

RECORDING REQUESTED BY, AND
WHEN RECORDED MAIL TO:

City Clerk
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92842

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Fee exempt per Govt. §§ 6103 and 27383

PARCEL NUMBER(S): **101-011-09**

PROJECT: **Storm Drain Facility at 13096 Blackbird Street**

**COVENANT AND AGREEMENT FOR CONSTRUCTION AND MAINTENANCE
OF STORM DRAIN FACILITY AND MONUMENT SIGNS**

This COVENANT AND AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF STORM DRAIN FACILITY AND MONUMENT SIGNS ("Agreement") is entered into between the CITY OF GARDEN GROVE (City) and CARITAS ACQUISITIONS I, LLC, (Property Owner) and his/her/its successors in interest of Assessor Parcel Number 101-011-09 (the "Property") located at 13096 Blackbird Street in the City of Garden Grove, Orange County, California.

1. The Storm Drain Facilities and Monument Signs. Property Owner wishes to construct a storm drain facility commencing at an inlet on the Public Right of Way at the end of the cul-de-sac of Blackbird Street, along with two monument signs located at the entrance of the Property which will be partially located within City's Public Right-of-Way easement. City hereby agrees, and grants its permission to the Property Owner to encroach into the Public Right-of-Way for the purpose of installing such storm drain improvement and monument signs. The location and dimensions of the encroachment is shown in Exhibit "A" and depicted therein as the "Encroachment Area." City has agreed to provide a one-time contribution to Property Owner in the amount of \$234,000 for the storm drain public improvement work in return for Property Owner's construction of, maintenance of, and covenants for the public improvement work as provided for in this Agreement. This Agreement is subject to the following terms and conditions:

- (A) Except for the one-time contribution by the City, the storm drain facility work and the construction of the monument signs within the Encroachment Area shall be performed and maintained in a safe and sanitary condition at the sole cost, risk, and responsibility of the Property Owner and its successors in interest. The Property Owner shall be responsible for all for all repairs and shall not allow the improvements to become dangerous, unsightly, or detrimental to the surrounding neighborhood.

- (B) The Property Owner shall indemnify, defend, and hold harmless the City, its council members, officers, employees and agents from and against any and all claims, demands, loss or liability of any kind, including reasonable attorney fees and costs, (collectively, "Claims") which the City may sustain resulting from: (1) Property Owner's activities on or about the Affected Property and/or Encroachment Area; (2) Property Owner's performance of any act on or about the Encroachment Area in connection with this Agreement; and (3) damage to the Encroachment Area. The indemnification requirements of this agreement shall survive the termination of this Agreement until all claims and actions related hereto have been fully and finally resolved.
- (C) The City's rights to the Encroachment Area are paramount to the Property Owner's interest. Whatever rights and obligations were acquired by the City with respect to the Encroachment Area shall remain and continue in full force and effect and shall in no way be affected by City's grant of permission to install and maintain the storm drain facility or monument signs.
- (D) The Property Owner acknowledges that the Encroachment Area is dedicated as right-of-way to the public, and as such, all rights for ingress and egress, public service, public utilities and all other public utility or governmental purposes are reserved by the City. As needed, all utilities have the right to lay, construct, reconstruct, remove and replace, renew, inspect, maintain, repair, improve and relocate their facilities in the Encroachment Area, if any, which may require repair to, removal of, and/or relocation of the storm drain facilities placed by the Property Owner. All costs to repair, remove and/or relocate said impacted storm drain facilities occasioned by the above shall be borne by the Property Owner.
- (E) In the event that the City causes any damage in the Encroachment Area to the storm drain and/or monument sign improvements (or to any other non-permitted items or improvements placed or constructed by the Property Owner within the Encroachment Area without City's consent) during City's inspection, maintenance, repairs, or replacement of utility facilities, or other exercise of City's rights in the Encroachment Area, the Property Owner assumes full responsibility for the cost and implementation of any and all repair or replacement of the landscape and irrigation improvements, or other related items or improvements, and any damage or injury caused to persons or property. The City, its officers, council,

employees, agents and consultants, shall not be responsible for any damage(s) to or because of the Encroachment Area which results from the City's exercise of its rights.

(F) Property Owner assumes full responsibility, liability and shall pay for any cost(s) or damage(s) to the City's facilities and appurtenant structures, arising from or related to the construction, existence, and/or use of the Encroachment Area by Property Owner.

(1) **Damage to Encroachment Area.** Except for the approved storm drain improvements and monument signs on the Encroachment Area, Property Owner shall not alter or impair the appearance of the Encroachment Area or cause any damage to the Encroachment Area in the exercise of the privileges granted by this Agreement. In the event that Property Owner intentionally or negligently causes damage to the Encroachment Area, the Property Owner shall immediately repair any such damage at Property Owner's sole cost and expense. The City may elect to repair such damage itself, in which case, Property Owner agrees to and shall reimburse the City for the reasonable costs and expenses in connection therewith.

(2) **Assessment Lien.** If the Property Owner fails to timely reimburse the City for the costs and expenses of repairing damages to the Encroachment Area, the total costs for such repairs shall constitute a special assessment against the Property. Upon recordation in the Office of the County Recorder of a Notice of Lien, the assessment shall constitute a lien on said Property for the amount of such assessment. The assessment shall be collected at the same time and in the same manner as regular city taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for regular city taxes. All laws applicable to the levy, collection and enforcement of city taxes shall be applicable to such special assessment and lien.

3. **Not a Real Property Interest.** It is expressly understood by the Parties that this Agreement does not in any way whatsoever grant or convey an ownership, easement, leasehold, fee or any other interest or estate in real property to the Property Owner.

4. **Entire Agreement.** This Agreement constitutes the entire agreement

between the parties with respect to the subject matter hereof and supersedes and replaces all other agreements, oral or written, between the parties with respect to the subject matter.

5. Notices. Any notice which is required or may be given pursuant to this Agreement shall be sent in writing by United States mail, first class, postage pre-paid, registered or certified with return receipt requested, or by other comparable commercial means and addressed as follows:

If to the City:

City Manager
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92842

If to the Property Owner:

Chief Executive Officer
Caritas Acquisitions I, LLC
5520 Trabuco Rd.
Irvine, CA 92620

These addresses may be changed from time to time by providing notice to the other party in the manner described above.

6. No Waiver. City's consent to or approval of any act or omission by the Property Owner shall not constitute a waiver of any other default by the Property Owner and shall not be deemed a waiver or render unnecessary City's consent for approval to any subsequent act by the Property Owner. Any waiver by City of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Agreement.

7. Successors and Assigns. This Agreement shall be binding and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns. The Property Owner agrees to incorporate this agreement by reference in any subsequent deeds to the property, but any failure to do so does not invalidate this provision.

8. Termination. This Agreement shall continue in full force and effect, subject to the conditions set forth, unless terminated by the Property Owner or City upon 30 days written notice; or shall be immediately terminated if the Property Owner fails to adhere to any conditions of this Agreement or if the Property Owner fails to maintain improvements to the point that the City believes said failure to be detrimental to the public health, safety and welfare.

9. Capacity. Each party represents that the person(s) executing this Agreement on behalf of such party has the authority to execute this Agreement and by such signature(s) thereby bind such party.

10. Non-Exclusive Agreement. Subject to the terms and conditions of this

agreement, the City reserves the right to allow other parties to utilize the Encroachment Area for any purpose consistent with the City's use of the right-of way, which the City may so designate.

11. Taxes and Assessments. Should this agreement be determined to create an interest subject to real property taxation and/or assessments, Property Owner shall pay, before delinquency, all lawful taxes, assessments, fees or charges which may be levied by the State, County, or any other tax or assessment-levying body upon the Encroachment Area and any improvements thereon.

12. Severability. If any provision contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect without being impaired or invalidated in anyway whatsoever.

13. Interpretation and Venue. This Agreement shall be governed and construed under the laws of the State of California. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Orange. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Central District of California.

14. Effective Date. The effective date of this agreement shall be the latest date of execution hereinafter set forth below the names of the signators hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the following dates.

<p>CARITAS ACQUISITIONS I, LLC a California Limited Liability Company</p> <p>By its manager:</p> <p>The Caritas Corporation, a California Nonprofit Corporation</p> <p>By: _____ Robert R. Redwitz Chief Executive Officer</p> <p>Dated: _____</p>	<p>CITY OF GARDEN GROVE</p> <p>By: _____ Scott C. Stiles City Manager</p> <p>Dated: _____</p> <p>Attest:</p> <p>_____ City Clerk</p> <p>Approved as to form:</p> <p>_____ City Attorney</p>
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Exhibit "A"
ENCROACHMENT AREA

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On _____, 2018, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(seal)

Signature _____