

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

City of Santa Ana  
City Clerk  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, California 92702  
Attention: City Clerk

Free Recording pursuant to  
Government Code 27383

**DENSITY BONUS HOUSING AGREEMENT WITH DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

**510-520 North Harbor Boulevard; APN: 100-63-04, 100-63-05**

This DENSITY BONUS HOUSING AGREEMENT WITH DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (“Agreement”), is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024, for reference purposes only, by and between the City of Santa Ana, a charter city and municipal corporation of the State of California (“City”), and Alminlo Properties, a California limited liability company (“Developer”). City and Developer are sometimes referred to collectively as the “Parties” and individually as a “Party.”

RECITALS

- A. Developer is the owner of that certain property located within the City of Santa Ana, County of Orange, State of California, commonly known as 510 and 520 North Harbor Boulevard, Santa Ana, California, and legally described as set forth in Exhibits A-1 and A-2, which are attached hereto and incorporated herein by this reference as if set forth in full (“Property”).
- B. Developer is proposing to develop a residential development consisting of no more than forty five (45) units, five (5) of which are proposed as moderate income residential ownership units on the Property, as more particularly set forth in Density Bonus Application No. DBA-XXXX (“Project”).
- C. Santa Ana Municipal Code sections 41-1600, *et seq.* (“City Density Bonus for Affordable Housing”), and California Government Code sections 65915, *et seq.* (“State Density Bonus Law”), set forth a process to provide increased residential densities and incentives, concessions, and waivers to property owners or developers who restrict a portion of their residential development to moderate income households, as specified. These regulations are intended to materially assist the housing industry in providing adequate and affordable housing for all

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economic segments of the community and to provide a balance of housing opportunities throughout the City.

~~D. The Project is proposing a total number of forty five (45) residential ownership units, including five (5) units for Moderate Income Tenants, as defined herein.~~

D. ~~E.~~ The Project complies with the affordability requirements for a housing development as set forth in the State Density Bonus Law and City Density Bonus for Affordable Housing.

E. ~~F.~~ In light of the purpose of the State Density Bonus Law and City Density Bonus for Affordable Housing, and the express provisions of Government Code Section 65915(d)(1)(2)(A), the City has determined that the Project is eligible for one (1) incentive or concession, and waivers as prescribed by the State Density Bonus Law.

F. ~~G.~~ This Agreement, and the exhibits attached hereto and incorporated herein by reference, are intended to set forth the terms and conditions for the implementation of the Project's requirement to provide affordable housing units in exchange for receiving the density bonus, concession and waivers set forth herein.

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein by this reference, and of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS

1.1 Definitions. In addition to the terms that may be defined elsewhere in this Agreement, the following terms when used in this Agreement shall be defined as follows:

1.1.1 **"Affordability Covenants"** means, ~~pursuant to California Government Code Section 65915(e)(2)(A)(ii)(III),~~ restrictions on the sale and conveyance of the Property pursuant to California Government Code Section 65915 that ensure that the Property will be preserved for lower income housing for at least 55 years for owner-occupied housing units and will be sold or resold only to persons or families of very low, low, or moderate income, as defined in Section 50052.5 of the California Health and Safety Code.

1.1.2 **"Adjusted for family size appropriate to the unit"** shall have the meaning set forth by Health and Safety Code Section 50052.5(h).

1.1.3 **"Administrative Procedures Manual"** shall mean the City's Administrative Procedures Manual: Ownership Housing Development, setting forth rules and regulations for the City's homeownership program.

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1.1.4 **"Affordability Term"** means the duration of the Affordability Covenants as set forth in Section ~~3-23.1~~.

1.1.5 **"Affordable Housing Cost"** means the total housing costs paid by a qualifying Moderate Income Household in accordance with California Health and Safety Code Section 50052.5.

1.1.6 **"Affordable Housing Resale Restrictions"** means the restrictions imposed on each Affordable Unit that restrict sales to qualified Eligible Households pursuant to a local preference for families who live or work in the City of Santa Ana at an Affordable Sales Price, in the form of Exhibit B attached hereto.

1.1.7 **"Affordable Sales Price"** means the maximum sales price that can be charged for an Affordable Unit as set forth in Section ~~3-4.23.3.2~~.

1.1.8 **"Affordable Units(s)"** means the five (5) unit(s), which shall comprise of four (4) three-bedroom units and one (1) four-bedroom unit, which always must be proportionate to the unit mix for the property. Any change to the number, bedroom size, or distribution of Affordable Units is subject to City Manager approval.

1.1.9 **"Agreement"** means this Density Bonus Housing Agreement With Declaration of Covenants, Conditions and Restrictions.

1.1.10 **"Benchmark Down Payment"** is a component of the Affordable Sales Price calculations. For the purposes of this Agreement, the Benchmark Down Payment is set at 5% of the total Affordable Sales Price. The Benchmark Down Payment is used solely as a component for determining the Affordable Sales Price for an Affordable Unit. It does not represent a cap on the down payment amount that can be contributed by a Homebuyer.

1.1.11 **"City"** means the City of Santa Ana, California.

1.1.12 **"City Attorney"** means the City Attorney for the City of Santa Ana.

1.1.13 **"City Council"** means the City Council of the City of Santa Ana.

1.1.14 **"City Manager"** means the City Manager for the City of Santa Ana.

1.1.15 **"City's Planning Commission"** means the Planning Commission for the City of Santa Ana.

1.1.16 **"Declaration of Inclusionary Housing Covenants, Resale Restrictions and City's Option to Purchase Agreement"** (**"Declaration of Resale Restrictions"**) means the resale restrictions for prospective buyers in the form attached hereto as Exhibit B.

1.1.17 **"Density Bonus Application"** shall mean the Density Bonus Application No. ~~XXXXXX~~ for the Project.

Shaw, Claudia [SC1] December 5, 2024 08:17 AM  
The City does not enter into a Deed of Trust with Inclusionary Buyers

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1.1.18 "**Developer**" means Alminlo Properties, a California limited liability company, and its permitted successors and assigns to all or any part of the Property, Project or this Agreement.

1.1.19 "**Effective Date**" means the date the Developer and the City shall record or cause to be recorded in the Official Records for Orange County, California, an executed original of this Agreement, pursuant to section 4.2 herein.

1.1.20 "**Eligible Household**" means a Household whose income does not exceed the "Moderate Income Household" qualifying limit as defined herein.

1.1.21 "**Gross Household Income**" means all income from whatever source from all adult Household members, which is anticipated to be received during the 12-month period following the date of the determination of Gross Household Income. The applicable sources of income are defined in California Code of Regulations Title 25 Housing and Community Development Section 6914. The definition includes the following specific requirements:

(a) Except as provided in subdivision (b), all payments from all sources received by the head of Household (even if temporarily absent) and each additional member of the Household who is not a minor shall be included in the annual income of a Household. Gross Household Income shall include, but not be limited to:

(i) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses;

(ii) The net income from operation of a business or profession or from rental or real or personal property (for this purpose, expenditures for business expansion or amortization of capital indebtedness shall not be deducted to determine the net income from a business);

(iii) Interest and dividends;

(iv) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts (but see subdivision (2)(c));

(v) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay;

(vi) Public Assistance. If the public assistance payment includes an amount specifically designated for shelter and utilities which is subject to adjustment by the public assistance agency in accordance with the actual cost of shelter and utilities, the amount of public assistance income to be included as income shall consist of:

(1) The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities, plus

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(2) The maximum amount which the public assistance agency could in fact allow for the Household for shelter and utilities.

(vii) Periodic and determinable allowances such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;

(viii) All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the Household or spouse or domestic partner (but see subdivision (b)(v));

(ix) Where a Household has net assets in excess of \$5,000, income shall include the actual amount of income, if any, derived from all of the net Household assets or 10 percent of the value of all such assets, whichever is greater. For purposes of this section, net Household assets means value of equity in real property other than the Household's full-time residence, savings, stocks, bonds, and other forms of capital investment. The value of necessary items such as furniture and automobiles shall be excluded.

(b) The following items shall not be considered as income:

(i) Casual, sporadic or irregular gifts;

(ii) Amounts which are specifically for or in reimbursement of the cost of medical expenses;

(iii) Lump-sum additions to Household assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;

(iv) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans not used for the above purposes of which are available for subsistence are to be included in income;

(v) The special pay to a serviceman head of a Household away from home and exposed to hostile fire;

(vi) Relocation payments made pursuant to federal, state, or local relocation law;

(vii) Foster child care payments;

(viii) The value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged the eligible Household;

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(ix) Payments received pursuant to participation in the following volunteer programs under the ACTION Agency:

(1) National Volunteer Antipoverty Programs which include VISTA, Service Learning Programs and Special Volunteer Programs.

(c) National Older American Volunteer Programs for persons aged 60 and over which include Retired Senior Volunteer Programs, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Program to Assist Small Business Experience, Service Corps of Retired Executive (SCORE) and Active Corps of Executives (ACE)

1.1.22 "**Homebuyer**" means an Eligible Household that has entered into an agreement to purchase an Affordable Unit in accordance with this Agreement.

1.1.23 "**Household**" means all the persons who will occupy the Affordable Unit as their primary residence. The size of a prospective Household must be compatible with the size of the Affordable Unit to be purchased. The minimum number of occupants is three (3) for the three-bedroom units and four (4) for the four-bedroom units. The maximum number of occupants is eight (8). A child who is subject to a legally-binding shared-custody agreement, in which the child resides with the Household at least 50% of the time, is counted as a member of the Household. For the purpose of calculating the Household income and not the number of occupants, excluded from the definition of Household are live-in caregivers/caretakers, foster children, unborn children and children being pursued for legal custody or adoption that are not currently living with the Household.

1.1.24 "**Housing Cost**" means and includes all of the following costs associated with ownership of an Inclusionary Unit as defined in Title 25 of the California Code of Regulations Section 6920:

- (a) Principal and interest on a mortgage loan at the defined interest rate;
- (b) Property tax and assessments;
- (c) Fire and casualty insurance covering replacement value of property improvements;
- (d) Property maintenance and repairs;
- (e) A reasonable utility allowance, as determined by the City; and
- (f) Homeowner Association assessments and dues.

1.1.25 "**Median Income**" means the Orange County, California area median income, adjusted for family size appropriate to the unit pursuant to California Health and Safety Code § 50052.5(h), as periodically published by HCD.

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1.1.26 "**Moderate Income Household(s)**" means a Household whose income does not exceed One Hundred Twenty Percent (120%) of the area median income for the Orange County, California PMSA, adjusted for household size, as published by HCD.

1.1.27 "**Project**" means that certain affordable residential development as more particularly described in the Recitals and Section 2 of this Agreement.

1.1.28 "**Project Approvals**" means all approvals, conditions, and entitlements issued by the City, inclusive of the Planning Commission and City Council.

1.1.29 "**Property**" means that certain real property more particularly described in the legal description in Exhibit A and improvements thereon.

1.1.30 "**State Density Bonus Law**" means Government Code Section 65915, et seq., as they exist on the Effective Date.

1.1.31 "**Supportable Mortgage**" means the mortgage amount that can be supported by a Moderate Income Household based on the Affordable Housing Cost calculations. The mortgage calculation is based on the prevailing market interest rate for a 30-year fully amortizing mortgage with a fixed interest rate. The Supportable Mortgage shall be determined in accordance with the City's Administrative Procedures Manual, provided that it should be determined for a Moderate Income Household consistent with the requirements of this Agreement and State Density Bonus Law.

1.1.32 "**Term**" means the period during which this Agreement shall be in full force and effect, as provided for in Section 5.1 below.

1.1.33 "**Unit**" means a residential dwelling unit within the Project to be constructed or caused to be constructed by Developer pursuant to this Agreement.

1.1.34 "**Unrestricted Units**" means the Units within the Project to be constructed or caused to be constructed by Developer to a Household without restriction.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

- |  |                         |   |
|--|-------------------------|---|
| 1.2.1  | <b>Exhibit A (1-2):</b> | Legal Description of the Property                   |
| 1.2.2  | <b>Exhibit B:</b>       | Declaration of Inclusionary Housing Covenants       |
| <del>Resale Restrictions and City's Option To Purchase Agreement</del> |                         |   |
| 1.2.3  | <b>Exhibit C:</b>       | Income Verification Form                            |
| 1.2.4  | <b>Exhibit D:</b>       | Certification of Continued Occupancy                |
| 1.2.5  | <b>Exhibit E:</b>       | Disclosure, Acknowledgment and Assumption Agreement |

2. DEVELOPMENT OF THE PROPERTY

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2.1 Project. Developer shall develop, operate, and maintain, or cause the development, operation and maintenance of, the Property as forty five (45) ~~single family homes~~Units, with five (5) Affordable Units for Eligible Households in accordance with this Agreement and the Project Approvals.

2.2 Density Bonus. The Project shall have forty five (45) Units, to be sold, owned, occupied, operated, and maintained pursuant to the terms and conditions of this Agreement. Developer understands and agrees that Developer is not requesting an increase in density and that this Agreement does not allow or approve an increase in residential density over the allowed density regulations of the City. Developer shall not construct or develop, or otherwise claim a right to construct or develop any additional residential units on the Property under this Agreement.

2.3 Development Concessions, Incentives, and Waivers. As set forth in the City entitlements, Developer petitioned for and is hereby granted the following concessions, incentives, and waivers as part of the approval of Density Bonus Application:

2.3.1 Concession. In accordance with Government Code Section 65915(d)(1), the Project is granted one (1) concession for relief from City Municipal Code Section 41-592.3 and SP-2, Ch. 3, Frontyard/Porch Frontage Type Configuration Requirement, contained at 1, on Page 3-9, which would ordinarily require the Project provide porch dimensions as follows: a minimum porch depth of 6 feet, a minimum porch width of 10 feet (for asymmetrical entries) and a minimum porch height of 10 feet. Pursuant to the Project Approvals, the Project shall provide the following: ~~XXXXXXXX~~

anonymous [2] December 4, 2024  
06:14 PM  
What is the requirement?

(a) Clear ground floor height minimum of nine feet-one inch (9'-1");

(b) Porch depth minimum of four feet (4') (measured from face of landing to building façade); and,

(c) Asymmetrical entry width minimum of nine feet-six inches (9'-6").

2.3.2 Waivers. In accordance with Government Code Section 65915(e), provided the Project complies with the Project Approvals, the Project is granted the following waivers or reductions from Onsite Open Space Requirements:

(a) The requirement of City Municipal Code Section 41-592.3 and SP-2, Ch. 3, Table 3-9, to provide minimum private open space of 90 square feet per unit is waived for eighteen (18) units.

(b) The requirement of City Municipal Code Section 41-592.3 and SP-2, Ch. 3, Table 3-9, for minimum private open space dimensions is reduced from six (6) feet to four feet-six inches (4'-6").

(c) The requirement of City Municipal Code Section 41-592.3 and SP-2, Ch. 3, Table 3-9 for common open space is reduced from 12,219 square feet, which is 15% of the lot area, to 3,853 square feet.

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2.4 Parking Requirements. Onsite parking shall be provided in compliance with Government Code Section 65915(p). The Project shall provide not less than ninety nine (99) parking spaces.

2.5 No Further Concessions, Incentives, or Waivers. Developer acknowledges and agrees that no further concessions, incentives, waivers or parking requirements are requested, and that the terms set forth in Section 2.3 and 2.4 fully satisfies any duty City may have under the City Density Bonus for Affordable Housing, the Density Bonus Law, or any other law or regulation to provide any density bonus incentive or to waive any building, zoning, or other requirement in connection with a density bonus. By this Agreement, Developer releases any and all claims Developer may have against City in any way relating to or arising from City's obligation to waive requirements of or provide development incentives pursuant to the City Density Bonus for Affordable Housing and the Density Bonus Law applicable to the Project.

2.6 Unit Mix.

2.6.1 Unrestricted Units. The Project, for purposes of this Agreement, may have no more than forty (40) Unrestricted Units, as set forth ~~in sub-paragraph~~Section 2.6.3, below, and pursuant to the terms and conditions of this Agreement. Any change to the unit distribution of the Unrestricted Units may affect the comparability of the Affordable Units and is subject to City Manager approval.

2.6.2 Affordable Units. The Project, for purposes of this Agreement, shall have no less than five (5) Affordable Units, for Moderate Income Households, as set forth in ~~sub-paragraph~~Section 2.6.3, and pursuant to the terms and conditions of this Agreement. The Affordable Units shall be consistent with the Project Approvals, comparable in bedroom distribution and amenities to the Unrestricted Units, and shall be located throughout the Project as required under Santa Ana Municipal Code section 41-1602(c)(5).

2.6.3 Unit Mix. Four (4) Affordable Units shall be three-bedroom units and one (1) Affordable Unit shall be a four-bedroom unit. The Affordable Units shall be consistent with the Project Approvals for approved for the Project.

2.7 Minimum Development Standards for Affordable Units. The Affordable Units shall be constructed with the same exterior appearance and interior features, fixtures, and amenities, and shall use the same type and quality of materials as provided for any Unrestricted Units, regardless of whether such Unrestricted Units are in the Project.

2.8 Permits and Processing; Compliance with Laws. Developer, at its sole cost and expense, or as otherwise set forth in a separate written agreement, shall secure or cause to be secured any and all permits that may be required for development of the Project by City or any other federal, state, or local governmental entity having or claiming jurisdiction over the Property or Project. Upon securing any and all permits, and all necessary financing and property interests, Developer shall carry out and perform the development, operation, and maintenance of the Project or cause the performance of the development, operation, and maintenance of the Project, in conformity with all applicable federal, state, and local laws and regulations, and all conditions

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of approval issued by the City Council and City's Planning Commission for the Project, inclusive of the Project Approvals. Any changes to the Project shall be reviewed by the City to determine compliance with this Agreement. If any changes to the Project shall materially alter the ability of Developer to comply with any terms of this Agreement in City's sole determination, then City and Developer shall meet and confer to address amendments and revisions to this Agreement as necessary.

2.9 Relocation Prior to Development of Project. If relocation is required prior to the completion of development of the Project, Developer shall have the sole and exclusive responsibility for providing relocation assistance and paying all relocation costs as may be required to comply with applicable federal and state laws and regulations. In addition to any other indemnity provided by Developer under this Agreement, Developer shall indemnify, defend (with counsel of City's choosing and the consent of Developer, which shall not be unreasonably withheld, and which may be joint defense counsel upon City's and Developer's consent), and hold harmless City and all of its officials, officers, employees, representatives, volunteers and agents from any and all alleged or actual claims, causes of action, liabilities, and damages from any third party for relocation assistance, benefits and costs prior to the completion of the development of the Project.

2.10 Mechanic's Liens; Indemnification. Developer shall take all actions reasonably necessary to remove any future mechanic's liens or other similar liens (including design professional liens) against the Property or Project, or any part thereof, by reason of work, labor, services, or materials supplied or claimed to have been supplied to Developer or caused by, at the direction of, or on behalf of Developer. Prior to the recording of this Agreement (or memorandum thereof) pursuant to Section 4.2 below, Developer shall provide evidence from the Title Company of any new recordings against the Property or Project. City hereby reserves all rights to post notices of non-responsibility and any other notices as may be appropriate upon a filing of a mechanic's lien. In addition to any other indemnity provided by Developer under this Agreement, Developer shall indemnify, defend (with counsel of City's choosing and the consent of Developer, which shall not be unreasonably withheld, conditioned or delayed and which may be joint defense counsel upon City's and Developer's consent), and hold harmless City and all of its officials, officers, employees, representatives, volunteers and agents from any and all alleged or actual claims, causes of action, liabilities, and damages from any third party by reason of a mechanic's lien or work, labor, services, or materials supplied or claimed to have been supplied to Developer or caused by, at the direction of, or on behalf of Developer.

3. **AFFORDABILITY**

3.1 Total Affordability Term. ~~Pursuant to~~ Subject to the requirements of California Government Code Section 65915(c)(2)(A)(ii)(III), each Affordable Unit shall be restricted to use and occupancy by an Eligible Household for a total period of no less than fifty-five (55) years ("Total Affordability Term") as required by City Municipal Code Section 41-1902. The Total Affordability Term for an Affordable Unit shall commence on the date that the building in which the Affordable Unit is located receives all required occupancy permits from the City.

3.2 ~~3.2~~ Memorializing Commencement of Total Affordability Term. Developer shall keep or cause to be kept detailed records of the commencement date of the Total

Brown, Judson [BJ3] December 5,  
2024 09:26 AM  
Fix index numbering

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Affordability Term for each Affordable Unit. City shall have the right to review and verify said records without a fee from City to Developer to ensure that the commencement date specified by Developer for an Affordable Unit coincides with the date that the initial Affordable Unit received all permits from City required for occupancy of the Unit. In the event that a conflict exists between the date specified by Developer for the commencement of the Total Affordability Term for an Affordable Unit and the date specified by City's issuance of all required permits for occupancy of the Unit, the date specified by City's issuance of all required permits for occupancy of the Unit shall control.

3.3 ~~3.3~~ Levels of Affordability.

3.3.1 ~~3.3.1~~ Moderate-Income Households. Subject to the terms of Section 5, Developer covenants that no less than five (5) Affordable Units in the Project shall at all times during the Density Bonus Housing Agreement Term be sold or conveyed to, or preserved for ~~Moderate Income Households, and will be sold or resold onto to Moderate Income~~Eligible Households.

~~3.1 Affordability Covenants and Restrictions.~~

~~3.3.2~~ ~~3.1.1~~ Affordable Homeownership Sales Price. Developer covenants that, during the Affordability Term, each Affordable Unit shall be sold to, or held vacant for sale to, an Eligible Household for an Affordable Sales Price.

~~3.1.2 Affordable Sales Price.~~ The Affordable Sales Price is equal to the sum of the Supportable Mortgage plus, if applicable, the Benchmark Down Payment. Prior to the sale of any Affordable Unit, Developer shall provide the City with at least thirty (30) days' written notice of the determined amount, and the City shall have ten (10) days to approve or disapprove of the proposed Affordable Sales Price. The Affordable Sales Price for Affordable Units shall be adjusted quarterly until all Affordable Units are sold and, thereafter, determined in connection with each re-sale, as applicable.

3.4 ~~3.2~~ Notice to City. Prior to entering into an agreement for the transfer of an Affordable Unit, Developer shall provide at least thirty (30) days written notice to the City, along with a proposed written agreement setting forth the terms of the sale, including the proposed Affordable Sales Price.

3.5 ~~3.3~~ Homebuyer Documents. The sale of each Affordable Unit is subject to satisfaction of the following conditions:

3.5.1 ~~3.3.1~~ Each Homebuyer shall execute the **Declaration of Resale Restrictions**, each of which shall be recorded against the Affordable Unit.

3.5.2 The Declaration of Resale Restrictions shall provide for the terms of resale and the distribution of proceeds from any sale, as follows:

(a) RESERVED (PENDING FURTHER REVIEW)

Shaw, Claudia [SC4] December 5, 2024 07:41 AM  
~~we do not execute a Promisory Note because we are not making a loan~~

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~~(a) The Homebuyer selling the Affordable Unit shall retain the value of any improvements and the down payment that were paid for by the seller, and the seller's proportionate share of appreciation.~~

4. OPERATION OF THE PROJECT BY DEVELOPER

4.1 Payment of Density Bonus Setup Fee. A Density Bonus Setup Fee in the amount of Fifteen Thousand Nine Hundred Sixty Seven Dollars and Ninety Cents (\$15,967.90), will be charged to the Developer and must be paid prior to execution of this Agreement.

4.2 Recording of Documents; Priority.

4.2.1 Prior to issuance of building permits for the Project, Developer and the City shall record or cause to be recorded in the Official Records for Orange County, California, an executed original of this Agreement. City shall cooperate with Developer in promptly executing in recordable form this Agreement. The date of recording of the Agreement shall be the Effective Date of the Agreement. Upon the date of recording, the terms and conditions of this Agreement shall be binding upon and run with the Property and Project for the Term of this Agreement. It is the express intent and agreement between the Parties that this Agreement shall remain binding and enforceable against the Property, the Project, and the Units to ensure compliance with the State Density Bonus Law and City Density Bonus Law, and to ensure the continued supply of Affordable Units in the Project, except as expressly set forth in this Agreement.

4.2.2 The Agreement shall be recorded against the Property and have priority over those matters of public record, except as approved in writing by the City; provided, however, prior to issuance of a certificate of occupancy (or its equivalent) for the Project, the Parties may execute an amendment to this Agreement or other appropriate instrument that ensures that the requirements of this Agreement are properly recorded against each Affordable Unit and memorializes Owner's obligation to provide the Affordable Units on a for-sale basis in accordance with this Agreement and, upon the recording of such instrument as to the individual Affordable Units, the City may determine, in its sole and absolute discretion, to a release of this Agreement to the Property as a whole.

4.2.3 Prior to issuance of a certificate of occupancy (or equivalent) for any Unit, Developer, at its sole cost and expense, shall deliver to City evidence that this Agreement is senior to any other lien, deed of trust, mortgage, or other interest in the Property or the Project. The City shall have not less than ten (10) days to determine, in its sole and absolute discretion, that this Agreement (or an amended version of the Agreement restricting the Affordable Units) has senior rights. If City disapproves the evidence provided by Developer, then Developer agrees and acknowledges that City may withhold a certificate of occupancy unless and until Developer provides evidence satisfactory to the City demonstrating priority of this Agreement or an amendment thereto.

4.3 Occupancy Levels. **RESERVED**

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4.4 Use of the Property. All uses conducted on the Property by Developer, including, without limitation, all activities undertaken by the Developer pursuant to this Agreement, shall conform to all applicable provisions of the Santa Ana Municipal Code and other applicable federal, state, and local laws, rules, and regulations.

4.5 Maintenance. Developer shall, at all times during the term of this Agreement, cause the Property and the Project to be maintained in a decent, safe and sanitary manner, regardless of cause of the disrepair. Developer and each Homebuyer shall be fully and solely responsible for costs of maintenance, repair, addition and improvements. City, and any of its employees, agents, contractors or designees shall have the right to enter upon the Property at reasonable times and in a reasonable manner to inspect the Project, after providing notice as follows: (i) at least a 24-hour notice to Developer and Homebuyer of the Affordable Unit which will be inspected, or (ii) at least 48 hours' notice to Developer, which shall promptly give notice to Owners of the Affordable Unit to be inspected.

4.6 Preparation and Recordation of Transfer Documents. Developer shall prepare and obtain City's approval, which approval shall not be unreasonably withheld, conditioned or delayed, of the City Loan Documents for each Affordable Unit to Eligible Households required by Section 3 of this Agreement. Developer shall not sell an Affordable Unit unless and until the City has reviewed and approved the Homebuyer as an Eligible Household for the purchase of the Affordable Unit, and the Homebuyer has executed and submitted to the Program Director, in recordable form, the Declaration of Resale Restrictions, and the approved financing for the Homebuyer.

4.7 Selection of Homebuyers. Except as otherwise provided for in this Agreement, Developer shall be responsible for the selection of Homebuyers for the Affordable Units in compliance with lawful and reasonable criteria and the requirements of this Agreement.

4.8 Income Verification and Certification. Developer shall verify income of prospective Homebuyers and certify the verification to the City. In evaluating prospective Homebuyers, Developer shall consider the following sources of income in order of preference: (i) employment income; (ii) business income; (iii) income from Social Security, Supplemental Security Income (SSI), welfare, disability, or pension payments; and (iv) alimony or child support. To verify income, Developer shall comply with the procedures set forth in Section A-3 of the Administrative Procedures Manual. Subject to the foregoing preferences, Developer shall consider Gross Household Income from all adult Household members, which is anticipated to be received during the 12-month period following the date of the determination of Gross Household Income. Within fifteen (15) days of delivery of an executed contract for purchase of an Affordable Unit by a prospective Homebuyer, Developer shall provide City with the Income Verification Form set forth in **Exhibit C** and the Certification of Continuing Occupancy set forth in **Exhibit D**.

Occupancy Requirements. The Owner shall occupy and continually use the Inclusionary Unit as the Owner's Primary Residence during the Affordable Covenant. On an annual basis, the Inclusionary Program Director will send the Owner an Occupancy Recertification Form to be filled out and returned to the City within thirty (30) days of receipt. The Owner shall affirm that they are occupying the Inclusionary Unit as their Primary Residence.

**Brown, Judson [BJ5]** December 5, 2024 09:32 AM  
Fix index numbering and spacing

**Shaw, Claudia [SC6]** December 5, 2024 07:50 AM  
~~The City does not monitor or conduct inspections for For Sale properties. The City sends out a yearly recertification letter~~

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The Owner will be required to submit copies of two current utility bills, or other evidence of occupancy that is acceptable to the City, as part of the annual recertification process.

4.9 Declaration of Resale Restrictions For each sale of an Affordable Unit, Developer and the proposed buyer shall execute and, a Declaration of Resale Restrictions, in a form substantially similar to Exhibit B, which is attached hereto and must be executed by the parties prior to any transfer of the Property.

4.10 Emergency Evacuation Plan. Developer shall submit and obtain approval of an Emergency Evacuation Plan (the EEP) from City Police and Fire Protection agencies prior to issuance of a Certificate of Occupancy. Up-to-date 24-hour emergency contact information for the on-site personnel shall be provided to the City on an ongoing basis and the approved EEP shall be kept onsite and also be submitted to the following City Agencies:

- (a) Police Department
- (b) Fire Department
- (c) Planning and Building Agency
- (d) Community Development Agency

4.11 Crime Free Housing. Developer shall work with City staff to formalize a crime free housing policy, procedure, and design plan (the “CFH Plan”), which includes the following provisions:

- (a) Requiring parking areas and common interior areas (lobbies, elevators, etc.) to contain security cameras;
- (b) Requiring routine unit inspections;
- (c) Ensuring lobby/other entrance doors are secured and accessed via remote controls, fobs, etc.; and
- (d) Have policies in place to ensure that common use areas such as hallways and trash enclosures are maintained in good condition and repair (e.g., well-lit, kept clean, etc.).

Developer shall submit and obtain approval from the City’s Planning and Building Agency (“PBA”) that the CFH Plan meets the requirements of this Subsection 4.12 prior to issuance of the Certificate of Occupancy. The approved CFH Plan shall be implemented and administered by Developer or its designated property manager.

4.12 Onsite Parking Management Plan. Developer shall provide onsite parking for residents and visitors of the Project and actively monitor the parking demand of the Project site. Developer shall continually monitor and take the following measures to manage the parking

demand of the Project site to mitigate the use of offsite parking spaces on private or public properties and/or right-of-way.

- (a) Requiring onsite parking permits (such as stickers or hang-tags) for any parking in the onsite parking spaces for both residents and guests;
- (b) Policies for maximum time vehicles may be parked in the surface parking spaces, including any guest parking; and
- (c) Policies for towing unauthorized vehicles, vehicles parked in unauthorized locations (such as fire lanes), vehicles parking in surface guest parking without a sticker, hang-tag, or other identifiers, and vehicles parked longer than any maximum guest parking timeframes allowed.

Prior to issuance of the Certificate of Occupancy, Developer shall submit and obtain approval from the PBA a Parking Management Plan (the "PMP") including those measures above. The approved PMP shall be adhered to and be enforced by the Project at all times.

#### 4.13 Marketing and Resident Selection Plan.

4.13.1 Prior to Certificate of Occupancy, Developer shall prepare and obtain City's approval of a marketing program and resident selection plan for the sale of the Affordable Units at the Project ("Marketing Program"). The sale of the Affordable Units shall thereafter be marketed in accordance with the Marketing Program as the same may be amended from time to time with City's prior written approval. Upon request, Developer shall provide City with periodic reports with respect to the sale of the Affordable Units.

4.13.2 The Marketing Program shall include, but is not limited to, marketing and community outreach activities, proposed homebuyer selection criteria, occupancy standards, income requirements, timeline and details for outreach and marketing, data collection, record keeping and monitoring, procedures for complaints, and compliance assessment. Components of the resident selection plan shall include, but are not limited to, the application process, interview procedure, Affordable Unit offer and assignment for selected homeowners, rejected applications, and wait list management. All requirements set forth herein shall be incorporated in the Marketing Program.

4.13.3 Non-Discrimination in Housing. Developer, and any successors in interest, shall not discriminate any person or group of persons on account of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial or marital status, disability, veteran or military status, genetic information, political affiliation or opinion, medical condition, pregnancy or pregnancy-related condition, or condition of physical or mental disability or other handicap, age, or source of income or status with regard to public assistance in the transfer, use, occupancy, tenure or enjoyment of the Property or the Affordable Units, and the Developer, or any person claiming under or through it, shall not establish or permit any such practice of discrimination or segregation with reference to

the selection, location, number, use or occupancy of any Homebuyer or resident of the Property or the Affordable Units.

5. TERM OF THIS AGREEMENT

5.1 Term. The term of this Agreement ("Term") shall commence on the Effective Date and shall continue until the expiration of the Affordability Term for all Affordable Units, as set forth in Section ~~3-23.1~~, above.

6. DEFAULT AND TERMINATION; INDEMNIFICATION

6.1 Default. Failure or delay by any Party to perform any term or provision of this Agreement, which is not cured within thirty (30) days after receipt of notice from the other Party specifying the default (or such other period specifically provided herein), constitutes a default under this Agreement; provided, however, if such default is of the nature requiring more than thirty (30) days to cure, the defaulting Party shall avoid default hereunder by commencing to cure within such thirty (30) day period, and thereafter diligently pursuing such cure to completion within an additional sixty (60) days following the conclusion of such thirty (30) day period (for a total of ninety (90) days). Except as required to protect against further damages, the injured Party may not institute proceedings against the Party in default until the time for cure has expired. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

6.2 Remedies.

6.2.1 Any individual who sells or rents (including subleasing) an Affordable Unit in violation of the provisions of this Agreement shall be required to forfeit to City all monetary amounts so obtained.

6.2.2 City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Agreement, including but not limited to:

- (a) Actions to revoke, deny or suspend any permits and/or certificate of occupancy;
- (b) Actions for injunctive relief, damages, or other monetary relief; and
- (c) Civil citations or penalties.

6.3 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

6.4 Waiver of Speculative, Consequential, or Punitive Damages. Notwithstanding anything to the contrary contained in this Agreement, in no event shall either Party be liable for speculative, consequential, punitive or other indirect damages, and each Party waives any

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right to collect speculative, consequential, punitive or other indirect damages against the other Party. Developer acknowledges the protections of Civil Code Section 1542 relative to this waiver and release, which section reads as follows:

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

BY INITIALING BELOW, DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION.

DEVELOPER'S INITIALS \_\_\_\_\_

6.5 Indemnification. In addition to any other indemnity specifically provided in this Agreement, Developer agrees to defend (with counsel of City's choosing and the consent of Developer, which shall not be unreasonably withheld, conditioned or delayed and which may be joint defense counsel upon City's and Developer's consent) indemnify and hold harmless City and its respective officers, officials, agents, employees, representatives, and volunteers (collectively, "Indemnitees") from and against any loss, liability, claim, or judgment arising from any claims, demands, or causes of action arising from or related to this Agreement, including the approval thereof, except to the extent caused by the active negligence or willful misconduct of Indemnitees.

7. ASSIGNMENT; COVENANTS RUN WITH THE LAND

7.1 Assignment by Developer.

7.1.1 Prohibited Transfers or Assignments. Developer shall not sell, transfer, or assign the Property or Project in whole or in part, or transfer or assign Developer's rights and obligations in this Agreement, in whole or in part, unless the sale, transfer, or assignment complies with this Section 7. If Developer seeks to sell, transfer or assign the Property or Project, or any rights and obligations in this Agreement, Developer shall request City's written consent, and City shall respond within thirty (30) days with a written approval or denial, which City may determine in its sole and absolute discretion. If City approves such a request, then prior to any such sale, transfer or assignment, Developer shall pay City's reasonable fees as compensation for the City's review of the request. City's failure to respond to the request within thirty (30) days shall be deemed an approval.

7.1.2 Sale of Property. Developer agrees and declares that the Property and the Project shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, operated, sold, and approved subject to all obligations set forth or incorporated in this Agreement, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property and the Project. All of the obligations set forth or incorporated in this Agreement shall constitute covenants which run with the land and shall be binding on

Developer and its successors and assigns, and all parties having or acquiring any right, title or interest in, or to any part of the Property or Project. Developer further understands and agrees that the approvals received for this Project have been made on the condition that Developer and all subsequent owners, or other successors and assigns of the Property and/or Project sell the Affordable Units in accordance with the covenants, conditions and restrictions of this Agreement.

7.1.3 Subsequent Assignment. As used in this Agreement, the term "Developer" shall be deemed to include any such transferee or assignee after the date such sale, transfer, or assignment occurs in compliance with this Agreement.

7.1.4 Unpermitted Assignments Void. Any sale, transfer, or assignment made in violation of this Agreement shall be null and void, and City shall have the right to pursue any right or remedy at law or in equity to enforce the provisions of the restriction against unpermitted sales, transfers, or assignments.

7.2 Covenants Run with the Land. The Property shall be used, occupied and improved subject to the covenants, conditions, and restrictions set forth herein. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth in this Agreement shall run with the Property and shall be binding upon Developer and all persons having any right, title or interest in the Property, or any part thereof, their heirs, and successive owners and assigns, shall inure to the benefit of City and its successors and assigns, and may be enforced by City and its successors and assigns. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of City and its successors and assigns, and the parties hereto expressly agree that this Agreement and the covenants herein shall run in favor of City. City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. Developer hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land and that the Developer's interest in the Property is rendered less valuable thereby. Developer hereby further declares its understanding and intent that the agreement provides a public benefit in furtherance of benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by the citizens of City and by furthering the health, safety, and welfare of the residents of City.

## 8. MISCELLANEOUS

8.1 Entire Agreement. This Agreement and all of its exhibits and attachments set forth and contain the entire understanding and agreement of the parties with respect to the density bonus of the Project, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

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8.2 Amendment. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance approved by the City Council, or through the City Manager as detailed herein, and signed on behalf of each party. The City Manager shall have the authority to make approvals, issue interpretations, execute documents, waive provisions, and/or enter into amendments of this Agreement on behalf of City that further the intent of this Agreement. Any requested alteration, change or modification of the Agreement by Developer shall require the payment of fees or deposit by Developer to City, as applicable, for the City's review of the request. Each alteration, change, or modification to this Agreement shall be recorded against the Property in the Official Records of Orange County, California.

8.3 Notices.

8.3.1 Delivery. As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder. All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) two (2) days after deposit in the United States mail in a sealed envelope, first class mail and postage prepaid, and addressed to the recipient named below; or (iv) one (1) day after deposit with a known and reliable next-day document delivery service (such as Federal Express), charges prepaid and delivery scheduled next-day to the recipient named below, provided that the sending party receives a confirmation of delivery from the delivery service provider; or (v) the first business day following the date of transmittal of any facsimile, provided confirmation of successful transmittal is retained by the sending Party; or (vi) upon transmission thereof (as evidenced by the recipient's reply to such notice or other competent evidence of actual receipt) if transmitted by electronic transmission (email), provided that a copy of such notice is concurrently sent by first-class mail postage prepaid. All notices shall be addressed as follows:

If to City:                   City of Santa Ana  
                                      Community Development Agency  
                                      20 Civic Center Plaza (M-26)  
                                      P.O. Box 1988  
                                      Santa Ana, California 92702  
                                      Attention: Housing Manager

With a copy to:           Office of the City Attorney  
                                      City of Santa Ana  
                                      20 Civic Center Plaza, 7th Floor (M-29)  
                                      Santa Ana, California 92702

If to Developer:           Alminlo Properties, a-

8.3.2 Change of Address. Either Party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

8.4 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.

8.5 Interpretation and Governing Law. This Agreement and any dispute hereunder shall be governed and interpreted in accordance with the laws of the State of California without regard to conflict of law principles. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation hereof.

8.6 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

8.7 Singular and Plural. As used herein, the singular of any word includes the plural, and vice versa, as context so dictates. Masculine, feminine, and neuter forms of any word include the other as context so dictates.

8.8 Joint and Several Obligations. If at any time during the term of this Agreement the Property and/or Project is owned, in whole or in part, by more than one Developer, all obligations of such Developer under this Agreement shall be joint and several, and the default of any such Developer shall be the default of all such Developers.

8.9 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

8.10 Computation of Days. Unless otherwise specified in this Agreement or any Exhibit attached hereto, use of the term "days" shall mean calendar days. For purposes of this Agreement and all Exhibits attached hereto, "business days" shall mean every day of the week except Saturdays, Sundays, official State holidays as recognized in Government Code Section 19853(a) or successor statute, and any days in which Santa Ana City Hall is closed for business.

8.11 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

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8.12 **Non-Discrimination.** In performing its obligations under this Agreement, Developer shall not discriminate because of race, color, creed, religion, sex, gender, gender identity, gender expression, marital status, sexual orientation, familial status, source of income, veteran or military status, age, national origin, ancestry, disability or genetic information, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other related activities. Developer affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

8.13 **Third Party Beneficiaries.** No person or entity, other than City and Developer shall have any right of action based upon any provision of this Agreement.

8.14 **Force Majeure.** Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, pandemics as declared by federal, state, or local emergency resolution, wars, riots or similar hostilities, strikes and other labor difficulties beyond the Party's control (including the Party's employment force), court actions (such as restraining orders or injunctions), or other causes beyond the Party's control, including delays by any governmental entity (although the City may not benefit from this provision for a delay that results from City's failure to perform its obligations under this Agreement), or an insurance company of either party. If any such events shall occur, the term of this Agreement and the time for performance by either Party of any of its obligations hereunder may be extended by the written agreement of the Parties for the period of time that such events prevented such performance.

8.15 **Mutual Covenants.** The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

8.16 **Successors in Interest.** The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all permitted successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest approved pursuant to this Agreement during ownership of the Property or any portion thereof.

8.17 **Counterparts.** This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

8.18 **Jurisdiction and Venue.** Any action at law or in equity under this Agreement or brought by a Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or to the extent allowed by law, in the federal court district covering

the City, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

8.19 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the development of private property and the Developer of such property.

8.20 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and in the satisfaction of the Project and conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or the Project or to evidence or consummate the transactions contemplated by this Agreement. City hereby authorizes City Manager to take such other actions and negotiate and execute any additional agreements or amendments to this agreement as may be reasonably necessary or proper to fulfill the City's obligations under this Agreement. The City Manager may delegate her or his powers and duties under this Agreement to an authorized management level employee of the City.

8.21 Estoppel Certificate. Within ten (10) business days following a written request by any of the Parties, the other Party shall execute and deliver to the requesting Party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding Party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification, except as may be represented by the requesting Party, and that there are no uncured defaults in the performance of the requesting Party, except as may be represented by the requesting Party.

8.22 No Subordination. City's approval of the necessary land use entitlements that authorize Developer to develop, operate, and maintain the Project was based upon Developer's obligation to provide the Affordable Units pursuant to the State Density Bonus Law, City Density Bonus for Affordable Housing, and the terms and conditions of this Agreement. For the duration of the Term, this Agreement shall have priority over any and all mortgages, deeds of trust, and other similar forms of secured financing recorded against the Property, the Affordable Units, or any portion thereof. Developer expressly understands and acknowledges that state law requires preservation of affordability covenants in connection with the approval of this density bonus project.

8.23 Attorneys' Fees and Costs. If either Party to this Agreement commences an action against the other Party to this Agreement arising out of or in connection with this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, expert witness fees, costs of investigation, and costs of suit from the losing Party.

8.24 Authority to Execute. The person or persons executing this Agreement on behalf of each Party warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind the Party to the performance of its obligations hereunder.

*{Signatures on following page}*

DRAFT

**IN WITNESS WHEREOF**, the parties hereto have caused this Density Bonus Housing Agreement to be executed on the date set forth at the beginning of this Agreement.

**ATTEST:** **CITY OF SANTA ANA**

\_\_\_\_\_  
[NAME]  
Jennifer ~~Hall~~ ~~City Clerk~~ ~~Hall~~  
[City Clerk](#)

\_\_\_\_\_  
Alvaro Nuñez  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
By: [NAME]  
City Attorney

**RECOMMEND FOR APPROVAL:**

**Alminlo Properties, a California limited liability company**

\_\_\_\_\_  
Michael Garcia  
Executive Director  
Community Development Agency

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

LEGAL DESCRIPTION OF THE PROPERTY

APN:

**[TO BE ADDED]**

DRAFT

**EXHIBIT B**

DECLARATION OF INCLUSIONARY HOUSING COVENANTS, RESALE RESTRICTIONS  
AND CITY'S OPTION TO PURCHASE AGREEMENT

**[TO BE ADDED]**

DRAFT

**EXHIBIT C**

INCOME VERIFICATION FORM

**[TO BE ADDED]**

DRAFT

**EXHIBIT D**

CERTIFICATION OF CONTINUED OCCUPANCY

**[TO BE ADDED]**

DRAFT

**EXHIBIT E**

DISCLOSURE, ACKNOWLEDGEMENT AND ASSUMPTION AGREEMENT

**[TO BE ADDED]**

DRAFT

<b>Summary report:</b>	
<b>Litera Compare for Word 11.10.1.2 Document comparison done on 12/5/2024 2:58:35 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> 510-520 N. Harbor Blvd_Draft Density Bonus Agreement DRAFT 12.4.24-c1 (CS JB) (002).docx	
<b>Modified DMS:</b> iw://bbklaw-mobility.imanage.work/iManage/42998272/1	
<b>Changes:</b>	
<u>Add</u>	56
<del>Delete</del>	52
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<u>Move To</u>	0
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>108</b>