

STAFF REPORT



ITEM NO. 8

CITY OF OCEANSIDE

DATE: April 19, 2006

TO: Honorable Mayor and City Councilmembers

FROM: Neighborhood Services Department

SUBJECT: **APPROVAL OF AMENDMENT 1 TO A REGULATORY AGREEMENT WITH TERI, INC., FOR A HOME GRANT AWARDED TO TERI, INC., TO DEVELOP AND OPERATE A GROUP HOME FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, AND APPROVAL FOR THE CITY MANAGER TO EXECUTE THE AMENDMENT**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 to the regulatory agreement between the City and TERI, Inc., for a HOME grant awarded to TERI, Inc., to develop and operate a group home for persons with developmental disabilities, and authorize the City Manager to execute the agreement.

BACKGROUND

On April 16, 2003, The City Council approved a grant of \$271,775 of HOME Investment Partnership Program funds from the U.S. Department of Housing and Urban Development (HUD) to TERI, Inc., to develop and operate a group home for persons with developmental disabilities (the "Project"). On December 17, 2003, the City Council approved a regulatory agreement with TERI, Inc., that regulates and restricts use, occupation and operation of the Project for a period of thirty-five years. This regulatory agreement was signed by the City and TERI, Inc., and subsequently recorded with the County of San Diego. TERI, Inc., obtained additional funding from local sponsors, community support, and a HUD Section 811 facilities grant; the Section 811 Program provides capital financing for housing for persons with disabilities. TERI, Inc., has completed acquisition and rehabilitation of the property, and the project is now open as a six-bed group home. TERI, Inc., has satisfied all terms of the regulatory agreement.

In order to complete final documents with HUD for the Section 811 loan obtained for the Project, HUD requires that certain amendments be made to the regulatory agreement. In particular, HUD requires that the developer of projects funded by Section 811 loans be single-asset, nonprofit, public benefit corporations. TERI, Inc., has formed the McNealy Housing Corporation, a California nonprofit public benefit corporation, to act as the developer of the Project; the governing board of McNealy Housing Corporation is composed of executives and board members from TERI, Inc. HUD has proposed other

amendments to the regulatory agreement that are necessary to meet specific legal requirements of HUD. TERI, Inc., has agreed to all the proposed changes, and representatives of the McNealy Housing Corporation have signed the amendment.

TERI, Inc., is a 25-year-old nonprofit agency based in Oceanside with 300 employees. It is the largest provider of training, education, and residential services for persons with developmental disabilities in the North San Diego County region, with an annual budget of over \$10 million. TERI, Inc., currently operates ten group homes, eight of which were acquired with HUD funding.

The development team for the Project includes Phipps-Carr Associates (PCA), a consulting agency specializing in special needs housing. PCA has assisted nonprofit providers to acquire over \$100 million in public funding resulting in the creation of more than 1,000 units, and serves as a consultant to 15 clients who operate HUD Section 811 housing projects. PCA has provided assistance to the City in the review and analysis of the proposed amendments to the regulatory agreement.

ANALYSIS

The City has allocated HOME funds and executed a regulatory agreement with TERI, Inc., for development and operation of a group home in Oceanside for persons with developmental disabilities. HUD awarded Section 811 capital financing to TERI, Inc., for the Project, and now requires that certain amendments be made to the regulatory agreement. Final funding for the project and the close of all agreements between HUD and TERI, Inc., are conditional upon approval of the amendments by the City Council and recordation with the County of San Diego.

FISCAL IMPACT

Approval of the amendment has no impact on the General Fund of the City. The allocation of HOME funds to TERI, Inc., has been completed and reported to HUD as part of the City's 2003-2004 Comprehensive Annual Performance Evaluation and Report (CAPER). The City has no further obligations to TERI, Inc., or the McNealy Housing Corporation for operation or maintenance of the Project.

COMMISSION OR COMMITTEE REPORT

The Housing Commission reviewed the regulatory agreement at its meeting on November 18, 2003. The Commission unanimously recommended that the City Council fund the project.

CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve Amendment 1 to the regulatory agreement between the City and TERI, Inc., for a HOME grant awarded to TERI, Inc., to develop and operate a group home for persons with developmental disabilities, and authorize the City Manager to execute the agreement.

PREPARED BY:



John A. Lundblad
Management Analyst

SUBMITTED BY:



Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant to the City Manager _____

Mike Blessing, Deputy City Manager _____

Margery M. Pierce, Neighborhood Services Director 

ATTACHMENTS

Amendment 1 to Regulatory agreement
Regulatory Agreement (original)

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

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AMENDMENT NO. ONE TO REGULATORY AGREEMENT

This Amendment No. One to Regulatory Agreement made this 15th day of MARCH, 2006 by and between the City of Oceanside, a municipal corporation ("City") and MCNEALY HOUSING CORPORATION, a California nonprofit public benefit corporation ("Developer") with reference to the following:

WHEREAS, City and TERI, Incorporated, a California nonprofit public benefit corporation ("Sponsor") entered into that certain Regulatory Agreement dated December 17, 2003 recorded January 2, 2004, as Instrument No. 2004-0000060, Official Records San Diego County, California ("the City Regulatory Agreement");

WHEREAS, Sponsor with the approval of City has assigned and transferred its rights and responsibilities in the City Regulatory Agreement to Developer;

WHEREAS, Developer has accepted the foregoing assignment and has agreed to be bound by the City Regulatory Agreement; and

WHEREAS, the City and Developer desire to amend the City Regulatory Agreement in accordance with the requirements of the Department of Housing and Urban Development ("HUD") under the HUD Section 811 Program.

NOW THEREFORE, it is agreed as follows:

1. The following definitions are added to this City Regulatory Agreement.

“1.1. “HUD” and the “Secretary of HUD” shall mean the U.S. Department of Housing and Urban Development.

- 1.2 “HUD Capital Advance Documents” shall mean the HUD Note, HUD Use Agreement, HUD Deed of Trust, HUD Regulatory Agreement, HUD Capital Agreement and the Project Rental Assistance Contract.
 - 1.3 “HUD Section 811 financing” means the HUD Capital Advance.
 - 1.4 HUD Regulatory Agreement shall mean the Regulatory Agreement to be entered into between Developer and HUD.
 - 1.5 “Term of the HUD Capital Documents” shall mean the period of time the project is encumbered by such documents.
2. Section 2(a)(i) is amended to read as follows:
- “A copy of any written construction agreement with a State of California licensed general contractor which Developer proposes to execute (or, if no general contractor will be used, a copy of each proposed written agreement with the various subcontractors). Such agreement shall provide that payment of at least 10% of the total price thereunder shall not be due until at least thirty (30) days after full completion of the work to be performed. In the event that a construction contract is approved in writing by HUD, no further City approval is required; and”
3. Section 2(a)(iii) is amended to read as follows:
- “(iii) A copy of the proposed one hundred percent (100%) completion bond naming the Developer and HUD as dual obligees and a copy of the proposed one hundred percent (100%) payment bond. Such bonds in a form approved by HUD shall be deemed approved by City.”
4. Section 2(b) is amended to read as follows:
- “(b) **Construction.** After receiving building permits Developer shall diligently pursue the work and Developer shall have completed the Project which shall be made available for the initial lease-up on or before December 31, 2006, except as such date may be extended by the number of working days lost by reason of strikes, fire, acts of God, or other events beyond the control of Developer. If Developer shall, after thirty (30) days notice to Developer, neglect, fail or refuse to commence its work as aforesaid and thereafter neglects, fails or refuses to diligently proceed with and complete its work, then City, in addition to other rights or remedies it may have and, may (i) complete Developer’s work at Developer’s expense, or (ii) declare Developer in default under this City Regulatory Agreement, and pursue any remedies available at law or in equity. City agrees not to exercise any of the foregoing remedies without the prior written approval of HUD. “

5. Section 3 is amended in its entirety to read as follows:

“3 **Restrictive Use of the Property.** Developer covenants and agrees for itself, its authorized successors and assigns, that during the term of this City Regulatory Agreement that the Property shall be developed, operated, and maintained as a supervised group home for developmentally disabled persons. Compliance by Developer with the HUD Capital Advance Documents shall constitute compliance with this Section 3 and in the event of a conflict the HUD Capital Advance Documents shall control”

6. Section 4 is amended to read as follows:

“4. **Affordable Housing Requirements.** In accordance with HOME regulations found at 24 CFR Part 92, the annual rent and utilities charged to each tenant may not exceed 30% of 50% of the San Diego County area median income (“AMI”) for a one-person household. Compliance by Developer with the HUD Capital Advance Documents shall constitute compliance with Sections 4, 4.1, 4.2, 4.3 and 4.4 hereof and in the event of a conflict the HUD Capital Advance Documents shall control. In the event any of the requirements of the HOME regulations conflict with requirements of the HUD Capital Advance Documents the matter shall be submitted to HUD for determination.”

7. Section 4.1. The first sentence of said section is amended to read as follows:

“The annual income of each tenant may not exceed 50% of the AMI for a one-person household.”

8. Section 5.1. Add at the end of this section:

“Compliance by Developer with the HUD Capital Advance Documents shall constitute compliance with Sections 5.1, 5.2 and 5.3 and in the event of a conflict the HUD Capital Advance Documents shall control.”

9. Section 5.2. Add at the end of this section:

“The amount of and use of the Replacement Reserve as determined by HUD shall satisfy the requirements of this Section 5.2.”

10. Section 6. Add at the end:

“Compliance by Developer with the HUD Capital Advance Documents shall constitute compliance with this Section 6 and in the event of a conflict the HUD Capital Advance Documents shall control.”

11. Section 8.3. This section is deleted in its entirety.

12. Section 9. Add at the end:

“During the Term of the HUD Capital Advance Documents any rights of the City to the improvements constituting the Project shall be subordinate to the rights of HUD.”

13. Section 12. Add at the end:

“During the Term of the HUD Capital Advance Documents any alteration to the Project requires the prior written consent of HUD.”

14. Section 13.1. Add at the end the following provision:

“The foregoing provision shall be subject to the rights of HUD during the Term of the HUD Capital Advance Documents.”

15. Section 14. The following sentence is eliminated from Section 14 of the City Regulatory Agreement:

“Notwithstanding any provision in this Section 14 to the contrary, in no event shall Developer make any assignment which would or could be effective beyond the Term without the prior written consent of the City.”

16. Section 15. Add at the end:

“Notwithstanding the foregoing provisions the City approves the HUD Section 811 financing for the Project.”

17. Add Section 17.6 as follows:

“During the Term of the HUD Capital Advance Documents, compliance with the insurance requirements of HUD shall be deemed to satisfy the insurance requirement of this City Regulatory Agreement. City shall be named as additional insured on any policies of insurance. In the event of loss covered by fire and extended coverage insurance, the insurance proceeds, to the extent of the Capital Advance then remaining unpaid, shall be paid to the beneficiary of the HUD deed of trust and, at the option of the beneficiary, may be applied to the Capital advance or released for the repair or rebuilding of the Project. Any balance remaining of insurance proceeds shall be paid to the additional insured and, at the option of such additional insured, may be applied for the indebtedness owed to such insured or be released for repair or rebuilding of the Project. Surplus insurance proceeds thereafter may be dispersed to the Owner of the Project.”

18. Section 24.2. Subsections (d) and (e) are deleted in their entirety from Section 24.2.

19. Section 24.4. Add at the end:

“The exercise by City of any remedy not included in Section 24.2 is subject to the prior written approval of HUD during the Term of the HUD Capital Advance Documents.”

20. Add Section 24.6 as follows:

“24.6 **Rights of HUD.** During the Term of the Capital Advance Documents, the following provisions shall apply:

- (i) Notwithstanding anything herein to the contrary, in the event the Secretary of HUD (hereinafter "Secretary") should take title to the real property and the Site through foreclosure, deed-in-lieu of foreclosure, or otherwise, all covenants, conditions and restrictions set forth in this City Regulatory Agreement shall cease and terminate and be of no further force or effect.
- (ii) Notwithstanding anything herein to the contrary, in the event any provision in this City Regulatory Agreement tends to contradict, modify or in any way change the terms of the HUD Regulatory Agreement encumbering the real property described therein to be entered into between the Secretary and the owner of the Site, the terms of the HUD Regulatory Agreement shall prevail and govern; or if any provision of this City Regulatory Agreement in any way tends to limit the Secretary in his administration of the Cranston-Gonzalez National Affordable Housing Act, or the regulations pursuant thereto, this City Regulatory Agreement shall be deemed amended as so to comply with the Act, the regulations and the aforementioned HUD Regulatory Agreement.
- (iii) Notwithstanding any statement in this City Regulatory Agreement to the contrary, no amendment to this City Regulatory Agreement shall be effected without the prior written approval of the Secretary, his successor or assigns.
- (iv) During the Term of the HUD Capital Advance Documents any monies owed City by Developer shall be payable only from residual receipts as defined by HUD subject to the prior written approval of HUD.
- (v) During the Term of the HUD Capital Advance Documents the City Regulatory Agreement shall be subject and subordinate to the HUD Use Agreement, HUD Deed of Trust, HUD Regulatory Agreement and the HUD Financing Statement.”

21. Section 25.5. The following provision is added at the end of this section:

“During the Term of the HUD Capital Advance Documents, the annual financial statement submitted to HUD shall constitute compliance with the requirements of this Section 25.5.”

22. Section 25.21. The following paragraph is added at the end thereof:

“In the event of any conflict between the provisions of this section and the requirements of the HUD Capital Advance Documents, the HUD Capital Advance Documents shall control.”

IN WITNESS WHEREOF, the undersigned have entered into this Amendment No. One on the date first above written.

CITY:

City of Oceanside, a municipal corporation

By: _____
Steven R. Jepsen
City Manager

DEVELOPER:

MCNEALY HOUSING CORPORATION, a California nonprofit public benefit corporation

By:  _____
Its: PRESIDENT

APPROVED AS TO FORM:

 ASSISTANT
City Attorney

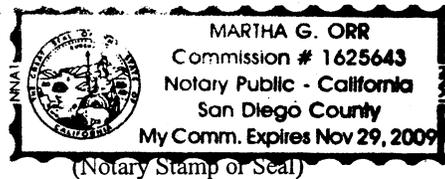
Notary form and signatures authorized to be attached

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On MARCH 15, 2006, before me, MARTHA G. ORR, Notary Public
(name and title of Notary)
personally appeared CHERYL KILMER, personally known to
me (or 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.

Martha G. Orr
Signature



STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2006, before me, _____
(name and title of Notary)
personally appeared _____, personally known to
me (or 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.

Signature

(Notary Stamp or Seal)

3

RECORDING REQUESTED BY:
FIRST SOUTHWESTERN TITLE COMPANY

742 DOC # 2004-0000060

JAN 02, 2004 8:00 AM

RECORDING REQUESTED BY AND
WHEN RECORDED PLEASE MAIL TO:
City of Oceanside
ATTN: City Clerk
300 North Coast Highway
Oceanside, CA 92054

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 100.00

1-8
32P



(Space above this line for Recorder's use)

Document No. 03-D743-1
12/17/03 (22)

REGULATORY AGREEMENT

This Regulatory Agreement (hereinafter this "Regulatory Agreement") dated this 17th day of December, 2003, is made and entered into by and between the City Of Oceanside, a municipal corporation (hereinafter the "City"), and TERI, Incorporated, a California nonprofit public benefit corporation, (hereinafter the "Developer").

The effective date hereof shall be the date this Regulatory Agreement is filed in the Office of the County Recorder of San Diego County, State of California, as evidenced by the recording stamp affixed hereto above (hereinafter the "Effective Date").

RECITALS

WHEREAS, As of the Effective Date, Developer will be the owner of that certain real property situated at 4602 Allende Street in the City of Oceanside, County of San Diego, State of California, as more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter the "Property"); and,

WHEREAS, Developer plans to acquire the Property by December 31, 2003, construct a 1,400-square-foot addition in accordance with State and local building codes, and operate a 6-bed supervised group housing project for developmentally disabled persons (hereinafter the "Project"); and,

WHEREAS, on April 16, 2003, the City conditionally approved a grant of \$271,775 of HOME funds to Developer for acquisition of property and construction of improvements; and,

WHEREAS, As an inducement for the City to provide the financial assistance, Developer has agreed to enter into this Regulatory Agreement and to record restrictive covenants, and has consented to be regulated and restricted as to the use, occupation and operation of the Project and Property as provided herein; and

NOW, THEREFORE, in witness whereof and for valuable and other considerations set forth herein, the parties hereto agree as follows:

1. **Term of Agreement.** This Regulatory Agreement shall be for a term commencing on the Effective Date hereof and continuing for a period of thirty-five (35) years thereafter (the "Term").

2. **Developer's Obligation to Construct Improvements.** This Regulatory Agreement is executed with the understanding and agreement that Developer is obligated to construct and make certain improvements to the Property. Developer covenants and agrees that the buildings, facilities, improvements and appurtenances thereto must be constructed and paid for wholly at the expense of Developer. Before submitting plans for approval by City and commencing the construction of any improvements on the Property, Developer agrees that it will furnish evidence, satisfactory to City, that it has arranged for financing so that at all times there will be available to Developer sufficient funds to pay for the cost of construction of the proposed improvements.

(a) **Construction Documents.** Developer, at its own expense, shall promptly cause the construction and/or improvement plans and specifications to be prepared for improvements to be made on or about the Property. Within sixty days (60) of the close of escrow for the HUD capital advance financing for the project, Developer shall submit to the City of Oceanside Building Department (the "Building Department") plans and specifications for the construction of the Project. Before construction is commenced on the improvements, Developer shall also submit to City for its approval, which approval shall not be unreasonably denied or withheld:

- (i) A copy of any written construction agreement with a State of California, licensed general contractor which Developer proposes to execute Such agreement shall provide that payment of at least 10% of the total price thereunder shall be retained and not be due until at least thirty (30) days after full completion of the work to be performed; and
- (ii) An estimated schedule of payments thereunder which shall provide for partial payments as the work progresses.
- (iii) A copy of the proposed one hundred (100%) percent completion and payment bonds naming the Developer as obligee.

(b) **Construction.** After receiving building permits Developer shall diligently pursue the work and Developer shall have completed the work within 18 months of the Effective Date, except as such date may be extended by the number of working days lost by reason of strikes, fire, acts of God, or other events beyond the control of Developer. If Developer shall, after thirty (30) days notice to Developer, neglect, fail or refuse to commence its work as aforesaid and thereafter neglects, fails or refuses to diligently proceed with and complete its work, then City, in addition to other rights or remedies it may have and, may (i) complete Developer's work at Developer's expense, or (ii) declare Developer in default under this

Regulatory Agreement, and pursue any remedies available at law or in equity.

3. Restrictive Use of the Property. Developer covenants and agrees for itself, its authorized successors and assigns, that during the term of this Regulatory Agreement that the Property shall be developed, operated, and maintained as a supervised group home for developmentally disabled persons.

4. Affordable Housing Requirements. In accordance with HOME regulations found at 24 CFR Part 92, the annual rent and utilities charged to each tenant may not exceed 30% of 50% of the San Diego County area median income for a one-person household.

4.1 Income of Residents. The annual income of each tenant may not exceed 30% of 50% of the AMI for a one-person household. Following the initial lease-up of Project to residents, and annually thereafter, within 30 days of the close of Developer's fiscal year, during the term of this Regulatory Agreement, the Developer shall submit to the City report that states the income and rent payable by each household that resided in the Project during the prior fiscal year.

4.2 Verifications. Developer shall verify, or shall cause to be verified by the Property Manager, the income of each proposed tenant of the Project prior to tenancy. Reasonable means shall be employed to verify said incomes, including third party verifications when available. Examples of acceptable verification include, but are not limited to payroll stubs, income tax filings, government entitlement letters, and bank statements.

4.3 Resident Selection Procedures. Developer shall be responsible for the selection of residents for the Project in accordance with its Management Plan, as defined in Section 6 herein. Developer shall not violate any applicable law with respect to denying applicant eligibility for admission.

4.4 Lease and Occupancy Procedures. Each eligible applicant selected to occupy a Housing Unit shall enter into a written occupancy agreement or lease with Developer, or its designated management agent, the form of which shall contain those provisions as are required by the Management Plan and this Regulatory Agreement.

5. Operating Budget, Reserve Requirements, and Accounting

5.1 Annual Operating Budget. Prior to lease-up of the Project, Developer shall submit to the City a proposed annual operating budget. Operating costs are defined as all expenses associated with providing decent, safe, and sanitary housing at the Project and normal upkeep of all buildings, structures, landscaping and appurtenant improvements made to the Property. The Annual Operating budget shall set forth the anticipated Effective Gross Income of the Project and a detailed estimate of all operating costs, capital improvements, deposits to all accounts required by the City and any other lenders to the Project, and all other expenses in conformance with customary accounting procedures. "Effective Gross Income" of the Project shall mean the gross

income generated by the Project, including without limitation rents and laundry revenues, such payments as may be provided from the Project and other public and private sources, without deduction for any expenses.

5.2 Capital Replacement Reserve. Developer shall also, or cause the Property Manager to, annually set aside no less than one thousand five hundred (\$1,500) dollars into a separate interest-bearing trust account (the "Capital Replacement Reserve"). Funds in the Capital Replacement Reserve shall be used for capital replacements to the Project fixtures and equipment which are normally capitalized under generally accepted accounting principles. As capital repairs and improvements of the Project become necessary, the Capital Replacement Reserve shall be the first source of payment. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Developer of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Property in the manner prescribed in this Section 5.

5.3 Accounting Records. In a manner subject to City approval, which shall not be unreasonably withheld, Developer shall maintain an accrual or modified accrual basis general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Project. All records and books relating to this system shall be retained for not less than seven years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to City inspection and audit; City shall provide reasonable written notice prior to such inspection or audit.

6. Property Manager and Management Plan Developer shall manage or cause the Property and the Project to be managed in a prudent manner consistent with professional standards for group housing programs in the county. Developer shall submit for the approval of the City a detailed "Management Plan" which sets forth in detail the duties of the Property Manager, tenant policies and procedures, rules and regulations of the Project, and other matters relevant to the management of the Project. The management of the Project shall be in compliance with the Management Plan, which shall be approved by the City and such approval shall not be unreasonably withheld.

7. Maintenance and Repair. Developer agrees to assume full responsibility for the maintenance of the Project and the Property throughout the Term without expense to the City, and to perform all repairs and replacements necessary to maintain and preserve the Project and the Property in good repair, in a neat, clean, safe and orderly condition reasonably satisfactory to the City and in compliance with all applicable laws. Developer shall maintain the Project, including all Housing Units, common areas and buildings, exterior facades, sidewalks, and all exterior areas, in a safe and sanitary condition.

8. Utilities and Taxes.

8.1 Utilities. Developer shall pay, and/or provide for the payment by residents of the Project, all charges for gas, electricity, water, sewer, garbage collection, and other utilities furnished to the Property and the Project and all sewer use charges, hookup or similar charges or assessments for utilities levied against the Property and the Project for any period included within the Term.

8.2 Real Estate Taxes.

- (a) As used herein, the term "real estate taxes" shall mean all real estate taxes, assessments for improvements to the Property, municipal or county water and sewer rates and charges, or any other assessments or taxes, which shall be levied against the Property or the Project, or any interest therein, and which become a lien thereon and accrues during the Term.
- (b) Any real estate taxes which are payable by Developer hereunder shall be prorated between the City and Developer as of the Commencement Date and then again at the expiration or earlier termination of the Term.
- (c) Developer shall have the right to contest the amount or validity of any real estate taxes, in whole or in part, by appropriate administrative and legal proceedings, without any costs or expense to the City.

Notwithstanding the above, however, the City acknowledges that Developer intends to obtain an exemption from the payment of property taxes with respect to the Property, and nothing in this Regulatory Agreement shall prevent Developer from obtaining such an exemption.

8.3 Personal Property. Developer covenants and agrees to pay before delinquency all personal property taxes, assessments and liens of every kind and nature upon all personalty as may be from time to time situated within the Property and Project.

9. Ownership of Improvements. All improvements constructed on the Property by Developer as permitted by this Regulatory Agreement shall, during the Term, be and remain the property of Developer; provided, however, that Developer shall have no right to waste the Project, or to destroy, demolish or remove the Project except as otherwise permitted pursuant to this Regulatory Agreement; and provided further that Developer's rights and powers with respect to the Project are subject to the terms and limitations of this Regulatory Agreement. The City and Developer intend that the improvements constituting the Project shall be real property.

10. Indemnification: Faithful Performance. Developer agrees to defend, indemnify, and hold the City and City of Oceanside and their respective officers, officials, employees, agents, and representatives, harmless against such liens caused to be placed on the Property by the Developer. If any such lien shall at any time be filed against the Property or the Project, Developer shall, within thirty (30) days after notice to Developer of the filing thereof, cause the same to be discharged of record; provided, however, that Developer shall have the right to contest the amount or validity, in whole

or in part, of any such lien by appropriate proceedings but in such event, Developer shall notify the City and promptly bond such lien in the manner authorized by law with a responsible surety company qualified to do business in the State of California or provide other security acceptable to the City. Developer shall prosecute such proceedings with due diligence. Nothing in this Regulatory Agreement shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of the City, express or implied, by inference or otherwise, to any person, firm or limited partnership for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Property, the Project, or any part thereof. Prior to commencement of construction of the Project on the Property, or any repair or alteration thereto, Developer shall give the City not less than thirty (30) days advance notice in writing of intention to begin said activity in order that nonresponsibility notices may be posted and recorded as provided by State and local laws.

11. Environmental Matters.

11.1 Definitions. For the purposes of this Regulatory Agreement, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

- (a) The term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes regulated by the City of Oceanside, the County of San Diego, the State of California, regional governmental authority (ies) having jurisdiction over the Property, or the United States Government, including, but not limited to, any material or substance which is:
- (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law);
 - (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act);
 - (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory);
 - (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances);
 - (v) petroleum;
 - (vi) friable asbestos,
 - (vii) polychlorinated biphenyl,
 - (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article II of Title 22 of the California Administrative Code, Division 4, Chapter 20,

- (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317),
 - (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903) or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. Notwithstanding the foregoing, "Hazardous Materials" shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation or management of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Project, including without limitation alcohol, aspirin, tobacco and saccharine.
- (b) The term "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the Date of Regulatory Agreement) emanating from the Property.
- (c) The term "Governmental Requirements" shall mean all past, present and future environmental laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, and the County of San Diego, which are applicable to the Property and its operation.

11.2 Property Evaluation. Developer has had an opportunity, prior to the Commencement Date of this Regulatory Agreement, to engage its own environmental consultant to make such investigations of the Property as Developer has deemed necessary, and Developer has approved the environmental condition of the Property. Developer assumes any and all responsibility and liabilities for all Hazardous Materials Contamination of the Property which occurs during the Term of this Regulatory Agreement, except to the extent of any remediation which the City may have agreed to perform upon the Property.

11.3 Indemnification. Upon and after the Commencement Date of this Regulatory Agreement Developer agrees to indemnify, defend and hold the City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, of the transportation of any such Hazardous Materials to or from, the

Property during the term of this Regulatory Agreement, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property during the term of this Regulatory Agreement; except to the extent arising as a result by the gross negligence or willful misconduct by the City. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. Developer's obligations under this Section 11.3(a) shall survive the expiration of this Regulatory Agreement.

11.4 Duty to Prevent Hazardous Material Contamination. Developer shall take all reasonably necessary precautions to comply with all environmental laws regarding the release of any Hazardous Materials into the environment. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards generally applied in San Diego County, California with respect to the disclosure, storage, use, removal, and disposal of Hazardous Materials.

11.5 Obligation of Developer to Remediate Premises (subject to the terms set forth in Section 11.3). Notwithstanding the obligation of Developer to indemnify the City pursuant to Section 11.3 of this Regulatory Agreement, Developer shall, at its sole cost and expense, promptly take (i) all actions required by any federal, state, regional, or local governmental agency or political subdivision or any Governmental Requirements and (ii) all actions necessary to make full economic use of the Property for the purposes contemplated by this Regulatory Agreement, which requirements or necessity arise from the presence upon, about or beneath the Property of any Hazardous Materials or Hazardous Materials Contamination no matter when occurring. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. Developer shall take all actions necessary to promptly restore the Property to an environmentally sound condition for the uses contemplated by this Regulatory Agreement notwithstanding any lesser standard of remediation allowable under applicable Governmental Requirements.

11.6 Right of Entry. Notwithstanding any other term or provision of this Regulatory Agreement, Developer shall permit the City or its agents or employees to enter the Property at any time during normal business hours (except in the event of an emergency), without prior notice in the event of an emergency, and with not less than twenty-four (24) hours advance notice if no emergency is involved, to inspect, monitor and/or take emergency or long-term remedial action with respect to Hazardous Materials and Hazardous Materials Contamination on or affecting the Property, or to

discharge Developer's obligations hereunder with respect to such Hazardous Materials and Hazardous Materials Contamination when Developer has failed to do so after notice from the City and a reasonable opportunity to cure or commence to cure and diligently pursue to completion such deficiency. All reasonable costs and expenses incurred by the City in connection with performing Developer's obligations hereunder shall be reimbursed by Developer to the City within thirty (30) days of Developer's receipt of written request therefore.

11.7 Storage or Handling of Hazardous Materials. Developer, at its sole cost and expense, shall comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials on or about the Property. In the event Developer does store, use, transport, handle or dispose of any Hazardous Materials, Developer shall notify the City in writing at least ten (10) days prior to their first appearance on the Property and Developer's failure to do so shall constitute a material default under this Regulatory Agreement. Developer shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. In addition, in the event of any complaint or governmental inquiry, or if otherwise deemed necessary by the City in its reasonable judgment, the City may require Developer, at Developer's sole cost and expense, to conduct specific monitoring or testing activities with respect to Hazardous Materials on the Property. Developer's monitoring programs shall be in compliance with applicable Governmental Requirements, and any program related to the specific monitoring of or testing for Hazardous Materials on the Property, shall be satisfactory to the City, in the City's reasonable discretion. Subject to the indemnity set forth in Section 11.3, Developer shall further be solely responsible, and shall reimburse the City, for all costs and expenses incurred by the City arising out of or connected with the removal, clean-up and/or restoration work and materials necessary to return the Property and any property adjacent to the Property affected by Hazardous Materials emanating from the Property to their condition existing at the time of the Developer's Property Evaluation. Developer's obligations hereunder shall survive the termination of this Regulatory Agreement and shall not merge with any grant deed.

11.8 Environmental Inquiries. Developer shall notify the City, and provide to the City a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Property: notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Developer shall report to the City, as soon as possible after each incident, any unusual, potentially important incidents.

In the event of a release of any Hazardous Materials into the environment, Developer shall, as soon as possible after the release, furnish to the City a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the City, Developer shall furnish to the City a copy or copies of any and all other environmental entitlements or inquiries relating to or

affecting the Property including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

12. Alteration of Improvements. Upon completion of the Project, Developer shall not make or permit to be made any structural alteration of the Project, nor demolish all or any part of the Project, without obtaining all required City permits and entitlements, and without obtaining the prior written consent of the City; provided, however, that the foregoing shall not prohibit or restrict the repair and/or replacement of the Project by Developer in accordance with Section 13 hereof. In requesting such consent of the City, Developer shall submit to the City detailed plans and specifications of the proposed work and an explanation of the need and reasons therefore. This provision shall not limit or set aside any obligation of Developer under this Regulatory Agreement to maintain the Project and the Property in a clean and safe condition, including structural repair and restoration of damaged Project. The City shall not be obligated by this Regulatory Agreement to make any improvements to the Property or to assume any expense therefore. Developer shall not commit or suffer to be committed any waste or impairment of the Property or the Project, or any part thereof, except as otherwise permitted pursuant to this Regulatory Agreement.

13. Damage or Destruction.

13.1 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. Subject to Section 13.3 below, if during the period of construction, the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Developer, Developer shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as the Project is required to be maintained in pursuant to this Regulatory Agreement, whether or not the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Developer shall complete the same as soon as possible thereafter so that the Project can be occupied in accordance with this Regulatory Agreement. Subject to Section 25.21, in no event shall the repair, replacement, or restoration period exceed one (1) year from the date Developer obtains insurance proceeds unless the City's City Manager or designee, in his or her reasonable discretion, approves a longer period of time. The City shall cooperate with Developer, at no expense to the City, in obtaining any governmental permits required for the repair, replacement, or restoration.

If, however, the then-existing laws of any other governmental agencies with jurisdiction over the Property do not permit the repair, replacement, or restoration, Developer may elect not to repair, replace, or restore the Project by giving notice to the City (in which event Developer will be entitled to all insurance proceeds, subject to Developer's obligations to lenders or other third parties, but Developer shall be required to remove all debris from the Property) or Developer may reconstruct such other improvements on

the Property as are consistent with applicable land use regulations and approved by the City, the City, and the other governmental agency or agencies with jurisdiction.

In the event Developer elects not to repair, replace, or restore and give the City notice of such election as provided herein, this Regulatory Agreement shall terminate.

13.2 Continued Operations. During any period of repair, Developer shall continue, or cause the continuation of, the operation of the Project on the Property to the extent reasonably practicable from the standpoint of prudent business management.

13.3 Damage or Destruction Due to Cause Not Required to be Covered by Insurance. If during the period of construction the Project is completely destroyed or substantially damaged by a casualty for which Developer is not required to (and has not) insured against, then the City shall deliver written notice to Developer of its obligations under this Section 13.3 within thirty (30) days of such event of substantial damage or destruction, and Developer shall not be required to repair, replace, or restore such improvements and may elect not to do so by providing the City with written notice of election not to repair, replace, or restore within ninety (90) days after such substantial damage or destruction. In such event, Developer shall remove all debris from the applicable portion of the Property. As used in this Section 13.3, "substantial damage caused by a casualty not required to be (and not) covered by insurance" shall mean damage or destruction which is fifteen percent (15%) or more of the replacement cost of the improvements comprising the Project. In the event that the City delivers such notice to Developer but Developer fails to timely elect to repair, replace, or restore the Project as set forth in the first sentence of this Section 13.3, Developer shall be conclusively deemed to have waived its right not to repair, replace, or restore the Project and thereafter Developer shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed Project in accordance with Section 13.1 above and continue operation of the Project during the period of repair (if practicable) in accordance with Section 13.2 above.

14. Sale, Assignment, Sublease or Other Transfer. Developer shall not sell, assign, sublease, or otherwise transfer this Regulatory Agreement or any right therein, nor make any total or partial sale, assignment, sublease, or transfer in any other mode or form of the whole or any part of the Property or the Project (each of which events is referred to in this Regulatory Agreement as an "Assignment"), without prior written approval of the City, which approval shall not be unreasonably withheld as more particularly set forth below in this Section 14. Any purported assignment without the prior written consent of the City shall render this Regulatory Agreement absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee.

Notwithstanding any other provision of this Regulatory Agreement to the contrary, the City's approval of an assignment of this Regulatory Agreement or conveyance of the Property or Project, or any part thereof, shall not be required in connection with any of the following:

- (a) Any transfer to McNealy Housing Corporation, a non-profit, single asset corporation, in accordance with the HUD Capital Advance Documents.
- (b) Any transfers to an entity or entities in which the Developer retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities.
- (c) The conveyance or dedication of any portion of the Property to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Project.
- (d) Any transfer to HUD or HUD's transferee during the term of the HUD Capital Advance Documents; any transfer by the Developer approved by HUD under its transfer of physical assets procedure.

In the event of an assignment by Developer under subparagraph (a), above, Developer nevertheless agrees that at least thirty (30) days prior to such assignment it shall give written notice to the City of such assignment and satisfactory evidence that the assignee or sublessee has assumed jointly with Developer the obligations of this Regulatory Agreement. In an assignment by Developer other than as set forth in subparagraphs (a) through (d) inclusive, the City agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 14, provided Developer delivers written notice to the City requesting such approval. Such notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's Development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 14 and as reasonably determined by the City. The City shall evaluate such proposed transferee or assignee on the basis of its development qualifications and experience and/or qualifications and experience in the operation of facilities similar to the Project, and its financial commitments and resources, and may reasonably disapprove any proposed transferee or assignee, which the City reasonably determines does not process sufficient qualifications. An assignment and assumption agreement in form satisfactory to the City's City Manager or designee shall also be required for all proposed assignments. Within thirty (30) days after the receipt of the Developer's written notice requesting approval of an assignment or transfer pursuant to this Section 14, the City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Developer shall promptly furnish to the City such further information as may be reasonably requested. Review of experience in operating similar projects shall not be required with respect to institutional lenders providing financing pursuant to Section 15 hereof so long as the original Developer (or a successor that has been expressly approved in writing by the City) remains responsible for operating the Project and performing as Developer pursuant to this Regulatory Agreement. Developer shall only sell, assign, sublease, or transfer the Property and the

Project as a whole and is not permitted to subdivide the Property and the Project for the duration of this Regulatory Agreement without the prior written approval of the City.

Notwithstanding anything else contained in this Section 14, this Regulatory Agreement may be assigned, without the consent of the City, to the purchaser at any foreclosure sale relating to a permitted senior trust deed encumbrance, whether judicial or non-judicial, or to the beneficiary or mortgagee under any Permitted Encumbrance (as defined in Section 15), pursuant to foreclosure or similar proceedings, or pursuant to an assignment or other transfer of this Regulatory Agreement to such beneficiary or mortgagee in lieu thereof, and may thereafter be assigned by such beneficiary or mortgagee without the City's consent, and any such purchaser, beneficiary, mortgagee or assignee shall be liable to perform the obligations herein imposed on Developer, other than as set forth in Section 15 of this Regulatory Agreement, only for and during the period that such purchaser, beneficiary, mortgagee or assignee is in possession or ownership of the leasehold estate created hereby.

Notwithstanding any provision in this Section 14 to the contrary, in no event shall Developer make any assignment which would or could be effective beyond the Term without the prior written consent of the City.

The City may assign or transfer any of its rights or obligations under this Regulatory Agreement with the approval of the Developer, which approval shall not be unreasonably withheld.

15. Financing. Developer may, at any time and from time to time during the Term, upon prior written notice to the City and subject to the requirements of Section 14 hereof, request that the City authorize Developer to mortgage, pledge, hypothecate or otherwise encumber to a federally or state chartered bank or savings and loan, a life insurance company, a mortgage company, a pension fund, investment trust or similar institutional lender or a governmental entity (herein called "Lender"), by deed of trust or mortgage or other security instrument, all of Developer's right, title and interest pursuant to this Regulatory Agreement and the fee estate hereby, following thirty (30) days prior written notice to the City (which notice shall include an itemization of and budget for the capital improvements to be financed), to secure financing of capital improvements to the Project ("Capital Improvement Loan(s)"). The City shall consider such request in good faith, and may approve, disapprove, or conditionally approve in the City's reasonable discretion. The encumbrances securing the Capital Improvement Loan(s), together with refinancing of the Capital Improvement Loan(s) approved by the City pursuant to Section 14, and any other loan or encumbrance approved by the City pursuant to this Regulatory Agreement shall be deemed to be "Permitted Encumbrances."

The proceeds of any Capital Improvement Loan(s) shall be used solely to pay (i) the costs of construction of capital improvements to the Project, and (ii) the costs of obtaining the Capital Improvement Loan(s).

Notwithstanding anything in this Section 15 to the contrary, Developer shall not, without the prior written consent of the City, which may be given or withheld in the City's sole

discretion, obtain any Capital Improvement Loan or other conveyance for financing secured by the Project or this Regulatory Agreement, the term of which Capital Development Loan or other conveyance for financing purposes extends beyond the Term.

16. Indemnity. Developer shall defend, indemnify, assume all responsibility for, and hold the City and City, and their respective officers, employees, agents, and representatives harmless from, all claims, demands, damages, defense costs or liability of any kind or nature (including attorneys' fees and costs) and for any damages to property or injuries to persons, including accidental death, which may be caused by or arise out of the Developer's performance or failure to perform its obligations pursuant to this Regulatory Agreement, whether such activities or performance thereof be by the Developer or by anyone employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Regulatory Agreement, or from any defect in the Property or the Project, or from any displacement of residents or liability for relocation assistance pursuant to Government Code Section 7260, et seq., due to the acts of Developer hereunder. Developer shall not be liable for property damage or bodily injury occasioned by the negligence of, willful misconduct of, or breach of this Regulatory Agreement by the City or its agents or employees.

17. Insurance.

17.1 Insurance to be Provided by Developer. During the Term, Developer, at its sole cost and expense, shall itself take out and maintain, or cause to be taken out and maintained, the following insurance coverage:

- (a) Maintain or cause to be maintained a policy or policies of all-risk property insurance. Such insurance policy shall be maintained in an amount not less than one hundred percent (100%) of the "Full Insurable Value" of the Project, as defined herein in this Section 17.
- (b) Maintain or cause to be maintained, upon the commencement of the occupancy of the Project, use and occupancy or business interruption or rental income insurance against the perils of fire, lighting, vandalism, malicious mischief, and such other perils ordinarily included in extended coverage fire insurance policies, in an amount equal to not less than twelve (12) months gross rental income payable to Developer from residents on the Property, assuming one hundred percent (100%) occupancy.
- (c) Maintain or cause to be maintained, in an amount not less than Two Million Dollars (\$2,000,000), combined single limit, comprehensive general liability insurance. The required amount of insurance shall be subject to increases as the City may reasonably require from time to time, but not more frequently than every twenty-four (24) months. In no event shall such increase or increases exceed the increase during such period in the

United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Subgroup "All Items," in the geographical area applicable to the Oceanside area. Developer agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Developer may be held responsible for the payment of damages to persons or property resulting from Developer's activities, activities of its sublessees or the activities of any other person or persons for which Developer is otherwise responsible.

- (d) Maintain or cause to be maintained by the Property Manager worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Developer and/or Property Manager in connection with the Property and the Project and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for on behalf of any person incurring or suffering injury or death in connection with the Property or the Project or the operation thereof by Developer or Property Manager.

17.2 Definition of "Full Insurable Value". The term "Full Insurable Value" as used in this Section 17 shall mean the actual replacement cost of the Project, including the cost of construction of the Project, architectural and engineering fees, applicable governmental fees, and inspection and supervision. Developer shall maintain the insurance policy required by Section 17.1(a) hereof at the current Full Insurable Value of the Project.

17.3 General Insurance Provisions. All policies of insurance provided for in this Section 17, except for the workers' compensation insurance, shall name Developer and any subtenant as the insured and the City, and their respective officers, employees, agents, and representatives, as additional insureds, as their respective interests may appear. All property casualty insurance policies shall include the interest of any Developer's Mortgagee, and may provide that any loss is payable jointly to Developer and Developer's Mortgagee in which event such policies shall contain standard mortgage loss payable clauses.

Developer agrees to timely pay or cause to be timely paid all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Developer agrees to submit policies of all insurance required by this Section 17 of this Regulatory Agreement, or certificates evidencing the existence thereof, to the City on or before the effective date of this Regulatory Agreement, indicating the coverage of the contractual liability imposed by this Regulatory Agreement. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the

existence thereof, shall be submitted to the City. All policies shall be written by good and solvent insurers qualified to do business in California and reasonably acceptable to the City Manager or designee. All policies or certificates of insurance shall also: (i) provide that such policies shall not be canceled or limited in any manner without at least thirty (30) days prior written notice to the City; and (ii) provide that such coverage is primary and not contributing with any insurance as may be obtained by the City and shall contain a waiver of subrogation for the benefit of the City.

17.4 Failure to Maintain Insurance. If Developer fails or refuses to procure or maintain insurance as required by this Regulatory Agreement, the City shall have the right, at the City's election, and upon ten (10) days prior notice to Developer, to procure and maintain such insurance. The premiums paid by the City shall be treated as amounts due from Developer, to be paid on the first day of the month following the date on which the premiums were paid. The City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

17.5 Insurance Proceeds Resulting from Loss or Damage to Project. All proceeds of insurance with respect to loss or damage to the Project during the term of this Regulatory Agreement shall be payable, under the provisions of the policy of insurance, to Developer, and said proceeds shall constitute a trust fund to be used for the restoration, repair and rebuilding of the Project in accordance with plans and specifications approved in writing by the City. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, then such proceeds shall be used to repay any outstanding loans secured by encumbrances upon the Property, and any remaining proceeds shall be apportioned between Developer and the City as their interests may appear. Notwithstanding the foregoing, within the period during which there is an outstanding mortgage upon the Project, such proceeds shall be payable in accordance with Capital Improvement Loan documents.

In the event this Regulatory Agreement is terminated by mutual agreement of the City and Developer and the Project is not restored, repaired or rebuilt, the insurance proceeds and proceeds of the Capital Replacement Reserve and Operating Reserve shall be jointly retained by the City and Developer and shall be applied first to any payments due under this Regulatory Agreement from Developer to the City, second to restore the Property and Project to their original condition and to a neat and clean condition, third to repay any outstanding loans secured by encumbrances upon the Property, and finally any excess shall be apportioned between Developer and the City as their interests may appear, and Developer shall have no further obligation hereunder to restore, repair or rebuild the Project; provided, however, that within any period when there is an outstanding mortgage upon the Project, such proceeds shall be applied in accordance with Capital Improvement Loan documents. The value of each interest for the purpose of apportioning excess proceeds under this Section 17.5 shall be the fair market value of such interests immediately prior to the occurrence of the damage or destruction.

In the event this Regulatory Agreement is terminated by mutual agreement of the City and Developer and a portion of the Project is not restored, repaired or rebuilt, a pro rata

portion of the insurance proceeds and proceeds of the Capital Replacement Reserve and Operating Reserve attributable to the portion of the Improvements which has been terminated shall be jointly retained by the City and Developer and shall be applied first to any payments due under this Regulatory Agreement from Developer to the City, second to restore the applicable portion of the Property and Project to their original condition and to a neat and clean condition, third to repay any outstanding loans secured by encumbrances upon the Property, and finally any excess shall be apportioned between Developer and the City as their interests may appear, and Developer shall have no further obligation hereunder to restore, repair or rebuild the applicable portion of the Project subject to termination; provided, however, that within any period when there is an outstanding mortgage upon the Project, such proceeds shall be applied in accordance with Capital Improvement Loan documents. The value of each interest for the purpose of apportioning excess proceeds under this Section 17.5 shall be the fair market value of such interests immediately prior to the occurrence of the damage or destruction.

18. Eminent Domain. In the event that the Property and/or the Project or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then, as between the City and Developer (or mortgagee, if a mortgage is then in effect), the interests of the City and Developer (or mortgagee) in the award and the effect of the taking upon this Regulatory Agreement shall be as follows:

- (a) In the event of such taking of only a part of the Property, leaving the remainder of the Property in such location and in such form, shape and size as to be used effectively and practicably for the conduct thereon of the uses permitted hereunder, this Regulatory Agreement shall terminate and end as to the portion of the Property so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Property not so taken.
- (b) In the event of taking of only a part of the Property, leaving the remainder of the Property in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, for the conduct thereon of the uses permitted hereunder, this Regulatory Agreement and all right, title and interest thereunder shall cease on the date title to the Property or the portion thereof so taken vests in the condemning authority.
- (c) In the event the entire Property is taken, this Regulatory Agreement and all of the right, title and interest thereunder, shall cease on the date title to the Property so taken vests in the condemning authority.
- (d) Promptly after a partial taking, at Developer's expense and in the manner specified in provisions of this Regulatory Agreement related to maintenance, repairs, alterations, Developer shall restore the Project, to the extent possible and as permitted by law, and to the extent of condemnation proceeds received by Developer, so as to place them in a

condition suitable for the uses and purposes for which the Property was leased.

- (e) In the event of any taking under subparagraphs (a), (b) or (c) hereinabove, that portion of any award of compensation attributable to the fair market value of the Property and Improvements or portion thereof taken, valued as subject to this Regulatory Agreement, shall belong to the City. That portion of any award attributable to the fair market value of Developer's fee interest with right of reversion in the Property and Improvements pursuant to this Regulatory Agreement shall belong to Developer. That portion of any award attributable to the fair market value of the Project or portion thereof taken shall belong to the City and Developer, as their interests may appear, except that in the event of a partial taking, where the Regulatory Agreement remains in effect and Developer is obligated to restore or repair the Project, then Developer shall be entitled to any portion of the award attributable to severance damages to the remaining Project to the extent necessary to restore or repair the Project and any remaining severance damages shall be payable to the City. Said award shall be used for the restoration, repair or rebuilding of the Project in accordance with plans and specifications approved in writing by the City to the extent necessary to restore or repair the Project and any remaining severance damages shall be payable to the City. The value of each interest for the purpose of apportionment under this Section shall be the fair market value of such interests at the time of the taking.
- (f) Provided, however, that within the period during which there is an outstanding mortgage on the Project, the mortgagee shall be entitled to any portion of the award attributable to the Project, consistent with the loan documents between Developer and the mortgagees. Any excess portion of the award attributable to the condemnation of the Project shall be payable to the City.
- (g) Notwithstanding the foregoing provisions of this Section, the City may, in its discretion and without affecting the validity and existence of this Regulatory Agreement, transfer the City's reversionary interests in the Property in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by the City, Developer (or mortgagee if a mortgage is then in effect) and the City shall retain whatever rights they may have to recover from said authority the fair market value of their respective interests in the Project taken by the authority.
- (h) All valuations to be made pursuant to this Section 18 shall be made by mutual agreement of the City and Developer.

19. Obligation to Refrain from Discrimination. Except as otherwise prescribed by HUD under the Section 811 program, Developer covenants by and for

itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, familial status, national origin or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of residents, lessees, subtenants, sublessees or vendees of the Property or any portion thereof.

Developer shall refrain from restricting the rental or lease of the Property and the Project, or any portion thereof, on the basis of race, color, religion, sex, familial status, national origin or disability (except to the extent not in violation of Federal HUD regulations) of any person. All such leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- (a) **In Leases:** " Except as otherwise prescribed by HUD under the Section 811 program, the lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, sex, familial status, national origin or disability in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of residents, lessees, sublessees, subtenants, or vendees in the premises herein leased."
- (b) **In Contracts:** " Except as otherwise prescribed by HUD under the Section 811 program, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, familial status, national origin or disability (except to the extent not in violation of Federal HUD regulations) in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of residents, lessees, subtenants, sublessees or vendees of the premises."
- (c) **In Deeds:** " Except as otherwise prescribed by HUD under the Section 811 program, the grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, familial status, national origin or disability (except to the extent not in violation of Federal

HUD regulations) in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

20. Nondiscrimination in Employment. Developer, for itself and its successors and assigns, agrees that during the operation of the Project provided for in this Regulatory Agreement, and during any work of repair or replacement, Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, familial status, national origin, disability (except to the extent not in violation of Federal HUD regulations), or sexual orientation, or on the basis of any other category or status not permitted by law.

21. Compliance with Law. Developer agrees, at its sole cost and expense, to comply and secure compliance by all contractors and residents of the Property and Project with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Property and the Project, as well as operations conducted thereon, and to faithfully observe and secure compliance by all contractors and residents of the Property and Project with, in the use of the Property and the Project all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and fees, if any, assessor levied upon Developer or the Property or the Project, including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Developer or by reason of the business or other activities of Developer upon or in connection with the Property and the Project subject to the right to contest in good faith such taxes and/or assessments. Developer shall use good faith efforts to prevent residents from maintaining any nuisance or other unlawful conduct on or about the Property, and shall take such actions as are reasonably required to abate any such violations by residents of the Property and Project. The judgment of any court of competent jurisdiction, or the admission of Developer or any sublessee or permittee in any action or proceeding against them, or any of them, whether the City be a party thereto or not, that Developer, sublessee or permittee has violated any such ordinance or statute in the use of the Property or the Project shall be conclusive of that fact as between the City and Developer, or such sublessee or permittee.

22. Entry and Inspection. The City reserves and shall have the right during reasonable business hours (except in cases of emergency), upon twenty-four (24) hours prior notice (except in cases of emergency) to Developer by the City Manager of the City or designee, to enter the Property and the Project for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Property and the Project or to inspect the operations conducted thereon, subject to the City's indemnification obligations as set forth in Section 16 hereof.

23. Right to Maintain. In the event that the entry or inspection by the City pursuant to Section 22 hereof discloses that the Property or the Project are not in a decent, safe, and sanitary condition, the City shall have the right, after thirty (30) days written notice to Developer (except in case of emergency, in which event no notice shall be necessary), to have any necessary maintenance work done for and at the expense of Developer and Developer hereby agrees to pay promptly any and all costs incurred by the City in having such necessary maintenance work done in order to keep the Property and the Project in a decent, safe and sanitary condition, provided that the City delivers such notice which is required hereunder. The rights reserved in this Section shall not create any obligations on the City or increase obligations elsewhere in this Regulatory Agreement imposed on the City.

24. Events of Default and Remedies.

24.1 Events of Default by Developer. The occurrence of any one (1) or more of the following shall constitute an event of default hereunder:

- (a) Developer shall abandon or surrender the Property or the Project for a continuous period of sixty (60) days; or
- (b) Developer shall fail to materially perform any covenant or condition of this Regulatory Agreement, and any such failure shall not be cured within thirty (30) days following the service on Developer of a written notice from the City specifying the failure complained of, or if it is not reasonably practicable to cure or remedy such failure within such thirty (30) day period, then Developer shall not be deemed to be in default if Developer shall commence such cure within such thirty (30) day period and thereafter diligently prosecute such cure to completion; or
- (c) Subject to any restrictions or limitations placed on the City by applicable laws governing bankruptcy, Developer's (i) application for, consent to or suffering of the appointment of a receiver, trustee or liquidator for all or for a substantial portion of its assets; (ii) making a general assignment for the benefit of creditors; (iii) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (iv) becoming unable to or failing to pay its debts as they mature; (v) being adjudged a bankrupt; (vi) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); (vii) convening a meeting of its creditors or any class thereof for purposes of effecting a moratorium, extension or composition of its debts; or (viii) suffering or permitting to continue unstayed and in effect for thirty (30) consecutive days any attachment, levy, execution or seizure of all or a portion of Developer's assets or of Developer's interest in this Regulatory Agreement; then such event shall constitute an event of default under this Regulatory Agreement.

24.2 Remedies of the City. In the event of any such default as described in Section 24.1, and the expiration of any applicable cure period, the City may, at its option:

- (a) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by the City in enforcing this provision) to the account of Developer, which charge shall be due and payable within thirty (30) days after presentation by the City of a statement of all or part of said costs;
- (b) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by the City in enforcing this provision) from the proceeds of any insurance, to the extent such proceeds are available to the City in accordance with this section;
- (c) Exercise its right to maintain any and all actions at law or suits in equity to compel Developer to correct or cause to be corrected said default;
- (d) Have a receiver appointed to take possession of Developer's interest in the Property and the Project, with power in said receiver to administer Developer's interest in the Property and the Project, to collect all funds available to Developer in connection with its operation and maintenance of the Property and the Project; and to perform all other duties consistent with Developer's obligation under this Regulatory Agreement as the court deems proper; or
- (e) Maintain and operate the Property and the Project, without terminating this Regulatory Agreement.

24.3 Damages. Damages which the City recovers in the event of default under this Regulatory Agreement shall be those which are then available under applicable California case and statutory law in the State of California.

24.4 Rights and Remedies are Cumulative. The remedies provided by this Section 24 are not exclusive and shall be cumulative to all other rights and remedies possessed by the City. The exercise by the City of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Developer.

24.5 Rights of Lenders. Any mortgagee shall have the right, at any time during the Term, while this Regulatory Agreement is in full force and effect:

- (i) to do any act required by Developer hereunder, and all such acts done or performed shall be effective as to prevent a forfeiture of Developer's rights hereunder as if the same had been done or performed by Developer;
- (ii) to rely on the security afforded by the fee estate, and to acquire and to succeed to the interest of Developer hereunder by foreclosure,

whether by judicial sale, by power of sale contained in any security instrument, or by deed given in lieu of foreclosure, and thereafter convey or assign title to the fee estate so acquired to any other person, firm or corporation.

Any provisions contained in this Regulatory Agreement to the contrary notwithstanding, any mortgagee of the Property or its assignee, may enforce such mortgage and acquire title to the estate in any lawful manner; and, pending foreclosure of any such mortgage, may take possession of the Property.

25. Miscellaneous.

25.1 Governing Law. The laws of the State of California shall govern the interpretation and enforcement of this Regulatory Agreement.

25.2 Legal Actions. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Regulatory Agreement. Such legal actions must be instituted in the Superior Court of San Diego County, North County Division, State of California, in any other appropriate court in that County, or in the Federal District Court in the District of California in which the Property is located.

25.3 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against the City, service of process on the City shall be made by personal service upon the Chairman or City Manager or designee of the City, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City against Developer, service of process on Developer shall be made by personal service upon Developer or in such other manner as may be provided by law.

25.4 Attorneys' Fees and Court Costs. In the event that either the City or Developer shall bring or commence an action to enforce the terms and conditions of this Regulatory Agreement or to obtain damages against the other party arising from any default under or violation of this Regulatory Agreement, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefore in addition to whatever other relief such prevailing party may be entitled.

25.5 Financial Statement; Inspection of Books and Records. Developer shall submit to the City on an annual basis, not later than one hundred twenty (120) days after the end of each fiscal year during the term of this Regulatory Agreement, a financial statement for the operation of the Property and Project, which is prepared by a certified public accounting firm. In addition, the City shall have the right (at Developer's office, upon not less than forty-eight (48) hours' notice, and during normal business hours) to inspect the books and records of Developer pertaining to the Property as pertinent to the purposes of this Regulatory Agreement. Developer also has the right (at the City's office, upon not less than forty-eight (48) hours' notice, and at all reasonable

times) to inspect the books and records of the City pertaining to the Property as pertinent to the purposes of this Regulatory Agreement.

25.6 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified or registered mail, return receipt requested, postage prepaid, and addressed as follows:

If to City:
City of Oceanside
300 North Coast Highway
Oceanside, California 92054
Attention: Director of
Housing and Neighborhood

If to Developer:
TERI, Inc.
3225 Roymar Rd.
Oceanside, CA 92054
Attn: William Mara

With Copy To: City Attorney

Or to such other address as either party shall later designate for such purposes by written notice to the other party. The City shall also give copies of such notices to any Lender or mortgagee, which has requested such notice. Notices shall be deemed effective upon personal delivery or within three (3) days after mailing thereof as provided above; provided, however that refusal to accept delivery after reasonable attempts thereto shall constitute receipt. Any notices attempted to be delivered to an address from which the receiving party has moved without notice to the delivering party shall be effective on the third day after the attempted delivery or deposit in the United States mail.

25.7 Time is of the Essence. Time is of the essence in the performance of the terms and conditions of this Regulatory Agreement.

25.8 Conflict of Interest. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Regulatory Agreement nor shall any such member, official or employee participate in any decision relating to the Regulatory Agreement which affects his personal interests or the interests of any limited partnership, partnership or association in which he is directly or indirectly interested. Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Regulatory Agreement.

25.9 Non-Liability of the City and City Officials and Employees. No member, official, officer, employee, agent, or representative of the City or City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligations under the terms of this Regulatory Agreement.

25.10 Relationship. The parties do not intend nor shall this Regulatory Agreement be deemed to create a partnership or joint venture.

25.11 Transactions with Affiliates. Developer shall not have the right to enter into transactions with subsidiaries, affiliates and other related entities for the purpose of leasing space, providing cleaning, maintenance and repair services, insurance policies and other purposes related to the use and development of the Property and the Project, without the prior written approval of the City, which approval shall be given only if the City reasonably concludes that all such costs, charges and rents are competitive with the costs, charges, rent and other sums which would be paid by or to, as the case may be, an unrelated third party.

25.12 Waivers and Amendments. All waivers of the provisions of this Regulatory Agreement must be in writing and signed by the appropriate authorities of the City or Developer. The waiver by the City of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by the City shall not be deemed to be a waiver of any preceding breach of Developer of any term, covenant or condition of this Regulatory Agreement, regardless of the City's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of the City to require or exact full and complete compliance with any of the covenants or conditions of this Regulatory Agreement shall not be construed as in any manner changing the terms hereof and shall not prevent the City from enforcing any provision hereof.

All amendments hereto must be in writing and signed by the appropriate authorities of the City and Developer. The Developer's mortgagee permitted by this Regulatory Agreement shall not be bound by any waiver or amendment to this Regulatory Agreement without Developer's mortgagee giving its prior written consent.

25.13 Entire Agreement; Duplicate Originals; Counterparts. Except as set forth in Section 25.16, this Regulatory Agreement sets forth the entire understanding of the parties with respect to the Property and the Project. This Regulatory Agreement is executed in three (3) triplicate originals and counterparts, each of which is deemed to be an original.

25.14 Severability. If any provision of this Regulatory Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Regulatory Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

25.15 Terminology. All personal pronouns used in this Regulatory Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of sections are for

convenience only, and neither limit nor amplify the provisions of the Regulatory Agreement itself.

25.16 Recordation. An original of this Regulatory Agreement, and any amendment thereof, shall, at the expense of Developer, be acknowledged by each of the parties hereto and recorded and referenced in the official records of the County of San Diego, California, at the close of Escrow handling the conveyance of the Property from City to Developer and concurrently with the recordation of the Grant Deed.

25.17 Binding Effect. This Regulatory Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

25.18 Estoppel Certificate. Each of the parties shall at any time and from time to time upon not less than twenty (20) days prior notice by the other, execute, acknowledge and deliver to such other party a statement in writing certifying that this Regulatory Agreement is unmodified and is in full force and effect (or if there shall have been modifications that this Regulatory Agreement is in full force and effect as modified and stating the modifications), and the dates to which the rent has been paid, and stating whether or not to the best knowledge of the signer of such certificate such other party is in default in performing or observing any provision of this Regulatory Agreement, and, if in default, specifying each such default of which the signer may have knowledge, and such other matters as such other party may reasonably request, it being intended that any such statement delivered by Developer may be relied upon by the City or any successor in interest to the City or any prospective mortgagee or encumbrancer thereof, and it being further intended that any such statement delivered by the City may be relied upon by any prospective assignee of Developer's interest in this Regulatory Agreement or any prospective mortgagee or encumbrancer thereof. Reliance on any such certificate may not extend to any default as to which the signer of the certificate shall have had no actual knowledge.

25.19 Force Majeure. The time within which the City or Developer is obligated herein to perform any obligation hereunder, other than an obligation that may be performed by the payment of money, shall be extended and the performance excused when the delay is caused by fire, earthquake or other natural disasters, strike, lockout, acts of public enemy, riot, insurrection or other cause beyond the control of the applicable party.

25.20 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by the City, the City Manager of the City or his or her designee is authorized to act on behalf of the City unless specifically provided otherwise or the law otherwise requires.

25.21 Certain Acts Prohibited. Developer shall not make any sale, encumbrance, assignment or conveyance, or transfer in any other form, of the Property or Project or any part thereof or of any of its interest therein other than in accordance

with the terms of this Regulatory Agreement and shall not, without the prior approval of the City:

- (a) Make any distribution not permitted by the terms of this Regulatory Agreement;
- (b) Assign or transfer any right to operate or manage the Project, except pursuant to Paragraph 14;
- (c) Require, as a condition of the occupancy or leasing of any housing unit in the Project, any consideration or deposit in excess of that permitted by the Program Regulations to guarantee the performance of the covenants of the lease. Any funds collected as security deposits shall be kept separate and apart from all other funds of the Project in a trust account with a depository insured by the Federal Deposit Insurance Corporation. The balance of such account shall at all times equal or exceed the aggregate of all outstanding obligations under said account;
- (d) Permit the use of the units in the Project for any purpose except that which was approved by the City;
- (e) Enter into any contract or contracts for supervisory or managerial services except as permitted by this Regulatory Agreement; or
- (f) Invest any funds from the Project in any property, real or personal, except as authorized by this Regulatory Agreement or by the City or deposit any such funds in a depository not authorized by this Regulatory Agreement or approved by the City.

25.22 Violation of Regulatory Agreement by Developer. In the event of the material violation of any of the provisions of this Regulatory Agreement by Developer, the City shall give written notice thereof to Developer of such violation by specifying: (a) the nature of the event or deficiency giving rise to the violation, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) days from the mailing of the notice by which such action to cure must be accomplished or if such breach is not reasonably susceptible of cure within such (30) day period, then within such additional time as is reasonably necessary to cure such failure, provided Developer has commenced cure within the initial thirty (30) day period and diligently pursues such cure to completion.

25.23 After the expiration of all applicable notice and cure periods as specified here, the City may, without further notice, declare in writing a default under this Regulatory Agreement effective on the date of such declaration of default and upon any such declaration of default the City may apply to any court, state or federal, for specific performance of this Regulatory Agreement; for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Regulatory Agreement, or for such other relief as may be appropriate, the venue for any such proceedings shall be in the County San Diego, State of California.

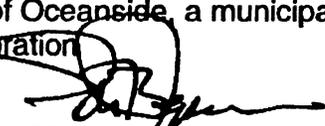
25.24 Compliance with Law. Developer agrees that, at all times, its acts regarding the development and operation of the Property and Project, shall be in compliance with all applicable laws, ordinances and/or federal, state, county or local regulations. Developer shall not maintain or commit any nuisance or unlawful conduct (as now or hereinafter defined by any applicable statutory or decisional law) on the Property, the in Project, or any parts thereof.

25.25 Amendments. This Regulatory Agreement shall not be altered or amended except in writing and mutually executed between the parties.

25.26 Other Federal Regulations. Developer agrees to carry out all activities in compliance with Title 24, Subtitle A, Part 92 of the Code of Federal Regulations; the Housing and Community Development Act of 1974 as amended; Title 24, Chapter V, Part 570 of the Code of Federal Regulations; Title 24, Subtitle A, Part 58 of the Code of Federal Regulations; Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; Section 109 of the Housing and Community Development Act of 1974; Section 3 of the Housing and Urban Development Act of 1968; Executive Orders 11246, 11063 and 11593; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Title 24, Part 42 of the Code of Federal Regulations; OMB Circular A-122 and Attachments A, B, C, F, H, N and O; the Archeological and Historical Preservation Act of 1974; the Architectural Barriers Act of 1968; the Hatch Act (Chapter 15 of Title 5, U.S.C.); the Flood Disaster Protection Act of 1974; the Clean Air Act (42 U.S.C. Section 1857 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et seq.). The lender agrees to comply with the provisions of Section 42 (h)(6)(E)(ii) of the Internal Revenue Code of 1986 (Or the corresponding provision of any successor statute).

IN WITNESS WHEREOF, this Regulatory Agreement constitutes the terms and conditions for the use of the Property and the parties hereto have caused this Regulatory Agreement to be executed in their respective names by their duly authorized officers as of the date first above written.

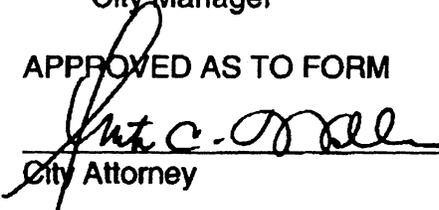
City:
City of Oceanside, a municipal corporation

By: 
Steven R. Jepsen
City Manager

Developer:
"TERI, Incorporated", a California non-profit public benefit corporation

By: 
Name: CHERYL KILMER
Title: EXECUTIVE DIRECTOR

APPROVED AS TO FORM


City Attorney

Notary form and signature authorization to be attached.