

No Fees per Government Code 6103]
 RECORDING REQUESTED BY:]
 National City Housing Authority]
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 WHEN RECORDED MAIL TO:]
 National City Housing Authority]
 Attention: Executive Director]
 1243 National City Boulevard]
 National City, CA 91950]

**AFFORDABLE HOUSING DENSITY BONUS AGREEMENT
 (1628 Orange Street)**

THIS AFFORDABLE HOUSING DENSITY BONUS AGREEMENT (“Agreement”) is dated as of the 12th day of December 2022, by and between the City of National City (“City”), and ORANGE ST. PARTNERS, LLC, a California limited liability company (“Developer”).

WHEREAS, Developer is the owner of that certain real property generally located at 1628 Orange Street, in the City of National City, County of San Diego, more particularly described in Exhibit “A” attached hereto (“Property”); and

WHEREAS, Developer has applied to the City for a density bonus pursuant to Government Code section 65915, and Sections 18.48.030, et seq. of the National City Municipal Code, provided, however, the Developer has independently and of its own free will chosen not to increase the density of the Development to be built at the Property. Rather, the Developer is electing to only take two (2) waivers, incentives, and concessions (as defined in Government Code Section 65915 and Sections 18.48.040 of the National City Municipal Code) in exchange for providing the Affordable Unit, as defined below; and

WHEREAS, Developer proposes to develop a total of eight (8) housing units on the Property (“Development”) and restrict the rent and occupancy of one (1) 947 square foot 3 bedroom residential dwelling unit (“Affordable Unit”) to very lower-income households in exchange for the two (2) waivers, incentives and concessions; and

WHEREAS, This Agreement will serve to memorialize Developer’s obligation to provide the Affordable Unit, the time frame for the construction and occupancy of the Affordable Unit and the restriction of the Affordable Unit by the recordation of this Agreement assuring affordability for a total of fifty-five (55) years measured from the issuance of final inspection approval for the Development.

NOW, THEREFORE, in consideration of the foregoing and of the mutual terms and covenants hereinafter set forth and other good and valuable consideration, the City and Developer agree as follows:

1. Acknowledgement of Incentives. Developer acknowledges and agrees that the Development is entitled to and is receiving two (2) waivers, incentives, and concessions as follows: (1) Eliminate requirement for 75% minimum street wall; and (2) Eliminate requirement for 10 ft landscape buffer (this would otherwise be required along the north side of parking lot), pursuant to and in accordance with Government Code 65915.

2. Developer Covenants. Pursuant to and in consideration of the waivers, incentives, and concessions, Developer hereby agrees and covenants on behalf of itself and its successors and assigns, and each successor in interest to the Property, that at all times during the term of this Agreement the 947 square foot 3 bedroom residential dwelling unit on the Property (designated as Unit 2 on those certain plans for the project by CLAD Inc., 1st Building Permit Submittal dated October 11, 2022) shall be rented and occupied as the Affordable Unit as set forth in this Agreement. As used herein, the term “Affordable Unit” shall refer to the one (1) residential dwelling unit on the Property held available strictly in accordance with the terms and conditions set forth in this Agreement.

3. Affordability Restrictions.

(a) Area Median Income. As used herein, “Area Median Income” shall mean the area median income, as adjusted for family size, for San Diego County, established periodically by the California Department of Housing and Community Development (“HCD”) and published in the California Code of Regulations. In the event HCD ceases to publish an established Area Median Income as aforesaid, the City may, in its sole discretion, use any other reasonably comparable method of computing Area Median Income.

(b) Occupancy Restrictions. During the term of this Agreement, the Affordable Unit shall be occupied by a household whose income does not exceed the very low income limits applicable to San Diego County, adjusted for household size, as published annually by HCD, earning at or below fifty percent (50%) of the Area Median Income.

(c) Rent Amount. During the term of this Agreement, the monthly rental rate for the Affordable Unit (which shall include a utility allowance based on the utility allowance schedules published annually by the National City Housing Authority) shall not exceed 1/12 of thirty percent (30%) of fifty percent (50%) of the Area Median Income, as adjusted for assumed household size and utilities. The imputed household size for the Affordable Unit shall be equal to the number of bedrooms in the unit plus one. For example, the rent for the studio Affordable Unit shall be calculated using fifty percent (50%) of the Area Median Income for a 1-person household.

4. Restrictions. The following restrictions shall also be applicable to the Affordable Unit:

(a) No Relationship With Developer. The Affordable Unit shall not be occupied or leased to Developer or any relative (by blood or marriage) of Developer or any person employed by Developer or of any individuals who are members, principals, executives, directors, partners, or shareholders of Developer or in any entity having an ownership in Developer or in the Property.

(b) No Full-Time Students. The Affordable Unit shall not be occupied or leased to any household comprised exclusively of persons who are full-time students, unless such persons are eligible to file a joint federal income tax return and all such persons reside in the Affordable Unit. The term “full-time student” shall be defined as any person who will be or has been a full-time student during five calendar months of the calendar year in question at an educational institution (other than a correspondence school) with regular faculty and students.

(c) No Student Dependents. Notwithstanding the provisions of section 4(b), the Affordable Unit shall not be occupied or leased to any student dependent as defined in the U.S. Internal Revenue Code, unless the taxpayer (upon whom the student in question is dependent) resides in the same unit.

(d) No Owners of Real Property. The Affordable Unit shall not be occupied or leased to any person or any household comprised of one or more persons who own real property.

(e) Liquid Asset Limitation. The Affordable Unit shall not be occupied or leased to any person or household holding, directly or indirectly, liquid assets whose aggregate value exceeds, at the time of determination of eligibility, eighty percent (80%) of the then-current annual Area Median Income. As used herein, the term “liquid assets” refers to cash and assets which are readily convertible to cash within a reasonable period, including but not limited to savings and checking accounts, certificates of deposit of any term, marketable securities, money market and similar accounts, mutual fund shares, and insurance policy cash values. The term “liquid assets” shall not include retirement funds which are not readily accessible or which cannot be accessed by the tenant without the tenant incurring a penalty.

(f) Income of Co-Tenants. The income of all co-tenants and/or occupants shall be taken into account in determining whether a tenant or prospective tenant meets the requirements of this Agreement.

(g) Eligible Tenants - Increased Income. If as a result of the annual recertification procedure described in Section 7 below any household which was previously determined to be eligible to occupy the Affordable Unit is determined to be ineligible as a result of increased income or assets, the City will provide written notification thereof, and Developer shall have one hundred eighty days (180) from the date of notification to take all reasonable steps to pursue eviction of the ineligible household. If Developer fails to act within the one hundred eighty day (180) period, the City shall require payment of a fee by Developer, provided that no fee shall be payable so long as Developer is diligently pursuing eviction of the ineligible household by appropriate proceedings. Under this fee requirement, the ineligible tenant residing in the Affordable Unit shall pay the full market rate rent, and Developer shall pay the difference between the affordable rent and the full market rate rent, as determined by the City, to the City. The period of fee payment shall in no event exceed a period of six (6) months, at which time Developer’s failure to provide the Affordable Unit to a household eligible hereunder shall constitute a material default under this Agreement.

5. Term. Pursuant to Government Code Section 65915, this Agreement shall be effective on the date of its recordation and shall remain in force until the date that is fifty-five (55) years from the date of issuance of final inspection approval of the Development by the City.

6. Deed of Trust.

(a) Execution and Recordation. Developer shall, concurrently with the execution of this Agreement, execute, acknowledge and record a deed of trust on the Property ensuring timely performance of the obligations set forth in this Agreement (“Deed of Trust”). The Deed of Trust shall be subordinated to the construction deed(s) of trust and/or permanent financing in favor of institutional lenders, as approved by the City Manager. The subordination shall be upon such terms and conditions and for such periods of time as the City Manager may approve to protect the provision of affordable housing as required by this Agreement. The City shall reconvey the Deed of Trust following the expiration of the term of this Agreement.

(b) Foreclosure on the Property. In the event of a foreclosure on the Property which eliminates the Deed of Trust, the new owner, upon five (5) days’ written notice from the City, shall: (i) execute, acknowledge, and deliver to the City an assignment and assumption of this Agreement in a form as approved by the City, in its reasonable discretion, for recordation; (ii) execute, acknowledge, and deliver to the City a deed of trust, in a form as approved by the City, in its reasonable discretion, to be recorded against the Property, in a lien priority immediately junior to the assignment and assumption of this Agreement which will secure the performance of this Agreement; and (iii) reimburse the City for all of its attorneys’ fees and costs in connection with the foregoing, including all costs, attorneys’ fees, and expert witnesses fees incurred by the City in obtaining compliance by the new owner, including those incurred in litigation, if any.

7. Verification of Eligibility. The Affordable Unit shall not be rented to a prospective tenant or occupied by any person unless and until the City, through its designated staff, has verified that the prospective tenant or occupant is eligible and that affordable rents will be charged in accordance with the criteria set forth in this Agreement. Developer and/or its successor in interest shall ensure that all eligibility and rent criteria are met during the term of the Agreement. Annually, on the anniversary of the initial certification of compliance, as determined by the City, during the term of this Agreement, Developer or its successor in interest shall certify to the City that the Affordable Unit is being occupied by eligible tenants. Said certification shall be on forms acceptable to the City.

8. Maintenance Standards. During the term of this Agreement, Developer shall maintain the Affordable Unit and the Property in a condition that satisfies the more stringent of (a) the requirements of the applicable local codes or (b) the United States Department of Housing and Urban Development’s Uniform Physical Conditions Standards. The City shall have the right to inspect the Affordable Unit and the Property prior to initial occupancy and periodically during the term of this Agreement, upon three business days’ notice to Developer. The City shall have the right to disclose results of those inspections to the appropriate enforcement authorities. Any deficiencies in the physical condition of the Affordable Unit shall be corrected by Developer at Developer’s expense within thirty (30) days of the identification of such deficiency by the City and delivery of written notice of the same to Developer. Failure to maintain the unit(s) and the

Property in compliance with this section shall constitute a breach of this Agreement and subject the Developer to damages as set forth in Section 13 of this Agreement.

9. Interpretation and Construction. If any provision of this Agreement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Agreement and the application of such provisions to persons or circumstances, other than those as to which it is found to be invalid, shall not be affected thereby. Nothing contained herein shall be deemed compliance with or waiver of any provision of law or conditions of approval except as expressly stated herein.

10. Design, Construction and Occupancy Schedule for the Affordable Unit. The Affordable Unit shall receive final inspection approval no later than the date that the market-rate units receive final inspection and approval. Time is of the essence in the occupancy of the Affordable Unit. The City Manager may, in his or her sole discretion, extend one or more time deadlines for performance as referenced in this Agreement for good cause.

11. Indemnity. Developer agrees to indemnify, defend and hold harmless the City, the National City Housing Authority, and any and all of their respective councilmembers, commissioners, members, officers, agents, servants, and employees (the "Indemnitees") from and against all claims, liens, claims of lien, losses, damages, costs, and expenses, whether direct or indirect, arising in any way from this Agreement, including the construction, sale, rental, or operation of the Development, the Property, and/or any of the units, or from the default by Developer in the performance of its obligations under this Agreement; provided, however, that Developer shall not be required to indemnify, defend, or hold harmless any of the Indemnitees from claims, losses, damages, costs, and expenses related to the sole negligence or willful misconduct of the Indemnitees.

12. Agreement Binding on Successors. The terms, covenants and conditions of this Agreement shall apply to, and shall bind the parties hereto and any successors or assignees. Developer shall not sell, transfer, or otherwise dispose of the Property, any portion thereof, or any interest therein unless the proposed transferee shall have executed and delivered to the City an express written assumption of all of Developer's obligations under this Agreement, on a form reasonably acceptable to the City. Upon assignment and assumption by a successor entity, as approved by the City, Developer shall be released from all prospective liability and responsibility under the terms of this Agreement. Developer agrees that all of its obligations hereunder shall constitute covenants, which shall run with the land and shall be binding upon the Property and upon every person having any interest therein at any time and from time to time during the term of this Agreement. Further, Developer agrees that, if a court of competent jurisdiction determines that the obligations set forth herein do not qualify as covenants running with the land, they shall be enforced as equitable servitudes. Any sale or conveyance of the Property shall be made subject to this Agreement.

13. Damages; Enforcement; Remedies; Security.

(a) Standing; Equitable Remedies; Remedies Cumulative. Developer expressly agrees and declares that the City shall be the proper party to, and shall have standing to, initiate and pursue

any and all actions or proceedings, at law or in equity, to enforce the provisions hereof and/or to recover damages for any event that is expressly stated to be a material default hereunder and which event remains uncured following sixty (60) days' written notice to Developer from the City (or up to one hundred twenty (120) days after notice, if actions to correct the material default have been timely initiated and are, in the reasonable opinion of the City, being diligently pursued), notwithstanding the fact that such damages or the detriment arising from such a material default that remains uncured as aforesaid may have actually been suffered by some other person or by the public at large. Further, Developer expressly agrees that injunctive relief and specific performance are proper pre-trial and/or post-trial remedies hereunder to assure compliance with this Agreement. Nothing in this Section and no recovery by the City shall restrict or limit the rights or remedies of persons or entities other than the City, against Developer in connection with the same or related acts by Developer, provided that Developer shall not be subject to duplicate awards or recoveries. The remedies set forth in this Section are cumulative and not mutually exclusive, except to the extent that their award is specifically determined to be duplicative by final order of a court of competent jurisdiction. Further, the award of damages hereunder shall not bar the exercise of police power or other governmental powers, or the pursuit of criminal, civil, or administrative penalties by the City in connection with any material default under this Agreement that remains uncured as aforesaid. Developer acknowledges that a material default under this Agreement that remains uncured may constitute a violation of state law.

(b) Remedies At Law For Breach Of Rental Restrictions. In the event of any material default under the provisions hereof that remains uncured following thirty (30) days' written notice to Developer from the City (or up to one hundred sixty (160) days after notice, if actions to correct the material default have been timely initiated and are, in the reasonable opinion of the City, being diligently pursued) regarding restrictions on rental of the Affordable Unit, at the sole option of the City, the City shall be entitled to the following remedies at law to the extent they are not duplicative, the election of which shall not be required and may be revoked and/or modified until immediately prior to entry of judgment:

(1) Damages For Specific Breach. The City shall be entitled to recover compensatory damages, at its sole option in the event of a material uncured default under the terms of this Agreement. If the material uncured default in question involves the violation of Section 13(b) above, the amount of such compensatory damages shall be the product of multiplying (A) the number of months that the material uncured default in question has continued until the time of trial or cure, whichever occurs first, by (B) the result of subtracting (i) the rents properly chargeable hereunder for the Affordable Unit (ii) the rents actually collected by Developer for the Affordable Unit for the months in question, as reasonably determined by the City. Developer and the City agree that it would be extremely difficult or impracticable to ascertain the precise amount of actual damages accruing to the City as a result of such a material uncured default and that the foregoing formula is a fair and reasonable method of approximating such damages. The City shall be entitled to seek and to recover damages in separate actions for successive, separate breaches, which may occur during the term of this Agreement. Further, interest shall accrue on the amount of such damages from the date of the expiration of Developer's cure period for the material uncured breach in question at the rate of ten percent (10%) per annum or the maximum rate then allowed by law, whichever is less. Nothing in this section shall preclude the award of exemplary damages as allowed by law.

(2) Acceleration and Liquidation of Future Performance. At the sole option of the City, if any material default by Developer in the performance of its obligations under this Agreement remains uncured for more than ninety (90) days after written notice to Developer by the City specifying such breach in reasonable detail (or such longer period of time, not to exceed six (6) months, as may reasonably be required for Developer to cure such breach exercising reasonable diligence), Developer's obligation to perform hereunder may be accelerated by the City and declared immediately due through the payment of a liquidated sum. Developer and the City agree that it would be extremely difficult and impractical to predict the precise cost to the City of (i) locating a rental unit equivalent to the Affordable Unit, (ii) procuring such unit (through purchase, lease, or subsidies) at the rent discounts contemplated herein, (iii) performing the substantial administrative activities associated with replacing the Affordable Unit, and (iv) inflation. Therefore, Developer and the City agree that, in the event of a material default hereunder by Developer that remains uncured as aforesaid, and upon written notice from the City to Developer that the City has elected to exercise its option to accelerate and liquidate Developer's performance hereunder in accordance with the provisions of this Section 13(b)(2), Developer shall pay, and the City shall be entitled to receive, within thirty (30) days of the City's delivery of such written notice, in complete liquidation of the City's future monetary damages and Developer's future obligations under this Agreement, a lump sum payment equal to: (A) the aggregate of the mathematical differences between the monthly rent for a "Comparable Market Rate Unit" (as determined by the City, using statistical data for units of the same size and location at the time of the breach) and the monthly rent allowable hereunder for the Affordable Unit, at the date of delivery of the aforesaid written notice of election to accelerate, multiplied by (B) the number of months remaining in the term of this Agreement, from and after the date of delivery of the aforesaid written notice of election to accelerate. Developer and the City agree that acceleration is a fair and reasonable remedy for non-compliance hereunder, and that the foregoing formula represents a fair and reasonable method of approximating and liquidating the future monetary obligations of Developer to the City hereunder for purposes of any such optional acceleration by the City. Further, such liquidated amount shall automatically commence to bear interest at the rate of ten percent (10%) per annum or the maximum rate then allowed by law, whichever is less, from and after the date that the City delivers to Developer the aforesaid written notice of the City's election to accelerate Developer's performance hereunder, until paid. Further, if Developer breaches this Section 13(b)(2), the City shall be entitled to receive all reasonable attorneys' fees, costs of suit, title insurance charges, foreclosure costs, and other out-of-pocket expenses reasonably incurred in recovering such liquidated amount.

14. Monitoring Fees. Developer shall pay to the City, each year during the term of this Agreement, an annual monitoring fee, as determined by the City in schedules promulgated by the City from time to time. Failure to timely pay such fees shall constitute a material default under this Agreement.

15. General Provisions.

(a) Waiver. No provision of this Agreement, or breach of any provision, can be waived except in writing. The waiver by any party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions, ordinance or law, shall not be deemed to be a

waiver of any other term, covenant, condition, ordinance, or law or any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law.

(b) Costs and Attorneys' Fees. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and witness, expert, and attorney's fees expended in connection with such an action from the other party.

(c) Recordation. This Agreement shall be recorded in the Office of the County Recorder of the County of San Diego senior to all monetary liens. City shall not be obligated to issue permits prior to such delivery and recordation of this Agreement.

(d) Integration. The undersigned, and each of them, acknowledge and represent that no promise or inducement not expressed in this Agreement has been made in connection with this Agreement. This Agreement contains the entire agreement and understanding between the parties as to its subject matter.

(e) Ownership of the Property. Developer represents and warrants that it is the owner of the Property and has full authority to execute this Agreement.

(f) Counterparts. This Agreement may be executed in any number of counterparts and, as so executed, the counterparts shall constitute one and the same Agreement. The parties agree that each such counterpart is an original and shall be binding upon all the parties, even though all of the parties are not signatories to the same counterpart.

(g) Notices. All notices given pursuant to this Agreement shall be in writing and sent to the party at its address appearing below (a) by certified or registered U.S. mail, return receipt requested, (b) overnight by a nationally recognized overnight courier such as UPS Overnight or FedEx, or (c) by personal delivery. All notices shall be effective upon receipt (or refusal to accept delivery). These addresses may be changed by any party by written notice to all other parties.

If to City: City of National City
Attention: City Manager
1243 National City Boulevard
National City, CA 91950

If to Developer: ORANGE ST. PARTNERS, LLC
2801 B Street #70
San Diego, CA 92102

(h) Exhibits and Recitals Incorporated. All exhibits referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The Recitals to this Agreement are hereby incorporated in this Agreement by this reference.

(i) Further Assurances. If Developer does not receive all of the necessary permits and approvals to construct the Development, Developer and the City agree that this Agreement and the density bonus granted herein shall be null and void and of no further force and effect and Developer and the City agree to take all reasonable steps and to execute and cause to be recorded all documents reasonably necessary to remove this Agreement and the Deed of Trust from the record chain of title to the Property.

16. Risk of Market Conditions. Developer shall bear sole responsibility for developing, constructing, and marketing the units covered by this Agreement, pursuant to the approvals that the City has issued for the Development and the requirements contained in this Agreement. The City shall have no obligation to amend this Agreement, and the Developer shall reimburse the City for administrative costs associated with any modification of this Agreement that shall require the approval of the City Council of National City.

17. Signature Authority. All individuals signing this Agreement for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the other party hereto that he or she has the necessary capacity and authority to act for, sign, and bind the respective entity or principal on whose behalf he or she is signing.

CITY:
City of National City

By: _____
Brad Raulston, City Manager

APPROVED AS TO FORM:
Interim City Attorney

By: _____
Barry J. Schultz

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

DEVELOPER:

ORANGE ST. PARTNERS, LLC, a California limited liability company

By:  .

Keith S. Robinson – Manager of Orange St. Partners

EXHIBIT "A"

Legal Description of the Property

That certain real property located in the City of National City, County of San Diego, State of California more particularly described as follows:

Parcel 1:

The Northerly 200.00 feet of the Easterly 108.50 feet of the Westerly 221.50 feet of Lot "E" in Block 5 of Lincoln Acres Orchard Subdivision, in the City of National City, County of San Diego, State of California, according to Map thereof No. 1785, filed in the office of the County Recorder of San Diego County, March 6, 1924. Together with that portion lying within the Easterly 93.50 feet of the Westerly 315.00 feet of the Northerly 25.00 feet of said Lot "E".

Parcel 2:

The Westerly 15.00 feet of the Easterly 30.00 feet of Lot "F" in Block 5 of Lincoln Acres Orchard Subdivision, in the City of National City, County of San Diego, State of California, according to Map thereof No. 1785, filed in the Office of the County Recorder of San Diego County, March 6, 1924.

Parcel 3:

An easement and right of way for road purposes over the Easterly 15.00 feet of Lot "F" and over the Northerly 50.00 feet lying Easterly of the Easterly line of the Westerly 221.50 feet of Lot "E" in Block 5 of Lincoln Acres Orchard Subdivision, in the City of National City, County of San Diego, State of California, according to Map thereof No. 1785, filed in the Office of the County Recorder of San Diego County, March 6, 1924. Excepting therefrom that portion lying within the Easterly 93.50 feet of the Westerly 315.00 feet of the Northerly 25.00 feet of said Lot "E".

The easement herein granted is hereby declared to be appurtenant to and for the use and benefit of the present and future owners of all or any portion of Parcels 1 and 2 above described.

APN: 561-160-16-00

ACKNOWLEDGMENT

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.

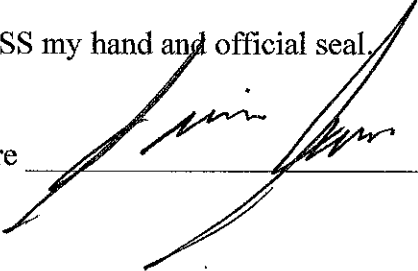
State of California)

County of San Diego)

On December 12TH, 2022, before me, CARRIN JOHNSON, notary public, personally appeared KEITH S. ROBINSON, 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)

