

RECORDING REQUESTED BY
CSCDA Community Improvement Authority

WHEN RECORDED RETURN TO:
Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105
Attention: Steffi Chan

THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE
CALIFORNIA GOVERNMENT CODE

PUBLIC BENEFIT AGREEMENT

By and Between

CSCDA COMMUNITY IMPROVEMENT AUTHORITY

and

THE CITY OF PASADENA

Dated as of December 1, 2021

Relating to

**CSCDA COMMUNITY IMPROVEMENT AUTHORITY
ESSENTIAL HOUSING SENIOR LIEN REVENUE BONDS, SERIES 2021A
(WESTGATE PHASE 1-PASADENA) (SOCIAL BONDS)**

**CSCDA COMMUNITY IMPROVEMENT AUTHORITY
ESSENTIAL HOUSING MEZZANINE LIEN REVENUE BONDS, SERIES 2021B
(WESTGATE PHASE 1-PASADENA) (SOCIAL BONDS)**

and

**CSCDA COMMUNITY IMPROVEMENT AUTHORITY
ESSENTIAL HOUSING SUBORDINATE LIEN REVENUE BONDS, SERIES 2021C
(WESTGATE PHASE 1-PASADENA)**

PUBLIC BENEFIT AGREEMENT

This PUBLIC BENEFIT AGREEMENT ("Agreement") is dated as of December 1, 2021 by and between the CSCDA COMMUNITY IMPROVEMENT AUTHORITY a joint exercise of powers agency organized and existing under the laws of the State of California (including its successors and assigns, "Owner") and THE CITY OF PASADENA ("Host").

BACKGROUND

WHEREAS, Owner proposes to issue Bonds (as hereinafter defined) to finance Owner's acquisition of the certain multifamily rental housing project (the "Project") located at 231 South DeLacey Avenue, Pasadena, California, located on the real property site described in Exhibit A hereto; and

WHEREAS, Owner intends to sell the Project at the instigation of the Host or upon the retirement of all Project Debt (as defined herein) pursuant to this Agreement.

AGREEMENT

In consideration of the mutual covenants herein contained, and such other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Owner and Host mutually agree as follows:

Section 1. Right to Cause Sale. Host shall have the right to cause ("Sale Right") Owner to sell the Property (as herein defined) upon payment by the purchaser thereof (the "Purchaser") of the applicable Sale Price (as herein provided) within the Sale Right Term (as herein defined) as provided in Section 4 hereof or following the Sale Right Term as provided in Section 5 hereof, and, in each case, in compliance with and observance of all of the terms and conditions of this Agreement.

Section 2. Definitions. Capitalized terms used in this Agreement shall have the meanings assigned to them in this Section 2; capitalized terms used in this Agreement and not defined in this Section 2 or elsewhere herein shall have the meanings assigned to them in the Indenture (herein defined).

(a) "Bonds" – collectively, (i) the CSCDA Community Improvement Authority Essential Housing Senior Lien Revenue Bonds, Series 2021A (Westgate Phase 1-Pasadena) (Social Bonds) (the "Series A Bonds"), (ii) the CSCDA Community Improvement Authority Essential Housing Mezzanine Lien Revenue Bonds, Series 2021B (Westgate Phase 1-Pasadena) (Social Bonds) (the "Series B Bonds"), and (iii) the CSCDA Community Improvement Authority Essential Housing Subordinate Lien Revenue Bonds, Series 2021C (Westgate Phase 1-Pasadena) (the "Series C Bonds"), with such other series and sub-series designations as may be set forth in the Indenture, originally issued to finance Owner's acquisition of the Project and related transaction costs.

(b) "Bond Trustee" – Wilmington Trust, National Association or any successor trustee under the Indenture.

- (c) “Closing” – shall have the meaning set forth in Section 8 hereof.
- (d) “Conveyance” – that transaction or series of transactions by which Owner shall transfer, bargain, sell and convey any and all right, title or interest in and to the Property.
- (e) “Extraordinary Costs and Expenses” – shall have the meaning set forth in the Indenture.
- (f) “Indenture” – the Trust Indenture between Owner, as issuer, and Bond Trustee, as trustee, pursuant to which the Bonds were issued.
- (g) “Minimum Sale Price” – means the lowest price at which the Property may be sold, as described in Section 4(c) hereof.
- (h) “Outstanding” – with respect to Bonds, as of any given date, all Bonds which have been authenticated and delivered by the Trustee under the Indenture, except: (i) Bonds cancelled at or prior to such date or delivered to or acquired by the Trustee at or prior to such date for cancellation; (ii) Bonds deemed to be paid in accordance with Article VIII of the Indenture; and (iii) Bonds in lieu of which other Bonds have been authenticated under the Indenture.
- (i) “Owner Indemnified Person” – Owner and each of its officers, governing members, directors, officials, employees, attorneys, agents and members.
- (j) “Project Administrator” – Waterford Property Company, LLC and its successors and assigns.
- (k) “Project Debt” – any debt secured by the Project and incurred to finance or refinance Owner’s acquisition of the Project and related transaction costs, including any portion of the Bonds and any bonds, notes or other indebtedness issued by Owner to improve the Project or to refund the Bonds in whole or in part. Owner agrees that any refinancings or refundings shall be limited to refinancings or refundings of then-existing balances of Project Debt.
- (l) “Property” – means all of Owner’s right, title and interest (which includes fee simple title to the real property) in and to all property and assets used in or otherwise related to the operation of the Project including, without limitation, all real property and interests in real property, all tangible and intangible personal property including furniture, fixtures, equipment, supplies, intellectual property, licenses, permits, approvals, and contractual rights of any kind or nature together with the right to own and carry on the business and operations of the Project.
- (m) “Regulatory Agreement” – means the Regulatory Agreement and Declaration of Restrictive Covenants by and between Owner and Bond Trustee, relating to the Bonds.
- (n) “Sale Price” – purchase price of the Property to be paid by the Purchaser upon sale of the Property by Owner pursuant to Host’s Sale Right in compliance with Section 4 hereof or sale by Owner pursuant to Section 5 hereof.
- (o) “Sale Right” – means the right of Host to cause Owner to sell the Property pursuant to Section 1 hereof.

(p) “Sale Right Exercise Date” – the date fifteen (15) years from the issuance of the Bonds.

(q) “Sale Right Term” – shall commence on the Sale Right Exercise Date and, if not exercised, shall terminate on the date on which no Project Debt remains outstanding.

(r) “Transaction Costs” – to the extent not otherwise described herein, any costs or expenses of any kind or nature associated with or incurred by Owner and/or Bond Trustee in connection with the consummation of the Conveyance, regardless of whether such costs and expenses are customarily borne by the seller or purchaser in any such transaction, including but not limited to taxes, recording fees and other impositions, Owner’s and Bond Trustee’s legal and other professional fees, fees for verification agents, bidding agents, escrow agents, custodians or trustees, assumption fees, prepayment fees, the cost of the appraisal, brokers’ fees and expenses, surveys, inspections, title commitments, title insurance premiums and other title-related fees, and all amounts required for indemnification of Owner, Bond Trustee and Project Administrator.

Section 3. Effectiveness; Term and Termination. The Sale Right shall become effective on the Sale Right Exercise Date and may be exercised during the Sale Right Term. Owner agrees that it will not enter into any agreement to sell all or any part of the Property during the Sale Right Term other than as may be required by the Indenture (e.g., in the event of default), without the specific written request of the Host and delivery of an Opinion of Bond Counsel to Bond Trustee substantially to the effect that such sale will not, in and of itself, adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation.

Section 4. Manner of Exercise.

(a) Host’s Notice. To exercise the Sale Right, Host shall provide a notice (an “Exercise Notice”) to Owner (with a copy to the Project Administrator) at any time during the Sale Right Term.

(b) Owner’s Best Efforts to Sell. Unless Host notifies Owner in writing that it is withdrawing its Exercise Notice within fifteen (15) business days of delivering the Exercise Notice under Section 4(a) hereof, Owner shall exercise its best efforts in selling and conveying good and marketable title to the Property within ninety (90) days following receipt of the Exercise Notice, or as soon as possible thereafter, but only if it can sell at or above the Minimum Sale Price. The obligation of Owner to sell and convey the Property shall be on a best efforts basis. Owner shall endeavor to sell the Property at a commercially reasonable price, subject to subsection (c) of this Section, by such means as it shall determine to be suitable for such purpose; provided that Host may direct Owner to sell the Property to Host, to a non-profit corporation designated by Host or to a limited partnership (that has a non-profit corporation as a general partner) designated by Host at a price less than commercially reasonable but at or above the Minimum Sale Price; provided further that Owner’s determination of the manner of sale and Sale Price shall be final and incontestable, and Owner shall incur no liability to any party as a result of or otherwise in connection with the sale or failure to sell. Subject to subsection (c), nothing herein shall require or prevent Owner selling the Property subject to the restrictions set forth in the Regulatory Agreement or similar types of restrictions established by Owner with the approval of Host. Owner shall direct the Bond Trustee in the foregoing as and to the extent necessary or appropriate.

(c) Sale Price. The Sale Price shall be at least equal to the sum of the amounts set forth below (net of any adjustments or prorations of the type described in Section 8(b)) (the “Minimum Sale Price”):

- i. an amount sufficient to either prepay, redeem in whole or fully defease for redemption on the earliest call date all Project Debt; plus
- ii. any fees or other amounts not identified in clause (i) that may be necessary to effect the complete release from and discharge of any lien, mortgage or other encumbrance on the Property; plus
- iii. any amounts due to Owner (including Owner Indemnified Persons, as provided in the Indenture), the Bond Trustee or any predecessor or successor, or any other Person under any indenture, loan agreement, bond, note or other instrument relating to any Project Debt (including, without limitation, indemnification amounts, Owner’s Extraordinary Costs and Expenses, recurrent and extraordinary fees and expenses, and reimbursable costs and expenses of any kind or nature); plus
- iv. Transaction Costs; minus
- v. Any funds held by or for Owner under the Indenture applied to the retirement of Project Debt. Owner may retain such portion of moneys in the Extraordinary Expense Fund or similar fund under the Indenture it deems reasonable as a reserve against future expected costs and expenses of the type described in subparagraph (iii). Owner’s determination of this amount shall be final and incontestable.

Section 5. Mandatory Conveyance. Upon the retirement of all Project Debt, Owner shall use its best efforts to effect a Conveyance within ninety (90) days thereafter, subject to Section 4(c) hereof; provided, however, that Host, by notice to Owner within two (2) weeks after notice from Owner that no Project Debt remains outstanding, shall have the option to cause Owner to sell the Property (i) to a non-profit corporation or a limited partnership (that has a non-profit corporation as a general partner) designated by Host upon payment by such non-profit corporation or limited partnership, as applicable, of a sale price approved by Host, which sale price shall be at least equal to the Minimum Sale Price, or (ii) to Host upon payment of the Minimum Sale Price. Nothing herein shall require or prevent Owner selling the Property subject to the restrictions set forth in the Regulatory Agreement or similar types of restrictions established by Owner with the approval of Host.

Section 6. Surplus Cash; Surplus Conveyance Proceeds. Upon a Conveyance of the Property, Owner shall apply the proceeds of such Conveyance (i) to redeem the Bonds then Outstanding, (ii) to prepay, redeem in whole or fully defease any other Project Debt, and (iii) to pay any fees or other amounts listed in Section 4(c)(ii) – (iv). Any proceeds remaining following the foregoing payments (such remaining amounts hereinafter referred to as “Surplus Conveyance Proceeds”) shall be transferred to Host and Host shall share such Surplus Conveyance Proceeds

with other taxing agencies selected by Host, and in the amounts determined by Host in its sole discretion and responsibility.

Section 7. Terms of Conveyance.

(a) The Conveyance shall be in the nature of a grant deed to Purchaser in which Owner shall deliver one or more deeds, bills of sale, or other instruments of transfer without recourse or warranty of any kind or nature.

(b) The Property will be conveyed to Purchaser in AS IS CONDITION, WITH ALL FAULTS, and without representations or warranties of any kind or nature as to the condition of the Property.

(c) There shall be no partial transfer and that, upon consummation of the Conveyance, Owner shall be fully divested of any and all right, title or interest in and to the Property.

Section 8. Closing.

(a) The closing of the Conveyance ("Closing") shall take place, in the case of a Conveyance pursuant to Section 4 hereof, not later than the ninetieth (90th) calendar day following Owner's receipt of the Exercise Notice, or as soon as possible thereafter, and in the case of a mandatory conveyance pursuant to Section 5 hereof, not later than the ninetieth (90th) calendar day following the retirement of all Project Debt, or as soon as possible thereafter.

(b) Prorations. All general and special real property taxes and assessments, and rents shall be prorated as of the Closing, with Purchaser responsible for all such items to the extent arising or due at any time following the Closing. General real property taxes shall be prorated at the time of Closing based on the net general real property taxes for the year of Closing.

Section 9. Recording. This Agreement, and any amendment thereto, shall be recorded with the recorder's office of the County; *provided*, that upon termination of the term of this Agreement, Host shall cooperate with Owner to remove any such recorded Agreement or amendment thereto from title to the Property upon Owner's reasonable request therefor and, in any event, by no later than thirty (30) days after the expiration of the original term of this Agreement. In the event that, within said time, Host fails to so cooperate and provide its original signature to a termination of such recorded Agreement or amendment thereto, then Host hereby irrevocably constitutes and appoints Owner as Host's true and lawful attorney (and agent-in-fact) to execute in Host's name any such termination.

Section 10. Subordination. This Agreement shall be subordinate to any claim, pledge or interest in the Property securing the Bonds or any Project Debt.

Section 11. Maintenance of Membership. In order to preserve the Property's exemption from property tax, Host agrees to remain a member of Owner joint powers authority so long as any Bonds remain Outstanding.

Section 12. Assignment. Neither party to this Agreement shall assign its interests, obligations, rights and/or responsibilities under this Agreement without the prior written consent of the other party.

Section 13. Limitation on Liability.

(a) Owner shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Agreement or any sale or Conveyance or failure or price thereof or application of proceeds thereof, except only as to moneys available therefor under and in accordance with the Indenture or this Agreement.

(b) No Owner Indemnified Person shall be individually or personally liable for the payment of any sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement, or by any proceedings for the sale or Conveyance or failure or price thereof, or Host's exercise or waiver of same, or otherwise except in the case of such Owner Indemnified Person's own willful misconduct.

Section 14. Notices, Governing Law, Binding Effect and Other Miscellaneous Provisions.

(a) **Notices.** All notices provided for in this Agreement shall be in writing and shall be given to Owner or Host at the address set forth below or at such other address as they individually may specify thereafter by written notice in accordance herewith:

If to Owner or: Designated Agent	CSCDA Community Improvement Authority 1700 North Broadway, Suite 405 Walnut Creek, California 94596 Attention: Jon Penkower Email: jpenkower@cscda.org
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With a copy to:	Waterford Property Company, LLC 130 Newport Center, Suite 230 Newport Beach, California 92660 Attention: John Drachman Email: jdrachman@waterfordco.com
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If to Host:	City of Pasadena - Housing Department 649 N. Fair Oaks Avenue, Suite #202 Pasadena, California 91103 Attention: Director of Housing
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Such notices shall be deemed effective upon actual delivery or upon the date that any such delivery was attempted and acceptance thereof was refused, or if mailed, certified return receipt requested, postage prepaid, properly addressed, three (3) days after posting.

(b) Consents and Approvals. All consents and approvals and waivers required or asserted hereunder shall be in writing, signed by the party from whom such consent, approval, waiver or notice is requested.

(c) Non-liability of Host or Owner Officers and Employees. No officer or employee of the Host shall be personally liable to the Owner, or any successor in interest, in the event of any default or breach by Host of any obligation of the terms of this Agreement. No officer or employee of the Owner shall be personally liable to Host, or any successor in interest, in the event of any default or breach by Owner of any obligation of the terms of this Agreement.

(d) Pronouns. Where appropriate to the context, words of one gender include all genders, and the singular includes the plural and vice versa.

(e) Amendments. This Agreement may not be modified except in a written instrument signed by Host and Owner.

(f) Complete Agreement; Benefits. This Agreement together with all schedules and exhibits attached hereto and made part thereof supersedes all previous agreements, understandings and representations made by or between the parties hereto. This Agreement shall inure solely and exclusively to the benefit of the Owner and Host, and no other party shall have any right, remedy or claim under or by reason of this Agreement.

(g) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles. All claims of whatever character arising out of this Agreement, or under any statute or common law relating in any way, directly or indirectly, to the subject matter hereof or to the dealings between Owner and any other party hereto, if and to the extent that such claim potentially could or actually does involve Owner, shall be filed and maintained in the Superior Court of California, County of Sacramento, California. By executing and delivering this Agreement, each party hereto irrevocably: (i) accepts generally and unconditionally the exclusive jurisdiction and venue of such court; (ii) waives any defense of forum non-conveniens; and (iii) agrees not to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be deemed or construed to constitute a waiver by Owner of any prior notice or procedural requirements applicable to actions or claims against or involving governmental units and/or political subdivisions of the State of California that may exist at the time of and in connection with such matter.

(h) Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid provision shall be deemed severable, and shall not affect the validity or enforceability of any other provisions of this Agreement, all of which shall remain fully enforceable.

(i) Term. This Agreement shall terminate upon the Conveyance.

(j) Captions. The captions used in this Agreement are solely for convenience, and shall not be deemed to constitute a part of the substance of the Agreement for purpose of its construction.

(k) Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same Agreement.

[SIGNATURE PAGE TO FOLLOW]

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

**CSCDA COMMUNITY IMPROVEMENT
AUTHORITY**

By:

Jon Penkower
Authorized Signatory

(Signature Page to Public Benefit Agreement)

THE CITY OF PASADENA

By: _____

Steve Mermell
City Manager

ATTEST:

By: _____

Mark Jomsky
City Clerk

APPROVED AS TO FORM

By: _____

Javan N. Rad
Chief Assistant City Attorney

Kane, Ballmer & Berkman
City Outside Counsel

By: _____

Kellan R. Martz

(Signature Page to Public Benefit Agreement)

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, _____,
(insert name and title of the officer)

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.

Signature _____

(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

The Land referred to herein is situated in the State of California, County of Los Angeles, City of Pasadena, and described as follows: