

**AEMENDMENT NO. 3 TO THE AMENDED AND RESTATED
REPLACEMENT LICENSE AGREEMENT
GRANTING RIGHT OF ENTRY TO AND ALLOWING ACCESS ON
CERTAIN CITY OWNED PROPERTY PREAMBLE**

This license agreement (“License”) is entered into by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 (“City”), and **Habitat for Humanity East Bay/Silicon Valley, a 501(c)(3) not-for-profit organization**, with its principal place of business located at **2619 Broadway, Oakland, CA 94612**, (“Licensee”), for the purpose of providing Licensee the temporary right of access to Property described in this License and the right to use it for the activities referred to in this License. City and Licensee may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this License.”

The Parties to this License agree that the rights, privileges, and obligations granted by this License are set forth as follows:

LICENSE PROVISIONS:

1. PERMITTED ACTIVITIES

In response to Licensee’s request that City grant a temporary license to Licensee for access to certain City owned real property located at **3575 De La Cruz Boulevard** (the “Property”) and in consideration of the sum of **Zero** dollars (\$0.00) and other good and valuable consideration, City hereby grants Licensee a revocable license to use Property for the specific and limited use and purpose as set forth in this License. The Property is more specifically described in Exhibit A, attached and incorporated by this reference. Said temporary access to the Property is granted to Licensee, its employees, agents and contractors for the sole purpose of conducting the following activities:

- A. **Use.** Licensee, its employees, agents and contractors are authorized to enter on and cross over Property only for the limited purpose of **conducting a property survey and geotechnical, environmental, and utility studies** and to perform the necessary activities related to such limited purpose. It is understood by the Parties that the use(s) permitted under this License is/are limited to the purposes described above.

- B. **Access.** Licensee is granted limited rights of access to the Property by this License. Licensee’s access to the Property will be from **De La Cruz Boulevard**, the public road adjacent to the Property. Vehicular travel on the Property will be

limited to areas outlined in Exhibit A. Licensee must provide notice to the City requesting access to the Property as outlined in Exhibit B.

- C. **Gates.** Licensee agrees to keep all gates it utilizes closed if found to be closed, or open if found to be open.
- D. **Weather.** All activities will be conducted on a “weather permitting” basis. Licensee shall use its best efforts to keep surface disturbances to a minimum and avoid rutting of any roads. Any damage caused to the Property or any underground electrical ducts, storm sewer and water lines, manholes and appurtenances located on or under the surface of the Property or to any roads shall be promptly repaired by Licensee. The roads or any other area shall not be left in a rutted or otherwise damaged condition.
- E. **Prohibitions and Limitations.** Except as may be required to accomplish the permitted use(s) described in subsection 1A, above, the use(s) and activities authorized under this License shall not:
 - 1. significantly disturb the surface of the Property
 - 2. be inconsistent with those permitted on the Property
 - 3. interfere in any way with the City’s ownership rights and privileges on the property; and/or
 - 4. cause or contribute in any way to the contamination of all or any portion of the Property, by any substance, especially Hazardous Materials as that term is defined in section 4 of this License.

2. **TERM OF THE LICENSE**

In order to align with the term of Amendment No. 5 to the Exclusive Negotiating Rights Agreement between the City of Santa Clara, California and Habitat for Humanity East Bay/Silicon Valley, Inc., City grants this License for temporary access to the Property to Licensee for a time period commencing on the Effective date of the License and ending on June 30, 2023. Upon prior written approval by the City Manager or her designee, a six (6) month extension of the term of this License may be granted after Licensee submits a written request to City which justifies the extension.

3. **RETURN PROPERTY TO EXISTING CONDITION**

Immediately upon completion of the use of the Property permitted by this License, or upon the expiration of the term of this License, whichever occurs first, Licensee shall restore the Property to substantially the same condition as it was existing prior to Licensee’s use, as determined by City representatives. At that time, Licensee shall remove from the Property any and all equipment or materials used in conducting the

permitted activities. Licensee expressly acknowledges its financial obligation to fulfill this condition promptly. Licensee shall repair any damage caused to the existing underground electric ducts, storm sewer and water lines, manholes and/or appurtenances located on, above or under the surface of the Property.

4. **HAZARDOUS MATERIALS ON THE PROPERTY**

- A. Licensee shall not use or store Hazardous Materials of any kind on or near the Property which could contaminate the Property, without prior written permission from City. Subject to Section 4.D. below, in the event that any Hazardous Material is spilled or leaked or otherwise released on the Property or any area in the vicinity of the Property as a result of Licensee's exercise of this License, Licensee shall promptly take all steps necessary to remove any contamination resulting from such activities. Licensee accepts full responsibility for all activities and costs incurred related to cleaning up the Property from the effects of such spill or leak. Licensee shall be responsible for meeting, and possess the means to satisfy, the requirements of all federal, state and local controlling agencies, such as the Bay Area Water Quality Management District and/or the Environmental Protection Agency, which may have jurisdiction over the region in which the Property is located or over the substance being used by Licensee on the Property.
- B. **Hazardous Materials Defined.** The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA., 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous

Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

- C. **Hazardous Materials Indemnity.** Subject to Section 4.D. below, Licensee shall indemnify, defend (by counsel reasonably acceptable to City), protect and hold City harmless from and against any and all claims, liabilities, penalties, forfeitures, losses and/or expenses (including, without limitation, diminution in value of the Property, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Property, damages arising from any adverse impact or marketing of the Property and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, either prior to or during the term of this License, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about the Property by Licensee, Licensee's agents, employees, licensees or invitees or at Licensee's direction of Hazardous Material, or by Licensee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. Licensee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Property, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the term of this License. For purposes of the indemnity provided herein, any acts or omissions of Licensee, or its employees, agents, customers, sublessees, assignees, contractors or subcontractors of Licensee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Licensee.
- D. Notwithstanding anything to the contrary contained in this Section 4 Licensee shall not be liable for clean up of the exacerbation of pre-existing Hazardous

Materials located on the Property (“Pre-existing Materials”) that might be caused by Licensee’s activities hereunder, including, but not limited to, the movement of Hazardous Materials between levels of soils or into groundwater, nor shall Licensee’s indemnification in Section 4.C. apply to any discovery or exacerbation of Pre-existing Materials.

5. HOLD HARMLESS/INDEMNIFICATION

To the extent permitted by law, Licensee hereby agrees to protect, defend, hold harmless, and indemnify City, its council, officers, employees, agents, successors, and assigns, from and against all claims, injury, liability, loss, cost, and expense, or damage however same may be caused, including without limitation, all costs and reasonable attorney’s fees in providing a defense to any claim arising therefrom, or any loss of or damage to property (real and/or personal), and for personal injury to or the death of any person or persons, arising out of, occurring by reason of, or in any way connected with, Licensee’s operations, acts, errors, omissions or use of the Property or exercise of it rights under this License, except to the extent arising out of the negligence or willful misconduct of City.

6. INSURANCE REQUIREMENTS

During the term of this License, Licensee, and each of its contractors and agents which enter onto the Property to carry out permitted activities, shall each maintain in full force and effect the following insurance policies:

- A. Commercial general liability policy (bodily injury and property damage);
- B. Comprehensive automobile liability insurance policy; and
- C. Worker’s Compensation and employer’s liability policy.

Said policies shall be maintained with respect to employees, volunteers, participants and spectators and vehicles using the Property with coverage amounts and including the required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C, attached and incorporated by this reference.

7. CITY’S RIGHTS

City reserves the right to use the Property in any manner, provided such use does not unreasonably interfere with the rights granted to the Licensee in this License.

8. ASSIGNMENT - EXCLUSIVE TO LICENSEE

The access rights granted in this License are personal and limited solely to Licensee and its employees for the stated purpose set forth in this License. Licensee agrees not to commit waste or to construct, allow or maintain any use, construction or operate any equipment which constitutes a nuisance on the Property or which may in any way

interfere with the use, enjoyment or possession of the Property by City, or the City's lessee(s) or licensee(s) on the Property, if any. The Property shall not be used by any person or entity, including the Licensee or its employees, for any purpose other than stated in this License. Neither this License, nor the rights granted to Licensee within it, shall be assignable or otherwise transferable without the prior written consent of City. Unless specifically stated to the contrary in any written consent to an assignment, no assignment or other transfer will release or discharge the Licensee from any duty, responsibility or liability under this License.

9. **REVOCAION OR TERMINATION OF LICENSE**

This License may be revoked or terminated with or without cause by City immediately upon providing written notice of said revocation or termination to Licensee, or its representative. If any notice given pursuant to the License is not personally delivered to Licensee, said notice shall be deemed to be delivered five (5) days after deposit of said notice in a sealed envelope, postage fully prepaid, in a mailing facility regularly maintained by the United States Post Office Department, addressed as follows:

If to Licensee:

Janice Jensen
Habitat for Humanity East Bay/Silicon Valley
2619 Broadway
Oakland, CA 94612

and to City at:

City of Santa Clara
Attention: City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
or by facsimile at (408) 241-6771

10. **AUTHORITY TO GRANT LICENSE**

City warrants that it is the owner of the Property and that it has the full rights and authority to grant the rights to the Licensee which are contained in this License.

11. **LICENSE TO BE CARRIED ON SITE**

This License, or a copy of the License, must be in the immediate possession of Licensee's representative at all times while on the Property.

12. **COUNTERPARTS**

This License may be executed in two counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

13. **FACSIMILE SIGNATURE**

The Parties agree that signatures on this License, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

Office of the City Attorney
City of Santa Clara

Rajeev Batra
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

HABITAT FOR HUMANITY EAST BAY/SILICON VALLEY

Dated: _____

By: _____

(Signature of Person executing the Agreement)

Name: Janice Jensen

Address: 2619 Broadway

Oakland, CA 94612

Telephone 510-251-6304

Fax: 510-251-6309

“LICENSEE”

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EXHIBIT A

APN: 101-15-049

NOTICES

All access notices required under this Agreement shall be in writing and shall be delivered with a minimum 24 hour notice prior to requesting access. Notices shall be delivered to the City at:

City of Santa Clara
Attention: Housing and Community Services Division
1500 Warburton Avenue
Santa Clara, CA 95050

If by electronic mail:
amarcus@santaclaraca.gov
copy to: communityservice@santaclaraca.gov

The notice of request for site access shall include the following:

- Date/Time of requested access
- Anticipated length of time needed at the site
- Name(s) of firms and individuals to be on site
- Scope of work (i.e., the activities to be conducted) with a confirmation that any appropriate permits have been secured.

A representative of the City will arrange for the gates to be opened at its earliest convenience.

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EXHIBIT B

The Insurance Certificate Must:

- * The Insurance Certificate must: Be an original document.
- * List all subsidiaries or DBA's covered by the certificate provided.
- * Provide at least 30 days' notice of cancellation.
- * Show complete insurance carrier names as listed in the A.M. Best Property & Casualty Guide * Be completed in its entirety and signed. Binders are not acceptable.

Commercial General Liability (CGL)

Occurrence form – requires coverage not less than:

\$1,000,000	General Aggregate
\$1,000,000	Products and Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence

- * Coverage must be placed with a carrier rated not less than A- VI by A.M. Best & Co.
- * Additional Insured Endorsement Required. Attach a CG 2026 11/85 Additional Insured Endorsement, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent, or CGL 090 74 18.
- * Additional Insured Wording must read: The City of Santa Clara, its City Council, commissions, officers, employees, agents and volunteers.
- * Coverage must be Primary and Non-Contributory above any other insurance The City of Santa Clara, its City Council, commissions, officers, employees, agents and volunteers may carry.

Commercial Automobile Liability:

Must indicate coverage for Any Auto or Owned, Hired or Borrowed, and Non-owned Vehicles

\$1,000,000	Combined Single Limit
\$1,000,000	Bodily Injury per Accident

Coverage must be placed with a carrier rated not less than A- VI by A.M. Best & Co.

Workers' Compensation:

State Statutory Limits

Employers' Liability Coverage

\$1,000,000	Each Accident
\$1,000,000	Disease – Policy Limit
\$1,000,000	Disease – Each Employee

Certificate Holder:

City of Santa Clara

c/o Ebix BPO – Insurance Compliance

P.O. Box 100085 – S2 or

1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097EBIX Inc.

Fax documents for compliance & verification of insurance requirements to (770) 325-0409 or

Email to ctsantaclara@ebix.com - For customer service and inquires, call (951)766-2280