

ATTACHMENT NO. 9

PROMISSORY NOTE
TO THE CITY OF ORANGE
(LMIHAF)

3% Interest (Simple)
\$2,200,000

Orange, California
May 9, 2024

FOR VALUE RECEIVED, ORANGE 702, L.P., a California limited partnership (“**Borrower**”), hereby promises to pay to the CITY OF ORANGE, a municipal corporation of the State of California (“**City**”), or order, a principal amount of TWO MILLION TWO HUNDRED THOUSAND DOLLARS (\$2,200,000), being the principal amount of the City’s loan of LMIHAF construction to permanent funds (the “**LMIHAF Loan**”). This Note is given pursuant to that certain Affordable Housing Agreement dated as of January 23, 2024, between Borrower and the City (the “**Affordable Housing Agreement**”) and evidences the LMIHAF Loan to Borrower, which provides part of the financing for the acquisition and development of that certain real property owned by Borrower and located at 1800 E. La Veta Avenue in the City of Orange, legally described in the Deed of Trust securing this Note (the “**Property**”). The obligation of Borrower to City hereunder is subject to the terms of the Affordable Housing Agreement, this Note and the following instruments, each dated on or about the date hereof, and, where applicable, executed and delivered by Borrower for the purpose of securing this Note: an Agreement Containing Covenants (Including Rental Restrictions) (“**Agreement Containing Covenants**”); a Subordinated Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) (“**City Deed of Trust**”); an Assignment of Rents and Leases (“**Assignment of Rents**”); an Assignment of Agreements (“**Assignment of Agreements**”); and a UCC-1 Financing Statement. Said documents are public records on file in the offices of City, and the provisions of said documents are incorporated herein by this reference. The Borrower will pay interest at the rate, in the amount and at the time hereinafter provided.

1. Definitions.

Capitalized terms not otherwise defined herein will have the meaning ascribed to such terms in the Affordable Housing Agreement. In addition, the following terms have the following meanings:

“**Acquisition and Development Costs**” means the total cost of acquiring the Property and developing, rehabilitating and constructing the Improvements thereon, in accordance with the Affordable Housing Agreement.

“**Administrative General Partner**” means USA Orange 702, Inc., a California corporation, and its successors and assigns permitted under the terms of the Affordable Housing Agreement and this Note.

“**Affiliate**” means any Person directly or indirectly controlling, controlled by or under common control with another Person. The term “control” as used in the immediately preceding sentence, means the power to direct the management or the power to control election of the board

of directors. It will be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity. For purposes of this definition, each general partner will be considered an "Affiliate" of Borrower.

"Annual Financial Statement" means the annual audited financial statement of Revenue and Operating Expenses and balance sheet for the Improvements, prepared at the Borrower's expense, by an independent certified public accountant reasonably acceptable to the City, which will form the basis for determining the Residual Receipts.

"City Deed of Trust" means the Subordinated Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents) executed by Borrower in favor of City and dated on or about the date hereof, which secures this Note and the LMIHAF Loan evidenced hereby.

"City's Share of Residual Receipts" will have the meaning set forth in Section 8, below.

"Construction Financing Event" means the point in time when all conditions precedent to the release of the Construction Loan funds and the LMIHAF Loan funds have been satisfied, in accordance with the Affordable Housing Agreement.

"Construction Loan" means the Construction Period loan(s) to be made to Borrower by an institutional or governmental lender reasonably acceptable to City (together with its successors and assigns, "**Construction Lender**") at the time of the Construction Financing Event, secured by the Construction Loan Deed of Trust.

"Construction Loan Deed of Trust" means the deed of trust securing the Construction Loan that is first in priority on Borrower's leasehold interest in the Property.

"Construction Period" means the period of time commencing upon the Construction Financing Event and ending upon the repayment of the Construction Loan and the funding of the Permanent Financing.

"Conversion" means the point in time when the Permanent Financing has been funded, the Limited Partner Capital Contribution has been funded (subject to adjustment as provided in the Partnership Agreement and less that portion, not to exceed 10%, of the Limited Partner Capital Contribution that will be funded upon receipt of Form(s) 8609) and related conditions, and the Construction Loan has been repaid in full or converted to a Permanent Loan.

"County Loan" means the loan made by the County of Orange to Borrower in the maximum amount of \$921,150.

“Deferred Developer Fee” means that portion of the Developer Fee which was not paid prior to the date of Conversion and which will be paid from the Revenue remaining after payment of Operating Expenses, prior to any payment of Residual Receipts to the City. The term “Deferred Developer Fee” will include any loan or capital contribution made by a partner of Borrower to pay such deferred fee.

“Developer Equity” means funds provided by the Borrower for payment of Acquisition and Development Costs and will not include the Senior Loan, the Secondary Loan, the LMIHAF Loan, the RCC Loan, the County Loan, the Trust Fund Loan, the Improvement Allowance, or any other borrowed funds, and will include the Deferred Developer Fee, the Investor Limited Partner’s capital contribution, as well as any other funds of the Borrower or the General Partners.

“Developer Fee” means the fee in the amount set forth in the Project Budget.

“Environmental Indemnity” means the indemnity in the form attached to the Affordable Housing Agreement as Attachment No. 15, which is incorporated herein by this reference.

“Ground Lease” means the ground lease between Ground Lessor and Borrower approved by the City Manager pursuant to the Affordable Housing Agreement.

“Ground Lessor” means the owner of the fee interest in the Property.

“Improvement Allowance” means the amount paid by Ground Lessor to Borrower pursuant to the Ground Lease to fund Acquisition and Development costs of the Improvements.

“Improvements” means the 166-unit residential development and ancillary facilities to be constructed on the Property by the Borrower, all as described in the Affordable Housing Agreement.

“Investor Limited Partner” means Bank of America, N.A., a national banking association, and Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, and each of its authorized successors and assigns. o

“LMIHAF Loan” means the loan made by the City to Borrower in the maximum amount of \$2,200,000, which is evidenced by this Note and secured by the City Deed of Trust.

“LMIHAF Loan Documents” means this Note, the City Deed of Trust, the Agreement Containing Covenants, the Assignment of Rents, the Assignment of Agreements, the Environmental Indemnity, and the UCC-1 Financing Statement, each dated on or about the date hereof.

“LMIHAF Note” means this Note dated as of the date hereof, evidencing the LMIHAF Loan.

“**Low Income Housing Tax Credits**” means tax credits authorized by the Tax Reform Act of 1986 and governed by Section 42 of the Internal Revenue Code.

“**Managing General Partner**” means Riverside Charitable Corporation, a California nonprofit public benefit corporation, and its successors and assigns permitted under the terms of the Affordable Housing Agreement and this Note.

“**Net Proceeds**” means the proceeds of a sale, transfer or refinancing, less the customary and reasonable costs of the transaction, including, without limitation, payment of the \$914,000 Capital Transaction Fee payable to the Managing General Partner upon a sale or refinancing of the Project.

“**Operating Expenses**” means actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance and management of the Property that are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles, expressly including, without limitation, payment of the following:

- a. Principal and interest and all periodic fees and costs due and payable on the Senior Loan;
- b. Amounts payable to Ground Lessor pursuant to the Ground Lease;
- c. Property and other taxes and assessments imposed on the Project;
- d. One or more general partner partnership management fees to the General Partner of Borrower not to cumulatively exceed \$25,000 per year, to be increased at an annual rate of three percent (3%), which will accrue to the extent not paid;
- e. General administrative expenses including but not limited to advertising and marketing, security services and systems and similar customary administrative expenses;
- f. Maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial, supplies, and similar customary services;
- g. Cash deposited into a replacement reserve fund in the amount of \$00 per unit per year or such greater amount as may be required by the Ground Lease, Senior Lender or Investor Limited Partner;
- h. Cash deposited into an operating reserve fund as set forth in the Limited Partnership Agreement, or in such other reasonable amounts as are required by Project lenders, the California Tax Credit Allocation Committee, and/or the Investor Limited Partner from time to time, and approved by the City;
- i. Utility services not paid for directly or reimbursed by tenants, including but not limited to water, sewer, trash collection, gas and electricity;
- j. License or certificate of occupancy fees required for operation of the Project;

- k. Premiums for property damage and liability insurance;
- l. Cable television, satellite, internet and similar services;
- m. Recreational amenities, supplies and services;
- n. Reasonable property management fee payable to a property manager acceptable to the City in an annual amount equal to five percent (5%) of gross Project Revenues pursuant to a management contract approved by the City, including the payment of any accrued and unpaid property management fee from prior years
- o. A reasonable resident services coordinator fee payable to a coordinator acceptable to the City;
- p. Purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings (other than from reserves);
- q. Fees and expenses of accountants, attorneys, consultants and other professionals, including annual audits and tax return preparation costs payable to a third party; and
- r. An Asset Management Fee to Borrower's Limited Partner in an amount not to exceed \$5,000 per year, to be increased at an annual rate of three percent (3.0%);
- s. Repayment of operating expense loans or development deficit loans to Borrower's partners; and
- t. A Project monitoring fee to the City in an amount equal to \$500 per year. Such initial amount of \$500 shall be increased annually commencing on the first June 1 following the first full calendar year of operation of the Project and each June 1 thereafter for the term of this Agreement by an amount equal to the annual change in the Consumer Price Index since the last June 1.

Operating Expenses will not include the following: depreciation, amortization, depletion or other non-cash expenses, any amount expended from a reserve. Operating Expenses will be subject to the reasonable approval of the City.

“Permanent Financing” means the Permanent Period Senior Loan identified in the Method of Financing (Attachment No. 3) attached to the Affordable Housing Agreement, secured by the Permanent Financing Deed of Trust.

“Permanent Financing Deed of Trust” means the leasehold deed(s) of trust and other security instruments securing the Permanent Financing.

“Permanent Period” means the period of time commencing upon the repayment of the Construction Loan and the funding of the Permanent Financing and payment of at least 90% of the Limited Partner Capital Contribution.

“Permitted Transfer” means any of the following, provided (except for subsection f. below) Borrower, a General Partner of Borrower, or an Affiliate of such General Partner, retains

day-to-day control over management and operations of the Property and the Improvements and further provided that such transfer is not to a Prohibited Person or would otherwise violate Anti-Terrorism Laws:

- a. An assignment of the Affordable Housing Agreement and Borrower's interests in the Property to an Affiliate or a conveyance back from the Affiliate to Borrower;
- b. A conveyance of a security interest in the Property or any portion thereof or interest therein, in connection with a Senior Loan;
- c. The inclusion of equity participation in the Project by addition of limited partners to Borrower's partnership or similar mechanism, and transfers of limited partnership interests in Borrower's partnership;
- d. The lease for occupancy of all or any part of the Improvements on the Property in accordance with the Affordable Housing Agreement;
- e. The granting of easements or permits to facilitate the development of the Property in accordance with the Affordable Housing Agreement;
- f. The withdrawal, removal and/or replacement of a general partner of Borrower's partnership pursuant to the terms of Borrower's partnership agreement, or a conveyance of Borrower's interest in the Property and the Improvements and/or a transfer of limited partnership interests to a general partner or an affiliate of the limited partner pursuant to the option provided to that partner in Borrower's partnership agreement, will not constitute a default under this Agreement or any of the LMIHAF Loan Documents, nor will such actions accelerate the maturity of the LMIHAF Loan, provided that, unless the substitute general partner is an entity directly or indirectly controlled by the Investor Limited Partner, any required substitute general partner is reasonably acceptable to the City, as evidenced by the City's written consent, and is selected with reasonable promptness; and
- g. A transfer approved in writing by City Manager or designee, at his or her reasonable discretion.

A transfer described in clauses a., b., or c. will be subject to the reasonable approval of the City Manager or designee; provided that, the City approves the transfer of limited partner interests in Borrower's partnership, and further provided that such transfer is not to a Prohibited Person or would otherwise violate Anti-Terrorism Laws.

"Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, domestic or foreign.

"Property" means the real property described as the "Property" legally described as set forth in Exhibit "A" of the City Deed of Trust.

"RCC Lender" means Riverside Charitable Corporation, a California nonprofit public benefit corporation and/or an affiliate thereof.

“**RCC Loan**” means the loan made by the RCC Lender to Borrower in the anticipated original principal amount of \$4,000,000.

“**Residual Receipts**” means the Revenue minus the Operating Expenses, calculated on a 12-month basis, minus the theretofore unpaid portion of the Deferred Developer Fee. All calculations of Residual Receipts will be subject to verification and reasonable approval by the City.

“**Revenue**” means the gross rental income from the Improvements, and any other income to the Borrower derived from the ownership, operation and management of the Property, including but not limited to the following: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repay Senior Loan(s) or repair or rebuild the Project; and condemnation awards for a taking of part or all of the Project for a temporary period. “Revenue” will also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Project, except that the value of services provided by on-site manager(s) will not be treated as “Revenue” if no more than one dwelling unit is leased to or otherwise used by on-site manager(s). “Revenue” will not include tenants’ security deposits, proceeds from the Senior Loan, any Secondary Loan, , the LMIHAF Loan, Developer Equity, the Improvement Allowance, the RCC Loan, the County Loan, the Trust Fund Loan including capital contributions or similar advances, or interest that is earned on and allocated to reserve accounts, other than in connection with Net Proceeds arising from a refinancing of the Senior Loan and/or the Secondary Loan.

“**Senior Loan**” means the Construction Period loan made by Construction Lender to Borrower in the approximate amount of [\$35,000,000] and during the Permanent Period, the Permanent Financing, which will be secured by deeds of trust or other instrument to which the City agrees to subordinate this Note and the City Deed of Trust.

“**Term**” of this Note means a term that expires on the fifty-fifth (55th) anniversary of the date of Conversion.

“**Transfer**” will have the meaning set forth in Section 11.e of this Note.

“**Trust Fund Loan**” means the loan made by the Orange County Housing Trust Fund to Borrower in the maximum amount of \$503,502, which is evidenced by this Note and secured by the City Deed of Trust.

2. This Note evidences the obligation of the Borrower to the City for the repayment of the LMIHAF Loan. The City shall disburse ninety percent (90%) of the proceeds of the LMIHAF Loan concurrently with the initial funding of the Construction Loan and the remaining

ten percent (10%) of the LMIHAF Loan concurrently with the release of the Construction Lender's retention disbursement.

3. This Note is payable at the principal office of City, 300 E. Chapman Avenue, Orange, California 92866, or at such other place as the holder hereof may inform the Borrower in writing, in lawful money of the United States.

4. This Note is secured by the City Deed of Trust.

5. This Note will bear three percent (3%) simple interest.

6. Except in the event of a default described in Section 7 hereof, no payments will be due and payable under this Note except to the extent of (a) the City's share of Residual Receipts as described in Section 8, below, and (b) any refinancing or Cost Savings, subject to the limitations set forth in Section **Error! Reference source not found.**, below.

7. The entire unpaid principal balance of this Note and any accrued but unpaid interest will be due and payable upon the expiration of the Term hereof, or immediately upon the occurrence of either of the following:

a. If the Property or any portion thereof or interest therein is sold, transferred, assigned or refinanced, without the prior written approval of the City, except as otherwise permitted in this Note; or

b. If there is a default by the Borrower under the terms of this Note, the City Deed of Trust, the Affordable Housing Agreement, the Agreement Containing Covenants, or any deed of trust or other instrument securing the Senior Loan or other obligations secured by a deed of trust on the Property, which is not cured within the respective notice and cure period provided herein and therein.

8. Prior to the expiration of the Term hereof, Borrower will be obligated to repay the LMIHAF Loan exclusively from the City's share of Residual Receipts, as follows:

a. Annually, not later than the thirtieth (30th) day of May, beginning with the year following the year in which Conversion occurs, Borrower will submit to City an audited Annual Financial Statement for the preceding calendar year, prepared by a certified public accountant reasonably acceptable to the City, determining the amount of Residual Receipts, if any, generated in that year, together with payment of the City's Share of such Residual Receipts. The first such Annual Financial Statement will be for the partial year beginning on the date of Conversion and ending on December 31 of that year. The City will review and approve such Annual Financial Statement, or request reasonable revisions, within 30 days after receipt. If as the result of the City's review of the statement, there is an increase in the amount of any payment due and payable to City (as the result, for example, of a determination that the actual amount of Residual Receipts to which the City is entitled exceeds the amount of City's Share of Residual Receipts shown in the Annual Financial Statement submitted by Borrower), Borrower will promptly pay to the City the difference, with interest, from the date on which such payment was

due, at the rate of one percent (1%) over the Prime Rate announced by Bank of America, but in any event within ten (10) days of notice of such increase.

b. The City's Share of Residual Receipts shall be 50% of Residual Receipts, subject to apportionment to the extent required by the following: For so long as any of the RCC Loan, the County Loan and/or the Trust Fund Loan is outstanding, the City's Share of Residual Receipt shall be proportionately reduced such that the City shall receive a portion of the Residual Receipts equal to the ratio of the then outstanding amount of the LMIHAF Note and the then outstanding amount of the RCC Loan, the County Loan and the Trust Fund Loan (as applicable).

9. All payments applied to this Note will be applied first to penalties and late fees, then to interest, then to reduce the principal amount owed.

10. If there are Cost Savings with respect to the Project, subject to the requirements of the other Project lenders, the Ground Lessor and the California Tax Credit Allocation Committee, the following will occur: (1) the Cost Savings shall first be applied to the payment of the Deferred Developer Fee; (2) then, to the extent of fifty percent (50%) of any remaining Cost Savings, said remaining Cost Savings will be used to pay accrued interest on and then reduction of the principal amount of the LMIHAF Loan. For purposes hereof, "Cost Savings", shall mean the difference between the total sources of funds and the total cost of development as shown in the Borrower's cost certification contained in Borrower's application to the California Tax Credit Allocation Committee for a Form 8609 for the Project ("Tax Credit Report"), or as reflected in a Revised Project Budget or Annual Project Budget submitted by Borrower and approved by the City; provided, however, the Cost Savings will be adjusted to take into account (i) the loss of any equity investment due to an adjustment in the allowable tax credits pursuant to Borrower's limited partnership agreement; and (ii) any reduction in the Senior Loans required by the Senior Loan Documents. The amount payable to City under this paragraph will be paid within sixty (60) days following Conversion.

11. Prohibitions on Transfer.

a. Prior to the repayment in full of the LMIHAF Loan and expiration of the Term of the Agreement Containing Covenants, the Borrower must not, except for Permitted Transfers or as permitted by the Affordable Housing Agreement, assign or attempt to assign the Affordable Housing Agreement or this Note or any right therein or herein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property (referred to hereinafter as a "**Transfer**"), without prior written approval of the City, except as expressly permitted by the Affordable Housing Agreement or this Note. Consent to one such transaction will not be deemed to be a waiver of the right to require consent to future or successive transactions. City shall not unreasonably withhold or delay its consent. If consent should be given, any such transfer shall be subject to this Section 11, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein.

b. Proposed transferees (other than an Affiliate of Borrower or a General Partner reasonably approved by the City) must have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the City, to fulfill Borrower's

obligations undertaken in the Affordable Housing Agreement, the Agreement Containing Covenants, and this Note. A proposed transferee (including an Affiliate of Borrower), by instrument in writing satisfactory to the City and in form recordable among the land records, for itself and its successors and assigns, and for the benefit of the City must expressly assume all of Borrower's obligations under the Affordable Housing Agreement, the Agreement Containing Covenants, and this Note and agree to be subject to all conditions and restrictions applicable to Borrower. There must be submitted to the City for review all instruments and other legal documents proposed to affect any such transfer; and if approved by the City its approval will be indicated to Borrower in writing. If consent should be given, such transfer will be subject to this Section 11.

c. In the absence of specific written agreement by the City, no unauthorized Transfer, or approval thereof by the City, will be deemed to relieve the Borrower or any other party from any obligations under the Affordable Housing Agreement, the Agreement Containing Covenants, or this Note.

d. In the event of a Transfer prior to the time the LMIHAF Loan is paid in full without the prior written consent of the City, the remaining principal balance of the LMIHAF Loan and all accrued but unpaid interest will be immediately due and payable.

e. As used herein, "Transfer" means (other than in connection with a Permitted Transfer):

(i) The sale, agreement to sell, transfer or conveyance of the Property, the Project, or any portion thereof or interest therein (including, without limitation, a beneficial interest), whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment sale contract or similar instrument affecting all or a portion of the Property or Project, or the lease of all or substantially all of the Property or Project.

(ii) "Transfer" also includes the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of an interest in Borrower, or a conversion of Borrower to an entity form other than that of Borrower at the time of execution of the Affordable Housing Agreement, except that, a cumulative change in ownership interest of a general partner of Borrower of forty-nine percent (49%) or less will not be deemed a "Transfer" for purposes of this Note. Transfer shall not include routine changes in officers and/or board members.

12. The City will not unreasonably withhold, condition, or delay its approval of any matter for which its approval is required hereunder. The City's disapproval will be in writing and contain the City's reasons for disapproval.

13. The LMIHAF Loan is funded from the City's LMIHAF. Accordingly, Borrower agrees for itself, its successors and assigns that the use of the property will be subject to the restrictions on rent and occupancy set forth in the Agreement Containing Covenants.

14. Subject to the provisions and limitations of this Section 14, the obligation to repay the LMIHAF Loan is a nonrecourse obligation of the Borrower. Borrower and each general partner or limited partner of Borrower will not have any personal liability for repayment of the loan, except

as provided in this Section 14. The sole recourse of City will be the exercise of its rights against the Property and other security for the LMIHAF Loan. Provided, however, that the foregoing will not (a) constitute a waiver of an obligation evidenced by this Note or the City Deed of Trust; (b) limit the right of the City to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Note and the City Deed of Trust or any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment will be asked for or taken against Borrower; (c) release or impair this Note or the City Deed of Trust; (d) prevent or in any way hinder the City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or other instrument securing the Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder the City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing this Note; (f) relieve Borrower of its obligations under an indemnity delivered by Borrower to City; or (g) affect in any way the validity of a guarantee or indemnity from any person of all or any of the obligations evidenced and secured by this Note and the City Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of a default, Borrower and its successors and assigns will have personal liability hereunder for any deficiency judgment, but only if and to the extent Borrower, its principals, shareholders, partners or its successors and assigns received rentals, other revenues, or other payments or proceeds in respect of the mortgaged Property after the occurrence of such default, which rentals, other revenues, or other payments or proceeds have not been used for the payment of ordinary and reasonable operating expenses of the mortgaged Property, ordinary and reasonable capital improvements to the mortgaged Property, debt service, real estate taxes in respect of the mortgaged Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Borrower in connection with the operation of the mortgaged Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, City may recover directly from Borrower or from any other party (other than Borrower's Investor Limited Partner):

a. Damages, costs and expenses incurred by the City as a result of fraud or criminal act or acts of Borrower or a partner, shareholder, officer, director or employee of Borrower, or of a member or general or limited partner of Borrower, or of a general or limited partner of such member or general or limited partner;

b. Damages, costs and expenses incurred by City as a result of misappropriation of funds provided for the payment of Acquisition and Development Costs, as described in the Affordable Housing Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds;

c. All amounts owing by Borrower pursuant to the indemnification regarding Hazardous Substances under the Environmental Indemnity, and

d. All court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that City will pay Borrower's reasonable

court costs and attorneys' fees if Borrower is the prevailing party in such enforcement or collection action).

15. Borrower waives presentment for payment, demand, protest, and notices of dishonor and of protest; the benefits of all waivable exemptions; and all defenses and pleas on the ground of an extension or extensions of the time of payment or of a due date under this Note, in whole or in part, whether before or after maturity and with or without notice. Borrower hereby agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the holder hereof, in the enforcement of this Note, the City Deed of Trust or any term or provision of either thereof.

16. Upon the failure of Borrower to perform or observe a term or provision of this Note, or upon the occurrence of an event of default under the terms of the City Deed of Trust, the Affordable Housing Agreement, the Agreement Containing Covenants, or a deed of trust securing a Senior Loan, or other obligations secured by a deed of trust on the Property, and after expiration of the applicable cure period, the holder may exercise its rights or remedies hereunder or thereunder.

17. Defaults and Remedies.

a. Subject to the extensions of time set forth in Section 18, and subject to the further provisions of this Section 17, failure or delay by Borrower to perform a material term or provision of this Note, the City Deed of Trust, the Affordable Housing Agreement, the Agreement Containing Covenants, or a deed of trust securing a Senior Loan, or other obligations secured by a deed of trust on the Property, constitutes a default under this Note.

b. The City will give written notice of default to Borrower, specifying the default complained of by the City. Delay in giving such notice will not constitute a waiver of any default nor will it change the time of default.

c. Failures or delays by the City in asserting its rights and remedies as to a default will not operate as a waiver of default or of such rights or remedies. Delays by the City in asserting its rights and remedies will not deprive the City of its right to institute and maintain actions or proceedings which it may deem necessary to protect, assert, or enforce such rights or remedies.

d. If a monetary event of default occurs under the terms of this Note or the City Deed of Trust, or a deed of trust securing a Senior Loan, or other obligations secured by a deed of trust on the Property, prior to exercising its remedies hereunder or thereunder the City will give Borrower, each general partner, and the Investor Limited Partner, concurrent written notice of such default. Borrower will have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by the City under this Note and the City Deed of Trust. In no event will the City be precluded from exercising remedies if its security becomes or is about to become materially impaired by a failure to cure a default or the default is not cured within ten (10) calendar days after the notice of default is received or deemed received.

e. If a non-monetary event of default occurs under the terms of the Affordable Housing Agreement, this Note, the City Deed of Trust, the Agreement Containing Covenants, or a document implementing the Affordable Housing Agreement or a deed of trust securing a Senior Loan or other obligations secured by a deed of trust on the Property, prior to exercising its remedies hereunder or thereunder, the City will give Borrower, each General Partner, and the Investor Limited Partner, concurrent notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Borrower will have such period to effect a cure prior to exercise of remedies by the City under the Affordable Housing Agreement, the Agreement Containing Covenants, this Note and/or the City Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Borrower (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Borrower will have such additional time as is reasonably necessary to cure the default prior to the City's exercise of remedies, but not to exceed ninety (90) days from the notice of default. If Borrower fails to take corrective action or to cure the default within the time set forth above in this Subsection 17.e, the City will give Borrower, the Senior Lender, the Investor Limited Partner written notice thereof, whereupon the Investor Limited Partner, subject to the terms of Borrower's partnership agreement, may take such corrective action, including removing and replacing a general partner. The Investor Limited Partner will have 45 days, or such longer period as is approved by the City Manager or designee, to remove and replace such general partner of Borrower. The City agrees to accept cures tendered by a Senior Lender or the Investor Limited Partner within the time period provided herein. Additionally, in the event the Senior Lender, or Investor Limited Partner is precluded from curing a non-monetary default due to a bankruptcy, injunction, or similar proceeding by or against Borrower or a general partner, the City agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which such party is so precluded from acting, not to exceed 90 days or such additional time as is reasonably approved by the City Manager or designee, provided such Senior Lender or Investor Limited Partner is otherwise in compliance with the foregoing provisions. In no event will City be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by a failure to cure a default or the default is not cured within one hundred eighty (180) days after the notice of default is received or deemed received or such additional time as is reasonably approved by the City Manager or designee.

f. A notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, will be deemed delivered upon its transmission; a notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), will be deemed received on the documented date of receipt by Borrower; and a notice of default that is sent by registered or certified mail, postage prepaid, return receipt required will be deemed received on the date of receipt thereof. Notices will be sent to the following addresses:

To City:

The City of Orange
300 E. Chapman Avenue
Orange, California 92866
Attention: City Manager

To Borrower:

c/o USA Properties Fund, Inc.
3200 Douglas Blvd., Suite 200
Roseville, CA 95661
Attn: President

And

c/o Riverside Charitable Corporation
14131 Yorba Street, Suite 204
Tustin, CA 9270
Attn: Executive Director

And

Bank of America, N.A.
MA5-100-04-11
100 Federal Street, 4th Floor
Boston, MA 02110
Attention: Asset Management

And:

Banc of America CDC Special Holding Company, Inc.
MA5-100-04-11
100 Federal Street, 4th Floor
t
Boston, MA 02110
Attention: Asset Management

And:

Buchalter, A Professional Corporation
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017
Attention: Michael A. Williamson, Esq.
Re: B0965-0757 (USA Orion)

18. Notwithstanding specific provisions of this Note, Borrower will not be deemed to be in default for failure to perform a non-monetary obligation hereunder where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of

transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the City or any other public or governmental authority or entity, or any causes beyond the control or without the fault of the Borrower. An extension of time for any such cause (a “**Force Majeure Delay**”) will be for the period of the enforced delay and will commence to run from the time of the commencement of the cause, if notice by Borrower is sent to the City within fifteen (15) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events will constitute a Force Majeure Delay unless and until Borrower delivers to the City written notice describing the event, its cause, when and how Borrower obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Borrower will deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Note may also be extended in writing by the City and Borrower, such revision approval may be denied by either party in its sole discretion.

19. If the rights created by this Note are held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the remaining obligations must be completely performed and paid.

20. The City Deed of Trust securing this Note and all other LMIHAF Loan Documents, except the Agreement Containing Covenants and the Density Bonus Agreement, (i) have been made subordinate and junior to the claims, liens or charges of the Construction Loan Deed of Trust and all other instruments securing the Construction Loan by that certain Subordination Agreement by and among City, Borrower and Construction Lender which is being recorded concurrently with the execution and delivery of this Note and the recordation of the City Deed of Trust, and (ii) have been made subordinate and junior to the claims, liens or charges of the Secondary Loan Deed of Trust and all other instruments securing the Secondary Loan by that certain Subordination Agreement by and among City, Borrower and Secondary Lender which is being recorded concurrently with the execution and delivery of this Note and the recordation of the City Deed of Trust, and will also be subordinate and junior to the claims, liens or charges of the Permanent Financing Deed of Trust securing Senior Loans and all other instruments securing the Permanent Financing involving Senior Loans.

21. The City agrees that the lien of the City Deed of Trust will be subordinate to the extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the “**Extended Use Agreement**”) recorded against the Project; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under the City Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure or comparable conversion of the Loan, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, will also apply: for a period of three (3) years from the date of foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the tenants occupying those units at the time of foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code. Borrower acknowledges and agrees that a default, event of default, or breach (however such terms may be defined) under the Extended Use Agreement will be an event of default under this Note and the City Deed of Trust and that all costs, damages or other

amounts, including reasonable attorneys' fees incurred by the City as a result of an event of default by Borrower, and all amounts paid by City to cure a default under the Extended Use Agreement will be an obligation of Borrower and become a part of the debt evidenced by this Note and secured by the City Deed of Trust.

22. With regard to an approval, consent, or other determination by the City required under this Note or the other LMIHAF Loan Documents, the City will act reasonably and in good faith.

23. Borrower will have the right to prepay the obligation evidenced by this Note, or any part thereof, without penalty. However, prepayment of the obligation evidenced by this Note prior to the expiration of the term of the Agreement Containing Covenants will not terminate or modify Borrower's obligations pursuant to the Agreement Containing Covenants or the Density Bonus Agreement.

24. This Note may be executed by each signatory on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

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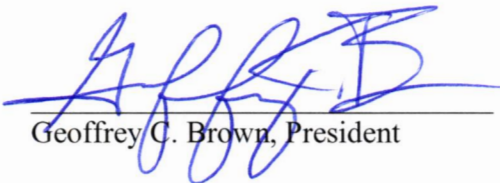
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF Borrower has executed this Note as of the day and year first set forth above.

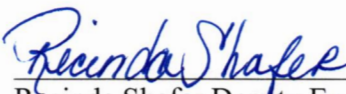
BORROWER

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

By: USA Orange 702, Inc., a California corporation,
Administrative General Partner

By: 
Geoffrey C. Brown, President

By: Riverside Charitable Corporation, a California
nonprofit public benefit corporation
Managing General Partner

By: 
Recinda Shafer Deputy Executive Director