

**DENSITY BONUS HOUSING AGREEMENT
THE ORION SENIOR CITIZEN APARTMENT COMPLEX**

RESOLUTION NO. PC 03-24

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
ORANGE APPROVING A DENSITY BONUS HOUSING AGREEMENT
FOR THE CONSTRUCTION OF A 166-UNIT AFFORDABLE SENIOR
CITIZEN APARTMENT COMPLEX LOCATED AT 1800 E. LA VETA
AVENUE**

APPLICANT: USA PROPERTY FUNDS INCORPORATED / LEATHA CLARK

Moved by Commissioner _____ and seconded by Commissioner _____ that the following Resolution be adopted:

WHEREAS, the Planning Commission has authority per Orange Municipal Code (OMC) Section 17.15.070 to approve the Density Bonus Housing Agreement for the 166-unit affordable senior citizen apartment complex located at 1800 E. La Veta Avenue on property described in Attachment A; and

WHEREAS, the Planning Commission conducted one duly advertised public hearing on March 7, 2022 for the purpose of considering Conditional Use Permit No. 3146-21, Major Site Plan Review No. 1047-21, and Design Review No. 5042-21 for the property located at 1800 E. La Veta Avenue, and recommended by a 4-0-1 vote to approve the project subject to recommended conditions of approval including a condition requiring recordation of a Density Bonus Housing Agreement; and

WHEREAS, a Density Bonus Housing Agreement was drafted by USA Property Funds Incorporated in accordance with the provisions of the City of Orange Municipal Code and is included as Attachment B; and

WHEREAS, the Density Bonus Housing Agreement was reviewed and determined to be acceptable by the Community Development Director and City Attorney, who have recommended that it be approved by the Planning Commission, as prescribed by local law; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission:

1. Approves the attached Density Bonus Housing Agreement (Attachment B) for the project, with entitlements consisting of Conditional Use Permit No. 3146-21, Major Site Plan Review No. 1047-21, and Design Review No. 5042-21 to allow for the construction of a 166-unit affordable senior citizen apartment complex for low-income senior households at an affordable rent as specified in the Density Bonus Housing Agreement.

2. Finds that:

(1) The underlying project was deemed categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15332 (Class 32 – In-fill Development Projects) because the project met the following criteria:

- a. With the allowed density bonus, the project is consistent with the existing General Plan designations, General Plan policies, and applicable zoning designations and regulations.
- b. The project is in the City on a site less than five acres and is substantially surrounded by urban uses.
- c. The project site has no value as habitat for endangered, rare or threatened species.
- d. The project has been evaluated for significant effects relating to traffic, noise, air quality, and water quality and no significant effects have been identified.
- e. The site would be adequately served by all required utilities and public services.

(2) The project did not trigger any exceptions from State CEQA Guidelines 15300.2 based on location, cumulative impacts, significant effects, location near a scenic highway, location on a hazardous waste site, or causing substantial adverse change to a historical resource because the project is not on an environmentally sensitive site, does not contribute to cumulative impacts, will not have a significant effect on the environment, is not near a scenic highway, is not on hazardous waste site, and is not a historical resources site. No environmental public review was required.

(3) A Notice of Exemption was filed for the project on March 14, 2022.

(4) The subject Density Bonus Housing Agreement was a condition of project approval. Since approval of the project and filing of the Notice of Exemption, there has been no change to the project or substantial changes in circumstances or new information that would warrant subsequent environmental analysis in accordance with CEQA.

I hereby certify that the foregoing Resolution was adopted on February 5, 2024, by the Planning Commission of the City of Orange by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

David Vazquez, Planning Commission Chair

Date

Attachment A
Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ORANGE,
COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 2 OF PARCEL MAP NO. 93-188, AS SHOWN ON A MAP FILED IN BOOK 280,
PAGES 39, 40, AND 41 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER
OF ORANGE COUNTY, CALIFORNIA.

FOR CONVEYANCING PURPOSES ONLY: APN 390-322-15
THE LAND

Attachment B
Density Bonus Housing Agreement

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City of Orange)
300 E. Chapman Avenue)
Orange, California 92866)
)
Attention: City Clerk)

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

OFFICIAL BUSINESS:

THIS DOCUMENT IS RECORDED AT THE REQUEST AND FOR THE BENEFIT OF THE CITY OF ORANGE AND IS EXEMPT FROM THE PAYMENT OF A RECORDING FEE PURSUANT TO GOVERNMENT CODE SECTIONS 6103 AND 27383.

DENSITY BONUS HOUSING AGREEMENT

Orion Apartments

THIS DENSITY BONUS HOUSING AGREEMENT (the "Agreement") is entered into as of _____, 2023, by and among the **CITY OF ORANGE**, a municipal corporation ("**City**"), **ORANGE 702, L.P.**, a California limited partnership ("**Developer**").

RECITALS

A. The Developer intends to develop a housing development to be known as Orion Apartments ("Housing Development"), containing one hundred sixty-six (166) rental housing units ("Housing Units" or "Units") and subsequent management thereof as an affordable rental housing complex with one hundred sixty-four (164) Housing Units to be restricted to Lower Income Households for Eligible Tenants. The Housing Development will be constructed on land owned by the Developer at 1800 East La Veta, in the City of Orange ("Site"), as particularly described in the Legal Description attached hereto as Exhibit "A-1", and depicted on the Site Plan attached hereto as "Exhibit A-2", which are incorporated herein.

B. The Developer has applied to the City for incentives and concessions under the state density bonus law, California Government Code Section 65915(b)(1)(G), and the City's density bonus ordinance, Orange Municipal Code ("OMC") Chapter 17.15. The City has required, as a condition of granting such incentives and concessions, that one hundred sixty-four (164) Housing Units developed on the Site be made available to Lower Income Households for Eligible Tenants at an Affordable Rent.

C. This Agreement is intended to satisfy the requirements of OMC Section 17.15.070 for the Developer and City to enter into a Density Bonus Housing Agreement.

NOW, THEREFORE, the Developer and City declare, covenant and agree, by and for themselves, their heirs, executors, administrators and assigns, and all persons claiming under or through them, that the Site, for the term of this Agreement, shall be held transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth.

1. DEFINITIONS. The following terms shall have the meanings ascribed to them in this Section for purposes of this Agreement.

1.1 “Actual Household Size” means the actual number of persons in the applicable household.

1.2 “Adjusted for Family Size Appropriate for the Unit” shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code, subject to the application of federal rules and regulations applicable to Housing Development financing sources, including Section 42(g)(2) of the Internal Revenue Code of 1986, as amended.

1.3 “Affordable Rent” means the following, determined in accordance with Government Code Section 65915(c)(1)(B)(ii) and Health and Safety Code Section 50053(b)(4): (i) for thirty-four (34) of the Affordable Units in the Housing Development (20% of the total Units in the Housing Development) a monthly rent that does not exceed one-twelfth of thirty percent (30%) of sixty percent (60%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit, less a utility allowance and other fees and charges required to be paid by tenants of the Housing Development on a non-optional basis, and (ii) for the remainder of the Affordable Units in the Housing Development, a monthly rent that does not exceed the applicable maximum rent level as determined by CTCAC regulations applicable to the Housing Development.

1.4 “Area Median Income” or “AMI” means the following: (i) pursuant to California Government Code Section 65915(c)(1)(B)(ii) and Health and Safety Code Sections 50053(d) and 50093, for thirty-four (34) of the Affordable Units in the Housing Development (20% of the total Units in the Housing Development), the median income for Orange County, California, adjusted for Actual Household Size, as determined by the U.S. Department of Housing and Urban Development (“HUD”) pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093, and (ii) for the remainder of the Affordable Units in the Housing Development, the median income for Orange County, California, Adjusted for Family Size Appropriate for the Unit, as determined by CTCAC regulations applicable to the Housing Development.

1.5 “Affordable Unit” shall mean one of the one hundred sixty-four (164) rental Units in the Housing Development restricted to occupancy by Lower Income Households.

1.6 “CTCAC” means the California Tax Credit Allocation Committee.

1.7 “Eligible Tenant” shall mean to a household that (i) qualifies as a Lower Income Household and (ii) satisfies the requirements of a household qualified to reside in a senior citizen housing development within the meaning of California Civil Code Section 51.3(b)(4).

1.8 “Gross Income” means the following: (i) pursuant to California Government Code Section 65915(c)(1)(B)(ii), for thirty-four (34) of the residential units in the Housing Development (20% of the total Units in the Housing Development), the total gross annual income of all persons in a household as calculated in accordance with Section 6914 of Title 25 of the California Code of Regulations, and (ii) for the remainder of the Affordable Units in the Housing Development, the total gross annual income of all persons in a household as determined by CTCAC regulations.

1.9 “Lower Income Households” shall mean households whose household income does not exceed eighty percent (80%) of the applicable Area Median Income.

2. DEVELOPMENT OF THE PROJECT

2.1 Overall Project. Developer shall develop, or cause to be developed, the Site with one hundred and sixty-six (166) Units, with appurtenant amenities.

2.2 Total Number of Affordable Units; Number of Bedrooms. Developer expressly understands and agrees that the state density bonus law allows, and the Developer has requested, a density bonus of eighty percent (80%), increasing the density from twenty-four dwelling units per acre (24 du/a) to forty-three dwelling units per acre (43 du/acre). The Housing Project shall have one hundred and sixty-four (164) Affordable Units and appurtenant amenities, pursuant to the terms and conditions of this Agreement. The Housing Project shall consist of a total of one hundred and sixty-six (166) units. The Affordable Units shall consist of: One Hundred Eleven (111) One-Bedroom Units; and Fifty-Three (53) Two-Bedroom Units.

2.3 Facilities. All of the Units in the Housing Development shall contain facilities adequate for living, sleeping, eating, cooking and sanitation in accordance with all applicable federal, state and local laws and codes. The development and maintenance of the Units shall comply with all applicable local codes, development standards, ordinances and zoning ordinances in effect, and the Units shall be decent, safe and sanitary and shall conform to the building, electrical, plumbing, mechanical and energy codes that have been adopted by the City.

2.4 Restrictions. None of the Units in the Housing Development shall at any time be utilized on a transient basis or shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, or trailer court or park, or any other use that is inconsistent or incompatible with this Agreement.

2.5 Ownership. No part of the Housing Development shall at any time be owned by a cooperative housing corporation nor shall the Developer take any steps in connection with the conversion to such ownership or uses to condominiums, or to any other form of ownership without prior written approval by the City.

2.6 Concessions or Incentives. The Developer is entitled to concessions or incentives and Developer acknowledges and agrees that the concessions or incentives described below are satisfactory to Developer and sufficient to fully comply with the requirements of Government Code Section 65915(d)(2):

(a) Height. The Developer requested a concession in building height. The OMC sets forth a height limit of 32 feet, or two stories. City agrees to grant a building height/story concession to construct a four (4) story building at a maximum height of fifty-three (53) feet.

(b) Unit Size. The Developer has requested a concession in minimum floor area for certain units. The OMC requires a minimum floor area of six hundred (600) square feet for a one-bedroom unit. City agrees to grant a concession in one-bedroom minimum floor area from the required six hundred square feet (600) to five hundred and eight four (584) square feet.

(c) Open Space. The Developer has requested a concession in private and common open space. The OMC requires a minimum width of 10 feet by 10 feet for decks/patios and 7 feet by 7 feet for balconies for each unit. The OMC requires two hundred and fifty (250) square feet of common open space per unit at the minimum dimensions of 20 feet by 20 feet and for the Housing Development, a total of 41,500 square feet. City further agrees the Developer shall provide private patios/balconies in 40% of the units (63 units) at 7 feet 7 inches by 5 feet 4 inches in size. City agrees Developer shall provide a total of 19,701 square feet (118 square feet per unit) in common open space and a minimum of 10 feet by 10 feet in most locations.

2.7 Planning Approvals; Environmental Review. Developer acknowledges that the City is a “public entity” and/or a “public agency” as defined under applicable California law. Therefore, the City must satisfy the requirements of certain California statutes relating to actions of public entities, including, without limitations, the California Environmental Quality Act (“CEQA”). Also, as a public entity, the City’s actions in approving this Agreement may be subject to proceedings to challenge or invalidate this Agreement or mandamus. Developer assumes the risk of delays and damages that may result to Developer from any third-party legal actions related to the City’s approval of this Agreement or pursuit of the activities contemplated by this Agreement, even in the event that an error, omission or abuse of discretion by the City is determined to have occurred. If a third-party files a legal actions regarding the City’s approval of this Agreement or the pursuit of activities contemplated by this Agreement, the City may terminate this Agreement on thirty (30) days advance written notice to Developer of the City’s intent to terminate this Agreement, refencing this Section 2.7, without any further obligations to perform the terms of this Agreement and without any liability to Developer resulting from such termination, unless Developer unconditionally agrees in writing to indemnify and defend the City, with legal counsel acceptable to the City, against such third party legal action, such indemnity agreement to be in form and content satisfactory to the City.

3. OCCUPANCY OF HOUSING DEVELOPMENT BY ELIGIBLE TENANTS.
Developer hereby represents, warrants, and covenants as follows:

3.1 Income Restrictions. Except as expressly provided herein, throughout the term of this Agreement, the Affordable Units shall be rented only to, and occupied only by, Eligible Tenants.

3.2 Rental Rates. Prior to the City's issuance of a certificate of occupancy for the Housing Development, and annually thereafter, the Developer shall submit to the City's Director of Community Development ("Director") a maximum rent schedule for the Affordable Units. Maximum rents for the Affordable Units set forth in such schedule shall not exceed Affordable Rent. Developer shall rent the Affordable Units to Eligible Tenants at no more than the allowable Affordable Rent. The rental rates for the Affordable Units shall be adjusted annually based upon annual updates of the applicable income and rent standards, including but not limited to updates published by the California Housing and Community Development Department, the United States Department of Housing and Urban Development and CTCAC. In no event shall any of the Affordable Units be rented at a rate greater than the applicable Affordable Rent. Failure to comply with the affordability requirements of this Agreement is an event of default.

3.3 Occupancy by Eligible Tenant. An Affordable Unit initially occupied by an Eligible Tenant shall be deemed occupied by an Eligible Tenant until such Affordable Unit is vacated, even if the tenant's household income subsequently increases to an amount that exceeds the maximum allowable income level for a Lower Income Household so long as satisfactory actions are taken to ensure that all vacancies are filled in accordance with this Agreement until the noncompliance is corrected.

3.4 Income Computation. Immediately prior to a prospective tenant's occupancy of an Affordable Unit, and annually thereafter, Developer shall obtain and maintain on file an income computation and certification form from such prospective tenant dated immediately prior to the date of initial occupancy of an Affordable Unit by such prospective tenant. Developer shall verify that the income information provided by an applicant is accurate by following all applicable City policies and procedures and by taking one or more of the following steps as a part of the verification process: (i) obtain two (2) pay stubs from the most recent pay periods; (ii) obtain a written verification of income and employment from applicant's current employer; (iii) obtain an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either agency; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income as is reasonably satisfactory; or (v) obtain such other information as may be reasonably required. Developer shall update the foregoing records annually and shall provide copies of updated tenant eligibility records and rental records to the Director (or his/her designee) for review. Upon review of such records, City may at its option perform an independent audit of the tenant eligibility records in order to verify compliance with the income and affordability requirements set forth herein. Developer shall retain the records described in this Section for a period of three (3) years after the date the respective records were created.

3.5 Lease Provisions. Total move-in costs for Eligible Tenants occupying Affordable Units shall be limited to the first month's rent plus a cleaning or security deposit not to exceed one month's rent. The lease for Affordable Units shall prohibit subletting except if (i) written permission is obtained from the Director (or his/her designee), (ii) the sublessee qualifies as an Eligible Tenant, as applicable to the Affordable Unit, and (iii) the rent payable by the sublessee does not exceed Affordable Rent applicable to the Affordable Unit.

3.6 Annual Reports. Developer covenants and agrees to submit to the Director an annual report ("Annual Report"), which shall include for each Affordable Unit the rental rate

and the income and family size of the occupants, and shall also include the records described in Section 8 of this Agreement. The income information shall be supplied by the tenant in a certified statement on a form provided by the City or on the form required by the CTCAC. The Developer shall submit the Annual Report on or before April 30 of the year following the year covered by the Annual Report. The Developer shall provide for the submission of household information and certification in its leases with tenants.

4. DURATION OF AFFORDABILITY REQUIREMENTS. The Affordable Units shall be subject to the requirements of this Agreement for fifty-five (55) years, commencing upon the date of the City's issuance of a certificate of occupancy for the Housing Development. The Developer hereby agrees that the Housing Development is to be owned, managed, and operated as a project for Eligible Tenants for the term of this Agreement.

5. NON-DISCRIMINATION COVENANTS. The Developer herein covenants by and for itself, its successors or assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in Government Code Section 12955 (a) or (d), as those bases are defined in Sections 12926, 12926.1, 12955(m), and 12955.2, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Housing Units, nor shall the Developer or any person claiming under or through it, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises conveyed. The foregoing covenants shall run with the land.

6. RESERVED.

7. COVENANTS TO RUN WITH THE LAND. Developer hereby subjects the Site to the covenants, reservations, and restrictions set forth in this Agreement. City and Developer hereby declare their express intent that all such covenants, reservations, and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Developer's successors in title to the Site; provided, however, that on the termination of this Agreement said covenants, reservations and restrictions shall expire, except the nondiscrimination covenants contained in Section 5 shall remain in perpetuity. The covenants established in this Section 7 shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City and its successors and assigns, and shall remain in effect in perpetuity.

8. MONITORING AND RECORDKEEPING. Throughout the term of this Agreement, Developer shall maintain complete and accurate records pertaining to the Affordable Units, including the name, address and income of each resident of an Affordable Unit, and which identifies the bedroom size and monthly rent of each Affordable Unit. Representatives of the City shall be entitled to enter the Housing Development during normal business hours, upon at least forty-eight (48) hours prior written notice, to monitor compliance with this Agreement, to inspect the records of the Housing Development, including, but not limited to, those records pertaining to tenant eligibility and occupancy of the Affordable Units, and to conduct an independent audit or inspection of such records. The Developer agrees to cooperate with the City in making the said records available for such inspection or audit. Developer agrees to maintain records in businesslike manner, and to maintain such records for at least three (3) years.

9. EVENTS OF DEFAULT. An "Event of Default" shall occur under this Agreement in the event there is a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement, and such breach continues for a period of thirty (30) days after written notice thereof to the defaulting party without the defaulting party curing such breach. However, no Event of Default shall occur if such breach cannot reasonably be cured within such thirty (30) day period, and the party commences the cure of such breach within such thirty (30) day period and thereafter diligently proceeds to cure such breach.

10. REMEDIES. The occurrence of any Event of Default shall give the nondefaulting party the right to proceed with any and all remedies set forth in this Agreement, including an action for damages, and an action or proceeding at law or in equity to require the defaulting party to perform its obligations and covenants hereunder or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement.

11. PERMITS AND PROCESSING, COMPLIANCE WITH LAW. Developer at its sole cost and expense shall secure or cause to be secured any and all permits that may be required by City or any other federal, state or local government entity having or claiming jurisdiction over the Site or Housing Project, except as provided by this Agreement. Upon securing any and all permits, Developer shall carry out and perform the development of the Housing Project in accordance with plans approved by the City, and in conformity with all applicable federal, state and local laws and regulations.

12. ATTORNEYS' FEES. In addition to any other remedies provided hereunder or available pursuant to law, if either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover from the other party its costs of suit, including without limitation expert witness fees and reasonable attorneys' fees.

13. REMEDIES CUMULATIVE. No right, power, or remedy given to the City or Developer by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City or Developer by the terms of any such instrument, or by any statute or otherwise against any other person.

14. RESERVED.

15. EFFECT OF AGREEMENT CONTAINING COVENANTS ON PERMITTED ENCUMBRANCES. This Agreement and any renewals or extensions thereof shall unconditionally be and remain at all times a lien on the Site and the Housing Development prior and superior to the lien created by the lien or charge of any mortgage or deed of trust or security recorded of record against the Site. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security recorded of record against the Site; provided, however, that any subsequent Developer of the Site shall be bound by such remaining covenants, conditions, restrictions, provisions and limitations, whether such Developer's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

16. MISCELLANEOUS.

16.1 Waiver of Terms and Conditions. The City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

16.2 Notices. Any approval, disapproval, demand, document or other notice (“Notice”) which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, postage prepaid, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice:

Developer: USA Orange 702, Inc.
3200 Douglas Boulevard, Suite 200
Roseville, California 95661
Attention: President

Riverside Charitable Corporation
14131 Yorba Street
Tustin, CA 92780
Attention: Executive Director

City: City of Orange
300 E. Chapman Avenue
Orange, California 92866
Attention: Director of Community Development

With a copy to: Office of the City Attorney
300 E. Chapman Avenue
Orange, California 92866

Such addresses may be changed by Notice to the other party given in the same manner as provided above.

16.3 Non-Liability of Officials and Employees of City. No member, official or employee of the City shall be personally liable to the Developer or any successor in interest, for any Event of Default or breach by the City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

16.4 Relationship Between City and Developer. It is hereby acknowledged that the relationship between the City and the Developer is not that of a partnership or joint venture and that the City and the Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein, the City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Housing Development.

16.5 City Approvals and Actions. The City shall maintain authority over this Agreement and the authority to implement this Agreement through the City's Director of Community Development (or his/her designee). The Director shall have the authority to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or development permitted on the Site. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council. All amendments to this Agreement shall be duly executed and recorded in the Official Records of the County of Orange.

16.6 Indemnification. In addition to any other indemnification specifically provided in this Agreement, Developer agrees to defend (with Counsel of City's choosing and the consent of Developer, which shall not be unreasonably withheld, and which may be joint defense counsel upon City's and Developer's consent), indemnify, and hold harmless City and its officers, officials, agents, employees, representatives, and volunteers (collectively, "Indemnitees") from and against ant loss, liability, claim or judgment arising from any act or omission of Developer in connection with its obligations under this Agreement, except to the extent caused by negligence or misconduct of Indemnitees.

16.7 Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement constitutes the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

16.8 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms.

16.9 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

16.10 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

16.11 Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held

invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

16.12 Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Government Code Section 6700. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

16.13 Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

16.14 Time of Essence. Time is expressly made of the essence with respect to the performance by the City and the Developer of each and every obligation, covenant and/or condition of this Agreement.

16.15 Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

16.16 Conflicts of Interest. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

16.17 Counterparts. This Agreement may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and shall be one and the same instrument. This Agreement shall not be effective until the execution and delivery by the Parties of at least one set of counterparts. The Parties hereunder authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

DEVELOPER:

ORANGE 702, L.P.,
a California limited partnership

By: USA Orange 702, Inc.,
a California corporation,
its administrative general partner

By: _____
Geoffrey C. Brown, President

By: Riverside Charitable Corporation,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Recinda Shafer,
Deputy Executive Director

[Remainder of Signatures on Next Page]

CITY:

CITY OF ORANGE,
a California municipal corporation

By: _____

Dan Slater
Mayor of the City of Orange

ATTEST:

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

Michael Vigliotta
City Attorney

APPROVED AS TO CONTENT:

Russell Bunim
Interim Director of Community Development

EXHIBIT "A-1"

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 2 OF PARCEL MAP NO. 93-188, AS SHOWN ON A MAP FILED IN BOOK 280, PAGES 39, 40 AND 41 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

APN: 390-322-15

