ITEM NO. 20

STAFF REPORT

CITY OF OCEANSIDE

DATE: January 14, 2009

TO: Honorable Mayor and City Councilmembers and Chairman and Community Development Commissioners

FROM: Economic and Community Development Department

SUBJECT: **APPROVAL OF A DISPOSITION AND DEVELOPMENT AGREEMENT FOR THE SALE OF REAL PROPERTY TO LIL JACKSON SENIOR COMMUNITY FOR THE DEVELOPMENT OF AN 80-UNIT SENIOR AFFORDABLE RENTAL HOUSING PROJECT ON LAKE BOULEVARD**

SYNOPSIS

Staff recommends that the City Council and Community Development Commission ("Agency") approve a disposition and development agreement and related documents for the CDC's sale of real property located on Lake Boulevard at Esplanade Street to Lil Jackson Senior Community at a price of $1,800,000, for the development of an 80-unit senior affordable rental housing project; approve loans in the amounts of $2,990,766 from the Agency ("Agency Loan") and $4,138,443 from the City ("City Gap Loan") to fund a portion of the construction of the project; approve budget appropriations in the amounts of $2,638,443 from the City's Inclusionary Housing In-Lieu Trust Fund, $59,013 from HOME Funds to fund the City Gap Loan, and $1,190,766 from the Redevelopment Low- and Moderate-Income Housing Fund to fund the Agency Loan; adopt a resolution authorizing the use of Redevelopment Low- and Moderate-Income Housing Funds outside the Redevelopment Project Area; adopt a resolution affirming Planning Commission approval of Tentative Parcel Map No. P-19-06, Development Plan No. D-26-06, and Conditional Use Permit No. C-49-06 by the adoption of its Resolution No. 2008-P57 (as required by the Regulatory Agreement); approve a reimbursement agreement in the amount of $1,347,302.56 as an early advance of a portion of the Agency loan to reimburse the developer for predevelopment expenses; and, authorize the Mayor/Chairman and City Manager/Executive Director to execute the respective documents; authorize the Chairman to sign and the City Clerk to accept the Final Parcel Map, and direct staff to open escrow and conclude the transaction.

BACKGROUND

In August 2002, the City acquired a 5.03-acre vacant parcel on Lake Boulevard at Esplanade Street, designated as Assessor Parcel No. 168-012-28 ("Property"), at a purchase price of $1,800,000 to further its efforts in meeting its mandated affordable housing goals, especially for very low- and lower-income senior citizens.

In January 2003, the City quitclaimed to the Agency the City's interest in the Property and in a Purchase and Sale Agreement and Escrow Instructions with Community HousingWorks, for the development of the site as a multi-unit senior residential rental development. The Agency used $1,800,000 of its Redevelopment Project Area Low- and Moderate-Income Housing Funds ("Set-Aside Funds") to compensate the City for the original purchase of the Property in August 2002. Subsequently, in January 2004 the transaction with Community HousingWorks was terminated and the escrow cancelled.

In 2003, while negotiating its sale of property at 602 Civic Center Drive to the City for the relocation of Fire Station 1, Southern California Presbyterian Homes ("SCPH"), based in Glendale, California, proposed developing the Property for low-income senior citizens. SCPH currently owns and manages more than 4,500 stabilized housing units and has more than 1,100 units in development or under construction.

In March 2004, the Agency entered into an Option Agreement ("Option") with SCPH for the sale of the Property at a purchase price of $1,800,000 and the development of an affordable senior housing complex of up to 125 rental units. Funding for the development of the project was anticipated to come from the following sources: 1) U.S. Department of Housing and Urban Development ("HUD") Section 202/811 housing programs capital advance funds ("HUD Capital Advance"); 2) a loan from the Agency; and 3) a loan from the City. HUD Capital Advance funds cover only costs associated with the construction of a basic building and essential amenities. Costs associated with any offsite improvements and nonessential onsite amenities or architectural features required by the local agency through the entitlement process may not be paid from the HUD Capital Advance funds and must be paid from other sources.

Under the terms of the Option, the Agency agreed to loan SCPH the purchase price of $1,800,000 to cover a portion of the costs associated with the development of the Property not covered by the HUD Capital Advance, with the caveat that SCPH would apply for and obtain a Fund Reservation from HUD by the 2006 application cycle. Additionally, the Option contemplated that if the project costs exceed the total of the HUD Capital Advance and Agency Loan amounts, an additional loan would be needed from the City.

Initial assessment of the Property to determine its suitability for the proposed project revealed that portions lie within the 100-year flood plain of the Buena Vista Creek. HUD regulations do not permit the use of HUD Capital Advance funds for projects within a flood plain. Therefore, the original building layout was revised to bring it out of the flood plain, and only an approximate 2.2-acre portion of the Property ("Site") will be conveyed to LJSC, with the remainder being retained by the City and restricted and reserved for habitat conservation as required by the regulatory agencies under the Mitigated Negative Declaration prepared and approved for the project.

In January 2006, SCPH received a Fund Reservation in the amount of $9,981,800 from HUD towards the development of the Site, consisting of 79 one-bedroom affordable units and one two-bedroom onsite manager unit. Pursuant to HUD requirements, SCPH formed

the Lil Jackson Senior Community, a California nonprofit public benefit corporation ("LJSC"), to develop and operate the project.

As required under the Option, the sale of the Site to LJSC and its development and operation of the Site will be controlled by a Disposition and Development Agreement ("DDA"), the components of which are: 1) the DDA; 2) Schedule of Performance; 3) Scope of Development; 4) Grant Deed from the Agency to LJSC; 5) Project Budget; 6) Agency Loan Documents, including a loan agreement, promissory note and deed of trust; 7) City Gap Loan Documents, with related attachments; 8) Certificate of Completion; and 9) Regulatory Agreement.

On October 17, 2006, LJSC made application to the Planning Commission for entitlements for the development of the Property as an 80-unit senior affordable rental project known as Lil Jackson Senior Community, which entitlements included Tentative Parcel Map No. P-19-06, Development Plan No. D-26-06, and Conditional Use Permit No. C-49-06. At its meeting on October 6, 2008, the Planning Commission unanimously approved the project and adopted its Resolution No. 2008-P57 setting forth certain findings and conditions for the development of the Site, and by Resolution No. 2008-P56 approved the Mitigated Negative Declaration and Initial Study prepared for the project pursuant to the California Environmental Quality Act ("CEQA").

ANALYSIS

The proposed project is a three-story building, consisting of 79 one-bedroom rental units and one two-bedroom manager's unit, recreation room, computer center, arts and crafts room (activity center), manager's office and reception area. Universal Design and accessibility elements will be used in the project design and over 20,000 square feet of usable open space will be provided. The building will be situated to the front of the site with 41 spaces of at-grade parking at the rear.

The project will further the City's efforts in meeting the mandated affordable housing goals, especially for very low-income seniors. Under the terms and conditions of the proposed Grant Deed and Regulatory Agreement the project will be age- and income-level restricted for an affordability period of 55 years commencing upon the issuance of the Certificate of Completion, with all 79 rental units being occupied by elderly (age 62 or older) very low- and lower-income persons and households, whose annual incomes are at 50 percent of the annual median income ("AMI"), or below. The estimated rents for the units, at the current AMI, would be a maximum of $604 per month for a unit occupied by a qualifying single person and $690 per month for a unit occupied by a qualifying two-member family or household.

For the first 40 years of the affordability period all of the rental units will be restricted to very low-income persons or households. After the 40th year of the term of the affordability period, if new funding, whether public or private, is not available and obtained to offset or subsidize rents, the rental units may be rented to lower-income persons or households. The HUD project rental assistance funding is anticipated to expire after the 40th year of the

affordability period and the adjustment in the income level from very low-income to lower-income persons and households would be needed to sustain the Project. The requirement to retain the affordability period for the 55-year period will be protected under the terms of the Grant Deed and Regulatory Agreement.

Sale of Property and Financing:

Escrow for the sale and conveyance of the Site will occur upon the closing and funding of the HUD Capital Advance, which is anticipated to occur in September 2009. The Agency and LJSC shall each pay one-half of the escrow fees, with the Agency paying for title insurance and any recording fees associated with the recording of the grant deed.

At the closing of the sale of the Site by the Agency, LJSC will deposit into escrow the purchase price of $1,800,000. Concurrent with this closing a trust account will be established for the construction financing as required by HUD. This trust account will be created from four funding sources: 1) the Agency Loan in the amount of $2,990,766, consisting of the purchase price of $1,800,000 and $1,190,766 in Redevelopment Low- and Moderate-Income Housing Funds; 2) the City Gap Loan in the amount of $4,138,443, comprised of $2,638,443 from the Inclusionary Housing In-Lieu Trust Fund and $1,500,000 from HOME funds, for a total sum of Agency/City funding of $7,129,209 for the project; 3) the HUD Capital Advance of $9,981,800; and 4) a Developer Fee contribution of $183,400 from LJSC, for a total project cost of $17,294,409. HUD regulations require that the Agency and City funds be disbursed to cover project costs before the HUD funds are expended. Disbursements of all funds in the trust account will be controlled and made pursuant to HUD requirements and regulations.

Repayment of the Agency and City Gap Loans will be made annually from 50 percent of the Residual Receipts from the project. Residual Receipts are defined as the net revenues from rents and other charges received from the project after payment of operating expenses, debt service on loans (other than the Agency and City Gap Loans), management and deferred developer's fees, and deposits made to the capital replacement reserves. The annual expenses of the project will be controlled by the annual operating budget approved by HUD and the City.

The Agency Loan will bear 3 percent simple interest and the City Gap Loan will bear 5 percent simple interest over their 55-year terms, commencing upon the issuance of the Certificate of Completion for the improvements, with any interest accrued and unpaid during the first 40 years being forgiven. The order of repayment of the City Gap Loan shall be HOME Funds repaid first followed by Inclusionary Housing In-Lieu Trust Funds.

With the exception of the portion of the City Gap Loan funded with HOME funds, which by federal regulations must be repaid, any unpaid portion of the Agency Loan and City Gap Loan shall be forgiven on the 55th anniversary of the date the Certificate of Occupancy is issued for the project so long as LJSC is not in material breach of any of its obligations under the related documents and instruments.

It is anticipated that construction of the project will begin in or before September 2009, immediately after the HUD Capital Advance funds have been released to LJSC and escrow for the sale of the Site by the Agency closes. Completion of construction and initial lease-up of the project is estimated to be in January 2011.

Reimbursement of Predevelopment Expenses:

As a condition for the release of the HUD Capital Advance for the project, HUD requires that LJSC be in a position to receive building permits for the construction of the project. This has caused LJSC and its consultants to expend out-of-pocket funds for predevelopment activities including, but not limited to, physical needs assessment, tentative and final parcel map approvals, planning approvals and entitlements, environmental studies, architectural and engineering drawings and approvals (the "Predevelopment Approvals"). Unforeseen delays in the Predevelopment Approvals process meant LJSC and its consultants had to carry out-of-pocket predevelopment expenses for a longer period of time than expected. LJSC is requesting an advance on the Agency Loan to offset these out-of-pocket expenses and to cover additional costs and fees for the issuance of the required building permits.

HUD regulations allow for the release of the HUD Capital Advance funds prior to the actual issuance of building permits provided LJSC can demonstrate that the City has received payment of fees and service charges normally required for permits. Therefore, staff recommends that the Agency provide LJSC an advance and early release of funds on the Agency Loan in the *not to exceed* amount of $1,347,302.56 ("Agency Loan Advance") under the terms and conditions of the proposed predevelopment expenses reimbursement agreement ("Reimbursement Agreement").

Staff further recommends that the Agency Loan Advance be disbursed to LJSC as follows: 1) within 10 business days following the approval of the Reimbursement Agreement, Agency would disburse the sum of $258,556.56 to reimburse LJSC for that portion of the Out-of-Pocket Expenses identified as Architectural/Engineering Fee, Consultant Fees, and other expenses owed to SCPH, which have been paid by LJSC and/or SCPH and listed on Exhibit "A" of the Reimbursement Agreement; and 2) the remaining $1,088,746 of the Agency Loan Advance will be disbursed, in whole or in parts, at the time or times when payment of fees is required to be paid to the City's Development Services, Fire, and Water Utilities Departments for those items listed under the Permit Fees category as shown on said Exhibit "A".

As security for the Agency Loan Advance, LJSC shall represent and warrant that, in the event LJSC fails to obtain the HUD Capital Advance and escrow does not close as contemplated under the DDA, all reports, surveys, studies, assessments, drawings, plans, permits, and other similar products, for which costs have been reimbursed by Agency to LJSC under the Reimbursement Agreement shall be made assignable to and become the property of the Agency, whether in draft or final form.

Affirmation of Planning Commission Approval:

In conformance with the Regulatory Agreement, staff recommends that the City Council adopt a resolution affirming the Planning Commission approval of Tentative Parcel Map No. P-19-06, Development Plan No. D-26-06, and Conditional Use Permit No. C-49-06 setting forth certain findings and conditions for the development of the Site by the adoption of its Resolution No. 2008-P57, and by its Resolution No. 2008-P56 approving the Mitigated Negative Declaration and Initial Study prepared for the project pursuant to CEQA.

Parcel Map:

Since LJSC will only be acquiring an approximate 2.2-acre portion of the Property, a parcel map will be created to divide the Property into two parcels. Because the Property is owned by the Agency (CDC) the map will need to be signed by the Chairman as representative of the property owner. The map will be processed following the approval of the DDA; therefore, staff recommends that the CDC authorize the Chairman to sign and the City Clerk to accept the Final Parcel Map upon its completion and approval by the City Engineer.

FISCAL IMPACT

The total cost of development is $17,294,409; the development cost per unit is $216,180. The proposed financing is $9,981,800 of HUD Capital Advance funds, $2,990,766 from the Agency Loan, $4,138,443 for the City Gap Loan [The City Gap Loan is comprised of $2,638,443 from the Inclusionary Housing In-Lieu Trust Fund and $1,500,000 from HOME funds] and $183,400 in developer fee that LJSC is contributing to the project verses providing equity into the project. The developer fee is an allowable expense under the HUD Capital Advance and is normally paid to the developer as compensation for constructing the project.

Staff recommends that $2,638,443 of Inclusionary Housing In-Lieu Funds (278.6990.00277-expenditure / 277.298824.4990.00278-revenue) be transferred to fund the City Gap Loan portion of the financing for the project, the approximate available balance of Inclusionary Housing In-Lieu Funds, after this appropriation is $1,778,457. The remaining loan amount, $1,500,000, will be made up from the Federal HOME program fund. The City Gap Loan will bear 5 percent simple interest during the 55-year term of the loan and shall be paid from residual receipts.

Staff recommends that an additional $59,013 in HOME funds be appropriated to the Lil Jackson Senior Community (277.298824.5374-expenditure / 277.298824.4458-revenue). On June 18, 2008, $1,440,987 of HOME funds was appropriated to the project. An additional $59,013 will increase the HOME funds needed for this project to $1,500,000. The HOME Program unallocated account (277.294798.5252-expenditure / 277.294798.4458-revenue) has a balance of $375,067. The Appropriation of $59,013 to the Lil Jackson Senior Community leaves a balance of $316,055.

The order of repayment of the City Gap Loan shall be HOME Funds repaid first followed by Inclusionary Housing In-Lieu Trust Funds.

Staff further recommends that $1,800,000 paid by LJSC for the purchase of the property be used to fund a portion of the Agency Loan and that an additional $1,190,766 (594.6990.00277-expenditure / 277.298824.4990.00594-revenue) in Redevelopment Low- and Moderate-Income Housing Funds be allocated from anticipated revenues (594.5940.4101.00002) to increase the Agency Loan to $2,990,766. The estimated available fund balance, at the end of the fiscal year, after the loan to LJSC, is $1,205,804. The Agency Loan will bear 3 percent simple interest during the 55-year term of the loan and will be paid from residual receipts. Payments against the Agency Loan will be credited to the Redevelopment Low- and Moderate-Income Housing Funds account.

Provided LJSC is not in default of the Agency Loan, the City Gap Loan, the Regulatory Agreement, the DDA, and the HUD Capital Advance Documents, any interest accrued and unpaid during the first 40 years of the term of the Agency and City Gap Loans shall be forgiven. However, commencing on the 41st year of the term of the Loans, and continuing through the remaining term thereof, LJSC will be required to make payments of principal and interest.

With the exception of the portion of the City Gap Loan funded with HOME Funds, which by federal regulations must be repaid, any unpaid portion of the Agency Loan and City Gap Loan shall be forgiven on the 55th anniversary of the date the Certificate of Occupancy is issued for the project so long as LJSC is not in material breach of any of its obligations under the related documents and instruments.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met by LJSC as of the close of escrow for the conveyance of the Site from the Agency to LJSC.

CITY ATTORNEY'S ANALYSIS

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

COMMISSION OR COMMITTEE REPORT

The Redevelopment Advisory Committee reviewed this item at its meeting on November 12, 2008, and unanimously approved the funding revisions for the Lil Jackson Senior Community.

The Housing Commission unanimously recommended that the City Council and the Community Development Commission approve the DDA and funding revisions for Lil Jackson Senior Community at its Adjourned Meeting on December 9, 2008 (summary of the Commission's action is attached).

RECOMMENDATION

Staff recommends that the City Council and the Community Development Commission:

1. Approve the disposition and development agreement and related documents for the sale of the Property from the Agency to Lil Jackson Senior Community, at a sale price of $1,800,000, for the development of an 80-unit senior affordable rental housing project;

2. Approve the loans in the amount of $2,990,766 from the Agency and $4,138,443 from the City to fund a portion of the construction of the project;

3. Approve a budget appropriation in the amount of $2,638,443 from the City's Inclusionary Housing In-Lieu Trust Fund to fund the City Gap Loan;

4. Approve a budget appropriation in the amount of $59,013 from HOME Funds to fund the City Gap Loan;

5. Approve a budget appropriation in the amount of $1,190,766 from the Redevelopment Low- and Moderate-Income Housing Fund to fund the Agency Loan;

6. Adopt a resolution authorizing the Use of Redevelopment Low- and Moderate-Income Housing Funds outside the Project Area;

7. Adopt a resolution affirming the Planning Commission's approval of the project;

8. Authorize the Mayor/Chairman and City Manager/Executive Director to execute the respective documents;

9. Authorize the Chairman to sign and City Clerk to accept the Final Parcel Map; and,

10. Direct staff to open escrow and conclude the transaction.

PREPARED BY:

William F. Marquis
Senior Property Agent

SUBMITTED BY:

Peter A. Weiss
City Manager/Executive Director

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Margery M. Pierce, Neighborhood Services Director

Jane McVey, Economic and Community Development Director

Douglas E. Eddow, Real Property Manager

Teri Ferro, Financial Services Director

HOUSING COMMISSION REPORT

CITY OF OCEANSIDE

TO: OCEANSIDE CITY COUNCIL – COMMUNITY DEVELOPMENT COMMISSION

FROM: HOUSING COMMISSION

DATE: DECEMBER 9, 2008

THE HOUSING COMMISSION UNANIMOUSLY RECOMMENDS THAT THE CITY COUNCIL AND COMMUNITY DEVELOPMENT COMMISSION APPROVE THE FUNDING REVISIONS FOR LIL' JACKSON SENIOR AFFORDABLE HOUSING COMPLEX ON LAKE BOULEVARD.

CAMP	YES
CHRISTY	YES
COOPER	YES
DAVIS	YES
FARMER	YES
HUSKY	ABSENT
PARKER	YES
SORENSEN	YES

ALTERNATE
SAIZ YES

RESPECTFULLY SUBMITTED,
KAY PARKER, CHAIR

DISPOSITION AND DEVELOPMENT AGREEMENT

BY AND AMONG

CITY OF OCEANSIDE
("CITY")

COMMUNITY DEVELOPMENT COMMISSION
OF THE CITY OF OCEANSIDE
("AGENCY")

AND

LIL JACKSON SENIOR COMMUNITY
("DEVELOPER")

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TABLE OF CONTENTS

I. ['100]SUBJECT OF AGREEMENT 1

A. ['101] Purpose of This Agreement 1
B. ['102] The Comprehensive Affordable Housing Strategy 1
C. ['103] The Project Area Low- and Moderate-Income Housing Funds 1
D. ['104] The Site 2
E. ['105] Parties to the Agreement 2
1. ['106] The Agency 2
2. ['107] The City 2
3. ['108] The Developer 2
F. ['109] Prohibition Against Change in Ownership, Management and Control of Developer 2
G. ['110] Definitions 3

II. ['200]DISPOSITION OF THE SITE 4

A. ['201] Sale and Purchase 4
B. ['202] Escrow 5
C. ['203] Conveyance of Title and Delivery of Possession 7
D. ['204] Form of Deed 7
E. ['205] Condition of Title 7
F. ['206] Time for the Place of Delivery of Deed 7
G. ['207] Payment of the Purchase Price and Recordation of the Deed 7
H. ['208] Title Insurance 7
I. ['209] Taxes and Assessments 8
J. ['210] Possession of the Site 8
K. ['211] Zoning, Etc. of the Site 8
L. ['212] Condition of the Site 8
M. ['213] Preliminary Work by the Developer 8
N. ['214] Submission of Evidence of Equity Capital and Mortgage Financing 9

III. ['300]DEVELOPMENT OF THE SITE 9

A. ['301] Development of the Site by the Developer 9
1. ['302] Scope of Development 9
2. ['303] Basic Concept Drawings 9
3. ['304] Construction Plans, Drawings and Related Documents 10
4. ['305] City Approval of Plans, Drawings and Related Documents 10
5. ['306] Cost of Construction 11
6. ['307] Construction Schedule 11
7. ['308] Indemnification; Bodily Injury and Property Damage Insurance 12
8. ['309] City and Other Governmental Agency Permits 14

9. ['310] Rights of Access 14
10. ['311] Local, State and Federal Laws 14
11. ['312] Antidiscrimination During Construction 15
B. ['313] Responsibilities of the Agency and City 15
C. ['314] Taxes, Assessments, Encumbrances and Liens 15
D. ['315] Prohibition Against Transfer of Site, the Buildings or Structures Thereon and Assignment of Agreement 15
E. ['316] Security Financing; Rights of Holders 16
1. ['317] No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases-Back or Other Financing for Development 16
2. ['318] Holder Not Obligated to Construct Improvements 16
3. ['319] Reserved 16
4. ['320] Reserved 16
5. ['321] Right of City to cure Mortgage, Deed of Trust or other Security Interest Default 16
F. ['322] Right of the City to Satisfy Other Liens on the Site After Title Passes 17
G. ['323] Certificate of Completion 17

IV. ['400] USE OF THE SITE 17

A. ['401] Uses 17
B. ['402] Obligation to Refrain From Discrimination 18
C. ['403] Form of Nondiscrimination and Non-segregation Clauses 18
D. ['404] Effect and Duration of Covenants 19
E. ['405] Rights of Access--Public Improvements and Facilities 19
F. ['406] Affordability Restriction and Tenant Selection 19

V. ['500] FINANCING 20

A. ['501] Method of Financing Acquisition and Development 20
1. ['502] Sources of Financing and Development Costs 20
2. ['503] Submittal of Financing Documents 20
B. ['504] Agency Loan 20
1. ['505] Terms of Agency Loan 21
2. ['506] Amount of Agency Loan 21
3. ['507] Conditions Precedent to Closing of Agency Loan 21
4. ['508] Defaults Following Closing of Agency Loan 22
5. ['509] Repayment of Agency Loan 22
C. ['510] City Gap Loan 23
1. ['511] Terms of City Gap Loan 24
2. ['512] Amount of City Gap Loan 24
3. ['513] Conditions Precedent to Closing of City Gap Loan 24
4. ['514] Defaults Following Closing of City Gap Loan 25
5. ['515] Repayment of City Gap Loan 25
D. ['516] Regulatory Agreement 26

VI. ['600]DEFAULTS, REMEDIES AND TERMINATION 27

A. ['601] Defaults--General 27
B. ['602] Legal Actions 27
1. ['603] Institution of Legal Actions 27
2. ['604] Applicable Law 27
3. ['605] Acceptance of Service of Process 27
C. ['606] Rights and Remedies are Cumulative 28
D. ['607] Damages 28
E. ['608] Specific Performance 28
F. ['609] Remedies and Rights of Termination Prior to Conveyance of the Site to the Developer 28
1. ['610] Termination by the Developer 28
2. ['611] Termination by the City 29

VII. ['700]GENERAL PROVISIONS 29

A. ['701] Notices, Demands and Communications Between the Parties 29
B. ['702] Conflicts of Interest 29
C. ['703] Nonliability of Agency and City Officials and Employees 29
D. ['704] Enforced Delay: Extension of Times of Performance 30
E. ['705] Inspection of Books and Records 30
F. ['706] Plans and Data 30

VIII. ['800] SPECIAL PROVISIONS 30

A. ['801] Recognition of HUD Agreement 30
B. ['802] Submission of Documents to the Agency and City for Approval 31
C. ['803] Amendments to this Agreement 31

IX. ['900]ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS 31

X. ['1000] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY 32

ATTACHMENTS

Attachment No. 1 ..... Site Map

Attachment No. 2 ..... Legal Description

Attachment No. 3 ..... Schedule of Performance

Attachment No. 4 ..... Scope of Development

Attachment No. 5 ..... Grant Deed

Attachment No. 6 ..... Project Budget

Attachment No. 7 ..... Agency Loan Documents

Attachment No. 8 ..... City Gap Loan Documents

Attachment No. 9 ..... Additional Provisions to be added to the Deed of Trust

Attachment No. 10 ..... Certificate of Completion

Attachment No. 11 ..... Regulatory Agreement

DISPOSITION AND DEVELOPMENT AGREEMENT
[and Joint Escrow Instructions]

THIS AGREEMENT, dated the 20th day of November, 2008 solely for identification purposes, is entered into by and among the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE, a public body, corporate and politic of the State of California, (the "Agency"), the CITY OF OCEANSIDE, a municipal corporation (the "City"), and LIL JACKSON SENIOR COMMUNITY, a California non-profit public benefit corporation, (the "Developer"). The effective date of this Agreement shall be the date this Agreement is approved by the Agency and City (the "Effective Date"). The Agency, City and Developer agree as follows:

I. ['100] SUBJECT OF AGREEMENT

A. ['101] Purpose of This Agreement

The purpose of this Agreement is to effectuate the City of Oceanside "Comprehensive Affordable Housing Strategy" and to provide housing opportunities for very low income and lower income elderly persons 62 years of age or older under the federal U.S. Department of Housing and Urban Development ("HUD") Section 202/811 housing programs by providing for the sale and development of certain real property owned or to be owned by the Agency (the "Site") as more fully described herein below, and the Agency agrees to sell the Site to the Developer, and provide certain financial assistance, using HUD Section 202 or Section 811 funds and funds made available for low and moderate income housing purposes pursuant to the California Community Redevelopment Law (Cal. Health and Safety Code Section 33000 et seq.) and in accord with Agency Resolution No. __ and City Resolution No. ____, as adopted on _____, 2008, authorizing the use of said funds outside the Redevelopment Project Area, so that the Developer may construct and operate the residential units described in this Agreement. The sale and development of the Site pursuant to this Agreement, and the fulfillment generally of the Agreement, are in the vital and best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local law and requirements.

B. ['102] The Comprehensive Affordable Housing Strategy

This Agreement is consistent with the provisions of the City's "Comprehensive Affordable Housing Strategy", which was approved by the City Council on March 3, 2004. The Comprehensive Affordable Housing Strategy, as in effect or may have been amended through the Effective Date hereof, is incorporated herein by reference and made a part hereof as though fully set forth herein.

C. ['103] The Redevelopment Project Area Low- and Moderate-Income Housing Funds

The Downtown Redevelopment Project Area (the "Project Area") is located in the City of Oceanside. The exact boundaries of the Project Area are specifically and legally described in the Redevelopment Plan, which was approved and adopted on November 19, 1975, by the City Council of the City of Oceanside by Ordinance No. 75-35 (the "Redevelopment Plan") is incorporated herein by reference and made a part hereof as though fully set forth herein. The use of Redevelopment Project Area Low- and Moderate-Income Housing Funds ("Set-Aside Funds") outside the Project Area is authorized pursuant to the provisions of Agency Resolution No. _____ _____ and City Resolution No. ____, as adopted on _____, 2008, which are incorporated herein by reference and made a part hereof as though fully set forth herein.

D. [' 104] The Site

The "Site" is illustrated on the "Site Map" attached hereto and incorporated herein as Attachment No. 1, and having the legal description set forth in the "Legal Description of the Site", incorporated herein as Attachment No. 2 to this Agreement. The Site consists of unimproved, vacant land.

E. [' 105] Parties to the Agreement

1. [' 106] The Agency

The Agency is the Community Development Commission of the City of Oceanside, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) The office of the Agency is located at 300 North Coast Highway, Oceanside, California 92054. The term "Agency" as used in this Agreement includes the Oceanside Redevelopment Agency and any assigns of or successor to its rights, powers and responsibilities. The Agency's role under this Agreement is that of "Seller" of the Site to the Developer, and that of "Lender" and "Beneficiary" under the Agency Loan.

2. [' 107] The City

The City is the City of Oceanside, a municipal corporation, in and of the State of California. The principal office of City is 300 North Coast Highway, Oceanside, California 92054. The term "City" as used in this Agreement includes all of its boards, officers, agents, and employees, and any assigns of or successors to its rights, powers, and responsibilities. The City's role under this Agreement is that of the governing body with jurisdiction over all local discretionary approvals required for the development of the Site, its use, operation and maintenance, and the terms and conditions set forth in this Agreement, except for those, by their nature, that are within the authority of the Agency.

3. [' 108] The Developer

The Developer is Lil Jackson Senior Community, a California nonprofit corporation. The principal office of the Developer is 516 Burchett Street, Glendale, California 91203. Wherever the term "Developer" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

F. [' 109] Prohibition Against Change in Ownership, Management and Control of Developer

The qualifications and identity of the Developer are of particular concern to the City and the Agency, and it is because of such qualifications and identity that the City and Agency have entered into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. This Agreement may be terminated by the City pursuant to Section 611 hereof if there is any significant change (voluntary or involuntary) in the membership, management or control of the Developer prior to the completion of the development of the Site as evidenced by the issuance of the Certificate of Completion (Attachment No. 10) therefor pursuant to Section 323 herein.

The Developer shall not assign all or any part of this Agreement without the prior written approval of the City. Notwithstanding the foregoing, no City approval shall be required for title to be taken by a separate nonprofit corporation formed to own and operate the project, provided

that a majority of the board of directors of such corporation is designated by the Developer.

Notwithstanding anything in this Section to the contrary, so long as the project contemplated by this Agreement is encumbered by a Deed of Trust and/or Regulatory Agreement in favor of HUD, any proposed transferee or assignee must have the prior written consent of HUD.

The Agreement shall not be terminated by the City if a transferee or assignee of this Agreement has the approval of HUD during the period of the term of the "Agency Loan" and/or the "City Gap Loan" and continues to control not less than fifty-one percent (51%) of the members and directors of Developer.

Nothing herein shall prohibit the Developer from transferring the Site to HUD or its transferee without City approval.

The covenants, conditions and restrictions of this Section shall, in any event, terminate upon the expiration of the period referred to in Section 404 of this Agreement.

G. [' 110] Definitions

For the purposes of this Agreement, the following definitions shall apply:

"Affordable Rental Rates" (including a Utility Allowance) may not exceed 30% of 50% of the Area Median Income for Very Low Income Households or 30% of 80% of the Area Median Income for Lower Income Households for the annual rent, adjusted for family size appropriate for the unit.

"Area Median Income" means the median family income of a geographic area of the state, as annually estimated by the United States Housing Act of 1937. For the purpose of this Agreement, the geographical area shall be San Diego County, California.

"HUD" shall mean the United States Department of Housing and Urban Development.

"HUD Capital Advance" shall mean the financial assistance to be provided by HUD to the Developer for the acquisition of the Site and the development of the Project thereon.

"HUD Capital Advance Agreement" shall mean the agreement between HUD and the Developer pursuant to which HUD provides a HUD Capital Advance to Developer for the Project.

"HUD Capital Advance Documents" shall collectively refer to the HUD Note, Deed of Trust, Regulatory Agreement, Use Agreement, Capital Advance Agreement and Project Rental Assistance Contract as required by Section 202 of the Housing Act of 1959, as amended, or by Section 811 of the Cranston-Gonzalez National Affordable Housing Act ("the Act").

"HUD Capital Advance Program" means the program established under the Act.

"HUD Closing" shall mean the point in time when all conditions of the HUD Firm Commitment are satisfied permitting the Project to commence construction.

"HUD Deed of Trust" means that Deed of Trust securing the HUD Capital Advance in favor of HUD.

"HUD Default Rate" means the interest rate in the HUD Note as of the HUD Closing.

"HUD Firm Commitment" shall mean the written commitment by HUD to the Developer to provide the HUD Capital Advance on terms set forth in such commitment.

"HUD Note" means the Promissory Note evidencing the HUD Capital Advance in favor of HUD and secured by the HUD Deed of Trust.

"HUD Regulatory Agreement" means the Regulatory Agreement encumbering the Site by and between the Developer and the Secretary of HUD.

"Lower Income Households" means persons or families whose income does not exceed eighty percent (80%) of Area Median Income, adjusted for family size in accordance with the adjusting factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. The determination of a household's status as a Lower Income Household shall be made through third party verification and prior to the initial occupancy of the Housing Unit by the household. For the purpose of this Agreement, Lower Income Household includes Very Low Income Households, as defined in Section 50105 of the Health and Safety Code, and Extremely Low Income Households and defined in Section 50106 of the Health and Safety Code.

"Qualified Permanent Resident" means a remaining member of the household who meets the following basic requirements for eligibility as a remaining member of a household: 1) The individual must be a party to the lease or rental contract when the Qualifying Resident leaves the Housing Unit; 2) The individual must be of legal age to contract under state law; 3) If the individual who establishes initial eligibility for the Housing Unit leaves the Housing Unit for any reason, other than death, in a Section 202/8, Section 202 PAC, Section 202 PRAC or Section 811 PRAC project, the owner must determine if the individual(s) still remaining in the Housing Unit meets the eligibility requirements for the project as to income and age. If the individual still remaining in the Housing Unit does not meet such requirements, the owner must remove the individual from the Housing Unit.

"Qualifying Resident or Senior Citizen" means a person who is sixty-two (62) years of age or older, as defined in Section 51.3 of the California Civil Code, and as amended from time to time, and meets the income level requirements set forth in this Agreement and the Regulatory Agreement

"Utility Allowance" means that amount required for utilities which are not paid for by Developer and which is the amount deducted from the total tenant rent to assist in paying utilities.

"Very Low Income Households" means persons and families whose income does not exceed fifty percent (50%) of Area median income. Income limits are based on family size and the annual income the family receives. The determination of a household's status as a Very Low Income Household shall be made through third party verification and prior to the initial occupancy of a Housing Unit by the household. For the purpose of this Agreement, Very Low Income Households include Extremely Low Income Households as defined in Section 50106 of the Health and Safety Code.

Notwithstanding the foregoing, if any of the foregoing shall conflict with the HUD Capital Advance Documents or the HUD Section 202 (or Section 811) program requirements, the applicable HUD requirements shall control.

N

II. [' 200] DISPOSITION OF THE SITE

A. [' 201] Sale and Purchase

In accordance with and subject to all the terms, covenants and conditions of this Agreement, the Agency agrees to sell, and the Developer agrees to purchase and develop the Site for the sum of One Million Eight Hundred Thousand Dollars ($1,800,000.00) (the "Purchase Price").

B. [' 202] Escrow

The Agency agrees to open an escrow with Commonwealth Lawyers Title Company or any other escrow company approved by the Agency and the Developer, as escrow agent (the "Escrow Agent"), in Los Angeles County, within the time established in the Schedule of Performance (Attachment No. 3) [Note: Title Insurance to be obtained from Commonwealth Lawyers Title Company, in San Diego County, per Section 208 herein]. This Agreement constitutes the joint escrow instructions of the Agency and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of escrow. The Agency and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent hereby is empowered to act under this Agreement, and upon indicating its acceptance of the provisions of this Section 202 in writing, delivered to the Agency and to the Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

The Developer shall deposit the Purchase Price for the Site with the Escrow Agent in accordance with the provisions of Section 207 of this Agreement.

The Developer shall also pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for the close of escrow:

1. One-half of the escrow fee; and
2. The portion of the premium for the title insurance policy or special endorsements to be paid by the Developer as set forth in Section 208 of this Agreement.

The Agency shall timely and properly execute, acknowledge and deliver a deed conveying to the Developer title to the Site in accordance with the requirements of Section 204 of this Agreement, together with an estoppel certificate certifying that the Developer has completed all acts (except deposit of the Purchase Price) necessary to entitle the Developer to such conveyance, if such be the fact.

The Agency shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the Agency of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for the close of escrow:

1. Costs necessary to place the title to the Site in the condition for conveyance required by the provisions of this Agreement;
2. One-half of the escrow fees;
3. Cost of drawing the deed;
4. Recording fees;
5. Notary fees;
6. The premium for a C.L.T.A. standard title insurance policy to be paid by the

Agency as set forth in Section 208 of this Agreement;

7. Ad valorem taxes, if any, upon the Site for any time prior to conveyance of title; and
8. Any State, County or City documentary transfer tax.

Upon delivery of a deed to the Escrow Agent by the Agency pursuant to Section 206 of this Agreement, the Escrow Agent shall record such deed when title can be vested in the Developer in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law and pay any transfer tax required by law. Any insurance policies governing the Site are not to be transferred.

The Escrow Agent is authorized to:

a. Pay and charge the Agency and the Developer, respectively, for any fees, charges and costs payable under this Section 202 of this Agreement. Before such payments are made, the Escrow Agent shall notify the Agency and the Developer of the fees, charges and costs necessary to clear title and close the escrow;

b. Disburse funds and deliver the deed and other documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the Agency and the Developer; and

c. Record any instruments delivered through this escrow, if necessary or proper, to vest title in the Developer in accordance with the terms and provisions of this Agreement.

All funds received in this escrow shall be deposited by the Escrow Agent with other escrow funds of Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made on the basis of a 30-day month.

If this escrow is not in condition to close before the time for conveyance established in Section 203 of this Agreement, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, terminate this Agreement in the manner set forth in Section 610 or 611 hereof, as the case may be, and demand the return of its money, papers or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate in the manner set forth in Section 610 or 611 hereof, as the case may be. No demand for return shall be recognized until 10 days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections are raised within the 10-day period, the Escrow Agent is authorized to hold all money, papers and documents with respect to the Site until instructed in writing by both the Agency and the Developer or until the party entitled thereto has been determined by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible. Nothing in this Section 202 shall be construed to impair or affect the rights or obligations of the Agency or the Developer to specific performance.

Any amendment of these escrow instructions shall be in writing and signed by both the Agency and the Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

All communications from the Escrow Agent to the Agency or the Developer shall be

directed to the addresses and in the manner established in Section 701 of this Agreement for notices, demands and communications between the Agency and the Developer.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 202 to 208, both inclusive, of this Agreement.

Neither the Agency nor the Developer shall be liable for any real estate commissions or brokerage fees which may arise herefrom. The Agency and the Developer each represent that neither has engaged any broker, agent or finder in connection with this transaction.

C. ['203] Conveyance of Title and Delivery of Possession

Provided that the Developer is not in default under this Agreement and all conditions precedent to such conveyance have occurred, and subject to any mutually agreed upon extensions of time, conveyance to the Developer of title to the Site shall be completed on or prior to the date specified in the Schedule of Performance (Attachment No. 3). The Agency and the Developer agree to perform all acts necessary to conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

Possession shall be delivered to the Developer concurrently with the conveyance of title, except that limited access may be permitted before conveyance of title as permitted in Section 213 of this Agreement. The Developer shall accept title and possession on or before the said date.

D. ['204] Form of Deed

The Agency shall convey to the Developer title to the Site in the condition provided in Section 205 of this Agreement by grant deed in substantially the form set forth in Attachment No. 5 (the "Grant Deed").

E. ['205] Condition of Title

The Agency shall convey to the Developer fee simple title to the Site free and clear of all recorded liens, encumbrances, assessments, leases and taxes except as are consistent with this Agreement, provided, however, that the Site shall be subject to covenants required pursuant to this Agreement.

F. ['206] Time for the Place of Delivery of Deed

Subject to any mutually agreed upon extensions of time, the Agency shall deposit the Grant Deed (Attachment No. 5) for the Site with the Escrow Agent on or before the date established for the conveyance of the Site in the Schedule of Performance (Attachment No. 3).

G. ['207] Payment of the Purchase Price and Recordation of the Deed

The Developer shall promptly deposit the Purchase Price for the Site with the Escrow Agent upon the date for the conveyance thereof, provided that Escrow Agent shall have notified the Developer in writing that the Grant Deed (Attachment No. 5) or other instrument conveying the Site to the Developer, properly executed and acknowledged by the Agency, has been delivered to the Escrow Agent and that title or possession is in condition to be conveyed in conformity with the provisions of Section 205 of this Agreement. The Escrow Agent shall deliver the Purchase Price to the Agency immediately following the delivery to the Developer of a title insurance policy insuring title in conformity with Section 208 of this Agreement and the filing of the deed or other instrument for recordation among the land records in the office of the County Recorder for San Diego County.

The parties acknowledge that the escrow shall close concurrently with the HUD closing. The Purchase Price shall be deposited in escrow upon the date of such HUD closing; however, if HUD funds are not available on the date of the HUD closing and the parties agree in writing, the Purchase Price shall be deposited in escrow when such HUD funds are available.

H. ['208] Title Insurance

Concurrent with recordation of the Grant Deed (Attachment No. 5) or an instrument conveying possession, Commonwealth Lawyers Title Company, office in San Diego County, or another title insurance company satisfactory to the Agency and the Developer ("Title Co.") shall provide and deliver to the Developer a CLTA Owner's policy issued by Title Co. insuring that the title is vested in the Developer in the condition required by Section 205 of this Agreement. The Title Co. shall provide the insurance policy and the title insurance policy shall be in the amount of the Purchase Price of the Site or in such greater amount as Developer may specify as hereinafter provided.

The Agency shall pay only for that portion of the title insurance premium attributable to a CLTA Owner's policy in the amount of the Purchase Price of the Site insuring title in the Developer. The Developer shall pay for a Lender's policy insuring HUD as the lender.

The Developer, if it desires any additional title insurance, shall pay for all premiums for any extended coverage or special endorsements which it requests.

I. ['209] Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Site, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the Agency. All ad valorem taxes and assessments levied or imposed for any period commencing after closing of the escrow shall be paid by the Developer.

J. ['210] Possession of the Site

The Agency warrants and agrees that title to the Site shall be conveyed free of any possession and any right of possession except that of the Developer, except as waived by the Developer in writing, and the easements of record.

K. ['211] Zoning, Etc. of the Site

At the time of conveyance of the Site, the zoning thereof shall be such as to permit development of the Site and the construction, use, operation, and maintenance of the improvements thereon in accordance with the provisions of this Agreement. The Developer shall apply for all necessary permits as provided in Section 309 herein below. In addition, all applicable environmental requirements shall have been met.

L. ['212] Condition of the Site

The Agency has no knowledge of the existence of any soil or seismic condition, geological defect or fault or the presence of hazardous substances.

It shall be the sole responsibility of the Developer, at the Developer's expense, to investigate and determine the soil and seismic conditions of the Site and their suitability for the development to be constructed thereon. It shall be the sole responsibility of the Developer to do all work necessary to demolish, grade, clear and prepare the Site and to investigate and determine the

soil and other conditions of the Site and the suitability of the Site for the development to be constructed by the Developer. If the soil conditions of the Site or any portion thereof are not in all respects entirely suitable for the use or uses to which the Site will be put, then it is the sole responsibility and obligation of the Developer to take such action as may be necessary to place the Site in all respects in a condition suitable for development.

M. [' 213] Preliminary Work by the Developer

Prior to the conveyance of title from the Agency, representatives of the Developer shall have the right of access to the Site at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. The Developer shall hold the Agency harmless for any injury or damages arising out of any activity pursuant to this Section. The Developer shall have access to all data and information on the Site available to the Agency, but without warranty or representation by the Agency as to the completeness, correctness or validity of such data and information.

Any preliminary work undertaken on the Site by the Developer prior to conveyance of title thereto shall be done only after written consent of the Agency Executive Director, or his designee, and at the sole expense of the Developer. The Developer shall save and protect the Agency against any claims resulting from such preliminary work, access or use of the Site. Copies of data, surveys and tests obtained or made by the Developer on the Site shall be filed with the Agency. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

N. [' 214] Submission of Evidence of Equity Capital and Mortgage Financing

Agency acknowledges that Developer is financing the acquisition and development of the Site and related activities under the Section 202 or 811 Capital Advance Financing Program of HUD. A firm commitment for Capital Advance Financing from HUD under Section 202 of the Housing Act of 1959 or Section 811 of the National Affordable Housing Act to be secured by a deed of trust shall evidence such financing and is deemed approved.

No later than the time specified in the Schedule of Performance (Attachment No. 3), the Developer shall submit to the Agency evidence satisfactory to the Agency Executive Director, or his designee, that the Developer has the equity capital and commitments for mortgage financing necessary for acquisition and development of the Site, or the firm commitment from HUD under Section 202 of the Housing Act of 1959, as amended, or Section 811 of the National Affordable Housing Act.

III. [' 300] DEVELOPMENT OF THE SITE

A. [' 301] Development of the Site by the Developer

1. [' 302] Scope of Development

The Site shall be developed as a three-story 80 unit affordable senior residential rental complex, consisting of 79 1-bedroom units (the "Housing Units"), 1 2-bedroom unit (manager's unit), recreation room, laundry, computer center, arts and crafts room (activity center), manager's office and reception area (the "Project"), as more fully set forth in the Scope of Development (Attachment No. 4).

2. [' 303] Basic Concept Drawings

Within the time set forth in the Schedule of Performance (Attachment No. 3), the Developer shall prepare and submit to the City Manager or his designee for review and written approval Basic Concept Drawings and related documents containing the overall plan for development of the Site. The Basic Concept Drawings shall conform to this Agreement, including the Scope of Development (Attachment No. 4), and any presentation materials or site plans approved by the City at the time of execution of this Agreement. The City shall approve or disapprove the Basic Concept Drawings within the time established in the Schedule of Performance (Attachment No. 3). Any disapproval shall state in writing the reasons for disapproval.

The Site shall be developed as generally established in the Basic Concept Drawings and related documents except as changes may be mutually agreed upon between the Developer and the City. Any such changes shall be within the limitations of the Scope of Development (Attachment No. 4). Notwithstanding the foregoing, in the event that the planning review and entitlement approval process requires or mandates alterations to or deviation from the Basic Concept Drawings, the conditions of approval for the Project shall control as to the scope and nature of the improvements to comprise the Project and the Scope of Development (Attachment No. 4) shall be deemed amended to conform with said conditions of approval.

3. [' 304] Construction Plans, Drawings and Related Documents

The Developer shall prepare and submit construction plans, drawings and related documents to the City for architectural and engineering review and written approval as and at the times established in the Schedule of Performance (Attachment No. 3). The construction plans, drawings and related documents shall be submitted in two stages: preliminary and final working drawings. Final drawings and plans are hereby defined as those in sufficient detail to obtain grading and building permits.

During the preparation of all drawings and plans, City staff and the Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by the City. The City and the Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the City can receive prompt and speedy consideration.

If any revisions or corrections of plans approved by the City shall be required by any government official agency, department or bureau having jurisdiction, or any lending institution involved in financing, the Developer and the City shall cooperate in efforts to obtain a waiver of such requirements or to develop a mutually acceptable alternative.

4. [' 305] City Approval of Plans, Drawings and Related Documents

Subject to the terms of this Agreement, the City shall have the right of architectural and site planning review of all plans and drawings, including any changes therein. The City agrees that the Developer need submit plans and submissions for architectural and site planning review only to the City, and the City shall obtain any architectural and site planning review required by any agency, department, board or commission of the City within the times required hereunder for review of such plans and submissions and changes therein by the City; provided, however, that nothing herein shall relieve the Developer of any obligation to submit plans and submissions for special development permits or building permits to City departments or other public agencies.

The City shall approve or disapprove the plans, drawings and related

documents referred to in Section 304 of this Agreement within the time established in the Schedule of Performance (Attachment No. 3). Failure by the City to either approve or disapprove within the times established in the Schedule of Performance shall be deemed an approval. Any disapproval shall state in writing the reasons for disapproval and the changes which the Agency requests be made. Such reasons and such changes must be consistent with the Scope of Development (Attachment No. 4) and any items previously approved or deemed approved hereunder by the City. The Developer, upon receipt of a disapproval based upon powers reserved by the City hereunder, shall revise such plans, drawings and related documents and resubmit them to the City as soon as possible after receipt of the notice of disapproval, provided that in no case shall the City be entitled to require changes inconsistent with the Scope of Development (Attachment No. 4) and any previously approved items.

If the Developer desires to make any substantial change in the construction plans after their approval by the City, the Developer shall submit the proposed change to the City for its approval. If the construction plans, as modified by the proposed change, conform to the requirements of Section 304 of this Agreement, the approvals previously granted by the City under this Section 305 and the Scope of Development (Attachment No. 4), the City shall approve the proposed change and notify the Developer in writing within thirty (30) days after submission to the City. Such change in the construction plans shall, in any event, be deemed approved by the City unless rejected, in whole or in part, by written notice thereof by the City to the Developer setting forth in detail the reasons therefor, and such rejection shall be made within the said period.

5. [' 306] Cost of Construction

The cost of developing the Site and constructing all improvements thereon shall be borne by the Developer, except for work expressly set forth in this Agreement to be performed or paid for by the Agency, the City or others. The Project budget ("Project Budget") which is set forth on Attachment No. 6 sets forth the estimated costs of the Project. Agency, at the time of close of escrow, shall deposit the sum of the Purchase Price, i.e., One Million Eight Hundred Thousand Dollars ($1,800,000.00), together with an additional sum of One Million One Hundred Ninety Thousand Seven Hundred Sixty-six Dollars ($1,190,766.00), for a total deposit in the sum of Two Million Nine Hundred Ninety Thousand Seven Hundred Sixty-six Dollars ($2,990,766.00) (the "Agency Loan") into the escrow discussed, below, in this Section 306, to pay for costs associated with the Project not covered or included in the HUD Capital Advance. The Agency Loan documents shall include the Agency Loan Agreement, Agency Residual Receipts Note and Note Rider, Agency Deed of Trust, and the Regulatory Agreement, as described in Section 500.

Agency and City acknowledge that HUD will not pay for design standards desired by City which are inconsistent with HUD's cost containment guidelines and that the difference or "gap" between the total costs set forth in the Project Budget (Attachment No. 6) and the amount of the HUD Capital Advance and the Agency Loan will be paid from other sources. In the event gap funding becomes necessary, Agency shall request the Oceanside City Council provide a loan in an amount not to exceed Four Million One Hundred Thirty-eight Thousand Four Hundred Forty-three Dollars ($4,138,443.00) ("the City Gap Loan"), as described in Section 500. Developer acknowledges that the purpose of the City Gap Loan is to pay for costs not included within the HUD Capital Advance and Agency Loan. The City Gap Loan documents shall include the City Loan Agreement, City Residual Receipts Note and Note Rider, City Deed of Trust, and the Regulatory Agreement.

Any funds required to be paid by the Agency and/or the City pursuant to the foregoing paragraphs shall be deposited with the Escrow Agent prior to the conveyance of title to Developer. Prior to such deposit, the Agency, City, Developer and the Escrow Agent shall agree upon escrow instructions for the release of such funds to Developer at the date of HUD initial

closing. Such escrow instructions shall provide for the expenditure of funds in the following order of priority as required by HUD: (1) the Agency's and City's funds, and (2) HUD capital advance funds. At the option of either the Agency or the Developer, the funds, if any, to be paid by the Agency to the Developer through escrow shall be offset against the Purchase Price.

The Agency and the Developer shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

6. [' 307] Construction Schedule

After the conveyance of title to the Site, the Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the improvements and the development of the Site. The Developer shall begin and complete all construction and development within the times specified in the Schedule of Performance (Attachment No. 3) or such reasonable extension of said dates as may be granted by the City or as provided in Section 704 of this Agreement.

During the period of construction, but not more frequently than once a month, the Developer shall submit to the City a written progress report of the construction when and as requested by the City Manager, or his designee. The report shall be in such form and detail as may reasonably be required by the City and shall include a reasonable number of construction photographs taken since the last report submitted by the Developer.

7. [' 308] Indemnification; Bodily Injury and Property Damage Insurance

a. During the period of construction on the Site, and throughout the term of the Agency Loan (and if appropriate, the City Gap Loan), the Developer agrees to and shall defend, indemnify and hold the Agency and the City, their officers, agents, and employees, harmless from and against all liability, loss, damage, costs or expenses (including attorney fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss and damage whatsoever caused to any person or to the property or any person which shall occur on or adjacent to such Site and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of the Developer and its agents, servants, employees and contractors, but excluding any such liability, loss, damage, costs or expenses arising out of the sole and active negligence of the Agency or a breach by or misrepresentation of the Agency under this Agreement. During the term of the HUD Capital Advance Documents any monies owed the Agency or the City by the Developer shall be payable only from residual receipts as defined by HUD subject to the prior written approval of HUD.

b. Prior to the Closing or receiving any other advance under the Agency Loan or the City Gap Loan, Developer shall furnish or cause to be furnished to the Agency duplicate originals of the insurance policy or policies required by this Agreement. Developer shall, until Developer's obligations under this Agreement are paid and discharged in full, maintain and keep in full force and effect any insurance required by Agency and City, issued by companies approved by Agency and City including, without limitation:

(1) Fire insurance in an amount not less than the face amount of the Agency Loan (and if applicable, the City Gap Loan) or the full insurable value of the Improvements, whichever is less, with extended coverage, including vandalism, malicious mischief, and a loss payable endorsement naming Agency and City as loss payee; and during the construction period and until the certificate of occupancy, i.e. City of Oceanside Utility Release and Occupancy Authorization Form (the "Certificate of Occupancy") for the completed Improvements has been issued by the City, a course of construction endorsement.

(2) Public liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Site and the Improvements, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Agency, City or Developer or any person acting for Agency, City or Developer, or under their respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Site and the Improvements, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Agency, City or Developer or its tenants or any person acting for Agency, City or Developer, or under their respective control or direction. Such property damage and personal injury insurance shall also provide for and protect Agency and City against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall name the Agency and the City as additional insureds. Initially, such personal injury and property damage insurance shall be in the following amounts: a general aggregate amount of not less than Three Million Dollars ($3,000,000); not less than Two Million Dollars ($2,000,000) of bodily injury and property damage insurance; and not less than Two Million Dollars ($2,000,000) of personal and advertising injury; provided, however, the limitation on the amount of insurance shall not limit the responsibility of the Developer to indemnify the Agency or pay damages on account of injury to persons or property resulting from Developer's activities or the activities of any other person or persons for which Developer is otherwise responsible. The insurance requirements of this subsection shall be modified if the premium cost for the same is not approved by HUD.

(3) Use and occupancy or business interruption or rental income insurance with respect to the Improvements against the perils of fire, lightning, vandalism, malicious mischief, riot and civil commotion, and such other perils ordinarily included in extended coverage fire insurance policies, in an amount that is acceptable to the Agency (except if the premium cost for such insurance is not approved by HUD).

(4) Workers' 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 in connection with the Site and the Improvements and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for, or on behalf of any person incurring or suffering injury or death in connection with the Site or the Improvements or the operation thereof by Developer.

(5) All required insurance policies shall provide that such insurance policies shall not be subject to change, cancellation, reduction in coverage, or non-renewal except after notice in writing shall have been sent by registered mail addressed to Agency and City not less than thirty (30) days prior to the effective date thereof. All policies shall name the Agency and the City and their elective and appointive boards, officers, agents and employees as additional insureds and provide that such additional insureds shall not be held liable for any premium or expense of any nature on such policies or any extensions thereof. All such policies also shall provide that such policy and coverage as is afforded to the City and the Agency and their elective and appointive boards, officers, agents and employees shall be primary insurance and not contributing with any other insurance maintained by the City or the Agency.

(6) The term "full insurable value" as used in paragraph (1) above shall mean the actual replacement cost (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of the Improvements immediately

before such casualty or other loss, including the cost of construction of the Improvements, architectural and engineering fees, and inspection and supervision. To ascertain the amount of coverage required, Developer shall cause the full insurable value to be determined from time to time by appraisal by the insurer, by agreement between Agency and Developer or by an appraiser mutually acceptable to Agency and Developer, not less often than once every three years.

(7) All insurance provided under this Section shall be for the benefit of Developer, HUD, Agency and City, any mortgagee, and any contractor at Developer's discretion. Developer agrees to timely pay 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.

(8) Developer shall submit policies of all insurance required by this Section to Agency and City prior to disbursement of any portion of the Agency Loan or the City Gap Loan, as set forth in this Section 308(b). At least thirty (30) days prior to expiration of any such policy, copies of renewal policies shall be submitted to Agency and City.

(9) All insurance provided for in this Agreement shall be effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California reasonably approved by Agency.

(10) All policies of insurance shall provide that such policies shall not be canceled or limited in any manner without at least thirty (30) days prior written notice to Agency.

(11) If Developer fails or refuses to procure or maintain insurance as required by this Agreement, Agency shall have the right, at Agency's election and upon ten (10) days prior notice to Developer and all mortgagees entitled to notice, to procure and maintain such insurance. The premiums paid by Agency shall be added to the amount of the Agency Loan.

(12) During the term of the HUD Capital Advance Documents, compliance with the insurance requirements of HUD shall be deemed to satisfy the insurance requirements of this Agreement. The City/Agency and their representatives shall be named as additional insureds 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 (defined as the amount to be provided in a grant from HUD) 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 to the indebtedness owed to such insured or be released for repair or rebuilding of the Project. Surplus insurance proceeds thereafter may be disbursed to the Owner of the Project.

8. [' 309] <u>City and Other Governmental Agency Permits</u>

Before commencement of construction or development of any buildings, structures or other work of improvement upon the Site (unless such construction, development or work is to be commenced before the conveyance of title), the Developer shall, at its own expense, unless otherwise specified in Section 305, secure or cause to be secured any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work, including, but not limited to any necessary zone change, variance, conditional use permits, parcel map, development plan, grading or shoring permit, or other required land use or building entitlements (collectively the "Entitlements").

The Developer shall comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.: "CEQA", related to the development of the Site and the improvements.

The City shall provide all assistance deemed appropriate by the City to the Developer in securing these permits.

9. [' 310] Rights of Access

For the purposes of assuring compliance with this Agreement, representatives of the City shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Improvements. Such representatives of the City shall be those who are so identified in writing by the City Manager. The City shall indemnify the Developer and hold it harmless from any damage caused or liability arising out of this right to access.

10. [' 311] Local, State and Federal Laws

The Developer shall carry out the construction of the Improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

11. [' 312] Antidiscrimination During Construction

The Developer, for itself and its successors and assigns, agrees that in the construction of the Improvements provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, familial status, ancestry or national origin.

B. [' 313] Responsibilities of the Agency and City

The Agency and City, without expense to the Developer or assessment or claim against the Site, shall perform all work specified herein and in the Scope of Development (Attachment No. 4) for the Agency and City to perform within the times specified in the Schedule of Performance (Attachment No. 3).

C. [' 314] Taxes, Assessments, Encumbrances and Liens

The Developer shall pay when due all real estate taxes and assessments assessed and levied on the Site for any period subsequent to conveyance of title to or delivery of possession of the Site. Prior to the issuance of the Certificate of Completion (Attachment No. 10), the Developer shall not place or allow to be placed on the Site any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement except for those required by HUD that may arise during the term of the HUD Section 202 or 811 trust deed. The Developer shall remove or have removed any levy or attachment made on the Site (or any portion thereof), or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto.

The Developer understands that under certain conditions, its control of the Site or portion thereof under this Agreement may give rise to the imposition of a possessory interest tax on said property and, in such event, the Developer agrees to pay when due any such possessory

interest tax.

Nothing herein shall prohibit the Developer from applying for and obtaining any exemptions, abatements or reductions from real state taxes as authorized by law.

D. [' 315] Prohibition Against Transfer of Site, the Buildings or Structures Thereon and Assignment of Agreement

After conveyance of title and prior to the issuance by the City of the Certificate of Completion (Attachment No.10) pursuant to Section 323, the Developer shall not, except as expressly permitted by this Agreement, sell, transfer, convey, assign or lease the whole or any part of the Site or the buildings or improvements thereon without the prior written approval of the City. This prohibition shall not apply subsequent to the issuance of the Certificate of Completion (Attachment No. 10) with respect to the improvements upon the Site. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site or to prohibit or restrict the leasing of any part or parts of a building or structure when said improvements are completed.

In the absence of specific written agreement by the City, no such transfer, assignment or approval by the City shall be deemed to relieve the Developer or any other party from any obligations under this Agreement until completion of development as evidenced by the issuance of the Certificate of Completion (Attachment No.10) therefor pursuant to Section 323 herein.

Notwithstanding anything in this Section to the contrary, the Developer shall at all times have the right to convey the Site to HUD or to a transferee selected by HUD, without City approval and any transfer approved by HUD shall be deemed approved by City.

E. [' 316] Security Financing; Rights of Holders

1. [' 317] No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases-Back or Other Financing for Development

Notwithstanding Sections 314 and 315 of this Agreement, mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing are permitted before issuance of the Certificate of Completion (Attachment No. 10) but only for the purpose of securing loans or advances of funds to be used for financing the acquisition of the Site, the construction of Improvements on the Site and any other expenditures necessary and appropriate to develop the Site under this Agreement. The Developer shall notify the City in advance of any mortgage, deed of trust, sale and lease-back or other form of conveyance for financing if the Developer proposes to enter into the same before issuance of the Certificate of Completion (Attachment No. 10). The Developer shall not enter into any such conveyance for financing without the prior written approval of the City (unless such lender shall be one of the ten (10) largest banking institutions doing business in the State of California, or one of the ten (10) largest insurance lending institutions in the United States qualified to do business in the State of California, or HUD), which approval the City agrees to give if any such conveyance is given to a responsible financial or lending institution or other acceptable person or entity. Such lender shall be deemed approved unless rejected in writing by the City within ten (10) days after notice thereof to the City by the Developer. In any event, the Developer shall promptly notify other financing conveyance, encumbrance or lien that has been created or attached thereto prior to completion of the construction of the Improvements on the Site whether by voluntary act of the Developer or otherwise. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

2. [' 318] Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion, nor shall any covenant or any other provision in the Grant Deed (Attachment No. 5) for the Site be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

3. [' 319] Reserved

4. [' 320] Reserved

5. [' 321] Right of City to cure Mortgage, Deed of Trust or other Security Interest Default

In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest with respect to the Site prior to the completion of development, and the holder has not exercised its option to complete the development, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien, provided such lien has the prior written approval of HUD, upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the Site as authorized herein.

F. [' 322] Right of the City to Satisfy Other Liens on the Site After Title Passes

After the conveyance of title and prior to the issuance of the Certificate of Completion (Attachment No. 10) for construction and development, and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Site, the City shall have the right to satisfy any such liens or encumbrances, provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site to forfeiture of sale.

G. [' 323] Certificate of Completion

Promptly after completion of all construction and development to be completed by the Developer upon the Site, the City shall furnish the Developer with a certificate of completion upon written request therefor by the Developer. Such certificate of completion shall be in such form as to permit it to be recorded in the Office of the County Recorder of San Diego County and substantially in the form and content set for in the "Certificate of Completion" attached hereto and incorporated herein as Attachment No. 10 to this Agreement. In no event shall the Certificate of Completion be issued prior to the issuance of the Certificate of Occupancy by the City.

The Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon the Site and of full compliance with the terms hereof.

The City shall not unreasonably withhold the Certificate of Completion. If the City

refuses or fails to furnish the Certificate of Completion for the Site after written request from the Developer, the City shall, within ten (10) days of the request, provide the Developer with a written statement of the reasons the City refused or failed to furnish the Certificate of Completion. The statement shall also contain the City's opinion of the action the Developer must take to obtain the Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials not exceeding ten percent (10%) of the cost of total construction, the City will issue the Certificate of Completion upon the posting of a cash deposit, or a letter of credit, or a bond by the Developer with the City in an amount representing the fair value of the work not yet completed. If the City shall have failed to provide such written statement within said 10-day period, the Developer shall be deemed entitled to the Certificate of Completion.

The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned or advanced to finance the Improvements or any part thereof. The Certificate of Completion is not notice of completion as referred to in California Civil Code Section 3093. The Certificate of Completion requirement(s) shall be waived for the HUD Capital Advance Program.

IV. [¹400] USE OF THE SITE

A. [¹401] Uses

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, the Developer, its successors and assignees shall develop the Site with 79 one-bedroom units, and 1 two bedroom on-site manager unit, in the apartment complex in which each person in residence in each dwelling unit is required to be a Senior Citizen of sixty two (62) years of age or older, or a "Qualifying Resident" as defined in California Civil Code Section 51.3 and as amended from time to time, and as set forth below (hereinafter collectively referred to as "Senior Citizen"). The use of the project shall be at all times rental units and not be converted to condominiums or other non-rental use. The foregoing covenant shall run with the land.

Compliance by Developer with the requirements of the HUD Section 202 or 811 program during the term of the HUD Capital Advance Documents (as defined herein) shall be deemed to satisfy the requirements of this Section, and in the event of a conflict, the HUD Capital Advance Documents shall prevail.

B. [¹402] Obligation to Refrain From Discrimination

Except as otherwise required by the HUD Section 202 (or 811) program rental requirements, the 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, creed, religion, sex, familial status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through the Developer 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 of the Site. The foregoing covenants shall run with the land.

C. [¹403] Form of Nondiscrimination and Nonsegregation Clauses

The Developer shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, creed, religion, sex, marital status, ancestry or national origin of any person. All

such deeds, leases (including rental agreements) or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "Except as otherwise required by the HUD Section 202 (or 811) program rental requirements, the grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators 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, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, 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 premises herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "Except as otherwise required by the HUD Section 202 (or 811) program rental requirements, the lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, 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, creed, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, 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 premises herein leased."

3. In contracts: "Except as otherwise required by the HUD Section 202 (or 811) program rental requirements, there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, or shall the transferee himself or herself, or any person claiming under or through him or her, 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 of the land."

D. [' 404] <u>Effect and Duration of Covenants</u>

Except as provided in Section 406, the covenants contained in this Agreement and the Grant Deed (Attachment No. 5) shall remain in effect for fifty-five (55) years following the issuance of the Certificate of Occupancy by the City, except that the covenants against discrimination shall remain in perpetuity. The covenants established in this Agreement and the Grant Deed (Attachment No. 5) shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Agency and City, their successors and assigns, and any successor in interest to the Site or any part thereof.

The Agency and City are deemed the beneficiaries of the terms and provisions of this Agreement and of the covenants running with the land for and in their own rights and for the purpose of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of the Agency and City without regard to whether the Agency or City has been, remains or is an owner of any land or interest therein in the Site, any parcel or subparcel thereof. The Agency and City, respectively, shall have

the right, if the Agreement or covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

E. [' 405] Rights of Access--Public Improvements and Facilities

The City, for itself and for other public agencies, at their sole risk and expense, reserves the right to enter the Site or any part thereof at all reasonable times and with as little interference as possible for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Site. Any such entry shall be made only after reasonable notices to the Developer, and the City shall indemnify and hold the Developer harmless from any claims or liabilities pertaining to any entry. Any damage or injury to the Site resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry.

F. [' 406] Affordability Restriction and Tenant Selection

During the HUD Capital Advance Documents (i.e., the first forty (40) years of the Affordability Period described in the Regulatory Agreement (Attachment No. 11)), all completed and occupied Housing Units on the Site shall be rented at Affordable Rental Rates to elderly Very Low Income Households in accordance with the requirements of Section 33334.2 et seq. of the California Health & Safety Code. Upon expiration of the term of the HUD Capital Advance Documents, as extended or amended, the Housing Units may be rented to elderly persons and families of Lower Income in accordance with the requirements of said Section 33334.2, but only if no other public or private funds are made available at that time to assist in offsetting or subsidizing rents. Compliance by Developer with the requirements of the HUD Section 202 or 811 program during the term of the HUD Capital Advance Documents shall be deemed to satisfy the requirements of this Section and, in the event of a conflict, the HUD requirements shall control. Notwithstanding the foregoing, the Developer may, no sooner than the forty-first (41st) year of the term of the Regulatory Agreement (Attachment No. 11), request that the Affordability Restrictions contained herein and in the Regulatory Agreement be renegotiated to allow renting the Housing Units to elderly persons and families earning no more than 80% of Area Median Income if a financial need to do so is demonstrated.

V. [' 500] FINANCING

A. [' 501] Method of Financing Acquisition and Development

1. [' 502] Sources of Financing and Development Costs

The Agency, City and the Developer anticipate that the acquisition of the Site and development of the Improvements shall be financed with a combination of loans and/or grants, as follows:

Construction and Permanent Financing:

Estimated Amount of HUD Section 202/811Capital Advance	$9,981,800
Developer Fee	$183,400
Estimated Amount of Agency Loan	$2,990,766
Estimated City Gap Loan	(1) $4,138,443
Total Estimated Development Cost	$17,294,409

[1] City Gap Loan is anticipated to be a not to exceed amount to cover those costs related to the development of the Site required through the entitlement process not covered by the HUD Section 202/811 Capital Advance and Agency Loan.

2. [' 503] Submittal of Financing Documents

Developer shall obtain the Capital Advance from HUD secured by a first priority deed of trust in an amount sufficient, together with the Agency Loan (and if applicable, the City Loan), to pay all costs of the Improvements. Within the time provided therefor in the Schedule of Performance (Attachment No. 3), Developer shall submit for Agency review and approval copies of the Capital Advance Documents required to obtain the Capital Advance. Developer shall provide written certification to the Agency and City that such Capital Advance Documents are correct copies of the actual documents to be executed by Developer on or before the closing date of the HUD Section 202/811 Capital Advance.

B. [' 504] Agency Loan

In accordance with and subject to the terms and conditions of this Agreement, the Agency agrees to lend to the Developer, and the Developer agrees to borrow from the Agency, loan funds in an amount set forth in Section 506 for construction and permanent financing (the "Agency Loan") under the terms and conditions contained in the Agency Loan Agreement ("Agency Loan Agreement") attached hereto and incorporated herein as Attachment No. 7. Interest shall commence to accrue on funds disbursed pursuant to this Agreement from the date of the initial disbursement hereunder. At the closing of the Agency Loan, the Developer shall execute and deliver a promissory note in the form of Exhibit "A" to the Agency Loan Agreement (Attachment No. 7) in the full amount of the Agency Loan ("Agency Residual Receipts Note"). The Agency acknowledges that the Agency Loan funds are to pay for costs not included within the HUD Capital Advance and that the Agency Loan funds must be disbursed before the HUD Capital Advance proceeds. The Agency Residual Receipts Note shall be secured by a deed of trust on the Site in a form approved by HUD and which shall include the provisions in Attachment No. 9 hereto.

1. [' 505] Terms of Agency Loan

The outstanding balance of the Agency Loan shall accrue interest at the rate of three percent (3%) per annum, simple interest, but not to exceed the HUD Default Rate from the date of disbursement and shall be paid to the Agency in annual installments from Residual Receipts as defined by HUD. Developer shall cause to be prepared and submit annually, not later than February 1st of the calendar year in which the Certificate of Occupancy is issued and each calendar year thereafter, a copy of the Annual Financial Statement submitted to HUD prepared by a certified public accountant, which shall state the amount of Revenue of the Development, the Operating Expenses and the amount of Residual Receipts. Each payment to the Agency of Residual Receipts shall be credited first to interest due on the Agency Loan and then to the principal outstanding balance.

2. [' 506] Amount of Agency Loan

The Agency Loan shall not exceed the lesser of the difference between the estimated Improvement costs and the HUD Section 202/811 Capital Advance; or Two Million Nine Hundred Ninety Thousand Seven Hundred Sixty-six Dollars ($2,990.766.00).

3. [' 507] Conditions Precedent to Closing of Agency Loan

Disbursement of any portion of the Agency Loan shall be conditioned upon each of the following occurring prior to the time of disbursement:

At the time established in the Schedule of Performance (Attachment No. 3) and, in any event, prior to disbursement of any portion of the Agency Loan, the Developer shall deliver to the Agency the following documents or instruments, all of which shall be in full force and effect at the time of disbursement of any portion of the Agency Loan:

a. All building permits.

b. A proposed construction contract between the Developer and a licensed general contractor approved by the Agency covering all construction required by this Agreement.

c. A construction budget, current as of the date of disbursement, demonstrating to the satisfaction of the Agency the availability of sufficient funds to construct the Improvements.

d. A copy of a completion bond and a payment bond, each in the amount of one hundred percent (100%) of the amount of the construction contract in favor of HUD and the Developer and certified by the Developer to be a true and correct copy of the same or, alternatively, evidence satisfactory to HUD of a cash deposit of twenty-five percent (25%) of such amount.

e. A copy of the Firm Commitment for the HUD Section 202/811 Capital Advance acceptable to Developer. Developer shall also provide the Agency with evidence that equity funds are available to fund the portion of Development Costs, if any, not funded by the HUD Section 202/811 Capital Advance and the Agency Loan.

f. A soils report satisfactory to the Agency, including a statement of whether or not the Site is in an earthquake hazard area and an engineering study regarding earthquake design, and the qualifications and experience of the soils engineer preparing such report.

g. An environmental assessment prepared by a qualified engineer acceptable to the Agency relating to the presence of Hazardous Substances in, on or around the Site, and confirming that all Hazardous Substances described in such assessment have been removed or mitigated in accordance with law, and that the condition of the Site will not result in liability for cleanup of the Site by the Developer or the Agency under applicable law.

h. Duplicate originals of all insurance policies required as set forth in Section 308 of this Agreement.

i. Documents relating to the Developer's corporate existence, including: copies of Developer's Articles of Incorporation together with any and all amendments thereto, certified as of a recent date by the Secretary of State of California; a certified copy of the Developer's Bylaws together with any and all amendments thereto; copies of all necessary actions taken by Developer to authorize the execution and delivery of the Agency Loan Documents; and a certificate of status of the Developer, issued on a recent date by the California Secretary of State.

j. The Agency Residual Receipts Note and Deed of Trust executed by the Developer.

k. Deposit in escrow of the financing documents required to cause the HUD Section 202/811 Capital Advance proceeds to be committed and available, in an amount sufficient, when combined with the Agency Loan, and if applicable the City Gap Loan, to complete the construction of the Improvements.

4. [' 508] Defaults Following Closing of Agency Loan

In the event that Developer, on or before the date established in the Schedule of Performance (Attachment No. 3) for such action, fails:

a. to complete construction of the Improvements and record the Certificate of Completion (Attachment No.10) referred to in Section 323 above, within the time provided in the Schedule of Performance (Attachment No. 3);

b. to fulfill its obligations to the Agency under this Agreement, the Agency Residual Receipts Note or any agreement or instrument executed in connection herewith; or

c. to close the HUD Section 202/811 Capital Advance;

the Agency, at its option, may declare the Developer to be in default in payment of the Agency Loan and declare the Agency Residual Receipts Note immediately due and payable, together with accrued interest, including interest from the date of initial disbursement of the Agency Loan; provided, however, that during the period the HUD Capital Advance Documents are in effect, the Agency may not declare acceleration of payment of the Agency Residual Receipts Note.

5. [' 509] Repayment of Agency Loan

a. Annually, not later than the first (1st) day of February of each year beginning with the first full calendar year of operations after the issuance of the Certificate of Occupancy by the City (the "Payment Date"), the Developer shall submit to the Agency its Annual Financial Statement for the preceding year (prepared at the Developer's expense by an independent certified public accountant acceptable to the Agency), together with the Agency's share of Residual Receipts as described in paragraph (b) below. Residual Receipts shall be determined on the basis of the Annual Financial Statement. The Agency shall review and approve such statement or request revisions within thirty (30) days after receipt. In the event that the Agency determines as the result of its review that the Developer has underpaid the Agency's share of Residual Receipts, Developer shall promptly deliver the amount of such underpayment to the Agency, but in any event not later than ten (10) days of notice of such underpayment. In the event that the Agency determines that there is an overpayment, the Agency shall promptly refund the amount of the overpayment to the Developer within ten (10) days of such determination.

b. During any period while the Agency Loan remains outstanding, the Developer shall pay fifty percent (50%) of all Residual Receipts to the Agency (inclusive of the City Gap Loan repayment); provided that during the term of the HUD Capital Advance Documents no Residual Receipts as defined in the HUD Regulatory Agreement may be paid except with prior HUD written approval. Payments shall be applied first to accrued interest on the Agency Loan, and then to reduce the principal amount of the Agency Loan. Upon payment in full of the Agency Loan, the Agency shall have no further right to payment of any portion of Residual Receipts. Notwithstanding the foregoing, provided the Developer is not in material default of the Agency Loan Agreement, the Regulatory Agreement (Attachment No. 11), this Agreement and the HUD Capital Advance

Documents, as to any interest accrued and unpaid during the first forty (40) years of the term of the Agency Loan such unpaid interest shall be forgiven. Commencing on the forty-first (41st) year of the term of the Agency Loan, and continuing through the remaining term thereof, the Developer shall make payments, of principal and interest, to the Agency as set forth in this Section 500.

c. The Agency Loan shall be due and payable immediately if the Project, or any portion thereof or interest therein, is sold, transferred, assigned or refinanced without the prior written consent of the Agency; provided, however, that during the term of the HUD Capital Advance Documents the foregoing shall not apply to a transfer to HUD, to a transferee approved by HUD or any transfer approved by HUD.

d. In the event the Project is sold or refinanced prior to the time the Agency Loan is paid in full, with or without the prior written consent of the Agency, the Net Proceeds of such sale or refinancing shall be paid to the Agency to the extent necessary to pay in full the accrued interest, current interest and remaining principal balance of the Agency Loan, provided that during the term of the HUD Capital Advance Documents any such proceeds be first applied to pay any Project expenses, repairs and reserves required by HUD.

e. The term of the Agency Loan shall be fifty-five (55) years from the date of issuance of the Certificate of Occupancy by the City but not before the maturity date of the HUD Capital Advance Documents. At the end of the term of the Agency Loan, the Agency shall forgive the Agency Loan in its entirety so long as the Developer is not in material default of the Agency Residual Receipts Note. At such time, the Agency shall cancel the Agency Residual Receipts Note and surrender it to the Developer and file a full reconveyance with the San Diego County Recorder.

C. [¹510] City Gap Loan

In accordance with and subject to the terms and conditions of this Agreement, the Agency agrees, in the event gap funding becomes necessary, Agency shall request the Oceanside City Council provide a loan to the Developer, and the Developer agrees to borrow from the City, "gap" loan funds in an amount set forth in Section 512 for construction and permanent financing (the "City Gap Loan") under the terms and conditions contained in the City Gap Loan Agreement ("City Gap Loan Agreement") attached hereto and incorporated herein a Attachment No. 8. Interest shall commence to accrue on funds disbursed pursuant to this Agreement from the date of the initial disbursement hereunder. At the closing of the City Gap Loan, the Developer shall execute and deliver a promissory note in the form of Exhibit "A" to the City Gap Loan Agreement (Attachment No. 8) in the full amount of the City Gap Loan ("City Residual Receipts Note"). The City acknowledges that the City Gap Loan funds are to pay for costs not included within the HUD Capital Advance and the Agency Loan and that the City Gap Loan funds must be disbursed before the HUD Capital Advance proceeds. The City Residual Receipts Note shall be secured by a deed of trust on the Site in a form approved by HUD and which shall include the provisions in Attachment No. 9 hereto.

1. [¹511] Terms of City Gap Loan

The outstanding balance of the City Gap Loan shall accrue interest at the rate of five percent (5%) per annum, simple interest, but not to exceed the HUD Default Rate from the date of disbursement and shall be paid to the City in annual installments from Residual Receipts as defined by HUD. Developer shall cause to be prepared and submit annually, not later than February 1st of the calendar year in which the Certificate of Occupancy is issued and each calendar year thereafter, a copy of the Annual Financial Statement submitted to HUD prepared by a certified public accountant, which shall state the amount of Revenue of the Development, the Operating

Expenses and the amount of Residual Receipts. Each payment to the City of Residual Receipts shall be credited first to interest, if applicable, due on the City Gap Loan and then to the principal outstanding balance.

2. [' 512] Amount of City Gap Loan

The City Gap Loan shall not exceed the amount of Four Million One Hundred Thirty-eight Thousand Four Hundred Forty-three Dollars ($4,138,443.00).

3. [' 513] Conditions Precedent to Closing of City Gap Loan

Disbursement of any portion of the City Gap Loan shall be conditioned upon each of the following occurring prior to the time of disbursement:

At the time established in the Schedule of Performance (Attachment No. 3) and, in any event, prior to disbursement of any portion of the City Gap Loan, the Developer shall deliver to the City the following documents or instruments, all of which shall be in full force and effect at the time of disbursement of any portion of the City Gap Loan:

a. All building permits.

b. A proposed construction contract between the Developer and a licensed general contractor approved by the Agency covering all construction required by this Agreement.

c. A construction budget, current as of the date of disbursement, demonstrating to the satisfaction of the City the availability of sufficient funds to construct the Improvements.

d. A copy of a completion bond and a payment bond, each in the amount of one hundred percent (100%) of the amount of the construction contract in favor of HUD and the Developer and certified by the Developer to be a true and correct copy of the same or, alternatively, evidence satisfactory to HUD of a cash deposit of twenty-five percent (25%) of such amount.

e. A copy of the Firm Commitment for the HUD Section 202/811 Capital Advance acceptable to Developer. Developer shall also provide the City with evidence that equity funds are available to fund the portion of Development Costs, if any, not funded by the HUD Section 202/811 Capital Advance, the Agency Loan, and the City Gap Loan.

f. A soils report satisfactory to the City, including a statement of whether or not the Site is in an earthquake hazard area and an engineering study regarding earthquake design, and the qualifications and experience of the soils engineer preparing such report.

g. An environmental assessment prepared by a qualified engineer acceptable to the City relating to the presence of Hazardous Substances in, on or around the Site, and confirming that all Hazardous Substances described in such assessment have been removed or mitigated in accordance with law, and that the condition of the Site will not result in liability for cleanup of the Site by the Developer or the Agency and City under applicable law.

h. Duplicate originals of all insurance policies required as set forth in Section 308 of this Agreement.

i. Documents relating to the Developer's corporate existence, including:

copies of Developer's Articles of Incorporation together with any and all amendments thereto, certified as of a recent date by the Secretary of State of California; a certified copy of the Developer's Bylaws together with any and all amendments thereto; copies of all necessary actions taken by Developer to authorize the execution and delivery of the City Gap Loan Documents; and a certificate of status of the Developer, issued on a recent date by the California Secretary of State.

j. The City Residual Receipts Note and Deed of Trust executed by the Developer.

k. Deposit in escrow of the financing documents required to cause the HUD Section 202/811 Capital Advance proceeds to be committed and available, in an amount sufficient, when combined with the Agency Loan and City Gap Loan, to complete the construction of the Improvements.

4. [' 514] Defaults Following Closing of City Gap Loan

In the event that Developer, on or before the date established in the Schedule of Performance (Attachment No. 3) for such action, fails:

a. to complete construction of the Improvements and record the Certificate of Completion (Attachment No.10) referred to in Section 323 above, within the time provided in the Schedule of Performance (Attachment No. 3);

b. to fulfill its obligations to the City under this Agreement, the City Residual Receipts Note or any agreement or instrument executed in connection herewith; or

c. to close the HUD Section 202/811 Capital Advance;

the City, at its option, may declare the Developer to be in default in payment of the City Gap Loan and declare the City Residual Receipts Note immediately due and payable, together with accrued interest, including interest from the date of initial disbursement of the City Gap Loan; provided, however, that during the period the HUD Capital Advance Documents are in effect, the City may not declare acceleration of payment of the City Residual Receipts Note.

5. [' 515] Repayment of City Gap Loan

a. Annually, not later than the first (1st) day of February of each year beginning with the first full calendar year of operations after the issuance of the Certificate of Occupancy by the City (the "Payment Date"), the Developer shall submit to the Agency and City its Annual Financial Statement for the preceding year (prepared at the Developer's expense by an independent certified public accountant acceptable to the City), together with the City's share of Residual Receipts as described in paragraph (b) below. Residual Receipts shall be determined on the basis of the Annual Financial Statement. The City shall review and approve such statement or request revisions within thirty (30) days after receipt. In the event that the City determines as the result of its review that the Developer has underpaid the City's share of Residual Receipts, Developer shall promptly deliver the amount of such underpayment to the City, but in any event not later than ten (10) days of notice of such underpayment. In the event that the City determines that there is an overpayment, the City shall promptly refund the amount of the overpayment to the Developer, but in any event within ten (10) days of such determination.

b. During any period while the City Gap Loan remains outstanding, the Developer shall pay fifty percent (50%) of all Residual Receipts to the City (inclusive of the Agency Loan repayment); provided that during the term of the HUD Capital Advance Documents no

Residual Receipts as defined in the HUD Regulatory Agreement may be paid except with prior HUD written approval. Payments shall be applied first to accrued interest, if applicable, on the City Gap Loan, and then to reduce the principal amount of the City Gap Loan. Upon payment in full of the City Gap Loan, the Agency shall have no further right to payment of any portion of Residual Receipts. Notwithstanding the foregoing, provided the Developer is not in material default of the City Loan Agreement, the Regulatory Agreement (Attachment No. 11), this Agreement and the HUD Capital Advance Documents, as to any interest accrued and unpaid during the first forty (40) years of the term of the City Loan such unpaid interest shall be forgiven. Commencing on the forty-first (41st) year of the term of the City Loan, and continuing through the remaining term thereof, the Developer shall make payments, of principal and interest, to the City as set forth in this Section 500.

c. The City Gap Loan shall be due and payable immediately if the Project, or any portion thereof or interest therein, is sold, transferred, assigned or refinanced without the prior written consent of the City; provided, however, that during the term of the HUD Capital Advance Documents the foregoing shall not apply to a transfer to HUD, to a transferee approved by HUD, or any transfer approved by HUD.

d. In the event the Project is sold or refinanced prior to the time the City Gap Loan is paid in full, with or without the prior written consent of the City, the Net Proceeds of such sale or refinancing shall be paid to the City to the extent necessary to pay in full the accrued interest, if applicable, current interest and remaining principal balance of the City Gap Loan, provided that during the term of the HUD Capital Advance Documents any such proceeds be first applied to pay any Project expenses, repairs and reserves required by HUD.

e. The term of the City Gap Loan shall be fifty-five (55) years from the date of issuance of the Certificate of Occupancy by the City but not before the maturity date of the HUD Capital Advance Documents. At the end of the term of the City Gap Loan, the City shall, with the exception of the portion of the City Gap Loan amount funded with HOME funds, which by federal regulations must be repaid, forgive the City Gap Loan in its entirety so long as the Developer is not in material default of the City Residual Receipts Note. At such time, the City shall cancel the City Residual Receipts Note and surrender it to the Developer and file a full reconveyance with the San Diego County Recorder.

D. ['516] Regulatory Agreement

As an inducement for the Agency and the City to provide the financial assistance provided for herein for the development of the Project, Developer hereby agrees to enter into a regulatory agreement, the form and substance of which is attached hereto and incorporated herein as Attachment No. 11 to this Agreement (the "Regulatory Agreement")

VI. ['600] DEFAULTS, REMEDIES AND TERMINATION

A. ['601] Defaults--General

Subject to the extensions of time set forth in Section 704, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default.

The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages and except as otherwise expressly provided in Sections 607 and 608 of this Agreement,

the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Notwithstanding the provisions of this Agreement, during the term of the HUD Capital Advance Documents, Agency and City shall not exercise the remedies referred to herein without the prior written approval of HUD.

B. ['602] Legal Actions

1. ['603] Institution of Legal Actions

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

2. ['604] Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

3. ['605] Acceptance of Service of Process

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

In the event that any legal action is commenced by the City and/or Agency against the Developer, service of process on the Developer shall be made by personal service upon the Vice President, Project Development, of the Developer or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

C. ['606] Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

D. ['607] Damages

If the Developer or the City or Agency defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within forty-five (45) days after service of the notice of default, the defaulting party shall be liable to the

other party for any damages caused by such default.

E. [¹608] Specific Performance

If the Developer or the City or the Agency defaults under any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured by the defaulting party within forty-five (45) days of service of the notice of default, the nondefaulting party, at its option, may institute an action for the specific performance of the terms of this Agreement.

F. [¹609] Remedies and Rights of Termination Prior to Conveyance of the Site to the Developer

1. [¹610] Termination by the Developer

In the event that prior to conveyance of title to the Site to the Developer:

a. The Developer disapproves the condition of title to the Site within thirty (30) days of the receipt of the preliminary title report for reasons which cannot be corrected by the Agency prior to the time set forth herein for conveyance of the Site to the Developer; or

b. The Developer disapproves the soil and geologic conditions or the Phase I Study of the Site in the manner and with the time set forth in Section 212 of this Agreement; or

c. The Agency does not tender conveyance of the Site or possession thereof in the manner and condition and by the date provided in this Agreement and in any such failure is not cured within thirty (30) days after written demand by the Developer;

d. The Developer does not obtain a Firm Commitment for Capital Advance Financing from HUD acceptable to Developer; or

e. The Developer has not obtained all building and other permits required for the project;

then this Agreement shall, at the option of the Developer, be terminated by written notice thereof to the Agency and the City. Upon such termination, neither the Agency, the City nor the Developer shall have any further rights against or liability to the other parties under this Agreement.

2. [¹611] Termination by the City

In the event that prior to conveyance of title to the Site to the Developer:

a. The Developer transfers or assigns or attempts to transfer or assign this Agreement or any rights herein or in the Site or the buildings or improvements thereon in violation of this Agreement; or

b. There is any significant change in the ownership or identity of the Developer or the parties in control of the Developer or Developer or the degree thereof contrary to the provisions of Section 109 hereof; or

c. The Developer does not pay the Purchase Price and take title to the Site under tender of conveyance by the Agency pursuant to this Agreement; or

d. The Developer is in breach or default with respect to any other obligation of the Developer under this Agreement; and

e. If any default or failure referred to in subdivision c or d of this Section shall not be cured within thirty (30) days after the date of written demand by the City;

then this Agreement, and any rights of the Developer or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the Agency or City, shall, at the option of the City, be terminated by the City.

VII. ['700] GENERAL PROVISIONS

A. ['701] Notices, Demands and Communications Between the Parties

Formal notices, demands and communications between the Agency, the City and the Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency, the City and the Developer as set forth in Section 105 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail.

B. ['702] Conflicts of Interest

No member, official or employee of the Agency and the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

C. ['703] Nonliability of Agency and City Officials and Employees

No member, official or employee of the Agency and the City shall be personally liable to the Developer in the event of any default or breach by the Agency or the City or for any amount which may become due to the Developer or on any obligations under the terms of this Agreement.

D. ['704] Enforced Delay: Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the Agency or the City shall not excuse performance by the Agency or the City) or any other causes beyond the control or without the fault of the party claiming an

extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the City and the Developer.

E. ['705] Inspection of Books and Records

The City has the right, upon not less than seventy-two (72) hours notice, at all reasonable times, to inspect the books and records of the Developer pertaining to the Site as pertinent to the purposes of this Agreement.

The Developer also has the right, upon not less than seventy-two (72) hours notice, at all reasonable times, to inspect the books and records of the Agency and the City pertaining to the Site as pertinent to the purposes of this Agreement.

F. ['706] Plans and Data

Where the Developer does not proceed with the purchase and development of the Site, and when this Agreement is terminated pursuant to Section 611 hereof for any reason, the Developer shall deliver to the City any and all plans and data concerning the Site, and the City or any other person or entity designated by the City shall be free to use such plans and data, including plans and data previously delivered to the Agency, for any reason whatsoever without cost or liability therefor to the Developer or any other person, to the extent permitted by the agreements between Developer and Developer's consultants, or to the extent permitted by law. The requirements of this section are subject to the requirements of the Capital Advance Agreement between the Developer and HUD.

VIII. ['800] SPECIAL PROVISIONS

A. ['801] Recognition of HUD Agreement

Notwithstanding anything herein to the contrary, in the event the Secretary of HUD ("Secretary") should take title to the Site through foreclosure, deed in lieu of foreclosure, or otherwise, all covenants, conditions and restrictions set forth in this Agreement shall cease and terminate and be of no further force and effect.

Notwithstanding anything herein to the contrary, in the event any provision of this Agreement tends to contradict, modify or in any way change the terms of the Regulatory Agreement encumbering the real property described in such Agreement to be entered into between the Secretary and the Developer ("HUD Regulatory Agreement"), the terms of the HUD Regulatory Agreement shall prevail and govern; or if any provision of this Agreement in any way tends to limit the Secretary in his administration of the Housing Act of 1959, as amended, or the Cranston-Gonzalez National Affordable Housing Act, or the regulations issued pursuant thereto, this Agreement shall be deemed amended so as to comply with the Acts, the regulations and the aforementioned HUD Regulatory Agreement.

Notwithstanding anything in this Agreement to the contrary, no amendment to this Agreement shall be effected without the prior written approval of the Secretary, his successor or assigns.

Any amounts due Agency and City by Developer shall be payable only from Residual

Receipts as defined in the HUD Regulatory Agreement and with the prior written approval of HUD.

B. [' 802] Submission of Documents to the Agency and the City for Approval

During the term of the HUD Capital Advance Documents, the Developer shall, at the same times as the same are submitted to HUD, provide City with conformed copies of all reports, including but not limited to those pertaining to, resident income levels, Project Income, Operating Expenses, and Residual Receipts, etc., required to be submitted to HUD under the HUD Capital Advance Documents, and after the term of the HUD Capital Advance Documents, as set forth in this Agreement, the Regulatory Agreement (Attachment No. 11), the Agency Loan Agreement (Attachment No. 7), the City Loan Agreement (Attachment No. 8), and the Grant Deed (Attachment No. 5). During the term of the HUD Capital Advance Documents, documents in compliance with HUD rental requirements in the Rental Agreements (leases) shall satisfy the Agency and City requirements for same.

C. [' 803] Amendments to this Agreement

The Developer, the Agency and the City agree to mutually consider reasonable requests for amendments to this Agreement which may be made by any of the parties hereto, lending institutions or financial consultants to the Agency or the City, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. If any provision of this Agreement tends to contradict, modify or in any way change the terms of the Capital Advance Documents or HUD 202 Program Requirements, the terms of the HUD Capital Advance Documents or HUD 202 Program Requirements shall control. If any modifications to this Agreement are required in order to obtain HUD approval for a commitment of the HUD 202 Program, the parties agree to make such changes to this Agreement and its Attachments and/or Exhibits as necessary for such compliance and approvals.

IX. [' 900] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement is executed in four (4) duplicate counterparts, each of which is deemed to be an original. This Agreement comprises pages 1 through 33, inclusive, and Attachment Nos. 1 through 11, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Agency, the City and the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency, the City and the Developer.

X. [' 1000] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by the Developer and delivered to the City, must be authorized, executed and delivered by the Agency and the City within forty-five (45) days after the date of signature by the Developer, or this Agreement shall be void, except to the extent that the Developer shall consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The effective date of this Agreement shall be the date when this Agreement has been approved and signed by the Agency and the City (the "Effective Date").

IN WITNESS WHEREOF, the parties have executed this Disposition and Development Agreement effective as of (but not necessarily on) the Effective Date.

"DEVELOPER"

LIL JACKSON SENIOR COMMUNITY

By: _____
Benjamin F. Beckler, III
Authorized Agent of the 501c3, Lil Jackson Senior Community

Dated: 12/08/08, ~~2008~~

"AGENCY" and "CITY"

CITY OF OCEANSIDE and COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE

By: _____
Jim Wood, Mayor and Chairman

Dated: _____, 2009

APPROVED AS TO FORM:

By: _____
Barbara L. Hamilton
Assistant City Attorney and General Counsel

Notary Acknowledgement of Developer's Signatures Must Be Attached
[Notary Public, Use California All-Purpose Acknowledgement Form]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles }

On 12/8/08 (Date) before me, Kimberly A. Heintzelman, Notary Public (Here Insert Name and Title of the Officer)

personally appeared Benjamin F. Beckler, III (Name(s) of Signer(s))

,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

KIMBERLY A. HEINTZELMAN
Commission # 1664138
Notary Public - California
Los Angeles County
My Comm. Expires May 5, 2010

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kimberly A. Heintzelman (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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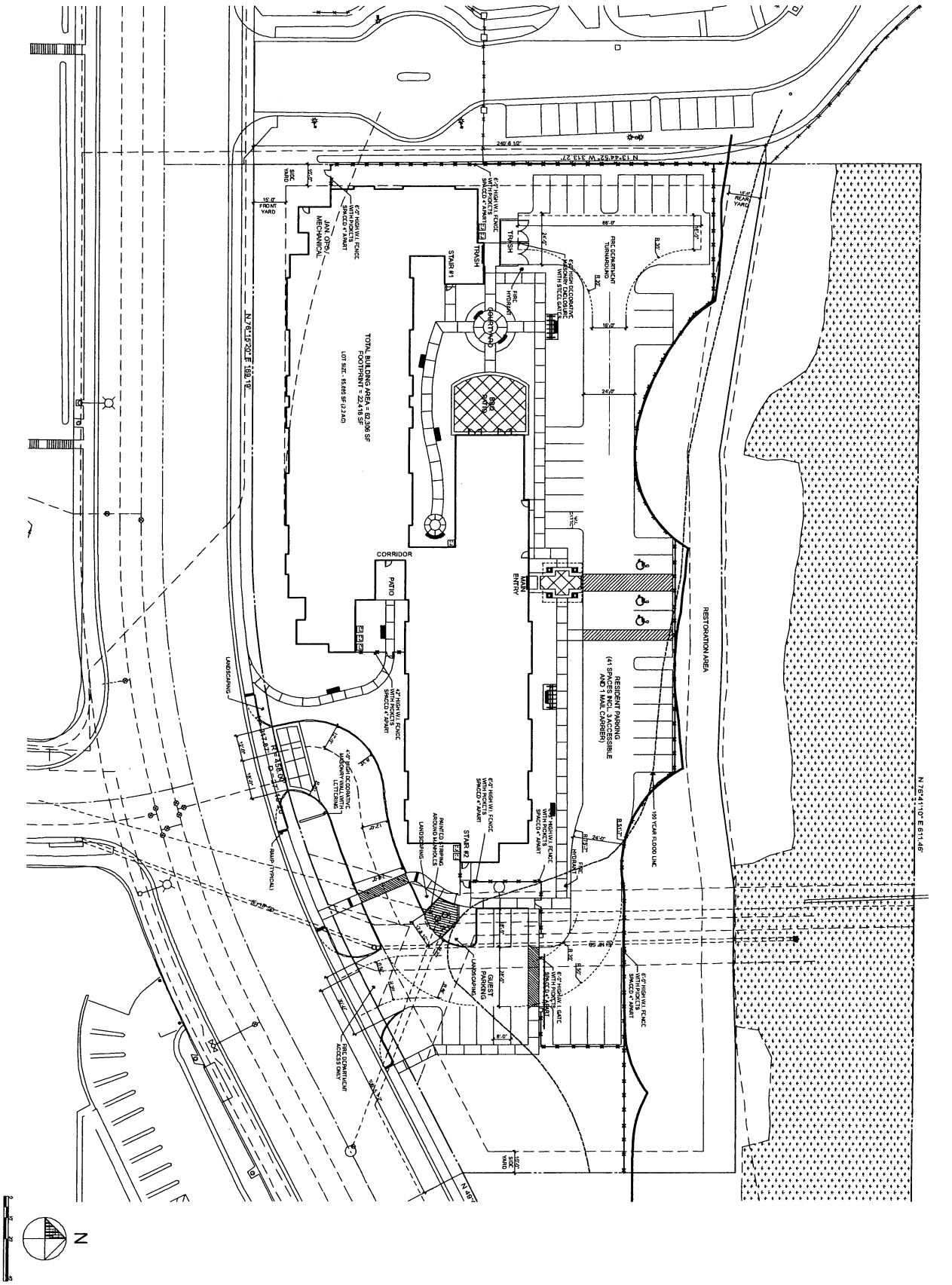
ATTACHMENT NO. 1



NOT FOR CONSTRUCTION

LIL JACKSON
LAKE BOULEVARD
OCEANSIDE, CA 92056
SOUTHERN CALIFORNIA PRESBYTERIAN HOMES

SITE PLAN

A1.1

ATTACHMENT NO. 2

LEGAL DESCRIPTION

THAT PORTION OF PARCEL 2, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN AT PAGE 4736 OF PARCEL MAPS, FILED IN THE OFFICE OF THE COUNTY RECORDER, MAY 19, 1976, LYING SOUTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2;
THENCE ALONG THE WESTERLY BOUNDARY THEREOF NORTH 13°44'52" WEST 240.57 FEET TO THE **TRUE POINT OF BEGINNING** OF THIS DESCRIPTION;
THENCE LEAVING SAID WESTERLY LINE NORTH 85°18'35" EAST 14.87 FEET;
THENCE NORTH 85°25'44" EAST 63.48 FEET;
THENCE NORTH 85°00'58" EAST 59.55 FEET;
THENCE NORTH 73°00'04" EAST 14.53 FEET;
THENCE NORTH 75°48'17" EAST 75.04 FEET;
THENCE NORTH 78°25'49" EAST 52.62 FEET;
THENCE NORTH 68°57'06" EAST 62.11 FEET;
THENCE NORTH 76°57'43" EAST 37.55 FEET;
THENCE NORTH 74°28'56" EAST 34.68 FEET;
THENCE NORTH 76°15'05" EAST 61.44 FEET;
THENCE SOUTH 13°44'56" EAST 127.33 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF SAID PARCEL 2, BEING THE **POINT OF TERMINUS** OF THIS DESCRIPTION.

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

Jan – Oct 2006	Complete a. Preliminary design and tentative parcel map b. Appraisal, soils, engineering, survey c. Single asset corporation filing d. Filing for tax exemption e. Preliminary Budget f. Submission for initial entitlement review
December 2006	a. Resubmit for entitlement processing b. Complete review of DDA and attachments to DDA
Jun 2007 – Aug 2008	a. Perform CEQA b. Refine Budget Estimate
October 2008	a. Planning Commission Hearing and Approval
January 2009	a. Council/CDC approval of DDA, loan agreements, regulatory agreement, etc. b. Begin preparation of working drawings c. Council Approval of entitlements/parcel map
March 1, 2009	a. Submit for plan check
March-May 2009	a. Complete plan check and re-plan check with City b. Complete firm documents c. Project permit ready d. Complete final budget
June-July 2009	a. Submit firm commitment to HUD b. Start working on final closing documents
August 2009	a. HUD issues firm commitment b. Start work on legal documents for closing c. Record parcel map
Sept. 2009	a. HUD closing b. Start of construction
January 2011 (or as extended by HUD)	a. Complete construction of project and begin occupancy

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

The proposed project will be located on 2.2013 acres at the intersection of Lake Blvd and Esplanade Street. The project is 62,306 square feet 3-story Type V-one hour wood frame slab on grade building. The proposed project will have pitched roof. The exterior surface of the building shall be hardi-board composite or equal. The project shall include vinyl, dual glaze, low E windows.

The proposed project consists of (79) 1-bedroom/1bath and (1) 2-bedroom/1bath. The project shall have electric service to each unit with separate meters. 5% of the units will be handicapped accessible. All units will be handicapped adaptable. Reception and Management offices are located on the first floor. The common spaces shall include large community room with hospitality kitchen with an outside patio located directly outside the community room for barbeques and resident functions. Other common rooms include the TV room, laundry room, computer/library room, and crafts room. The common spaces shall be located thru out the building to encourage resident circulation and convenient access to residents.

The proposed project includes (2) hydraulic elevators. On site parking shall be include 0.5 space per unit. The site shall be fully fenced to enhance resident security.

ATTACHMENT NO. 5

Recording Requested by:

COMMUNITY DEVELOPMENT COMMISSION OF THE
CITY OF OCEANSIDE

When Recorded Return to and
Mail Tax Statements to:

Lil Jackson Senior Community
C/o Southern California Presbyterian Homes
516 Burchett Street
Glendale, CA 91203

_____SPACE ABOVE THIS LINE FOR RECORDING USE_____

A.P.N. CITY DOCUMENT NO.

DOCUMENTARY TRANSFER TAX $_____
___ computed on full value of property conveyed, or
___ computed on full value less liens & encumbrances
remaining thereon at time of sale

_____
Signature of declarant or agent determining tax - Firm name

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged the **COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE**, a public body, corporate and politic of the State of California, (herein called "Grantor"), hereby grants to **LIL JACKSON SENIOR COMMUNITY,** a California nonprofit, public benefit corporation, (herein called "Grantee"), the real property, (hereinafter referred to as the "Property"), more particularly described in a legal description thereof, marked Exhibit "A" and as shown on a sketch thereof marked Exhibit "B", respectively attached hereto and incorporated herein by this reference.

(1) Grantor excepts and reserves any existing street, proposed street, or portion of any street or proposed street lying outside the boundaries of the Property which might otherwise pass with a conveyance of the Property.

(2) Said Property is conveyed subject to the covenants, conditions and restrictions and other obligations of Grantee as set forth herein.

(3) The Property is conveyed to Grantee at a purchase price (herein called "Purchase Price"), determined in accordance with the uses permitted. Therefore, Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property that the Grantee, such successors and such assigns, shall develop, maintain, and use the Property only as follows:

(a) The terms of this Grant Deed are made by Grantor and accepted by Grantee with the understanding and agreement that the Property shall not be used in violation of the development permitted and the uses specified in the applicable provisions of this Grant Deed and that certain Regulatory Agreement, by and among Grantor, the City of Oceanside (the "City") and Grantee, which is of the same date as this Grant Deed and filed concurrently herewith in the Office of said County Recorder (the "Regulatory Agreement"), whichever document is more restrictive.

(b) There shall be constructed upon the Property a 3-story, eighty (80) unit, multi-family residential building containing seventy-nine (79) one-bedroom rental units for the elderly (the "Housing Units"), and one (1) two-bedroom unit for a resident (onsite) manager, service and recreational/leisure program facilities, related parking facilities, appropriate landscaping and other appurtenant improvements, all in accordance with plans and specifications prepared by Grantee and approved by Grantor. Said Housing Units shall be made available to and the occupancy thereof restricted to qualified low-income households in which each person is required to be a Senior Citizen of sixty-two (62) years of age or older, or a "Qualifying Resident" as defined in California Civil Code Section 51.3 and as amended from time to time, and as set forth below (hereinafter collectively referred to as "Senior Citizen") all at Affordable Rental Rates in accordance with the provisions of paragraph 4 of this Grant Deed.. The use of the Property shall be at all times rental units and not be converted to condominiums or other non-rental use. The foregoing covenant shall run with the land. Compliance by Developer with the requirements of HUD Section 202 or 811 program requirements during the term of the HUD Capital Advance Documents shall be deemed to satisfy the requirements of this Section, and in the event of conflict, the HUD Capital Advance Documents shall control.

(c) Grantee shall maintain the improvements on the Property and shall keep the Property free from any accumulation of debris or waste materials. Grantee shall also maintain the required landscaping in a healthy condition.

(i) Grantee shall establish and maintain, at all times during the term of this Grant Deed, a Capital Replacement Reserve (the "Capital Replacement Reserve") in an amount or amounts of funds to sufficiently and properly maintain the Property, together with any and all structures, buildings, equipment, and appurtenant improvements constructed thereon, in good and workable order. During the term of the HUD Capital Advance Documents, maintenance of Capital Replacement Reserve levels as established by the HUD Capital Advance Documents shall fulfill this requirement.

(d) Grantee shall only sell, transfer, convey or assign the Property as a whole and is not permitted to subdivide the Property (except for the letting of residential Housing Units) without the prior approval of the Grantor.

(e) Grantor hereby reserves a lien on the Property as security for the fulfillment by Grantee of its obligations under this Grant Deed and the Regulatory Agreement. Any such lien is subject to the prior written approval of HUD.

(4) Grantee shall make available, restrict occupancy to, and rent the Housing Units to qualified Very Low Income Senior Citizen households, during the term of the Affordability Period, all at the Affordable Rental Rates described below. Grantee shall set aside one (1) two-bedroom unit as an onsite manager's residence. For the purposes of this Grant Deed the following definitions shall apply:

(a) "Very Low Income Households" means persons and families whose income does not exceed fifty percent (50%) of Area Median Income, adjusted for family size in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. The determination of a household's status as a Very Low Income Household shall be made through third party verification and prior to the initial occupancy of a Housing Unit by the household. For the purpose of this Grant Deed, Very Low Income Households includes Extremely Low Income Households as defined by Health and Safety Code Section 50106.

(b) "Lower Income Households" means persons and families whose income does not exceed eighty percent (80%) of Area Median Income, adjusted for family size in accordance with the adjusting factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. The determination of a household's status as a Lower Income Household shall be made through third party verification and prior to the initial occupancy of a Housing Unit by the household. For the purpose of this Regulatory Agreement, Lower Income Households includes Very Low Income Households, as defined in Health and Safety Code Section 50105, and Extremely Low Income Households, as defined in Health and Safety Code Section 50106.

(c) "Qualified Permanent Resident" means a remaining member of a household who meets the following basic requirements for eligibility as a remaining member of a household: 1) the individual must be a party to the lease or rental contract when the Qualifying Resident leaves the Housing Unit; 2) the individual must be of legal age to contract under state law; 3) if the individual who establishes initial eligibility for the Housing Unit leaves the Housing Unit for any reason, other than death, in a Section 202/8, Section 202 PAC, Section 202 PRAC project, the owner must determine if the individual(s) still remaining in the Housing Unit meets the eligibility requirements for the project as to income and age. If the individual still remaining in the Housing Unit does not meet such requirements, the owner must remove the individual from the Housing Unit. Notwithstanding the foregoing, if any of the requirements of this Section 4 conflict with the HUD Capital Advance Documents or the HUD Section 202 (or Section 811) program requirements, the applicable HUD requirements shall control.

(d) "Qualifying Resident or Senior Citizen" means a person who is 62 years of age or older, as defined in Section 51.3 of the California Civil Code, and as amended from time to time, and meets the income level requirements set forth in this Grant Deed and the Regulatory Agreement.

(e) "Annual Rent" shall mean the total of monthly payments made over the period of one

year by the resident of a Housing Unit for use and occupancy of the Housing Unit and facilities associated therewith, including an allowance for utilities ("Utility Allowance") as prescribed by the City of Oceanside, Neighborhood Services Department.

(f) "Affordable Rental Rates" (including a Utility Allowance) may not exceed 30% of 50% of the Area Median Income for Very Low Income Households or 30% of 80% of the Area Median Income for Lower Income Households for the annual rent, adjusted for family size appropriate for the unit.

(g) "Area Median Income" means the median family income of a geographic area of the state, as annually estimated by the United States Housing Act of 1937. For the purpose of this Grant Deed the geographical area shall be San Diego County, California.

(h) "Utility Allowance" means that amount required for utilities which are not paid for by Developer and which is the amount deducted from the total tenant rent to assist in paying utilities."

(i) "Affordability Period" the Housing Units on the Property shall, for a period of fifty-five (55) years from the date of issuance of the Certificate of Occupancy by the City (the "Affordability Period"), be rented at Affordable Rental Rates to a Qualifying Resident or Senior Citizen pursuant to the requirements of this Grant Deed and the Regulatory Agreement. During the first forty (40) years of the term of the Affordability Period, Grantee shall restrict occupancy of all of the Housing Units to Very Low Income Households. Provided, at the time, additional HUD Section 202 or Section 811 program funding or any other public or private funds are not made available to assist in offsetting or subsidizing rents for the Project, Grantee may, commencing on the forty-first (41st) year of the term of the Affordability Period and during the remaining term thereof, as vacancies occur, make available and rent a Housing Unit to a Lower Income Household (Senior Citizen). Notwithstanding the foregoing, Grantee may, no sooner than the forty-first (41st) year of the term of the Affordability Period, request that the Affordability Restrictions contained herein and in the Regulatory Agreement be renegotiated to allow renting the Housing Units to elderly persons and families earning no more that 80% of Area Median Income if a financial need to do so is demonstrated. Compliance by the Grantee with the requirements of the HUD Section 202 or 811 program during the term of the HUD Capital Advance Documents shall be deemed to satisfy the requirements of the Section and, in the event of a conflict, the HUD requirements shall control.

(j) "HUD" shall mean the United States Department of Housing and Urban Development.

(k) "HUD Capital Advance Documents" shall collectively refer to the HUD Note, Deed of Trust, Regulatory Agreement, Use Agreement, Capital Advance Agreement and Project Rental Assistance Contract as required by Section 202 of the Housing Act of 1959, as amended, or by Section 811 of the Cranston-Gonzalez National Affordable Housing Act ("the Act").

(5) The Grantee shall not make any total or partial sale, transfer, conveyance or assignment of the Property or any part thereof or the improvements thereon, except for the letting of the Housing Units pursuant to the terms and conditions hereof and the Regulatory Agreement, without the prior written approval of Grantor. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property, nor shall it prohibit granting any security interests in the Property permitted by paragraph (5)(a) of this Grant Deed for financing the acquisition and development of the Property. The consideration payable for such sale, transfer, conveyance or assignment to the extent it is in excess of the amount so authorized shall belong and be paid to the Grantor and until so paid the Grantor shall have a lien on the Property (or any portion thereof) for such amount. Any such lien shall be subordinate and subject to mortgages, deeds of trust, or other security instruments executed for the sole purpose of obtaining funds to purchase and develop the Property (or any portion thereof) as authorized by paragraph (5)(a) of this Grant Deed and any such lien shall be subject to the prior written approval of HUD.

(a) The Grantee shall not place or suffer to be placed on the Property any lien or encumbrance other than mortgages, deeds of trust, or any other form of conveyance required for any reasonable method of financing the acquisition of the Property, the construction of improvements on the Property, and any other expenditures necessary and appropriate to develop the Property under the terms of the Regulatory Agreement or the HUD Capital Advance Documents or HUD 202 Program. The Grantee shall not enter into any such conveyance for financing without the prior written approval of the Grantor, which approval the Grantor agrees to give if any such conveyance is given to a responsible financial or lending institution or other acceptable person or entity. No approval is required for the HUD Capital Advance Documents.

Notwithstanding anything in this paragraph (5) to the contrary, the Grantee shall, at all times during the term of the HUD Capital Advance Documents, have the right to convey the Property to HUD or to a transferee approved by HUD, without Grantor approval and any transfer approved by HUD shall be deemed approved by Grantor.

(6) Prior to the recordation of a Certificate of Completion issued by the Grantor for the improvements to be constructed on the Property or on any part thereof:

(a) The Grantor shall have the right, at its option, to reenter and take possession of the Property hereby conveyed (or portion thereof) with all improvements thereon, and to terminate and revest in the Grantor the estate hereby conveyed to the Grantee, if the Grantee (or its successors in interest) shall:

(i) Fail to commence construction of the improvements on the Property (or portion thereof) as required by the Regulatory Agreement and this Grant Deed for a period of three (3) months after written notice to proceed from the Grantor; or

(ii) Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the Grantor; or

(iii) Assign or attempt to assign the Agreement, or any rights therein, or transfer,

or suffer any involuntary transfer of, the Property, or any part thereof, in violation of the Regulatory Agreement or this Grant Deed, and such violation shall not be cured within thirty (30) days after the date of the receipt of written notice thereof by the Grantor to the Grantee.

(b) The right to reenter, repossess, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid, or limit:

(i) The HUD Regulatory Agreement and Capital Advance Documents; or

(ii) Any mortgage or deed of trust or other security interest permitted by the Agreement and paragraph (5)(a) of this Grant Deed; or

(iii) Any rights or interests provided in the Regulatory Agreement and this Grant Deed for the protection of the holders of such mortgages, deeds of trust, or other security interests.

(c) In the event title to the Property, or any part thereof, is revested in the Grantor as provided in this paragraph (6), the Grantor shall, pursuant to its responsibilities under state law, use its best efforts to resell the Property, or any part thereof, as soon and in such manner as the Grantor shall find feasible and consistent with the objectives of such law to a qualified and responsible party or parties (as determined by the Grantor), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to the Grantor and in accordance with the uses specified for the Property, or part thereof. Upon such resale of the Property, or any part thereof, the proceeds thereof shall be applied:

(i) First, to reimburse the Grantor on its own behalf or on behalf of the City of Oceanside for all costs and expenses incurred by the Grantor, including but not limited to, any and all amounts loaned by Grantor to Grantee for the acquisition and construction of improvements on the Property, salaries to personnel engaged in such action, in connection with the recapture, management, and resale of the Property, or part thereof (but less any income derived by the Grantor from the Property, or part thereof, in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part thereof (or, in the event the Property, or part thereof, is exempt from taxation or assessment or such charges during the period of ownership thereof by the Grantor, then such taxes, assessments, or charges, as would have been payable if the Property, or part thereof, were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Grantee, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Property, or part thereof; and any amounts otherwise owing to the Grantor by the Grantee and its successor or transferee; and

(ii) Second, to reimburse the Grantee, its successor or transferee, up to the amount equal to: the sum of (1) the Purchase Price paid to the Grantor by the Grantee for the Property (or allocable to the part thereof), and (2) the costs incurred for the development of the Property, or part thereof, or for the construction of the agreed improvements thereon; less (3) any amounts loaned by Grantor to Grantee for the acquisition and construction of improvements on the Property, any gain or income withdrawn or made by the Grantee from the Property, or part thereof, or from the improvements thereon. For purposes of this paragraph the term "cost incurred" shall include direct, out-of-pocket expenses of development, but shall exclude Grantee's general overhead expense.

(iii) Any balance remaining after such reimbursements shall be retained by the Grantor as its property.

(e) To the extent that this right of reverter involves a forfeiture, it must be strictly interpreted against the Grantor, the party for whose benefit it is created. This right is to be interpreted in light of the fact that the Grantor hereby conveys the Property to the Grantee for development and not for speculation in undeveloped land.

The provisions of this Section 6 shall not be applicable during the term of the HUD Capital Advance Documents.

(7) Grantee covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property, or any part thereof, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, familial status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property (or portion thereof), 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 of the Property (or portion thereof). The foregoing covenants shall run with the land.

(8) All deeds, leases or contracts made relative to the Property, improvements thereon, or any part thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: "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 sex, familial status, race, color, creed, religion, national origin or ancestry 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."

(b) In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, 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, ancestry, familial status, disability or sexual orientation in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(c) In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of sex, familial status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, 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 or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

During the term of the HUD Capital Advance Documents, compliance with similar requirements contained in the HUD Capital Advance Documents or HUD 202 Program shall be deemed compliance with the foregoing requirements of this Section 8.

(9) All conditions, covenants and restrictions contained in this Grant Deed shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Grantor, its successors and assigns, and the City of Oceanside and its successors and assigns, against Grantee, its successors and assigns, to or of the Property conveyed herein or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof.

(10) The covenants against discrimination set forth in paragraphs (7) and (8) of this Grant Deed shall remain in perpetuity.

(11) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that Grantor shall be deemed a beneficiary of the agreements and covenants provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor, and such covenants shall run in favor of the Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. Grantor shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

(12) No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of

any mortgage or deed of trust or security interest permitted by paragraph (5)(a) of this Grant Deed; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations, and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

(13) None of the terms, covenants, agreements or conditions heretofore agreed upon in writing in other instruments between the parties to this Grant Deed with respect to obligations to be performed, kept or observed by Grantee or Grantor in respect to said Property or any part thereof after this conveyance of said Property shall be deemed to be merged with this Grant Deed.

(14) The covenants contained in this Grant Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, except for the covenant and condition contained in paragraph (6) of this Grant Deed.

(15) During the term of the HUD Capital Advance Documents, Grantor shall not declare a default or breach by Grantee (or and HUD approved successor to Grantee), under the terms set forth in this Grant Deed, without HUD's prior written approval.

(16) Notwithstanding anything herein to the contrary, during the term of the HUD Capital Advance Documents, in the event the Secretary of HUD ("Secretary") should take title to the Property through foreclosure, deed in lieu of foreclosure, or otherwise, all covenants, conditions and restrictions set forth in this Agreement shall cease and terminate and be of no further force and effect.

(17) Notwithstanding anything herein to the contrary, during the term of the HUD Capital Advance Documents, in the event any provision of this Agreement tends to contradict, modify or in any way change the terms of the Regulatory Agreement encumbering the real property described in such Agreement to be entered into between the Secretary and the Grantee ("HUD Regulatory Agreement"), the terms of the HUD Regulatory Agreement shall prevail and govern; or if any provision of this Agreement in any way tends to limit the Secretary in his administration of the Housing Act of 1959, as amended, or the Cranston-Gonzalez National Affordable Housing Act, or the regulations issued pursuant thereto, this Agreement shall be deemed amended so as to comply with the Acts, the regulations and the aforementioned HUD Regulatory Agreement.

(18) Notwithstanding anything in this Agreement to the contrary, during the term of the HUD Capital Advance Documents, no amendment to this Agreement shall be effected without the prior written approval of the Secretary, his successor or assigns.

(19) During the Term of the HUD Capital Advance Documents, any amounts due Grantor and City by Grantee shall be payable only from Residual Receipts as defined in the HUD Regulatory Agreement and with the prior written approval of HUD.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY
[Signatures on Following Page]

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized this __ day of _____, 2009.

Grantor-Commission:

COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE

By: _____
Jim Wood, Chairman

APPROVED AS TO FORM:

By: _____
Barbara L. Hamilton, Assistant General Counsel

The Grantee hereby accepts the written deed, subject to all of the matters hereinbefore set forth.

Grantee:
LIL JACKSON SENIOR COMMUNITY,
a California nonprofit public benefit corporation

By: _____
Benjamin F. Beckler III
Authorized Agent of the 501c3, Lil Jackson Senior Community

Exhibit "A"

DESCRIPTION OF THE PROPERTY

THAT PORTION OF PARCEL 2, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN AT PAGE 4736 OF PARCEL MAPS, FILED IN THE OFFICE OF THE COUNTY RECORDER, MAY 19, 1976, LYING SOUTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2;
THENCE ALONG THE WESTERLY BOUNDARY THEREOF NORTH 13°44'52" WEST 240.57 FEET TO THE **TRUE POINT OF BEGINNING** OF THIS DESCRIPTION;
THENCE LEAVING SAID WESTERLY LINE NORTH 85°18'35" EAST 14.87 FEET;
THENCE NORTH 85°25'44" EAST 63.48 FEET;
THENCE NORTH 85°00'58" EAST 59.55 FEET;
THENCE NORTH 73°00'04" EAST 14.53 FEET;
THENCE NORTH 75°48'17" EAST 75.04 FEET;
THENCE NORTH 78°25'49" EAST 52.62 FEET;
THENCE NORTH 68°57'06" EAST 62.11 FEET;
THENCE NORTH 76°57'43" EAST 37.55 FEET;
THENCE NORTH 74°28'56" EAST 34.68 FEET;
THENCE NORTH 76°15'05" EAST 61.44 FEET;
THENCE SOUTH 13°44'56" EAST 127.33 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF SAID PARCEL 2, BEING THE **POINT OF TERMINUS** OF THIS DESCRIPTION.

Exhibit "B"

SKETCH OF THE PROPERTY

[To be Attached]

ATTACHMENT NO. 6

PROJECT BUDGET

PROJECT ITEM:

Construction estimate		$12,213,500
Bond Premium		$ 95,000
Architectural fees:		$ 474,530
Other fees:		$ 1,273,999
Taxes:		$ 18,000
Insurance:		$ 40,000
Title and Recording:		$ 15,000
Developer fee:		$ 631,898
a. contingency:	$331,898	
b. consultant:	$ 60,000	
c.. Appraisal:	$ 6,600	
d. Organizational:	$ 50,000	
e. Available for closing:	$183,400	
Attorney:		$ 25,000
Cost certification:		$ 8,000
Land:		$ 1,800,000
TOTAL:		$16,594,927

a. Offsites:	$653,202	
b. Maintenance escrow for biological buffer for 5 years:	$32,500	
c. Offsite engineering:	$13,780	
Total additional expenses:		$ 699,482
PROJECT EXPENSES TOTAL:		$17,294,409

PROJECT INCOME:

HUD Grant:	$ 9,981,800
Developer fee contributed:	$ 183,400
Agency Loan:	$ 2,990,766
City Gap Loan:	$ 4,138,443
Total Income:	$17,294,409

OTHER FEE BREAKDOWN

Cost Analyst	$ 15,000
Acoustical Study	$ 1,500
Phase I	$ 3,150
Archeology	$ 1,800
Environmental Consultant	$ 7,000
Survey	$ 29,191
Soils	$ 22,495
Traffic Study	$ 15,391
Traffic Signal	$ 203,200
Alarm Inspections	$ 9,750
Building Finals	$ 4,880
Sprinkler Inspections	$ 9,760
Other City Inspections	$ 2,000
Building Plan Check	$ 10,990
Energy Plan Check	$ 1,099
Fire Plan Check	$ 228
Disabled Access Plan Check	$ 659
Building Permit	$ 23,293
Energy Permit	$ 1,689
Disabled Access Permit	$ 768
SMIP	$ 768
Microfilm Fee	$ 100
Public Fac. Res. Fee	$ 165,760
Parks Fee	$ 280,240
Fire Plan Check	$ 228
Grading Plan Review	$ 30,913
Bond for Grading	$ 1,200
Grading Permit	$ 40
Erosion Control Plan Rev.	$ 637
Improvement Plan Rev.	$ 6,528
Landscape Review	$ 5,028
Development Plan Rev.	$ 3,621
Dev. Agreement Dep.	$ 6,250
Environmental Review	$ 2,126
Tentative Parcel Map	$ 1,796

Final Map Review	$	749
CUP	$	2,285
Traffic Fee	$	86,627
Reproduction Fee	$	200
Address	$	13
Post Card Noticing Fee	$	1,050
Schools	$	26,169
Meter Fee	$	430
Water System Buy-in Fee	$	35,590
San Diego Co. Cap. Water	$	23,358
San Diego Co. Water Treat.	$	863
Wastewater Buy-in Fee	$	48,280
Electric Facilities Charge	$	50,000
Streambed Alteration	$	1,750
Maintenance Bond for Drain.	$	25,000
Biologist Monitoring	$	9,000
Parcel Map Engineering	$	40,000
Irrigation Meter	$	18,351
Mission Resources Cons.	$	900
Archeological Monitoring	$	3,000
Revegetation Plan Mont.	$	6,850
Revegetation Plan Eng.	$	18,800
Fire Flow Test	$	2,500
Reclaimed Water System Plan Check	$	1,478
Reclaimed Water Inspection	$	1,678
Total	$1,273,999	

ATTACHMENT NO. 7

AGENCY LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") is entered into as of _____, 2009, by and between the **COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE**, a public body corporate and politic, ("Agency"), and **LIL JACKSON SENIOR COMMUNITY,** a California nonprofit public benefit corporation (the "Developer").

RECITALS

The following recitals are a substantive part of this Agreement:

A. The Agency is a public body corporate and politic organized under the Community Redevelopment Law, being §33000, et seq., of the California Health and Safety Code ("H&S Code"), which pursuant to §33334.2(a) is required to allocate 20 percent of all taxes allocated to the Agency through tax increment for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost to persons and families of low and moderate income, lower income, very low income, and extremely low income (the "Low and Moderate Income Housing Funds").

B. The Agency and the City Council of the City of Oceanside, a municipal corporation in and of the State of California (the "City"), have adopted a resolution pursuant to H&S Code §33334.2(g) allowing the use of the Low and Moderate Income Housing Funds outside the Agency's Project Area for the purposes of strengthening public-private partnerships to provide decent, safe, sanitary, and affordable housing cost to persons and families of low and moderate income, lower income, very low income, and extremely low income households and persons in the City.

C. The City has adopted a Housing Element to its General Plan pursuant to Government Code Section 65580, et seq., which sets forth the City's policies, goals and objectives to provide housing to all economic segments of the community.

D. The Agency, the City and the Developer have entered into a Disposition and Development Agreement, dated November 20, 2008 (the "DDA"). Pursuant to the DDA, (i) the Agency has agreed to sell an approximately 2 acres vacant parcel of real property, located in the City of Oceanside on Lake Boulevard between College Boulevard and Thunder Drive (the "Site"), (ii) the Agency has agreed to provide certain financial assistance to the Developer, (iii) the Developer has agreed to construct and operate an 80 unit multifamily senior rental apartment development on the Site (the "Development"), and (iv) the Developer has agreed to rent those apartment units to very low and lower income households and persons at an affordable rent. The DDA is hereby incorporated herein by reference. The Agency, the City and the Developer have also agreed to execute and record in the official records of San Diego County a "Regulatory Agreement" which sets forth certain obligations of the parties with respect to the construction and operation of the Development. The Regulatory Agreement is hereby incorporated herein by reference. All capitalized terms not otherwise defined herein shall have the meanings set forth in the DDA.

E. The Agency has agreed to provide a loan of Two Million Nine Hundred Ninety Thousand Seven Hundred Sixty-six Dollars ($2,990,766.00) to the Developer (the "Agency Loan") to be used in connection with the development of the Development.

F. The provision of financial assistance to the Developer and the development of the Development pursuant to the terms and conditions of this Agreement are in the vital and best interest of the Agency.

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

1. Agency Loan. Subject to Developer's performance of all of the terms, covenants and conditions which are set forth herein, the Agency hereby agrees to loan to the Developer, and the Developer agrees to borrow from the Agency, the sum of Two Million Nine Hundred Ninety Thousand Seven Hundred Sixty-six Dollars ($2,990,766.00) (the "Agency Loan"). Agency shall make the Agency Loan to Developer from available funds in the Agency's Low and Moderate Income Housing Funds, which shall be disbursed to Developer as provided herein.

1.1 Repayment of Agency Loan. The Developer's obligation to repay the Agency Loan shall be set forth in the Agency Residual Receipts Note and Note Rider in the form of Exhibit "A" attached hereto, which is incorporated herein. The Agency Residual Receipts Note shall be for a term of fifty-five (55) years from the date a Certificate of Occupancy is issued for the Development, and shall bear simple interest at the rate of three percent (3%) per annum commencing upon the City's issuance of the Certificate of Occupancy for the Project. Such interest rate to be consistent with the below referenced Residual Receipts Note. Notwithstanding the foregoing, the Agency shall forgive the Agency Loan in its entirety so long as the Developer is not in material breach of the Agency Loan at the maturity date of the Agency Loan. At such time, the Agency shall cancel the Agency Residual Receipts Note and surrender it to the Developer and file a full reconveyance with the San Diego County Recorder. In any event, the Agency Residual Receipts Note shall not be paid in full for any reason, prior to the maturity of the HUD Capital Advance Documents. The Agency Residual Receipts Note shall be payable from Fifty Percent (50%) of the "Residual Receipts" of the Development, after payment of (i) actual, reasonable and customary (for comparable high quality multifamily rental housing developments in San Diego County) "Operating Expenses" directly incurred, paid, and attributable to the operation, maintenance, and management of the Development, (ii) "Debt Service" which is senior to the Agency Residual Receipts Note, (iii) deposits to required reserve accounts ("Reserve Deposits"), (iv) asset management fees payable to the managing general partner of the Developer ("Partnership Management Fees"), and (v) social program fees, (vi) bond monitoring/trustee fees, and (vii) "Deferred Developer Fee" payments (as all of those terms are defined in Section 3 of the Agency Residual Receipts Note), which are in accordance with the Operating Budget approved by the City pursuant to Section 5(h) of the Regulatory Agreement. The Developer shall annually, on or before February 1st of each year, commencing in the year after the issuance of the Certificate of Occupancy for the Development, submit to the Agency a Residual Receipts Report, in the form attached hereto as Schedule "1" and incorporated herein, which shall provide the basis for the Developer's payment of Residual Receipts to the Agency. Notwithstanding the foregoing, during the term of the HUD Capital Advance Documents no Residual Receipts as defined in the HUD Regulatory Agreement may be paid except with the prior approval of HUD.

a. **Unpaid Interest.** Notwithstanding the foregoing, provided the Developer is not in default of the Agency Loan, the City Loan, the Regulatory Agreement, the DDA, and the HUD Capital Advance Documents, any interest accrued and unpaid during the first forty (40) years of the term of the Agency Loan shall be forgiven. However, commencing on the forty-first (41st) year of the term of the Agency Loan, and continuing through the remaining term thereof, the Developer shall make payments, of principal and interest, to the Agency as set forth in this Section 1.

1.2 Security for Agency Loan. The Agency Residual Receipts Note shall be secured by a Deed of Trust to be recorded as an encumbrance to the Developer's fee interest in the Site, in the form of Exhibit "B" attached hereto, which is incorporated herein, and the recordation of a UCC-1 fixture filing with respect to the Development.

1.3 Disbursement of Agency Loan. The proceeds of the Agency Loan shall be disbursed only to pay for actual and reasonable hard and soft costs of the construction of the Development, including without limitation costs of architectural, engineering, planning, legal and related professional services, and the costs of permits and fees required for the performance of the construction of the Development, all in accordance with the Project Budget which is approved by the Agency pursuant to Section 306 of the DDA, and the construction contract which has been approved by the Agency pursuant to Section 507 of the DDA (the "Construction Contract"). Agency's obligation to commence disbursement of the Agency Loan proceeds is subject to the fulfillment or waiver by Agency of each and all of the conditions precedent (a) through (i), inclusive, described below ("Conditions Precedent"), which are solely for the benefit of Agency, any of which may be waived by the Agency Executive Director or designee in his or her sole and absolute discretion:

a. **Execution of Documents.** Developer shall have executed and delivered to the Agency the Agency Residual Receipts Note and the Deed of Trust and any other documents required hereunder, and the Deed of Trust shall have been recorded as an encumbrance to the Developer's fee interest in the Site.

b. **Permits and Land Use Approvals.** Developer shall have obtained each and all of the land use, subdivision, grading and building permits and approvals necessary for the construction and development of the Development, in accordance with Section 309 of the DDA.

c. **Evidence of Financing.** Developer shall have deposited in escrow the financing documents required to cause the HUD Section 202 Capital Advance proceeds to be committed and available, in an amount sufficient, when combined with the Agency Loan and any City Gap Loan to Complete the construction of the Improvements.

d. **Construction Contract.** Developer shall have provided to the Agency a proposed Construction Contract between the Developer and one or more duly licensed general contractors for the construction of the Development, certified by the Developer to be true and correct copies thereof, and the Agency Executive Director or designee shall have reasonably approved such contractor or contractors as having the experience and financial resources necessary to construct the Development. HUD approval of the Construction Contract shall satisfy the requirements of this provision.

e. Sale of Site. If the Developer has not already acquired the Site, the Developer shall be prepared to close escrow on the purchase of the Site, concurrently with the funding of the Agency Loan.

f. Title Policy. A title insurance company reasonably acceptable to the Agency shall have unconditionally committed to issue a lender's policy of title insurance insuring the lien of the Deed of Trust in the amount of the Agency Loan, subject to such exceptions as are reasonably acceptable to the Agency, together with any endorsements reasonably requested by the Agency. The cost of such title policy and endorsements shall be paid for from the proceeds of the Agency Loan. HUD approval of an Owner's Title Policy on the Site shall satisfy the requirements of this provision.

g. Proof of Insurance. Developer shall have provided to the Agency a certificate of insurance that satisfies the requirements of Section 308 of the DDA.

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

i. Disbursement of Agency Loan Funds. Agency and Developer agree that the Agency shall disburse all of the funds of the Agency Loan before the funds of the HUD Capital Advance will be distributed.

1.4 Conditions for Each Agency Loan Disbursement. Agency's obligation to disburse each individual disbursement of the Agency Loan proceeds is subject to the fulfillment or waiver by Agency of each and all of the following conditions described below:

a. Application for Payment. The Developer shall have submitted a request for payment to the Agency in the form of the Application for Disbursement which is attached hereto as Exhibit "C" and incorporated herein, at least ten (10) business days prior to the requested disbursement. The Application for Disbursement shall be completed and certified to be accurate by the Developer. The Application for Disbursement shall specifically identify the nature of each expense, by reference to items in the Project Budget, and shall identify the status of completion of such construction. Each Application for Disbursement shall be accompanied by invoices from contractors and subcontractors and any other requested information and documents, and lien releases from such contractors and subcontractors and/or mechanic's lien title endorsements reasonably acceptable to the Agency.

b. Inspection of Work. The Agency may retain a construction administrator that monitors the construction of the Development (the "Construction Administrator"). If retained, the Construction Administrator shall have approved the Application for Disbursement and accompanying documents, and shall have inspected the work for which the Application for Disbursement is being requested and shall have certified to the Agency that (i) such work has been completed substantially in accordance with the DDA, the Scope of Development and the approved Development Plans, (ii) the amount requested corresponds with the percentage of work completed, (iii) there are adequate funds remaining from the Agency

Loan proceeds and other approved funding to complete the construction of the Development, (iv) the work for which payment is being requested has been completed in a good and workmanlike manner in accordance with the standards of the construction industry, and (v) the expenses are reasonable and in accordance with the Construction Contract budget.

c. Lien Waivers. If requested by Agency or the Construction Administrator, Agency shall have received appropriate conditional (conditioned solely on payment) waivers of mechanics' and materialmen's lien rights and stop notice rights executed by all contractors and other persons rendering services or delivering materials covered by requests made in the Request for Disbursement. To resolve such issues among others, the approved Construction Contract shall contain a ten percent (10%) holdback of the Construction Contract amount.

d. Frequency. Agency shall not be obligated to make disbursements more frequently than twice per month.

e. Use of Disbursements. Developer shall use or apply all Agency Loan disbursements solely for the purposes described in the Application for Disbursement pursuant to which the disbursement was made.

f. HUD Disbursement Form Acceptable. During the term of the HUD Capital Advance Documents, the HUD form of disbursement shall be acceptable by the Agency. The Agency Loan funds shall be fully disbursed before any HUD Capital Advance funds shall be disbursed. Subsequent to the Agency Loan proceeds being fully disbursed, Developer shall submit its request to HUD for disbursement of HUD Capital Advance proceeds based upon the applicable HUD Capital Advance Documents. Agency acknowledges that the purpose of the Agency Loan is to pay for costs not included within the HUD Capital Advance.

1.5 Subordination. The Agency Loan, note, deed of trust and other related instruments evidencing the Agency Loan as referenced in the DDA is to be subordinate to the HUD Capital Advance Documents.

1.6 Assumption/Assignment/Transfer. The Agency Residual Receipts Note shall not be assumable by successors and assigns of Developer without the prior written consent of the Agency pursuant to the DDA. Notwithstanding anything in this Section or this Agreement to the contrary, so long as the Project is encumbered by the HUD Capital Advance Documents, any proposed assumption by any transferee or assignee must have the prior written consent of HUD. Such assumption, assignment or transfer shall not constitute a default of this Agreement or the Agency Residual Receipts Note if transferee or assignee of the Residual Receipt Note or this Agreement has the approval of HUD. Nothing contained in this Agreement shall prohibit the Developer from transferring the Property or Site to HUD or to a HUD approved transferee without Agency approval.

Pursuant to the provisions of Health and Safety Code Section 33141, upon the deactivation of the Agency, the Agency Loan Agreement, the Agency Residual Receipts Note, Agency Deed of Trust shall automatically be assigned to and assumed by the City. Notwithstanding the foregoing, the Agency may assign it rights and obligations under and to the Agency Loan, Agency Residual Receipts Note, and Agency Deed of Trust to the City, at its sole and absolute discretion, at any time during the term hereof without the consent of the Developer. Should Agency make any such assignment, Agency shall provide Developer and

HUD with thirty (30) days advance written notice of such. However, any failure by Agency to provide such notice to Developer or HUD shall not invalidate or in any manner affect the effectiveness and validity of such assignment.

2. Development Requirements.

2.1 Development and Operation of Development in Compliance with DDA and Regulatory Agreement. The Developer shall develop, operate and maintain the Development in compliance with the requirements of the DDA, Financing Plan, and the Regulatory Agreement.

2.2 Maintenance. The Developer shall maintain the Development in good condition, free of debris, waste and graffiti, in a clean and presentable manner, and in compliance with the DDA, the Regulatory Agreement, and all applicable provisions of the Oceanside Municipal Code. The Development shall not be demolished or converted to another use without the prior written approval of the Agency. The Development shall be maintained in accordance with this Section 2.2 until the Agency Loan is repaid in full. If the Development is not so maintained, and such condition is not corrected within a reasonable period after written notice thereof from the Agency as provided more specifically in the Regulatory Agreement, then the Agency may perform the necessary maintenance and Developer shall pay such costs as are reasonably incurred for such maintenance.

Developer shall submit for the approval of the Agency, which approval shall not unreasonably be withheld, a plan for marketing the rental of the Development (the "Marketing Plan"). The Marketing Plan shall include affirmative marketing procedures and requirements consistent with the provisions of Section 4 of the Regulatory Agreement.

During the term of the HUD Capital Advance Documents, compliance with HUD requirements shall be deemed to satisfy the forgoing requirements in this Section 2.2.

2.3 Insurance. Developer shall furnish the Agency with proper evidence of the insurance that is required pursuant to Section 308 of the DDA. During the term of the HUD Capital Advance Documents, compliance by the Developer with the insurance requirements of the HUD 202 Program shall be deemed compliance with the insurance requirements of this Agreement.

2.4 Indemnification and Hold Harmless. Developer shall indemnify, hold harmless and defend, with attorney(s) reasonably acceptable to the Agency, the Agency and its officers, elected and appointed boards and officials, employees, representatives and agents, from and against any and all liability, damages, costs, losses, claims and expenses, suits, actions, proceedings and judgments, including attorney's fees, however caused, resulting directly or indirectly from or connected with the Development, the Site and/or the performance of this Agreement by Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf, except to the extent caused by the sole and active negligence or willful misconduct of the Agency or its officers, boards, officials, employees, representatives or agents. Provided, however, that during the term of the HUD Capital Advance Documents, any payment due under this Section over and above available insurance proceeds shall be paid only from the Residual Receipts of the Project, as defined in the HUD Regulatory Agreement, and shall be subject to HUD's prior written approval. In the event HUD acquires title to the Site or Property, HUD shall have no liability under this indemnity provision.

2.5 Compliance with Laws. The Developer shall develop, maintain and operate the Development and the Site in conformity with all applicable laws, including without limitation all applicable state labor standards, the zoning and development standards of the City of Oceanside, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, all applicable environmental laws, all state and federal fair housing laws, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.,* Government Code Section 4450*, et seq.,* Government Code Section 11135*, et seq.,* and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

2.6 Nondiscrimination. Developer for itself and its successors and assigns, agrees that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, familial status, national origin, or ancestry in the leasing, subleasing, rental, transferring, use, occupancy, tenure, or enjoyment of the Site nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, leases, sublessees, subtenants, contractors or vendees in the Site.

2.7 Condition of the Site.

a. Developer Precautions. Developer shall take all reasonably necessary precautions to prevent the release into the environment of any Hazardous Materials that may be located in, on or under the Site. 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 as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

b. Environmental Indemnity. Developer shall indemnify, defend and hold Agency 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 from the Site, use on the Site, generation on the Site, discharge from the Site, storage on the Site, disposal on or from the Site, or transportation to or from the Site, of any Hazardous Materials during the term of this 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 Site. This indemnity shall include, without limitation, any damage, liability, fine, penalty, 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; provided, however, under no circumstances shall these indemnity obligations of Developer include any obligation for payment of punitive damages assessed against Agency or City or their officers, employees, agents or representatives. Notwithstanding the forgoing, this indemnity provision shall only apply to claims, actions, suits, proceedings, loss, costs, damages, liabilities, deficiencies, fines, penalties, punitive damages, or expenses, which are directly resulting from Hazardous Material which are actually introduced onto the Site by Developer and

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shall only be payable from Residual Receipts, as defined in the HUD Regulatory Agreement, with the prior written consent of HUD. In the event HUD acquires title to the Site or Property, HUD shall have no liability under this indemnity provision.

c. Definitions. For purposes of this Agreement, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, San Diego County, the State of California, regional governmental authority, 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 byphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) 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 (xii) 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 Development, including without limitation alcohol, aspirin, tobacco and saccharine.

2.8 Liens and Stop Notices. Developer shall use its best efforts to prevent any lien or stop notice from being placed on the Site or the Development or any part thereof. If a claim of a lien or stop notice is given or recorded affecting the Site the Developer shall within thirty (30) days of such recording or service:

a. pay and discharge the same; or

b. effect the release thereof by recording and delivering to Agency a surety bond in sufficient form and amount, or otherwise; or

c. provide Agency with indemnification from a title insurance company reasonably acceptable to the Agency against such lien or other assurance which Agency deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of Agency from the effect of such lien or bonded stop notice.

3. Developer's Representations and Warranties. Developer represents and

warrants to Agency as follows:

3.1 Authority. Developer has full right, power and lawful authority to undertake all obligations as provided herein, and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of the Developer. The parties who have executed this Agreement on behalf of Developer are authorized to bind Developer by their signatures hereto.

3.2 Litigation. To the best of Developer's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Developer or any parties affiliated with Developer, at law or in equity before any court or governmental agency, domestic or foreign, which if adversely determined, would materially impair the right or ability of Developer to execute or perform its obligations under this Agreement or any documents required hereby to be executed by Developer, or which would materially adversely affect the financial condition of Developer or any parties affiliated with Developer.

3.3 No Conflict. To the best of Developer's knowledge, Developer's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer or any parties affiliated with Developer is a party or by which it is bound.

3.4 No Bankruptcy. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other proceedings have been filed or are pending or threatened against the Developer or any parties affiliated with Developer, nor are any of such proceedings contemplated by Developer or any parties affiliated with Developer.

3.5 Notice of Changed Conditions. Until the final disbursement of the Agency Loan, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3 not to be true in any material respect, immediately give written notice of such fact or condition to Agency. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder, but shall constitute an exception which Agency shall have a right to approve or disapprove if such exception would have a material adverse effect on the development and/or operation of the Development. If Agency elects to disburse the Agency Loan to the Developer following disclosure of such information, Developer's representations and warranties contained herein shall be deemed to have been made as of the date of the disbursement of the Agency Loan, subject to such exception(s). If following the disclosure of such information the Developer fails to cure such matter within the time set forth in Section 4 hereof for the cure of defaults, Agency may elect in its sole and exclusive discretion to terminate this Agreement by written notice to the Developer.

4. Remedies for Default. A failure by either party to substantially perform any action or covenant required by this Agreement, the DDA, the Grant Deed, the Regulatory Agreement, the Agency Residual Receipts Note, the Deed of Trust, or any loan or deed of trust for the Development which is senior to the Agency Loan, within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party cures such default within ten (10) days if the

claimed Default is a failure to pay amounts due pursuant to the Agency Residual Receipts Note, or thirty (30) days from receipt of such notice for all other claimed Defaults hereunder, unless a longer cure period is provided in the DDA, Grant Deed, Regulatory Agreement, Agency Residual Receipts Note, Deed of Trust or other applicable document. However, in the event that such Default is other than a failure to pay money and is of such a nature that it cannot reasonably be cured within thirty (30) days from receipt of such notice, the claimant shall not institute any proceeding against the other party, and the other party shall not be in Default if such party immediately upon receipt of such notice, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence as soon as reasonably possible thereafter. In the event that the Developer is in default on any loan or deed of trust senior to the Agency Loan, the Developer shall immediately deliver to the Agency a copy of such notice of default. Even if the holder of such loan or deed of trust has not exercised its rights or remedies with respect to such default, the Agency shall have the right (but not be obligated to) cure such default. In such event, the Agency shall be entitled to reimbursement from the Developer of all costs and expenses actually incurred by the Agency in curing such default, plus interest at the rate of four and three quarter percent (4.75%) per annum or the current HUD default rate, whichever is less. The Agency shall be entitled to add such amount to the amounts owing pursuant to the Agency Residual Receipts Note, and secured by the Leasehold Deed of Trust. Notwithstanding the forgoing, during the term of the HUD Capital Advance Documents, Agency shall not declare or claim a default under the DDA, this Agreement, the Agency Loan, Note or Deed of Trust without the prior written consent of HUD.

4.1 Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or 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 Agreement. The Agency may also cause all indebtedness of the Developer under this Agreement and the Agency Residual Receipts Note to become immediately due and payable, and may institute an action for judicial or nonjudicial foreclosure pursuant to the Deed of Trust. Legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in an appropriate municipal court in that county, or in the United States District Court for the Southern District of California. Notwithstanding the forgoing, during the term of the HUD Capital Advance Documents, Agency shall not declare or claim a default under the DDA, this Agreement, the Agency Loan, Note or Deed of Trust without the prior written consent of HUD.

4.2 Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against Agency, service of process on Agency shall be made by personal service upon the Agency Secretary (City Clerk) or in such other manner as may be provided by law. In the event that any legal action is commenced by Agency against the Developer, service of process shall be made in such manner as may be provided by law and shall be effective whether served inside or outside of California.

4.3 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of 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 the other party.

4.4 Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

4.5 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

4.6 Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees. Any such sums owed by Developer to Agency shall, during the term of the HUD Capital Advance Documents, be made from Residual Receipts as defined in the HUD Regulatory Agreement and only with HUD's prior written approval.

5. General Provisions.

5.1 Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may 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 mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice:

To Agency: Community Development Commission
of the City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Attention: Executive Director

With a copy to: City of Oceanside
City Attorney
300 North Coast Highway
Oceanside, CA 92054

To Developer: Lil Jackson Senior Community
C/o Southern California Presbyterian Homes
516 Burchett Street
Glendale, CA 91203
Attention: Benjamin F. Beckler III

With a copy to: Ross and Berke, LLP
17530 Ventura Boulevard, Suite 205
Encino, CA 91316
Attention: Alan D. Ross, Esq.

Any written notice, demand or communication shall be deemed received immediately upon receipt; 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 shall be effective on the third day from the date of the attempted delivery or deposit in the United States mail.

5.2 Non-Liability of Officials and Employees of Agency and Agency. No member, official, officer or employee of Agency or the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by Agency (or the City) or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

5.3 Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

5.4 Integration. This Agreement, together with the Agency Residual Receipts Note, Deed of Trust, Form of Residual Receipts Report, DDA, Grant Deed, Regulatory Agreement, Project Budget and other attachments to the DDA, contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes Exhibits A (Agency Residual Receipts Note and Note Rider), B (Leasehold Deed of Trust), and C (Application for Disbursement), which constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

5.5 No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

5.6 Modifications. Any alteration, change, or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

5.7 Severability. If any term, provision, condition, or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

5.8 Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement;

and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

5.9 Time of Essence. Time is expressly made of the essence with respect to the performance by the parties of each and every obligation and condition of this Agreement.

5.10 Cooperation. Each party shall cooperate with the other in this transaction and, in that regard, sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

5.11 Definitions. Any terms used in this Agreement but not separately defined herein shall have the meaning given to such terms in the DDA or Grant Deed, as appropriate.

5.12 Construction. If any provision of this Agreement tends to contradict, modify or in any way change the terms of the DDA, the terms of the DDA shall control, prevail and govern. If any provision of this Agreement tends to contradict, modify or in any way change the terms of any of the HUD Capital Advance Documents or the HUD 202 Program Requirements, the terms of the HUD Capital Advance Documents and the HUD 202 Program Requirements shall control. If any modifications to this Agreement are required in order to obtain HUD approval for a commitment of the HUD 202 Program Commitment or for approval of the documents needed to further the Project under the HUD 202 Program, the parties agree to make such changes to the Agreement and its exhibits as necessary for such compliance or approvals."

5.13 HUD Provisions. Notwithstanding anything to the contrary in this Agreement, if any provision of this Agreement tends to contradict, modify or in any way change the terms of the Regulatory Agreement encumbering the Property or Site to be entered into between the Secretary of HUD and the Developer, the terms of the Regulatory Agreement shall prevail and govern; or if any provision of this Agreement in any way tends to limit the Secretary of HUD in his administration of the Housing Act of 1959, as amended, or the Cranston-Gonzalez National Affordable Housing Act, or the regulations pursuant thereto, this Agreement shall be deemed amended so as to comply with the Acts, Regulations and Regulatory Agreement in favor of HUD. No other amendment to this Agreement shall be effective without the prior written consent approval of HUD. Notwithstanding anything herein to the contrary, if the Secretary of HUD should take title to the Property through foreclosure, deed in lieu of foreclosure, or otherwise, all covenants, conditions and restrictions set forth in this Agreement shall cease and terminate and be of no further effect. During the term of the HUD Capital Advance Documents, any monies due Agency shall be payable only from the Residual Receipts, as defined by the HUD Regulatory Agreement, with the prior approval of HUD.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY
[Signatures on Following Page]

IN WITNESS WHEREOF, Agency and the Developer have executed this Agreement as of the date first set forth above.

APPROVED AS TO FORM:

By: _____
Barbara I. Hamilton
Assistant General Counsel

AGENCY:
COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE, a public body corporate and politic

By: _____
Jim Wood, Chairman

DEVELOPER:
LIL JACKSON SENIOR COMMUNITY, a California nonprofit public benefit corporation

By: _____
Benjamin F. Beckler, III
Authorized Agent of the 501c3, Lil Jackson Senior Community

Developer's Signature(s) Must be Notarized

ATTACHMENT NO. 7
EXHIBIT "A"

FHA FORM NO. 1710
(REVISED 2/69)
Modified 2-26-92(ADR)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

SECTION 202/811

AGENCY RESIDUAL RECEIPTS NOTE
(Nonprofit Mortgagors)

Project No. 129-EE032-WAH-NP/CA33-SD51-001

For value received, the undersigned maker promises to pay to the Community Development Commission of the City of Oceanside (payee) the principal sum of Two Million Nine Hundred Ninety Thousand Seven Hundred Sixty-six Dollars ($2,990,766.00) with interest on the outstanding balance at the rate of *three percent (3%) per annum, which shall not be compounded, subject to the following conditions and limitations:

(1) Principal and interest on this note shall be due and payable on fifty-five (55) years from the date of the City Certificate of Occupancy but not before the maturity date of the note and deed of trust held by the Secretary of Housing and Urban Development ("Secretary") financing HUD Project No. 129-EE032-WAH-NP/CA33-SD51-001, provided that if the aforesaid note is prepaid in full, the holder of this note, at its option and without notice, may declare the whole principal sum or any balance thereof, together with interest thereon, immediately due and payable.

(2) Prepayments to principal and interest on this note may be made only from the residual receipts fund, as that term is defined in the Regulatory Agreement between the maker and the Secretary executed in connection with the above project, and only after obtaining the prior written approval of the Secretary. Such prepayments may be made only after final closing on the note by the Secretary and after the end of a semiannual or an annual fiscal period.

(3) This note is non-negotiable and may not be sold, transferred, assigned, or pledged by the payee except with the prior written approval of the Secretary.

(4) This note is made and delivered in payment of costs not included in the HUD Capital Advance.

(5) See attached Rider for additional provisions.

Presentation, demand and notice of demand, non-payment and protest of this note are waived.

Executed this ____ day of _____, 20___.

Lil Jackson Senior Community, a California nonprofit public benefit corporation

Attest:

By: _____
Benjamin F. Beckler, III
Authorized Agent of the 501c3, Lil Jackson Senior Community

_____

The payee hereby certifies that this is a bona fide transaction and that it fully understands all the requirements of this note, and that no prepayment of principal or interest shall be accepted without evidence that the Secretary has authorized such prepayment. If an unauthorized prepayment is accepted, the funds shall be held by the payee in trust for the project.

APPROVED AS TO FORM:

Community Development Commission of the City of Oceanside, a public body corporate and politic

By: _____
Barbara L. Hamilton
Assistant General Counsel

By: _____
Jim Wood, Chairman

*Not to exceed the highest permissible rate established by the Secretary.

AGENCY RESIDUAL RECEIPT NOTE RIDER

_____, 2009 Oceanside, California

THIS RESIDUAL RECEIPTS NOTE RIDER ("Note Rider") is attached to and made a part of the Agency Residual Receipts Note dated _____, 2009 (the "Note") made by **LIL JACKSON SENIOR COMMUNITY**, a California nonprofit public benefit corporation (the "Borrower"), under which Borrower promises to pay to the **COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE,** a public body corporate and politic (the "Agency") the sum of Two Million Nine Hundred Ninety Thousand Seven Hundred Sixty-six Dollars ($2,990,766.00) (the "Note Amount"), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

1. **Agreement.** This Note Rider is given in accordance with that certain Loan Agreement executed by the Agency and Borrower, dated as of _____, 2009 (the "Agreement") and the Note. The rights and obligations of the Borrower and the Agency under the Note shall be governed by the Agreement and by the additional terms set forth in this Note Rider. In the event of any inconsistencies between the terms of this Note Rider and the terms of the Agreement or any other document related to the Note Amount, the terms of the Note shall prevail. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

2. **Repayment of Note Amount.** The Note Amount shall be paid by the Borrower's annual payment to the Agency of an amount equal to fifty percent (50%) of the Residual Receipts (as defined below) from operation of the Development (as defined in the Agreement), as determined by a residual receipts calculation from the operation of the Development during the preceding fiscal year. Annual Residual Receipts payments shall be delivered on or before February 1st, of each year during the term of the Note first following the date the Development is placed in service, until the Note Amount and all unpaid interest thereon has been repaid in full. Provided Borrower is not in default of the Agreement, the Regulatory Agreement, the DDA, and the HUD Capital Advance Documents, any interest accrued and unpaid during the first forty (40) years of the term of the Agreement shall be forgiven. Commencing on the forty-first (41st) year of the term of the Agreement, and continuing through the remaining term thereof, Borrower shall make payments, of principal and interest, to the Agency as set forth herein. Any remaining portion of the Note Amount shall be forgiven in its entirety by the Agency on the fifty-fifth (55th) anniversary of the date the Certificate of Occupancy is issued by the City for the Development so long as Borrower is not in material breach of the Agreement, the Note and this Note Rider. Notwithstanding the foregoing, the full Note Amount may be accelerated as set forth in Section 10 hereof. During the term of the HUD Capital Advance Documents, Developer shall make payment from Residual Receipts, as defined in the HUD Regulatory Agreement, and only with HUD's prior written approval.

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

As used herein, "Debt Service" means payments made in a calendar year pursuant to the approved financing obtained for the acquisition and ownership of the Development pursuant to Section 1.3(c) of the Agreement and Section 214 of the DDA, but excluding payments made pursuant to this Note.

As used herein, "Deferred Developer Fees" shall mean any deferred developer fee allowable under the Project Budget that has been approved by the Agency pursuant to Section 306 of the DDA.

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

As used herein, "Partnership Management Fees" shall mean the asset management fee payable to the managing general partner and/or any special limited partner of the Borrower, or any qualified affiliate of Borrower or designated management agent of Borrower, which is allowable under the Project Budget which has been approved by the Agency pursuant to Section 306 of the DDA.

As used herein, "Reserve Deposits" shall mean and payments to the Operating Reserve account and payments to the Capital Replacement Reserve account pursuant to the HUD Capital Advance Documents.

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

On or before February 1st of each year, commencing in the year of the issuance of the Certificate of Occupancy for the Development, the Borrower shall annually provide the Agency a Residual Receipts report, in the form attached to the Agreement as Schedule "1", which shall describe in detail the Annual Project Revenue, Debt Service, Operating Expenses, Reserve Deposits, Partnership Management Fees, Deferred Developer Fees, and Residual Receipts for that fiscal year. The Borrower shall also submit to the Agency, on or before February 1st, of each fiscal year commencing in the year of the issuance of the Certificate of Occupancy for the

Development, annual financial statements with respect to the Development that have been reviewed by an independent certified public accountant, together with an expressed written opinion of the certified public accountant that such financial statements present the financial position, results of operations, and cash flows fairly and in accordance with generally accepted accounting principles.

3. **Security.** The Note is secured by a Deed of Trust (the "Deed of Trust") dated as of the same date as this Note Rider, and a UCC-1 fixture filing.

4. **Waivers**

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

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

c. Subject to the Provisions of Section 10 of this Note Rider, the obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

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

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

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

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

7. **Amendments and Modifications.** The Note and this Note Rider may not be changed orally, but only by an amendment in writing signed by Borrower and by the Agency.

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8. Agency May Assign. Agency may, at its option, assign its right to receive payment under the Note without necessity of obtaining the consent of the Borrower. Should Agency make any such assignment, Agency shall provide Developer and HUD with thirty (30) days advance written notice of such. However, any failure by Agency to provide such notice to Developer or HUD shall not invalidate or in any manner affect the effectiveness and validity of such assignment.

9. Borrower Assignment Prohibited. In no event shall Borrower assign or transfer any portion of the Note without the prior express written consent of the Agency, which consent shall not unreasonably be withheld, except pursuant to a transfer which is permitted or approved under the Agreement or the DDA. Notwithstanding anything in this Section, or elsewhere in this Note Rider or the Agreement to the contrary, so long as the Development is encumbered by the HUD Capital Advance Documents, any proposed assumption by any transferee or assignee must have the prior written consent of HUD. Such assumption, assignment or transfer shall not constitute a default of the Agreement, the Note or this Note Rider if transferee or assignee of the Note, this Note Rider or the Agreement has the approval of HUD. Nothing contained in the Note, this Note Rider or the Agreement shall prohibit the Developer from transferring the Development or Site to HUD or to a HUD approved transferee without Agency approval.

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

11. Consents. Borrower hereby consents to: (a) any renewal, extension or modification (whether one or more) of the terms of the Agreement or the terms or time of payment under this Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof, (c) the granting of any other indulgences to Borrower, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Any such renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to Borrower or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder. Notwithstanding the foregoing, during the term of the HUD Capital Advance Documents no such renewal, extension, modification, release, surrender, exchange or substitution shall be made without the prior written approval of HUD.

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

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

a. the provisions of this paragraph shall govern and control;

b. neither Borrower nor Borrower's heirs, legal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest allowed by the Interest Law applicable to this loan transaction;

c. any excess shall be deemed canceled automatically and, if theretofore paid, shall be credited on the Note by Agency or, if the Note shall have been paid in full, refunded to Borrower; and

d. the effective rate of interest shall be automatically subject to reduction to the Maximum Legal Rate of Interest (as defined below), allowed under such Interest Law, as now or hereafter construed by courts of appropriate jurisdiction. To the extent permitted by the Interest Law applicable to this loan transaction, all sums paid or agreed to be paid to Agency for the use, forbearance or detention of the indebtedness evidenced hereby shall be amortized, prorated, allocated and spread throughout the full term of the Note. For purposes of the Note, "Interest Law" shall mean any present or future law of the State of California, the United States of America, or any other jurisdiction which has application to the interest and other charges under the Note. The "Maximum Legal Rate of Interest" shall mean the maximum rate of interest

that Agency may from time to time charge Borrower, and under which Borrower would have no claim or defense of usury under the Interest Law.

e. the provisions of this Section 13 shall not be applicable during the term of the HUD Capital Advance Documents.

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

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

LIL JACKSON SENIOR COMMUNITY, a California nonprofit public benefit corporation

By: _____
Benjamin F. Beckler, III
Authorized Agent of the 501c3, Lil Jackson Senior Community

Attachment No. 12
[Exhibit "B" to Loan Agreement]

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

Community Development Commission of
the City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Attention: City Clerk

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

AGENCY CONSTRUCTION DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS CONSTRUCTION DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust"), made as of _____, 2009, is entered into by and between **LIL JACKSON SENIOR COMMUNITY**, a California nonprofit public benefit corporation ("Trustor"), City of Oceanside, a municipal corporation ("Trustee"), and **COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE**, a public body corporate and politic ("Beneficiary").

ARTICLE 1. GRANT IN TRUST

1.1 GRANT. For the purposes of and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, IN TRUST FOR THE BENEFIT OF BENEFICIARY, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's right, title and interest, whether now owned or hereafter acquired, in and to that certain real property located in the City of Oceanside, County of San Diego, State of California, described on Exhibit A attached hereto (the "Real Property"), including, but not necessarily limited to, (i) Trustor's fee interest in the Real Property, including, but not limited to, that certain interest created by that certain Grant Deed dated as of _____, 2009, by and between Lil Jackson Senior Community, as Grantee, and the Community Development Commission of the City of Oceanside, as Grantor (the "Grant Deed"); (ii) all buildings and other improvements and fixtures now or hereafter located on the Real Property, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the Real Property, it being intended by the parties that all such items shall be conclusively considered to be a part of the Real Property, whether or not attached or affixed to the Real Property (collectively, the "Improvements"); (iii) all development rights or credits, air rights, water, water rights and water stock related to the Real Property, the Grant Deed or the Improvements (the Real Property, the Grant Deed and the Improvements are collectively

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referred to herein as the "Property"); (iv) all minerals, oil and gas, and other hydrocarbon substances in, on or under the Property, (v) all appurtenances, easements, rights and rights of way appurtenant or related to the Property; (vi) all interest or estate which Trustor may hereafter acquire in any of the property described above; and (vii) all additions and accretions to, and the proceeds of, any of the foregoing (all of the foregoing being collectively referred to as the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

1.2 ADDRESS. The subject property is located at _____, Lake Boulevard, Oceanside, California. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Deed of Trust on the Subject Property as described on Exhibit A.

1.3 HUD DEED OF TRUST. This Deed of Trust is junior in position to the HUD Note and HUD Deed of Trust, as such terms are defined in the Disposition and Development Agreement between Trustor, Agency (Beneficiary) and City (Trustee) (the "DDA").

ARTICLE 2. OBLIGATIONS SECURED

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

a. Payment to Beneficiary of all sums at any time owing under that certain Agency Residual Receipts Note ("Note") of even date herewith, in the principal amount of Two Million Nine Hundred Ninety Thousand Seven Hundred Sixty-six Dollars ($2,990,766.00) executed by Trustor and payable to the order of Beneficiary, as lender; and

b. Payment and performance of all covenants and obligations of Trustor under that certain "Loan Agreement" between Trustor and Beneficiary, of even date herewith; and

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

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

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

2.2 OBLIGATIONS. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all principal, interest,

prepayment charges (if any), late charges, other charges, and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.3 INCORPORATION. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. Any and all persons or entities who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

3.1 ASSIGNMENT. Trustor hereby irrevocably assigns to Beneficiary, subject to any prior assignment to Trustor's lenders, all of Trustor's right, title and interest in, to and under: (a) all leases and subleases of the Subject Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Subject Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Subject Property or any portion thereof, whether now existing or entered into after the date hereof ("Leases"); and (b) the rents, issues, deposits and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property.

3.2 GRANT OF LICENSE. Beneficiary confers upon Trustor a license ("License"), subject to any prior license conferred upon Trustor's lenders, to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to Section 6.4 without notice and without taking possession of the Subject Property. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.

3.3 EFFECT OF ASSIGNMENT. The foregoing irrevocable Assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any Lessee, licensee, employee, invitee or other person or entity. Beneficiary shall not directly or indirectly be liable to Trustor or

any other person or entity as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

3.4 REPRESENTATIONS AND WARRANTIES. Trustor represents and warrants that as of the date of this Deed of Trust there are no existing Leases.

3.5 COVENANTS. Trustor covenants and agrees at Trustor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (b) exercise Trustor's best efforts to lease all of the apartment units within the Subject Property at all times upon the completion of construction of the Improvements; (c) deliver to Beneficiary fully executed, counterpart original(s) of each and every Lease if requested to do so; and (d) execute and record such additional assignments of any Lease or specific subordinations of any Lease to the Deed of Trust, in form and substance acceptable to Beneficiary, as Beneficiary may request. Trustor shall not, without Beneficiary's prior written consent, except as otherwise permitted pursuant to the Loan Agreement: (i) enter into any Leases after the date of this Assignment except leases in the ordinary course of Trustor's business and on the lease form approved by Beneficiary; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rent one (1) month in advance of the time when it becomes due; (iv) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder except in the ordinary course of Trustor's business; (v) consent to any assignment or subletting by any lessee; or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance, except as required to obtain financing for the Subject Property. Any such attempted action in violation of the provisions of this Section 3.5 shall be null and void. Without in any way limiting the requirement of Beneficiary's consent hereunder, any sums received by Trustor in consideration of any termination (or the release or discharge of any lessee) modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Trustor shall be held in trust by Trustor for such purpose.

3.6 ESTOPPEL CERTIFICATES. Within thirty (30) days after written request by Beneficiary, Trustor shall deliver to Beneficiary and to any party designated by Beneficiary estoppel certificates executed by Trustor and by each of the lessees, in recordable form, certifying (if such be the case): (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date of each lessee's most recent payment of rent; (c) that there are no defenses or offsets outstanding, or stating those claimed by Trustor or lessees under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Beneficiary.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

4.1 SECURITY INTEREST. Trustor hereby grants and assigns to Beneficiary, as of the effective date of the Loan Agreement, a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Trustor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use thereon, (i) the Real Property described on Exhibit A attached hereto and incorporated by reference herein (to the extent the same are not effectively made a part of the Real Property pursuant to Section 1.1 above) or (ii) the improvements constructed or to be constructed on the Subject Property, as described in the Disposition and Development Agreement between Trustor and Beneficiary, dated November 20, 2008 (which real property and improvements are, pursuant to Section 1.1 above, collectively referred to herein, along with the other property described in Section 1.1 above, as the Subject Property); together with all rents, issues, deposits and profits of the Subject Property (to the extent, if any, they are not subject to Article III); all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Subject Property or any business now or hereafter conducted thereon by Trustor; all permits consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Subject Property; all advance payments of insurance premiums made by Trustor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a security agreement and a fixture filing under Sections 9105, 9313 and 9402(6) of the California Uniform Commercial Code, as amended or recodified from time to time, and is acknowledged and agreed to be a "construction mortgage" under such Sections. Trustor is the "debtor" and Beneficiary is the "secured party". Beneficiary's security interest in the Collateral shall be junior and subject to the prior security interest of Trustor's lender(s) for the Subject Property.

4.2 REPRESENTATIONS AND WARRANTIES. Trustor represents and warrants that: (a) Trustor has, or will have, good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity except to construction and permanent lenders approved by Beneficiary; and (c) Trustor's principal place of business is located at the address shown in Section 7.8.

4.3 RIGHTS OF BENEFICIARY. In addition to Beneficiary's rights as a "secured party" under the California Uniform Commercial Code, as amended or recodified from time to time ("UCC"), Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person or entity of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the

Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC §9505, or other applicable law.

4.4 RIGHTS OF BENEFICIARY ON DEFAULT. Upon the occurrence of a Default (hereinafter defined) under this Deed of Trust, then in addition to all of Beneficiary's rights as a "secured party" under the UCC or otherwise at law:

a. Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become purchaser at any such sales; and

b. Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral.

Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Trustor shall make an express written election of said remedy under UCC §9505, or other applicable law.

4.5 POWER OF ATTORNEY. Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

4.6 POSSESSION AND USE OF COLLATERAL. Except as otherwise provided in this Section, or any other Loan Documents (as defined in the Loan Agreement), so long as no Default exists under this Deed of Trust, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business and in accordance with the Loan Agreement and Disposition and Development Agreement.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

5.1 TITLE. Trustor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty, Trustor lawfully holds and possesses valid title to the Subject Property without limitation on the right to encumber.

5.2 TAXES AND ASSESSMENTS. Subject to Trustor's right to in good faith contest payment of taxes, Trustor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which (i) are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein, or (ii) are required to be paid by Trustor. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; *provided, however*, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.

5.3 TAX AND INSURANCE IMPOUNDS. At Beneficiary's option and upon its demand, Trustor, shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments and levies imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, other hazard and mortgage insurance next due. If Beneficiary determines that any amounts paid by Trustor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Beneficiary shall notify Trustor of the increased amounts required to pay all amounts due, whereupon Trustor shall pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Beneficiary shall, unless Trustor is otherwise in Default hereunder or under any Secured Obligation, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Trustor hereunder or under any Secured Obligation, Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee whereupon Beneficiary and its Trustee shall be released from all liability with respect thereto. Within ninety-five (95) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Beneficiary may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor and no other party shall have any right or claim thereto. Notwithstanding the forgoing, during the term of the HUD Capital Advance Documents encumbering the Real Property Beneficiary shall not exercise any provision of this Section without first receiving the prior written approval of HUD.

5.4 PERFORMANCE OF SECURED OBLIGATIONS. Trustor shall promptly pay and perform each Secured Obligation when due.

5.5 LIENS, ENCUMBRANCES AND CHARGES. Trustor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust, subject to the requirements of the Loan Agreement with respect to mechanic's liens. Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or any interest therein, whether senior or subordinate hereto.

5.6 DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.

a. Subject to the senior claim thereto by lenders holding deeds of trust senior to this Deed of Trust, the following (whether now existing or hereafter arising) are, in the amount not to exceed any sums then owing under the Loan Agreement and Note, all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Subject Property; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 5.7(d), Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure.

b. At its reasonable option, Beneficiary may permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary; (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (bb) of the continuation of Leases acceptable to and required by Beneficiary; (cc) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust; and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Beneficiary of such insurance or condemnation proceeds, then Beneficiary may apply such insurance or condemnation proceeds to pay down principal of the

Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose.

5.7 MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY. Trustor covenants, subject to the provisions of the Loan Agreement: (a) to insure the Subject Property against such risks as Beneficiary may reasonably require and, at Beneficiary's request, to provide evidence of such insurance to Beneficiary, and to comply with the requirements of any insurance companies insuring the Subject Property; (b) to keep the Subject Property in good condition and repair; (c) not to remove or demolish the Subject Property or any part thereof, not to alter, restore or add to the Subject Property and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property without Beneficiary's prior written consent; (d) to complete or restore promptly and in good and workmanlike manner the Subject Property, or any part thereof which may be damaged or destroyed, without regard to whether Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in Section 5.6; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Subject Property; and (g) to do all other acts which from the character or use of the Subject Property may be reasonably necessary to maintain and preserve its value.

5.8 DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS. At Trustor's sole expense, Trustor shall protect, preserve and defend the Subject Property and title to and right of possession of the Subject Property, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property and of any condemnation offer or action.

5.9 ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE. Trustee accepts this trust when this Deed of Trust is recorded. From time to time upon written request of Beneficiary and presentation of this Deed of Trust or a certified copy thereof for endorsement, and without affecting the personal liability of any person or entity for payment of any indebtedness or performance of any obligations secured hereby, Trustee may, without liability therefor and without notice: (a) reconvey all or any part of the Subject Property; (b) consent to the making of any map or plat thereof; and (c) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding, including, without limitation, actions in which Trustor, Beneficiary or Trustee shall be a party unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it hereunder unless the performance of the act is requested in writing and Trustee is reasonably indemnified and held harmless against loss, cost, liability or expense.

5.10 COMPENSATION; EXCULPATION; INDEMNIFICATION.

a. Trustor shall pay Trustee's fees and reimburse Trustee for expenses in the administration of this trust, including attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limit any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person or entity as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Subject Property or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to sell, lease or sublease the Subject Property after a Default (hereinafter defined) or from any other act or omission of Beneficiary in managing the Subject Property after a Default, unless the loss is caused by the gross negligence or willful misconduct of Beneficiary, and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

b. Trustor indemnifies Trustee and Beneficiary against, and holds Trustee and Beneficiary harmless from, all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other expenses which either may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the execution of this trust or in performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Trustor to perform Trustor's obligations; or (iv) by reason of any alleged obligation or undertaking on Beneficiary's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Subject Property, unless the loss is caused by the gross negligence or willful misconduct of Trustee or Beneficiary, as applicable. The above obligation of Trustor to indemnify and hold harmless Trustee and Beneficiary shall survive the release and cancellation of the Secured Obligations and the release and reconveyance or partial release and reconveyance of this Deed of Trust. Notwithstanding the foregoing, however, under no circumstances shall these indemnity obligations of Trustor include any obligation for payment of punitive damages assessed against Beneficiary or Trustee or their officers, employees, agents or representatives. In the event HUD acquires title to the Site or Property, HUD shall have no liability under this indemnity provision.

c. Trustor shall pay all amounts and indebtedness arising under this Section 5.10 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.

d. During the term of the HUD Capital Advance Documents, no amounts shall be due from Trustor to Beneficiary under the foregoing provisions without HUD's prior written approval.

5.11 SUBSTITUTION OF TRUSTEES. From time to time, writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Subject Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally

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named Trustee herein. A writing recorded pursuant to the provisions of this Section 5.11 shall be conclusive proof of the proper substitution of such new Trustee.

5.12 DUE ON SALE OR ENCUMBRANCE. If the Subject Property or any interest therein shall be sold, assigned, leased, subleased, transferred (including, without limitation, through sale or transfer of a majority or controlling interest of the corporate stock or general partnership interests or limited liability company interests of Trustor), mortgaged, collaterally assigned, or further encumbered (other than leases of individual apartment units within the Improvements), whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, THEN Beneficiary, in its sole discretion, may declare all Secured Obligations immediately due and payable. Notwithstanding the forgoing, during the term of the HUD Capital Advance Documents the provisions of this Section shall not apply to a transfer to HUD or to a transferee approved by HUD and that any sale, transfer, or refinance transaction approved by HUD shall be deemed approved by Beneficiary. Any proceeds resulting from such sale, transfer, or refinancing shall first go toward Development expenses, repairs and reserves as required by HUD, then if required by HUD, to reduce the HUD Capital Advance, then to the Agency Loan, then to the City Gap Loan.

5.13 RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Deed of Trust upon the Subject Property.

5.14 RECONVEYANCE. Upon Beneficiary's written request, and upon surrender to Trustee for cancellation of this Deed of Trust or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby, Trustee shall reconvey, without warranty, the Subject Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto" and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons or entities claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Subject Property to the person or persons legally entitled thereto.

5.15 SUBROGATION. Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.

5.16 RIGHT OF INSPECTION. Beneficiary, its agents and employees, may enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and ascertaining Trustor's compliance with the terms hereof.

5.17 HUD CAPITAL ADVANCE PROVISIONS. Notwithstanding any provision of this Deed of Trust to the contrary, this Deed of Trust is subject to the following requirements of the HUD Capital Advance Documents concerning the Development:

a. This Deed of Trust is second and junior in lien to a deed of trust made by Trustor in favor of the Secretary of Housing and Urban Development ("Secretary") to be recorded concurrently securing a Capital Advance made by the Secretary pursuant to Section 202 of the Housing Act of 1959, as amended, or Section 811 of the Cranston-Gonzales National Affordable Housing Act and to a Regulatory Agreement and Use Agreement between Trustor and the Secretary with respect to the Subject Property referred to herein.

b. During the period the HUD Regulatory Agreement or Use Agreement is in effect, no default under this Deed of Trust may be declared without the prior written approval of the Secretary.

c. In the event that during the period the HUD Regulatory Agreement or Use Agreement is in effect, the Secretary acquires title to the property by foreclosure or by deed in lieu of foreclosure, or otherwise, the lien of this Deed of Trust shall automatically terminate.

d. This Deed of Trust shall not be modified during the period the HUD Regulatory Agreement or Use Agreement is in effect without the prior written approval of the Secretary.

e. During the period the HUD Regulatory Agreement or Use Agreement is in effect, in the event of any conflict between any provisions of this Deed of Trust and the Cranston-Gonzalez National Affordable Housing Act or the Housing Act of 1959, as amended, HUD regulations, or the HUD Regulatory Agreement, this Deed of Trust shall be deemed amended to comply with said Act, regulations and HUD Regulatory Agreement.

f. Approval by the Secretary of a Transfer of Physical Assets ("TPA") of the Development referred to in the Note secured by this Deed of Trust shall constitute approval of the TPA by the Beneficiary.

g. During the term of the HUD Capital Advance Documents the Trustor shall not exercise the remedies referred to in Sections 4.3, 4.4, 4.5, 5.12, 6.2 and 6.7 herein without the prior written approval of HUD.

ARTICLE 6. DEFAULT PROVISIONS

6.1 DEFAULT. For all purposes hereof, the term "Default" shall mean (a) at Beneficiary's option, the failure of Trustor to make any payment of principal or interest on the Note or to pay any other amount due hereunder or under the Note when the same is due and payable, within ten (10) days after receipt of written notice from Beneficiary; or (b) the failure of Trustor to perform any non-monetary obligation hereunder, or the failure to be true of any representation or warranty of Trustor contained herein and the continuance of such failure for thirty (30) days after notice from Beneficiary (or such longer grace period as may be provided pursuant to the Loan Agreement for such failure or the existence of any default under the Loan Agreement), or if it is not reasonably practicable to cure or remedy such failure within such thirty (30) day period, then Trustor shall not be deemed to be in default if Trustor shall commence

such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

6.2 RIGHTS AND REMEDIES. At any time after Default, Beneficiary and Trustee shall each have all the following rights and remedies:

a. With or without notice, to declare all Secured Obligations immediately due and payable;

b. With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons.

c. To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;

d. To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment;

e. To enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property, to make, terminate, enforce or modify Leases of the Subject Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Subject Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof;

f. To execute a written notice of such Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States,

payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Subject Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person or entity, including Trustee, Trustor or Beneficiary may purchase at the sale;

g. To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine in their sole discretion.

h. Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Subject Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios previously discussed between Trustor and Beneficiary; and (z) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Subject Property.

6.3 APPLICATION OF FORECLOSURE SALE PROCEEDS. After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

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6.4 APPLICATION OF OTHER SUMS. All sums received by Beneficiary under Section 6.2 or Section 3.2, less all costs and expenses incurred by Beneficiary or any receiver under Section 6.2 or Section 3.2, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; *provided, however*, Beneficiary shall have no liability for funds not actually received by Beneficiary.

6.5 NO CURE OR WAIVER. Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.

6.6 PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES. Trustor agrees to pay to Beneficiary immediately and without demand all costs and expenses incurred by Trustee and Beneficiary pursuant to Section 6.2 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein. In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any attorneys' fees.

6.7 POWER TO FILE NOTICES AND CURE DEFAULTS. Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Trustor hereunder; *provided, however*, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 NO MERGER. No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary consents to a

merger in writing. If both the lessor's and lessee's estate under any lease or any portion thereof which now or hereafter constitutes a part of Subject Property shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Subject Property pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Subject Property shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

7.2 WAIVER OF MARSHALLING RIGHTS. Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Subject Property, hereby waives all rights to have the Subject Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation ("Other Property") marshaled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.

7.3 RULES OF CONSTRUCTION. When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Subject Property" means all and any part of the Subject Property and any interest in the Subject Property.

7.4 SUCCESSORS IN INTEREST. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; *provided, however*, that this Section 7.4 does not waive or modify the provisions of Section 5.12.

7.5 EXECUTION IN COUNTERPARTS. This Deed of Trust may be executed in any number of counterparts, each of which, when executed and delivered to Beneficiary, will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.

7.6 CALIFORNIA LAW. This Deed of Trust shall be construed in accordance with the laws of the State of California, except to the extent that Federal laws preempt the laws of the State of California.

7.7 INCORPORATION. Exhibit A as attached, is incorporated into this Deed of Trust by this reference.

7.8 NOTICES. All notices or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class U.S. mail, postage prepaid, except that notice of a Default may be sent by certified mail, return receipt requested, or by Overnight

Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the addresses set forth below. For purposes of notice, the addresses of the parties shall be:

Trustor:	Lil Jackson Senior Community c/o Southern California Presbyterian Homes 516 Burchett Street Glendale, CA 91203 Attention: Benjamin F. Beckler, III
Beneficiary:	Community Development Commission of the City of Oceanside 300 North Coast Highway Oceanside, CA 92054 Attention: Executive Director
Trustee:	City of Oceanside 300 North Coast Highway Oceanside, CA 92054 Attention: City Manager

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Trustor shall forward to Beneficiary, without delay, any notices, letters or other communications delivered to the Subject Property or to Trustor naming Beneficiary, "Lender" or the "Construction Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Trustor to perform its obligations to Beneficiary under the Note.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

LIL JACKSON SENIOR COMMUNITY, a California nonprofit public benefit corporation

By: _____
Benjamin F. Beckler III
Authorized Agent of the 501c3, Lil Jackson Senior Community

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

EXHIBIT A

DESCRIPTION OF SUBJECT PROPERTY

THAT PORTION OF PARCEL 2, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN AT PAGE 4736 OF PARCEL MAPS, FILED IN THE OFFICE OF THE COUNTY RECORDER, MAY 19, 1976, LYING SOUTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2;
THENCE ALONG THE WESTERLY BOUNDARY THEREOF NORTH 13°44'52" WEST 240.57 FEET TO THE **TRUE POINT OF BEGINNING** OF THIS DESCRIPTION;
THENCE LEAVING SAID WESTERLY LINE NORTH 85°18'35" EAST 14.87 FEET;
THENCE NORTH 85°25'44" EAST 63.48 FEET;
THENCE NORTH 85°00'58" EAST 59.55 FEET;
THENCE NORTH 73°00'04" EAST 14.53 FEET;
THENCE NORTH 75°48'17" EAST 75.04 FEET;
THENCE NORTH 78°25'49" EAST 52.62 FEET;
THENCE NORTH 68°57'06" EAST 62.11 FEET;
THENCE NORTH 76°57'43" EAST 37.55 FEET;
THENCE NORTH 74°28'56" EAST 34.68 FEET;
THENCE NORTH 76°15'05" EAST 61.44 FEET;
THENCE SOUTH 13°44'56" EAST 127.33 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF SAID PARCEL 2, BEING THE **POINT OF TERMINUS** OF THIS DESCRIPTION.

Schedule 1

FORM OF RESIDUAL RECEIPTS REPORT
(NOT APPLICABLE DURING THE TERM OF THE HUD CAPITAL ADVANCE DOCUMENTS)

Community Development Commission of the City of Oceanside
Lil Jackson Senior Community

Residual Receipts Report
for the Year Ending _____

Date Prepared _____

Please complete the following information and execute the certification at the bottom of this form.

Annual Project Revenue

Please report Annual Project Revenue for the year ending _____ on the following lines:

Rent Payments (including Section 8 tenant assistance payments, if any)	(1)	$_____
Interest Income (do **not** include interest income from replacement and operating reserves nor interest income on tenant security deposits)	(2)	$_____
Additional Income Related to Project Operations (for example, vending machine income, tenant forfeited deposits, laundry income not paid to the residents' association)	(3)	$_____
Total Annual Project Revenue (Add lines 1, 2, and 3)	(4)	$_____

Operating Expenses[1]

Please report Operating Expenses incurred in relation to the operations of the Project for the year ending _____, on the following lines:

Operating and Maintenance Expenses	(5)	$_____
Utilities	(6)	$_____
Property management Expenses and On-Site Staff Payroll	(7)	$_____
Administrative Expenses Incurred by Project	(8)	$_____
Property Taxes	(9)	$_____
Insurance	(10)	$_____
Other Expenses Related to Operations of the Project	(11)	$_____

Please list these expenses: _____
_____
_____
_____

Total Annual Operating Expenses (Add lines 5, 6, 7, 8, 9, 10, and 11) (12) $_____

Net Operating Income (Subtract Line 12 from Line 4) (13) $_____

[1] Do not include expense unrelated to the Project's operations, such as depreciation, amortization, accrued principal and interest expense on deferred payment debt, or capital expenditures.

Additional Cash Flow Payments

Obligated Debt Service Payments (as approved by the Agency and other parties that may have such approval rights) (14) $_____

Scheduled Deposits to Reserves (as approved by the Agency) (15) $_____

Additional Payment Obligations (such as partnership management fees, deferred developer fees, or repayments on loans to partners, as approved by the Agency to have priority over Residual Receipt Payment to the Agency (16) $_____

Total Additional Cash Flow Payments (Add lines 14, 15, and 16) (17) $_____

Residual Receipts for Year Ending _____ (Subtract Line 17 from Line 13) (18) $_____

Percentage of Residual Receipts to be Paid to the Agency (as shown in the Agency Residual Receipts Note by and between the Agency and Borrower dated _____) (19) _____%

Amount Payable to the Agency (Multiply Line 18 by Line 19) (20) $_____

The amount payable to the Agency listed on Line 2 is subject to payment according to the terms of the Agency Residual Receipts Note by and between the Agency and Borrower dated _____. If Line 20 is $0.00 or negative, you owe nothing to the Agency this year. If Line 20 is a positive number, remit check payable to _____ and attach to this report.

Computation of Residual Receipts
for the Year Ending _____

The following certification should be executed by the Executive Director or Chief Financial Officer of the Borrower, or the Managing General Partner of the Borrower.

I certify that the information provided in this form is true, accurate, and correct in all respects.

By: _____ _____
Date

_____
(Print Name)

_____
(Title)

EXHIBIT "C"

APPLICATION FOR DISBURSEMENT
Lil Jackson Senior Community

TO: Community Development Commission of the City of Oceanside ("Agency")

FROM:Lil Jackson Senior Community ("Developer")

REQUEST NO. _____

DATE: _____, 200___

Pursuant to the Loan Agreement dated as of _____, 2008 (the "Agreement") between Developer and Agency, Developer hereby requests that Agency disburse $_____ of the Agency Loan. This disbursement is requested to pay for various expenses incurred in connection with the Lil Jackson Senior Community Development (the "Development"), development of the land or construction of the improvements as summarized on the schedule attached hereto and detailed in the invoices submitted herewith. Developer hereby certifies that the amounts shown on the attached schedule and the accompanying invoices represent costs of designing, developing, and constructing improvements for the Development which are eligible for reimbursement at this time in accordance with the provisions of the Agreement.

Developer acknowledges that any increased costs of construction arising out of change orders, or otherwise, are not included in, or provided for, in the Construction Contract budget, and cannot be invoiced on this Application for Disbursement unless and until such change orders and/or increases in costs have been approved in writing by the Agency, except as otherwise provided in the Agreement.

Developer certifies that there have been no change order or changes in the work of the Development, except as previously expressly approved by Agency in writing, or as referenced below, with a copy of the appropriate documentation describing the change attached hereto (whether or not a disbursement is requested herein on account of such change). The following change orders, identified by number and date have been proposed and/or approved since the last Application for Disbursement: _____
_____.

SUBMITTED BY: _____

Date: _____, 200__

REVIEWED AND APPROVED BY: _____
Agency Inspector

Date: _____, 200__

DISBURSEMENT SCHEDULE

Item of Cost	Budgeted Amount	Amount Previously Disbursed	Amount Requested this Disbursement

ATTACHMENT NO. 8

CITY LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") is entered into as of _____, 2009, by and between the **CITY OF OCEANSIDE**, a municipal corporation, ("City"), and **LIL JACKSON SENIOR COMMUNITY,** a California nonprofit public benefit corporation (the "Developer").

RECITALS

The following recitals are a substantive part of this Agreement:

A. The Community Development Commission of the City of Oceanside (the "Agency") is a public body corporate and politic organized under the Community Redevelopment Law, being §33000, et seq., of the California Health and Safety Code ("H&S Code"), which pursuant to §33334.2(a) is required to allocate 20 percent of all taxes allocated to the City through tax increment for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost to persons and families of low and moderate income, lower income, very low income, and extremely low income (the "Low and Moderate Income Housing Funds").

B. The Agency and the City Council have adopted a resolution pursuant to H&S Code §33334.2(g) allowing the use of the Low and Moderate Income Housing Funds outside the Agency's Project Area for the purposes of strengthening public-private partnerships to provide decent, safe, sanitary, and affordable housing cost to persons and families of low and moderate income, lower income, very low income, and extremely low income households and persons in the City.

C. The City has adopted a Housing Element to its General Plan pursuant to Government Code Section 65580, et seq., which sets forth the City's policies, goals and objectives to provide housing to all economic segments of the community.

D. The Agency, the City and the Developer have entered into a Disposition and Development Agreement, dated November 20, 2008 (the "DDA"). Pursuant to the DDA, (i) the Agency has agreed to sell an approximately 2 acres vacant parcel of real property, located in the City of Oceanside on Lake Boulevard between College Boulevard and Thunder Drive (the "Site"), (ii) the Agency has agreed to provide certain financial assistance to the Developer for the development of the Site in accordance with the DDA and the Agency Loan Agreement (the "Agency Loan") (iii) the City has agreed to provide certain financial assistance to the Developer to pay for costs associated with the development of the Site and improvements associated therewith not covered by the HUD Capital Advance financing and the Agency Loan, (iv) the Developer has agreed to construct and operate an 80 unit multifamily senior rental apartment development on the Site (the "Development"), and (v) the Developer has agreed to rent those apartment units to very low and lower income households and persons at an affordable rent. The DDA is hereby incorporated herein by reference. The Agency, the City and the Developer have also agreed to execute and record in the official records of San Diego County a "Regulatory Agreement" which sets forth certain obligations of the parties with respect to the

construction and operation of the Development. The Regulatory Agreement is hereby incorporated herein by reference. All capitalized terms not otherwise defined herein shall have the meanings set forth in the DDA.

E. The City has agreed to provide a loan of Four Million One Hundred Thirty-eight Thousand Four Hundred Forty-three Dollars ($4,138,443.00) to the Developer (the "City Gap Loan") to be used in connection with the development of the Development and pay for costs associated with the Development not covered by the Agency Loan and the HUD Capital Advance financing.

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

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

1. City Loan. Subject to Developer's performance of all of the terms, covenants and conditions which are set forth herein, the City hereby agrees to loan to the Developer, and the Developer agrees to borrow from the City, the sum of Four Million One Hundred Thirty-eight Thousand Four Hundred Forty-three Dollars ($4,138,443.00) (the "City Gap Loan"). City shall make the City Loan to Developer from available funds in the City's Inclusionary Housing In-lieu Trust Funds, which shall be disbursed to Developer as provided herein.

1.1 Repayment of City Loan. The Developer's obligation to repay the City Gap Loan shall be set forth in the City Residual Receipts Note and Note Rider in the form of Exhibit "A" attached hereto, which is incorporated herein. The City Residual Receipts Note shall be for a term of fifty-five (55) years from the date a Certificate of Occupancy is issued for the Development, and shall bear simple interest at the rate of five percent (5%) per annum commencing upon the City's issuance of the Certificate of Occupancy for the Project. Such interest rate to be consistent with the below referenced Residual Receipts Note. Notwithstanding the foregoing, the City shall forgive the City Gap Loan in its entirety so long as the Developer is not in material breach of the City Gap Loan at the maturity date of the City Gap Loan. At such time, the City shall cancel the City Residual Receipts Note and surrender it to the Developer and file a full reconveyance with the San Diego County Recorder. In any event, the City Residual Receipts Note shall not be paid in full for any reason, prior to the maturity of the HUD Capital Advance Documents. The City Residual Receipts Note shall be payable from Fifty Percent (50%) of the "Residual Receipts" of the Development, after payment of (i) actual, reasonable and customary (for comparable high quality multifamily rental housing developments in San Diego County) "Operating Expenses" directly incurred, paid, and attributable to the operation, maintenance, and management of the Development, (ii) "Debt Service" which is senior to the City Residual Receipts Note, (iii) deposits to required reserve accounts ("Reserve Deposits"), (iv) asset management fees payable to the managing general partner of the Developer ("Partnership Management Fees"), and (v) social program fees, (vi) bond monitoring/trustee fees, and (vii) "Deferred Developer Fee" payments (as all of those terms are defined in Section 3 of the City Residual Receipts Note), which are in accordance with the Operating Budget approved by the City pursuant to Section 5(h) of the Regulatory Agreement. The Developer shall annually, on or before February 1st of each year, commencing in the year after the issuance of the Certificate of Occupancy for the Development, submit to the City a Residual Receipts Report, in the form attached hereto as Schedule "1" and incorporated herein, which shall provide the basis for the Developer's payment of Residual Receipts to the City. The

order of repayment of the City Gap Loan shall be HOME Funds repaid first followed by Inclusionary Housing In-Lieu Trust Funds. Notwithstanding the foregoing, during the term of the HUD Capital Advance Documents no Residual Receipts as defined in the HUD Regulatory Agreement may be paid except with the prior approval of HUD.

a. Unpaid Interest. Notwithstanding the foregoing, provided the Developer is not in default of the City Gap Loan, the Agency Loan, the Regulatory Agreement, the DDA, and the HUD Capital Advance Documents, any interest accrued and unpaid during the first forty (40) years of the term of the City Gap Loan shall be forgiven. However, commencing on the forty-first (41st) year of the term of the City Gap Loan, and continuing through the remaining term thereof, the Developer shall make payments, of principal and interest, to the City as set forth in this Section 1.

1.2 Security for City Loan. The City Residual Receipts Note shall be secured by a Deed of Trust to be recorded as an encumbrance to the Developer's fee interest in the Site, in the form of Exhibit "B" attached hereto, which is incorporated herein, and the recordation of a UCC-1 fixture filing with respect to the Development.

1.3 Disbursement of City Loan. The proceeds of the City Gap Loan shall be disbursed only to pay for actual and reasonable hard and soft costs of the construction of the Development, including without limitation costs of architectural, engineering, planning, legal and related professional services, and the costs of permits and fees required for the performance of the construction of the Development, all in accordance with the Project Budget which is approved by the City pursuant to Section 306 of the DDA, and the construction contract which has been approved by the City pursuant to Section 507 of the DDA (the "Construction Contract"). City's obligation to commence disbursement of the City Gap Loan proceeds is subject to the fulfillment or waiver by City of each and all of the conditions precedent (a) through (i), inclusive, described below ("Conditions Precedent"), which are solely for the benefit of City, any of which may be waived by the City Manager or designee in his or her sole and absolute discretion:

a. Execution of Documents. Developer shall have executed and delivered to the City the City Residual Receipts Note and the Deed of Trust and any other documents required hereunder, and the Deed of Trust shall have been recorded as an encumbrance to the Developer's fee interest in the Site.

b. Permits and Land Use Approvals. Developer shall have obtained each and all of the land use, subdivision, grading and building permits and approvals necessary for the construction and development of the Development, in accordance with Section 309 of the DDA.

c. Evidence of Financing. Developer shall have deposited in escrow the financing documents required to cause the HUD Section 202 Capital Advance proceeds to be committed and available, in an amount sufficient, when combined with the Agency Loan and the City Gap Loan to Complete the construction of the Improvements.

d. Construction Contract. Developer shall have provided to the City a proposed Construction Contract between the Developer and one or more duly licensed general contractors for the construction of the Development, certified by the Developer to be true and correct copies thereof, and the City Manager or designee shall have reasonably

approved such contractor or contractors as having the experience and financial resources necessary to construct the Development. HUD approval of the Construction Contract shall satisfy the requirements of this provision.

e. Sale of Site. If the Developer has not already acquired the Site, the Developer shall be prepared to close escrow on the purchase of the Site, concurrently with the funding of the City Gap Loan.

f. Title Policy. A title insurance company reasonably acceptable to the City shall have unconditionally committed to issue a lender's policy of title insurance insuring the lien of the Deed of Trust in the amount of the City Gap Loan, subject to such exceptions as are reasonably acceptable to the City, together with any endorsements reasonably requested by the City. The cost of such title policy and endorsements shall be paid for from the proceeds of the City Gap Loan. HUD approval of an Owner's Title Policy on the Site shall satisfy the requirements of this provision.

g. Proof of Insurance. Developer shall have provided to the City a certificate of insurance that satisfies the requirements of Section 308 of the DDA.

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

i. Disbursement of City Loan Funds. City and Developer agree that the City shall disburse all of the funds of the City Loan before the funds of the HUD Capital Advance will be distributed.

1.4 Conditions for Each City Loan Disbursement. City's obligation to disburse each individual disbursement of the City Gap Loan proceeds is subject to the fulfillment or waiver by City of each and all of the following conditions described below:

a. Application for Payment. The Developer shall have submitted a request for payment to the City in the form of the Application for Disbursement which is attached hereto as Exhibit "C" and incorporated herein, at least ten (10) business days prior to the requested disbursement. The Application for Disbursement shall be completed and certified to be accurate by the Developer. The Application for Disbursement shall specifically identify the nature of each expense, by reference to items in the Project Budget, and shall identify the status of completion of such construction. Each Application for Disbursement shall be accompanied by invoices from contractors and subcontractors and any other requested information and documents, and lien releases from such contractors and subcontractors and/or mechanic's lien title endorsements reasonably acceptable to the City.

b. Inspection of Work. The City may retain a construction administrator that monitors the construction of the Development (the "Construction Administrator"). If retained, the Construction Administrator shall have approved the Application for Disbursement and accompanying documents, and shall have inspected the work for which

the Application for Disbursement is being requested and shall have certified to the City that (i) such work has been completed substantially in accordance with the DDA, the Scope of Development and the approved Development Plans, (ii) the amount requested corresponds with the percentage of work completed, (iii) there are adequate funds remaining from the City Gap Loan proceeds and other approved funding to complete the construction of the Development, (iv) the work for which payment is being requested has been completed in a good and workmanlike manner in accordance with the standards of the construction industry, and (v) the expenses are reasonable and in accordance with the Construction Contract budget.

c. Lien Waivers. If requested by City or the Construction Administrator, City shall have received appropriate conditional (conditioned solely on payment) waivers of mechanics' and materialmen's lien rights and stop notice rights executed by all contractors and other persons rendering services or delivering materials covered by requests made in the Request for Disbursement. To resolve such issues among others, the approved Construction Contract shall contain a ten percent (10%) holdback of the Construction Contract amount.

d. Frequency. City shall not be obligated to make disbursements more frequently than twice per month.

e. Use of Disbursements. Developer shall use or apply all City Gap Loan disbursements solely for the purposes described in the Application for Disbursement pursuant to which the disbursement was made.

f. HUD Disbursement Form Acceptable. During the term of the HUD Capital Advance Documents, the HUD form of disbursement shall be acceptable by the City. The City Gap Loan funds shall be fully disbursed before any HUD Capital Advance funds shall be disbursed. Subsequent to the City Gap Loan proceeds being fully disbursed, Developer shall submit its request to HUD for disbursement of HUD Capital Advance proceeds based upon the applicable HUD Capital Advance Documents. City acknowledges that the purpose of the City Gap Loan is to pay for costs not included within the HUD Capital Advance or covered by the Agency Loan.

1.5 Subordination. The City Gap Loan, note, deed of trust and other related instruments evidencing the City Gap Loan as referenced in the DDA is to be subordinate to the HUD Capital Advance Documents (first priority loan) and the Agency Loan Agreement, Note, Note Rider and Deed of Trust (second priority loan).

1.6 Assumption/Assignment/Transfer. The City Residual Receipts Note shall not be assumable by successors and assigns of Developer without the prior written consent of the City pursuant to the DDA. Notwithstanding anything in this Section or this Agreement to the contrary, so long as the Project is encumbered by the HUD Capital Advance Documents, any proposed assumption by any transferee or assignee must have the prior written consent of HUD. Such assumption, assignment or transfer shall not constitute a default of this Agreement or the City Residual Receipts Note if transferee or assignee of the Residual Receipt Note or this Agreement has the approval of HUD. Nothing contained in this Agreement shall prohibit the Developer from transferring the Property or Site to HUD or to a HUD approved transferee without City approval.

The City may assign it rights and obligations under and to the City Gap Loan, City Residual Receipts Note, and City Deed of Trust to any person or entity, at its sole and absolute discretion, at any time during the term hereof without the consent of the Developer. Should City make any such assignment, City shall provide Developer and HUD with thirty (30) days advance written notice of such. However, any failure by City to provide such notice to Developer or HUD shall not invalidate or in any manner affect the effectiveness and validity of such assignment.

2. Development Requirements.

2.1 Development and Operation of Development in Compliance with DDA and Regulatory Agreement. The Developer shall develop, operate and maintain the Development in compliance with the requirements of the DDA, Financing Plan, and the Regulatory Agreement.

2.2 Maintenance. The Developer shall maintain the Development in good condition, free of debris, waste and graffiti, in a clean and presentable manner, and in compliance with the DDA, the Regulatory Agreement, and all applicable provisions of the Oceanside Municipal Code. The Development shall not be demolished or converted to another use without the prior written approval of the City. The Development shall be maintained in accordance with this Section 2.2 until the City Gap Loan is repaid in full. If the Development is not so maintained, and such condition is not corrected within a reasonable period after written notice thereof from the City as provided more specifically in the Regulatory Agreement, then the City may perform the necessary maintenance and Developer shall pay such costs as are reasonably incurred for such maintenance.

Developer shall submit for the approval of the City, which approval shall not unreasonably be withheld, a plan for marketing the rental of the Development (the "Marketing Plan"). The Marketing Plan shall include affirmative marketing procedures and requirements consistent with the provisions of Section 4 of the Regulatory Agreement.

During the term of the HUD Capital Advance Documents, compliance with HUD requirements shall be deemed to satisfy the forgoing requirements in this Section 2.2.

2.3 Insurance. Developer shall furnish the City with proper evidence of the insurance that is required pursuant to Section 308 of the DDA. During the term of the HUD Capital Advance Documents, compliance by the Developer with the insurance requirements of the HUD 202 Program shall be deemed compliance with the insurance requirements of this Agreement.

2.4 Indemnification and Hold Harmless. Developer shall indemnify, hold harmless and defend, with attorney(s) reasonably acceptable to the City, the City and its officers, elected and appointed boards and officials, employees, representatives and agents, from and against any and all liability, damages, costs, losses, claims and expenses, suits, actions, proceedings and judgments, including attorney's fees, however caused, resulting directly or indirectly from or connected with the Development, the Site and/or the performance of this Agreement by Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf, except to the extent caused by the sole and active negligence or willful misconduct of the City or its officers, boards, officials, employees, representatives or agents. Provided, however, that during the term of the HUD Capital Advance Documents, any payment due under this Section over and above available insurance proceeds shall be paid only

from the Residual Receipts of the Project, as defined in the HUD Regulatory Agreement, and shall be subject to HUD's prior written approval. In the event HUD acquires title to the Site or Property, HUD shall have no liability under this indemnity provision.

2.5 Compliance with Laws. The Developer shall develop, maintain and operate the Development and the Site in conformity with all applicable laws, including without limitation all applicable state labor standards, the zoning and development standards of the City of Oceanside, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, all applicable environmental laws, all state and federal fair housing laws, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.,* Government Code Section 4450*, et seq.,* Government Code Section 11135*, et seq.,* and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

2.6 Nondiscrimination. Developer for itself and its successors and assigns, agrees that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, familial status, national origin, or ancestry in the leasing, subleasing, rental, transferring, use, occupancy, tenure, or enjoyment of the Site nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, leases, sublessees, subtenants, contractors or vendees in the Site.

2.7 Condition of the Site.

a. Developer Precautions. Developer shall take all reasonably necessary precautions to prevent the release into the environment of any Hazardous Materials that may be located in, on or under the Site. 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 as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

b. Environmental Indemnity. Developer shall indemnify, defend and hold 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 from the Site, use on the Site, generation on the Site, discharge from the Site, storage on the Site, disposal on or from the Site, or transportation to or from the Site, of any Hazardous Materials during the term of this 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 Site. This indemnity shall include, without limitation, any damage, liability, fine, penalty, 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; provided, however, under no circumstances shall these indemnity obligations of Developer include any obligation for payment of punitive damages assessed against City or City or their officers,

employees, agents or representatives. Notwithstanding the forgoing, this indemnity provision shall only apply to claims, actions, suits, proceedings, loss, costs, damages, liabilities, deficiencies, fines, penalties, punitive damages, or expenses, which are directly resulting from Hazardous Material which are actually introduced onto the Site by Developer and shall only be payable from Residual Receipts, as defined in the HUD Regulatory Agreement, with the prior written consent of HUD. In the event HUD acquires title to the Site or Property, HUD shall have no liability under this indemnity provision.

c. Definitions. For purposes of this Agreement, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, San Diego County, the State of California, regional governmental authority, 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 byphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) 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 (xii) 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 Development, including without limitation alcohol, aspirin, tobacco and saccharine.

2.8 Liens and Stop Notices. Developer shall use its best efforts to prevent any lien or stop notice from being placed on the Site or the Development or any part thereof. If a claim of a lien or stop notice is given or recorded affecting the Site the Developer shall within thirty (30) days of such recording or service:

a. pay and discharge the same; or

b. effect the release thereof by recording and delivering to City a surety bond in sufficient form and amount, or otherwise; or

c. provide City with indemnification from a title insurance company reasonably acceptable to the City against such lien or other assurance which City deems, in its

sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of City from the effect of such lien or bonded stop notice.

3. Developer's Representations and Warranties. Developer represents and warrants to City as follows:

3.1 Authority. Developer has full right, power and lawful authority to undertake all obligations as provided herein, and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of the Developer. The parties who have executed this Agreement on behalf of Developer are authorized to bind Developer by their signatures hereto.

3.2 Litigation. To the best of Developer's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Developer or any parties affiliated with Developer, at law or in equity before any court or governmental agency, domestic or foreign, which if adversely determined, would materially impair the right or ability of Developer to execute or perform its obligations under this Agreement or any documents required hereby to be executed by Developer, or which would materially adversely affect the financial condition of Developer or any parties affiliated with Developer.

3.3 No Conflict. To the best of Developer's knowledge, Developer's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer or any parties affiliated with Developer is a party or by which it is bound.

3.4 No Bankruptcy. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other proceedings have been filed or are pending or threatened against the Developer or any parties affiliated with Developer, nor are any of such proceedings contemplated by Developer or any parties affiliated with Developer.

3.5 Notice of Changed Conditions. Until the final disbursement of the City Loan, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3 not to be true in any material respect, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder, but shall constitute an exception which City shall have a right to approve or disapprove if such exception would have a material adverse effect on the development and/or operation of the Development. If City elects to disburse the City Loan to the Developer following disclosure of such information, Developer's representations and warranties contained herein shall be deemed to have been made as of the date of the disbursement of the City Loan, subject to such exception(s). If following the disclosure of such information the Developer fails to cure such matter within the time set forth in Section 4 hereof for the cure of defaults, City may elect in its sole and exclusive discretion to terminate this Agreement by written notice to the Developer.

4. Remedies for Default. A failure by either party to substantially perform any action or covenant required by this Agreement, the DDA, the Grant Deed, the Regulatory Agreement, the City Residual Receipts Note, the Deed of Trust, or any loan or deed of trust for the Development which is senior to the City Loan, within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this

Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party cures such default within ten (10) days if the claimed Default is a failure to pay amounts due pursuant to the City Residual Receipts Note, or thirty (30) days from receipt of such notice for all other claimed Defaults hereunder, unless a longer cure period is provided in the DDA, Grant Deed, Regulatory Agreement, City Residual Receipts Note, Deed of Trust or other applicable document. However, in the event that such Default is other than a failure to pay money and is of such a nature that it cannot reasonably be cured within thirty (30) days from receipt of such notice, the claimant shall not institute any proceeding against the other party, and the other party shall not be in Default if such party immediately upon receipt of such notice, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence as soon as reasonably possible thereafter. In the event that the Developer is in default on any loan or deed of trust senior to the City Gap Loan, the Developer shall immediately deliver to the City a copy of such notice of default. Even if the holder of such loan or deed of trust has not exercised its rights or remedies with respect to such default, the City shall have the right (but not be obligated to) cure such default. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses actually incurred by the City in curing such default, plus interest at the rate of four and three quarter percent (4.75%) per annum or the current HUD default rate, whichever is less. The City shall be entitled to add such amount to the amounts owing pursuant to the City Residual Receipts Note, and secured by the Leasehold Deed of Trust. Notwithstanding the forgoing, during the term of the HUD Capital Advance Documents, City shall not declare or claim a default under the DDA, this Agreement, the City Gap Loan, Note or Deed of Trust without the prior written consent of HUD.

4.1 Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or 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 Agreement. The City may also cause all indebtedness of the Developer under this Agreement and the City Residual Receipts Note to become immediately due and payable, and may institute an action for judicial or nonjudicial foreclosure pursuant to the Deed of Trust. Legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in an appropriate municipal court in that county, or in the United States District Court for the Southern District of California. Notwithstanding the forgoing, during the term of the HUD Capital Advance Documents, City shall not declare or claim a default under the DDA, this Agreement, the City Gap Loan, Note or Deed of Trust without the prior written consent of HUD.

4.2 Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against City, service of process on City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law. In the event that any legal action is commenced by City against the Developer, service of process shall be made in such manner as may be provided by law and shall be effective whether served inside or outside of California.

4.3 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of 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 the other party.

4.4 Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

4.5 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

4.6 Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees. Any such sums owed by Developer to City shall, during the term of the HUD Capital Advance Documents, be made from Residual Receipts as defined in the HUD Regulatory Agreement and only with HUD's prior written approval.

5. General Provisions.

5.1 Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may 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 mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice:

To City:
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Attention: City Manager

With a copy to:
City of Oceanside
City Attorney
300 North Coast Highway
Oceanside, CA 92054

To Developer:
Lil Jackson Senior Community
C/O Southern California Presbyterian Homes
516 Burchett Street
Glendale, CA 91203
Attention: Benjamin F. Beckler III

With a copy to:
Ross and Berke, LLC
17530 Ventura Boulevard, Suite 205
Encino, CA 91316
Attention: Alan D. Ross, Esq.

Any written notice, demand or communication shall be deemed received immediately upon receipt; 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 shall be effective on the third day from the date of the attempted delivery or deposit in the United States mail.

5.2 Non-Liability of Officials and Employees of City and City. No member, official, officer or employee of City or the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by City (or the City) or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

5.3 Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

5.4 Integration. This Agreement, together with the City Residual Receipts Note, Deed of Trust, Form of Residual Receipts Report, DDA, Grant Deed, Regulatory Agreement, Project Budget and other attachments to the DDA, contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes Exhibits A (City Residual Receipts Note and Note Rider), B (City Deed of Trust), and C (Application for Disbursement), which constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

5.5 No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

5.6 Modifications. Any alteration, change, or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

5.7 Severability. If any term, provision, condition, or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

5.8 Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have

knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

5.9 Time of Essence. Time is expressly made of the essence with respect to the performance by the parties of each and every obligation and condition of this Agreement.

5.10 Cooperation. Each party shall cooperate with the other in this transaction and, in that regard, sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

5.11 Definitions. Any terms used in this Agreement but not separately defined herein shall have the meaning given to such terms in the DDA or Grant Deed, as appropriate.

5.12 Construction. If any provision of this Agreement tends to contradict, modify or in any way change the terms of the DDA, the terms of the DDA shall control, prevail and govern. If any provision of this Agreement tends to contradict, modify or in any way change the terms of any of the HUD Capital Advance Documents or the HUD 202 Program Requirements, the terms of the HUD Capital Advance Documents and the HUD 202 Program Requirements shall control. If any modifications to this Agreement are required in order to obtain HUD approval for a commitment of the HUD 202 Program Commitment or for approval of the documents needed to further the Project under the HUD 202 Program, the parties agree to make such changes to the Agreement and its exhibits as necessary for such compliance or approvals."

5.13 HUD Provisions. Notwithstanding anything to the contrary in this Agreement, if any provision of this Agreement tends to contradict, modify or in any way change the terms of the Regulatory Agreement encumbering the Property or Site to be entered into between the Secretary of HUD and the Developer, the terms of the Regulatory Agreement shall prevail and govern; or if any provision of this Agreement in any way tends to limit the Secretary of HUD in his administration of the Housing Act of 1959, as amended, or the Cranston-Gonzalez National Affordable Housing Act, or the regulations pursuant thereto, this Agreement shall be deemed amended so as to comply with the Acts, Regulations and Regulatory Agreement in favor of HUD. No other amendment to this Agreement shall be effective without the prior written consent approval of HUD. Notwithstanding anything herein to the contrary, if the Secretary of HUD should take title to the Property through foreclosure, deed in lieu of foreclosure, or otherwise, all covenants, conditions and restrictions set forth in this Agreement shall cease and terminate and be of no further effect. During the term of the HUD Capital Advance Documents, any monies due City shall be payable only from the Residual Receipts, as defined by the HUD Regulatory Agreement, with the prior approval of HUD.

REMINDER OF PAGE LEFT BLANK INTENTIONALLY
[Signatures on Following Page]

IN WITNESS WHEREOF, City and the Developer have executed this Agreement as of the date first set forth above.

APPROVED AS TO FORM:

_____
Barbara L. Hamilton, Assistant City Attorney

CITY:
CITY OF OCEANSIDE, a municipal corporation

By: _____
Jim Wood, Mayor

DEVELOPER:
LIL JACKSON SENIOR COMMUNITY, a California nonprofit public benefit corporation

By: _____
Benjamin F. Beckler, III
Authorized Agent of the 501c3, Lil Jackson Senior Community

Developer's Signature(s) Must be Notarized

ATTACHMENT NO. 8
EXHIBIT "A"

FHA FORM NO. 1710
(REVISED 2/69)
Modified 2-26-92(ADR)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

SECTION 202/811

CITY RESIDUAL RECEIPTS NOTE
(Nonprofit Mortgagors)

Project No. 129-EE032-WAH-NP/CA33-SD51-001

For value received, the undersigned maker promises to pay to City of Oceanside (payee) the principal sum of Four Million One Hundred Thirty-eight Thousand Four Hundred Forty-three Dollars ($4,138,443.00) or so much thereof as may be advanced, with interest on the outstanding balance at the rate of *five percent (5%) per annum, which shall not be compounded, subject to the following conditions and limitations:

(1) Principal and interest on this note shall be due and payable on fifty-five (55) years from the date of the City Certificate of Occupancy but not before the maturity date of the note and deed of trust held by the Secretary of Housing and Urban Development ("Secretary") financing HUD Project No. 129-EE032-WAH-NP/CA33-SD51-001, provided that if the aforesaid note is prepaid in full, the holder of this note, at its option and without notice, may declare the whole principal sum or any balance thereof, together with interest thereon, immediately due and payable.

(2) Prepayments to principal and interest on this note may be made only from the residual receipts fund, as that term is defined in the Regulatory Agreement between the maker and the Secretary executed in connection with the above project, and only after obtaining the prior written approval of the Secretary. Such prepayments may be made only after final closing on the note by the Secretary and after the end of a semiannual or an annual fiscal period.

(3) This note is non-negotiable and may not be sold, transferred, assigned, or pledged by the payee except with the prior written approval of the Secretary.

(4) This note is made and delivered in payment of costs not included in the HUD Capital Advance.

(5) See attached Rider for additional provisions.

Presentation, demand and notice of demand, non-payment and protest of this note are waived.

Executed this ____ day of _____, 20___.

Attest:

_____

Lil Jackson Senior Community, a California nonprofit public benefit corporation

By: _____
Benjamin F. Beckler, III
Authorized Agent of the 501c3, Lil Jackson Senior Community

The payee hereby certifies that this is a bona fide transaction and that it fully understands all the requirements of this note, and that no prepayment of principal or interest shall be accepted without evidence that the Secretary has authorized such prepayment. If an unauthorized prepayment is accepted, the funds shall be held by the payee in trust for the project.

APPROVED AS TO FORM:

By: _____
Barbara L. Hamilton
Assistant City Attorney

City of Oceanside, a municipal corporation

By: _____
Jim Wood, Mayor

*Not to exceed the highest permissible rate established by the Secretary.

CITY RESIDUAL RECEIPT NOTE RIDER

_____, 2009 Oceanside, California

THIS RESIDUAL RECEIPTS NOTE RIDER ("Note Rider") is attached to and made a part of the City Residual Receipts Note dated _____, 2009 (the "Note") made by **LIL JACKSON SENIOR COMMUNITY**, a California nonprofit public benefit corporation (the "Borrower"), under which Borrower promises to pay to the **CITY OF OCEANSIDE,** a municipal corporation (the "City") the sum of Four Million One Hundred Thirty-eight Thousand Four Hundred Forty-three Dollars ($4,138,443.00) (the "Note Amount"), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

1. **Agreement.** This Note Rider is given in accordance with that certain Loan Agreement executed by the City and Borrower, dated as of _____, 2009 (the "Agreement") and the Note. The rights and obligations of the Borrower and the City under the Note shall be governed by the Agreement and by the additional terms set forth in this Note Rider. In the event of any inconsistencies between the terms of this Note Rider and the terms of the Agreement or any other document related to the Note Amount, the terms of the Note shall prevail. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

2. **Repayment of Note Amount.** The Note Amount shall be paid by the Borrower's annual payment to the City of an amount equal to fifty percent (50%) of the Residual Receipts (as defined below) from operation of the Development (as defined in the Agreement), as determined by a residual receipts calculation from the operation of the Development during the preceding fiscal year. Annual Residual Receipts payments shall be delivered on or before February 1st, of each year during the term of the Note first following the date the Development is placed in service, until the Note Amount and all unpaid interest thereon has been repaid in full. Provided Borrower is not in default of the Agreement, the Regulatory Agreement, the DDA, and the HUD Capital Advance Documents, any interest accrued and unpaid during the first forty (40) years of the term of the Agreement shall be forgiven. Commencing on the forty-first (41st) year of the term of the Agreement, and continuing through the remaining term thereof, Borrower shall make payments, of principal and interest, to the City as set forth herein. With the exception of the portion of the Note Amount funded with HOME funds (i.e. One Million Five Hundred Thousand Dollars ($1,500,000.00)), which by federal regulations must be repaid, any remaining portion of the Note Amount shall be forgiven in its entirety by the City on the fifty-fifth (55th) anniversary of the date the Certificate of Occupancy is issued by the City for the Development so long as Borrower is not in material breach of the Agreement, the Note and this Note Rider. Notwithstanding the foregoing, the full Note Amount may be accelerated as set forth in Section 10 hereof. During the term of the HUD Capital Advance Documents, Developer shall make payment from Residual Receipts, as defined in the HUD Regulatory Agreement, and only with HUD's prior written approval.

As used herein, "Annual Project Revenue" shall mean all gross income and all revenues of any kind from the Development in a fiscal year, including without limitation, Development rents, Section 8 housing assistance payments, if any, late charges, vending machine income,

and any other revenues of whatever kind or nature from the Development, except that interest on security deposits and required reserves shall not be considered Annual Project Revenue.

As used herein, "Debt Service" means payments made in a calendar year pursuant to the approved financing obtained for the acquisition and ownership of the Development pursuant to Section 1.3(c) of the Agreement and Section 214 of the DDA, but excluding payments made pursuant to this Note.

As used herein, "Deferred Developer Fees" shall mean any deferred developer fee allowable under the Project Budget that has been approved by the City pursuant to Section 306 of the DDA.

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

As used herein, "Partnership Management Fees" shall mean the asset management fee payable to the managing general partner and/or any special limited partner of the Borrower, or any qualified affiliate of Borrower or designated management agent of Borrower, which is allowable under the Project Budget which has been approved by the City pursuant to Section 306 of the DDA.

As used herein, "Reserve Deposits" shall mean and payments to the Operating Reserve account and payments to the Capital Replacement Reserve account pursuant to the HUD Capital Advance Documents.

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

On or before February 1st of each year, commencing in the year of the issuance of the Certificate of Occupancy for the Development, the Borrower shall annually provide the City a Residual Receipts report, in the form attached to the Agreement as Schedule "1", which shall describe in detail the Annual Project Revenue, Debt Service, Operating Expenses, Reserve

Deposits, Partnership Management Fees, Deferred Developer Fees, and Residual Receipts for that fiscal year. The Borrower shall also submit to the City, on or before February 1st, of each fiscal year commencing in the year of the issuance of the Certificate of Occupancy for the Development, annual financial statements with respect to the Development that have been reviewed by an independent certified public accountant, together with an expressed written opinion of the certified public accountant that such financial statements present the financial position, results of operations, and cash flows fairly and in accordance with generally accepted accounting principles.

3. Security. The Note is secured by a Deed of Trust (the "Deed of Trust") dated as of the same date as this Note Rider, and a UCC-1 fixture filing.

4. Waivers

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

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

c. Subject to the Provisions of Section 10 of this Note Rider, the obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

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

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

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

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

7. **Amendments and Modifications.** The Note and this Note Rider may not be changed orally, but only by an amendment in writing signed by Borrower and by the City.

8. **City May Assign.** City may, at its option, assign its right to receive payment under the Note without necessity of obtaining the consent of the Borrower. Should City make any such assignment, City shall provide Developer and HUD with thirty (30) days advance written notice of such. However, any failure by City to provide such notice to Developer or HUD shall not invalidate or in any manner affect the effectiveness and validity of such assignment.

9. **Borrower Assignment Prohibited.** In no event shall Borrower assign or transfer any portion of the Note without the prior express written consent of the City, which consent shall not unreasonably be withheld, except pursuant to a transfer which is permitted or approved under the Agreement or the DDA. Notwithstanding anything in this Section, or elsewhere in this Note Rider or the Agreement to the contrary, so long as the Development is encumbered by the HUD Capital Advance Documents, any proposed assumption by any transferee or assignee must have the prior written consent of HUD. Such assumption, assignment or transfer shall not constitute a default of the Agreement, the Note or this Note Rider if transferee or assignee of the Note, this Note Rider or the Agreement has the approval of HUD. Nothing contained in the Note, this Note Rider or the Agreement shall prohibit the Developer from transferring the Development or Site to HUD or to a HUD approved transferee without City approval.

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

11. Consents. Borrower hereby consents to: (a) any renewal, extension or modification (whether one or more) of the terms of the Agreement or the terms or time of payment under this Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof, (c) the granting of any other indulgences to Borrower, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Any such renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to Borrower or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder. Notwithstanding the foregoing, during the term of the HUD Capital Advance Documents no such renewal, extension, modification, release, surrender, exchange or substitution shall be made without the prior written approval of HUD.

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

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

a. the provisions of this paragraph shall govern and control;

b. neither Borrower nor Borrower's heirs, legal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest allowed by the Interest Law applicable to this loan transaction;

c. any excess shall be deemed canceled automatically and, if theretofore paid, shall be credited on the Note by City or, if the Note shall have been paid in full, refunded to Borrower; and

d. the effective rate of interest shall be automatically subject to reduction to the Maximum Legal Rate of Interest (as defined below), allowed under such Interest Law, as now or hereafter construed by courts of appropriate jurisdiction. To the extent permitted by the Interest Law applicable to this loan transaction, all sums paid or agreed to be paid to City for the use, forbearance or detention of the indebtedness evidenced hereby shall be amortized, prorated, allocated and spread throughout the full term of the Note. For purposes of the Note, "Interest Law" shall mean any present or future law of the State of California, the United States of America, or any other jurisdiction which has application to the interest and other charges under the Note. The "Maximum Legal Rate of Interest" shall mean the maximum rate of interest

that City may from time to time charge Borrower, and under which Borrower would have no claim or defense of usury under the Interest Law.

e. the provisions of this Section 13 shall not be applicable during the term of the HUD Capital Advance Documents.

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

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

LIL JACKSON SENIOR COMMUNITY, a California nonprofit public benefit corporation

By: _____
Benjamin F. Beckler III
Authorized Agent of the 501c3, Lil Jackson Senior Community

Attachment No. 8
[Exhibit "B" to Loan Agreement]

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

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

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

AGENCY CONSTRUCTION DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS CONSTRUCTION DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust"), made as of _____, 2009, is entered into by and between **LIL JACKSON SENIOR COMMUNITY**, a California nonprofit public benefit corporation ("Trustor"), City of Oceanside ("Trustee"), and **CITY OF OCEANSIDE**, a municipal corporation ("Beneficiary").

ARTICLE 1. GRANT IN TRUST

1.1 GRANT. For the purposes of and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, IN TRUST FOR THE BENEFIT OF BENEFICIARY, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's right, title and interest, whether now owned or hereafter acquired, in and to that certain real property located in the City of Oceanside, County of San Diego, State of California, described on Exhibit A attached hereto (the "Real Property"), including, but not necessarily limited to, (i) Trustor's fee interest in the Real Property, including, but not limited to, that certain interest created by that certain Grant Deed dated as of _____, 2009, by and between Lil Jackson Senior Community, as Grantee, and the Community Development Commission of the City of Oceanside, as Grantor (the "Grant Deed"); (ii) all buildings and other improvements and fixtures now or hereafter located on the Real Property, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the Real Property, it being intended by the parties that all such items shall be conclusively considered to be a part of the Real Property, whether or not attached or affixed to the Real Property (collectively, the "Improvements"); (iii) all development rights or credits, air rights, water, water rights and water stock related to the Real Property, the Grant Deed or the Improvements (the Real Property, the Grant Deed and the Improvements are collectively referred to herein as the "Property"); (iv) all minerals, oil and gas, and other hydrocarbon substances in, on or under the Property, (v) all appurtenances, easements, rights and rights of

way appurtenant or related to the Property; (vi) all interest or estate which Trustor may hereafter acquire in any of the property described above; and (vii) all additions and accretions to, and the proceeds of, any of the foregoing (all of the foregoing being collectively referred to as the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

1.2 ADDRESS. The subject property is located at _____, Lake Boulevard, Oceanside, California. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Deed of Trust on the Subject Property as described on Exhibit A.

1.3 HUD AND AGENCY DEEDS OF TRUST. This Deed of Trust is junior in position to the HUD Note and HUD Deed of Trust and the Agency Note and Agency Deed of Trust, as such terms are defined in the Disposition and Development Agreement between Trustor, Agency (Beneficiary) and City (Trustee) (the "DDA").

ARTICLE 2. OBLIGATIONS SECURED

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

a. Payment to Beneficiary of all sums at any time owing under that certain City Residual Receipts Note ("Note") of even date herewith, in the principal amount of Four Million One Hundred Thirty-eight Thousand Four Hundred Forty-three Dollars ($4,138,443.00) executed by Trustor and payable to the order of Beneficiary, as lender; and

b. Payment and performance of all covenants and obligations of Trustor under that certain "Loan Agreement" between Trustor and Beneficiary, of even date herewith; and

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

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

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

2.2 OBLIGATIONS. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all principal, interest,

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prepayment charges (if any), late charges, other charges, and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.3 INCORPORATION. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. Any and all persons or entities who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

3.1 ASSIGNMENT. Trustor hereby irrevocably assigns to Beneficiary, subject to any prior assignment to Trustor's lenders, all of Trustor's right, title and interest in, to and under: (a) all leases and subleases of the Subject Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Subject Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Subject Property or any portion thereof, whether now existing or entered into after the date hereof ("Leases"); and (b) the rents, issues, deposits and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property.

3.2 GRANT OF LICENSE. Beneficiary confers upon Trustor a license ("License"), subject to any prior license conferred upon Trustor's lenders, to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to Section 6.4 without notice and without taking possession of the Subject Property. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.

3.3 EFFECT OF ASSIGNMENT. The foregoing irrevocable Assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any Lessee, licensee, employee, invitee or other person or entity. Beneficiary shall not directly or indirectly be liable to Trustor or

any other person or entity as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

3.4 REPRESENTATIONS AND WARRANTIES. Trustor represents and warrants that as of the date of this Deed of Trust there are no existing Leases.

3.5 COVENANTS. Trustor covenants and agrees at Trustor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (b) exercise Trustor's best efforts to lease all of the apartment units within the Subject Property at all times upon the completion of construction of the Improvements; (c) deliver to Beneficiary fully executed, counterpart original(s) of each and every Lease if requested to do so; and (d) execute and record such additional assignments of any Lease or specific subordinations of any Lease to the Deed of Trust, in form and substance acceptable to Beneficiary, as Beneficiary may request. Trustor shall not, without Beneficiary's prior written consent, except as otherwise permitted pursuant to the Loan Agreement: (i) enter into any Leases after the date of this Assignment except leases in the ordinary course of Trustor's business and on the lease form approved by Beneficiary; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rent one (1) month in advance of the time when it becomes due; (iv) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder except in the ordinary course of Trustor's business; (v) consent to any assignment or subletting by any lessee; or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance, except as required to obtain financing for the Subject Property. Any such attempted action in violation of the provisions of this Section 3.5 shall be null and void. Without in any way limiting the requirement of Beneficiary's consent hereunder, any sums received by Trustor in consideration of any termination (or the release or discharge of any lessee) modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Trustor shall be held in trust by Trustor for such purpose.

3.6 ESTOPPEL CERTIFICATES. Within thirty (30) days after written request by Beneficiary, Trustor shall deliver to Beneficiary and to any party designated by Beneficiary estoppel certificates executed by Trustor and by each of the lessees, in recordable form, certifying (if such be the case): (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date of each lessee's most recent payment of rent; (c) that there are no defenses or offsets outstanding, or stating those claimed by Trustor or lessees under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Beneficiary.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

4.1 SECURITY INTEREST. Trustor hereby grants and assigns to Beneficiary, as of the effective date of the Loan Agreement, a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Trustor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use thereon, (i) the Real Property described on Exhibit A attached hereto and incorporated by reference herein (to the extent the same are not effectively made a part of the Real Property pursuant to Section 1.1 above) or (ii) the improvements constructed or to be constructed on the Subject Property, as described in the Disposition and Development Agreement between Trustor and Beneficiary, dated November 20, 2008 (which real property and improvements are, pursuant to Section 1.1 above, collectively referred to herein, along with the other property described in Section 1.1 above, as the Subject Property); together with all rents, issues, deposits and profits of the Subject Property (to the extent, if any, they are not subject to Article III); all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Subject Property or any business now or hereafter conducted thereon by Trustor; all permits consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Subject Property; all advance payments of insurance premiums made by Trustor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a security agreement and a fixture filing under Sections 9105, 9313 and 9402(6) of the California Uniform Commercial Code, as amended or recodified from time to time, and is acknowledged and agreed to be a "construction mortgage" under such Sections. Trustor is the "debtor" and Beneficiary is the "secured party". Beneficiary's security interest in the Collateral shall be junior and subject to the prior security interest of Trustor's lender(s) for the Subject Property.

4.2 REPRESENTATIONS AND WARRANTIES. Trustor represents and warrants that: (a) Trustor has, or will have, good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity except to construction and permanent lenders approved by Beneficiary; and (c) Trustor's principal place of business is located at the address shown in Section 7.8.

4.3 RIGHTS OF BENEFICIARY. In addition to Beneficiary's rights as a "secured party" under the California Uniform Commercial Code, as amended or recodified from time to time ("UCC"), Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person or entity of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the

Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC §9505, or other applicable law.

4.4 RIGHTS OF BENEFICIARY ON DEFAULT. Upon the occurrence of a Default (hereinafter defined) under this Deed of Trust, then in addition to all of Beneficiary's rights as a "secured party" under the UCC or otherwise at law:

a. Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become purchaser at any such sales; and

b. Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral.

Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Trustor shall make an express written election of said remedy under UCC §9505, or other applicable law.

4.5 POWER OF ATTORNEY. Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

4.6 POSSESSION AND USE OF COLLATERAL. Except as otherwise provided in this Section, or any other Loan Documents (as defined in the Loan Agreement), so long as no Default exists under this Deed of Trust, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business and in accordance with the Loan Agreement and Disposition and Development Agreement.

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ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

5.1 TITLE. Trustor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty, Trustor lawfully holds and possesses valid title to the Subject Property without limitation on the right to encumber.

5.2 TAXES AND ASSESSMENTS. Subject to Trustor's right to in good faith contest payment of taxes, Trustor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which (i) are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein, or (ii) are required to be paid by Trustor. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; *provided, however*, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.

5.3 TAX AND INSURANCE IMPOUNDS. At Beneficiary's option and upon its demand, Trustor, shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments and levies imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, other hazard and mortgage insurance next due. If Beneficiary determines that any amounts paid by Trustor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Beneficiary shall notify Trustor of the increased amounts required to pay all amounts due, whereupon Trustor shall pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Beneficiary shall, unless Trustor is otherwise in Default hereunder or under any Secured Obligation, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Trustor hereunder or under any Secured Obligation, Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee whereupon Beneficiary and its Trustee shall be released from all liability with respect thereto. Within ninety-five (95) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Beneficiary may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor and no other party shall have any right or claim thereto. Notwithstanding the forgoing, during the term of the HUD Capital Advance Documents encumbering the Real Property Beneficiary shall not exercise any provision of this Section without first receiving the prior written approval of HUD.

5.4 PERFORMANCE OF SECURED OBLIGATIONS. Trustor shall promptly pay and perform each Secured Obligation when due.

5.5 LIENS, ENCUMBRANCES AND CHARGES. Trustor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust, subject to the requirements of the Loan Agreement with respect to mechanic's liens. Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or any interest therein, whether senior or subordinate hereto.

5.6 DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.

a. Subject to the senior claim thereto by lenders holding deeds of trust senior to this Deed of Trust, the following (whether now existing or hereafter arising) are, in the amount not to exceed any sums then owing under the Loan Agreement and Note, all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Subject Property; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 5.7(d), Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure.

b. At its reasonable option, Beneficiary may permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary; (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (bb) of the continuation of Leases acceptable to and required by Beneficiary; (cc) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust; and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Beneficiary of such insurance or condemnation proceeds, then Beneficiary may apply such insurance or condemnation proceeds to pay down principal of the

Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose.

5.7 MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY. Trustor covenants, subject to the provisions of the Loan Agreement: (a) to insure the Subject Property against such risks as Beneficiary may reasonably require and, at Beneficiary's request, to provide evidence of such insurance to Beneficiary, and to comply with the requirements of any insurance companies insuring the Subject Property; (b) to keep the Subject Property in good condition and repair; (c) not to remove or demolish the Subject Property or any part thereof, not to alter, restore or add to the Subject Property and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property without Beneficiary's prior written consent; (d) to complete or restore promptly and in good and workmanlike manner the Subject Property, or any part thereof which may be damaged or destroyed, without regard to whether Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in Section 5.6; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Subject Property; and (g) to do all other acts which from the character or use of the Subject Property may be reasonably necessary to maintain and preserve its value.

5.8 DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS. At Trustor's sole expense, Trustor shall protect, preserve and defend the Subject Property and title to and right of possession of the Subject Property, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property and of any condemnation offer or action.

5.9 ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE. Trustee accepts this trust when this Deed of Trust is recorded. From time to time upon written request of Beneficiary and presentation of this Deed of Trust or a certified copy thereof for endorsement, and without affecting the personal liability of any person or entity for payment of any indebtedness or performance of any obligations secured hereby, Trustee may, without liability therefor and without notice: (a) reconvey all or any part of the Subject Property; (b) consent to the making of any map or plat thereof; and (c) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding, including, without limitation, actions in which Trustor, Beneficiary or Trustee shall be a party unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it hereunder unless the performance of the act is requested in writing and Trustee is reasonably indemnified and held harmless against loss, cost, liability or expense.

5.10 COMPENSATION; EXCULPATION; INDEMNIFICATION.

a. Trustor shall pay Trustee's fees and reimburse Trustee for expenses in the administration of this trust, including attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limit any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person or entity as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Subject Property or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to sell, lease or sublease the Subject Property after a Default (hereinafter defined) or from any other act or omission of Beneficiary in managing the Subject Property after a Default, unless the loss is caused by the gross negligence or willful misconduct of Beneficiary, and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

b. Trustor indemnifies Trustee and Beneficiary against, and holds Trustee and Beneficiary harmless from, all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other expenses which either may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the execution of this trust or in performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Trustor to perform Trustor's obligations; or (iv) by reason of any alleged obligation or undertaking on Beneficiary's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Subject Property, unless the loss is caused by the gross negligence or willful misconduct of Trustee or Beneficiary, as applicable. The above obligation of Trustor to indemnify and hold harmless Trustee and Beneficiary shall survive the release and cancellation of the Secured Obligations and the release and reconveyance or partial release and reconveyance of this Deed of Trust. Notwithstanding the foregoing, however, under no circumstances shall these indemnity obligations of Trustor include any obligation for payment of punitive damages assessed against Beneficiary or Trustee or their officers, employees, agents or representatives. In the event HUD acquires title to the Site or Property, HUD shall have no liability under this indemnity provision.

c. Trustor shall pay all amounts and indebtedness arising under this Section 5.10 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.

d. During the term of the HUD Capital Advance Documents, no amounts shall be due from Trustor to Beneficiary under the foregoing provisions without HUD's prior written approval.

5.11 SUBSTITUTION OF TRUSTEES. From time to time, writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Subject Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally

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named Trustee herein. A writing recorded pursuant to the provisions of this Section 5.11 shall be conclusive proof of the proper substitution of such new Trustee.

5.12 DUE ON SALE OR ENCUMBRANCE. If the Subject Property or any interest therein shall be sold, assigned, leased, subleased, transferred (including, without limitation, through sale or transfer of a majority or controlling interest of the corporate stock or general partnership interests or limited liability company interests of Trustor), mortgaged, collaterally assigned, or further encumbered (other than leases of individual apartment units within the Improvements), whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, THEN Beneficiary, in its sole discretion, may declare all Secured Obligations immediately due and payable. Notwithstanding the forgoing, during the term of the HUD Capital Advance Documents the provisions of this Section shall not apply to a transfer to HUD or to a transferee approved by HUD and that any sale, transfer, or refinance transaction approved by HUD shall be deemed approved by Beneficiary. Any proceeds resulting from such sale, transfer, or refinancing shall first go toward Development expenses, repairs and reserves as required by HUD, then if required by HUD, to reduce the HUD Capital Advance, then to the City Loan, then to the City Gap Loan.

5.13 RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Deed of Trust upon the Subject Property.

5.14 RECONVEYANCE. Upon Beneficiary's written request, and upon surrender to Trustee for cancellation of this Deed of Trust or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby, Trustee shall reconvey, without warranty, the Subject Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto" and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons or entities claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Subject Property to the person or persons legally entitled thereto.

5.15 SUBROGATION. Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.

5.16 RIGHT OF INSPECTION. Beneficiary, its agents and employees, may enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and ascertaining Trustor's compliance with the terms hereof.

5.17 HUD CAPITAL ADVANCE PROVISIONS. Notwithstanding any provision of this Deed of Trust to the contrary, this Deed of Trust is subject to the following requirements of the HUD Capital Advance Documents concerning the Development:

a. This Deed of Trust is third and junior in lien to a deed of trust made by Trustor in favor of the Secretary of Housing and Urban Development ("Secretary") to be recorded concurrently securing a Capital Advance made by the Secretary pursuant to Section 202 of the Housing Act of 1959, as amended, or Section 811 of the Cranston-Gonzales National Affordable Housing Act and to a Regulatory Agreement and Use Agreement between Trustor and the Secretary with respect to the Subject Property referred to herein and second and junior in lien to the deed of trust made in favor of the Community Development Commission of the City of Oceanside (the "Agency").

b. During the period the HUD Regulatory Agreement or Use Agreement is in effect, no default under this Deed of Trust may be declared without the prior written approval of the Secretary.

c. In the event that during the period the HUD Regulatory Agreement or Use Agreement is in effect, the Secretary acquires title to the property by foreclosure or by deed in lieu of foreclosure, or otherwise, the lien of this Deed of Trust shall automatically terminate.

d. This Deed of Trust shall not be modified during the period the HUD Regulatory Agreement or Use Agreement is in effect without the prior written approval of the Secretary.

e. During the period the HUD Regulatory Agreement or Use Agreement is in effect, in the event of any conflict between any provisions of this Deed of Trust and the Cranston-Gonzalez National Affordable Housing Act or the Housing Act of 1959, as amended, HUD regulations, or the HUD Regulatory Agreement, this Deed of Trust shall be deemed amended to comply with said Act, regulations and HUD Regulatory Agreement.

f. Approval by the Secretary of a Transfer of Physical Assets ("TPA") of the Development referred to in the Note secured by this Deed of Trust shall constitute approval of the TPA by the Beneficiary.

g. During the term of the HUD Capital Advance Documents the Trustor shall not exercise the remedies referred to in Sections 4.3, 4.4, 4.5, 5.12, 6.2 and 6.7 herein without the prior written approval of HUD.

ARTICLE 6. DEFAULT PROVISIONS

6.1 DEFAULT. For all purposes hereof, the term "Default" shall mean (a) at Beneficiary's option, the failure of Trustor to make any payment of principal or interest on the Note or to pay any other amount due hereunder or under the Note when the same is due and payable, within ten (10) days after receipt of written notice from Beneficiary; or (b) the failure of Trustor to perform any non-monetary obligation hereunder, or the failure to be true of any representation or warranty of Trustor contained herein and the continuance of such failure for thirty (30) days after notice from Beneficiary (or such longer grace period as may be provided pursuant to the Loan Agreement for such failure or the existence of any default under the Loan Agreement), or if it is not reasonably practicable to cure or remedy such failure within such thirty

(30) day period, then Trustor shall not be deemed to be in default if Trustor shall commence such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

6.2 RIGHTS AND REMEDIES. At any time after Default, Beneficiary and Trustee shall each have all the following rights and remedies:

a. With or without notice, to declare all Secured Obligations immediately due and payable;

b. With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons.

c. To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;

d. To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment;

e. To enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property, to make, terminate, enforce or modify Leases of the Subject Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Subject Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof;

f. To execute a written notice of such Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may

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determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Subject Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person or entity, including Trustee, Trustor or Beneficiary may purchase at the sale;

g. To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine in their sole discretion.

h. Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Subject Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; <u>and</u> (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios previously discussed between Trustor and Beneficiary; <u>and</u> (z) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Subject Property.

6.3 APPLICATION OF FORECLOSURE SALE PROCEEDS. After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

6.4 APPLICATION OF OTHER SUMS. All sums received by Beneficiary under Section 6.2 or Section 3.2, less all costs and expenses incurred by Beneficiary or any receiver under Section 6.2 or Section 3.2, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; *provided, however*, Beneficiary shall have no liability for funds not actually received by Beneficiary.

6.5 NO CURE OR WAIVER. Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.

6.6 PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES. Trustor agrees to pay to Beneficiary immediately and without demand all costs and expenses incurred by Trustee and Beneficiary pursuant to Section 6.2 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein. In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any attorneys' fees.

6.7 POWER TO FILE NOTICES AND CURE DEFAULTS. Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Trustor hereunder; *provided, however*, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 NO MERGER. No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary consents to a

merger in writing. If both the lessor's and lessee's estate under any lease or any portion thereof which now or hereafter constitutes a part of Subject Property shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Subject Property pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Subject Property shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

7.2 WAIVER OF MARSHALLING RIGHTS. Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Subject Property, hereby waives all rights to have the Subject Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation ("Other Property") marshaled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.

7.3 RULES OF CONSTRUCTION. When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Subject Property" means all and any part of the Subject Property and any interest in the Subject Property.

7.4 SUCCESSORS IN INTEREST. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; *provided, however*, that this Section 7.4 does not waive or modify the provisions of Section 5.12.

7.5 EXECUTION IN COUNTERPARTS. This Deed of Trust may be executed in any number of counterparts, each of which, when executed and delivered to Beneficiary, will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.

7.6 CALIFORNIA LAW. This Deed of Trust shall be construed in accordance with the laws of the State of California, except to the extent that Federal laws preempt the laws of the State of California.

7.7 INCORPORATION. Exhibit A as attached, is incorporated into this Deed of Trust by this reference.

7.8 NOTICES. All notices or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class U.S. mail, postage prepaid, except that notice of a Default may be sent by certified mail, return receipt requested, or by Overnight

Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the addresses set forth below. For purposes of notice, the addresses of the parties shall be:

Trustor:	Lil Jackson Senior Community C/o Southern California Presbyterian Homes 516 Burchett Street Glendale, CA 91203 Attention: Benjamin F. Beckler, III
Beneficiary:	City of Oceanside 300 North Coast Highway Oceanside, CA 92054 Attention: City Manager
Trustee:	City of Oceanside 300 North Coast Highway Oceanside, CA 92054 Attention: Director of Financial Services

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Trustor shall forward to Beneficiary, without delay, any notices, letters or other communications delivered to the Subject Property or to Trustor naming Beneficiary, "Lender" or the "Construction Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Trustor to perform its obligations to Beneficiary under the Note.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

LIL JACKSON SENIOR COMMUNITY, a California nonprofit public benefit corporation

By: _____
Benjamin F. Beckler III
Authorized Agent of the 501c3, Lil Jackson Senior Community

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

EXHIBIT A

DESCRIPTION OF SUBJECT PROPERTY

THAT PORTION OF PARCEL 2, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN AT PAGE 4736 OF PARCEL MAPS, FILED IN THE OFFICE OF THE COUNTY RECORDER, MAY 19, 1976, LYING SOUTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2;
THENCE ALONG THE WESTERLY BOUNDARY THEREOF NORTH 13°44'52" WEST 240.57 FEET TO THE **TRUE POINT OF BEGINNING** OF THIS DESCRIPTION;
THENCE LEAVING SAID WESTERLY LINE NORTH 85°18'35" EAST 14.87 FEET;
THENCE NORTH 85°25'44" EAST 63.48 FEET;
THENCE NORTH 85°00'58" EAST 59.55 FEET;
THENCE NORTH 73°00'04" EAST 14.53 FEET;
THENCE NORTH 75°48'17" EAST 75.04 FEET;
THENCE NORTH 78°25'49" EAST 52.62 FEET;
THENCE NORTH 68°57'06" EAST 62.11 FEET;
THENCE NORTH 76°57'43" EAST 37.55 FEET;
THENCE NORTH 74°28'56" EAST 34.68 FEET;
THENCE NORTH 76°15'05" EAST 61.44 FEET;
THENCE SOUTH 13°44'56" EAST 127.33 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF SAID PARCEL 2, BEING THE **POINT OF TERMINUS** OF THIS DESCRIPTION.

Schedule 1

FORM OF RESIDUAL RECEIPTS REPORT
(NOT APPLICABLE DURING THE TERM OF THE HUD CAPITAL ADVANCE DOCUMENTS)

City of Oceanside
Lil Jackson Senior Community

Residual Receipts Report
for the Year Ending _____

Date Prepared _____

Please complete the following information and execute the certification at the bottom of this form.

Annual Project Revenue

Please report Annual Project Revenue for the year ending _____ on the following lines:

Rent Payments (including Section 8 tenant assistance payments, if any)	(1)	$_____
Interest Income (do **not** include interest income from replacement and operating reserves nor interest income on tenant security deposits)	(2)	$_____
Additional Income Related to Project Operations (for example, vending machine income, tenant forfeited deposits, laundry income not paid to the residents' association)	(3)	$_____
Total Annual Project Revenue (Add lines 1, 2, and 3)	(4)	$_____

Operating Expenses[1]

Please report Operating Expenses incurred in relation to the operations of the Project for the year ending _____, on the following lines:

Operating and Maintenance Expenses	(5)	$_____
Utilities	(6)	$_____
Property management Expenses and On-Site Staff Payroll	(7)	$_____
Administrative Expenses Incurred by Project	(8)	$_____
Property Taxes	(9)	$_____
Insurance	(10)	$_____
Other Expenses Related to Operations of the Project Please list these expenses: _____ _____ _____ _____	(11)	$_____

Total Annual Operating Expenses (Add lines 5, 6, 7, 8, 9, 10, and 11) (12) $_____

Net Operating Income (Subtract Line 12 from Line 4) (13) $_____

[1] Do not include expense unrelated to the Project's operations, such as depreciation, amortization, accrued principal and interest expense on deferred payment debt, or capital expenditures.

Additional Cash Flow Payments

Obligated Debt Service Payments (as approved by the City and other parties that may have such approval rights) (14) $_____

Scheduled Deposits to Reserves (as approved by the City) (15) $_____

Additional Payment Obligations (such as partnership management fees, deferred developer fees, or repayments on loans to partners, as approved by the City to have priority over Residual Receipt Payment to the City (16) $_____

Total Additional Cash Flow Payments (Add lines 14, 15, and 16) (17) $_____

Residual Receipts for Year Ending _____ (Subtract Line 17 from Line 13) (18) $_____

Percentage of Residual Receipts to be Paid to the City (as shown in the City Residual Receipts Note by and between the City and Borrower dated _____) (19) _____%

Amount Payable to the City (Multiply Line 18 by Line 19) (20) $_____

The amount payable to the City listed on Line 2 is subject to payment according to the terms of the City Residual Receipts Note by and between the City and Borrower dated _____. If Line 20 is $0.00 or negative, you owe nothing to the City this year. If Line 20 is a positive number, remit check payable to _____ and attach to this report.

Computation of Residual Receipts
for the Year Ending _____

The following certification should be executed by the Executive Director or Chief Financial Officer of the Borrower, or the Managing General Partner of the Borrower.

I certify that the information provided in this form is true, accurate, and correct in all respects.
By: _____ _____
Date

_____
(Print Name)

_____
(Title)

EXHIBIT "C"

APPLICATION FOR DISBURSEMENT
Lil Jackson Senior Community

TO: Community Development Commission of the City of Oceanside ("City")

FROM: Lil Jackson Senior Community ("Developer")

REQUEST NO. _____

DATE: _____, 200___

Pursuant to the Loan Agreement dated as of _____, 2009 (the "Agreement") between Developer and City, Developer hereby requests that City disburse $_____ of the City Loan. This disbursement is requested to pay for various expenses incurred in connection with the Lil Jackson Senior Community Development (the "Development"), development of the land or construction of the improvements as summarized on the schedule attached hereto and detailed in the invoices submitted herewith. Developer hereby certifies that the amounts shown on the attached schedule and the accompanying invoices represent costs of designing, developing, and constructing improvements for the Development which are eligible for reimbursement at this time in accordance with the provisions of the Agreement.

Developer acknowledges that any increased costs of construction arising out of change orders, or otherwise, are not included in, or provided for, in the Construction Contract budget, and cannot be invoiced on this Application for Disbursement unless and until such change orders and/or increases in costs have been approved in writing by the City, except as otherwise provided in the Agreement.

Developer certifies that there have been no change order or changes in the work of the Development, except as previously expressly approved by City in writing, or as referenced below, with a copy of the appropriate documentation describing the change attached hereto (whether or not a disbursement is requested herein on account of such change). The following change orders, identified by number and date have been proposed and/or approved since the last Application for Disbursement: _____ _____.

SUBMITTED BY: _____

Date: _____, 200__

REVIEWED AND APPROVED BY: _____
City Inspector

Date: _____, 200__

DISBURSEMENT SCHEDULE

Item of Cost	Budgeted Amount	Amount Previously Disbursed	Amount Requested this Disbursement

ATTACHMENT NO. 9

ADDITIONAL PROVISIONS TO BE ADDED TO THE DEED OF TRUST

1. This Deed of Trust is second and junior in lien to a deed of trust made by Trustor in favor of the Secretary of Housing and Urban Development ("Secretary") to be recorded concurrently securing a Capital Advance made by the Secretary pursuant to Section 202 of the Housing Act of 1959, as amended, or Section 811 of the Cranston-Gonzales National Affordable Housing Act and to a Regulatory Agreement and Use Agreement between Trustor and the Secretary with respect to the Property referred to herein.

2. During the period the HUD Regulatory Agreement or Use Agreement is in effect, no default under this deed of trust may be declared without the prior written approval of the Secretary.

3. In the event that during the period the HUD Regulatory Agreement or Use Agreement is in effect, the Secretary acquires title to the property by foreclosure or by deed in lieu of foreclosure, or otherwise, the lien of this deed of trust shall automatically terminate.

4. This deed of trust shall not be modified during the period the HUD Regulatory Agreement or Use Agreement is in effect without the prior written approval of the Secretary.

5. During the period the HUD Regulatory Agreement or Use Agreement is in effect, in the event of any conflict between any provisions of this deed of trust and the Cranston-Gonzalez National Affordable Housing Act or the Housing Act of 1959, as amended, HUD regulations, or the HUD Regulatory Agreement, this deed of trust shall be deemed amended to comply with said Act, regulations and HUD Regulatory Agreement.

6. Approval by the Secretary of a Transfer of Physical Assets ("TPA") of the Project referred to in the Note secured by this Deed of Trust shall constitute approval of the TPA by the Beneficiary.

7. During the term of the HUD Capital Advance Documents the Trustor shall not exercise the remedies referred to in Sections _____ without the prior written approval of HUD.

ATTACHMENT NO. 10

RECORDING REQUEST BY AND
AFTER RECORDING MAIL TO:

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

Space Above This Line For Recorders Use Only

APN:
No Fees Due – For Benefit of Public Agency

CERTIFICATE OF COMPLETION

THIS CERTIFICATE OF COMPLETION (the "Certificate") is being executed by the **CITY OF OCEANSIDE**, a municipal corporation (the "City") and is made with reference to the following facts:

A. Lil Jackson Senior Community, a California nonprofit public benefit corporation ("the Developer") is the developer of that certain real property in the City of Oceanside, County of San Diego, State of California, legally described as _____ Parcel Map No. _____ as filed in the Office of the County Recorder of San Diego County _____, 200__ (the "Property").

B. The land comprising the Property was developed by the Developer as part of a residential community in furtherance of the City's "Comprehensive Affordable Housing Strategy", which was approved by the City Council on March 3, 2004, as in effect or may have been amended through the Effective Date hereof and that certain Disposition and Development Agreement dated as of November 6, 2008 by and between the City, the Community Development Commission of the City of Oceanside, and Developer concerning the development of the Property (the "Agreement"), all of which documents are public records on file in the offices of the City Clerk of the City of Oceanside, and are by reference thereto incorporated herein as though fully set forth herein.

C. Section 323 of the Agreement provides that the City shall furnish to Developer a Certificate of Completion upon the completion of all construction required by the Agreement upon the Property, and that the Certificate shall be, and shall so state, conclusive determination of satisfactory completion of the construction upon the Property required by the Agreement, and of full compliance with the terms of the Agreement with respect to the construction required upon the Property.

D. The Developer has requested the City to issue this Certificate.

NOW, THEREFORE, the City hereby certifies as follows:

1. The construction required upon the Property has been completed by the Developer to the satisfaction of the City, in accordance with the terms and conditions of the Agreement, as evidenced

by the issuance of a Certificate of Occupancy issued by the City on _, 200__.

2. Effective as of the date of recordation of this Certificate, the right of reentry provided for under the Agreement shall be of no further force or effect.

3. This Certificate shall not affect the rights and obligation of the City and Developer as set forth in documents entered into and or recorded pursuant to the Agreement, if any.

IN WITNESS WHEREOF, the City has executed this Certificate as of this _____day of _____, 200__.

CITY OF OCEANSIDE
(City)

By: _____
(Name)
(Title)

ATTACHMENT NO. 11

REGULATORY AGREEMENT

ATTACHMENT NO. 11

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)_____

NO DOCUMENTARY TRANSFER TAX DUE R&T CODE §11922
FOR BENEFIT OF PUBLIC AGENCY – NO FEES DUE GOV"T CODE §27383

REGULATORY AGREEMENT

This Regulatory Agreement (hereinafter this "Regulatory Agreement") dated this __,dayof _____, 200_, is made and entered into by and among the CITY OF OCEANSIDE, a municipal corporation in and of the State of California (hereinafter the "City"), COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE, a public body corporate and politic (hereinafter the "Commission"), and LIL JACKSON SENIOR COMMUNITY, 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 is, or will be, the owner of that certain real property situated 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"), pursuant to that certain Grant Deed between the Community Development Commission of the City of Oceanside, as Grantor, and Developer, as Grantee, dated _____, 200_, and filed concurrently with this Regulatory Agreement in Office of the San Diego County Recorder (hereinafter the "Grant Deed"), incorporated herein and made a part hereof by reference;

WHEREAS, on October 17, 2006, Developer made application to the Oceanside Planning Commission for entitlements for the development of the Property, which entitlements included Tentative Parcel Map No. P-19-06, Development Plan No. D-26-06, and Conditional Use Permit No. C-49-06, as approved by the Planning Commission on October 6, 2008, by the adoption of its Resolution No. 2008-P57, and as reaffirmed by the Oceanside City Council on _____,200_,by the adoption of its Resolution No. ___,. Said Resolution No. 2008-P57 set forth certain findings and

conditions on the approval of said Tentative Parcel Map, Development Plan, and Conditional Use Permit, which findings and conditions are incorporated herein and made a part hereof, as if the same are stated in whole herein;

WHEREAS, Developer has applied to the City and Commission for financial assistance in order to develop and operate an eighty (80) unit affordable senior residential rental complex, consisting of 79 1-bedroom units, 1 2-bedroom unit (manager's unit), recreation room, laundry, computer center, arts and crafts room (activity center), manager's office and reception area (hereinafter the "Project") on the Property. That the financial assistance provided by the City and the Commission is to cover costs associated with the construction of the Project not covered by the US Department of Housing and Urban Development ("HUD") Capital Advance Documents (the "HUD Capital Advance Documents") and subject to the requirements of the specific source of funds utilized for the acquisition of the Property and the construction of the Project (hereinafter the "Program"). Developer agrees to be bound and to abide by all applicable Program statutes, rules, and regulations that are applicable to the Project and the financial assistance provided by the City and Commission; and

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

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

1. **Recitals.** The foregoing recitals, Developer's application to the Oceanside Planning Commission for entitlements for the development of the Property, the findings and conditions contained in said Planning Commission Resolution No. 2008-P57 approving said Tentative Parcel Map No. P-19-06, Development Plan No. D-26-06, and Conditional Use Permit No. C-49-06, are a part of this Regulatory Agreement. Developer agrees to comply with all income targeting and affordability requirements as described herein.

1.1 **Term of Agreement.** This Regulatory Agreement shall be for a term commencing on the Effective Date hereof and continuing for a period of **Fifty-five (55) years** after the issuance of a Certificate of Occupancy by the City (the "Commencement Date of the Affordability Period") for the Project (the "Term"), unless sooner terminated as provided for herein, however, in no event shall this Regulatory Agreement be terminated sooner than the maturity date of the HUD Capital Advance Documents. As used hereinafter the terms the "Term" and the "Term of the Regulatory Agreement" and similar phrases relating to the duration of this Regulatory Agreement, shall mean 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 the 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. At the times established in that certain Disposition and Development Agreement, dated November 20, 2008, by and between the City, the Commission and the Developer (the "Disposition and Development Agreement"), Developer shall submit to the City for its approval, plans and specifications for the construction of the Project in conformity with said Resolution 2008-P57. City's approval of said plans and specifications shall not be unreasonably denied or withheld. After such plans and specifications have been approved and before construction is commenced on each respective phase of improvements, Developer shall also submit to the City for their 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 (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; and

(ii) An estimate schedule of payments thereunder which shall provide for partial payments as the work progresses; and

(iii) If required by City, Developer shall post performance guarantees in favor of the City and Commission in the amount of the total (100%) projected cost of the improvements to be made to the Property guaranteeing the completion of the work and fifty percent (50%) of the total projected cost to guarantee payment of labor and materials related to the work. Developer's compliance with the requirements of the HUD Capital Advance Documents or the HUD Section 202 or HUD Section 811 program requirements shall be deemed compliance with the requirements of this Section.

Compliance with the HUD Capital Advance Documents constitutes compliance with any provision of this Section 2 herein. If any provision of this Section 2 conflicts with the HUD Capital Advance Documents or the HUD Section 202 or Section 811 program requirements, the HUD requirements shall prevail.

(b) **Construction.** After receiving building permits Developer shall diligently pursue the work and Developer shall have completed the work in each and every particular and the Housing Units within the Project shall be made available for the initial lease-up on or before _____, **200**_, 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 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 or Commission, in addition to other rights or remedies they may have and, after thirty (30) days notice to Developer, may, subject to the prior written consent of the Secretary of the US Department of Housing and Urban Development (the "Secretary"), (i) complete Developer's work at Developer's expense, or (ii) declare this Regulatory Agreement cancelled and of no further force and effect and re-enter upon the Property and title in the Property shall revest to Commission, it successors or assigns.

(c) **Plan Variances.** Developer shall not authorize any variance from the plans or specifications approved by the City without prior written approval by City.

(d) **Completion Documents.** On the completion date for each phase of improvements, Developer shall deliver to the Property Management Division of the City of Oceanside Public Works Department each of the following:

(i) A certificate of completion by the architect or engineer who supervised the construction, which shall state that all work, has been completed in accordance with the approved plans and specifications.

(ii) Copy of the Certificate of Occupancy, or any equivalent permit or certificate which any governmental authority may require.

(iii) Properly executed general contractor's affidavits stating that all laborers and materialmen have been paid in full, final waivers of liens or lien releases from any general contractor and all subcontractors who have performed work on or furnished materials to the Property.

(e) **As-Built Plans.** Within thirty (30) days of the completion of each phase of improvements, Developer shall furnish and submit to City a reproducible set of plans showing the as-built condition of all improvements made to, in or upon the Property and certified by the plan's preparer that the as-built conditions are depicted accurately.

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 Project and Property shall be developed, devoted, maintained and operated as an eighty (80) unit affordable low-income senior residential rental development, consisting of 79 1-bedroom units (the "Housing Units"), 1 2-bedroom unit (manager's unit), recreation room, laundry, computer center, arts and crafts room (activity center), manager's office and reception area, and appurtenant improvements (the "Improvements"), in conformance with said Planning Commission Resolution No. 2008-P57, the Grant Deed, this Regulatory Agreement, and the HUD Capital Advance Documents. In the event of any inconsistency between the Grant Deed, this Regulatory Agreement, and the HUD Capital Advance Documents or the HUD Section 202 (or Section 811) program requirements, the HUD requirements shall control.

4. **Affordable Housing Requirements.** During the first forty (40) years of the term of the Affordability Period, Developer agrees to make available, restrict occupancy to, and rent each of the Housing Units to a Very Low Income Senior Citizen of sixty-two (62) years of age or older, or a Qualified Resident as defined in California Civil Code Section 51.3 and as amended from time to time, and as set forth below (collectively referred to as "Senior Citizen"), all at Affordable Rental Rates described below. Compliance by the Developer with the requirements of the HUD Section 202 or Section 811 program requirements during the term of the HUD Capital Advance Documents shall be deemed to satisfy the requirements of this Section, and in the event of a conflict, the HUD Capital Advance Documents shall prevail.

Provided, at the time, additional HUD Section 202 or Section 811 program funding or any other public or private funds are not made available to assist in offsetting or subsidizing rents for the Project, Developer may, commencing on the forty-first (41st) year of the term of the Affordability

Period and during the remaining term thereof make available and rent a Housing Unit to a Lower Income Household (Senior Citizen). Notwithstanding the foregoing, Developer may, no sooner than the forty-first (41st) year of the Affordability Period, request that the Affordability Restrictions contained herein be renegotiated to allow renting the Housing Units to elderly persons and families earning no more than 80% of Area Median Income if a financial need to do so is demonstrated.

(a) **Definitions.** For the purposes of this Agreement, the following definitions shall apply:

"Affordable Rental Rates" (including a Utility Allowance) may not exceed 30% of 50% of the Area Median Income for Very Low Income Households or 30% of 80% of Area Median Income for Lower Income Households for the annual rent, adjusted for family size appropriate for the unit.

"Area Median Income" means the median family income of a geographic area of the state, as annually estimated by the United States Housing Act of 1937. For the purpose of this Regulatory Agreement the geographical area shall be San Diego County, California.

"HUD" shall mean the United States Department of Housing and Urban Development.

"HUD Capital Advance" shall mean the financial assistance to be provided by HUD to the Developer for the acquisition of the Site and the development of the Project thereon.

"HUD Capital Advance Agreement" shall mean the agreement between HUD and the Developer pursuant to which HUD provides a HUD Capital Advance to Developer for the Project.

"HUD Capital Advance Documents" shall collectively refer to the HUD Note, Deed of Trust, Regulatory Agreement, Use Agreement, Capital Advance Agreement and Project Rental Assistance Contract as required by Section 202 of the Housing Act of 1959, as amended, or by Section 811 of the Cranston-Gonzalez National Affordable Housing Act ("the Act").

"HUD Capital Advance Program" means the program established under the Act.

"HUD Closing" shall mean the point in time when all conditions of the HUD Firm Commitment are satisfied permitting the Project to commence construction.

"HUD Deed of Trust" means that Deed of Trust securing the HUD Capital Advance in favor of HUD.

"HUD Default Rate" means the interest rate in the HUD Note as of the HUD Closing.

"HUD Firm Commitment" shall mean the written commitment by HUD to the Developer to provide the HUD Capital Advance on terms set forth in such commitment.

"HUD Note" means the Promissory Note evidencing the HUD Capital Advance in

favor of HUD and secured by the HUD Deed of Trust.

"HUD Regulatory Agreement" means the Regulatory Agreement encumbering the Site by and between the Developer and the Secretary of HUD.

"Lower Income Households" means persons and families whose income does not exceed eighty percent (80%) of Area Median Income, adjusted for family size in accordance with the adjusting factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. The determination of a household's status as a Lower Income Household shall be made through third party verification and prior to the initial occupancy of a Housing Unit by the household. For the purpose of this Regulatory Agreement, Lower Income Households includes Very Low Income Households, as defined in Health and Safety Code Section 50105, and Extremely Low Income Households, as defined in Health and Safety Code Section 50106.

"Qualified Permanent Resident" means a remaining member of the household who meets the following basic requirements for eligibility as a remaining member of a household: 1) The individual must be a party to the lease or rental contract when the Qualifying Resident leaves the Housing Unit; 2) The individual must be of legal age to contract under state law; 3) If the individual who establishes initial eligibility for the Housing Unit leaves the Housing Unit for any reason, other than death, in a Section 202/8, Section 202 PAC, Section 202 PRAC or Section 811 PRAC project, the owner must determine if the individual(s) still remaining in the Housing Unit meets the eligibility requirements for the project as to income and age. If the individual still remaining in the Housing Unit does not meet such requirements, the owner must remove the individual from the Housing Unit.

"Qualifying Resident or Senior Citizen" means a person who is sixty-two (62) years of age or older, as defined in Section 51.3 of the California Civil Code, and as amended from time to time, and meets the income level requirements set forth in this Regulatory Agreement.

"Utility Allowance" means that amount required for utilities which are not paid for by Developer and which is the amount deducted from the total tenant rent to assist in paying utilities.

"Very Low Income Households" means persons and families whose income does not exceed fifty percent (50%) of area median income. Income limits are based on family size and the annual income the family receives. The determination of a household's status as a Very Low Income Household shall be made through third party verification and prior to the initial occupancy of a Housing Unit by the household. For the purpose of this Regulatory Agreement, Very Low Income Households shall include Extremely Low Income Households, as defined in Health and Safety Code Section 50106.

(b) **<u>Duration of Affordability Requirements</u>.** The Housing Units shall be subject to the requirements of this Section 4 for the fifty-five (55) years from the date of the issuance of the Certificate of Occupancy by the City (the "Commencement Date"). The duration of this requirement shall be known as the "Affordability Period."

(c) **Income of Residents.** Following the initial lease-up of Housing Units to residents, and annually thereafter, on or before the first (1st) day of February of each year during the term of this Regulatory Agreement, the Developer shall submit to the City, at Developer's expense, a summary of the income, household size and rent payable by each of the residents of the Housing Units. At the City's request, Developer shall also provide to the City completed income computation and certification forms, in a form acceptable to the City, for any such tenant or residents. Developer shall obtain, or shall cause to be obtained by the Property Manager, a certification from each tenant leasing a Housing Unit demonstrating that such tenant is a Very Low Income Senior Citizen or Household during years 1-40 of Affordability Period or a Lower Income Household during years 41-55 of the Affordability Period or Qualified Permanent Resident, and meets the eligibility requirements established for the Housing Unit. Developer's compliance with such reporting requirements under the HUD Capital Advance Documents, the Section 202 or Section 811 program requirements shall be deemed compliance with the requirements of this Section, provided copies of the same are provided concurrently to the City.

(d) **Verifications.** Developer shall verify, or shall cause to be verified by the Property Manager through third party verification, the income of each proposed and existing tenant of the Housing Units in an appropriate manner. Following the issuance of a Certificate of Occupancy by the City for the Improvements to be constructed on the Property, and on or before the first (1st) day of February of each year, Developer, as an expense of the Project, shall submit to the City and Commission the reports required pursuant to Health and Safety Code Section 33418, as the same may be amended from time to time, with each such report to be in a form reasonably acceptable to the City or Commission. Each annual report shall cover the immediately preceding fiscal year. Developer's compliance with the requirements of the HUD Capital Advance Documents or the HUD Section 202 or Section 811 program requirements shall be deemed compliance with the requirements of this Section, provided Developer simultaneously submits certified copies of the HUD reports to the City and Commission.

(e) **Rent Schedule.** At the time of initial lease-up of the Housing Units, Developer shall charge only those rents approved by the City and which are established pursuant to the Program Regulations. Subsequent increases or decreases in rent, including special rent increases, shall be charged only if consistent with the Program Regulations. Developer's compliance with the HUD Capital Advance Documents or the HUD Section 202 or Section 811 program requirements shall be deemed compliance with the requirements of this Section, provided Developer simultaneously submits certified copies of the HUD reports to the City. Failure to observe this regulation shall be considered a material breach of the Regulatory Agreement.

(f) **Resident Selection Procedures.** Developer shall be responsible for the selection of residents for the Housing Units in compliance with state and federal fair housing laws. An applicant is eligible for admission to a Housing Unit if the household meets the requirements of the Program Regulations as described in this Regulatory Agreement. Developer may determine that an applicant is not eligible for admission if, on the basis of substantial, factual evidence of that person's prior actions there is good cause to believe that the applicant will repeatedly fail to pay rent, will create a

substantial threat to the health and safety of other residents, or will repeatedly breach material requirements of the lease or rental agreement. Developer's compliance with the HUD Capital Advance Documents or the HUD Section 202 or Section 811 program requirements shall be deemed compliance with the requirements of this Section.

(g) **Lease and Occupancy Procedures.** Each eligible applicant selected to occupy a Housing Unit shall enter into a written lease or rental agreement with Developer, or its designated management agent, the form of which shall contain those provisions as are required by the Program Regulations, the Grant Deed and this Regulatory Agreement.

(i) Developer shall establish reasonable rules of conduct and occupancy that shall be consistent with State and Federal law and the Program Regulations. The rules shall be in writing and shall be given to each resident. Any amendment to said rules shall be effective no less than 30 days after giving written notice thereof to each resident.

(ii) All leases or rental agreements and the landlord-tenant relationship shall be subject to California law, the Program Regulations, and the provisions of this Regulatory Agreement. Residents of the housing units shall pay rents, in advance, on a monthly basis for the period the resident actually occupied the housing unit. Developer may require the resident to move out if the resident has seriously or repeatedly violated important terms of the lease agreement.

Developer's compliance with the HUD Capital Advance Documents or the HUD Section 202 or Section 811 program requirements shall be deemed compliance with the requirements of this Section.

5. **Maintenance and Repair.** Developer agrees to assume full responsibility for the management, operation and maintenance of the Project and the Property throughout the Term without expense to the City or Commission, 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 agrees that the City and Commission shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Project and the Property. Developer hereby waives all rights to make repairs or to cause any work to be performed at the expense of the City or Commission as may be provided for in Section 1941 and 1942 of the California Civil Code, if applicable. Developer shall manage and maintain the Project on the Property in conformity with the Oceanside Municipal Code.

Developer and its maintenance staff, contractors or subcontractors shall comply with the following standards:

(a) Developer shall maintain the Project, including individual Housing Units, all common areas and buildings, all exterior facades, all sidewalks, and all exterior areas, in a safe and sanitary fashion suitable for a high quality multifamily housing development. The Developer agrees to provide utility services, administrative services, supplies, contract services, maintenance, maintenance reserves, and management which are necessary for the maintenance of the entire Project

including interior tenant spaces, common area spaces and interior and exterior common areas.

(b) Landscape maintenance shall include, but not be limited to: watering and irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all private paths, sidewalks, parking areas, driveways, curbs, gutters and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of.

(d) The Project shall be maintained in conformance with, in accordance with and in compliance with the approved construction and architectural and landscape plans and design scheme, as the same may be amended from time to time with the approval of the City.

(e) All maintenance work shall conform to all applicable federal and state standards and regulations for the performance of maintenance, including without limitation the Occupation Safety and Health Act.

(f) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance performed by Developer, Property Manager or their contractors shall be applied in strict accordance with all governing regulations and in accordance with the manufacturer's directions for their use. Precautionary measures shall be employed recognizing that all areas are open to public access.

(g) Parking lots, lighting fixtures, trash enclosures, and all areas which, can be seen from the adjacent streets shall be kept free from any debris or waste materials by regularly scheduled maintenance.

(h) **Annual Operating Budget**. Developer will submit to the City a proposed Annual Operating Budget for the Project no later than ninety (90) days after completion of the Project improvements and on or before February 1st of each year thereafter.

The Annual Operating Budget shall set forth the anticipated Gross Income of the Project, including rents and such payments as may be provided from the Program and other public and private sources, and a detailed estimate of all operating costs, capital improvements, deposits to all accounts required by the City, and all other expenses in conformance with customary accounting procedures and in the format required by the City. HUD's acceptance of the Annual Operating Budget in a format acceptable to HUD shall be deemed compliance with this requirement.

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.

Unless the City objects to the proposed budget within fifteen (15) days after submission of a complete proposed budget, such proposed operating budget shall be the Operating Budget for the fiscal year of the Project, provided that the written submittal states that failure to approve or disapprove within such fifteen (15) day period shall be deemed an approval. In the event that the City objects to the proposed Annual Operating Budget, the City and Developer shall use reasonable and diligent efforts to reach mutual agreement to determine the operating budget. Notwithstanding the foregoing, HUD's acceptance of the proposed Annual Operating Budget shall be compliance with this requirement.

(i) **Capital Replacement Reserve.** Throughout the Term hereof, Developer shall establish and maintain a Capital Replacement Reserve fund in accordance with HUD regulations (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 therefor; provided, however, Developer shall not make any disbursements of the Capital Replacement Reserve, in a cumulative amount in excess of twenty-five thousand Dollars ($25,000) per year for both the Operating Reserve and Capital Replacement Reserve, without the prior consent HUD. 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.

Developer, as an expense of the Project, shall submit to the City, at the same times and manner as required for the submittal of the reports related to the Annual Operating Budget as stated in the Subsection (h) above, a budget, a capital improvement management plan and an accounting for the Capital Replacement Reserve, said budget and management plan shall be in a form acceptable to HUD. HUD's acceptance of said budget and management plan shall be deemed compliance with this requirement. Capital repairs to and replacement of the Project shall include only those items with a long useful life (generally five years or longer).

(j) For purposes of this Section 5, "Effective Gross Income" of the Project shall mean the gross income actually generated by the Project, including without limitation, rents and such payments as may be provided from the Program and other public and private sources, without deduction for any expenses.

(k) If other funding entities have differing requirements, the City and Developer may mutually amend this paragraph in writing to be consistent with those other requirements.

Notwithstanding any provision of this Section 5, if any provision herein conflicts with the HUD Capital Advance Documents or the HUD Section 202 or Section 811 program requirements, the HUD requirements shall prevail. Developer's compliance with the HUD Capital Advance Documents or the HUD Section 202 or Section 811 program requirements shall be deemed

compliance with the requirements of this Section, provided Developer simultaneously submits certified copies of the respective HUD reports to the City and Commission.

6. **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. Developer's compliance with the HUD Capital Advance Documents or the HUD Section 202 or Section 811 program requirements, as to the maintenance of said accounting system, shall be deemed compliance with the requirements of this Section. All records shall be subject to City and Commission inspection and audit.

7. **Management.** Developer shall manage or cause the Property and the Project to be managed in a prudent and business-like manner, consistent with professional standards for senior rental housing developments in San Diego County, California. Developer may contract with a Property Manager or manager to operate and maintain the Property and the Project in accordance with the terms of this Regulatory Agreement (hereinafter "Property Manager") provided, however, that the selection and hiring of such Property Manager shall be subject to approval by the City's Director of Neighborhood Services. Approval of a Property Manager or manager by the City shall not be unreasonably withheld. Furthermore, the identity of the Property Manager shall not be changed without the prior approval of the City, which approval shall not be unreasonably withheld. Property Manager approval by HUD shall be deemed approval by City.

Developer and its Property Manager 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 manner of enforcement, a standard lease form, and other matters relevant to the management of the Project. The management of the Project shall be in compliance with the Management Plan, which is approved by the City. Developer and Property Manager may from time to time submit proposed amendments to the Management Plan, which shall also be subject to the prior written approval of the City.

In the event of "Gross Mismanagement" (as that term is defined below) of the Project, the City shall have the authority to require that such Gross Mismanagement cease immediately, and further to require the immediate replacement of the Property Manager if such condition is not corrected after expiration of sixty (60) days from the date of written notice from the City. For purposes of this Agreement, the term "Gross Mismanagement" shall mean management of the Project in a manner which violates the terms and/or intention of this Regulatory Agreement to operate a high quality multifamily housing complex, and shall include, but is not limited to, the following:

(a) Repeatedly leasing to residents who exceed the prescribed income levels or are otherwise ineligible for tenancy;

(b) Repeatedly allowing the residents to exceed occupancy limits prescribed by law or set forth in the Management Plan without taking immediate action to stop such overcrowding;

(c) Repeatedly under funding the prescribed Capital Replacement Reserve (Section 10(i));

(d) Repeatedly failing to timely maintain the Project and the Property in accordance with

the Management Plan and the manner prescribed in Section 5 hereof; and,

(e) Fraud or embezzlement of Project monies, including without limitation the funds in the Capital Replacement Reserve.

Notwithstanding the above, Developer shall use its best efforts to correct any defects in management at the earliest feasible time and, if necessary, to replace the Property Manager as provided above.

To the extent that the HUD Capital Advance Documents impose management requirements, which are substantially different than the foregoing provisions, the requirements of the HUD Capital Advance Documents shall control. Management Plan approved by HUD shall be deemed approved by City.

8. Utilities and Taxes.

8.1 Utilities. To the extent that the HUD Capital Advance Documents or the HUD Section 202 or Section 811 programs require such, Developer shall pay, and/or provide for the payment by residents of the Housing Units, all charges for gas, 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) Although it is recognized that the Commission is a tax-exempt entity, Commission shall be responsible to clear all real estate taxes owing against the Property prior to the Effective Date this Regulatory Agreement. The Developer shall be responsible for all real estate taxes accruing after the Effective Date of this Regulatory Agreement. Provided the Effective Date of this Regulatory Agreement is the same as the HUD Closing date and transfer of the Property to Developer.

(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 or Commission.

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.

Notwithstanding the above, however, the City acknowledges that Developer intends to obtain an exemption from the payment of property taxes described in the foregoing Sections 8.2 and 8.3 with respect to the Property, and nothing in this Regulatory Agreement shall prevent Developer from obtaining such an exemption.

9. **Ownership of Improvements, Fixtures and Furnishings.**

9.1 **Ownership During Term.** 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 Improvements from the Property or 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, Commission and Developer intend that the Improvements constituting the Project shall be real property.

9.2 **Ownership at Earlier Termination.** Upon the earlier termination of this Regulatory Agreement, subject to the prior written approval of HUD during the term of the HUD Capital Advance Documents, all Improvements and fixtures shall, without compensation to Developer, then become the City's property, free and clear of all liens, encumbrances, and claims to or against them by Developer or any third person, firm or entity, including but not limited to any mortgagee or lender, except for such encumbrance as may be consented to, in writing, by the City to remain. At the option of the City, the City may require Developer to demolish and remove any of the Improvements to the Property which have not previously been approved by the City.

(a) **Quitclaim of Commission's Interest to City.** In the event the Property revests in Commission as provided for in this Regulatory Agreement, the Commission hereby REMISES, RELEASES and QUITCLAIMS the Property to the City. For the purposes of this paragraph, the term Property includes the real property, all improvements and appurtenants attributed thereto.

10. **Indemnification: Faithful Performance.** Developer shall not suffer or permit any liens to be enforced against the fee simple estate in reversion of the Commission as to the Property and Project, nor against Developer's interest therein by reason of work, labor, services or materials supplied or claimed to have been supplied to Developer or anyone holding the Property and the Project, or any part thereof, through or under Developer. Developer agrees to defend, indemnify, and hold the Commission and City and their respective officers, officials, employees, agents, and representatives, harmless against such liens. 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 Commission 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 or Commission. 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 or Commission, 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 and Commission 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. Any amounts owed by Developer under this Section shall be paid from Residual Receipts of the Project as defined by the HUD Capital Advance Documents and must have HUD's prior written approval.

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 any local governmental authority, the County of San Diego, the State of California, regional governmental authority 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 laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Property is located, and any other state, county, city, political subdivision, agency, instrumentality or other entity exercising jurisdiction over the City, Commission, Developer or the Property.

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 Commission may have agreed to perform upon the Property.

11.3 **Indemnification.**

(a) **Developer's Indemnity.** Upon and after the Commencement Date of this Regulatory Agreement Developer agrees to indemnify, defend and hold the City and Commission 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. 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. Any amounts owed by Developer under this provision shall be limited to damages resulting from the introduction of hazardous materials onto the Property by Developer and any payments made by Developer pursuant to this provision shall be made from Residual Receipts as defined by the HUD Capital Advance Documents and only with HUD's prior written consent, such consent shall be required only during the term of the HUD Capital Advance Documents.

(b) **Commission's Indemnity.** Upon and after the Commencement Date of this Regulatory Agreement, the Commission agrees to indemnify, defend and hold Developer 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, or the transportation of any such Hazardous Materials to or from, the Property during the period of the Commission's ownership of the Property prior to 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 period of the Commission's ownership of the Property prior to the term of this Regulatory Agreement. 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. the Commission's obligations under this Section 11.3(b) shall survive the expiration of this Regulatory Agreement.

11.4 **Duty to Prevent Hazardous Material Contamination.** Developer shall take all reasonably necessary precautions to prevent 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 by apartment complexes in San Diego County, California as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials.

11.5 **Obligation of Developer to Remediate Premises.** Notwithstanding the obligation of Developer to indemnify the City and Commission 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, the Grant Deed and the Disposition and Development 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 reasonably necessary to promptly restore the Property to an environmentally sound condition for the uses contemplated by this Regulatory Agreement and the 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 and/or Commission or their 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 and/or Commission in connection with performing Developer's obligations hereunder shall be reimbursed by Developer to the City and/or Commission within thirty (30) days of Developer's receipt of written request therefor.

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. Developer shall further be solely responsible 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 acquisition of the Property by Developer. Any indemnity by Developer of City shall be limited to only those Hazardous Materials which were introduced onto the Property by Developer and shall be paid only out of Residual Receipts as defined by the HUD Regulatory Agreement. Developer's obligations hereunder shall survive the termination of this Regulatory Agreement and shall not merge with any grant deed.

11.8 Environmental Inquiries. If any of the following events occur after the conveyance of the property to the Developer from the Commission, 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 10 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 therefor. 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 improvements and appurtenances. The City and Commission shall not be obligated by this Regulatory Agreement to make any improvements to the Property or to assume any expense therefor. 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. Notwithstanding the foregoing, during the term of the HUD Capital Advance Documents, compliance with the HUD Capital Advance Documents or the HUD Section 202 or Section 811 program requirements shall be deemed compliance with the provisions of the Section 12.

13. Damage or Destruction.

13.1 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. Subject to rights of lenders and 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 25.23, in no event shall the repair, replacement, or restoration period exceed one (1) year from the date Developer obtains insurance proceeds unless the City Manager or designee, in his or her sole and absolute 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, HUD (if applicable), and any other governmental agency or agencies with jurisdiction.

In the event Developer elects not to repair, replace, or restore and gives the City and Commission 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 does not timely elect not 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. In no event, however, shall the Developer be obligated to expend more than One Hundred Twenty Thousand Dollars ($120,000.00) of its own funds (as adjusted as provided below) to satisfy its obligations under this Section 13.3 to repair, replace or restore the Project. Such maximum expense number shall increase annually by the percentage change in the Consumer Price Index (All Urban Consumers) (Base Year 1982-84 100) for the San Diego area, as published by the United States Department of Labor, Bureau of Labor Statistics, or its successor index, during the last reported one year period. In the event Developer elects not to repair, replace, or restore, and gives the City notice of such election as provided herein, this Regulatory Agreement shall terminate.

13.4 **Deemed Compliance.** Notwithstanding the foregoing provisions of this Section 13, during the term of the HUD Capital Advance Documents, compliance with the HUD Capital Advance Documents or the HUD Section 202 or Section 811 program requirements shall be deemed compliance with the requirements of this Section 13.

14. **Sale, Assignment, Sublease or Other Transfer.** Except for (a) leases of particular dwelling units to residents, (b) the lease of or grant of an easement or license to the City or utility companies, (c) the lease of space within the community center portion of the Project to outside parties, and (d) transfers permitted pursuant to Section 109 of the Disposition and Development Agreement, 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 and HUD shall render such assignment 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 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.

(b) 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.

(c) Any transfer to a transferee or assignee approved by the Secretary of HUD or if the Secretary or his transferee should take title to the Property through foreclosure, deed in lieu of foreclosure, or otherwise.

In the event of an assignment by Developer under subparagraphs (a) through (b), inclusive, above, not requiring the City's prior approval, 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. 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 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 complexes 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. Approval by the City of any such sale, assignment, sublease or transfer shall be deemed to relieve Developer or any approved or permitted assign or successor from any obligations under 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 first 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 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 Commission 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; provided, however, that the Commission may assign or transfer any of its interests hereunder to the City at any time without the consent of the Developer.

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 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 their 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.

Notwithstanding anything in this Section 15 to the contrary, during the term of the HUD Capital Advance Documents, nothing contained in this Section shall limit Developer's right to obtain any funds from HUD, as HUD deems necessary for the Property or Project.

16. **Indemnity.** Developer shall defend, indemnify, assume all responsibility for, and hold the Commission 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 negligent acts of Developer hereunder. Developer shall not be liable for property damage or bodily injury occasioned by the active negligence of, willful misconduct of, or breach of this Regulatory Agreement by the City, Commission or their agents or employees.

In the event HUD acquires title to the Site or Property, HUD shall have no liability under this indemnity provision.

The City and/or Commission shall defend, indemnify, assume all responsibility for, and hold Developer and its 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 City and or Commission's performance or failure to perform its obligations pursuant to this Regulatory Agreement, whether such activities or performance thereof be by the City, Commission or by anyone employed or contracted with by the City and/or Commission and whether such damage shall accrue or be discovered before or after termination of this Agreement. The City and Commission shall not be liable for property damage or bodily injury occasioned by the active negligence of, willful misconduct of, or breach of this Agreement by Developer or its agents or employees.

Notwithstanding the foregoing, any payments made by Developer under this indemnity provision, shall be made from Residual Receipts as defined by the HUD Capital Advance Documents or as otherwise defined by HUD and shall only be made with HUD's prior written consent.

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 Housing Units, 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 lessees 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 the Commission, and their respective officers, employees, agents, and representatives, as additional insureds, as their respective interests may appear. Insurance coverage provided to the City and Commission as additional insured shall be primary insurance and other insurance maintained by the City and/or Commission, their officers, employees, agents, and representatives shall be excess only and not contributing with insurance provided pursuant to this Section 17. 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 Commission and shall contain a waiver of subrogation for the benefit of the City and Commission.

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 added rent 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, the City and Commission as their interests may appear. Notwithstanding the foregoing, within the period during which the HUD Capital Advance Documents encumber the Property and the Project, such proceeds shall be payable in accordance with the HUD Capital Advance Documents.

In the event this Regulatory Agreement is terminated by mutual agreement of the City, Commission 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, Commission and Developer and shall be applied first to any payments due under this Regulatory Agreement from Developer to the City and Commission, 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, the City and the Commission 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 held by HUD, such proceeds shall be applied in accordance with the HUD Capital Advance 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 partially terminated by mutual agreement of the City, Commission 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, Commission and Developer and shall be applied first to any payments due under this Regulatory Agreement from Developer to the City and Commission, 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, the City and the Commission 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 mortgage 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.

Notwithstanding the foregoing, during the HUD Capital Advance Documents, compliance by the Developer with the insurance requirements of the HUD 202 Program shall be deemed compliance with the insurance requirements of this Section 17. The City and Commission and their and their respective officers, employees, agents, and representatives shall be named additional insures(s) on all such 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 (defined as the amount

provided by the grant from HUD) 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 repair or rebuilding of the Project. Any balance then remaining of the insurance proceeds shall be paid to the additional insured(s) and, at the option of such additional insured(s), may be applied to the indebtedness owed to such additional insured(s) or be released for the repair or rebuilding of the Project. Surplus insurance proceeds thereafter may be dispersed to the owner of the Project.

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, Commission and Developer (or mortgagee, if a mortgage is then in effect), the interests of the City, Commission 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 and from and after such date the rental required by this Regulatory Agreement to be paid by Developer to the Commission shall be reduced in the proportion which the number of square feet so taken bears to the total number of square feet in the Property.

(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 Developer and applied towards the expenses of the Project. That portion of any award attributable to the fair market value of the Project or portion thereof taken shall belong to the City, Commission 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. 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 Developer and applied towards the expenses of the Project. 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 held by HUD, HUD shall be entitled to any portion of the award attributable to the Project, consistent with the HUD Capital Advance Documents. Any excess portion of the award attributable to the condemnation of the Project shall be payable to the City and Commission.

(g) Notwithstanding the foregoing provisions of this Section, the City and Commission may, in their discretion and without affecting the validity and existence of this Regulatory Agreement, transfer the City and Commission's 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 and Commission, Developer (or mortgagee if a mortgage is then in effect), the City and the Commission 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, Commission and Developer.

19. <u>Obligation to Refrain from Discrimination</u>. Except as otherwise required by the HUD Section 202 or Section 811 program rental requirements, 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, creed, religion, sex, marital status, national origin or ancestry 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. The foregoing covenants shall run with the land.

Developer shall refrain from restricting the rental or lease of the Property and the Project, or any portion thereof, on the basis of sex, marital status, race, color, creed, religion, ancestry or national origin of any person. Except as otherwise required by the HUD Section 202 or Section 811 program rental requirements, all such leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) **<u>In Leases</u>:** "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 sex, marital status, race, color, creed, religion, national origin, or ancestry, 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**: "There shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, race, color, creed, religion, national origin or ancestry 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**: "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 sex, marital status, race, color, creed, religion, national origin or ancestry 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."

Developer's compliance with the requirements under the HUD Capital Advance Documents or the HUD Section 202 or Section 811 requirements shall be deemed compliance with the requirements of this Section 19.

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, creed, religion, sex, marital status, physical or mental disability, sexual orientation, ancestry or national origin, 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. 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 and/or Commission 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, Commission 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 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 and the Commission's 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 and Commission or increase obligations elsewhere in this Regulatory Agreement imposed on the City and/or Commission. Developer's compliance with the requirements under the HUD Capital Advance Documents or the HUD Section 202 or Section 811 requirements shall be deemed compliance with the requirements of this Section 23.

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; or

(b) Developer shall fail or refuse to pay, within ten (10) days of notice from the City or Commission that the same is due, any installment of rent or any other sum required by this Regulatory Agreement to be paid by Developer; or

(c) Developer shall fail to materially perform any covenant or condition of the Disposition and Development Agreement, the Agency and City Loan Agreements, this Regulatory Agreement, and/or any loan documents or regulatory agreements executed by Developer which are permitted pursuant to the foregoing, other than as set forth in subparagraphs (a) or (b) above, and any such failure shall not be cured within thirty (30) days following the service on Developer of a written notice from the City or Commission 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

(d) Subject to any restrictions or limitations placed on the City and Commission 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 and/or Commission.** In the event of any such default as described in Section 24.1, subject to prior written approval of HUD during the term of the HUD Capital Advance Documents, the City and/or Commission may, at its option:

(a) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by the City and/or Commission 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 and/or Commission 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 and/or Commission in enforcing this provision) from the proceeds of any insurance;

(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 consistent with Developer's obligation under this Regulatory Agreement as the court deems proper;

(e) Maintain and operate the Property and the Project, without terminating this Regulatory Agreement;

(f) Require the replacement of one or more general partners of the Developer with other general partners, which are reasonably acceptable to the City and Commission.

24.3 **Damages.** Damages which the City and/or Commission recover in the event of default under this Regulatory Agreement shall be those which are then available under applicable California case and statutory law to lenders for real estate loans in the State of California including, but not limited to, any accrued but unpaid principle and interest and the worth at-the time of award of the amount by which the unpaid principle and interest for the balance of the term of this Regulatory Agreement after the date of award exceeds the amount of such loss for the same period that Developer proves could be reasonably avoided.

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 and/or Commission. The exercise by the City and/or Commission 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 Remedies During the HUD Capital Advance Documents Term. During the term of the HUD Capital Advance Document, the City and/or Commission may not exercise any right or remedy under this Regulatory Agreement without the prior written consent of HUD.

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, 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 and/or Commission, service of process on the City and/or Commission shall be made by personal service upon the City Clerk, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City and/or Commission against Developer, service of process on Developer shall be made by personal service upon Executive Director of the Developer or in such other manner as may be provided by law, and shall be effective whether made within or without the State of California.

25.4 Attorneys' Fees and Court Costs. In the event that either the City, Commission 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 therefor 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 first (1st) day of February of each calendar 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 and Commission pertaining to the Property as pertinent to the purposes of this Regulatory Agreement. During the term of the HUD Capital Advance Documents, Developer's compliance with the requirements under the HUD Capital Advance Documents or the

HUD Section 202 or HUD Section 811 requirements shall be deemed compliance with the requirements of this Section.

25.6 **Interest.** Any amount due the City and/ or Commission that is not paid when due shall bear interest from the date such amount becomes due until it is paid. Interest shall be at a rate equal to the lesser of (i) four and three quarter percent (4.75%), and (ii) the current HUD Default Rate.

25.7 **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 and Commission:

City of Oceanside
300 North Coast Highway
Oceanside, California 92054
Attention: City Manager

If to Developer:

Lil Jackson Senior Community
c/o Southern California Presbyterian Homes
516 Burchett Street
Glendale, CA 91203
Attention: Benjamin F. Beckler, III

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 and Commission shall also give copies of such notices to HUD and 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.

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

25.9 **Non-Merger of Fee and Leasehold Estates.** If the City's, Commission's and Developer's estates in the Property or the Project or both become vested in the same owner, this Regulatory Agreement shall nevertheless not be destroyed by application of the doctrine of merger except at the express election of the City and the Secretary of HUD. The voluntary or other surrender of this Regulatory Agreement by Developer, or a mutual cancellation thereof, shall not work as a merger and shall, at the option of the City, terminate all or any existing sublease or subtenancies or may, at the option of the City, operate as an assignment to the City of any or all such existing subleases or subtenancies.

25.10 **Conflict of Interest.** No member, official or employee of the City or Commission 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.

25.12 Non-Liability of the Commission and City Officials and Employees. No member, official, officer, employee, agent, or representative of the Commission 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 Commission or for any amount which may become due to Developer or successor or on any obligations under the terms of this Regulatory Agreement.

25.13 Relationship. The relationship between the parties hereto shall at all times be deemed to be that of Lender and Borrower. The parties do not intend nor shall this Regulatory Agreement be deemed to create a partnership or joint venture.

25.14 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, 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.

25.15 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, Commission or Developer. The waiver by the City or Commission 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 sums due hereunder by the City or Commission 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 or Commission's knowledge of such preceding breach at the time of acceptance of such sums. Failure on the part of the City or Commission 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 or Commission from enforcing any provision hereof.

All amendments hereto must be in writing and signed by the appropriate authorities of the City, Commission 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.

25.16 Merger with Grant Deed. The terms, covenants or conditions agreed upon in writing in the Grant Deed and other instruments between the parties to this Regulatory Agreement with respect to obligations to be performed, kept or observed by Developer, City or the Commission in respect to the Property and Project or any part thereof, shall be deemed to be merged with this Regulatory Agreement.

25.17 Entire Agreement. Except as set forth in Section 25.16, this Regulatory Agreement sets forth the entire understanding of the parties with respect to Developer's use and occupation of the Property.

25.18 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.

25.19 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.

25.20 Recordation. The 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 Commission to Developer and concurrently with the recordation of the Grant Deed.

25.21 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.

25.22 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 and Commission or any successor in interest to the Commission or any prospective mortgagee or encumbrancer thereof, and it being further intended that any such statement delivered by the City and/or Commission 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.

25.23 Force Majeure. The time within which the City, Commission 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.

25.24 Quiet Enjoyment. The City and Commission do hereby covenant, promise and agree to and with Developer that Developer, for so long as Developer is not in default hereof, shall and may at all times peaceably and quietly have, hold, use, occupy and possess the Property throughout the Term.

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

25.26 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, Commission or the Secretary of HUD:

(a) Make any distribution not permitted by the terms of this Regulatory Agreement or the HUD Capital Advance Documents;

(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 or rental agreement. Any funds collected as security deposits shall be kept separate and apart from all other funds of the Project in a dedicated bank account with a depository insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan 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 Housing Units in the Project for any purpose except that which was approved by the City or HUD;

(e) Enter into any contract or contracts for supervisory or managerial services except as permitted by this Regulatory Agreement or the HUD Capital Advance Documents; or

(f) Invest any funds from the Project in any property, real or personal, except as authorized by this Regulatory Agreement or by the HUD Capital Advance Documents or deposit any such funds in a depository not authorized by this Regulatory Agreement or approved by the Secretary of HUD.

(g) During the term of the HUD Capital Advance Documents, any sale, encumbrance, assignment, conveyance, and other transfer described above shall be deemed approved by City or Commission if approved in writing by HUD. Any transfer by HUD or HUD's transferee shall be deemed approved by the City and Commission.

25.27 <u>Violation of Regulatory Agreement by Developer</u>. 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.

After the expiration of all applicable notice and cure periods as specified herein, 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.

It being agreed by Developer that the injury to the City and/or Commission arising from a default under any of the terms of this Regulatory Agreement would be irreparable and that it would be extremely difficult to ascertain the amount of compensation of the City and/or Commission which afford adequate relief in light of the purposes and policies of the Program.

Notwithstanding the foregoing, during the term of the HUD Capital Advance Documents, City shall not declare or claim a default under this Regulatory Agreement without the prior written consent of HUD.

25.28 Compliance with Law. Developer agrees that, at all times, its acts regarding the development and operation of the Property and Project, Developer shall not use the Property or the Project for any purpose that is in violation of any law, ordinance or regulation of any federal, state, county or local government agency, body or entity. 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 Project, or any parts thereof.

Furthermore, Developer shall at all times be in conformity with all provisions of the Program including the statutes, rules and regulations and such policies and procedures of the City or Commission pertaining thereto, as amended and in effect from time to time (hereinafter the "Program Regulations"). Developer acknowledges that it is aware of such applicable Program Regulations, and that professional advice is available as necessary for the purpose of enabling Developer to fully comply with such statutes, rules and regulations.

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

25.30 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 Drug-Free Workplace Act of 1988; and, San Diego Board of Supervisors Policy B-39a (Disabled Veterans Business Enterprise Program). The lender agrees to comply with the provisions of Section 42 (h)(6)(E)(ii) of the Internal Revenue Code of 1989.

25.31 HUD Provisions. During the term of the HUD Capital Advance Documents, the following provisions shall apply:

(a) Notwithstanding anything herein to the contrary, in the event the Secretary should take title to Property and the improvements thereon through foreclosure, deed-in-

lieu of foreclosure, or otherwise, all covenants, conditions and restrictions set forth in this Regulatory Agreement shall cease and terminate and be of no further force or effect.

(b) Notwithstanding anything herein to the contrary, in the event any provision in this Regulatory Agreement tends to contradict, modify or in any way change the terms of the HUD Regulatory Agreement encumbering the Property to be entered into between the Secretary and the Developer, the terms of the HUD Regulatory Agreement shall prevail and govern; or if any provision of this Regulatory Agreement in any way tends to limit the Secretary in his administration of the Housing Act of 1959, as amended, or the Cranston-Gonzalez National Affordable Housing Act (jointly the "Acts") or the regulation pursuant thereto, this Regulatory Agreement shall be deemed amended so as to comply with the Acts, the regulations and the aforementioned HUD Regulatory Agreement.

(c) Notwithstanding anything in this Regulatory Agreement to the contrary, no amendment to this Regulatory Agreement shall be effective without the prior written approval of the Secretary, his successor or assign.

(d) Unless otherwise approved in writing by HUD, during the term of the HUD Capital Advance Documents, any monies owed City and/or Commission shall be paid only from Residual Receipts as defined by HUD subject to the prior written approval of HUD.

25.32 **Subordination to HUD Documents.** This Regulatory Agreement shall be subordinate and junior to each and all of the HUD Capital Advance Documents including, but not limited to, the HUD Deed of Trust, HUD Use Agreement, HUD Regulatory Agreement and the HUD UCC-1.

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[SIGNATURES ON FOLLOWING PAGE]

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 and COMMISSION:
City of Oceanside, a municipal corporation, and Community Development Commission of the City of Oceanside, a public body corporate and politic

By:_____
Peter A. Weiss
City Manager/Executive Director

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

By; _____
Barbara L. Hamilton
Assistant City Attorney/General Counsel

DEVELOPER:
Lil Jackson Senior Community, a California nonprofit public benefit corporation

By: _____
Benjamin F. Beckler, III
Authorized Agent of the 501c3, Lil Jackson Senior Community

EXHIBIT "A"

LEGAL DESCRIPTION

THAT PORTION OF PARCEL 2, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN AT PAGE 4736 OF PARCEL MAPS, FILED IN THE OFFICE OF THE COUNTY RECORDER, MAY 19, 1976, LYING SOUTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2;
THENCE ALONG THE WESTERLY BOUNDARY THEREOF NORTH 13°44'52" WEST 240.57 FEET TO THE **TRUE POINT OF BEGINNING** OF THIS DESCRIPTION;
THENCE LEAVING SAID WESTERLY LINE NORTH 85°18'35" EAST 14.87 FEET;
THENCE NORTH 85°25'44" EAST 63.48 FEET;
THENCE NORTH 85°00'58" EAST 59.55 FEET;
THENCE NORTH 73°00'04" EAST 14.53 FEET;
THENCE NORTH 75°48'17" EAST 75.04 FEET;
THENCE NORTH 78°25'49" EAST 52.62 FEET;
THENCE NORTH 68°57'06" EAST 62.11 FEET;
THENCE NORTH 76°57'43" EAST 37.55 FEET;
THENCE NORTH 74°28'56" EAST 34.68 FEET;
THENCE NORTH 76°15'05" EAST 61.44 FEET;
THENCE SOUTH 13°44'56" EAST 127.33 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF SAID PARCEL 2, BEING THE **POINT OF TERMINUS** OF THIS DESCRIPTION.

COUNCIL RESOLUTION NO. _____
CDC RESOLUTION NO. _____

A JOINT RESOLUTION OF THE CITY COUNCIL AND COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE APPROVING THE USE OF LOW AND MODERATE INCOME HOUSING FUNDS (SET-ASIDE FUNDS) OUTSIDE THE DOWNTOWN REDEVELOPMENT PROJECT AREA

WHEREAS, the City Council (the "City Council") is the legislative body of the City of Oceanside and the Community Development Commission of the City of Oceanside is a Community Development Agency (the "Agency") organized and existing under the Community Redevelopment Law, being §33000, et seq., of the California Health and Safety Code ("H&S Code");

WHEREAS, the Agency is engaged in activities necessary and appropriate to carry out and implement the Redevelopment Plan for the Downtown Redevelopment Project Area (the "Project" and/or "Project Area");

WHEREAS, H&S Code §33334.2(a) requires that not less than 20 percent of all taxes that are allocated to the Agency through tax increment shall be used for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing costs to persons and families of low or moderate income, lower income, very low income, and extremely low income (the "Low and Moderate Income Housing Funds");

WHEREAS, pursuant to H&S Code §33334.2(e) the Agency may exercise any and all of its powers for the construction, rehabilitation, or preservation of affordable housing for extremely low, very low, low- and moderate-income persons and families, including, but not limited to, the following:

- Acquire real property or building sites;
- Improve real property or building sites with onsite and offsite improvements;
- Donate real property to private or public persons or entities;

- Construct buildings or structures; and
- Provide subsidies to, or for the benefit of, extremely low income households, very low income households, lower income households, or persons and families of low- or moderate-income, to the extent those households cannot obtain housing at affordable costs on the open market;

WHEREAS, pursuant to H&S Code §33334.2(g) the Agency may use its Low and Moderate Income Housing Funds inside or outside the Project Area upon a resolution of the Agency and City Council that the use will be of benefit to the Project;

WHEREAS, there is limited and insufficient housing stock within the Project Area to meet the City and Agency affordable housing development goals for qualified persons or families; and

WHEREAS, the City Council and Agency are required to make a determination in order to use the Low and Moderate Income Housing Funds outside of the Project Area.

NOW, THEREFORE, the City Council of the City of Oceanside and the Community Development Commission of the City of Oceanside do mutually resolve as follows:

SECTION 1. That, in order to increase, improve, and preserve the community's supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income, lower income, very low income, and extremely low income and to promote the City and Agency goals and satisfy specific requirements of the Community Redevelopment Law to produce such housing opportunities, it is necessary to expend the Low and Moderate Income Housing Funds outside of the Project Area.

SECTION 2. That the City Council and the Agency are making a final and conclusive determination that the use of the Low and Moderate Income Housing Funds outside of the Project Area will be of benefit to the Project based on the following findings:

a. The Project Area is comprised of a number of commercial and small retail businesses and operations;
b. The affordable housing stock in the Project Area is very limited for qualified persons or families;

c. Funding housing opportunities outside the Project Area with the Low and Moderate Income Housing Funds will have a direct economic benefit to the Project by increasing the number of persons utilizing and contributing to the betterment and success of Project Area businesses.

SECTION 3. That this resolution shall take effect immediately.

PASSED AND ADOPTED by the City Council of the City of Oceanside and the Community Development Commission of the City of Oceanside, California, this ____ day of _____, 2009, by the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

_____
Mayor/Chair

ATTEST:

_____
City Clerk/Secretary

APPROVED AS TO FORM:

_____
City Attorney/General Counsel

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE SUPPORTING AND REAFFIRMING PLANNING COMMISSION RESOLUTION NO. 2008-P57 APPROVING TENTATIVE PARCEL MAP NO. P-19-06, DEVELOPMENT PLAN NO. D-26-06 AND CONDITIONAL USE NO. C-49-06 FOR AN 80 UNIT SENIOR AFFORDABLE RENTAL HOUSING PROJECT

(Lil Jackson Senior Community)

WHEREAS, on March 17, 2004, the Community Development Commission of the City of Oceanside ("Commission") and Southern California Presbyterian Homes ("SCPH") entered into an option agreement, as amended on May 21, 2008 (the "Option Agreement"), for the sale of vacant Commission-owned land situated on Lake Boulevard between Lake Boulevard and Thunder Drive, which real property is more particularly described in a legal description thereof marked Exhibit "A", attached hereto and incorporated herein by reference (the "Property"),;

WHEREAS, an application was filed for a Tentative Parcel Map (P-19-06), Development Plan (D-26-06) and Conditional Use Permit (C-49-06) (collectively the "Applications") to allow for the development and operation of an 80-unit senior affordable rental housing project, commonly known as Lil Jackson Senior Community (the "Project"), on a portion of the Property;

WHEREAS, on October 6, 2008, the Planning Commission of the City of Oceanside, after holding a duly advertised public hearing, adopted Resolution No. 2008-P57, approving said Tentative Parcel Map (P-19-06), Development Plan (D-26-06) and Conditional Use Permit (C-49-06) and setting forth certain conditions and entitlements for the development and operation of the Project;

WHEREAS, pursuant to the California Environmental Quality Act of 1970 and the State Guidelines thereto as amended to date, a Mitigated Negative Declaration and Initial Study was prepared for the Project and circulated for public and agency review and approved by the Planning Commission in conjunction with its October 6, 2008, actions on the Applications by the adoption of Resolution No. 2008-P56;

WHEREAS, on January 14, 2009, the City Council and the Commission heard and considered evidence and testimony by all interested parties concerning a disposition and development agreement (the "DDA") by and among the City, Commission and Lil Jackson

Senior Community, a California nonprofit public benefit corporation, for the disposition of the Property and development of the Project;

WHEREAS, based on such evidence, testimony and staff reports, this Council makes the findings of fact as set forth in Planning Commission Resolutions No. 2008-P56 and 2008-P57 and hereby incorporates them by reference as if fully set forth herein;

NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:

1. The Council supports and affirms the Planning Commission action of October 6, 2008, approving the Mitigated Negative Declaration and said Resolution No. 2008-P56 and approving the Applications for said Tentative Parcel Map (P-19-06), Development Plan (D-26-06), Conditional Use Permit (C-49-06), and said Resolution No. 2008-P57 for the development of the Property and operation of the Project.

PASSED and ADOPTED by the City Council of the City of Oceanside, California this _____day of_____, 2009 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____
Mayor of the City of Oceanside

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

Barbara Hamilton, ASST.
City Attorney

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

THAT PORTION OF PARCEL 2, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN AT PAGE 4736 OF PARCEL MAPS, FILED IN THE OFFICE OF THE COUNTY RECORDER, MAY 19, 1976, LYING SOUTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2;
THENCE ALONG THE WESTERLY BOUNDARY THEREOF NORTH 13°44'52" WEST 240.57 FEET TO THE **TRUE POINT OF BEGINNING** OF THIS DESCRIPTION;
THENCE LEAVING SAID WESTERLY LINE NORTH 85°18'35" EAST 14.87 FEET;
THENCE NORTH 85°25'44" EAST 63.48 FEET;
THENCE NORTH 85°00'58" EAST 59.55 FEET;
THENCE NORTH 73°00'04" EAST 14.53 FEET;
THENCE NORTH 75°48'17" EAST 75.04 FEET;
THENCE NORTH 78°25'49" EAST 52.62 FEET;
THENCE NORTH 68°57'06" EAST 62.11 FEET;
THENCE NORTH 76°57'43" EAST 37.55 FEET;
THENCE NORTH 74°28'56" EAST 34.68 FEET;
THENCE NORTH 76°15'05" EAST 61.44 FEET;
THENCE SOUTH 13°44'56" EAST 127.33 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF SAID PARCEL 2, BEING THE **POINT OF TERMINUS** OF THIS DESCRIPTION.

REIMBURSEMENT AGREEMENT
BETWEEN
COMMUNITY DEVELOPMENT COMMISSION
AND
LIL JACKSON SENIOR COMMUNITY

THIS REIMBURSEMENT AGREEMENT ("Agreement"), dated November 20, 2008, solely for identification purposes, is entered into by and between the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE, a public body corporate and politic of the State of California ("Agency"), and LIL JACKSON SENIOR COMMUNITY, a California nonprofit public benefit corporation ("Developer"). Herein, Agency and Developer are sometimes individually referred to as the "Party" and collectively as the "Parties". The effective date of this Agreement shall be the date this Agreement is approved by the Agency (the "Effective Date").

RECITALS

WHEREAS, Agency is the equitable and legal owner of that certain real property situated in the City of Oceanside, County of San Diego, State of California, more particularly described as being Parcel 2 of Parcel Map No. 4736, filed in the Office of the County Recorder of San Diego County, May 19, 1976, as File No. 76-152026 of Official Records, located on the north side of Lake Boulevard between College Boulevard and Thunder Drive (the "Property");

WHEREAS, Agency and Developer are the parties to that certain Option Agreement, dated March 17, 2004, and as amended by that certain Amendment No. 1 to Option Agreement, dated May 21, 2008, (collectively the "Option Agreement"), under the terms of which Agency has agreed to sell a portion of the Property to Developer and Developer has agreed to purchase a portion of the Property from Agency for the development of an 80-unit multifamily affordable senior residential rental apartment complex by Developer to serve the housing needs of very-low income senior citizen households and persons (the "Project");

WHEREAS, under the terms of the Option Agreement and as a condition precedent to the close of escrow for the purchase of the Property by Developer from Agency, Developer is required to secure funding under the U.S. Department of Housing and Urban Development ("HUD") Section 202 of the Housing Act of 1959, 12 U.S.C. Section 1701q (the "HUD Capital Advance") for the purchase of the Property and development and operation of the Project;

WHEREAS, as a condition for the release of the HUD Capital Advance for the development and operation of the Project, HUD is requiring that Developer be in a position to receive building permits for the construction of the Project, which necessitated the expenditure of out-of-pocket funds by Developer for predevelopment activities including, but not limited to, physical needs assessment, tentative and final parcel map approvals, planning approvals and entitlements, environmental studies, and architectural and engineering drawings and approvals (the "Predevelopment Approvals");

WHEREAS, under the terms of the Option Agreement, Agency has agreed to lend Developer certain funds to assist in the purchase of the Property and construction of the Development (the "Agency Loan"), contingent upon Agency and Developer entering into a Disposition and Development Agreement (the "DDA") for the purchase and development of the Property by Developer. The amount of the Agency Loan is Two Million Nine Hundred Ninety

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Thousand Seven Hundred Sixty-six Dollars ($2,990,766.00). As of the Effective Date of this Agreement the Agency and Developer have entered into the DDA;

WHEREAS, unforeseen delays in the Predevelopment Approvals process have caused Developer and its consultants to carry out-of-pocket predevelopment expenses for a longer period of time than expected, prompting Developer to request an advance on the Agency Loan to offset these out-of-pocket expenses and to cover additional costs and fees for the issuance of the required building permits for the construction of the Project (collectively the "Out-of-Pocket Expenses") and be in a position to receive the HUD Capital Advance; and

WHEREAS, Agency has agreed to advance such funds from the Agency Loan to Developer for the reimbursement and payment of the Out-of-Pocket Expenses under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements and other terms and conditions contained herein and for valuable consideration, receipt of which is hereby acknowledged, Agency and Developer hereby agree as follows:

1. **Purpose of Agreement.** The purpose of this Agreement is to set forth the terms and conditions for an advance and early release of funds from the Agency Loan to reimburse Developer for the Out-of-Pocket Expenses, listed on the spreadsheet attached hereto as Exhibit "A" and incorporated herein by reference, to enable Developer to close on the HUD Capital Advance and to construct and operate the Project. The Agency Loan Advance, as said term is defined herein below, shall be disbursed from the Agency Loan funds contemplated under the DDA and shall not be considered as an additional loan or grant.

2. **Amount of Agency Loan Advance.** Agency hereby agrees to provide to Developer and Developer hereby agrees to accept from Agency an advance and early release of funds on the Agency Loan in the *not to exceed* amount of One Million Three Hundred Forty-seven Three Hundred Two Dollars and Fifty-six Cents ($1,347,302.56) (the "Agency Loan Advance"). The Agency Loan Advance shall be disbursed as set forth in Section 3 of this Agreement.

3. **Disbursement of Agency Loan Advance.** The Agency Loan Advance shall be disbursed to Developer by Agency as follows:

   a. Within ten (10) business days following the Effective Date of this Agreement, Agency shall disburse to Developer the sum of Two Hundred Fifty-eight Thousand Five Hundred Fifty-six Dollars and Fifty-six Cents ($258,556.56) to reimburse Developer for that portion of the Out-of-Pocket Expenses identified as Architectural/Engineering Fee, Consultant Fees, and other expenses owed to Southern California Presbyterian Homes ("SCPH"), which have been paid by Developer and/or SCPH as of the Effective Date of this Agreement and listed on Exhibit "A", attached hereto and incorporated herein.

   b. The remaining One Million Eighty-eight Thousand Seven Hundred Forty-six Dollars ($1,088,746.00) of the Agency Loan Advance shall be disbursed, in whole or in parts, at the time or times when payment of fees is required to be paid to the City of Oceanside Development Services, Fire, and Water Utilities departments for those items listed under the Permit Fees category as shown on said Exhibit "A", within ten (10) business days of Agency's receipt of an itemized

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written request for disbursement from Developer. Any remaining balance of the Agency Loan Advance or the Agency Loan which has not yet been disbursed under this Agreement shall be disbursed in accordance with the DDA.

4. **Assignment of Work Products.** As security for the Agency Loan Advance, Developer hereby represents and warrants that, in the event Developer fails to obtain the HUD Capital Advance and escrow does not close as contemplated under the DDA, all reports, surveys, studies, assessments, drawings, plans, permits, and other similar products, for which costs have been reimbursed by Agency to Developer under this Agreement shall be made assignable to and become the property of the Agency, whether in draft or final form.

5. **Developer's Indemnification of Agency.** Developer shall indemnify and hold harmless the Agency and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct, negligent acts, errors or omissions or wrongful acts or conduct of Developer, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the Agency, its officers, agents, or employees. Developer's indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the Agency, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, Developer at its own expense shall, upon written request by the Agency, defend any such suit or action brought against the Agency, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of Developer. Developer's indemnification of Agency shall not be limited by any prior or subsequent declaration by the Developer. For the purpose of this Section 5, the term "Agency" shall include the "City of Oceanside".

6. **Entire Agreement.** This Agreement comprises the entire integrated understanding between Agency and Developer concerning the work to be performed under this Agreement and supersedes all prior negotiations, representations, or agreements, whether oral or written.

7. **Interpretation of the Agreement.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to Agency.

Developer shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

8. **Agreement Modification.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto. During the term of the HUD Capital Advance Documents, HUD's approval shall also be required to modify this Agreement.

9. **Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Developer and the Agency.

10. **HUD Provision.** If anything in this Agreement tends to contradict, modify or in any way change the terms of the DDA (except with regard to Sections 2 and 3 herein), the DDA and the attachments thereto shall control. Also in the event anything in this Agreement or in a document required by or referred to in this Agreement conflicts with the requirements of the HUD 202 program, the HUD requirements shall control. Agency agrees on the request of HUD that any documents referred to in this Agreement to be recorded be amended to conform to the HUD 202 program requirements.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Reimbursement Agreement to be executed as of, but not necessarily on, the Effective Date hereof by setting their signatures hereunto.

DEVELOPER
Lil Jackson Senior Community,
a California nonprofit benefit public corporation

By: _____
Benjamin F. Beckler, III
Authorized Agent of the 501c3,
Lil Jackson Senior Community

Dated: 12/08/08

AGENCY
Community Development Commission of the City of Oceanside, a public body corporate and politic

By: _____
Peter A. Weiss
Executive Director

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
Barbara L. Hamilton
Assistant General Counsel

Developer's Signature(s) Must Be Notarized
(Notary Public, Use California All-Purpose Acknowledgement Form)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On 12/8/08 (Date) before me, Kimberly A. Heintzelman, Notary Public (Here Insert Name and Title of the Officer)

personally appeared Benjamin F. Beckler III (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

KIMBERLY A. HEINTZELMAN
Commission # 1664138
Notary Public - California
Los Angeles County
My Comm. Expires May 5, 2010

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kimberly A. Heintzelman (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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Southern California Presbyterian Homes		
Predevelopment Cost thru 9/26/08 rev. #2		
Description	**Cost**	**Total**
Architectural/Engineering Fee		$168,096.00
Preliminary Design Cost (SCPH Paid)	$27,756.00	
Entitlement Fee Cost	$100,000.00	
Engineering Cost	$9,394.34	
Engineering Cost (SCPH Paid)	$30,945.66	
Consultant Fee		$3,000.00
Predevelopment Cost	$3,000.00	
SCPH		$87,460.56
Predevelopment Cost (SCPH Paid)	$87,460.56	
Permit Fees		$1,088,746.00
Public Facilities Residential Fee	$165,760.00	
Park Fee	$280,240.00	
Traffic Study	$15,391.00	
School Fee	$26,169.00	
Water System Buy in Fee	$35,590.00	
San Diego Co. Capacity Water Fee	$23,358.00	
Wastewater Buy In Fee	$48,280.00	
Traffic Fee	$86,627.00	
Environmental consultant	$7,000.00	
Traffic signal	$203,200.00	
Building Plan check	$10,990.00	
Energy plan check	$1,099.00	
Disabled access plan check	$659.00	
Building Permit	$23,293.00	
Energy Permit	$1,689.00	
Disabled access permit	$768.00	
SMIP	$768.00	
Microfilm fee	$100.00	
Fire Plan check	$228.00	
Grading Plan review	$30,913.00	
Bond for grading	$1,200.00	
Grading permit	$40.00	
Erosion control Plan rev.	$637.00	
Improvement plan rev.	$6,528.00	
Landscape Review	$5,028.00	
Development plan rev.	$3,621.00	
Dev. Agreement dep.	$6,250.00	
Environmental review	$2,126.00	
Ten.Parcel Map	$1,796.00	
Final Map review	$749.00	
CUP	$2,285.00	
Reproduction fee	$200.00	
Address	$13.00	
Post card noticing fee	$1,050.00	
Electric facilities charge (Estimate)	$50,000.00	
Streambed alteration:	$1,750.00	
Maintenance bond for drain (Estimate)	$25,000.00	
Irrigation Meter Fee	$18,351.00	
Total		**$1,347,302.56**

EXHIBIT "A"