

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 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

SUBORDINATION AGREEMENT
CITY OF SANTA ANA AND ORANGE COUNTY HOUSING FINANCE TRUST

This Subordination Agreement (this "**Subordination Agreement**") is dated for reference purposes as of _____, and is executed by and between the **CITY OF SANTA ANA**, a California charter city (the "**City**"), and the **ORANGE COUNTY HOUSING FINANCE TRUST**, a joint powers authority (the "**OCHFT**").

Factual Background

- A. City has agreed to make a permanent loan to North Broadway Housing Partners L.P., a California limited partnership (the "**Borrower**"), in the original principal amount of up to Five Million Two Hundred Fifty Six Thousand Three Hundred Twenty Seven Dollars (\$5,256,327) (the "**City Loan**") to assist in financing the construction of an affordable multifamily residential development (the "**Project**") on property located at 1411 N. Broadway in Santa Ana, and more particularly described in Exhibit A attached hereto and incorporated herein (the "**Property**").
- B. The City Loan is evidenced by a City HOME-ARP Loan Agreement dated as of _____, and executed by and between Borrower and the City (the "**City Loan Agreement**") and a City HOME-ARP Promissory Note executed by the Borrower in favor of the City dated as of _____ (the "**City Note**"). The City Loan is secured by a City HOME-ARP Deed of Trust _____, dated as of _____, that will be recorded in the official records of Orange County ("**Official Records**") substantially concurrently herewith (the "**City Deed of Trust**"). The City Loan Agreement, the City Note, and the City Deed of Trust are collectively referred to herein as the "**City Loan Documents**." In connection with the City Loan, Borrower and City will execute that certain Affordability Restrictions on the Transfer of Property, which will be recorded substantially concurrently herewith (the "**City Regulatory Agreement**").
- C. Pursuant to an Orange County Housing Finance Trust ("OCHFT") Loan Agreement dated as of _____, between OCHFT and Borrower ("**OCHFT Loan**").

Agreement”), OCHFT has made or is making a loan to Borrower in the maximum principal amount of Two Million Four Hundred Eighty Thousand Thirty Dollars (\$2,480,030) (“**OCHFT Loan**”). The OCHFT Loan is secured by an OCHFT Deed of Trust dated as of _____ (“**OCHFT Deed of Trust**”) encumbering all or a portion of the Mortgaged Property. In connection with the OCHFT Loan, Borrower and OCHFT have entered into that certain Amended and Restated Rent Limitation and Regulatory Agreement by and between Borrower and City to be recorded with the Recording Office on or about the date hereof (the “**OCHFT Regulatory Agreement**”).

AGREEMENT

1. **Subordination.**

1.1 The City Deed of Trust, and any and all renewals, modifications permitted hereunder, extensions, or protective advances (including those costs to cure Borrower’s default) thereunder (including interest thereon), is and will remain at all times, a lien, claim, or charge on the Property prior and superior to the OCHFT Deed of Trust. OCHFT acknowledges that it has had an opportunity to review the City Loan Documents, and OCHFT intentionally subordinates the lien of the OCHFT Deed of Trust to the City Deed of Trust.

1.2 The City Regulatory Agreement, and any and all renewals, modifications permitted hereunder, extensions, or protective advances (including those costs to cure Borrower’s default) thereunder (including interest thereon), is and will remain at all times, a lien, claim, or charge on the Property prior and superior to the OCHFT Regulatory Agreement. OCHFT acknowledges that it has had an opportunity to review the City Regulatory Agreement, and OCHFT intentionally subordinates the OCHFT Regulatory Agreement to the City Regulatory Agreement.

2. Amendments Require Consent. OCHFT agrees that it will not amend or modify the OCHFT Loan Documents to shorten the maturity date, increase the principal amount, accelerate the repayment schedule (excluding any acceleration of the OCHFT Note due to Borrower’s default) or increase the interest rate payable under the OCHFT Loan Documents without City’s prior written consent. City agrees that it will not amend or modify the City Loan Documents to shorten the maturity date, increase the principal amount, accelerate the repayment schedule (excluding any acceleration of the OCHFT Note due to Borrower’s default) or increase the interest rate payable under the City Loan Documents without OCHFT’s prior written consent.

3. **Notice and Cure Rights.**

3.1 Definitions: For purposes of this **Section 3**, the following capitalized words and terms shall have the following meanings.

"Cure Period" means a period of a ninety (90) consecutive days from the giving of a Default Notice.

"Defaulted Lender" means the party giving a Default Notice.

"Default Notice" means written notice of the default(s) or Event(s) of Default giving rise to a party's right to complete a Foreclosure Remedy.

"Foreclosure Remedy" means the completion of a foreclosure sale of the Property or the recording of a deed-in-lieu of foreclosure with respect to the Property.

"Noticed Defaults" means the noticed default(s) or Event(s) of Default set forth in a Default Notice.

"Notice Party" means the party receiving a Default Notice.

3.2 Notice and Cure Rights.

(a) Notice and Cure Rights of City. OCHFT agrees that concurrently with OCHFT's provision of any notice of default (including without limitation any Default Notice) to Borrower under the OCHFT Loan Documents, OCHFT shall provide a copy of such notice to City at the address specified below. OCHFT agrees that City shall have the right to cure any default of Borrower within the same period of time provided to Borrower under the OCHFT Loan Documents, extended by a period of ninety (90) days. OCHFT further agrees that it shall not complete a Foreclosure Remedy unless and until City has first been given a Default Notice, and City has failed to cure the Noticed Defaults within the Cure Period or such longer period provided pursuant to this Section; provided, however, that OCHFT shall be entitled during the Cure Period to continue to pursue all of its rights and remedies under the OCHFT Loan Documents, including but not limited to acceleration of the OCHFT Note (subject to the de-acceleration provisions set forth below), commencement and pursuit of foreclosure (but not completion of the foreclosure sale), any guaranty (subject to any notice and cure provisions contained therein), and/or any other OCHFT Loan Document. It is the express intent of the parties hereunder that OCHFT shall have the right to pursue all rights and remedies except completion of a Foreclosure Remedy without liability to City for failure to provide notice to City, and that the OCHFT's liability hereunder shall be expressly limited to actual damages to City directly caused by the OCHFT's completion of a Foreclosure Remedy without City receiving the notice and opportunity to cure described above. Except as specifically provided herein, or otherwise agreed in writing, OCHFT's failure to give any such notice for any reason shall not act to impair or waive any remedy or right of OCHFT under this Subordination Agreement or any of the Loan Documents.

(b) Notice and Cure Rights of OCHFT. City agrees that concurrently with City's provision of any notice of default (including without limitation any Default Notice) to Borrower under the City Loan Documents, City shall provide a copy of such notice to OCHFT at the address specified below. City agrees that OCHFT shall have the right to cure any default of Borrower within the same period of time provided to Borrower under the City Loan Documents, extended by a period of ninety (90) days. City agrees that it shall not complete a Foreclosure Remedy unless and until OCHFT has first been given a Default Notice, and OCHFT has failed to cure the Noticed Defaults within the Cure Period; provided, however, that City shall be entitled during the Cure Period to continue to pursue all of its rights and remedies under City Loan Documents including but not limited to acceleration of the City Note (subject to the de-acceleration provisions set forth below), commencement and pursuit of foreclosure (but not

completion of the foreclosure sale), any guaranty (subject to any notice and cure provisions contained therein), and/or any other City Loan Document. It is the express intent of the parties hereunder that City shall have the right to pursue all rights and remedies except completion of a Foreclosure Remedy without liability to OCHFT for failure to provide notice to OCHFT, and that the City's liability hereunder shall be expressly limited to actual damages to OCHFT directly caused by the City's completion of a Foreclosure Remedy without OCHFT receiving the notice and opportunity to cure described above. Except as specifically provided herein, or otherwise agreed in writing, City's failure to give any such notice for any reason shall not act to impair or waive any remedy or right of City under this Subordination Agreement or any of the City Loan Documents.

3.3 Exercise of Cure Rights. With respect to the exercise of the cure rights provided in **Section 3.2** above, the following shall apply:

(a) Each Notice Party, whether OCHFT or City, shall have the right, but not the obligation, to elect to cure the Noticed Defaults by giving the Defaulted Lender written notice of its intention to cure the Noticed Defaults within the Cure Period and thereafter curing all Noticed Defaults within the Cure Period.

(b) If a cure of all the Noticed Defaults is completed within the Cure Period, the Defaulted Lender will rescind any notice of default recorded and request dismissal of any receiver who has been appointed, after reimbursement of all of Defaulted Lender's costs, including, without limitation, reasonable attorneys' fees and costs.

(c) Following the timely cure of all Noticed Defaults by a Notice Party, the Defaulted Lender will not exercise its right to accelerate (or will de-accelerate) the amounts due under the Defaulted Lender's loan documents by reason of the Noticed Defaults cured by such Notice Party; provided, however, that nothing herein shall be construed to waive or limit any of Defaulted Lender's rights or remedies as to any uncured Noticed Default, or any subsequent default, by Borrower.

(d) Nothing in this Section is intended to limit or modify any covenant, term, or condition contained in the OCHFT Loan Documents or the City Loan Documents, including, without limitation, any covenant against creating or recording any liens or encumbrances against the Property without OCHFT's or City's prior written approval, and any acceleration clause in the OCHFT Deed of Trust and/or the City Deed of Trust.

4. Integration; No Waiver. This Subordination Agreement is the whole and only agreement with regard to the subordination of the liens, claims, and charges of the City Deed of Trust to the OCHFT Deed of Trust. This Subordination Agreement may not be modified or amended except by a written agreement signed by the party against whom enforcement is sought. No waiver shall be deemed to be made by any party of any of its rights hereunder unless the same shall be in writing signed by such party, and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights of such party or the obligations of Borrower to City or OCHFT in any other respect at any other time.

5. **Successors and Assigns.** This Subordination Agreement is binding on and inures to the benefit of the legal representatives, successors, and assigns of the parties.

6. **Creditor's Rights.** City and OCHFT each agree not to commence or join with any other creditor of Borrower in commencing any bankruptcy, reorganization, or insolvency proceedings against the Borrower without the prior written consent of the other party.

7. **Governing Law.** This Subordination Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to the choice of law rules of that State, except to the extent that any of such laws may now or hereafter be preempted by Federal law. The parties hereto consent to the jurisdiction of any Federal or State court having jurisdiction within the OCHFT of Orange, California, submits to venue in such jurisdiction, and also consents to service of process by any means authorized by Federal law or the law of the State of California. Without limiting the generality of the foregoing, the parties hereby waive and agree not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) any such party is not subject to the jurisdiction of the courts of the above-referenced jurisdiction or the United States District Court for such jurisdiction, or (ii) such suit, action, or proceeding is brought in an inconvenient forum, or (iii) the venue of such suit, action, or proceeding is improper.

8. **Notices.** All notices given under this Subordination Agreement shall be in writing and be given by personal delivery, overnight receipted courier (such as Airborne, UPS, or Federal Express) or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below its signature. Notices shall be effective upon the first to occur of receipt, when proper delivery is refused, or the expiration of forty-eight (48) hours after deposit in registered or certified United States mail as described above. Addresses for notice may be changed by any party by notice to any other party in accordance with this Section.

9. **Counterparts.** This Subordination Agreement may be executed in counterparts, and all counterparts constitute but one and the same document.

10. **Exhibits and Recitals.** The above Recitals and the attached exhibits are incorporated into this Agreement.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the parties have executed this Subordination Agreement.

ATTEST:

CITY OF SANTA ANA

Norma Orozco
Clerk of the Council

Kristine Ridge
City Manager

Dated: _____

Dated: _____

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

By: Matt Reilly
Special Counsel to the City
Best, Best & Krieger

Dated: 2/23/23

RECOMMENDED FOR APPROVAL:

Michael L. Garcia
Executive Director
Community Development Agency

ORANGE COUNTY HOUSING FINANCE TRUST,
a political subdivision of the State of California

By: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY

By: _____

Address for notices to OCHFT:

Orange County Housing Finance Trust
Attn: Adam Eliason, Manager
1 League #62335
Irvine, CA 92602

EXHIBIT A
LEGAL DESCRIPTION

All that certain real property situated in the County of Orange, State of California, described as follows:

COMMENCING AT THE CENTERLINE INTERSECTION OF 15TH STREET AND SYCAMORE STREET AS SHOWN ON THE RECORD OF SURVEY NO 85-1067, RECORDED IN BOOK 111, PAGE 38, OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, SAID CENTERLINE OF SYCAMORE STREET BEING DESCRIBED IN THAT CERTAIN FINAL JUDGMENT, SUPERIOR COURT CASE NO. 23280, A CERTIFIED COPY OF WHICH WAS RECORDED JANUARY 8, 1929 IN BOOK 227, PAGE 401 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, CALIFORNIA; THENCE SOUTHERLY ALONG SAID CENTERLINE OF SYCAMORE STREET SOUTH 00° 14' 46" WEST, 90 FEET AND SOUTH 00° 04' 48" EAST, 213.42 FEET TO THE POINT OF BEGINNING; THENCE LEAVING SAID CENTERLINE NORTH 89° 58' 21" WEST, 312.17 FEET TO THE CENTERLINE OF BROADWAY, THENCE NORTHERLY ALONG SAID CENTERLINE OF BROADWAY NORTH 00° 16' 10" EAST, 75.00 FEET TO THE SOUTHWEST CORNER OF THE LAND DESCRIBED IN A DEED TO T. J. MULLINIX RECORDED OCTOBER 29, 1897 IN BOOK 33, PAGE 197 OF DEEDS OF SAID ORANGE COUNTY; THENCE EASTERLY ALONG SAID SOUTHERLY LINE OF SAID DEED TO T. J. MULLINIX SOUTH 89° 58' 10" EAST, 181.72 FEET TO THE WESTERLY LINE OF THE EAST 130.00 FEET OF THAT PORTION OF THE LAND ALLOTTED TO JACOB ROSS, AS DESCRIBED IN THE FINAL DECREE OF PARTITION OF THE RANCHO SANTIAGO DE SANTA ANA, WHICH WAS ENTERED SEPTEMBER 12, 1869 IN BOOK "B", PAGE 410 OF JUDGMENTS OF THE DISTRICT COURT OF THE 17TH JUDICIAL DISTRICT IN AND FOR LOS ANGELES COUNTY, CALIFORNIA; THENCE NORTHERLY, ALONG SAID WESTERLY LINE NORTH 00° 04' 48" WEST, 77.08 FEET; THENCE SOUTH 89°58'10" EAST, 130.00 FEET TO THE ABOVE MENTIONED CENTERLINE OF SYCAMORE STREET; THENCE SOUTHERLY ALONG SAID CENTERLINE OF SYCAMORE STREET, SOUTH 00°04'48" EAST, 152.06 FEET TO THE POINT OF BEGINNING.

SAID LAND IS SHOWN AS LOT 1 ON VOLUNTARY LOT MERGER NO. 2022-06 RECORDED JANUARY 26, 2023 AS INSTRUMENT NO. 2023000018589, OFFICIAL RECORDS OF SAID COUNTY.

Assessor's Parcel Number: 398-523-04