

RESOLUTION NO. 2023-XXX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING DENSITY BONUS AGREEMENT NO. 2023-01 AS CONDITIONED FOR A NEW RENTAL RESIDENTIAL DEVELOPMENT WITH FIFTEEN UNITS FOR THE PROPERTY LOCATED AT 1212 E. FOURTH STREET (APN: 398-385-02)

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The Planning Commission of the City of Santa Ana hereby finds, determines and declares as follows:

- A. Oscar Uranga (applicant), on behalf of Unison Real Estate Group, LLC (property owner), is requesting approval of density bonus agreement (DBA) No. 2023-01 to allow the construction of a rental residential development, consisting of fifteen apartment units with one unit proposed as affordable to very-low income households earning less than 50 percent of the area median income (AMI) for the property located at 1212 E. Fourth Street.
- B. The Transit Zoning Code was adopted in 2010 to provide the zoning necessary to support the long-term development of a successful transit program. The regulating plan, which establishes land uses and development standards, allows a variety of housing and commercial projects, including affordable residential communities, live/work units, service and retail, and professional offices.
- C. The California Density Bonus law allows developers to seek increases in base density for providing on-site housing units in exchange for providing affordable units on site. To help make constructing on-site affordable units feasible, the law allows developers to seek incentives/concessions or waivers that would help the project be built without significant burden and without detriment to public health.
- D. The Applicant's request has been thoroughly evaluated by the City's Development Review Committee (DRC) through Development Project No. 2021-33. Through this review, the DRC has considered the subject site, proposed development, and the applicant's requests for incentives/concessions and waivers pursuant to the State's Density Bonus Law.
- E. Section 41-1607 of the Santa Ana Municipal Code (SAMC) requires an application for a density bonus agreement containing deviations

(incentives/concessions and/or waivers) to be approved by the Planning Commission.

- F. On August 28, 2023, the Planning Commission of the City of Santa Ana held a duly noticed public hearing and at that time considered all testimony, written and oral.
- G. The Planning Commission determines that the following findings, which must be established in order to grant this Density Bonus Agreement application pursuant to SAMC Section 41-1607, have been established for Density Bonus Agreement No. 2023-01 to allow construction of the proposed project:
 - 1. That the proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the city.

The proposed development will provide fifteen residential rental units, including one unit for very-low income households, contributing toward the City's rental housing stock to serve the needs of diverse and underserved populations. The area in which the project is proposed, the Transit Zoning Code, currently contains a mix of uses, including single-family residential, medium and medium-high density apartments, townhomes, and neighborhood- serving commercial. The construction of this project will contribute toward an economically balanced community by providing housing for different demographic and income levels in an area rich with employment opportunities, commercial development, and market-rate housing.

- 2. That the development will not be inconsistent with the purpose of the underlying zone or applicable designation in the general plan land use element.

The project site is in an area already identified in both the City's Zoning Code (the Transit Zoning Code) and General Plan (the Land Use and Housing elements) for new residential communities. Moreover, the City's General Plan land use designation for the project site is Urban Neighborhood-Medium (UN-40), which allows for the development of semi-urban villages that are well connected to schools, parks, and shopping centers. These areas are accessible by multiple modes of transportation, have lively and pedestrian-friendly streetscapes, and are designed to foster community interaction.

This designation allows a mix of uses, including medium and medium-high density apartments, townhomes, garden- or motor-court homes, and neighborhood- serving commercial. Mixed-use projects are allowed in both horizontal configuration, with commercial and residential uses side-by-side, and vertical, with commercial uses on the ground floor and residential above. Lastly, the proposed density of 52.26 dwelling units per acre (du/ac) is below the density bonus provisions in the California Density Bonus Law for an eight-percent affordability rate for one very-low income unit (27.5-percent State Density Bonus) which allows for 55.7 du/ac on the project site.

3. That the deviation is necessary to make it economically feasible for the Applicant to utilize a density bonus authorized for the development pursuant to section 41-1603.

The proposed project requires one deviation through incentives/concessions: Mixed-use requirement; as well as four deviations through a waiver in (1) maximum building height; (2) building size and massing standards; (3) open space standards; and (4) landscape standards. The five deviations are described as follows:

Mixed-use Requirement (Incentive/Concession)

Table 2A (Use Standards) in the Transit Zoning Code (TZC) states that multi-family dwellings are a permitted use in the Corridor (CDR) district, but only on second or upper floors, or behind retail or service ground floor use.

Pursuant to Government Code Section 65915 (k)(1), a concession may be sought by the applicant not only to modify or eliminate a development standard but also to modify “zoning code requirements.” In this case, the requirement for ground floor commercial is a zoning code requirement. Strict adherence to this requirement would result in a reduction in the number of units that can be provided in the overall project, thus not achieving the full 27.5-percent density bonus to which the applicant is entitled. Moreover, the ground floor commercial requirement is subordinate in function to the primary zoning classification of *Multi-Family Dwellings* within the CDR district. Lastly, adherence to ground floor commercial requirement would be economically infeasible, as it would require adding another story to the building to meet the ground floor commercial requirement and to still provide the number of units that the applicant is entitled to under State law.

Maximum Height (Waiver)

The maximum height permitted in the CDR district of the TZC is three stories. As proposed, the maximum height of the new structure would be four stories (58-feet, nine-inches). However, only the stairwell and elevator penthouse will be at the maximum height, and the rest of the four-story structure would be 51-feet, nine-inches in height.

The proposed fourth story is needed to make construction of the residential development financially feasible. The gross site area and existing site conditions severely restrict the applicant from providing a site plan that could accommodate the proposed number of units with a three story building type. With the current maximum height restriction, the applicant could propose underground parking to take advantage of the limited gross site area. However, this would result in a project that is financially infeasible. Strict adherence to the maximum height requirement would result in a loss of four residential units, would physically preclude construction of the project, and would preclude the construction of the affordable unit to be dedicated to very-low income occupants. This would also make the project infeasible and would not allow the applicant to achieve the full 27.5-percent density bonus to which the applicant is entitled under State law.

Building Size and Massing Standards – Maximum Ratio for each Flex Block story (Waiver)

Pursuant to Section 41-2022 of the TZC, the residential building is designed as Flex Block Building Type. The building type establishes a maximum ratio for each flex block story/level. Specifically, the second through fourth floor can only be 85-percent of the ground floor volume/gross floor area. As designed, the second through fourth floor cannot exceed 3,309 square feet.

The second through fourth floor of the proposed building exceed the allowable ratio and are 97.9-percent of the ground floor's volume. The second through fourth floor are proposed to be 3,811 square feet, exceeding the maximum allowable by 502 square feet. The proposed site has a smaller than average lot depth and lot width, compared to most lots in the downtown area. Lots in the downtown area range in lot depth and width but are on average 250 feet by 250 feet. The subject site is approximately 100 feet by 125 feet. Without the increase in the allowable building size and massing

standards, the project would need to be redesigned, resulting in several impacts to the feasibility of the site's development. These impacts would include a loss parking spaces; an incompatible design and unbalanced composition of massing the project site; and a smaller building footprint that would reduce the building's interior floor area and individual unit sizes and result in a loss of units.

In order to provide the required building size and massing standards, the developer would be required to construct an additional level, resulting in a different type of construction (steel-frame versus wood), or build underground parking, further increasing development costs and making the project infeasible.

Open Space Standards (Waiver)

Pursuant to Section 41-2022 of the TZC, the residential building is designed as Flex Block Building Type. This building type requires common open space to be designed as a courtyard or in the front as a forecourt, have it open to the sky, and to be equal to 15-percent of the lot. Moreover, private open space is required to be provided for each residential unit, no less than 50 square feet with a minimum dimension of six feet in each direction. The total common open space required is 1,875 square feet and the total private open space required is 750 square feet.

As proposed, the project provides 433 square feet of common interior space, provided in the form of lobby space (approximately 3.5-percent of lot) to be furnished (e.g., coffee tables, chairs, lounge tables, etc.), where feasible. The project also provides 591 square feet of private open space, in the form of private decks for nine units. The gross site area and existing site conditions severely restrict the ability for the project to accommodate any common open space, and restrict the ability to provide the fully required private open space. Providing the required common open space standard would lead to the elimination of three or more units, which would affect the feasibility to construct the project. In order to maintain the current proposed unit count, the developer would be required to construct additional floor levels or required to provide underground parking, which would further increase development costs and make the project financially infeasible. To help alleviate the common open space deficiency, the project proposes an average of 40 square feet of private open space per unit, through use of private balconies/decks.

Landscape Standards (Waiver)

Pursuant to Section 41-2020 of the TZC, all setbacks, yards, and shared common open spaces are required to be landscaped. In addition, a landscape buffer of not less than five feet is required to be provided to separate parking lot from an adjacent properties and the surface parking lot is required to be landscaped per City's commercial area standards.

As designed, the project provides a landscape buffer of two feet proposed along the western property lines, three feet less than required. In addition, the project does not provide the required full-size landscape planters in the surface parking lot and instead provides partial and diamond-shaped planters. Due to site constraints, smaller than average lot size, and parking and landscaping requirements, the required landscape buffer and landscape planters cannot be accommodated. Maintaining the required landscape standards would result in a site redesign, reducing the number of parking stall, the drive aisle width, the ability of trash trucks to service the site, and ultimately lead to the loss of bedroom units, resulting in the project becoming infeasible. In order to provide the required landscaping and maintain the current proposed unit count, the developer would be required to construct an additional level, resulting in a different type of construction (steel-frame versus wood), or build underground parking, further increasing development costs.

Section 2. In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, an Environmental Impact Report (EIR) was prepared and certified in 2010 in order to address the potential environmental impacts associated with the Transit Zoning Code. A mitigation monitoring and reporting program (MMRP), findings of fact, and a statement of overriding consideration were adopted with the 2010 EIR. As proposed, the development is not anticipated to have additional environmental impacts not addressed in the 2010 EIR. Therefore, no additional environmental review will be required. Based on this analysis, a Notice of Exemption, Environmental Review No. 2022-04 will be filed for this project. All applicable mitigation measures in the original EIR and associated MMRP will be enforced.

Section 3. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments,

agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

Section 4. The Planning Commission of the City of Santa Ana, after conducting the public hearing, hereby approves Density Bonus Agreement No. 2023-01 as conditioned in Exhibit A attached hereto and incorporated as though fully set forth herein. This decision is based upon the evidence submitted at the above said hearing, which includes, but is not limited to: the Request for Planning Commission Action dated August 28, 2023, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 28th day of August 2023, by the following vote:

AYES: Commissioners:
NOES: Commissioners:
ABSENT: Commissioners:
ABSTENTIONS: Commissioners:

Bao Pham
Chairperson

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: John M. Funk
John Funk
Chief Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Nuvia Ocampo, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2023-XXX to be the original resolution adopted by the Planning Commission of the City of Santa Ana on August 28, 2023.

Date: _____

Recording Secretary
City of Santa Ana

EXHIBIT A
Conditions for Approval for Density Bonus Agreement Application No. 2023-01

Density Bonus Agreement Application No. 2023-01 is approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with applicable sections of the Santa Ana Municipal Code, the California Administrative Code, the California Building Standards Code, and all other applicable regulations. In addition, it shall meet the following conditions of approval:

The Applicant must comply with each and every condition listed below prior to exercising the rights conferred by the Density Bonus Agreement.

The Applicant must remain in compliance with all conditions listed below throughout the life of the development project. Failure to comply with each and every condition may result in the revocation/termination of the Density Bonus Agreement.

1. All proposed site improvements must conform to the Development Project (DP) approval of DP No. 2021-33.
2. Any amendment to the DP No. 2021-33, including modifications to approved materials, finishes, architecture, site plan, landscaping, unit count, mix, and square footages must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or if the Development Project Review must be amended.
3. All mechanical equipment shall be screened from view from public and courtyard areas.
4. Prior to issuance of building permits, the Applicant shall submit a construction schedule and staging plan to the Planning Division for review and approval. The plan shall include construction hours, staging areas, parking and site security/screening during project construction.
5. Prior to issuance of building permits, the Applicant shall submit to the Planning Division and have approved a Parking Management Plan (PMP). The PMP shall provide for measures to address any parking shortages that may result from the project, with terms including but not limited to:
 - a. Requiring onsite parking permits (such as stickers or hang-tags) for any parking in the onsite parking spaces for both residents and guests;
 - b. Policies for maximum time vehicles may be parked in the surface parking spaces, including any guest parking; and

- c. Policies for towing unauthorized vehicles; vehicles parked in unauthorized locations, such as fire lanes; vehicles parking in surface guest parking without a sticker, hang-tag, or other identifiers; and vehicles parked longer than any maximum guest parking timeframes allowed;
- 6. Prior to installation of landscaping, the Applicant shall submit representative photos and specifications of all trees to be installed on the project site for review and approval by the Planning Division. Specifications shall include, at a minimum, the species, box size (24 inches minimum), brown trunk height (10-foot minimum), and name and location of the supplier.
- 7. Walls and Fencing.
 - a. The applicant shall construct a minimum six-foot (6') tall perimeter wall, as measured from nearest adjacent finished sidewalk, surrounding the project site, unless a conforming perimeter wall (minimum six-foot tall) already exists. Any new or existing perimeter wall shall conform to all applicable Citywide Design Guidelines, including a split-face or painted design with regularly-spaced pilasters and decorative cap. The applicant is responsible for coordination with any adjacent property owners to avoid double-walls or gaps between walls where possible.
 - b. Climbing vines shall be planted at regularly-spaced intervals along all exposed walls and wrought-iron fencing to deter graffiti. All solid walls shall be finished with anti-graffiti coating.
- 8. After project occupancy, landscaping and hardscape materials must be maintained as shown on the approved landscape plans.
- 9. Prior to final occupancy, a Property Maintenance Agreement must be recorded against the property. The agreement will be subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained, Applicant (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a maintenance agreement with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions and restrictions relating to the following:
 - a. Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the

construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);

- b. Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses);
- c. Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;
- d. Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris about the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);
- e. If Applicant and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms.
- f. The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties and obligations and responsibilities set forth under the maintenance agreement.
- g. The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the

property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City.

- h. The execution and recordation of the maintenance agreement shall be a condition precedent to the Certificate of occupancy.