

ATTACHMENT

EXCLUSIVE NEGOTIATION AGREEMENT (NATIONAL COMMUNITY RENAISSANCE)

THIS EXCLUSIVE NEGOTIATION AGREEMENT (National Community Renaissance), is dated as of _____, 2024, for reference purposes only (this “Agreement”), and is entered into by and between the City of Lake Forest, a California municipal corporation (“City”), and NATIONAL COMMUNITY RENAISSANCE of California, a California nonprofit public benefit corporation (“Developer”), to provide a specified period of time to attempt to identify an appropriate site for development of an affordable housing project and negotiate an Affordable Housing Agreement. City and Developer are sometimes referred to in this Agreement, individually, as a “Party” and, collectively, as the “Parties.” This Agreement is entered into by the Parties with reference to the following recited facts (each, a “Recital”):

RECITALS

A. The City Council directed staff to solicit responses from qualified developers to work with the City to develop one or more affordable housing projects in the City. The NOFA sought statements of qualification from qualified nonprofit and for-profit developers with a desire to partner with City to carry out the City’s community development, land use, and housing goals; and

B. On _____, 2024, City selected Developer to partner with City in the potential development of affordable housing; and

C. City has allocated \$3,350,000 from the City’s Affordable Housing Trust Fund (“Funds”) to address the City’s community housing needs. All income limitations for which the Funds may be used are derived from the published 2023 Housing and Community Development Department’s Income Limits Summary; and

D. The intent of City and Developer in entering into this Agreement is to establish a specific, limited period of time for Developer to work with City regarding the selection of a site for a project and the negotiation of an Affordable Housing Agreement for the development and use of Funds, subject to mutually agreeable terms, conditions, covenants, restrictions and agreements to be negotiated and documented in the future, in the respective sole and absolute discretion of Developer and City (this future agreement is referred to in this Agreement as an “Affordable Housing Agreement”).

NOW, THEREFORE, in consideration of the mutual covenants, restrictions and conditions contained in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS

1. **Incorporation of Recitals.** The Recitals of fact set forth above are true and correct and are incorporated into this Agreement, in their entirety, by this reference.

2. **Term of Agreement.**

(a) Effective Date. The rights and duties of City and Developer established by this Agreement shall commence on the first date on which all of the following have occurred (“Effective Date”): (i) the authorized representative(s) of Developer have signed three (3) originals of this Agreement and delivered such signed originals of this Agreement to the City, which shall occur prior to consideration of this Agreement by the City Council; (ii) the City Council has approved this Agreement; and (iii) the authorized representatives of the City have signed this Agreement and delivered one (1) signed original of this Agreement to Developer. This Agreement shall continue in effect for a period of Five Hundred Forty-Five (545) calendar days beginning on the Effective Date (“Negotiation Period”), subject to the provisions of Section 2(b).

(b) Extension of Negotiation Period. The Negotiation Period may be extended for two additional periods of one hundred eighty (180) days each upon the mutual written agreement of the City Manager or his or her designee and Developer, provided that Developer submits a written request for said extension no later than thirty (30) calendar days prior to the expiration of the Negotiation Period, as may have been previously been extended. If the Negotiation Period is extended pursuant to this Section 2(b), the City Manager may also modify the deadlines for any remaining actions to be taken by either City or Developer, within such extended Negotiation Period. Notwithstanding the immediately preceding sentence, Section 7 or any other part of this Agreement, in no event (including any Unavoidable Delay(s)), shall the Negotiation Period exceed Nine Hundred and Five (905) consecutive calendar days.

(c) Expiration or Termination. Notwithstanding any other term, condition, covenant, restriction or agreement contained in this Agreement, this Agreement shall automatically expire and be of no further force or effect on the earlier to occur of any of the following: (i) the expiration or earlier termination of the Negotiation Period; (ii) entry into a separate Affordable Housing Agreement by the City and Developer, in their respective sole and absolute discretion; (iii) the determination of City’s legal counsel, in their sole and exclusive discretion, that any litigation or statute prohibits City from complying with their respective obligations hereunder or proceeding with the proposed development; or (iv) either party reasonably determines that the identification of a site or the development of an affordable housing project is infeasible under the then existing circumstances.

3. **Obligations of Developer**. During the Negotiation Period, Developer shall proceed diligently and in good faith to do all of the following:

(a) Needs Assessment. Within ninety (90) calendar days following the Effective Date, Developer shall submit a market demand analysis to City that determines, based on reliable data sources (e.g., US Census), including current average household sizes and income levels, what the demand for affordable housing is in the community. The market analysis shall include, but is not limited to, the need for housing at specific levels of affordability and unit sizes. The market study shall include at least one public meeting coordinated by City staff to involve community stakeholders in the process of identifying housing needs.

(b) Site Analysis. Within one hundred and fifty (150) calendar days of the Effective Date, Developer shall submit an analysis of potential affordable housing development sites, including new construction sites and acquisition and rehabilitation sites.

(c) Workshop/Charrette. Within sixty (60) calendar days of submitting the Site Analysis, Developer shall facilitate at least one workshop for the City Council and community in a format to be designed in concert with City staff, to present the needs assessment and identify community desires for type and location of a potential housing project.

(d) Submittals to City. Within three hundred (300) calendar days following the Effective Date, develop and present to City staff, for review, all of the following:

(i) *Site Plan*. A conceptual development site plan for a proposed project that describes and depicts: (1) the location and orientation of proposed buildings; and (2) the architecture and elevations of the proposed buildings; and (3) the floor plans, including unit sizes;

(ii) *Financial Pro Forma*. A preliminary financial pro forma that includes cost financing and a cash flow analysis, including anticipated rents for affordable units, unit size distribution, and anticipated onsite and off-site improvement;

(iii) *Project Schedule*. A proposed time schedule for commencement and completion of the Project;

(iv) *Any Other Information Required*. Any other information or data required by the City or its negotiating representatives.

(e) City Council Workshop. As part of the ongoing public outreach for the development of affordable housing, participate in a City Council workshop to present to the City Council the results of the market analysis, site surveys, previous workshop/charrette, and conceptual development plan.

4. Negotiation of Affordable Housing Agreement. During the Negotiation Period, Developer shall proceed diligently and in good faith to develop and submit to City all of the documents and information set forth in Section 3(a) and City and Developer shall proceed diligently and in good faith to negotiate and document the potential terms, conditions, covenants, restrictions and agreements of an Affordable Housing Agreement between them. City and Developer shall generally cooperate with each other and supply such documents and information as may be reasonably requested by the other to facilitate the conduct of the negotiations. City and Developer shall exercise reasonable efforts to complete discussions relating to the terms, conditions, covenants, restrictions or agreements of an Affordable Housing Agreement as may be mutually acceptable to City and Developer, in their respective sole and absolute discretion. The exact terms and conditions of an Affordable Housing Agreement, if any, shall be determined during the course of these negotiations. Nothing in this Agreement is intended nor shall be interpreted or construed to be a representation or agreement by City or Developer that a mutually acceptable Affordable Housing Agreement will be produced from negotiations under this Agreement. Nothing in this Agreement shall impose any obligation on any Party to agree to a definitive Affordable Housing Agreement in the future. Nothing in this Agreement shall be interpreted or construed to be a guaranty, warranty or representation that any proposed Affordable Housing Agreement that may be negotiated by City staff and Developer will be subsequently approved by the City Council. Developer acknowledges and agrees that the City Council's consideration of any future Affordable Housing Agreement is subject to the independent

and reserved sole and absolute discretion of the City Council and any and all legally required public hearings, public meetings, notices, factual findings and other determination or activities required by law.

5. **Project Development Application.** Developer shall endeavor to gain site control of the preferred site to allow Developer to submit a complete Development Application for the Project to the City of Lake Forest Planning Division. Following this submittal, the Parties shall continue negotiating the site specific Affordable Housing Agreement and complete the environmental review pursuant to the California Environmental Quality Act.

6. **No City Commitment to Fund or Transfer Property.** Nothing in this Agreement is intended to be an express or implied commitment by the City to provide financing and/or Funds, exercise any power of eminent domain or other power, acquire, adopt a resolution of necessity to acquire, provide City staff time or other resources or take any other action regarding the transfer of any property or financial resources for the Project or otherwise.

7. **Restrictions Against Change in Ownership, Management and Control of Developer and Assignment of Agreement.**

(a) City Reliance on Developer Qualifications. The qualifications and identity of Developer and Developer's principals are of particular concern to City. Developer's qualifications and identity are the reason that City has entered into this Agreement with Developer. During the Negotiation Period, no voluntary or involuntary successor-in-interest of Developer shall acquire any rights or powers under this Agreement, except as expressly provided in Section 7(c).

(b) Notice to City of Organizational Changes. Developer shall promptly notify City in writing of any and all changes whatsoever in the identity of the business entities or individuals either comprising or in Control (as defined in Section 7(d)) of Developer, as well as any and all changes in the interest or the degree of Control of Developer by any such person, of which Developer or any of Developer's directors, managers or officers are notified or may otherwise have knowledge or information.

Upon the occurrence of any significant or material change (more than 10%), whether voluntary or involuntary, in ownership, management or Control of Developer (other than such changes occasioned by the death or incapacity of any individual) that has not been approved by City, prior to the time of such change, City shall have the right, in City's sole and absolute discretion, to terminate this Agreement, without liability to Developer or any other person, by sending written notice of termination to Developer, referencing this Section 7(b).

(c) Developer Assignment. Developer may only assign Developer's rights under this Agreement to an Affiliate (as defined in Section 7(d)), subject to all of the following conditions: (1) such Affiliate expressly assumes all of the obligations of Developer under this Agreement in a written assumption agreement reasonably satisfactory to City; and (2) Developer, shall, at all times, Control any such Affiliate. Notwithstanding any assignment of this Agreement, Developer shall, at all times, be responsible and obligated directly to City for performance of Developer's obligations under this Agreement.

(d) Definitions of "Affiliate" and "Control." For the purposes of this Agreement, the term "Affiliate" means any person, directly or indirectly, Controlling or Controlled by or under common Control with Developer, whether by direct or indirect ownership of equity interests, by contract, or

otherwise. For the purposes of this agreement, “Control” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership of equity interests, by contract, or otherwise.

8. **Unavoidable Delay.** The time period for performance of any action to be taken by either City or Developer pursuant to this Agreement shall be extended by the number of days by which an Unavoidable Delay actually delays such performance, subject to the limitations set forth in this Section 8 or in Section 2(b). For the purposes of this Agreement “**Unavoidable Delay**” means delay in any Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party’s reasonable control, including casualty, third-party legal actions related to City’s approval of this Agreement or the pursuit of the activities contemplated by this Agreement, war, acts of terrorism or riots. Unavoidable Delay shall not include delay caused by a Party’s financial condition or insolvency. Any Party claiming Unavoidable Delay shall notify the other Party: (a) within ten (10) calendar days after such Party knows of any such Unavoidable Delay; and (b) within ten (10) calendar days after such Unavoidable Delay ceases to exist. To be effective, any notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party seeking to be excused by an Unavoidable Delay shall exercise such Party’s commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time. Each Party expressly agrees that adverse changes in economic conditions of such Party specifically or the economy generally, or changes in market conditions or demand, shall not operate to excuse or delay the performance of each and every one of each Party’s obligations or covenants arising under this Agreement. All Parties expressly assume the risk of such adverse economic or market changes, whether or not foreseeable as of the Effective Date.

9. **Developer Obligations to Review Draft Agreements and Attend Meetings.**

(a) Project Design and Planning. During the Negotiation Period, Developer shall keep City staff advised on the progress of Developer in performing Developer’s obligations under this Agreement, on a regular basis or as requested City staff, including having one or more of Developer’s employees or consultants who are knowledgeable regarding this Agreement, the design and planning of the proposed project and the progress of negotiation of a future Affordable Housing Agreement, such that such person(s) can meaningfully respond to the City Council or City staff questions regarding the progress of the design and planning of the Project or the negotiation of an Affordable Housing Agreement, and can attend both: (1) meetings with City staff, as reasonably scheduled by City staff; and (2) meetings of the City Council, when reasonably requested to do so by City staff.

(b) Affordable Housing Agreement. During the Negotiation Period, Developer shall diligently review and comment on drafts of an Affordable Housing Agreement prepared by City legal counsel and, if the terms and conditions of such a Affordable Housing Agreement are agreed upon between City staff and Developer, submit the Affordable Housing Agreement signed by the authorized representative(s) of Developer to City Manager for submission to the City Council for review and approval or disapproval, in the sole and absolute discretion of the City Council. Any Affordable Housing Agreement shall consist of terms, conditions, covenants, restrictions and agreements acceptable to the Developer and the City Council, in their respective sole and absolute discretion.

(c) CEQA Documents. Subsequent to submittal of a Project Development Application, Developer shall diligently review and comment on draft environmental review documents relating to any proposed project prepared by City's environmental consultant, if any.

10. **Developer to Pay All of its Costs and Expenses, Deposit.** All fees or expenses of engineers, architects, financial consultants, legal, planning or other consultants or contractors, retained by Developer for any study, analysis, evaluation, report, schedule, estimate, environmental review, planning or design activities, drawings, specifications or other activity or matter relating to the Obligations of Developer set forth in Section 3, including the negotiation or documentation of an Affordable Housing Agreement that may be undertaken by Developer during the Negotiation Period or otherwise, pursuant to or in reliance upon this Agreement or in Developer's discretion, regarding any matter relating to this Agreement, or an Affordable Housing Agreement shall be the sole responsibility of and undertaken at the sole cost and expense of Developer and no such activity or matter shall be deemed to be undertaken for the benefit of, at the expense of or in reliance upon City. City shall not be obligated to pay, reimburse or refund any expenses, fees, charges or costs incurred by Developer or City in pursuit of any study, analysis, evaluation, report, schedule, estimate, environmental review, planning or design activities, drawings, specifications or other activity or matter relating to this Agreement or negotiation or documentation of an Affordable Housing Agreement that may be undertaken by Developer or City during the Negotiation Period or otherwise, whether or not this Agreement is eventually terminated or extended or an Affordable Housing Agreement is entered into between City and Developer.

11. **City Not To Negotiate With Others.** During the Negotiation Period, the City Council and City staff shall not negotiate with any other person regarding the use of the Funds without the prior consent of the Developer.. The term "negotiate," as used in this Agreement, means and refers to engaging in any discussions with a person other than Developer, regardless of how initiated, with respect to that person's development of affordable housing utilizing the Funds to the total or partial exclusion of Developer subject to the other provisions of this Section 11. Notwithstanding the preceding provisions of this Section 11, City shall have the right to receive and retain unsolicited offers regarding development of affordable housing from persons other than Developer, but shall not negotiate with the proponent of any such offer during the Negotiation Period to the extent that the Funds or potential sites identified would be required to proceed with this alternative affordable housing project. Nothing in this Agreement shall prevent or prohibit City from discussing or disclosing the fact that City is a Party to this Agreement. Notwithstanding any other provision of this Section 10 or this Agreement, implementation of City's development plans and/or use of available funding shall be and remain in the sole and exclusive purview and discretion of City. Nothing in this Agreement shall limit, prevent, restrict or inhibit City from providing any information in City's possession or control that would customarily be furnished to persons requesting information from City concerning the City's activities, goals or matters of a similar nature as required by law to be disclosed, upon request or otherwise. Notwithstanding anything to the contrary herein, Developer acknowledges that City has additional resources that could be committed to affordable housing projects and that City may negotiate with others in regards to any additional resources the City may choose to use for affordable housing purposes; however these negotiations will exclude any sites or potential sites identified for development by the Developer during the Negotiation Period.

12. **Acknowledgments and Reservations.**

(a) No Project Commitment. City and Developer agree that, if this Agreement expires or is terminated for any reason, or an Affordable Housing Agreement is not approved and signed by the City and Developer, for any reason, neither City nor Developer shall be under any obligation, nor have any liability to each other or any other person regarding the development of an affordable housing project, the Funds or the financing considered to assist with the development of an affordable housing project.

(b) No City Offer or Acceptance. Developer acknowledges and agrees that no provision of this Agreement shall be deemed to be an offer by City, nor an acceptance by City of any offer or proposal from Developer, for City to convey or receive any estate or interest in property or for City to provide any financial assistance, including the Funds to Developer, for development of an affordable housing project.

(c) No Conveyance. Developer acknowledges and agrees that Developer has not acquired, nor will acquire, by virtue of the terms of this Agreement, any legal or equitable interest in any real or personal property from City.

(d) Development Standards. Certain development standards and design controls for a project may be established between Developer and City, but City and Developer understand and agree that any project must conform to all City of Lake Forest and other applicable governmental development, land use and architectural regulations and standards which are or may be applicable to an affordable housing project.

Drawings, plans and specifications for any project shall be subject to the approval of the City of Lake Forest, through the standard development application and design review processes for similar projects. Nothing in this Agreement shall be considered approval of any plans or specifications for a project by the City of Lake Forest. The Parties enter into this Agreement further acknowledging and intending that a complete and definitive Affordable Housing Agreement may not be entered into between them, if at all, prior to review of any project in accordance with CEQA.

(e) No City Approval. Nothing in this Agreement, nor any comments provided by City staff, nor any failure of City staff to provide comments to any submittal under or pursuant to this Agreement shall: (i) modify or replace any land use entitlement process of City applicable to the Project; (ii) limit the police power land use jurisdiction of City relative to the Project; (iii) constitute an approval of all or any portion of a project by City pursuant to the police power land use jurisdiction of City ; or (iv) constitute any approval of all or any portion of an Affordable Housing Agreement with Developer by City.

(f) City Due Diligence. City reserves the right to reasonably obtain further information, data and commitments to ascertain the ability and capacity of Developer to purchase, develop or operate a Project. Developer acknowledges that Developer may be requested to make certain financial disclosures to City, City staff, City attorney, or other City-retained consultants, as part of the financial due diligence investigations of City relating to the potential development of a project and that any such disclosures may become public records. City shall maintain the confidentiality of financial information of Developer to the extent allowed by law, as determined by the City Attorney.

(g) Required City Approval. City shall not be deemed to be a Party to any agreement for the acquisition of, lease of or disposition of real or personal property, financial commitments to

Developer or development of a project, except pursuant to the terms and conditions of a complete Affordable Housing Agreement approved by the City Council, in its sole and absolute discretion, following all required public hearing(s), determinations, findings or other procedures. Developer expressly acknowledges and agrees that City will not be bound by any statement, promise or representation made by City staff or representatives during the course of negotiations of an Affordable Housing Agreement and that City shall only be legally bound upon the approval and execution of a complete Affordable Housing Agreement in the future by the City Council, in its sole and absolute discretion, in accordance with law.

(h) No Intent to be Bound. Further efforts by any Party to perform due diligence, arrange or obtain financing or carry out other acts in contemplation of the possible acquisition, transfer or development of the Project shall not be deemed evidence of intent by any Party to be bound by any terms, conditions, covenants, restrictions or agreements relating to acquisition, transfer or development a project.

13. **Nondiscrimination.** Developer covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through Developer, that this Agreement is made and accepted upon and subject to the following conditions:

(a) Standards. There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of property nor shall Developer, itself, himself or herself, or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, subtenants, sublessees, or vendees in the property or a project.

(b) Interpretation. Notwithstanding Section 13(a), with respect to familial status, Section 13(a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in Section 13(a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to Section 13(a).

14. LIMITATION ON DEVELOPER REMEDIES AND DAMAGES.

(a) DEVELOPER WAIVER AND RELEASE. IF THE DEVELOPER TERMINATES THIS AGREEMENT AS A RESULT OF A MATERIAL DEFAULT UNDER THIS AGREEMENT BY CITY, SUBJECT TO ALL APPLICABLE NOTICE AND CURE PERIODS, THE DEVELOPER'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT. CITY AND DEVELOPER EACH ACKNOWLEDGE AND AGREE THAT CITY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT IF CITY WERE TO BE LIABLE TO DEVELOPER FOR ANY MONETARY DAMAGES, MONETARY RECOVERY OR ANY REMEDY IN THE EVENT OF A DEFAULT OF THIS AGREEMENT BY CITY, OTHER THAN TERMINATION OF THIS AGREEMENT. ACCORDINGLY, CITY AND DEVELOPER AGREE THAT DEVELOPER'S SOLE AND EXCLUSIVE RIGHT AND REMEDY DURING A DEFAULT OF THIS AGREEMENT BY CITY IS TO TERMINATE THIS AGREEMENT. DEVELOPER WAIVES ANY RIGHT TO PURSUE

ANY REMEDY OTHER THAN TERMINATION OF THIS AGREEMENT AS A RESULT OF ANY DEFAULT OF THIS AGREEMENT BY CITY.

(b) DEVELOPER 1542 ACKNOWLEDGMENT. DEVELOPER ACKNOWLEDGES THAT DEVELOPER IS AWARE OF THE MEANING AND LEGAL EFFECT OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES:

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

(c) DEVELOPER 1542 WAIVER. CALIFORNIA CIVIL CODE SECTION 1542 NOTWITHSTANDING, THE INTENTION OF DEVELOPER IS TO BE BOUND BY THE LIMITATION ON DAMAGES AND REMEDIES SET FORTH IN THIS SECTION 14, AND DEVELOPER HEREBY WAIVES AND RELEASES ANY AND ALL CLAIMS AGAINST CITY FOR MONETARY DAMAGES, MONETARY RECOVERY OR OTHER LEGAL OR EQUITABLE RELIEF RELATED TO ANY DEFAULT OR BREACH OF THIS AGREEMENT, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 14, WHETHER OR NOT ANY SUCH RELEASED CLAIMS WERE KNOWN OR UNKNOWN TO DEVELOPER AS OF THE EFFECTIVE DATE. DEVELOPER SPECIFICALLY WAIVES THE BENEFITS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL OTHER STATUTES AND JUDICIAL DECISIONS OF SIMILAR EFFECT WITH REGARD TO THE LIMITATIONS ON DAMAGES OR REMEDIES AND WAIVERS AND RELEASES OF ANY SUCH DAMAGES OR REMEDIES CONTAINED IN THIS SECTION 14.

Initials of Authorized
City Representative

Initials of Authorized
Developer Representative

15. Default; Breach; Remedy.

(a) Default. Failure or delay by any Party to perform any material term, provision, obligation or agreement or observe any restriction, condition or covenant set forth in this Agreement shall constitute a "Default" under this Agreement. If the Party that is claimed to be in Default by the other Party cures, corrects or remedies the alleged Default within thirty (30) calendar days after receipt of written notice specifying such Default, such Party shall not be in Default under this Agreement. The notice and cure period provided in the immediately preceding sentence shall not, under any circumstances, extend the Negotiation Period. If notice of an alleged Default is given with thirty (30) or fewer calendar days remaining in the Negotiation Period, this Agreement shall automatically terminate on the date of such notice, without further notice to or action by either Party, and the Party alleged to have been in Default shall be deemed to have cured such Default on the termination of this Agreement. The Party claiming that a Default has occurred shall give written notice of Default to the Party claimed to be in Default, specifying the alleged Default. Delay in giving such notice shall not constitute a waiver of any Default nor shall it change the time of

Default. However, the injured Party shall have no right to exercise any remedy for a Default under this Agreement, without first delivering written notice of the Default.

(b) Breach; Termination. If a Default of any Party remains uncured for more than fifteen (15) calendar days following such Party's receipt of written notice of such Default, a "Breach" of this Agreement by the Defaulting Party shall have occurred, except as otherwise provided in Section 15(a) during the last fifteen (15) calendar days of the Negotiation Period. In the event of a Breach of this Agreement, the sole and exclusive remedy of the Party who is not in Breach shall be to terminate this Agreement by serving written notice of termination on the Party in Breach except that the City shall retain all rights pursuant to Section 10 of this Agreement. The failure of Developer to timely submit any item described in Section 3 shall be a Default under this Agreement by Developer, unless an extension is granted due to an Unavoidable Delay as defined in Section 8.

(c) No Waiver. Any failure or delay by a Party in asserting any of such Party's rights or remedies as to any Default or Breach shall not operate as a waiver of any Default or Breach or of any rights or remedies associated with a Default or Breach.

16. **Compliance with Law.** Developer acknowledges that any Affordable Housing Agreement, if approved by the City Council, will require Developer (among other things) to carry out the development of a project in conformity with all applicable laws, including all applicable building, planning and zoning laws, environmental laws, safety laws and labor and wage laws.

17. **Notice.** All notices required under this Agreement shall be presented in person or electronically, and confirmed by the same-day mailing of a hard copy version through a nationally recognized delivery service (i.e., Federal Express, United Parcel Service, etc.) or by first class United States mail, with postage prepaid, to the address for the Party set forth in this Section 16. Notice shall be deemed received by United States Postal Service delivery as of the third (3rd) business day after deposit with the United States Postal Service, addressed as required by this Section 16. Notice by personal service shall be effective on delivery. Notice by nationally recognized overnight delivery service shall be effective upon the earlier of: (a) delivery; or (b) the date of the second attempt to deliver such notice, as set forth in the written records of the delivery service. Either Party may change its address for receipt of notices by notifying the other Party in writing. Rejection, other refusal to accept or the inability to deliver a notice because of a changed address of which no notice was given or other action by the Party to whom the notice is transmitted, shall be deemed receipt of the notice. An attorney representing a Party may give notice on behalf of such Party.

To Developer:

Attn: Michael Ruane, President
National Community Renaissance of California
9692 Haven Avenue, Suite 100
Rancho Cucamonga, CA 91730

To City:

Attn: City Manager
City of Lake Forest
25550 Commercentre Drive, Suite 100
Lake Forest, CA 92630

18. **Warranty Against Payment of Consideration for Agreement.** Developer represents and warrants that: (a) Developer has not employed or retained any person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Developer and third persons to whom fees are paid for professional services related to planning, design or construction of the Project or documentation of this Agreement; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Developer or any of Developer's agents, employees or representatives to any elected or appointed official or employee of City in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 17 shall entitle City to terminate this Agreement on two (2) days' notice to Developer.

19. **Press Releases.** Developer agrees to obtain the approval of the City Manager, or his or her designee or successor in function, regarding any press release(s) Developer may propose relating to this Agreement or negotiation of an Affordable Housing Agreement, at least five (5) calendar days prior to publication.

20. **Counterpart Originals.** This Agreement may be signed by City and Developer in multiple counterpart originals, each of which shall constitute an original and all of which together shall constitute a single agreement.

21. **No Third-Party Beneficiaries.** Nothing in this Agreement is intended to benefit any person other than City or Developer.

22. **Governing Law.** City and Developer acknowledge and agree that this Agreement was negotiated, entered into and is to be fully performed in the City of Lake Forest, California. City and Developer agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the substantive and procedural laws of the State of California, without application of conflicts or choice of laws principles.

23. **Waivers.** No waiver of any Breach or Default of any term or condition contained in this Agreement shall be deemed a waiver of any preceding or succeeding Breach or Default of such term or condition, or of any other term or condition contained in this Agreement. No extension of the time for performance of any obligation or act, no waiver of any term or condition of this Agreement, nor any modification of this Agreement shall be enforceable against City or Developer, unless made in writing and signed by the Party against whom such extension, waiver or modification is sought to be enforced.

24. **Principles of Interpretation.** No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of

English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where

the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word “or” in this Agreement includes the word “and.” Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time. Headings at the beginning of each section or sub-section of this Agreement are solely for the convenience of reference of City and Developer and are not a part of this Agreement. Whenever required by the context of this Agreement, the masculine shall include the feminine and vice versa. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits referred to in this Agreement are attached to this Agreement, unless otherwise specified. If the date on which City or Developer is required to take any action pursuant to the terms of this Agreement is not a business day of City, the action shall be taken on the next succeeding business day of City.

[Signatures on the following page]

**SIGNATURE PAGE
TO
EXCLUSIVE NEGOTIATION AGREEMENT
(NATIONAL COMMUNITY RENAISSANCE)**

IN WITNESS WHEREOF, the City and Developer have signed and entered into this Exclusive Negotiation Agreement (NATIONAL COMMUNITY RENAISSANCE) through the signatures of their authorized representative(s) set forth below:

CITY:

CITY OF LAKE FOREST, a municipal corporation

By: _____
Mayor

DEVELOPER:

National Community Renaissance of California,
A California nonprofit public benefit corporation

By: _____
President

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP

By: _____
City Attorney