

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Housing Authority of the
County of San Bernardino
715 East Brier Drive
San Bernardino, California 92408-2841
Attn: Executive Director

No fee for recording pursuant to
Government Code Section 27383 and 27388.1

AGREEMENT

**FIRST AMENDED AND RESTATED
DECLARATION PROVIDING FOR RECIPROCAL EASEMENTS**

THIS FIRST AMENDED AND RESTATED DECLARATION PROVIDING FOR RECIPROCAL EASEMENTS (“**Declaration**”) is dated for reference purposes as of August____, 2019, and is made by the HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, a political subdivision of the State of California (the “**Housing Authority**”) on the basis of the following facts, understandings and objectives:

RECITALS

A. The Housing Authority is the owner of fee title to certain real property located within the City of San Bernardino, County of San Bernardino, bounded generally by Baseline Street on the north, Waterman Avenue on the west, Olive Street on the south and La Junta Avenue (a private street) which is owned by the Housing Authority on the east (the “**Site**”) described more specifically in Exhibit A attached hereto and incorporated herein by reference.

B. On or about March 18, 2016, the Housing Authority entered into a long-term ground lease (the “**Olive Meadows Ground Lease**”) for approximately 6.4 acres located in the southeast corner of the Site and bounded by Orange Street to the north, Crestview Avenue to the west, Olive Street to the South, and La Junta Avenue to the east (the “**Olive Meadows Property**”), with Waterman Gardens Partners 1, L.P., a California limited partnership, (the “**Olive Meadows Partnership**”) as Lessee. The Olive Meadows Ground Lease is evidenced by that certain Memorandum of Ground Lease recorded March 21, 2016 as Instrument No. 2016-0106064, Official Records of San Bernardino County, California. The Olive Meadows Property is improved with a 62-unit affordable housing community (including one manager’s unit) for rent to persons and families at affordable rents (the “**Olive Meadows Development**”).

C. At the time of entering into the Olive Meadows Ground Lease, the Housing Authority entered into a Declaration Providing for Reciprocal Easements as consented to by the Olive Meadows Partnership, dated April 1, 2016, and recorded against the Site on April 19, 2016 as Instrument No. 2016-0148598 (the “**Original Declaration**”). This Declaration amends and restates in its entirety the Original Declaration.

D. Concurrently herewith, the Housing Authority is entering into a long-term ground lease (the “**Arrowhead Grove Ground Lease**”) for approximately 9.03 acres of the Site bounded by Baseline Street to the north, the Housing Authority Retained Property (as defined below) to the west, the Parking Property (as defined below) to the south, and Crestview Avenue to the east (the “**Arrowhead Grove Property**”), with Waterman Gardens Partners 2, L.P., a California limited partnership, (the “**Arrowhead Grove Partnership**”) as Lessee. The Arrowhead Grove Partnership intends to redevelop the Arrowhead Grove Property into one hundred eighty-four (184) multifamily housing units including two (2) manager units in eighteen (18) buildings, and related ancillary facilities including but not limited to parking and common spaces (the “**Arrowhead Grove Housing Improvements**”), and a detention basin and open

space (along with the Arrowhead Grove Housing Improvements, the “**Arrowhead Grove Development**”). The Olive Meadows Partnership and the Arrowhead Grove Partnership are each a “**Project Partnership**” and collectively the “**Project Partnerships**”.

E. The balance of the Site (the “**Housing Authority Retained Property**”) is in the process of being redeveloped by the Housing Authority and may include future housing developments and shared community space (the “**Future Developments**”). The Housing Authority anticipates that this Declaration will be amended to include the Future Developments, including their share in the obligations set forth in this Declaration, and to provide rights to the Project Users (defined below) to use any future developed community space. The Authority may also in the future form an Association including all owners and lessees of portions of the Site to oversee the maintenance of the shared areas of the Site.

F. Access to the various improvements within the Site and to public streets bordering the Site is provided by a series of private streets, including: Orange Street, La Junta Avenue, and Crestview Avenue, (all of such private streets are referred to herein collectively as the “**Private Street Circulation System**”). Public streets surrounding the Site are Waterman Avenue, Baseline Avenue, and Olive Street. The Private Street Circulation System is described more specifically on Exhibit B attached hereto and incorporated herein by reference.

G. Portions of the Private Street Circulation System are located on the Olive Meadows Property and portions are located on the Arrowhead Grove Property.

H. A portion of the Housing Authority Retained Property located immediately to the south of the Arrowhead Grove Property (the “**Parking Property**”) is to be developed by the Arrowhead Grove Partnership into a parking lot for the benefit of the Project Users (defined below) concurrently with the development of the Arrowhead Grove Development. The Parking Property is described more specifically on Exhibit B. The Parking Property will be improved with forth (40) uncovered parking spaces and seventeen (17) covered parking spaces and attendant landscaping (the “**Parking Improvements**”).

I. In order to (i) confirm and provide access in favor of the residents, occupants, tenants, visitors, invitees and licensees of the Olive Meadows Development (the “**Olive Meadows Users**”) and the residents, occupants, tenants, visitors, invitees and licensees of the Arrowhead Grove Housing Improvements (the “**Arrowhead Grove Users**”, along with the Olive Meadows Users, the “**Project Users**”) over designated portions of the private streets comprising the Private Street Circulation System and the Parking Property, and (ii) confirm the general right to use wet and dry utility master loop systems which are located within the Site and within the Olive Meadows Property and the Arrowhead Grove Property, the Housing Authority desires to subject designated portions of the Site to the easements described in this Declaration for the benefit of the Olive Meadows Partnership, the Arrowhead Grove Partnership, and the Project Users.

J. By its execution hereof, the Olive Meadows Partnership desires to confirm and provide emergency and service access, and access in favor of the residents, occupants, tenants,

visitors, invitees and licensees of the Housing Authority (collectively, the “**Housing Authority Users**”) and the Arrowhead Grove Users over such of the private streets comprising the Private Street Circulation System which are located on the Olive Meadows Property, and subject to its ground leasehold interest in the Olive Meadows Property.

K. By its execution hereof, the Arrowhead Grove Partnership desires to confirm and provide emergency and service access, and access in favor of the Housing Authority Users and Olive Meadows Users over such of the private streets comprising the Private Street Circulation System which are located on the Arrowhead Grove Property, and subject to its ground leasehold interest in the Arrowhead Grove Property.

L. The foregoing Recitals constitute a substantive part of this Declaration and are incorporated into the Operative Provisions hereof by this reference.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and conditions set forth in this Declaration and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Housing Authority hereby declares that certain portions of the Site shall hereinafter be held, conveyed, encumbered, leased, occupied and otherwise used and transferred subject to the reciprocal rights and easements created in this Declaration, all of which shall run with title to all or any portion of, or any interest in, the Site.

The Olive Meadows Partnership by execution hereof declares its agreement that the reciprocal rights and easements created in this Declaration shall constitute encumbrances upon the ground leasehold interest in the Olive Meadows Property and that the ground leasehold interest of the Olive Meadows Partnership shall be used and transferred subject to the reciprocal rights and easements created in this Declaration, all of which shall run with title to all or any portion of, or any interest in, the Olive Meadows Partnership’s leasehold interest in the Olive Meadows Property.

The Arrowhead Grove Partnership by execution hereof declares its agreement that the reciprocal rights and easements created in this Declaration shall constitute encumbrances upon the ground leasehold interest in the Arrowhead Grove Property and that the ground leasehold interest of the Arrowhead Grove Partnership shall be used and transferred subject to the reciprocal rights and easements created in this Declaration, all of which shall run with title to all or any portion of, or any interest in, the Arrowhead Grove Partnership’s leasehold interest in the Arrowhead Grove Property.

I. EASEMENTS

1.1 Ingress, Egress and Access Easements.

(a) Authority Easement Rights in Olive Meadows Property. There shall be appurtenant to ownership of the ground leasehold interest in the Olive Meadows Property, for the use and benefit of the Housing Authority and the Housing Authority Users, for the benefit of the Housing Authority Retained Property, a nonexclusive easement for pedestrian, vehicle, and light truck access, ingress, egress and travel over and across any private street included in the Private Street Circulation System which is now or will hereafter be located on or crossing over the Olive Meadows Property, which easement area is generally described as: Orange Street from La Junta Avenue to Crestview Avenue, and Crestview Avenue from the Parking Property to Olive Street, and depicted on Exhibit B (the “**Authority Easement Area**”).

(b) Olive Meadows Easement Rights. There shall be appurtenant to the ownership of the Housing Authority Retained Property, for the use and benefit of the Olive Meadows Partnership and the Olive Meadows Users, for the benefit of the Olive Meadows Property, a nonexclusive easement for pedestrian, vehicle, and light truck access, ingress, egress and travel over and across all portions of all private streets included in the Private Street Circulation System which is now or will hereafter be located on the Housing Authority Retained Property which easement area is generally described as: La Junta Avenue from Olive Street to Baseline Street; Orange Street from La Junta Avenue to Crestview Avenue; and Crestview Avenue from Baseline Street to the Parking Property and through the Parking Property, depicted in Exhibit B (the “**Olive Meadows Easement Area**”).

(c) Arrowhead Grove Easement Rights. There shall be appurtenant to the ownership of the Housing Authority Retained Property and the Olive Meadows Property, for the use and benefit of the Arrowhead Grove Partnership and the Arrowhead Grove Users, for the benefit of the Arrowhead Grove Property, a nonexclusive easement for pedestrian, vehicle, and light truck access, ingress, egress and travel over and across all portions of all private streets included in the Private Street Circulation System which is now or will hereafter be located outside of the boundaries of the Arrowhead Grove Property on the Housing Authority Retained Property and the Olive Meadows Property which easement area is generally described as: La Junta Avenue from Olive Street to Baseline Street; Orange Street from La Junta Avenue to Crestview Avenue; Crestview Avenue from Olive Street to Baseline Street and through the Parking Property; and pedestrian access in the street on the southwestern boundary of the Arrowhead Grove Property depicted in Exhibit B (the “**Arrowhead Grove Easement Area**”).

(d) Parking Lot Easement for Project Partnerships. The Housing Authority grants to the Arrowhead Grove Partnership and the Olive Meadows Partnership, a non-exclusive easement over, under, and all about the Parking Property for the purposes of vehicular parking in spaces to be designated on the Parking Property, in favor of any Project Users (the “**Parking Easement Area**”); provided, however, no van, trailer, camper, mobile home, truck (other than a minivan or lightweight pickup truck), boat, inoperable automobile, or similar equipment shall be permitted to remain parked on the Parking Property, other than on a temporary or transient basis. The Olive Meadows Easement Area, the Arrowhead Grove Easement Area, and the Parking Easement Area are collectively the “**Partnership Easement Area**”).

(e) General Easement Limitations. The ingress, egress and access easements described herein benefit and burden both fee title to the Site, as well as the ground leasehold interest held by the Project Partnerships. These easements are for the benefit and enjoyment of the Housing Authority and the Housing Authority Users and the Project Partnerships and the Project Users and the successors and assigns of each. Notwithstanding the generality of the foregoing, however, use of the ingress, egress and access easements described in this Declaration and the areas subject to such easements on and over the Site shall be subject to reasonable regulations and restrictions including, but not limited to:

(i) The right of each of the Housing Authority and the Project Partnerships to keep, maintain and enforce reasonable and necessary directional signs, traffic control signs, speed limit signs and traffic-calming/speed control devices on such private streets;

(ii) The right of each of the Housing Authority and the Project Partnerships to close off any portion of its real property for such a reasonable period of time (a) as may be legally necessary to prevent the acquisition of prescriptive rights by any third person or entity, and (b) as may be necessary in connection with construction, reconstruction, resurfacing, slurry sealing and restriping any private street which is a part of the Private Street Circulation System; provided, however, that prior to closing off any portion of its property, such party shall give written notice to the other parties of its intention to do so and shall in all cases coordinate such closing-off with such other party(ies) so that no unreasonable interference with the passage of pedestrians or vehicles shall occur and such that persons using the private streets shall continue to have access in some form to the remaining public and private streets within and bordering the Site including La Junta Avenue;

(iii) The right of each of the Housing Authority and the Project Partnerships to make any subsurface use of that party's real property which subsurface use does not unreasonably interfere with the surface use of the Partnership Easement Area and Authority Easement Area;

(iv) The right of each of the Housing Authority and the Project Partnerships to, at any time and from time to time, exclude and/or reasonably restrain third persons or entities who are not its tenants or their residents, occupants, visitors, invitees and licensees from using its property or the easement areas described in this Declaration;

(v) The right of each of the Housing Authority and the Project Partnerships to temporarily erect or place barriers in and around areas on its real property which are subject to the easements described in this Declaration, which areas are being constructed and/or repaired in order to insure either safety of persons or protection of property;

(vi) The ingress, egress and access rights hereto are for the passage of automobiles and light commercial vehicles and pedestrians over the Partnership Easement Area and Authority Easement Area; the grant of such easements shall not permit any of the Housing Authority Users or Project Users to park or store, or cause or permit to be parked or stored, within any of such easement areas, any automobile or other vehicle, as the easements granted

herein (other than over the Parking Property as described in Subsection (c) above), do not include parking rights; and

(vii) No portion of the Partnership Easement Area or of the Authority Easement Area shall be used for parking or storage of recreational vehicles, trailers or boats or similar items of personal property.

(f) Street Configuration. All areas of the Private Street Circulation System shall be retained in substantially their current configurations as shown on Exhibit B, which generally consist of two lanes, one in each direction, and may not be relocated or reduced in width without the prior approval of the Housing Authority, and the Project Partnerships.

(g) Emergency and Service Use. The easements contained herein include use for the passage of police and emergency vehicles and trash trucks and other service vehicles to gain ingress, egress and access to all residential and other improvements located on and within the Site and to gain access to all trash enclosures which have been established for each of the communities constructed or to be constructed on the Site.

1.2 Utilities.

(a) All of the Site, only to the extent necessary for the development of the Olive Meadows Development by the Olive Meadows Partnership and the Arrowhead Grove Development by the Arrowhead Grove Partnership, shall have appurtenant thereto a nonexclusive easement for the location, maintenance, use, operation and repair of both “wet” and “dry” underground utility lines, conduits, vaults and equipment including, but not limited to, those for the service or transmission of electric power, gas, water, sanitary sewers and storm drains, which are described herein or are presently, or will in the future, be located within or under the paved surface of the Private Street Circulation System. “Utility lines” shall mean those facilities and systems for the transmission of utility services, including the drainage and storage of surface water and including water catchment basins and storm receptors. The rights granted herein shall be limited to those necessary to provide applicable service only to the Olive Meadows Development and the Arrowhead Grove Development, as applicable. The initial location of all utility lines shall be in the location where such utility lines are constructed or installed at the time of completion of construction of the Olive Meadows Development and the Arrowhead Grove Development.

(b) All utility lines shall be underground except for: (i) ground-mounted electrical transformers or risers; (ii) as may be necessary during periods of construction, reconstruction, repair or temporary service; (iii) as may be required by any governmental authority; (iv) as may be required by the provider of each such utility service; (v) fire hydrants; and (vi) those which are presently above ground as of the date of recordation of this Declaration and are not required to be undergrounded by conditions of approval applicable to the development of the Site.

(c) In installing separate utility lines servicing the Olive Meadows

Development and the Arrowhead Grove Development, as applicable, the applicable Project Partnership shall obtain all permits and approvals and pay all costs and expenses with respect to the initial construction and all subsequent maintenance, relocation or abandonment of such separate utility lines located on the Site. The applicable Project Partnership shall be responsible to pay all costs and expenses with respect to all maintenance, repair, servicing or relocation of a utility line that exclusively serves the Olive Meadows Development and the Arrowhead Grove Development, as applicable. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice under the circumstances, each party shall use its best commercial efforts to notify the other parties before commencement of any work on a common utility line which might impact or affect the supply of utilities to the other apartment communities within the Site. The party performing such work shall use its best commercial efforts to minimize any impact or affect to the supply of utilities to all other apartment communities within the Site. Each Project Partnership agrees to indemnify, defend, protect, and hold harmless the Housing Authority and the other Project Partnership from and against all claims or demands of any kind relating to the utility lines installed by that Project Partnership, including but not limited to the maintenance, repair, replacement or relocation of a utility line performed by a Project Partnership and located in, upon or under the Site, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind, including reasonable attorneys' fees and costs of suit; provided, however, the foregoing obligations shall not apply to claims or demands based upon the negligence or willful act or omission of the Housing Authority, the other Project Partnership, or of either of their tenants. Notwithstanding anything to the contrary set forth in this Declaration, so long as the Secretary of the U.S. Department of Housing and Urban Development (“**HUD**”) or his/her successor or assigns, are the insurers or holders of the first mortgage on the Olive Meadows Development, FHA Project No. 143-35131, the Olive Meadows Partnership's obligation to hold the Housing Authority or the Arrowhead Grove Partnership harmless shall be limited to Surplus Cash of the Olive Meadows Partnership or non-Project Assets of the Olive Meadows Partnership (each as defined in the Regulatory Agreement for Multifamily Projects by and between the Olive Meadows Partnership and HUD), or available liability insurance proceeds.

(d) Each party shall have the right to relocate a utility line and/or a separate utility line which is located on or under its real property providing that such relocation: (i) shall not interfere with or diminish utility service to another apartment community during the evening hours but shall be done wherever possible during business hours, and the parties shall coordinate such interruption to eliminate as much as possible all detrimental effects thereof; (ii) shall not reduce or unreasonably impair the usefulness or function of a common utility line serving more than one apartment community; (iii) shall be performed without cost or expense to the other party(ies); (iv) shall be completed using materials and design standards which equal or exceed those originally used; and (v) shall have been approved by the provider of such utility service and, if required, the appropriate governmental authority.

1.3 Drainage Easements. Each of the Site and the Olive Meadows Development and the Arrowhead Grove Development, as applicable, shall have appurtenant thereto a nonexclusive easement for drainage and the right to discharge surface storm water drainage and/or runoff from each of such properties over, upon and across such other property in areas which have been

prepared for and designed for such water drainage and runoff, providing: (i) the grades and surface water drainage/retention systems, catchment basins and water quality filtering systems shall be maintained by the party on whose property such improvements are located as initially constructed and in compliance with any approved mitigation plans or ownership and maintenance plans; (ii) if required by applicable provisions, each such responsible party shall maintain, repair and replace the same using best management practices identified in any approved storm water mitigation plan in perpetuity and shall complete and maintain all forms required to comply with applicable ordinances which may govern such improvements; (iii) retaining walls, structures such as trellises, decks and other hardscape and individual landscape improvements shall not be constructed within required storm drain facilities or basins; and (iv) no party shall alter or permit to be altered the ground surface of any of its real property if such alteration would materially increase the flow of surface water onto adjacent real property either in the aggregate or by directing the flow of surface water into a limited area.

II. GENERAL PROVISIONS

2.1 General Maintenance Responsibilities.

(a) The Housing Authority shall be responsible for maintaining, servicing, repaving, sealing, restriping, repairing and replacing the improvements located in the Parking Property and the Private Street Circulation System including sidewalks adjacent to such private streets, if any, landscaping adjacent to or in medians within such private streets, if any, and private street lighting adjacent to such private streets to the extent such private streets are not located solely within the Arrowhead Grove Development (the “**Authority Performed Maintenance**”). The Olive Meadows Partnership and the Arrowhead Grove Partnership shall be responsible for maintaining, servicing, repaving, sealing, restriping, repairing and replacing all other site improvements located within the Olive Meadows Development and Arrowhead Grove Development respectively. Each party reserves to itself for such party and its contractors, materialmen and laborers a temporary license for access and/or use over and across such portion of a community as may be reasonably necessary for the responsible party to maintain, repair and replace the improvements on such party’s property which it is obligated by the provisions of this Declaration to maintain. Such temporary license shall be in effect only during such periods when actual maintenance, repair and/or replacement is being performed and provided further that the use of such temporary license shall not unreasonably interfere with the use and operation of the Private Street Circulation System or any individual community operated by another party.

(b) Except in the case of an emergency threatening persons or property, prior to exercising such temporary license the party intending to use the same shall provide evidence upon request to the party upon whose property such temporary use will occur of a certificate of insurance showing that the party or its contractor has obtained such insurance coverage as may be required by the provisions of this Declaration. The responsible party shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, shall promptly clean the area, shall keep the other party’s real property free and clear from mechanics’ liens or claims and at completion shall restore and/or repair the affected area to a condition which is equal to or better than the condition which existed prior to the

commencement of such work performed under any such temporary license.

(c) Notwithstanding the other maintenance obligations herein, if the Arrowhead Grove Partnership or Arrowhead Grove Users cause or is responsible for any damage to the Partnership Easement Area and/or the Arrowhead Grove Easement Area, the Arrowhead Grove Partnership shall promptly repair and restore the Partnership Easement Area and/or the Arrowhead Grove Easement Area to the condition immediately prior to the damage.

(d) Notwithstanding the other maintenance obligations herein, if the Olive Meadows Partnership or Olive Meadows Users cause or is responsible for any damage to the Partnership Easement Area and/or the Olive Meadows Easement Area, the Olive Meadows Partnership shall promptly repair and restore the Partnership Easement Area and/or the Olive Meadows Easement Area to the condition immediately prior to the damage.

(e) Notwithstanding the other maintenance obligations herein, if the Housing Authority or Housing Authority Users cause or is responsible for any damage to the Authority Easement Area, the Housing Authority shall promptly repair and restore the Authority Easement Area to the condition immediately prior to the damage.

2.2 Allocation of Shared Maintenance Costs.

(a) Shared Costs. All costs of the Authority Performed Maintenance shall be shared among the Olive Meadows Partnership, the Arrowhead Grove Partnership, and owners of the Future Developments if any (the “**Shared Maintenance Costs**”). Until the development of Future Developments, the Arrowhead Grove Partnership and the Olive Meadows Partnership shall share the Shared Maintenance Costs. The initial percentage allocation of Shared Maintenance Costs shall be based on the number of residential units in each of the Olive Meadows Development and Arrowhead Grove Development. The percentage allocation of the Shared Maintenance Costs between the Olive Meadows Development and Arrowhead Grove Development may be amended from time to time by separate agreement between the Olive Meadows Partnership and Arrowhead Grove Partnership. The Housing Authority anticipates amending this Declaration to add the Future Developments as contributors to the Shared Maintenance Costs.

(b) Budgeting. On or before November 1st of each year, the Project Partnerships and the Housing Authority shall prepare a draft annual budget of the Shared Maintenance Costs (the “**Budget**”) which shall contain the parties’ reasonable and good faith estimate of the Shared Maintenance Costs for the next calendar year.

(c) Payment. The Project Partnerships shall pay their share of the Shared Maintenance Costs as set forth in the Budget for the current year on or before January 1st of each year. Until the Budget for a calendar year is final, the Project Partnerships and the Housing Authority shall use the Budget from the prior year for purposes of the payments and make adjustments as necessary when the Budget for the current year has been finalized. The Project Partnerships and the Housing Authority shall maintain true and complete books and records,

including copies of all appropriate invoices and statements relating to any Shared Maintenance Costs. The authorized representatives of the Housing Authority and the Project Partnerships, on reasonable notice to the other parties shall have the right to inspect and copy during normal business hours the books and records that relate to the Shared Maintenance Costs.

(d) Extraordinary Expenses. If either of the Project Partnerships or the Housing Authority anticipate the need to incur any extraordinary expenses which were not included in the Budget but which otherwise would be Shared Maintenance Costs, the applicable party shall promptly notify the other parties in writing of the expense (“**Expense Notice**”). The Expense Notice shall describe the work needed, the party to perform the work, the time needed to perform the work, the cost and payment schedule, and other related information. Within thirty (30) days after receipt of the Expense Notice, the Project Partnerships and the Authority shall meet and confer with respect to the Expense Notice.

2.3 Insurance. The Project Partnerships shall maintain insurance as required in the Olive Meadows Ground Lease and Arrowhead Grove Ground Lease as applicable, which shall include coverage for damage to persons and/or property occurring in or on all Private Street Circulation System and the Parking Property, insuring against liability incident to the use, maintenance or ownership of areas subject to easements granted and/or reserved in this Declaration.

2.4 Hazardous Materials. Each of the Project Partnerships and the Housing Authority agree that it shall not use or transport, or permit or cause to be used or transported, any Hazardous Materials (as defined below) over, under, on, across or through the area of any easement granted or reserved in this Declaration except as permitted by, and in strict compliance with, all applicable federal, state and local laws, statutes, ordinances, regulations, guidelines, orders, judicial and administrative decisions and any applicable insurance requirements. As used herein, “Hazardous Material” shall mean any material or substance defined or regulated as a hazardous or toxic material, waste or substance under any federal, state or local law, statute, ordinance, regulation, guideline or order presently in effect or as may be modified from time to time after the date of recordation of this Declaration and shall include, but not be limited to, petroleum products and by-products, except where any of the same in common use is used in accordance with and in strict compliance with any applicable manufacturer’s requirements and/or guidelines.

2.5 Mechanics’ Liens and Claims. No liens shall be filed against the Site by a Project Partnership. Each of the Project Partnerships shall defend, indemnify and hold the Housing Authority free and harmless from and against any mechanics’, materialmans’ and/or laborers’ liens arising out of the operation, maintenance, repair and replacement of any part of the Private Street Circulation System, or the Parking Property for which that Project Partnership is responsible and all costs, expenses and liabilities in connection therewith including reasonable attorneys’ fees and court costs. If any part of the Site shall become subject to such lien described above and resulting from the actions or inactions of a Project Partnership, that Project Partnership shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting a bond or other security as

shall be required by law to obtain such release and discharge. Notwithstanding anything to the contrary set forth in this Declaration, so long as the Secretary of HUD or his/her successor or assigns, are the insurers or holders of the first mortgage on the Olive Meadows Development, FHA Project No. 143-35131, the Olive Meadows Partnership's obligation to hold the Housing Authority harmless shall be limited to Surplus Cash of the Olive Meadows Partnership or non-Project Assets of the Olive Meadows Partnership (each as defined in the Regulatory Agreement for Multifamily Projects by and between the Olive Meadows Partnership and HUD), or available liability insurance proceeds.

2.6 Default.

(a) The occurrence of any one or more of the following events shall constitute a default and breach of this Declaration by the non-performing party (the "**Defaulting Party**"):

(i) The failure to make any payment required to be made hereunder within thirty (30) days after the due date; and/or

(ii) The failure to observe or perform any of the covenants, conditions or obligations contained in or provided by this Declaration, other than as described in the preceding subsection (i), within thirty (30) days after the issuance of a written notice by another party (the "**Non-Defaulting Party**") specifying the nature of the default claimed; provided, however, that if the default is the type that cannot reasonably be cured within a thirty (30) day period, then such cure period shall be automatically extended as long as the defaulting party commences such cure within such thirty (30) day cure period and diligently prosecutes such cure to completion.

(b) With respect to any default under this Declaration, any Non-Defaulting Party shall have the right following the expiration of any applicable cure period, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event such default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as reasonably possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have a license to enter upon the property of the Defaulting Party (but not into any building improvements thereon) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus interest at the maximum rate provided by law or ten percent (10%), whichever is less, within thirty (30) days after receipt of demand therefore, together with reasonable documentation supporting the cost of the expenditure made. The right to cure the default of another party shall not be deemed to (i) impose any obligation on a Non-Defaulting Party to do so, (ii) render the Non-Defaulting Party liable to the Defaulting Party or any third party for an election not to do so, (iii) relieve the Defaulting Party from any performance obligations hereunder then or thereafter, and (iv) relieve

the Defaulting Party from any repayment obligation provided in this Declaration. Each Non-Defaulting Party shall have the right to prosecute any proceeding at law or in equity against any Defaulting Party hereto, or any other person, violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration and to recover damages for any such violation to default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another party or person of any of the terms, covenants or conditions of this Declaration or to obtain a decree to compel specific performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a party under this Declaration or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

(c) The limited partner of each of the Project Partnerships shall have the right, but not the obligation, to cure any default of either of the Project Partnerships hereunder, and such cure shall be deemed to have been made by the Project Partnership that is in default.

2.7 No Exemption from Liability. No party may exempt itself from liability for its payment of any expenses incurred under this Declaration which are to be charged to that party by waiver of the use or enjoyment of the easements created herein or by the abandonment of that party's property.

2.8 Covenants to Run With the Land. Each and every one of the provisions of this Declaration to be performed on the part of the parties hereto and their successors and assigns, including the benefits and the burdens hereof, shall run with title to all the property subject hereto and shall be binding upon and inure to the benefit of the heirs, assigns and successors of each of the parties hereto. All of the property subject hereto shall be held, transferred, encumbered, used, sold, conveyed and occupied subject to the provisions of this Declaration which shall run with title in perpetuity.

2.9 Method of Amendment. The provisions of this Declaration may be modified or amended, in whole or in part, only by an instrument in writing, executed and acknowledged by the Housing Authority and the Project Partnerships, as well as, as applicable, the prior written consent of the limited partner(s) of each of the Project Partnerships which instrument is duly recorded in the Official Records of San Bernardino County. Notwithstanding the generality of the foregoing, however, the consent of any mortgagee or holder of a security interest in the real property subject hereto shall be required in order to cause the interest of such mortgagee or holder of a security interest in existence at the time of such proposed amendment to be subordinate to such amendment. It is expressly understood and agreed that no modification or amendment, in whole or in part, of this Declaration shall require consent or approval on the part of any tenants of any apartment communities within the Site. The Housing Authority anticipates amending this Declaration in the future to include the Future Developments.

2.10 No Third Party Beneficiary. The provisions of this Declaration are for the benefit

of the Housing Authority and the Project Partnerships and their respective limited partners, and not for the benefit of any third party, nor shall this Declaration be deemed to have conferred any rights, express or implied, upon any third person or upon the public generally. Nothing herein contained shall be deemed to be a gift or dedication to the general public or the creation upon any portion of the Site or any of the easements created hereunder of any interest for any public purpose whatsoever, it being the intent of the parties to this Declaration that this Declaration shall be strictly limited to and for the purposes herein expressed.

2.11 No Easement by Implication; Prevention of Prescriptive Rights. Neither the execution of this Declaration nor the granting of the easements described herein shall be deemed to grant any other easement or to establish any other easement by implication or prescription, and the parties to this Declaration and their successors understand and agree that the only easements and/or licenses made and granted herein and hereby are the easements and/or licenses which are expressly made and granted by the specific terms of this Declaration. The parties hereto acknowledge that, except as specifically provided by the terms of this Declaration, nothing contained herein shall be deemed to grant to any person or entity the right to enter generally upon or generally cross over any portion of the Site or the Olive Meadows Property or Arrowhead Grove Property, other than the areas encumbered by the easements granted by and described in the terms of this Declaration.

2.12 Protection of Mortgagees. A breach of the restrictions, conditions, covenants and reservations contained in this Declaration shall not defeat or render invalid the lien of any mortgagee or beneficiary under any duly recorded mortgage or deed of trust made in good faith and for value encumbering the Olive Meadows Development and/or Arrowhead Grove Development as applicable. The restrictions, covenants and reservations contained in this Declaration shall be binding upon and effective against any ground leasehold owner or owners of the Olive Meadows Property and/or Arrowhead Grove Property as applicable whose title was acquired by foreclosure, trustee's sale or otherwise.

2.13 Effect of Foreclosure. If any property subject to this Declaration is subject to a monetary obligation established and/or created pursuant to any provision of this Declaration and is also subject to the lien of a bonafide mortgage or encumbrance, (i) the enforcement of any such obligation created by any provision of this Declaration shall not operate to affect or impair the lien of such mortgage or deed of trust, and (ii) the foreclosure of the lien of such mortgage or deed of trust, the acceptance of a deed in lieu of foreclosure of such mortgage or deed of trust or a sale under the power of sale contained in any such mortgage or deed of trust (these events shall be referred to collectively as "**Events of Foreclosure**") shall not operate to affect or impair the lien of this Declaration, except that any person or persons who obtained an interest through any of the Events of Foreclosure and their successors in interest shall take title free of the obligation to pay monetary amounts which might be imposed by this Declaration prior to the time of any of the Events of Foreclosure, but shall be subject to the lien of this Declaration for all charges and obligations which occur after the Events of Foreclosure.

2.14 Severability. If any term, provision or condition contained in this Declaration shall, to any extent, be invalid or unenforceable, the remainder of this Declaration, or the

application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be effected thereby and each term, provision and condition hereof shall be valid and enforceable to the fullest extent permitted by law.

2.15 Binding Effect. This Declaration shall, except as otherwise provided herein, be binding upon and inure to the benefit of the Housing Authority and the Project Partnerships and the heirs, executors, administrators, successors and assigns of each. Upon termination of the Arrowhead Grove Ground Lease the Arrowhead Grove Partnership shall no longer have any rights under this Declaration, and upon termination of the Olive Meadows Ground Lease the Olive Meadows Partnership shall no longer have any rights under this Declaration.

2.16 Attorneys' Fees. If any proceeding is brought for the enforcement of this Declaration, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions hereof or to interpret this Declaration or any of the provisions hereof, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that proceeding, whether or not said proceeding becomes final or is enforced via a court judgment or action, in addition to any other relief to which it or they may be entitled, which shall include any attorneys' fees incurred by the prevailing party on appeal, by the prevailing party for any subsequent motion proceedings or hearings, and any and all attorneys' fees incurred in any and all efforts by the prevailing party to collect its award.

2.17 Authority. Execution of this Declaration shall be presumed to be made by duly authorized individuals.

2.18 Governing Law. This Declaration shall be construed and governed in accordance with the laws of the State of California.

2.19 Miscellaneous. When used herein, the masculine and neuter genders, the singular number and the present tense shall be deemed to include the feminine gender, the plural number and past and future tenses, respectively, where the context so requires.

2.20 No Discrimination. Each of the parties hereto shall not permit discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the use and/or enjoyment of any commonly used areas described in this Declaration.

2.21 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Housing Authority or the Project Partnerships nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each of such parties and its respective successors and assigns shall be considered a separate owner and no owner shall have the right to act as an agent for another owner, unless expressly authorized to do so herein or by separate written instrument signed by the owner to be charged.

2.22 Notice. All notices given pursuant to any provision of this Declaration shall be in writing and shall be delivered by personal service, or by any generally accepted commercial overnight package delivery service, or by facsimile and/or electronic transmission, confirmed by mailing a “hard” copy thereof in the ordinary U.S. Mail, postage prepaid, the same day, or by certified or registered mail, postage prepaid, return receipt requested. Any written notice to any of the parties required or permitted hereunder shall be deemed to have been duly given on the date of service. Rejection or other refusal to accept or the inability to deliver because of a changed address of which no notice was given as provided hereunder shall be deemed to be receipt of the notice, demand or request sent. Notice may be given by legal counsel for a party with the same force and effect as if given by the party. Notices shall be addressed as follows:

Housing Authority:

Housing Authority of the
County of San Bernardino
715 East Brier Drive
San Bernardino, California 92408-2841

Olive Meadows Partnership:

Waterman Gardens Partners 1, L.P.
c/o National Community Renaissance of California
9421 Haven Avenue
Rancho Cucamonga, California 91730
Attn: CFO

with a copy to:

Wells Fargo Affordable Housing Community Development Corporation
MAC D1053-170
301 South College Street
Charlotte, NC 28288
Attn: Director of Asset Management

Arrowhead Grove Partnership:

Waterman Gardens Partners 2, L.P.
c/o National Community Renaissance of California
9421 Haven Avenue
Rancho Cucamonga, California 91730
Attn: CFO

with a copy to:

Bank of America, N.A.

MA1-225-02-02
225 Franklin Street
Boston, MA 02110
Attention: Asset Management
Facsimile: 617-346-2257

Banc of America CDC Special Holding Company, Inc.
MA1-225-02-02
225 Franklin Street
Boston, MA 02110
Attention: Asset Management
Facsimile: 617-346-2257

2.23 Construction and Interpretation.

(a) This Declaration contains all of the representations and the entire agreement between the parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements concerning the subject matter hereof are superseded hereby. No party shall be deemed the scrivener of this Declaration and, based on the foregoing, the provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any party.

(b) The captions preceding the text of each provision of this Declaration are included only for convenience of reference. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this instrument.

(c) This Declaration may be executed in counterparts, each of which shall be deemed an original. The signatures to this Declaration may be executed and notarized on separate pages and, when attached to this Declaration, shall constitute one complete document.

Excusable Delays. Where performance is required of any party hereunder such party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such party, then the time for performance as herein specified shall be appropriately extended by an amount equal to the amount of the delay actually so caused. However, the provisions hereof shall not operate to excuse any party from the prompt payment of any monies required by the provisions of this Declaration.

2.25 Continuation Notwithstanding Breach. It is expressly agreed that no breach of this Declaration or event of default hereunder shall (i) entitle any party to cancel, rescind or otherwise terminate this Declaration or any of the easements or rights granted herein, or (ii) defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as

to any part of the Site or the Olive Meadows Property or the Arrowhead Grove Property.

2.26 No Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver shall be implied from any omission by a party to take action in respect to a default. No waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such waiver.

2.27 Governmental Approvals. No provision of this Declaration shall be interpreted so as to circumvent or otherwise modify the obligations of a party to comply with all applicable requirements of any governmental entity. Without limiting the foregoing, no approval given hereunder and no provision contained herein shall affect the requirement to obtain approvals from any governmental authority or entity, to the extent that such approvals are otherwise required.

[this space left blank intentionally; signature on following page]

**SIGNATURE PAGE FOR FIRST AMENDED AND RESTATED DECLARATION OF
RECIPROCAL EASEMENTS**

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed effective as of the day and year first-above written.

HOUSING AUTHORITY:

The Housing Authority of the County of San
Bernardino, a political subdivision of the State of
California

By: _____
Maria Razo, Executive Director

**SIGNATURE PAGE FOR FIRST AMENDED AND RESTATED DECLARATION OF
RECIPROCAL EASEMENTS**

AGREED TO AND ACKNOWLEDGED BY:

OLIVE MEADOWS PARTNERSHIP:

Waterman Gardens Partners 1, L.P.,
a California limited partnership

By: WG Partners 1 MGP, LLC,
a California limited liability company,
its general partner

By: National Community Renaissance of
California, a California nonprofit
public benefit corporation, its sole
member and manager

By: _____

ARROWHEAD GROVE PARTNERSHIP:

Waterman Gardens Partners 2, L.P.,
a California limited partnership

By: WG Partners 2 MGP, LLC,
a California limited liability company,
its general partner

By: National Community Renaissance of
California, a California nonprofit
public benefit corporation, its sole
member and manager

By: _____

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 _____)

On _____, before me, _____, Notary Public, personally appeared _____, 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.

Name: _____
Notary Public

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 _____)

On _____, before me, _____, Notary Public, personally appeared _____, 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.

Name: _____
Notary Public

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 _____)

On _____, before me, _____, Notary Public, personally appeared _____, 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.

Name: _____
Notary Public

EXHIBIT A
[legal description of the Site]

EXHIBIT B
[Private Street Circulation System]
[Depicts Authority Easement Area and Partnership Easement Area and Parking Property]