

services; and

WHEREAS, on September 30, 1999 the City of Santa Barbara imposed certain conditions for the use of the Property which were imposed for the benefit of the public (“Conditional Use Permit”) with some of the imposed conditions set forth in the “Declaration of Covenants, Conditions and Restrictions Imposed on Real Property” recorded December 20, 1999 as document number 1999-0098691 in the office of the County Recorder of the County of Santa Barbara, California (“CCRs”); and

WHEREAS, on June 2, 2006, the Coalition transferred ownership of the Property to Casa Esperanza Homeless Center (“Casa”) which acquired title subject to the Original Covenant, Conditional Use Permit, and the CCRs; and

WHEREAS, on March 26, 2009, the City of Santa Barbara Planning Commission issued Conditions of Approval Resolution No. 008-09 which amended the Conditional Use Permit (Amended CUP) with the imposed conditions set forth in “Declaration Of Restrictions Established By City Of Santa Barbara Conditional Use Permit Resolution No. 008-09” recorded concurrently herewith (“Declaration”); and

WHEREAS, on February 1, 2012, the Agency dissolved and on November 20, 2012, the City adopted Resolution No. 12-083 and assumed all right, title and interest in all housing assets of the former Agency including the above described Original Covenant; and

WHEREAS, on April 14, 2014, the County and Casa entered into a “First Amendment to Restricted Use Covenant Imposed on Real Property For the Operation of a Homeless Shelter and Related Services” (“County Amendment”) which County Amendment recorded on April 17, 2014 as Document No 2014-0017410 in the Official Records of the Santa Barbara County Recorder; and

WHEREAS, the Exhibit B attached hereto and by this reference made a part hereof hereby supersedes and replaces the Exhibit B attached to the Original Covenant and the County Amendment; and

WHEREAS, on June 23, 2015 by minute action, the County Board of Supervisors approved and consented to PATH as the acceptable operator of the homeless shelter at the Property, provided that Casa merges with and into PATH; and

WHEREAS, on July 1, 2015 the proposed merger of Casa with Owner was finalized; and Owner assumed all assets and liabilities of Casa; and

WHEREAS, on _____, Casa transferred ownership of the Property to Owner which acquired title subject to the Original Covenant, Conditional Use Permit, and the CCRs; and

WHEREAS, Owner is a California nonprofit benefit corporation with the specific purpose of providing shelter services and/or financial and supportive services and shelters for homeless families and adults; and

WHEREAS, on July 21, 2015 by minute action, City Council authorized the Community Development Director to execute assignment agreements and related documents between the City and the Owner in connection with the merger and transfer of the Property to Owner; and

WHEREAS, City, County, and Owner now wish to restate and amend the Original Covenant.

NOW THEREFORE, in consideration of the foregoing recitals, and other good and valuable

consideration, the receipt and sufficiency of which is hereby acknowledged, Owner hereby covenants and agrees to record this Covenant and impose the following covenants, conditions, restrictions and limitations upon the possession, use and enjoyment of the Property. City, County, and Owner agree as follows:

A. PROGRAM CONDITIONS

For a period of SIXTY (60) YEARS from the date of the above described Original Covenant, the Property shall be owned and operated only by a not-for-profit organization organized under section 501(c)(3) of the Internal Revenue Code which has the provision of providing shelter services and/or financial and supportive services and shelters for homeless families and adults as its sole corporate purpose. The Property shall be used solely for the purpose of a homeless shelter and related services (“Facility”), as described in the Program Description attached as Exhibit B.

No fee may be charged for any shelter or service provided on the Property unless the amount and purpose of the fee is first approved in writing by the City’s Community Development Director and the County Executive Officer or designee.

B. OPERATOR

Owner shall manage the shelter and provide the related services through an entity or organization (“Operator”) approved by and acceptable to the City and County. At the time of the execution of this Covenant, PATH-SANTA BARBARA, with its office located at the Property, is expected to be the Operator, and is hereby approved by the City and County. Owner and Operator shall enter into a written agreement which sets forth the duties and responsibilities of the parties, and the City and County shall be provided with a copy and the City Administrator or designee and the County Executive Officer or designee shall have the right to approve the terms of such agreement.

C. REPORTING REQUIREMENTS

1. On or before the first day of August each year, Owner shall provide a Report to the City and County which report shall include a discussion of overall operations, statistical information of the numbers of persons served during the immediately preceding fiscal year (July 1 – June 30); and
2. Failure to submit the reports required under this section within thirty days of the specified date shall constitute a default under this Covenant.
3. During the term of this Covenant, Owner will keep complete accounting, financial and required Internal Revenue Service records related to Owner, the Property, and the Facility, in accordance with generally accepted accounting principles. All financial records will be made available to the City and the County at any time during regular working hours at the request of the City and the County.
4. In lieu of all or some of the above reports, the City and County may accept certified copies of reports filed with the U.S. Internal Revenue Service containing similar information.

D. DEFAULTS AND REMEDIES

1. It is understood and agreed between the parties that the obligations of all parties under this

Covenant are unique, and furtherance of important public policies encouraging development of shelters and services for homeless low-income persons and families, and that in case of a breach or default, it would be extremely difficult or impossible to compensate for the breach or default in money. Consequently, each party agrees that their obligations hereunder may be specifically enforced by any court having jurisdiction, in addition to any and all other remedies at law or in equity that may be available to them.

2. Upon becoming aware of any violation of the terms of this Covenant, the City or the County or both may declare a default under this Covenant. Upon the declaration of a default, the City or the County or both shall deliver written notice thereof to the Owner and upon receipt of which the Owner shall have thirty days to cure such default. Should the default not be cured by Owner within the time specified, the City or the County or both may apply to a court of competent jurisdiction for specific performance of the Covenant, for an injunction prohibiting the violation of this Covenant, or for any such other relief as may be appropriate.

3. Owner acknowledges that occupancy or use of the Property in violation of this Covenant is prohibited. In consideration of the benefits conferred on Owner and the Property by the City and County's financial support, Owner hereby assigns to the City and County the right to receive the rents due or collected from the Property used or occupied in violation of the terms of this Covenant, during the entire period of the violation. Any rents collected by the City and County shall be used to reimburse the City and County for their reasonable costs incurred in enforcing this Covenant, and any remaining funds shall be divided as follows: 50% to the City and 50% to the County.

E. ADDITIONAL PROVISIONS

1. This Covenant shall be binding upon the successors and assigns of the Owner and the heirs, personal representatives, grantees, lessees, sublessees, and contract purchasers, and assignees of Owner and any subsequent owner of the Property, for a period of SIXTY (60) YEARS from the date of the above described Original Covenant.

2. Owner hereby declares that the Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, and used and occupied subject to these covenants, conditions, restrictions and limitations. All of the above-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.

3. Owner shall not voluntarily convey the Property to any entity other than a not-for-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code, which has as its sole stated corporate purpose of providing shelter services and/or financial and supportive services and shelters for homeless families and adults.

4. Any purchaser of the Property, by the acceptance of a deed therefore, whether from Owner or from any subsequent owner of the Property, or by the signing of a contract or agreement to purchase the same, shall, by the acceptance of such deed or by the signing of such contract or agreement be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

5. The Owner covenants that it has not and will not execute any other agreement or covenant with provisions contradictory to or in opposition to the provisions hereof and that in any event this

Covenant is controlling as to the rights and obligations between and among the Owner, the City, the County and their respective successors.

6. If any one or more of the provisions contained in this Covenant shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Covenant and this Covenant shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

7. The terms of this Covenant shall be interpreted under the laws of the State of California.

8. Whenever any notice is permitted or required by this Covenant, such notice shall be deemed to have been given and received when personally delivered, or three (3) days after it is mailed if mailed by United States mail, certified, return receipt requested, to the parties at the addresses listed below or such other addresses as the parties hereafter designate in writing:

To Owner: PATH
340 North Madison Avenue
Los Angeles, CA 90004
Attn: Joel John Roberts, CEO

To Operator: PATH-SANTA BARBARA
816 Cacique Street
Santa Barbara, CA 93003

To City: City of Santa Barbara
P.O. Box 1990
Santa Barbara, CA 93102
Attn: George Buell, Community Development Director

City Attorney
P.O. Box 1990
Santa Barbara, CA 93102

To County: County of Santa Barbara
County Executive Office
105 East Anapamu Street
Santa Barbara, CA 93101
Attn: Mona Miyasato, County Executive Officer

9. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Covenant.

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

“OWNER”

PATH, a California nonprofit benefit corporation

BY: _____

Joel John Roberts
Chief Executive Officer

“CITY”

THE CITY OF SANTA BARBARA, a body politic

BY: _____

George Buell
Community Development Director

APPROVED AS TO FORM:

Ariel Calonne
City Attorney

ATTEST:
Mona Miyasato
Clerk of the Board

“COUNTY”
THE COUNTY OF SANTA BARBARA,
A political subdivision of the State of California

BY: _____
Deputy Clerk

BY: _____
Janet Wolf
Chair, Board of Supervisors

APPROVED AS TO ACCOUNTING FORM:
Robert W. Geis, CPA
Auditor-Controller

BY: _____
George Chapjian
Director, Community Services Department

BY: _____
Deputy Auditor-Controller

APPROVED AS TO FORM:
Michael C. Ghizzoni
County Counsel

BY: _____
Deputy County Counsel

APPROVED AS TO FORM:
Ray Aromatorio, ARM, AIC
Risk Management

BY: _____
Risk Manager

EXHIBIT 'A'
LEGAL DESCRIPTION

Real property in the City of Santa Barbara, County of Santa Barbara, State of California, described as follows:

THAT PORTION OF BLOCK 351 OF THE CITY OF SANTA BARBARA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL MAP THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID BLOCK; THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF CACIQUE STREET TO A 1 1/2" IRON PIPE DISTANT 194.96 FEET SOUTHWESTERLY FROM THE NORTHERLY CORNER OF SAID BLOCK; THENCE AT RIGHT ANGLES SOUTHEASTERLY 225.00 FEET; THENCE AT RIGHT ANGLES SOUTHWESTERLY 287.74 FEET TO THE CENTER LINE OF NOPAL STREET; THENCE AT RIGHT ANGLES NORTHWESTERLY 225.00 FEET TO A POINT LYING SOUTHWESTERLY 30.00 FEET FROM THE POINT OF BEGINNING; THENCE AT RIGHT ANGLES 30.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND LYING SOUTHWESTERLY OF THAT LINE BEING SHOWN AS "N. 47° 53' 34" W. 225.01 FEET" ON THAT LOT LINE ADJUSTMENT MAP FILED IN BOOK 112, PAGE 96 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SANTA BARBARA COUNTY.

APN: 017-240-021

EXHIBIT 'B'
PROGRAM DESCRIPTION

24-Hour Homeless Shelter

1. From December 1 through March 31, Owner will operate an emergency shelter and related services on the Property with up to 230 beds, with a monthly average of no more than 200 beds. At the request of the shelter operator, the Community Development Director may extend the duration of the emergency shelter operation and related services due to cold and/or rainy weather.

2. From April 1 through November 30 of each year, Owner will operate a shelter and related services on the Property with up to 100 beds.