

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

475 Sansome Street, Suite 1700
San Francisco, California 94111
Attention: Josh D. Anzel

THIS SPACE IS FOR RECORDERS USE ONLY

PUBLIC BENEFIT AGREEMENT

(Title of Document)

Per Government Code 27388.1 (a)(1) "A fee of \$75 dollars shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded, except those expressly exempted from payment of recording fees, per each single transaction per parcel or real property. The fee shall not exceed two hundred twenty-five dollars (\$225)"

Reason for Exemption:

- ☐ Exempt from fee per GC 27388.1 (a) (2); recorded concurrently "in connection with" a transfer subject to the imposition of documentary transfer tax (DTT).
- ☐ Exempt from fee per GC 27388.1 (a) (2); recorded concurrently "in connection with" a transfer of real property that is a residential dwelling to an owner-occupier.
- ☐ Exempt from fee per GC 27388.1 (a) (1); fee cap of \$225.00 reached.
- ☐ Exempt from the fee per GC 27388.1 (a) (1); not related to real property.

Failure to include an exemption reason will result in the imposition of the \$75.00 Building Homes and Job Act Fee.

RECORDING REQUESTED BY
CMFA Special Finance Agency VII

WHEN RECORDED RETURN TO:
Jones Hall, A Professional Law Corporation
475 Sansome Street, Suite 1700
San Francisco, California 94111
Attention: Josh D. Anzel

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

PUBLIC BENEFIT AGREEMENT

By and Between

CMFA SPECIAL FINANCE AGENCY VII

and

CITY OF HUNTINGTON BEACH

Dated as of _____ 1, 2021

Relating to

**CMFA SPECIAL FINANCE AGENCY VII
SENIOR ESSENTIAL HOUSING REVENUE BONDS, SERIES 2021A-1
(THE BREAKWATER APARTMENTS)**

**CMFA SPECIAL FINANCE AGENCY VII
JUNIOR ESSENTIAL HOUSING REVENUE BONDS, SERIES 2021A-2
(THE BREAKWATER APARTMENTS)**

and

**CMFA SPECIAL FINANCE AGENCY VII
SUBORDINATE ESSENTIAL HOUSING REVENUE BONDS, SERIES 2021B
(THE BREAKWATER APARTMENTS)**

PUBLIC BENEFIT AGREEMENT

This PUBLIC BENEFIT AGREEMENT ("Agreement") is dated as of _____ 1, 2021, by and between the CMFA SPECIAL FINANCE AGENCY VII, 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 HUNTINGTON BEACH, a California municipal corporation and charter city ("Host").

BACKGROUND

WHEREAS, the Owner proposes to issue Bonds (as hereinafter defined) to finance Owner's acquisition of the certain multifamily rental housing projects (collectively, the "Project") located at 16761 Viewpoint Lane in the City of Huntington Beach, California, located on the real property site described in Exhibit A hereto; and

WHEREAS, the Owner has executed a Regulatory Agreement and Declaration of Restrictive Covenants between Owner and Wilmington Trust, National Association, dated concurrently and recorded in the official records of the County of Orange, California (the "County"), which imposes requirements upon the Project with respect to maximum income levels of tenants, maximum rents payable by tenants, maintenance of the Project in accordance with industry standards, and certain other matters, and Host is entering into this Agreement in reliance on Owner's compliance with such requirements; and

WHEREAS, the 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") the Owner to sell the Property (as herein defined) to Host or Host's designee upon payment by the Purchaser (as herein defined) of the Sale Price (as herein provided) within the Sale Right Term (as herein defined) and 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 CMFA Special Finance Agency VII Senior Essential Housing Revenue Bonds, Series 2021A-1 (The Breakwater Apartments), (ii) the CMFA Special Finance Agency VII Junior Essential Housing Revenue Bonds, Series 2021A-2 (The Breakwater Apartments), and (iii) the CMFA Special Finance Agency VII Subordinate Essential Housing Revenue Bonds, Series 2021B (The Breakwater Apartments) (the "Series B 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. The original principal amount of the Series B Bonds shall not exceed \$5,000,000.

(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) "Exercise Notice" – shall have the meaning set forth in Section 4(a) hereof.

(f) "Extraordinary Costs and Expenses" – shall have the meaning set forth in the Indenture.

(g) "Host Indemnified Person" – the Host and each of its officers, governing members, directors, officials, employees, attorneys, agents and members.

(h) "Indenture" – the Trust Indenture between Owner, as issuer, and the Bond Trustee, as trustee, pursuant to which the Bonds were issued.

(i) "Minimum Sale Price" – means the lowest price at which the Property may be sold, as described in Section 4(c) hereof.

(j) "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.

(k) "Owner Indemnified Person" – the Owner and each of its officers, governing members, directors, officials, employees, attorneys, agents and members.

(l) "Project Administrator" – Catalyst Housing Group LLC and its successors and assigns.

(m) "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.

(n) "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.

(o) "Purchaser" – means the purchaser of the Property in a sale thereof.

(p) "Regulatory Agreement" – means the Regulatory Agreement and Declaration of Restrictive Covenants by and between the Owner and the Bond Trustee, relating to the Bonds.

(q) "Sale Price" – purchase price of the Property to be paid by the Purchaser upon sale of the Property by the Owner pursuant to the Sale Right in compliance with Section 4 hereof or sale by the Owner pursuant to Section 5 hereof.

(r) "Sale Right" – means the right of the Host to cause the Owner to sell the Property pursuant to Section 1 hereof.

(s) "Sale Right Exercise Date" – the date fifteen (15) years from the issuance of the Bonds.

(t) "Sale Right Term" – shall commence on the Sale Right Exercise Date and, if not exercised, shall terminate at 11:59 p.m. local time on the date that is the earlier of: (i) fourteen (14) years from the Sale Right Exercise Date or (ii) the date on which no Project Debt remains Outstanding.

(u) "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 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, 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 the Owner 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. Exercise of Sale Right.

(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 to enter into a purchase agreement for the sale of the Property in accordance with Section 7(d) and to sell and convey good and marketable title to the Property to Host or its designee within ninety (90) days following receipt of the Exercise Notice, or as soon as possible thereafter, in accordance with the purchase agreement, but only if it can sell at or above the Minimum Sale Price. The obligation of the Owner to enter into the purchase agreement for the sale and conveyance of the Property to Host or its designee shall be on a best efforts basis. The Owner shall endeavor to sell the Property at a commercially reasonable price, subject to subsection (c) of this Section, by such means as the parties to the purchase agreement shall determine to be suitable for such purpose; provided that

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. The 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 the 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, the Owner shall use its best efforts to effect a Conveyance within ninety (90) days thereafter, subject to Section 4(c) hereof. Owner shall give notice to Host of its intent to convey the Property, and Host (or its designee) shall have the first right to acquire the Property by delivery of an Exercise Notice to Owner within thirty (30) days after receipt of Owner's notice. Nothing herein shall require or prevent Owner selling the Property subject to the restrictions set forth in the Regulatory Agreement.

Section 6. Surplus Cash; Surplus Conveyance Proceeds. Upon a Conveyance of the Property, the 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 the Host (11.99095% of Surplus Conveyance Proceeds), the County of Orange (the "County") (73.65871% of Surplus Conveyance Proceeds), Coast Community College District (2.72452% of Surplus Conveyance Proceeds), Ocean View School District (2.17978% of Surplus Conveyance Proceeds), Huntington Beach Union High School (2.01362% of Surplus Conveyance Proceeds), Huntington Beach Employee Retirement (1.28474% of Surplus Conveyance Proceeds), Orange County Vector Control District (0.00628% of Surplus Conveyance Proceeds), Municipal Water District of Orange County (0.30992% of Surplus Conveyance Proceeds) and Orange County Sanitation District (5.83147% of Surplus Conveyance Proceeds), up to a maximum amount of foregone property tax revenue for each local agency, plus interest calculated from the date of foregone property tax payments at the Local Agency Investment Fund interest rate as determined by Host. After payment of the foregoing foregone amounts, any remaining Surplus Conveyance Proceeds shall be payable to Host.

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, except as may otherwise be set forth in the purchase agreement.

(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.

(d) Upon Host's delivery of the Exercise Notice, Owner shall deliver to Purchaser a purchase agreement for the Property, and the parties shall negotiate in good faith towards a mutually satisfactory purchase agreement form and substance satisfactory to Owner and Purchaser and their counsel subject to the terms and conditions of this Agreement. The purchase agreement shall permit Purchaser to conduct physical inspections of the Property and conduct due diligence related to the purchase of the Property, including without limitation its value and physical and environmental condition, and shall provide Purchaser a due diligence approval period of not less than sixty (60) days after the date of the purchase agreement. The purchase agreement shall provide for Owner to deliver to Purchaser copies of all plans, studies, records, reports, governmental notices and approvals, and other written materials related to the use, occupancy or condition of the Property that Owner has in its possession, including without limitation environmental, structural, mechanical, engineering and land surveys. Purchaser shall provide Owner with comments to the form of purchase agreement within fifteen (15) business days of its receipt thereof, and Owner and Purchaser shall use good faith efforts to negotiate, draft and execute a mutually acceptable purchase agreement as soon as practicable thereafter. The purchase agreement shall provide for closing for the conveyance to Purchaser of good and marketable title to the Property at the Sales Price within the time set forth in Section 8(a) hereof.

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 the 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) 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.

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. [Reserved]

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, except as provided herein.

Section 13. Limitation on Liability.

(a) The Owner and Host 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 or Host 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.

(c) The Bonds will not be a debt, liability or obligation of Host but rather, solely indebtedness of the Owner, limited to the Trust Estate pledged and available therefor under the Indenture. Under no circumstances shall Host be obligated to (i) provide any financing to acquire or construct the Project or any refinancing of the Project; (ii) approve any application or request for or take any other action in connection with any planning approval, permit or other action necessary for the acquisition, construction, rehabilitation or operation of the Project; or (iii) make any contribution or advance any funds whatsoever to the Owner.

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 CMFA Special Finance Agency VII
 2111 Palomar Airport Road, Suite 320
 Carlsbad, California 92011
 Attention: Financial Advisor

With a copy to: Catalyst Housing Group LLC
 21 Ward Street, Suite 2
 Larkspur, California 94939
 Attention: Jordan Moss

If to Host: City of Huntington Beach
 2000 Main Street
 Huntington Beach, California 92648
 Attention: City Manager

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 San Diego, 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.

(l) Regulatory Agreement. Owner shall not amend the Regulatory Agreement to increase the maximum income levels or maximum rents of the Affordable Units, or to revise the percentages of units to be rented as Low Income Units, Median Income Units and Moderate Income Units, without the prior written approval of Host, which approval shall not unreasonably be withheld.

(m) Except with respect to any nonresidential space existing as of the date of issuance of the Bonds, for the term of the Regulatory Agreement, the Owner hereby represents, covenants, warrants and agrees as follows: (i) the Project will be owned and operated for the purpose of providing multifamily residential rental property; and (ii) the Owner will own, and cause the Project to be managed and operated, as a project to provide multifamily residential rental property comprised of a building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities.

(n) The Agency, or the Bond Trustee on its behalf, shall pay to the City an annual monitoring fee of \$25.00 per unit on each anniversary of the date hereof, commencing with the first anniversary; provided, however, that such fee shall be payable solely from revenues of the Project, and the Agency shall not otherwise be liable therefor.

[SIGNATURE PAGE TO FOLLOW]

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

CMFA SPECIAL FINANCE AGENCY VII

By: _____
Edward J. Becker
Executive Director

CITY OF HUNTINGTON BEACH

By: _____
Oliver Chi
City Manager

Approved as to Form:

By: _____
City Attorney

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 Orange, City of Huntington Beach, and described as follows:

[TO COME]