

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 6103 & 27383

When Recorded Mail to:

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

SPACE ABOVE THIS LINE FOR RECORDING USE
FREE RECORDING REQUESTED
[Government Code Section 6103]

DEVELOPMENT IMPACT FEE DEFERRAL AGREEMENT

between

THE CITY OF SANTA ANA
a charter city and municipal corporation of the State of California

and

Washington Santa Ana Housing Partners, L.P.
a California limited partnership

[Dated as of June 21, 2022]

DEVELOPMENT IMPACT FEE DEFERRAL AGREEMENT

1. PARTIES AND EFFECTIVE DATE.

This Development Impact Fee Deferral Agreement (“Agreement”) is entered into on this 21st day of June, 2022, by and between the City of Santa Ana, a charter city and municipal corporation of the State of California (“City”), and Washington Santa Ana Housing Partners, L.P., a California limited partnership (“Owner”). City and Owner are sometimes individually referred to herein as “Party” and collectively as “Parties.”

2. RECITALS.

2.1 Owner is the owner of a leasehold interest in that certain real property in the City of Santa Ana, California, that includes land owned by both the Housing Authority of the City of Santa Ana, a public body, corporate and politic, and the County of Orange, and more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference and as evidenced by that certain Memoranda of Lease between _____, which was recorded in the Official Records of Orange County, California on _____, as Document No. _____ (“Property”). The Housing Authority and the County of Orange have executed a Joint Powers Agreement to provide a combined site for the project that includes both the Housing Authority property and the County of Orange property, which will be combined and owned as tenants in common. Owner is the developer of the affordable rental residential community at 1126, 1136, & 1146 East Washington Avenue, Santa Ana, CA 92701, (APNs 398-092-14 and 398-092-13) consisting of 85 new affordable units and 1 manager’s unit, with 42 two, three- and four-bedroom units for large families, and 43 studio, one- and two-bedroom affordable units for persons experiencing homelessness. 100% of the units will be for extremely low-income households at 30% Area Median Income. Owner has received City approval and is in the process of obtaining the building permits;

2.2 Prior to issuance of any building permits, the City currently requires the payment of various development impact fees for all residential projects to help address the impacts of new development;

2.3 On May 11, 2022, Owner submitted a written request formally requesting the deferral of specific development impact fees for the Property pursuant to California Government Code section 66007; and,

2.4 City and Owner desire to execute this Agreement to defer certain development impact fees applicable to the Property and place a lien on the Property to secure payment of these fees, pursuant to the terms and conditions set forth herein.

3. TERMS.

3.1 Deferral of Development Impact Fees.

3.1.1 *Deferral of Development Impact Fees.* City and Owner agree that the development impact fees (“Subject Fee(s)”) and amount as shown on Exhibit “B,” for the Property ordinarily due before issuance of a building permit for any new affordable residential units on the Property (including manager’s units) will be deferred until immediately prior to the final inspection or issuance of a certificate of occupancy for any new residential units on the Property, whichever occurs first (“Deferral Period”). City and Owner acknowledge and agree that the City Council may, in its sole and absolute discretion and during a regular, regular adjourned, or special meeting of the City Council, extend the deadline for payment of the Subject Fees without obtaining the approval of Owner or an amendment or modification of this Agreement. Any extension granted by the City Council pursuant to this Section 3.1.1 shall automatically be deemed to be part of the Deferral Period for purposes of this Agreement.

3.1.2 *Payment of Subject Fees.* Owner, or its successor in interest to the Property or any portion thereof, shall be liable for the payment of the Subject Fees pursuant to this Agreement. The Subject Fees for a residential building constructed on the Property shall be due and payable at the termination of the Deferral Period. No certificate of occupancy shall be issued for the building, any portion, or any residential units thereof on the Property unless and until all Subject Fees ordinarily required to have been paid absent this Agreement have been paid in full.

3.1.3 *Subject Fee Amount.* Except as may otherwise be provided for by a statutory development agreement for the Property, as approved by the City, the amount of the Subject Fee for each residential unit to be developed on the Property shall be determined according to the rate of the Subject Fee adopted by the City and in effect on the date when the building permit for the residential building is issued by the City. Upon issuance of each building permit, the City shall complete and attach the form set forth in Exhibit “B” to this Agreement to reflect the amount of the Subject Fee applicable at the time of issuance of that building permit and attach a copy of the building permit, which shall collectively thereafter be incorporated as part of this Agreement.

3.1.4 *Obligation for Payment of Subject Fee.* Owner hereby acknowledges and agrees that Owner’s obligation to pay the Subject Fees shall continue and remain an obligation of Owner, or any successors in interest of Owner, including, without limitation, any successor in interest to the Property or any portion of the Property. Without limiting the nature of the foregoing, any Subject Fees that remain unpaid following the time that they are required to be paid may be collected by the City as a personal obligation of the Owner, or any successor of Owner, as a special assessment against the property (collected at the same time and in the same manner as ad valorem property taxes), or by any combination of the foregoing.

3.2 **Covenant of Owner.** Owner covenants that he, she or it is eligible to enter into this Agreement and has fulfilled the requirements for approval of deferral of the Subject Fees. Should Owner and/or the Property be deemed at any time prior or subsequent to execution of this Agreement to be ineligible for a deferral of Subject Fees regardless of whether Owner intentionally or unintentionally misrepresented to the City that Owner was eligible for a deferral of Subject Fees, City may terminate this Agreement and require all Subject Fees ordinarily required to have been paid absent this Agreement to be immediately paid in full.

3.3 **Recordation of Agreement.** Upon the execution of this Agreement, the City shall cause this Agreement to be recorded in the Official Records of the County of Orange, California. All costs assessed by the County of Orange for recordation of this Agreement shall be paid by the Owner.

3.4 **Lien against Property.** From and after its execution, this Agreement shall contractually bind Owner to pay all Subject Fees as provided in this Agreement, and shall constitute a lien against the Property in an amount equal to the total Subject Fees, pursuant to Government Code section 66007(c)(2). Upon payment to City of the total amount of the Subject Fees for the Property, City shall, at the request of the Owner, execute and record in the Official Records of the County of Orange, California, a release of the lien from the Property in substantially the form of Exhibit "C" which is attached hereto and incorporated herein by this reference. At the request of the Owner, the City shall deliver a copy of the executed and recorded release of the lien to Owner. No partner of Owner shall have any personal liability for the payment of any Subject Fees.

3.5 **Breach Won't Defeat Lien.** The breach of any of the provisions of this Agreement, or any lien (or a foreclosure thereof) pursuant to this Agreement, shall not defeat or render invalid the lien of any duly recorded mortgage or deed of trust encumbering the Property or any portion thereof which is/are made in good faith and for value, provided that all provisions of this Agreement shall be binding and effective against any owner operating the Property who acquires the Property by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

3.6 **Covenants Run With Land.** Notwithstanding Section 3.6, each and all of the promises, covenants and conditions of this Agreement and all liens against the Property subject to this Agreement shall, as provided in Government Code section 66007, run with the Property and shall be binding upon a party upon having or acquiring any right, title or interest in or to the Property or any portion thereof.

3.7 **Sale of Property.** Pursuant to Government Code section 66007(c)(3), Owner shall notify City in writing within three (3) business days of the sale or transfer of all or any portion of the Property by Owner.

3.8 **Invalidity of Lien.** The invalidity or unenforceability of any lien provided for under this Agreement shall not affect the contractual obligation of Owner to pay any and all Subject Fees for the Property, nor shall the sale, lease or any encumbrance of the Property release the Owner of this contractual obligation.

3.9 **Rights Not Granted Under Agreement.** This Agreement is not, and shall not be construed to be, an approval or a granting of any right or entitlement (vested or otherwise) by City concerning any development on the Property, or any other project, development or other construction by Owner within the City. This Agreement does not, and shall not be construed to, exempt Owner from paying any fees for any entitlements, permits, licenses or other approvals that may be required by the City or other public entity with jurisdiction over the Property at the time required by the City or other public entity with jurisdiction over the Property, or any other project development or other construction by Owner. This Agreement does not, and shall not be construed to, exempt Owner from any requirement to obtain permits or other discretionary or

non-discretionary approvals as may be necessary for the development, maintenance or operation of the development on the Property or any other project, development or other construction by Owner within the City. This Agreement does not, and shall not be construed to, exempt Owner or the Property from the application or exercise of the City's or any of its related agencies' power of eminent domain or its police powers, including, but not limited to, the regulation of land uses, and the taking of any actions necessary to protect the health, safety and welfare.

3.10 Cumulative Remedies. The rights or remedies of the City, as provided in this Agreement, or pursuant to any applicable laws, rules or regulations, may be pursued singly, successively, together or otherwise against the Property, Owner or its transferees, at the sole discretion of the City. The City's failure to exercise any such right or remedy shall in no event be construed as a waiver or release of such rights or remedies, or of the right to exercise them at any later time.

3.11 Indemnification. Owner agrees to indemnify, defend and hold harmless the City, its elected officials, officers, agents and employees from and against all claims, demands, costs, damages, liabilities and obligations of any kind or nature arising out of the deferral provided by the City to Owner, this Agreement, or both, including without limitation, all costs of collection, including actual attorneys' and expert witness fees.

3.12 Successors and Assigns. Owner may not assign this Agreement, in whole or in part, without the prior written consent of the City, which may be given, withheld or conditioned in the City's sole and absolute discretion. Any attempt to assign this Agreement without the City's prior written consent shall be null and void. This Agreement shall be binding on any and all permitted successors and assigns of Owner.

3.13 Governing Laws. This Agreement shall be governed by the laws of the State of California, without regard to the conflict of laws principles. The Superior Courts of the State of California in the County of Orange, California, shall have exclusive jurisdiction of any litigation between the City and Owner arising out of this Agreement. Owner hereby expressly waives the provisions of any federal or state law providing for a change of venue to any other state court or to federal district court, due to any reason whatsoever, including, without implied limitation, the fact that the City is a party to this Agreement, due to any diversity of citizenship between the City and Owner, or due to the fact that a federal question may be involved. Without limiting the generality of the foregoing, Owner expressly waives, to the maximum legal extent, the benefit of California Code of Civil Procedure Section 394 and all other state and federal statutes and judicial decisions of similar effect.

3.14 Notices. All notices required to be delivered under this Agreement or applicable law shall be delivered by personal delivery, express mail or by United States mail, certified, postage prepaid. Notices personally delivered or delivered by express mail shall be deemed received upon receipt. Notices delivered by certified mail shall be deemed received the earlier of three (3) days following deposit of such notice with the United States Postal Service or actual receipt. Notices shall be sent as follows:

To City: City of Santa Ana
 Community Development Agency

20 Civic Center Plaza (M-26)
P.O. Box 1988
Santa Ana, CA 92702-1988
Attention: Housing. Manager

With copy to: Office of City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Santa Ana, California 92702

To Owner: Washington Santa Ana Housing Partners, L.P.
c/o The Related Companies of California, LLC
19201 Von Karman Avenue, Suite 900
Irvine, CA 92612
Attention: President

c/o A Community of Friends
3701 Wilshire Boulevard, Suite 700
Los Angeles, CA 90010
Attention: Dora Leong Gallo
President and Chief Executive Officer

With a copy to:
Bocarsly Emden Cowan Esmail & Arndt LLP
633 W. 5th Street, 64th Floor
Los Angeles. CA 90071
Attention: Lance Bocarsly, Esq.

3.15 Attorneys' Fees and Costs. Should the City or Owner bring any action or proceeding against the other, and if such action or proceeding is related to the interpretation or enforcement of this Agreement or in any way relates to or arises due to the existence of this Agreement, then the prevailing party in that action or proceeding shall be entitled to recover from the non-prevailing party, in addition to all other relief to which the prevailing party may be entitled, its actual litigation costs and attorneys' and expert witness fees. The "prevailing party" shall be as determined by the court in accordance with the provisions of California Code of Civil Procedure Section 1032. Recoverable litigation costs and attorneys' fees include those incurred by the prevailing party in the enforcement of any judgment or other judicial order, and during, the defense of any appeal taken from such underlying judgment or other judicial order.

3.16 Entire Agreement. This Agreement constitutes the entire agreement of City and Owner as to the deferral of impact fees and supersedes all previous agreements, oral or written, on the subject matter of this Agreement.

3.17 Modification. This Agreement may be amended or modified only by an agreement in writing signed by each of the parties hereto.

3.18 **Headings.** Section headings contained in this Agreement are for convenience only, and shall not impact the construction or interpretation of any provision.

3.19 **Severability.** If any provision or clause of this Agreement or any application of it to any person, firm, organization, partnership or corporation is held invalid, such invalidity shall not affect any other provision of this Agreement, and the Agreement shall be construed as if such provisions or clauses did not exist.

3.20 **Time is of the Essence.** Time is of the essence in this Agreement.

3.21 **No Third Party Beneficiaries.** This Agreement and the performance of the City's and Owner's obligations hereunder are for the sole and exclusive benefit of the City and Owner. No person or entity who or which is not a signatory to this Agreement shall be deemed to be benefited or intended to be benefited by any provision hereof, and no such person or entity shall acquire any rights or causes of action against either the City or Owner hereunder as a result of the City's or Owner's performance or nonperformance of their respective obligations under this Agreement.

3.21 **Counterparts.** This Agreement may be signed by the Parties in different counterparts and the signature pages combined shall create a single document binding on all parties.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

OWNER

Washington Santa Ana Housing Partners, L.P.,
a California limited partnership

By: Related/Washington Santa Ana Development Co., LLC,
a California limited liability company,
its Administrative General Partner

By: _____
Frank Cardone, President

By: Supportive Housing LLC,
a California limited liability company,
its Managing General Partner

By: A Community of Friends,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Dora Leong Gallo,
President and Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

OWNER

Washington Santa Ana Housing Partners, L.P.,
a California limited partnership

By: Related/Washington Santa Ana Development Co., LLC,
a California limited liability company,
its Administrative General Partner

Lf
No further changes
6/9

By: _____
Frank Cardone, President

By: Supportive Housing LLC,
a California limited liability company,
its Managing General Partner

By: A Community of Friends,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Dora Leong Gallo,
President and Chief Executive Officer

ATTEST:

CITY OF SANTA ANA

Daisy Gomez
Clerk of the Council

Kristine Ridge
City Manager

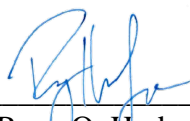
Dated: _____

Dated: _____

PROPERTY OWNER:
HOUSING AUTHORITY OF THE CITY OF SANTA ANA

Steven A. Mendoza
Executive Director

APPROVED AS TO FORM:
SONIA R. CARVALHO, City Attorney

By: _____
Ryan O. Hodge
Assistant City Attorney

Dated: June 9, 2022 _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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, _____
(here insert name and title of the officer)

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.

 Signature (Seal)

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, _____
(here insert name and title of the officer)

personally appeared _____

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WITNESS my hand and official seal.

Signature (Seal)

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STATE OF CALIFORNIA

COUNTY OF _____

On _____, _____, before me, _____
 (here insert name and title of the officer)

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.

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WITNESS my hand and official seal.

 Signature (Seal)

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STATE OF CALIFORNIA

COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

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.

 Signature (Seal)

**EXHIBIT “A” TO
DEVELOPMENT IMPACT FEE DEFERRAL AGREEMENT
Legal Description of Property**

Exhibit A
Legal Description (After Lot Merger)

PARCEL 1:

THAT PORTION OF THE RANCHO SANTIAGO DE SANTA ANA IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA PER MAP RECORDED IN BOOK 3 PAGE 420 OF PATENTS, RECORDS OF LOS ANGELES COUNTY IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST TERMINUS OF THAT CERTAIN COURSE ON THE SOUTHWEST LINE OF SAID LAND SHOWN AS HAVING A BEARING AND DISTANCE OF "NORTH 60°05'57" EAST 133.86 FEET" PER RECORD OF SURVEY NO. 2002-1059 RECORDED IN BOOK 194 PAGES 28 THROUGH 36 OF RECORD OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA;

THENCE ALONG SAID SOUTHWEST LINE NORTH 60°05'57" EAST, 133.81 FEET;

THENCE NORTH 64°53'54" EAST, 193.71 FEET;

THENCE NORTH 21°00'44" WEST, 62.74 FEET;

THENCE NORTH 21°00'43" WEST, 224.19 FEET;

THENCE NORTH 32°46'09" WEST, 150.43 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHERLY AND HAVING A RADIUS OF 45.00 FEET, A RADIAL LINE TO SAID BEGINNING OF CURVE BEARS NORTH 82°28'26" EAST;

THENCE SOUTHERLY ALONG SAID CURVE, 166.04 FEET, THROUGH A CENTRAL ANGLE OF 211°24'37" TO THE BEGINNING OF A REVERSE CURVE, CONCAVE WESTERLY AND HAVING A RADIUS OF 71.00 FEET, A RADIAL LINE TO SAID BEGINNING OF CURVE BEARS SOUTH 66°06'57" EAST;

THENCE NORTHEASTERLY ALONG SAID CURVE, 52.77 FEET, THROUGH A CENTRAL ANGLE OF 42°35'14";

THENCE NORTH 55°21'04" WEST, 25.14 FEET;

THENCE SOUTH 00°16'37" WEST, 621.36 FEET TO THE **POINT OF BEGINNING**.

**EXHIBIT “B” TO
DEVELOPMENT IMPACT FEE DEFERRAL AGREEMENT**

Subject Fees for Building Permit No. ____

The following development impact fees imposed upon the Property or portion thereof by the city of Santa Ana upon issuance of City of Santa Ana Building Permit No. ____ shall be deferred pursuant to the terms and conditions of this Agreement:

Fee Description	Factor	Factor	Total
Transit Zoning Code Traffic Impact Mitigation Fair Share	\$1,333.54 per unit	86 Units	\$114,685
Drainage Area Assessment Fee	\$7,748.21 per acre	2.286 Acres	\$17,712
Sewer Connection Fee	\$49.00 per F.U.	562 F.U. (est.)	\$25,774
Park Acquisition and Development Fee			\$400,448
Fire Facilities	\$0.94psf	100,104 SF	\$94,098
TOTAL			\$652,717

Calculations of the final fee amounts to be determined at the time of issuance of certificate of occupancy.

**Exhibit “C” TO
DEVELOPMENT IMPACT FEE DEFERRAL AGREEMENT
Form Release of Lien**

[Attached behind this cover page]

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 6103 & 27383

When Recorded Mail to:

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

SPACE ABOVE THIS LINE FOR RECORDING USE
FREE RECORDING REQUESTED
[Government Code Section 6103]

RELEASE OF LIEN FOR PAYMENT OF DEVELOPMENT IMPACT FEES

The City of Santa Ana, a charter city and municipal corporation of the State of California, does hereby release that leasehold interest in certain real property, as further described in Exhibit 1 attached to this Release, from the lien for payment of certain development impact fees as created by the Development Impact Fee Deferral Agreement entered into on _____, by and between the City of Santa Ana and Washington Santa Ana Housing Partners, L.P., a California limited partnership, which was recorded on _____, as Document Serial No. _____ in the Official Records of the County of Orange, California ("Agreement").

This release pertains only to the property described above and does not extend to any other property(ies). This release of lien is executed and recorded pursuant to the provisions of California Government Code section 66007.

Dated: _____

CITY OF SANTA ANA

By: _____
City Manager

Attest:

City Clerk

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, _____
(here insert name and title of the officer)

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.

 Signature (Seal)