

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of San Marcos
Attn: Sylvia Daniels
One Civic Center Drive
San Marcos, CA 92069

Space above this line for Recorder's use.

APN 221-091-19

**AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**
(Terra Cotta Apartments)

This Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions (this "Amendment") is entered into effective as of _____, 2024 ("Effective Date") by and between the **CITY OF SAN MARCOS** acting solely in its capacity as the designed successor housing agency to the former San Marcos Redevelopment Agency ("Agency") and **TERRA COTTA HOUSING ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP** ("Borrower"). Agency and Borrower are collectively referred to herein as the "Parties."

RECITALS

A. The Parties entered into that certain loan (the "Loan") evidenced by a promissory note from the Borrower dated October 31, 1997 in the original principal amount of \$5,800,000, and a promissory note from the Borrower dated October 31, 1997 in the original principal amount of \$500,000, each as amended from time to time (collectively, the "Promissory Note"), and a Construction and Permanent Financing Loan Agreement, dated October 31, 1997, modified by a Modification Agreement dated December 22, 1999 and recorded in the Official Records of San Diego County as Instrument No. 2000-0014245 (the "Loan Agreement").

B. In connection with the Loan, the Parties entered into that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions, dated October 31, 1997, and recorded in the Official Records of San Diego County as Instrument No. 1997-0667243, as amended by an Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions, dated June 26, 2018, and recorded in the Official Records of San Diego County as Instrument No. 2018-0268920 (collectively, the "Declaration").

C. In connection with the refinance of the Property, the Parties hereby wish to amend the Declaration as more particularly set forth herein.

NOW THEREFORE,

In consideration of the foregoing Recitals and for the promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

1. Amendments.

(a) Section 32 of the Declaration is hereby deleted and replaced with the following new Section 32:

“32. Documentation; Occupancy Monitoring Fee; Late Fee. Declarant hereby agrees to provide the SHA with such documentation relating to the Affordable Units as is reasonably necessary for the SHA to monitor ongoing compliance with the terms set forth herein. Such documentation includes, but is not limited to, tenant eligibility information and ongoing occupancy reports for the Affordable Units as reasonably requested. Beginning May 1, 2019, and on May 1 of each year thereafter during the term of this Declaration, the Developer shall pay to the SHA an affordable housing occupancy monitoring and inspection fee in the amount of \$100 for each of the 83 Affordable Units at the Property, which amount shall be increased beginning in 2026 by 2% each year, provided that the Project generates Residual Receipts (as defined in the Promissory Notes) in such year. Provided, however, upon any sale, transfer of conveyance of the Property to a transferee that is not an affiliate of BRIDGE Housing Corporation, the amount of the annual affordable housing occupancy monitoring and inspection fee shall be increased to \$220 for each of the 83 Affordable Units, increasing by 2% per annum. Failure to provide such documentation or monitoring fee, if such failure is not cured within thirty (30) days after written notice of such failure to Declarant from the SHA, shall constitute a material default hereunder entitling the SHA to the remedies herein or permitted by law and/or equity. Further, in addition to the remedies of the SHA set forth in this Declaration, Declarant shall pay the SHA a fee equal to: Ten Dollars (\$10.00) for each day that such documentation and such monitoring fee is not being produced. Declarant expressly agrees that the aforesaid fee is not being produced. Declarant expressly agrees that the aforesaid late fee is a fair and reasonable approximation of the additional costs and administrative expenses which the SHA will incur as a result of any failure by Declarant to timely furnish the required documentation.”

(b) Section 16 is hereby amended to provide that term of the Declaration shall remain in effect until the date which is fifty-five (55) years from the date of recordation of this Amendment in the Official Records of San Diego County.

(c) Section 29 of the Declaration is hereby deleted and replaced with the following new Section 29:

“29. Tenants Displaced By Redevelopment Agency Projects. Subject to all applicable fair housing laws, any person who was displaced as a result of an action of the City of San Marcos or the Agency shall be eligible to be placed on the Project’s waiting list at the highest priority in accordance with applicable Redevelopment Law and/or California Code 7061 regulatory rules for local preferences, upon application by the displaced and verification by the AGENCY of displacement. All such displacees shall be subject to DECLARANT’s standard tenant selection and eligibility criteria, including household income requirements.”

2. No Other Modification. Except as amended by this Amendment, the Declaration shall continue unmodified and in full force and effect.

3. Counterparts. This Amendment may be executed in several counterparts each of which will constitute an original document, and all of which shall constitute one agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the same counterparts.

[Signature Page(s) Follow]

IN WITNESS WHEREOF, the Parties have entered into this Amendment effective as of the date first written above.

AGENCY:

THE CITY OF SAN MARCOS,

Acting solely in its capacity as the designated successor housing agency to the former San Marcos Redevelopment Agency

By: _____
Michelle Bender, Executive Director

APPROVED AS TO FORM:

By: _____
Its: _____

BORROWER:

**TERRA COTTA HOUSING ASSOCIATES,
A CALIFORNIA LIMITED PARTNERSHIP**

By: San Marcos Family Housing, Inc.
a California nonprofit public benefit corporation,
its general partner

By: _____
Name: Natalia Williams
Its: Vice President

[Notary Clauses Follow]

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 SANTA CLARA)

On _____ before me, _____, Notary Public, personally appeared, _____, who proved to me the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacity, and that by (his/her/their) signature on the instrument, the entity upon behalf of which (he/she/they) 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
Description of the Property

The land referred to is situated in the County of San Diego, City of San Marcos, State of California, and is described as follows:

PARCEL ONE:

Lot 6 of City of San Marcos Tract No. 347, Rancho Coronado, in the City of San Marcos, County of San Diego, State of California, according to Map thereof No. 12591, filed in the office of the County Recorder of San Diego County, March 29, 1990.

Excepting therefrom that portion described as follows:

Beginning the Northeast corner of said Lot 6, said point being on the Westerly right of way line of Twin Oaks Valley Road as shown on said mp; thence North $89^{\circ} 52' 32''$ West 665.59 feet along the Southerly right of way Craven Road to the true point of beginning; thence leaving said right of way line South $00^{\circ} 07' 28''$ West 12.17 feet to a point on a non-tangent curve, concave Southeasterly, having a radius of 25.00 feet, radial line to said point having a bearing of North $01^{\circ} 47' 05''$ West; thence West and South along said curve 38.44 feet through a central angle of $88^{\circ} 05' 27''$; thence South $00^{\circ} 07' 28''$ West 293.05 feet to a point on a nontangent curve, concave Easterly, having a radius of 200.00 feet, a radial line to said point having a bearing of South $58^{\circ} 20' 03''$ West; thence North along said curve 110.97 feet through a central angle of $31^{\circ} 47' 25''$; thence North $00^{\circ} 07' 28''$ East 224.85 feet to the said Southerly right of way of Craven Road; thence Easterly along said right of way South $89^{\circ} 52' 32''$ East 54.17 feet to the point of beginning.

PARCEL TWO:

That portion of Lot 5 of San Marcos Tract No. 347, in the City of San Marcos, County of San Diego, State of California, according to Map thereof No. 12591, filed in the office of the County Recorder of San Diego County, March 29, 1990, described as follows:

Beginning in the Northeast corner of Lot 6 of said map, said point being on the Westerly right of way line of Twin Oaks Valley Road as shown on said map; thence North $89^{\circ} 52' 32''$ West 665.59 feet along the Southerly right of way Craven Road; thence leaving said right of way line South $00^{\circ} 07' 28''$ West 12.17 feet to a point on a non-tangent curve, concave Southeasterly, having a radius of 25.00 feet, a radial line to said point having a bearing of North $01^{\circ} 47' 05''$ West; thence West and South along said curve 38.44 feet through a central angle of $88^{\circ} 05' 27''$; thence South $00^{\circ} 07' 28''$ West 293.05 feet to the true point of beginning said point also being a point on a non-tangent curve, concave Easterly, having a radius of 200.00 feet, a radial line to said point having a bearing of South $58^{\circ} 20' 03''$ West; thence South along said curve 11.64 feet through a central angle of $03^{\circ} 20' 03''$; thence South $35^{\circ} 00' 00''$ East 176.49 feet to the beginning of a tangent curve, concave Westerly, having a radius of 200.00 feet; thence Southerly along said curve 152.60 feet through a central angle of $43^{\circ} 42' 57''$; thence South $08^{\circ} 42' 41''$ West 47.97 feet to a point on a non-tangent curve, concave Westerly, having a radius of 530.00 feet, a radial line to said point having a bearing of South $86^{\circ} 18' 58''$ East; thence North along said curve 46.55 feet through a central angle of $05^{\circ} 01' 55''$; thence North $81^{\circ} 17' 03''$ West 100.48 feet to a point on a non-tangent curve, concave Westerly, having a radius of 430.00 feet, a radial line to said point having a bearing of South $87^{\circ} 29' 26''$ East; thence North along said curve 128.32 feet through a central angle of $17^{\circ} 05' 52''$; thence North $14^{\circ} 35' 19''$ West 57.83 feet to the beginning of a tangent curve, concave Easterly, having a radius of 370.00 feet; thence North along said curve 95.01 feet through a central angle of $14^{\circ} 42' 47''$; thence North $00^{\circ} 07' 28''$ East 8.15 feet to the true point of beginning.

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