



DATE: November 14, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Neighborhood Services Department

SUBJECT: **APPROVAL OF AN INCREASE OF \$900,000 TO THE CITY LOAN FOR THE DEVELOPMENT OF LA MISION VILLAGE, AND AUTHORIZATION FOR THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE LOAN AGREEMENT**

SYNOPSIS

Staff recommends that the City Council approve an increase in the amount of \$900,000 to the City loan for the development of the La Mision Village mixed-use affordable housing project located at 3232 Mission Avenue, and authorize the City Manager to execute an amendment to the Loan Agreement and the City Clerk to file the Deed of Trust with the County Recorder increasing the total loan amount of City Housing Funds from \$5.344 million to \$6.244 million.

BACKGROUND

The La Mision Village Project, an 80-unit mixed-use affordable housing development, was approved by the Housing Commission and City Council in mid-2005. Development entitlements were obtained in late 2005 with construction commencing in the summer of 2006. At the onset of the project it was anticipated that unknown variables involving soils engineering, seismic requirements and impact fees could result in overall development budget adjustments. Staff has monitored the project through the development process and has assisted with mitigating the above issues as feasible.

ANALYSIS

The initial project development budget was approved by the City Council in July 2005 and amended in June 2006 as part of the approved Development and Disposition Agreement (DDA) with SoCal Housing. The budget was based upon best estimates for development costs at that time. As the development has progressed, additional costs directly associated with soils engineering, increased City impact fees and seismic requirements necessitate additional funding for the project. SoCal Housing is requesting an additional \$900,000 be added to the project budget to replenish the contingency budget as outlined in the attached supporting memo. As the project nears completion, SoCal is committed to exploring additional tax-credit funding opportunities which may result in reimbursing a portion of this additional funding to the City upon conversion to permanent financing.

FISCAL IMPACT

A total of \$8.214 million in City housing funds were initially allocated by the City Council for the project. As a result of a thorough financial analysis by the City's housing consultant and the subsequent receipt of various sources of competitive tax-credit financing, the final City loan amount for the project was \$5.344 million. Staff is recommending that an additional \$900,000 remaining from the original Housing Fund allocation (284.294456.5241) be added to the City loan amount to cover the additional costs. The Housing Fund currently has an FY 2006-07 carry forward balance of \$2.8 million. No additional appropriation of housing funds is requested.

The additional \$900,000 will increase the City's loan amount to \$6.244 million. City Loan documents will be amended to reflect this increased amount. The City's loan will earn 3 percent simple interest and will be amortized over a 55-year period. The total cost of development will increase from \$25.0 million to \$25.9 million. This is a 3.6 percent project budget increase. The City loan subsidy is \$78,050 per unit.

COMMISSION OR COMMITTEE REPORT

At its September 25, 2007 meeting, the Housing Commission unanimously recommended that the City Council approve the increase in funding for the project. The recommendation of the Housing Commission is attached.

CITY ATTORNEY'S ANALYSIS

The documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

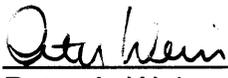
Staff recommends that the City Council approve an increase in the amount of \$900,000 to the City loan for the development of the La Mision Village mixed-use affordable housing project located at 3232 Mission Avenue, and authorize the City Manager to execute an amendment to the Loan Agreement and the City Clerk to file the Deed of Trust with the County Recorder increasing the total loan amount of City Housing Funds from \$5.344 million to \$6.244 million.

PREPARED BY:



David L. Manley
Neighborhood Services Division Manager

SUBMITTED BY:



Peter A. Weiss
City Manager

Michelle Skaggs Lawrence, Deputy City Manager

Margery M. Pierce, Neighborhood Services Director

Paul Bussey, Interim Financial Services Director





- Attachments: 1. Amended Loan Agreement, Deed of Trust, Promissory Note
2. Request letter from SoCal Housing (Oceanside Housing Partners)

AMENDMENT NO. 1 TO LOAN AGREEMENT

THIS AMENDMENT NO. 1 TO LOAN AGREEMENT (this "Amendment") is entered into as of November 7, 2007, by and between the **CITY OF OCEANSIDE**, a municipal corporation ("City") and **OCEANSIDE HOUSING PARTNERS, L.P.**, a California limited partnership (the "Developer").

RECITALS

The following recitals are a substantive part of this Amendment:

A. The City and the Developer have entered into a Disposition and Development Agreement, dated July 6, 2005 (the "DDA"). Pursuant to the DDA, (i) the City has agreed to ground lease to the Developer, pursuant to a Ground Lease dated as of October 11, 2005, as amended by that certain Amended and Restated Ground Lease dated June 21, 2006 (collectively the "Ground Lease"), an approximately 3.1-acre parcel of real property, located in the City of Oceanside at 3210 and 3232 Mission Avenue (the "Site"), (ii) the City has agreed to provide certain financial assistance to the Developer, (iii) the Developer has agreed to construct and operate an 80 unit multifamily rental apartment and commercial/retail mixed-use development on the Site (the "Development"), and (iv) the Developer has agreed to rent those apartment units to very low and low income households at an affordable rent. The DDA is hereby incorporated herein by reference. The City and the Developer have also executed and recorded in the official records of San Diego County, on June 30, 2007, a Regulatory Agreement, as Document No. 2006-0464615 Official Records (the "Regulatory Agreement") which sets forth certain obligations of the parties with respect to the construction and operation of the Development. The Regulatory Agreement is hereby incorporated by reference.

B. The City and the Developer have entered into a Loan Agreement (the Loan Agreement) dated July 21, 2006, to provide financial assistance to the Developer for the development and construction of the Development in the amount of Five Million Three Hundred Forty-four Thousand Dollars (\$5,344,000.00) evidenced by a Promissory Note dated June 21, 2006 (the "Note"), and secured by a Deed of Trust (the "Deed of Trust") dated June 21, 2006 and filed in the Office of the County Recorder of San Diego County on June 30, 2006 as Document No. 2006-0464619 Official Records.

C. The Developer has informed the City of the need to replenish the contingency reserves in the construction budget due to unanticipated soil conditions and requisite remedial work associated thereto that have depleted the contingency reserves, and the Developer has requested that the City provide additional funds to cover the unanticipated costs and restore the construction contingency budget to an acceptable level.

D. The City has agreed to provide an additional advancement of funds for the construction of the Development as a loan of an amount not to exceed Nine Hundred Thousand Dollars (\$900,000.00) (the "Additional City Loan") to replenish the contingency reserves in the construction budget, which advancement of additional funds shall become a part of the Loan Agreement, evidenced by a Promissory Note (the "Additional Loan Promissory Note") in the amount of the Additional Loan and secured by an amendment to the Deed of Trust (the "Amendment No. 1 to Deed of Trust").

E. The provision of the additional financial assistance to the Developer and the development of the Development pursuant to the terms and conditions of the Loan Agreement and this Amendment are in the vital and best interest of the City.

NOW, THEREFORE, the City and the Developer hereby agree as follows:

1. The Loan Agreement shall be and hereby is amended and modified by adding and including the following terms, conditions, covenants and provisions:

1.7 Additional City Loan. Subject to Developer's performance of all of the terms, covenants and conditions set forth in the Loan Agreement and this Amendment, the City hereby agrees to loan to the Developer, and the Developer agrees to borrow from the City, the not to exceed sum of Nine Hundred Thousand Dollars (\$900,000.00) (the "Additional City Loan"). City shall make the Additional City Loan to Developer from available funds allocated to the City pursuant to the Inclusionary Housing In-Lieu Trust Funds, which shall be disbursed to Developer as provided herein.

1.8 Repayment of Additional City Loan. The Developer's obligation to repay the Additional City Loan shall be set forth in the Additional Loan Promissory Note in the form of Exhibit "A" attached hereto, which is incorporated herein. The Additional Loan Promissory Note shall be for a term of fifty-five (55) years from the date a certificate of occupancy is issued for the Development, and shall bear simple interest at the rate of three percent (3%) per annum commencing upon the City's issuance of the certificate of occupancy for the Project. The Additional Loan Promissory Note shall be paid as follows: 1) any cost savings between the approved total sources of funds in the Financing Plan and the total cost of development as documented in the Development's post-completion cost certification will be repaid by the Borrower to the City on the Date Borrower receives the fourth capital contribution from MMA La Mision LLC; 2) from approximately thirty-three percent (33%) of the "Residual Receipts" of the Development, after payment of (i) actual, reasonable and customary (for comparable high quality multifamily rental housing developments in San Diego County) "Operating Expenses" directly incurred, paid, and attributable to the operation, maintenance, and management of the Development, (ii) "Debt Service" which is senior to the Promissory Note, (iii) deposits to required reserve accounts ("Reserve Deposits"), (iv) asset management fees payable to the managing general partner of the Developer ("Partnership Management Fees"), and (v) social program fees, (vi) bond monitoring/trustee/servicing fees, and (vii) "Deferred Developer Fee" payments (as all of those terms are defined in Section 3 of the Promissory Note), which are in accordance with the Operating Budget approved by the City pursuant to Section 5(h) of the Regulatory Agreement. The Developer shall annually, on or before ninety (90) days after the end of the Developer's fiscal year, commencing in the year after the issuance of the certificate of occupancy for the Development, submit to the City a Residual Receipts Report, which shall provide the basis for the Developer's payment of Residual Receipts to the City.

1.9 Security for Additional City Loan. The Additional Loan Promissory Note shall be secured by the Amendment No. 1 to Deed of Trust to be recorded as an encumbrance to the Developer's leasehold interest in the Site, in the form of Exhibit "B" attached hereto, which is incorporated herein, and shall have the same position and priority of lien as the Deed of Trust.

1.10 Disbursement of Additional City Loan. The entire proceeds of the Additional City Loan shall, upon the approval of this Amendment by the Oceanside City

Council (or as soon as reasonably possible thereafter) be deposited with and held by the bond trustee [the Bank of New York Trust Company, N.A.] (the "Trustee") and shall be used to replenish the construction contingency budget and disbursed only to pay for actual and reasonable hard and soft costs required for the performance of the construction of the Development not covered by the individual construction line items contained in the Financing Plan which is approved by the City pursuant to Section 2.7 of the DDA, and the construction contract which has been approved by the City pursuant to Section 3.8 of the DDA (the "Construction Contract"). The disbursement of the City Loan proceeds by the Trustee is subject to the fulfillment or waiver by City of each and all of the conditions precedent (a) through (d), inclusive, described below ("Conditions Precedent"), which are solely for the benefit of City, any of which may be waived by the City Manager or designee in his or her sole and absolute discretion:

a. Execution of Documents. Developer shall have executed and delivered to the City the Additional Loan Promissory Note and the Amendment No. 1 to Deed of Trust and any other documents required hereunder, and the Amendment No. 1 to Deed of Trust shall have been recorded as an encumbrance to the Developer's leasehold interest in the Site.

b. Title Policy. A title insurance company reasonably acceptable to the City shall have unconditionally committed to issue a lender's policy of title insurance insuring the lien of the Amendment No. 1 to Deed of Trust in the amount of the Additional City Loan, subject to such exceptions as are reasonably acceptable to the City, together with any endorsements reasonably requested by the City. The cost of such title policy and endorsements shall be paid for from the proceeds of the Additional City Loan.

c. Proof of Insurance. Developer shall have provided to the City a certificate of insurance that satisfies the requirements of Section 3.9 of the DDA and Section 17 of the Ground Lease.

d. No Default, Representations and Warranties. Developer shall not be in default in any of its obligations under the terms of the Loan Agreement, this Amendment, the DDA, the Regulatory Agreement or the Ground Lease. All representations and warranties of Developer contained herein and in the DDA, the Regulatory Agreement and Ground Lease shall be true and correct in all material respects on and as of the date of the disbursement of the Additional City Loan as though made at that time, and all covenants of Developer which are required to be performed prior to the disbursement of the Additional City Loan shall have been performed by such date."

2. Unless otherwise defined, or the context otherwise indicates, the terms as used herein have the meaning defined in the Loan Agreement.

3. The provisions of this Amendment shall control over any inconsistent provisions of the Loan Agreement.

4. All provisions in the Loan Agreement that are not addressed and amended in this Amendment shall remain in full force and effect and are hereby ratified and reaffirmed.

5. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective entities of the City and the Developer.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to Loan Agreement effective as of (but not necessarily on) the day and year first written hereinabove.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

CITY:
CITY OF OCEANSIDE,
a municipal corporation

By: 
City Attorney

By: _____
City Manager

DEVELOPER:
OCEANSIDE HOUSING PARTNERS, L.P.,
a California limited partnership
By: **The Southern California Housing
Development Corporation of
Orange,** a California nonprofit public
benefit corporation, its General
Partner

By: 
Its:

Richard J. Whittingham, CPA
Chief Financial Officer

By: _____
Its:

**Developer's Signature(s) Must Be Notarized
(Notary Use California All-Purpose Acknowledgment Form)**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

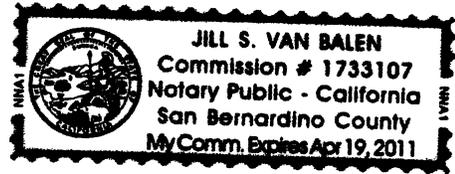
State of California
County of San Bernardino ss.

On October 16, 2007 before me, Jill S. Van Balen, notary public
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Richard J. Whittingham
Name(s) of Signer(s)

personally known to me
 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.



WITNESS my hand and official seal.

Jill S. Van Balen
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable for persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer – Title(s): _____
- Partner – Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

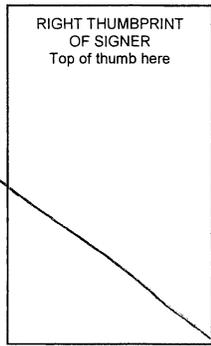


EXHIBIT "B"

RECORDING REQUEST BY AND
AFTER RECORDING MAIL TO:

City of Oceanside
ATTN: City Clerk
300 North Coast Highway
Oceanside, CA 92054

This document is exempt from the
payment of a recording fee pursuant to
Government Code Section 27383

**AMENDMENT NO. 1 TO LEASEHOLD CONSTRUCTION DEED OF TRUST
WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS AMENDMENT NO. 1 TO LEASEHOLD CONSTRUCTION DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Amendment No. 1 to Deed of Trust"), made as of November 7, 2007, is entered into by and between **OCEANSIDE HOUSING PARTNERS, L.P.**, a California limited partnership ("Trustor"), Lawyers Title ("Trustee"), and the **CITY OF OCEANSIDE**, a municipal corporation ("Beneficiary").

RECITALS

The following recitals are a substantive part of this Amendment No. 1 to Deed of Trust:

A. The Beneficiary and the Trustor have entered into a Disposition and Development Agreement, dated July 6, 2005 (the "DDA"). Pursuant to the DDA, (i) the Beneficiary has agreed to ground lease to the Trustor, pursuant to a Ground Lease dated as of October 11, 2005, as amended by that certain Amended and Restated Ground Lease dated June 21, 2006 (collectively the "Ground Lease"), concerning an approximately 3.1-acre parcel of real property, located in the City of Oceanside at 3210 and 3232 Mission Avenue as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Real Property"), (ii) the City has agreed to provide certain financial assistance to the Trustor, (iii) the Trustor has agreed to construct and operate an 80 unit multifamily rental apartment and commercial/retail mixed-use development on the Real Property (the "Development"), and (iv) the Trustor has agreed to rent those apartment units to very low and low income households at an affordable rent.

B. The Beneficiary (as "City") and the Trustor (as "Developer") have entered into a Loan Agreement (the Loan Agreement) dated July 21, 2006, to provide financial assistance to the Developer for the development and construction of the Development in the amount of Five Million Three Hundred Forty-four Thousand Dollars (\$5,344,000.00) evidenced by a Promissory

Note dated June 21, 2006 (the "Note"), and secured by a Deed of Trust (the "Deed of Trust") dated June 21, 2006 and filed in the Office of the County Recorder of San Diego County on June 30, 2006 as Document No. 2006-0464619 Official Records.

C. The Trustor has requested and the Beneficiary has agreed to provide an additional advancement of funds to Trustor for the construction of the Development and Trustor has agreed to borrow such additional advancement of funds from Beneficiary as a loan of an amount not to exceed Nine Hundred Thousand Dollars (\$900,000.00) (the "Additional City Loan"), which advancement of additional funds shall become a part of the Loan Agreement, evidenced by a Promissory Note (the "Additional Loan Promissory Note") in the amount of the Additional City Loan and secured by an amendment to the Deed of Trust, i.e. this "Amendment No. 1 to Deed of Trust". For the purpose of this Amendment No. 1 to Deed of Trust the Note and the Additional Loan Promissory Note shall be collectively referred to as the "Note".

D. The provision of the additional financial assistance to the Trustor and the development of the Development pursuant to the terms and conditions of the Loan Agreement and this Amendment No. 1 to Deed of Trust are in the vital and best interest of the City.

NOW, THEREFORE, the Beneficiary and the Trustor hereby agree as follows:

1. Section 2.1 OBLIGATIONS SECURED of the Deed of Trust shall be and hereby is amended and modified to read in its entirety as follows:

"2.1 OBLIGATIONS SECURED. Trustor makes this grant and assignment for the purpose of securing the following obligations ("Secured Obligations"):

a. Payment to Beneficiary of all sums at any time owing under the Note and the Additional Promissory Note totaling the principal amount of not to exceed Six Million Two Hundred Forty-four Thousand Dollars (\$6,244,000.00) executed by Trustor and payable to the order of Beneficiary, as lender; and

b. Payment and performance of all covenants and obligations of Trustor under that certain "Loan Agreement" between Trustor and Beneficiary, as amended by "Amendment No. 1 to Loan Agreement" of even date herewith; and

c. Payment and performance of all covenants and obligations of Trustor under this Deed of Trust; and

d. Payment and performance of all future advances and other obligations that the then owner of all or part of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

e. All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes."

2. This Amendment No. 1 to Deed of Trust is not intended to alter or change the priority and position of lien of the Deed of Trust nor shall it be construed as altering or changing the priority or position of lien held by the Deed of Trust related to other security instruments affecting the Real Property having a senior or junior position of lien to that of the Deed of Trust.

3. Unless otherwise defined, or the context otherwise indicates, the terms as used herein have the meaning defined in the Deed of Trust.

4. The provisions of this Amendment No. 1 to Deed of Trust shall control over any inconsistent provisions of the Deed of Trust.

5. All provisions in the Deed of Trust, which are not addressed and amended in this Amendment No. 1 to Deed of Trust shall remain in full force and effect, and are hereby ratified and reaffirmed.

6. The individuals executing this Amendment No. 1 to Deed of Trust represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment No. 1 to Deed of Trust on behalf of the respective entities of the Trustor.

IN WITNESS WHEREOF, Trustor has executed this Amendment No. 1 to Deed of Trust effective as of (but not necessarily on) the day and year first written hereinabove.

TRUSTOR:
OCEANSIDE HOUSING PARTNERS, L.P.,
a California limited partnership
By: **The Southern California Housing
Development Corporation of
Orange,** a California nonprofit public
benefit corporation, its General
Partner

By: _____
Its:

By: _____
Its:

**Developer's Signature(s) Must Be Notarized
(Notary Use California All-Purpose Acknowledgment Form)**

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY

Parcel A

Parcel B of Certificate of Compliance No. PLA-09-2003, in the City of Oceanside, County of San Diego, State of California, as recorded in the Office of the County Recorder of San Diego County on June 7, 2004, as Document No. 2004-528761, more particularly described as:

Parcel 2 of Parcel Map No. 7795, in the City of Oceanside, County of San Diego, State of California, recorded on September 7, 1978, excepting therefrom, the Southwesterly 17.78 feet of said Parcel 2;

Parcel B

Together with, Parcel 3 of Parcel Map no. 7795, in the City of Oceanside, County of San Diego, State of California, recorded on September 7, 1978;

Parcel C

Together with, Parcel 1 of Parcel Map No. 8164, filed in the Office of the County Recorder of San Diego County, December 13, 1978, being a division of Parcel Map No. 1728, filed in the Office of the County Recorder of said San Diego County, July 13, 1973, in the City of Oceanside, County of San Diego, State of California, according to the United States Government Survey;

Parcel C-1

An easement for ingress and egress over the Southwesterly 22 feet of Parcel 2 of Parcel Map 8164, filed in the Office of the County Recorder of San Diego County, December 13, 1978, being a division of Parcel Map No. 1728, filed in the Office of the County Recorder of said San Diego County, July 13, 1973, in the City of Oceanside, County of San Diego, State of California, according to United States Government Survey.

Parcel D

That portion of the Southwest $\frac{1}{4}$ of Section 18, Township 11 South, Ranch 4 West, San Bernardino Meridian, in the City of Oceanside, County of San Diego, State of California, according to United States Government Survey approved December 27, 1870, described as follows:

Beginning at the most Easterly corner of Oceanside Industrial Subdivision, according to Map thereof No. 3748, filed in the Office of the County Recorder of San Diego County, being a point on the Northwesterly line of that 100.00 right-of-way described in deed to the State of California, recorded February 27, 1940, in Book 995, Page 370 of Official Records of Sa Diego County; thence, along said Northwesterly line North $50^{\circ}23'30''$ East, 150.00 feet to the True Point of Beginning; thence, continuing along said Northwesterly line North $50^{\circ}23'30''$ East, 100.00 feet; thence, at right angles, North $39^{\circ}36'30''$ West, 150 feet; thence, South $50^{\circ}23'30''$ West, 100.00 feet; thence, South $39^{\circ}36'30''$ East, 150 feet to the True Point of Beginning.

EXHIBIT A

**Description of the Property
(Cont.)**

Parcel D-1

An easement for ingress and egress over, along and across the Southeasterly 30.00 feet of Parcel 1 of Parcel Map No. 1474, in the City of Oceanside, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, April 20, 1973.

EXHIBIT "A"

**PROMISSORY NOTE
[Additional City Loan]**

\$900,000.00
November 7, 2007

Oceanside, California

FOR VALUE RECEIVED, OCEANSIDE HOUSING PARTNERS, L.P., a California limited partnership (the "Borrower"), promises to pay to the **CITY OF OCEANSIDE**, a municipal corporation (the "City"), or order, at the City's office at 300 North Coast Highway, Oceanside, California, or such other place as the City may designate in writing, the not to exceed sum of Nine Hundred Thousand Dollars (\$900,000.00) (the "Note Amount"), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

1. Agreement. This Promissory Note (the "Note") is given in accordance with that certain Loan Agreement executed by the City and Borrower, dated June 21, 2006, and as amended by that certain Amendment No. 1 to Loan Agreement executed by the City and Borrower, dated as of November 7, 2007 (collectively the "Agreement"). The rights and obligations of the Borrower and the City under this Note shall be governed by the Agreement and by the additional terms set forth in this Note. In the event of any inconsistencies between the terms of this Note and the terms of the Agreement or any other document related to the Note Amount, the terms of this Note shall prevail.

2. Interest. The Note Amount shall bear simple interest at the rate of three percent (3%) per annum. Interest shall commence to accrue upon the issuance of a certificate of occupancy for the Development by the City of Oceanside.

3. Repayment of Note Amount. The Note Amount shall be paid by the Borrower as follows: 1) any cost savings between the approved total sources of funds in the Financing Plan and the total cost of development as documented in the Development's post-completion cost certification will be repaid by the Borrower to the City on the Date Borrower receives the fourth capital contribution from MMA La Mision LLC; 2) an annual payment to the City of an amount equal to approximately thirty-three percent (33%) of the Residual Receipts (as defined below) from operation of the Development (as defined in the Agreement), as determined by a residual receipts calculation from the operation of the Development during the preceding fiscal year. Annual Residual Receipts payments shall be delivered on or before ninety (90) days after the end of the Borrower's fiscal year, of each year during the term of this Note first following the date the Development is placed in service, until the Note Amount and all unpaid interest thereon has been repaid in full. Any remaining portion of the Note Amount shall be due and payable on the fifty-fifth (55th) anniversary of the date a certificate of occupancy is first granted for the Development. Notwithstanding the foregoing, the full Note Amount may be accelerated as set forth in Section 12 hereof.

As used herein, "Annual Project Revenue" shall mean all gross income and all revenues of any kind from the Development in a fiscal year, including without limitation, Development rents, Section 8 housing assistance payments, if any, late charges, vending machine income, and any other revenues of whatever kind or nature from the Development, except that interest on security deposits and required reserves shall not be considered Annual Project Revenue.

As used herein, "Debt Service" means payments made in a calendar year pursuant to the approved financing obtained for the acquisition and construction of the Development pursuant to Section 1.3(c) of the Agreement and Section 2.7 of the DDA, but excluding payments made pursuant to this Note.

As used herein, "Deferred Developer Fees" shall mean any deferred developer fee allowable under the Financing Plan that has been approved by the City pursuant to Section 2.7 of the DDA.

As used herein, "Operating Expenses" shall mean actual, reasonable and customary (for comparable high quality affordable rental housing developments in San Diego County) costs, fees and expenses directly incurred, paid, and attributable to the operation, maintenance and management of the Development in a fiscal year, which are in accordance with the Operating Budget approved by the City pursuant to Section 5(h) of the Regulatory Agreement, including: painting, cleaning, repairs, alterations, landscaping, utilities, refuse removal, certificates, permits and licenses, sewer charges, real and personal property taxes, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings which are not paid from the Capital Replacement Reserve, fees and expenses of property management and for payment of all other support services supplied to the Property pursuant to the approved annual budget, fees and expenses of accountants, attorneys and other professionals, bond monitoring/trustee/servicing fees, and other actual, reasonable and customary operating costs and capital costs which are directly incurred and paid by the Borrower, but which are not paid from the Operating Reserve or other reserve accounts. The Operating Expenses shall not in any event include expenses not related to the Development's operations, including without limitation, depreciation, amortization, and accrued principal and interest expense on deferred payment debt.

As used herein, "Partnership Management Fees" shall mean the asset management fee payable to the managing general partner and/or any special limited partner of the Borrower, which is allowable under the Financing Plan which has been approved by the City pursuant to Section 2.7 of the DDA.

As used herein, "Reserve Deposits" shall mean and payments to the Operating Reserve account pursuant to Section 10(h) of the Ground Lease and payments to the Capital Replacement Reserve account pursuant to Section 10(i) of the Ground Lease.

As used herein, "Residual Receipts" shall mean Annual Project Revenue less the sum of (i) Operating Expenses, (ii) Debt Service, (iii) Reserve Deposits, (iv) Partnership Management Fees, and (v) Deferred Developer Fees, for each fiscal year; provided, however, that if such calculation results in a negative number, Residual Receipts shall be zero for that year.

On or before ninety (90) days after the end of the Borrower's fiscal year, of each fiscal year commencing in the year of the issuance of a certificate of occupancy for the Development, the Borrower shall annually provide the City a Residual Receipts report, in the form attached to the Agreement as Schedule "1", which shall describe in detail the Annual Project Revenue, Debt Service, Operating Expenses, Reserve Deposits, Partnership Management Fees, Deferred Developer Fees, and Residual Receipts for that fiscal year. The Borrower shall also submit to the City, on or before ninety (90) days after the end of the Borrower's fiscal year, of each fiscal year commencing in the year of the issuance of a certificate of occupancy for the Development, annual financial statements with respect to the Development that have been reviewed by an independent certified public accountant, together with an expressed written opinion of the certified public accountant that such financial statements present the financial position, results of operations, and cash flows fairly and in accordance with generally accepted accounting principles.

4. Security. This Note is secured by a Leasehold Deed of Trust dated June 21, 2006, as filed in the Office of the County Recorder of San Diego County on June 30, 2006 as Document No. 2006-0464619 Official Records, and as amended by that certain Amendment No. 1 to Deed

of Trust dated as of the same date as this Note (collectively the "Leasehold Deed of Trust"), and a UCC-1 fixture filing.

5. Waivers

a. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time at the City's sole discretion and that the City may accept security in consideration for any such extension or release any security for this Note at its sole discretion, all without in any way affecting the liability of Borrower.

b. No extension of time for payment of this Note made by agreement by the City with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

c. Subject to the Provisions of Section 17 of this Note, the obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

d. Borrower waives presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights of interests in or to properties securing of this Note, and the benefit of any exemption under any homestead exemption laws, if applicable.

e. No previous waiver and no failure or delay by City in acting with respect to the terms of this Note or the Leasehold Deed of Trust shall constitute a waiver of any breach, default, or failure or condition under this Note, the Leasehold Deed of Trust or the obligations secured thereby. A waiver of any term of this Note, the Leasehold Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

6. Attorneys' Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

7. Joint and Several Obligation. This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, successors and assigns.

8. Amendments and Modifications. This Note may not be changed orally, but only by an amendment in writing signed by Borrower and by the City.

9. City May Assign. City may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Borrower.

10. Borrower Assignment Prohibited. In no event shall Borrower assign or transfer any portion of this Note without the prior express written consent of the City, which consent shall not unreasonably be withheld, except pursuant to a transfer which is permitted or approved under the Agreement or DDA.

11. Terms. Any terms not separately defined herein shall have the same meanings as set forth in the Agreement.

12. Acceleration and Other Remedies. Upon: (a) the occurrence of an event of Default as defined in the Agreement, or (b) Borrower selling, contracting to sell, giving an option to purchase, conveying, leasing, further encumbering, mortgaging, assigning or alienating the Borrower's subleasehold interest in the Site, whether directly or indirectly, whether voluntarily or involuntarily or by operation of law, or any interest in the Site, or suffering its title, or any interest in the Site to be divested, whether voluntarily or involuntarily, without the consent of the City or as otherwise permitted under the Agreement and the Disposition and Development Agreement, City may, at City's option, declare the outstanding principal amount of this Note, together with the then accrued and unpaid interest thereon and other charges hereunder, and all other sums secured by the Leasehold Deed of Trust, to be due and payable immediately, and upon such declaration, such principal and interest and other sums shall immediately become and be due and payable without demand or notice, all as further set forth in the Deed of Trust. All costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred in connection with protection of, or realization on, the security for this Note, may be added to the principal hereunder, and shall accrue interest as provided herein. City shall at all times have the right to proceed against any portion of the security for this Note in such order and in such manner as such City may consider appropriate, without waiving any rights with respect to any of the security. Any delay or omission on the part of the City in exercising any right hereunder, under the Agreement or under the Leasehold Deed of Trust shall not operate as a waiver of such right, or of any other right. No single or partial exercise of any right or remedy hereunder or under the Agreement or any other document or agreement shall preclude other or further exercises thereof, or the exercise of any other right or remedy. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of City's right to either require prompt payment when due of all other sums payable hereunder or to declare an Event of Default for failure to make prompt or complete payment.

13. Consents. Borrower hereby consents to: (a) any renewal, extension or modification (whether one or more) of the terms of the Agreement or the terms or time of payment under this Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof, (c) the granting of any other indulgences to Borrower, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Any such renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to Borrower or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder.

14. Successors and Assigns. Whenever "City" is referred to in this Note, such reference shall be deemed to include the City of Oceanside and its successors and assigns, including, without limitation, any subsequent assignee or holder of this Note. All covenants, provisions and agreements by or on behalf of Borrower, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of the City and City's successors and assigns.

15. Usury. It is the intention of Borrower and City to conform strictly to the Interest Law, as defined below, applicable to this loan transaction. Accordingly, it is agreed that notwithstanding any provision to the contrary in this Note, or in any of the documents securing payment hereof or otherwise relating hereto, the aggregate of all interest and any other charges or consideration constituting interest under the applicable Interest Law that is taken, reserved, contracted for, charged or received under this Note, or under any of the other aforesaid agreements or otherwise in connection with this loan transaction, shall under no circumstances exceed the maximum amount of interest allowed by the Interest Law applicable to this loan transaction. If any excess of interest in such respect is provided for in this Note, or in any of the documents securing payment hereof or otherwise relating hereto, then, in such event:

- a. the provisions of this paragraph shall govern and control;
- b. neither Borrower nor Borrower's heirs, legal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest allowed by the Interest Law applicable to this loan transaction;
- c. any excess shall be deemed canceled automatically and, if theretofore paid, shall be credited on this Note by City or, if this Note shall have been paid in full, refunded to Borrower; and
- d. the effective rate of interest shall be automatically subject to reduction to the Maximum Legal Rate of Interest (as defined below), allowed under such Interest Law, as now or hereafter construed by courts of appropriate jurisdiction. To the extent permitted by the Interest Law applicable to this loan transaction, all sums paid or agreed to be paid to City for the use, forbearance or detention of the indebtedness evidenced hereby shall be amortized, prorated, allocated and spread throughout the full term of this Note. For purposes of this Note, "Interest Law" shall mean any present or future law of the State of California, the United States of America, or any other jurisdiction which has application to the interest and other charges under this Note. The "Maximum Legal Rate of Interest" shall mean the maximum rate of interest that City may from time to time charge Borrower, and under which Borrower would have no claim or defense of usury under the Interest Law.

16. Miscellaneous. Time is of the essence hereof. This Note shall be governed by and construed under the laws of the State of California except to the extent Federal laws preempt the laws of the State of California. Borrower irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of San Diego or the United States District Court of the Southern District of California, as City hereof may deem appropriate, or, if required, the Municipal Court of the State of California for the County of San Diego, in connection with any legal action or proceeding arising out of or relating to this Note. Borrower also waives any objection regarding personal or in rem jurisdiction or venue.

17. No Personal Liability. In the event of any default under the terms of this Note or the Leasehold Deed of Trust, the sole recourse of the City for any and all such defaults shall be by judicial foreclosure or by the exercise of the trustee's power of sale, and Borrower and its partners shall not be personally liable for the payment of this Note or for the payment of any deficiency established after judicial foreclosure or trustee's sale; provided, however, that the foregoing shall not in any way affect any rights the City may have (as a secured party or otherwise) hereunder or under the Agreement or Leasehold Deed of Trust to recover directly from Borrower any amounts secured by the Leasehold Deed of Trust, or any funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by City as a result of fraud, misrepresentation or waste, and any costs and expenses incurred by the City in connection thereof (including without limitation reasonable attorneys' fees and costs).

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

[Signature(s) on Following Page]

**Promissory Note
[Additional City Loan]**

Signature Page

BORROWER:

OCEANSIDE HOUSING PARTNERS, L.P., a
California limited partnership

By: **The Southern California Housing
Development Corporation of Orange**,
a California nonprofit public benefit
corporation, its General Partner

By: _____
Its:

By: _____
Its:



Date: 6/18/07

To: Margery Pierce, Director Neighborhood Services Dept.
David Manley, Division Manager, Neighborhood Services Dept.

From: Welton R. Smith, Senior VP of Development
Cc: John Seymour, VP of Acquisitions/Forward Planning

Re: La Mision Village Budget and Schedule Challenges

Over the past several months, we have had numerous discussions and briefing sessions with City departments in pursuit of the mutual goal of solving the challenges and delays that have materialized with the La Mision project. Neighborhood Services and Housing Department staff have been a tremendous help in this regard and we very much appreciate all the assistance.

The challenges revolved primarily around severe soils conditions, related updates to the City seismic standards that required additional changes beyond the scope of the budgeted mitigation and unanticipated City increases to the Development Impact Fees.

Challenges with soils conditions have now been adequately addressed and the buildings are beginning to take shape very rapidly. The vast majority of unknown factors have been encountered and addressed and the project is moving forward to rapid completion of the remaining work.

Development impact fees (DIF's) for the project were estimated by the Civil Engineer based on a City fee schedule provided at the time of the pro forma development. The shortfall resulted from increased DIF's beyond what was included in the budget, as detailed in the attachment.

The challenges encountered with this project, which were beyond our control have led to delays and cost increases. Increased costs associated primarily with soils condition mitigation (stone columns and new city related seismic standards) have depleted the project's agreed-upon contingency.

Early into this project, we were confident that a prudent and reasonable amount of money was placed in the development budget to address and pay for soil mitigation, as were our general contractor, soils engineer and city housing consultant. Because we did not want to appear to have an "inflated" soils mitigation budget, the team performed all industry standard due diligence to develop a prudent and reasonable budget for soils mitigation.

As work progressed, it became evident that the budget was not going to be adequate to overcome the very severe soil challenges and the new city imposed seismic standards. The increased cost of the stone columns was a direct result of new seismic upgrades now required by the City of Oceanside and a number of other cities when liquefiable soils conditions are encountered.

These delays have caused our agreed-upon completion date with our General Contractor to slip from February 2008 to June 2008, and will have an impact in the form of change orders for lost time and tax credit delivery losses. We are diligently working with the contractor on an acceleration schedule that will help to mitigate the potential impact of these delays.

Items that contributed to the cost increases detailed in the attachment were out of our control and housing staff's control. These items have depleted the project's contingency and are expected to create budget shortfalls in the project as the work progresses.

We are respectfully requesting your support to return to the Housing Commission and then to City Council to replenish the \$900,000 construction contingency as a result of the unanticipated and severe soil mitigation costs and the new seismic standards and the increased to the City development impact fees. Replenishment of the contingency will provide sufficient funds to move through the remainder of the project.

As far as new sources coming into the project to offset this replenished contingency, we anticipate that upon project completion the net result of the downward tax credit adjuster (caused by delays) and the upward tax credit adjuster (caused by increased soil costs) might be \$357,000 in the positive and our permanent loan may be increased by \$152,000 in the positive, resulting in a total amount of \$509,000 new dollars in permanent sources of funding. However, these additional funds will not be available until permanent loan conversion occurs so the replenishment of the contingency is very necessary to cover the remaining build out of the project.

We are seeking your support to return to the Housing Commission in August or mid to late September and then to City Council in late September or early October for additional funds to replenish the project's contingency.

As the developer of La Mision, we are very much aware of our responsibility to complete the project, and must ensure that there are adequate funds available to pay the monthly draws as they are submitted. Since the vast majority of the circumstances that caused these increases were beyond our control, we are asking that our City partner replenish the project's contingency. As per our City agreement, any remaining unused contingency will be reimbursed to the City.

Thank you in advance for your support.

TO: OCEANSIDE CITY COUNCIL
FROM: HOUSING COMMISSION
RE: LA MISION FUNDING
DATE: SEPTEMBER 25, 2007

THE OCEANSIDE HOUSING COMMISSION RECOMMENDS THAT THE CITY COUNCIL APPROVE A FUNDING INCREASE OF \$900,000.00 TO THE CITY LOAN FOR THE DEVELOPMENT OF THE LA MISION VILLAGE MIXED USE AFFORDABLE HOUSING PROJECT AND AUTHORIZE THE CITY MANAGER TO EXECUTE AMENDMENTS TO THE CITY LOAN DOCUMENTS INCREASING THE TOTAL LOAN AMOUNT OF THE CITY HOUSING FUNDS FROM \$5.344 MILLION TO \$6.244 MILLION.

CAMP	ABSENT
CHRISTY	YES
COOPER	YES
DAVIS	YES
FARMER	YES
HUSKEY	YES
IGO	YES
PARKER	YES
SORENSEN	ABSENT

ALTERNATES

SAIZ	ABSENT
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