inspectors, surveyors, consultants or agents engaged in any inspection or testing of the Property, such that no mechanics liens or similar liens for work performed are imposed upon the Property by any such persons. Following the conduct of any Due Diligence Investigations on the Property, Habitat shall restore the Property to substantially its condition prior to the conduct of such Due Diligence Investigations.

**(4). Indemnification of City.** The activities of Habitat or its agents directly or indirectly related to the Due Diligence Investigations shall be subject to Habitat's indemnity, defense and hold harmless obligations pursuant to § 220 Habitat shall provide City with evidence of liability insurance in compliance with § 323 prior to the commencement of any Due Diligence Investigations on the Property.

**(5). Due Diligence Completion Notice.** Habitat shall deliver a Due Diligence Completion Notice to City and Escrow Agent prior to the end of the Due Diligence Period. If Habitat does not unconditionally accept the condition of the Property by delivery of its Due Diligence Completion Notice stating such unconditional acceptance, prior to the end of the Due Diligence Period, Habitat shall be deemed to have rejected the condition of the Property and refused to accept conveyance of title to the Property. If the condition of the Property is rejected or deemed rejected by Habitat, then both City and Habitat shall have the right to cancel the Escrow and terminate this Agreement, in their respective sole and absolute discretion, without liability to the other party or any other person, by delivery of a Notice of termination to the other party and Escrow Agent, in which case the Parties and Escrow Agent shall proceed pursuant to § 204.

#### **D. Escrow [§ 204].**

(1). City and Habitat agree to open an escrow ("Escrow") for the Property with First American Title Insurance Company ("Escrow Agent") by the times established therefor in the Schedule of Performance incorporated herein and attached to this Agreement as Exhibit "E". This Agreement constitutes the joint escrow instructions of City and Habitat, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the Escrow. City and Habitat shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent hereby is empowered to act under this Agreement, and upon indicating its acceptance of the provisions of this § 204 in writing, delivered to City and to Habitat within five (5) days after the opening of the Escrow, shall carry out its duties as Escrow Agent hereunder.

(2). The parties agree that the closing of the Escrow, ("Closing") is to occur, if at all, on or before June 30, 2014, or such earlier date as is mutually agreed upon in writing.

(3). Habitat shall pay into the Escrow the following fees, charges and costs promptly after the Escrow Agent has notified Habitat of the amount of such fees, charges and costs, but not later than three (3) days prior to the scheduled date for the Closing.

(a). One-half of the escrow fee;

(b). The portion of the premium for the title insurance policy to be paid by Habitat as set forth in § 210.

(4). City shall pay at the Closing the following:

(a). Any State, County, or City Documentary Stamps;

(b). Any Transfer Tax.

(c). City shall timely and properly execute, acknowledge and deliver a grant deed conveying to Habitat title to the Property in accordance with the requirements of § 206.

(5). City shall pay into the Escrow the following fees, charges, and costs promptly after the Escrow Agent has notified City of the amount of such fees, charges, and costs, prior to the scheduled date for the Closing:

(a). Costs necessary to place the title in the condition for conveyance required by the provisions of this Agreement;

(b). One-half of the escrow fee;

(c). Cost of drawing the grant deed;

(d). Documentary transfer taxes and recording fees;

(e). Notary fees;

(f). The portion of the premium for the title insurance policy to be paid by City as set forth in § 210;

(g). Real property or other ad valorem taxes, if any, upon the Property for any time prior to conveyance of title.

(6). Upon delivery of a grant deed to the Escrow Agent by City pursuant to § 207, the Escrow Agent shall record such deed when title can be vested in Habitat in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by applicable law, and pay any transfer tax required by law. Any insurance policies governing the Property are not to be transferred.

(7). The Escrow Agent is authorized to:

(a). Pay, and charge City and Habitat respectively, for any fees, charges, and costs payable under this § 204. Before such payments are made, the Escrow Agent shall notify City and Habitat of the fees, charges and costs necessary to remove from record any encumbrances, liens or other matters to which Habitat reasonably has disapproved or objected pursuant to the provisions of § 207 hereof, and to close the Escrow;

(b). Disburse funds and deliver the grant deed and other documents to the parties entitled thereto when the conditions of the Escrow have been fulfilled by City and Habitat. The Disposition Price shall not be disbursed by the Escrow Agent unless and until it has recorded the deed thereto and has delivered to Habitat a title insurance policy insuring title acceptable to Habitat and Habitat's lender, if any, and conforming to the requirements of § 210, and

(c). Record any instruments delivered through the Escrow if necessary or proper to vest title in Habitat in accordance with the terms and provisions of this Agreement.

(d). All funds received in the Escrow shall be deposited by the Escrow Agent with other Escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made on the basis of a 30-day month.

(e). The Closing and the obligation of any party to purchase or sell property pursuant to this Agreement is conditioned upon:

(i). The requirements in § 201 having been satisfied;

(ii). The receipt by City of evidence that Habitat has financing sufficient to enable it to finance the proposed improvements;

(iii). City having performed those obligations set forth in §§ 211, 212, 213 and 214 and all of City's obligations which are to be performed prior to the Closing having been performed prior thereto and all of City's representations, covenants and warranties being true and correct both at the time of the Closing and as of the date hereof;

(iv). Habitat's review and approval of a currently dated Preliminary Title Report for the Property prepared by Title Company selected by City ("Title Company"), and the Title Company's issuance or commitment to issue an ALTA Extended Owner's Policy of Title Insurance in the amount of XXXXX Dollars (\$X.XX) ("Insurance Amount") as of the Closing;

(v). If the Escrow is not in condition to close before the time for conveyance established in § 204, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, terminate this Agreement and demand the return of its money, papers, or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate. If neither City nor Habitat shall have fully performed the acts to be performed before the time for conveyance established in § 204, no termination or demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of

its or their principal place or places of business. If any objections are raised within the (10) days period, the Escrow Agent is authorized to hold all money, papers and documents with respect to the Property until instructed by mutual agreement of the parties or upon failure thereof, by a court of competent jurisdiction. If no such demands are made, the Escrow shall be closed as soon as possible.

(vi). The Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both City and Habitat, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

(vii). Any amendment to these escrow instructions shall be in writing and signed by both City and Habitat. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

(viii). All communications from the Escrow Agent to City or Habitat shall be directed to the addresses and in the manner established in § 600 for notices, demands, and communications between City and Habitat. Nothing in this § 204 shall be construed to impair or affect the rights or obligations of City or Habitat to specific performance.

(8). The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under §§ 204 to 210, both inclusive, of this Agreement.

(9). Neither City nor Habitat shall be liable for any real estate commissions or brokerage fees which may arise from this Agreement. City and Habitat each represent that it has engaged no broker, agent, or finder in connection with this transaction. Should a claim for a real estate commission, brokerage fees, finder's fee or the like be made or asserted relative to the sale of the Property to Habitat, then in that event, the party who purportedly retained such real estate sales person, broker or finder shall indemnify and hold the other party harmless from such claim, demand, expense or liability.

#### **D. Conveyance of Title and Delivery of Possession [§ 205].**

(1). Subject to any mutually agreed upon extensions of time, which shall not be unreasonably withheld, conveyance to Habitat of title to the Property (in accordance with the provisions of § 206) shall be completed on or prior to the date specified in § 204. City and Habitat agree to perform all acts necessary to conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

(2). Possession shall be delivered to Habitat concurrently with the conveyance of title. Habitat shall accept title and possession on the Closing Date.

#### **E. Form of Deed [§ 206].**

City shall convey to Habitat fee simple title to the Property in the condition provided in § 207 herein of this Agreement by grant deed in the form attached hereto as Exhibit "F". The Title Company will insure the title herein, consistent with the terms of this Agreement.

**F. Condition of Title [§ 207].**

(1). Prior to the Closing, in accordance with the Schedule of Performance herein, City shall provide Habitat with a preliminary title report and all underlying documents with respect to the Property. Within the time provided in said Schedule, Habitat shall approve or disapprove the preliminary title report and in the event of a disapproval shall set forth such matters contained therein as are disapproved.

(2). City shall convey to Habitat fee simple merchantable title to the Property free and clear of all recorded or unrecorded liens, encumbrances, assessments, leases and taxes except as are consistent with this Agreement and subject only to those exceptions or matters which are approved by Habitat as provided herein.

**G. Time for and Place of Delivery of Deed [§ 208].**

Subject to any mutually agreed upon extension of time, City shall deposit the grant deed for the Property with the Escrow Agent on or before the date established for the conveyance of the Property in the Schedule of Performance.

**H. Payment of the Disposition Price and Recordation of Deed [§ 209].**

Upon the Closing, the Escrow Agent shall (i) deliver the Disposition Price to City, (ii) record the grant deed in the Office of the County Recorder for Orange County and (iii) deliver to Habitat a title insurance policy (or commitment therefor) insuring title in conformity with § 210.

**I. Title Insurance [§ 210].**

(1). **Issuance of Policy.** Concurrently with the recordation of the grant deed conveying title to the Property, the Title Company shall provide and deliver to Habitat an ALTA Extended Owner's Policy of title insurance ("Owner's Policy") issued by the Title Company insuring that the title is vested in Habitat in the condition required by § 207 of this Agreement. The title company shall provide City with a copy of the title insurance policy and the title insurance policy be in the amount of the Insurance Amount.

(2). **Premiums.** Habitat shall pay the entire premium for the C.L.T.A. standard form policy of title insurance in the amount of the Insurance Amount.

(3). **Endorsement.** Concurrently with the recording of the grant deed conveying title to the Property, the Title Company shall, if requested by Habitat, provide Habitat with an endorsement to insure the amount of Habitat's estimated construction costs of the improvements to be constructed upon the Property. Habitat shall pay the entire premium for any such increase in coverage requested by it.

**J. Taxes and Assessments [§ 211].**

Real property and other *ad valorem* taxes and assessments, if any, on the Property and taxes upon this Agreement or any rights thereunder, levied, assessed, or imposed for any period commencing prior to conveyance of title shall be borne by City. All such taxes and assessments levied or imposed for any period commencing after the Closing shall be paid by Habitat. These covenants survive the Closing and recordation of the grant deed.

**A. Occupants of the Property [§ 212].**

Except as otherwise may be provided in the "Schedule of Performance" incorporated herein and attached to this Agreement as Exhibit "E the Property shall be conveyed free of any possession or right of possession except that of Habitat and easements of record.

**B. Zoning of the Property [§ 213].**

City warrants and agrees that the provisions of all zoning laws, rules and regulations, including the City's General Plan, relative or applicable to the Property at the time of conveyance thereof shall permit the use, operation and maintenance of the improvements to be constructed hereunder. City also warrants that the uses of the Property contemplated by this Agreement comply with the General Plan.

**C. Condition of the Property [§ 214].**

Except as may otherwise be provided for herein, all portions of the Property shall be conveyed in an "as is" condition.

**D. Hazardous Materials. [§ 215].**

**(1). Definitions. [§ 216].**

For purposes of this Agreement, the following terms shall have the following meanings:

(a). "Environmental Claims" shall mean any claims by third parties for personal injury (including sickness, disease or death), or for injury to property or natural resources or the environment, including, without limitation, lost profits, consequential damages, diminution of property value or loss of use of property, or for any violation or alleged violation of, or noncompliance with, the requirements of any Environmental Law.

(b). "Environmental Cleanup liability" shall mean any cost or expense incurred to investigate, monitor, remove, remediate, treat, clean up, abate or otherwise respond to any Release or threatened Release of Hazardous Materials, including, without limitation, the cost of obtaining Property closure from applicable governmental agencies and the cost of restoring the affected property upon completion of responsive action.

(c). "Environmental Compliance Costs" shall mean any cost or expense necessary to enable the affected property to comply with all applicable Environmental Laws.

(d). "Environmental Laws" shall mean any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Governmental Authority regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Material, as defined in this Agreement, or pertaining to occupational health or industrial hygiene or environmental conditions on the Land, as in effect on the date of this Agreement or as may at any later time be in effect, including without limitation, the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. § 1251, *et seq.*; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601, *et seq.*; the Clean Air Act ("CAA"), 42 U.S.C. § 7401, *et seq.*; the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136, *et seq.*; the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f, *et seq.*; the Surface Mining Control and Reclamation Act ("SMCRA"), 30 U.S.C. § 1201, *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.*; the Superfund Amendment and Reauthorization Act of 1986 ("SARA"), Public Law 99-499, 100 Stat. 1613, the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11001, *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*; the Occupational Safety and Health Act, as amended ("OSHA"), 29 U.S.C. §§ 655 and 657; the California Underground Storage of Hazardous Substances Act ("CUSHSA"), California Health & Safety Code § 25280, *et seq.*; the California Hazardous Substance Account Act ("CHSAA"), California Health & Safety Code § 25300, *et seq.*; the California Hazardous Waste Control Act ("CHWCA"), California Health & Safety Code § 25100, *et seq.*; the Hazardous Waste Disposal Land Use Law, California Health & Safety Code § 25220, *et seq.*; the Porter-Cologne Water Quality Act ("PCWQA"), California Water Code § 13000, *et seq.*; the Hazardous Materials Release Responses Plans and Inventory, California Health & Safety Code § 25500, *et seq.*; the Asbestos Notification Law California Health & Safety Code § 25915, *et seq.*; the California Occupational Safety and Health Act, California Labor Code § 6300, *et seq.*; Chapters 10 and 11, Division 4.5, Title 22, California Code of Regulations and the California Safe Drinking Water and Toxic Enforcement Act ("CSDWTEA"), California Health & Safety Code § 24249.5, *et seq.*, Hazardous Materials Transportation Act ("HMTA"), 49 U.S.C. § 5101, *et seq.*, together with any amendments thereto, regulations promulgated thereunder and any similar successor, new, or additional law, statute, ordinance or regulation thereafter in effect from the date of this Agreement.

(e). "Hazardous Materials" shall mean: (i) any hazardous, toxic or dangerous waste, substance or material defined or listed as such in (or for the purposes of) CERCLA, SARA, FWPCA, RCRA, CHSAA, CHWCA, CUSHSA, PCWQA, CSDWTEA or any of the other Environmental Laws, (ii) any other waste, substance or material that exhibits any of the characteristics enumerated in 40 C.F.R. §§ 261.20-261.24, inclusive, and those extremely hazardous substances listed under § 302 of SARA and toxic or hazardous chemical substances listed under OSHA, and (iii) any asbestos or asbestos containing substances whether or not the same are defined or listed as hazardous, toxic, dangerous waste, a dangerous substance or dangerous material in any of the Environmental Laws, (iii) those substances listed in the United States Department of Transportation Table, CFR § 172.101, or by the Environmental Protection Agency ("EPA"), or any successor Agency as hazardous substances, (iv) other substances, materials and wastes that are or become regulated or classified as hazardous or toxic under

federal, state or local laws or regulations, or (v) any material, waste or substance that is (a) a petroleum or refined petroleum product, (b) asbestos, (c) polychlorinated biphenyl, (d) designated as a hazardous substance pursuant to 33 U.S.C. § 1321 or listed pursuant to 33 U.S.C. § 1317, (e) a flammable explosive, or (f) a radioactive material or (g) any pollutant, contaminant, hazardous or toxic substance, material or waste which is or becomes identified, listed or regulated as such under any Environmental Law by the United States Government, the State of California or any regional or local governmental authority having jurisdiction over the Property.

(f). "Release" shall mean the release, as defined in California Health and Safety Code §§ 25320 and 25321, of a Hazardous Material or Hazardous Materials.

**(2). Habitat Indemnity. [§ 217].**

(a). Effective upon the close of Escrow, Habitat agrees to indemnify, protect, defend, reimburse and hold City and its elected and appointed officers, officials, agents, employees and attorneys ("City Parties") harmless from and against any and all claims, actions, proceedings, lawsuits, orders, costs, liabilities, judgments, damages, fines, encumbrances, liens, penalties, punitive damages, losses and expenses (including without limitation all costs and expenses reasonably incurred to investigate and defend claims, whether or not such claim is ultimately defeated, and costs and expenses reasonably incurred for consultants, court fees, administrative fees, expert witness fees, and attorneys' fees) of whatever kind or nature, contingent or otherwise, matured or not matured, foreseeable or unforeseeable, any of which are suffered or incurred by said indemnified parties, or assessed, levied or asserted by any person or entity (whether governmental or private) against said indemnified parties, after the close of Escrow and relating to the following:

(b). Any Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs arising from the Release or threatened Release of Hazardous Materials in or into the soil or groundwater in, on, under or from the Property, as a result of the use, generation, discharge, storage, handling or disposal of Hazardous Materials at the Property, by Habitat or Habitat's agents, employees, contractors or invitees after the close of Escrow.

**(3). City Indemnity [§ 218].**

(a).. Effective upon the close of Escrow and until the expiration of this Agreement, City agrees to indemnify, protect, defend, reimburse and hold Habitat and its agents, employees, shareholders, partners, members, affiliates, successors and assigns, harmless from and against any and all claims, actions, proceedings, lawsuits, orders, costs, liabilities, judgments, damages, fines, encumbrances, liens, penalties, punitive damages, losses and expenses (including without limitation all costs and expenses reasonably incurred to investigate and defend claims, whether or not such claim is ultimately defeated, and costs and expenses reasonably incurred for consultants, court fees, administrative fees, expert witness fees, and attorneys' fees) of whatever kind or nature, contingent or otherwise, matured or not matured, foreseeable or unforeseeable, any of which are suffered or incurred by any of said indemnified parties, or assessed, levied or asserted by any person or entity (whether

governmental or private) against any of said indemnified parties, after the close of Escrow and relating to the following:

(b). Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs arising from the Release or threatened Release of Hazardous Materials in or into the soil or groundwater in, on, under or from the Property as a result of the use, generation, discharge, storage, handling or disposal of Hazardous Materials at the Property prior to the close of Escrow, except as may have arisen during Habitat's Due Diligence Investigation of the Property prior thereto.

**(4). Waiver of California Civil Code § 850, et seq. [§ 219].**

Pursuant to California Civil Code §§ 851(g), 853(f) and other applicable law, the parties hereby acknowledge and agree that the terms, provisions and requirements of the Environmental Responsibility Acceptance Act (California Civil Code § 850, et seq.) shall have no application with respect to any Environmental Claims, Environmental Cleanup Liability and Environmental Cleanup Costs of the parties as to each other and related to the Property.

**(5). Indemnity [§ 220].**

Except as provided in § (2).(a).. [§ 217], above, Habitat shall defend, indemnify, assume all responsibility for and hold City and the City Parties all costs (including attorney's fees and costs), claims, demands or liabilities judgments for injury or damage to property and injuries to persons, including death, which may be caused by any of Habitat's activities under this Agreement, whether such activities or performance thereof be by Habitat or anyone directly or indirectly employed or contracted with by Habitat and whether such damage shall accrue or be discovered before or after termination of this Agreement.

**3. THE PROJECT [§ 300].**

**A. Development of the Property by Habitat [§ 301].**

**(1). Schedule of Performance [§ 302].**

The Property shall be developed with the Project within the limitations established in Exhibit "E," the Schedule of Performance.

**(2). Time for Completion and Penalty for Failure to Complete [§ 303].**

Habitat covenants and agrees that it will construct and complete Improvements on the Property and the City Property within thirty six (36) months from the date on which title to the Property is conveyed to Habitat. In the event Habitat fails to complete the Improvements in the time required hereunder, Habitat shall be liable to City, as a penalty, in the sum of One Thousand (\$1,000.00) Dollars.

**(3). Construction Plans Drawings and Related Documents [§ 304].**

Habitat shall prepare and submit all construction drawings and related documents to City for architectural review prior to Habitat obtaining any building permits for the Property ("Architectural Review" hereinafter).

(a). If Habitat desires to make any substantial change in the construction plans after their approval by City, Habitat shall submit the proposed change, to City for its approval. If the construction plans, as modified by the proposed change, conform to the requirements of § 304 of this Agreement and the Schedule of Performance, City shall approve the proposed change and the notify Habitat in writing within thirty (30) days after submission to City. Such change in the construction plans shall be deemed approved by City unless rejected, in whole or in part, by written notice thereof by City to Habitat setting forth in detail the reasons therefor, and such rejection shall be made within the said thirty (30) day period.

(b). During the preparation of all drawings and plans, City and Habitat shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by City. City and Habitat shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to City can receive prompt and speedy consideration.

**(4). Cost of Construction [§ 305].**

The cost of developing the Property and constructing all improvements thereon shall be borne by Habitat.

**(5). Schedule of Performance [§ 306].**

(a). After the conveyance of title to the Property subject to the provisions specified in the Schedule of Performance or such reasonable extension of said dates as may be granted by City pursuant to § 604 or as may be mutually agreed upon in writing between Habitat and City, Habitat shall promptly begin and thereafter diligently prosecute to completion the construction of the improvements and the development of the Property. Habitat shall begin and complete all construction and development within the times specified in the Schedule of Performance or such reasonable extension of said dates as may be granted by City. The Schedule of Performance is subject to revisions from time-to-time as mutually agreed upon in writing between Habitat and City.

(b). During the period of construction, Habitat shall submit to City a written report of the progress of the construction when and as reasonably requested by City. The report shall be in such form and detail as may reasonably be required by City and shall include a reasonable number of construction photographs taken since the last report by Habitat.

**(6). City and Other Governmental City Permits [§ 308].**

Before commencement of construction or development of any buildings, structures or other work of improvement upon the Property, Habitat shall secure or cause to be secured any and all permits which may be required by City or any other governmental City affected by such construction, development or work to be undertaken by Habitat. City shall waive all

normal fees with respect to, and shall provide all proper assistance to Habitat in securing, such permits.

**(7). Rights of Access [§ 309].**

Representatives of City and City shall have the reasonable right of access to the Property without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to the inspection of the work being performed in constructing the improvements. Such representatives of City or City shall be those who are so identified in writing by the City Administrator. City agrees to indemnify, defend and hold Habitat harmless from any and all losses, damages, liabilities and expenses resulting from exercise of such right of access except those resulting from the negligence or misconduct of Habitat.

**(8). Local, State and Federal Laws [§ 310].**

Habitat shall carry out the construction of the improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

**(9). Anti-discrimination During Construction [§ 311].**

Habitat for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, Habitat will not discriminate against any employee or applicant for employment because of race, color, religion, marital status, sex, national origin or ancestry and shall be bound by and incorporate the provisions of § 401 C. in any contract issued by Habitat with regard to construction.

**B. Responsibilities of City [§ 312].**

City, without expense to Habitat or assessment or claim against the Property, shall perform any work specified in the Schedule of Performance or as outlined in Exhibit "E", for City to perform within the time specified in the Schedule of Performance.

**C. Prohibition Against Transfer of the Property [§ 314].**

**(1). No Transfers.** Prior to recordation by City of a Certificate of Completion of construction as provided hereinafter, Habitat shall not, except as permitted by this Agreement, sell, transfer, convey, assign or lease the whole or any part of the Property or the buildings or structures on the Property without the prior written approval of City. This prohibition shall not apply subsequent to the recordation of the Certificate of Completion with respect to the improvements upon the Property.

**(2). Continuing Obligations.** In the absence of specific written agreements by City, no such transfer, assignment or approval by City shall be deemed to relieve Habitat or any other party from any obligations under this Agreement until completion of development is evidenced by a Certificate of Completion.

**(3). Sale to Affiliate.** City hereby expressly allows Habitat to sell, transfer, convey or assign in whole or in part the Property, the buildings or improvements thereon, and/or this Agreement, providing no event of default has occurred and remains uncured, without the prior written approval of City to any corporation, partnership or other entity in which Habitat is the controlling and/or majority shareholder or partner and in which Habitat has an active management role. A controlling interest shall mean the retention by Habitat of at least fifty-one percent (51%) of the voting control of the entity.

**D. Security Financing of Holders [§ 315].**

**(1). No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases-Back or Other Financing for Development [§ 316].**

Mortgages, deeds of trust, sales and leases-back, collateral assignments of rents or profits or any other form of conveyance required for any reasonable method of financing are permitted before issuance of a Certificate of Completion of the construction of the improvements, but only for the purpose of securing loans of funds to be used for the construction or installation of improvements or equipment or fixtures on the Property and any other expenditures necessary and appropriate to develop the Property under this Agreement. Habitat shall notify City in advance of any mortgage, deed of trust, sale and lease-back or other form of conveyance for financing if Habitat proposes to enter into the same before issuance of a Certificate of Completion of the construction of the improvements on the Property. Habitat shall not enter into any such conveyance for financing without the proper written approval of City which approval City agrees to give if any such conveyance is given to a responsible financial or lending institution or other acceptable person or entity. Such lender shall be deemed approved unless rejected in writing by City within ten (10) days after notice thereof to City by Habitat. In any event, Habitat shall promptly notify City of any mortgage, deed of trust, sale and lease-back or other financing conveyance, encumbrance or lien that has been created or attached thereto prior to completion of the construction of the improvements on the Property whether by voluntary act of Habitat or otherwise. The words "mortgage" and "deed of trust" as used herein include all other appropriate modes of financing real estate acquisition, construction, and land development. The obligations and covenants of Habitat set forth in this § 316 shall terminate upon issuance of a Certificate of Completion. City agrees to execute and deliver in recordable form any instrument reasonably requested by the prospective holder of any mortgage, deed of trust or other security interest authorized by this Agreement so as to indicate the subordination of this Agreement and the Purchase Money Deed of Trust to the holder's mortgage, deed of trust or other security interest.

**(2). Holder Not Obligated to Construct Improvements [§ 317].**

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completions; provided; however, that nothing in this Agreement shall be deemed to construe, permit, or authorize any such holder to devote the Property to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

**3. Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure [§ 318].**

Whenever City shall deliver any notice or demand to Habitat with respect to any breach or default by Habitat in completion of construction of the improvements, City shall at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement a copy of such notice or demand. Each such holder shall (insofar as the rights of City are concerned) have the right at its option within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interests provided that, if such holder has commenced an action, either by private right of sale or to judicially foreclose, it shall have an additional thirty (30) day period within which to cure the default. Nothing contained in this Agreement shall be deemed to require, permit or authorize such holder to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) unless such holder shall have expressly assumed Habitat's obligations to City by written agreement reasonably satisfactory to City and holder. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to City, to a Certificate of Completion from City.

**(4). Failure of Holder to Complete Improvements [§ 319].**

In any cases where, six (6) months after default by Habitat in completion of construction of improvements under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Property has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction despite receipt of demand from City to do so, City may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest and the costs of reconveyance of the deed of trust or security instrument. If the ownership of the Property has vested in the holder, City, if it so desires, shall be entitled to a conveyance from the holder to City upon payment to the holder of an amount equal to the sum of the following:

- (a). The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

- (b). All expenses with respect to foreclosure;
- (c). The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Property;
- (d). The costs of any improvements made by such holder; and
- (e). An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust and such debt had continued in existence to the date of payment by City.

**(5). Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default [§ 320].**

In the event there exists a monetary default by Habitat of a mortgage, deed of trust or other security instruments with respect to the Property prior to the completion of development and all applicable cure periods under the loan documents have lapsed and there exists a recorded Notice of Default, and the holder has not exercised its option to complete the development, City may cure the monetary default, prior to completion of any foreclosure. The exercise by City of its Right-of-Reverter as provided herein shall not be a default under such mortgage, deed of trust or other security instruments. In the event City cures a monetary default and does not exercise its Right-of-Reverter, City shall be entitled to reimbursement from Habitat of all costs and expenses incurred by City in curing the default. In such event, City shall also be entitled to a lien upon the Property to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security instruments executed for the sole purpose of obtaining funds to purchase and develop the Property as authorized herein.

**(6). Right of City to Satisfy Other Liens on the Property After Title Passes [§ 321].**

After conveyance of title by City to Habitat and prior to the recordation of a Certificate of Completion for construction and development, and after Habitat has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Property, City shall have the right at its risk to satisfy any such liens or encumbrances, provided, however, that nothing in this Agreement shall require Habitat to pay or make provision for the payment of any tax, assessment, lien or charge so long as Habitat in good faith shall contest the validity or amount thereof and post a bond therefor.

**(7). Certificate of Completion [§ 322].**

(a). Promptly after completion of the Project by Habitat upon the Property, City shall furnish Habitat with a Certificate of Completion upon written request therefor by Habitat. City shall not unreasonably withhold any such Certificate of Completion. Such Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon the Property, and of full compliance with the terms hereof. City may also furnish Habitat with a Certificate of Completion for portions of the improvements upon the Property as they are properly completed and ready to use if

Habitat is not in default under this Agreement. Further, if applicable, Habitat shall be entitled to receive, and City shall cooperate in providing to Habitat and/or any lender, an estoppel certificate certifying that Habitat is not in default under this Agreement (or, if it is, to the extent such default exists) and otherwise specifying such material information as Habitat may reasonably request. After issuance of such Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest therein shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the grant deed, lease, mortgage, deed of trust, contract or other instrument of transfer in accordance with the provisions of §§ 400-403 of this Agreement and this Agreement shall thereafter be deemed satisfied and terminated.

(b). A Certificate of Completion of the Project shall be in such form as to permit it to be recorded in the Recorder's Office of the County of Orange. Certificates of Completion of construction for less than the complete improvement and development of the Property shall not be recorded.

(c). If City refuses or fails to furnish a Certificate of Completion for the Project after written request from Habitat, City shall, within thirty (30) days of the written request, provide Habitat with a written statement of the reasons City refused or failed to furnish a Certificate of Completion. The statement shall also contain City's opinion of the action Habitat must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items of materials for landscaping or fine arts, City will issue its Certificate of Completion upon the posting of cash, letter of credit, certificate of deposit or a bond by Habitat with City in an amount representing a fair value of the work not yet completed. If City shall have failed to provide such written statement within said 30-day period, Habitat shall be deemed entitled to the Certificate of Completion and City shall provide the same to Habitat upon demand.

(d). Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Habitat to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Certificate of Completion is not a notice of completion as referred to in California Civil Code § 3093.

**(8). Insurance [§ 323].**

**(a). Definitions.** The following defined terms are referred to in this § 323.

**(i). Automobile Liability Insurance.** Insurance coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by Habitat regarding the Project, with minimum limits for bodily injury and property damage of ONE MILLION DOLLARS (\$1,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by City, which approval shall not be unreasonably withheld.

**(ii). Builder's Risk Insurance.** Builder's risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the completed value of the subject construction, including cost of debris removal, but excluding foundation and excavations. Such insurance shall also: (I) grant permission to occupy; and (II) cover, for replacement cost, all materials on or about any offsite storage location intended for use in, or in connection with, the Property.

**(iii). Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature and any judgment.

**(iv). Liability Insurance.** Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in, or about the Property, the Project or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and which may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Property or the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.

**(v). Property Insurance.** Insurance providing coverage for the Property and all improvements on or to the Property against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements comprising the Project (excluding excavations and foundations) and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Property; an "increased cost of construction" endorsement; and an endorsement covering demolition and cost of debris removal.

**(vi). Workers Compensation Insurance.** Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease, covering all employees of Habitat.

**(vii). Labor Code Certification.** In accordance with the provisions of California Labor Code § 3700, every employer shall secure the payment of compensation to his employees. HABITAT, prior to commencing work, shall sign and file with CITY a certification as follows:

"I am aware of the provisions of § 3700 of the California Labor Code which require every employer to be insured against liability for workers'

compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.”

**(9). Habitat.** Habitat shall maintain, to protect the City and the City Parties against all insurable Claims resulting from the actions of Habitat in connection with this Agreement, the Property and the Project, at the sole cost and expense of Habitat, until issuance of a Completion Certificate for the Project, the following insurance (or its then reasonably available equivalent): (a) Liability Insurance; (b) Automobile Liability Insurance; (c) Property Insurance; (d) Builder’s Risk Insurance; and (e) Workers Compensation Insurance. The obligations set forth in this Section shall remain in effect only until the final Certificate of Completion has been furnished as hereinafter provided.

**(i). Nature of Insurance.** All Liability Insurance, Property Insurance and Automobile Liability Insurance policies this Agreement requires shall be issued by carriers that: (a) are listed in the then current “Best’s Key Rating Guide—Property/Casualty—United States & Canada” publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of “A-” and a minimum financial size category of “VII” (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State. Habitat may provide any insurance under a “blanket” or “umbrella” insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Property and the Project, which amount(s) shall equal or exceed the amount(s) required by this Agreement; and (ii) such policy otherwise complies with the insurance requirements in this Agreement.

**(ii). Policy Requirements and Endorsements.** All insurance policies required by this Agreement shall contain (by endorsement or otherwise) the following provisions:

**(A.). Insured.** Liability Insurance and Automobile Liability Insurance policies shall name the City Parties as “additional insured.” Property Insurance and Builder’s Risk Insurance policies shall name City as a “loss payee.” The coverage afforded to the City Parties shall be at least as broad as that afforded to Habitat regarding the Property and the Project and may not contain any terms, conditions, exclusions, or limitations applicable to the City Parties that do not apply to Habitat.

**(B). Primary Coverage.** Any insurance or self-insurance maintained by the City Parties shall be excess of all insurance required under this Agreement and shall not contribute with any insurance required under this Agreement.

**(D). Contractual Liability.** Liability Insurance policies shall contain contractual liability coverage, for Habitat’s indemnity obligations under this Agreement. Habitat’s obtaining or failure to obtain such contractual liability coverage shall not relieve Habitat from nor satisfy any indemnity obligation of Habitat under this Agreement.

**(E). Deliveries to City.** Habitat shall deliver to City evidence of Liability Insurance prior to the commencement of any Due Diligence Investigations. Evidence of Habitat’s maintenance of all insurance policies required by this Agreement shall be delivered to City prior to the

Close of Escrow. Builder's Risk Insurance shall incept no later than the time of Builder mobilization for the Project. No later than ten (10) days before any insurance required by this Agreement expires, is cancelled or its liability limits are reduced or exhausted, Habitat shall deliver to City evidence of such Party's maintenance of all insurance this Agreement requires. Each insurance policy required by this Agreement shall state or be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days' advance written notice of such action has been given to City by certified mail, return receipt requested; provided; however, that only ten (10) days' advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as "endeavor to" and "but failure to mail such Notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance or endorsements to such policies applicable to the City Parties pursuant to this Agreement.

**(E). Waiver of Certain Claims.** Habitat shall cause each insurance carrier providing any Liability Insurance, Builder's Risk Insurance, Worker's Compensation Insurance, Automobile Liability Insurance or Property Insurance coverage under this Agreement to endorse their applicable policy(ies) with a Waiver of Subrogation with respect to the City Parties, if not already in the policy. To the extent that Habitat obtains insurance with a Waiver of Subrogation, the Parties release each other, and their respective authorized representatives, from any Claims for damage to any Person or property to the extent such Claims are paid by such insurance policies obtained pursuant to and in satisfaction of the provisions of this Agreement.

**(F). No Representation.** No Party makes any representation that the limits, scope, or forms of insurance coverage this Agreement requires are adequate or sufficient.

**(G). No Claims Made Coverage.** None of the insurance coverage required under this Agreement may be written on a claims-made basis.

**(H). Fully Paid and Non-Assessable.** All insurance obtained and maintained by Habitat in satisfaction of the requirements of this Agreement shall be fully paid for and non-assessable.

**(I). City Option to Obtain Coverage.** During the continuance of an Event of Default arising from the failure of Habitat to carry any insurance required by this Agreement, City may, in City's sole and absolute discretion, purchase any such required insurance coverage. City shall be entitled to immediate payment from Habitat of any premiums and associated reasonable costs paid by City to obtain or maintain such insurance coverage. Any amount becoming due and payable to City under this § 323 that is not paid within fifteen (15) calendar days after written demand from City for payment of such amount, with an explanation of the amounts demanded, will bear Default Interest from the date of the demand until paid in full, with all such accrued interest. Any election by City to purchase or not to purchase insurance otherwise required by the terms of this Agreement to be carried by Habitat shall not relieve Habitat of its obligation to obtain and maintain any insurance coverage required by this Agreement.

**(J). Separation of Insured.** All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Habitat and the City Parties. Insurance policies obtained in satisfaction of or in accordance with the requirements of this Agreement may provide a cross-suits exclusion for suits between named insured Persons, but shall not exclude suits between named insured Persons and additional insured Persons.

**(K). Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions under insurance policies required by this Agreement shall be declared to and approved by City. Habitat shall pay all such deductibles or self-insured retentions regarding the City Parties or, alternatively, the insurer under each such insurance policy shall eliminate such deductibles or self-insured retentions with respect to the City Parties. Each insurance policy issued in satisfaction of the requirements of this Agreement shall provide that, to the extent that Habitat fails to pay all or any portion of a deductible or self-insured retention under such policy, the City may pay the unpaid portion of such deductible or self-insured retention, in the City's sole and absolute discretion.

**(L). No Separate Insurance.** Habitat shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Agreement, unless City is made an additional insured thereon, as required by this Agreement for the insurance required to be carried by Habitat under this Agreement.

**(M). Insurance Independent of Indemnification.** The insurance requirements of this Agreement are independent of Habitat's indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify Habitat's indemnification or other obligations or to limit the Parties' liability under this Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall the provision of such insurance preclude City from taking such other actions as are available to it under any other provision of this Agreement or otherwise at law or in equity.

#### **4. USE OF THE PROPERTY [§ 400].**

##### **A. Use of Property [§ 401].**

(1). As used in this Agreement, the term "Eligible Owner" shall refer to a person or family whose income does not exceed the qualifying limits for Low Income families in Orange County as established by the State of California pursuant to California Health and Safety Code § 50079.5, as such qualifying limit is amended from time to time.

(2). Habitat shall develop the Property with the Project, consisting of two (2) dwelling units to be sold to Eligible Owners. Habitat recognizes that a material consideration for City's entering into this Agreement is to assist in providing housing opportunities for qualified persons of low income at affordable prices. Accordingly, Habitat covenants and agrees that, from the date Close of Escrow and continuing thereafter for a period of at least sixty (60) years, the use of the Property, shall be restricted to providing such housing opportunities to qualified households of low income.

(3). Habitat shall provide City with a copy of its Marketing, Outreach and Sales Plan (“Plan”) which shall set forth how Habitat plans to provide interested households with information about the Sites. Habitat shall be solely responsible for the selection of qualified purchasers of the Affordable Units. Habitat shall ensure that there will be adequate homebuyer education with HUD approved pre- and post- purchase counseling. The Plan shall give priority preference to residents of the City of Placentia, those who work in the City of Placentia and to those on active duty military or military veterans, in that order. The Plan and the associated applicant selection procedures will be targeted to purchasers regardless of race, color, religion, sex, disability status, familial status or national origin.

(4). Immediately prior to an Eligible Owner’s occupancy, Habitat shall obtain, and maintain on file, an Income Computation and Certification form (which form shall be approved in advance by the City) from each such Eligible Owner dated immediately prior to the date of initial occupancy of the Property by such Eligible Owner. In addition, Habitat will use commercially reasonable measures to obtain and provide such further information as may be required in the future by the City. Habitat shall use its best efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process: (i) obtain three (3) pay stubs for the most recent pay periods; (ii) obtain a written verification of income and employment from applicant’s current employer; (iii) obtain an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either City; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant’s income as is satisfactory to the City; or (v) such other information as may be requested by the City. A copy of each such Income Computation and Certification shall be filed with the City prior to occupancy by an Eligible Owner whenever possible, but in no event more than thirty (30) days after initial occupancy by said tenant.

(5). Habitat shall annually advise City of the occupancy of the Project by delivering a Certificate of Continuing Program Compliance form (which form shall be approved in advance by City) stating (i) the Property was occupied by an Eligible Owner(s) during such period and (ii) that to the knowledge of Habitat either (a) no unremedied default has occurred under this Agreement, (b) a default has occurred, in which event the certificate shall describe the nature of the default and set forth the measures being taken by the Habitat to remedy such default.

(6). Habitat shall maintain complete and accurate records pertaining to the Property, and shall permit any duly authorized representative of City to inspect the books and records of Habitat pertaining to the Property including, but not limited to, those records pertaining to the occupancy thereof.

#### **B. Obligation to Refrain From Discrimination [§ 402].**

Habitat covenants by and for itself, and any successor(s) in interest, that there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, race, color, creed national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Habitat or any person claiming under or through it establish or permit any such practice or practices of discrimination or

segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property. The foregoing covenants shall run with the land.

**C. Form of Nondiscrimination and Nonsegregation Clauses [§ 403].**

Habitat shall refrain from restricting the rental, sale or lease of the Property on the basis of sex, race, color, creed, ancestry or national origin of any person. All such deeds, leases or contracts for the use of the Property shall contain or be subject to substantially the following nondiscrimination clauses:

**(1). In deeds:** “(1). The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, 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 any basis listed in subdivision (a) or (d) of § 12955 of the Government Code, as those bases are defined in §§ 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of § 12955, and § 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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 premises herein conveyed. The foregoing covenants shall run with the land. (2) Notwithstanding paragraph (1), with respect to familial status, paragraph 1 shall not be construed to apply to housing for older persons, as defined in § 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect §§ 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of § 51 and § 1360 of the Civil Code and subdivisions (n), (o), and (p) of § 12955 of the Government Code shall apply to paragraph (1).”

**(2). In leases:** “(1). The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, 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 any basis listed in subdivision (a) or (d) of § 12955 of the Government Code, as those bases are defined in §§ 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of § 12955, and § 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, 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, sublessees, subtenants, or vendees in the premises herein leased.

“(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in § 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect §§ 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to

housing for senior citizens. Subdivision (d) of § 51 and § 1360 of the Civil Code and subdivisions (n), (o), and (p) of § 12955 of the Government Code shall apply to paragraph (1).”

**(3). In contracts:** The foregoing provisions in substantially the forms set forth shall be included and the contracts shall further provide that the foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

**D. Effect and Duration of Covenants [§ 404].**

Except as otherwise provided herein, the covenants contained in § 403 as shown and the deeds shall be binding upon Habitat and its successors and assigns as set forth in § 401(1). The covenants against discrimination shall remain in perpetuity.

**5. DEFAULTS, REMEDIES AND TERMINATION [§ 500].**

**(A). Defaults – General [§ 501].**

(1). Subject to the extensions of time set forth in § 604 of this Agreement, failure or delay by any party to perform any term or provision of this Agreement within thirty (30) days after receipt of written notice constitutes a “default” under this Agreement. The party who so fails or delays must promptly following notice given pursuant to § 601 commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default.

(2). The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, and except as otherwise expressly provided in §§ 507 and 508 of this Agreement, the injured party may not institute proceedings against the party in default until thirty (30) days after defaulting party has received such notice and only if said party in default has not commenced to cure the default.

(3). Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive 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.

**B. Legal Action [§ 502].**

**(1). Institution of Legal Actions [§ 503].**

In addition to any other rights or remedies, any party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Orange, State of California or in the Federal District Court for the Central District of California.

**(2). Applicable Law [§ 504].**

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

**(3). Acceptance of Service of Process [§ 505].**

(a). In the event that any legal action is commenced by Habitat against City, service of process on City shall be made by personal service upon the Mayor of City, or in such other manner as may be provided by law.

(b). In the event that any legal action is commenced by City against Habitat service of process shall be to Habitat and such service on Habitat shall be made by personal service upon Habitat or a corporate officer of Habitat or in such other manner as may be provided by law, whether made within or without the State of California.

**C. Rights and Remedies are Cumulative [§ 506].**

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 time or different times of any other rights or remedies for the same default or any other default by the other party(s).

**D. Damages [§ 507].**

If Habitat or City defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within thirty (30) days after service of the notice of default, the defaulting party shall be liable to the other party for any damages caused by such default.

**E. Specific Performance [§ 508].**

If Habitat or City defaults under any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured by the defaulting party within thirty (30) days of service of the notice of default, at its option, the non-defaulting party may institute an action for specific performance to require compliance with the terms of this Agreement.

**F. Attorney Fees [§ 509].**

In the event legal proceedings are commenced to enforce any of the provisions of this Agreement the prevailing party shall be entitled to recover, in addition to damages, reasonable attorney fees and costs incurred in connection therewith.

**G. Remedies and Rights of Termination Prior to Conveyance [§ 510].**

**(1). Termination by Habitat [§ 511].**

In the event that:

- (a). City does not tender conveyance of title to the Property, or possession thereof, in the manner and condition, and by the dates provided in this Agreement, and any such failure is not cured within thirty (30) days after written demand by Habitat; or
- (b). Any conditions precedent in § 204 are not timely satisfied or waived; then this Agreement shall, at the option of Habitat, be terminated by written notice thereof to City and neither City nor Habitat shall have any further rights against or liability to the other under this Agreement.

**(2). Termination by City [§ 512].**

In the event that:

- (a). Habitat (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein, or in the Property in contravention to this Agreement; or
- (b). There is any change in the ownership or identity of Habitat, or the parties in control of Habitat, or any assignment not permitted or contemplated by the terms of this Agreement; or
- (c). Habitat at the Closing does not take title to the Property under tender of conveyance by City pursuant to this Agreement; and
- (d). If any default or failure referred to in subsection (c) of this § 512 is not cured within thirty (30) days after the date of written notice by City, then this Agreement, and any rights of Habitat or any assignee or transferee in this Agreement, pertaining thereto or arising therefrom, with respect to City shall, at the option of City, be terminated by City, and neither Habitat (or assignee or transferee) nor City shall have any further rights against or liability to the other under this Agreement.

**H. Option to Repurchase, Reenter and Repossess [§ 513].**

In the event of a default by Habitat and lapse of all applicable cure periods, City shall have the additional right ("Right-of-Reverter") at its option to repurchase, reenter and take possession of the Property with all improvements thereon if after conveyance of title and prior to the recordation of the Certificate of Completion, Habitat (or its successors in interest) shall:

- (1). Fail to proceed with the construction of the improvements as required by this Agreement for a period of three months after written notice thereof from City except as excused by § 604; or
- (2). Abandon or substantially suspend construction of the improvements for a period of three consecutive months after written notice of such abandonment or suspension from City except as excused by § 604; or

(3). Transfer, or suffer any involuntary transfer of the Property, or any part thereof, in violation of this Agreement.

(4). Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(a). Any mortgage, deed of trust or other security instrument permitted by this Agreement;

(b). Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

(5). To exercise its right to repurchase, reenter and take possession, City shall pay to Habitat (or its successors in interest) in cash an amount equal to:

(a). The Disposition Price paid to City for the Property; plus

(b). The costs incurred for on-Property labor and materials for the construction of the improvements existing on the Property at the time of the repurchase, reentry, and repossession; less

(c). Any gains or income withdrawn or made by Habitat (or its successor in interest) from the Property or the improvements thereon.

**6. GENERAL PROVISIONS [§ 600].**

**A. Notices, Demands and Communications Between the Parties [§ 601].**

Formal notices, demands and communications between City and Habitat shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the following address of City and Habitat:

City: City of the City of Placentia  
401 E. Chapman Avenue,  
Placentia, CA 92870  
Attn: City Administrator

With copy to: Andrew V. Arczynski,  
City Attorney  
City of Placentia  
1400 N. Brea Blvd.  
Fullerton, CA 92835



In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; inclement or severe weather; acts or failures to act of any public or governmental City or entity (other than that acts or failures to act of City shall not excuse performance by City) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If however, notice by the party claiming such extensions is sent to the other party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the joint approval of City and Habitat. City'

**E. Inspection of Books and Records [§ 605].**

City has the right, upon not less than seventy-two (72) hours' notice, at all reasonable times to inspect the books and records of Habitat pertaining to the Property as pertinent to the purpose of this Agreement. Habitat also has the right, upon not less than seventy-two (72) hours' notice, at all reasonable times to inspect the books and records of City pertaining to the Property as pertinent to the purposes of this Agreement.

**7. SPECIAL PROVISIONS [§ 700].**

**A. Amendments to Agreement [§ 701].**

Habitat and City agree to mutually consider reasonable requests for amendments to this Agreement which may be made by lending institutions, or City's bond counsel or financial consultants provided said requests are consistent with this Agreement and would not substantially alter the basic terms included herein.

**B. Additional Provisions [§ 702].**

(1). This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, if any, are merged into this Agreement and shall be of no further force or effect. Each party is entering into 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.

(2). The parties are sophisticated buyers and sellers of real property and have participated in the drafting of this Agreement.

(3). The use of the term "day" in this Agreement shall mean calendar days unless otherwise provided in this Agreement.

(4). The article and section headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(5). In the event of any conflict, the terms of the Disposition and Development Agreement will take precedence over all Exhibits.

**8. TIME FOR ACCEPTANCE OF AGREEMENT BY City [§ 800].**

This Agreement, when executed by Habitat and delivered to City, must be authorized, executed and delivered by City within five (5) days after the date of the signature by Habitat or this Agreement shall be void, except to the extent that Habitat shall consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The effective date of this Agreement shall be the date when this Agreement has been signed by City.

**IN WITNESS WHEREOF**, the parties hereof have executed this Agreement as of the dates first set forth in this Agreement.

*Signatures on following page.*

Dated: \_\_\_\_\_, 2014

HABITAT FOR HUMANITY OF ORANGE  
COUNTY, INC., a California non-profit public benefit  
corporation

By: \_\_\_\_\_  
Sharon Ellis  
Executive Director

Dated: \_\_\_\_\_, 2014

By: \_\_\_\_\_  
Mark Korando  
Senior Vice President

CITY OF PLACENTIA

Dated: \_\_\_\_\_, 2014

By: \_\_\_\_\_  
Scott W. Nelson, Mayor

ATTEST:

Dated: \_\_\_\_\_, 2014

By: \_\_\_\_\_  
Patrick J. Melia, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew V. Arczynski,  
City Attorney  
City of Placentia

RESOLUTION NO. PC-2014-09

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PLACENTIA, CALIFORNIA RECOMMENDING THE CITY COUNCIL APPROVE THAT CERTAIN DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PLACENTIA AND HABITAT FOR HUMANITY OF ORANGE COUNTY AND FINDING THAT THE DISPOSITION OF SIX (6) PARCELS OF REAL PROPERTY (APNS 346-181-05,-06,-07,-30,-35,-37) COMMONLY REFERRED TO AS 1617 OAK STREET TO BE USED FOR RESIDENTIAL PURPOSES CONFORMS TO THE ADOPTED GENERAL PLAN

**A. Recitals.**

(i). On July 8, 2014, this Planning Commission conducted a duly noticed public hearing, as required by law, to consider a recommendation to the City Council regarding approval of that certain Disposition and Development Agreement between the City of Placentia and Habitat for Humanity of Orange County ("Agreement") and to consider whether the proposed disposition of six (6) parcels of real property (APNs 346-181-05,-06,-07,-30,-35,-37) commonly referred to as 1617 Oak Street ("Parcels"), conforms to the adopted General Plan with said public hearing having been concluded prior to adoption of this Resolution.

(ii). This Planning Commission has reviewed and considered all elements of proposed Agreement as well as disposition of said Parcels, including written staff reports and verbal testimony presented during the above-referenced public hearing.

(iii). All legal prerequisites to the adoption of this Resolution have occurred.

**B. Resolution.**

**NOW, THEREFORE,** the Planning Commission of the City of Placentia does hereby find, determine, and resolve as follows:

1. This Commission hereby specifically finds that all the facts as set forth in the Recitals, Part A, of this Resolution are true and correct.

2. This Commission recommends the City Council enter into the Agreement to provide an effective mechanism whereby the City of Placentia and Habitat for Humanity are able to increase the availability of low to moderate cost housing stock within the

City, by providing for the rehabilitation, construction, maintenance and approve the proposed disposition of six (6) parcels of real property (APNs 346-181-05,-06,-07,-30,-35,-37) commonly referred to as 1617 Oak Street.

3. Pursuant to the provisions of California Government Code § 65402, this Commission finds that disposition of said Parcels to be used for affordable housing residential uses is in conformance with the Placentia General Plan.

4. The disposition of said Parcels for affordable housing residential uses promotes implementation of the goals and policies set forth in the adopted General Plan.

5. The Planning Commission hereby makes, and recommends the City Council make, the following findings: That said parcels are in accordance with the California Environmental Quality Act, as amended, and the regulations promulgated thereunder (Exemptions for In-Fill Developments), the project is consistent with Class 32 Exemption in that:

(a). The project is consistent with applicable General Plan designations and policies as well as zoning regulations.

(b). The proposed development occurs within City limits on a project site of no more than five (5) acres substantially surrounded by urban uses.

(c). The project site has no value as habitat for endangered, rare or threatened species.

(d). Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or air quality.

(e). The site can be adequately served by all required utilities and public services.

6. The Planning Commission hereby recommends that, upon adoption of the resolution by City Council and execution of the related disposition and development agreement a Notice of Exemption be filed with the Orange County Clerk-Recorder, as required by law.

7. This Commission finds, and recommends the City Council find, that the facts supporting the above specified findings are contained in the staff report and exhibits, and information provided to this Planning Commission during the public hearing

conducted with respect to the proposed disposition of six (6) parcels of real property (APNs 346-181-05,-06,-07,-30,-35,-37) commonly referred to as 1617 Oak Street.

8. This Commission hereby recommends that the City Council approve the proposed disposition of six (6) parcels of real property (APNs 346-181-05,-06,-07,-30,-35,-37) commonly referred to as 1617 Oak Street.

9. The Secretary of this Commission shall:

a. Certify to the adoption of this Resolution; and

b. Forthwith transmit a certified copy of this Resolution to the City Council of the City of Placentia together with all documents prepared with respect to these considerations and transcripts of any and all hearings conducted with respect to the action recommended for approval herein.

PASSED, ADOPTED AND APPROVED this 8<sup>th</sup> day of July, 2014

\_\_\_\_\_  
, Chairman

I, Charles Rangel, Secretary to the Planning Commission of the City of Placentia, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Planning Commission of the City of Placentia held on July 8, 2014 by the following vote:

AYES:	COMMISSION MEMBERS:
NOES:	COMMISSION MEMBERS:
ABSENT:	COMMISSION MEMBERS:
ABSTAINED:	COMMISSION MEMBERS:

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Chairman

ATTEST:

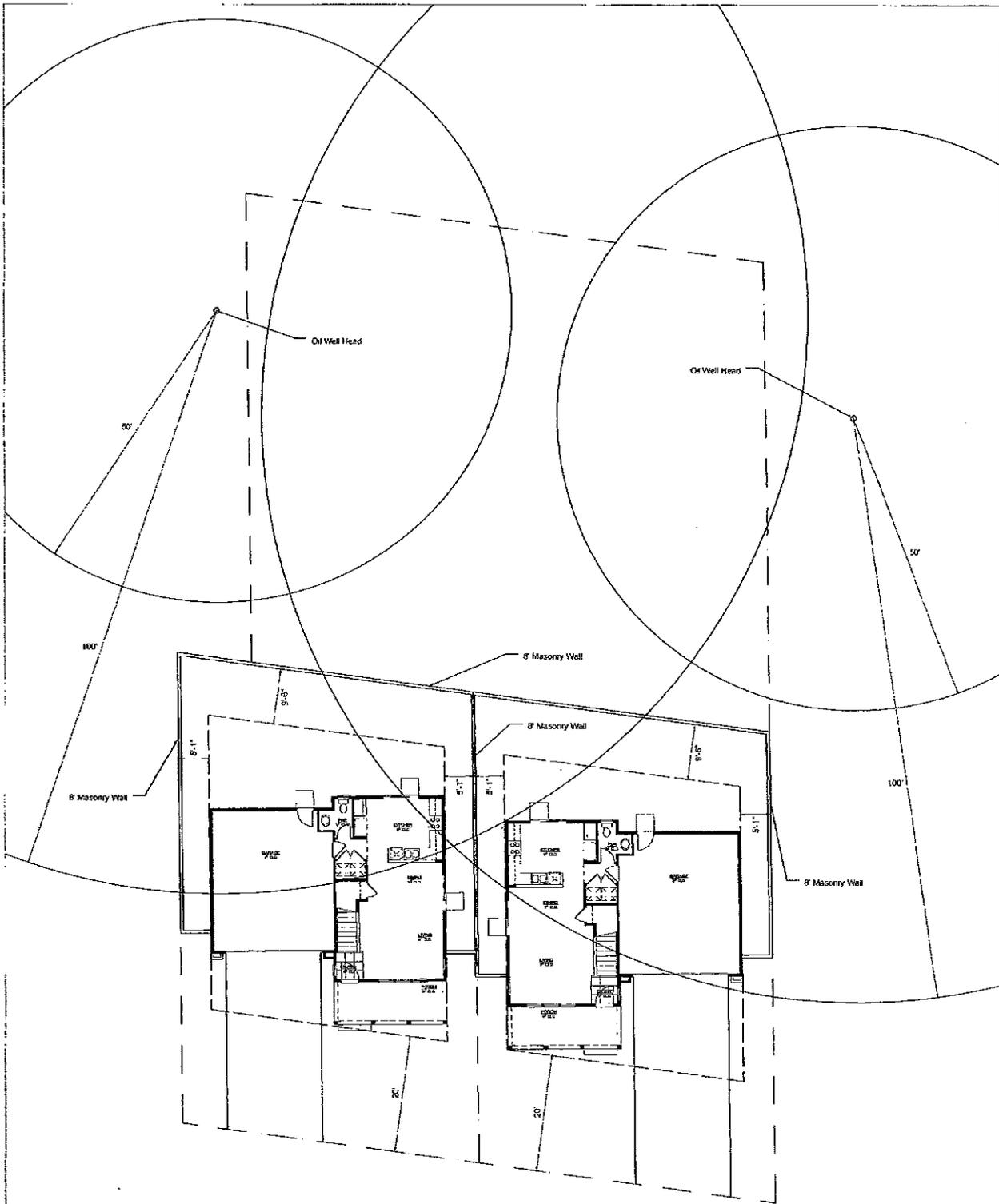
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CHARLES L. RANGEL,  
Secretary to the Planning Commission

APPROVED AS TO FORM

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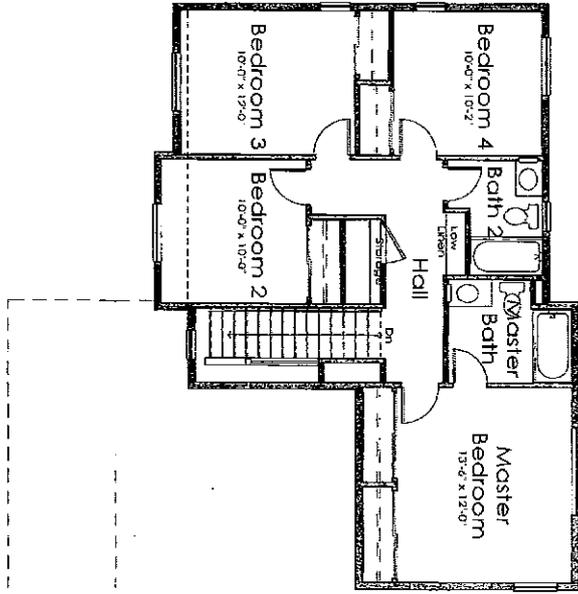
ANDREW V. ARCZYNSKI,  
CITY ATTORNEY



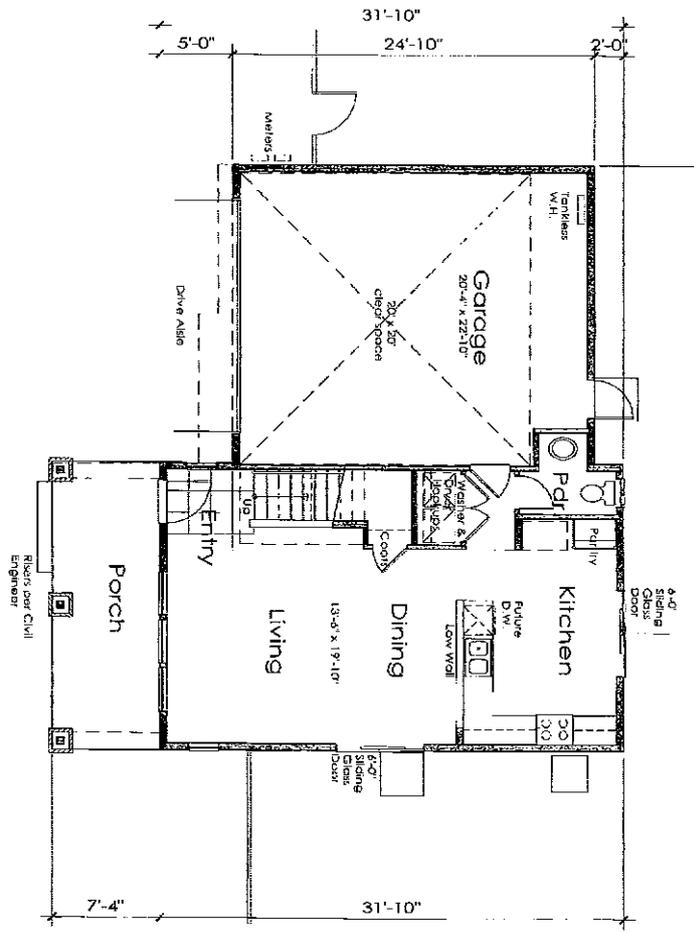
Oak Street

1617 Oak Street  
Placentia, CA

Scale  $\frac{1}{16}'' = 1'-0''$

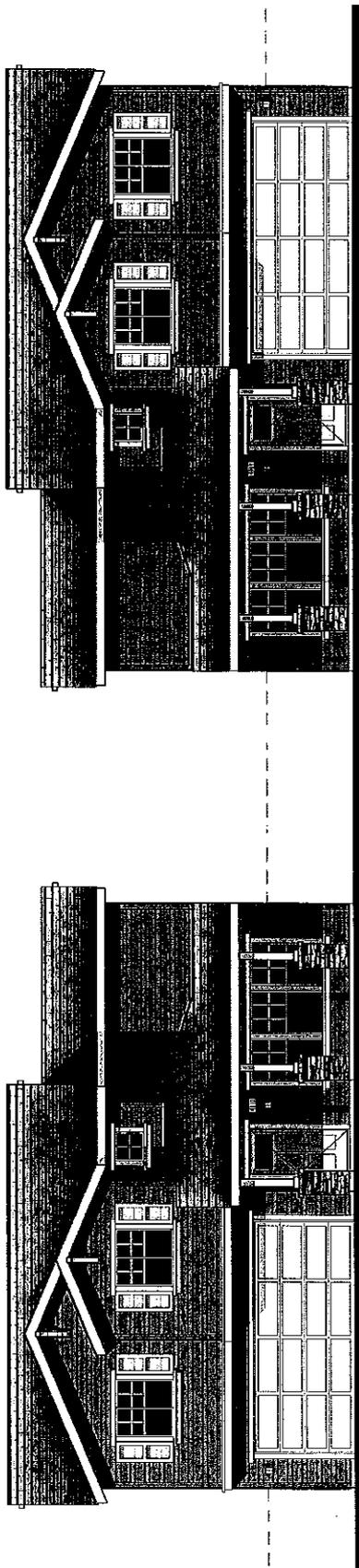


Second Floor  
860 Sq. Ft.



First Floor  
645 Sq. Ft.

Rickards Post Civil  
Engineer



**Proposed Homes**  
**1617 Oak Street**  
**Placentia, CA**