

## **RESOLUTION NO. 2016-94**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING A MEMORANDUM OF UNDERSTANDING AND RELATED DOCUMENTS FOR AFFORDABLE HOUSING CONSTRUCTION FOR THE WILLOW GLEN SUBDIVISION PHASE 1 (SOUTHEAST SPECIFIC PLAN)**

**WHEREAS**, on December 7, 2010, the City Council of the City of Rohnert Park adopted Resolution No 2010-134 approving the Final Environmental Impact Report (EIR) for the Southeast Specific Plan;

**WHEREAS**, on November 25, 2014, the City Council of the City of Rohnert Park adopted Resolution No. 2014-165 approving an amended Final Development Plan for the Southeast Specific Plan Area;

**WHEREAS**, on November 25, 2014, the City Council of the City of Rohnert Park adopted Resolution 2014-166 the Tentative Map for the Southeast Specific Plan Area prepared by Civil Design Consultants (the “Tentative Map”), subject to certain conditions of approval (“Conditions”);

**WHEREAS**, on December 7, 2010, the City Council of the City of Rohnert Park adopted Ordinance No. 832, approving a Development Agreement (“Development Agreement”) between the City of Rohnert Park and Redwood Equities LLC, which included an Affordable Housing Plan;

**WHEREAS**, in accordance with Development Agreement, Redwood Equities LLC has assigned the Development Agreement to Penn Grove Mountain LLC (“Developer”) an entity under common control with Redwood Equities LLC;

**WHEREAS**, on December 9, 2014, the City Council of the City of Rohnert Park adopted Ordinance No. 882, approving an amendment to the Development Agreement including amendments to the Affordable Housing Plan;

**WHEREAS**, the Developer intends to file the Final Map for Phase 1 of the Southeast Estates Subdivision, consisting of 107 residential lots which includes four lots designated for duet units that are to be affordable for low to moderate income earners;

**WHEREAS**, the Development Agreement requires that an Affordable Housing Agreement be entered into concurrent with the first Final Map to cover the construction, sale and operation of these duet units;

**WHEREAS**, the City does not have the staff resources and expertise to implement an Affordable Housing Plan for the Southeast Specific Plan Area;

**WHEREAS**, the Housing Land Trust of Sonoma County (HLT) is a nonprofit corporation with experience in the construction, sale and operation of affordable ownership opportunities and is qualified to execute an Affordable Housing Agreement with the City and the Developer.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Rohnert Park that it does hereby authorize and approve:

1. The Memorandum of Understanding between the City, the Developer and HLT in substantially similar form to Exhibit A of this Resolution;
2. The "Inclusionary Housing Agreement" between the City and Developer, in substantially similar form to Exhibit B of this Resolution;
3. The Performance Deed of Trust for the benefit of the City in substantially similar form to Exhibit C of this Resolution; and
4. The Affordable Housing Agreement and Declaration of Restrictive Covenants with Option to Purchase" ("Affordable Housing Agreement") by and between the City and HLT in substantially similar form to Exhibit D of this Resolution.

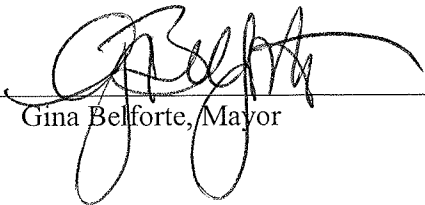
**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized and directed to execute the above documents and other documents necessary to execute the Affordable Housing Plan, as provided herein, for and on behalf of the City of Rohnert Park, subject to revisions approved by the City Attorney.

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized and directed to accept title to the four properties on which the affordable duet units are located and convey title to the same properties to HLT for continued affordability using a form of deed approved by the City Attorney.

**BE IT FURTHER RESOLVED** that the Finance Director is hereby authorized and directed to make the budget amendments necessary to fund HLT's fee of \$7,500 per unit from the City's In-Lieu Fee Fund and to accept reimbursements from the Developer for portions of HLT's fees as outlined in the Memorandum of Understanding.

**DULY AND REGULARLY ADOPTED** this 13<sup>th</sup> day of September, 2016.

**CITY OF ROHNERT PARK**

  
Gina Belforte, Mayor

**ATTEST:**

  
City Clerk, Deputy

Attachments: Exhibits A, B, C and D

AHANOTU: Aye CALLINAN: Absent STAFFORD: Aye MACKENZIE: Aye BELFORTE: Aye  
AYES: ( 4 ) NOES: ( 0 ) ABSENT: ( 1 ) ABSTAIN: ( 0 )

Resolution Exhibit A

MEMORANDUM OF UNDERSTANDING  
Willow Glen Subdivision – Southeast Rohnert Park Specific Plan Area  
Inclusionary Housing Units

This Memorandum of Understanding (“**MOU**”) is entered into as of \_\_\_\_\_, 2016 by and among the City of Rohnert Park (“**City**”), Penn Grove Mountain LLC or its related assigns (“**Developer**”), and Housing Land Trust of Sonoma County (HLT), in order to facilitate the development of up to thirty six (36) owner-occupied affordable housing units in the Willow Glen Subdivision (defined below).

This **MOU** is entered into in connection with the First Development Phase of the Willow Glen Subdivision. Later phases of development of the Willow Glen Subdivision will be accompanied by future and independent documents relating to each future phase.

1. Application for Development. Developer has filed an application for development (“**Application**”) of approximately 80 acres, in the City of Rohnert Park, State of California, and more particularly described as Assessor’s Parcel No. 047-111-030 located at 7279 Petaluma Hill Road and more commonly known as the “**Southeast Specific Plan Area**.”
2. Definitions. For the purpose of this Memorandum of Understanding, the following definitions apply:

Very Low Income means an income between 31% and 50% of the Area Median Income;

Low Income means an income between 51% and 80% of the Area Median Income;

Median Income means an income between 81% and 100% of the Area Median Income; and

Moderate income means an income between 101% and 120% of the Area Median Income.

3. Inclusionary Housing Requirements. The Development Agreement by and between the City of Rohnert Park and Developer, as amended, (“Development Agreement”) requires the Developer to provide seventy-two (72) affordable housing units (“**Affordable Units**”), including fourteen (14) duet units (28 total units), eight (8) townhomes and thirty-six (36) rental apartments, in order to meet the City’s inclusionary housing requirements under the City’s Municipal Code. The Exhibit D to the Development Agreement requires that the owner-occupied affordable units be affordable to Low Income up to Moderate Income Households and affordable rental units be affordable to Very Low to Low Income Households.

## Resolution Exhibit A

4. Development and Construction of First Development Phase. Developer has applied for a Final Map for the 105-lot first phase of its subdivision which includes two (2) affordable duets (4 units). Developer will provide these units under the following terms and conditions:
  - a. Developer shall develop and construct, at its sole cost and expense, two (2) duet homes (4 units) at the locations illustrated on Exhibit A. Each duet shall include one (1) two bedroom unit and one (1) three bedroom unit. Developer shall dedicate the land underlying the duet homes to the City, the City shall deed the land to HLT who in turn will execute a long term ground lease, under the terms hereinafter specified, to ensure affordability.
  - b. All Affordable Units shall be resale restricted for sale to households with median to moderate income earners (i.e., made affordable to households with incomes from 81% to 120% of Area Median Income). The City and Land Trust will allow all four first phase units to be sold to moderate income earners.
  - c. Developer shall sell the Affordable Units and shall recover and retain all proceeds from such sales.
  - d. At each close of escrow for each of the Affordable Units, City shall pay to Housing Land Trust the sum of Seven Thousand Five Hundred Dollars (\$7,500) per unit, which sum shall be a fixed cost that will cover all costs incurred by Housing Land Trust related to marketing, homebuyer selection, homebuyer education and preparation of documents for the close of escrow as related to the Affordable Units. From the sales proceeds of the fourth (last) escrow to close for the Affordable Units, Developer shall reimburse to City the sum of Three Thousand Seven Hundred and Fifty Dollars (\$3,750) per unit or a total amount of Fifteen Thousand Dollars (\$15,000). (\$15,000 is a reimbursement rate of \$3,750 per unit multiplied by four units).
5. Intent to Cooperate on Future Phases. Developer, City and the Housing Land Trust intend to cooperate in the delivery of owner-occupied Affordable Housing including twelve (12) additional Affordable Duets (24 units) and eight (8) Affordable Townhouses in future phases. Each future phase will be accompanied by future and independent documents including, but not limited to, future Memoranda of Understanding. The goal of Developer, City and the Housing Land Trust is to deliver these units under the following terms and conditions:
  - a. Developer shall develop and construct, at its sole cost and expense, twelve (12) additional affordable duets (24 units) which shall be distributed throughout the subdivision as illustrate in Exhibit A. Each duet shall

## Resolution Exhibit A

include one (1) two bedroom unit and one (1) three bedroom unit. Developer shall dedicate the land underlying the duet homes to the City, the City shall deed the land to HLT who in turn will execute a long term ground lease (under the terms hereinafter specified) to ensure affordability. All of the affordable duets shall be resale restricted for sale to households with median to moderate income earners

- b. Of the twenty-four (24) units contained within the future phase duets, the goal of the Developer, the City and the Land Trust is to have fourteen (14) units sold to households with low incomes (51% to 80% of Area Median Income) and ten (10) units sold to households with median to moderate income earners (81% to 120% of Area Median Income).
  - c. Developer shall develop and construct, at its sole cost and expense, eight (8) townhouses which shall be distributed throughout the entire townhouse portion of the WillowGlen Subdivision (i.e., these townhouse units will be intermixed with the market rate townhouse units). Because townhouse units do not include ownership of the land underlying the townhouse building, there shall be no requirement for land transfer in connection with the development and construction of the Affordable Condos.
  - d. Of the eight (8) townhouse units, the goal of the Developer, the City and the Land Trust is to have four (4) units sold to households with low incomes (51% to 80% of Area Median Income) and four (4) units sold to households with median income earners (81% to 100% of Area Median Income).
  - e. Developer shall sell the Affordable Units and shall recover and retain all proceeds from such sales.
  - f. From the sales proceeds at each close of escrow for each of the Affordable Units, Developer shall pay to Housing Land Trust the sum of Seven Thousand Five Hundred Dollars (\$7,500) per unit, which sum shall be a fixed cost that will cover all costs incurred by Housing Land Trust related to marketing, homebuyer selection, homebuyer education and preparation of documents for the close of escrow as related to the Affordable Units.
6. City's Obligations. The City will work in partnership with the Housing Land Trust of Sonoma County ("**Housing Land Trust**") to take and retain title to the land beneath the Affordable Duplex and the Affordable SFs, and will thereafter transfer that land to the Housing Land Trust (subject to a Regulatory Agreement) so that the Housing Land Trust may enter into a 99-year renewable term ground lease with each buyer to ensure continued affordability. Working with the Housing Land Trust, the City will draft all documents necessary to effectuate the intent of this MOU, including any leases, and any affordability and occupancy restrictions designed to protect the City's interest in maintaining the homes as

Resolution Exhibit A

affordable workforce housing over time. The City, in conjunction with Housing Land Trust, will coordinate outreach efforts to income-qualified buyers. DeNova shall have no liability to the City and/or the Housing Land Trust for the policies and procedures adopted to effectuate any workforce housing program offered.

7. Housing Land Trust Obligations. Housing Land Trust will work in partnership with the City to effectuate a 99-year renewable ground lease that will ensure continued affordability for the Affordable Duets and Townhomes. Housing Land Trust shall implement a deed covenant for the condominiums to ensure long term affordability. Working with the City, Housing Land Trust will draft all documents necessary to effectuate the intent of this MOU, including any leases, deed restrictions and any affordability and occupancy restrictions designed to protect the City's interest in maintaining the homes as affordable workforce housing over time and the Housing Land Trust's interest in creating workforce housing. Housing Land Trust, in conjunction with the City, will coordinate outreach efforts to income-qualified buyers. Housing Land Trust will be responsible for marketing the units and finding qualified buyers. DeNova shall have no liability to the City and/or the Housing Land Trust for the policies and procedures adopted to effectuate any workforce housing program offered.

IN WITNESS WHEREOF, the parties hereto have executed this MOU on the first date written above.

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City of Rohnert Park  
Darrin Jenkins, City Manager

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Penn Grove Mountain LLC  
Ben VanZutphen, Manager

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Housing Land Trust of Sonoma County  
Dev Goetschius, Executive Director

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

Developer's Attorney  
Address

, CA 94

City of \_\_\_\_\_

\_\_\_\_\_, CA 9

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

FOR RECORDER'S USE ONLY

## Inclusionary Housing Agreement

This Inclusionary Housing Agreement ("Agreement") is made on \_\_\_\_\_, 2016 by and between Penn Grove Mountain LLC ("Developer") and the City of Rohnert Park ("City").

### RECITALS

- A. Developer is the owner of certain real property (the "Property") described as Lots 1 through 105, Assessor's Parcel Numbers \_\_\_\_\_, in the City of Rohnert Park California, which is entitled for the development of one hundred and five (105) residential lots, as shown on the final map for the Southeast Estates Subdivision (the "Development") recorded on \_\_\_\_\_. 2016, as document number \_\_\_\_/\_\_\_\_ in the Official Records of the County of Sonoma, State of California ("Official Records"), in Book \_\_\_\_ of Maps, Pages \_\_\_\_ - \_\_\_\_.
- B. As part of the City's approval of the Development, City has required the Developer to provide four affordable housing units (individually a "Unit" and collectively the "Units") in two duets as follows: two for occupancy by median income persons or households, and two for occupancy by moderate income persons or households, all in satisfaction of City's inclusionary housing mandates set forth in Municipal Code Section 17.07.020(N)(2). Each lot associated with an affordable Unit and the plans for that residence, are designated, shown and described, in the attached Exhibit A, which is incorporated herein by this reference.
- C. Developer's affordable housing obligations contained herein are a material part of the consideration received by City in connection with its approval of the Development.
- D. Capitalized terms not defined herein shall have the meaning ascribed to them in that certain Affordable Housing Agreement and Declaration of Restrictive Covenants with

Option to Purchase, the form of which is attached hereto as Exhibit B.

NOW, THEREFORE, in consideration of the following covenants, the parties hereto agree as follows:

#### 1.0 INCLUSIONARY HOUSING REQUIREMENTS

1.1 Restricted Units. Developer agrees, at its sole cost and expense, to construct or cause to be constructed, two duets (four Units), which it shall cause to remain available for a minimum of forty-five (45) years for the sale, transfer or conveyance to, and the occupancy of, the following categories of occupants: 2 Units for median income persons or households, and 2 Units for moderate income persons or households, all as designated, shown and described, in Exhibit "A" attached to this Agreement and incorporated herein by reference. Further, said Units shall be constructed in accordance with the City-approved building plans and specifications and in compliance with the inclusionary housing requirements set forth in Municipal Code Section 17.07.020(N)(2), except as expressly provided otherwise herein. The Units shall be made available for sale to Eligible Buyers and the total of the monthly mortgage, hazard insurance, property tax, and homeowners' association dues (if any) shall represent no more than thirty-eight percent (38%) of the total household income of the purchaser, with a maximum purchase price as follows:

(a) For the Median-Income Units, \$300,000, based on the Median-Income figures in existence when this Agreement was signed, but subject to an increase based on a change in the AMI between the date this Agreement was signed and the time at which said Median-Income Units are available for sale to Eligible Buyers.

(b) For the Moderate-Income Units, \$350,000, based on the Moderate-Income figures in existence when this Agreement was signed, but subject to an increase based on a change in the AMI between the date this Agreement was signed and the time at which said Moderate-Income Units are available for sale to Eligible Buyers.

1.2 Construction Timing. Said Units shall be constructed prior to the issuance of the final market-rate building permit for the Development. If Developer fails to construct the Units in compliance with this requirement, the City may withhold the issuance of building permits for the remainder of the Development, until such time as the Developer comes into compliance with this requirement.

1.2 Tentative Map Conditions. In addition to the foregoing, Developer shall satisfy all other specific conditions of approval imposed by City on the tentative map for the Property.

1.3 Right to Locate / Approve Buyer. As between the Developer and the City, City reserves the right to locate and approve the initial Eligible Buyers of the Units.

#### 2.0 INDEMNITY

2.1 Indemnity. To the maximum extent permitted by law, Developer agrees to indemnify, defend (with counsel approved by the City) and hold harmless City and its elected and appointed officials, officers, employees, representatives and agents (collectively,



“Indemnitees”) from and against any and all claims, liabilities, losses, costs, demands, damages, causes of action, legal and administrative proceedings, penalties, deficiencies, fines, expenses and obligations (including, without limitation, attorneys’ fees and costs of litigation) arising out of or relating in any manner to Developer's willful or negligent failure to perform the terms of this Agreement. The provisions of this Section shall survive the expiration or other termination of this Agreement or any release of all or part of the Property from the burdens of this Agreement.

### 3.0. ENFORCEMENT

3.1 Default. In the event Developer, through no fault of the City, materially defaults in the performance of any obligation under this Agreement, and such default remains uncured for a period of (30) days after City has delivered a written notice of such, or in the event a cure cannot be completed within thirty (30) days, if the Developer has not begun and diligently pursued the cure to completion, then City may declare an "Event of Default" to have occurred, in which case it may take one or more of the following steps:

- (a) By mandamus or other suit, action or proceeding at law or in equity, require Developer to perform its obligation under this Agreement, or enjoin any actions which may exacerbate damages caused by the default;
- (b) Take such other action at law or in equity as may be reasonably necessary or appropriate to enforce Developer’s obligations hereunder.

3.2 Remedies Not Exclusive. In any case where this Agreement provides a specific remedy to City for default by Developer, such remedy shall be in addition to, and not exclusive of, City's right to pursue any other administrative, legal, or equitable remedy to which it may be entitled.

### 4.0. COVENANTS TO RUN WITH THE LAND

4.1 Binding on Successors. Developer hereby subjects the Property to the covenants, reservations and restrictions set forth in this Agreement and declares its express intent that all such covenants, reservations and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Developer's successors in title to the Property. All covenants without regard to technical classification or designation shall be binding for the benefit of City, and such covenants shall run in favor of City for the entire term of this Agreement. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be conclusively held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions set forth in this Agreement, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

4.2 Attorneys’ Fees. In the event that a party to this Agreement brings an action against the other party hereto by reason of the breach of any condition or covenant, representation or warranty in this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover costs of suit, including reasonable attorneys’ fees, as may be fixed by the court rendering judgment. Attorney’s fees shall include attorney’s fees on any appeal.

4.3 Amendments. This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the Official Records.

4.4 Severability / Waiver / Integration.

(a) If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

(b) A waiver by either party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right, be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

(c) This Agreement together with any exhibits contains the entire agreement between the parties.

5.0 FUTURE ENFORCEMENT BY CITY

5.1 Enforcement. The parties hereby agree that City shall have the right to enforce all of the terms and conditions herein.

6.0 GENERAL PROVISIONS

6.1 Modification. No modification to this Agreement shall be binding upon any party unless such modification is in writing and is signed by the party to be bound.

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

6.3 Counterparts. This Agreement may be executed in any number of counterparts, all of which together shall constitute one original Agreement.

6.4 Rule of Construction. The parties hereto acknowledge that they each enter into this Agreement after having an opportunity for thorough review by, and on advice of, their respective legal counsel. The judicial rule of construction requiring or allowing an instrument to be construed to the detriment of or against the interests of the maker thereof shall not apply to this Agreement.

IN WITNESS WHEREOF, the Developer and City have executed this Agreement on the date first written above.

*Signatures on Next Page*

"DEVELOPER": Penn Grove Mountain LLC

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By: Ben vanZutphen, Manager

"CITY": CITY OF ROHNERT PARK

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By: Darrin Jenkins, City Manager

ATTEST:

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, City Clerk

APPROVED AS TO FORM:

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, City Attorney

## Exhibit A

### Dedication of Lots on Map for Four below Market Rate Units

<b><u>Unit Income Classification:</u></b>	<b>Lot Nos.</b>
Median and Moderate	53, 54, 55 and 56

### **Designation of Plans and Specifications for each Unit**

Lot No	Plans & Specifications	Unit Square Feet	Number of Bedrooms
53	SE Medium Density Conventional Duet Plan 5	1412	3
54	SE Medium Density Conventional Duet Plan 4	1214	2
55	SE Medium Density Conventional Duet Plan 4	1214	3
56	SE Medium Density Conventional Duet Plan 5	1412	3

### **Sales Price of Below Market Rate Units**

Two (2) Units .....\$300,000

Two (2) Units.....\$350,000

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF CALIFORNIA     )  
  ) ss.  
SONOMA COUNTY            )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF CALIFORNIA     )  
  ) ss.  
SONOMA COUNTY            )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Resolution Exhibit C

Recording requested by and when recorded  
mail to:

CITY OF \_\_\_\_\_  
\_\_\_\_\_, CA 95448  
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

**PERFORMANCE DEED OF TRUST**

**THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY ENCUMBERED BY THIS DEED OF TRUST. EXCEPT FOR A TRANSFER TO THE CITY OF ROHNERT PARK (THE "CITY") OR CITY'S ASSIGNEE FOLLOWING CITY'S EXERCISE OF ITS OPTION TO PURCHASE, THE HOMES CONSTRUCTED ON THIS PROPERTY MAY ONLY BE SOLD TO "ELIGIBLE HOUSEHOLDS" AT A PRICE NOT TO EXCEED AN "AFFORDABLE PURCHASE PRICE."**

This PERFORMANCE DEED OF TRUST ("**Deed of Trust**") is made as of \_\_\_\_\_ 201\_ ("**Effective Date**") by The Housing Land Trust of Sonoma County, a nonprofit public benefit corporation ("**Trustor**"), in favor of \_\_\_\_\_ Title Company ("**Trustee**"), for the benefit of the City of Rohnert Park, a California municipal corporation ("**City**" or "**Beneficiary**") as Beneficiary.

**RECITALS**

A. Trustor is the owner of the real property identified as Lots \_\_\_\_\_ and \_\_\_\_\_ in the \_\_\_\_\_ Subdivision (the "**Development**") located in \_\_\_\_\_, California, and more particularly described in the attached Exhibit A (the "**Property**").

B. Trustor shall cause the Property to be leased to Eligible Buyers pursuant to a ninety-nine (99)-year renewable Ground Lease, and the terms of that certain Affordable Housing Agreement and Declaration of Restrictive Covenants with Option to Purchase (the "**Affordable Housing Agreement**") dated as of \_\_\_\_\_, 201\_ and executed by the Parties and recorded substantially concurrently herewith in the Official Records of Sonoma County (the "**Official Records**"). Capitalized terms not defined herein shall have the meaning ascribed to them in the Affordable Housing Agreement.

C. Pursuant to the Affordable Housing Agreement, Trustor is obligated, among other requirements, to enter into a ground lease with the owner of each of the Restricted Homes constructed on the Property to ensure that the Restricted Homes are purchased only by Eligible Buyers at a price not in excess of the Affordable Purchase Price.

D. The Affordable Housing Agreement also provides (among other provisions) that Beneficiary has an option to purchase the Property or part thereof if Trustor defaults under the Affordable Housing Agreement.

**NOW, THEREFORE**, to secure the full and timely performance by Trustor of the Secured Obligations (defined below), it is agreed as follows:

1. Grant in Trust. Trustor, in consideration of the promises herein recited and the trust herein created, hereby irrevocably and unconditionally grants, transfers, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale, all estate, right title and interest which Trustor now has or may later acquire in and to that certain real property located in the City of Rohnert Park, County of Sonoma, State of California, described in the attached Exhibit A (the "**Property**") together with all of the following:

(i) all improvements now or hereafter located or constructed on the Property, and all replacements and additions thereto ("**Improvements**");

(ii) all easements, rights of way, appurtenances and other rights used in connection with the Property or as a means of access thereto ("**Appurtenances**");

(iii) all fixtures now or hereafter attached to or used in and about the Property or the improvements located thereon or hereafter located or constructed on the Property, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to the improvements in any manner ("**Fixtures and Equipment**"); and

(iv) all leases, subleases, licenses and other agreements relating to use or occupancy of the Property ("**Leases**") and all rents or other payments which may now or hereafter accrue or otherwise become payable to or for the benefit of Trustor ("**Rents**") (whether or not such Leases and Rents are permitted by the Affordable Housing Agreement).

All of the above-referenced Property, Improvements, Appurtenance, Fixtures and Equipment, Leases and Rents are herein referred to collectively as the "**Security**".



2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of the following (the "**Secured Obligations**"): (i) all present and future obligations of Trustor set forth in this Deed of Trust or in the Affordable Housing Agreement (including without limitation, Trustor's obligation to ensure that the Restricted Homes are conveyed only to Eligible Buyers at no more than the Affordable Purchase Price); (ii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iii) all modifications, supplements, amendments, renewals, and extensions of any of the foregoing, whether evidenced by new or additional documents; and (iv) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary's interests under this Deed of Trust.

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary's right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land and Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of the lessor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and unless due solely to the willful misconduct or gross negligence

of Beneficiary, shall not be responsible for any dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property.

4. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the UCC with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of Sonoma County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC. The full name of Trustor and the mailing address of Trustor are set forth in Section 10.2 of this Deed of Trust.

5. Trustor's Representations, Warranties and Covenants.

5.1 Trustor's Estate. Trustor represents and warrants that Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security, that other than this Deed of Trust, the Security is encumbered only by the Affordable Housing Agreement and such other instruments as Trustor has disclosed to Beneficiary in writing. Trustor agrees to warrant and defend generally the title to the Security against all claims and demands, subject to any declarations, easements or restrictions of record as of the date hereof.

5.2 Affordable Housing Agreement. Trustor will observe and perform all of Trustor's covenants and agreements set forth in the Affordable Housing Agreement.

5.3 Senior Loans. Trustor will observe and perform all of the covenants and agreements of any loan documents evidencing or securing loans secured by the Property and any other instruments that are senior in priority to this Deed of Trust.

5.4 Charges; Liens. Trustor will pay prior to delinquency, all taxes, assessments and other charges, fines and impositions affecting the Security directly to the payee thereof. Upon request by the City, Trustor will promptly furnish to the City all notices of such amounts due. Trustor shall pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest in it, whether or not such lien, charge or encumbrance is

or would be senior or subordinate to this Deed of Trust. Trustor shall not be required to pay any tax, levy, charge or assessment so long as its validity is being actively contested in good faith and by appropriate actions and/or proceedings which will operate to prevent the enforcement of the lien or forfeiture of the Security or any part thereof.

#### 5.5 Hazard Insurance.

(a) Trustor will keep the Security insured by a standard all risk property insurance policy equal to the replacement value of the Security (adjusted every five (5) years by appraisal, if requested by the City). If the Security is located in a flood plain, Trustor shall also obtain flood insurance. In no event shall the amount of insurance be less than the amount necessary to prevent Trustor from becoming a co-insurer under the terms of the policy.

The insurance carrier providing this insurance shall be licensed to do business in the State of California and be chosen by Trustor subject to approval by the City.

All insurance policies and renewals thereof will be in a form acceptable to the City, and will include a standard mortgagee clause with standard lender's endorsement in favor of City as its interests may appear and in a form acceptable to the City. The City shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and Trustor shall promptly furnish to the City, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Trustor will give prompt notice to the insurance carrier and the City or its designated agent. The City, or its designated agent, may make proof of loss if not made promptly by Trustor. The City shall receive thirty (30) days advance notice of cancellation of any insurance policies required under this section.

Unless otherwise permitted by the City in writing, insurance proceeds, subject to the rights of any senior lienholder, will be applied to restoration or repair of the Security damaged. If permitted by City, and subject to the rights of any senior lienholder, the insurance proceeds shall be used to repay any amounts due under the Affordable Housing Agreement, with the excess, if any, paid to Trustor. If the Security is abandoned by Trustor, or if Trustor fails to respond to the City, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to Trustor that the insurance carrier offers to settle a claim for insurance benefits, the City, or its designated agent, is authorized to collect and apply the insurance proceeds at the City's option either to restoration or repair of the Security or to pay amounts due under the Affordable Housing Agreement.

Notwithstanding anything to the contrary set forth herein, during such time that Trustor is not the owner in fee of the Improvements, Trustor may satisfy the

requirements of this Section by ensuring that Beneficiary is named as additional insured/loss payee as Beneficiary's interests may appear under the policies of insurance Trustor requires the fee owner(s) of such Improvements to maintain.

If the Security is acquired by the City, all right, title and interest of Trustor in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Security prior to the sale or acquisition will pass to the City to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition, subject to the rights of any senior lienholder.

(b) During the course of any construction on the Property, Trustor shall hire only licensed contractors who maintain the following forms of insurance:

(i) Liability Insurance. Comprehensive general liability insurance against liability for bodily injury to or death of any person or property damage arising out of an occurrence on or about the Property. The limits of such insurance shall be not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage.

(ii) Workers' Compensation Insurance. Workers' compensation insurance covering all persons employed in connection with any work on the Property.

5.6 Preservation and Maintenance of Security. Trustor will keep the Security in good repair and in a neat, clean, and orderly condition and will not commit waste or permit impairment or deterioration of the Security. If there arises a condition in contravention of this Section, and if the Trustor has not cured such condition within thirty (30) days after receiving a City notice of such a condition, then in addition to any other rights available to the City, the City shall have the right (but not the obligation) to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Security to recover its cost of curing.

5.7 Protection of the City's Security. If Trustor fails to perform the covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which materially affects the City's interest in the Security, including, but not limited to, default under any senior lienholder document, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then the City, at the City's option, without releasing Trustor from any obligation hereunder, may make such appearances, disburse such sums and take such action as it determines necessary to protect the City's interest, including but not limited to, disbursement of reasonable attorneys' fees and entry upon the Security to make repairs. Any amounts disbursed by the City pursuant to this paragraph, with interest thereon,

will become an indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and City agree to other terms of payment, such amount will be payable upon notice from the City to Trustor requesting payment thereof, and will bear interest from the date of disbursement at the lesser of (i) ten percent (10%); or (ii) the highest rate permissible under applicable law. Nothing contained in this paragraph will require the City to incur any expense or take any action hereunder.

5.8 Inspection. The City may make or cause to be made reasonable entries upon and inspections of the Security; provided that the City will give Trustor reasonable notice of inspection.

5.9 Hazardous Substances. Trustor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances in, on, under, about, or from the Property. Trustor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property when used and disposed of in accordance with Environmental Law.

**"Hazardous Substances"** means any substance defined as toxic or as a hazardous substance or hazardous waste, or regulated under any Environmental Law, and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

**"Environmental Law"** means all federal, state or local statutes, ordinances, regulations, orders, decrees and judgments that relate to health, safety or environmental protection including without limitation the regulation of the use, disposal, manufacture, or release of Hazardous Substances.

Trustor shall promptly give City written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Trustor has actual knowledge. If Trustor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Trustor shall promptly take all necessary remedial actions in accordance with Environmental Law.

6. Nonliability for Negligence, Loss, or Damage; No Joint Venture. Trustor acknowledges, understands and agrees that City does not undertake or assume any responsibility for or duty to Trustor to select, review, inspect, supervise, pass judgment on, or inform Trustor of the quality, adequacy or suitability of the

Security or any other matter. The City owes no duty of care to protect Trustor against negligent, faulty, inadequate or defective building or construction or any condition of the Security, and Trustor agrees that neither Trustor, nor Trustor's heirs, successors or assigns shall ever claim, have or assert any right or action against the City for any loss, damage or other matter arising out of or resulting from any condition of the Security, and Trustor will hold City harmless from any liability, loss or damage for these things. Nothing contained herein or in the Affordable Housing Agreement shall be deemed to create or construed to create a partnership, joint venture or any relationship other than that of a borrower and lender.

7. Indemnity. Trustor agrees to defend, indemnify, and hold the City of Rohnert Park and its elected and appointed officials, officers, employees, and agents ("**Indemnitees**") harmless from and against all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys' fees that the Indemnitees may incur as a direct or indirect consequence of Trustor's failure to perform any obligations as and when required by the Affordable Housing Agreement and this Deed of Trust.

8. Acceleration; Remedies. Upon Trustor's breach of any covenant or agreement of Trustor in the Affordable Housing Agreement or this Deed of Trust, including, but not limited to, the covenants to pay, when due, any sums secured by this Deed of Trust, the City, prior to the exercise of its remedies hereunder, will mail by express delivery with delivery receipt, notice to Trustor specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty (30) days from the date the notice is received by Trustor as shown on the return receipt, by which such breach is to be cured; and (4) if the breach is curable, that failure to cure such breach on or before the date specified in the notice may result in City's exercise of remedies and the sale of the Security. The notice will also inform Trustor of Trustor's right to reinstate and the right to bring a court action to assert the nonexistence of default or any other defense of Trustor to the exercise of such remedies. If the breach is not cured on or before the date specified in the notice, the City, at the City's option, may:

(a) declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law;

(b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder

or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale;

(c) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(d) deliver to Trustee a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924 et seq., as amended from time to time; or

(e) exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees.

9. Trustor's Right to Reinstate. Notwithstanding the City's acceleration of the sums secured by this Deed of Trust or City's pursuit of other remedies hereunder, Trustor will have the right to have any proceedings begun by the City to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Security pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Trustor pays City all sums which would be then due under this Deed of Trust if there were no acceleration under this Deed of Trust or the Affordable Housing Agreement; (b) Trustor cures all breaches of any other covenants or agreements of Trustor contained in the Affordable Housing Agreement or this Deed of Trust; (c) Trustor pays all reasonable expenses incurred by City and Trustee in enforcing the covenants and agreements of Trustor contained in the Affordable Housing Agreement or this Deed of Trust, and in enforcing the City's and Trustee's remedies, including, but not limited to, reasonable attorney's fees; and (d) Trustor takes such action as City may reasonably require to assure that the lien of this Deed of Trust, City's interest in the Security and Trustor's obligation to pay the sums and perform the obligations secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

10. Reconveyance. Upon the expiration or termination of the Affordable Housing Agreement if the Trustor is not in violation of any provisions of this Deed of Trust or the Affordable Housing Agreement, the City will request Trustee to reconvey the Security and will surrender this Deed of Trust and the Affordable

Housing Agreement to Trustee. Trustee will reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

11. Substitute Trustee. The City, at the City's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. The successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

12. Subordination. City agrees that if required in order to assist Eligible Buyers to secure purchase money financing for the acquisition of a Home, the City will enter into a subordination agreement with a purchase money lender to subordinate this Deed of Trust under such terms as the City and the purchase money lender shall negotiate provided that City is granted reasonable notice and cure rights under the first mortgage. The City further agrees that if City succeeds to the interest of Trustor under any ground lease applicable to any one or more home constructed on the Property pursuant to the exercise of City's remedies under the Affordable Housing Agreement or this Deed of Trust, the City agrees that it shall recognize the Lessee under such ground lease and shall comply with the requirements of Fannie Mae Form 2100 (3/06) and Fannie Mae Announcement 06-03 or similar successor policy, as such documents may be modified or amended.

13. Request for Notice. City requests that copies of the notice of default and notice of sale be sent to City at the address set forth in Section 15.5.

14. Miscellaneous.

14.1 Forbearance by the City Not a Waiver. Any forbearance by the City in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the City will not be a waiver of the City's right to require satisfaction of any obligations secured by this Deed of Trust.

14.2 Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

14.3 Successors and Assigns Bound. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the City and Trustor subject to the provisions of this Deed of Trust.



14.4 Joint and Several Liability. If this Deed of Trust is executed by more than one person as Trustor, the obligations of each shall be joint and several.

14.5 Notices. Except for any notice required under applicable law to be given in another manner, any notice to Trustor or to City pursuant to this Deed of Trust will be given by certified mail, return receipt requested, express delivery with delivery receipt or personal delivery with delivery receipt, addressed to the applicable party at the address shown below, or such other address as such party may designate by notice to the other party as provided herein. Notice shall be effective as of the date received by City as shown on the return receipt.

**City:** City of Rohnert Park  
130 Avram Avenue  
Rohnert Park, CA 94928  
Attn: City Manager

**Trustor:** Housing Land Trust of Sonoma County  
P.O. Box 5431  
Petaluma, CA 94955-5431  
Attn: Executive Director

**Trustee:** Title Company  
Address  
AddressCA  
Attn:

14.6 Governing Law. This Deed of Trust shall be governed by the laws of the State of California.

14.7 Severability. In the event that any provision or clause of this Deed of Trust or the Affordable Housing Agreement conflicts with applicable law, such conflict will not affect other provisions of this Deed of Trust or the Affordable Housing Agreement which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the Affordable Housing Agreement are declared to be severable.

14.8 Captions. The captions and headings in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

14.9 Nondiscrimination. Trustor covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, transfer, use, occupancy, tenure or enjoyment of the

Property, nor shall Trustor or any person claiming under or through Trustor establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Property. The foregoing covenant shall run with the land.

**[SIGNATURE ON FOLLOWING PAGE; SIGNATURE MUST BE  
NOTARIZED.]**

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first written above.

**TRUSTOR:**

**HOUSING LAND TRUST OF SONOMA COUNTY**

A nonprofit public benefit corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Resolution Exhibit C

ACKNOWLEDGMENT

STATE OF CALIFORNIA       )  
  )  
COUNTY OF SONOMA       )

On \_\_\_\_\_ 20\_\_, before me, \_\_\_\_\_, a Notary Public, in and for said State and County, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION**

Real property in the City of \_\_\_\_\_,  
County of Sonoma, State of California, described as follows:

Lots \_\_\_\_\_, and \_\_\_\_ as shown upon the map entitled "\_\_\_\_\_", filed  
\_\_\_\_\_, 200 in Book \_\_\_\_\_ of Maps Pages \_\_\_\_\_ Sonoma County Records.

APN: \_\_\_\_\_

2352879.1

Resolution Exhibit D

Recording requested by and when  
recorded mail to:

CITY OF \_\_\_\_\_  
Address

Attn: City Clerk

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

**AFFORDABLE HOUSING AGREEMENT AND DECLARATION OF  
RESTRICTIVE COVENANTS WITH OPTION TO PURCHASE  
("REGULATORY AGREEMENT")**

This Affordable Housing Agreement and Declaration of Restrictive Covenants with Option to Purchase (this "**Agreement**") is entered into effective as of \_\_\_\_\_, 201\_ ("**Effective Date**") by and between the City of Rohnert Park, a California municipal corporation ("**City**") and the Housing Land Trust of Sonoma County, a California nonprofit public benefit corporation ("**HLT**"). City and HLT are hereafter referred to as the "**Parties**."

**RECITALS**

A. Pursuant to Municipal Code Section 17.07.020(N)(2) (the "**Code**"), residential developments of \_\_\_ or more units are required to contribute to the provision of below market-rate housing as specified therein. In order to satisfy its obligation under the Code with respect to that certain development known as the Southeast Estates Subdivision, consisting of 105 total lots including 101 market rate single family residential lots (the "**Development**") in the City of Rohnert Park County of Sonoma, and State of California, Redwood Equities LLC, a California Corporation ("**Subdivider**"), has agreed to contribute the property known as Lots \_\_, \_\_, \_\_, \_\_, and \_\_ in the Development, for the construction of four (4) residential units to be restricted for occupancy to certain income levels (the "**Restricted Homes**" or the "**Project**"), as set forth herein, and as more particularly described in Exhibit A attached hereto (the "**Property**").

B. As of the Effective Date, the Property has been conveyed to the City by Subdivider, and the Property has been or shall be conveyed to HLT by the City pursuant to a Grant Deed recorded in the Official Records of Sonoma County ("**Official Records**") substantially concurrently herewith.

Resolution Exhibit D

C. HLT has entered into, or shall enter into an agreement with Subdivider, pursuant to which Subdivider will construct the Restricted Homes as part of the larger Development, and sell the Restricted Homes constructed on the Property to eligible homebuyers at an affordable price. Concurrently with the sale of each of the Restricted Homes, HLT will enter into a ground lease ("**Ground Lease**") with each homebuyer in order to ensure long-term affordability of the Restricted Homes.

D. This Agreement is entered into to provide assurance to City that the Restricted Homes shall comply with the requirements of the Code and the conditions of approval for the Southeast Estates Subdivision.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth below. Additional terms are defined in the Recitals and the text of this Agreement.

(a) "**Affordable Purchase Price**" means a home purchase price resulting in an average monthly housing payment (including mortgage loan principal and interest, mortgage insurance fees, property taxes and assessments, a reasonable allowance for property maintenance and repairs, homeowners insurance premiums, a reasonable utility allowance, and homeowners association dues, if any) which is affordable to households of Low to Moderate-Income, as determined using standard underwriting criteria in common use by Fannie Mae or the California Housing Finance Agency.

(b) "**Area Median Income**" means the median household income, adjusted for household size, applicable to Sonoma County, California as published periodically by the State Department of Housing and Community Development in the California Code of Regulations, Title 25, Section 6932 pursuant to California Health and Safety Code Section 50093(c) (or successor provision).

(c) "**Eligible Buyer**" means a household of Low- to Moderate—Income, as applicable, which the City has determined meets the eligibility requirements for purchase of a Restricted Home.

(d) "**Deed of Trust**" means the deed of trust, dated as of the date hereof, executed by HLT as Trustor for the benefit of City which secures HLT's performance under this Agreement, and which will be recorded in the Official Records substantially concurrently herewith.

(e) "**Low-Income**" means an annual income which does not exceed eighty percent (80%) of the Area Median Income adjusted for household size.

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(f) **"Median-Income"** means an annual income which does not exceed one hundred percent (100%) of the Area Median Income, adjusted for household size.

(g) **"Moderate-Income"** means an annual income which does not exceed one hundred twenty percent (120%) of the Area Median Income, adjusted for household size.

(h) **"Maximum Initial Sales Price"** means the initial Affordable Purchase Price for a Home as determined by City.

2. Satisfaction of Affordable Housing Obligation. HLT agrees that it shall enter into a Construction and Resale Agreement with Subdivider pursuant to which Subdivider will construct four (4) Restricted Homes on the Property and sell two (2) Restricted Homes at an Affordable Purchase Price to an Eligible Buyer of Median-Income and two (2) Restricted Homes at an Affordable Purchase Price to an Eligible Buyer of Moderate-Income, in accordance with income categories specified in Exhibit B. Concurrently with the sale of each Restricted Home, HLT shall require the homebuyer to execute a Ground Lease substantially in the form attached hereto as Exhibit C. Among other provisions, the Ground Lease will require each Restricted Home (i) to be used solely for residential purposes (ii) to be occupied as the homebuyer's principal residence, and (iii) to be permitted to be transferred only to HLT, another Eligible Buyer, or upon the death of the homebuyer, to the homebuyer's heirs who qualify as Low-Income, Median-Income or Moderate-Income, as applicable. HLT agrees that the intent of this Agreement and the Ground Lease is that the Restricted Homes shall be permanently affordable to Eligible Buyers of Low-Income to Moderate-Income, as applicable, and HLT agrees that resale of the Restricted Homes shall be so restricted pursuant to the Ground Lease.

3. Marketing and Sale to Eligible Buyers. HLT shall require Subdivider to sell the Restricted Homes developed on the Property at an Affordable Purchase Price as described in Section 4 to Eligible Buyers of Low-Income, Median-Income or Moderate-Income, as applicable, and in accordance with Exhibit B. Within the pool of eligible applicants, preference is to be given to persons that have either live in \_\_\_\_\_ and have been City residents for the past 3 continuous years; or who have been employed in \_\_\_\_\_ for the past 3 years. City shall cooperate with HLT to identify Eligible Buyers; however, HLT will have primary responsibility for marketing the Restricted Homes, finding qualified Eligible Buyers, and screening and selecting applicants. City shall have no obligation to pay costs related to marketing, sales efforts or real estate commissions. HLT agrees that it shall comply, and shall require Subdivider to comply, with applicable fair housing laws in the marketing and sale, as applicable, of the Restricted Homes.



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4. Affordable Purchase Price. The Maximum Initial Sales Price for the Homes is shown in Exhibit B attached hereto and incorporated herein.
5. City Review of Documents. Upon request, HLT agrees that it shall provide the following to City: (a) the form of Purchase and Sale Agreement to be used for sale of the Restricted Homes, and (b) the form of Ground Lease to be executed by the homebuyers.
6. Compliance Reports, Inspections, Monitoring. Upon completion of construction of the Restricted Homes, and annually thereafter by no later than each anniversary of the Effective Date, upon City's request HLT shall submit to City a Compliance Report verifying HLT's compliance with this Agreement, and certified as correct by HLT under penalty of perjury. The Compliance Report shall be in such format as City may reasonably request and shall contain certifications regarding the eligibility of homebuyers and evidence of the homebuyer's and HLT's execution of the Ground Lease.

HLT shall retain all records related to compliance with this Agreement, and shall make such records available to City or its designee for inspection and copying on five (5) business days' written notice. HLT shall permit City and its designees to inspect the Property to monitor compliance with this Agreement following two (2) business days' written notice.
7. Covenants Run with the Land. The covenants and conditions herein contained shall apply to and bind, during their respective periods of fee ownership, HLT and its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title or interest in or to any part of the Property and shall run with and burden such portions of the Property. This Agreement shall remain in effect in perpetuity unless released by City pursuant to an instrument recorded in the Official Records.
8. Default and Remedies. Failure of HLT to cure any default in HLT's obligations under this Agreement within thirty (30) days after the delivery of a notice of default from the City will constitute an Event of Default under this Agreement. In addition to remedies set forth in this Agreement, the City may exercise any and all remedies available under law or in equity, including but not limited to the exercise of City's remedies under the Deed of Trust, and the exercise of City's Option (as described in Section 10 below), instituting against HLT or other applicable parties, a civil action for declaratory relief, injunction or any other equitable relief, or relief at law, including without limitation an action to rescind a transaction and/or to require repayment of any funds received in connection with such a violation.
9. Option to Purchase, Enter and Possess. City shall have the right at its option to purchase, enter and take possession of the Property or any portion thereof owned by HLT with all improvements thereon (the "**Option**"), if, at or

## Resolution Exhibit D

after the initial sale of the Restricted Homes to Eligible Buyers, the Restricted Homes are sold to persons who do not qualify as Eligible Buyers. In such event City shall have an option to purchase any such Restricted Homes at the Affordable Purchase Price as determined pursuant to this Agreement, or the City may pursue any remedies it may have under this Agreement, the Deed of Trust or under law or in equity. To exercise the Option, City shall pay to HLT cash in an amount equal to:

- (i) The fair market value of the Property at the time of exercise of the Option; less
- (ii) Any gains or income withdrawn or made by HLT from the applicable portion of the Property ; less
- (iii) The value of any liens or encumbrances on the applicable portion of the Property which the City assumes or takes subject to; less
- (iv) Any damages to which the City is entitled under this Agreement by reason of HLT's default.

In order to exercise the Option, the City shall give HLT notice of such exercise, and HLT shall, within thirty (30) days after receipt of such notice, provide the City with a summary of all of HLT's costs incurred as described in this Section. Within thirty (30) days of the City's receipt of such summary, the City shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 10, and HLT shall execute and deposit into such escrow a grant deed transferring to the City all of HLT's interest in the Property, or portion thereof, as applicable and the improvements located thereon. If by \_\_\_\_\_, 201\_\_, some but not all of the Restricted Homes have been constructed and sold to Eligible Buyers, the City's Option shall not apply to any of the Restricted Homes that have been sold in compliance with the requirements of this Agreement.

10. Mortgagee Protection. The City's rights pursuant to Section 9 shall not defeat, limit or render invalid any mortgage or deed of trust recorded against the Property or any portion thereof, including without limitation, any Restricted Home. Any conveyance of the Property to the City pursuant to Section 9 shall be subject to mortgages and deeds of trust permitted by this Agreement.

11. Remedies Cumulative. No right, power, or remedy specified in this Agreement is intended to be exclusive of any other right, power, or remedy, and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy available to the City under law or in equity. Neither the failure nor any delay on the part of the City to exercise any such rights, powers or remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right, power or remedy preclude any

## Resolution Exhibit D

other or further exercise of such right, power or remedy, or any other right, power or remedy.

12. Attorneys' Fees and Costs. The City shall be entitled to receive from HLT or any person violating the requirements of this Agreement, in addition to any remedy otherwise available under this Agreement or at law or equity, whether or not litigation is instituted, the costs of enforcing this Agreement, including without limitation reasonable attorneys' fees and the costs of City staff time. In any dispute arising in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees.

13. Appointment of Other Agencies. In its sole discretion, the City may designate, appoint or contract with any other person, public agency or public or private entity to perform some or all of the City's obligations under this Agreement.

14. Hold Harmless. HLT agrees to indemnify, defend (with counsel approved by the City) and hold harmless City and its elected and appointed officials, officers, employees, representatives and agents (all of the foregoing, collectively the "**Indemnitees**") from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) (all of the foregoing, collectively hereinafter "**Claims**") arising or allegedly arising out of or relating in any manner to the Project, the Property, or HLT's performance or nonperformance under this Agreement, except to the extent arising from the gross negligence or willful misconduct of the City. The provisions of this section shall survive the expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement.

15. Insurance Requirements. HLT shall obtain and maintain at HLT's expense, Commercial General Liability, naming Indemnitees as additional insureds with aggregate limits of not less than Two Million Dollars (\$2,000,000) for bodily injury and death or property damage including coverage for contractual liability and premises operations, purchased from an insurance company duly licensed to issue such insurance in the State of California with a current Best's Key Rating of not less than A-V, such insurance shall be evidenced by an endorsement which so provides and delivered to the City prior to the Effective Date.

16. Notices. All notices required pursuant to this Agreement shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the party to receive such notice at the addresses set forth below:

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**City:**

City of \_\_\_\_\_  
ADDRESS \_\_\_\_\_, CA 95448  
Attn: City Clerk

**HLT:**

Housing Land Trust of Sonoma County  
P.O. Box 5431  
Petaluma, CA 94955-5431  
Attn: Executive Director

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

17. Integrated Agreement; Amendments. This Agreement, together with the exhibits hereto, the Performance Deed of Trust and exhibits thereto, and that certain August 2014 Letter of Understanding executed by and among City, HLT and other parties constitutes the entire Agreement between the Parties with respect to the subject matter hereof. No modification of or amendment to this Agreement shall be binding unless reduced to writing and signed by the Parties. The City Manager or his or her designee shall have authority to approve or disapprove minor or technical amendments to this Agreement on behalf of the City.

18. Subordination; Execution of Riders for the Benefit of Mortgage Lenders. City agrees that if required in order to assist Eligible Buyers to secure purchase money financing for the acquisition of a Home, the City will enter into a subordination agreement with a purchase money lender to subordinate this Agreement under such terms as the City and the purchase money lender shall negotiate provided that City is granted reasonable notice and cure rights under the first mortgage. The City further agrees that if City succeeds to the interest of HLT under the Ground Lease applicable to any one or more Restricted Homes pursuant to the exercise of City's remedies under this Agreement or the Deed of Trust, the City agrees that it shall recognize the Lessee under the Ground Lease and shall comply with the requirements of Fannie Mae Form 2100 (3/06) and Fannie Mae Announcement 06-03 or similar successor policy, as such documents may be modified or amended.

19. Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

## Resolution Exhibit D

20. Further Assurances; Action by the City. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council unless the City Manager determines in his or her discretion that such action requires such approval.

21. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to principles of conflicts of law. The Parties consent to the jurisdiction of any federal or state court in the jurisdiction in which the Property is located (the "**Property Jurisdiction**"). Borrower agrees that any controversy arising under or in relation to this Agreement shall be litigated exclusively in courts having jurisdiction in the Property Jurisdiction. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

22. No Waiver. Any waiver by the City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of HLT or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to HLT to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by HLT shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

23. Headings. The titles of the sections and subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

24. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

25. Severability. If any provision contained in this Agreement is to be held by a court of competent jurisdiction to be void or unenforceable the remaining portions of this Agreement shall remain in full force and effect.

26. Exhibits. The following exhibits attached to this Agreement are hereby incorporated herein by reference:

Resolution Exhibit D

Exhibit A    Legal Description of the Property

Exhibit B    Maximum Homebuyer Income Level; Unit Size and Bedroom  
Count; Maximum Initial Sales Price

Exhibit C    Form of Ground Lease

**[SIGNATURES ON FOLLOWING PAGE; SIGNATURES MUST BE  
NOTARIZED]**

## Resolution Exhibit D

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**HLT:**

Housing Land Trust of Sonoma County,  
A nonprofit public benefit corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY :**

City of \_\_\_\_\_,  
a California municipal corporation

By: \_\_\_\_\_, City Manager

ATTEST: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_, City Attorney

Resolution Exhibit D

State of California            )  
  )  
County of Sonoma            )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_(seal)  
Notary Public

State of California            )  
  )  
County of Sonoma            )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_(seal)  
Notary Public



Resolution Exhibit D

Exhibit A

**LEGAL DESCRIPTION OF THE PROPERTY**

Real property in the City of \_\_\_\_\_, County of Sonoma,  
State of California, described as follows:

Lots \_\_, \_\_, \_\_ and \_\_, as shown upon the map entitled  
"\_\_\_\_\_", filed \_\_\_\_\_, 200\_\_ in Book \_\_\_\_\_ of Maps Pages  
\_\_\_\_\_ Sonoma County Records.

APN: \_\_\_\_\_

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Exhibit B

**Unit Income Classification** **Lot Nos.**

Median and Moderate 53, 54, 55 and 56

**Designation of Plans and Specifications for each Unit**

<b><u>Lot No.</u></b>	<b><u>Plans &amp; Specifications</u></b>	<b><u>Unit Square Feet</u></b>	<b><u>No. of Bedrooms</u></b>
53	SE Medium Density Conventional Duet Plan 5	1412	3
54	SE Medium Density Conventional Duet Plan 4	1214	2
55	SE Medium Density Conventional Duet Plan 4	1214	2
56	SE Medium Density Conventional Duet Plan 5	1412	3

**Sales Price of Below Market Rate Units**

Two (2) Units .....\$300,000

Two (2) Units.....\$350,000.

Resolution Exhibit D

Exhibit C

[Attach Form of Ground Lease]

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