

# AGREEMENT BETWEEN THE CITY OF LAGUNA BEACH AND SHOHREH DUPUIS AND FARZAD MOHAMMADI REGARDING HOUSING ASSISTANCE

This Agreement ("Agreement") is made and entered into on May 24, 2016 by and between the City of Laguna Beach, a California municipal corporation (the "City"), and Shohreh Dupuis ("Dupuis") and Farzad Mohammadi ("Mohammadi"), husband and wife, sometimes herein referred to individually as a "Party" and collectively as the "Parties."

## Recitals

A. The City Council of the City of Laguna Beach authorized the establishment of a housing assistance program for a small number of certain current and/or prospective qualified City employees to encourage their residence in the City.

B. A primary consideration for the housing assistance program is that the employee be responsible for the performance of essential services for the City, including but not limited to police, fire, marine safety and public works services.

C. Dupuis, who currently serves as Assistant City Manager/Director of Public Works is such an essential employee. She is on call to respond to serious emergencies at times outside normal business hours, and he is on this status for a substantial portion of her personal time. There is a great benefit to the community to have her reside as near as possible to the scene of possible future emergencies.

D. On May 10, 2016, the City Council authorized the City Manager to, among other things: (i) communicate an offer to Dupuis to allow her to participate in a certain described equity-sharing and direct loan program with the City under which the City would assume the position of lender under a first deed of trust; and (ii) prepare and execute all documents necessary for City and Dupuis to purchase the residence, other improvements and the real property known as 31680 3<sup>rd</sup> Avenue, Laguna Beach (the "Property") for the price \$1,595,000 ("Purchase Price") after the City determined the Purchase Price was fair market value

NOW, THEREFORE, the City and Dupuis agree to continue to participate in a housing assistance program in accordance with the following terms and conditions:

## **1. PURCHASE OF THE PROPERTY**

(a) The Parties will implemented the provisions of the Agreement related to the purchase of the Property, including the following: (i) Dupuis will contribute up to \$797,500 to the Purchase Price (50.00%) of the Property, a portion of which will be a direct loan by the City to the Dupuis secured by a deed of trust ("New Loan") on the Property;

(ii) the City contribution will be up to \$797,500 of the Purchase Price (50.00%); (iii) Dupuis and the City will share equally all closing costs related to the purchase of the Property, including but not limited to any real estate broker's fee, title insurance and escrow fees; and (iv) the proportional ownership of the Property is shown on the grant deed as a ratio of funds provided by Dupuis and the City toward the Purchase Price (Dupuis and Mohammadi own an undivided 50.00% interest and the City owns an undivided 50.00% interest).

(b) Continuing Obligations. Dupuis, Mohammadi and the City shall continue to cooperate in the administration of this Agreement including, without limitation, the preparation and execution of all documents necessary to implement this Agreement.

(c) New Loan. In accordance with the City Council decision, Dupuis shall have the right to request the City to finance a Direct Loan of \$472,000 pursuant to the following: (i) as of the Effective Date of this Agreement, the interest rate of the Loan shall be 2% (which is .5% percent above the average return on City investments during the twelve (12) months preceding the Effective Date of this Agreement but no less than 2%); (ii) the interest rate of the loan ("New Loan") shall be adjusted on or about the date of each anniversary of the Effective Date such that the interest rate for the subsequent 12 months is .5% above the City's average rate of return on its investments during the preceding twelve (12) months; (iii) in no event will the interest rate of the New Loan during the term of this Agreement be less than two percent (2%) or more than five percent (5%); (iv) the term of the New Loan is twenty (20) years from the New Loan date, and Dupuis may repay the New Loan at any time without penalty; and (v) Dupuis' New Loan payments shall be deducted from Dupuis' biweekly paychecks during the time Dupuis is a City employee and thereafter Dupuis shall make monthly New Loan payments in an amount pursuant to a schedule that the City shall prepare and deliver to Dupuis.

## **2. PRIMARY RESIDENCE**

Notwithstanding the City's ownership interest, Dupuis shall have an exclusive right, and Dupuis has the obligation, to occupy the Property during the term of this Agreement. The Property shall be Dupuis' primary place of residence and she continuously shall reside on the Property during the term of this Agreement. Dupuis and Mohammadi shall, at their sole cost and expense, maintain the Property, including all improvements and land in good condition and repair and in accordance with all applicable laws during the term of this Agreement. Dupuis and Mohammadi also shall be solely responsible for all sewer, trash, water and utility charges and fees.

## **3. LIENS**

Except for the New Loan, Dupuis and Mohammadi shall not cause any lien or mortgage to be recorded against the Property unless they have received prior written consent from the City Manager. Dupuis and Mohammadi may, after obtaining consent

from the City Manager, use their ownership interest in the Property as security for a loan. The City shall not withhold permission for any loans that do not impair the City's interest in the Property and any loan with a "loan to value" ratio (the value calculated on the basis of Dupuis' and Mohammadi's ownership interest) of 50% or less shall be deemed not to impair the City's ownership interest. Dupuis and Mohammadi shall be solely responsible for any and all fees and costs associated with any refinancing or home equity loan originated by Dupuis and Mohammadi.

#### **4. SHARED PAYMENT**

Dupuis, Mohammadi and the City shall pay, in proportion to their ownership interests, their respective share of property taxes, homeowners association dues (if any), and homeowners insurance for the Property. Dupuis and Mohammadi alone shall have the voting right with respect to the homeowners association (if any). To the maximum extent feasible, all policies of insurance relating to the Property shall name the City as an additional insured as long as the City maintains an interest in the Property. Dupuis and Mohammadi have presented proof that the City is, as of the Effective Date of this Agreement, an additional insured. The City shall not be obligated to pay any portion of homeowners insurance premiums for policies that do not name the City as an additional insured unless the policy provides that the proceeds of insurance shall be paid to the Parties (or to an escrow) in accordance with their respective ownership interests. To the maximum extent feasible, all policies of insurance relating to the Property shall state the respective interests of the Parties and provide that, in the event of damage to or destruction of the Property, the proceeds of any such insurance shall be paid to the Parties in accordance with their respective interests as of the date of the insurable event. The Parties shall continue to cooperate with one another with respect to any issue related to insurance for the Property.

#### **5. HOUSING ASSISTANCE PAYMENT**

The City has determined, based on advice of legal counsel and as of the date of this Agreement, that Dupuis receives income, as that term is defined in the Internal Revenue Code, because of the City's ownership interest in the Property and Dupuis's contractual right, pursuant to the Original Agreement and this Agreement, to the exclusive use and occupancy of the Property. The City has also determined that the amount of income Dupuis receives is equal to the fair market rental value of the Property multiplied by City's ownership interest in the Property less the costs of maintenance and repair that Dupuis incurs pursuant to this Agreement. Dupuis shall maintain, and submit to the City on or before March 1<sup>st</sup> of each year, records reflecting the maintenance and repair costs incurred during the previous calendar year. The City will continue to report to the Internal Revenue Service and the Franchise Tax Board the income that Dupuis receives by virtue of Dupuis's residence on and exclusive use of the Property. The City shall, each year during the term of this Agreement, pay Dupuis a housing assistance payment equal to the amount of federal and/or state income taxes that Dupuis is required

to pay because of the income attributable to the City's ownership interest in, and Dupuis' residence on and exclusive right to use, the Property. The City shall, periodically, retain a real estate broker with experience renting property in Laguna Beach to determine the annual fair market rental value of the Property, taking into consideration the terms and conditions of this Agreement including, without limitation, Dupuis's obligation to pay all costs of repair and maintenance. The City shall provide Dupuis with notice of this determination of fair market rental value. In no event shall the housing assistance payment, the income Dupuis receives because of the right to exclusive use of the Property, or the value of the City's equity interest in the Property be considered compensation for purposes of the California Public Employees Retirement System.

## **6. CAPITAL IMPROVEMENTS**

(a) Definition. For purposes of this Agreement, the term "capital improvement" means an improvement to the Property that (i) is consistent with all City zoning ordinances and (ii) requires a City-issued permit, has a useful life that exceeds 10 years, enhances the value of the Property by an amount generally proportional to the cost, and is not considered normal repair, maintenance or replacement (such as the replacement of windows with material of similar quality or appearance). Examples of improvements that qualify as capital improvements include, without limitation: (i) replacement of a roof or replacement of the siding on a home; (ii) room additions; (iii) kitchen or bathroom remodels that involve the installation of material (including tile and flooring) or fixtures that are of significantly higher quality than the material or fixtures being replaced; and (iv) the installation of new cabinets and related facilities in areas where they did not previously exist.

(b) Equity Adjustment. The Parties shall, when the Property is listed for sale pursuant to the provisions of Section 7, (i) agree on the total cost of all capital improvements made by Dupuis and Mohammadi during the term of the Original Agreement and this Agreement, (ii) adjust Dupuis' and Mohammadi's ownership interest by adding the total cost of all capital improvements made by them to the dollar amount of their initial contribution and dividing that amount by the total of their contributions and the City's contributions to come up with revised ownership percentage, and (iii) adjust the City's ownership interest by subtracting Dupuis' and Mohammadi's ownership interest from 100%.

## **7. MANDATORY SALE OF PROPERTY**

The Parties shall list the Property for sale no later than:

- (a) Twenty-four (24) months following separation of City employment by Dupuis, either voluntarily or involuntarily, for any reason except for retirement or death;

- (b) Upon retirement from the City, the number of days from May 2, 2016 to the date of Dupuis' retirement up to a maximum of ten (10) years after the date of Dupuis' retirement;
- (c) Ten (10) years following the date of Dupuis' death if Dupuis dies prior to retirement and has resided on the Property continuously between the Effective Date of this Agreement and the date of Dupuis death; or
- (d) Except in the case of Dupuis' death as specified in Subsection (c), six (6) months after the Property ceases to be Dupuis' primary place of residence as required in Section 2.

## **8. EMPLOYEE PURCHASE OF PROPERTY**

Dupuis and Mohammadi may, at any time during the term of this Agreement, purchase the City's ownership interest in the Property. The value of the City's ownership interest shall be determined by an appraisal prepared pursuant to Exhibit A. The City shall pay the cost of the appraisal and all costs attendant to the sale if Dupuis and Mohammadi purchase the City's ownership interest in the Property, and Dupuis and Mohammadi shall pay the cost of the appraisal and other costs related to the transaction if Dupuis and Mohammadi decide not to purchase the City's ownership interest in the Property. The City Manager and the Director of Finance and Information Technology are authorized, in conjunction with a sale of the City's interest, to negotiate, subject to City Council approval, terms and conditions of a sale that include, without limitation, incentives to Dupuis and Mohammadi in the form of deferred principal and/or interest payments, initial or long term interest rates below market rates (but in no event more than .5% below the City's then current rate of return on invested funds) or other inducements that the City Manager and the Director of Finance and Information Technology deem to be in the City's best interests. In the event of a proposed purchase by Dupuis and Mohammadi within eighteen (18) months after Dupuis' separation, the City Manager and the Director of Finance and Information Technology are, in addition to one or more of the incentives described above and subject to City Council approval, also authorized to reduce the purchase price in an amount that reflects all or a portion of the then current value of the future housing assistance payments. The Parties agree that no broker(s) will be involved in the event of a purchase pursuant to this Section.

## **9. CITY PURCHASE OF PROPERTY**

The City shall have the right to purchase Dupuis' and Mohammadi's ownership interest in the Property in lieu of a sale pursuant to Section 7 or in the event Dupuis and Mohammadi, for any reason, decides to sell their ownership interest. The value of the Dupuis' and Mohammadi's ownership interest shall be based on Dupuis' and Mohammadi's ownership interest (as determined pursuant to Section 6 of this Agreement) and an appraisal prepared pursuant to Exhibit A. The City shall pay the cost

of the appraisal and all costs attendant to the sale. The Parties agree that no broker(s) will be involved in the event of a City purchase of Dupuis' and Mohammadi's ownership interest in the Property pursuant to this Section.

#### **10. JOINT SALE OF PROPERTY**

The Parties may, at any time during the term of this Agreement, mutually agree to sell the Property. In such event, the Parties shall list the Property with a licensed real estate broker familiar with Laguna Beach real estate. The listing price shall reflect input from the broker and any appraisal commissioned by the Parties pursuant to Exhibit A.

#### **11. DISPOSITION OF SALE PROCEEDS**

The proceeds of any sale of the Property shall be allocated to the Parties in accordance with the following:

(a) From the gross sale price, any costs of sale, including, but not limited to escrow fees, real estate broker's fees, and related expenses shall first be deducted (net proceeds of sale);

(b) From the gross sales price, the remaining balance, if any, of the New Loan to Dupuis and Mohammadi shall be repaid to the City;

(c) The Parties shall receive that portion of the net proceeds of sale that reflects their respective interests in the Property as of the date of the sale (for example, if employee's ownership interest is fifty percent (50%) and the net proceeds are \$1,500,000, employee would receive \$750,000);

(d) Dupuis and Mohammadi shall be solely responsible for the payment, out of their share of the net proceeds of sale, of the New Loan or any loan that they have incurred and for which the Property is security for payment and/or any lien recorded as a result of any action or inaction by Dupuis and Mohammadi.

#### **12. TERM**

Subject to Section 13, this Agreement shall remain in full force and effect until the Property is sold to a third party (in accordance with Section 10) or either Party purchases the other Party's share (in accordance with either Sections 8 or 9). Upon the occurrence of the first of the foregoing, this Agreement shall automatically terminate.

#### **13. ALTERNATE PROPERTY**

Notwithstanding any provision to the contrary in this Agreement, Dupuis and Mohammadi may, during the term of this Agreement and while Dupuis is employed by the City, elect to sell the Property and purchase another home located in the City of Laguna Beach (the "New Property"), provided the New Property is not situated within



that portion of Laguna Beach located on El Toro Road known as Sycamore Hills. Upon Dupuis' and Mohammadi's election and their compliance with the terms and conditions of this Agreement, the Parties agree that this Agreement shall be considered modified to apply to the New Property with terms and conditions consistent with this Agreement, subject only to the following: (i) the City's assistance with respect to the New Property shall be limited to the lesser of \$797,500 of the purchase price for the New Property; (ii) the proceeds of the sale of the Property shall be divided in accordance with Section 11, provided that Dupuis and Mohammadi shall solely be responsible for the payment of all transaction Costs, except for any brokerage commission(s), which shall be shared based on the Parties' respective ownership percentages of the Property; (iii) the City shall have the right to disapprove the sale of the Property and the purchase of the New Property if the City's net proceeds from the sale of the Property is less than \$797,500; and (iv) Dupuis and Mohammadi shall be solely responsible for the payment of all transaction costs in connection with the purchase of the New Property. The City Manager and the Director of Finance and Information Technology shall ensure that any transaction related to a New Property comply with the provisions of this Section; but in the event of compliance, no further City review or approval is required.

### **13. SUCCESSORS**

(a) This Agreement is intended to and shall bind the Parties, their successors, heirs and personal representatives, and is not assignable by either Party without the express written consent of the other Party.

(b) The intent of the Parties is that, in the event Dupuis dies prior to the expiration of the term of this Agreement, Mohammadi shall be entitled to the same benefits and be subject to the same obligations that he and Dupuis would have been entitled had she survived. (For example, Farzad Mohammadi shall be entitled to reside on the Property for ten (10) years from the date of Dupuis' death if she dies prior to retirement; and after the expiration of then ten (10) year period, Mohammadi would then be obligated to list the Property for sale pursuant to Section 7. In the event Dupuis dies after retirement, Mohammadi shall be entitled to reside on, and to the exclusive use of, the Property for the number of days from May 2, 2016 to the date of Dupuis' retirement, up to a maximum of ten (10) years after the date of Dupuis' retirement, and is then required to list the Property for sale pursuant to Section 7.) Mohammadi shall comply with all terms and conditions of this Agreement during the time he is entitled to exclusive use of the Property, including the duty to repair and maintain the Property.

(c) Dupuis and Mohammadi shall have the right to place their ownership interest in the Property into a family trust or any similar estate planning vehicle.

### **14. VOLUNTARY**

The Parties, and each of them, freely and voluntarily have entered into and executed this Agreement, and they warrant and represent they are not aware of any duress, fraud, coercion or undue influence which has caused them to enter into and execute this Agreement. The Parties, and each of them, represent they have carefully read and fully understand all of the provisions of this Agreement.

**15. LEGAL COUNSEL**

The Parties, and each of them, acknowledge that in entering into and executing this Agreement, they have each had the opportunity to seek and receive independent legal advice as to their respective legal rights and they certify that they have read this Agreement and fully understand all of its terms and contents.

**16. ENTIRE UNDERSTANDING**

This Agreement contains the entire agreement and understanding between the Parties concerning the subject matter and supersedes any and all prior or contemporaneous agreements or understandings between them. The Parties, and each of them, declare that no promise, representation or agreement not expressly stated in this Agreement has been made to them to induce them to execute this Agreement. This Agreement may only be modified or changed by a written agreement executed by both Parties.

**17. GOVERNING LAW**

The Parties, and each of them, agree that this Agreement shall be governed by and interpreted under the laws of the State of California and shall be construed as if it were jointly drafted by the Parties.

**18. NO GUARANTEE**

The Parties agree that nothing in this Agreement shall alter the nature or characterization of Dupuis's employment with the City, nor shall this Agreement be construed as a guarantee of Dupuis's employment for any specific time period.

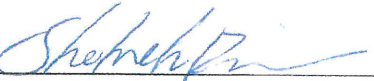
**19. CITY COUNCIL**

While Dupuis is the Assistant City Manager/Director of Public Work, the City Manager and the Director of Finance and Information Technology shall be responsible for administering the provisions of this Agreement. The City Manager and the Director of Finance and Information Technology shall have the right to obtain input from City staff relative to the administration and may, with City Council approval, retain professionals to assist in administering this Agreement.

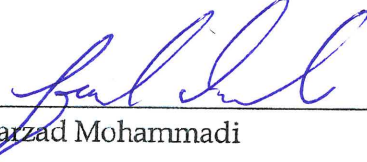


IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first set forth above.

SHOHREH DUPUIS

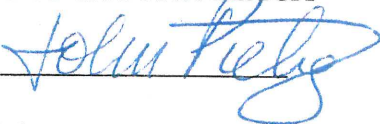
By:   
Shohreh Dupuis, Assistant City Manager,  
Director of Public Works

Dated: 5/26/16

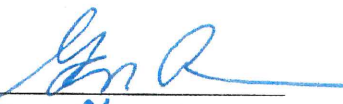
By:   
Farzad Mohammadi

Dated: 5/26/16

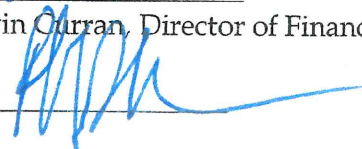
CITY OF LAGUNA BEACH

By:   
John Pietig, City Manager

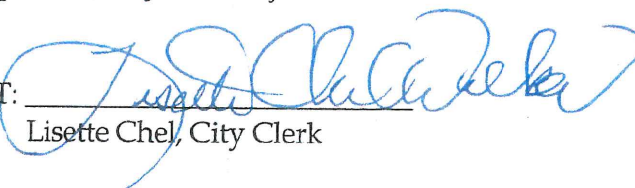
Dated: 5/26/16

By:   
Gavin Curran, Director of Finance and Information Technology

Dated: 5-25-2016

By:   
Philip Kohn, City Attorney

Dated: 5/25/2016

ATTEST:   
Lisette Chel, City Clerk

## EXHIBIT A

Whenever this Agreement calls for the selection of an appraiser, the Parties agree to use their respective best efforts to agree on an appraiser without resort to the selection process that follows.

In the event the Parties, using their respective best efforts, fail to agree on an appraiser, each Party shall designate an appraiser and the two appraisers designated shall jointly select a mutually satisfactory qualified appraiser, who shall then prepare the required appraisal.

The Parties also agree to use their respective best efforts to agree on instructions to the appraiser. Notwithstanding the foregoing, in the event either party so requests, the instructions to the appraiser shall include direction to consider the sale price of the Property necessary to affect a sale within a specified period of time, but in no event less than 90 days.