



## Irvine Community Land Trust

### REQUEST FOR IRVINE COMMUNITY LAND TRUST BOARD ACTION

LAND TRUST BOARD MEETING DATE:

SEPTEMBER 16, 2009

TITLE: Second Amendment to Affordable Housing and Grant Agreement of October 10, 2008

A handwritten signature in blue ink that reads "Mark Asturias".

Executive Director

#### RECOMMENDED ACTION:

Approve a Second Amendment to the Affordable Housing and Grant Agreement of October 10, 2008.

#### BACKGROUND:

In 2008 the Irvine Community Land Trust (Land Trust) was awarded a grant of Federal Community Development Block Grant (CDBG), HOME, and State of California Workforce Housing funds by the City of Irvine (City) to acquire residential property for affordable housing purposes. The Affordable Housing and Grant Agreement (Agreement) provided \$1,063,515 in total funding that was to be used for expenses associated with the acquisition, rehabilitation and operation of affordable housing within the City of Irvine.

The City received notification from the State of California after the Agreement was executed that an addition allocation of State Workforce Housing funds had been awarded and could be allocated to the Land Trust to increase its activities to acquire existing residential property for affordable housing. An amendment was approved by the City and the Land Trust on November 26, 2008 to allocate the additional \$752,124 in State of California Workforce Housing funds. Although the City and Land Trust executed the Agreement and the State executed a contract with the City for this funding, moneys were not released to the City and Land Trust until May 2009 due to the State budget crisis. The City confirmed the release of money in July 2009 and ensured it was deposited into the City's account so there would be no impairment to drawing these funds when the Land Trust opened escrows of future properties.

The City was awarded \$14,954 in funds from the U.S. Department of Housing and Urban Development (HUD) under a temporary entitlement grant program called the American Dream Downpayment Initiative (ADDI). As part of the City's approval of the CDBG and HOME program for this year the ADDI funds were committed to the Land Trust to be used as down payment assistance.

The ADDI program has the following requirements:

- ADDI funds may only be used for downpayment assistance towards the purchase of a single family home by low-income, first-time homebuyers.
- Rehabilitation that is completed in conjunction with a home purchase assisted with ADDI funds is an eligible activity; however, rehabilitation assistance may not exceed 20 percent of the ADDI allocation.
- Assisted homebuyers may not earn more than 80 percent of the Orange County Median Income.
- There is a minimum subsidy of \$1,000 and a maximum of \$10,000 per household.

City staff recommended approval of the allocation of the \$14,954 balance of the City's ADDI funds to the Land Trust to facilitate the sale of its initial affordable units. The City Council approved the allocation and a second amendment to Agreement. The Agreement, first and second amendment are attached for the Board's information.

FISCAL IMPACT:

The allocation of \$14,954 in downpayment assistance funds does not increase costs to the Land Trust, however it will facilitate the acquisition of Land Trust units by home buyers as these funds will provide partial funding for purchase and closing costs.

ALTERNATIVE:

None

CONCLUSION:

Approval of the proposed allocation will direct \$14,954 of ADDI funds to the Land Trust to facilitate the sale of permanent affordable housing. The Land Trust will provide downpayment assistance to income eligible homebuyers in accordance with HUD regulations and the City Agreement. Given that the Land Trust has been established for the purpose of developing and managing permanent affordable housing, staff recommends approval of the proposed second amendment to the Affordable Housing Agreement.

Attachment:

1. The Affordable Housing and Grant Agreement
2. First Amendment to the Affordable Housing and Grant Agreement
3. Second Amendment to the Affordable Housing and Grant Agreement

Attachment 1  
The Affordable Housing and Grant Agreement

**DUPLICATE**

**AFFORDABLE HOUSING AND GRANT AGREEMENT**

**by and between**

**CITY OF IRVINE,  
a California municipal corporation,**

**and**

**IRVINE COMMUNITY LAND TRUST,  
a California nonprofit public benefit corporation**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
1. DEFINITIONS.....	1
2. ACQUISITION AND REHABILITATION OF AFFORDABLE UNITS.....	4
2.1 Identification of Affordable Units.....	4
2.2 Affordable Unit Implementation Document.....	5
2.3 Purchase Agreement.....	4
2.4 Program Activities.....	6
2.5 Monitoring.....	6
2.6 Compliance with Laws and Regulations and Program Requirements.....	6
2.7 Licenses, Approvals and Permits.....	6
2.8 Program Costs.....	7
2.9 Program Income.....	7
2.10 Compliance with Permits and Laws.....	7
2.11 Rights of Access.....	7
2.12 Relocation.....	7
3. CITY GRANT.....	7
3.1 Amount and Source of City Grant.....	7
3.2 Permissible Use of City Grant; Eligible Expenses.....	8
3.3 Disbursements of City Grant.....	8
3.4 Return of City Grant Proceeds.....	9
3.5 Excess City Grant Proceeds.....	9
4. AFFORDABILITY COVENANTS.....	9
5. RECORDS AND REPORTS.....	10
5.1 Records.....	10
5.2 Reports.....	10
6. INSURANCE AND INDEMNITY.....	11
6.1 Insurance.....	11
6.2 Indemnification.....	12
7. TERMINATION.....	12
7.1 Termination for Cause.....	12
7.2 Termination for Convenience.....	13
7.3 Obligations Survive Termination.....	13
8. DEFAULTS AND REMEDIES.....	13
8.1 Defaults-General.....	13
8.2 Institution of Legal Actions.....	13
8.3 Additional City Remedies.....	13
8.4 Applicable Law.....	14
8.5 Rights and Remedies are Cumulative.....	14
8.6 Attorney's Fees.....	14

9. GENERAL PROVISIONS..... 14

9.1 Notices, Demands, and Communications between the Parties..... 14

9.2 Nonliability of City Officials and Employees ..... 15

9.3 Contract Administration ..... 15

9.4 Enforced Delay; Extension of Times of Performance..... 15

9.5 Interpretation ..... 16

9.6 Entire Agreement, Waivers and Amendments ..... 16

9.7 Severability..... 16

9.8 Prohibition against Assignment and Transfer ..... 16

9.9 Third Party Beneficiaries..... 16

9.10 Execution in Counterparts ..... 16

9.11 Exhibits..... 16

EXHIBITS

- A HOME INVESTMENT PARTNERSHIPS PROGRAM INFORMATION
- B COMMUNITY DEVELOPMENT BLOCK GRANT INFORMATION

## AFFORDABLE HOUSING AND GRANT AGREEMENT

This AFFORDABLE HOUSING AND GRANT AGREEMENT ("Agreement") is entered into this 10<sup>th</sup> day of OCTOBER, 2008, by and between the CITY OF IRVINE, a California municipal corporation ("City"), and the IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation ("Participant").

### R E C I T A L S

A. Participant desires to acquire existing residential units in the City of Irvine for the purpose of providing affordable housing.

B. City has received the following funds: (a) Community Development Block Grant funds ("CDBG Funds") from the United States Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301, *et seq.*), and the regulations promulgated thereunder (24 C.F.R. § 570, *et seq.*); (b) HOME funds ("HOME Funds") from HUD under the HOME Investment Partnerships Act at Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. § 12741, *et seq.*), and the implementing regulations (24 C.F.R. § 92, *et seq.*); and (c) funds from the California Department of Housing and Community Development pursuant to the Workforce Housing Reward Program (Health and Safety Code. § 50550, *et seq.*) ("Workforce Funds") to be used for the purposes of this Agreement.

C. City desires to provide financial assistance to Participant in the form of a grant of CDBG Funds, HOME Funds, and Workforce Funds in the collective amount not to exceed \$1,063,515 ("City Grant") to be used by Participant for certain expenses related to Participant's housing activities, more particularly described herein as the "Eligible Expenses."

D. City's provision of the City Grant to Participant pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the welfare of its residents.

### A G R E E M E N T

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, City and Participant hereby agree as follows:

#### 1. DEFINITIONS.

The following terms as used in this Agreement shall have the meanings given below unless expressly provided to the contrary:

"Affordable Unit Completion Date" shall have the meaning set forth in Section 3.4 of this Agreement.

"Affordable Unit Implementation Document" shall have the meaning set forth in Section 2.3 of this Agreement.

“Affordable Unit” and “Affordable Units” shall mean the housing unit(s) located within the City that are listed for sale and that City approves for Participant’s acquisition under this Agreement.

“Agreement” shall mean this Affordable Housing and Grant Agreement between City and Participant, including all exhibits and other documents attached hereto, and each Affordable Unit Implementation Document. This Agreement constitutes the written agreement required under 24 C.F.R. § 570.503 to be entered into by a recipient and subrecipient for subgrants of CDBG Funds. This Agreement also constitutes the written agreement required under 24 C.F.R. §§ 92.504(b) and 92.504(c)(3) to be entered into by a recipient and subrecipient for subgrants of HOME Funds.

“CDBG Funds” shall mean the funds allocated to City by HUD under the Community Development Block Grant Program at Title I of the Housing and Community Development Act of 1974.

“CDBG Requirements” shall mean the requirements of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 *e. seq.*) as amended from time to time, and the implementing regulations set forth in 24 C.F.R. § 570 *et seq.* as amended from time to time, including those summarized in Exhibit “B” attached hereto and incorporated herein by this reference.

“CDBG Portion of City Grant” shall mean the portion of the City Grant in the amount of Two Hundred Eighty-Nine Thousand One Hundred Thirty-Three Dollars (\$289,133) comprised of CDBG Funds.

“City” shall mean the City of Irvine, a municipal corporation, organized under the laws of the State of California and having its offices at One Civic Center Plaza, Irvine, CA 92623-9575.

“City Grant” shall mean the subgrant of Program Funds in the amount not to exceed the sum of One Million Sixty-Three Thousand and Five Hundred Fifteen Dollars (\$1,063,515) to be provided by City to Participant for the Eligible Expenses, as more fully explained in Section 3 of this Agreement. The City Grant is comprised of the \$289,133 CDBG Portion of City Grant, the \$617,184 HOME Portion of City Grant, and the \$157,198 Workforce Portion of City Grant

“Contract Officer” shall mean City’s Grants Coordinator or such other person as may be designated by the City Manager of City to administer this Agreement.

“Effective Date” shall mean the date this Agreement is approved by City, which date shall be inserted in the preamble to this Agreement.

“Eligible Expenses” shall mean the expenses for the acquisition and rehabilitation of the Affordable Units for which the City Grant may be used. As to each Affordable Unit, the line item categories of Eligible Expenses and the amount budgeted for each item shall be set forth in the Affordable Unit Implementation Document for that Affordable Unit.

“HCD” shall mean the California Department of Housing and Community Development.

“HOME Funds” shall mean the funds allocated to City by HUD under the HOME Investment Partnerships Act at Title II of the Cranston-Gonzales National Affordable Housing Act.

“HOME Portion of City Grant” shall mean the portion of the City Grant in the amount of Six Hundred Seventeen Thousand One Hundred Eighty-Four Dollars (\$617,184) comprised of HOME Funds.

“HOME Requirements” shall mean the requirements of the HOME Investment Partnerships Act, as amended (42 U.S.C. § 12741, *et seq.*), and the implementing regulations (24 C.F.R. § 92, *et seq.*), including those summarized in Exhibit “A” attached hereto and incorporated herein by this reference.

“HUD” shall mean the United States Department of Housing and Urban Development.

“Notice to Proceed” shall mean a written letter from City to the Participant Representative notifying Participant that Program Requirements have been met such that Participant may proceed to close escrow for a particular Affordable Unit.

“Participant” shall mean the Irvine Community Land Trust, a California nonprofit public benefit corporation, having its offices at 13825 B Street, Irvine, CA 92618. The term “Participant” includes any legally permissible assignee or successor to the rights, powers, and responsibilities of Participant hereunder, in accordance with Section 9.8 of this Agreement.

“Participant Representative” shall mean Mark Asturias, Executive Director, who is designated by Participant to represent Participant in the administration of this Agreement.

“Program Activities” shall mean the tasks, activities, and operations set forth in each Affordable Unit Implementation Document, all activities assisted with the City Grant, and all other obligations under this Agreement that Participant is required to perform.

“Program Funds” shall collectively refer to the CDBG Funds, the HOME Funds, and the Workforce Funds.

“Program Requirements” shall collectively refer to the CDBG Requirements, the HOME Requirements, and the Workforce Requirements.

“Proposed Affordable Unit(s)” shall mean residential units located within the City that Participant proposes to acquire pursuant to this Agreement.

“Quarter” shall mean any of the three (3) month periods during a fiscal year commencing July 1, October 1, January 1, or April 1.

“Workforce Funds” shall mean the funds allocated to City by HCD under the Workforce Housing Reward Program (Health and Safety Code. § 50550, *et seq.*).

“Workforce Portion of City Grant” shall mean the portion of the City Grant in the amount of One Hundred Fifty Seven Thousand One Hundred Ninety-Eight Dollars (\$157,198) comprised of Workforce Funds.

“Workforce Requirements” shall mean the requirements of the Workforce Housing Reward Program (Health and Safety Code, § 50550, *et seq.*) and any requirements of the California Department of Housing and Community Development imposed pursuant to said program.

## 2. ACQUISITION AND REHABILITATION OF AFFORDABLE UNITS.

2.1 Identification of Affordable Units. As of the date of this Agreement, the Affordable Units have not been specifically identified but shall be located within the corporate limits of the City. The location of the Affordable Units and the number of units that will constitute Affordable Units shall be as determined by Participant and City, but shall be subject to the approval of City in its sole discretion. Participant shall exercise diligent efforts to select the units that it proposes to constitute an Affordable Unit or Affordable Units (collectively, “Proposed Affordable Units”) as soon as reasonably practicable following the Effective Date. After locating a Proposed Affordable Unit(s), Participant shall notify City of the location and acquisition price of each Proposed Affordable Unit as soon as reasonably practicable. City shall have the right to approve or disapprove any or all Proposed Affordable Units in its sole and absolute discretion. The Proposed Affordable Units approved by City as Affordable Units shall meet all applicable Program Requirements. Upon City’s approval of a Proposed Affordable Unit as an Affordable Unit, Participant shall have the right to (a) commence Program Activities for the purchase of the Affordable Unit, and (b) open an escrow for the purchase and sale of the Affordable Unit, provided that Participant has obtained an executed Purchase Agreement as set forth below.

### 2.2 Purchase Agreement.

(a) The form of the purchase agreement that Participant will enter into with the owners of the Affordable Units for the acquisition of the Affordable Units (“Purchase Agreement”) shall be subject to the prior written approval of City. As to each Purchase Agreement that Participant enters into, Participant shall comply with each and every condition, responsibility, and obligation it may have pursuant to the Purchase Agreement in order to accomplish the close of escrow on or prior to the outside closing date set forth in the Purchase Agreement and shall exercise commercially diligent efforts to cause the conditions precedent to the close of escrow for which Participant is responsible to be satisfied. In addition to any other conditions precedent that Participant must satisfy therein, the Purchase Agreement shall require as a condition precedent to closing of escrow that City and Participant have executed and delivered a copy to the escrow holder an Affordable Unit Implementation Document for the Affordable Unit to be purchased by Participant. Participant shall not amend or modify a Purchase Agreement without the prior written consent of City. Participant shall keep City informed of the progress of the performance under the Purchase Agreement and shall notify City of any defaults of Participant or the seller of the Affordable Unit thereunder or any default notices issued by either party. Participant shall not assign a Purchase Agreement to any other party. Upon obtaining the written approval by City of the form of the Purchase Agreement, Participant shall have the right to a disbursement from the City Grant to cover the amount of any good faith deposit required by a seller of an Affordable Unit, and if requested by Participant, City shall wire the funds to the escrow account opened for the applicable Affordable Unit within twenty-four (24) hours of Participant’s request.

(b) The Purchase Agreement shall provide for a reasonable contingency period during which Participant shall have the right to review title and inspect the environmental condition of the Affordable Unit, in addition to any other rights Participant may have during the contingency period. Participant shall disclose to City if, upon the expiration of the contingency period, the condition of title, environmental condition, or any other reason caused Participant to terminate the Purchase Agreement.

(c) In the event that Participant accepts the condition of the Affordable Unit and does not terminate the Purchase Agreement within the contingency period set forth therein, Participant shall notify City that it intends to proceed with closing of escrow. Provided Participant is not in default of this Agreement, and provided that Participant and City have executed or will have executed by the close of escrow an Affordable Unit Implementation Document for the applicable Affordable Unit, then City shall issue a Notice to Proceed.

(d) In the event that Participant terminates the Purchase Agreement for a particular Affordable Unit, any funds disbursed by City into escrow shall be transferred to another escrow account set up by Participant, with said escrow account to serve as the temporary placement of funds that shall be used for the purchase of a different Affordable Unit, after City has approved the new Proposed Affordable Unit and a Purchase Agreement in accordance with this Agreement. In the event that the funds in the temporary escrow account are not used or applied to the acquisition of a different Affordable Unit within one (1) year of opening said temporary escrow, the funds shall be returned to the City.

2.3 Affordable Unit Implementation Document. For each Affordable Unit, City and Participant shall set forth in a written instrument to be executed by both parties the following for the Affordable Unit (each, an "Affordable Unit Implementation Document"): (a) the address and location of the Affordable Unit; (b) a description of the rehabilitation work that Participant will be required to perform, if any; (c) the dates and/or time periods by which the obligations and tasks must be performed and completed with respect to the Affordable Unit; (d) the line item categories of Eligible Expenses for the Affordable Unit and the amount of City Grant proceeds allocated to each category; and (e) whether the Affordable Unit will constitute an affordable rental or ownership unit and the income level and other affordability requirements that will be imposed on the Affordable Unit; and (f) any other information that is required under the Program Requirements. Upon execution of each Affordable Unit Implementation Document, all of the terms, conditions, provisions and covenants of the Affordable Unit Implementation Document shall be deemed incorporated in this Agreement by reference as though written out at length herein and this Agreement and the Affordable Unit Implementation Document shall be deemed to constitute a single instrument or document. Upon execution of the Affordable Unit Implementation Document and delivery to escrow thereof for the applicable Affordable Unit, Participant shall have the right to a disbursement from the City Grant to cover the amount of the purchase price (less the amount of any good faith deposit previously disbursed pursuant to the Purchase Agreement) and closing costs, as based upon an estimated escrow statement or similar document provided by the escrow holder for that Affordable Unit. If requested by Participant, City shall wire the funds to the escrow account opened for the applicable Affordable Unit within twenty-four (24) hours of Participant's request. City shall use every reasonable effort to ensure a disbursement of the City Grant for the applicable Affordable Unit shall be received by escrow holder no later than two (2) days prior to the outside closing date set forth in the Purchase Agreement.

## 2.4 Program Activities.

(a) Participant shall perform and complete all Program Activities diligently and in a timely manner to the satisfaction of City and in accordance with this Agreement. If any Program Activity constitutes a specific task or activity that is required under this Agreement or the Affordable Unit Implementation Document Agreement to be commenced or completed by a certain date or time period, Participant shall commence, complete, and perform the task or activity within the specified time period. In addition to the quarterly reports referred to in Section 5.2, Participant shall, if requested by City, provide to City monthly written reports on the progress of any Program Activity. Participant represents to City that the Program Activities will be performed by Participant under its direct supervision, and that all personnel engaged in the Program Activities shall be fully qualified and authorized and permitted under applicable law to perform such Program Activities.

(b) In the event that an Affordable Unit is determined to be an ownership unit and not a rental unit, and Participant then sells the Affordable Unit to an eligible household that meets the affordability requirements that shall be set forth in the Regulatory Agreement required by Section 4 of this Agreement, then Participant shall have the right to use the proceeds from any such sale in conjunction with the City Grant for Program Activities authorized herein, including but not limited to the acquisition of additional residential units that shall become Affordable Units. Participant and City shall comply with the terms and conditions of this Agreement for each Proposed Affordable Unit that Participant proposes to acquire with proceeds from the sale of any other Affordable Unit.

2.5 Monitoring. City shall monitor and evaluate Participant's performance under this Agreement to determine compliance with this Agreement and the Program Requirements. Participant shall cooperate with City and shall make available to City all information, documents, and records reasonably requested by City and shall provide City the reasonable right of access to the Affordable Units (provided Participant has access) during normal business hours for the purpose of assuring compliance with this Agreement and evaluating Participant's performance hereunder.

2.6 Compliance with Laws and Regulations and Program Requirements. Participant shall observe and comply with all applicable laws, regulations, and rules of governmental agencies having jurisdiction, including the Program Requirements and the legal requirements set forth in Exhibits "A" and "B" attached to this Agreement and the statutes referenced therein. Because the source of the City Grant is funds received from HUD pursuant to the federal government's Home Investment Partnership program and Community Development Block Grant Project and from HCD under the Workforce Program, Participant is required to comply with all applicable Program Requirements. In the case of any conflict between the Program Requirements and this Agreement, the Program Requirements shall control; it being understood, however, that in order to be in compliance with this Agreement and the Program Requirements, Participant shall, to the extent possible, comply with the most restrictive provisions in this Agreement and the Program Requirements.

2.7 Licenses, Approvals and Permits. Participant shall secure, at its sole cost and expense, any and all licenses, permits and approvals that may be required by law for the performance of the Program Activities.

2.8 Program Costs. Except to the extent City has specifically agreed to provide the City Grant pursuant to Section 3, Participant shall be responsible for all costs related to the Program Activities.

2.9 Program Income. Participant shall submit to City quarterly reports as set forth in Section 5.2 on all program income as defined 24 C.F.R. 92.503(a) generated by activities carried out with HOME Funds, if any. Participant shall submit to City quarterly reports as set forth in Section 5.2 on all program income as defined 24 C.F.R. 570.500(a) generated by activities carried out with CDBG Funds, if any. The program income shall, at City's election, (a) be returned to City or (b) retained by Participant and utilized for Eligible Expenses or such other activities approved in writing by City, in which case all provisions of this Agreement shall apply to the activities funded by the program income. In the event City determines that Participant may retain the program income for Eligible Expenses, the program income shall be expended by Participant for Eligible Expenses before City is obligated to advance any other City Grant proceeds to Participant. Upon the termination of this Agreement, all unused program income shall be returned to City.

2.10 Compliance with Permits and Laws. Participant shall carry out the Program Activities in conformity with all applicable laws, regulations, and rules of governmental agencies having jurisdiction, including without limitation all applicable federal and state fair labor standards, including the payment of prevailing wages, if required, and all applicable conditions and requirements of the Program Requirements.

2.11 Rights of Access. During the period and for so long as Participant owns an Affordable Unit, representatives of City shall have the reasonable right of access to the Affordable Units, without charges or fees, for the purpose of assuring compliance with this Agreement, including but not limited to the inspection of the work being performed by Participant.

2.12 Relocation. City shall not be responsible for relocating any occupants from the Affordable Units to the extent any occupants are located in the Affordable Units. If required, Participant shall have the sole and exclusive responsibility for providing relocation assistance and paying all relocation costs required to comply with all applicable federal and state laws, rules, and regulations. Participant shall indemnify, defend, and hold City harmless from and against any claims, liabilities, damages, or losses made against it by tenants or occupants of the Affordable Units, including without limitation claims for relocation assistance, inverse condemnation, and claims otherwise arising from any act or omission of Participant pursuant to this Section 2.12.

### 3. CITY GRANT.

3.1 Amount and Source of City Grant. Subject to the terms and conditions set forth herein, City shall provide Participant financial assistance for the Eligible Expenses in the form of a grant not to exceed the sum of One Million Sixty-Three Thousand Five Hundred Fifteen Dollars (\$1,063,515) ("City Grant"). The City Grant is comprised of the CDBG Portion of City Grant in the amount of Two Hundred Eighty-Nine Thousand One Hundred Thirty-Three Dollars (\$289,133), the HOME Portion of City Grant in the amount of Six Hundred Seventeen Thousand

One Hundred Eighty-Four Dollars (\$617,184), and the Workforce Portion of City Grant in the amount of One Hundred Fifty-Seven Thousand One Hundred Ninety-Eight Dollars (\$157,198).

3.2 Permissible Use of City Grant; Eligible Expenses. Pursuant to all of the terms and conditions of this Agreement, Participant shall be permitted to use the City Grant proceeds only for the Eligible Expenses that are actually and reasonably incurred by Participant and approved by City, and for no other purpose. The maximum amount of the HOME Portion of City Grant allocated to an Affordable Unit shall not exceed the per-unit subsidy limitations set forth in the HOME Requirements.

3.3 Disbursements of City Grant. Provided Participant is not in default of this Agreement, the City Grant shall be disbursed by City to Participant from time to time, as Eligible Expenses are incurred by Participant, as follows:

(a) *Submittal of Payment Request.* Participant shall submit to the Contract Officer a request for payment of City Grant proceeds to pay for Eligible Expenses incurred by Participant or that the parties expect to be incurred by Participant within thirty (30) days from the date the payment request is submitted. The payment request shall include the total amount requested, with such supporting information as City may reasonably require, documenting that the costs for which Participant seeks payment are solely for Eligible Expenses incurred by Participant or to be incurred by Participant. The supporting information required by City may include without limitation, letters of intent to purchase real property, receipts, canceled checks, time records, billing statements, bank statements, invoices, and contracts (including the Purchase Agreement). The payment request shall itemize the Eligible Expenses by listing each budget line item category from the project budget that is set forth in the Affordable Unit Implementation Document for the Affordable Unit and including the following information for each category: (i) a description and the amount of each Eligible Expense included within that category for which payment is sought; (ii) the total amount budgeted in the Affordable Unit Implementation Document to the budget line item category; and (iii) the total amount paid to Participant for the budget line item category to date.

(b) *City's Review of Payment Request and Disbursement of Funds.* The Contract Officer shall have the authority on behalf of City to calculate and approve the amount of Participant's Eligible Expenses. To the extent City has received sufficient Program Funds, payment of the City Grant amount determined by City to be owing to Participant shall be made by City to Participant no later than the time limit set forth in this Agreement, or if no time limit is otherwise set forth herein, then no later than fifteen (15) days after Participant's submission of its completed payment request. It is anticipated that the Eligible Expenses for the acquisition of the Affordable Units may be deposited by City into the escrows established for the acquisition of the Affordable Units. If City disapproves a payment request, City shall notify Participant in writing the reason(s) for disapproval.

(c) *Conditions to Disbursement.* City's obligation to disburse the City Grant proceeds to Participant in accordance with this Section 3.3 is subject to the satisfaction of all of the following conditions at the time the payment is to be made: (i) Participant shall have provided to City a complete payment request with all supporting information; (ii)

Participant shall have submitted to City the reports referred to in Section 5.2 of this Agreement; (iii) if payment for the professional services of a consultant or contractor is an Eligible Expense, Participant shall have provided City a copy of the executed contract between Participant and the consultant or contractor, certified by Participant to be a true and correct copy thereof; (iv) Participant shall have executed and delivered to City, pursuant to the terms and conditions set forth in this Agreement, the Purchase Agreement or Affordable Unit Implementation Document for the Affordable Unit for which Participant has requested a disbursement of City Grant funds; (v) Participant shall not be in default of any of its obligations set forth in this Agreement; (vi) City has issued the Notice to Proceed; and (vii) City shall have received sufficient Program Funds from HUD or HCD, as applicable. In connection with clause (vii) of the preceding sentence, Participant acknowledges and agrees that City's obligation to provide the City Grant to Participant under this Agreement shall be subject to the availability of Program Funds and, if for any reason City does not receive sufficient Program Funds from HUD or HCD or the funds are withdrawn, City shall have no obligation to provide the City Grant to Participant or to fund the City Grant from any other source of funds. Notwithstanding any other provision of this Agreement, it is understood that City is not obligated to expend City Grant proceeds for Program Activities that were performed, or Eligible Expenses that were incurred, prior to City's issuance of the Notice to Proceed.

3.4 Return of City Grant Proceeds. As to each Affordable Unit, upon the expiration of the time period set forth in Section 2.2(d) for Participant to acquire an Affordable Unit and perform any required rehabilitation work for the Affordable Unit ("Affordable Unit Completion Date") or the earlier termination of this Agreement, Participant shall transfer to City any City Grant funds on hand for the Affordable Unit for which Eligible Expenses have not been incurred. In addition to the foregoing, in the event the Eligible Expenses for which any disbursement of City Grant funds are disbursed are not incurred by Participant within thirty (30) days after City's disbursement, or such longer time as City approves in its sole discretion, City shall have the right to require that Participant return the City Grant proceeds to City. In addition, if it is determined, as a result of an audit or otherwise, that any of the disbursements of City Grant proceeds were improper or made for expenditures not eligible for payment, Participant shall immediately repay to City the amounts of such disbursements.

3.5 Excess City Grant Proceeds. As to each Affordable Unit, if the amount of Eligible Expenses incurred by Participant as of the Affordable Unit Completion Date or the earlier termination of this Agreement is less than the portion of the City Grant allocated to that Affordable Unit, the excess City Grant proceeds shall revert to City or transferred to a separate escrow account to purchase another Proposed Affordable Unit. In addition, as to each Affordable Unit, the City Grant funds for Eligible Expenses for which Participant has not submitted a complete payment request to City within thirty (30) days after the Affordable Unit Completion Date or the earlier termination of this Agreement shall revert to City and be allocated for other activities.

#### 4. AFFORDABILITY COVENANTS.

Participant acknowledges that each Affordable Unit will be required to be maintained as an affordable rental or ownership unit, as determined by City at the time the Affordable Unit Implementation Document is executed for each Affordable Unit. Prior to the close of escrow for

each Affordable Unit, City and Participant shall enter into and record against the Affordable Unit a regulatory agreement, in such form as provided by City, which shall set forth the affordability requirements for the Affordable Unit (“Regulatory Agreement”). The affordable housing cost or affordable rent for the Affordable Unit, whichever is applicable, shall be consistent with the most restrictive requirements of the CDBG Requirements, Home Requirements, or Workforce Requirements. The term of the affordability covenants shall be for a period of fifty-five (55) years after the date the applicable Regulatory Agreement is recorded.

## 5. RECORDS AND REPORTS.

### 5.1 Records.

5.1.1 Records to be maintained. Participant shall keep and maintain records providing a full description of the Program Activities undertaken, records demonstrating that the Program Activities meet the Program Requirements, records demonstrating the eligibility of the activities constituting the Eligible Expenses, and such other records as may be reasonably required by City to enable City to evaluate Participant’s compliance with the Program Requirements, to identify and account for the use of the City Grant proceeds and expenditures of Eligible Expenses and all costs pertaining to this Agreement, and to enable City to comply with City’s recordkeeping and reporting requirements under the Program Requirements. Books and records pertaining to the Eligible Expenses shall be kept and prepared in accordance with generally accepted accounting principles.

5.1.2 Retention. The books and records required to be maintained by Participant under this Agreement shall be retained for a period of five (5) years following the last Affordable Unit Completion Date; provided, however, in the event any litigation, audit, negotiation, or other action involving the books and records is commenced prior to the expiration of the five (5) year retention period, Participant shall retain the books and records until completion of the action and resolution of all issues which arise from it.

5.1.3 Location of Records. The books and records required to be maintained by Participant shall be kept at a location in the City of Irvine.

5.1.4 Access to Records. City and HUD and/or their representatives shall have full and free access to, and the right to examine, inspect, and audit, all books and records of Participant pertaining to this Agreement at all times during normal business hours.

5.1.5 Audits. Participant shall perform all audits of its books and records required by the Program Requirements or City or HUD and a copy of such audits shall be forwarded to the City within thirty (30) days after completion. Participant shall be subject to all audit and review requirements imposed on City in connection with this Agreement and shall, at its sole cost and expense, cause such audits and reviews to be timely performed.

### 5.2 Reports.

5.2.1 Quarterly Reports. No later than fifteen (15) days after the end of each Quarter, Participant shall submit to City the following quarterly reports on forms approved by the Contract Officer:

(a) *Performance Reports.* A report on the summary of the Program Activities and activities undertaken by Participant under this Agreement for the previous Quarter (“Performance Report”). The Performance Report shall, at a minimum, describe the status of each Program Activity required to be performed and met during that Quarter, progress towards completing the other Program Activities, costs incurred, funds remaining, a narrative explanation of problems, delays, or adverse conditions which impaired the ability of Participant to meet any obligations if any were not met, favorable developments which enabled Participant to satisfy obligations and meet objectives sooner or at less cost than anticipated or producing more beneficial results than planned, and any additional pertinent information related to contract performance.

(b) *Program Income.* A report on the program income generated for the Quarter, if any, as more fully explained in Section 2.9 of this Agreement, which shall include a description of the expenditures of program income and a progress report for the activities funded by the program income if Participant is permitted to retain program income.

5.2.2 Other Reports. In addition to the reports referenced in Section 5.2.1, Participant shall, at such times and in such forms as required by City, prepare and submit to the Contract Officer, such other reports concerning the performance of the Program Activities, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement and compliance with Program Requirements, as City may reasonably require from time to time.

## 6. INSURANCE AND INDEMNITY.

6.1 Insurance. Prior to issuance of any Notice to Proceed, Participant shall furnish or cause to be furnished to City evidence reasonably satisfactory to City’s Contract Officer of Commercial General Liability coverage in the amount of at least One Million Dollars (\$1,000,000) combined single limits, naming City and its officers, officials, employees, volunteers, agents, and representatives as named insureds. In addition, all such insurance:

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

(b) shall contain no special limitations on the scope of protection afforded to City or its officers, officials, employees, volunteers, agents, and representatives;

(c) shall be “per occurrence” rather than “claims made” insurance;

(d) shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability;

(e) shall provide that the policy will not be cancelled or limited in scope by the insurer or Participant unless there is a minimum of thirty (30) days prior written notice by certified mail, return receipt requested to City;

(f) shall be written by a California licensed insurer with a Best rating of not less than A:VII;

(g) shall be endorsed to state that any failure to comply with the reporting provisions of the policies shall not affect coverage provided to City and its officers, officials, employees, volunteers, agents, and representatives; and

(h) shall contain a waiver by the insurer of any right to subrogation against City, and its officers, officials, employees, volunteer, agents, and representatives which arises or might arise by reason of any payment under such policy or policies or by reason of any act or omission of City or its officers, employees, volunteers, agents, and representatives.

Any deductible or self-insured retention must be declared to City. None of the above described policies shall include a deductible or self-insured retention amount of more than Ten Thousand Dollars (\$10,000) unless approved in writing by the Contract Officer.

Participant shall also furnish or cause to be furnished to City's Contract Officer evidence reasonably satisfactory to the Contract Officer that Participant and any contractor with whom Participant has contracted for the performance of the Program Activities have current Workers' Compensation insurance as required by the State of California Labor Code as well as Employer's Liability Coverage of not less than One Million Dollars (\$1,000,000) per accident. Such insurance shall be endorsed to include a waiver of subrogation rights against City and its officers, officials, employees, volunteers, agents, and representatives, and notice of cancellation as described in subsection (e) above. Such policies shall be written by California licensed insurers with Best ratings of not less than A:VII in the most recent edition of Best Rating Guide.

Nothing in this Section 6.1 shall in any way limit Participant's indemnity obligations set forth in Section 6.2 herein.

6.2 Indemnification. Participant shall indemnify, defend, and hold harmless City and its officers, officials, employees, representatives and agents (collectively, the "Indemnitee") from and against any and all claims, causes of action, liabilities, and damages arising out of any acts or omissions of Participant or Participant's officers, employees, contractors, and agents, in the performance under this Agreement and/or with respect to the Affordable Units, except to the extent of such loss as may be caused by the sole negligence or willful misconduct of any Indemnitee. The Indemnitee shall promptly notify Participant of the filing of any such action and cooperate with Participant in the defense thereof (at no cost to Indemnitee).

## 7. TERMINATION.

7.1 Termination for Cause. This Agreement may be terminated by City for cause as follows:

(a) *Lack of Funding.* If, for any reason, the Program Funds required by City to fund the Eligible Expenses are not received by City or are withdrawn from City, the City may unilaterally terminate or modify the terms of this Agreement to reflect the loss of funding, without liability to Participant.

(b) *Failure to Comply with Agreement.* If Participant fails to comply with the terms and conditions of this Agreement and fails to cure the default after notice from City as set forth in Section 8.1 of this Agreement, City may terminate this Agreement in whole or in part.

7.2 Termination for Convenience. This Agreement may be terminated for convenience as provided in 24 C.F.R. § 85.44.

7.3 Obligations Survive Termination. Notwithstanding the expiration or earlier termination of this Agreement, Participant's obligations to City shall not terminate until all closeout requirements are completed. In addition, the following obligations of Participant shall survive the termination of this Agreement: (a) Participant's indemnity obligations; (b) the obligation to cause audits to be performed relating to Participant's activities and costs under this Agreement; (c) the obligation to repay to City any City Grant proceeds improperly disbursed to Participant or disbursed or used for ineligible expenditures; and (d) any other obligations which cannot by their nature be performed until after the expiration of the Agreement.

## 8. DEFAULTS AND REMEDIES.

8.1 Defaults-General. The failure or delay by either party to perform any term or provision of this Agreement shall constitute a default. Except where a shorter period of time is specified in this Agreement, the defaulting party shall have thirty (30) days after receipt of written notice from the other party specifying the nature of the default to cure, correct or remedy the default, or for defaults that cannot reasonably be cured, corrected, or remedied within such thirty (30) day time period, the defaulting party shall have thirty (30) days after receipt of the notice to commence to cure such failure or delay and shall diligently prosecute such cure, correction or remedy to completion within an additional sixty (60) days following the conclusion of such thirty (30) day period (for a total of ninety (90) days. 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, the injured party may not institute proceedings against the party in default until the time for cure, correction, or remedy of a default has expired. Except as otherwise expressly provided in this Agreement, any failure or delay by a party in giving a notice of default or in asserting any of its rights and remedies as to any default shall not constitute a waiver of any default, nor shall it change the time of default, nor shall it 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.

8.2 Institution of Legal Actions. In addition to any other rights or remedies, either 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 purposes of this Agreement. Such legal actions must be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court in that county.

8.3 Additional City Remedies. In addition to any other rights or remedies available at law or in equity, upon a default of Participant, City may do any of the following: (a) temporarily withhold disbursement of City Grant proceeds pending correction of the default by Participant; (b) refuse to advance all or any part of the City Grant and reallocate said funds to another activity; (c) wholly or partially suspend or terminate the award of the City Grant; (d) wholly or

partially suspend or terminate this Agreement; (e) withhold further awards for the Program Activities; and (f) require Participant to repay any City Grant funds which City determines were not expended in compliance with the requirements of this Agreement or the Program Requirements.

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

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

8.6 Attorney's Fees. If either party to this Agreement is required to initiate or defend litigation in any way connected with this Agreement, the prevailing party in such litigation, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees from the losing party. If any party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Agreement by the other party, then the party so litigating shall be entitled to reasonable attorneys' fees from the other party to this Agreement. Attorneys' fees shall include attorney's fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, retaining expert witnesses, taking depositions and discovery, and all other necessary costs incurred with respect to such litigation.

9. GENERAL PROVISIONS.

9.1 Notices, Demands, and Communications between the Parties. Formal notices, demands, and communications between City and Participant shall be given either by (a) personal service, (b) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (c) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

- To City: City of Irvine  
One Civic Center Plaza  
Irvine, CA 92623-9575  
Attn: Grants Coordinator
  
- With a copy to: Rutan & Tucker, LLP  
611 Anton Blvd. Suite 1400  
Costa Mesa, CA 92626  
Attn: Philip D. Kohn, Esq.
  
- To Participant: Irvine Community Land Trust  
13825 B Street  
Irvine, CA 92618  
Attn: Executive Director

With a copy to:

Rutan & Tucker, LLP  
611 Anton Blvd. Suite 1400  
Costa Mesa, CA 92626  
Attn: William H. Ihrke, Esq.

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as any party may from time to time designate in writing.

9.2 Nonliability of City Officials and Employees. No member, official, employee, or contractor of City shall be personally liable to Participant in the event of any default or breach by City or for any amount which may become due to Participant or on any obligations under the terms of this Agreement.

9.3 Contract Administration. The Contract Officer shall be the person designated by City to administer this Agreement on behalf of City, and the Participant Representative shall be the person designated by Participant to administer this Agreement on behalf of Participant. The Community Development Director (or his or her authorized representative), but not the Grants Coordinator, shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of City so long as such actions do not substantially add to the costs of City as specified herein. The Participant Representative (or his authorized representative) shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of Participant so long as such actions do not substantially add to the costs of Participant as specified herein.

9.4 Enforced Delay; Extension of Times of Performance. Except as expressly set forth in this Section 9.4, performance by either party hereunder shall not be deemed to be in default and such party shall be entitled to an extension of time to perform its obligations hereunder where delays in performance are due to causes beyond the control and without the fault of such party, including as applicable: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplies; acts of the other party; acts or the failure to act of City or any other public or governmental agency or entity (except that any act or failure to act of or by City shall not excuse performance by City). Notwithstanding the foregoing, Participant's inability to secure satisfactory financing, interest rates, and market and economic conditions shall not entitle Participant to an extension of time to perform. An extension of time for any cause permitted under this Section 9.4 shall be limited to the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. If no written notice is sent within thirty (30) days, for purposes of measuring the extension period for performance of the obligation in question, the period of the enforced delay shall commence to run from the date written notice is sent to the other party.

Times of performance under this Agreement may be extended by mutual written agreement of City and Participant.

9.5 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

9.6 Entire Agreement, Waivers and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of City and Participant.

9.7 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

9.8 Prohibition against Assignment and Transfer. The qualifications and identity of Participant are of particular concern to City. It is because of those qualifications and identity that City has provided financial assistance to Participant and entered into this Agreement with Participant. Accordingly, Participant shall not, whether voluntarily, involuntarily, or by operation of law, undergo any significant change in ownership or assign all or any part of this Agreement or any rights hereunder, or in the programs and projects associated with the Program Activities, or in the Affordable Units without City's prior written approval which City may grant or withhold in its sole and absolute discretion.

9.9 Third Party Beneficiaries. Except for the Irvine Redevelopment Agency, a public body, corporate and politic ("Agency"), which is an expressed third party beneficiary hereto, nothing in this Agreement is intended to create any third party beneficiaries, and no person or entity other than City and Participant, and the permitted successors and assigns of each of them, and the Agency as an expressed third party beneficiary, shall be authorized to enforce the provisions of this Agreement.

9.10 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.11 Exhibits. This Agreement incorporates by reference the following two (2) Exhibits attached hereto:

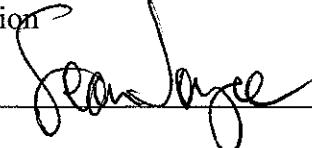
- Exhibit A HOME Investment Partnerships Program Information
- Exhibit B CDBG Information

[Signatures on next page]

IN WITNESS WHEREOF, City and Participant have entered into this Agreement as of the date set forth above.

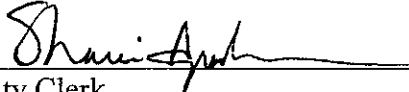
“CITY”

CITY OF IRVINE, a California municipal corporation

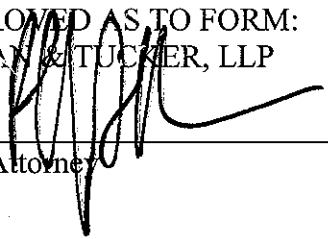
By: 

Its: City Manager , SEAN JOYCE

ATTEST:

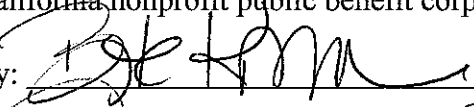
  
City Clerk

APPROVED AS TO FORM:  
RUTAN & TUCKER, LLP

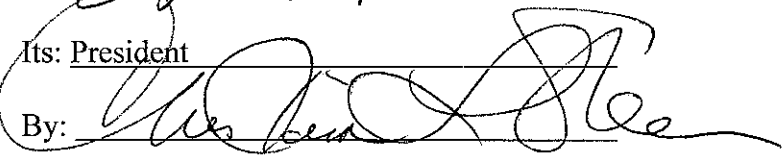
  
City Attorney

“PARTICIPANT”

IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation

By: 

Its: President

By: 

Its: Secretary

## EXHIBIT "A"

### HOME INVESTMENT PARTNERSHIPS PROGRAM INFORMATION

**The following is a summary only and shall not be construed as a complete statement of all Participant requirements. In the event of any conflict between this summary and the requirements imposed by applicable laws, regulations, and requirements, the applicable laws, regulations, and requirements shall apply.**

Participant shall perform the Program Activities in compliance with all applicable requirements of the HOME Investment Partnerships Act, as amended (42 U.S.C. § 12741, *et seq.*), and the HOME Regulations (24 C.F.R. § 92, *et seq.*), including, but not limited to, those requirements which are summarized below:

1. *Use of the HOME Funds.* The HOME Portion of City Grant shall be used only for eligible costs (see, e.g., 24 C.F.R. § 92.206, 92.214), and any rehabilitation work shall be completed within the times referred to in the Affordable Housing and Grant Agreement between City and Participant and the applicable Affordable Unit Implementation Document.

2. *Affordability.* The units shall meet the affordability requirements of the HOME Requirements (24 C.F.R. § 92.254 or § 92.254 as applicable) or this Agreement and the Regulatory Agreement, whichever is more restrictive. If the units do not meet the affordability requirements of the HOME Requirements for the specified time period, Participant shall repay the HOME Portion of City Grant to City promptly upon demand by City. In such event, Participant shall not be released from the affordability and other covenants and restrictions set forth in this Agreement and the Regulatory Agreement, which shall continue to apply independent of the HOME Requirements.

3. *Uniform Administrative Requirements.* Participant shall comply with applicable uniform administrative requirements as described in 24 C.F.R. § 92.205.

4. *Project Requirements.* Participant shall comply with all project requirements set forth in 24 C.F.R. §§ 92.250-92.258, as applicable in accordance with the type of project assisted.

5. *Property Standards.* Participant shall perform any rehabilitation work and maintain the Affordable Units in compliance with the property standards in 24 C.F.R. § 92.251 and the lead-based paint requirements in 24 C.F.R. § 92 Part 35, Subparts A, B, J, K, M and R, as applicable.

6. *Other Program Requirements.* Participant shall carry out each activity under the Agreement in accordance with all applicable federal laws and regulations described in Subpart H of 24 C.F.R. § 92.

7. *Environmental.*

a. *Limitation on Activities Pending Clearance.* In accordance with 24 C.F.R. § 58.22 entitled "Limitations on activities pending clearance," neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities,

or any of their contractors, may commit HUD assistance under a program listed in 24 C.F.R. § 58.1(b) on an activity or project until HUD or the state has approved the recipient's Request for Release of Funds (RROF) and the related certifications have been approved. Neither a recipient nor any participant in the development process may commit non-HUD funds or undertake an activity or project that would have an adverse environmental impact or limit the choice of reasonable alternatives. Upon completion of environmental review or receipt of environmental clearance, City shall issue a Notice to Proceed signifying the environmental requirements have been met. HUD funds shall not be utilized until the City has issued a Notice to Proceed. The environmental review or violation of the provisions may result in approval, modification or cancellation of the City Grant. If a project or activity is exempt under 24 C.F.R. § 58.34, or is categorically excluded (except in extraordinary circumstances) under 24 C.F.R. § 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the City has documented its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section by issuing a Notice to Proceed.

b. **Air and Water.** Participant shall comply with the following regulations insofar as they apply to the performance of the Agreement: Clean Air Act, 42 U.S.C. 7401, et seq.; Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; and the U.S. Environmental Protection Agency regulations pursuant to 40 C.F.R. Part 50, as amended.

c. **Flood Disaster Protection.** In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4001), Participant shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

d. **Lead-Based Paint.** Participant shall comply with the Lead-Based Paint Regulations referenced in 24 C.F.R. § 570.608, including 24 C.F.R. Part 35, et. al.

e. **Historic Preservation.** Participant shall comply with the historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470) and the procedures set forth in 36 C.F.R. Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

8. **Affirmative Marketing.** If the HOME Portion of City Grant will be used for housing containing 5 or more assisted units, Participant shall establish for City's review and approval a plan and procedures to affirmatively market the units. The objective of the plan shall be to provide information and attract eligible persons from all racial, ethnic and general groups in the housing market area to the available housing. In connection therewith, Participant shall perform those affirmative marketing responsibilities set forth in 24 C.F.R. § 92.351(a) and the marketing plan shall include the following:

(a) methods for informing the public, owners, and potential tenants about federal fair housing loans and the City's affirmative marketing policy;

(b) requirements and practices Participant must adhere to in order to carry out the affirmative marketing procedures and requirements;

(c) procedures to be used by Participant to inform and solicit applications from persons in the housing market area that are not likely to apply for the housing without special outreach;

(d) records that will be kept describing actions taken by Participant to affirmatively market units and records to assess the results of those actions; and

(e) a description of how Participant will assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

9. *Nondiscrimination.* Participant shall comply with the federal requirements and nondiscrimination provisions in 24 C.F.R. § 92.350, which include requirements on nondiscrimination and equal opportunity, disclosure requirements, debarred, suspended or ineligible contractors, and maintaining a drug-free workplace.

10. *Displacement.* Consistent with the other goals and objectives of Subpart H of 24 C.F.R. § 92, Participant shall take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of the Program Activities.

11. *Labor Requirements.* Participant shall comply with applicable labor requirements set forth in 24 C.F.R. § 92.354.

12. *Conflict of Interest.* Participant shall comply with the conflict of interest provisions in 24 C.F.R. § 92.356, as applicable.

13. *Debarment and Suspension.* As required in 24 C.F.R. § 92.357, Participant shall comply with all debarment and suspension certifications.

14. *Records and Reports.* Participant shall provide to City all records and reports relating to the Program Activities that may be reasonably requested by City in order to enable it to perform its recordkeeping and reporting obligations pursuant to 24 C.F.R. §§ 92.508 and 92.509.

15. *Enforcement of Agreement.* In addition to the other provisions set forth in the Agreement, City shall have the authority to enforce Participant's obligation to comply with the HOME Requirements.

16. *Return of HOME Funds.* As to each Affordable Unit, upon the Affordable Unit Completion Date or earlier termination of the Agreement, Participant shall transfer to City any HOME funds on hand for the Affordable Unit for which Eligible Expenses have not been incurred and any accounts receivable attributable to the use of HOME funds. In addition to the

foregoing, in the event the Eligible Expenses for which any disbursement of City Grant funds are disbursed are not incurred by Participant within thirty (30) days after City's disbursement, or such longer time as City approves in its sole discretion, City shall have the right to require that Participant return the City Grant proceeds to City.

17. *Monitoring.* Not less than once per year, City shall review Participant's activities and operations under the Agreement and Participant's compliance with the HOME Requirements. Such review may include an on-site inspection of the Affordable Units (including unit interiors). If such an on-site inspection of the Affordable Units is to be undertaken, City shall coordinate such inspection with Participant. The monitoring required pursuant to this paragraph shall be in compliance with the requirements of 24 C.F.R. § 92.504.

18. *Section 3.* Participant shall comply with and cause its contractors to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u), the HUD regulations issued pursuant thereto at 24 C.F.R, Part 135, and any applicable rules and orders of HUD issued thereunder. The Section 3 clause, set forth in 24 C.F.R § 135.38 provides:

- i. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- ii. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- iii. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- iv. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to

take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

- v. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.
- vi. Noncompliance with HUD's regulations in 24 C.F.R Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

Participant shall abide by the Section 3 clause set forth above and will also cause this Section 3 clause to be inserted in all contracts entered into with third parties for the rehabilitation of the Affordable Units.

19. *Tenant Participation Plan.* Participant shall provide to City for approval the form of the lease agreement to be used for the HOME-assisted units, if such units will constitute rental units, which lease must be fair and provide for a grievance procedure. In addition, Participant shall provide to City for approval a plan that provides for tenant participation in management decisions. (24 C.F.R § 92.303.)

## EXHIBIT "B"

### COMMUNITY DEVELOPMENT BLOCK GRANT INFORMATION

**The following is a summary only and shall not be construed as a complete statement of all Participant requirements. In the event of any conflict between this summary and the requirements imposed by applicable laws, regulations, and requirements, the applicable laws, regulations, and requirements shall apply.**

Participant shall perform the Program Activities in compliance with all applicable requirements of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 *et seq.*), and the implementing regulations (24 C.F.R. § 570, *et seq.*), including, but not limited to, those requirements which are summarized below:

1. *Equal Opportunity and Nondiscrimination.*

a. Participant shall comply with Title VI of the Civil Rights Act of 1964 which provides that no person shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

b. Participant shall comply with Section 109 of the Housing and Community Development Act of 1974 which provides that no person shall on the grounds of race, color, or national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving funds under this Title.

c. Participant shall comply with Executive Order 11246, as amended by Executive Orders 11375 and 12086, which prohibits discrimination on the grounds of race, creed, color, sex or national origin in employment under federally assisted contracts.

d. Participant shall comply with Executive Order 11063, as amended by Executive Order 12259, which requires equal opportunity in housing and related facilities.

e. Participant shall comply with Section 504 of the Rehabilitation Act of 1973, and implementing regulations, which provides that handicapped individuals may not be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance.

f. EEO/AA Statement. Participant shall, in all solicitations or advertisements for employees placed by or on behalf of Participant; state that it is an Equal Opportunity or Affirmative Action Employer.

g. Minority/Women Business Enterprise. Participant will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of the Agreement. As used in the Agreement, the term "minority and female business enterprise" means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For

the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surname or Spanish-heritage Americans, Asian-Americans, and American Indians. Participant may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

h. Participant shall comply with Section 3 of the Housing and Community Development Act of 1968.

2. *Uniform Administrative Requirements.* Participant shall comply with the uniform administrative requirements described in 24 C.F.R. § 570.502.

3. *Other Program Requirements.* Participant shall carry out each activity under the Agreement in accordance with all applicable federal laws and regulations described in Subpart K of 24 C.F.R. § 570 except for City's environmental responsibilities under 24 C.F.R. § 570.604 and City's responsibility for initiating the review process under the provisions of 24 C.F.R. Part 52.

4. *Religious Organizations.* If Participant is a religious organization as defined by the CDBG Requirements, Participant shall comply with all conditions prescribed by HUD for the use of CDBG funds by religious organizations, including the First Amendment of the United States Constitution regarding church/state principles and the applicable constitutional prohibitions set forth in 24 C.F.R. § 200(j).

5. *Reversion of Assets.* Upon the expiration or sooner termination of the Agreement, Participant shall transfer to City (a) any and all CDBG Funds and program income on hand, and (b) any accounts receivable attributable to the use of CDBG Funds or program income.

6. *Environmental.*

a. *Limitation on Activities Pending Clearance.* In accordance with 24 C.F.R. § 58.22 entitled "Limitations on activities pending clearance," neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in 24 C.F.R. § 58.1(b) on an activity or project until HUD or the state has approved the recipient's Request for Release of Funds (RROF) and the related certifications have been approved. Neither a recipient nor any participant in the development process may commit non-HUD funds or undertake an activity or project that would have an adverse environmental impact or limit the choice of reasonable alternatives. Upon completion of environmental review or receipt of environmental clearance, City shall issue a Notice to Proceed signifying the environmental requirements have been met. HUD funds shall not be utilized until the City has issued a Notice to Proceed. The environmental review or violation of the provisions may result in approval, modification or cancellation of the City Grant. If a project or activity is exempt under 24 C.F.R. § 58.34, or is categorically excluded (except in extraordinary circumstances) under 24 C.F.R. § 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the City has documented its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section by issuing a Notice to Proceed.

b. Air and Water. Participant shall comply with the following regulations insofar as they apply to the performance of the Agreement: Clean Air Act, 42 U.S.C. 7401, et seq.; Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; and the U.S. Environmental Protection Agency regulations pursuant to 40 C.F.R. Part 50, as amended.

c. Flood Disaster Protection. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4001), Participant shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

d. Lead-Based Paint. Participant shall comply with the Lead-Based Paint Regulations referenced in 24 C.F.R. § 570.608, including 24 C.F.R. Part 35, et. al.

e. Historic Preservation. Participant shall comply with the historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470) and the procedures set forth in 36 C.F.R. Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

7. *Conflict of Interest.* Participant will comply with the provisions of the applicable HUD requirements of 24 C.F.R. § 570.611 regarding the avoidance of conflict of interest.

8. *Relocation.* City shall not be responsible for relocating any occupants from the Affordable Units to the extent any occupants are located in the Affordable Units. If required, Participant shall have the sole and exclusive responsibility for providing relocation assistance and paying all relocation costs required to comply with all applicable federal and state laws, rules, and regulations, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, et seq., as amended, and HUD Handbook 1378. Participant shall indemnify, defend, and hold City harmless from and against any claims, liabilities, damages, or losses made against it by tenants or occupants of the Affordable Units, including without limitation claims for relocation assistance, inverse condemnation, and claims otherwise arising from any act or omission of Participant pursuant to the provision of relocation assistance.

9. *Allowable Costs.* Participant shall comply with OMB Circular No. A-122 "Cost Principles for Non Profit Organizations" or OMB Circular No. A-21 "Cost Principles for Educational Institutions", as applicable.

10. *Labor Standards.* When applicable, Participant shall comply with the provisions of 24 C.F.R. § 570.603 and related requirements. Participant shall include in all applicable construction contracts the provisions of federal law imposing labor standards on federally assisted contracts.

11. *Records and Reports.* Participant shall provide to City all records and reports relating to the Program Activities that may be reasonably requested by City in order to enable it to perform its record keeping and reporting obligations pursuant to the CDBG Requirements.

12. *Section 3.* Participant shall comply with and cause its contractors to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u), the HUD regulations issued pursuant thereto at 24 C.F.R, Part 135, and any applicable rules and orders of HUD issued thereunder. The Section 3 clause, set forth in 24 C.F.R § 135.38 provides:

- i. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- ii. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- iii. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- iv. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The

contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

- v. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.
- vi. Noncompliance with HUD's regulations in 24 C.F.R Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

Participant shall abide by the Section 3 clause set forth above and will also cause this Section 3 clause to be inserted in all contracts entered into with third parties for the rehabilitation of the Affordable Units.

Attachment 2  
First Amendment to the Affordable Housing and Grant Agreement

**FIRST AMENDMENT TO**  
**AFFORDABLE HOUSING AND GRANT AGREEMENT**

This FIRST AMENDMENT TO AFFORDABLE HOUSING AND GRANT AGREEMENT (the "Amendment") is made and entered into this 26<sup>th</sup> day of November, 2008, by and between the CITY OF IRVINE, a California municipal corporation ("City"), and IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation ("Participant"), with reference to the following:

**RECITALS**

A. On or about October 7, 2008, the parties entered into that certain Affordable Housing and Grant Agreement (the "Agreement") whereby City agreed to provide Participant with financial assistance so that Participant could acquire existing residential units in the City of Irvine for the purpose of providing affordable housing.

B. The City agreed to provide financial assistance to Participant in the form of CDBG Funds, HOME Funds, and Workforce Funds (as defined in the Agreement) in the collective amount not to exceed One Million Sixty-Three Thousand Five Hundred Fifteen Dollars (\$1,063,515.00) ("City Grant") to be used by Participant for certain expenses related to Participant's housing activities.

C. The City, because of recent changes in the housing market, has asked for and obtained approval from the California Department of Housing and Community Development to reallocate approximately Seven Hundred Fifty-Two Thousand One Hundred Twenty-Four Dollars (\$752,124.00) in Workforce Funds.

D. The City now desires to provide Participant with the additional Seven Hundred Fifty-Two Thousand One Hundred Twenty-Four Dollars (\$752,124.00) in Workforce Funds.

E. Pursuant to Section 9.6 of the Agreement, City and Participant may amend the Agreement by a writing signed by the appropriate authorities of City and Participant.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Participant hereby agree as follows:

SECTION 1. Recital C of the Agreement is struck and hereby amended to read in its entirety as follows:

City desires to provide financial assistance to Participant in the form of a grant of CDBG Funds, HOME Funds, and Workforce Funds in the collective amount not to exceed One Million Eight Hundred Fifteen Thousand Six Hundred Thirty-Nine Dollars (\$1,815,639.00) ("City Grant") to be used by Participant for certain

expenses related to Participant's housing activities, more particularly described herein as the "Eligible Expenses."

SECTION 2. The definition of "City Grant" contained in Section 1 of the Agreement is struck and hereby amended to read in its entirety as follows:

"City Grant" shall mean the subgrant of Program Funds in the amount not to exceed the sum of One Million Eight Hundred Fifteen Thousand Six Hundred Thirty-Nine Dollars (\$1,815,639) to be provided by City to Participant for the Eligible Expenses, as more fully explained in Section 3 of this Agreement. The City Grant is comprised of the Two Hundred Eighty-Nine Thousand One Hundred Thirty-Three Dollars (\$289,133.00) CDBG Portion of City Grant, the Six Hundred Seventeen Thousand One Hundred Eighty-Four Dollars (\$617,184.00) HOME Portion of City Grant, and the Nine Hundred Nine Thousand Three Hundred Twenty-Two Dollars (\$909,322.00) Workforce Portion of City Grant.

SECTION 3. The definition of "Workforce Portion of the City Grant" contained in Section 1 of the Agreement is struck and hereby amended to read in its entirety as follows:

"Workforce Portion of City Grant" shall mean the portion of the City Grant in the amount of Nine Hundred Nine Thousand Three Hundred Twenty-Two Dollars (\$909,322.00) comprised of Workforce Funds.

SECTION 4. Section 3.1 of the Agreement is struck and hereby amended to read in its entirety as follows:

Amount and Source of City Grant. Subject to the terms and conditions set forth herein, City shall provide Participant financial assistance for the Eligible Expenses in the form of a grant not to exceed the sum of One Million Eight Hundred Fifteen Thousand Six Hundred Thirty-Nine Dollars (\$1,815,639.00) ("City Grant"). The City Grant is comprised of the CDBG Portion of City Grant in the amount of Two Hundred Eighty-Nine Thousand One Hundred Thirty-Three Dollars (\$289,133.00), the HOME Portion of City Grant in the amount of Six Hundred Seventeen Thousand One Hundred Eighty-Four Dollars (\$617,184.00), and the Workforce Portion of City Grant in the amount of Nine Hundred Nine Thousand Three Hundred Twenty-Two Dollars (\$909,322.00).

SECTION 5. Except as specifically amended by this Amendment, the terms and conditions in the Agreement remain in full force and effect.

SECTION 6. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

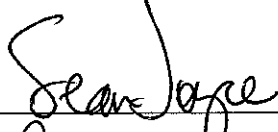
*[Signatures On Next Page]*

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

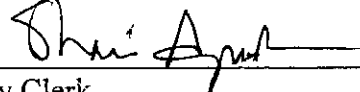
"CITY"

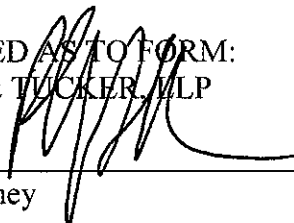
CITY OF IRVINE, a California municipal corporation

Date: Nov. 26, 2008

By:   
Its: City Manager

ATTEST:

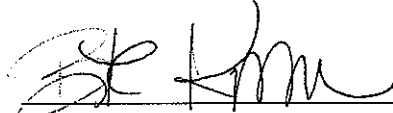

  
City Clerk

APPROVED AS TO FORM:  
RUTAN & TUCKER, LLP  
  
City Attorney

"PARTICIPANT"

IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation

Date: November 25, 2008

By:   
Its: President  
By:   
Its: Treasurer/Secretary

Attachment 3  
Second Amendment to the Affordable Housing and Grant Agreement

**SECOND AMENDMENT TO**  
**AFFORDABLE HOUSING AND GRANT AGREEMENT**

This SECOND AMENDMENT TO AFFORDABLE HOUSING AND GRANT AGREEMENT (the "Amendment") is made and entered into this \_\_\_\_ day of June, 2009, by and between the CITY OF IRVINE, a California municipal corporation ("City"), and IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation ("Participant"), with reference to the following:

**RECITALS**

A. On or about October 7, 2008, the parties entered into that certain Affordable Housing and Grant Agreement (the "Agreement") whereby City agreed to provide Participant with financial assistance so that Participant could acquire existing residential units in the City of Irvine for the purpose of providing affordable housing.

B. The City agreed to provide financial assistance to Participant in the form of Community Development Block Grant (CDBG) Funds, HOME Investment Partnerships Program (HOME) Funds and Workforce Housing Funds (as defined in the Agreement) in the collective amount not to exceed One Million Eight Hundred Fifteen Thousand Six Hundred Thirty-Nine Dollars (\$1,815,639.00) ("City Grant") to be used by Participant for certain expenses related to Participant's housing activities.

C. The City now desires to provide Participant with the additional Fourteen Thousand Nine Hundred Fifty-Four (\$14,954.00) in American Dream Down Payment Initiative Funds to be used to assist low-income first time homebuyers in purchasing single-family homes by providing funds for down payment, closing costs and rehabilitation carried out in conjunction with the assisted home purchase.

D. The amount of ADDI assistance provided may not exceed \$10,000 or six percent of the purchase price of the home, whichever is greater. The rehabilitation must be completed within one year of the home purchase. Rehabilitation may include, but is not limited to, the reduction of lead paint hazards and the remediation of other home health hazards.

E. Pursuant to Section 9.6 of the Agreement, City and Participant may amend the Agreement by a writing signed by the appropriate authorities of City and Participant.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Participant hereby agree as follows:

1. Recital C of the Agreement is struck and hereby amended to read in its entirety as follows:

City desires to provide financial assistance to Participant in the form of a grant of CDBG Funds, HOME Funds, Workforce Housing and ADDI Funds in the collective amount not to exceed One Million Eight Hundred Thirty Thousand Five Hundred Ninety-Three Dollars (\$1,830,593.00) ("City Grant") to be used by Participant for certain expenses related to Participant's housing activities, more particularly described herein as the "Eligible Expenses."

2. The definition of "City Grant" contained in Section 1 of the Agreement is struck and hereby amended to read in its entirety as follows:

"City Grant" shall mean the sub grant of Program Funds in the amount not to exceed the sum of One Million Eight Hundred Thirty Thousand Five Hundred Ninety-Three Dollars (\$1,830,593.00) to be provided by City to Participant for the Eligible Expenses, as more fully explained in Section 3 of this Agreement. The City Grant is comprised of the Two Hundred Eighty-Nine Thousand One Hundred Thirty-Three Dollars (\$289,133.00) CDBG Portion of City Grant, the Six Hundred Seventeen Thousand One Hundred Eighty-Four Dollars (\$617,184.00) HOME Portion of City Grant, the Nine Hundred Nine Thousand Three Hundred Twenty-Two Dollars (\$909,322.00) Workforce Portion of City Grant, and the Fourteen Thousand Nine Hundred Fifty-Four (\$14,954.00) ADDI Portion of the City Grant.

3. Except as specifically amended by this Amendment, the terms and conditions in the Agreement remain in full force and effect.

4. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

*[Signatures on Next Page]*

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

"CITY"

CITY OF IRVINE, a California municipal corporation

Date: \_\_\_\_\_

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

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
RUTAN & TUCKER, LLP

\_\_\_\_\_  
City Attorney

"PARTICIPANT"

IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation

Date: \_\_\_\_\_

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

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

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

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