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DATE: January 9, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Neighborhood Services Department  
Housing and Code Enforcement Division

SUBJECT: **APPROVAL OF A PURCHASE AND SALE AGREEMENT WITH JORBON, LLC, AND APPROVAL OF AN ACQUISITION AND REHABILITATION AGREEMENT, LOAN AGREEMENT AND REGULATORY AGREEMENT WITH WAKELAND HOUSING AND DEVELOPMENT CORPORATION FOR THE ACQUISITION AND REHABILITATION OF COUNTRY CLUB APARTMENTS LOCATED AT 201 COUNTRY CLUB LANE**

### **SYNOPSIS**

Staff and the Housing Commission recommend that the City Council approve a Purchase and Sale Agreement with Jorbon, LLC; approve an Acquisition and Rehabilitation Agreement, Loan Agreement and Regulatory Agreement with Wakeland Housing and Development Corporation for the acquisition and rehabilitation of Country Club Apartments located at 201 Country Club Lane; authorize the Mayor and the City Manager to execute the necessary documents; and authorize the City Clerk to file the Deed of Trust with the County Recorder.

### **BACKGROUND**

The Neighborhood Services Department Housing Division's primary responsibility is to implement Housing programs that encourage, increase, and preserve the inventory of affordable housing units in the City of Oceanside. The acquisition and rehabilitation of existing rental units, such as Country Club Apartments, is also one recommendation included in the Affordable Housing Strategy adopted by the City Council in 2004 and assists the City in meeting its State-mandated Housing Element goals.

### **ANALYSIS**

Wakeland Housing and Development Corporation (Wakeland), a non-profit affordable housing developer, proposes to acquire and rehabilitate Country Club Apartments, an existing 91-unit apartment complex located at 201 Country Club Lane. The complex was constructed in 1974 and is in need of a comprehensive rehabilitation.

In December 2006, the City Council authorized staff to negotiate a Purchase and Sale Agreement (PSA) with the current owner of the property, Jorbon LLC. Based upon a fair-market appraisal, the PSA has been successfully negotiated for a purchase price of \$10.2 million with a tentative close of escrow in May 2008. The proposed closing date will ensure a 10-year ownership hold by the current owner, which is required to obtain Low-Income Housing Tax-Credit (LIHTC) financing for the project.

Wakeland will rehabilitate, manage and operate the complex through the terms of the approved Acquisition and Rehabilitation Agreement. Under the proposed project, 90 units will be made available for residents at 50 percent or below the County Area Median Income (AMI) with one unit being reserved for an on-site manager. The affordability restrictions will be for a period of 99 years. A Physical Needs Assessment (PNA) report and Phase I Environmental report has been completed as part of predevelopment activities for this project. Wakeland has also contracted with a certified relocation consultant to assist with the relocation process of any current residents pursuant to State Law requirements.

The total estimated cost of this acquisition and rehabilitation project is \$21,139,232. The proposed sources of financing include \$3,073,263 of Tax-Exempt permanent financing, \$7,211,492 of Tax-Credit financing and a \$10,854,477 loan of City Housing funds. The City's loan will earn 3 percent simple interest and will be amortized over a 55-year period.

Wakeland has developed, acquired and rehabilitated over 5,000 units of affordable housing. Wakeland works with a variety of municipalities, developers and redevelopment agencies throughout California and utilizes federal, state and local funding resources including tax exempt bonds and tax credits, and leverages other funds from the private and public sectors. Wakeland's board of directors is comprised of affordable-housing, community and business leaders. Its highly qualified staff has expertise in both affordable housing and on-site resident service programs.

### **FISCAL IMPACT**

Staff is recommending an additional \$654,477 of Inclusionary Housing (In-Lieu) Trust Funds (284.2510.03565) be appropriated to the Country Club Apartments Project Account (284.294662.5701) to acquire and rehabilitate the project. An original appropriation of \$10.2 million for the project was approved by the City Council on March 21, 2007 for the purchase of the property. The total loan amount for the project will be \$10,854,477. Appropriation of these funds will leave a balance of \$2,534,088 in the Inclusionary Housing (In-Lieu) Trust Fund (based on the Fund balance as of October 31, 2007).

### **COMMISSION OR COMMITTEE REPORT**

At its November 27, 2007 meeting, the Housing Commission unanimously recommended that the City Council approve the Purchase and Sale Agreement, the Acquisition and Rehabilitation Agreement, the Loan Agreement and the Regulatory Agreement for the acquisition and rehabilitation of Country Club Apartments. The recommendation of the Housing Commission is attached.

**CITY ATTORNEY'S ANALYSIS**

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

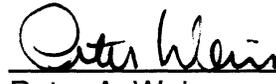
**RECOMMENDATION**

Staff and the Housing Commission recommend that the City Council approve a Purchase and Sale Agreement with Jorbon, LLC; approve an Acquisition and Rehabilitation Agreement, Loan Agreement and Regulatory Agreement with Wakeland Housing and Development Corporation for the acquisition and rehabilitation of Country Club Apartments located at 201 Country Club Lane; authorize the Mayor and the City Manager to execute the necessary documents; and authorize the City Clerk to file the Deed of Trust with the County Recorder.

PREPARED BY:

  
\_\_\_\_\_  
David L. Manley  
Neighborhood Services Div. Mgr.

SUBMITTED BY:

  
\_\_\_\_\_  
Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Margery M. Pierce, Neighborhood Services Director

Teri Ferro, Financial Services Director

  
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Attachments:

1. Purchase and Sale Agreement
2. Acquisition and Rehabilitation Agreement
3. Loan Agreement, Deed of Trust, Promissory Note
4. Regulatory Agreement

TO: OCEANSIDE CITY COUNCIL  
FROM: HOUSING COMMISSION  
DATE: NOVEMBER 27, 2007  
RE: APPROVAL OF AGREEMENTS WITH WAKELAND FOR  
ACQUISITION AND REHAB OF COUNTRY CLUB APARTMENTS  
201 COUNTRY CLUB LANE

THE HOUSING COMMISSION RECOMMENDS THAT THE CITY COUNCIL APPROVE A PURCHASE AND SALES AGREEMENT, AN ACQUISITION AND REHABILITATION AGREEMENT, LOAN AGREEMENT AND REGULATORY AGREEMENT FOR COUNTRY CLUB APARTMENTS WITH WAKELAND HOUSING FOR PURCHASE AND REHAB OF 91 UNITS AT 201 COUNTRY CLUB LANE.

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

ALTERNATES

SAIZ	ABSENT
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PURCHASE AND SALE AGREEMENT  
[and Joint Escrow Instructions]

This PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, 2007 ("Effective Date"), by and between the CITY OF OCEANSIDE, a municipal corporation of the State of California (hereinafter referred to as the "Buyer"), and JORBON, LLC, a California limited liability company, the managing members of which are Peter Julius Jordan and Bonita Henrietta Jordan (hereinafter referred to as the "Seller"). The Effective Date shall be the date this Agreement is approved by the Oceanside City Council and signed by Buyer (the "Effective Date").

WHEREAS, Seller is the owner of that certain real property located at 201 Country Club Lane, Oceanside, California, as more particularly described in Exhibit "A" and as shown on a sketch thereof marked Exhibit "B", attached hereto and incorporated herein by reference, which real property is improved with a 90 unit multi-family apartment complex;

WHEREAS, Buyer desires to purchase said property for the purpose of securing, preserving, and providing affordable rental housing stock within the City of Oceanside, consistent with the provisions of the City's "Comprehensive Affordable Housing Strategy", 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;

WHEREAS, Buyer has determined that purchasing the property for the purposes set forth herein would be a benefit to the public and is in the furtherance of the public purposes of Buyer, including, without limitations, the purposes set forth herein; and

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained and for other valuable consideration, the parties hereto agree as follows:

**ARTICLE I  
RECITALS**

**101. Description of Property.** Seller is the owner of the fee simple interest in that certain real property situated in the City of Oceanside, County of San Diego, State of California, which is more particularly described in Exhibit "A" and illustrated and delineated on a sketch marked Exhibit "B", respectively incorporated herein and made a part hereof. Said real property is improved with a 90 unit multi-family apartment complex. For the purposes of this Agreement the Land, Improvements, Fixtures, and Personality appurtenant thereto are collectively referred to as the "Property". The following terms, when used in this Agreement referring to the Property (including when used in the above recitals), shall have the following meanings:

(a) "**Fixtures**" means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including, but not limited to: machinery; equipment; engines; boilers; incinerators; installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring, and conduits used in connection with radio, television, security, fire prevention or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and

related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposals, washers, dryers and other appliances; light fixtures; awnings; windows; doors; pictures; screens; blinds; shades; curtains; curtain rods; mirrors; cabinets; paneling; rugs; floor and wall coverings; fences; trees; plants; swimming pools; and exercise equipment.

**(b) "Improvements"** means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including future replacements and additions.

**(c) "Land"** means the land described in Exhibit "A".

**(d) "Personalty"** means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements, relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements and all other tangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities of the Land.

**102. Status and Powers of Seller.** Seller is a California limited liability company and is authorized by the laws of the State of California to enter into this Agreement and perform the actions and duties of the Seller more particularly described in this Agreement.

**103. Status and Powers of Buyer.** Buyer is a municipal corporation of the State of California, organized and existing pursuant to the Constitution and statutes of the State of California and is authorized to purchase the Property from Seller and perform the actions and duties of the Buyer more particularly described in this Agreement.

**104. Purpose of Agreement.** Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer on the terms and conditions in this Agreement. Buyer is purchasing the Property for rehabilitation and conversion to a multifamily affordable rental housing complex to be maintained and operated under the terms of a ground lease by a nonprofit housing development corporation (the "Selected Lessee").

**105. Public Benefit.** This Agreement is for the benefit of the public and is in the furtherance of the public purposes of Buyer.

## **ARTICLE II DEFINITIONS AND GENERAL PROVISIONS**

**201. Agreement.** For good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as set forth herein.

**202. Definitions in General.** The terms defined in Exhibit "C" attached hereto and by this reference incorporated herein, as used and capitalized herein, shall, for all purposes of this Agreement, have the meanings ascribed to them in said Exhibit "C", unless the context clearly requires some other meaning. In addition, the term "Agreement" as used herein means this Purchase and Sale Agreement.

**203. Rules of Construction.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement.

### **ARTICLE III PURCHASE AND SALE OF PROPERTY**

**301. Sale of Property.** Seller agrees to sell and Buyer agrees to purchase the Property on the terms and conditions in this Agreement.

**302. Purchase Price.** The purchase price of the Property is **Ten Million Two Hundred Thousand Dollars (\$10,200,000.00)** the ("Purchase Price").

### **ARTICLE IV CONDITIONS PRECEDENT**

**401. Conditions Precedent to Closing.** Buyer's obligation to purchase the Property from Seller is subject to the following conditions precedent set forth in Sections 402 through 410 inclusive ("Conditions Precedent"). Subject to Buyer's rights under Article VII "ESCROW", if any of the Conditions Precedent have not been fulfilled within the applicable time periods or if Buyer disapproves, pursuant to this Article IV, any matter for which Buyer's approval is required, Buyer may:

- (a) Waive the condition or disapproval and close escrow with respect to the Property in accordance with this Agreement, without adjustment or rebate in the Purchase Price;
- (b) Cure the failure of the condition or representation and reduce the Purchase Price by the amount equal to the cost to cure; or
- (c) Terminate this Agreement by written notice to Seller.

**402. Title.** Unless otherwise specified in this Agreement, Seller shall convey title to the Property to Buyer by grant deed, free and clear of all liens and encumbrances, subject to the following: Seller will provide Buyer with access to all documents in its possession regarding the Property but makes no representations or warranties as to the accuracy or reliability thereof. Except as provided herein, Seller makes no representations or warranties, expressed or otherwise, regarding the condition of title to the Property or the condition of the Property. Buyer is obligated to investigate, inspect and analyze the condition of the Property and the condition of title to the Property to its own satisfaction and expressly agrees that in entering into the Agreement it is relying on its own investigation as to the condition of the Property and condition of title to the Property, except as expressly provided herein.

**403. Preliminary Title Report.** A preliminary title report has been obtained and issued by Commonwealth Land Title Company (the "Title Company"), dated April 11, 2007, and having Order/File No. 04611176-54 (the "Preliminary Report"), a copy of which (without supporting documents) is attached hereto as Attachment No. 1 and made a part hereof by reference.

(a) Seller shall not alter the condition of title as stated in the Preliminary Report, or any amendment thereof, without the express written consent of Buyer. Notwithstanding the foregoing, the parties recognize that Seller shall pay all outstanding property taxes, including general and special taxes, personal property taxes, if any, and any assessments collected with taxes, and shall discharge exception items 7 through 12, inclusive, as set forth in Schedule B of the Preliminary Report, through escrow. Notwithstanding the giving of any notice or any failure to give any notice with respect to said exception items, or any other encumbrances against the Property as disapproved by Buyer, they shall be discharged through escrow as provided in this Agreement.

(b) Notwithstanding any of the foregoing in this Section 403, in the event that a subsequent update to the Preliminary Report reveals encumbrances against the Property or other defects in title to the Property, Buyer reserves the right to disapprove any such item or items by providing Seller with written notice of such disapproved item or items. Seller shall remove or otherwise cure, in a manner reasonably satisfactory to Buyer, the disapproved item or items at or before the Close of Escrow. The right of Buyer to disapprove the condition of title shall apply only to exceptions which materially and adversely limit or affect the use of the Property. Seller may elect not to remove or cure any disapproved item or items by delivering written notice thereof to Buyer within ten (10) days following the date of written notification of the disapproval. If Seller elects not to remove or cure any disapproved item or items, Buyer may terminate this Agreement by delivering a written notice of termination to Seller within ten (10) days after the date that Buyer actually receives notice of Seller's election not to remove or cure any disapproved item.

(c) This Agreement provides that Buyer will receive title free and clear of liens and encumbrances. Seller shall be obligated to pay any property taxes and assessments to the date of the Close of Escrow. The parties recognize that certain encumbrances such as existing deeds of trust, tax liens, assessment liens, and the like will be discharged through escrow as provided in this Agreement.

(d) From and after the effective date of the Preliminary Report, Seller warrants that it has not adversely altered the condition of title since the date of the Preliminary Report and shall not alter the condition of title without the express written consent of Buyer.

**404. Title Policy.** On or before the Close of Escrow, Buyer shall have received evidence that Title Company is ready, willing, and able to issue, upon payment of the Title Company's regularly scheduled premium, a California Land Title Association (CLTA) standard policy of title insurance showing title to the Property vested in the Buyer subject only to:

(a) Non-delinquent general, special, and supplemental property taxes or assessments constituting a lien at Close of Escrow, except as set forth pursuant to Section 502 herein; and

(b) The matters described in the printed form portion of the Policy of Title Insurance to the extent that such matters do not conflict with the provisions of this Agreement; and

(c) Covenants, conditions, reservations, restrictions, easements or other matters appearing as exceptions in the Preliminary Report as approved by Buyer pursuant to this Agreement; and

(d) Any lien or restriction voluntarily imposed by Buyer as of the Close of Escrow.

**405. Physical Condition of the Property.** Buyer has caused a physical needs assessment (the "PNA") to be performed on the Property by EMG; a written report of the findings of the PNA, dated May 29, 2007, is incorporated herein and made a part of the Agreement as if set forth herein in its entirety. Seller shall not cause or allow the physical condition of the Property to deteriorate or change in condition from that documented in the PNA, betterments and normal wear and tear excepted, without the prior written consent of Buyer. Notwithstanding the foregoing, Seller agrees to make any and all repairs or replacements necessary to maintain the Property in the condition, or better, as documented in the PNA through the Close of Escrow. Pursuant to the provisions of Section 801 hereinbelow, Buyer reserves the right to perform an additional physical needs assessment and inspection of the Property no sooner than March 1, 2008, and prior to the Close of Escrow to determine the current condition of the Property. In the event such assessment and inspection reveals substantial variation in the condition of the Property from that documented in the PNA, Buyer shall provide Seller with written notice of such variation in the condition of the Property and may, at Buyer's option: i) request that Seller remedy the condition or conditions at Seller's sole cost and expense; or ii) deduct the costs attributed to the variation or variations in the condition of the Property from the Purchase Price at the Close of Escrow; or iii) in the event Seller refuses to remedy the deteriorated condition or refuses to allow a deduction in the Purchase Price, terminate this Agreement upon written notice to Seller. For the purpose of this Agreement, the phrase "substantial variation" shall mean an increase of more than ten-percent (10%) in the estimated cost of repair, replacement or rehabilitation of any portion of the Property that has been allowed to deteriorate beyond its condition as documented in the PNA, excepting therefrom normal wear and tear of the interior of the units and increases in labor and material costs from the date of the PNA and the re-assessment and re-inspection. Buyer agrees that the Property is being sold in its "As-Is" and "Where-Is" condition, except as expressly provided for elsewhere herein. Buyer is obligated to investigate, inspect and analyze the condition of the Property and title to the Property to its own satisfaction and expressly agrees that in entering into this Agreement, it is relying on its own investigation as to the condition of the Property, except as expressly provided herein.

**406. Property Documents.** Seller has previously delivered to Buyer copies of all permits, soils tests, hazardous or toxic waste reports, geological studies, environmental impact studies, topographical maps, licenses, maintenance contracts, service contracts, utility contracts, operating contracts, leases or rental agreements, and other documents pertaining to the Property ("Property Documents"). Seller shall furnish copies of any of the Property Documents that have been entered into or obtained by Seller since May 1, 2007. Within ninety (90) days from the Effective Date of this Agreement, Buyer shall review and approve or disapprove each Property Document. On or before the Close of Escrow, Seller shall assign to Buyer all of Seller's rights and remedies under the Property Documents, to the extent assignable, pursuant to an assignment of contracts, warranties, guarantees, and other intangible property in form and substance satisfactory to Buyer. At the request of Buyer, the assignment of contracts shall exclude Seller's rights under any Property Documents designated by Buyer. At the request of Buyer, Seller shall use its best good faith efforts to obtain the consent to assignment of any other parties to the Property Documents as specified by Buyer. At the request of Buyer, Seller shall terminate any Property Document designated by Buyer as authorized by the Property Document, by delivering notices to

the other party under the Property Document in sufficient time to terminate the Property Document prior to the Close of Escrow. Except as provided herein, Seller makes no representations or warranties, expressed or otherwise, regarding the condition of title to the Property or the condition of the Property. Buyer is obligated to investigate, inspect and analyze the condition of title to the Property and the condition of the Property to its own satisfaction and expressly agrees that in entering into the Agreement, it is relying on its own investigation as to the condition of title to the Property and the condition of the Property, except as expressly provided herein.

**407. Non-foreign Affidavit.** If applicable, on or before the Close of Escrow, Seller shall deliver to Buyer a non-foreign affidavit as required by the Foreign Investment In Real Property Tax Act (FIRPTA) [42 USC § 1445] executed by Seller.

**408. Seller's Obligations.** Seller is obligated to Buyer for performance by Seller of every material covenant, agreement, and promise to be performed by Seller pursuant to this Agreement and the related documents executed or to be executed by Seller.

**409. Seller's Representations.** Seller represents to Buyer the truth and accuracy of all Seller's representations and warranties as set forth in this Agreement or in documents provided by Seller under this Agreement.

**410. Affordability Provisions.** Buyer and the Selected Lessee shall have entered into a loan agreement and note secured by a deed of trust in the amount of the Purchase Price, and a ground lease and regulatory agreement restricting the use of the Property as an affordable rental housing project. The Selected Lessee shall have been awarded financing with the allocation of private activity tax exempt bonds from the California Debt Limit Allocation Committee ("CDLAC"), combined with 4% low income housing tax credits from California Tax Credit Allocation Committee ("TCAC"), as well as an allocation of Affordable Housing Program ("AHP") funds from the Federal Home Loan Bank of San Francisco ("FHLB-SF") for the acquisition and rehabilitation of the Property (the "Tax Credit Financing").

**411. Buyer's Obligations.** Buyer is obligated to Seller for performance by the Buyer of every material covenant, agreement, and promise to be performed by Buyer pursuant to this Agreement and the related documents executed or to be executed by Buyer.

## **ARTICLE V SELLER'S REPRESENTATIONS AND WARRANTIES**

**501. Time.** The representations and warranties by Seller in this Article are made as of the date of this Agreement and as of the Close of Escrow and will survive the Close of Escrow.

**502. Title.** As of the date of this Agreement, Seller is or will be the legal and equitable owner of a fee interest in the Property, with full right to convey said interest. Seller has not previously conveyed title to the Property to any other person. Seller has not granted any options or rights of first refusal or rights of first offer to third parties to purchase or otherwise acquire an interest in the Property. The Property is free and clear of all liens, encumbrances, claims, demands, easements, leases, agreements, covenants, conditions, or restrictions of any kind, except for the letting of the individual apartment units to residents and the exceptions set forth in the Preliminary Report. Seller has obtained (or will obtain as of Close of Escrow) all required consents, permissions or releases to convey good and marketable title in the Property.

**503. Hazardous Substances.** To the best of Seller's knowledge the Property is free and has always been free from Hazardous Substances and is not and has never been in violation of any Environmental Laws. Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are or have been in violation of any Environmental Law, or informing Seller that the Property is subject to investigation or inquiry regarding Hazardous Substances on the Property or the potential violation of any Environmental Law.

**504. Violation of Law.** To the best of Seller's knowledge, no condition on the Property violates any health, safety, fire, environmental, building, zoning or other federal, state, or local law, code, ordinance, or regulation.

**505. Litigation.** To the best of Seller's knowledge, there is no pending or threatened litigation, administrative proceeding, or other legal or governmental action or condemnation with respect to the Property or which may adversely affect Seller's ability to fulfill the obligations of this Agreement.

**506. Bankruptcy.** No filing or petition under the United States Bankruptcy Law or any insolvency laws, or any laws for composition of indebtedness or for the reorganization of debtors has been filed with regard to Seller.

**507. No Defaults.** Seller is not in default of Seller's obligations or liabilities pertaining to the Property. There are no facts, circumstances, conditions or events, which after notice or lapse of time would constitute default. Seller has not received any notice of any default and has no reason to believe that there is likely to be any breach or default of any of Seller's obligations or liabilities pertaining to the Property.

**508. Special Studies Zone.** The Property is not within a special studies zone under the Alquist-Priolo Geologic Hazard Act [Pub. Res. Code §§ 2621.9 et seq.] (which generally requires sellers to inform purchasers if property is within a special studies zone, which zones are generally near potentially or recently active earthquake faults).

**509. Foreign Investment Real Property Tax Act.** Seller is not a "foreign person" within the meaning of 42 USC § 1445(f)(3). Seller understands and agrees that the certification made in this Section 509 may be disclosed to the Internal Revenue Service by Buyer and that any false statement contained herein could be punished by fine, imprisonment or both. This certification is made under penalty of perjury under the laws of the State of California.

**510. Disclosure.** Any information that Seller has delivered to Buyer either directly or through Seller's agents or employees, is complete and accurate. Seller has disclosed to Buyer all material facts with respect to the Property to which Seller has access.

## **ARTICLE VI COVENANTS**

**601. Power to Enter into Agreements.**

(a) Buyer is duly authorized to enter into this Agreement and to enter into the transactions contemplated by this Agreement. Buyer has duly authorized and executed this Agreement.

(b) Seller is duly authorized to enter into this Agreement. The provisions of this Agreement are and will be the valid and legally enforceable obligations of Seller in accordance with their terms and the terms of this Agreement.

**602. No Violation of Other Agreements.**

(a) Buyer hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Buyer is a party or by which Buyer is bound, or constitutes a default under any of the foregoing.

(b) Seller hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Seller is a party or by which Seller is bound, or constitutes a default under any of the foregoing.

**603. Payment of Seller's Obligations.** To the extent Seller is authorized by the Property Documents, Seller shall discharge all obligations and liabilities under the Property Documents before the Close of Escrow with respect to the Property.

**604. Brokers.** Seller and Buyer acknowledge that brokers or real estate agents with the firm of Marcus & Millichap are involved in this transaction representing Seller and that Seller shall be solely responsible for the payment of any fee or commission to which said brokers or real estate agents may be entitled. Seller shall hold Buyer harmless from any claims for such fees or commissions claimed by said brokers or real estate agents, any other broker, real estate agent or other third party claiming through Seller.

**605. Litigation.** Seller shall immediately notify Buyer of any lawsuits, condemnation proceedings, rezoning, or other governmental order or action, or any threat thereof, of which Seller has actual knowledge, which might affect the Property or any interest of Buyer with respect to the Property.

**606. Indemnification.**

(a) Seller shall indemnify, defend and hold Buyer harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Seller's covenants under this Agreement and any other related documents, or from Seller's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole and active negligence or willful misconduct of Buyer or Buyer's officers, agents or employees.

(b) Buyer shall indemnify, defend and hold Seller harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Buyer's covenants under this Agreement and any other related documents, or from Buyer's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole and active negligence or willful misconduct of Seller or Seller's officers, agents or employees.

(c) The provisions of this Section 606 shall survive the Close of Escrow with respect to the Property.

## **ARTICLE VII ESCROW**

**701. Establishment of Escrow.** Within seven (7) days after the date this Agreement is approved by the Oceanside City Council, Buyer and Seller shall establish an Escrow for the close of the sale of the Property with the Escrow Department of Commonwealth Land Title Company ("Escrow Agent"). If the Escrow Agent is unwilling or unable to perform, Buyer shall designate another escrow agent. Escrow Agent shall notify both parties in writing of the specific date on which the Escrow has opened. This Agreement shall constitute Escrow Instructions, provided however, that Escrow Agent shall prepare general instructions as may be deemed necessary by the Escrow Agent for the fulfillment of this Agreement and deliver those general instructions to Seller and Buyer. Buyer and Seller shall each execute the general instructions, or proposed changes thereto, within five (5) days after receipt of the instructions. If there is any conflict between the terms of the general instructions and this Agreement, the provisions of this Agreement shall prevail unless the conflicting provision is specifically identified as an amendment to this Agreement.

**702. Acceptance of Grant Deed.** Concurrent with the execution of this Agreement, but no later than the Close of Escrow pursuant to Section 703 herein, Seller shall deliver to Buyer a Grant Deed properly executed and notarized, in recordable form, for the Buyer's acceptance of the conveyance of the Property to Buyer. Within five (5) working days of its receipt Buyer shall affix a certificate of acceptance to the Grant Deed and promptly deliver the complete document to the Escrow Agent. In the event that Seller delivers the Grant Deed to the Escrow Agent without Buyer's certificate of acceptance attached, Seller hereby authorizes the Escrow Agent to release the original Grant Deed to Buyer and Buyer shall likewise affix the certificate of acceptance to the Grant Deed and return the original and complete document to the Escrow Agent within five (5) working days.

**703. Closing.** Subject to the provisions of this Agreement and no later than May 31, 2008 ("Closing Deadline") and when the Title Company is in position to issue the policy of title insurance as set forth in Article IV of this Agreement, the Grant Deed shall be recorded and the Property transferred from Seller to Buyer ("Close of Escrow") after Buyer has either approved or waived each Condition Precedent, the Selected Lessee has received an award of the Tax Credit Financing, Buyer and Selected Lessee have entered into a loan agreement and note secured by a deed of trust in the amount of the Purchase Price and a ground lease and regulatory agreement restricting the use of the Property as an affordable rental housing project.

(a) Unless the Close of Escrow is extended by written agreement of the parties, Escrow shall close no later than the Closing Deadline.

**704. Closing Deposits.** On or before the Close of Escrow, Seller and Buyer shall deposit with Escrow Agent the following documents and shall close Escrow as follows:

(a) Seller shall deposit with Escrow Agent the following:

(i) The original executed and acknowledged Grant Deed conveying the Property from Seller to Buyer, pursuant to the provisions of Section 702 above;

- (ii) The original Non-Foreign Affidavit executed by Seller;
  - (iii) The originals of all Property Documents, except for those documents rejected by Buyer or terminated at the request of Buyer;
  - (iv) A certificate acknowledging that all conditions to the Close of Escrow that Buyer was to satisfy or perform have been satisfied and performed, and that Seller's representations, covenants, and warranties made in or pursuant to this Agreement are correct as of the Close of Escrow; and
  - (v) Any other documents or funds required of Seller to close escrow in accordance with this Agreement;
- (b) Buyer shall deposit with Escrow Agent the following:
- (i) The total sum of the Purchase Price for the Property, which shall be released and disbursed to Seller at the Close of Escrow;
  - (ii) The regulatory agreement, loan agreement, note, and deed of trust, by and between Buyer and the Selected Lessee, of which the regulatory agreement and deed of trust shall be filed in the Office of the County Recorder of San Diego County at the Close of Escrow;
  - (iii) A certificate executed by Buyer providing that all conditions to Close of Escrow that Seller was to satisfy or perform have been satisfied and performed and Buyer's representations, covenants, and warranties made in and pursuant to this Agreement are correct as of the Close of Escrow; and
  - (iv) Any other document or funds required of Buyer to close escrow in accordance with this Agreement.

**705. Closing Costs.** Buyer shall pay the premium for a CLTA Standard Policy of Title Insurance and the customary and usual Escrow Agent's fee. Seller shall be responsible for any extraordinary escrow charges incurred at Seller's request.

**706. Property Taxes, Withholding Taxes, and Prorations.** Seller shall be solely responsible for bringing the Property's real property taxes current as of the Close of Escrow and Buyer shall have no liability for payment of taxes. Seller shall pay any sales, use, ad valorem, or withholding taxes connected with the Close of Escrow for the Property. It is recognized that Buyer is a tax-exempt governmental agency. To the extent that Seller is obligated to pay for gas, electricity, water or other utility charges Seller will cause all utility meters to be read as of the Close of Escrow and will be responsible for the cost of all utilities used before Close of Escrow, unless otherwise set forth in this Agreement.

**707. Possession.** Right to possession of the Property (subject to the rights of tenants under the Leases) shall transfer at the Close of Escrow.

## ARTICLE VIII MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

**801. Additional Physical Needs Assessment and Inspection.** Seller hereby consents to entry upon the Property by Buyer and/or the Selected Lessee, their officers, employees, contractors and agents for the purpose of conducting an additional physical needs assessment and inspection of the Property no sooner than March 1, 2008, and prior to the Close of Escrow to determine the current condition of the Property. Buyer shall have fourteen (14) calendar days from issuance of notice to Seller of the start date ("Re-Inspection Period") in which to complete its re-inspections, testing and feasibility studies of the Property to determine the condition of the Property, which shall be limited to inspection and examination of structures, buildings and other improvements, soils, environmental factors (including, but not limited to, asbestos, lead-based paint and mold), Hazardous Substances, if any, to determine if any substantial variation in the condition of the Property exists from that documented in the PNA. If Buyer disapproves of the results of the re-inspection and review, Buyer may elect to terminate this Agreement by giving Seller written notification pursuant to Section 405 of this Agreement. If Buyer fails to properly notify Seller of the intent to terminate this Agreement, Buyer shall be deemed to be satisfied with the results of the re-inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision.

(a) Buyer agrees to defend, indemnify and hold Seller harmless from all liabilities, costs and expenses resulting directly from Buyer's or its officers', employees', contractors' or agents' inspections and tests. Buyer agrees that its independent inspection of the Property is its sole basis to determine the suitability of the Property for its purposes; Buyer acknowledges that it is not relying on any representations by Seller regarding suitability of the Property, and by executing this Agreement, Buyer acknowledges that it has made or will make its own independent inspection of the Property. If Buyer alters the physical conditions of the Property and escrow does not close, Buyer shall restore the Property to the condition existing before Buyer's inspections or tests.

**802. Further Assurances.** Whenever requested by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, instruments of further assurance, approvals, consents and any other instrument or document as may be necessary, expedient or proper to complete the transaction contemplated by this Agreement, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this Agreement.

**803. Assignment.**

(a) Seller shall have no right, power, or authority to assign or mortgage this Agreement or any portion of this Agreement, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily, or by operation of law, without the prior written consent of Buyer.

(b) Buyer shall have no right, power, or authority to assign this Agreement or any portion of this Agreement or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily or by operation of law without Seller's prior written approval.

Neither party shall unreasonably withhold approval to any assignment.

**804. Preservation and Inspection of Documents.** Documents received by Seller or Buyer under the provisions of this Agreement shall be retained in their respective possessions and

shall be subject at all reasonable times to the inspection of the other party hereto and its assigns, agents and representatives, any of whom may make copies thereof.

**805. Parties of Interest.** Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or party other than Seller and Buyer any rights, remedies or claims under or by reason of this Agreement or any covenants, condition or stipulation hereof; and all covenants, stipulations, promises and agreements in this Agreement made by or on behalf of Seller or Buyer shall be for the sole and exclusive benefit of Seller and Buyer.

**806. No Recourse Under Agreement.** All covenants, stipulations, promises, agreements and obligations of the parties hereto contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the parties hereto, respectively, and not of any member, officer, employee or agent of the parties hereto in an individual capacity, and no recourse shall be had for any claim based on or under this Agreement against any member, officer, employee or agent of the parties hereto.

**807. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail with First Class postage fully prepaid:

If to Buyer:

City of Oceanside  
ATTN: William F. Marquis  
300 North Coast Highway  
Oceanside, CA 92054

Copy to:

City Attorney  
City of Oceanside  
300 North Coast Highway  
Oceanside, CA 92054

If to Seller:

Jorbon, LLC  
c/o Peter Julius Jordan  
41900 Parado Del Sol Drive  
Temecula, CA 92592

Copy to:

The parties hereto, by notice given hereunder, may, respectively designate different addresses to which subsequent notices, certificates or other communications will be sent.

**808. Binding Effect.** Without waiver of Section 803, this Agreement shall inure to the benefit of and shall be binding upon Seller, Buyer, and their respective successors and assigns.

**809. Severability.** If any one or more of the covenants, stipulations, promises, agreements or obligations provided in this Agreement on the part of Seller or Buyer to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant, stipulation, promise, agreement or obligation shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, agreements and obligations herein contained and shall in no way affect the validity of the other provisions of this Agreement.

**810. Headings.** Any headings preceding the text of the several Articles and Sections hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

**811. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**812. Seller and Buyer Representatives.** Whenever under the provisions of this Agreement the approval of Seller or Buyer is required, or Seller or Buyer are required to take some action at the request of the other, such approval of such request may be given for Seller by an Authorized Officer/Representative of Seller and for Buyer by an Authorized Officer of Buyer, and any party hereto shall be authorized to rely upon any such approval or request.

**813. Form of Certificate of Officers.** Every certificate with respect to compliance with a condition or covenant provided for in this Agreement and which is precedent to the taking of any action under this Agreement shall include:

(a) A statement that the person making or giving such certificate has read such covenant or condition and the definitions herein relating thereto;

(b) A brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate are based;

(c) A statement that, in the opinion of the signer, he has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) A statement as to whether, in the opinion of the signer, such condition or covenant has been complied with.

A certificate may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless the persons provided the certificate know that the certificate or representations with respect to the matters upon which the certificate may be based are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

**814. Amendment.** This Agreement may be amended, modified, or changed only in writing as mutually agreed to and duly executed by the parties hereto.

**815. Counterpart.** This Agreement may be executed in counterpart.

**816. Time of the Essence.** Time is of the essence in this Agreement and every provision contained in this Agreement.

**817. Integration.** This Agreement, and all attachments and exhibits hereto constitute the entire agreement of the parties. There are no oral or parol agreements, which are not expressly set forth in the Agreement or the related documents being executed in connection with this Agreement.

**818. Waivers.** No waiver or breach of any provision shall be deemed a waiver of any other provision, and no waiver shall be valid unless it is in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

**819. Attorney Fees, Litigation Costs and Related Matters.** If any legal action or other proceeding, including arbitration or an action for declaratory relief, is brought to enforce this Agreement or because of a dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs in addition to any other relief. Venue for enforcement of this Agreement shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable action, action for declaratory relief, suit, proceeding, or arbitration that the parties shall first submit the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or if a mediator cannot be agreed upon by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The cost of mediation shall be shared equally by the parties.

**820. Exhibits.** All exhibits referred to in this agreement and attached hereto are made a part hereof and are incorporated herein by this reference.

**821. Survival.** Seller's representations and warranties, Buyer's representations and warranties, all covenants and obligations to be performed at a time or times after Close of Escrow, and indemnities shall survive the Close of Escrow.

**822. Merger.** All of the terms, provisions, representations, warranties, and covenants of the parties under this Agreement shall survive the Close of Escrow and shall not be merged in any other documents.

## **ARTICLE IX SPECIAL PROVISIONS**

**901. Assignment of Rents.** As part of the consideration for the purchase of the Property by Buyer from Seller, Seller shall, as of the Close of Escrow, absolutely and unconditionally assign and transfer to Buyer all Rents (whether from residential or non-residential space), including but not limited to, revenues and other income of the Property, including parking fees, laundry and vending machine income and fees and charges and other services provided at the Property, whether now due, past due, or to become due, and deposits forfeited by tenants ("Rents"). It is the obligation of Seller, as of the Close of Escrow, to establish a present, absolute and irrevocable transfer and assignment to Buyer of all Rents and to authorize and empower Buyer to collect and receive all Rents without the necessity of further action on the part of Seller. Promptly upon request of Buyer, Seller agrees to execute and deliver such further assignments as Buyer may from time to time require. Seller and Buyer intend this assignment of Rents to be immediately effective as the Close of Escrow and to constitute an absolute present assignment and not an assignment for security purposes. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall be deemed to be a part of the Property.

(a) Seller represents and warrants to Buyer that Seller has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the Purchase Price as of the Close of Escrow), that Seller has not performed, and Seller covenants and agrees that it will not

perform, any acts and has not executed, and shall not execute, any instrument which would prevent Seller from exercising its right under this Section 901, and that at the time of execution of this Agreement there has been no anticipation or prepayment of any Rents for more than two (2) months prior to the due dates of such Rents. Seller shall not collect or accept payment of any Rents more than two (2) months prior to the due dates of such Rents.

(b) All Rents collected (whether current or past due) from the Property subsequent to the Close of Escrow shall remain with the Property, including net profits, after monthly expenses of the Property have been met, and Seller shall not be entitled to receive a disbursement or distribution of Rents.

**902. Assignment of Leases.** As part of the consideration for the purchase of the Property by Buyer from Seller, Seller shall, as of the Close of Escrow, absolutely and unconditionally assign and transfer to Buyer all of Seller's rights, title and interest in, to and under the Leases, including but not limited to, all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Property, or any portion of the Property, and all modifications, extensions or renewals ("Leases"), including Seller's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Seller to establish a present, absolute and irrevocable transfer and assignment to Buyer of all of Seller's right, title and interest in, to and under the Leases. Seller and Buyer intend this assignment of the Leases to be immediately effective as of the Close of Escrow and to constitute an absolute present assignment and not an assignment for security purposes. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall be deemed to be a part of the Property.

(a) Seller represents and warrants to Buyer that Seller has not executed any prior assignment of the Leases (other than an assignment of the Leases securing indebtedness that will be paid off and discharged with the proceeds of the Purchase Price as of the Close of Escrow), that Seller has not performed, and Seller covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Seller from exercising its right under this Section 902, and that at the time of execution of this Agreement there has been no anticipation or prepayment of any Rents due under the Leases for more than two (2) months prior to the due dates of such Rents. Seller shall not collect or accept Rent under any Lease (whether residential or non-residential) for more than two (2) months in advance.

**903. The Property.** As an amplification and not to limit or diminish the definition of the "Property" as set forth in Article I of this Agreement, for the purpose of this Agreement the term "Property" means and includes all of Seller's present and future right, title and interest in and to all of the following:

- (a) the Land;
- (b) the Improvements;
- (c) the Fixtures;
- (d) the Personalty;

- (e) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances relating to or benefiting the Land or the Improvements, or both, and all rights-of-way streets, alleys and roads which may have been or may in the future be vacated;
- (f) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Property, whether or nor the Seller obtained the insurance pursuant to any Seller's lender's requirements;
- (g) all awards, payments and other compensation made or to be made by any municipality, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty of any other part of the Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (h) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Property entered into by Seller now or in the future, including cash or securities deposited to secure performances by parties of their obligations;
- (i) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;
- (j) all Rents and Leases;
- (k) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Property;
- (l) all refunds of Impositions (as defined in said Section 7(a) of said Deed of Trust) by any municipality, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Agreement is dated);
- (m) all tenant security deposits which have not been forfeited by any tenant under any Lease; and
- (n) all names or by which any of the above Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Property.

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY**  
**[Signatures on following Page]**

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

Buyer:  
City of Oceanside, a municipal corporation

Seller:  
Jorbon, LLC, a California limited liability  
company

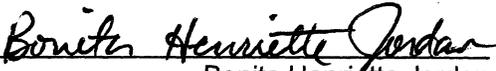
By: \_\_\_\_\_  
Mayor

By:   
Peter Julius Jordan  
Its: Managing Member

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

Date: 8-23-07

By:   
City Attorney

By:   
Bonita Henrietta Jordan  
Its: Managing Member

Date: 8-23-07

**SELLER'S SIGNATURE(S) MUST BE NOTARIZED. NOTARY USE APPROPRIATE ACKNOWLEDGEMENT**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

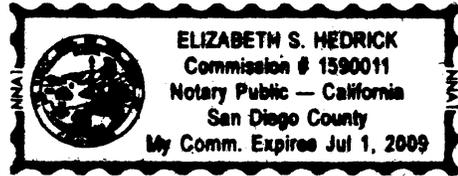
State of California )  
County of San Diego )ss.

On 8-23-07 before me, Elizabeth S. Hedrick, Notary Public  
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Peter J. Jordan and Bonita H. Jordan,  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal.

Elizabeth S. Hedrick  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

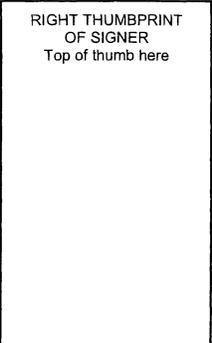
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

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

Signer Is Representing: \_\_\_\_\_



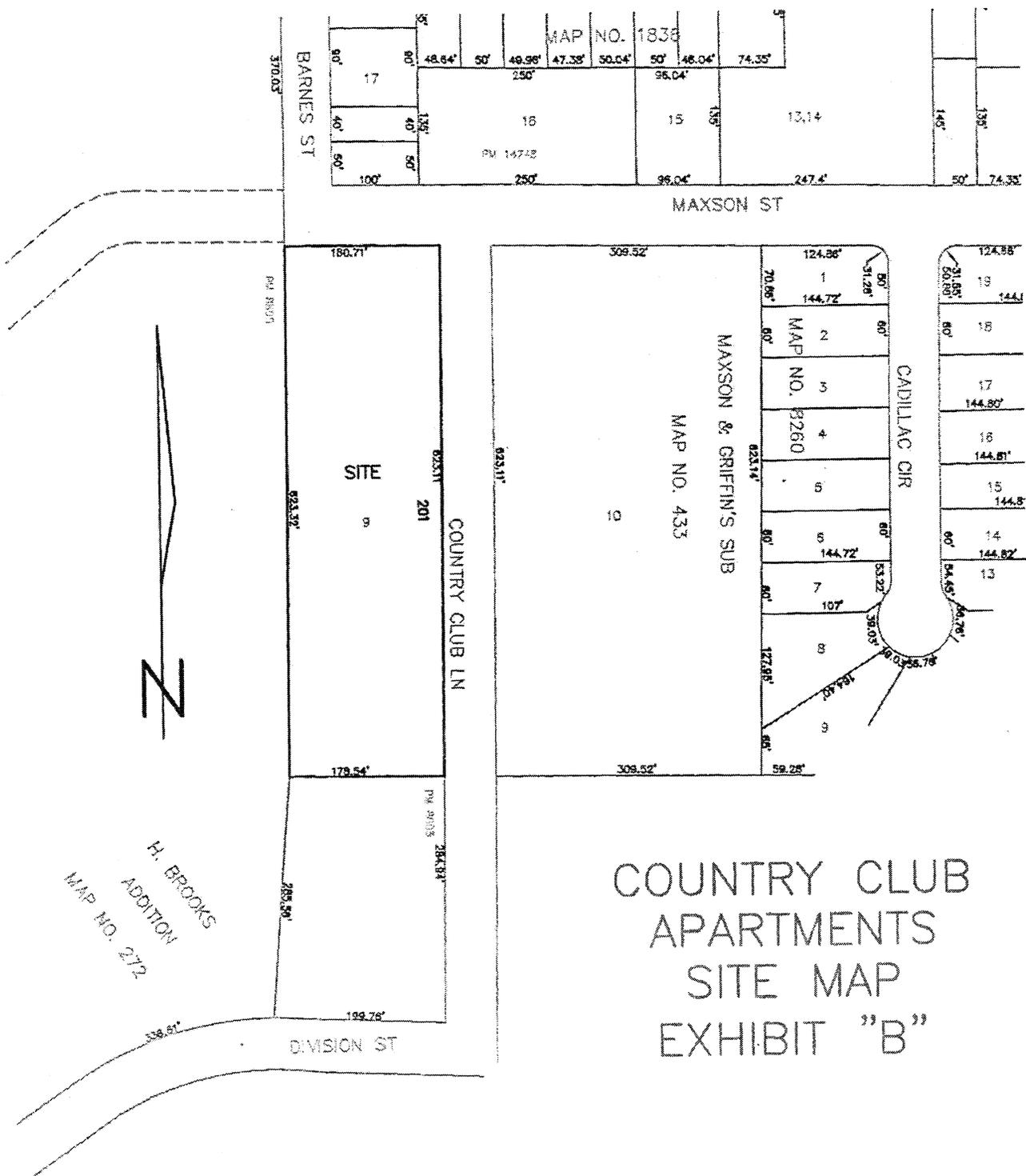
File No. 04611176

## EXHIBIT "A"

All that certain real property situated in the County of San Diego, State of California, described as follows:

Tract 9 of Maxson and Griffin's Subdivision, in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 433, filed in the Office of the County Recorder of San Diego County, December 29, 1887.

Assessor's Parcel Number: **148-291-03**



For Illustrative Purposes Only  
 Not To Be Considered A Survey  
 Compiled From Record Data

## EXHIBIT "C"

### DEFINITIONS

**Seller.** The term "Seller" means the Jorbon, LLC, a California limited liability company, its managing members being Peter Julius Jordan and Bonita Henrietta Jordan.

**Buyer.** The term "Buyer" means the City of Oceanside, a municipal corporation of the State of California.

**Authorized Officer.** The term "Authorized Officer", when used with respect to Buyer, means the Mayor, City Manager or any employee designated by the City Manager as an Authorized Officer. The term "Authorized Officer", when used with respect to Seller, means Peter Julius Jordan or any other person or representative designated in writing by Peter Julius Jordan.

**Environmental Laws.** The term Environmental Laws means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene, to the extent that such relate to matters on, under, or about the Property, occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USC § 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USC § 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution control Act (FWPCA) [33 USC § 1251 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USC § 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC § 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USC § 6901 et seq.]; the Clean Air Act [42 USC § 7401 et seq.]; the Safe Drinking Water Act [42 USC § 300f et seq.]; the Surface Mining Control and Reclamation Act [30 USC § 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USC § 11001 et seq.]; the Occupational Safety and Health Act [29 USC § 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code § 25280 et seq.]; the California Hazardous Substances Account Act [Health and Safety Code § 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code § 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Water Code § 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to the protection of the environment as such apply to matters on, under, or about the Property.

**Hazardous Substances.** The term "Hazardous Substances" includes without limitation:

- (a) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste." or "pollutant or contaminant" in any Environmental Law;
- (b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFR Part 302];
- (c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and
- (d) Any material, waste, or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 USC § 1321 or listed pursuant to 33 USC § 1317, a hazardous substance or toxic material designated pursuant to any State Statute, a flammable explosive or a radioactive material.

**Property.** The term "Property" means that certain real property within the City of Oceanside, California, as more fully described in Exhibit "A" attached hereto, and defined in Article I and IX of this Agreement.

**State.** The term "State" means the State of California.



LandAmerica  
Commonwealth

ATTACHMENT NO. 1

Commonwealth Land Title Company  
3131 Camino del Rio N., #1400  
San Diego, CA 92108

Phone: (619) 686-6000

City of Oceanside, City Hall South  
300 North Coast Highway  
Oceanside, CA 92054

Our File No: 04611176 - 54  
Title Officer: Linda Slavik  
(lslavik@landam.com)  
Phone: (619) 686-2192  
Fax: (619) 725-3248

Attn: **Bill Marquis**

Your Reference No: Country Club Apts.

Property Address: 201 Country Club Lane, Oceanside, California

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## AMENDE PRELIMINARY REPORT

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Dated as of April 11, 2007 at 7:30 a.m.

In response to the above referenced application for a policy of title insurance, Commonwealth Land Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusion from the coverage and Limitations on Covered Risks of said Policy or Policies are set forth in Exhibit B attached. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit B. Copies of the Policy forms should be read. They are available from the office which issued this report.

***Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit B of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered. It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.***

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

File No: 04611176

## **SCHEDULE A**

The form of policy of title insurance contemplated by this report is:

**CLTA Standard Owners**

**ALTA Loan 1992**

The estate or interest in the land hereinafter described or referred to covered by this report is:

**A FEE**

Title to said estate or interest at the date hereof is vested in:

**Jorbon, LLC, a California limited liability company**

The land referred to herein is situated in the County of San Diego, State of California, and is described as follows:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF**

File No: 04611176

## **EXHIBIT "A"**

All that certain real property situated in the County of San Diego, State of California, described as follows:

Tract 9 of Maxson and Griffin's Subdivision, in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 433, filed in the Office of the County Recorder of San Diego County, December 29, 1887.

Assessor's Parcel Number:       **148-291-03**

## SCHEDULE B

At the date hereof Exceptions to coverage in addition to the printed exceptions and exclusions in said policy form would be as follows:

- A. Property taxes, including general and special taxes, personal property taxes, if any, and any assessments collected with taxes, for the fiscal year 2006 - 2007.

1st Installment:	\$25,002.78 Open
Penalty:	\$2,500.28 Due with installment amount if paid after December 10
2nd Installment:	\$25,002.78 Open
Penalty (including cost):	\$2,510.28 Due with installment amount if paid after April 10
Exemption:	\$0.00
Code Area:	07000
Assessment No.:	148-291-03

- B. Supplemental or escaped assessments of property taxes, if any, assessed pursuant to the Revenue and Taxation Code of the State of California.

1. An easement in favor of the public over any existing roads lying within said land.
2. An easement for the purpose shown below and rights incidental thereto as set forth in a document  
Granted to: San Diego Consolidated Gas and Electric Company, a Corporation  
Purpose: public utilities  
Recorded: May 25, 1926 in Book 1173, Page 340 of Official Records  
  
Affects: Portions of the herein described land, the exact location of which can be determined by examination of the above-mentioned instrument, which contains a complete legal description of the affected portions of said land.
3. An easement for the purpose shown below and rights incidental thereto as set forth in a document  
Granted to: The City of Oceanside, a Municipal Corporation  
Purpose: street purposes  
Recorded: May 19, 1953 in Book 4860, Page 402 of Official Records  
Affects: Said land more particularly described therein
4. An easement for the purpose shown below and rights incidental thereto as set forth in a document  
Granted to: San Diego Gas and Electric Company  
Purpose: pole lines and underground conduits  
Recorded: June 12, 1973 as Instrument No. 73-159683 of Official Records  
Affects: Said land more particularly described therein

File No: 04611176

5. An easement for the purpose shown below and rights incidental thereto as set forth in a document
- |             |  |
|-------------|--|
| Granted to: | Pacific Telephone and Telegraph Company                          |
| Purpose:    | pole lines and underground conduits                              |
| Recorded:   | January 14, 1974 as Instrument No. 74-009247 of Official Records |
| Affects:    | said land more particularly described therein.                   |

6. An easement for the purpose shown below and rights incidental thereto as set forth in a document
- |             |   |
|-------------|---|
| Granted to: | The City of Oceanside   |
| Purpose:    | gas monitoring wells  |
| Recorded:   | June 29, 1987 as Instrument No. 87-363411 of Official Records |

The exact location and/or extent of said easement is not disclosed in the public records.

7. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein.

Lessor:	Immelmann Venture, Ltd.
Lessee:	Apartment Coin Laundries, a General Partnership
Disclosed by:	Lease
Recorded:	September 9, 1987 as Instrument No. 87-511345 of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

8. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein.

Lessor:	Reliable Company
Lessee:	Country Club Apartments
Disclosed by:	unrecorded lease
Recorded:	November 15, 1996 as Instrument No. 1996-0578590 of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

9. A deed of trust to secure an indebtedness in the amount shown below, and any other obligations secured thereby.

Amount:	\$3,000,000.00
Dated:	November 15, 2001
Trustor:	Jorbon, LLC, a California limited liability company
Trustee:	Commonwealth Land Title Company
Beneficiary:	GMAC Commercial Mortgage Corporation, a California corporation
Recorded:	November 15, 2001 as Instrument No. 2001-0834130 of Official Records

An assignment of the beneficial interest under said deed of trust which names

As Assignee:	Federal Home Loan Mortgage Corporation, a corporation
Recorded:	November 15, 2001 as Instrument No. 2001-0834132 of Official Records

A First Amendment to Assignment of Security Agreement, by GMAC Commercial Mortgage Corporation, a California corporation in favor of Federal Home Loan Mortgage Corporation, recorded December 28, 2001 as Instrument No. 2001-0968480 of Official Records.

File No: 04611176

10. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein.

Lessor: Jorbon, LLC, successor in interest to Country Club Apartments  
Lessee: Coin Mach, Inc., successor in interest to Reliable Company  
Disclosed by: Subordination and Non-Disturbance and Attornment Agreement  
Recorded: November 15, 2001 as Instrument No. 2001-0834131 of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

11. A document subject to all the terms, provisions and conditions therein contained.

Entitled: Subordination and Non-Disturbance and Attornment Agreement  
Dated: November 15, 2001  
By and between: GMAC Commercial Mortgage Corporation, a California Corporation and Coin Mach, Inc., successor in interest to Reliable Company  
Recorded: November 15, 2001 as Instrument No. 2001-0834131 of Official Records

Reference is made to said document for full particulars.

12. A financing statement filed in the office of the county Recorder, showing:

Debtor: Jorbon, LLC, a California limited liability company  
Secured Party: Federal Home Loan Mortgage Corporation  
Date: Not Set Out  
Recorded: November 15, 2001 as Instrument No. 2001-0834133 of Official Records  
Property Covered: fixtures

A Transition Continuation Statement referring to the above was  
Recorded: June 7, 2006 as File No. 2006-0404063 of Official Records

#### **END OF SCHEDULE B EXCEPTIONS**

**PLEASE REFER TO THE "NOTES AND REQUIREMENTS SECTION" WHICH FOLLOWS FOR INFORMATION NECESSARY TO COMPLETE THIS TRANSACTION**

File No: 04611176

## **REQUIREMENTS SECTION:**

REQ NO.1: The Company will require that it be provided with the following with respect to the California limited liability company named below:

- A. A copy of its operating agreement and any amendments thereto;
- B. A certified copy of its articles of organization (LLC-1), any certificate of correction (LLC-11), certificate of amendment (LLC-2), or restatement of articles or organization (LLC-10); and
- C. A copy of the current Statement of Information form (LLC-12) filed with the Secretary of State.

Limited Liability Company: Jorbon, LLC, a California limited liability company

## **INFORMATIONAL NOTES SECTION**

NOTE NO. 1: The information on the attached plat is provided for your convenience as a guide to the general location of the subject property. The accuracy of this plat is not guaranteed, nor is it a part of any policy, report or guarantee to which it may be attached.

NOTE NO. 2: California insurance code section 12413.1 regulates the disbursement of escrow and sub-escrow funds by title companies. The law requires that funds be deposited in the title company escrow account and available for withdrawal prior to disbursement. Funds deposited with the company by wire transfer may be disbursed upon receipt. Funds deposited with the company via cashier's check or teller's check drawn on a California based bank may be disbursed on the next business day after the day of deposit. If funds are deposited with the company by other methods, recording and/or disbursement may be delayed. All escrow and sub-escrow funds received by the company will be deposited with other escrow funds in one or more non-interest bearing escrow accounts of the company in a financial institution selected by the company. The company may receive certain direct or indirect benefits from the financial institution by reason of the deposit of such funds or the maintenance of such accounts with such financial institution, and the company shall have no obligation to account to the depositing party in any manner for the value of, or to pay to such party, any benefit received by the company. Those benefits may include, without limitation, credits allowed by such financial institution on loans to the company or its parent company and earnings on investments made with the proceeds of such loans, accounting, reporting and other services and products of such financial institution. Such benefits shall be deemed additional compensation of the company for its services in connection with the escrow or sub-escrow.

### **WIRING INSTRUCTIONS FOR THIS OFFICE ARE:**

Union Bank  
530 "B" Street  
San Diego, CA 92101  
ABA # 122-000-496  
Credit To: Commonwealth Land Title Company – San Diego County  
Account #9100899563

**RE: 04611176 675 - 54**

**PLEASE INDICATE COMMONWEALTH LAND TITLE COMPANY ESCROW OR TITLE ORDER NUMBER**

File No: 04611176

NOTE NO. 3: The charges which the company will make for next day messenger services (i.e. Federal Express, UPS, DHL, Airborne, Express mail, etc.) Are \$15.00 per letter, standard overnight service, and \$25.00 for larger size packages and/or priority delivery services. Such charges include the cost of such messenger service and the company's expenses for arranging such messenger service and its overhead and profit. Special messenger services will be billed at the cost of such services. There will be no additional charge for pick-up or delivery of packages via the company's regularly scheduled messenger runs.

NOTE NO. 4: None of the items shown in this report will cause the Company to decline to attach CLTA Endorsement Form 100 to an ALTA Loan Policy, when issued.

NOTE NO. 5: The following information will be included in the CLTA form 116 endorsement to be issued pursuant to this order:

there is located on

said land: multiple family residence

known as: 201 Country Club Lane, Oceanside, California

NOTE NO. 6: There are no conveyances affecting said land recorded within 24 months of the date of this report.

NOTE NO. 7: If taxes are posted paid less than 45 days, the Company will hold the tax amount plus delinquency amount until 45 days have elapsed. If taxes have been paid through an impound account or if a copy of the cancelled check can be provided to us, this requirement can be waived.

Typist: 814

Date Typed: December 14, 2006

**Exhibit B (Revised 06-17-06)**

**CALIFORNIA LAND TITLE ASSOCIATION  
STANDARD COVERAGE POLICY – 1990  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10/22/03)  
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
  - a. building
  - b. zoning
  - c. Land use
  - d. improvements on the Land
  - e. Land division
  - f. environmental protectionThis Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date. This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
  - a. a notice of exercising the right appears in the Public Records at the Policy Date; or
  - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 14, 15, 16 and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
- The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
<b>Covered Risk 14:</b>	<b>1% of Policy Amount or \$2,500</b> (whichever is less)	<b>\$10,000</b>
<b>Covered Risk 15:</b>	<b>1% of Policy Amount or \$5,000</b> (whichever is less)	<b>\$25,000</b>
<b>Covered Risk 16:</b>	<b>1% of Policy Amount or \$5,000</b> (whichever is less)	<b>\$25,000</b>
<b>Covered Risk 18:</b>	<b>1% of Policy Amount or \$2,500</b> (whichever is less)	<b>\$5,000</b>

**AMERICAN LAND TITLE ASSOCIATION  
RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
  - land use
  - improvements on the land
  - land division
  - environmental protectionThis exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
  - a notice of exercising the right appears in the public records on the Policy Date
  - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
  - that are created, allowed, or agreed to by you
  - that are known to you, but not to us, on the Policy Date -- unless they appeared in the public records
  - that result in no loss to you
  - that first affect your title after the Policy Date -- this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
  - to any land outside the area specifically described and referred to in Item 3 of Schedule A
  - OR
  - in streets, alleys, or waterways that touch your landThis exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

**AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92)  
WITH ALTA ENDORSEMENT-FORM 1 COVERAGE  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy forms may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following General Exceptions:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

**2006 ALTA LOAN POLICY (06-17-06)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters

- (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
- (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

**AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92)**  
**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
- (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
- (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy forms may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage Policy will also include the following General Exceptions:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

**2006 ALTA OWNER'S POLICY (06-17-06)**  
**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
- (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
- or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
- (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
- (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)**  
**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.

File No: 04611176

- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
- 2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
- 3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or
  - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
- 4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
- 5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.
- 6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.
- 7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
- 8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:
  - (a) The time of the advance; or
  - (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of Interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.
- 9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.



Commonwealth Land Title Company  
3131 Camino del Rio N., #1400  
San Diego, CA 92108

Phone: (619) 686-6000

File No: 04611176

## Notice to Customers

You may be eligible for a \$20.00 reduction in your title or escrow fees in this transaction charged by **Commonwealth Land Title Insurance Company** pursuant to the Final Judgments entered in People of the State of California v. LandAmerica Financial Group, Inc., et al., Sacramento Superior Court Case No. 92 AS 06111, and Taylor, et al. v. LandAmerica Financial Group, Inc., et al., Los Angeles Superior Court Case No. BC 231917. You are eligible for this \$20.00 reduction in your title or escrow fees if you meet the following requirements:

1. You are a natural person or trust;
2. Your transaction involves the purchase, sale or refinancing of residential real property containing one-to-four-dwelling units;
3. You previously purchased title insurance or escrow services involving a transaction which closed between May 19, 1995 and October 8, 2002 from one of the following companies:

LandAmerica Financial Group, Inc.  
 Commonwealth Land Title Insurance Company or  
 Commonwealth Land Title Company  
 Lawyers Title Insurance Corporation or Lawyers Title Company  
 First American Title Insurance Company, First American Title Company, First American Title Guarantee Company  
 Fidelity National Financial, Inc.  
 Fidelity National Title Insurance Company  
 Fidelity National Title Company  
 Fidelity National Title Insurance Company of California, Inc.  
 Fidelity National Loan Portfolio Services  
 Ticor Title Insurance Company  
 Security Union Title Insurance Company  
 Chicago Title Insurance Company  
 Chicago Title Company  
 Chicago Title and Trust Company  
 Rocky Mountain Support Services, Inc.  
 California Tracking Service, Inc.  
 Title Accounting Services Corporation

- 4 You did not receive a \$65.00 cash payment from LandAmerica Financial Group, Inc. in the reconveyance fee claims process pursuant to the Final Judgments entered in People of the State of California v. LandAmerica Financial Group, Inc., et al., Sacramento Superior Court Case No. 92 AS 06111, and Taylor, et al. v. LandAmerica Financial Group, Inc., et al., Los Angeles Superior Court Case No. BC 231917.

If you meet the foregoing requirements and want the \$20.00 fee reduction complete this form and return it to your **Commonwealth Land Title Insurance Company** escrow or title officer. **NOTE: If you are eligible for the \$20.00 fee reduction please complete and return this form. You must advise us of your eligibility prior to closing in order to receive the \$20.00 fee reduction.**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No: \_\_\_\_\_

**ACQUISITION AND REHABILITATION AGREEMENT**

**BY AND BETWEEN THE**

**CITY OF OCEANSIDE  
("CITY")**

**AND**

**COUNTRY CLUB APARTMENTS, L.P.  
("DEVELOPER")**

**COUNTRY CLUB APARTMENTS  
AFFORDABLE HOUSING DEVELOPMENT**

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**ATTACHMENTS**

Attachment No. 1	Legal Description of the Site
Attachment No. 2	Site Map
Attachment No. 3	Schedule of Performance
Attachment No. 4	Scope of Work
Attachment No. 5	Regulatory Agreement
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Attachment No. 7	Memorandum of Agreement
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Attachment No. 9	City's Loan Agreement
Attachment No. 10	Deed of Trust
Attachment No. 11	Promissory Note

## ACQUISITION AND REHABILITATION AGREEMENT

This Acquisition and Rehabilitation Agreement (this "Agreement") dated, solely for identification, as of December 19, 2007, is made and entered into by and between the **City of Oceanside**, a municipal corporation (the "City"), and **Country Club Apartments, L.P.**, a California limited liability company (the "Developer"). The effective date of this Agreement shall be the date this Agreement is approved by the Oceanside City Council (the "Effective Date").

### **1.0 SUBJECT OF AGREEMENT**

**1.1 Purpose of Agreement.** The purpose of this Agreement is to further the City's Low-Income Housing goals by providing for the conveyance of the "Site" (as hereinafter defined) to the Developer for redevelopment as an affordable multi-family residential apartment complex (the "Complex"). The Developer's redevelopment of the Site consists of the Developer's acquisition of the Site and rehabilitation of existing improvements on the Site generally described in the "Scope of Work" (which is attached hereto as "Attachment No. 4" and incorporated herein by reference) (the "Improvements"). The acquisition and rehabilitation of the Site and its redevelopment pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interest of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes of the City and provisions of applicable federal, state and local laws and requirements. For the purpose of this Agreement the acquisition of the Site, the rehabilitation of the Improvements, and the Developer's subsequent ongoing management and operation of the Site and the Complex as an affordable multifamily residential rental development shall be referred to herein as the "Activity".

**1.2 Term of Agreement.** The term of this Agreement shall commence as of the Effective Date hereof and expire upon the completion of all work set forth in the "Scope of Work" (Attachment No. 4) and the leasing of the units to qualified very low-income persons and households as set forth in the "Regulatory Agreement" (attached hereto as "Attachment No. 5" and incorporated herein by reference) unless earlier terminated as provided for elsewhere in this Agreement. On or before May 31, 2008, the Developer shall provide proof to City that Developer has been awarded financing with the allocation of private activity tax exempt bonds from the California Debt Limit Allocation Committee ("CDLAC"), combined with 4% low income housing tax credits from California Tax Credit Allocation Committee ("TCAC"), for the acquisition of the Site and rehabilitation of the Improvements and all on-site and off-site improvements appurtenant to the Activity. In the event that the Developer does not secure said financing, or alternative financing reasonably acceptable to the City, by said date, the City may terminate this Agreement by written notice thereof to the Developer and thereafter this Agreement shall be of no further force or effect.

**1.3 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.

**1.4 The Site.** The "Site" is that certain real property located at 201 Country Club Lane within the City of Oceanside, County of San Diego, State of California, more particularly described in the legal description set forth in the "Legal Description of the Site" (which is attached hereto as "Attachment No. 1" and incorporated herein by reference) and illustrated and

designated as such on the "Site Map" (which is attached hereto as "Attachment No. 2" and incorporated herein by reference).

**1.5 The Complex.** The "Complex" is that certain 91-unit multi-family residential apartment building located on the Site, comprised of twelve (12) studio apartments, fifty-seven (57) one-bedroom apartments, and twenty-two (22) two-bedroom apartments (including one (1) two-bedroom manager's apartment), and all related fixtures, parking, common space and other amenities associated with the Site, together with other appurtenances on-site. For the purpose of this Agreement the "Site" and the "Complex" are sometimes, collectively, referred to as the "Real Property".

**1.6 Parties to the Agreement.**

**1.6.1 The City.** The City is a municipal corporation, exercising governmental functions and powers and organized and existing under the Constitution and statutes of the State of California, and is authorized to enter into this Agreement and perform the actions and duties of City as set forth in this Agreement. The principal office of the City is located at the Oceanside Civic Center, 300 North Coast Highway, Oceanside, California 92054.

"City" as used in this Agreement, includes the Community Development Commission of the City of Oceanside, and any assignee of or successor to its rights, powers and responsibilities. All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the City, its successors and assigns.

**1.6.2 The Developer.** The Developer is a California limited liability company, authorized under the laws of the State of California to enter into this Agreement and perform the actions and duties of the Developer as set forth in this Agreement. The principal office and mailing address of the Developer for the purposes of the Agreement is located at 1230 Columbia Street, Suite 950, San Diego, California 92101.

"Developer" as used in this Agreement includes any assignee of or successor to the Developer permitted in this Agreement. All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Developer and the permitted successors and assigns of the Developer as herein provided.

**1.7 Restrictions on Transfers of Interest in the Site or the Agreement.**

**1.7.1 Prohibition.** The qualifications of the Developer are of particular concern to the City. It is because of those qualifications and identity that the City has entered into this Agreement with the Developer. Therefore, except as expressly set forth in this Section, for the period commencing upon the Effective Date of this Agreement and ending upon the expiration of the covenant requiring the provision of affordable housing contained in the "Regulatory Agreement" (attached hereto as "Attachment No. 5" and incorporated herein by reference), no voluntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, nor shall the Developer make any total or partial sale or transfer of the Site without the prior written approval of the City.

**1.7.2 Permitted Transfers.** Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment of this Agreement or conveyance of the Complex, the Site or the Improvements (or any part thereof) shall not be required in connection with any of the following:

i. The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements or the operation of the Complex.

ii. Any letting of residential dwelling units to the occupants of such units.

iii. The conveyance or dedication of any portion of the Site or the Complex to a California Limited Partnership, California Limited Liability Corporation or other entity as may be needed to secure financing for the Complex through the provisions of the low income housing tax credit program and private activity tax-exempt bond program.

iv. Transfer of the Developer's interest in the Site and/or Complex to an Affiliate wholly controlled by the Developer, where "Control" is defined as the Developer controlling the appointment of 100% of the members of the board of directors of any such affiliate formed for purposes of managing the Complex and carrying out the Activity under provisions of low income housing tax credit program, or a transfer to Wakeland or an affiliate that is wholly controlled by the Developer after the 15-year tax credit compliance period.

**1.7.2.1** In the event of an assignment by the Developer not requiring the City's prior approval under subparagraphs 1.7.2 (iii) through (iv), inclusive, above, the Developer nevertheless agrees, 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 has assumed the Developer's obligations under this Agreement. In such an event the Developer shall remain responsible for the full implementation of this Agreement.

**1.7.2.2** Any assignment for financing purposes related to this Agreement, including (without limitation) the grant of a deed of trust to secure the funds necessary for construction and/or permanent financing of the Improvements, shall be subject to the prior written approval of the City pursuant to Section 1.7.3 herein.

**1.7.3 City Consideration of Requested Transfer.** The City agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 1.7, provided the Developer delivers written notice to the City requesting such approval and such transfer of the Developer's rights and/or powers under this Agreement is deemed by the City to be in the best interests of the City to carry out the purposes of the Comprehensive Affordable Housing Plan and this Agreement. However, no such request under this Section 1.7 or approval by City shall be necessary for transfers permitted pursuant to Section 1.7.2. Such notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development qualifications and experience in operating the applicable type and respective portion of the

Improvements, and its financial resources in sufficient detail to enable the City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 1.7.3 and as reasonably determined by the City. The City shall evaluate each proposed transferee or assignee on the basis of its development and/or operational qualifications and experience and its financial commitments and resources, and may disapprove any proposed transferee or assignee, during the period for which this Section 1.7 applies, which the City determines does not possess qualifications that enable the proposed transferee or assignee to meet the obligations of the Developer under this Agreement. An assignment and assumption agreement in a form satisfactory to City legal counsel shall also be required for all proposed assignments.

i. Within thirty (30) days after the receipt of a written notice requesting City approval of an assignment or transfer pursuant to this Section 1.7, the City shall either approve or disapprove in writing such proposed assignment, or shall respond in writing by stating what further information, if any, the City requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such response, the requesting party shall promptly furnish to the City such further information as may be requested.

ii. Notwithstanding anything to the contrary contained in this Agreement, the City reserves the right to determine the qualifications of the Developer (or any assignee(s)) in its sole and absolute discretion as deemed in the best interests of the public and the public purposes of the City.

**1.7.4 Limitation and Termination of Restrictions.** The restrictions of this Section 1.7 shall not in any event be deemed to prevent construction and/or permanent loans for the Improvements, or any part thereof. The restrictions set forth in this Section 1.7 shall terminate and be of no further force and effect upon the expiration of the covenant requiring the provision of affordable housing contained in the "Regulatory Agreement" (Attachment No. 5) discussed below in Section 4 of this Agreement.

**1.8 City's Representations and Warranties.** The City hereby represents and warrants to the Developer, as of the Effective Date of this Agreement, as follows:

i. The City is a duly organized and existing City and municipal corporation under the laws of the State of California;

ii. By proper action of the Oceanside City Council, the City has been authorized to execute and deliver this Agreement, acting by and through its authorized officer(s);

iii. By entering into this Agreement, the City does not violate any provision of any other agreement to which the City is a party;

iv. The City, as of the effective date of this Agreement is, or will be, the "Buyer" under the terms and conditions of that certain Purchase and Sale Agreement, being of the same date as this Agreement, with Jorbon, LLC, as "Seller", for the acquisition of the Real Property (the "Purchase Agreement") and/or, subject to Seller's prior approval thereunder, has the right, power and authority to assign the "Purchase Agreement" for the Site to the Developer as provided herein and to perform all of the

City's obligations hereunder, and no further compliance with surplus property or other legal requirements is necessary for the authorization of the assignment of the City's interest in and under the "Purchase Agreement" and related escrow to the Developer;

v. To the best of City's actual knowledge, the Site and Complex, as of the Effective Date of this Agreement, are in compliance with zoning and municipal code requirements, and that no code violation occurring prior to the conveyance of the Site from Seller to Buyer will be entered or prosecuted against the Developer;

vi. To the best of the City's actual knowledge, there are no stop notices and/or unsatisfied mechanic's or materialman's lien rights concerning the Site;

vii. To the best of the City's actual knowledge, no actions, suits, or proceedings are pending or threatened before any governmental department, commission, board, bureau, agency or instrumentality that would adversely affect the Site or the Developer's right to occupy, redevelop or utilize it; and

viii. The City has disclosed to the Developer all information concerning the Site of which the City is aware, and the City's representations and warranties are set forth in this Section 1.8. If the City becomes aware of any fact or circumstance that would change or render incorrect, in whole or in part, any representation or warranty by the City under this Agreement, whether as of the date hereof or any time thereafter through the effective date of the conveyance of the Real Property to Buyer by Seller (the "Conveyance"), and whether or not such representation or warranty was based on the City's knowledge and/or belief as of a certain date, the City will give immediate notice of such changed facts or circumstances to the Developer.

The City shall advise the Developer in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items i to viii, inclusive.

**1.9 Developer Representations and Warranties.** The Developer hereby represents and warrants to the City as follows:

i. The Developer is duly established and in good standing under the laws of the State of California and has duly authorized, executed and delivered this Agreement and any and all other agreements and documents required to be executed and delivered by the Developer to the City in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement;

ii. The Developer does not have any material contingent obligations or any material contractual agreements that could materially adversely affect the ability of the Developer to carry out its obligations hereunder;

iii. The Developer has not made any payment or contribution to any elected official, City official's campaign fund, or City employee, agent, or representative, to influence City decisions associated with this Agreement, the "Regulatory Agreement" (Attachment No. 5), or any related document or instrument;

iv. To the Developer's best knowledge, no actions, suits, or proceedings are pending or threatened before any governmental department, commission, board, bureau, agency or instrumentality to which the Developer is or may be made a party or

to which any of its property is or may become subject, which have not been fully disclosed in the material submitted to the City which could materially adversely affect the ability of the Developer to carry out its obligations hereunder;

v. There is no action or proceeding pending or, to the Developer's best knowledge, threatened, looking toward the dissolution or liquidation of the Developer, and there is no action, suit or proceeding pending or, to the Developer's best knowledge, threatened by or against the Developer which could affect the validity and enforceability of the terms of this Agreement, or materially and adversely affect the ability of the Developer to carry out its obligations hereunder. The Developer further warrants that there has been no bankruptcy of the Developer or any entity controlled by the Developer or any project which the Developer has served as general partner, managing general partner, sole or co-developer in the last five (5) years preceding the Effective Date of this Agreement, and that no bankruptcy action or other arrangement, reorganization or insolvency action of the Developer or any of its affiliates is pending;

vi. The Developer has performed, or will perform, all of its obligations to be performed in accordance with this Agreement and the Purchase Agreement at or prior to the effective date of the "Conveyance" and is not in default thereof.

The Developer shall advise the City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items i to vi, inclusive.

## **2.0 ACQUISITION OF THE SITE**

**2.1 Acquisition of Site.** As of the Effective Date of this Agreement the City (as "Buyer") shall have entered into a purchase agreement (the "Purchase Agreement") with Jorbon, LLC, (as "Seller") for the purchase of the Site and Complex ("Real Property"). The purchase price of Ten Million Two Hundred Thousand Dollars (\$10,200,000.00) (the "Purchase Price"), together with related escrow closing costs and title fees, shall be paid by the Developer, at its sole cost and expense, and funded in part from a loan by the City in the not to exceed amount of Ten Million Eight Hundred Fifty-four Thousand Four Hundred Seventy-seven Dollars (\$10,854,477.00) (the "City Loan") of which an initial disbursement of Seven Million Six Hundred Thousand Dollars (\$7,600,000.00) will be allocated to the Purchase Price, with the balance of the Purchase Price being funded through tax credit equity and tax-exempt multifamily housing bond financing (or other financing approved by the City) to be obtained by the Developer for the acquisition and rehabilitation of the Site and Improvements. The balance of the "City Loan" shall be disbursed as set forth in the "Loan Agreement" (attached hereto as "Attachment No. 9" and Incorporated herein by reference) for the rehabilitation of the Improvements. For the purpose of this Agreement, the Purchase Agreement is incorporated herein and made a part hereof as if set forth herein in its entirety.

**2.2 Assignment of Purchase Agreement.** Subject to Seller's prior written approval, and in accordance with and subject to all the terms, covenants and conditions of this Agreement and the "Purchase Agreement", the City agrees to assign its interests in and under the "Purchase Agreement" and related escrow to the Developer, and the Developer agrees to accept such assignment of the "Purchase Agreement" and related escrow from the City and to perform all acts, duties and obligations of Buyer there under (the "Assignment") and agrees to be regulated as to the use of the Site and Complex under the terms and conditions set forth in the "Regulatory Agreement" (Attachment No. 5).

**2.3 Execution of Assignment of Purchase Agreement and Delivery of Possession.** Prior to, but no later than the effective date of the "Conveyance", the City shall assign the "Purchase Agreement" and related escrow to the Developer and the Developer shall accept the assignment of the "Purchase Agreement" and related escrow from the City and agree to the performance of all of Buyer's duties and obligations thereunder from and after the effective date of the "Assignment". The Developer's possession and occupation of the Real Property in accordance with the provisions of this Agreement and the "Regulatory Agreement" (Attachment No. 5) shall commence upon the effective date of the "Conveyance" which shall occur on or before the date specified therefor in the "Schedule of Performance" (Attachment No. 3), or such date as mutually agreed to in writing by the authorized representatives of the Seller, the City and the Developer. The City and the Developer agree to perform all acts necessary for the "Assignment" in sufficient time in accordance with the foregoing provisions so that the "Regulatory Agreement" (Attachment No. 5) will be effective as of the date of the Close of Escrow for the "Conveyance". Possession of the Site shall be delivered to the Developer by the Seller concurrently with the effective date of the "Conveyance", except that access and entry may be granted before conveyance of possession of the Site by the Developer as permitted pursuant to the provisions of the "Purchase Agreement".

**2.4 Condition of the Real Property.** The Developer has caused a physical needs assessment (the "PNA") to be performed on the Real Property by EMG; a written report of the findings of the PNA, dated May 29, 2007, is incorporated herein and made a part of this Agreement as if set forth herein in its entirety. Under the terms of the Purchase Agreement Seller shall not cause or allow the physical condition of the Real Property to deteriorate or change in condition from that documented in the PNA, betterments and normal wear and tear excepted, without the prior written consent of Buyer. Seller further agreed to make any and all repairs or replacements necessary to maintain the Real Property in the condition, or better, as documented in the PNA through the Close of Escrow. Pursuant to the provisions of Section 801 of the Purchase Agreement, City reserved the right to perform an additional physical needs assessment and inspection of the Property no sooner than March 1, 2008, and prior to the "Conveyance" to determine the current condition of the Site and Complex. In the event such assessment and inspection reveals substantial variation in the condition of the Complex or the Site, or any portions thereof, from that documented in the PNA, Buyer shall provide Seller with written notice of such variation in the condition of the Real Property and may, at Buyer's option: i) request that Seller remedy the condition or conditions at Seller's sole cost and expense; or ii) deduct the costs attributed to the variation or variations in the condition of the Site or Complex from the Purchase Price at the "Conveyance"; or iii) in the event Seller refuses to remedy the deteriorated condition or refuses to allow a deduction in the Purchase Price, terminate the Purchase Agreement upon written notice to Seller. For the purpose of this Agreement, the phrase "substantial variation" shall mean an increase of more than ten-percent (10%) in the estimated cost of repair, replacement or rehabilitation of any portion of the Real Property that has been allowed to deteriorate beyond its condition as documented in the PNA, excepting therefrom normal wear and tear of the interior of the units and increases in labor and material costs from the date of the PNA and the re-assessment and re-inspection. The Developer agrees that the Real Property is being sold in its "As-Is" and "Where-Is" condition, except as expressly provided for elsewhere herein. The Developer is obligated to investigate, inspect and analyze the condition of the Real Property and title to the Real Property to its own satisfaction and expressly agrees that in entering into this Agreement, it is relying on its own investigation as to the condition of the Real Property, except as expressly provided herein.

**2.4.1 Additional Physical Needs Assessment and Inspection.** Pursuant to Section 801 of the Purchase Agreement, Seller has consented to entry upon the Real

Property by the City and the Developer, their officers, employees, contractors and agents for the purpose of conducting an additional physical needs assessment and inspection of the Real Property no sooner than March 1, 2008, and prior to the Conveyance to determine the current condition of the Site and Complex. The Developer shall have fourteen (14) calendar days from issuance of notice to Seller of the start date ("Re-Inspection Period") in which to complete its re-inspections, testing and feasibility studies of the Real Property to determine the condition of the Site and Complex, which shall be limited to inspection and examination of structures, buildings and other improvements, soils, environmental factors (including, but not limited to, asbestos, lead-based paint and mold), Hazardous Substances, if any, to determine if any substantial variation in the condition of the Property exists from that documented in the PNA. If the Developer disapproves of the results of the re-inspection and review, and only in the event the Seller refuses to remediate such conditions of the Real Property or disallows a reduction in the Purchase Price, the Developer may elect to terminate this Agreement by giving written notice thereof to the City. If the Developer fails to properly notify the City of the intent to terminate this Agreement pursuant to the foregoing, the Developer shall be deemed to be satisfied with the results of the re-inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision.

i. The Developer agrees to defend, indemnify and hold the City and the Seller harmless from all liabilities, costs and expenses resulting directly from any damages caused to the Site or the Complex by the Developer's or its officers', employees', contractors' or agents' inspections and tests. The Developer agrees that its independent inspection of the Site and the Complex is its sole basis to determine the suitability of the Real Property for its purposes; The Developer acknowledges that it is not relying on any representations by the City or the Seller regarding suitability of the Real Property, and by executing this Agreement, the Developer acknowledges that it has made or will make its own independent inspection of the Property. If the Developer alters the physical conditions of the Site and the Complex and escrow does not close, the Developer shall restore the Real Property to the condition existing before the Developer's inspections or tests.

**2.5 Condition of Title.** The Buyer shall acquire from the Seller the fee simple interest in the Real Property subject to all recorded and unrecorded liens, encumbrances, assessments, easements, leases, taxes, and other matters affecting title, as may be set out in a preliminary title report, subject to the review and approval of said report by the Developer, the rights of possession by existing tenants, and those matters set forth in the "Regulatory Agreement" (Attachment No. 5) and those otherwise consistent with this Agreement and which are acceptable to the Developer; provided, however, that no covenants, conditions, restrictions or equitable servitudes shall prohibit or limit the redevelopment and rehabilitation of the Site and Complex permitted by the "Scope of Work" (Attachment No. 4).

**2.6 Execution of Regulatory Agreement.** Concurrently with the execution and delivery and deposit of the Grant Deed (the "Grant Deed") into escrow by the Seller for the "Conveyance" of the Real Property to Buyer, or as soon as possible thereafter (but no later than the date of the "Conveyance"), the City and the Developer shall execute and acknowledge the "Regulatory Agreement" (Attachment No. 5) placing certain covenants, conditions, and restrictions on the use and occupation of the Site by the Developer, which instrument shall be filed in the office of the County Recorder of San Diego County concurrently with the filing of the "Grant Deed".

**2.7 Taxes and Assessments.** The Developer shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon the Developer or the Site, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by the Developer or levied by reason of the business or other activities of the Developer related to the Site, including any licenses or permits and any ad valorem taxes and assessments levied, assessed or imposed on the Site, and taxes upon this Agreement or any rights thereunder, levied, assessed or imposed for any period commencing after the effective date of the "Conveyance".

**2.8 Conditions Precedent to the Assignment of Purchase Agreement.** Prior to and as conditions to the City leasing the Site to the Developer, and provided neither the City nor the Developer shall have terminated this Agreement, the City and the Developer (as applicable) shall, by the time established therefor in the "Schedule of Performance" (Attachment No. 3), complete each of the following "City Conditions to Assignment" (items 2.8.1 i to vii, inclusive) and "Developer Conditions to Assignment" (items 2.8.2 i to viii, inclusive), which together collectively constitute the "Conditions Precedent to the Assignment":

**2.8.1 City Conditions to Assignment of Purchase Agreement.** The City's obligation to assign its interest in the Purchase Contract and related escrow concerning the Site to the Developer and the execution and effective date of the "Regulatory Agreement" (Attachment No. 5) shall be expressly conditioned upon the satisfaction of, or the written waiver by the City of, each of the following ("City Conditions to Assignment"):

- i. This Agreement has not been terminated and is in full force and effect;
- ii. The Developer shall have complied with all the requirements of this Agreement applicable to the Developer;
- iii. The Seller shall have consented to the Assignment;
- iv. The Developer shall submit to the City for the approval by the City Manager (or designee(s)) a Financing Plan (the "Financing Plan") which contains: (i) a development budget for the Activity and Improvements; (ii) a sources and uses analysis for the period of construction, including an analysis of the subsidized financing which is necessary from the City and/or other public entities; (iii) an income and expense projection, including a calculation of affordable restricted rents with appropriate utility allowances, operating costs, and allowances for replacement in operating reserve deposits; (iv) low income housing tax credit threshold and basis analysis; (v) financing assumptions for construction debt, permanent debt, tax credit financing, and other sources of loans for the rehabilitation of the Complex and Improvements; (vi) a low income housing tax credit capital account analysis and projection for 15 years; (vii) a sources and uses analysis from the date of the issuance of the "Certificate of Completion" (attached hereto as "Attachment No. 6" and incorporated herein by reference), including an analysis of the additional subsidized financing which is necessary from the City or other public entities; (viii) a Fifty-five (55) year cash flow analysis of the Complex from the date of the issuance of the "Certificate of Completion" (Attachment No. 6); (ix) an operating budget for the Complex, including without limitation an operating reserve fund and capital replacement

reserve fund; (x) a projection of operating reserve and capital replacement reserve balances over a Fifty-five (55) year period; and (xi) all underlying assumptions for each of the above. The Developer shall submit to the City for its approval any proposed revisions to the Financing Plan, which approval shall not be unreasonably withheld;

v. The Developer shall have submitted to the City a relocation plan for the temporary and permanent relocation of the affected qualified tenants (the "Relocation Plan") and the City shall have approved the Relocation Plan as submitted or as amended by mutual agreement of the City and the Developer. The Relocation Plan shall be in compliance with the provisions of Title 49 Code of Federal Regulations Part 24 (49CFR24) i.e. the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the "Uniform Act");

vi. The Developer shall have succeeded in obtaining financing on the terms that are commercially reasonable and satisfactory to the City and the Developer in an amount sufficient to enable the Developer to complete the Improvements and carry out the Activity; and

vii. The Developer shall have provided to the City satisfactory proof of insurance (certificates) conforming to Section 3.13 of this Agreement.

The City may, at any time prior to termination of this Agreement, by written notice to the Developer, waive any City Conditions to Assignment.

**2.8.2 Developer Conditions to Assignment.** The Developer's obligation to accept the assignment of the "Purchase Agreement" and related escrow and enter into the "Regulatory Agreement" (Attachment No. 5) shall be expressly conditioned upon the satisfaction of each of the following ("Developer Conditions to Assignment"):

i. This Agreement has not been terminated and is in full force and effect;

ii. The City shall have complied with all requirements of this Agreement applicable to the City;

iii. The City shall have approved the Working Drawings in accordance with Section 3.3 of this Agreement;

iv. The Developer shall have approved the condition of the Site and condition of title in the Site pursuant to Section 401, *et seq.*, of the "Purchase Agreement";

v. The City shall have approved the Relocation Plan for the affected displaces.

vi. The City shall not be in material default of this Agreement;

vii. The Developer shall have succeeded in obtaining financing on the terms that are commercially reasonable and satisfactory to the City and the

Developer in an amount sufficient to enable the Developer to complete the Improvements and carry out the Activity and such financing shall be able to be closed concurrently with the "Conveyance"; and

viii. The Developer shall have approved any material changes to the structural, physical and environmental condition of the Site and the Complex which have occurred after the date of the PNA.

The Developer may, at any time prior to the termination of this Agreement, by written notice to the City, waive any Developer Conditions to Assignment.

**2.9 Occupants of the Site.** The Site shall be delivered to the Developer by the Seller as of the date of the "Conveyance" subject to the possessory rights or possession by existing tenants of individual units.

### **3.0 REHABILITATION OF THE SITE**

**3.1 Developer's Obligation to Rehabilitate Improvements.** This Agreement is executed with the understanding and agreement that Developer is obligated to rehabilitate and make certain improvements to the Development. Developer covenants and agrees that the buildings, facilities, improvements and appurtenances thereto must be rehabilitated and paid for wholly at the expense of Developer from funding sources as described herein. Before submitting plans for approval by the City and commencing the rehabilitation of any of the Improvements on the Site, 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 rehabilitation of the proposed improvements.

**3.2 Scope of Work.** Within the time set forth therefor in the "Schedule of Performance" (Attachment No. 3), the Developer shall rehabilitate the Complex and the Site as a multifamily affordable rental residential development that is consistent with the rehabilitation concept set out in the "Scope of Work" (Attachment No. 4). The "Schedule of Performance" (Attachment No. 3) is subject to revision from time-to-time as mutually agreed upon in writing between the City Manager (or designee(s)) and the Developer. To the extent of any inconsistencies between the plans approved by the City for the construction of the Improvements and rehabilitation of the Complex and the Site and the "Scope of Work" (Attachment No. 4), the City-approved plans shall supersede the "Scope of Work" (Attachment No. 4) and control as to the rehabilitation of the Site and the Improvements.

**3.3 Working Drawings.** Within the time set forth therefor in the "Schedule of Performance" (Attachment No. 3), the 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 Site. Developer shall submit to the City for its approval, such plans and specifications as may be required by law or ordinance for the rehabilitation of the Complex and the Site in conformity with the Uniform Building Code and City's building permit regulations as appropriate for the work to be performed that would require the issuance of a building or other permit. 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 its approval, which approval shall not be unreasonably denied or withheld:

i. A copy of any written construction agreement with a State of California licensed general contractor which Developer proposes to execute (or, if no general contractor will be used, a copy of each proposed written agreement with the various subcontractors); and

ii. An estimated schedule of payments thereunder which shall provide for partial payments as the work progresses.

**3.4 City Review.** The City shall review all plans and submissions, including any changes therein, through its normal plan review process. The City shall have the right to disapprove in its reasonable discretion any of the plans and submissions if they (i) do not materially conform to the "Scope of Work" (Attachment No. 4), or (ii) are incomplete. The City shall state in writing the reasons for disapproval within thirty (30) days of such disapproval. The Developer acknowledges and agrees that the City's Building, Engineering, Fire, Planning, and Water Utilities departments (the "Reviewing Department(s)) are responsible for reviewing the Working Drawings and issuing appropriate permits. The Reviewing Departments' review of all plans, drawings, related documents and other submissions, including any proposed changes thereto, shall include (but not be limited to) exterior elevations and exterior material (including selections and colors). The City's inspection or review of the plans, drawings and related documents for development of the Site shall include the determination of the engineering or structural design, sufficiency or integrity of the improvements contemplated by such plans, drawings and related documents, and their compliance with any and all applicable Uniform Codes (e.g., Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations, safety features or standards. The City's right of review shall include the inspection, approval, or disapproval of the quality, adequacy or suitability of such plans, specifications or drawings, the labor, materials, services or equipment to be furnished or supplied therewith.

**3.5 Subsequent Changes to Plans.** If the Developer desires to make any substantial changes in the Working Drawings after their approval by the City, the Developer shall submit the proposed changes to the respective Reviewing Department for approval. If the Reviewing Department determines that the Working Drawings, as modified by the proposed changes, substantially conform to the requirements of the "Scope of Work" (Attachment No. 4) and any modification(s) thereof approved in connection with the City's review of the Working Drawings, the respective Reviewing Department shall approve the proposed changes and notify the Developer in writing within thirty (30) days after submission of the proposed changes by the Developer. Such change in the Working Drawings shall be deemed approved unless disapproved by written notice thereof to the Developer within said thirty (30) day period. Any and all change orders or revisions required by the City and its inspectors which are required under applicable City Ordinances and other applicable Uniform Codes (e.g., Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by the Developer in its Working Drawings and completed during the construction of the Improvements.

**3.6 Construction.** After receiving building permits, if required, Developer shall diligently pursue the work and Developer shall have completed the work in each and every particular item of work on or before twelve (12) months from the initial commencement date that such rehabilitation work has commenced, except as such date may be extended by the number of working days lost by reason of events beyond the control of Developer as set forth in Section 6.3 hereof. 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, in addition to other rights or remedies it may have and, after thirty (30) days notice to Developer, may: (i) complete Developer's work at Developer's expense, or (ii) declare Developer in default

of this Agreement and the "Regulatory Agreement" (Attachment No. 5) and seek remedies for such default as set forth in Section 24 of the "Regulatory Agreement" (Attachment No. 6).

**3.7 Plan Variances.** Developer shall not authorize any material variance from the plans or specifications approved by the City without prior written approval by City.

**3.8 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, or by an authorized representative of the Developer, if the work of rehabilitation was not supervised by an architect or engineer, which shall state that all work has been completed in accordance with the approved plans and specifications.

ii. If applicable, copies of the approved final building permit for each phase of improvements, 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 Site and the Complex.

The terms, conditions and covenants contained in this Section 3.8 shall survive the expiration of the term of this Agreement.

**3.9 As-Built Plans.** Within forty-five (45) days of the completion of each phase of improvements for which the issuance of a permit is required, 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 Site and certified by the plan's preparer that the as-built conditions are depicted accurately.

The terms, conditions and covenants contained in this Section 3.9 shall survive the expiration of the term of this Agreement.

**3.10 CEQA Requirements.** 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, including (but not limited to) preparation of a development environmental impact report ("EIR") for the Activity which analyzes potential significant environmental impacts that might result as a consequence of redeveloping the Site. Nothing contained herein shall prevent the Developer from seeking and obtaining an exemption to CEQA requirements related to the Activity.

**3.11 Costs of Construction.** Except as provided otherwise herein and the "Loan Agreement" (Attachment No. 9), the Developer shall bear all of the costs of planning, designing, developing and constructing the rehabilitation of the Improvements. The Developer shall be responsible for the payment of all development impact, utility, plan check, and grading/building

permit fees associated with the rehabilitation of the Improvements and levied by, on behalf of, the City and the payment of any fees and charges imposed by any other governmental body.

**3.12 Project Budget.** The Developer has submitted to the City a Financing Plan for the rehabilitation of the Site and construction of the Improvements constituting the Activity, as set forth in the "Project Budget" (which is attached hereto as "Attachment No. 8" and incorporated herein by reference), which summarizes the sources and uses of funds for the completion of the Complex. By its execution hereof, the City has given its approval to the "Project Budget" (Attachment No. 8). While the "Project Budget" (Attachment No. 8) has been prepared based on the best, good faith estimate of the Developer of the costs which are likely to be incurred for the rehabilitation of the Site and the Improvements, the parties recognize that events and circumstances not currently contemplated, some of which are outside of the control of the parties, could result in changes in the costs of developing the Site, necessitating changes in the "Project Budget" (Attachment No. 8). Changes in costs could be occasioned by conditions found in the field that were not anticipated as of the date of execution of this Agreement, including changes (and delays that result from changes) as a result of onsite inspections. Due to the impact of other, competing demands for staff time, inspections themselves might be delayed.

**3.12.1 Construction Cost Increases.** Because of the specialized nature of the funding for the Activity, unanticipated material changes could constitute a challenge to the rehabilitation of the Complex and completion of the Improvements and may cause cost to the Activity unanticipated in the "Project Budget" (Attachment No. 8). Should the Developer become aware of any such material fact or circumstance which will result in a material increase in the cost of the proposed rehabilitation of the Complex (a cost or costs will constitute a "material increase" if alone or cumulative such costs result in increased expenses detailed in the "Scope of Work" (Attachment No. 4) and the Complex in excess of \$100,000), the Developer shall promptly and without delay give written notice to the City of such material increase in cost. Furthermore:

i. The Developer understands and agrees that it is placing its developer fee, as identified in the "Project Budget" (Attachment No. 8) at risk of deferral by contributing, to the extent necessary, portions of the developer fee, if not the entire developer fee to cover cost increases encountered after the start of construction. The Developer accepts this risk as part of its undertaking the Activity and entering into this Agreement;

ii. The "Project Budget" (Attachment No. 8) identifies a construction contingency fund amount. The contingency fund amount line item in the "Project Budget" (Attachment No. 8) is expressly designed to guard against unanticipated increases in construction costs after the start of construction and the close of construction financing. To the extent that some or all of the construction contingency line item amount is not needed to rehabilitate the Improvements and secure the "Certificate of Completion" (Attachment No. 6), those funds shall be returned to the City;

iii. In the event that, despite the best efforts of the City and the Developer, an alternative resolution to such material increases and/or materially altered facts and circumstances is not mutually approved by the City and the Developer or does not become available within a reasonable time prior to the start of construction, the Developer shall be reimbursed for only those out-of-

pocket, third-party costs approved in the Pre-Development Budget as contained in the "Project Budget" (Attachment No. 8) that result in plans, studies or reports associated with rehabilitation of the Complex that become the property of the City, or for which the City obtains license to use such plans, specifications, and/or reports. Such plans, studies and reports may include, but are not limited to, architectural and engineering plans and drawings associated with the Activity. The Developer shall not be reimbursed for costs borne by the Developer for financial consulting, attorneys' fees or the Developer's overhead costs, or any other costs, direct or indirect, not pre-approved as a Pre-Development Budget expense item to be reimbursed by the City. Prior to reimbursement, the Developer shall submit to the City invoices, supported by receipts, for approval by the City, which shall not be unreasonably withheld.

The terms, conditions and covenants contained in this Section 3.12 shall survive the expiration of the term of this Agreement.

**3.13 Insurance Requirements.** The Developer shall, during the construction period for the rehabilitation of the Improvements following the City's execution of this Agreement, defend, indemnify, assume all responsibility for, and hold the City, its officers, and employees, harmless from, all claims or suits for, and damages to without limitation) property and injuries to persons, including accidental death (including reasonable attorneys' fees and costs), which may be caused by any of Developer's activities under this Agreement whether such activities or performance thereof be by the Developer or anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. At all times during the Term of this Agreement that the Developer or its agents enter upon Site to conduct predevelopment activities of any nature and at all times after the "Conveyance" during the term of the "City Loan" the Developer shall take out and maintain a comprehensive liability policy in the amount of **One Million Dollars (\$1,000,000.00)** per occurrence/**Two Million Dollars (\$2,000,000.00)** aggregate, including contractual liability, as shall protect the Developer, City, and City officers, agents and employees from claims for such damages. The liability policy must be provided in a manner, and by an insurance company, approved by the City.

i. The Developer shall furnish (or cause to be furnished) a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form of the insurance carrier setting forth the general provisions of the insurance coverage. This countersigned certificate (and endorsement) shall name the City, its officers, agents, and employees as additional insured under the policy. Insurance coverage provided to the City as additional insured shall be primary insurance to the City, its, officers, employees, contractors, agents and authorized volunteers. The coverage shall contain no special limitations on the scope of protection afforded to the City, their directors, officers, employees, contractors, agents and authorized volunteers. Any insurance, self-insurance or other coverage maintained by the City, its officers, employees, contractors, agents and authorized volunteers, shall not contribute to the insurance provided pursuant to this Section.

ii. All insurance companies affording coverage to Developer pursuant to this Agreement shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

iii. The certificate by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify the City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by the Developer shall be primary insurance and not contributing with any insurance maintained by the City, its officers, agents and/or employees, and shall contain such provision in the policy(ies), certificate(s) and/or endorsement(s). The insurance policy or the certificate of insurance shall contain a waiver of subrogation for the benefit of the City. The required certificate shall be furnished by the Developer to the City prior to effective date of the "Conveyance".

iv. The Developer shall also furnish (or cause to be furnished) to the City evidence satisfactory to the City Attorney (or designee(s)) that the Developer, any contractor or subcontractor with whom it has contracted for the performance of work on the Site or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

v. The obligations set forth in this Section 3.13 shall remain in effect only until all of the Developer's construction and development activities as provided herein have been completed to the reasonable satisfaction of the City.

**3.14 Access Rights.** For the purposes of assuring compliance with this Agreement, representatives of the City shall have the right of access to all portions of the Site, without charges or fees, at normal construction hours during the period of construction (except in events of an emergency) for the purposes of this Agreement including (but not limited to) the inspection of the work being performed in constructing and rehabilitating the Improvements, so long as they comply with all safety rules. Such representatives shall be those who are so identified in writing by the City Manager (or designee(s)). With the exception of City building or engineering inspections, any such entries shall be made only after reasonable notice to Developer, and the City shall indemnify and hold the Developer harmless from any liens, claims or liabilities pertaining to such 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. After the issuance by the City of the "Certificate of Completion" (Attachment No. 6) (on the final phase of construction) for the Site, access to the Site by the City for purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Site shall be subject to reasonable restrictions and rights of tenants, and will be governed by easements, right-of-entry and other applicable instruments pertaining thereto, and applicable laws and regulations.

**3.15 Local, State and Federal Laws.** The Developer shall carry out the rehabilitation of the Improvements in conformity with all applicable laws; provided, however, that the Developer and its contractors, successors, assigns, transferees, and lessees are not waiving their rights to contest any such laws, rules or standards.

**3.16 Nondiscrimination During Construction.** The Developer covenants and agrees, for itself, its successors, assigns and any successors in interest to the Site, that it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, familial status, handicap, national origin, ancestry or any other prohibited classification established by federal or state law in connection with the construction of the Improvements or carrying out the Activity on the Site.

**3.17 Taxes and Assessments.** The Developer shall pay prior to delinquency all ad valorem real property taxes and assessments on the Site, subject to the Developer's right to contest in good faith any such taxes and the Developer's right to file exemption applications under Revenue and Taxation Code §214. The Developer shall remove or have removed any levy or attachment made on the Site (or any portion thereof), or assure the satisfaction thereof within a reasonable time.

**3.18 Encumbrances and Liens.** The Developer shall not place or allow to be placed on the Site (or any part thereof) any mortgage, trust deed, encumbrance or lien other than as allowed by this Agreement. The Developer shall remove (or have removed) any levy or attachment made on the Site (or any portion thereof), or assure the satisfaction thereof within a reasonable period of time.

**3.19 Mortgage, Deed of Trust, Sale and Lease-Back Financing; Rights of Holders.**

**3.19.1 No Encumbrances Except Mortgages, Deeds of Trust, etc.** Mortgages, deeds of trust, sales and lease-back are permitted before the completion of the construction and rehabilitation of the Improvements, but only for the purpose of securing loans of funds to be used for financing the development and construction of the Improvements on the Site.

**3.19.2 Holder Not Obligated to Construct.** The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the 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 "Regulatory Agreement" (Attachment no.5) for the Site be construed so as 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.

**3.19.3 Notice of Default to Mortgagee or Deed of Trust Holders: Right to Cure.** With respect to any mortgage or deed of trust granted by the Developer as provided herein, whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the Improvements, the City shall at the same time deliver to each holder of record of any mortgage or deed of trust, authorized by this Agreement, a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, within ninety (90) days after receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Written notice of such holder's intention to cure the Developer's default shall be deemed to be commencement of cure. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to the City. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Any

such holder properly completing such Improvements shall be entitled, upon compliance with the requirements of Section 3.20 hereof, to a "Certificate of Completion" (the form and substance of which is attached hereto as "Attachment No. 6" and incorporated herein by reference) as specified in Section 3.20 hereof.

**3.19.4 Failure of Holder to Complete Improvements.** In any case, where ninety (90) days after receipt by a holder of notice of default by the Developer in completion of the Improvements under this Agreement, the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site (or any portion thereof) has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, or to obtain after institution of foreclosure or trustee's sale proceedings, the City may purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid mortgage or deed of trust. If the ownership of the Site or any part thereof has vested in the holder, the City, if it so desires, shall be entitled to a conveyance from the holder to the City upon payment to the holder of an amount equal to the sum of the following:

- i. The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less any appropriate credits, including those resulting from collection and application of rents and other income received during foreclosure proceedings);
- ii. All expenses with respect to foreclosure;
- iii. The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or part hereof;
- iv. The costs of any improvements made by such holder; and
- v. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City; less
- vi. Any income derived by the lender from operations conducted on the Site (the receipt of principal and interest payments in the ordinary course of business shall not constitute income for the purposes of this subsection (vi)).

**3.19.5 Right of City to Cure Mortgage or Deed of Trust Default.** In the event of an equity financing and tax credit syndication required by project, and/or mortgage or deed of trust default or breach by the Developer prior to the completion of the construction of the Improvements on the Site and the holder of any mortgage or deed of trust has not exercised its option to construct, the City may cure the default. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing such default. The City shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subordinate to the construction financing mortgages or deeds of trust.

**3.19.6 Right of the City to Satisfy Other Liens on the Site After Effective Date After Title Passes.** After the effective date of the "Conveyance" and prior to the completion of construction, and after the Developer has had written notice and has failed after a reasonable time (but in any event not less than thirty (30) days) to challenge, cure, adequately bond against, or satisfy any liens or encumbrances on the Site which are not otherwise permitted under this Agreement, the City shall have the right (but not the obligation) to satisfy any such liens or encumbrances. In such event, the City shall be entitled to reimbursement from the Developer (as additional rents) of all costs and expenses incurred by the City in satisfying such liens or encumbrances.

**3.20 Certificate of Completion.** After completion of all construction and redevelopment required to be undertaken by the Developer upon the Site in conformity with this Agreement and all applicable federal, state and local regulatory requirements, the City shall furnish the Developer with a "Certificate of Completion" (Attachment No. 6) within thirty (30) days of written request therefor by the Developer. The "Certificate of Completion" (Attachment No. 6) shall be a conclusive determination of satisfactory completion of the rehabilitation of the Improvements upon the Site and the "Certificate of Completion" (Attachment No. 6) shall so state. The "Certificate of Completion" (Attachment No. 6) shall be in such a form as to permit it to be recorded in the Office of the County Recorder of San Diego County.

i. The "Certificate of Completion" (Attachment No. 6) shall be, and shall so state, a conclusive determination of satisfactory completion of the Developer's rehabilitation obligations under this Agreement, and of full compliance with the terms of this Agreement, relating to construction of the Improvements on the Site. After the date the Developer is entitled to the issuance of the "Certificate of Completion" (Attachment No. 6), and notwithstanding any other provisions of this Agreement to the contrary, any party then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by the covenants regarding the use and maintenance of the Site set forth below in Section 4.1 and 4.2, and the covenants regarding nondiscrimination set forth in Sections 4.3 and 4.4.

ii. If the City refuses or fails to furnish the "Certificate of Completion" (Attachment No. 6) after written request from the Developer, the City shall, within thirty (30) days after such written request, provide the Developer with a written statement of the reason the City refused or failed to furnish the "Certificate of Completion" (Attachment No. 6). The statement shall also contain the City's opinion of the action(s) the Developer must take to obtain the "Certificate of Completion" (Attachment No. 6); if the City shall have failed to provide such written statement within said thirty (30) day period, the Developer shall notify the City in writing that if such written statement is not received within thirty (30) days that the Developer shall be deemed entitled to the "Certificate of Completion" (Attachment No. 6). If the reason for such refusal is confirmed to such factors as the non-completion of final "punch list" items or the unavailability of specific items or materials for landscaping, then the City will issue its "Certificate of Completion" (Attachment No. 6) upon the Developer's posting with the City of a cash deposit or other security in an amount representing the fair value of the work not yet completed.

iii. The "Certificate of Completion" (Attachment No. 6) shall not constitute evidence of completion with or satisfaction of any obligation of the Developer to any

holder of a mortgage or any insurer of a mortgage on or with respect to the Site. The "Certificate of Completion" (Attachment No. 6) is not a notice of completion as referred to in the California Civil Code Section 3093.

#### **4.0 USE OF THE SITE**

**4.1 Limitations on Site Use.** The Developer understands and agrees that the use of the Site and Improvements thereon is limited to only those uses specified in the City's Municipal Code, Zoning Ordinance, and as set forth in this Agreement and the "Regulatory Agreement" (Attachment No. 5).

**4.2 Maintenance of the Site.** The Developer agrees, for itself, its successors and assigns, to maintain the Site and the Improvements and landscaping thereon in good condition and repair consistent with community standards and in compliance with the terms of all applicable provisions of the City Municipal Code and Zoning Ordinance.

**4.3 Obligation to Refrain from Discrimination.** The Developer covenants and agrees, for itself, its successors and assigns, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability, sexual orientation or any other protected classification established by federal or state law 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 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, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

**4.4 Nondiscrimination Covenant.** The Developer, its successors and assigns, and any other person claiming under or through them, shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability, sexual orientation or any other protected classification established by federal or state law. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

i. 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 race, color, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the real property 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 real property herein conveyed. The foregoing covenants shall run with the land."

ii. 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, marital 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 of the premises herein leased."

iii. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the contractor 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 real property."

**4.5 Effect of Duration of Covenants.** The covenants established in Section 4.0 of this Agreement shall, without regard to technical classification and designation, be binding on the Developer and any successors in interest to the Site for the benefit and in favor of the City, its successors and assigns, and shall, with respect to the rehabilitation of the Improvements, remain in effect until the recording of the "Certificate of Completion" (Attachment No. 6) for the Site as provided for in Section 3.20 of this Agreement. Such covenants upon the Developer and/or the Site as are to survive the issuance of the "Certificate of Completion" (Attachment No. 6) shall be contained in the "Regulatory Agreement" (Attachment No. 5) and any other such instruments executed and/or recorded pursuant to this Agreement, and shall remain in effect for the periods specified therein.

## **5.0 DEFAULTS AND REMEDIES**

**5.1 Defaults – General.** Subject to the extensions of time set forth in Section 6.3 of this Agreement, failure or delay by any 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 diligence.

i. 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, the injured party may not institute proceedings against the party in Default until thirty (30) days after giving such notice, however, if the defaulting party has commenced a cure and a cure is not reasonably possible within thirty (30) days, the injured party shall not commence a proceeding so long as the defaulting party is reasonably pursuing a cure. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default.

## **5.2 Legal Actions.**

**5.2.1 Institution of Legal Actions.** In addition to any other rights or remedies and subject to the restrictions in Section 5.1 of this Agreement, 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 Agreement. Such legal

actions must be instituted in the Superior Court of San Diego County, North County Branch, State of California.

**5.2.2 Acceptance of Service Process.**

i. In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon either the City Clerk, at the address stated in Section 1.6 herein, or in such other manner as may be provided by law.

ii. In the event that any legal action is commenced by the City against the Developer, service on the Developer shall be made by personal service upon the Executive Director of the Developer, at the address stated in Section 1.6 herein, or in such other manner as may be provided by law.

**5.3 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.

**5.4 Inaction Not a Waiver of Default.** Any failures or delays by a 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 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.

**5.5 Remedies and Rights of Termination Prior to Assignment.**

**5.5.1 Damages.** If the Developer or the City defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such Default upon the defaulting party. If the Default is not cured by the defaulting party within the time period set forth above in Section 5.1, the defaulting party shall be liable to the other party for any damages caused by such Default, and the non-defaulting party may thereafter commence an action for damages against the defaulting party with respect to such Default.

**5.5.2 Action for Specific Performance.** If either the Developer or the City defaults with regard to any of the provisions of this Agreement, the non-defaulting 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 the time period set forth in Section 5.1, the non-defaulting party at its option may thereafter commence an action for specific performance of the terms of this Agreement pertaining to such Default

**5.5.3 Termination by the City.** In the event that the City is not in Default under this Agreement and prior to the effective date of the "Assignment":

i. If the Developer (or any successor in interest) assigns this Agreement or any rights therein or in the Site in violation of Section 1.7 of this Agreement; or

ii. If the Developer is in Default hereunder and any such Default is not commenced to be cured within the time period set forth above in Section 5.1, then this Agreement shall, at the option of the City, exercisable by delivery of written notice to the Developer, be terminated by the City. In the event of a termination for any such cause, neither party shall have any further rights or obligations hereunder except in the case of the Developer's Default hereunder, in which event the City may seek monetary damages or specific performance of the Developer's obligation.

**5.5.4 Termination by the Developer.** In the event that the Developer is not in Default under this Agreement and prior to the effective date of the "Assignment" if the City is in Default hereunder and such Default is not commenced to be cured within the time period set forth above in Section 5.1, then this Agreement shall, at the option of the Developer, exercisable by delivery of written notice to the City, be terminated by the Developer. In the event of a termination for any such cause, neither party shall have any further rights or obligations hereunder except in the case of the City's Default hereunder, in which event the Developer may seek specific performance of the City's obligation; provided that the Developer shall have the right to seek damages, if and only if specific performance is not adequate to make the Developer whole.

## **5.6 Remedies for Default After Effective Date of Assignment.**

**5.6.1 Damages.** After the effective date of the "Assignment", if either the Developer or the City defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such Default upon the defaulting party. If the Default is not cured by the defaulting party within the time period set forth above in Section 5.1, the defaulting party shall be liable to the other party for any damages caused by such Default.

**5.6.2 Action for Specific Performance.** After the effective date of the "Assignment", if either the Developer or the City defaults with regard to any of the provisions of this Agreement, the non-defaulting 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 the time period set forth above in Section 5.1, the non-defaulting party at its option may institute an action for specific performance of the terms of this Agreement.

## **6.0 GENERAL PROVISIONS**

**6.1 Notices, Demands and Communications Among the Parties.** Written notices, demands and communications between the City and the Developer shall be sufficiently given if delivered by hand (and a receipt thereof is obtained or is refused to be given), by facsimile if confirmed by same day mailing of the hard copy thereof via first class mail, postage prepaid, use of overnight commercial carriers (with receipt thereof obtained), or dispatched by certified mail, postage prepaid, return receipt requested, to the principal offices of the City and the Developer as designated herein below. 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 as provided in this Section 6.1.

If to City:

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

With Copy to:

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

If to Developer

Country Club Apartments, L.P.  
c/o Wakeland Housing and Development Corp.  
1230 Columbia Street, Suite 950  
San Diego, CA 92101

With Copy to:

i. Any written notice, demand or communication shall be deemed received immediately if delivered by hand or by facsimile if sent during normal working hours of the receiving party; shall be deemed delivered on the day of delivery if by overnight commercial carrier; and shall be deemed received on the third (3<sup>rd</sup>) day from the date it is postmarked if delivered by certified mail.

**6.2 Conflicts of Interest.** No member, official or employee of the City shall have any material personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee of City participate in any decision relating to this Agreement which affects his material personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. Conflicts under this Section 6.2 shall be defined in terms consistent with the Political Reform Act as interpreted by the Fair Political Practices Commission.

**6.3 Enforced Delay; Extensions of Times of Performance.** In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of Nature; acts of public enemy; acts of terrorism; epidemics; quarantine restrictions; freight embargos; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary financing, labor, material or tools; delays of a contractor, subcontractor or supplier; acts or omissions of the other party; acts or failures to act of any other public or governmental commission, board, agency or entity (other than the acts or failures to act of the City which shall not excuse performance by the City); or any other cause(s) beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the Developer and the City Manager (or designee(s)).

**6.4 Nonliability of Officials of the City and the Developer.** No member, official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the City, for any amount which may become due to the Developer or its successors, or in any obligations under the terms of this Agreement.

i. No member, official or employee of the Developer shall be personally liable to the City, or any successor in interest, in the event of any Default or breach by the Developer, for any amount which may become due to the City or its successors, or in any obligations under the terms of this Agreement.

**6.5 Relationship between the City and the Developer.** It is hereby acknowledged that the relationship between the City and the Developer is not that of a partnership or joint venture and that the City and the Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Improvements.

**6.6 City's Authority.** The City represents and warrants that: (i) it is a municipal corporation duly organized and existing under the laws of the State of California; (ii) by proper action of the Oceanside City Council, the City has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; (iii) all documents delivered by the City to the Developer, now or at a later date, have been or will be duly authorized, executed, and delivered by the City; and (iv) to the best of the City's knowledge, there is no claim, suit, demand, litigation or administrative proceeding threatened or pending as of the Effective Date of this Agreement with respects to or in connection with this Agreement.

**6.7 Developer's Authority.** The Developer represents and warrants that: (i) the general partner of the Developer is a California non-profit public benefit corporation duly organized and existing under the laws of the State of California; (ii) by proper action of its board of directors, the general partner of the Developer has been duly authorized to execute and deliver this Agreement on behalf of the Developer; (iii) all documents delivered by the Developer to the City, now or at a later date, have been or will be duly authorized, executed, and delivered by the Developer; and (iv) to the best of the Developer's knowledge, there is no claim, suit, demand, litigation or administrative proceeding threatened or pending as of the Effective Date of this Agreement with respect to or in connection with this Agreement.

**6.8 Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties; provided, however, that this Section 6.8 is subject to and does not waive the provisions of Section 1.7 of this Agreement.

**6.9 Applicable Law; Interpretation.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and as though both of the parties participated equally in its drafting. Captions and organizations are for convenience only and shall not be used in construing meaning.

**6.10 Inspection of Books and Records; Reports.** The City (or its designee) has the right 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 City's inspection of said books and records of the Developer shall be at a location reasonably agreed upon by the City and the Developer. The Developer also has the right at all reasonable times upon reasonable advance notice (during normal business hours) to inspect the books and records of the City pertaining to the Site as pertinent to the purposes of this Agreement. The Developer's inspection of said books and records of the City shall be at the offices of the City as designated in Section 1.6 of this Agreement.

**6.11 Approvals.** Approvals required of the parties shall be given within the time set forth in the "Schedule of Performance" (Attachment No. 3) or, if no time is given, within a reasonable time. Any such approvals by any of the parties hereto shall not be unreasonably withheld, delayed or conditioned.

**6.12 Real Estate Commissions.** The City and Developer each represent to the other party that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, brokers' fees, or finder's fees which may accrue by means of the Developer's leasing the Site from City, and agrees to hold harmless the other party from such commissions or fees as are alleged to be due from the party making such representations.

**6.13 Administration.** This Agreement shall be administered by the City Manager (or designee(s)) following approval of this Agreement by the Oceanside City Council. The City shall maintain authority of this Agreement through the City Manager (or authorized representative(s)). The City Manager shall have the authority to sign all documents, issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not substantially change the uses or development permitted on the Site, or add to the costs of the City as specified herein or as agreed to by the City Council, and such amendments may include extensions of time specified in the "Schedule of Performance" (Attachment No. 3). All other waivers or amendments shall require the written consent of the City Council.

**6.14 Mutual Cooperation.** The parties acknowledge that it is their mutual best interest that approvals for the Improvements be processed in a timely and expeditious manner. Therefore, the parties agree to use good faith efforts to expedite all actions to be undertaken pursuant to this Agreement so that actions may be completed as soon as reasonably possible. The City shall assign a staff member to work cooperatively with the Developer and the City's Planning, Building and Public Works departments to assist the Developer in obtaining expeditious review and approval of the Working Drawings, plans, drawings and related documents submitted to the City. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement. In addition, (i) at the request of the "holder" (as described in Section 3.19 hereof), the City agrees to execute an agreement (or agreements) subordinating this Agreement to the lien or security interest in the Site created for the purposes set forth in Section 3.19.1 and/or item "(iii)" to Section 1.7.2 hereof; and (ii) in the event that the Developer proposes subsequent development projects in the City of Oceanside, the City agrees to consider entering into future agreements with the Developer as to those projects.

**6.15 No Third Party Beneficiaries.** The parties agree that this Agreement is made solely for the benefit of the City and the Developer, and no third person or entity shall be deemed to have any rights or remedies hereunder, except that the holder of a mortgage or deed of trust permitted by this Agreement shall have the rights and obligations specified herein for such holder.

**6.16 Memorandum of Agreement.** As of the Effective Date of the "Conveyance", the parties agree to execute, acknowledge and cause to be recorded in the official records of San Diego County, California, a "Memorandum of Agreement" substantially in the form of "Attachment No. 7", which is attached hereto and incorporated herein by reference.

**6.17 Bankruptcy.** Subject to any restrictions or limitations placed on the City by applicable laws governing bankruptcy, Developer's (i) application for, consent to or suffering of

the appointment of a receiver, trustee or liquidator for all or for a substantial portion of its assets; (ii) making a general assignment for the benefit of creditors; (iii) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (iv) becoming unable to or failing to pay its debts as they mature; (v) being adjudged a bankrupt; (vi) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); (vii) convening a meeting of its creditors or any class thereof for purposes of effecting a moratorium, extension or composition of its debts; or (viii) suffering or permitting to continue unstayed and in effect for thirty (30) consecutive days any attachment, levy, execution or seizure of all or a portion of Developer's assets or of Developer's interest in this Agreement; then such event shall constitute an event of default under this Agreement.

**6.18 Binding Effect.** This 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.

## **7.0 ENTIRE AGREEMENT; WAIVERS**

**7.1 Execution of Agreement.** This Agreement is executed in two (2) duplicate copies, each of which is deemed to be an original. This Agreement includes pages 1 through 28, and Attachment 1 through Attachment 11, which constitutes the entire understanding and agreement of the parties.

**7.2 Whole Agreement.** This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or all part of the subject matter hereof.

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

**7.4 Agreement Modification.** This Agreement shall not be altered, amended or modified except in writing and mutually executed between the parties.

**7.5 Section Headings.** The Table of Contents and the section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

**7.6 Gender/Singular/Plural.** All personal pronouns used in this 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 this Agreement itself.

**7.7 Advice of Legal Counsel.** The parties have had the opportunity to seek the advice of independent legal counsel prior to executing this Agreement. The parties acknowledge that no party, agent or attorney of any party has made a promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter of this Agreement to induce the other party to execute this Agreement. Each party acknowledges that it has not executed this Agreement in reliance upon any promise, representation or warranty not contained herein.

**7.8 Signatories.** Each individual signing below represents and warrants that he/she has the authority to execute this Agreement on behalf of and bind the party he/she purports to represent.

IN WITNESS WHEREOF, the City and the Developer have signed this Agreement on the respective dates set forth below.

“City”  
**CITY OF OCEANSIDE**, a municipal corporation

By: \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

APPROVED AS TO FORM:  
CITY ATTORNEY’S OFFICE

By: *Robert J. Hamilton, ASST.*  
City Attorney

“Developer”  
**Country Club Apartments, L.P.**, a California limited partnership

By: Wakeland Country Club Apartments, LLC, a California limited liability company, its Managing General Partner

By: Wakeland Housing and Development Corporation, a California non-profit public benefit corporation

By: *Kenneth L. Sauder*  
Kenneth L. Sauder,  
President and CEO

Dated: 11-20-07

**(Developer’s Signature Must Be Acknowledged)**  
**[Notary Use California All-Purpose Acknowledgement]**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

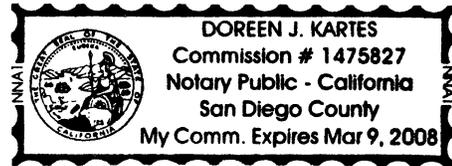
State of California )  
County of San Diego )<sup>SS.</sup>

On November 20, 2007 before me, Doreen J. Kartes, Notary Public,  
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Kenneth L. Sauder,  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal.

Doreen J. Kartes  
Signature of Notary Public

**OPTIONAL**

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

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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

**ATTACHMENT NO.1**

**Legal Description of the Site**

All that certain real property situated in the County of San Diego, State of California, described as follows:

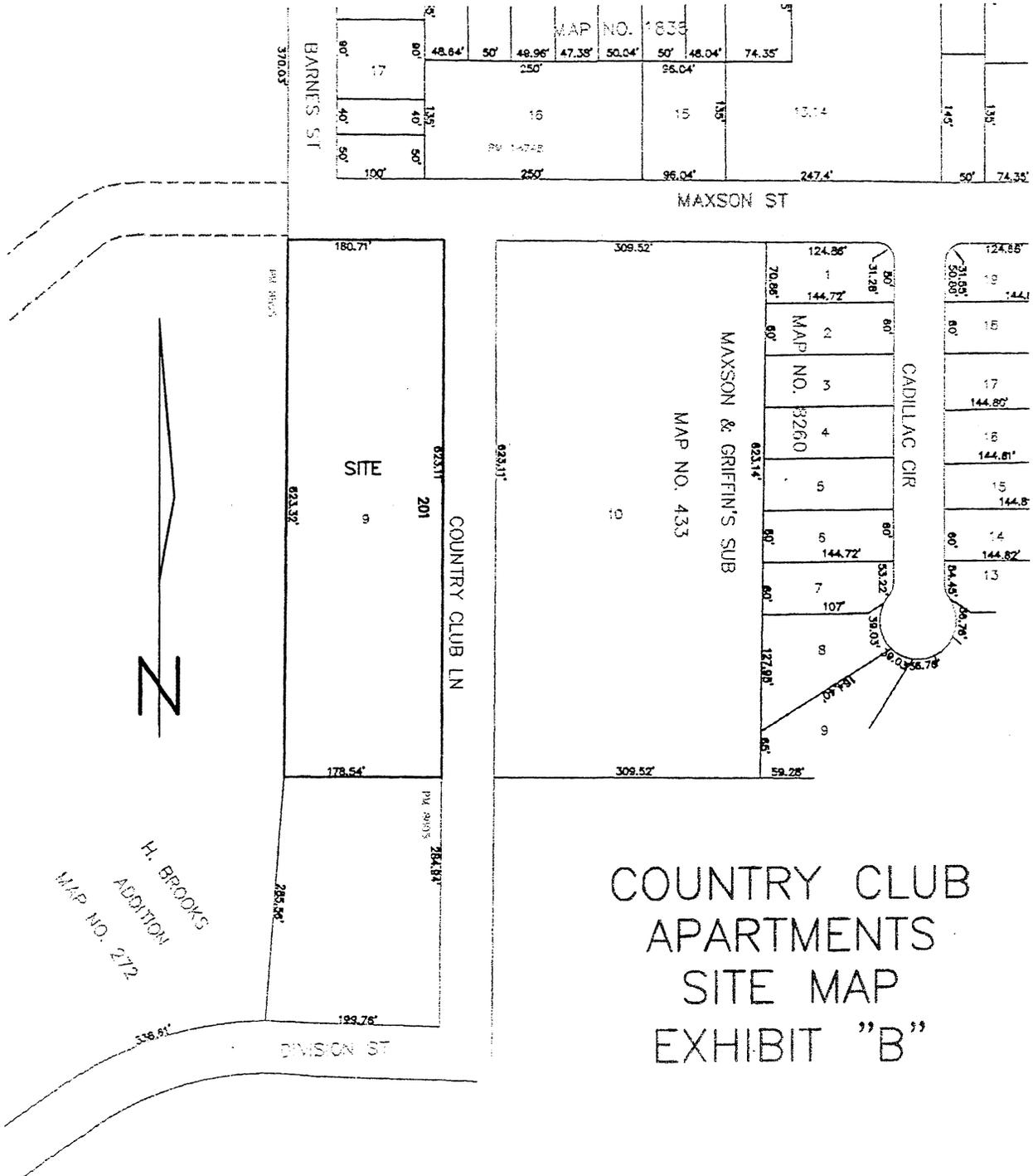
Tract 9 of Maxson and Griffin's Subdivision, in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 433, filed in the Office of the County Recorder of San Diego County, December 29, 1887.

Assessor's Parcel Number: **148-291-03**

**ATTACHMENT NO. 2**

**Site Map**

[On Following Page]



For Illustrative Purposes Only  
 Not To Be Considered A Survey  
 Compiled From Record Data

**ATTACHMENT NO. 3**

**Schedule of Performance**  
[On Following Pages]

**ATTACHMENT NO. 3**  
**SCHEDULE OF PERFORMANCE**  
**Country Club Apartments**

- **City Approval of City Loan & Purchase Assignment** **Dec. 19, 2007**
- **CDLAC Application** **Jan., 2008**
- **CTCAC Application** **Feb.**
- **CDLAC Allocation** **March**
- **CTCAC Allocation** **April**
- **Update PNA** **April**
- **GC Contract** **May**
- **Land Purchase** **May**
- **Close All Financing** **May**
- **Begin Construction** **June**
- **Complete Construction** **March, 2009**
- **Loan Conversion** **May**

**ATTACHMENT NO. 4**

**Scope of Work**  
[On Following Pages]

# PHYSICAL NEEDS

## ASSESSMENT

### WAKELAND HOUSING AND DEVELOPMENT CORPORATION

625 Broadway, Suite 1000  
San Diego, California 92101  
Mr. Barry Getzel



### PHYSICAL NEEDS ASSESSMENT

of

### COUNTRY CLUB APARTMENTS

201 Country Club Lane  
Oceanside, California 92054

#### PREPARED BY:

**EMG**  
11011 McCormick Road  
Hunt Valley, Maryland 21031  
800.733.0660  
410.785.6220 (fax)  
[www.emgcorp.com](http://www.emgcorp.com)

#### REVIEWED BY:

**Melvin Cauthen**  
Senior Engineering Consultant  
800.733.0660, x6513  
[mjcauthen@emgcorp.com](mailto:mjcauthen@emgcorp.com)

**EMG Project #:** 82100.07R-001.214  
**Date of Report:** May 29, 2007  
**On site Date:** April 4-6, 2007

## Project at a Glance

Country Club Apartments  
 Oceanside, California 92054  
 Date of site visit: April 4-6, 2007  
 EMG Project No. 82100.07R-001.214

Building Type : Family Development  
 Apartments : 91 Units  
 Property Age : 33 Years

Physical Condition Summary	Good	Fair	Poor	Action	Immediate	Physical Needs
					Physical Needs	Over the Term
<b>Code Compliance and Accessibility</b>						
3.1 Building, Zoning, and Fire Code Compliance	✓			None Required	\$0	\$0
3.2 ADA Compliance		✓		See Section 3.2	\$104,585	\$0
3.3 Mold		✓	✓	See Mold Report	\$0	\$0
3.4 Follow-Up Recommendations		✓		See Section 1.2	\$40,000	\$0
<b>Site Improvements</b>						
5.1 Utilities	✓				\$0	\$0
5.2 Parking, Paving and Sidewalks	✓	✓		Repair, seal	\$229,000	\$4,200
5.3 Storm Sewer, Drainage Systems & Erosion Control		✓		Repair	\$172,500	\$0
5.4 Landscaping and Topography		✓		Repair/replace	\$90,000	\$0
5.5 General Site Improvements		✓		Replace	\$200,500	\$4,000
<b>Building Architectural &amp; Structural Systems</b>						
6.1 Foundations	✓			Repair	\$5,000	\$0
6.2 Superstructure and Floors	✓	✓		Repair	\$627,000	\$0
6.3 Roofing		✓	✓	Replace	\$344,250	\$0
	FRT plywood No FRT plywood present.					
6.4 Exterior Walls		✓	✓	Repair, paint	\$399,000	\$95,550
6.5 Exterior and Interior Stairs		✓		Refinish	\$35,000	\$0
6.6 Exterior Windows and Doors		✓		Replace, refinish	\$277,800	\$114,000
6.7 Patio, Terrace and Balcony		✓	✓	Repair	\$100,250	\$0
6.8 Common Areas, Entrances and Corridors		✓		Refinish	\$145,500	\$13,600
<b>Building Mechanical, Electrical and Plumbing Systems</b>						
7.1 Building HVAC				Not Applicable	\$0	\$0
7.2 Building Plumbing and Domestic Hot Water	✓	✓		Replace	\$589,500	\$10,000
	Polybutylene piping No polybutylene piping present.					
7.3 Building Gas Distribution	✓				\$0	\$0
7.4 Building Electrical	✓			Repair	\$27,750	\$0
7.5 Building Elevators and Conveying Systems				Not Applicable	\$0	\$0
7.6 Fire Protection	✓		✓	Replace	\$20,925	\$0
<b>Interiors</b>						
8.1 Interior Finishes	✓	✓	✓	Refinish	\$751,205	\$168,350
8.2 Kitchen Appliances	✓	✓	✓	Replace	\$373,100	\$163,800
8.3 HVAC		✓		Replace	\$122,850	\$0
8.4 Plumbing		✓	✓	Replace	\$227,500	\$0
8.5 Electrical	✓	✓	✓	Replace	\$95,550	\$0
	Aluminum wiring in unit's branch circuits No aluminum wiring present.					
	Units Ampacity EMG found min. 100-Amps to each unit					
	Panel boxes EMG found circuit breakers.					
<b>Other Structures</b>						
9.0 Caport		✓		Reroof, paint	\$25,000	\$0
<b>Totals</b>					<b>\$5,003,765</b>	<b>\$573,500</b>

Holdback and Reserve Summary	Today's Dollars	\$/Unit	Escalated
Immediate Physical Needs	\$5,003,765	\$54,986	\$168,350
Physical Needs Over the Term	\$573,500	\$6,302	\$367

Conditions noted in the Project At a Glance Table are representative of the overall conditions of the property. There may be more detail on specific assessment components in the Report text, therefore the Project At a Glance Table should not be used as a stand alone document

## Immediate Physical Needs

<b>Property Name:</b> Country Club Apartments	<b>Number of Units:</b> 91
<b>Location:</b> Oceanside, California 92054	<b>Number Buildings:</b> 1
<b>EMG Project No.:</b> 82100.07R-001.214	<b>Reserve Term:</b> 20 years
	<b>Property Age:</b> 33 years

Sec	Component or System	Action / Comment	Quantity	Unit	Cost	Total \$
3.2	ADA compliance items	See Section 3.2 of Report	1	LS	\$104,585.00	\$104,585
3.4	Civil Engineer, on-site review & report	Perform follow-up study	1	LS	\$28,000.00	\$28,000
3.4	Structural Engineer, review & report	Perform follow-up study	1	LS	\$6,000.00	\$6,000
3.4	Termite Inspection	Perform follow-up study	1	LS	\$6,000.00	\$6,000
5.2	Roadways & parking	Expand parking lot	1	LS	\$35,000.00	\$35,000
5.2	Roadways & parking, full depth repair	Cut out, patch and overlay	30,000	SF	\$5.25	\$157,500
5.2	Roadways & parking, seal coat asphalt	Seal and fill cracks	1	LS	\$9,500.00	\$9,500
5.2	Roadways & parking, concrete swale	Repair	500	SF	\$50.00	\$25,000
5.2	Pedestrian concrete paving	Repair damaged areas	500	SF	\$6.00	\$3,000
5.3	Storm drain lines	Hydro jet lines	1	LS	\$2,500.00	\$2,500
5.3	Storm drainage	Improve drainage	1	LS	\$170,000.00	\$170,000
5.4	Landscaping	Remove	1	LS	\$75,000.00	\$75,000
5.4	Irrigation system	Replace	1	LS	\$15,000.00	\$15,000
5.5	Carport mounted exterior lighting	Add lighting	10	EA	\$15,000.00	\$150,000
5.5	CMU wall	Increase height	1	LS	\$15,000.00	\$15,000
5.5	Dumpster enclosures	Install gates	3	EA	\$3,500.00	\$10,500
5.6	Security	Access upgrades and cameras	1	LS	\$25,000.00	\$25,000
6.1	Foundation slab	Repair/patch	1	LS	\$5,000.00	\$5,000
6.2	Columns and beams	Column repair and subfloor repair	1	LS	\$35,000.00	\$35,000
6.2	Superstructure	General Contractor Fee and General Condition	1	LS	\$592,000.00	\$592,000
6.3	Roof covering, membrane	Replace roofs as necessary to restore proper function.	375	SQ	\$550.00	\$206,250
6.3	Roof covering, asphalt shingle	Replace roofs as necessary to restore proper function.	25	SQ	\$200.00	\$5,000
6.3	Roof covering, flashing	Repair	4,500	LF	\$4.00	\$18,000
6.3	Roof structure	Repair/replace	1	LS	\$60,000.00	\$60,000
6.3	Roof structure	Repair parapet walls	1	LS	\$30,000.00	\$30,000
6.3	Roof drainage, exterior (gutter & fascia)	New gutters	1,000	LF	\$25.00	\$25,000
6.4	Exterior walls, stucco	Repair/Replace damaged sections as needed.	3,500	SF	\$50.00	\$175,000
6.4	Exterior walls, stucco	Repair/replace damaged stucco	30,000	SF	\$6.00	\$180,000
6.4	Garage ceilings	Repair and Paint	14,000	SF	\$1.00	\$14,000
6.4	Exterior walls, wood trim	Repair and paint	2,000	LF	\$2.50	\$5,000
6.4	Exterior walls,	Allowance for termite repairs	1	LS	\$25,000.00	\$25,000
6.5	Exterior stairs, steel and concrete	Repair or replace	50	EA	\$700.00	\$35,000
6.6	Exterior Unit Doors	Refinish and repair	91	LS	\$300.00	\$27,300
6.6	Windows (frames and glazing)	Replace	91	EA	\$1,500.00	\$136,500
6.6	Residential Glass Doors, Sliding	Replace	95	EA	\$1,200.00	\$114,000
6.7	Patio enclosure fence, replace	Replace	46	EA	\$500.00	\$23,000
6.7	Wood-framed balconies, repair	Replace	23	EA	\$1,250.00	\$28,125
6.7	Wood-framed access corridors	Paint	6	EA	\$3,500.00	\$21,000
6.7	Guardrails, stucco clad wood	Replace	23	EA	\$1,250.00	\$28,125
6.8	Common Areas, Entrances and corridors	Renovate interior finishes	1	LS	\$145,500.00	\$145,500
7.2	Hot and cold water distribution	Replace	91	EA	\$4,500.00	\$409,500
7.2	DHW heaters, <150 gal.	Replace	4	EA	\$2,500.00	\$10,000
7.2	Storage tanks	Replace	20	EA	\$1,000.00	\$20,000
7.2	Solar System	Repair/replace	1	LS	\$150,000.00	\$150,000
7.4	Building lighting	Add corridor lighting	1	LS	\$5,000.00	\$5,000
7.4	Master TV system	Install cable TV	91	EA	\$250.00	\$22,750
7.6	Pull Stations and Emergency exit lights	Upgrade pull stations and exit lights	1	LS	\$5,000.00	\$5,000
7.6	Smoke & fire detection system	Replace	91	EA	\$175.00	\$15,925
8.1	Living areas	Replace interior finishes, doors, damaged drywall and paint. Includes Asbestos and Mold remediation.	91	EA	\$8,255.00	\$751,205
8.2	Refrigerator	Replace	91	EA	\$450.00	\$40,950
8.2	Dishwasher	Replace	91	EA	\$300.00	\$27,300
8.2	Kitchen cabinets	Replace	91	EA	\$2,950.00	\$268,450
8.2	Range	Replace	91	EA	\$400.00	\$36,400
8.3	Electric radiant heating	Replace with wall heater	91	EA	\$1,200.00	\$109,200
8.3	Unit fans	Replace	91	EA	\$150.00	\$13,650
8.4	Bath Fixtures (Sink, toilet, tub)	Replace	91	EA	\$2,250.00	\$204,750
8.4	Vanities	Replace	91	EA	\$250.00	\$22,750
8.5	Electrical devices: switches & outlets	Install GFCI	91	EA	\$300.00	\$27,300
8.5	Electric fixtures	Replace lighting	91	EA	\$750.00	\$68,250
9.0	Carports	Reroof, paint	1	LS	\$25,000.00	\$25,000

Conditions noted in the Immediate Physical Needs are representative of the overall conditions of the property. There may be more detail on specific assessment components in the Report text, therefore the Immediate Physical Needs should not be used as a stand alone document.

<b>Total Immediate Repairs</b>	<b>\$5,003,765</b>
<b>Cost per Dwelling Unit</b>	<b>\$54,988</b>



**Site Elements Systems and Conditions**

Country Club Apartments  
 Oceanside, California 92054  
 Date of Site Visit: April 4-6, 2007  
 EMG Project No. 62100.07R-001.214

Number of Units: 91  
 Number Buildings: 1  
 Reserve Term: 20 years  
 Property Age: 33 years

	P	NA	NA	NA		See Section 3.2 of Report	1	LS	I
<b>ADA compliance items</b>									
<b>SITING/WORK</b>									
Site electric main	G	40	33	7	4				
Site gas main	G	40	33	7	1				
Gas distribution lines	G	40	33	7	1				
Roadways & parking	F	25	24	1		Expand parking lot	1	LS	I
Roadways & parking, full depth repair	F	25	24	1		Cut out patch and overlay	30,000	SF	I
Roadways & parking, seal coat asphalt	P	5	5	0		Seal and fill cracks	1	LS	I
Roadways & parking, seal coat asphalt	G	5	0	5		Seal and fill cracks	42,000	SF	R
Roadways & parking, concrete swale	F	30	29	1		Repair	500	SF	I
Pedestrian concrete paving	F	30	29	1		Repair damaged areas	500	SF	I
Catch Basin	F	40	38	1	3				
Storm drain lines	P	50	33	17		Hydro jet lines	1	LS	I
Site water main	G	40	33	7	1				
Site sewer main	F	50	33	17	1				
Landscaping	F	50	49	1		Remove	1	LS	I
Irrigation system	F	30	29	1		Replace	1	LS	I
Signage	F	10	8	2		Replace	2	LS	R
Carport mounted exterior lighting	F	6	5	1		Add lighting	10	EA	I
Building mounted exterior lighting	F	6	4	2	3				
CMU wall	F	30	28	1		Increase height	1	LS	I
Dumpsters	G	10	5	5	4				
Dumpster enclosures	F	10	9	1		Install gates	3	EA	I
Security	F	20	19	1		Access upgrades and cameras	1	LS	I
<b>BUILDING EXTERIOR</b>									
Columns and beams	P	50	48	1		Column repair and subfloor repair	1	LS	I
Superstructure	F	50	48	1		General Contractor Fee and General Condition	1	LS	I
Roof covering, membrane	P	20	19	1		Replace roofs as necessary to restore proper function.	375	SQ	I
Roof covering, asphalt shingle	F	20	19	1		Replace roofs as necessary to restore proper function.	25	SQ	I
Roof covering, flashing	F	20	19	1		Repair	4,500	LF	I
Roof structure	F	50	49	1		Repair/replace	1	LS	I
Roof structure	F	20	19	1		Repair parapet walls	1	LS	I
Roof drainage, exterior (gutter & fascia)	F	25	24	1		New gutters	1,000	LF	I
Access hatch, replace	G	30	15	15	2				
Exterior walls, stucco	P	30	29	1		Repair/Replace damaged sections as needed.	3,500	SF	I
Exterior walls, stucco	F	5	4	1		Repair/replace damaged stucco	30,000	SF	I
Exterior walls, stucco	G	5	0	5		Prep and paint or stain, per unit	273	SF	R
Garage ceilings	F	30	29	1		Repair and Paint	14,000	SF	I
Exterior walls, wood trim	F	5	4	1		Repair and paint	2,000	LF	I
Exterior walls	F	40	39	1		Allowance for termite repairs	1	LS	I
Exterior stairs, steel and concrete	F	50	49	1		Repair or replace	50	EA	I
Exterior Unit Doors	F	25	24	1		Refinish and repair	91	LS	I
Windows (frames and glazing)	F	30	29	1		Replace	91	EA	I
Residential Glass Doors, Sliding	F	15	14	1		Replace	95	EA	I
Residential Glass Doors, Sliding	G	15	0	15		Replace	95	EA	R
Concrete patio slabs	G	50	33	17	1				
Patio enclosure fence, replace	F	30	29	1		Replace	46	EA	I
Wood-framed balconies, repair	F	20	19	1		Replace	23	EA	I
Wood-framed access corridors	F	5	5	0		Paint	6	EA	I
Guardrails, stucco clad wood	F	20	19	1		Replace	23	EA	I
Common floors, concrete	G	50	33	17	1				
Common Areas, Entrances and corridors	F	7	7	0		Renovate interior finishes	1	LS	I
Common floors, carpet	G	7	0	7		Replace	2	LS	R
Common area walls, paint	G	5	0	5		Paint	3	SF	R
Laundry room washer and dryer	G	15	9	6		Replace	16	EA	R
Laundry room washer and dryer	G	15	9	6					
<b>MISCELLANEOUS</b>									
Carports	F	30	29	1		Reroof, paint	1	LS	I
<b>MECHANICAL/ELECTRICAL/PLUMBING</b>									
Water circulating pumps	G	15	10	5	3				
Hot and cold water distribution	F	50	49	1		Replace	91	EA	I
DHW heaters, <150 gal.	F	15	14	1		Replace	4	EA	I
DHW heaters, <150 gal.	G	15	0	15		Replace	4	EA	R
Storage tanks	F	20	19	1		Replace	20	EA	I
Solar System	P	20	19	1		Repair/replace	1	LS	I
Gas distribution system	G	50	33	17	1				
Electrical wiring	G	60	33	27					
Building lighting	F	20	19	1		Add corridor lighting	1	LS	I
Master TV system	F	30	29	1		Install cable TV	91	EA	I
Electrical switchgear	G	30	28	2	1				
Pull Stations and Emergency exit light	P	20	9	11		Upgrade pull stations and exit light	1	LS	I
Smoke & fire detection system	F	15	15	0		Replace	91	EA	I
<b>INTERIOR FINISHES &amp; APPLIANCES</b>									
Living area floors, carpet	F	7	0	7		Replace	182	EA	R
Living area floors, resilient	F	15	0	15		Replace	91	EA	R
Living area walls, drywall/plaster	F	25	23	2	3				
Interior doors	G	30	0	30					
Refrigerator	F	15	0	15		Replace	91	EA	R
Refrigerator	F	15	14	1		Replace	91	EA	I
Disposal	F	5	3	2	3				
Dishwasher	G	10	0	10		Replace	91	EA	R
Range	G	15	0	15		Replace	91	EA	R
Kitchen cabinets	F	20	19	1		Replace	91	EA	I
Electric radiant heating	F	25	24	1		Replace with wall heater	91	EA	I
Electric wall heater	G	20	10	10	3				
Unit fans	D	25	23	2		Replace	91	EA	I
Bath Fixtures (Sink, toilet, tub)	F	20	19	1		Replace	91	EA	I
Vanities	F	20	19	1		Replace	91	EA	I
Bath accessories	F	10	8	2	3				
Electrical devices: switches & outlets	F	20	20	0		Install GFC	91	EA	I
Electric fixtures	F	20	19	1		Replace lighting	91	EA	I
Unit wiring	F	50	33	17	1				

Foot Notes Indicated in "Dir" Column:

1. Quality of original construction appears to be higher than typical industry standards, extending the remaining useful life
2. Reported maintenance performed appears to be of a higher than typical industry standard, extending the remaining useful life
3. Item/component is of such minimal quantity/cost that it is considered part of the routine maintenance program
4. Item/component is owned by an outside contractor/leasee and is not the responsibility of the property owner
5. Item is replaced with another component or system. Cost is inclusive with the other component or system

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## CERTIFICATION

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EMG has completed a Physical Needs Assessment (PNA) of the subject property, Country Club Apartments, located at 201 Country Club Lane in Oceanside, San Diego County, California. The PNA was performed on April 4-6, 2007.

The PNA was performed at the Client's request using methods and procedures consistent with good commercial and customary practice conforming with published guidelines Fannie Mae Multi-Family Physical Needs Assessment Exhibit iii-11 dated August 17, 1992. EMG also utilizes the standards set forth by ASTM E2018-01, *Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process*. In addition, EMG's reference to the Client follows the ASTM guide's definition of User, whereas, the party that retains EMG for the preparation of a baseline PNA of the subject property. A user may include, without limitation, a purchaser, potential tenant, owner, existing or potential mortgagee, lender, or property manager of the subject property.

This report is exclusively for the use and benefit of the Client identified on the first page of this report. The purpose for which this report shall be used shall be limited to the use as stated in the contract between the client and EMG.

This report is not for the use or benefit of, nor may it be relied upon by, any other person or entity without the advance written consent of EMG.

The opinions EMG expresses in this report were formed utilizing the degree of skill and care ordinarily exercised by any prudent architect or engineer in the same community under similar circumstances. EMG assumes no responsibility or liability for the accuracy of information contained in this report which has been obtained from the Client or the Client's representatives, from other interested parties, or from the public domain. The conclusions presented represent EMG's professional judgment based on information obtained during the course of this assignment. EMG's evaluations, analyses and opinions are not representations regarding either the design integrity, structural soundness, or actual value of the property. Factual information regarding operations, conditions and test data provided by the Client or their representative have been assumed to be correct and complete. The conclusions presented are based on the data provided, observations made, and conditions that existed specifically on the date of the assessment.

EMG certifies that EMG has no undisclosed interest in the subject property, EMG's relationship with the Client is at arms-length, and that EMG's employment and compensation are not contingent upon the findings or estimated costs to remedy any deficiencies due to deferred maintenance and any noted component or system replacements.

EMG's PNA cannot wholly eliminate the uncertainty regarding the presence of physical deficiencies and the performance of a subject property's building systems. Preparation of a PNA in accordance with ASTM E2018-01 and Fannie Mae's *Exhibit III Specific Guidance to the Property Evaluator* is intended to reduce, but not eliminate, the uncertainty regarding the potential for component or system failure and to reduce the potential that such component or system may not be initially observed. This PNA was prepared recognizing the inherent subjective nature of EMG's opinions as to such issues as workmanship, quality of original installation, and estimating the remaining useful life of any given component or system. It should be understood that EMG's suggested remedy may be determined under time constraints, formed without the aid of engineering calculations, testing, exploratory probing, the removal of materials, or design. Furthermore, there may be other alternate or more appropriate schemes or methods to remedy the physical deficiency. EMG's opinions are generally formed without detailed knowledge from individuals familiar with the component's or system's performance.

# PHYSICAL NEEDS

ASSESSMENT

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Any questions regarding this report should be directed to Melvin Cauthen at [mjcauthen@emgcorp.com](mailto:mjcauthen@emgcorp.com) or at 800.733.0660, 6513.

Prepared by: Patricia Weber, Field Observer

Reviewed by:



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## 1. EXECUTIVE SUMMARY

### 1.1. SUMMARY OF FINDINGS

The Client contracted with EMG to conduct a Physical Needs Assessment (PNA) of the subject property, Country Club Apartments, located at 201 Country Club Lane in Oceanside, San Diego County, California. The PNA was performed on April 4-6, 2007.

The multi-family property has one 2-story apartment building containing 91 apartment units. The site area is approximately 2.58 acres. Construction of the property was completed in 1974.

On site amenities include two laundry rooms.

Generally, the property appears to have been constructed within industry standards in force at the time of construction, to have been somewhat maintained during recent years, and is in fair overall condition.

According to property management personnel, the property has had a limited capital improvement expenditure program over the past three years, primarily consisting of new water heaters. Supporting documentation was not provided but the work is evident.

There are a number of Immediate Physical Needs and Physical Needs Over the Term that should be accomplished during the evaluation period as part of the preventive maintenance program. These needs are identified in the various sections of this report and are summarized in the enclosed cost tables. EMG also provides a *Project at a Glance* table as part of the Executive Summary.

The following is a list of property-specific items as outlined in the published guidelines: Fannie Mae Multi-family Physical Needs Assessment Exhibit iii-11 dated August 17, 1992.

Issue	Yes	No	Section Reference
Is fire retardant treated (FRT) plywood used as roof sheathing?		✓	Section 6.3
Is aluminum branch wiring used for appliances, general lighting, and electrical devices?		✓	Section 8.5
Is electrical system overcurrent protection provided to each dwelling unit by a circuit breaker type panel box?	✓		Section 8.5
Is the current electrical system adequately configured with regard to "provided" versus "demanded" capacity?	✓		Section 8.5

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## 1.2. FOLLOW UP RECOMMENDATIONS

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The following issues require additional study:

- There is significant evidence of wood framing deterioration due to insect infestation primarily noted at the patio enclosure fencing and at the wood trim at exterior walls. A local, licensed exterminator must be retained to treat the property as required to eliminate the pests and associated threat. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The superstructure is concealed. There is significant evidence of suspect framing deterioration due to water intrusion at the exterior walls, soffits and underside of balconies. A Professional Engineer with specific expertise in structural design and construction in this geographical area must be retained to evaluate the structure, determine the scope of damage, and provide remedial recommendations consistent with local regulatory and code requirements. The estimated cost to retain an engineer is included in the Immediate and Short Term Repairs Cost Estimate (Table 1). Although repair cost cannot be accurately determined without the recommended study, a cost allowance for damaged material is included in the repairs noted in Section 6.
- Property Management Personnel reported that storm water drainage is inadequate, especially at the courtyard. EMG noted ponding water at the carport along the south side of the property. The POC reported that during heavy rains storm water ponds at the inlets and has entered apartment units when not immediately responded to. EMG recommends that a civil engineer be retained to design an appropriate drainage scheme for the property. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1). Although repair cost cannot be accurately determined without the recommended study, a cost allowance for potential modifications to existing inlets, resloping landscaped areas and concrete paving toward drains is discussed and included in Section 5.3.

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## 1.3. OPINIONS OF PROBABLE COST

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This section provides estimates for the repair and capital reserves items noted within this Physical Needs Assessment (PNA).

These estimates are based on invoice or bid documents provided either by the Owner/facility and construction costs developed from construction resources such as *R.S. Means* and *Marshall & Swift*, EMG's experience with past costs for similar properties, city cost indexes, and assumptions regarding future economic conditions.

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### 1.3.1. Methodology

Based upon site observations, research, and judgment, along with referencing Expected Useful Life (EUL) tables from various industry sources, EMG opines as to when a system or component will most probably necessitate replacement. Accurate historical replacement records, if provided, are typically the best source of information. Exposure to the elements, initial quality and installation, extent of use, and the quality and amount of preventive maintenance exercised are all factors that impact the effective age of a system or component. As a result, a system or component may have an effective age that is greater or less than its actual chronological age. The Remaining Useful Life (RUL) of a component or system equals the EUL less its effective age.

Where quantities could not be derived from actual takeoff, lump sum or allowances are used. Estimated costs to correct are based on professional judgment and the probable or actual extent of the observed defect, inclusive of the cost to design, procure, construct, and manage the corrections.

**1.3.2. Immediate Physical Needs**

Immediate physical needs are opinions of probable costs that require immediate action as a result of: (1) material existing or potential unsafe conditions, (2) material building or fire code violations, or (3) conditions that, if left unremedied, have the potential to result in or contribute to critical element or system failure within 90 days or will most probably result in a significant escalation of its remedial cost.

**1.3.3. Physical Needs Over the Term**

Physical Needs Over the Term are for recurring probable expenditures that are not classified as operation or maintenance expenses and should be annually budgeted for in advance. These needs are reasonably predictable both in terms of frequency and cost. However, they may also include components or systems that have an indeterminable life, but nonetheless have a potential liability for failure within an estimated time period.

Physical Needs Over the Term excludes systems or components that are estimated to expire after the reserve term (loan term plus two years) and are not considered material to the structural and mechanical integrity of the subject property. Furthermore, systems and components that are not deemed to have a material affect on the use are also excluded. Costs that are caused by acts of God, accidents, or other occurrences that are typically covered by insurance, rather than reserved for, are also excluded.

Replacement costs were solicited from ownership/property management, EMG's discussions with service companies, manufacturers' representatives, and/or previous experience in preparing such schedules for other similar facilities. Costs for work performed by ownership's or property management's maintenance staff were also considered. All costs are scrutinized and verified through research, as discussed above.

EMG's reserve methodology involves identification and quantification of those systems or components requiring capital reserve funds within the evaluation period, which is defined as the loan term plus two years. Additional information concerning systems or components respective replacement costs (in today's dollars), typical expected useful lives, and remaining useful lives were estimated so that a funding schedule could be prepared. The Physical Needs Over the Term presupposes that all required remedial work has been performed or that monies for remediation have been budgeted for items defined in the Immediate Physical Needs Cost Estimate.

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## 2. PURPOSE AND SCOPE

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### 2.1. PURPOSE

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The purpose of this Fannie Mae Physical Needs Assessment (PNA) is to assist the Client in evaluating the physical aspects of this property and how its condition may affect the soundness of the Client's financial decisions over time. For this PNA, representative samples of the major independent building components were observed and their physical conditions were evaluated in accordance with published guidelines: Fannie Mae Multi-Family Physical Needs Assessment Exhibit iii-11 dated August 17, 1992 and ASTM E2018-01 including site and building exteriors, representative interior common areas, and a representative sample of the apartment units. Apartment unit observations include a minimum of 50 percent of the vacant units and 50 percent of the down units.

The property management staff and code enforcement agencies were interviewed for specific information relating to the physical property, code compliance, available maintenance procedures, available drawings, and other documentation. The property's systems and components were observed and evaluated for their present condition. EMC completed the *Systems and Conditions Table*, which lists the current physical condition and estimated remaining useful life of each system and component present on the property, as observed on the day of the site visit. The estimated costs for repairs and/or capital reserves are included in the enclosed cost tables. All findings relating to these opinions of probable costs are included in the narrative sections of this report.

The physical condition of building systems and related components are typically defined as being in one of three conditions: Good, Fair, or Poor, or a combination thereof. For the purposes of this report, the following definitions are used:

- Good = Satisfactory as-is. Requires only routine maintenance over the evaluation period. Repair or replacement may be required due to a system's estimated useful life.
- Fair = Satisfactory as-is. Repair or replacement is required due to current physical condition and/or estimated remaining useful life.
- Poor = Immediate repair, replacement, or significant maintenance is required.

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### 2.2. DEVIATIONS FROM THE ASTM E2018-01 GUIDE

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ASTM E2018-01, *Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process* requires that any deviations from the Guide be so stated within the report. EMC's probable cost threshold limitation is reduced from the Guide's \$3,000 to \$1,000, thus allowing for a more comprehensive assessment on smaller scale properties. Therefore, EMC's opinions of probable costs that are individually less than a threshold amount of \$1,000 are omitted from this PNA. However, comments and estimated costs regarding identified deficiencies relating to life/safety or accessibility items are included regardless of this cost threshold.

In lieu of providing written record of communication forms, personnel interviewed from the facility and government agencies are identified in Section 2.5. Relevant information based on these interviews is included in Sections 2.5, 3.1, and other applicable report sections.

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### **2.3. ADDITIONAL SCOPE CONSIDERATIONS**

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Items required by ASTM E2018-01 and Fannie Mae's *Exhibit III Specific Guidance to the Property Evaluator* are included within the Physical Needs Assessment (PNA). Additional "non-scope" considerations were addressed at the recommendation of EMG and subsequent contract with the Client. These additional items are identified as follows:

- PNA is performed by a Professional Engineer or a Registered Architect
- PNA is reviewed by a Professional Engineer or a Registered Architect, other than the Field Observer
- Property disclosure information was obtained from the EMG's *Pre-Survey Questionnaire*
- A limited visual assessment of accessibility utilizing EMG's *Accessibility Checklist*. This does not constitute a comprehensive ADA Survey.
- A limited visual assessment and review of the property for mold growth, conditions conducive to mold growth, and evidence of moisture in accessible areas of the property
- Provide a statement on the property's Remaining Useful Life
- Provide cross reference indexing between cost tables and report text
- Provide *Project At a Glance* summary table as part of the Executive Summary
- Determination of FEMA Flood Plain Zone for single address properties
- Determination of Uniform Building Code Seismic Zone

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### **2.4. PROPERTY'S REMAINING USEFUL LIFE ESTIMATE**

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Subject to the qualifications stated in this paragraph and elsewhere in this report, the Remaining Useful Life (RUL) of the property is estimated to be not less than 35 years. The Remaining Useful Life estimate is an expression of a professional opinion and is not a guarantee or warranty, expressed or implied. This estimate is based upon the observed physical condition of the property at the time of EMG's visit and is subject to the possible effect of concealed conditions or the occurrence of extraordinary events such as natural disasters or other "acts of God" that may occur subsequent to the date of EMG's site visit.

The Remaining Useful Life for the property is further based on the assumption that: (a) the immediate repairs, short term repairs, and future repairs for which replacement reserve funds are recommended are completed in a timely and workman-like manner, and (b) a comprehensive program of preventive and remedial property maintenance is continuously implemented using an acceptable standard of care. The Remaining Useful Life estimate is made only with regard to the expected physical or structural integrity of the improvements on the property, and no opinion regarding economic or market conditions, the present or future appraised value of the property, or its present or future economic utility, is expressed by EMG.

**2.5. PERSONNEL INTERVIEWED**

The following personnel from the facility and government agencies were interviewed in the process of conducting the PNA:

Name and Title	Organization	Phone Number
Ms. Mary Tait Property Manager	Country Club Apartments	760-277-5182
Mr. Sixto Maltos Maintenance Supervisor	Country Club Apartments	760-277-5182
Jerry (No last name given) Staff	Oceanside Building Department	760-435-3944
Ms. Laura Robbins Planner	Oceanside Planning Department	760-435-3520
Ms. Tina Maria Fire Prevention Staff	Oceanside Fire Department	760-435-4101

The PNA was performed with the assistance of Ms. Mary Tait, Property Manager, and Mr. Sixto Maltos, Maintenance Supervisor, Country Club Apartments, the on site Points of Contact (POC), who were cooperative and provided information that appeared to be accurate based upon subsequent site observations. The on site contacts are completely knowledgeable about the subject property and answered most questions posed during the interview process. Ms. Tait's management involvement at the property has been for the last eleven years. Mr. Maltos' management involvement at the property has been for the past nine years.

**2.6. DOCUMENTATION REVIEWED**

Prior to the PNA, relevant documentation was requested that could aid in the knowledge of the subject property's physical improvements, extent and type of use, and/or assist in identifying material discrepancies between reported information and observed conditions. The review of submitted documents does not include comment on the accuracy of such documents or their preparation, methodology, or protocol. The following documents were provided for review while performing the PNA:

- Rent roll
- Unit types and square footages
- Miscellaneous construction drawings

No other documents were available for review. The Documentation Request Form is provided in Appendix E.

**2.7. PRE-SURVEY QUESTIONNAIRE**

A Pre-Survey Questionnaire was sent to the POC prior to the site visit. The questionnaire is included in Appendix E. Information obtained from the questionnaire has been used in preparation of this PCR.

# PHYSICAL NEEDS ASSESSMENT

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## 2.8. WEATHER CONDITIONS

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Weather conditions at the time of the site visit were overcast, with temperatures in the 70s (°F) and light winds.



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### 3. CODE INFORMATION, ACCESSIBILITY, AND MOLD

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#### 3.1. CODE INFORMATION, FLOOD ZONE AND SEISMIC ZONE

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According to Jerry (No last name given) of the Oceanside Building Department, there are no outstanding building code violations on file. The Building Department does not have an annual inspection program. They only inspect new construction, work that requires a building permit, and citizen complaints. A copy of the original Certificate of Occupancy is included in Appendix C.

According to Ms. Laura Robbins of the Oceanside Planning Department, the property is located within a RH, High-density Residential, zoning district and is a conforming use.

According to Ms. Tina Maria of the Oceanside Fire Department, code compliance information can be obtained through request to the Fire Department and Staff review of files. A request has been made and significant information will be forwarded when it is made available.

According to the Flood Insurance Rate Map, published by the Federal Emergency Management Agency (FEMA) and dated January 19, 2001, the property is located in Zone X, defined as an area outside the 500-year flood plain with less than 0.2% annual probability of flooding. Annual Probability of Flooding of Less than one percent.

According to the 1997 Uniform Building Code Seismic Zone Map of the United States, the property is located in Seismic Zone 4, defined as an area of high probability of damaging ground motion.

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#### 3.2. ADA ACCESSIBILITY

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Generally, Title III of the Americans with Disabilities Act (ADA) prohibits discrimination by entities to access and use of "areas of public accommodations" and "commercial facilities" on the basis of disability. Regardless of its age, these areas and facilities must be maintained and operated to comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

Buildings completed and occupied after January 26, 1992 are required to comply fully with the ADAAG. Existing facilities constructed prior to this date are held to the lesser standard of compliance to the extent allowed by structural feasibility and the financial resources available. As an alternative, a reasonable accommodation pertaining to the deficiency must be made.

During the PNA, a limited visual observation for ADA accessibility compliance was conducted. The scope of the visual observation was limited to those areas set forth in EMG's *Abbreviated Accessibility Checklist* provided in Appendix D of this report. It is understood by the Client that the limited observations described herein does not comprise a full ADA Compliance Survey, and that such a survey is beyond the scope of EMG's undertaking. Only a representative sample of areas was observed and, other than as shown on the *Abbreviated Accessibility Checklist*, actual measurements were not taken to verify compliance.

At a multi-family property, the areas considered as public accommodations are the access to the rental office and the parking provisions for the rental office.

# PHYSICAL NEEDS ASSESSMENT

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The facility does not appear to be accessible with Title III of the Americans with Disabilities Act. Elements as defined by the ADAAG that are not accessible as stated within the priorities of Title III, are as follows:

## **Parking**

- Adequate number of designated parking stalls and signage for vans are not provided.  
Estimated Cost: 1 @ \$220 each = ..... \$220
- Access aisles adjacent to parking spaces, crossing hazardous vehicle areas, from main roadways or public transportation stops to the building sidewalks and entrances are not provided.  
Estimated Cost: 30 ft. @ \$6.50 LF = ..... \$195
- Signage directing to accessible building entrances to the facility are not provided.  
Estimated Cost: 1 @ \$120 each = ..... \$120

## **Entrances/Exits**

- Existing entrance doors at the rental office and laundry rooms are not wide enough to accommodate wheelchair access and clear floor space beside the door swing is lacking.  
Estimated Cost: 3 @ \$1,250 each = ..... \$3,750
- Lever action hardware is not provided at all accessible locations.  
Estimated Cost: 3 @ \$100 each = ..... \$300

## **Apartments**

- None of the existing apartment units are accessible. As part of the proposed substantial renovation, reasonable accommodation pertaining to the deficiency must be made. Costs are therefore included to convert five percent of the total number of units to be accessible.  
Estimated Cost: 5 @ \$20,000 each = ..... \$100,000

A full ADA Compliance Survey may reveal additional aspects of the property that are not in compliance.

Corrections of these conditions should be addressed from a liability standpoint, but are not necessarily code violations. The Americans with Disabilities Act Accessibility Guidelines concern civil rights issues as they pertain to the disabled and are not a construction code, although many local jurisdictions have adopted the Guidelines as such. The cost to address the achievable items noted above is \$104,585 and is included as a lump sum in the Immediate Physical Needs Estimate (Table 1).

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## **3.3. MOLD**

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As part of the PNA, EMG completed a limited, visual assessment for the presence of visible mold growth, conditions conducive to mold growth, or evidence of moisture in readily accessible areas of the property. EMG interviewed property personnel concerning any known or suspected mold contamination, water infiltration, or mildew-like odor problems.

# PHYSICAL NEEDS

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This assessment does not constitute a comprehensive mold survey of the property. The reported observations and conclusions are based solely on interviews with property personnel and conditions observed in readily accessible areas of the property at the time of the assessment. Sampling was not conducted as part of the assessment.

EMG observed the presence of visible suspect mold growth, mildew-like odors, moist conditions, and water damage, in the areas cited below:

- Suspect mold and mildew observed in ten percent of apartment units at the bathroom ceilings. Additional units have moist conditions and damage including peeling paint at bathroom ceilings, staining from roof leaks, and wall or window leaks.
- Suspect mold and mildew observed at the exterior walls. Staining noted throughout the property; significant dark staining noted at the courtyard walls, soffits and underside of balcony decks.

EMG recommends removal, cleaning and replacement of affected materials in conjunction with renovations work and as noted in each pertinent sections within this report. A Mold Survey was also being conducted in conjunction with the Phase I Environmental Site Assessment. The costs of any additional findings are not included in this report. Please refer to the Mold Survey report issued under EMG Project Number 82100.07R-001.081 for additional information.

**4. EXISTING BUILDING EVALUATION**

**4.1. APARTMENT UNIT TYPES AND UNIT MIX**

If provided, the appendices contain floor plan illustrations, which graphically represent the various unit types. The gross area measurements in the chart below are an approximation, are based on information provided by on site personnel, and are not based on actual measurements. Due to the varying methods that could be utilized by others to derive square footage, the area calculations in the chart below do not warrant, represent, or guarantee the accuracy of the measurements.

Apartment Unit Types and Mix		
Quantity	Type	Floor Area
7	Studio	560 SF
4	Studio Large	640 SF
49	1 Bedroom/1 Bathroom	760 SF
8	1 Bedroom/1 Bathroom Large	835 SF
19	2 Bedrooms/2 Bathrooms	1,025 SF
3	2 Bedrooms/2 Bathrooms Large	1,125 SF
1	3 Bedrooms/2 Bathrooms	1,600 SF
There are currently 4 vacant units.		
There are currently 0 down units.		
<b>91</b>	<b>TOTAL</b>	

**4.2. APARTMENT UNITS OBSERVED**

One hundred percent of the apartment units were observed in order to establish a representative sample and to gain a clear understanding of the property's overall condition. Other areas accessed included the exterior of the property, a representative sample of the roof, and the interior common areas. The following apartments were observed.

Apartment Units Observed		
Unit/Floor	Type	Comments
1/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Wall and tub damage, fan out; finishes, appliances and cabinets fair.
2/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Light fixture, vanity damage, fan out; finishes, appliances and cabinets fair.

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Apartment Units Observed		
Unit/Floor	Type	Comments
3/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Ceiling damage, fan out; finishes, appliances and cabinets fair.
4/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Finish and wall damage; finishes, appliances and cabinets fair.
5/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Tub, vanity, sink damage; finishes, appliances and cabinets fair.
6/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Tub, fan, sink surround damage; finishes, appliances and cabinets fair. Unit has electric wall heater.
7/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Finishes poor; appliances and cabinets fair.
8/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Balcony door, tub damage; finishes, appliances and cabinets fair.
9/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Counter, fan, vanity, sink damage; finishes poor, appliances good to poor, cabinets fair.
10/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Switch damage; finishes, appliances and cabinets fair.
11/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Mildew at bath ceiling, vanity damage; finishes, appliances and cabinets fair.
12/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Tub damage; finishes, appliances and cabinets fair.
13/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Dishwasher out; finishes, appliances and cabinets fair.
14/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Mildew at bath ceiling, smoke detector damage; carpet, appliances and cabinets fair.
15/ 2nd	1 Bedroom/1 Bathroom	Vacant. Poor condition. Missing light fixture, fan out; finishes, appliances and cabinets poor.
16/ 2nd	1 Bedroom/1 Bathroom	Occupied. Poor condition. Stain at living room ceiling from roof leak, vanity and tub damage. Finishes, appliances and cabinets fair.
17/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Vanity damage. Finishes, appliances and cabinets fair.
18/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Mildew and ceiling damage at bath; Finishes, refrigerator, stove and cabinets fair. Dishwasher out.
19/ 1st	1 Bedroom/1 Bathroom	Occupied. Poor condition. Excessive debris collected by tenant, access unavailable.
20/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Tub damage; finishes, appliances and cabinets fair.
21/ 2nd	1 Bedroom/1 Bathroom	Occupied. Poor condition. Door, tub, counter damage; finishes, appliances and cabinets fair.
22/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Finishes, appliances and cabinets fair.



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Apartment Units Observed		
Unit/Floor	Type	Comments
23/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Mirror, vanity damage; appliances and cabinets fair, finishes fair to poor.
24/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Finishes, appliances and cabinets fair.
25/ 1st	3 Bedrooms/2 Bathrooms	Occupied. Fair condition. Vanity, tub damage; finishes, appliances and cabinets fair. Fiberglass shower pan.
26/ 2nd	Studio	Occupied. Fair condition. VCT, cabinet, fan damage; carpet, appliances fair.
27/ 2nd	Studio	Occupied. Good condition. Finishes, appliances, cabinets good to fair. Unit has electric wall heater.
28/ 2nd	Studio	Occupied. Poor condition. Ceiling damage from water leak. Carpet, appliances and cabinets fair, old sheet vinyl.
29/ 2nd	Studio	Occupied. Good condition. Finishes, appliances, cabinets good to fair.
30/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Counter damage, large ceiling patch; finishes, appliances, cabinets good to fair.
31/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Ceiling, cabinet damage; appliances fair, carpet and old sheet vinyl poor.
32/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Counter damage; appliances, cabinets fair, carpet poor.
33/ 1st	1 Bedroom/1 Bathroom	Occupied. Good condition. Ceiling damage; finishes, appliances, cabinets fair.
34/ 2nd	1 Bedroom/1 Bathroom	Occupied. Good condition. Finishes, appliances, cabinets good.
35/ 2nd	1 Bedroom/1 Bathroom	Occupied. Good condition. Finishes, appliances, cabinets good.
36/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Counter and cabinet damage; finishes, appliances, good.
37/ 2nd	1 Bedroom/1 Bathroom	Occupied. Good condition. Counter and tub damage; finishes, cabinets, appliances good.
38/ 1st	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. Ceiling, vanity, door damage, carpet, cabinets, appliances fair, old sheet vinyl.
39/ 1st	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. VCT damage; finishes, cabinets, appliances fair.
40/ 1st	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. VCT, and door damage, mildew at bath ceiling; finishes, cabinets, appliances fair.



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Apartment Units Observed		
Unit/Floor	Type	Comments
41/ 1st	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. Door damage, ceiling paint peeling, plumbing leak repairs in progress; finishes, cabinets, appliances fair.
42/ 2nd	2 Bedrooms/2 Bathrooms	Occupied. Poor condition. Door, wall, tub, vanity damage, mildew at bath ceiling; VCT, cabinets, appliances fair, carpet poor.
43/ 2nd	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. VCT, counter, vanity, fan damage; finishes, cabinets, appliances fair.
44/ 2nd	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. VCT, vanity damage; finishes, cabinets, appliances fair.
45/ 2nd	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. Tub damage, mildew at bath ceiling; finishes, cabinets, appliances fair.
46/ 1st	2 Bedrooms/2 Bathrooms	Occupied. Poor condition. Door, sink damage, peeling paint at bath ceilings; finishes, cabinets, appliances fair.
47/ 1st	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. Door damage; finishes, cabinets, appliances fair.
48/ 2nd	2 Bedrooms/2 Bathrooms	Occupied. Good condition. Finishes, cabinets, appliances fair.
49/ 2nd	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. VCT damage; finishes, cabinets, appliances fair.
50/ 2nd	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. Finishes, cabinets, appliances fair.
51/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Cabinets, walls, vanity, tub damage; finishes, appliances fair.
52/ 2nd	1 Bedroom/1 Bathroom	Occupied. Poor condition. Hood, cabinet, counter, wall damage; appliances fair, carpet poor.
53/ 1st	2 Bedrooms/2 Bathrooms	Occupied. Good condition. Ceiling damage; finishes, cabinets, appliances fair.
54/ 2nd	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. Vanity damage; VCT, cabinets, appliances fair, carpet poor.
55/ 2nd	2 Bedrooms/2 Bathrooms	Occupied. Poor condition. Wall damage, peeling paint at bath ceiling; VCT, cabinets, appliances fair, carpet poor.
56/ 1st	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. VCT, vanity damage; appliances, cabinets fair, carpet poor.
57/ 1st	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. Vanity, surround damage; finishes, cabinets, appliances fair.
58/ 2nd	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. Finishes, cabinets, appliances fair.
59/ 2nd	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. Cabinet, fan damage; finishes, appliances fair.



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Apartment Units Observed		
Unit/Floor	Type	Comments
60/ 2nd	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. Ceiling, tub damage, wall leak at bedroom; finishes, cabinets, appliances fair.
61/ 2nd	2 Bedrooms/2 Bathrooms	Occupied. Fair condition. Finishes, cabinets, appliances fair.
62/ 1st	1 Bedroom/1 Bathroom	Occupied. Good condition. Finishes, cabinets, appliances fair.
63/ 1st	1 Bedroom/1 Bathroom	Occupied. Poor condition. VCT, door, vanity damage; finishes, cabinets, appliances fair.
64/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Finishes, cabinets, appliances fair.
65/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Finishes, cabinets, appliances fair.
66/ 2nd	1 Bedroom/1 Bathroom	Occupied. Good condition. Finishes, cabinets, appliances fair.
67/ 2nd	1 Bedroom/1 Bathroom	Occupied. Good condition. Finishes, cabinets, appliances fair.
68/ 1st	Studio	Occupied. Fair condition. Tub, sink damage; cabinets, appliances fair, old sheet vinyl, carpet poor.
68A/ 1st	Studio	Occupied. Fair condition. Ceiling damage, finishes, cabinets, appliances fair. This unit was remodeled in 1997 from recreation room to an apartment unit.
69/ 2nd	Studio	Occupied. Fair condition. Tub, vanity damage; finishes, cabinets, appliances fair.
70/ 2nd	Studio	Occupied. Fair condition. Tub, fan damage; cabinets fair, carpet poor, old sheet vinyl, stove poor.
71/ 2nd	Studio	Occupied. Fair condition. Finishes, cabinets, appliances fair.
72/ 2nd	Studio	Occupied. Fair condition. Door, counter damage; finishes, cabinets, appliances fair.
73/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Vanity, cabinet, VCT damage; carpet, appliances fair.
74/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Door, vanity damage; finishes, cabinets, appliances fair.
75/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. VCT, cabinet, counter, vanity, smoke detector damage; carpet, appliances fair.
76/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Finishes, cabinets, appliances fair.
77/ 2nd	1 Bedroom/1 Bathroom	Vacant. Poor condition. Vanity, fan, wall, door damage, mildew at bath ceiling; VCT, cabinets, appliances fair, no carpet.



Apartment Units Observed		
Unit/Floor	Type	Comments
78/ 2nd	1 Bedroom/1 Bathroom	Occupied. Poor condition. Cabinet, fan, tub damage, leaks at window and ceiling; finishes, appliances fair.
79/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. VCT, ceiling, sink damage; carpet, cabinets, appliances fair.
80/ 1st	Studio	Occupied. Fair condition. Plumbing repairs in progress; finishes, cabinets, appliances fair.
81/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Vanity, tub damage; finishes, cabinets, appliances fair.
82/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Fan damage; finishes, cabinets, appliances fair.
83/ 2nd	1 Bedroom/1 Bathroom	Occupied. Good condition. Finishes, cabinets, appliances fair.
84/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Cabinet, tub, fan damage; finishes, appliances fair.
85/ 1st	1 Bedroom/1 Bathroom	Occupied. Good condition. Finishes, cabinets, appliances fair.
86/ 1st	1 Bedroom/1 Bathroom	Occupied. Fair condition. Vanity, door, wall damage; finishes, cabinets, appliances fair.
87/ 2nd	1 Bedroom/1 Bathroom	Vacant. Fair condition. Finishes, cabinets, appliances fair, no carpet.
88/ 2nd	1 Bedroom/1 Bathroom	Occupied. Fair condition. Door, tub damage; finishes, cabinets, appliances fair.
89/ 2nd	1 Bedroom/1 Bathroom	Vacant. Fair condition. Tub, fan damage; finishes, cabinets, appliances fair.
90/ 2nd	1 Bedroom/1 Bathroom	Occupied. Good condition. Tub damage; finishes, cabinets, appliances fair.

All areas of the property were available for observation during the site visit.

A "down unit" is a term used to describe a non-rentable apartment unit due to poor conditions such as fire damage, water damage, missing appliances, damaged floor, wall or ceiling surfaces, or other significant deficiencies. According to the POC, there are no down units.

The following areas were not available for observation during the site visit:

- Apartment unit 19 was not accessed due to excessive impassible debris inside the unit accumulated by the tenant. Visual observations were made from the front door to the unit.

**5. SITE IMPROVEMENTS**

**5.1. UTILITIES**

The following table identifies the utility suppliers and the condition and adequacy of the services.

Site Utilities		
Utility	Supplier	Condition & Adequacy
Sanitary sewer	City of Oceanside	Good
Storm sewer	City of Oceanside	Good
Domestic water	City of Oceanside	Good
Electric service	San Diego Gas & Electric	Good
Natural gas service	San Diego Gas & Electric	Good

**Observations/Comments:**

- According to the POC, the utilities provided are adequate for the property. There are no unique, on site utility systems such as emergency electrical generators, septic systems, water or waste water treatment plants, or propane gas tanks.

**5.2. PARKING, PAVING, AND SIDEWALKS**

The main entrance drive is located along Maxson Street on the north side of the property. One additional entrance drive is located along Country Club Lane. The parking areas, and drive aisles are paved with asphalt.

Based on a physical count, parking is provided for 103 cars. The parking ratio is 1.13 spaces per apartment unit. Twenty of the parking stalls are located in open lots, 20 of the parking stalls are located at the carport, and 63 parking stalls are located at the tuck under parking areas. There is no public parking at the property. There are five parking spaces marked with the handicap symbol, however these spaces do not comply with the minimum ADA requirements for signage, size and access aisles.

Type Space	Number of Spaces
Open Self Park	103
Handicapped-accessible	0
<b>Total</b>	<b>103</b>

The sidewalks throughout the property are constructed of cast-in-place concrete.

The curbs and gutters are constructed of cast-in-place concrete.

### **Observations/Comments:**

- The asphalt pavement is in fair to poor condition. The POC reported that the seal coat is more than eleven years old. There is overall surface deterioration as well as isolated areas of failure and deterioration, such as alligator cracking and localized depressions; located along the west and south drive aisles. The damaged areas of paving must be cut and patched in order to maintain the integrity of the overall pavement system, grinding and overlay of the remaining paving with sealing and striping. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- In addition to the pavement repairs noted above, pothole patching, crack sealing, seal coating, and restriping of the asphalt pavement will also be required during the evaluation period to maximize the pavement life. The cost of this work is included in the Physical Needs Over the Term Estimate (Table 2).
- The paving is to be expanded as part of a renovation project. A section of the CMU wall will need to be relocated as part of the parking area expansion. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The concrete curbs are minimal and generally in good condition. Concrete gutters are located at the drive aisle centerlines and exhibit cracking and spalling which requires repair in conjunction with asphalt paving work noted above. The cost of this work is included with the asphalt paving work noted above.
- The concrete sidewalks throughout the property are in good to fair condition. There are isolated areas of displacement, and cracks which occur at the courtyard and adjacent to the front of the property. The damaged areas of concrete pavement will require replacement to eliminate tripping hazards. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- High pressure cleaning is also required to remove significant build up of dirt and debris. This work is considered to be routine maintenance.

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### **5.3. DRAINAGE SYSTEMS AND EROSION CONTROL**

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Storm water from the roofs, landscaped areas, and paved areas flows into on site inlets and catch basins with underground piping connected to the municipal storm water management system.

### **Observations/Comments:**

- There is no evidence of storm water runoff from adjacent properties. Property Management Personnel reported that storm water drainage is inadequate, especially at the courtyard. EMG noted ponding water at the carport along the south side of the property. The POC reported that during heavy rains storm water ponds at the inlets and has entered apartment units when not immediately responded to. EMG recommends that a civil engineer be retained to design an appropriate drainage scheme for the property. The estimated cost of this work is included in Section 1.2. Although repair cost cannot be accurately determined without the recommended study, a cost allowance for potential modifications to existing inlets, resloping landscaped areas and concrete paving replacement is included in Immediate Physical Needs Estimate (Table 1).
- Hydro jetting of the storm water lines is required to ensure positive storm water drainage. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).

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#### 5.4. TOPOGRAPHY AND LANDSCAPING

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The property slopes slightly down from the northeastern corner of the property to the southwestern corner of the property.

The landscaping consists of trees, shrubs, and grasses. Landscaped areas are located adjacent to the public roadways, at the courtyard, and at one island in the parking lot.

Landscaped areas are irrigated by an in-ground sprinkler system, which consists of underground piping, shut-off valves, and sprinkler heads. The POC reported that the system is manually operated.

Surrounding properties include commercial (Elks Club, and Boys and Girls Club) and residential developments, and a baseball field.

**Observations/Comments:**

- The topography and adjacent uses do not appear to present conditions detrimental to the property.
- The landscape materials range from good to poor condition. There are significant areas of barren lawns, reportedly due to lack of watering. New landscape material must be installed at the affected areas. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The irrigation system was reported to be in poor condition and replacement or repair of some of the underground piping and equipment is required. The cost of this work is included in the Immediate Physical Needs Estimate (Table 1).

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#### 5.5. GENERAL SITE IMPROVEMENTS

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Property identification is provided by a small metal pole-mounted sign in the landscape area adjacent to the rental office. The sign indicates the street address numbers, vacancies, types of units and the telephone number of the rental office.

Site lighting is provided by light fixtures mounted on metal poles located in the landscaped areas adjacent to Country Club Lane.

Exterior building illumination is provided by light fixtures surface-mounted on the exterior walls and at the undersides of the soffits. A wall-mounted light fixture is located adjacent to each apartment unit's entrance door and patio or balcony door.

A perimeter fence is located along the west and south property lines. The fence is constructed of slump stone masonry and is the back wall of the carports along the south property line and a portion of the west property line. Stained wood board fencing controls access into the courtyard along the north elevation of the building.

Tube steel fencing and metal gates control access to the property at the breezeways adjacent to Country Club Lane and to the parking areas.

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Dumpsters are located in the parking area and are placed on concrete pads. The dumpsters are partially enclosed by a slump stone masonry wing walls integral with the perimeter fencing.

### **Observations/Comments:**

- The property signage is in fair condition, is small and does not indicate the name of the property. Property identification signage should be provided. The cost of this work is included in the Physical Needs Over the Term Estimate (Table 2).
- The exterior site and building light fixtures are in fair to poor condition. Based on visual observation of the light fixtures, site lighting appears to be inadequate especially at the parking areas. Additional fixtures are required to illuminate the parking areas. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The site fencing is in good condition and will require routine maintenance over the evaluation period. A section of the CMU wall will have the height increased to increase security. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- Site security system upgrades including access security and cameras are to be added as part of a renovation program. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The dumpsters are owned and maintained by the refuse contractor. The dumpster wing walls and slabs are in good condition and will require routine maintenance over the evaluation period. Trash enclosure gates are to be installed as part of the parking area expansion. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).

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## 6. BUILDING ARCHITECTURAL AND STRUCTURAL SYSTEMS

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### 6.1. FOUNDATIONS

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Based on structures of similar size, configuration, and geographic location, it is assumed that, the foundation consists of reinforced concrete slab-on-grade with continuous footings, column pad footings and grade beams.

**Observations/Comments:**

- The foundations and footings could not be directly observed during the site visit. There is no evidence of movement that would indicate excessive settlement. There are some isolated areas of concrete patching that will be required. The cost of this work is included in the Immediate Physical Needs Estimate (Table 1).

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### 6.2. SUPERSTRUCTURE

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The building is a conventional wood-framed structure and has wood stud-framed exterior and interior bearing walls, which support the upper floor and roof diaphragms. The upper floors are constructed with wood joists and are sheathed with plywood. The floors are topped with lightweight concrete. The roof diaphragms are constructed of wood joists and rafters sheathed with plywood.

**Observations/Comments:**

- The superstructure is concealed. There is significant evidence of suspect framing deterioration due to water intrusion at the exterior walls, soffits and underside of balconies. In addition, there is evidence of suspect termite damage. A Professional Engineer with specific expertise in structural design and construction in this geographical area must be retained to evaluate the structure, determine the scope of damage, and provide remedial recommendations consistent with local regulatory and code requirements. The estimated cost to retain an engineer is included in Section 1.2. Although repair cost cannot be accurately determined without the recommended study, a cost allowance for this work is included in the repairs to specific components including exterior finishes and roof replacements and is discussed in various sections of this report.
- A cost allowance for General Contractor's fees and general conditions has also been included for the renovation project. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- One column at the west side at the southwest corner of the tuck under parking area appears to be out of plumb. As these columns are always subject to potential vehicle impact, shoring of the column is required to eliminate potential issues. A cost allowance for subfloor framing repairs is also included. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- Walls and floors appear to be plumb, level, and stable. There are no significant signs of deflection or movement.

### 6.3. ROOFING

The primary roofing is classified as flat roofing. The roof is finished with a mineral-surfaced cap sheet over a multi-ply bituminous built-up membrane. Presence of roof insulation was not determined and was not reported.

The roof membrane terminates along the perimeter of the roof at a flashed edge detail at the courtyard and along the south and west sides. Sloped roofing is located along the north and east sides of the roof adjacent to the public streets. The roof membrane continues up the flat backside of the sloped roof along the north and east sides and terminates at metal coping. The roofs have built-up and sheet metal flashing elements.

The roof drains over the edges to sheet metal gutters or directly to the ground surfaces. Metal gutters and downspouts are located along the perimeter of the roof at the courtyard. Downspouts are connected by underground piping to the storm drainage system.

There are no attics at the flat roofs. The ceilings of the upper floor apartment units are the bottom side of the roof diaphragm.

The secondary roofs are classified as sloped roofing with cross gables and occur along the north and east elevations which are adjacent to the public streets. The sloped roofs are finished with asphalt shingles over asphalt-saturated paper. Presence of roof insulation was not determined and was not reported. The roofs drain over the eaves directly to ground surfaces. The attics are not accessible.

#### **Observations/Comments:**

- The roof finishes appear to be original. Information regarding roof warranties or bonds are not available. The roofs are maintained and repaired by the in-house maintenance staff.
- The field of the primary roof is in poor condition. There are significant areas of topping degradation, physical damage, cracking, debris, low spots, and previous patching throughout the roof surface. In addition, the POC, reported that there are active roof leaks. Evidence of previous leaks was noted in some of the second story apartment units as well as at the exterior soffits. Based on the estimated Remaining Useful Life (RUL) and current condition, the roof membranes will require replacement. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- There is evidence of roof deck deterioration especially occurring at obvious low spots along the perimeter of the roof. Based on observed conditions, some roof deck will require replacement in conjunction with the roof membrane replacement. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- There is no evidence of fire retardant treated plywood (FRT) and, according to the POC, FRT plywood is not used.
- The roof flashings are in fair condition, replacements are required in conjunction with the roof membrane replacement. The estimated cost of this work is included with the roof replacement costs noted above.
- The flat side wall and copings are in fair condition with noted sealant deterioration at the coping. Replacements are required in conjunction with the roof membrane replacement. The estimated cost of this work is included with the roof replacement costs noted above.
- Roof drainage appears to be inadequate. The POC reported that during heavy rains the gutters spill over with storm water. New larger gutters and downspouts are required in conjunction with the roof membrane replacement. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1). In addition, clearing and minor repair of drain system components should be performed regularly as part of the property management's routine maintenance program.

- The field of the sloped perimeter roofing is in poor condition. Overall significant deterioration of the shingles was noted. The asphalt shingles and some of the decking require replacement. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The attics are not accessible and it could not be determined if there is moisture, water intrusion, or excessive daylight in the attics.

### 6.4. EXTERIOR WALLS

The exterior walls are finished with stucco and wood trim in a "half timbering" style. Wood fixed shutters and decorative wood corbels are located along the front elevation. The soffits are concealed and are finished with stucco.

Building sealants (caulking) are located between dissimilar materials, at joints, and around window and door openings.

#### *Observations/Comments:*

- The stucco finishes range from good to poor condition. There is significant evidence of moisture penetration behind the stucco noted by staining and deterioration at the walls, soffits and the undersides of the balconies throughout the property. Damaged stucco finishes require repairs or removal and replacement. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1). In addition to the work noted above, exterior painting is also required. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- Finish deterioration and previous damage was noted at the tuck under parking ceiling and walls presumably due to vehicle impact and previous water leaks. These areas require repair in conjunction with stucco repairs noted above. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The exterior wood trim is in fair or poor condition, replacement of damaged trim is required and replacement of some trim in conjunction with stucco repairs. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The exterior shutters and corbels are in good to fair condition. Repairs if any are included with the exterior trim work noted above.
- In addition to the work noted above, exterior painting will also be required during the evaluation period. The cost of this work is included in the Physical Needs Over the Term Estimate (Table 2).
- The sealant is fair condition, replacements are required and included with the exterior painting costs noted above.

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## 6.5. EXTERIOR AND INTERIOR STAIRS

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The exterior stairs are constructed of steel and have open risers and precast concrete treads. The handrails and balusters are constructed of metal.

**Observations/Comments:**

- The exterior stairs, balusters, and handrails are in good to fair condition. The finishes at the steel supports are deteriorated and a minimal number of damaged treads were noted. Repairs, scraping and painting are required. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).

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## 6.6. WINDOWS AND DOORS

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The windows are aluminum-framed, single-glazed sliding units and have exterior screens.

The apartment unit entrance doors are painted or unfinished solid-core wood doors set in wood frames. Exterior entrance doors to the apartments contain cylindrical locksets with knob handle hardware, keyed deadbolts, spy-eyes and doorbells.

Apartment unit patio and balconies are accessed by aluminum-framed sliding glass doors with sliding screen doors.

**Observations/Comments:**

- According to the POC, the property experiences a significant number of complaints regarding window leaks. There is evidence of window leaks noted in a few units. The windows and screens are in fair to poor condition, beyond the useful life, and are not energy efficient. Replacement of the windows is recommended. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The exterior doors and door hardware are generally in good condition. Replacement doors have been installed unfinished. A number of door frames were also noted to be damaged. Refinishing of all doors and repairs to damaged frames is required. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The patio and balcony doors and screens are in fair condition and beyond the useful life. Replacements are required during the evaluation period. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).

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## 6.7. PATIO, TERRACE, AND BALCONY

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The ground floor patios are paved with concrete. The patios are enclosed by painted wood board fences.

The upper level apartment units have wood-framed balconies, which cantilever off the exterior bearing walls. The balcony decks are sheathed with plywood and are topped with concrete. The balconies have painted stucco-finished guardwalls.

An exterior stair provides access to each upper floor apartment unit entrance. The stair landings are sheathed with plywood and are topped with concrete. The landings have painted metal guardrails.

An exterior exit balcony provides access to the upper floor apartment units along the south end of the building. The balcony deck is sheathed with plywood and is topped with concrete. The balcony has painted metal guardrails.

Open ended exit corridors are located at the second floor. The exit corridors are sheathed with plywood and are topped with concrete. Two or three steps are located at some areas. Some areas have been closed off and entry is provided through an access panel only.

**Observations/Comments:**

- The ground-level patio slabs are in good condition. There are no significant signs of movement, settlement, or cracking.
- The patio fences are in poor condition and exhibit significant deterioration and suspect termite damage. All enclosure fences require replacement. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The apartment unit balcony framing and decks range from good to poor condition. Observed damage includes deck damage and cracked topping slab. Repairs to balcony decks are required. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The apartment unit balcony guardrails are in fair or poor condition. A significant number of balcony guardwalls exhibit cracked and spalled stucco at the top of the wall, which also allows for water infiltration. Balcony guardwalls require repairs and replacements as required. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The exterior exit balcony guardrails, decks and landings are in good condition, however the surface is deteriorated. Repainting or refinishing is required. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The open ended access corridors are in fair condition. Some apartment unit doors are located at the ends of the corridors; the remaining portion does not contain doors. These corridors are dimly lit and do not appear to be satisfying any existing function. The POC reported that after the corridors were closed up, the City of Oceanside had the property reopen some portions. EMG recommends discussing the function and requirements for these corridors with the City of Oceanside. Repainting or refinishing of the deck, installation of handrails at the steps, repair to deck at areas of previous plumbing repairs, repair to ceiling finish, and installation of additional lighting fixtures are required. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).

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**6.8. COMMON AREAS, ENTRANCES, AND CORRIDORS**

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The rental office is located in the building at the center of the east elevation adjacent to Country Club Lane.

Laundry rooms are located at the south end of the building and towards the north end of the building. There are a total of eight washing machines and eight clothes dryers.

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The following table identifies the interior common areas and generally describes the finishes in each common area.

Common Area	Floors	Walls	Ceilings
Rental Office	Carpet	Painted Drywall	Painted Drywall
Laundry Room	Painted concrete	Painted Drywall	Painted Drywall

### Observations/Comments:

- It appears that the interior finishes in the common areas have not been renovated within the last twelve years.
- The interior finishes in the common areas are in fair or poor condition. Laundry rooms require floor refinishing and painting. The rental office requires carpet replacement and painting. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1). Based on their estimated Remaining Useful Life (RUL), the carpet replacement and painting will also be required over the evaluation period. The cost of this work is included in the Physical Needs Over the Term Estimate (Table 2).
- The washers and dryers are in good condition. Based on their estimated Remaining Useful Life (RUL), the washers and dryers will require replacement over the evaluation period. The cost of this work is included in the Physical Needs Over the Term Estimate (Table 2).

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## 7. BUILDING MECHANICAL AND ELECTRICAL SYSTEMS

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### 7.1. BUILDING HEATING, VENTILATING, AND AIR-CONDITIONING (HVAC)

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The interior common areas are not heated or air-conditioned. See Section 8.3 for descriptions and comments regarding the apartment unit HVAC systems.

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### 7.2. BUILDING PLUMBING

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The plumbing systems include the incoming water service, the cold water piping system, and the sanitary sewer and vent system. The risers and the horizontal distribution piping are observed and reported to be copper. The soil and vent systems are observed and reported to be primarily cast iron with replacement piping of Acrylonitrile-Butadiene-Styrene (ABS).

The water meter is located in a vault adjacent to the public street.

Domestic hot water is supplied to all areas of the building by a combination of commercial water heaters and solar panels with storage tanks. There are a total of four commercial water heaters located in two areas at the tuck under parking. Each commercial water heater has a rated input capacity of 199,000 BTUH. Solar panels are located on the roof. There are a total of fourteen storage tanks, eight at the southern end of the building in a mechanical room at the tuck under parking and six at a mechanical room toward the north side of the building. Although requested, the POC could not provided information regarding the operation of the domestic hot water system. Based on available information, the solar hot water system is presumed to pre-heat the water prior to entering the commercial water heaters.

**Observations/Comments:**

- The plumbing systems are reported and observed to be in fair or poor condition with a history of water leaks. According to the POC, significant numbers of water leaks occur on a frequent basis. Plumbing is located under the concrete slab at the ground floor. Approximately five areas are currently in progress of repair with a portion of the slab or upper floor structure removed to expose the piping. These areas occur inside apartment units and in the upper floor access corridors. The plumbing is maintained and repaired by on site maintenance staff. Based on the estimated Remaining Useful Life (RUL), and observed conditions, an allowance is provided to re-plumb each apartment unit. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- According to the POC, the water pressure is adequate.
- There is no evidence that the property uses polybutylene piping for the domestic water distribution system. According to the POC, polybutylene piping is not used at the property.
- According to the POC, the pressure and quantity of hot water are adequate.

- The commercial water heaters appear to be in good condition and range from six months to three years old. Based on the estimated Remaining Useful Life (RUL), the water heaters will require replacement during the evaluation period. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1). In addition to the work noted above, the water heaters will also need to be replaced during the evaluation period. The cost of this work is included in the Physical Needs Over the Term Estimate (Table 2).
- According to building permit records the hot water solar heating system was installed in 1983. The panels appear to be in fair condition. Some of the piping for the system was noted to be disconnected. The tanks range from good to poor condition with deterioration noted at some of the tanks at the north side of the property. Corroded tanks require replacement and the solar system will need to be restored to working condition. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).

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### **7.3. BUILDING GAS DISTRIBUTION**

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Gas service is supplied from the gas main on the adjacent public street. The gas meter and regulator are located along the exterior wall of the building. The gas distribution piping is malleable steel (black iron).

**Observations/Comments:**

- According to the POC, the pressure and quantity of gas are adequate.
- The gas meter and regulator appear to be in good condition and will require routine maintenance over the evaluation period.
- Only limited observation of the gas distribution piping can be made due to hidden conditions. The gas piping is in good condition and, according to the POC, there have been no gas leaks.

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### **7.4. BUILDING ELECTRICAL**

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The electrical supply lines run underground to pad-mounted transformers, which feed electrical meters located in wall-mounted cabinets at the tuck under parking areas and at breezeways along the east side of the building. The common area lighting is metered separately.

Electrical service is provided to six panels at 400-amp, 120/240 volt single-phase three-wire alternating current (AC). The electrical wiring is copper. Circuit breaker panels are located in each apartment unit.

**Observations/Comments:**

- The on site electrical systems are owned and maintained by the respective utility company. This includes transformers, meters, and all elements of the on site systems.
- According to the POC, the electrical power is adequate for the property's demands.
- The switchgear, circuit breaker panels and electrical meters appear to be in good condition and will require routine maintenance over the evaluation period.
- The corridor lighting needs to be upgraded and cable TV should be added as a market upgrade. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).

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**7.5. BUILDING ELEVATORS AND CONVEYING SYSTEMS**

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Not applicable. There are no elevators or conveying systems.

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**7.6. FIRE PROTECTION SYSTEMS**

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The fire protection system consists of fire extinguishers and smoke detectors. Fire extinguishers are located in each apartment units and in the laundry rooms. At least one hard-wired smoke detector is located in each apartment unit. Fire alarm pull stations and local alarm bells are mounted on the exterior walls in the vicinity of the apartment units. Illuminated exit signs are also located on the walls at each end of the interior open-ended corridors. The nearest fire hydrants are located along the public streets bordering the property and are approximately 30 feet from the building.

***Observations/Comments:***

- Information regarding fire department inspection information is included in Section 3.1.
- The fire extinguishers are serviced annually and appear to be in good condition. The fire extinguishers were serviced and inspected within the last year.
- The pull stations and alarm bells appear to be in fair condition. The pull stations should be upgraded as part of renovation. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1). Routine maintenance will be required over the evaluation period.
- Smoke detectors are required in every bedroom, in the immediate vicinity of the bedrooms outside of the bedroom, and on all levels of the dwelling unit. Additionally, the smoke detectors must be hard-wired, or the battery operated-type must have 10-year life, be tamper resistant, and are not interchangeable with appliances or toys. As such, smoke detector installation is required in all locations. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1). Smoke detector replacement is considered to be routine maintenance.
- Exit signs were noted to be damaged or burned out. Replacements are required for life safety. The estimated cost of this work is included in the pull station upgrades noted above.

**8. DWELLING UNITS**

**8.1. INTERIOR FINISHES**

The following table generally describes the interior finishes in the apartment units:

Typical Apartment Finishes			
Room	Floor	Walls	Ceiling
Living room	Carpet, Vinyl tile at entry	Painted drywall	Painted drywall
Kitchen	Sheet vinyl or Vinyl tile	Painted drywall	Painted drywall
Bedroom	Carpet	Painted drywall	Painted drywall
Bathroom	Sheet vinyl or Vinyl tile	Painted drywall and Ceramic tile tub surround	Painted drywall

The interior doors in each apartment unit are painted hollow-core wood doors set in wood frames. Wardrobe closets are accessed by sliding or swing doors.

**Observations/Comments:**

- The residential units are typically renovated upon tenant turnover. The renovation generally consists of floor finish cleaning or replacement, interior painting, general cleaning, and repair or replacement of any damaged items.
- The interior floor finishes in the apartment units range from good to poor condition. Most carpet is in fair or poor condition requiring replacement. Vinyl tile is typically stained with areas of mismatched vinyl tile noted, presumably at areas of plumbing repairs or damage. Based on observed conditions the carpet and vinyl flooring will require replacement. As part of a renovation program, the interior finishes will be replaced. The renovation program also includes asbestos abatement that was identified as part of a separate Asbestos Survey Report (EMG Project # 82100.07R-001.086) and mold remediation identified as part of a Mold Survey (EMG Project # 82100.07R-001.081). The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1). In addition, the carpet and tile will also need to be replaced during the evaluation period. The cost of this work is included in the Physical Needs Over the Term Estimate (Table 2).
- The wall and ceiling finishes in the apartment units range from good to poor condition. Significant numbers of apartments have previous patching, staining from previous leaks and other damage. Drywall repairs and painting is required. The cost of this work is included in floor finish replacement work noted above. After initial repairs and painting is considered to be routine maintenance.
- The interior doors and door hardware range from good to poor condition. Replacement of some damaged interior doors and frames is required. The cost of this work is included in floor finish replacement work noted above. After initial repairs, replacement of doors is considered to be routine maintenance.

**8.2. DWELLING APPLIANCES**

Each apartment unit kitchen typically includes the following appliances:

Appliance	Comment
Refrigerator	Frost-free
Range	Electric
Hood	Ducted
Dishwasher	Provided
Disposal	Provided
Trash compactor	Not provided

The kitchen cabinets are constructed of wood. The countertops are wood with plastic laminate finish.

Each unit, with the exception of the small studios, has a simulated fire place with electrical light.

**Observations/Comments:**

- According to the POC, none of the kitchen appliances are original. Apartment appliances are reportedly replaced on an "as needed" basis.
- The kitchen appliances range from good to poor condition. Appliances are generally consistent in age at most apartment units. The dishwashers are generally older units with a few noted inoperable units. Refrigerators generally appear to be in fair condition however the POC reported that the replacements have only been lasting one to three years. The stoves are in fair functional condition. Based on observed and reported conditions the appliances will require replacement. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1). In addition, the appliances will also require replacement during the evaluation period. The cost of this work is included in the Physical Needs Over the Term Estimate (Table 2).
- The kitchen cabinets and countertops are original and range from fair to poor condition. Based on the estimated Remaining Useful Life (RUL), and observed conditions, the cabinets and countertops will require replacement. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1). The countertops will also require refinishing and repair over the evaluation period. The cost is included in the Replacement Reserves Cost Estimate (Table 2).

**8.3. HVAC**

Heating is provided by electric radiant heating consisting of electrical wiring in the ceilings. Heating is controlled by wall-mounted thermostats. Approximately two apartment units have an electric wall heater with integral controls.

Natural ventilation is provided by operable windows. Mechanical ventilation is provided in the bathrooms by ceiling exhaust fans.

Air-conditioning is not provided.

**Observations/Comments:**

- According to the POC, the HVAC systems are maintained by the in-house maintenance staff. Records of the installation, maintenance, upgrades, and replacement of the HVAC equipment at the property have been maintained in recent years.
- According to the POC, approximately 98 percent of the HVAC equipment is original. HVAC equipment is reportedly replaced on an "as needed" basis.
- The electric radiant heating is concealed in the ceiling and was not directly observed. Approximately two apartment units have non-functional systems which have been abandoned in place and replaced with electric wall heaters. According to the POC and a number of residents, the heating system is expensive to run and many tenants do not use it. It is not cost effective to replace or repair these radiant systems due to the location in the ceiling. Based on the estimated Remaining Useful Life (RUL), and observed conditions, replacement of the radiant systems with wall heaters is recommended. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- The bathroom fans are typically in fair or poor condition. Efficient fans are required to reduce moisture in the bathrooms and replacement is recommended. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).

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**8.4. PLUMBING**

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The bathrooms include a water closet, enameled-steel bathtub, a vanity, and a lavatory. The master baths in the two bathroom apartment units have ceramic tile or fiberglass shower pans and glass shower enclosures. Some bathtubs are also provided with glass doors.

Domestic hot water is supplied by the central system described in Section 7.2.

**Observations/Comments:**

- The bathroom fixtures are in fair condition. Bathtub deterioration was noted at a significant number of units and some leaking toilets were noted. Replacement or reglazing of bathtubs and replacement or poorly functioning toilets is required. In addition, the bathroom vanities will also need to be replaced. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).
- According to the POC, the pressure and quantity of hot water are adequate.

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**8.5. ELECTRICAL**

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The electrical service to each apartment unit is 100 amps. A circuit breaker panel inside each unit supplies the HVAC system, appliances, receptacles and light fixtures.

The apartment units have incandescent and fluorescent light fixtures. Each apartment unit has at least one cable television outlet and telephone jack.

**Observations/Comments:**

- The apartment unit light fixtures are in fair condition. Based on the estimated Remaining Useful Life (RUL), and observed conditions, replacement of the light fixtures is recommended. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).

# PHYSICAL NEEDS

## ASSESSMENT

82100.07R-001.214

- The current electrical system at the Project Site is in good overall condition and is adequately configured with regard to "provided" versus "demanded" electrical capacity for each apartment unit.
- Electrical outlets in the kitchen and bathrooms do not contain GFCI which can pose a safety hazard. In addition, some of the switches were noted to be loose. Replacement of affected outlets in proximity to water source and damaged switches is required. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).

### 8.6. FURNITURE, FIXTURES AND EQUIPMENT (FF&E)

Not applicable. There are no furnished apartments.

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## 9. OTHER STRUCTURES

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The carport is a wood-framed structure and the rear wall is the slump stone masonry perimeter fencing. The carport incorporates the maintenance shop which is located at the southwest corner. The carport roof is finished with tar and gravel. Carport illumination is provided by surface-mounted fluorescent ceiling fixtures.

***Observations/Comments:***

- The carport is in good to fair condition. One area of deck deterioration and suspect dryrot was noted at the underside near the southeast corner of the property, staining was also noted along the west side. Based on the estimated Remaining Useful Life (RUL), and observed conditions, the carport roof and some of the decking will require replacement over the evaluation period. Exterior painting will also be required. The estimated cost of this work is included in the Immediate Physical Needs Estimate (Table 1).

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**10. APPENDICES**

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- APPENDIX A: Photographic Record
- APPENDIX B: Site Plan
- APPENDIX C: Supporting Documentation
- APPENDIX D: EMG Accessibility Checklist
- APPENDIX E: Pre-Survey Questionnaire
- APPENDIX F: Acronyms and Out of Scope Items
- APPENDIX G: Resumes for Report Reviewer and Field Observer

**ATTACHMENT NO. 5**

**Regulatory Agreement**  
[On the Following Pages]

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

City Document No.

***THIS INSTRUMENT IS RECORDED AT THE  
REQUEST AND FOR THE BENEFIT OF THE CITY OF  
OCEANSIDE AND IS EXEMPT FROM RECORDING  
FEE PURSUANT TO GOVERNMENT CODE § 27383***

## **REGULATORY AGREEMENT**

This Regulatory Agreement (hereinafter this "Regulatory Agreement") dated, solely for identification purposes, as of this \_\_\_\_ day of \_\_\_\_\_, 2007, is made and entered into by and between the City of Oceanside, a municipal corporation (hereinafter the "City"), and Country Club Apartments, L.P., a California limited liability company (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 (hereinafter the "Effective Date").

### **RECITALS**

WHEREAS, as of the Effective Date, Developer is, or will be the legal and equitable owner of the fee interest in the real property situated at 201 Country Club Lane in the City of Oceanside, County of San Diego, State of California, Assessor Parcel No. 148-291-03, as more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter the "Property");

WHEREAS, the Property is improved with a 91-unit multifamily rental residential complex commonly referred to as the Country Club Apartment (the "Complex");

WHEREAS, Developer and City entered into an Acquisition and Rehabilitation Agreement (the "Acquisition and Rehabilitation Agreement"), dated, solely for identification purposes as of, December 19, 2007, for the acquisition and rehabilitation of the Property to further the City's Low-Income Housing Goals by providing for the purchase of the Property to the Developer for rehabilitation as an affordable multifamily residential apartment complex and to contribute to the revitalization of the neighborhood immediately surrounding the Property.

WHEREAS, Developer has applied to the City for financial assistance in order to rehabilitate and operate the Complex as an affordable multifamily rental residential development, consisting of ninety-one (91) units consisting of twelve (12) studio apartments, fifty-seven (57) one-bedroom apartments, twenty-two (22) two-bedroom apartments, with one (1) two-bedroom apartment set aside for the onsite manager, together with all appurtenant fixtures, common use areas, amenities and parking spaces related thereto. That the financial assistance provided by the City is subject to the requirements of the specific source of funds utilized for the acquisition of the Property and the

rehabilitation of the Complex (hereinafter the "Program"). Developer agrees to be bound and to abide by all applicable Program statutes, rules, and regulations that are applicable to the Complex and the Property, and the financial assistance provided by the City; and

WHEREAS, as an inducement for the City to provide the financial assistance made available under the Program and that certain loan agreement, of the same date as this Regulatory Agreement, by and between the Developer and City (the "Loan Agreement"), 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 Complex 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, and Developer's application package for financial assistance for the development of the Property as approved by the City, on file in the Offices of the Housing and Neighborhood Services Department of the City of Oceanside, 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 (the "Commencement Date") and continuing in perpetuity (the "Term"), unless terminated earlier as provided for herein. As used hereinafter the terms the "Term" and the "Term of this Regulatory Agreement" and similar phrases relating to the duration of this Regulatory Agreement, shall mean Term.

2. **Developer's Obligation to Rehabilitate Improvements.** This Regulatory Agreement is executed with the understanding and agreement that Developer is obligated to rehabilitate and make certain improvements to the Property as set forth in the Acquisition and Rehabilitation Agreement (the "Improvements"). Developer covenants and agrees that the buildings, facilities, improvements and appurtenances thereto must be rehabilitated and paid for wholly at the expense of Developer. Before submitting plans and specifications for approval by City and before commencing the rehabilitation of the Improvements, 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 rehabilitation of the proposed Improvements.

2.1 **Relocation,**

- (a) During the times of renovations of the interior of the Housing Units and the manager's residence, the Developer shall provide the affected qualified tenants (i.e. households or persons meeting the targeted income levels set forth in Section 4 and who meet established industry standards with regard to background and credit history, below) with temporary relocation/residential lodging. Notwithstanding the foregoing, Developer shall use best management practices to minimize the need for temporary displacement of tenants during the renovation of the interior of the Housing Units.
- (b) Developer shall provide permanent relocation assistance for all eligible tenants (displacees) who are in occupancy of a Housing Unit as of the initial written offer to purchase the Property (i.e. February 20, 2007) in accordance with provisions of the Uniform Act.

- (c) All relocation services shall be administered in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (as amended) and Title 49 Code of Federal Regulations (CFR) part 24 (the "Uniform Act") without regard to race, color, national origin, or sex in compliance with Title VI of the Civil Rights Act (42 U.S.C. 2000d, *et seq.*), and pursuant to the relocation plan as first approved in writing by the City.

**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 the Complex and Property shall be rehabilitated, devoted, maintained and operated as an affordable rental residential apartment complex containing ninety-one (91) units consisting of the twelve (12) studio apartments, fifty-seven (57) one-bedroom apartments, twenty-two (22) two-bedroom apartments, (the "Housing Units" or "Housing Unit") with one (1) two-bedroom apartment set aside for the onsite manager (the "Manager's Residence"), together with all appurtenant fixtures, common use areas, amenities and parking spaces (the "Complex") on the Property, all of which Housing Units, except for the Manager's Residence, shall be leased at affordable rental rates to qualified very low income persons and households, in conformance with the affordability restrictions stipulated in this Regulatory Agreement. In the event of any inconsistency regarding affordability requirements between this Regulatory Agreement and any other document or instrument concerning the use and occupancy of the Property the provisions of this Regulatory Agreement shall control.

**4. Affordable Housing Requirements.** Upon the completion of the interior improvements for each individual Housing Unit, and at all times thereafter during the Term of this Regulatory Agreement, Developer agrees to make available, restrict occupancy to, and rent all of the Housing Units to qualified very low-income households and persons, all at affordable rents described below. Developer shall set aside one (1) two-bedroom apartment as an on-site manager's residence ("Manager's Residence"), with no income or rent restrictions applying thereto.

**4.1 Definitions.** For the purposes of this Regulatory Agreement, "Very Low Income Household" shall mean a household whose gross adjusted income is not greater than fifty percent (50%) of San Diego County Area Median Income (AMI), as set forth by regulation of the U.S. Department of Housing and Urban Development, and adjusted periodically. "Affordable Housing Expense" shall mean thirty percent (30%) of fifty percent (50%) on AMI, adjusted for household size appropriate for the Housing Unit, less a utility allowance as defined herein below. "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 a utility allowance as published annually by the Neighborhood Services Department – Housing Division, designee or successor. "Adjusted for household size appropriate for the Housing Unit" shall have the meaning set forth in laws and regulations pertaining to Low Income Tax Credits.

**4.2 Duration of Affordability Requirements.** The use and occupancy of the Housing Units shall be subject to the requirements of this Section 4 for the Term of this Regulatory Agreement and any extension thereof. The duration of this requirement shall be known as the "Affordability Period."

**4.3 Income of Residents.** Following the completion of the renovation of the interior improvements of all the Housing Units and the Manager's Residence, and annually thereafter, on or before the thirtieth (30th) day of June 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 copies of completed income computation and certification forms, pursuant to California Tax Credit Allocation Committee ("TCAC"), or successor requirements, 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 Household, and meets the eligibility requirements established for the Housing Unit.

**4.4 Rent Schedule.** Upon the completion of the initial renovation of the interior Improvements for each individual Housing Units, Developer shall charge only those rents approved by the City and which are established pursuant to the TCAC Program Regulations (the "Program Regulations). Subsequent increases or decreases in rent, including special rent increases, shall be charged only if consistent with the Program Regulations. Failure to observe these regulations shall be considered a material breach of this Regulatory Agreement.

**4.5 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 individual or household meets the requirements of the Program Regulations as described in this Regulatory Agreement.

**4.6 Tenant Occupancy Procedures.** Each eligible household or persons who are in legal occupancy of the Housing Units as of the Effective Date of this Regulatory Agreement, and each eligible applicant selected to occupy a Housing Unit thereafter, shall enter into a written occupancy agreement or lease with Developer, or its designated management agent, the form of which shall contain those provisions as are required by the Program Regulations and this Regulatory Agreement.

- (a) Developer shall establish reasonable rules of conduct and occupancy that shall be consistent with state and federal law and the Program Regulations and as approved in writing by the City Manager (or designee(s)). The rules shall be in writing and shall be given to each applicant and resident. Any amendment to said rules shall be effective no less than thirty (30) days after giving written notice thereof to each resident.
- (b) All occupancy or rental agreements, leases, 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. Developer may require the resident to move out if the resident has violated terms of the occupancy agreement or lease. Developer shall not collect or accept payment of any rents more than two (2) months prior to the due dates of such Rents.

**5. Maintenance and Repair.** Developer shall manage, operate and maintain the Complex and the Property throughout the Term without expense to the City, and perform all repairs and replacements necessary to maintain and preserve the Complex 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 shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Complex and the Property.

Developer and its maintenance staff, contractors or subcontractors shall comply with the following standards:

- (a) Developer shall maintain the Complex, 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 shall remove, or cause the removal of, all graffiti within twenty-four (24) hours of the discovery of such being on any portion of the Complex or Property, including, but not limited to, buildings, walls, fences, hardscaped areas, windows, signs, fixtures and equipment. 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 Complex including, but not limited to, exterior and interior tenant spaces, exterior and interior common areas and parking 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; staking for support of trees; and pest control.
- (c) Clean-up maintenance shall include, but not be limited to: maintenance of all 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, and all tools and implements removed.
- (d) The Complex 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 prior written 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 Operating Budget (the "Annual Operating Budget") for the Complex no later than ninety (90)

days prior to the completion of the Improvements and on or before sixty (60) days prior to the start of the next operating year of the Complex (defined as being the fiscal year of the Complex as stipulated in the Partnership Agreement executed between the Developer and the low income housing tax credit investor ("Investor") (the "Operating Year")) and continuing annually thereafter.

The Annual Operating Budget shall set forth the anticipated Gross Income of the Complex, including residential rents, laundry revenues, 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.

Operating costs are defined as all expenses associated with providing decent, safe, and sanitary housing at the Complex and normal upkeep of all buildings, structures, landscaping and appurtenant improvements made to the Property, and any social service fees, as approved by the City in the Annual Operating Budget.

In addition to operating costs, the City will also annually approve contributions to replacement reserves, operating reserves, repayment of deferred developer fees, if any, and the payment of partnership management fees in the Annual Operating Budget.

Unless the City objects to the proposed budget within thirty (30) days after submission of a complete proposed budget, such proposed operating budget shall be the operating budget for the fiscal year of the Complex, provided that the written submittal states that failure to approve or disapprove within such thirty (30) day period shall be deemed an approval. In the event that the City reasonably objects to the proposed operating budget, City will submit objections in writing to the Developer within said thirty (30) day period and City and Developer shall use reasonable and diligent efforts to reach mutual agreement to determine the operating budget. Notwithstanding the foregoing, City approval of the Annual Operating Budget shall not be unreasonably withheld.

- (i) **Operating Reserve.** Developer shall, or shall cause the Property Manager to, set aside in a separate interest-bearing trust account an initial amount of One Hundred Seventy-Five Thousand Dollars (\$175,000.00) (the "Operating Reserve"). Interest earned on funds in the Operating Reserve shall remain in the Operating Reserve. Notwithstanding the foregoing, however, the Developer shall not be obligated to place any further amounts in the Operating Reserve whenever the balance of the Operating Reserve equals or exceeds the Operating Reserve Threshold Amount (defined as the amount equal to nine (9) months of the current year Annual Operating Budget for operating expenses (the "Operating Reserve Threshold Amount")). Developer shall provide, to the City, at the same times and manner as required for the submittal of the Operating Year reports related to the Annual Operating Budget as stated in Subsection (h) above, evidence reasonably satisfactory to the City Manager (or designee(s)) of compliance herewith. Developer shall retain such amount in the Operating Reserve to cover shortfalls between Complex income, including, but not limited to, rents, such payments as may be provided from the Program and other public and private sources and actual

Complex operating expenses. Developer shall not make any disbursements from the Operating Reserve in excess of the approved annual budgeted line items for the Operating Reserve without the prior written consent of the City Manager (or designee(s)). Upon making such disbursements, the Operating Reserve shall be replenished to the Operating Reserve Threshold Amount at the times set forth above. In the event the Operating Reserve cannot be replenished to the level required herein through a single month's deposit, Developer shall develop a plan for restoring the required balance, subject to the review and approval of the City through the budget review process.

- (j) **Capital Replacement Reserve.** Developer shall also, or cause the Property Manager to, annually set aside no less than Twenty-eight Thousand Six Hundred Sixty-five Dollars (\$28,665.00) into a separate interest bearing trust account (the "Capital Replacement Reserve"). The Capital Replacement Reserve shall be increased Two and One Half Percent (2.5%) per year and that amount deposited each year in the Capital Replacement Reserve. Funds in the Capital Replacement Reserve shall be used for capital replacements to the Complex fixtures and equipment which are normally capitalized under generally accepted accounting principles. As capital repairs and improvements of the Complex become necessary, the Capital Replacement Reserve shall be the first source of payment therefor; provided, however, Developer shall not make any disbursements from the Capital Replacement Reserve in excess of the approved annual budgeted line items for Capital Replacement Reserve, without the prior written consent of the City Manager (or designee(s)). A failure by the City to approve, disapprove or respond to a reserve withdrawal request within fifteen (15) days of the date of receipt of the written request shall be deemed approval, provided that the written request states that failure to approve or disapprove such request within such fifteen (15) day period shall be deemed approval. 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 Complex, 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 Subsection (h) above, a budget and an accounting for the Capital Replacement Reserve. Capital repairs to and replacement of improvements, fixtures and equipment related to the Complex shall include only those items with a long useful life (generally five years or longer).

For the purposes of determining the adequacy of the funds retained in the Capital Replacement Reserve, the Developer shall conduct, or cause to be conducted, an analysis of the Capital Replacement Reserve and a replacement study of the various components of the Complex, including, without limitation, all appurtenant improvements, fixtures, furniture and equipment, excluding personal property of the residents and occupants of the Site, shall be conducted at five (5) year intervals throughout the Term of this Regulatory Agreement, commencing on the sixth (6<sup>th</sup>) year of the Term hereof, assessing and evaluating the condition and effective life of such improvements, fixtures, furniture and equipment. The purpose of this replacement study is to advise the Developer and the City as to replacement requirements of the Complex and Property conditions and the current funding and future deposits to be placed in the Capital Replacement Reserve account to meet

the updated replacement projections and Developer shall make additional deposits to the account to maintain adequate funding for future replacements as so determined and approved in writing by the City.

- (k) For purposes of this Section 5, "Effective Gross Income" of the Complex shall mean the gross income actually generated by the Complex, including without limitation rents, laundry revenues, and such payments as may be provided from the Program and other public and private sources, without deduction for any expenses.

**6. Accounting Records.** The Developer shall provide an audited financial statement of the Complex, conforming to customary accounting standards, to the City no later than ninety (90) days following the end of each Operating Year. 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 Complex. All records and books relating to this system shall be retained for not less than seven years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to City inspection and audit, upon reasonable notice from City, the location of which shall be mutually acceptable to the parties and during normal working hours.

**7. Management.** Developer shall manage or cause the Property and the Complex to be managed in a prudent and business-like manner, consistent with professional standards for high quality multifamily 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 Complex (the "Property Manager") in accordance with the terms of this Regulatory Agreement provided, however, that the selection and hiring of the Property Manager shall be subject to the written approval by the Director of Neighborhood Services Department (or designee(s)). Approval of the Property Manager by the City shall not be unreasonably withheld. The John Stewart Company is hereby approved as the initial Property Manager. Furthermore, the identity of the Property Manager shall not be changed without the prior written approval of the City, which approval shall not be unreasonably withheld.

Developer and the 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 Complex and manner of enforcement, a standard occupancy agreement or lease form, and other matters relevant to the management of the Complex. The management of the Complex shall be in compliance with the Management Plan, which is approved by the City. Developer and the 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 Complex, 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 Complex in a manner which violates the terms and/or intention of this Regulatory Agreement and the Management Plan 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; or,

- (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; or,
- (c) Repeatedly under funding the prescribed Capital Replacement and Operating Reserves (Sections 5(i) and 5(j)); or,
- (d) Failure to pay property taxes, special assessments and liens levied against the Site or any personal property related thereto;
- (e) Failure to resolve or remove mechanical, workmens' or any other type of lien placed against the Site or the improvements thereon;
- (f) Failure to maintain insurance as required pursuant to terms and conditions of this Regulatory Agreement;
- (g) Repeatedly failing to timely maintain the Complex and the Property in accordance with the Management Plan and the manner prescribed in this Section 7;
- (h) Repeatedly failing to submit timely and/or adequate annual resident income certification reports as required in Section 4.3;
- (i) Commitment of fraud or embezzlement of Complex monies, including without limitation, the funds in the Capital Replacement Reserve and Operating Reserve;
- (j) Repeatedly failing to fully cooperate with the Oceanside Police Department, or other local, State or Federal law enforcement agencies with jurisdiction over the Development, in attempting to maintain a crime-free environment on the Site.

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.

## **8. Utilities and Taxes.**

**8.1 Utilities.** Developer shall pay, and/or provide for the payment by residents of the Housing Units, all charges for gas, electricity, water, sewer, garbage collection, and other utilities and services furnished to the Property and the Complex, and all use, hookup or similar charges or assessments for utilities levied against the Property and the Complex, but excluding telephone, internet, cable television and other telecommunication services and utilities. Nothing contained herein shall preclude the Developer from individually metering the Housing Units for any such utilities provided to the Property and the Development and to require the payment of such utility costs to be made by the residents. Services provided for the common use areas of the Property and the Development shall be an expense to the Complex.

## **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 benefit of the Property, municipal or county water and sewer rates and charges, or any other assessments, flat rate charges or possessory interest taxes, which shall be levied against the Property or the Complex, or any interest therein, and which become a lien thereon and accrues during the Term.

- (b) Developer covenants and agrees to pay all such real estate taxes levied against the Property and Complex prior to the delinquency date thereof.
- (c) Developer shall have the right to file exemption applications pursuant to Revenue and Taxation Code §214 and 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.

**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 property as may be from time to time situated within the Property and Complex.

Notwithstanding the above provisions of this Section 8, however, the City acknowledges that Developer intends to obtain an exemption from the payment of property taxes with respect to the Property, and nothing in this Regulatory Agreement shall prevent Developer from applying for and obtaining such an exemption.

**9. Ownership of Improvements, Fixtures and Furnishings.** All improvements existing as of the Effective Date of this Regulatory Agreement or constructed on the Property by Developer as permitted by City and this Regulatory Agreement shall be and remain the property of Developer, its assigns or syndication under the low income housing tax credit provisions; provided, however, that Developer shall have no right to waste the Complex, or to destroy, demolish or remove the Complex, except as otherwise permitted pursuant to this Regulatory Agreement; and provided further that Developer's rights and powers with respect to the Property and Complex are subject to the terms and limitations of this Regulatory Agreement. The City and Developer intend that the improvements constituting the Complex, plus the land for the Site, shall be real property.

**10. Indemnification: Faithful Performance.** Developer shall not suffer or permit any liens to be enforced against the Property and Complex by reason of work, labor, services or materials supplied or claimed to have been supplied to Developer or anyone holding the Property and the Complex, or any part thereof, through or under Developer. Developer agrees to defend, indemnify, and hold the City and its 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 Complex, Developer shall, within thirty (30) days after notice to Developer of the filing thereof, cause the same to be discharged of record; provided, however, that Developer shall have the right to contest the amount or validity, in whole or in part, of any such lien by appropriate proceedings, but in such event, Developer shall notify the City and promptly bond such lien in the manner authorized by law with a responsible surety company qualified to do business in the State of California or provide other security acceptable to the City. Developer shall prosecute such proceedings with due diligence. Nothing in this Regulatory Agreement shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of the City, express or implied, by inference or otherwise, to any person, firm or limited partnership for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Property, the Complex, or any part thereof. Prior to commencement of rehabilitation of the Complex on the Property, or any repair or alteration thereto, Developer shall give the City not less than thirty

(30) days advance notice in writing of intention to begin said activity in order that non-responsibility notices may be posted and recorded as provided by state and local laws.

## **11. Environmental Matters.**

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

- (a) The term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes regulated by 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 Complex, including without limitation alcohol, aspirin 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, Developer or the Property.

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

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

**11.4 Duty to Prevent Hazardous Material Contamination.** Developer shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment from the Property or the Complex. 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 pursuant to Section 11.3 of this Regulatory Agreement, Developer shall, at its sole cost and expense, promptly take (i) all actions required by any federal, state, regional, or local governmental agency or political subdivision or any Governmental Requirements

and (ii) all actions necessary to make full economic use of the Property for the purposes contemplated by this Regulatory Agreement, which requirements or necessity arise from the presence upon, about or beneath the Property of any Hazardous Materials or Hazardous Materials Contamination no matter when occurring. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. Developer shall take all actions necessary to promptly restore the Property to an environmentally sound condition for the uses contemplated by this Regulatory Agreement notwithstanding any lesser standard of remediation allowable under applicable Governmental Requirements.

**11.6 Right of Entry.** Notwithstanding any other term or provision of this Regulatory Agreement, Developer shall permit the City or its agents or employees to enter the Property at any time during normal business hours (except in the event of an emergency), without prior notice in the event of an emergency, and with not less than twenty-four (24) hours advance notice if no emergency is involved, to inspect, monitor and/or take emergency or long-term remedial action with respect to Hazardous Materials and Hazardous Materials Contamination on or affecting the Property, or to discharge Developer's obligations hereunder with respect to such Hazardous Materials and Hazardous Materials Contamination when Developer has failed to do so after notice from the City and a reasonable opportunity to cure or commence to cure and diligently pursue to completion such deficiency. All reasonable costs and expenses incurred by the City in connection with performing Developer's obligations hereunder shall be reimbursed by Developer to the City within thirty (30) days of Developer's receipt of written request 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; provided, however, that nothing contained in this Section shall preclude the Developer, its agents, contractors or employees from bringing, keeping or using on or about the Property such materials, supplies, equipment and machinery as are appropriate or customary in the construction or repair, operation and maintenance of the Property and the Complex and used or applied in accordance with manufacturer's directions and requirements. In the event Developer does store, use, transport, handle or dispose of any Hazardous Materials which are in violation of applicable law, 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, and shall reimburse the City, for all costs and expenses incurred by the City arising out of or connected with the removal, clean-up and/or restoration work and materials necessary to return the Property and any property adjacent to the Property affected by Hazardous Materials emanating from the Property to their condition existing at the time of the Developer's Property Evaluation. Developer's obligations hereunder shall survive the termination of this Regulatory Agreement and shall not merge with any grant deed.

**11.8 Environmental Inquiries.** Developer shall notify the City, and provide to the City a

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

In the event of a release of any Hazardous Materials into the environment from the Property or the Complex in violation of applicable law, 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 rehabilitation of the Complex, Developer shall not make or permit to be made any structural alteration of the Complex, nor demolish all or any part of the Complex, 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 Complex 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 Complex and the Property in a clean and safe condition, including structural repair and restoration of damaged Complex improvements. The City 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 Complex, or any part thereof, except as otherwise permitted pursuant to this Regulatory Agreement.

**13. Damage or Destruction.**

**13.1 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance.** Subject to Section 13.3 below, if during the period of rehabilitation, the Complex 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 Complex to substantially the same condition as the Complex 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 Complex can be occupied in accordance with this Regulatory Agreement. Subject to Section 25.22, 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(s)), 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 Complex by giving notice to the City (in which event Developer will be entitled to all insurance proceeds, subject to Developer's obligations to lenders, including the City, 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, and the other governmental agency or agencies with jurisdiction.

In the event Developer elects not to repair, replace, or restore and give the City notice of such election as provided in this Section 13.1, 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 Complex 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 rehabilitation the Complex 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. Such notice shall contain a prominent notice that Developer's failure to respond within ninety (90) days shall be deemed Developer's waiver of its right not to so repair, replace or restore such damage or destruction. 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 Complex. In the event that the City delivers such notice to Developer but Developer does not timely elect not to repair, replace, or restore the Complex 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 Complex and thereafter Developer shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed Complex in accordance with Section 13.1 above and continue operation of the Complex during the period of repair (if practicable) in accordance with Section 13.2 above. If Developer elects to repair, replace or restore the Improvements, the Capital Reserve funds may be used for such purpose.

**14. Sale, Assignment, Sublease or Other Transfer.** Except for (a) leases of Housing Units to residents, and (b) transfers permitted pursuant to this Regulatory 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 Complex (each of which events is referred to in this Regulatory Agreement as an "Assignment"), without prior written approval of the City, which approval shall not be unreasonably withheld as more particularly set forth below in this Section 14. Any purported assignment without the prior written consent of the City shall render this Regulatory Agreement absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee.

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

- (a) Any transfer of the Site to a limited partnership in which the Wakeland Housing and

Development Corporation ("Wakeland"), or a wholly controlled non-profit entity controlled by the Developer (the "Affiliate"), to whom it is the sole general partner, for the purposes of operating a low income housing tax credit limited partnership during the fifteen year tax credit for the compliance period pursuant to Internal Revenue Code Section 42(i)(1). For purposes of this paragraph, "control" is defined as Wakeland maintaining "control" of the appointment of 100% of the members of the Board of Directors of the Affiliate created to serve as General Partner instead of Wakeland for the Property and Complex, and the low income housing tax credit limited partnership.

- (b)** Any transfer to Wakeland or an Affiliate after the expiration of the fifteen (15) year tax credit compliance period.
- (c)** Any requested assignment for financing purposes (subject to such financing being considered and approved by the City pursuant to Section 15 herein), including the grant of a deed of trust to secure the funds necessary for construction and permanent financing of the Complex.

In the event of an assignment by Developer under subparagraphs (a) through (c), inclusive, above, not requiring the City's prior approval, Developer nevertheless agrees that at least sixty (60) 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 Complex, 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 Attorney (or designee(s)) shall also be required for all proposed assignments. Within sixty (60) 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 Complex 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 assignee or successor from any obligations under this Regulatory Agreement. Developer shall only sell, assign, sublease, or transfer the Property and the Complex as a whole and is not permitted to subdivide the Property and the Complex for the Term 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 leasehold estate created hereby.

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

The City may assign or transfer any of its rights or obligations under this Regulatory Agreement at any time without the approval or consent of the Developer.

The terms of this Regulatory Agreement shall survive in the event of an assignment by Developer subparagraph (a) through (c), inclusive.

**15. Financing.** Developer may, at any time and from time to time during the Term of this Regulatory Agreement, 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 Property, 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 Property and Complex ("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. Such approval, disapproval, or conditional approval will be submitted to Developer in writing within said thirty (30) day period. 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 Property and Complex, and (ii) the costs of obtaining the Capital Improvement Loan(s).

**15.1 Hypothecation.** The Developer may, from time to time, with the prior written consent of the City, hypothecate, mortgage, pledge, convey in trust or alienate (collectively, a "deed of trust or mortgage") the Property as security for payment of any indebtedness and/or the performance of any obligation. The holder of any such deed of trust or mortgage upon the Property, is herein referred to as a "Mortgagee". A Mortgagee may enforce such deed of trust or mortgage and acquire title to the Property in any lawful way and, pending foreclosure of such deed of trust or mortgage, the Mortgagee may take possession of and operate the Complex performing all obligations performable by Developer, and upon foreclosure of such lien by power of sale, judicial

foreclosure, or upon acquisition of the Property by deed in lieu of foreclosure, the Mortgagee may sell and assign the estate hereby created. A Mortgagee shall at all times have the right to assign its rights under the deed of trust or mortgage and any other security instruments and/or documents relating to the deed of trust or mortgage to a nominee for the purpose of taking title to the Complex following a foreclosure of the deed of trust or mortgage or deed-in-lieu thereof. Such nominee shall be entitled to all of the rights and protections afforded a Mortgagee in this Regulatory Agreement. Any person or entity acquiring such leasehold estate so sold or assigned by the Mortgagee shall be liable to perform the obligations imposed on Developer by this Regulatory Agreement only during the period such person has ownership of said leasehold estate. The rights and privileges hereunder of any Mortgagee shall be subject to the rights and privileges of any other Mortgagee whose lien has priority over the lien of such Mortgagee.

**15.2 Notice to and Rights of Mortgagee.** When giving notice to Developer pursuant to Section 24 herein, with respect to any default hereunder, the City shall also serve a copy of each such notice upon each Mortgagee who shall have given City a written notice requesting such notice and specifying its name and address. All notices by the City to any Mortgagee shall be given pursuant to Section 25.7 herein. No notice to Developer under this Regulatory Agreement shall be effective unless a copy of the same is delivered to each such Mortgagee.

In the event Developer shall default in the performance of any of the terms, conditions, covenants and agreements of this Regulatory Agreement on Developer's part to be performed, each Mortgagee shall have the right, but not the obligation, to cure or make good such monetary and/or non-monetary default or cause the same to be cured or made good and City shall accept such performances on the part of any such Mortgagee as though the same had been done or performed by Developer. In the case of a default by Developer in the payment of money, after the expiration of all applicable grace and cure periods, City will take no action to exercise any other remedy by reason thereof unless such default is not cured within sixty (60) days after each Mortgagee receives written notice from City that such default was not timely cured, it being the intent hereof and the understanding of the parties that each such Mortgagee entitled to such notice shall be allowed up to but not in excess of sixty (60) days after the service of such notice to cure any default of Developer in the making of any other monetary payment required under the terms of this Regulatory Agreement. In the case of any other default by Developer, City will take no action to exercise any remedy by reason thereof if, within one-hundred-twenty (120) days after the expiration of all applicable grace and cure periods available to Developer for curing said default and City's delivery of written notice thereof to each Mortgagee, any Mortgagee commences a non-monetary cure and thereafter diligently prosecutes the same to completion within a reasonable period of time.

The commencement of judicial or non-judicial foreclosure proceedings by the Mortgagee shall be deemed the commencement of such a non-monetary cure provided that: (i) the Mortgagee thereafter diligently prosecutes the same (provided, however, that if the Mortgagee is prevented or restrained by a court of competent jurisdiction or by reason of any law, regulation, order, stay or rule from so proceeding, the time period set forth above, and the time within when such Mortgagee shall be required to cure such default, shall be tolled, and provided further that if the default is cured, the Mortgagee may discontinue such proceedings and/or possession); and (ii) upon acquisition by either the Mortgagee or any other direct purchaser or direct transferee of Developer's interest under this Regulatory Agreement, whether at a judicial foreclosure, trustee's sale or by deed or assignment in lieu of foreclosure, such Leasehold Mortgagee, purchaser or transferee commences, within one-hundred twenty (120) days after acquiring such interest, and thereafter diligently prosecutes to completion, the cure of all defaults hereunder reasonably capable of being cured by such Mortgagee or transferee. The time available to any Mortgagee to initiate foreclosure proceedings as aforesaid shall be deemed extended by the reasonable number of days of delay occasioned by circumstances beyond the Mortgagee's control. During the period that such

Mortgagee shall be in possession of the Property and/or during the pendency of any foreclosure proceedings instituted by any Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid all charges of what ever nature payable by Developer hereunder which have been accrued and are unpaid and which will thereafter accrue during said period (subject to the provisions of the preceding paragraph). Following the acquisition of the Property by the Mortgagee, or its designee, either as a result of judicial foreclosure or trustee sale proceedings or acceptance of an assignment in lieu of foreclosure, the Mortgagee or party acquiring title to Developer's leasehold estate shall, as promptly as reasonably possible, commence the cure of all defaults hereunder reasonably susceptible to being cured by the Mortgage and thereafter diligently process such cure to completion, Any such purchaser, including, without limitation, any Mortgagee, shall be liable to perform the obligations imposed on Developer by this Regulatory Agreement incurred or accrued only during the period such person or entity has ownership of the Property.

Upon the request of a Mortgagee, City shall, as reasonably acceptable to City, subordinate this Regulatory Agreement to approved financing through the execution of a subordination agreement with such Mortgagee.

**15.3 Notice to and Rights of Investor.** When giving any notice to Developer pursuant to Section 24 herein, with respect to any default hereunder, City shall also serve a copy of such notice upon Developer's tax credit investor ("Investor") as specified in and pursuant to Section 25.7 herein, which shall be deemed effective as set forth in Section 25.7. Investor shall have the same rights as Developer to cure any default hereunder on behalf of Developer, provided that Investor shall have an additional thirty (30) days to cure beyond the cure period afforded to Developer in the event that Investor removes and replaces the general partner of Developer in order to effectuate such cure, and provided further that Investor uses commercially reasonable efforts to prosecute the cure during the pendency of the replacement of the general partner. City shall have the right to approve such replacement general partner. Notwithstanding the generality of the foregoing, City approves as a replacement general partner any person or entity which is a limited partner approved by City.

**15.4 New Regulatory Agreement.** In the event that this Regulatory Agreement is terminated for any reason, including, without limitation, any termination or rejection through bankruptcy or chapter proceedings, City shall give each Mortgagee written notice of such termination, each Mortgagee shall have the right within one-hundred twenty (120) days of receipt of notice of such termination, to demand a new agreement to replace this Regulatory Agreement covering the Property for a term to commence on the date of procurement by City of possession of the Property and to expire on the same date as this Regulatory Agreement would have expired if it had otherwise continued uninterrupted until its scheduled date of termination, and containing all of the same rights, terms, covenants, considerations and obligations as set forth in this Regulatory Agreement; provided however, that should more than one Mortgagee make such a demand, only the senior-most Mortgagee's demand shall be honored. Such new agreement shall be executed and delivered by the City to such Mortgagee within one-hundred twenty (120) days after receipt by the City of written notice from the Mortgagee of such election and upon payment by such Mortgagee of all sums owing by Developer under the provisions of the Regulatory Agreement (less the rent and other income actually collected by City in the meantime from any lessees or other occupants of the Property). After such termination and cancellation of this Regulatory Agreement and prior to the expiration of the period within which any Mortgagee may elect to demand such new agreement from City, City shall refrain from terminating any existing lease and from executing any new leases or otherwise encumbering the real property regulated hereby without the prior written consent of each Mortgagee and City shall account to each Mortgagee for all rent collected from lessees during such period. Any new agreement granted any such Mortgagee shall be in a form substantially identical to this Regulatory Agreement and shall enjoy the same priority in time and in

right as this Regulatory Agreement over any lien, encumbrance or other interest created by City before or after the date of such new agreement and shall have the benefit of and vest in such Mortgagee all right, title, interest, power and privileges of Developer hereunder in the Property, including specifically, without written limitation, the assignment of Developer's interest in and to all then existing leases and lease rentals, and the automatic vesting of title to all buildings, Improvements, and appurtenances, as well as to all equipment, fixtures and machinery therein until the expiration or termination of the Term of this Regulatory Agreement. Such new Regulatory Agreement shall provide, with respect to each and every lease which immediately prior to the termination of this Regulatory Agreement was superior to the lien of the Mortgagee executing the new agreement and Developer, or to which such Mortgagee has executed a nondisturbance agreement, that such Developer thereunder shall be deemed to have recognized the lessee under the lease, pursuant to the terms of the lease, as modified by any applicable nondisturbance or attornment agreement, as though the lease had never terminated but had continued in full force and effect after the termination of this Regulatory Agreement, and to have assumed all of the obligations of the sublessor accruing from and after the termination of this Regulatory Agreement, except that the obligation of the new Developer, as sublessor, under any covenant of quiet enjoyment, express or implied, contained in any such sublease, shall be limited to the acts of such Developer and those claiming by, under and through such Developer.

**15.5 Consent of Mortgagee.** This Regulatory Agreement shall not be surrendered, canceled, terminated or amended and no agreement purporting to surrender, cancel, terminate, or amend this Regulatory Agreement without the consent of each Mortgagee entitled to receive notice of default under this Section 15 shall be valid or effective. In order to facilitate any financing or refinancing by Developer which involves the hypothecation of Developer's estate and rights in and to the Property, City, if requested so to do by Developer, agrees to join in executing any and all instruments which legal counsel for any lender who is or may become a Mortgagee may reasonably require in order to grant to the Mortgagee or prospective Mortgagee the right to act for Developer in enforcing or exercising any of Developer's rights, options, or remedies under this Regulatory Agreement.

**16. Indemnity.** Developer shall defend, indemnify, assume all responsibility for, and hold the City, 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 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 Complex, or from any displacement of residents occupying the Property and/or Complex or liability for relocation assistance pursuant to Government Code Section 7260, et seq., due to the acts of Developer hereunder. Developer shall not be liable for property damage or bodily injury occasioned solely by the active negligence or willful misconduct of, or breach of this Regulatory Agreement by the City or its officers, agents or employees.

The City 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's performance or failure to perform its obligations pursuant to this Regulatory Agreement, whether such activities or performance thereof be by the City, its officers, agents, employees, or by anyone employed or contracted with by the City and whether such damage shall

accrue or be discovered before or after termination of this Regulatory Agreement. The City shall not be liable for property damage or bodily injury occasioned solely by the active negligence or willful misconduct of, or breach of this Regulatory Agreement by Developer or its officers, agents or employees.

**17. Insurance.**

**17.1 Insurance to be Provided by Developer.** During the Term of this Regulatory Agreement, 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) 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 Complex, as defined herein in Section 17.2.
- (b) 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, lightning, 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) Comprehensive general liability insurance in an amount not less than Two Million Dollars (\$2,000,000), combined single limit. The required amount of insurance shall be subject to increases as the City may reasonably require from time to time, but not more frequently than every twenty-four (24) months. In no event shall such increase or increases exceed the increase during such period in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Subgroup "All Items," in the geographical area applicable to the Oceanside area. Developer agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Developer may be held responsible for the payment of damages to persons or property resulting from Developer's activities, activities of its sublessees or the activities of any other person or persons for which Developer is otherwise responsible.
- (d) 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 Complex 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 Complex 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 Complex, including the cost of rehabilitation of the Complex, 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 Complex.

**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 of Oceanside, its officers, employees, agents, and representatives, as "additional insured", as their respective interests may appear. Insurance coverage provided to City as additional insured shall be primary insurance and other insurance maintained by City, its officers, agents and employees 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, or holding an AM Best rating (or its reasonable equivalent) of A-X or better, and reasonably acceptable to the City Manager (or designee(s)). All policies or certificates of insurance shall also: (i) provide that such policies shall not be canceled or limited in any manner without at least thirty (30) days prior written notice to the City; and (ii) provide that such coverage is primary and not contributing with any insurance as may be obtained by the City and shall contain a waiver of subrogation for the benefit of the City.

**17.4 Failure to Maintain Insurance.** If Developer fails or refuses to procure or maintain insurance as required by this Regulatory Agreement, the City shall have the right, at the City's election, and upon ten (10) days prior notice to Developer, to procure and maintain such insurance. The premiums paid by the City shall be treated as 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 Complex.** Subject to the requirements of senior Mortgagees, all proceeds of insurance with respect to loss or damage to the Complex 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 Complex in accordance with plans and specifications approved in writing by the City. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, then such proceeds shall be used to repay any outstanding loans secured by encumbrances upon the Property, and any remaining proceeds shall be apportioned between Developer and the City as their interests may appear. Notwithstanding the foregoing, within the period during which there is an outstanding mortgage upon the Complex, such proceeds shall be payable in accordance with mortgage loan documents.

In the event this Regulatory Agreement is terminated by mutual agreement of the City and Developer and the Complex is not restored, repaired or rebuilt, subject to any lien claims thereto, the insurance proceeds and proceeds of the Capital Replacement Reserve and Operating Reserve

shall be jointly retained by the City and Developer and shall be applied first to any payments due under this Regulatory Agreement from Developer to the City, second to restore the Property and Complex to their original condition and to a neat and clean condition, third to repay any outstanding loans secured by encumbrances upon the Property, and finally any excess shall be apportioned between Developer and the City as their interests may appear, and Developer shall have no further obligation hereunder to restore, repair or rebuild the Complex; provided, however, that within any period when there is an outstanding mortgage upon the Complex, 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.

In the event this Regulatory Agreement is partially terminated by mutual agreement of the City and Developer and a portion of the Complex is not restored, repaired or rebuilt, and subject to any lien claims thereto, a pro rata portion of the insurance proceeds and proceeds of the Capital Replacement Reserve and Operating Reserve attributable to the portion of the improvements which has been terminated shall be jointly retained by the City and Developer and shall be applied first to any payments due under this Regulatory Agreement from Developer to the City, second to restore the applicable portion of the Property and Complex to their original condition and to a neat and clean condition, third to repay any outstanding loans secured by encumbrances upon the Property, and finally any excess shall be apportioned between Developer and the City as their interests may appear, and Developer shall have no further obligation hereunder to restore, repair or rebuild the applicable portion of the Complex subject to termination; provided, however, that within any period when there is an outstanding mortgage upon the Complex, 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.

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

**18.1 Total Condemnation.** If during the Term of this Regulatory Agreement, fee title to all of the Property or to all the Complex and Improvements, or the entire leasehold estate of the Developer is taken under the power of eminent domain, or should so much of the Property be taken under the power of eminent domain as will, in the Developer's reasonable judgment, and subject to the approval of the Leasehold Mortgagee holding the most-superior Leasehold Mortgage, if applicable, prevent or substantially impair the use of the Property for the use and purposes then being made or proposed to be made by the Developer, by any public or quasi-public agency or entity (a "Total Taking"), this Regulatory Agreement shall terminate as of 12:01 AM on whichever of the following occurs first: (1) the date legal title becomes vested in the agency or entity exercising the power of eminent domain, or (2) the date actual physical possession is taken by the agency or entity exercising the power of eminent domain. Thereafter, both the City and the Developer shall be released from all obligations under this Regulatory Agreement, except for those specified in Section 18.3 herein.

**18.2 Partial Taking-Improvements.** If at any time during the Term of this Regulatory Agreement and the Lease a taking occurs that is less than a Total Taking and affects the Complex, including appurtenant buildings, structures, and/or parking spaces, all compensation and damages payable for that taking shall be made available to and used, to the extent reasonably needed, by

the Developer to provide replacement Improvements or to restore the remaining Improvements of the Complex, provided that such replacement and/or restoration is then permitted by the existing law with only such modifications as will not materially reduce the value of the restored Improvements, as compared to the damaged Improvements; Plans and specifications for such replacements and restoration must be compatible, in terms of architecture and quality of construction, with the Improvements not taken. Any material changes in the quality of construction, must be first approved in writing by the City, which approval will not be unreasonably withheld or delayed.

**18.3 Mortgagee.** Notwithstanding any provision set forth in this Section 18 (or any other provision set forth herein) to the contrary, during any period of time when the Property or the Complex and/or Improvements are encumbered by a deed of trust or mortgage, all proceeds from any condemnation of all or any part of the Property or the Complex payable to Developer shall be made payable to the Mortgagee holding the senior-most Mortgage and shall be disbursed in accordance with the terms and provisions set forth under separate agreement by and between the Developer and such Mortgagee. Additionally, notwithstanding any provision to the contrary set forth herein, in the event of any condemnation during any period of time when the Property is encumbered by a deed of trust or mortgage, neither the City nor the Developer shall have the right to terminate this Regulatory Agreement by reason of such condemnation without the prior written consent of each Mortgagee, unless each Mortgagee is repaid all amounts owing to each Mortgagee from the condemnation award or otherwise.

**19. Obligation to Refrain from Discrimination.** Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation, 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 Complex, or any portion thereof, on the basis of sex, familial status, race, color, creed, religion, ancestry or national origin of any person. All such leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- (a) **In Leases:** "The lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, sex, 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 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 race, color, religion, sex, marital status,

national origin, ancestry, familial status, disability or sexual orientation, 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."

**20. Nondiscrimination in Employment.** Developer, for itself and its successors and assigns, agrees that during the operation of the Complex 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, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, or on the basis of any other category or status not permitted by law.

**21. Compliance with Law.** Developer agrees, at its sole cost and expense, to comply and secure compliance by all contractors, residents and other occupants of the Property and Complex 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 Complex, as well as operations conducted thereon, and to faithfully observe and secure compliance by all contractors, residents and other occupants of the Property and Complex, with, in the use of the Property and the Complex 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, assessed or levied upon Developer or the Property or the Complex, 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 Complex. Developer shall use good faith efforts to prevent residents and other occupants 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 Complex and residents' invitees. The judgment of any court of competent jurisdiction, or the admission of Developer or any sublessee or permittee in any action or proceeding against them, or any of them, whether the City be a party thereto or not, that Developer, sublessee or permittee has violated any such ordinance or statute in the use of the Property or the Complex shall be conclusive of that fact as between the City and Developer, or such sublessee or permittee.

**22. Entry and Inspection.** The City reserves and shall have the right during reasonable business hours (except in cases of emergency), upon twenty-four (24) hours prior notice (except in cases of emergency) to Developer by the City's Director of Neighborhood Services Department (or designee(s)), to enter the Property and the Complex for the purpose of viewing and ascertaining the condition of the same, or to protect its investment in the Property and the Complex 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 Complex 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 Complex in a decent, safe and sanitary condition, provided that the City delivers such notice which is required hereunder. Such costs paid by the City shall be due

and payable within thirty (30) days after presentation by the City of a statement of all or part of said costs. The rights reserved in this Section shall not create any obligations on the City or increase obligations elsewhere in this Regulatory Agreement imposed on the City.

**24. Events of Default and Remedies.**

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

- (a) Developer shall abandon or surrender the Property, or the Complex; or
- (b) Notwithstanding the provisions of Section 23 herein, Developer shall fail or refuse to pay, within ten (10) days of notice from the City that the same is due, or any sum required by this Regulatory Agreement to be paid by Developer; or
- (c) Developer shall fail to materially perform any covenant or condition of 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 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 by applicable laws governing bankruptcy, Developer's (i) application for, consent to or suffering of the appointment of a receiver, trustee or liquidator for all or for a substantial portion of its assets; (ii) making a general assignment for the benefit of creditors; (iii) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (iv) becoming unable to or failing to pay its debts as they mature; (v) being adjudged a bankrupt; (vi) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); (vii) convening a meeting of its creditors or any class thereof for purposes of effecting a moratorium, extension or composition of its debts; or (viii) suffering or permitting to continue unstayed and in effect for thirty (30) consecutive days any attachment, levy, execution or seizure of all or a portion of Developer's assets or of Developer's interest in this Regulatory Agreement; then such event shall constitute an event of default under this Regulatory Agreement.

**24.2 Remedies of the City.** In the event of any such default as described in Section 24.1, and subject to Section 15 herein, the City may, at its option:

- (a) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by the City in enforcing this provision) to the account of Developer, which charge shall be due and payable within thirty (30) days after presentation by the City of a statement of all or part of said costs;
- (b) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by the City in enforcing this provision) from the proceeds of any

insurance;

- (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) Make application to the court for an order to have a receiver appointed to take possession of Developer's interest in the Property and the Complex, with power in said receiver to administer Developer's interest in the Property and the Complex, to collect all funds available to Developer in connection with its operation and maintenance of the Property and the Complex; and to perform all other acts and duties consistent with Developer's obligation under this Regulatory Agreement as the court deems proper;
- (e) Maintain and operate the Property and the Complex, 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;
- (g) Require the replacement of the Property Manager under circumstances of Gross Mismanagement after notice of such has been given pursuant to this Section 24 and after the time for an opportunity to cure has lapsed.

**24.3 Damages.** Subject to Section 24.5, damages which the City recovers in the event of default under this Regulatory Agreement shall be those which are then available under applicable California case and statutory law to lessors for leases in the State of California including, but not limited to, any accrued but unpaid rent and the worth at the time of award of the amount by which the unpaid rent for the balance of the term of the Loan Agreement after the date of award exceeds the amount of such rental 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. The exercise by the City of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Developer.

**24.5 Recourse to Developer.** Developer's obligations under the terms of this Regulatory Agreement shall be nonrecourse obligations as to Developer, no deficiency amount may be recovered from the Developer, except as provided herein. Notwithstanding the generality of the foregoing, however, the Developer shall indemnify, defend, protect and hold the City harmless from and against any and all loss, damage, liability, action, cause of action, cost or expense (including, without limitation, reasonable attorneys' fees and expenses incurred by the City) arising as a result of:

- (a) fraud or material misrepresentation by the Developer under or in connection with this Regulatory Agreement, the Acquisition and Rehabilitation Agreement, the Loan Agreement, Promissory Note, Deed of Trust or any related agreements or instruments related to the Property or the Complex;
- (b) intentional bad faith waste of the Complex or Property;

Developer's obligation to indemnify the City under this section shall be a personal, recourse obligation of the Developer, and in the event of any breach of such obligation, the City shall have the right to proceed directly against the Developer to recover any and all losses, damages, liabilities, costs and expenses (including without limitation, reasonable attorneys' fees) resulting from such breach, and may bring any action and institute any proceeding to obtain a deficiency judgment in or following foreclosure for any and all such losses, damages, liabilities, costs and expenses resulting from such breach.

**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, North County Branch, or in the Federal District Court in the District of California in which the Property is located.

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

In the event that any legal action is commenced by the City against Developer, service of process on Developer shall be made by personal service upon Developer's Executive Director or in such other manner as may be provided by law, and shall be effective whether made within or outside the State of California.

**25.4 Attorneys' Fees and Court Costs.** In the event that either the City or Developer shall bring or commence an action to enforce the terms and conditions of this Regulatory Agreement or to obtain damages against the other party arising from any default under or violation of this Regulatory Agreement, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs 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 one hundred twenty (120) days after the end of each fiscal year as defined in the Regulatory Agreement during the term of this Regulatory Agreement, an audited financial statement for the operation of the Property and Complex, which is prepared by a certified public accounting firm. In addition, the City shall have the right (at a location determined by City, 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 during normal business hours) to inspect the books and records of the City pertaining to the Property as pertinent to the purposes of this Regulatory Agreement.

**25.6 Interest.** Any amount due the City 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) the Prime Rate, plus two percent (2%), on the first day of the month such amount becomes due,

and (ii) the maximum rate permitted by applicable law.

**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 mail, return receipt requested, postage prepaid, and addressed as follows:

If to City:  
City of Oceanside  
300 North Coast Highway  
Oceanside, California 92054  
Attention: City Manager

If to Developer:  
Country Club Apartments, L.P.  
c/o Wakeland Housing and Development Corporation  
1230 Columbia Street, Suite 950  
San Diego, California 92101  
Attention: Executive Director

With Copy To:  
City of Oceanside  
City Attorney  
300 North Coast Highway  
Oceanside, CA 92054

With Copy To:  
Wakeland Attorney:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

And Copy To:  
City of Oceanside  
Housing and Neighborhood  
Services Director  
300 North Coast Highway  
Oceanside, CA 92954

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

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

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

**25.10 Non-Liability of the City and City Officials and Employees.** No member, official,

officer, employee, agent, or representative of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligations under the terms of this Regulatory Agreement.

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

**25.12 Transactions with Affiliates.** Developer shall not have the right to enter into transactions with subsidiaries, affiliates and other related entities for the purpose of leasing space, providing cleaning, maintenance and repair services, insurance policies and other purposes related to the use and development of the Property and the Complex, 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.

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

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

**25.14 Entire Agreement; Duplicate Originals; Counterparts.** Except as set forth in Section 25.15, this Regulatory Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof. This Regulatory Agreement is executed in one (1) original and shall be filed in the Office of the County Recorder of San Diego County and be made a part of the Official Records pursuant to Section 25.17 herein.

**25.15 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.

**25.16 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 this Regulatory Agreement itself.

**25.17 Recordation.** An original of this Regulatory Agreement, and any amendment thereof, shall, at the expense of Developer, be acknowledged by each of the parties hereto and recorded and referenced in the official records of the County of San Diego, California, and concurrently with the recordation of the "Conveyance".

**25.18 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.

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

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

**25.21 Quiet Enjoyment.** The City does 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 of this Regulatory Agreement.

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

**25.23 Certain Acts Prohibited.** Developer shall not make any sale, encumbrance, assignment or conveyance, or transfer in any other form, of the Property or Complex or any part thereof, or of any of its interest therein other than in accordance with the terms of this Regulatory Agreement and shall not, without the prior approval of the City:

- (a) Assign or transfer any right to operate or manage the Complex, except pursuant to Section 14;
- (b) Require, as a condition of the occupancy or leasing of any Housing Unit in the Complex, any consideration or deposit in excess of that permitted by the Program Regulations to guarantee the performance of the covenants of the lease. Any funds collected as security deposits shall be kept separate and apart from all other funds of the Complex in a trust 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;

- (c) Permit the use of the Housing Units and other areas of the Property and Complex for any purpose except that which was approved by the City;
- (d) Enter into any contract or contracts for supervisory or managerial services except as permitted by this Regulatory Agreement; or
- (e) Invest any funds from the Complex in any property, real or personal, except as authorized by this Regulatory Agreement or by the City, or deposit any such funds in a depository not authorized by this Regulatory Agreement or approved by the City or in financially risky investments. Permissible investments, for invested funds, as first approved in writing by the City Manager (or designee(s)), shall maintain a minimum credit quality standard to preserve the principal thereof with an financial or securities institution which maintains a credit rating of not less than AA.

**25.24 Violation of Regulatory Agreement by Developer.** In the event of the material violation of any of the provisions of this Regulatory Agreement by Developer, the City shall give written notice thereof to Developer of such violation by specifying: (a) the nature of the event or deficiency giving rise to the violation, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) days from the giving 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 here, the City may, without further notice, declare in writing a default under this Regulatory Agreement effective on the date of such declaration of default and upon any such declaration of default the City may apply to any court, state or federal, for specific performance of this Regulatory Agreement; for the appointment of a receiver to take over and operate the Property and Complex 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.

Developer agrees that the injury to the City arising from a default under certain 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 which afford adequate relief in light of the purposes and policies of the Program.

**25.25 Compliance with Law.** Developer agrees that, at all times, its acts regarding the development, operation of the Property and Complex, Developer shall not use the Property or the Complex 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 Complex, 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 pertaining thereto, as amended and in effect from time to time (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.

In the event that any Program Regulations promulgated after the execution of the Regulatory Agreement, are in conflict with this Regulatory Agreement, the provisions of this Regulatory Agreement shall prevail.

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

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

City:  
City of Oceanside, a municipal corporation

Developer:  
Country Club Apartments, L.P., a California limited partnership

\_\_\_\_\_  
City Manager

By: Wakeland Country Club Apartments, LLC, a California limited liability company, its Managing General Partner

By: Wakeland Housing and Development Corporation, a California nonprofit public benefit corporation, its Manager and Sole Member

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE

By: \_\_\_\_\_  
Kenneth L. Sauder, President and CEO

By: \_\_\_\_\_  
City Attorney

**NOTARY ACKNOWLEDGEMENT OF SIGNATORIES MUST BE ATTACHED**

**EXHIBIT "A"**

**Legal Description of the Property**

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

TRACT 9 OF MAXSON AND GRIFFIN'S SUBDIVISION, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 433, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 29, 1887.

ASSESSOR'S PARCEL NUMBER:

**148-291-03**

**ATTACHMENT NO. 6**

**Certificate of Completion**  
[On the Following Pages]

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. 148-291-03

City Document No.

This Instrument is recorded at the request and for the benefit of the City of Oceanside pursuant to Government Code §§ 27279, 27280, and 27281.5, and is exempt from recording fee pursuant to Government Code § 27383

**RELEASE OF CONSTRUCTION COVENANTS**  
("Certificate of Completion")

WHEREAS, by that certain Acquisition and Rehabilitation Agreement (the "Agreement") dated December 19, 2007, by and between the CITY OF OCEANSIDE, a municipal corporation (hereinafter referred to as the "City"), and COUNTRY CLUB APARTMENTS, L.P., a California limited partnership (hereinafter referred to as the "Developer"), the Developer has acquired and rehabilitated the real property (the "Site"), legally described on the attached Exhibit "A", by constructing (or causing to be constructed) the Improvements thereon according to the terms and conditions of the Agreement; and

WHEREAS, a Memorandum of Agreement related to the Agreement was filed in the Office of the County Recorder of San Diego County on \_\_\_\_\_, 200\_ as Document No. \_\_\_\_\_ Official Records; and

WHEREAS, pursuant to Section 3.20 of the Agreement, after the Developer's completion of the Improvements (as therein defined), the City shall furnish the Developer with a "Certificate of Completion" upon written request therefor by the Developer; and

WHEREAS, the issuance by the City of a Certificate of Completion shall be conclusive evidence that the Developer's construction of the Improvements conforms to the Agreement; and

WHEREAS, the Developer has requested that the City furnish the Developer with a Certificate of Completion; and

WHEREAS, the City has determined that the Developer's construction of the Improvements conforms to the Agreement.

NOW THEREFORE:

1. As provided in the Agreement, the City does hereby certify that the construction of the Improvements has been satisfactorily performed and completed, and that such development and construction work complies with the Agreement.

2. This Release of Construction Covenants ("Certificate of Completion") does not constitute evidence of the compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage security money loaned to finance the work of construction of improvements or development of the Site, or any part thereof. The Release of Construction Covenants ("Certificate of Completion") is not a notice of completion as referenced in Section 3093 of the California Civil Code.

3. Executory provisions of the Agreement shall remain in full force and effect to the extent provided therein.

IN WITNESS WHEREOF, the City has executed this Release of Construction Covenants ("Certificate of Completion") as of the date first written hereinabove.

**CITY OF OCEANSIDE**, a municipal corporation

By: \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

By: \_\_\_\_\_  
City Attorney

**ATTACHMENT NO. 7**

**Memorandum of Agreement**  
[On the Following Pages]

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. 148-291-03

City Document No.

THIS INSTRUMENT IS RECORDED AT THE  
REQUEST AND FOR THE BENEFIT OF THE CITY OF  
OCEANSIDE AND IS EXEMPT FROM RECORDING  
FEE PURSUANT TO GOVERNMENT CODE § 27383

## MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Memorandum"), dated for identification purposes as of \_\_\_\_\_, 2008 ("Effective Date"), is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation (hereinafter referred to as the "City"), and COUNTRY CLUB APARTMENTS, L.P., a California limited partnership (hereinafter referred to as the "Developer").

1. **Acquisition and Rehabilitation Agreement.** The City and Developer have executed an Acquisition and Rehabilitation Agreement ("Agreement") dated as of December 19, 2007, which (among other things) imposes certain obligations and restrictions on the Developer's rehabilitation of improvements and use of that certain real property located in the City of Oceanside, County of San Diego, State of California, more fully described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Site"). Among other things, the Agreement imposes obligations regarding nondiscrimination in the sale or lease of the Site by the Developer and any and all successors in interest to the Site. The Agreement is available for public inspection and copying at the Office of the City Clerk of the City of Oceanside, 300 North Coast Highway, Oceanside, California. All of the terms, condition, provisions and covenants of the Agreement are incorporated in this Memorandum by reference as though written out at length herein, and the Agreement and this Memorandum shall be deemed to constitute a single instrument or document.

2. **Purpose of Memorandum.** This Memorandum is prepared for recordation purposes only, and in no way modifies the terms, conditions, provisions and covenants of the Agreement. In the event of any inconsistency between the terms, conditions, provision and covenants of this Memorandum and the Agreement, the terms, conditions, provisions and covenants of the Agreement shall prevail.

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY**  
[SIGNATURES ON NEXT PAGE]

The parties have executed this Memorandum of Agreement on the dates specified immediately adjacent to their respective signatures.

CITY:  
City of Oceanside, a municipal corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

By: \_\_\_\_\_  
City Attorney

DEVELOPER:  
Country Club Apartments, L.P., a California  
limited partnership

By: Wakeland Country Club Apartments,  
LLC, a California limited liability  
company, its Managing General  
Partner

By: Wakeland Housing and  
Development Corporation, a  
California nonprofit public benefit  
corporation, its Manager and Sole  
Member

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kenneth L. Sauder  
President and CEO

Its:

**ATTACHMENT NO. 8**

**Project Budget**  
[On the Following Pages]

FORECAST ASSUMPTIONS

DEVELOPMENT SCHEDULE

Units for Rent		90
Manager's Units		1
Total Number of Units		91
Density Per Acre	3.00 Acres	30.33
Construction Start		
Completion/Certificate of Occupancy		
Construction Period (Months)		
Start of Leasing		
Units Leased per Month		
Stabilized Occupancy		
Lease-Up Period (Months)		
Permanent Loan Takeout		
Total Months - Const Start to Takeout		

SOURCES AND USES OF FUNDS

USES:	per unit	Construction	Permanent	Final Perm.
Land/Acquisition	\$112,253	\$10,215,000	\$10,215,000	\$10,215,000
Design & Engineering	\$3,033	276,000	276,000	276,000
Legal/Financial/Other Consultants	\$2,599	222,290	236,487	236,487
Permits & Fees	\$681	62,000	62,000	62,000
Bridge Loan Interest	\$0	0	0	0
Direct Building Construction	\$64,334	5,854,359	5,854,359	5,854,359
Financing Costs	\$24,574	2,050,890	2,236,204	2,236,204
Marketing/General & Administrative	\$819	74,500	74,500	74,500
Developer Fees	\$13,187	300,000	1,200,000	1,200,000
Hard Cost Contingency	\$9,650	878,154	878,154	878,154
Soft Cost Contingency	\$1,171	106,527	106,527	106,527
<b>Total Project Uses</b>	<b>\$232,299</b>	<b>\$20,039,721</b>	<b>\$21,139,232</b>	<b>\$21,139,232</b>

SOURCES:	per unit	Construction	Permanent	Final Perm.
Tax Credit Equity	79,247	\$1,081,724	\$7,211,492	\$7,211,492
Tax- Exempt Bonds (Permanent Loan)	33,772	0	3,073,264	3,073,264
MHP Financing	0	0	0	0
Bond Arbitrage	0	0	0	0
Construction Loan	0	11,357,997	0	0
Deferred Developer Fees	0	0	0	0
City Subsidy	119,280	7,600,000	10,854,477	10,854,477
Gap	0	0	0	0
<b>Total Project Sources</b>	<b>\$232,299</b>	<b>\$20,039,721</b>	<b>\$21,139,232</b>	<b>\$21,139,232</b>

<b>Total Max. Bonds</b>	11,357,997	55.47%
<b>Bridge Loan</b>	8,284,733	

RESIDENTIAL UNIT MIX/AFFORDABILITY ANALYSIS

Income	Mgns. Units					Total Units	% of TC
	Studio	BR2/BA2	1BR/1BA	2BR/1.5BA	3BR/1.5BA		
30.00%	0	0	0	0	0	0	0.0%
50.00%	12	1	57	21	0	91	100.0%
60.00%	0	0	0	0	0	0	0.0%
70.00%	0	0	0	0	0	0	0.0%
Market	0	0	0	0	0	0	0.0%

Total Units	12	1	57	21	0	0	91	50.00%
%		0.0%	63.3%	23.3%	0.0%	0.0%		

Sq. Ft./Unit	NA	Na	Na	Na	0		\$ psf
Total Resid Sq Ft	NA	0	0	0	0	0	0

Related Residential Sq. Ft.	
Community Center	NA
Library	NA
Laundry	NA
Maintenance	NA
Balconies +Circulation	NA
Total Square Feet	NA

Public cost per bedroom	75,248
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DEBT FINANCING ASSUMPTIONS

<b>CONSTRUCTION LOAN:</b>		
Construction Loan Interest Rate		6.625%
Credit Enhancement		0.85%
<b>PERMANENT LOAN:</b>		
Permanent Loan Rate		6.125%
Permanent Loan Constant		7.38%
Loan Points and Fees		0.50%
Debt Service Coverage Ratio		1.15
Loan Underwriting Term (Years)		30
Maximum Loan to Value Ratio		80.00%
Capitalization Rate		5.50%
Project Value (NOI/Cap Rate)		4,685,344
Maximum Loan to Cost Ratio		100.00%
Cash Available for Debt Service (NOI)		257,694
Loan to Value Ratio (restricted)	NA	
Permanent Loan		3,073,264
Annual Payment		224,082
Actual DSC		1.150
<b>OTHER DEBT/LOANS:</b>		
	<u>Redeemt Loan</u>	<u>Other Loan</u>
Interest Rate	3.00%	0.00%
Loan Points and Fees	0.000%	0.000%
Loan Term (Years)	55	0

TAX CREDIT FINANCING ASSUMPTIONS

Credit Year		2008
Federal Tax Credit Rate		3.46%
State Tax Credit Rate		0.00%
Difficult to Develop %		130.00%
Applicable Fraction		100.00%
Adjusted Eligible Basis		13,213,176
Annual Tax Credits		457,176
Investor Yield on 99% of Total Credit Allocation		98.00%
Gross Investor Contribution to Lower Tier		7,211,492
Deferred Pay-in on Tax Credit Equity		0
TCAC Actual Points		
TCAC Possible Points		
Tiebreaker: Tax Credits per Bedroom		

OTHER ASSUMPTIONS

<b>Property Taxes:</b>		
Tax Rate		1.25%
Existing Property Basis (per unit)		0
New Unit Basis (per unit)		
<b>Ground Lease:</b>		
Return on Ground Lease	0	0.00%
<b>Inflation Indexes:</b>		
Income Inflation		3.00%
Expense Inflation		3.00%
Real Estate Tax Inflation		2.00%

HUD INCOME GUIDELINES/UTIL ALLOWANCE/BASIS LIMITS

For: San Diego County					
as of:	06/27/05	March 2007	March 2007	CTCAC	
Family Size	Median Income	Utility Allowance		Basis Limits	
1 Person	48,300				
2 Person	55,200				
3 Person	62,100	Studio	20		90,258
4 Person	69,000	1-BR	28		104,070
5 Person	74,500	2-BR	35		125,509
6 Person	80,000	3-BR	43		160,652
7 Person	85,600	4-BR	55		178,973
8 Person	91,100				

PARTNER ALLOCATIONS

	Operations	Sale
General Partner	0.01%	0.01%
Limited Partner A	99.980%	99.98%
Limited Partner B	0.00%	0.00%

ELIGIBLE BASIS CALCULATION

DEVELOPMENT COSTS	TOTAL	PER UNIT	100.00% DEPRECIABLE BASIS		0.00%		EXPENSED
			NON-DEPRECIABLE	RESIDENTIAL	NON-RESIDENTIAL	AMORTIZED	
<b>Land Costs</b>							
Land Cost	10,200,000	112,088	10,200,000	0	0	0	0
Legal/Title	15,000	165	15,000	0	0	0	0
Broker Fees	0	0	0	0	0	0	0
<b>Total Land Costs</b>	<b>10,215,000</b>	<b>112,253</b>	<b>10,215,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Acquisition Costs</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>New Construction</b>							
Site Work	0	0	0	0	0	0	0
Structures	5,003,726	54,986	0	5,003,726	0	0	0
Contractor Overhead	500,373	5,499	0	500,373	0	0	0
Contractor Profit	350,261	3,849	0	350,261	0	0	0
<b>Total New Construction Costs</b>	<b>5,854,359</b>	<b>64,334</b>	<b>0</b>	<b>5,854,359</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Architectural Fees</b>							
Design	55,000	604	0	55,000	0	0	0
Supervision	0	0	0	0	0	0	0
<b>Total Architectural Costs</b>	<b>55,000</b>	<b>604</b>	<b>0</b>	<b>55,000</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Survey &amp; Engineering Costs</b>	<b>170,000</b>	<b>1,868</b>	<b>0</b>	<b>170,000</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Construction Interest and Fees</b>							
Predevelopment/Acquisition Loan Interest	0	0	0	0	0	0	0
Construction Loan Interest	555,140	6,100	0	277,570	0	0	277,570
Loan Origination Fee	96,543	1,061	0	96,543	0	0	0
Bond Premium	0	0	0	0	0	0	0
Property Taxes	84,274	926	0	84,274	0	0	0
Construction Period Insurance	119,315	1,311	0	119,315	0	0	0
Title & Recording	20,490	225	0	20,490	0	0	0
<b>Total Construction Interest &amp; Fees</b>	<b>875,762</b>	<b>9,624</b>	<b>0</b>	<b>598,192</b>	<b>0</b>	<b>0</b>	<b>277,570</b>
<b>Permanent Financing</b>							
Permanent Loan Origination Fee	15,366	169	0	0	0	0	15,366
Bond Issuer fee	64,623	710	0	0	0	0	64,623
Bridge Loan Interest	0	0	0	0	0	0	0
Bond Rating Fee	0	0	0	0	0	0	0
Trustee Fee	0	0	0	0	0	0	0
<b>Total Permanent Financing Costs</b>	<b>79,990</b>	<b>879</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>79,990</b>
<b>Legal Fees</b>							
Legal Costs (Const Loan+ Project Related)	95,000	1,044	0	95,000	0	0	0
Other (Tax Credits)	35,000	385	35,000	0	0	0	0
<b>Total Attorney Costs</b>	<b>130,000</b>	<b>1,429</b>	<b>35,000</b>	<b>95,000</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Appraisal Costs</b>	<b>23,900</b>	<b>263</b>	<b>0</b>	<b>23,900</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Reserves</b>							
Operating Reserves	204,794	2,250	204,794	0	0	0	0
Other	0	0	0	0	0	0	0
<b>Total Reserve Costs</b>	<b>204,794</b>	<b>2,250</b>	<b>204,794</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Construction Contingency Costs</b>	<b>878,154</b>	<b>9,650</b>	<b>0</b>	<b>878,154</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Other</b>							
TCAC App/Reserv./Monitoring Fees	99,700	1,096	0	0	0	0	99,700
Environmental Audit/Toxic Remediation	51,000	560	0	51,000	0	0	0
Local Permit Fees	62,000	681	0	62,000	0	0	0
Marketing+ Market Study	19,500	214	0	7,500	0	0	12,000
Impound Taxes/Insurance	0	0	0	0	0	0	0
Furnishings	20,000	220	0	20,000	0	0	0
Relocation	985,559	10,830	0	985,559	0	0	0
Soft Cost Contingency	106,527	1,171	0	106,527	0	0	0
Other Consultants	0	0	0	0	0	0	0
Legal - Bond Counsel	56,790	624	0	56,790	0	0	0
Syndicator	35,000	385	35,000	0	0	0	0
<b>Total Other Costs</b>	<b>1,438,076</b>	<b>15,781</b>	<b>35,000</b>	<b>1,289,376</b>	<b>0</b>	<b>0</b>	<b>111,700</b>
<b>Sub-Total Residential Costs</b>	<b>19,923,035</b>	<b>218,934</b>	<b>10,489,794</b>	<b>8,963,981</b>	<b>0</b>	<b>0</b>	<b>357,560</b>
<b>Developer Costs</b>							
Developer Overhead/Profit	1,200,000	13,187	0	1,200,000	0	0	0
Consultant/Processing Agent Fees	0	0	0	0	0	0	0
Project Administration	16,197	178	0	0	0	0	16,197
Other	0	0	0	0	0	0	0
<b>Total Developer Costs</b>	<b>11.97%</b>	<b>1,216,197</b>	<b>13,365</b>	<b>1,200,000</b>	<b>0</b>	<b>0</b>	<b>16,197</b>
<b>Total Project Costs</b>	<b>21,139,232</b>	<b>232,299</b>	<b>10,489,794</b>	<b>10,163,981</b>	<b>0</b>	<b>0</b>	<b>373,757</b>
Local Development Impact Fees Add on:	0	0	0	0	0	0	0

onside 91 Unit Rehab.

**CAC BASIS CALCULATIONS**

Unit Size	# of Units	2,007		224.00% **	
		TCAC Basis Limits w/o Features	Basis x # of Units	TCAC Basis Limits w/ Features	Basis x # of Units
Studios	12	113,093	1,357,116	253,328	3,039,940
BR2/BA2 Mgr.	1	157,260	157,260	352,262	352,262
1BR/1BA	57	130,397	7,432,629	292,089	16,649,089
2BR/1.5BA	21	157,260	3,302,460	352,262	7,397,510
3BR/1.5BA	0	201,295	0	450,901	0
4BR/1.5BA	0	224,251	0	502,322	0
Totals	<u>91</u>		<u>12,249,465</u>	Impact Fees	<u>0</u>
					<u>27,438,802</u>
Net Project Basis					<u>10,163,981</u>
Requested Eligible Basis			<u>10,163,981</u>		<u>10,163,981</u>

\*\* Increases in basis limits due to in a DDA & High Cost (+120%) and energy conservation (4%).

## TAX CREDIT CALCULATIONS

	Federal Tax Credits	Acquisition Tax Credits		Total
Preliminary Eligible Basis	10,163,981	8,160,000		
Deductions from Eligible Basis:				
Grant Proceeds Used to Finance Costs in Eligible Basis	0	0		
Federal Loans Used to Finance Costs in 9% Eligible Basis	0	0		
Non-Qualified Non-Recourse Financing	0	0		
Non-Qualifying Portion of Higher Quality Units	0	0		
Historic Credit (Residential Portion Only)	0	0		
Total Deductions from Eligible Basis	0	0		10,438,409
Total Eligible Basis	10,163,981	8,160,000		361,169
High Cost Area Adjustment	130.00%	100.00%		361,133
Total Adjusted Eligible Basis	13,213,176	8,160,000		3,611,328
Applicable Fraction	100.00%	100.00%		3,539,102
Total Qualified Basis	13,213,176	8,160,000		
Tax Credit %	3.46%	3.46%		
Total Annual Tax Credits	457,176	282,336		4,854,095
LP Share of Credits	99.990%	99.990%		
Credits Available to Equity Provider	457,130	282,308	739,438	7,394,379
Credit Period	10	10		
Total Credit Allocation	4,571,302	2,823,078		7,394,379
Investor Yield	0.980000	0.980000		
Gross Investor Contribution	4,479,876	2,766,616		7,246,492
Less Lower Tier Syndication Expenses:				
Legal - Syndication	35,000	0		35,000
Syndication Consulting	0	0		0
Syndication Accounting	0	0		0
Total Syndication Expenses	35,000	0		35,000
Total Investor Contribution	4,444,876	2,766,616		7,211,492
% Investor Contribution	97.23%	98.00%		97.53%





Oceanside 91 Unit Rehab.

DEVELOPMENT COST BUDGET

COST CODE	DESCRIPTION		TOTAL	CHECK
125-010	Land Acquisition	\$78.05 per sq.ft	10,200,000	0
	Wetland Mitigation Land, Reveg + Monitoring		0	0
125-050	Escrow & Title- Acquisition Phase		15,000	0
	Payment to Adjacent Property Owner for Encroachment		0	0
125-070	Property Maintenance During Predevelopment		0	0
125-100	Broker fees		0	0
	<b>LAND ACQUISITION &amp; CLOSING</b>		<b>10,215,000</b>	<b>0</b>
130-100	Architect/Landscape Architect		40,000	0
130-103	Design/Landscape Arch-Const Observation		0	0
130-200	Civil Engineer		25,000	0
130-200	Structural Engineer		20,000	0
130-210	Construction Mgr.		75,000	0
130-300	Surveying		15,000	0
130-310	Environmental		38,000	0
130-900	Other Consultants (e.g. Needs Assessment, entitlements)		40,000	0
130-950	Reimbursable Expts-Pre-Dev't		15,000	0
130-951	Reimbursable Expts-Construction		10,000	0
130-999	Contingency	5.00%	13,800	0
	<b>DESIGN &amp; ENGINEERING</b>		<b>288,800</b>	<b>0</b>
			0	0
131-400	Legal-Project Development		85,000	0
131-420	Legal-DUS + Fannie + Perm lender		0	0
131-430	Legal-Bond Counsel		56,780	0
131-450	Legal-Tax Credit & Bonds (GP)		35,000	0
131-710	Legal - Bond Purchaser		30,000	0
131-720	Housing Authority Financial Advisor		33,500	0
131-820	Accounting & Auditing		2,000	(14,197)
131-999	Contingency	5.00%	11,114	0
	<b>LEGAL/FINANCIAL/OTHER</b>		<b>233,404</b>	<b>(14,197)</b>
			0	0
132-150	Permits & Fees	500	45,500	0
	Testing & Inspections		18,500	0
132-160	Developer Performance Bonds		0	0
	Prevailing Wage Monitoring Consultant		0	0
132-999	Contingency	5.00%	3,100	0
	<b>PERMITS/BONDS/FEEES</b>		<b>65,100</b>	<b>0</b>
			0	0
135-010	Off-Site Imp's/Infrastructure		0	0
135-055	On-Site Imp's/Infrastructure & Landscaping	see below	0	0
135-989	Contingency		0	0
	<b>SITE IMP'S/INFRASTRUCTURE</b>		<b>0</b>	<b>0</b>
			0	0
135-110	Building Rehab. Costs (PNA)	\$54,988	5,003,726	0
	Other		0	0
	Other		0	0
	Other		0	0
135-950	General Conditions	7.00%	350,261	0
135-951	Contractor Overhead (including Ins & Bonds)	3.00%	150,112	0
135-990	Contractor's Fee	7.00%	350,261	0
135-970	Contingency	15.00%	878,154	0
	<b>DIRECT CONSTRUCTION</b>		<b>6,732,613</b>	<b>0</b>
			0	0
137-701	Construction Interest		555,140	0
137-702	Predev Loan		0	0
137-710	Constr.Lender & Predev. Appraisals & Cost Review		23,900	0
137-711	Relocation		985,559	0
137-712	Construction Lender Fee		96,543	0
137-719	Escrow/Title Fees-Construction Loan		20,480	0
137-720	Permanent Loan Points		15,366	0
137-721	Permanent Loan Conversion Fee + Legal		0	0
	Permanent Loan Appraisal, Environ. Review, PNA, etc.		0	0
	Bond Commitment Deposit	2.00%	0	0
	Trustee Start-Up Fee		0	0
	Bond Rating Fee +CUSIP		0	0
	City Doc Fee & Monitoring Set-up		5,000	0
	Bond Issuer Fee	0.23%	26,123	0
137-729	Escrow/Title Fees-Permanent Loan		0	0
137-730	Predev. & Construction Period Insurance		119,315	0
	Earthquake Insurance		0	0
	Bond Lag Deposit		0	0
137-751	Operating Reserve		0	(204,794)
137-752	Reserve for Resident Services	\$0	0	0
137-780	Property Taxes		84,274	0
137-770	Impound Taxes/Insurance		0	0
137-781	CDLAC, CTCAC Fees		62,390	0
137-782	CDLAC Performance Deposit	4.00%	58,790	56,790
137-784	CTCAC Monitoring Fee	\$410	0	(37,310)
137-999	Contingency	5.00%	74,788	0
	<b>FINANCING COSTS</b>		<b>2,125,878</b>	<b>(185,314)</b>
			0	0
140-102	Furnishings		20,000	0
140-104	Lease-Up/Advertising Expense		12,000	0
140-200	Market Study		7,500	0
140-300	Syndicator		35,000	0
	Other		0	0
	Prevailing Wage Monitor		0	0
140-989	Contingency	5.00%	3,725	0
	<b>MARKETING/GEN &amp; ADMIN</b>		<b>78,225</b>	<b>0</b>
			0	0
145-900	Bridge Loan Interest - Wells		0	0
	<b>DEVELOPER FEES</b>	6.03%	<b>300,000</b>	<b>0</b>
			0	0
	<b>TOTAL PROJECT COSTS</b>	232,289	<b>20,039,721</b>	<b>(199,511)</b>
			0	0
			0	0
	<b>SOURCES OF FUNDS - CONSTRUCTION PERIOD</b>			
			0	0
	LIIF & Red Capital Predev Loans		0	0
	Tax Credit Equity	0	1,081,724	0
	City Subsidy	6,512,886	7,800,000	0
	6,512,886		0	0
	Net Project Income	0	0	0
	Bond Arbitrage	0	0	0
	State HCD	0	0	0
	Beginning Construction Loan Balance		0	0
	Bond Proceeds Draw	10,802,857	10,802,857	0
	Bond Debt Service	555,140	555,140	0
	0		0	0
	Ending Construction Loan Balance	11,357,997	0	0
	<b>TOTAL CONSTRUCTION SOURCES OF FUNDS</b>		<b>19,484,581</b>	
			0	0
	Expensed Interest		277,570	0

RENTAL INCOME ASSUMPTIONS

RENTAL INCOME ANALYSIS:

Family Size	Unit Type	Number of Units	Monthly Rent	Utility Allowance	Net Monthly Rent	Net Annual Rent	Sec. 8 Vouchers	Net Annual	Rent/ Sq. Ft.
							Monthly Sec 8 Rent	Sec 8 Rents & 6 CTCAC Units	
% of Median									
50.00%	Studio	12	613	20	593	85,392	2,036	290,304	\$0.29
50.00%	1BR/1BA	57	658	28	630	430,920	954	633,384	\$0.66
50.00%	2BR/1.5BA	21	790	35	755	190,260	1,158	282,996	\$0.65
50.00%	3BR/1.5BA	0	851	45	806	0	1,688	0	\$0.48
50.00%	4BR/1.5BA	0	931	58	873	0	2,036	0	\$0.43
60.00%	Studio	0	724	21	703	0 NA	0	0	\$0.00
60.00%	1BR/1BA	0	776	29	747	0	954	0	\$0.78
60.00%	1BR/1BA	0	776	29	747	0 NA	0	0	
60.00%	2BR/1.5BA	0	931	35	896	0	1,158	0	\$0.77
60.00%	2BR/1.5 BA	0	931	34	897	0 NA	0	0	
60.00%	3BR/1.5BA	0	1,031	45	986	0	1,688	(7,260)	\$0.58
60.00%	3BR/1.5 BA	0	1,031	45	986	0 NA	0	0	
60.00%	4BR/1.5BA	0	1,118	58	1,060	0	2,036	0	\$0.52
Mgr.	BR2/BA2	1	1,110	35	1,075	12,900	1,158	13,476	\$0.96
<b>TOTAL PROJECT</b>		<b>91</b>			<b>659</b>	<b>719,472</b>	<b>22,594</b>	<b>1,212,900</b>	<b>\$0.05</b>
								1,212,900	

Oceanside 81 Unit Rehab. 2008 Bond Sale		PROJECT CASH FLOW												
Tax Credit/Rent		YEAR												
		1	2	3	4	5	6	7	8	9	10	11	12	13
<b>RENTAL REVENUES:</b>														
Gross Potential Rent (Affordable Units)		719,472	741,958	763,288	786,167	808,173	834,068	859,056	884,881	911,407	938,749	968,911	995,818	1,025,796
Laundry/Other	\$12.00 /mo	13,104	13,987	14,802	14,219	14,746	15,191	15,847	16,116	16,989	17,087	17,610	18,188	18,882
Vacancy Allowance	5.00% /yr	(98,629)	(37,726)	(38,890)	(40,625)	(41,228)	(42,465)	(43,737)	(45,049)	(46,400)	(47,792)	(49,228)	(50,709)	(52,224)
Net Rental Income		695,947	718,225	738,330	760,481	783,296	806,794	830,996	855,928	881,908	908,064	935,295	963,353	992,254
<b>PROPERTY OPERATING COSTS:</b>														
<b>Administrative Expenses:</b>														
Office Supplies & Equipment	\$200 /mo.	2,400	2,472	2,546	2,622	2,701	2,782	2,865	2,951	3,040	3,131	3,225	3,322	3,422
Payroll Expenses	\$100 /mo.	1,368	1,347	1,387	1,429	1,472	1,516	1,561	1,608	1,658	1,708	1,757	1,807	1,858
Van Services	\$0 /mo.	0	0	0	0	0	0	0	0	0	0	0	0	0
Telephone/Answering Service	\$200 /mo.	2,400	2,472	2,546	2,622	2,701	2,782	2,865	2,951	3,040	3,131	3,225	3,322	3,422
Auto Expense	\$100 /mo.	1,200	1,236	1,275	1,311	1,350	1,391	1,433	1,478	1,520	1,568	1,613	1,661	1,711
Training & Travel	\$25 /mo.	300	306	318	336	354	368	385	399	419	431	453	471	487
Misc. Administrative Expense	\$82 /mo.	984	1,014	1,044	1,075	1,107	1,140	1,174	1,209	1,245	1,282	1,320	1,360	1,401
Resident Service	\$1,250 /yr	15,000	15,525	16,088	16,831	17,213	17,815	18,439	19,084	19,752	20,443	21,159	21,900	22,664
<b>Marketing Expenses:</b>														
Advertising		0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Professional Fees:</b>														
Property Management Fees	\$37.50 /unit/mo	40,950	42,179	43,444	44,747	46,088	47,472	48,896	50,363	51,874	53,430	55,033	56,684	58,385
Accounting	\$0 /mo.	0	0	0	0	0	0	0	0	0	0	0	0	0
Legal Fees	\$75 /mo.	900	927	956	984	1,014	1,044	1,075	1,107	1,140	1,174	1,208	1,245	1,282
Auditing Expense	\$800 /unit	9,600	9,898	10,165	10,491	10,806	11,100	11,464	11,800	12,192	12,527	12,900	13,290	13,689
<b>Utilities:</b>														
Electricity	\$45.55 /unit/mo	50,834	52,359	53,930	55,548	57,214	58,930	60,697	62,519	64,395	66,327	68,317	70,367	72,478
Gas	\$23.84 /unit/mo	28,145	28,925	29,736	28,989	29,425	30,308	31,217	32,154	33,119	34,119	35,156	36,190	37,278
Water and Sewer	\$45.22 /unit/mo	49,381	50,663	52,069	53,991	55,580	57,247	58,994	60,733	62,559	64,432	66,365	68,356	70,407
<b>Payroll/Payroll Taxes:</b>														
Salaries-Manager	\$2,500 /mo.	30,000	30,900	31,872	32,782	33,765	34,778	35,821	36,896	38,003	39,143	40,317	41,527	42,773
Salaries-Assistant Manager - part time	\$0 /mo.	8,000	6,180	6,365	6,558	6,753	6,956	7,165	7,380	7,601	7,829	8,064	8,306	8,555
Salaries-Administrative	\$0 /mo.	0	0	0	0	0	0	0	0	0	0	0	0	0
Salaries-Maintenance Supervisor	\$0 /mo.	0	0	0	0	0	0	0	0	0	0	0	0	0
Salaries-Maintenance Personnel	\$0 /mo.	24,000	24,720	25,462	26,228	27,013	27,823	28,658	29,519	30,404	31,316	32,255	33,223	34,220
Employee Apartments	\$1,110 /unit/mo	13,320	13,720	14,132	14,558	14,999	15,443	15,900	16,374	16,874	17,390	17,901	18,438	18,991
Payroll Taxes	15.000%	9,900	9,270	9,546	9,835	10,130	10,434	10,747	11,068	11,401	11,745	12,095	12,454	12,832
Workers Compensation	12.000%	7,200	7,416	7,839	7,867	8,103	8,348	8,598	8,854	9,120	9,394	9,678	9,968	10,285
Health Insurance/Other Benefits	\$800 /unit	7,200	7,416	7,638	7,867	8,103	8,348	8,598	8,854	9,120	9,394	9,678	9,968	10,285
<b>Contract Services:</b>														
Estimating	\$2 /unit/mo	2,400	2,472	2,546	2,622	2,701	2,782	2,865	2,951	3,040	3,131	3,225	3,322	3,422
Trash Removal	\$18.70 /unit/mo	18,238	18,783	19,346	19,826	20,324	21,140	21,774	22,427	23,100	23,783	24,507	25,242	25,999
Security Patrol	\$0 /mo.	0	0	0	0	0	0	0	0	0	0	0	0	0
Building/Grounds Maintenance	\$10.87 /unit/mo	11,400	11,742	12,094	12,457	12,831	13,216	13,612	14,020	14,441	14,874	15,320	15,760	16,235
Janitorial	\$10.00 /unit/mo	5,400	5,624	5,783	5,963	6,148	6,330	6,520	6,718	6,917	7,125	7,339	7,559	7,786
Repair	\$15.00 /unit/mo	10,920	11,248	11,585	11,933	12,291	12,860	13,040	13,631	13,834	14,449	14,876	15,116	15,569
Elevator & Other Equipment	\$0 /mo.	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Cleaning &amp; Decorating:</b>														
Painting Supplies	\$5.00 /unit/mo	3,000	3,090	3,183	3,278	3,376	3,477	3,581	3,688	3,798	3,913	4,030	4,151	4,276
Grounds Supplies	\$12.00 /unit/mo	8,000	8,180	8,365	8,556	8,753	8,956	9,165	9,380	9,601	9,829	10,064	10,306	10,555
<b>Repairs &amp; Maintenance:</b>														
Repairs & Maintenance General	\$17.15 /unit/mo	18,500	19,055	19,627	20,216	20,822	21,447	22,090	22,753	23,436	24,139	24,883	25,609	26,377
Facilities Services	\$0 /mo.	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL VARIABLE COSTS</b>	\$4,110 /unit	374,037	385,335	396,970	408,980	421,313	434,039	447,144	460,652	474,569	488,908	503,673	518,991	534,988
<b>Taxes &amp; Insurance:</b>														
Real Property Tax Assessment	\$53 /unit	4,885	4,779	4,875	4,973	5,072	5,173	5,276	5,382	5,490	5,600	5,712	5,826	5,942
Director's & Officers Insurance	\$40 /mo.	0	0	0	0	0	0	0	0	0	0	0	0	0
Misc. Taxes/Licenses/Permits	\$12.00 /mo.	1,200	1,236	1,273	1,311	1,350	1,391	1,433	1,478	1,520	1,568	1,613	1,661	1,711
Insurance	\$319 /unit	29,688	30,558	31,473	32,417	33,390	34,392	35,424	36,487	37,582	38,709	39,870	41,068	42,288
Fidelity Bond Insurance	\$0 /mo.	0	0	0	0	0	0	0	0	0	0	0	0	0
Ground Lease Payment	\$0 /mo.	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL FIXED COSTS</b>		35,551	36,271	37,021	38,701	39,812	40,896	42,153	43,245	44,562	45,875	47,185	48,253	49,952
<b>TOTAL OPERATING COSTS</b>	\$4,501 /unit	409,588	421,606	434,591	447,681	461,125	474,895	489,277	503,897	519,161	534,781	550,858	567,444	584,620
<b>NET OPERATING INCOME:</b>														
<b>CASH FLOW FROM OPERATIONS:</b>		286,359	294,619	303,739	312,820	322,171	331,789	341,721	351,931	362,445	373,273	384,427	395,909	407,734
Net Operating Income		286,359	294,619	303,739	312,820	322,171	331,789	341,721	351,931	362,445	373,273	384,427	395,909	407,734
Operating Reserve	See Below	0	0	0	0	0	0	0	0	0	0	0	0	0
Replacement Reserve	\$315	28,665	29,382	30,118	30,889	31,641	32,432	33,243	34,074	34,926	35,799	36,694	37,611	38,551
<b>CASH FLOW AVAILABLE FOR DEBT SERVICE</b>														
Debt Service - First Trust Dwd	3,075,284	257,894	265,537	273,622	281,951	290,530	299,387	308,478	317,857	327,519	337,475	347,733	358,298	369,183
Cash Flow After Debt Service		(224,089)	(224,089)	(224,089)	(224,089)	(224,089)	(224,089)	(224,089)	(224,089)	(224,089)	(224,089)	(224,089)	(224,089)	(224,089)
General Partner Assat Mgmt Fee	3.00%	33,812	41,458	49,841	57,889	66,448	75,296	84,396	93,775	103,437	113,293	123,351	133,719	144,401
Limited Partner Assat Mgmt. Fee	3.00%	(12,500)	(12,875)	(13,281)	(13,699)	(14,091)	(14,491)	(14,920)	(15,373)	(15,835)	(16,310)	(16,798)	(17,300)	(17,822)
Deferred Developer Fee Rpsay	100.00%	(5,000)	(5,484)	(5,905)	(6,368)	(6,829)	(7,296)	(7,770)	(8,249)	(8,740)	(9,244)	(9,760)	(10,289)	(10,831)
<b>CASH FLOW AVAILABLE</b>		18,112	23,431	30,975	38,746	46,752	54,999	63,500	72,253	81,289	90,559	100,133	109,992	120,150
<b>Repayment to City:</b>														
Balance		10,854,477	11,172,055	11,495,874	11,799,121	12,102,582	12,404,840	12,702,775	12,996,959	13,288,187	13,571,187	13,851,522	14,127,080	14,397,728
Simple Interest @ 3%		325,634	325,634	325,634	325,634	325,634	325,634	325,634	325,634	325,634	325,634	325,634	325,634	325,634
Rpsay @ 50% for 30yrs., then 75%		(8,058)	(11,715)	(15,487)	(19,373)	(23,476)	(27,499)	(31,760)	(36,128)	(40,634)	(45,280)	(50,088)	(54,999)	(60,057)
Revised Balance		11,172,055	11,465,974	11,796,121	12,102,382	12,404,840	12,702,775	12,996,959	13,288,187	13,571,187	13,851,522	14,127,080	14,397,728	14,663,207
<b>Available Operating Reserve:</b>														
Beginning Balance		204,794	204,794											

Downtown 81 Unit Rehab. PROJECT CASH FLOW	2006 Bond Sale Tax Credit Rents														
	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
<b>RENTAL REVENUES:</b>															
Gross Potential Rent (Affordable Units)	1,066,570	1,088,267	1,120,915	1,154,542	1,189,178	1,224,853	1,261,569	1,299,327	1,338,130	1,377,983	1,418,940	1,461,038	1,504,314	1,551,806	1,598,154
Leasehold/Other	19,242	19,819	20,414	21,026	21,657	22,307	22,976	23,665	24,375	25,106	25,859	26,635	27,434	28,257	29,105
Vacancy Allowance	(53,791)	(55,404)	(57,058)	(58,778)	(60,542)	(62,355)	(64,220)	(66,136)	(68,104)	(70,124)	(72,200)	(74,335)	(76,523)	(78,767)	(81,068)
Net Rental Income	1,022,021	1,052,682	1,084,263	1,116,790	1,150,293	1,184,802	1,220,346	1,256,956	1,294,695	1,333,555	1,373,509	1,414,714	1,457,196	1,500,870	1,545,896
<b>PROPERTY OPERATING COSTS:</b>															
<b>Administrative Expenses:</b>															
Office Supplies & Equipment	3,525	3,631	3,740	3,852	3,968	4,087	4,210	4,338	4,468	4,600	4,738	4,880	5,028	5,177	5,332
Payroll Services	1,920	1,976	2,037	2,096	2,161	2,226	2,293	2,362	2,433	2,506	2,581	2,658	2,736	2,820	2,905
Van Services	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Telephone/Answering Service	3,525	3,631	3,740	3,852	3,968	4,087	4,210	4,338	4,468	4,600	4,738	4,880	5,028	5,177	5,332
Auto Expense	1,762	1,815	1,869	1,925	1,983	2,042	2,103	2,166	2,231	2,298	2,367	2,438	2,511	2,585	2,664
Training & Travel	440	453	467	481	495	510	525	541	557	574	591	609	627	646	666
Misc. Administrative Expense	1,449	1,488	1,531	1,577	1,624	1,673	1,723	1,775	1,828	1,882	1,939	1,997	2,057	2,119	2,183
Resident Services	23,459	24,280	25,130	26,010	26,920	27,862	28,838	29,847	30,891	31,973	33,092	34,250	35,449	36,689	37,974
<b>Marketing Expenses:</b>															
Advertising	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Professional Fees:</b>															
Property Management Fees	60,137	61,941	63,799	65,713	67,684	69,715	71,806	73,960	76,179	78,464	80,819	83,243	85,740	88,312	90,961
Accounting	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Legal Fees	1,320	1,360	1,401	1,443	1,488	1,531	1,577	1,624	1,673	1,723	1,775	1,828	1,883	1,939	1,997
Auditing Expense	14,100	14,523	14,969	15,440	15,927	16,430	16,948	17,481	18,029	18,592	19,161	19,746	20,347	20,964	21,597
<b>Utilities:</b>															
Electricity	74,892	76,092	77,399	78,714	80,037	81,368	82,707	84,054	85,409	86,772	88,143	89,521	90,906	92,298	93,697
Gas	38,394	39,546	40,732	41,954	43,212	44,508	45,844	47,219	48,636	50,085	51,568	53,085	54,638	56,228	57,854
Water and Sewer	72,519	74,095	75,708	77,358	79,044	80,776	82,554	84,378	86,248	88,164	90,126	92,134	94,188	96,289	98,437
<b>Payroll/Payroll Taxes:</b>															
Sales/Manager	44,056	45,378	46,739	48,141	49,585	51,073	52,605	54,183	55,807	57,472	59,178	60,925	62,714	64,546	66,422
Sales/Assistant Manager - part time	8,812	9,078	9,348	9,622	9,901	10,185	10,474	10,768	11,067	11,371	11,680	11,994	12,313	12,637	12,966
Sales/Administrative	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sales/Maintenance Supervisor	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sales/Maintenance Personnel	39,247	39,904	40,583	41,285	42,019	42,786	43,587	44,423	45,294	46,199	47,138	48,111	49,118	50,160	51,238
Employee Apartments	19,561	20,148	20,752	21,375	22,018	22,681	23,364	24,077	24,820	25,592	26,394	27,226	28,088	28,980	29,902
Payroll Taxes	15,217	15,814	16,422	17,042	17,684	18,348	19,034	19,743	20,485	21,259	22,066	22,906	23,779	24,685	25,628
Workers Compensation	10,573	10,890	11,217	11,554	11,901	12,258	12,635	13,032	13,450	13,898	14,327	14,778	15,250	15,743	16,258
Health Insurance/Other Benefits	10,573	10,890	11,217	11,554	11,901	12,258	12,635	13,032	13,450	13,898	14,327	14,778	15,250	15,743	16,258
<b>Contract Services:</b>															
Estimating	3,525	3,631	3,740	3,852	3,968	4,087	4,210	4,338	4,468	4,600	4,738	4,880	5,028	5,177	5,332
Trash Removal	26,779	27,582	28,409	29,261	30,139	31,043	31,974	32,933	33,921	34,938	35,985	37,062	38,170	39,309	40,480
Security Patrol	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Building/Grounds Maintenance	16,741	17,243	17,760	18,293	18,842	19,407	19,988	20,585	21,207	21,843	22,495	23,164	23,850	24,554	25,276
Janitorial	8,020	8,261	8,508	8,764	9,027	9,298	9,577	9,864	10,158	10,467	10,781	11,101	11,426	11,757	12,094
Repair	18,038	18,517	19,013	19,523	20,049	20,590	21,148	21,723	22,314	22,921	23,544	24,183	24,838	25,509	26,197
Elevator & Other Equipment	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Cleaning &amp; Decorating:</b>															
Painting Supplies	4,404	4,538	4,672	4,812	4,958	5,109	5,265	5,426	5,592	5,763	5,939	6,120	6,306	6,497	6,693
Grounds Supplies	8,812	9,078	9,348	9,622	9,901	10,185	10,474	10,768	11,067	11,371	11,680	11,994	12,313	12,637	12,966
<b>Repairs &amp; Maintenance:</b>															
Repairs & Maintenance General	27,168	27,963	28,827	29,667	30,579	31,465	32,440	33,413	34,415	35,447	36,509	37,601	38,723	39,866	41,032
Facilities Services	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL VARIABLE COSTS</b>	<b>550,721</b>	<b>567,590</b>	<b>584,501</b>	<b>602,161</b>	<b>620,357</b>	<b>639,104</b>	<b>658,414</b>	<b>678,311</b>	<b>698,806</b>	<b>719,928</b>	<b>741,683</b>	<b>764,096</b>	<b>787,191</b>	<b>810,963</b>	<b>835,496</b>
<b>Taxes &amp; Insurance:</b>															
Real Property Tax Assessment	6,062	6,183	6,307	6,433	6,562	6,693	6,827	6,964	7,103	7,245	7,390	7,538	7,690	7,845	8,003
Director's & Officer's Insurance	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Misc Taxes/Licenses/Permits	1,762	1,815	1,869	1,925	1,983	2,042	2,103	2,166	2,231	2,298	2,367	2,438	2,511	2,585	2,664
Insurance	43,567	44,774	46,020	47,307	48,635	50,006	51,421	52,880	54,384	55,934	57,531	59,174	60,864	62,603	64,391
Fidelity Bond Insurance	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ground Lease Payment	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL FIXED COSTS</b>	<b>51,351</b>	<b>52,872</b>	<b>54,398</b>	<b>55,925</b>	<b>57,450</b>	<b>59,241</b>	<b>60,825</b>	<b>62,712</b>	<b>64,833</b>	<b>67,208</b>	<b>69,837</b>	<b>72,714</b>	<b>75,841</b>	<b>79,218</b>	<b>82,847</b>
<b>TOTAL OPERATING COSTS</b>	<b>602,112</b>	<b>620,462</b>	<b>638,899</b>	<b>658,186</b>	<b>677,807</b>	<b>698,345</b>	<b>719,369</b>	<b>740,923</b>	<b>763,339</b>	<b>786,314</b>	<b>809,890</b>	<b>834,081</b>	<b>858,907</b>	<b>884,381</b>	<b>910,343</b>
<b>NET OPERATING INCOME:</b>	<b>419,909</b>	<b>432,450</b>	<b>445,338</b>	<b>458,629</b>	<b>472,358</b>	<b>486,537</b>	<b>501,183</b>	<b>516,346</b>	<b>532,030</b>	<b>548,255</b>	<b>565,031</b>	<b>582,368</b>	<b>600,274</b>	<b>618,757</b>	<b>637,818</b>
<b>CASH FLOW FROM OPERATIONS:</b>															
Net Operating Income	419,909	432,450	445,338	458,629	472,358	486,537	501,183	516,346	532,030	548,255	565,031	582,368	600,274	618,757	637,818
Operating Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Replacement Reserve	39,515	40,500	41,515	42,553	43,617	44,707	45,823	46,971	48,145	49,348	50,583	51,847	53,141	54,472	55,834
<b>CASH FLOW AVAILABLE FOR DEBT SERVICE</b>	<b>380,384</b>	<b>391,947</b>	<b>403,853</b>	<b>416,110</b>	<b>428,739</b>	<b>441,790</b>	<b>455,255</b>	<b>469,154</b>	<b>483,484</b>	<b>498,255</b>	<b>513,484</b>	<b>529,181</b>	<b>545,369</b>	<b>562,057</b>	<b>579,266</b>
Debt Service - First Trust Debt	(224,082)	(224,082)	(224,082)	(224,082)	(224,082)	(224,082)	(224,082)	(224,082)	(224,082)	(224,082)	(224,082)	(224,082)	(224,082)	(224,082)	(224,082)
Cash Flow After Debt Service	156,313	167,865	179,771	192,028	204,657	217,708	231,173	245,072	259,402	274,173	289,399	305,103	321,287	337,975	355,184
General Partner Asset Mgt Fee	(18,557)	(18,907)	(19,275)	(20,059)	(20,861)	(21,691)	(22,549)	(23,436)	(24,353)	(25,301)	(26,281)	(27,294)	(28,341)	(29,422)	(30,537)
Limited Partner Asset Mgt. Fee	(7,343)	(7,563)	0	0	0	0	0	0	0	0	0	0	0	0	0
Deferred Developer Fee Repey	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>CASH FLOW AVAILABLE</b>	<b>130,613</b>	<b>141,395</b>	<b>160,296</b>	<b>171,970</b>	<b>183,897</b>	<b>196,308</b>	<b>209,156</b>	<b>222,504</b>	<b>236,353</b>	<b>250,609</b>					



2001 Bond Sale Tax Credit Refunds		44	45	46	47	48	49	50	51	52	53	54	55
<b>RENTAL REVENUES:</b>													
Ones Potential Rent (Affordable Units)		2,984,569	2,841,508	2,720,751	2,802,374	2,886,445	2,873,038	3,082,229	3,154,086	3,248,719	3,348,781	3,446,566	3,549,983
Laundry/Other		48,704	46,105	49,548	51,034	52,295	54,142	55,769	57,439	59,162	60,937	62,765	64,648
Vacancy Allowance		(150,584)	(124,481)	(138,215)	(142,870)	(148,921)	(151,358)	(155,200)	(160,671)	(166,240)	(172,256)	(178,457)	(185,231)
Net Rental Income		2,482,709	2,553,132	2,632,084	2,710,538	2,789,819	2,875,821	2,962,798	3,050,855	3,142,427	3,235,762	3,333,864	3,437,800
<b>PROPERTY OPERATING COSTS:</b>													
<b>Administrative Expenses:</b>													
Office Supplies & Equipment		8,557	8,814	9,078	9,350	9,631	9,920	10,218	10,525	10,841	11,166	11,501	11,846
Payroll Services		4,861	4,801	4,845	5,093	5,246	5,403	5,565	5,732	5,904	6,081	6,263	6,451
Van Services		0	0	0	0	0	0	0	0	0	0	0	0
Telephone/Accounting Service		8,527	8,814	9,078	9,350	9,631	9,920	10,218	10,525	10,841	11,166	11,501	11,846
Auto Expenses		4,273	4,401	4,533	4,669	4,809	4,953	5,102	5,256	5,413	5,575	5,742	5,914
Training & Travel		1,067	1,095	1,132	1,168	1,201	1,237	1,274	1,312	1,351	1,392	1,434	1,477
Misc. Administrative Expense		3,522	3,607	3,716	3,836	3,961	4,091	4,229	4,376	4,523	4,680	4,837	4,994
Recycled Services		65,046	65,150	70,355	71,004	75,568	76,204	80,941	83,774	86,708	89,741	92,892	96,132
<b>Marketing Expenses:</b>													
Advertising		0	0	0	0	0	0	0	0	0	0	0	0
<b>Professional Fees:</b>													
Property Management Fees		145,864	150,243	154,833	159,489	164,284	169,213	174,289	179,518	184,804	190,251	195,765	201,350
Accounting		0	0	0	0	0	0	0	0	0	0	0	0
Legal Fees		3,205	3,201	3,400	3,502	3,607	3,715	3,826	3,941	4,058	4,181	4,308	4,435
Auditing Expense		34,228	35,253	36,311	37,400	38,522	39,678	40,868	42,084	43,327	44,598	45,896	47,218
<b>Utilities:</b>													
Electricity		181,207	188,838	192,237	198,004	203,844	210,062	216,384	223,855	230,544	238,427	245,520	252,898
Gas		87,188	95,985	98,865	101,831	104,880	108,033	111,274	114,612	118,050	121,592	125,240	128,987
Water and Sewer		176,028	181,309	188,746	193,350	198,121	204,065	210,167	216,435	222,968	229,778	236,885	243,895
<b>Payroll/Payroll Taxes:</b>													
Salaries-Manager		106,850	110,138	113,442	116,845	120,350	123,961	127,680	131,510	135,455	139,510	143,768	148,016
Salaries-Assistant Manager - part time		21,589	22,031	22,892	23,373	24,074	24,798	25,540	26,308	27,095	27,908	28,745	29,607
Salaries-Administrative		0	0	0	0	0	0	0	0	0	0	0	0
Salaries-Maintenance Supervisor		0	0	0	0	0	0	0	0	0	0	0	0
Salaries-Maintenance Personnel		85,552	88,119	90,783	93,488	96,291	99,180	102,156	105,220	108,377	111,622	114,977	118,428
Employee Apartments		47,482	48,900	50,373	51,884	53,441	55,044	56,690	58,380	60,114	61,892	63,714	65,582
Payroll Taxes		32,081	33,043	34,035	35,058	36,107	37,181	38,280	39,405	40,558	41,738	43,114	44,407
Workers Compensation		25,688	26,435	27,220	28,046	28,917	29,834	30,797	31,806	32,853	33,948	35,089	36,278
Health Insurance/Other Benefits		25,688	26,438	27,228	28,046	28,917	29,834	30,797	31,806	32,853	33,948	35,089	36,278
<b>Contract Services:</b>													
Exterminting		8,557	8,814	9,078	9,350	9,631	9,920	10,218	10,525	10,841	11,166	11,501	11,846
Trench Removal		84,906	66,846	68,054	71,023	73,154	75,349	77,608	79,937	82,335	84,805	87,348	89,968
Security Patrol		0	0	0	0	0	0	0	0	0	0	0	0
Building/Grounds Maintenance		40,835	41,854	43,110	44,403	45,735	47,107	48,520	49,976	51,475	53,019	54,611	56,248
Janitorial		19,470	20,054	20,698	21,278	21,914	22,571	23,248	23,945	24,683	25,403	26,195	26,950
Repair		39,828	40,094	41,298	42,534	43,814	45,128	46,478	47,876	49,312	50,789	52,315	53,884
Elevator & Other Equipment		0	0	0	0	0	0	0	0	0	0	0	0
<b>Cleaning &amp; Decorating:</b>													
Painting Supplies		10,889	11,010	11,340	11,680	12,030	12,391	12,763	13,146	13,540	13,946	14,364	14,795
Grounds Supplies		21,389	22,031	22,892	23,733	24,074	24,798	25,540	26,308	27,095	27,908	28,745	29,607
<b>Repairs &amp; Maintenance:</b>													
Repairs & Maintenance General		65,943	87,921	69,859	72,058	74,220	76,447	78,740	81,102	83,536	86,041	88,622	91,281
Facilities Services		0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL VARIABLE COSTS</b>		<b>1,345,849</b>	<b>1,386,350</b>	<b>1,428,281</b>	<b>1,471,481</b>	<b>1,515,892</b>	<b>1,561,650</b>	<b>1,609,097</b>	<b>1,657,774</b>	<b>1,707,828</b>	<b>1,759,598</b>	<b>1,812,834</b>	<b>1,867,681</b>
<b>Taxes &amp; Insurance:</b>													
Real Property Tax Assessment		10,891	11,201	11,425	11,854	11,897	12,125	12,366	12,615	12,867	13,124	13,388	13,654
Director's & Officer's Insurance		0	0	0	0	0	0	0	0	0	0	0	0
Misc. Taxes/Licenses/Permits		4,273	4,401	4,533	4,669	4,809	4,953	5,102	5,256	5,413	5,575	5,742	5,914
Insurance		105,746	108,818	112,168	115,562	119,018	122,590	126,288	130,099	133,956	137,877	142,118	146,379
Fidelity Bond Insurance		0	0	0	0	0	0	0	0	0	0	0	0
Ground Lease Payment		0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL FIXED COSTS</b>		<b>121,000</b>	<b>124,520</b>	<b>128,144</b>	<b>131,875</b>	<b>135,715</b>	<b>139,688</b>	<b>143,738</b>	<b>147,828</b>	<b>152,238</b>	<b>156,878</b>	<b>161,744</b>	<b>165,847</b>
<b>TOTAL OPERATING COSTS</b>		<b>1,466,849</b>	<b>1,510,870</b>	<b>1,556,425</b>	<b>1,603,356</b>	<b>1,651,707</b>	<b>1,701,518</b>	<b>1,752,835</b>	<b>1,805,702</b>	<b>1,860,184</b>	<b>1,916,272</b>	<b>1,974,678</b>	<b>2,033,628</b>
<b>NET OPERATING INCOME:</b>		<b>1,014,080</b>	<b>1,044,260</b>	<b>1,075,259</b>	<b>1,107,382</b>	<b>1,140,292</b>	<b>1,174,300</b>	<b>1,209,280</b>	<b>1,245,258</b>	<b>1,282,223</b>	<b>1,320,490</b>	<b>1,359,788</b>	<b>1,400,252</b>
<b>CASH FLOW FROM OPERATIONS:</b>													
Net Operating Income		1,014,080	1,044,260	1,075,259	1,107,382	1,140,292	1,174,300	1,209,280	1,245,258	1,282,223	1,320,490	1,359,788	1,400,252
Operating Reserve	See Below	0	0	0	0	0	0	0	0	0	0	0	0
Replacement Reserve		82,885	84,895	87,881	89,259	91,690	93,777	96,127	98,525	100,988	103,513	106,100	108,753
<b>CASH FLOW AVAILABLE FOR DEBT SERVICE</b>		<b>831,174</b>	<b>955,302</b>	<b>968,278</b>	<b>1,018,124</b>	<b>1,048,682</b>	<b>1,090,523</b>	<b>1,113,130</b>	<b>1,146,733</b>	<b>1,181,235</b>	<b>1,216,978</b>	<b>1,253,888</b>	<b>1,291,499</b>
Debt Service - First Trust Deed		0	0	0	0	0	0	0	0	0	0	0	0
Cash Flow After Debt Service		831,174	955,302	968,278	1,018,124	1,048,682	1,090,523	1,113,130	1,146,733	1,181,235	1,216,978	1,253,888	1,291,499
General Partner Asset Mgmt Fee		(44,559)	(45,293)	(47,270)	(46,688)	(50,149)	(51,863)	(53,203)	(54,709)	(56,449)	(58,136)	(59,860)	(61,577)
Limited Partner Asset Mgmt. Fee		0	0	0	0	0	0	0	0	0	0	0	0
Deferred Developer Fee Repey		0	0	0	0	0	0	0	0	0	0	0	0
<b>CASH FLOW AVAILABLE</b>		<b>886,615</b>	<b>910,009</b>	<b>921,008</b>	<b>968,436</b>	<b>998,534</b>	<b>1,038,660</b>	<b>1,059,855</b>	<b>1,091,824</b>	<b>1,124,892</b>	<b>1,158,841</b>	<b>1,193,808</b>	<b>1,228,822</b>
<b>Repayment to City:</b>													
Balance		15,332,488	14,993,137	14,633,715	14,255,583	13,852,151	13,428,750	12,982,730	12,513,413	12,020,089	11,502,081	10,956,585	10,388,844
Simple Interest @ 3%		325,834	325,834	325,834	325,834	325,834	325,834	325,834	325,834	325,834	325,834	325,834	325,834
Repey @ 50% for 30yrs, then 75%		(854,903)	(895,057)	(705,709)	(721,077)	(740,035)	(771,054)	(784,952)	(818,951)	(843,889)	(869,131)	(895,544)	(922,357)
Revised Balance		14,993,137	14,533,715	14,253,393	13,852,151	13,428,750	12,982,730	12,513,413	12,020,089	11,502,081	10,956,585	10,388,844	9,782,112
<b>Available Operating Reserve:</b>													
Beginning Balance		868,584	898,895	930,448	963,015	996,720	1,031,608	1,067,712	1,105,082	1,143,700	1,183,791	1,225,224	1,268,107
Interest Income	Interest @	30,400	31,464	32,538	33,705	34,865	36,108	37,470	38,878	40,332	41,833	42,883	44,284
End Balance		898,984	930,359	963,015	996,720	1,031,608	1,067,712	1,105,082	1,143,700	1,183,791	1,225,224	1,268,107	1,312,491
% of Operating Costs		61%	62%	63%	62%	62%	63%	63%	63%	64%	64%	64%	65%

**ATTACHMENT 9**

**City's Loan Agreement**  
[On the Following Pages]

Attachment No. 9

**LOAN AGREEMENT**

**THIS LOAN AGREEMENT** (the "Agreement") is entered into as of \_\_\_\_\_, 2008, by and between the **CITY OF OCEANSIDE**, a municipal corporation ("City"), and **COUNTRY CLUB APARTMENTS, L.P.**, a California limited partnership (the "Developer").

**RECITALS**

The following recitals are a substantive part of this Agreement:

**A.** The City is a California municipal corporation which has received funds through its Inclusionary Housing In-lieu Trust Funds program to provide decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low income and lower income households in the City.

**B.** 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.

**C.** The City and the Developer have entered into an Acquisition and Rehabilitation Agreement, dated December 19, 2007 (the "ARA"). Pursuant to the ARA, (i) the City has agreed to assign its interest in that certain Purchase and Sale Agreement, dated December 19, 2007, by and between the City, as "Buyer" and Jorbon, LLC, as "Seller", (the "Purchase Agreement") and related escrow concerning real property located in the City of Oceanside at 201 Country Club Lane (the "Site") to the Developer and the Developer has agreed to accept said assignment and assume and perform all acts required of "Buyer" under the Purchase Agreement, (ii) the City has agreed to provide certain financial assistance to the Developer for the acquisition of the Site and rehabilitation of certain improvements located on the Site, (iii) the Developer has agreed to rehabilitate and renovate certain improvements on the Site which is improved with a 91-unit multifamily rental residential apartment complex, commonly referred to as the Country Club Apartments, consisting of twelve (12) studio, fifty-seven (57) one-bedroom, and twenty-two (22) two-bedroom units (the "Housing Units"), with one (1) two-bedroom unit set aside for the onsite manager (the "Manager's Residence"), together with appurtenant common use areas, amenities and parking spaces (the "Development" and sometime referred to herein as the "Project"), and (iv) the Developer has agreed to rent the Housing Units to Very Low Income Households at an affordable rent. The ARA is hereby incorporated herein by reference. 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 rehabilitation and operation of the Development. The Regulatory Agreement is hereby incorporated by reference.

**D.** The City has agreed to provide a loan of an amount not to exceed Ten Million Eight Hundred Fifty-four Thousand Four Hundred Seventy-seven Dollars (\$10,854,477.00) to the Developer (the "City Loan") to be used in connection with the acquisition of the Site and the rehabilitation of the Development.

E. The provision of financial assistance to the Developer and the rehabilitation and operation of the Development at affordable rental rates 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 (as "Borrower") agrees to borrow from the City, the not to exceed sum of **Ten Million Eight Hundred Fifty-four Thousand Four Hundred Seventy-seven Dollars (\$10,854,477.00)** (the "City Loan"). City shall make the City Loan to Developer from available funds. The City has received 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 Loan shall be set forth in the Promissory Note in the form of Exhibit "A" attached hereto, which is incorporated herein. The Promissory Note shall be for a term of fifty-five (55) calendar years from the date a certificate of completion is issued for the rehabilitation of the Development (the "Certificate of Completion"), and shall bear simple interest at the rate of three percent (3%) per annum commencing upon the City's issuance of the Certificate of Completion for the Project. The Promissory Note shall be paid as follows: 1) any cost savings between the approved total sources of funds in the Financing Plan and the total cost of development as documented in the Development's post-completion cost certification will be repaid by the Borrower, in full, within five (5) business days of the date of the post-completion cost certification, to the City; 2) from fifty percent (50%) of the "Residual Receipts" of the Development during the first thirty (30) calendar years following the issuance of the Certificate of Completion and thereafter, commencing in the thirty-first (31<sup>st</sup>) calendar year following the issuance of the Certificate of Completion, from seventy-five percent (75%) of the "Residual Receipts" of the Development, after payment of (i) actual, reasonable and customary (for comparable high quality multifamily rental housing developments in San Diego County) "Operating Expenses" directly incurred, paid, and attributable to the operation, maintenance, and management of the Development, (ii) "Debt Service" which is senior to the Promissory Note, (iii) deposits to required reserve accounts ("Reserve Deposits"), (iv) asset management fees payable to the managing general partner and investor limited partner of the Developer ("Partnership Management Fees"), and (v) social program fees, (vi) bond monitoring/trustee/servicing fees, and (vii) "Deferred Developer Fee" payments (as all of those terms are defined in Section 3 of the Promissory Note), which are in accordance with the Operating Budget approved by the City pursuant to Section 5(h) of the Regulatory Agreement. The Developer shall annually, on or before ninety (90) days after the end of the Developer's fiscal year, commencing in the year after the issuance of the certificate of occupancy for the Development, submit to the City a Residual Receipts Report, 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.

1.2 **Security for City Loan.** The Promissory 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 entire proceeds of the City Loan shall be disbursed as follows: 1) the initial disbursement of the City Loan proceeds, in the not to exceed sum of **Seven Million Six Hundred Thousand Dollars (\$7,600,000.00)** shall made at the time of the closing of the tax credit financing (or as soon as reasonably possible thereafter, but no later than the

date set for the close of escrow (the "Closing") for the acquisition of the Site) be deposited into the escrow for the acquisition of the Site and Development and shall be used solely for the purpose of purchasing the Site and Buyer's escrow closing costs; and 2) the remaining balance of the City Loan proceeds in the amount of **Three Million Two Hundred Fifty-four Thousand Four Hundred Seventy-seven Dollars (\$3,254,477.00)** shall, at City's discretion, be: 1) deposited with and held by the bond trustee [\_\_\_\_\_] (the "Trustee"), servicing agent [\_\_\_\_\_] (the "Servicing Agent"), or lender [\_\_\_\_\_] (the "Lender"); or 2) retained by City and allocated to an account specifically established for the Project; and shall be disbursed only to pay for actual and reasonable hard and soft costs of the rehabilitation 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 rehabilitation of the Development, all in accordance with the Financing Plan which is approved by the City pursuant to Section 3.12 of the ARA, and the construction contract which has been approved by the City pursuant to Section 3.3(i) of the ARA (the "Construction Contract"). The disbursement of the City Loan proceeds shall be made in accordance with the provisions of Section 1.4 herein and is subject to the fulfillment or waiver by City of each and all of the conditions precedent (a) through (h), 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 Promissory 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 building permits and approvals necessary for the rehabilitation of the Development, in accordance with Section 3, *et seq.*, of the ARA.

**c. Evidence of Financing.** Developer shall have provided written proof reasonably acceptable to City that the Developer has obtained a commitment for equity contributions, subject to customary conditions, for construction and permanent financing of the Development, and City shall have reasonably approved such financing commitments and the Financing Plan pursuant to Section 3.12 of the ARA. The construction financing for the Development shall close prior to or concurrently with the closing of escrow for the acquisition of the Site and Development and initial disbursement of the City Loan. In addition, a partnership agreement reasonably acceptable to the City in accordance with the approved Financing Plan shall have been executed and a Certificate of Limited Partnership shall have been filed with the California Secretary of State, under which the limited partners are committed to make equity contributions in an amount which together with the proceeds of the construction loan and the City Loan is sufficient to finance the development of the Development. In addition, the Developer shall have certified in writing to the City that the City Loan, together with the construction loan, are together projected to be sufficient to pay for the rehabilitation of the Development.

**d. Construction Contract.** Developer shall have provided to the City a signed copy of the Construction Contract between the Developer and one or more duly licensed general contractors for the rehabilitation 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 rehabilitate the Development in accordance with the provisions of the ARA.

Portrait Homes is hereby initially approved by the City to be the general contractor. Notwithstanding the foregoing, in the event Portrait Homes' bid amount for the rehabilitation of the Development is not consistent with the established construction budget as set forth in the Financing Plan, the identity of the general contractor may change subject to City's prior written approval.

**e. Acquisition of Site.** The City and the Developer shall have executed the Assignment of the Purchase Agreement, and the Developer shall have obtained possession of the Site pursuant thereto. The Regulatory Agreement shall be in full force and effect, and there shall be no defaults thereunder, or any matters which, with the passage of time and/or giving of appropriate notice, would become a default thereunder.

**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 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 Loan.

**g. Proof of Insurance.** Developer shall have provided to the City a certificate of insurance that satisfies the requirements of Section 3.13 of the ARA.

**h. No Default, Representations and Warranties.** Developer shall not be in default in any of its obligations under the terms of this Agreement, the ARA, or the Regulatory Agreement. All representations and warranties of Developer contained herein and in the ARA 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 Loan shall have been performed by such date.

**1.4 Conditions for Each City Loan Disbursement.** Disbursement of the City Loan proceeds by the Trustee 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, at the same time and in the same form as Developer makes an application for disbursement with the Trustee, or as applicable with the Servicing Agent or Lender, (the "Application for Disbursement"), provide the City with a true and exact copy of the Application for Disbursement. City shall have five (5) business days after receipt of each Application for Disbursement to object to the payment of all or any portion of the work for which the Developer is requesting payment. City shall notify the Developer, the Trustee, the Servicing Agent or the Lender under the Developer' bond financing, by facsimile transmittal of its written notice of objection, with hard copy mailed to Developer at the address provided for in Section 5.1 herein and to Trustee at \_\_\_\_\_, or to any other address as may be required by the Trustee, to the Servicing Agent at \_\_\_\_\_, or any other address as may be required by the Servicing Agent, or to the Lender at \_\_\_\_\_, or any other address as may be required by the Lender. Any objection by the City shall not prevent the Trustee from disbursing the City Loan proceeds pursuant to the Loan and Financing Agreement dated \_\_\_\_\_, 2008, between California Statewide Communities Development Authority and the Developer, and any failure of the City to provide written

objection to an Application for Disbursement as provided for herein shall not be deemed as the waiver of same.

**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 ARA, 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 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. City Loan proceeds used for hard construction costs may at the City's discretion be subject to a retention of ten percent (10%), with retained proceeds to be released thirty-five (35) days after lien-free completion of such items of construction.

**d. Use and Order of Disbursements.** Developer shall use or apply all City Loan disbursements solely for the purposes described in the Application for Disbursement pursuant to which the disbursement was made. The order of funding the disbursements shall be equity first, City Loan proceeds second, and bond proceeds third.

**1.5 Subordination.** The Deed of Trust shall be made subordinate to the deeds of trust to be held by the lender or lenders which are approved by the City pursuant to Section 1.3(c) hereof.

**1.6 Assumption.** The Promissory Note shall not be assumable by successors and assigns of Developer without the prior written consent of the City.

## **2. Development Requirements.**

**2.1 Development and Operation of Development in Compliance with ARA and Lease.** The Developer shall rehabilitate, operate and maintain the Development in compliance with the requirements of the ARA, 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 ARA, 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 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.

**2.3 Insurance.** Developer shall furnish the City with proper evidence of the insurance that is required pursuant to Section 3.13 of the ARA.

**2.4 Indemnification and Hold Harmless.** Developer shall, subject to Section 17 of the Note, indemnify, hold harmless and defend, with attorney(s) reasonably acceptable to the City, 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.

**2.5 Compliance With Laws.** The Developer shall rehabilitate, 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, religion, sex, marital status, national origin, or ancestry, familial status, disability or sexual orientation, 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 necessary precautions to prevent the release into the environment of any Hazardous Materials that may be located in, on or under the Site commencing upon the Closing and during the term of this Agreement. 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 arising after the Closing, 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 during the term of this Agreement and arising after the Closing. 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, its officers, employees, agents or representatives, or arising from the sole and active negligence or willful misconduct of the City, its officers, employees, agents or representatives.

**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 rehabilitation 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 perform any action or covenant required by this Agreement, the ARA, the Regulatory Agreement, the Promissory 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 Promissory 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 ARA, Regulatory Agreement, Promissory 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 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 seven percent (7%) per annum. The City shall be entitled to add such amount to the amounts owing pursuant to the Promissory Note, and secured by the Leasehold Deed of Trust.

**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 Promissory 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, or in the United States District Court for the Southern District of California.

**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.

**4.7 No Personal Liability.** In the event of any default under the terms of this Agreement, 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 the Developer 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) under this Agreement or Deed of Trust to recover directly from Developer 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).

## **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:** Country Club Apartments, L.P.  
c/o Wakeland Housing and Development Corporation  
1230 Columbia Street, Suite 950  
San Diego, CA 92101  
Attention: Executive Director

**With a copy to:** [Developer's Attorney]

**With a copy to:** [Bond Lender]  
  
Attention: Asset Manager

**With a copy to:** [Bond Counsel]  
  
Attention:

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.** No member, official, officer or employee of City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by 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 Promissory Note, Deed of Trust, Form of Residual Receipts Report, ARA, Regulatory Agreement, Financing Plan and other attachments to the ARA, 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 (Promissory Note) and B (Deed of Trust), 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 ARA or Lease, as appropriate.

**REMAINDER 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:

**CITY:**  
**CITY OF OCEANSIDE**, a municipal corporation

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
City Manager

**DEVELOPER:**  
**COUNTRY CLUB APARTMENTS, L.P.**, a  
California limited partnership

By: Wakeland Country Club Apartments, LLC, a  
California limited liability company, its Managing  
General Partner

By: **Wakeland Housing and Development  
Corporation**, a California nonprofit public  
benefit corporation, its Manager and Sole  
Member

By: \_\_\_\_\_  
Kenneth L. Sauder, President and CEO

**Developer's Signature(s) Must be Notarized**

**EXHIBIT "A"**

**Promissory Note**

*[See Attachment No. 11 of  
Acquisition and Rehabilitation Agreement]*

**EXHIBIT "B"**

**Deed of Trust**

*[See Attachment No. 10 of  
Disposition and Development Agreement]*

Schedule 1

FORM OF RESIDUAL RECEIPTS REPORT

City of Oceanside
Country Club Apartments

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 Expenses1

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** (12) \$ \_\_\_\_\_  
(Add lines 5, 6, 7, 8, 9, 10, and 11)

**Net Operating Income (Subtract Line 12 from Line 4)** (13) \$ \_\_\_\_\_

<sup>†</sup> 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** \_\_\_\_\_ (18) \$ \_\_\_\_\_  
(Subtract Line 17 from Line 13)

**Percentage of Residual Receipts to be Paid to the City (as shown in the Promissory 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 Promissory 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)

**Attachment No. 10**

**Deed of Trust**  
[On the Following Pages]

**Attachment No. 10**  
**[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 Manager

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

**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 \_\_\_\_\_, 2008 is entered into by and between **COUNTRY CLUB APARTMENTS, L.P.**, a California limited partnership ("Trustor"), \_\_\_\_\_ ("Trustee"), and the **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 \_\_\_\_\_, 2008, (the "Grant Deed"), by and between Jorbon, LLC, a California limited liability company, as Grantor, and Country Club Apartments, L.P., as Grantee; (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 or the Improvements (the Real Property 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 201 Country Club Lane, 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.

## **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 Promissory Note ("Note") of even date herewith, in the principal amount of not to exceed Ten Million Eight Hundred Fifty-four Thousand Four Hundred Seventy-seven Dollars (\$10,854,477.00) 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 Acquisition and Rehabilitation Agreement between Trustor and Beneficiary, dated December 19, 2007 (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 (except for the Lessor's approval right for encumbrances specifically set forth in that certain Regulatory Agreement of even date herewith entered into by and between Trustor, as Developer, and Beneficiary, as City).

**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 pursuant to the Lease. 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 (or which are required to be paid by Trustor pursuant to the Regulatory Agreement) 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.

**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 and Lease 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.

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.

**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 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.

**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 AFFORDABLE HOUSING MATTERS.** This Deed of Trust is subject to the requirements that the Subject Property be used solely as an affordable multifamily rental apartment complex whose residents are qualified persons or households as set forth in the Regulatory Agreement. The use of the Subject Property shall be at all times during the Term of the Affordability Period rental units and not converted to condominiums or other non-rental use. For the purposes of this Deed of Trust the following definitions shall apply:

a. **"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 Low Income Households for the annual rent, adjusted for family size appropriate for the unit.

b. **"Affordability Period"** means all of the Housing Units on the Property shall, in perpetuity commencing on the date of the issuance of the Certificate of Completion, be rented at Affordable Rental Rates to qualifying households and persons who are also Very Low-Income Households.

c. **"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.

**d. "Area Median Income"** means the median family income of a geographic area of the state, as annually estimated by HUD pursuant to the United States Housing Act of 1937.

**e. "Housing Unit"** shall mean all the units in the Subject Property, except one (1) two-bedroom unit set aside for the onsite manager's residence, reserved for occupancy by Very Low-Income Households.

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

**g. "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.

**h. "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 upon the initial occupancy of a unit by the household.

**5.18. OBLIGATION TO REFRAIN FROM DISCRIMINATION.** The Borrower covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Subject Property, nor shall the Borrower itself or any person claiming under or through the Borrower 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 Subject Property. The foregoing covenants shall run with the land through the Term of the Affordability Period.

**5.19 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, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation, 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:

**a. In deeds:** "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, religion, sex, marital status, national origin, ancestry,

familial status, disability or sexual orientation, 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."

**b. In leases:** "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, 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."

**c. In contracts:** "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation, 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."

## **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.

**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: Country Club Apartments, L.P.  
c/o Wakeland Housing and Development Corporation  
1230 Columbia Street, Suite 950  
San Diego, CA 92101  
Attention: Executive Director

With a copy to: [Bond Lender]

Attention: Asset Manager

With a copy to: [Bond Counsel]

Attention:

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

Trustee:

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.

**Country Club Apartments, L.P.**, a California limited partnership

By: **Wakeland Country Club Apartments, LLC**, a California limited liability company, its Managing General Partner

By: **Wakeland Housing and Development Corporation**, a California nonprofit public benefit corporation, its Managing and Sole Member

By: \_\_\_\_\_  
Kenneth L. Sauder, President and CEO

**(ALL SIGNATURES MUST BE ACKNOWLEDGED)**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

State of California )  
County of \_\_\_\_\_) ss.

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared \_\_\_\_\_,  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**EXHIBIT A**

**DESCRIPTION OF SUBJECT PROPERTY**

All that certain real property situated in the County of San Diego, State of California, described as follows:

Tract 9 of Maxson and Griffin's Subdivision, in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 433, filed in the Office of the County Recorder of San Diego County, December 29, 1887.

Assessor's Parcel Number: **148-291-03**

**ATTACHMENT NO. 11**

**Promissory Note**  
[On the Following Pages]

**Attachment No. 11**  
**[Exhibit "A" to Loan Agreement]**

**PROMISSORY NOTE**

Not to Exceed \$10,854,477.00  
\_\_\_\_\_, 2008

Oceanside, California

**FOR VALUE RECEIVED, COUNTRY CLUB APARTMENTS, L.P.**, a California limited partnership (the "Borrower"), promises to pay to the **CITY OF OCEANSIDE**, a municipal corporation (the "City"), or order, at the City's office at 300 North Coast Highway, Oceanside, California, or such other place as the City may designate in writing, the not to exceed sum of **Ten Million Eight Hundred Fifty-four Thousand Four Hundred Seventy-seven Dollars (\$10,854,477.00)** or so much of such sum as has been disbursed by the City (the "Note Amount"), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

**1. Agreement.** This Promissory Note (the "Note") is given in accordance with that certain Loan Agreement executed by the City and Borrower, dated as of \_\_\_\_\_, 2008 (the "Agreement"). The rights and obligations of the Borrower and the City under this Note shall be governed by the Agreement and by the additional terms set forth in this Note. In the event of any inconsistencies between the terms of this Note and the terms of the Agreement or any other document related to the Note Amount, the terms of this Note shall prevail.

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

**3. Repayment of Note Amount.** The Note Amount shall be paid by the Borrower as follows: 1) any cost savings between the approved total sources of funds in the Financing Plan and the total cost of development as documented in the Development's post-completion cost certification will be repaid in full by the Borrower to the City within five (5) business days of the date of the post-completion cost certificate; 2) an 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 calendar year during the first thirty (30) calendar years following the issuance of the Certificate of Completion and thereafter, commencing in the thirty-first (31<sup>st</sup>) calendar year following the issuance of the Certificate of Completion, from seventy-five percent (75%) of the Residual Receipts of the Development. Annual Residual Receipts payments shall be delivered on or before ninety (90) days after the end of the Borrower's fiscal year, of each year during the term of this Note first following the date the Development is placed in service, until the Note Amount and all unpaid interest thereon has been repaid in full. Any remaining portion of the Note Amount shall be due and payable on the fifty-fifth (55<sup>th</sup>) anniversary of the date a certificate of occupancy is first granted for the Development. Notwithstanding the foregoing, the full Note Amount may be accelerated as set forth in Section 12 hereof.

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

As used herein, "Debt Service" means payments made in a calendar year pursuant to the approved financing obtained for the acquisition and rehabilitation of the Development pursuant to Section 1.3(c) of the Agreement and Section 3 of the ARA, but excluding payments made pursuant to this Note.

As used herein, "Deferred Developer Fees" shall mean any deferred developer fee allowable under the Financing Plan that has been approved by the City pursuant to Section 3.12 of the ARA.

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

As used herein, "Partnership Management Fees" shall mean the asset management fee payable to the managing general partner and/or any special limited partner of the Borrower, which is allowable under the Financing Plan which has been approved by the City pursuant to Section 3.12 of the ARA.

As used herein, "Reserve Deposits" shall mean and payments to the Operating Reserve account pursuant to Section 5(i) of the Regulatory Agreement and payments to the Capital Replacement Reserve account pursuant to Section 5(j) of the Regulatory Agreement.

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

On or before ninety (90) days after the end of the Borrower's fiscal year, of each fiscal year commencing in the year of the issuance of 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 ninety (90) days after the end of the Borrower's fiscal year, 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.

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

**5. Waivers**

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

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

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

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

**e.** No previous waiver and no failure or delay by City in acting with respect to the terms of this Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure or condition under this Note, the Deed of Trust or the obligations secured thereby. A waiver of any term of this 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.

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

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

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

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

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

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

**12. Acceleration and Other Remedies.** Upon: (a) the occurrence of an event of Default as defined in the Agreement, or (b) Borrower selling, contracting to sell, giving an option to purchase, conveying, leasing, further encumbering, mortgaging, assigning or alienating the Borrower's 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 Acquisition and Rehabilitation Agreement, City may, at City's option, declare the outstanding principal amount of this Note, together with the then accrued and unpaid interest thereon and other charges hereunder, and all other sums secured by the 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.

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

**14. Successors and Assigns.** Whenever "City" is referred to in this Note, such reference shall be deemed to include the City of Oceanside and its successors and assigns, including, without limitation, any subsequent assignee or holder of this Note. All covenants,

provisions and agreements by or on behalf of Borrower, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of the City and City's successors and assigns.

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

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

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

**17. No Personal Liability.** In the event of any default under the terms of this Note or the Deed of Trust, the sole recourse of the City for any and all such defaults shall be by judicial foreclosure or by the exercise of the trustee's power of sale, and Borrower and its partners shall not be personally liable for the payment of this Note or for the payment of any

deficiency established after judicial foreclosure or trustee's sale; provided, however, that the foregoing shall not in any way affect any rights the City may have (as a secured party or otherwise) hereunder or under the Agreement or 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).

**BORROWER:**

**COUNTRY CLUB APARTMENTS, L.P.**,  
a California limited partnership

By: **Wakeland Country Club Apartments, LLC**, a  
California limited liability company, its Managing  
General Partner

By: **Wakeland Housing and Development  
Corporation**, a California nonprofit public  
benefit corporation, its Managing and Sole  
Member

By: \_\_\_\_\_  
Kenneth L. Sauder, President and CEO  
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