



Memorandum City of Highland

DATE: February 13, 2024

TO: City Council

FROM: Carlos Zamano, Public Works Director/City Engineer *CZ*
Kim Stater, Asst. Community Development Director *KS*

SUBJECT: City Council Agenda Item #9 – San Carlo Townhomes

This memo is associated with City Council Agenda Item #9, approval of a Project Improvement Agreement to permit the residential occupancy of the San Carlo Townhomes prior to the construction of a traffic signal at Greenspot Road and Calhoun Road. The City Council amended the project's Engineering Conditions of Approval at the January 9th meeting and agreed to the concept that the City would allow occupancy of all but the last 8-unit building so long as the Applicant constructed interim safety traffic control measures in the median, installed no u-turn sign at Greenspot Road and Webster Street, and bonded for the ultimate construction of the traffic signal. With this direction, staff proceeded with preparation of the Agreement as included in the Agenda (Version 1).

Subsequent to preparation of the Agenda, the Applicant requested modifications to clarify the scope of work and insurance coverage. These amendments are shown in track changes in Version 2 attached.

Additionally, the Applicant requested to remove the hold on the last building occupancy and instead requests the establishment of a 6-month timeline in which to construct the traffic signal with an option to extend the completion period up to an additional six months by the City Engineer, at the Applicant's request, if at least fifty percent progress towards the construction of the traffic signal has been made. This is attached as Version 3.

Staff recommends the Council adopt Version 3, which has been reviewed by the City Attorney, as is similar to the concept accepted by Council at the January 9th meeting.

Version 2

Amendments to Scope of Work and Insurance

CITY OF HIGHLAND

PROJECT IMPROVEMENT AGREEMENT

* * * * * REFERENCE DATA * * * * *

PROJECT NO. DRA 20-006

NAME OF PROJECT (hereinafter "Project"): San Carlo I, Highland Townhome
Apartments

NAME AND ADDRESS
OF THE DEVELOPER(S): San Carlo Apartment Homes LLC
2518 North Santiago Blvd.
Orange, California 92867

CITY COUNCIL RESOLUTION NOs. 2020-049 and 2024-001 (hereinafter "Resolution of
Approval")

IMPROVEMENT PLANS NO. Traffic Signal Calhoun Road at Greenspot Road
(hereinafter "Improvement Plans," which include all Project specifications)

IMPROVEMENTS: See Schedule A

ESTIMATED TOTAL COSTS OF IMPROVEMENTS: \$500,000
(hereinafter "Estimated Total Costs")

FORM OF IMPROVEMENT SECURITY: Surety bonds

NAME AND ADDRESS OF SURETY:

SURETY BOND NUMBERS: Performance Bond: \$500,000

Payment Bond: \$250,000

Warranty Bond: \$125,000

EFFECTIVE DATE OF AGREEMENT: February 13, 2024

COMPLETION PERIOD: All Improvements (as defined in Recital B) of the Project shall be
completed prior to the issuance of a certificate of occupancy for the last residential building on
the Project site consisting of at least eight residential units.

THIS PROJECT IMPROVEMENT AGREEMENT ("Agreement") is made and entered into by and between the City of Highland, a municipal corporation ("City"), and the Developer whose name and address is set forth above in the Reference Data.

RECITALS

A. The Developer has presented to the City for approval a proposed Project, identified above in the Reference Data, pursuant to the City's ordinances and regulations. The City has conditionally approved that Project by adopting the Resolution of Approval, which is incorporated into this Agreement by this reference.

B. As a condition precedent to the approval of the Project, the Developer must comply with the Resolution of Approval and must enter into a secured agreement with the City to complete the construction of a traffic signal utilizing a video detection system at the intersection of Greenspot Road and Access "C" (Calhoun Road) as per Engineering Condition of Approval #11 and #12 (DRA 20-006), and other related improvements ("Improvements") prior to the issuance of a certificate of occupancy for the last residential building on the Project site consisting of at least eight residential units. Access "C" (Calhoun Road) is to be constructed to approximately 325 lineal feet north of the intersection of Greenspot Road and Calhoun Road.

C. In consideration of approval of the Project by the City, the Developer desires to enter into this Agreement whereby the Developer promises to install and complete, at its sole expense, the Improvements. The Developer has secured this Agreement by improvement security required under this Agreement.

D. Improvement Plans, numbered as designated above in the Reference Data, for the construction, installation and completion of the Improvements have been prepared by the Developer, approved by the City Engineer, and are on file in the office of the City Engineer.

AGREEMENT

NOW, THEREFORE, in consideration of the approval by the City Council of the Resolution of Approval, the Developer and the City agree as follows:

1. THE DEVELOPER'S OBLIGATION TO CONSTRUCT IMPROVEMENTS

A. The Developer shall, at its sole expense, and in compliance with the Improvement Plans and all applicable City standards and fees, and in a good and workmanlike fashion, furnish, construct, install and guarantee and warranty (as set forth in Section 3) the Improvements more specifically described in the City Council's Resolution of Approval.

B. Developer shall complete all Improvements within the Completion Period specified in the Reference Data.

C. The Developer shall, at its sole expense, replace or repair all public improvements related to San Carlo I project, public property, or public utility facilities which are destroyed or damaged as a result of any work under this Agreement. Any such replacement or

repair shall be subject to the approval of the City Engineer.

D. Until the Improvements are accepted by the City, the Developer shall be responsible for the care and maintenance of such Improvements and shall bear all risks of loss or damage to said Improvements. Neither the City, nor its officers, agents nor employees shall have any liability for any accident, loss or damage to the Improvements prior to their completion and acceptance by the City.

E. The Developer shall, at its sole expense, obtain all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices, and pay all fees required by the City's ordinance or resolution and all taxes required by law.

F. Not less than fifteen (15) days prior to commencement of work on the Improvements, the Developer shall give written notice to the City Engineer of the date fixed for such commencement of work so that the City Engineer shall have adequate time to schedule all necessary inspections.

G. The Developer shall pay all City fees and costs stipulated in the latest fee resolution as adopted by the City Council from time to time as required for the development of the Project, which may include, but is not limited to, building permit fees, grading permit fees, plan check fees, encroachment permit fees, and inspection fees.

2. INSPECTION OF WORK AND FINAL ACCEPTANCE

A. The Developer shall at all times maintain proper facilities and safe access for inspection of the Improvements by the City Engineer and other City personnel and inspection consultants.

B. Upon completion of Improvements, the Developer shall request a final inspection by the City Engineer. Within ten (10) business days of any inspection of the Improvements, the City Engineer shall provide written notice to the Developer of the list of items which have been found to be incomplete and the list of items which have been found to be complete. If the City Engineer determines that the Improvements have been completed in accordance with this Agreement and in compliance with the Improvement Plans and all applicable City standards, then the City Engineer shall certify to the City Council the completion of such Improvements. The Developer shall bear all costs of inspection and certification for completeness in accordance with the City's formally adopted fees and rates.

C. Acceptance of the Improvements by the City Council shall be made upon recommendation and certification of the City Engineer following inspection of said Improvements pursuant to Subsection B above. The City Council shall act upon the City Engineer's recommendation within forty-five (45) days following certification by the City Engineer that such Improvements have been completed. Acceptance by the City Council shall not constitute a waiver by the City of any defects in the Improvements.

3. GUARANTEE AND WARRANTY OF THE IMPROVEMENTS

A. Within the period commencing on the date the first portion of the

Improvements is accepted by the City until one (1) year following acceptance by the City of the last of the Improvements, if any Improvements or part of any Improvements furnished, installed, or constructed by the Developer, any of the materials comprising the Improvements, or any of the work performed under this Agreement, fails to comply with any requirements of this Agreement or the Improvement Plans, the Developer shall, without delay and without cost to the City, repair, replace, or reconstruct any defective or otherwise unsatisfactory part or parts of the Improvements. This guarantee and warranty on behalf of the Developer shall be separate from and in addition to the improvement security described in Section 4(A)(3) of this Agreement.

B. Should the Developer fail or refuse to act promptly or in accordance with Subsection A above, or should the exigencies of the situation require repair, replacement, or reconstruction to be undertaken before the Developer can be notified and can perform the necessary work, then the City may, in its discretion, make the necessary repairs or replacements or perform the necessary reconstruction. The City shall provide a bill to the Developer of the total costs of such repair, replacement, or reconstruction, and the Developer shall immediately reimburse the City for those total costs. If the Developer does not immediately pay the total costs incurred, the City may opt to tender on the Developer's improvement security.

4. IMPROVEMENT SECURITY

A. Prior to the City's execution of this Agreement, the Developer shall provide all three of the following as security to the City:

1. For Performance: Security in an amount equal to one hundred percent (100%) of the Estimated Total Costs, as set forth in the Reference Data. With this security, the Developer assures faithful performance under this Agreement, as demonstrated by the City's acceptance, in accordance with the Resolution of Approval and Improvement Plans.

2. For Payment: Security in an amount equal to fifty percent (50%) of the Estimated Total Costs, as set forth in the Reference Data. With this security, the Developer guarantees payment to all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of this Agreement and referred to in Part 6 (commencing with Section 8000) of Division 4 of the Civil Code.

3. For Warranty: Security in an amount equal to twenty-five percent (25%) of the Estimated Total Costs, as set forth in the Reference Data, must be provided before final completion and the acceptance of any category of Improvements by the City. With this security, the Developer guarantees the Improvements for one (1) year after the completion and acceptance of the last of such Improvements, against any defective workmanship or materials or any unsatisfactory performance, pursuant to Section 3 of this Agreement.

B. All improvement securities shall be from a California admitted surety insurer or insurers and shall be on forms that are approved by the City Attorney.

C. If the improvement security is a surety bond and, in the opinion of the City, any surety or sureties thereon become insolvent or liquidated, or any surety bond cannot be tendered upon for the full penal sum for any reason, the Developer shall renew or replace any such surety bond with a valid surety bond from a solvent surety or sureties in the amount of the full

penal sum within ten (10) days after receiving from the City written demand therefor.

D. Improvement security shall be kept on file with the City Engineer. If a surety bond is replaced by another approved bond, the Developer shall submit the replacement bond to the City Engineer and, upon acceptance by the City Attorney, the improvement security shall be deemed to have been made a part of and incorporated into this Agreement. Upon approval by the City Attorney of a replacement bond, the former improvement security shall be released.

E. Modifications of the Improvement Plans and the Improvements not exceeding ten percent (10%) of the original Estimated Total Costs shall not relieve or release any improvement security furnished by the Developer pursuant to this Agreement. If any such modifications exceed ten percent (10%) of the Estimated Total Costs, the Developer shall furnish additional improvement security for performance and payment, as required by Subsection A above, for one hundred percent (100%) of the revised Estimated Total Costs. Alternatively, the Developer may provide official notice from the surety company that it acknowledges receipt of the modified Improvement Plans and that the existing bonds have been amended to reflect the new penal sum, which shall be in the amount of the revised Estimated Total Costs, and that the existing bonds shall therefore apply to warrant the Project as revised.

F. All Improvements shall be completed within the Completion Period listed in the Reference Data. If the Developer has not completed the Improvements within this specified time, the Developer shall be in default. Alternatively, in the event of a default by the Developer pursuant to Section 9, and after written notice to the Developer and reasonable opportunity to cure, the City, at its sole option, shall have the right, without limiting any other rights and remedies available to the City at law or in equity, to draw upon or utilize the improvement security furnished herewith to construct and install the Improvements itself.

5. REDUCTION OR RELEASE OF IMPROVEMENT SECURITY

A. Partial releases or reductions in the Developer's performance improvement security may be authorized prior to the City's acceptance of all Improvements required under this Agreement, as provided in this Section 5.

B. Upon written request of the Developer, the City may reduce the improvement security for performance by up to thirty percent (30%) of the penal sum if: 1) the Developer has completed a portion of the Improvements, and the City has accepted those Improvements; 2) the remaining improvement security for performance is in an amount that covers the remaining Improvements to be installed; and 3) the Developer has submitted, and the City has approved, the full improvement security for warranty. The improvement security for payment and warranty shall not be reduced.

6. INDEMNIFICATION OF THE CITY BY THE DEVELOPER

A. Neither the City, nor its officers, officials, employees, agents, representatives, and volunteers (collectively, "City Personnel") shall be liable or responsible for any accident, injury, loss, or damage to either property or person attributable to or arising out of the construction, installation, or maintenance of the Improvements by the Developer, its officers, employees, and agents. The Developer shall defend, indemnify, and hold harmless the City and

City Personnel from and against any and all losses, claims, costs, expenses, liabilities, damages, actions, causes of action, and judgments, including attorneys' fees, arising directly or indirectly out of or attributable to the Developer's acts or failure to act.

B. The Developer's obligations under this Section 6 are not conditioned or dependent upon whether the City or City Personnel prepared, supplied, or reviewed any Improvement Plans in connection with the Project or the Improvements, or has insurance or other indemnification covering any of these matters.

C. The Developer's obligation to defend, indemnify, and hold harmless the City shall extend to injuries to persons and damages to or alleged taking of property resulting from the design or construction of the Project, and the Improvements required under this Agreement. Except for a City Directive as defined below, the City's acceptance of the Improvements shall not constitute an assumption by the City of any responsibility or liability for any damage or alleged taking of property referenced under this Agreement. The City shall not be responsible or liable for the design or construction of the Project or the Improvements constructed or installed pursuant to the approved Improvement Plans, regardless of any act or omission by the City in approving the Improvement Plans, unless the particular Improvement design was required by the City over the written objection of the Developer, which objection stated that the Improvement design was potentially dangerous or defective and set forth an alternative design (a "City Directive"). After the City's acceptance of the Improvements, the Developer shall remain obligated to correct or eliminate all dangerous conditions created by defects in design or construction (other than those required by a City Directive); provided, however, that the Developer shall not be responsible for routine maintenance. The Developer's indemnity obligations under this Section 6 shall remain in effect for two (2) years following acceptance of the last of the Improvement(s) by the City Council. The Developer acknowledges and agrees that the Developer shall be responsible and liable for the design and construction of the Improvements and other work done pursuant to this Agreement, unless the same is due to a City Directive. The City shall not be liable for any acts or omissions in approving, reviewing, checking, correcting, or modifying any Improvement Plans, or in inspecting, reviewing, or approving any work or construction of Improvements, unless the same is due to a City Directive. The Developer's improvement security shall not be required to secure the Developer's obligations under this Subsection C beyond the warranty period listed in Section 4(A)(3).

D. The Developer shall pay and satisfy any judgment, award or decree that may be rendered against the City and City Personnel to the extent of the indemnity provided above in any such suit, action, or other legal proceeding, provided the City gives the Developer prompt written notice of such claim.

E. The Developer's obligation to indemnify shall not be restricted to Insurance proceeds, if any, received by the City and City Personnel.

F. The Developer, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the City and City Personnel to the extent of the indemnity above provided.

7. INSURANCE Developer shall at all times during the term of this Agreement, carry and maintain the insurance policies set forth below. This requirement may ~~(The insurance set forth below in Section 7 will be~~ satisfied by the insurance that Developer will carry and maintain in connection with ~~satisfied by the temporary traffic control plan encroachment permit ("Traffic Control") and it's insurance requirements, required by the January 2, 2024 City Council approved revision to Engineering Condition of Approval #11 (DRA 20-006).~~ In the event ~~the REXCDeveloper does not maintain the "Traffic Control" encroachment permit and required insurance, then REXCDeveloper must provide the required insurance as detailed below in this Agreement.~~

A. *General Liability.* The Developer shall at all times during the term of this Agreement (as listed in Section 13) carry, maintain, and keep in full force and effect a policy or policies of comprehensive general liability insurance with limits of One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate, combined single limit, against bodily injury (including death), or loss or damage to property to the extent resulting from the wrongful or negligent acts or omissions of the Developer, its officers, employees, and agents, and shall require such coverage of its independent contractors. If such insurance contains a general aggregate limit, either the general aggregate shall apply separately to this Project, or the general aggregate limit shall be three (3) times the occurrence limit. The Developer shall have the right to provide such insurance under its existing insurance program, provided such existing insurance meets all of the requirements of this Subsection A.

B. *Automobile Liability (including owned, non-owned, and hired autos).* The Developer shall at all times during the term of this Agreement (as listed in Section 13) also carry, maintain, and keep in full force and effect a policy or policies of commercial automobile liability insurance with a combined single limit of One Million Dollars (\$1,000,000), single limit, per occurrence for bodily injury and property damage, which will cover the drivers and automobiles used to perform services pursuant to this Agreement. Such insurance shall include coverage for owned, non-owned, and hired automobiles. The Developer shall have the right to provide such insurance under its existing insurance program, provided such existing insurance meets all of the requirements of this Subsection B.

C. *Workers' Compensation.* The Developer shall at all times during the term of this Agreement (as listed in Section 13) provide Workers' Compensation Insurance, including employer's liability coverage, for the protection of the Developer's employees, with a minimum limit of One Million Dollars (\$1,000,000) or the amount required by law, whichever is greater. The Developer shall require each contractor and subcontractor to provide Workers' Compensation Insurance in the aforementioned amount and file certificates of insurance with the City evidencing such coverage for their respective employees.

D. The Developer agrees that if it does not keep the aforesaid insurance in full force and effect the City may either, after written notice to the Developer and failure by the Developer to cure same within ten (10) days, immediately terminate this Agreement for default by the Developer, or, if insurance is available at reasonable cost, the City may take out the necessary insurance and pay, at the Developer's expense, the premium amount.

E. The general liability policy and automobile liability policy shall each be endorsed to state that the City and City Personnel, as that term is defined above, shall be covered as additional insureds to the extent of the indemnity in Section 6.

F. The insurance provided by the Developer shall be primary to any coverage available to the City or City Personnel and shall provide that any insurance or self-insurance maintained by the City or City Personnel shall be in excess of the Developer's insurance and shall not contribute with it.

G. The insurance provided by the Developer shall be endorsed to state that the insurer shall waive all rights of subrogation against the City and City Personnel, to the extent of the Indemnity in Section 6.

H. The policy or policies required under this Agreement shall be issued by an insurer admitted in the State of California with a rating of at least B+:VII in the latest edition of A.M. Best's insurance guide.

I. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer or a broker to bind coverage on its behalf. The certificates shall also specifically state that the coverage contained in those policies affords insurance in compliance with the terms and conditions as set forth in this Agreement.

J. *Deductibles.* Any deductibles or self-insured retentions of any contractors or subcontractors must be declared to and approved by the City prior to the execution of this Agreement by the City. At the option of the City, either the contractor's or subcontractor's insurer(s) shall reduce or eliminate the deductibles or self-insured retentions regarding the City, or the contractor or subcontractor shall procure a bond guaranteeing payment of losses and expenses.

K. *Notice of Policy Changes.* Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days' prior written notice thereof given by the Developer to the City.

L. *Evidence of Coverage.* Prior to commencement of work, the Developer shall submit a certificate or certificates of insurance in a form acceptable to the City Attorney, showing compliance with the foregoing requirements. The Developer shall ensure those certificates are valid at all times during the term of this Agreement (as listed in Section 13) or shall replace them immediately. The Developer shall ensure that all of its contractors and subcontractors required in this Agreement to obtain any insurance shall also submit certificates of insurance in form acceptable to the City Attorney showing compliance with the foregoing requirements prior to commencement of work and shall ensure those certificates are valid at all times during the term of this Agreement.

M. Nothing contained in this Section 7 shall be construed as limiting in any way the Developer's obligations of indemnification under Section 6 or any other extent to which the Developer may be held responsible for payment of damages to persons or property resulting from its operations, including operations and work performed or materials supplied by or on behalf of the Developer, any contractors or subcontractors, or by anyone directly or indirectly employed by any of them.

N. The above coverages will be provided by the Developer and maintained on behalf of the City and in accordance with the requirements set forth in this Agreement. If the Developer performs construction activities through a general contractor or subcontractors, some or all of these insurance requirements for the period of construction may be satisfied by the general contractor's or subcontractors' insurance coverages; provided, however, that the Developer shall first provide a written plan for the approval of the City which sets forth the respective obligations and deadlines of the Developer and its contractor and subcontractors.

8. OWNERSHIP OF THE IMPROVEMENTS

A. Ownership of all or any category of the Improvements constructed and installed by the Developer pursuant to this Agreement to be dedicated shall vest, as applicable, in the City (or other specified governmental agency) upon acceptance of said Improvements by the City Council and recordation of a Notice of Completion.

B. The Developer shall at all times prior to the acceptance of the Improvements by the City, give good and adequate warning to the public of each and every dangerous and defective condition caused by the construction of the Improvements and shall take all steps necessary to protect the public from such dangerous or defective conditions. The Developer agrees and understands that until acceptance of the Improvements by the City, each Improvement and Improvement area that is offered for dedication shall be under the charge of the Developer, and the Developer may close all or a portion of any street or area whenever necessary to protect the public during the construction of the Improvements.

9. DEFAULT AND BREACH BY THE DEVELOPER AND REMEDIES OF THE CITY

A. Upon the occurrence of any of the following events, the Developer shall be deemed to be in default under this Agreement:

1. Failure to complete construction and installation of the Improvements or any of them by the Completion Date set forth in the Reference Data;

2. Failure to promptly correct or cure any defect in the Improvements or any of them (other than a City Directive) during the guarantee and warranty period required by Section 3(A) or failure to commence correction or cure of any such defect or failure to diligently prosecute same to completion, in each instance following written notice that such defect exists;

3. Failure to perform substantial work on the Improvements or on any of them, after commencement of work on same, for a period of thirty (30) days after written notice thereof from the City;

4. Insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, whether voluntary or involuntary, and such is not cured or discharged within a period of thirty (30) days;

5. Commencement of a foreclosure action against the Project or any portion thereof, or any conveyance by the Developer in lieu or in avoidance of foreclosure, within

thirty (30) days of written notice thereof from the City; or

6. Failure to perform any other obligations in accordance with the terms and provisions of this Agreement within the time period specified in this Agreement for the performance of that obligation, or if no time is specified, within thirty (30) days of written notice thereof from the City.

B. The City reserves to itself all remedies available to it at law and in equity for any breach of the Developer's obligations under this Agreement. The City shall have the right, without limitation of other rights or remedies, after written notice to the Developer and a reasonable opportunity for the Developer to cure any such alleged default, to draw upon or utilize any improvement security furnished hereunder to complete the Improvements or otherwise mitigate the City's damages in the event of the Developer's default.

C. Following the written notice of alleged default and failure by the Developer to promptly commence the cure of any alleged default and to diligently prosecute such cure to completion within the time period set forth in Section 9(A)(6), the City may tender to the surety on the surety bond furnished as improvement security for performance, and request appropriate funds or that said surety take over and complete the Improvements specified under this Agreement.

D. The Developer acknowledges that the Estimated Total Costs and improvement security amounts set forth under this Agreement may not reflect the actual cost of construction or installation of the Improvements, and consequently, the City's damages for the Developer's default shall be measured by the actual cost of completing the required Improvements.

E. Following the written notice of alleged default and failure by the Developer to promptly commence the cure of any alleged default and to diligently prosecute such cure to completion within the time period set forth in Section 9 (A)(6), the City may, without liability for so doing, take possession of, and utilize in completing the Improvements, such materials, appliances, plant and other property belonging to the Developer as may be on the site of the work and necessary for the performance of the work. The Developer hereby consents to such entry by the City and its representatives, including employees, agents, and contractors, upon any real property in the Project owned by the Developer, in the event the City elects to maintain or complete the work on the Improvements following the Developer's default.

F. The City's failure to take an enforcement action with respect to a default, or to declare a default or breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of the Developer.

G. If any legal action or other proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, experts' fees, and other costs, in addition to any other relief to which the party may be entitled.

10. RELATIONSHIP OF THE PARTIES

Neither the Developer, nor any of the Developer's contractors, subcontractors, employees or agents, are or shall be deemed to be, agents of the City in connection with the performance of the Developer's obligations under this Agreement. The Developer shall not, at any time or in any manner, represent or allow representation by its contractors, subcontractors, employees, or agents that any of them are contractors, subcontractors, employees, or agents of the City.

11. ASSIGNMENT

A. The Developer shall not assign this Agreement or any portion thereof without the prior written consent of the City, which consent shall not be unreasonably withheld. Any attempted or purported assignment in violation of this Subsection A shall be null and void and shall have no force or effect.

B. The sale or other disposition of the Project shall not relieve the Developer of its obligations under this Agreement. If the Developer intends to sell the Project or any portion thereof to any other person or entity, the Developer may request a novation of this Agreement and a substitution of improvement security. Upon the City's approval of the novation and substitution of improvement security, the Developer may request a release or reduction of the improvement security furnished pursuant to this Agreement.

12. NOTICES

All notices required or provided for in this Agreement shall be in writing and delivered in person or by mail, postage prepaid, and addressed as follows:

If to the City:	Carlos Zamano Public Works Director/City Engineer City of Highland 27215 Base Line Highland, California 92546
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If to the Developer:	To the address set forth above in the Reference Data, or to such other address as may subsequently be designated in written notice to the City.
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Notice shall be effective on the date that it is delivered in person, or if mailed, three (3) days after the date of deposit in the United States Mail.

13. TERM

The term of this Agreement shall commence on the Effective Date of Agreement as listed in the Reference Date and shall continue until the end of the guarantee and warranty period in Section 3(A) and warranty period in Section 4(A)(3), unless any claims filed during that time have not been settled, in which case the term of this Agreement shall extend until those claims have been settled.

14. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties with respect to its subject matter. All modifications, amendments, or waivers of any terms of this Agreement shall be in writing and signed by the duly authorized representatives of the parties. In the case of the City, the duly authorized representative, unless otherwise specified under this Agreement, shall be the City Engineer.

15. SEVERABILITY

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

16. INCORPORATION OF REFERENCE DATA AND RECITALS

The Reference Data and the Recitals are incorporated into this Agreement.

17. GOVERNING LAW; VENUE

This Agreement shall be governed by the laws of the State of California, excluding California's choice of law rules. Venue for any action relating to this Agreement shall be in the San Bernardino County Superior Court.

18. CONSTRUCTION

In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter under this Agreement, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted this Agreement or who drafted that portion of this Agreement.

19. EFFECTIVE DATE OF THIS AGREEMENT

This Agreement shall be and become effective as of the date that it is executed by a duly authorized officer or employee of the City, it being the intention of the parties that the Developer shall first execute this Agreement and thereafter submit it to the City. The City shall insert the effective date in the Reference Data in all counterparts of this Agreement and shall transmit a fully executed counterpart to the Developer.

– SIGNATURES BEGIN ON NEXT PAGE –

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, thereunto duly authorized, as of the dates set forth below their respective signatures.

[Note: All signatures must be acknowledged by a notary public and the acknowledgement must be attached. If signed by a corporation, the signatures of two corporate officers are required, unless a resolution of the corporation's board of directors is provided indicating that the signature of the one signatory is sufficient to bind the corporation.]

“DEVELOPER”

(Type or print exact name of person or entity)

By: _____
(Signature of authorized officer)

(Type or print name of authorized officer)

☐ Chairperson ☐ President ☐ Vice President

By: _____
(Signature of authorized officer)

(Type or print name of authorized officer)

☐ Secretary ☐ Asst. Secretary
☐ Chief Finance Officer ☐ Asst. Treasurer

Date: _____

– SIGNATURES CONTINUE ON NEXT PAGE –

“CITY”

CITY OF HIGHLAND

Penny Lilburn, Mayor

ATTEST:

Betty Hughes, City Clerk

(SEAL)

APPROVED AS TO FORM:
Richards, Watson & Gershon

Maricela Marroquin, City Attorney

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)

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)

Bond No. _____

FAITHFUL PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

Whereas, the City of Highland, State of California, and San Carlo Apartment Homes LLC (hereinafter designated as "Principal") have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which said agreement, dated February 13, 2024, pertaining to the San Carlo I, Highland Townhome Apartments is hereby referred to and made a part hereof; and

Whereas, Principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the Principal and _____, as surety (hereinafter designated as "Surety"), are held and firmly bound unto the City of Highland in the penal sum of _____ dollars (\$ _____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded Principal, his, her, or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his, her, its or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City of Highland, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City of Highland in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Further, Surety hereby waives the provisions of California Civil Code Sections 2845 and 2849. The City of Highland is the principal beneficiary of this bond and has all rights of a party hereto.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these

presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

By: _____
Its: _____

By: _____
Its: _____

“Surety”

By: _____
Its: _____

By: _____
Its: _____

(Seal)

(Seal)

APPROVED AS TO FORM:

RICHARDS, WATSON & GERSHON
A Professional Corporation

By: _____
City Attorney

Note: This bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.

Bond No. _____

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

Whereas, the City of Highland, State of California, and San Carlo Apartment Homes LLC (hereinafter designated as "Principal") have entered into an agreement whereby the Principal agrees to install and complete certain designated public improvements, which agreement, dated February 13, 2024, pertaining to the San Carlo I, Highland Townhome Apartments, is hereby referred to and made a part hereof; and

Whereas, under the terms of the agreement, the Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Highland to secure the claims to which reference is made in Part 6 (commencing with Section 8000) of Division 4 of the Civil Code.

Now, therefore, the Principal and _____, as surety (hereinafter designated as "Surety"), are held firmly bound unto the City of Highland and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the agreement and referred to in Part 6 (commencing with Section 8000) of Division 4 of the Civil Code in the penal sum of _____ dollars (\$ _____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City of Highland in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Part 6 (commencing with Section 8000) of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

Further, Surety hereby waives the provisions of California Civil Code Sections 2845 and 2849. The City of Highland is the principal beneficiary of this bond and has all rights of a party hereto.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these

presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

By: _____
Its: _____

By: _____
Its: _____

(Seal)

“Surety”

By: _____
Its: _____

By: _____
Its: _____

(Seal)

APPROVED AS TO FORM:

RICHARDS, WATSON & GERSHON
A Professional Corporation

By: _____
City Attorney

Note: This bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.

Bond No. _____

WARRANTY BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

Whereas, the City of Highland, State of California, and San Carlo Apartment Homes LLC (hereinafter designated as "Principal") have entered into an agreement, dated February 13, 2024, pertaining to the San Carlo I, Highland Townhome Apartments, is hereby referred to and made a part hereof; and

Whereas, Principal is required under the terms of said agreement to furnish a bond for the good and sufficient warranty of all of the improvements installed pursuant to said agreement.

Now, therefore, we, the Principal and _____, as surety (hereinafter designated as "Surety"), are held and firmly bound unto the City of Highland in the penal sum of _____ dollars (\$_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that, if the hereby bounded Principal, his, her or its heirs, executors, administrators, successors or assigns, shall remedy, without cost to the City of Highland, any defects which may develop during a period of one (1) year from the date of the completion and acceptance of the last of the improvements installed under the agreement, caused by defective or inferior materials or workmanship as determined by the City, and shall indemnify, defend and hold harmless the City of Highland, its officers, agents, and employees for any and all claims, demands, causes of action, damages, injuries, liabilities, losses, costs or expenses, including attorneys' fees and costs of defense, which arise out of, pertain to, or relate to such defects or inferior materials or workmanship or to the Principal's actions or inactions in remedying such defects or inferior materials or workmanship, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

If suit is brought upon this bond, Surety further agrees to pay, in addition to the Penal Sum, all costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City of Highland in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Further, Surety hereby waives the provisions of California Civil Code Sections 2845 and 2849. The City of Highland is the principal beneficiary of this bond and has all rights of a party hereto.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

“Surety”

By: _____
Its: _____

By: _____
Its: _____

By: _____
Its: _____

By: _____
Its: _____

(Seal)

(Seal)

APPROVED AS TO FORM:

RICHARDS, WATSON & GERSHON
A Professional Corporation

By: _____
City Attorney

Note: This bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.

Version 3

Amendments Replacing Unit Hold with 6-Month Deadline

CITY OF HIGHLAND

PROJECT IMPROVEMENT AGREEMENT

* * * * * REFERENCE DATA * * * * *

PROJECT NO. DRA 20-006

NAME OF PROJECT (hereinafter "Project"): San Carlo I, Highland Townhome Apartments

NAME AND ADDRESS
OF THE DEVELOPER(S): San Carlo Apartment Homes LLC
2518 North Santiago Blvd.
Orange, California 92867

CITY COUNCIL RESOLUTION NOs. 2020-049 and 2024-001 (hereinafter "Resolution of Approval")

IMPROVEMENT PLANS NO. Traffic Signal Calhoun Road at Greenspot Road
(hereinafter "Improvement Plans," which include all Project specifications)

IMPROVEMENTS: See Schedule A

ESTIMATED TOTAL COSTS OF IMPROVEMENTS: \$500,000
(hereinafter "Estimated Total Costs")

FORM OF IMPROVEMENT SECURITY: Surety bonds

NAME AND ADDRESS OF SURETY:

SURETY BOND NUMBERS: Performance Bond: \$500,000

Payment Bond: \$250,000

Warranty Bond: \$125,000

EFFECTIVE DATE OF AGREEMENT: February 13, 2024

COMPLETION PERIOD: All Improvements (as defined in Recital B) of the Project shall be completed prior to ~~the issuance of a certificate of occupancy for the last residential building on the Project site consisting of at least eight residential units~~ August 13, 2024, unless further extended as provided in Recital B of the Agreement.

THIS PROJECT IMPROVEMENT AGREEMENT ("Agreement") is made and entered into by and between the City of Highland, a municipal corporation ("City"), and the Developer whose name and address is set forth above in the Reference Data.

RECITALS

A. The Developer has presented to the City for approval a proposed Project, identified above in the Reference Data, pursuant to the City's ordinances and regulations. The City has conditionally approved that Project by adopting the Resolution of Approval, which is incorporated into this Agreement by this reference.

B. As a condition precedent to the approval of the Project, the Developer must comply with the Resolution of Approval and must enter into a secured agreement with the City to complete the construction of a traffic signal utilizing a video detection system at the intersection of Greenspot Road and Access "C" (Calhoun Road) as per Engineering Condition of Approval #11 and #12 (DRA 20-006), and other related improvements ("Improvements"). The Improvements shall be completed prior to the issuance of a certificate of occupancy for the last residential building on the Project site consisting of at least eight residential units August 13, 2024. In the event that the Developer has made at least fifty percent (50%) progress towards the construction of the Improvements, as determined by the City Engineer, the City Engineer is authorized at the request of the Developer to extend the completion period by up to an additional six months. In no event shall the Improvements be constructed later than February 28, 2025. Access "C" (Calhoun Road) is to be constructed to approximately 325 lineal feet north of the intersection of Greenspot Road and Calhoun Road.

C. In consideration of approval of the Project by the City, the Developer desires to enter into this Agreement whereby the Developer promises to install and complete, at its sole expense, the Improvements. The Developer has secured this Agreement by improvement security required under this Agreement.

D. Improvement Plans, numbered as designated above in the Reference Data, for the construction, installation and completion of the Improvements have been prepared by the Developer, approved by the City Engineer, and are on file in the office of the City Engineer.

AGREEMENT

NOW, THEREFORE, in consideration of the approval by the City Council of the Resolution of Approval, the Developer and the City agree as follows:

1. THE DEVELOPER'S OBLIGATION TO CONSTRUCT IMPROVEMENTS

A. The Developer shall, at its sole expense, and in compliance with the Improvement Plans and all applicable City standards and fees, and in a good and workmanlike fashion, furnish, construct, install and guarantee and warranty (as set forth in Section 3) the Improvements more specifically described in the City Council's Resolution of Approval.

B. Developer shall complete all Improvements within the Completion Period

specified in the Reference Data.

C. The Developer shall, at its sole expense, replace or repair all public improvements related to San Carlo I project, public property, or public utility facilities which are destroyed or damaged as a result of any work under this Agreement. Any such replacement or repair shall be subject to the approval of the City Engineer.

D. Until the Improvements are accepted by the City, the Developer shall be responsible for the care and maintenance of such Improvements and shall bear all risks of loss or damage to said Improvements. Neither the City, nor its officers, agents nor employees shall have any liability for any accident, loss or damage to the Improvements prior to their completion and acceptance by the City.

E. The Developer shall, at its sole expense, obtain all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices, and pay all fees required by the City's ordinance or resolution and all taxes required by law.

F. Not less than fifteen (15) days prior to commencement of work on the Improvements, the Developer shall give written notice to the City Engineer of the date fixed for such commencement of work so that the City Engineer shall have adequate time to schedule all necessary inspections.

G. The Developer shall pay all City fees and costs stipulated in the latest fee resolution as adopted by the City Council from time to time as required for the development of the Project, which may include, but is not limited to, building permit fees, grading permit fees, plan check fees, encroachment permit fees, and inspection fees.

2. INSPECTION OF WORK AND FINAL ACCEPTANCE

A. The Developer shall at all times maintain proper facilities and safe access for inspection of the Improvements by the City Engineer and other City personnel and inspection consultants.

B. Upon completion of Improvements, the Developer shall request a final inspection by the City Engineer. Within ten (10) business days of any inspection of the Improvements, the City Engineer shall provide written notice to the Developer of the list of items which have been found to be incomplete and the list of items which have been found to be complete. If the City Engineer determines that the Improvements have been completed in accordance with this Agreement and in compliance with the Improvement Plans and all applicable City standards, then the City Engineer shall certify to the City Council the completion of such Improvements. The Developer shall bear all costs of inspection and certification for completeness in accordance with the City's formally adopted fees and rates.

C. Acceptance of the Improvements by the City Council shall be made upon recommendation and certification of the City Engineer following inspection of said Improvements pursuant to Subsection B above. The City Council shall act upon the City Engineer's recommendation within forty-five (45) days following certification by the City Engineer that such Improvements have been completed. Acceptance by the City Council shall not constitute a waiver

by the City of any defects in the Improvements.

3. GUARANTEE AND WARRANTY OF THE IMPROVEMENTS

A. Within the period commencing on the date the first portion of the Improvements is accepted by the City until one (1) year following acceptance by the City of the last of the Improvements, if any Improvements or part of any Improvements furnished, installed, or constructed by the Developer, any of the materials comprising the Improvements, or any of the work performed under this Agreement, fails to comply with any requirements of this Agreement or the Improvement Plans, the Developer shall, without delay and without cost to the City, repair, replace, or reconstruct any defective or otherwise unsatisfactory part or parts of the Improvements. This guarantee and warranty on behalf of the Developer shall be separate from and in addition to the improvement security described in Section 4(A)(3) of this Agreement.

B. Should the Developer fail or refuse to act promptly or in accordance with Subsection A above, or should the exigencies of the situation require repair, replacement, or reconstruction to be undertaken before the Developer can be notified and can perform the necessary work, then the City may, in its discretion, make the necessary repairs or replacements or perform the necessary reconstruction. The City shall provide a bill to the Developer of the total costs of such repair, replacement, or reconstruction, and the Developer shall immediately reimburse the City for those total costs. If the Developer does not immediately pay the total costs incurred, the City may opt to tender on the Developer's improvement security.

4. IMPROVEMENT SECURITY

A. Prior to the City's execution of this Agreement, the Developer shall provide all three of the following as security to the City:

1. For Performance: Security in an amount equal to one hundred percent (100%) of the Estimated Total Costs, as set forth in the Reference Data. With this security, the Developer assures faithful performance under this Agreement, as demonstrated by the City's acceptance, in accordance with the Resolution of Approval and Improvement Plans.

2. For Payment: Security in an amount equal to fifty percent (50%) of the Estimated Total Costs, as set forth in the Reference Data. With this security, the Developer guarantees payment to all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of this Agreement and referred to in Part 6 (commencing with Section 8000) of Division 4 of the Civil Code.

3. For Warranty: Security in an amount equal to twenty-five percent (25%) of the Estimated Total Costs, as set forth in the Reference Data, must be provided before final completion and the acceptance of any category of Improvements by the City. With this security, the Developer guarantees the Improvements for one (1) year after the completion and acceptance of the last of such Improvements, against any defective workmanship or materials or any unsatisfactory performance, pursuant to Section 3 of this Agreement.

B. All improvement securities shall be from a California admitted surety insurer or insurers and shall be on forms that are approved by the City Attorney.

C. If the improvement security is a surety bond and, in the opinion of the City, any surety or sureties thereon become insolvent or liquidated, or any surety bond cannot be tendered upon for the full penal sum for any reason, the Developer shall renew or replace any such surety bond with a valid surety bond from a solvent surety or sureties in the amount of the full penal sum within ten (10) days after receiving from the City written demand therefor.

D. Improvement security shall be kept on file with the City Engineer. If a surety bond is replaced by another approved bond, the Developer shall submit the replacement bond to the City Engineer and, upon acceptance by the City Attorney, the improvement security shall be deemed to have been made a part of and incorporated into this Agreement. Upon approval by the City Attorney of a replacement bond, the former improvement security shall be released.

E. Modifications of the Improvement Plans and the Improvements not exceeding ten percent (10%) of the original Estimated Total Costs shall not relieve or release any improvement security furnished by the Developer pursuant to this Agreement. If any such modifications exceed ten percent (10%) of the Estimated Total Costs, the Developer shall furnish additional improvement security for performance and payment, as required by Subsection A above, for one hundred percent (100%) of the revised Estimated Total Costs. Alternatively, the Developer may provide official notice from the surety company that it acknowledges receipt of the modified Improvement Plans and that the existing bonds have been amended to reflect the new penal sum, which shall be in the amount of the revised Estimated Total Costs, and that the existing bonds shall therefore apply to warrant the Project as revised.

F. All Improvements shall be completed within the Completion Period listed in the Reference Data. If the Developer has not completed the Improvements within this specified time, the Developer shall be in default. Alternatively, in the event of a default by the Developer pursuant to Section 9, and after written notice to the Developer and reasonable opportunity to cure, the City, at its sole option, shall have the right, without limiting any other rights and remedies available to the City at law or in equity, to draw upon or utilize the improvement security furnished herewith to construct and install the Improvements itself.

5. REDUCTION OR RELEASE OF IMPROVEMENT SECURITY

A. Partial releases or reductions in the Developer's performance improvement security may be authorized prior to the City's acceptance of all Improvements required under this Agreement, as provided in this Section 5.

B. Upon written request of the Developer, the City may reduce the improvement security for performance by up to thirty percent (30%) of the penal sum if: 1) the Developer has completed a portion of the Improvements, and the City has accepted those Improvements; 2) the remaining improvement security for performance is in an amount that covers the remaining Improvements to be installed; and 3) the Developer has submitted, and the City has approved, the full improvement security for warranty. The improvement security for payment and warranty shall not be reduced.

6. INDEMNIFICATION OF THE CITY BY THE DEVELOPER

A. Neither the City, nor its officers, officials, employees, agents,

representatives, and volunteers (collectively, "City Personnel") shall be liable or responsible for any accident, injury, loss, or damage to either property or person attributable to or arising out of the construction, installation, or maintenance of the Improvements by the Developer, its officers, employees, and agents. The Developer shall defend, indemnify, and hold harmless the City and City Personnel from and against any and all losses, claims, costs, expenses, liabilities, damages, actions, causes of action, and judgments, including attorneys' fees, arising directly or indirectly out of or attributable to the Developer's acts or failure to act.

B. The Developer's obligations under this Section 6 are not conditioned or dependent upon whether the City or City Personnel prepared, supplied, or reviewed any Improvement Plans in connection with the Project or the Improvements, or has insurance or other indemnification covering any of these matters.

C. The Developer's obligation to defend, indemnify, and hold harmless the City shall extend to injuries to persons and damages to or alleged taking of property resulting from the design or construction of the Project, and the Improvements required under this Agreement. Except for a City Directive as defined below, the City's acceptance of the Improvements shall not constitute an assumption by the City of any responsibility or liability for any damage or alleged taking of property referenced under this Agreement. The City shall not be responsible or liable for the design or construction of the Project or the Improvements constructed or installed pursuant to the approved Improvement Plans, regardless of any act or omission by the City in approving the Improvement Plans, unless the particular Improvement design was required by the City over the written objection of the Developer, which objection stated that the Improvement design was potentially dangerous or defective and set forth an alternative design (a "City Directive"). After the City's acceptance of the Improvements, the Developer shall remain obligated to correct or eliminate all dangerous conditions created by defects in design or construction (other than those required by a City Directive); provided, however, that the Developer shall not be responsible for routine maintenance. The Developer's indemnity obligations under this Section 6 shall remain in effect for two (2) years following acceptance of the last of the Improvement(s) by the City Council. The Developer acknowledges and agrees that the Developer shall be responsible and liable for the design and construction of the Improvements and other work done pursuant to this Agreement, unless the same is due to a City Directive. The City shall not be liable for any acts or omissions in approving, reviewing, checking, correcting, or modifying any Improvement Plans, or in inspecting, reviewing, or approving any work or construction of Improvements, unless the same is due to a City Directive. The Developer's improvement security shall not be required to secure the Developer's obligations under this Subsection C beyond the warranty period listed in Section 4(A)(3).

D. The Developer shall pay and satisfy any judgment, award or decree that may be rendered against the City and City Personnel to the extent of the indemnity provided above in any such suit, action, or other legal proceeding, provided the City gives the Developer prompt written notice of such claim.

E. The Developer's obligation to indemnify shall not be restricted to Insurance proceeds, if any, received by the City and City Personnel.

F. The Developer, on behalf of itself and all parties claiming under or through

it, hereby waives all rights of subrogation and contribution against the City and City Personnel to the extent of the indemnity above provided.

7. INSURANCE Developer shall at all times during the term of this Agreement, carry and maintain the insurance policies set forth below. This requirement may ~~(The insurance set forth below in Section 7 will be~~ satisfied by the insurance that Developer will carry and maintain in connection with ~~satisfied by the temporary traffic control plan encroachment permit ("Traffic Control") and its insurance requirements, required by the January 2, 2024 City Council approved revision to Engineering Condition of Approval #11 (DRA 20-006). In the event the REXCDeveloper does not maintain the "Traffic Control" encroachment permit and required insurance, then REXCDeveloper must provide the required insurance as detailed below in this Agreement.~~

A. *General Liability.* The Developer shall at all times during the term of this Agreement (as listed in Section 13) carry, maintain, and keep in full force and effect a policy or policies of comprehensive general liability insurance with limits of One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate, combined single limit, against bodily injury (including death), or loss or damage to property to the extent resulting from the wrongful or negligent acts or omissions of the Developer, its officers, employees, and agents, and shall require such coverage of its independent contractors. If such insurance contains a general aggregate limit, either the general aggregate shall apply separately to this Project, or the general aggregate limit shall be three (3) times the occurrence limit. The Developer shall have the right to provide such insurance under its existing insurance program, provided such existing insurance meets all of the requirements of this Subsection A.

B. *Automobile Liability (including owned, non-owned, and hired autos).* The Developer shall at all times during the term of this Agreement (as listed in Section 13) also carry, maintain, and keep in full force and effect a policy or policies of commercial automobile liability insurance with a combined single limit of One Million Dollars (\$1,000,000), single limit, per occurrence for bodily injury and property damage, which will cover the drivers and automobiles used to perform services pursuant to this Agreement. Such insurance shall include coverage for owned, non-owned, and hired automobiles. The Developer shall have the right to provide such insurance under its existing insurance program, provided such existing insurance meets all of the requirements of this Subsection B.

C. *Workers' Compensation.* The Developer shall at all times during the term of this Agreement (as listed in Section 13) provide Workers' Compensation Insurance, including employer's liability coverage, for the protection of the Developer's employees, with a minimum limit of One Million Dollars (\$1,000,000) or the amount required by law, whichever is greater. The Developer shall require each contractor and subcontractor to provide Workers' Compensation Insurance in the aforementioned amount and file certificates of insurance with the City evidencing such coverage for their respective employees.

D. The Developer agrees that if it does not keep the aforesaid insurance in full force and effect the City may either, after written notice to the Developer and failure by the Developer to cure same within ten (10) days, immediately terminate this Agreement for default by the Developer, or, if insurance is available at reasonable cost, the City may take out the necessary insurance and pay, at the Developer's expense, the premium amount.

E. The general liability policy and automobile liability policy shall each be endorsed to state that the City and City Personnel, as that term is defined above, shall be covered as additional insureds to the extent of the indemnity in Section 6.

F. The insurance provided by the Developer shall be primary to any coverage available to the City or City Personnel and shall provide that any insurance or self-insurance maintained by the City or City Personnel shall be in excess of the Developer's insurance and shall not contribute with it.

G. The insurance provided by the Developer shall be endorsed to state that the insurer shall waive all rights of subrogation against the City and City Personnel, to the extent of the Indemnity in Section 6.

H. The policy or policies required under this Agreement shall be issued by an insurer admitted in the State of California with a rating of at least B+:VII in the latest edition of A.M. Best's insurance guide.

I. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer or a broker to bind coverage on its behalf. The certificates shall also specifically state that the coverage contained in those policies affords insurance in compliance with the terms and conditions as set forth in this Agreement.

J. *Deductibles.* Any deductibles or self-insured retentions of any contractors or subcontractors must be declared to and approved by the City prior to the execution of this Agreement by the City. At the option of the City, either the contractor's or subcontractor's insurer(s) shall reduce or eliminate the deductibles or self-insured retentions regarding the City, or the contractor or subcontractor shall procure a bond guaranteeing payment of losses and expenses.

K. *Notice of Policy Changes.* Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days' prior written notice thereof given by the Developer to the City.

L. *Evidence of Coverage.* Prior to commencement of work, the Developer shall submit a certificate or certificates of insurance in a form acceptable to the City Attorney, showing compliance with the foregoing requirements. The Developer shall ensure those certificates are valid at all times during the term of this Agreement (as listed in Section 13) or shall replace them immediately. The Developer shall ensure that all of its contractors and subcontractors required in this Agreement to obtain any insurance shall also submit certificates of insurance in form acceptable to the City Attorney showing compliance with the foregoing requirements prior to commencement of work and shall ensure those certificates are valid at all times during the term of this Agreement.

M. Nothing contained in this Section 7 shall be construed as limiting in any way the Developer's obligations of indemnification under Section 6 or any other extent to which the Developer may be held responsible for payment of damages to persons or property resulting from its operations, including operations and work performed or materials supplied by or on behalf of the Developer, any contractors or subcontractors, or by anyone directly or indirectly employed by any of them.

N. The above coverages will be provided by the Developer and maintained on behalf of the City and in accordance with the requirements set forth in this Agreement. If the Developer performs construction activities through a general contractor or subcontractors, some or all of these insurance requirements for the period of construction may be satisfied by the general contractor's or subcontractors' insurance coverages; provided, however, that the Developer shall first provide a written plan for the approval of the City which sets forth the respective obligations and deadlines of the Developer and its contractor and subcontractors.

8. OWNERSHIP OF THE IMPROVEMENTS

A. Ownership of all or any category of the Improvements constructed and installed by the Developer pursuant to this Agreement to be dedicated shall vest, as applicable, in the City (or other specified governmental agency) upon acceptance of said Improvements by the City Council and recordation of a Notice of Completion.

B. The Developer shall at all times prior to the acceptance of the Improvements by the City, give good and adequate warning to the public of each and every dangerous and defective condition caused by the construction of the Improvements and shall take all steps necessary to protect the public from such dangerous or defective conditions. The Developer agrees and understands that until acceptance of the Improvements by the City, each Improvement and Improvement area that is offered for dedication shall be under the charge of the Developer, and the Developer may close all or a portion of any street or area whenever necessary to protect the public during the construction of the Improvements.

9. DEFAULT AND BREACH BY THE DEVELOPER AND REMEDIES OF THE CITY

A. Upon the occurrence of any of the following events, the Developer shall be deemed to be in default under this Agreement:

1. Failure to complete construction and installation of the Improvements or any of them by the Completion Date set forth in the Reference Data;

2. Failure to promptly correct or cure any defect in the Improvements or any of them (other than a City Directive) during the guarantee and warranty period required by Section 3(A) or failure to commence correction or cure of any such defect or failure to diligently prosecute same to completion, in each instance following written notice that such defect exists;

3. Failure to perform substantial work on the Improvements or on any of them, after commencement of work on same, for a period of thirty (30) days after written notice thereof from the City;

4. Insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, whether voluntary or involuntary, and such is not cured or discharged within a period of thirty (30) days;

5. Commencement of a foreclosure action against the Project or any portion thereof, or any conveyance by the Developer in lieu or in avoidance of foreclosure, within thirty (30) days of written notice thereof from the City; or

6. Failure to perform any other obligations in accordance with the terms and provisions of this Agreement within the time period specified in this Agreement for the performance of that obligation, or if no time is specified, within thirty (30) days of written notice thereof from the City.

B. The City reserves to itself all remedies available to it at law and in equity for any breach of the Developer's obligations under this Agreement. The City shall have the right, without limitation of other rights or remedies, after written notice to the Developer and a reasonable opportunity for the Developer to cure any such alleged default, to draw upon or utilize any improvement security furnished hereunder to complete the Improvements or otherwise mitigate the City's damages in the event of the Developer's default.

C. Following the written notice of alleged default and failure by the Developer to promptly commence the cure of any alleged default and to diligently prosecute such cure to completion within the time period set forth in Section 9(A)(6), the City may tender to the surety on the surety bond furnished as improvement security for performance, and request appropriate funds or that said surety take over and complete the Improvements specified under this Agreement.

D. The Developer acknowledges that the Estimated Total Costs and improvement security amounts set forth under this Agreement may not reflect the actual cost of construction or installation of the Improvements, and consequently, the City's damages for the Developer's default shall be measured by the actual cost of completing the required Improvements.

E. Following the written notice of alleged default and failure by the Developer to promptly commence the cure of any alleged default and to diligently prosecute such cure to completion within the time period set forth in Section 9 (A)(6), the City may, without liability for so doing, take possession of, and utilize in completing the Improvements, such materials, appliances, plant and other property belonging to the Developer as may be on the site of the work and necessary for the performance of the work. The Developer hereby consents to such entry by the City and its representatives, including employees, agents, and contractors, upon any real property in the Project owned by the Developer, in the event the City elects to maintain or complete the work on the Improvements following the Developer's default.

F. The City's failure to take an enforcement action with respect to a default, or to declare a default or breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of the Developer.

G. If any legal action or other proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be

entitled to recover reasonable attorneys' fees, experts' fees, and other costs, in addition to any other relief to which the party may be entitled.

10. RELATIONSHIP OF THE PARTIES

Neither the Developer, nor any of the Developer's contractors, subcontractors, employees or agents, are or shall be deemed to be, agents of the City in connection with the performance of the Developer's obligations under this Agreement. The Developer shall not, at any time or in any manner, represent or allow representation by its contractors, subcontractors, employees, or agents that any of them are contractors, subcontractors, employees, or agents of the City.

11. ASSIGNMENT

A. The Developer shall not assign this Agreement or any portion thereof without the prior written consent of the City, which consent shall not be unreasonably withheld. Any attempted or purported assignment in violation of this Subsection A shall be null and void and shall have no force or effect.

B. The sale or other disposition of the Project shall not relieve the Developer of its obligations under this Agreement. If the Developer intends to sell the Project or any portion thereof to any other person or entity, the Developer may request a novation of this Agreement and a substitution of improvement security. Upon the City's approval of the novation and substitution of improvement security, the Developer may request a release or reduction of the improvement security furnished pursuant to this Agreement.

12. NOTICES

All notices required or provided for in this Agreement shall be in writing and delivered in person or by mail, postage prepaid, and addressed as follows:

If to the City:	Carlos Zamano Public Works Director/City Engineer City of Highland 27215 Base Line Highland, California 92546
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If to the Developer:	To the address set forth above in the Reference Data, or to such other address as may subsequently be designated in written notice to the City.
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Notice shall be effective on the date that it is delivered in person, or if mailed, three (3) days after the date of deposit in the United States Mail.

13. TERM

The term of this Agreement shall commence on the Effective Date of Agreement as listed in the Reference Date and shall continue until the end of the guarantee and warranty period in Section 3(A) and warranty period in Section 4(A)(3), unless any claims filed during that time have

not been settled, in which case the term of this Agreement shall extend until those claims have been settled.

14. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties with respect to its subject matter. All modifications, amendments, or waivers of any terms of this Agreement shall be in writing and signed by the duly authorized representatives of the parties. In the case of the City, the duly authorized representative, unless otherwise specified under this Agreement, shall be the City Engineer.

15. SEVERABILITY

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

16. INCORPORATION OF REFERENCE DATA AND RECITALS

The Reference Data and the Recitals are incorporated into this Agreement.

17. GOVERNING LAW; VENUE

This Agreement shall be governed by the laws of the State of California, excluding California's choice of law rules. Venue for any action relating to this Agreement shall be in the San Bernardino County Superior Court.

18. CONSTRUCTION

In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter under this Agreement, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted this Agreement or who drafted that portion of this Agreement.

19. EFFECTIVE DATE OF THIS AGREEMENT

This Agreement shall be and become effective as of the date that it is executed by a duly authorized officer or employee of the City, it being the intention of the parties that the Developer shall first execute this Agreement and thereafter submit it to the City. The City shall insert the effective date in the Reference Data in all counterparts of this Agreement and shall transmit a fully executed counterpart to the Developer.

– SIGNATURES BEGIN ON NEXT PAGE –

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, thereunto duly authorized, as of the dates set forth below their respective signatures.

[Note: All signatures must be acknowledged by a notary public and the acknowledgement must be attached. If signed by a corporation, the signatures of two corporate officers are required, unless a resolution of the corporation's board of directors is provided indicating that the signature of the one signatory is sufficient to bind the corporation.]

“DEVELOPER”

(Type or print exact name of person or entity)

By: _____
(Signature of authorized officer)

(Type or print name of authorized officer)

☐ Chairperson ☐ President ☐ Vice President

By: _____
(Signature of authorized officer)

(Type or print name of authorized officer)

☐ Secretary ☐ Asst. Secretary
☐ Chief Finance Officer ☐ Asst. Treasurer

Date: _____

– SIGNATURES CONTINUE ON NEXT PAGE –

“CITY”

CITY OF HIGHLAND

Penny Lilburn, Mayor

ATTEST:

Betty Hughes, City Clerk

(SEAL)

APPROVED AS TO FORM:
Richards, Watson & Gershon

Maricela Marroquin, City Attorney

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)

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)

Bond No. _____

FAITHFUL PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

Whereas, the City of Highland, State of California, and San Carlo Apartment Homes LLC (hereinafter designated as "Principal") have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which said agreement, dated February 13, 2024, pertaining to the San Carlo I, Highland Townhome Apartments is hereby referred to and made a part hereof; and

Whereas, Principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the Principal and _____, as surety (hereinafter designated as "Surety"), are held and firmly bound unto the City of Highland in the penal sum of _____ dollars (\$_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded Principal, his, her, or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his, her, its or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City of Highland, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City of Highland in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Further, Surety hereby waives the provisions of California Civil Code Sections 2845 and 2849. The City of Highland is the principal beneficiary of this bond and has all rights of a party hereto.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these

presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

By: _____
Its: _____

By: _____
Its: _____

“Surety”

By: _____
Its: _____

By: _____
Its: _____

(Seal)

(Seal)

APPROVED AS TO FORM:

RICHARDS, WATSON & GERSHON
A Professional Corporation

By: _____
City Attorney

Note: This bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.

Bond No. _____

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

Whereas, the City of Highland, State of California, and San Carlo Apartment Homes LLC (hereinafter designated as "Principal") have entered into an agreement whereby the Principal agrees to install and complete certain designated public improvements, which agreement, dated February 13, 2024, pertaining to the San Carlo I, Highland Townhome Apartments, is hereby referred to and made a part hereof; and

Whereas, under the terms of the agreement, the Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Highland to secure the claims to which reference is made in Part 6 (commencing with Section 8000) of Division 4 of the Civil Code.

Now, therefore, the Principal and _____, as surety (hereinafter designated as "Surety"), are held firmly bound unto the City of Highland and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the agreement and referred to in Part 6 (commencing with Section 8000) of Division 4 of the Civil Code in the penal sum of _____ dollars (\$ _____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City of Highland in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Part 6 (commencing with Section 8000) of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

Further, Surety hereby waives the provisions of California Civil Code Sections 2845 and 2849. The City of Highland is the principal beneficiary of this bond and has all rights of a party hereto.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these

presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

By: _____
Its: _____

By: _____
Its: _____

“Surety”

By: _____
Its: _____

By: _____
Its: _____

(Seal)

(Seal)

APPROVED AS TO FORM:

RICHARDS, WATSON & GERSHON
A Professional Corporation

By: _____
City Attorney

Note: This bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.

Bond No. _____

WARRANTY BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

Whereas, the City of Highland, State of California, and San Carlo Apartment Homes LLC (hereinafter designated as "Principal") have entered into an agreement, dated February 13, 2024, pertaining to the San Carlo I, Highland Townhome Apartments, is hereby referred to and made a part hereof; and

Whereas, Principal is required under the terms of said agreement to furnish a bond for the good and sufficient warranty of all of the improvements installed pursuant to said agreement.

Now, therefore, we, the Principal and _____, as surety (hereinafter designated as "Surety"), are held and firmly bound unto the City of Highland in the penal sum of _____ dollars (\$ _____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that, if the hereby bounded Principal, his, her or its heirs, executors, administrators, successors or assigns, shall remedy, without cost to the City of Highland, any defects which may develop during a period of one (1) year from the date of the completion and acceptance of the last of the improvements installed under the agreement, caused by defective or inferior materials or workmanship as determined by the City, and shall indemnify, defend and hold harmless the City of Highland, its officers, agents, and employees for any and all claims, demands, causes of action, damages, injuries, liabilities, losses, costs or expenses, including attorneys' fees and costs of defense, which arise out of, pertain to, or relate to such defects or inferior materials or workmanship or to the Principal's actions or inactions in remedying such defects or inferior materials or workmanship, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

If suit is brought upon this bond, Surety further agrees to pay, in addition to the Penal Sum, all costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City of Highland in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Further, Surety hereby waives the provisions of California Civil Code Sections 2845 and 2849. The City of Highland is the principal beneficiary of this bond and has all rights of a party hereto.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

“Surety”

By: _____
Its: _____

By: _____
Its: _____

By: _____
Its: _____

By: _____
Its: _____

(Seal)

(Seal)

APPROVED AS TO FORM:

RICHARDS, WATSON & GERSHON
A Professional Corporation

By: _____
City Attorney

Note: This bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.