

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Santa Ana
Community Development Agency
20 Civic Center Plaza (M-26)
Santa Ana, CA 92702
Attn: Housing Division Manager

APN: 398-323-08

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EXEMPT FROM RECORDING FEE PER
GOVERNMENT CODE §27383

AMENDED AND RESTATED
AGREEMENT CONTAINING AFFORDABLE HOUSING COVENANTS
(Garden Court Apartments)

by and between

THE CITY OF SANTA ANA,
a California municipal corporation and charter city,

and

ORANGE HOUSING DEVELOPMENT CORPORATION,
a California nonprofit public benefit corporation

[Dated as of _____, 2024 for reference purposes only]

AMENDED AND RESTATED
AGREEMENT CONTAINING AFFORDABLE HOUSING COVENANTS
(Garden Court Apartments)

THIS AMENDED AND RESTATED AGREEMENT CONTAINING AFFORDABLE HOUSING COVENANTS (this "**Agreement**") is entered into as of _____ 2024, by and among ORANGE HOUSING DEVELOPMENT CORPORATION, a California nonprofit corporation ("**OHDC**"), and THE CITY OF SANTA ANA, a municipal corporation and charter city (the "**City**").

WHEREAS, OHDC is the owner of that certain real property (the "**Property**") located in the City of Santa Ana more particularly described in Attachment No. 1 which is attached hereto and incorporated herein by this reference; and

WHEREAS, the City, the Community Redevelopment Agency of the City of Santa Ana, a public body, corporate and politic ("**Agency**") and OHDC entered into that certain Agreement Containing Covenants (Garden Court Apartments Apartments) (the "**Original Agreement**"), dated as of May 26 1994, and recorded on May 26, 1995 as Document No. 95-0225207 in the Official Records of Orange County (the "**Official Records**"), which provides that the Owner would operate the Property as affordable housing with specified income, occupancy and rent restrictions.

WHEREAS, the Project was previously financed with a loan from the City under the HOME Investment Partnerships Act (the "HOME Program"). The Project complied with the minimum period of affordability for the HOME Program as set forth in 24 CFR 92.252 by providing affordable housing to very low income households for a period of no less than twenty (20) years. The Project now requires rehabilitation to continue providing safe, decent, and quality affordable housing. Therefore, OHDC is requesting a modification of the Original Agreement to remove the HOME Program affordability requirements and impose affordability requirements consistent with the low-income housing tax credit program, as implemented by the California Tax Credit Allocation Committee, as further set forth herein.

WHEREAS, OHDC desires to refinance and rehabilitate the Project. In connection with the refinance and rehabilitation of the Project, the City and OHDC desire to amend and restate the Original Regulatory Agreement in its entirety with this Agreement.

WHEREAS, the City agrees to this Amended and Restated Agreement Containing Affordable Housing Covenants to allow for the OHDC to complete the rehabilitation, reconstruction, improvement or addition to, or replacement of, dwelling units of a previously existing low-rent housing project, or a project previously or currently occupied by lower income households, as defined in Section 50079.5 (the "Project"), on the terms and conditions set forth herein.

NOW, THEREFORE, CITY AND OHDC COVENANT AND AGREE AS FOLLOWS:

1. OHDC covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof (the "**Owner**") that Owner, such successors,

and such assigns shall use the Property to provide affordable housing in compliance with this Agreement. In addition to all other terms and conditions set forth herein, this Agreement is subject to the following:

(a) Owner agrees and acknowledges prior receipt of a loan from the City in the amount of One Million One Hundred Thousand Dollars (\$1,100,000.00) ("City HOME Loan"), evidenced by a Promissory Note Secured by Subordinated Deed of Trust, dated May 26, 1995, and secured by a Subordinated Deed of Trust with Assignment of Rents (Securing Home Loan), recorded in the Official Records of Orange County as Document No. 95-0225206 ("City HOME Deed of Trust"). Owner represents and warrants that it is not in default of the City HOME Loan and agrees that this Agreement does not amend, restate or modify the loan agreement and promissory note evidencing the City HOME Loan nor the City HOME Deed of Trust or the obligations thereunder.

(b) Owner and City agree to amend the affordability covenants in Section 2 of the Original Agreement on the terms and conditions set forth herein, which shall be effective upon the recordation of this Agreement and continue for a term of at least fifty-five (55) years (the "Term").

(c) The covenants against discrimination set forth in Section 9, below, shall remain in effect in perpetuity.

2. Owner, for itself and its successors and assigns, hereby covenants and agrees that the 84 apartments on the Property (the "**Units**") shall be restricted as follows: (i) forty-one (41) Units, consisting of fifteen (15) one bedroom, one-bathroom Units and twenty-six (26) two-bedroom, two-bathroom Units (the "**60% AMI Units**") shall be rented exclusively, at Affordable Rent, to 60% Income Households as defined in subsection (a) below, and to Existing Households as set forth in subsection (b) below; and, (ii) forty-two (42) Units, consisting of nine (9) one bedroom, one-bathroom Units and thirty-two (32) two-bedroom, two-bathroom Units (the "**80% AMI Units**") shall be rented exclusively, at Affordable Rent, to 80% Income Households, as defined in subsection (a) below. The 60% AMI Units and the 80% AMI Units are collectively referred to as the "**Restricted Units**," which shall only be occupied by eligible households for the 60% AMI Units or 80% AMI Units, as applicable. Area median income levels and Affordable Rents are subject to adjustment from time to time as provided in this Section 2 below. The restrictions set forth in this Section 2 shall remain in effect for fifty-five (55) years after the date of recordation of this Agreement. "**Affordable Rent**" shall mean the maximum rent for Existing Restricted Tenants (as defined below) as set forth in subsection (b) or the maximum rent for 60% AMI Units or 80% AMI Units, as applicable, as set forth in subsection (c).

(a) Maximum Incomes.

(i) 60% AMI Units. The maximum incomes of residential tenants eligible to rent the 60% AMI Units shall be an individual or household that has a household income equal to or less than sixty percent (60%) of then current Area Median Family Income for the Santa Ana-Anaheim-Irvine, CA HUD Metro FMR Area, adjusted for household size, as published by the California Tax Credit Allocation Committee ("**TCAC**") annually ("**60%**

Income Household(s)). A 60% Income Household includes an Existing Restricted Tenant that meets the income eligibility requirements of the Original Agreement.

(ii) 80% AMI Units. The maximum incomes of residential tenants eligible to rent the 80% AMI Units shall be an individual or household that has a household income equal to or less than eighty percent (80%) of then current Area Median Family Income for the Santa Ana-Anaheim-Irvine, CA HUD Metro FMR Area, adjusted for household size, as published by TCAC annually ("**80% Income Household(s)**").

(b) Restrictions on Rent Increases for Existing Households Currently Residing in the 60% AMI Units. The 60% AMI Units are the same forty one (41) Units restricted under the Original Agreement. Notwithstanding the definition of Affordable Rent set forth in subsection (c), below, the maximum annual rent increase for tenants currently residing in one of the 60% AMI Units ("**Existing Restricted Tenant**") shall not exceed five percent (5%) plus the percentage change in Consumer Price Index, or ten percent (10%), whichever is lower, of the rent authorized under the Original Agreement at the time of the recording of this Agreement and, in each subsequent year, the then current rents, until the rent equals the rent that is otherwise allowed under Section 2(c)(i) of this Agreement. Rents may be increased only once a year. The term "**Consumer Price Index**" means, at the time of the rent increase, the annual percentage increase in the United State Consumer Price Index for all Urban Consumers in the Los Angeles-Long Beach- Anaheim Metropolitan Area (1982-84=100) published by the Bureau of Labor Statistics, not seasonally adjusted, for the most recent twelve (12) month period ending prior to the rent increase. For each Existing Restricted Tenant that ceases to reside at the Property, the rent for the Unit that tenant formerly occupied shall no longer be subject to this Section 2(b) and shall be subject to Section 2(c).

(c) Maximum Rents for New Households.

(i) 60% AMI Units. Except as provided in subdivision (b) above, the maximum rent for the 60% AMI Units shall be determined in accordance with the maximum rent for a 60% Income Household as published by the TCAC annually to qualify for and be in compliance with the federal statutes or regulations for the federal low income housing tax credit program established under Section 42 of the Internal Revenue Code and administered in the State of California by TCAC ("**Tax Credit Program**").

(ii) 80% AMI Units. The maximum rent for the 80% AMI Units shall be determined in accordance with the maximum rent for an 80% Income Household as published by the TCAC annually to qualify for and be in compliance with the Tax Credit Program.

(iii) Adjustments for Household Size. For purposes of the calculation of Affordable Rent "adjusted for household size" shall be the federally-mandated household size assumptions as set forth for the Tax Credit Program.

(iv) Rent Increases. Owner may increase rents not more than once annually in accordance with the annual maximum rent for 60% Income Households or 80% Income Households, as applicable, as published by the TCAC annually.

(d) Recertification of Incomes. Owner shall reexamine the income of each tenant household living in the Restricted Units at the same times as required TCAC regardless if low income tax credits have been allocated to the Project. The maximum monthly rent shall be recalculated by Owner in accordance with the then maximum rent for Existing Restricted Tenants, as defined above, or for 60% Income Households or 80% Income Households, as applicable, as published by TCAC. Any increase in rents for the Restricted Units is subject to the provisions of existing leases with tenants. In any event, Owner must provide tenants of the Restricted Units not less than 30 days prior written notice before implementing any increase in rents, and must comply with any state or local law providing for additional notice requirements.

(i) Owner shall make reasonable efforts to verify or cause to be verified that the Gross Household Income for each Eligible Household complies with the requirements of this Agreement. These efforts shall include verification of the income and asset statement provided by an applicant in an income certification is accurate by taking, at a minimum, at least one of the following steps as a part of the verification process: (1) obtain three months consecutive pay stubs for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) obtain an income verification form from the applicant's current employer, (4) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies, or (5) if the applicant is unemployed and has no such tax return, obtain another form of independent verification.

(ii) OHDC agrees to recertify or cause to be recertified household eligibility on the same time frame and on the same forms as required by TCAC. Owner shall provide to City the form of tenant income recertification that is required by TCAC no later than seventy-five (75) days after close of each calendar year.

(e) Increases in Tenant Incomes Above 80% Income.

(i) Increase from 60% AMI Income to, at or below 80% AMI Income. In the event a tenant of a Restricted Unit no longer qualifies as a 60% Income Household as the result of increases in the income of the household, Owner may increase the rent charged to such tenant to an amount equal to the maximum rent for 80% AMI Units as set forth in Section 2(c)(ii). In addition, to the extent that the number of 60% AMI Units falls below forty-one (41) as the result of an increase in the income of a tenant of a Restricted Unit, Owner shall rent to a 60% Income Household, at Affordable Rent, the next Unit that becomes vacated, such that the total number of 60% Income Units is restored to forty-one (41).

(ii) Increase Above 80% AMI Income. In the event a tenant of a Restricted Unit no longer qualifies as an 80% Income Household as the result of increases in the income of the household, Owner may increase the rent charged to such tenant to an amount equal to 30% percent of the tenant's household income. In addition, to the extent that the number of Restricted Units falls to below eighty-three (83) as the result of an increase in the income of a tenant of a Restricted Unit, Owner shall rent the next Unit that becomes vacated, to either a 60% Income Household or an 80% Income Household at Affordable Rent to comply with the requirements of Section 2 above.

(iii) To the extent the federal Tax Credit Program requirements conflict with the requirements in this Section 2(e), relative to the continued occupancy by households that do not qualify as 80% Income Households, the federal Tax Credit Project requirements shall apply in place of the provisions in this Section 2(e).

(f) Occupancy Levels. Subject to state or federal laws and regulations, the number of persons permitted to occupy each Restricted Unit shall not exceed the amount permitted by TCAC or, if TCAC no longer sets maximum occupancy limits, two persons per bedroom, plus one person. If a household, during the terms of its tenancy, adds members that exceed the maximum occupancy allowed under this section, Owner shall provide written notification informing the household that: it is over-occupancy; has been placed on a waiting list for an appropriately-sized unit for a period of up to one-hundred and eighty (180) days; the expiration date of the waiting list; and the terms for terminating the lease. A written status update will be provided to the household at one-hundred and twenty (120) days, ninety (90) days, sixty (60) days and thirty (30) days if applicable. To the extent that a tenant household occupying a Restricted Unit as of the date of this Agreement is over-occupancy, such tenant household shall not be subject to this subsection (f) as long as it continues to occupy the same Restricted Unit.

3. Owner, its successors and assigns shall not charge rents for the Restricted Units in excess of the amounts set forth in Section 2(b) or (c), as applicable.

4. Owner shall adopt and include as part of its Management Plan (described in Section 10, below), written tenant selection policies and criteria for the Restricted Units which meet the following requirements.

(a) Are consistent with the purpose of providing housing for 60% Income Households and 80% Income Households.

(b) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease.

(c) Give reasonable consideration to the housing needs of families that would have a preference under 42 CFR §906.211 (Federal selection preferences for admission to Public Housing);

(d) Provide for:

(i) The selection of tenants from a written waiting list in the chronological order of their application, subject to Section 4(e) and 4(f) below, insofar as is practicable; and

(ii) The prompt written notification to any rejected applicant of the grounds for any rejection;

(e) Subject to applicable fair housing laws, give a first priority preference and consideration, including but not limited to priority placement on a written waiting list of available units, to the housing needs of households who have been permanently displaced or face permanent displacement from housing in Santa Ana as a result of any of the following:

(i) A redevelopment project undertaken pursuant to California's Community Redevelopment Law (Health & Safety Code Sections 33000, et seq.) - applicable only to projects funded by the low and moderate income housing asset fund as defined in the Community Redevelopment Law;

(ii) Ellis Act, owner-occupancy, or removal permit eviction;

(iii) Earthquake, fire, flood, or other natural disaster;

(iv) Cancellation of a Housing Choice Voucher HAP Contract by property owner; or

(v) governmental action, such as Code Enforcement;

(f) Subject to applicable fair housing laws, give a second preference to the housing needs of households residing in, employed in, or offered employment in the City of Santa Ana, including but not limited to priority placement on a written waiting list of available units; and

(g) Carry out the Affirmative Marketing procedures of the City of Santa Ana, to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups, and low income households or households with special needs, in the housing market area to the Restricted Units. Owner shall maintain a marketing program and resident selection plan for leasing of the Restricted Units ("Marketing Program") consistent with the marketing of the Project under the Original Agreement prior to the approval of this Agreement . The leasing of the Restricted Units shall be marketed in accordance with the Marketing Program, as the same may be amended from time to time and submitted to the City. The Marketing Program shall include, but is not limited to, marketing and community outreach activities, proposed tenant selection criteria, occupancy standards, income requirements, timeline and detail 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, apartment offer and assignment, rejected applications, and wait list management.

5. Owner, its successors and assigns, shall not refuse to lease a restricted Unit to a holder of a certificate of family participation under 24 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher Program) or to a holder of a comparable document evidencing participation in a HOME or other tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable HOME or other tenant-based rental assistance document.

6. Any lease of a Restricted Unit must be for not less than one year, unless by mutual agreement between the tenant and the Owner. The lease may not contain any of the following provisions (in which references to "owner" shall mean the Owner, its successors or assigns):

(a) Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(b) Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with state law;

(c) Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(d) Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(e) Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(f) Agreement by the tenant to waive any right to a trial by jury;

(g) Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(h) Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

7. Owner, its successors or assigns, may not terminate the tenancy or refuse to renew the lease of a tenant of a Restricted Unit, except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; for completion of the transitional housing period; or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by Owner's service upon the tenant of a written notice specifying the grounds for the action.

8. Owner shall, at all times during the Term of this Agreement, cause the Property and the Project to be maintained in a healthy and safe manner, regardless of cause of the disrepair. Owner shall be fully and solely responsible for costs of maintenance, repair, addition and improvements. Subject to the rights of tenants, 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 Owner and tenants of the Restricted Unit(s) which will be inspected, or (ii) at least 48 hours' notice to Owner, which shall promptly give notice to tenants of the Restricted Unit(s) to be inspected.

9. Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, age, source of income, disability, veteran or military status, or genetic information of any person, in the sale, lease, sublease; transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Owner itself or any person claiming under or through it

establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

10. Owner shall manage the Restricted Units in accordance with the most-recently approved Management Plan, including such amendments as may be approved in writing from time to time by the City Housing Division Manager, for the term of the income and rent restrictions contained in this Agreement. The components of the Management Plan shall include:

(a) Management Agent. Owner shall submit the name and qualifications of any proposed change to the Management Agent. The City Housing Division Manager shall approve or disapprove any changes to the Management Agent in writing based on the experience and qualifications of the Management Agent. The City hereby approves Advanced Property Services Management, Inc. as the Management Agent.

(b) Management Agreement. Owner shall submit a copy of any proposed changes to the management agreement specifying the amount of the management fee, and the relationship and division of responsibilities between Owner and Management Agent.

(c) Tenant Selection Policies. Owner shall include in the Management Plan the tenant selection policies in accordance with Section 4, above.

If at any time the City determines that the Restricted Units are not being managed or maintained in accordance with the approved Management Plan, Owner shall change the Management Agent or the practices complained of, upon receipt of written notice from the City Housing Division Manager. The City Housing Division Manager may require Owner to change management practices or to terminate the management contract and designate and retain a different management agent, to be approved by the City Housing Division Manager. The management agreement shall provide that it is subject to termination by Owner without penalty, upon thirty (30) days prior written notice, at the direction of the City Housing Division Manager. Within ten (10) days following a direction of the City Housing Division Manager to replace the Management Agent, Owner shall select another management agent or make other arrangements satisfactory to the City Housing Division Manager or designee for continuing management of the Restricted Units.

11. Prevailing Wage.

(a) Owner represents that it is familiar with the requirements of the California Prevailing Wage Law (Cal. Labor Code § 1720 et seq.) and the federal Davis-Bacon Act (40 U.S.C. § 3141 et seq.) (collectively, the “Prevailing Wage Laws”). Owner agrees and acknowledges that City has not made any statements or representations about whether Prevailing Wage Laws apply to any work to be performed on the Project or the Property, and that Owner assumes any and all responsibility and liability as to whether or not laborers employed relative to any work on the Property or Project must be paid the prevailing per diem wage rate for their labor classification or whether any other requirements of the Prevailing Wage Laws apply to work performed on the Property or the Project.

(b) Owner, on behalf of itself, its successors, and assigns, waives and releases the City from any right of action that may be available to any of them pursuant to Prevailing Wage Laws. Owner acknowledges the protections of Civil Code section 1542 relative to the waiver and release contained in this Section 11, which reads as follows:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor or released party.

(c) By signing this Agreement, Owner knowingly and voluntarily waives the provisions of section 1542 solely in connection with the waivers and releases of this Section 11.

(d) Additionally, Developer shall indemnify, defend and hold harmless the city against any claims made under Prevailing Wage Laws arising from this Agreement or the construction, installation or rehabilitation of the Property or the Project, or portion thereof.

12. Relocation. Owner 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. Prior to recordation of this Agreement, Owner submitted to the City a relocation plan, dated on or about May 28, 2024, regarding rehabilitation of the Project and prior to any rehabilitation of the Project the Owner shall submit updates to such relocation plan for City approval, which approval shall not be unreasonably withheld, delayed, or conditioned ("Relocation Plan"). Owner shall at all times comply with the Relocation Plan. In addition to any other indemnity provided by Owner under this Agreement, Owner shall indemnify, defend (with counsel of City's choosing and the consent of Owner, which shall not be unreasonably withheld, and which may be joint defense counsel upon City's and Owner'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, or any other claim arising from or related to relocation of existing tenants.

13. Emergency Evacuation Plan. Owner shall maintain an Emergency Evacuation Plan (the EEP). 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 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

14. Crime Free Housing. Owner shall maintain 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.).

The CFH Plan shall be implemented and administered by Owner or its designated property manager, subject to all legal requirements, prohibitions against discrimination or unlawful housing practices.

15. Onsite Parking Management Plan. Owner shall maintain onsite parking for residents and visitors of the Project consistent with parking available to the Project prior to approval of this Agreement and actively monitor the parking demand of the Project site. Owner 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, but taking the following actions:

- 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. Adopting policies for maximum time vehicles may be parked in the surface parking spaces, including any guest parking; and
- c. Adopting policies for towing unauthorized vehicles, vehicles parked in unauthorized locations (such as fire lanes), vehicles parked in surface guest parking without a sticker, hang-tag, or other identifiers, and vehicles parked longer than any maximum guest parking timeframes allowed.

Owner shall comply with and enforce the PMP at all times.

16. Recordkeeping. Throughout the Term of this Agreement, Owner shall annually complete and submit to City an annual compliance report. Representatives of the City shall be entitled to enter the Property, if necessary, after review of the documentation, upon at least forty-eight (48) hours' notice, to monitor compliance with this Agreement, and shall be entitled to inspect the records of the Project and to conduct an independent audit or inspection of such records at a location within the City that is reasonably acceptable to the City. Owner agrees to cooperate with the City making the Property and the records of the Project relating to each Unit available for such inspection or audit. Owner agrees to maintain each record of the Project for no less than five (5) years after the creation of such record, or such longer time as required by law if a record relates to an audit or litigation.

17. The covenants established in this Agreement and any amendments hereto approved by the City and Owner shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City and its respective successors and assigns.

18. The City is a beneficiary of the terms and provisions of this Agreement and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The City shall have the right if the covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which they or any other beneficiaries of this Agreement and covenants are entitled.

19. The covenants and agreements contained herein shall run with the land and not be personal obligations of Owner. Upon the sale, conveyance or other transfer of the Property that is approved by the City pursuant to this Agreement, or a Permitted Transfer, and the assumption of the obligations hereunder by a transferee, Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.

20. Default.

(a) Event of 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.

(b) 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. City's rights and remedies to enforce this Agreement include any and all civil, administrative, or criminal remedies as set forth in local, state, or federal law. 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 right to collect speculative, consequential, punitive or other indirect damages against the other Party.

21. Indemnification. In addition to any other indemnity specifically provided in this Agreement, Owner agrees to defend (with counsel of City's choosing and the consent of Owner, which shall not be unreasonably withheld, conditioned or delayed and which may be joint defense counsel upon City's and Owner's consent) indemnify and hold harmless City, the Housing Authority (in its capacity as the Successor Agency to the Community Redevelopment Agency for

the City of Santa Ana), and their respective officers, officials, agents, employees, representatives, volunteers, successors or assigns (collectively, "Indemnitees") from and against any loss, liability, claim, or judgment arising from any act or omission of Owner, or its officers, officials, agents, employees, representatives, volunteers, or successors or assigns ("Indemnitors") in connection with Indemnitors' obligations under the Original Agreement or this Agreement, or any loss, claims, damages, judgement, penalties, liabilities or costs asserted against Indemnitees that arise from or relate to the Original Agreement or this Agreement, including but not limited to the approval this Agreement, except to the extent required by law for the negligence or willful misconduct of Indemnitees.

22. Transfer or Assignment

(a) Prohibited Transfers or Assignments. Owner shall not sell, transfer, or assign the Property or Project in whole or in part, or transfer or assign Owner's rights and obligations in this Agreement, in whole or in part, unless the sale, transfer, or assignment is a Permitted Transfer (as defined in Section 22(e)) or approved by the City. If Owner seeks to sell, transfer or assign the Property or Project, or any rights and obligations in this Agreement, in a manner that does not constitute a Permitted Transfer, Owner shall request City's written consent, and City shall respond within fifteen (15) days with a written approval or denial, which City may determine in its reasonable discretion. If City approves such a request, then prior to any such sale, transfer or assignment, Owner 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 fifteen (15) days shall be deemed an approval. Notwithstanding any transfer or assignment, including any Permitted Transfers, this Agreement shall not be subordinated and shall have priority over any and all mortgages, deeds of trust, and other similar forms of secured financing recorded against the Property or any portion thereof on or after the approval of this Agreement.

(b) Sale of Property. Owner 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 Owner 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.

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

(d) 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.

(e) Permitted Transfers. Any of the following do not require the City's prior written approval (the "**Permitted Transfers**"):

- a. Any transfer to a lender providing financing to the Project;
- b. Any transfer resulting from foreclosure or deed in lieu of foreclosure;
- c. Any transfer of stock or equity in Owner that does not change management or operational control of the Project, with no material change in beneficial ownership (with the exception of any conveyance to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit);
- d. The lease of residential units in the Project consistent with this Agreement;
- e. Any transfer of this Agreement and the Property to a limited partnership in which OHDC or its affiliate is a general partner.
- f. The transfer and sale of limited partnership interests in Owner while the Owner is in the form of a limited partnership.
- g. In the event that any general partner of the Owner, while the Owner is in the form of a limited partnership, is removed by the limited partner of such limited partnership for cause following default under the partnership agreement, the transfer of the general partner interest to a 501(c)(3) tax exempt nonprofit corporation selected by the limited partner and approved by the City, which approval shall not be withheld unreasonably, delayed or conditioned.
- h. The transfer of the Project from Owner, while the Owner is in the form of a limited partnership, to one or more of the general partners of the Owner or affiliates of the general partners of the Owner at the end of the tax credit compliance period for the Project; and
- i. Any dilution of the general partner's interest in the Owner while the Owner is in the form of a limited partnership, in accordance with the Owner's limited partnership agreement.

23. MISCELLANEOUS

(a) 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 affordability requirements set forth in this Agreement for 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.

(b) 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. Each alteration, change, or modification to this

Agreement shall be recorded against the Property in the Official Records of Orange County, California.

(c) Notices.

(i) 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) 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 Division 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 Owner: Orange Housing Development Corporation
 414 E. Chapman Avenue
 Orange, CA 92866
 Attention: Chief Executive Officer

(ii) 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.

(d) 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.

(e) 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.

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

(g) 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.

(h) 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 owner, all obligations of such Owner under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners.

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

(j) 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.

(k) 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.

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

(m) Third Party Beneficiaries. No person or entity, other than City and Owner shall have any right of action based upon any provision of this Agreement.

(n) 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.

(o) 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.

(p) 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 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.

(q) 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.

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

(s) Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that 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 Owner is that of a government entity regulating private property and the Owner of such property.

(t) 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.

(u) 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.

(v) No Subordination. This Agreement shall have priority over any and all mortgages, deeds of trust, and other similar forms of secured financing recorded against the Property or any portion thereof.

(w) 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.

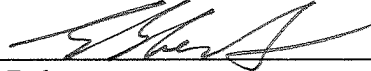
24. Authority to Execute. The person or persons executing this Agreement on behalf of each Party warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they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

[Signatures on Following Pages]

IN WITNESS WHEREOF, the City and Owner have executed this Agreement.

ORANGE HOUSING DEVELOPMENT
CORPORATION, a California nonprofit
public benefit corporation

Date: 6/27/2024

By: 
Eunice Bobert
Chief Executive Officer

THE CITY OF SANTA ANA, a municipal
corporation and charter city

Date: _____


By: _____
Alvaro Nunez,
Acting City Manager

ATTEST:


Jennifer L. Hall, City Clerk

APPROVED AS TO FORM:

Sonia R. Carvalho
CITY ATTORNEY

By: 
Matthew R. Cody
Special Council to the City
Best, Best & Krieger

RECOMMENDED FOR APPROVAL

By: 
Michael L. Garcia
Executive Director
Community Development Agency

CONSENT BY HOUSING AUTHORITY

The Housing Authority of the City of Santa Ana, a public body, corporate and politic, in its capacity as the successor to the housing assets and functions of the Community Redevelopment Agency of the City of Santa Ana, hereby agrees to the termination of the Original Agreement but is otherwise not a party to this Agreement.

THE HOUSING AUTHORITY OF THE
CITY OF SANTA ANA , a public body,
corporate and politic, in its capacity as the
successor to the housing assets and functions
of the Community Redevelopment Agency of
the City of Santa Ana

Date: _____

By: _____
_____,
Executive Director

ATTEST:

Jennifer L. Hall,
Clerk of the Board of Commissioners

APPROVED AS TO FORM:

By: _____
General Counsel

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 _____)

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

Name: _____
Notary Public

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)

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

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Notary Public

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)
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COUNTY OF _____)

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basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) 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.

Name: _____
Notary Public

ATTACHMENT NO. 1

LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOTS 1 THROUGH 10 INCLUSIVE, IN BLOCK 2 OF FRUIT'S ADDITION TO SANTA ANA, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 9, PAGE 91 OF MISCELLANEOUS RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

EXCEPT FROM SAID PROPERTY ALL OIL, GAS, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH AND TO USE AND OCCUPY ALL PARTS OF SAID PROPERTY LYING MORE THAN 500 FEET BELOW THE SURFACE THEREOF FOR ANY AND ALL PURPOSES INCIDENTAL TO THE EXPLORATION FOR OR PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES OR MINERALS FROM SAID PROPERTY OR OTHER LANDS, BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SAID PROPERTY OR ANY PORTION THEREOF WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER TO THE EXTENT SUCH RIGHTS TO DRILL HAVE BEEN EXCEPTED BY THE PARTIES NAMED IN DEEDS, LEASES AND OTHER DOCUMENTS OF RECORD, BY DEED RECORDED FEBRUARY 7, 1986, AS INSTRUMENT NO. 86-53330 OF OFFICIAL RECORDS.

APN: 398-323-08