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DATE: November 15, 2006

TO: Honorable Mayor and City Councilmembers

FROM: Neighborhood Services Department

SUBJECT: **APPROVAL OF A LOAN AGREEMENT AND REGULATORY AGREEMENT WITH SOUTHERN CALIFORNIA HOUSING DEVELOPMENT CORPORATION FOR THE ACQUISITION AND REHABILITATION OF CAPE COD VILLAS, APPROVAL OF A BUDGET APPROPRIATION IN THE AMOUNT OF \$5,012,500 FROM THE INCLUSIONARY HOUSING (IN-LIEU) TRUST FUND, AND AUTHORIZATION FOR THE CITY MANAGER TO EXECUTE THE AGREEMENTS**

**SYNOPSIS**

Staff recommends that the City Council approve a Loan Agreement and Regulatory Agreement with Southern California Housing Development Corporation for the acquisition and rehabilitation of Cape Cod Villas, approve a budget appropriation in the amount of \$5,012,500 from the Inclusionary Housing (In-Lieu) Trust Fund, and authorize the City Manager to execute the agreements.

**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 "at-risk" affordable units, such as Cape Cod Villas, 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**

Southern California Housing Development Corporation (SoCal), a non-profit affordable housing developer, proposes to acquire and rehabilitate Cape Cod Villas, an existing 36-unit apartment complex located at 1710 Maxson Street. The complex, consisting of all one-bedroom units, was constructed in 1988 as an affordable density-bonus project with both rent and age restrictions. These restrictions are set to expire in 2007. SoCal has entered into a purchase option with original and current owner of the property. SoCal is requesting financial assistance from the City in the form of an acquisition and development loan. SoCal will maintain the units as both affordable and age-restricted

through the proposed Regulatory Agreement. Current rents for the units range from \$554 - 779. Under the proposed project, estimated rents will range from \$558 - 752. Fifty percent of the units will be made available to residents at 60 percent or below area median income. Twenty-seven percent of the units will be available to residents at 50 percent or below area median income. Nineteen percent of the units will be available to residents at 45 percent or below area median income. One unit is reserved for an on-site manager. The affordability restrictions will be for a period of 99 years. Initial review of the current rent roll shows two tenants that will be relocated based upon income limitations. SoCal has contracted with a certified relocation consultant to assist with the relocation process pursuant to the State Law requirements. The complex has been regularly maintained and will require only minimal upgrades. The total estimated cost of property rehabilitation is \$555,000. SoCal will be making every effort to ensure minimal disruption to the existing residents during the rehabilitation phase of the project.

SoCal Housing, based in Rancho Cucamonga, is an experienced developer and manager of affordable housing projects. It currently owns and manages more than 5,000 stabilized units and has more than 1,000 units in development or under construction. SoCal also operates the Hope Through Housing Foundation to provide vital education, health and social programs to its communities.

SoCal has initiated Phase I environmental and geotechnical reports as part of predevelopment activities for this project. SoCal anticipates completing the rehabilitation work in late 2007.

The proposed sources of financing include \$914,826 of tax-exempt permanent financing, \$1,648,440 of Low-Income Housing Tax Credits (LIHTC), and a \$4,178,000 loan of City Housing funds. The City's loan will earn three percent simple interest and will be amortized over a 55-year period. The above financing plan has also been reviewed by the City's affordable housing consultant, David Rosen & Associates.

**FISCAL IMPACT**

Staff is recommending approval of a budget appropriation in the amount of \$5,012,500 from the Inclusionary Housing (In-Lieu) Trust account (284.2510.03565) to the Cape Cod Villas Acquisition / Rehabilitation account (284.29xxxx.xxxx) for the acquisition and rehabilitation of Cape Cod Villas. The balance of Inclusionary Housing (In-Lieu) Trust Fund is \$12,859,030 as of September 30, 2006. Approximately \$2,900,000 will be reimbursed to the City upon award of tax-exempt and LIHTC funding. An additional disbursement of \$2,035,500 for the development component of the project will result in a final permanent loan by the City to SoCal Housing in the amount of \$4,148,000.

**COMMISSION OR COMMITTEE REPORT**

The Housing Commission unanimously recommended that the City Council approve the Agreements with SoCal Housing for the acquisition and rehabilitation of Cape Cod Villas at its October 24, 2006 meeting.

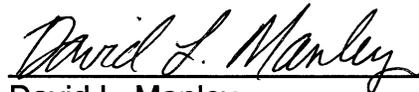
**CITY ATTORNEY'S ANALYSIS**

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

**RECOMMENDATION**

Staff recommends that the City Council approve a Loan Agreement and Regulatory Agreement with Southern California Housing Development Corporation for the acquisition and rehabilitation of Cape Cod Villas, approve a budget appropriation in the amount of \$5,012,500 from the Inclusionary Housing (In-Lieu) Trust Fund, and authorize the City Manager to execute the agreements.

**PREPARED BY:**

  
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David L. Manley  
Neighborhood Services Division Manager

**SUBMITTED BY:**

  
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Barry E. Martin  
Interim City Manager

**REVIEWED BY:**

Michelle Skaggs Lawrence, Assistant to the City Manager

Mike Blessing, Deputy City Manager / Community Development

Margery M. Pierce, Director, Neighborhood Services

Nita McKay, Financial Services Director

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**Attachments:**

- 1. Loan Agreement
- 2. Regulatory Agreement

TO: OCEANSIDE CITY COUNCIL  
FROM: HOUSING COMMISSION  
RE: LOAN AGREEMENT/REGULATORY AGREEMENT  
DATE: OCTOBER 24, 2006

THE HOUSING COMMISSION RECOMMENDS THAT THE CITY COUNCIL APPROVE A LOAN AGREEMENT AND REGULATORY AGREEMENT WITH SOUTHERN CALIFORNIA HOUSING DEVELOPMENT CORPORATION FOR THE ACQUISITION AND REHABILITATION OF CAPE COD VILLA APARTMENTS. (MAXSON STREET)

CAMP	YES
COOPER	YES
FARMER	ABSENT
HUSKEY	YES
MEYER	YES
OLINSKI	ABSENT
PARKER	YES
SORENSEN	YES

ALTERNATES

SAIZ	ABSENT
DAVIS	YES

## LOAN AGREEMENT

**THIS LOAN AGREEMENT** (the "Agreement") is entered into as of November 15, 2006, by and between the **CITY OF OCEANSIDE**, a municipal corporation, ("City"), and **THE SOUTHERN CALIFORNIA HOUSING DEVELOPMENT CORPORATION**, a California nonprofit public benefit corporation (the "Developer").

### RECITALS

The following recitals are a substantive part of this Agreement:

**A.** 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.

**B.** The Community Development Commission of the City of Oceanside and George Kenneth Alameda and Kathleen Marie Alameda, Co-Trustees of the Alameda Trust dated July 3, 1991, as to an undivided 50 percent interest, and Lawrence G. Alameda and George Kenneth Alameda, Trustees of the Lawrence G. Alameda Non-Exempt Trust dated June 7, 2004, as to an undivided 20 percent interest, and Lawrence G. Alameda and George Kenneth Alameda, Trustees of the George Kenneth Alameda Non-Exempt Trust dated June 7, 2004, as to an undivided 20 percent interest, and Lawrence G. Alameda and George Kenneth Alameda, Trustees of the Linda M. Frank Non-Exempt Trust dated June 7, 2004, as to an undivided 10 percent interest, successors in interest to George Kenneth Alameda and Kathleen Marie Alameda, husband and wife as joint tenants, as to an undivided 50 percent interest, and Michael D. O'Gara and Vicki B. O'Gara, husband and wife as joint tenants, as to an undivided 25 percent interest, and George G. Alameda and Julie L. Alameda, husband and wife as joint tenants, as to an undivided 25 percent, as tenants in common (the "Seller"), have entered into an Agreement Authorizing Affordable Housing Density Bonus and Restrictions on Real Property (the "Affordable Housing Agreement"), dated February 10, 1987, as filed in the Office of the County Recorder of San Diego County on March 31, 1987 as File/Page No. 87-170128, concerning the real property situated in the City of Oceanside, County of San Diego, State of California, described as Parcel 1 of Parcel Map No. 14748, filed in the Office of said County Recorder, March 30, 1987, commonly known as the Cape Cod Villas, located at 1710 Maxson Street, Oceanside, California, consisting of a 36 unit apartment complex (the "Development" and/or the "Property"), which requires the Development be used and maintained as an affordable senior citizen rental project through March 31, 2007.

**C.** To keep the Development available to low- and very-low income households and persons, the Developer has agreed to purchase the Development and maintain the age and affordability rental restrictions on the Property for an additional ninety-nine (99) years. The City and the Developer have 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 maintenance and operation of the Development. The Regulatory Agreement is hereby incorporated herein by reference.

**D.** The City has agreed to provide a loan of Five Million Twelve Thousand Five Hundred Dollars (\$5,012,500.00) to the Developer to be used in connection with the purchase and acquisition of the Development (the "Purchase Loan"), which shall be paid down

to a balance not to exceed \$2,112,500 during the course of construction and which, with an additional amount not to exceed \$2,035,500, shall roll into a Development Loan in an amount not to exceed \$4,148,000 (the "Development Loan") which shall be part of the permanent financing for the rehabilitation of the Development.

E. The provision of financial assistance to the Developer and the maintenance and operation of the Property 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. Purchase Loan.** Subject to Developer's performance of all of the terms, covenants and conditions which are set forth herein, the City hereby agrees to loan to the Developer, and the Developer agrees to borrow from the City, the sum of Five Million Twelve Thousand Five Hundred Dollars (\$5,012,500.00) (the "Purchase Loan") for the purchase of the Development. City shall make the Purchase Loan to Developer from available funds in the City's Inclusionary Housing In-Lieu Fees Trust Fund, which shall be disbursed to Developer as provided herein.

**1.1 Repayment of Purchase Loan.** The Developer shall repay a minimum of \$2,900,000 of the Purchase Loan from Tax-Exempt Bond Construction Loan ("Construction Loan") proceeds from a private lender upon closing of the Construction Loan. The balance of the Purchase Loan, not to exceed \$2,112,500, will remain during construction and will roll into the Development Loan, pursuant to Section 2 herein, upon the completion of construction/rehabilitation of the Development and conversion of the Construction Loan to the permanent loan ("Permanent Loan")

**1.2 Security for Purchase Loan.** The Promissory Note, in the form of Exhibit "A" (the "Promissory Note") attached hereto and incorporated herein, shall be secured by a Deed of Trust to be recorded as an encumbrance to the Developer's fee interest in the Development, in the form of Exhibit "B" (the "Deed of Trust") attached hereto and incorporated herein, and the recordation of a UCC-1 fixture filing with respect to the Development.

**1.3 Disbursement of Purchase Loan.** The entire proceeds of the Purchase Loan shall be deposited in the Escrow account for the Developer's purchase of the Development from the Seller within ten (10) days prior to the Close of Escrow (the "Close of Escrow"). The disbursement of the Purchase Loan proceeds shall be subject to the fulfillment or waiver of the conditions precedent (a) through (f), 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 be in recordable condition as an encumbrance to the Developer's fee interest in the Site immediately upon the Close of Escrow.

**b. Financing Plan.** Developer shall have provided, and City shall have reasonably approved the Financing Plan, in the form of Exhibit "C" ("Financing Plan") attached hereto "C" and incorporated herein, showing that the City Loan, together with the

Construction Loan and required equity contributions, are together projected to be sufficient to pay for the rehabilitation of the Development.

**c. Purchase of Development.** The Developer shall be prepared to purchase and obtain possession of the Development.

**d. Title Policy.** A title insurance company reasonably acceptable to the City shall be prepared to unconditionally commit to issue a lender's policy of title insurance insuring the lien of the Deed of Trust in the amount of the purchase price paid to the Seller for the Developer's purchase of the Development, 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 Purchase Loan.

**e. Proof of Insurance.** Developer shall have provided to the City a certificate of insurance that satisfies the requirements of Section 3.3 this Agreement.

**f. No Default, Representations and Warranties.** Developer shall not be in default in any of its obligations under the terms of this Agreement, or the Regulatory Agreement. All representations and warranties of Developer contained herein and in 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 Subordination.** The Deed of Trust shall, if requested by Developer, 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(b) hereof.

**1.5 Assumption.** The Promissory Note shall not be assumable by successors and assigns of Developer without the prior written consent of the City.

**2. Development Loan.** Subject to Developer's performance of all of the terms, covenants and conditions which are set forth herein, including repayment of at least \$2,900,000 of the Purchase Loan as provided for in Section 1.1 herein, the City hereby agrees to roll over the balance of the Purchase Loan, in an amount not to exceed \$2,112,500, into a Development Loan. In addition, the City will provide an additional amount not to exceed \$2,035,500 ("Additional Amount") which shall be added to the Development Loan, bringing the total amount of the Development Loan to an amount not to exceed \$4,148,000 (the "Development Loan"), which shall become part of the permanent financing of the Development. City shall make the Additional Amount of the Development Loan to Developer from available funds in the City's Inclusionary Housing In-Lieu Fees Trust Fund, which shall be disbursed to Developer as provided herein. The disbursement of the Additional Amount of the Development Loan proceeds is subject to the fulfillment or waiver by City of each and all of the conditions precedent (a) through (f), inclusive, described below ("Conditions Precedent"), which are solely for the benefit of the City, any of which may be waived by the City Manager or designee in his or her sole and absolute discretion:

**a. Permits and Land Use Approvals.** Developer shall have obtained each and all of the land use, engineering and building permits and approvals necessary for the rehabilitation of the Development.

**b. Evidence of Financing.** Developer shall have provided written proof reasonably acceptable to City that the Developer has obtained a commitment for equity contributions, affordable housing subsidies and loans, subject to customary conditions, for rehabilitation and permanent financing of the Development, and City shall have reasonably approved such financing commitments and the Financing Plan. In addition, a partnership agreement and funding 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 Development Loan, Construction Loan and other affordable housing subsidies and loans is sufficient to finance the rehabilitation of the Development. In addition, the Developer shall have certified in writing to the City that the Development Loan, together with the Construction Loan, affordable housing subsidies and required equity contributions, are together projected to be sufficient to pay for the rehabilitation of the Development.

**c. 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 construct the Development.

**d. Purchase of Development.** The Developer shall have purchased and obtained possession of the Development and title thereto shall have vested in that of the Developer.

**e. Conversion of the Construction Loan to Permanent Loan.** The Developer shall have completed the rehabilitation of the Development in all particulars and have delivered evidence to the City that the Developer has received funding commitment from the lender for the conversion of the Construction Loan to the Permanent Loan.

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

**2.2 Repayment of Development Loan.** The Developer's obligation to repay the Purchase Loan and the Development Loan shall be set forth in the Promissory Note. The Promissory Note shall be for a term of fifty-five (55) years from the date of the "Close of Escrow" on the Developer's purchase of the Development and title to the Development is vested in the Developer. The Purchase Loan shall bear simple interest at the rate of five percent (5%) per annum commencing upon the Close of Escrow. The Development Loan shall bear simple

interest at the rate of three percent (3%) per annum commencing upon the disbursement of the Additional Amount of the Development Loan proceeds. The Promissory Note shall be payable from fifty percent (50%) of the "Residual Receipts" of the Development, after payment of (i) actual, reasonable and customary (for comparable high quality multifamily rental housing developments in San Diego County) "Operating Expenses" directly incurred, paid, and attributable to the operation, maintenance, and management of the Development, (ii) "Debt Service" which is senior to the Promissory Note, (iii) deposits to required reserve accounts ("Reserve Deposits"), (iv) asset management fees payable to the managing general partner of the Developer ("Partnership Management Fees"), and (v) social program fees, (vi) bond monitoring/trustee/servicing fees, and (vii) "Deferred Developer Fee" payments (as all of those terms are defined in Section 3 of the Promissory Note), which are in accordance with the Operating Budget approved by the City pursuant to Section 5(h) of the Regulatory Agreement. The Developer shall annually, on or before one hundred-five (105) days after the end of the Developer's fiscal year, commencing in the year after the Close of Escrow, 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.

**2.3 Security for Development Loan.** The Promissory Note shall be secured by the Deed of Trust to be recorded as an encumbrance to the Developer's fee interest in the Development and the recordation of a UCC-1 fixture filing with respect to the Development.

**2.4 Disbursement of Development Loan.** The Additional Amount of the Development Loan shall be funded at the time of Permanent Loan Conversion and shall be deposited in to the escrow established to implement conversion and payment of the Construction Loan, all in accordance with the Financing Plan which is approved by the City pursuant to Section 1.3(b) above. The disbursement of the Additional Amount proceeds is subject to the fulfillment or waiver by City of each and all of the following conditions described below:

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

**b. Lien Waivers.** City shall have received appropriate waivers of mechanics' and materialmen's lien rights and stop notice rights executed by all contractors and other persons rendering services or delivering materials for the rehabilitation of the Development.

**c. Use of Disbursement.** Developer shall use or apply the Development Loan disbursement solely for the purpose of paying down the Construction Loan at conversion to the Permanent Loan.

### **3. Operating Requirements.**

**3.1 Operation of Development.** The Developer shall rehabilitation, operate and maintain the Development in compliance with the requirements of this Agreement, the Financing Plan, and the Regulatory Agreement.

**3.2 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 this Agreement, the Financing Plan, 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 3.2 until the Purchase Loan and Development Loan are 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.

**3.3 Insurance.** During the Term of the Promissory Note and Deed of Trust, the Developer, at its sole cost and expense, shall itself take out and maintain, or cause to be taken out and maintained, the following insurance coverage:

a. Maintain or cause to be maintained a policy or policies of all-risk property insurance. Such insurance policy shall be maintained in an amount not less than one hundred percent (100%) of the "Full Insurable Value" of the Development, as defined herein in Section 3.3.1 of this Agreement.

b. Maintain or cause to be maintained 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 Development, assuming ninety-five percent (95%) occupancy.

c. Maintain, or cause to be maintained, in an amount not less than Two Million Dollars (\$2,000,000), combined single limit, comprehensive general liability insurance. The required amount of insurance shall be subject to increases as the City may reasonably require from time to time, but not more frequently than every twenty-four (24) months. In no event shall such increase or increases exceed the increase during such period in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Subgroup "All Items," in the geographical area applicable to the Oceanside area. The 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 the Developer may be held responsible for the payment of damages to persons or property resulting

from the Developer's activities, activities of its lessees or the activities of any other person or persons for which the Developer is otherwise responsible.

d. Maintain, or cause to be maintained by the Property Manager, worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by the Developer and/or Property Manager in connection with the Development 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 Development or the operation thereof by the Developer or the Property Manager.

**3.3.1 Definition of "Full Insurable Value".** The term "Full Insurable Value" as used in this Section 3.3 shall mean the actual replacement cost of the Development, including the cost of construction of the Improvements, architectural and engineering fees, applicable governmental fees, and inspection and supervision. Developer shall maintain the insurance policy required by Section 3.3 (a) hereof at the current Full Insurable Value of the Development.

**3.3.2 General Insurance Provisions.** All policies of insurance provided for in this Section 3.3, except for the workers' compensation insurance, shall name the Developer as the insured and the City, 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 the City, its officers, employees, agents, and representatives shall be excess only and not contributing with insurance provided pursuant to this Section 3.3. All property casualty insurance policies shall include the interest of any Developer's Mortgagee, and may provide that any loss is payable jointly to the Developer and the Developer's Mortgagee in which event such policies shall contain standard mortgage loss payable clauses.

The 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. The Developer agrees to submit policies of all insurance required by this Section 3.3, or certificates evidencing the existence thereof, to the City on or before the effective date of this Agreement, indicating the coverage of the contractual liability imposed by this 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.

**3.3.3 Failure to Maintain Insurance.** If the Developer fails or refuses to procure or maintain insurance as required by this Agreement, the City shall have the right, at the City's election, and upon ten (10) days prior notice to Developer, to procure and maintain such

insurance. The premiums paid by the City shall be treated as amounts due to the City from the 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).

**3.3.4 Insurance Proceeds Resulting from Loss or Damage to Development.** Subject to the requirements of senior Mortgagees, all proceeds of insurance with respect to loss or damage to the Development and any improvement appurtenant thereto during the Term of the Promissory Note and Deed of Trust shall be payable, under the provisions of the policy of insurance, to the Developer, and said proceeds shall constitute a trust fund to be used for the restoration, repair and rebuilding of the Development 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 Development, and any remaining proceeds shall be apportioned between the Developer and the City as their interests may appear. Notwithstanding the foregoing, within the period during which there is an outstanding mortgage upon the Development, such proceeds shall be payable in accordance with mortgage loan documents.

In the event this Agreement, the Promissory Note and Deed of Trust are terminated by mutual agreement of the City and the Developer and the Development 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 the Developer and shall be applied first to any payments due under this Agreement from the Developer to the City, second to restore the Development to its original condition and to a neat and clean condition, third to repay any outstanding loans secured by encumbrances upon the Development, and finally any excess shall be apportioned between the Developer and the City as their interests may appear, and the Developer shall have no further obligation hereunder to restore, repair or rebuild the Development; provided, however, that within any period when there is an outstanding mortgage upon the Development, such proceeds shall be applied in accordance with the mortgage loan documents. The value of each interest for the purpose of apportioning excess proceeds under this Section 3.3.4 shall be the fair market value of such interests immediately prior to the occurrence of the damage or destruction.

In the event this Agreement, the Promissory Note and Deed of Trust is partially terminated by mutual agreement of the City and the Developer and a portion of the Development is not restored, repaired or rebuilt, a pro rata portion of the insurance proceeds and proceeds of the Capital Replacement Reserve and Operating Reserve attributable to the portion of the Improvements which has been terminated shall be jointly retained by the City and the Developer and shall be applied first to any payments due under this Agreement from the Developer to the City, second to restore the applicable portion of the Development to its original condition and to a neat and clean condition, third to repay any outstanding loans secured by encumbrances upon the Development, and finally any excess shall be apportioned between the Developer and the City as their interests may appear, and the Developer shall have no further obligation hereunder to restore, repair or rebuild the applicable portion of the Development subject to termination; provided, however, that within any period when there is an outstanding mortgage upon the Development, such proceeds shall be applied in accordance with the mortgage loan documents. The value of each interest for the purpose of apportioning excess proceeds under this Section 3.3.4 shall be the fair market value of such interests immediately prior to the occurrence of the damage or destruction.

**3.4 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, the City and its officers, elected and appointed boards and officials, employees, representatives and agents, from and against any and all liability, damages, costs, losses, claims and expenses, suits, actions, proceedings and judgments, including attorney's fees, however caused, resulting directly or indirectly from or connected with the Development, the Site and/or the performance of this Agreement by Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf, except to the extent caused by the negligence or willful misconduct of the City or its officers, boards, officials, employees, representatives or agents.

**3.5 Compliance With Laws.** The Developer shall develop, rehabilitate, maintain and operate the Development and the Property 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.*

**3.6 Nondiscrimination.** Developer for itself and its successors and assigns, agrees that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the leasing, subleasing, rental, transferring, use, occupancy, tenure, or enjoyment of the Development 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 Development.

**3.7 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 on which the Development is situated (the "Site"). Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

**b. Environmental Indemnity.** Developer shall indemnify, defend and hold City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the release from the Site, use on the Site, generation on the Site, discharge from the Site, storage on the Site, disposal on or from the Site, or transportation to or from the Site, of any Hazardous Materials during the term of this Agreement, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the

Site. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment; provided, however, under no circumstances shall these indemnity obligations of Developer include any obligation for payment of punitive damages assessed against City or its officers, employees, agents or representatives, or for damages, penalties or costs assessed against the City due to actions of City employees, officers, 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.

**3.8 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 or the Development 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.

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

**4.1 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.

**4.2 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.

**4.3 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.

**4.4 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.

**4.5 Notice of Changed Conditions.** Until the final disbursement of the Development Loan, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 4 not to be true in any material respect, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder, but shall constitute an exception which City shall have a right to approve or disapprove if such exception would have a material adverse effect on the Development and/or operation of the Development. If City elects to disburse the Development 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 Development 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 5 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.

**5. Remedies for Default.** A failure by either party to perform any action or covenant required by this Agreement, 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

Development 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 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 Development 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 Deed of Trust.

**5.1 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, in an appropriate municipal court in that county, or in the United States District Court for the Southern District of California.

**5.2 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.

**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 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.

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

**5.6 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.

**6. General Provisions.**

**6.1 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:** Southern California Housing Development Corporation  
9065 Haven Boulevard, Suite 100  
Rancho Cucamonga, CA 91730  
Attention: President

**With a copy to:** Edward A. Hopson  
655-A North Mountain Avenue  
Upland, CA 91786

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.

**6.2 Non-Liability of Officials and Employees of City and 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.

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

**6.4 Integration.** This Agreement, together with the Promissory Note, Deed of Trust, Form of Residual Receipts Report, Regulatory Agreement, Financing Plan and other attachments thereto, 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), B (Deed of Trust) and C (Financing Plan), 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.

**6.5 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.

**6.6 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.

**6.7 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.

**6.8 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.

**6.9 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.

**6.10 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.

**6.11 Definitions.** Any terms used in this Agreement but not separately defined herein shall have the meaning given to such terms in the Promissory Note or Deed of Trust, 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:

*Robert Hamilton, Assi.*  
City Attorney

CITY:  
CITY OF OCEANSIDE, a municipal corporation

By: \_\_\_\_\_  
City Manager

DEVELOPER:  
THE SOUTHERN CALIFORNIA HOUSING  
DEVELOPMENT CORPORATION, a California  
nonprofit public benefit corporation

By: *[Signature]*  
Richard J. Whittingham, CPA  
Chief Financial Officer

Developer's Signature(s) Must be Notarized

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California  
County of San Bernardino

On Oct. 31, 2006 before me, Jill S. Van Balen, notary public,  
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

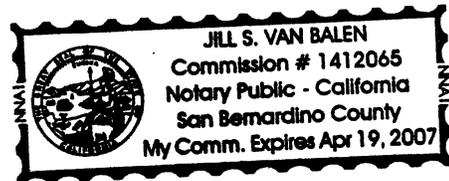
personally appeared Richard J. Whittingham,  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

*Jill S. Van Balen*  
Signature of Notary Public



**EXHIBIT "A"**

**PROMISSORY NOTE**

\$5,012,500.00

November 15, 2006  
Oceanside, California

FOR VALUE RECEIVED, THE SOUTHERN CALIFORNIA HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation (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 at such other place as the City may designate in writing, the sum of Five Million Twelve Thousand Five Hundred Dollars (\$5,012,500), which represents the "Purchase Loan Amount" pursuant to the loan agreement executed by the City and the Borrower dated as of November 15, 2006 (the "Loan Agreement"). All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Loan Agreement. Provisions for reduction in the principal balance hereof and a possible subsequent increase in that reduced principal balance are set forth in Section 3 of this Note. Payments shall be made 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 provisions of the Loan Agreement. The rights and obligations of the Borrower and the City under this Note shall be governed by the Loan 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 Loan Agreement or any other document related to the principal balance of this Note, the terms of this Note shall prevail.

**2. Interest.** The principal balance of this Note outstanding from time to time shall bear simple interest at the rate of: (i) as to the Purchase Loan Amount, five percent (5%) per annum accruing commencing upon the "Close of Escrow" for the Borrower's purchase of the Development and continuing until modified in accordance with the provisions of this Note; and (ii) as of the date that the City has loaned the Additional Amount (as provided in Section 3 below) to the Borrower and the principal balance hereof has been converted into the Development Loan in the Development Loan Amount of Four Million One Hundred Forty-Eight Thousand Dollars (\$4,148,000), three percent (3%) per annum accruing commencing on the date of disbursement of the Additional Amount.

**3. Repayment of Note.** The principal balance hereof shall be paid by the Borrower as follows:

**a.** Concurrently with the closing and funding of the Tax-Exempt Bond Construction Loan and without further notice to Borrower, the Borrower shall pay to City as partial payment of the principal balance of this Note an amount of Two Million Nine Hundred Thousand Dollars (\$2,900,000) which shall be sufficient to reduce the principal balance of this Note to Two Million One Hundred Twelve Thousand Five Hundred Dollars (\$2,112,500) (the "Rollover Amount"). In the event the Borrower fails to obtain the Construction Loan, the total Purchase Loan Amount shall be repaid by the Borrower as set forth below in Section 3.b below.

b. The Loan Agreement requires the City to lend the Additional Amount of Two Million Thirty-Five Thousand Five Hundred Dollars (\$2,035,500) to the Borrower concurrently with the Conversion Date and upon satisfaction of the conditions precedent therefore which are contained in the Loan Agreement. At such time as the City has made its loan of the Additional Amount, the principal balance of this Note will be increased to Four Million One Hundred Forty-Eight Thousand Dollars (\$4,148,000), the "Development Loan Amount." The Development Loan Amount, or the Purchase Loan Amount if the Borrower fails to obtain the Construction Loan as provided in Section 3.a. above, shall be paid by Borrower's annual payment to the City of an amount equal to fifty percent (50%) of the Residual Receipts (as defined below) from the operation of the Development (as defined in the Loan Agreement), as determined by a Residual Receipts calculation from the operation of the Development during the preceding fiscal year. Annual payment of the City's share of Residual Receipts shall be delivered by Borrower to the City on or before April 15<sup>th</sup> of each calendar year commencing with April 15<sup>th</sup> of the calendar year immediately following the year in which Borrower completes construction/rehabilitation of the Development and the City has loaned the Additional Amount to Borrower, and shall continue on April 15<sup>th</sup> of each year thereafter until the Development Loan Amount and all unpaid interest thereon, and any unpaid interest on the remaining balance of the Purchase Loan Amount, if not previously paid, has been repaid in full. Any remaining portion of the Development Loan Amount then remaining shall be due and payable on the fifty-fifth (55<sup>th</sup>) anniversary of the date of advance by the City of the Additional Amount, without additional notice to the Borrower. Notwithstanding the foregoing, the outstanding principal balance of this Note may at any time and from time to time be paid in part or in full without penalty or premium and the full principal balance of this Note and all accrued interest thereon may be accelerated and become due and payable in full as set forth in Section 12 below.

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

As used herein, "Debt Service" means payments made in a calendar year pursuant to the approved financing obtained for the acquisition and ownership of the Development pursuant to Section 1.3(b) of the Loan Agreement, 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.

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.

As used herein, "Reserve Deposits" shall mean any payments to the Operating Reserve account and the Capital Replacement Reserve account pursuant to 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 one hundred-five (105) days after the end of the Borrower's fiscal year (i.e. April 15<sup>th</sup>), of each fiscal year commencing in the year in which the Construction Loan converts to the Permanent Loan and payment by the City of the Additional Amount occurred, the Borrower shall annually provide the City a Residual Receipts report, in the form attached to the Loan 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 one hundred-five (105) days after the end of the Borrower's fiscal year, of each fiscal year commencing in the year of the initial disbursement of the Additional Amount of the Development Loan Amount, 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. Subject to the Provisions of Section 17 of this Note, the obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

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

e. No previous waiver and no failure or delay by City in acting with respect to the terms of this Note or the 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 Obligations.** This Note is the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, successors and assigns.

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

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

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

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

**12. Acceleration and Other Remedies.** Upon: (a) the occurrence of an event of Default as defined in the Loan 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 Loan Agreement and the Regulatory 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 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 Loan 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 Loan 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 Loan Agreement or the terms or time of payment under this Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof, (c) the granting of any other indulgences to Borrower, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Any such renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to Borrower or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder.

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

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

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

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

d. the effective rate of interest shall be automatically subject to reduction to the Maximum Legal Rate of Interest (as defined below), allowed under such Interest Law, as now or hereafter construed by courts of appropriate jurisdiction. To the extent permitted by the Interest Law applicable to this loan transaction, all sums paid or agreed to be paid to City for the use, forbearance or detention of the indebtedness evidenced hereby shall be amortized, prorated, allocated and spread throughout the full term of this Note. For purposes of this Note, "Interest Law" shall mean any present or future law of the State of California, the United States of America, or any other jurisdiction which has application to the interest and other charges under this Note. The "Maximum Legal Rate of Interest" shall mean the maximum rate of interest that City may from time to time charge Borrower, and under which Borrower would have no claim or defense of usury under the Interest Law.

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

**17. No Personal Liability.** In the event of any default under the terms of this Note or the 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 Loan Agreement or Deed of Trust to recover directly from Borrower any losses, damages, costs and expenses incurred by the City, or any funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by City as a result of fraud, misrepresentation or waste, and any costs and expenses incurred by the City in connection thereof (including without limitation reasonable attorneys' fees and costs).

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

**Signature Page for Promissory Note**  
**From**  
**The Southern California Housing Development Corporation**  
**To**  
**City of Oceanside**

**BORROWER:**

**The Southern California Housing Development Corporation**, a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Richard J. Whittingham, CPA  
Chief Financial Officer

**EXHIBIT "B"**

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 November 15, 2006, is entered into by and between **THE SOUTHERN CALIFORNIA HOUSING DEVELOPMENT CORPORATION**, a California nonprofit public benefit corporation ("Trustor"), 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; (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 1710 Maxson Street, 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 initial principal amount of Five Million Twelve Thousand Five Hundred Dollars (\$5,012,500.00) executed by Trustor and payable to the order of Beneficiary, as lender, which Note provides for the reduction in the principal balance thereof to Two Million One Hundred Twelve Thousand Five Hundred Dollars (\$2,112,500.00) (the "Rollover Amount") and a possible subsequent increase in the reduced principal balance in the "Additional Amount" of Two Million Thirty-five Thousand Five Hundred Dollars (\$2,035,500.00), to increase the principal balance thereof to Four Million One Hundred Forty-eight Thousand Dollars (\$4,148,000.00) (the "Development Loan"); 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 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 and rehabilitation 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 3.4 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.

#### **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 or rehabilitated on the Subject Property, as described in the Rehab Budget included in the Financing Plan (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 3); 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 Regulatory 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 Beneficiary's approval right for encumbrances specifically set forth in the Regulatory Agreement).

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

**5.3 TAX AND INSURANCE IMPOUNDS.** At Beneficiary's option and upon its demand, Trustor, shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments and levies imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property (or which are required to be paid by Trustor pursuant to the Loan 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. Amounts deposited into impound accounts held and maintained by lenders holding security interests in the Property senior to Beneficiary shall be credited against Trustor's payment obligations hereunder. 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 Regulatory Agreement with respect to mechanic's liens. Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or any interest therein, whether senior or subordinate hereto.

**5.6 DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

a. Subject to the senior claim thereto by lenders holding deeds of trust senior to this Deed of Trust, the following (whether now existing or hereafter arising) are, in the amount not to exceed any sums then owing under the Loan Agreement and Note, all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or

private use affecting all or any part of, or any interest in, the Subject Property; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Subject Property; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 5.7(d), Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure.

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

#### **5.7 MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY.**

Trustor covenants, subject to the provisions of the Loan Agreement: (a) to insure the Subject Property against such risks as Beneficiary may reasonably require and, at Beneficiary's request, to provide evidence of such insurance to Beneficiary, and to comply with the requirements of any insurance companies insuring the Subject Property; (b) to keep the Subject Property in good condition and repair; (c) not to remove or demolish the Subject Property or any part thereof, not to alter, restore or add to the Subject Property and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property without Beneficiary's prior written consent; (d) to complete or restore promptly and in good and workmanlike manner the Subject Property, or any part thereof which may be damaged or destroyed, without regard to whether Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in Section 5.6; (e) to comply with all laws,

ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Subject Property; and (g) to do all other acts which from the character or use of the Subject Property may be reasonably necessary to maintain and preserve its value.

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

**5.9 ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE.** Trustee accepts this trust when this Deed of Trust is recorded. From time to time upon written request of Beneficiary and presentation of this Deed of Trust or a certified copy thereof for endorsement, and without affecting the personal liability of any person or entity for payment of any indebtedness or performance of any obligations secured hereby, Trustee may, without liability therefor and without notice: (a) reconvey all or any part of the Subject Property; (b) consent to the making of any map or plat thereof; and (c) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies. Except for such obligations as may be imposed upon Trustee by law, 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.

**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 Development), 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 use solely as a senior citizen (age 55 or older) rental apartment complex whose residents are qualified low- or very low-income persons or households. Trustor shall, during the Affordability Period, make available, restrict occupancy to, and rent all the units in the Subject Property to Senior Citizens or Qualified Residents who are also Low Income Households or Very Low Income Households. Trustor shall set aside one (1) unit as an onsite manager's residence. 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. **"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.

b. **"Low Income Households"** means persons or families whose income does not exceed sixty percent (60%) of Area Median Income, adjusted for family size in accordance with adjustment factors adopted and amended from time to time by the U.S. 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 Low Income Household shall be made upon the initial occupancy of a unit by the household.

c. **"Qualified Permanent Resident," "Qualifying Resident" and "Senior Citizen"** means a person 55 years of age or older:

'Qualified Permanent Resident' means a person who meets both of the following requirements: (i) was residing with a Qualifying Resident or Senior Citizen prior to the death,

hospitalization or other prolonged absence of, or the dissolution of marriage with, the Qualifying Resident or Senior Citizen, and (ii) was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the Qualifying Resident or Senior Citizen. 'Qualified Permanent Resident' also means a disabled person or person with a disabling illness or injury who is a child or a grandchild of a Senior Citizen or a Qualified Permanent Resident who needs to live with the Senior Citizen or Qualified Permanent Resident because of the disabling condition, illness or injury. For the purposes hereof, 'disabled' means a person who has a disability as defined in California Civil Code §54(b). A 'disabling injury or illness' means an illness or injury which results in a condition meeting the definition of disability set forth in California Civil Code §54(b). For any person who is a Qualified Permanent Resident hereunder whose disabling condition ends, Trustor may require the formerly disabled resident to cease residing in the Property upon receipt of six months written notice; however, Trustor may allow the person to remain a resident for up to one year after the disabling condition ends without being deemed in violation of any provisions of this Deed of Trust or of the Regulatory Agreement. Trustor may take action to prohibit or terminate occupancy of the Property by a person who is a Qualified Permanent Resident hereunder if Trustor finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that the action to prohibit or terminate the occupancy may be taken only after doing both of the following: (a) providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the co-resident parent or grandparent of that person, and (b) giving due consideration to the relevant, credible and objective information provided in the hearing (which evidence shall be taken and held in a confidential manner by Trustor in order to preserve the privacy of the affected persons). The affected person shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

For purposes hereof 'cohabitant' refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of California Family Code §297. 'Permitted Healthcare Resident' means a person hired to provide live-in, long-term or terminal healthcare to a Qualifying Resident, or a family member of the Qualifying Resident providing that care. For the purposes of this provision, the care provided by a Permanent Healthcare Resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both. A Permitted Healthcare Resident shall be entitled to continue his or her occupancy, residency or use of the dwelling unit as a permitted resident thereof in the absence of the Senior Citizen from the dwelling unit only if both of the following are applicable: (A) the Senior Citizen becomes absent from the dwelling unit due to hospitalization or other necessary medical treatment and expects to return to his or her residence within ninety days from the date the absence began, and (B) the absent Senior Citizen or an authorized person acting for the Senior Citizen submits a written request to Trustor stating that the Senior Citizen desires that the Permanent Healthcare Resident be allowed to remain in order to be present when the Senior Citizen returns to reside in the Property. Upon written request by the Senior Citizen or an authorized person acting for the Senior Citizen, Trustor shall have the discretion to allow a Permitted Healthcare Resident to remain for a time period longer than ninety days from the date that the Senior Citizen's absence began, if it appears that the Senior Citizen will return within a period of time not to exceed an additional ninety days. At all times during the Affordability Period, one person in residence in each of the dwelling units of the Property (except for the dwelling unit reserved for occupancy by the manager) shall be required to be a Senior Citizen and every other resident in that same dwelling unit shall be a Qualified Permanent Resident or a Permitted Healthcare Resident. Temporary

residency by persons who are guests of a Senior Citizen or Qualified Permanent Resident and who are less than 55 years of age may be permitted but not for more than a cumulative total of sixty days in any calendar year (which may not be accumulated from year to year). Upon the death or dissolution of marriage or upon the hospitalization or other prolonged absence of the Qualifying Resident or Senior Citizen, any Qualified Permanent Resident shall be entitled to continue his or her occupancy, residency or use of the Dwelling Unit as a Permitted Resident. This entitlement shall not apply to a Permitted Healthcare Resident.

Any change in the provisions and definition set forth in California Civil Code §51.3 which modify or amend the definitions used herein shall be deemed incorporated herein by reference to modify and amend the definitions used herein when they become effective.

d. **"Annual Rent"** shall mean the total of monthly payments made over the period of one year by the resident of a Dwelling Unit for use and occupancy of the Dwelling Unit and facilities associated therewith, including an allowance for utilities ("Utility Allowance") as prescribed by the City of Oceanside, Neighborhood Services Department.

e. **"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.

f. **"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.

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. **"Affordability Period"** means all Dwelling Units on the Property shall, for a period of ninety-nine (99) years commencing on the date of the occurrence of conversion of the Construction Loan to the Permanent Loan and the Beneficiary's funding of the Additional Amount, be rented at Affordable Rental Rates to qualifying Senior Citizens who are also Low-Income Households and Very Low-Income Households.

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

**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, creed, religion, sex, familial status, ancestry or national origin 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, creed, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases (including rental agreements) or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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, creed, religion, sex, familial status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

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, creed, religion, sex, familial 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:** "Except as otherwise required by the HUD Section 202 (or 811) program rental requirements, there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, familial status, national origin or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, or shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

## **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.** Subject to Section 17 of the Note secured hereby, 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:                   The Southern California Housing Development Corporation  
9065 Haven Boulevard, Suite 100  
Rancho Cucamonga, California 91730  
Attention: President

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

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

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

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

**The Southern California Housing Development Corporation**, a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Richard J. Whittingham, CPA  
Chief Financial Officer

**(ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC)**

**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**

PARCEL 1, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARCEL MAP NO. 14748, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 30, 1987.

Schedule 1

FORM OF RESIDUAL RECEIPTS REPORT

City of Oceanside  
Cape Cod Villas

Residual Receipts Report  
for the Year Ending \_\_\_\_\_

Date Prepared \_\_\_\_\_

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

**Annual Project Revenue**

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

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

**Operating Expenses<sup>1</sup>**

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)

**EXHIBIT "C"**

**FINANCING PLAN**

[On the Following 10 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)\_\_\_\_\_

NO DOCUMENTARY TRANSFER TAX DUE R&T CODE §11922  
FOR BENEFIT OF PUBLIC AGENCY – NO FEES DUE GOV'T CODE §27383

## **REGULATORY AGREEMENT**

This Regulatory Agreement (hereinafter this "Regulatory Agreement") dated this 15<sup>th</sup>, day of November, 2006, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation in and of the State of California (hereinafter the "City"), and THE SOUTHERN CALIFORNIA HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation (hereinafter the "Developer").

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

### **RECITALS**

WHEREAS, as of the Effective Date, Developer is, or will be, the owner of that certain real property situated in the City of Oceanside, County of San Diego, State of California, as more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter the "Property"), pursuant to that certain Loan Agreement by and between City and Developer dated November 15, 2006, (hereinafter the "Loan Agreement"), incorporated herein and made a part hereof by reference;

WHEREAS, The Community Development Commission of the City of Oceanside and George Kenneth Alameda and Kathleen Marie Alameda, Co-Trustees of the Alameda Trust dated July 3, 1991, as to an undivided 50 percent interest, and Lawrence G. Alameda and George Kenneth Alameda, Trustees of the Lawrence G. Alameda Non-Exempt Trust dated June 7, 2004, as to an undivided 20 percent interest, and Lawrence G. Alameda and George Kenneth Alameda, Trustees of the George Kenneth Alameda Non-Exempt Trust dated June 7, 2004, as to an undivided 20 percent interest, and Lawrence G. Alameda and George Kenneth Alameda, Trustees of the Linda M. Frank Non-Exempt Trust dated June 7, 2004, as to an undivided 10 percent interest, successors in interest to George Kenneth Alameda and Kathleen Marie Alameda, husband and wife as joint tenants, as to an undivided 50 percent interest, and Michael D. O'Gara and Vicki B. O'Gara,

husband and wife as joint tenants, as to an undivided 25 percent interest, and George G. Alameda and Julie L. Alameda, husband and wife as joint tenants, as to an undivided 25 percent, as tenants in common (the "Seller"), have entered into an Agreement Authorizing Affordable Housing Density Bonus and Restriction on Real Property (the "Affordable Housing Agreement"), dated February 10, 1987, as filed in the Office of the County Recorder of San Diego County on March 31, 1987 as File/Page No. 87-170128, concerning the real property situated in the City of Oceanside, County of San Diego, State of California, described as Parcel 1 of Parcel Map No. 14748, filed in the Office of said County Recorder, March 30, 1987, commonly known as the Cape Cod Villas, located at 1710 Maxson Street, Oceanside, California, consisting of a 36 unit apartment complex (the "Development"), which requires the Development be used and maintained as an affordable senior citizen rental project through March 31, 2007.

WHEREAS, to keep the Development available to low- and very-low income senior citizen (age 55 or older) households and persons, the Developer has agreed to purchase the Development and maintain the age and affordable rental restrictions on the Development for an additional ninety-nine (99) years;

WHEREAS, Developer has applied to the City for financial assistance in order to purchase, rehabilitate and operate the Development as a low- and very-low income senior citizen residential rental complex (hereinafter the "Program") on the Property. The financial assistance provided by the City is for the purchase of the Development from the Seller and to assist the Developer to pay down the Tax Exempt Bond Construction Loan (the "Construction Loan") at the Conversion Date. Subject to the requirements of the Loan Agreement and this Regulatory Agreement. Developer agrees to be bound and to abide by all applicable statutes, rules, and regulations that are applicable to the Development and the financial assistance provided by the City; and

WHEREAS, as an inducement for the City to provide the financial assistance, Developer has agreed to enter into this Regulatory Agreement and has consented to be regulated and restricted as to the use, occupation and operation of the Development as provided herein.

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

1. **Recitals.** The foregoing recitals, Developer's application to the City for financial assistance for the purchase and rehabilitation of the Development, the Loan Agreement, Promissory Note and Deed of Trust 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 for a period of **Ninety-nine (99) years** thereafter (the "Term"), unless sooner terminated as provided for herein. As used hereinafter the terms the "Term" and the "Term of the Regulatory Agreement" and similar phrases relating to the duration of this Regulatory Agreement, shall mean Term.

2. **Developer's Obligation to Rehabilitate Improvements.** This Regulatory 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. Before submitting plans for approval by the City and commencing the rehabilitation of any improvements on the Development, 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.

- (a) **Construction Documents.** Developer, at its own expense, shall promptly cause the construction and/or improvement plans and specifications to be prepared for improvements to be made on or about the Development. 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 Development in conformity with the Uniform Building Code and City's building permit regulations. 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). Such agreement shall provide that payment of at least 10% of the total price thereunder shall not be due until at least thirty (30) days after full completion of the work to be performed; and
  - (ii) An estimate schedule of payments thereunder which shall provide for partial payments as the work progresses.
  
- (b) **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 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 strikes, fire, acts of God, or other events beyond the control of Developer. If Developer shall neglect, fail or refuse to commence its work as aforesaid and thereafter neglects, fails or refuses to diligently proceed with and complete its work, then City, 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 this Regulatory Agreement cancelled and of no further force and effect and enter upon the Property and title in the Property shall vest to City.
  
- (c) **Plan Variances.** Developer shall not authorize any variance from the plans or specifications approved by the City without prior written approval by City.
  
- (d) **Completion Documents.** On the completion date for each phase of improvements, Developer shall deliver to the Property Management Division of the City of Oceanside Public Works Department each of the following:
  - (i) A certificate of completion by the architect or engineer who supervised the construction, 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) 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 Property.

(e) **As-Built Plans.** Within thirty (30) days of the completion of each phase of improvements for which plans are 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 Property and certified by the plan's preparer that the as-built conditions are depicted accurately.

3. **Restrictive Use of the Development.** Developer covenants and agrees for itself, its authorized successors and assigns, that during the term of this Regulatory Agreement that the Development shall be rehabilitated, devoted, maintained and operated as an thirty-six (36) unit affordable low-income senior residential rental development, consisting of 35 1-bedroom units (the "Housing Units"), 1 unit (manager's unit), laundry and common areas and facilities, manager's office and reception area, and appurtenant improvements (the "Improvements"), in conformance with the approved plans and specifications and this Regulatory Agreement. During the Term of this Regulatory Agreement the Development shall at all times be a multifamily senior citizen residential rental project and shall not be converted to condominiums or any other use.

4. **Affordable Housing Requirements.** Developer agrees to make available, restrict occupancy to, and rent each of the Housing Units to a low and very low-income Senior Citizen of fifty-five (55) years of age or older, or a Qualified Resident as defined in California Civil Code Section 51.3 and as amended from time to time, and as set forth below (collectively referred to as "Senior Citizen") or a handicapped person, all at affordable rental rates described below.

(a) **Definitions.** For the purposes of this Agreement, the following definitions shall apply:

"Affordable Rental Rates" (including a utility allowance) may not exceed 30% of 50% of the Area Median Income for Very Low Income Households or 30% of 80% of the Area Median Income for persons and families of low and moderate income for the annual rent, adjusted for family size appropriate for the unit.

"Area Median Income" means the median family income of a geographic area of the state, as annually estimated by the U.S. Department of Housing and Urban Development pursuant to the United States Housing Act of 1937.

"Low Income Households" means persons or families whose income does not exceed sixty percent (60%) of Area Median Income, adjusted for family size in accordance with adjustment factors adopted and amended from time to time by the U.S. 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 Low Income Household shall be made through third party verification and prior the initial occupancy of a unit by the household.

"Persons and Families of Low and Moderate Income" means persons and families whose income does not exceed one hundred twenty percent (120%) of area median income, adjusted for family size in accordance with adjusting factors adopted or 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 low or moderate income household shall be made upon the initial occupancy of a unit by the household.

"Qualified Permanent Resident," "Qualifying Resident" and "Senior Citizen" means a person 55 years of age or older, as defined in Section 51.3 of the California Civil Code, and as amended from time to time:

'Qualified Permanent Resident' means a person who meets both of the following requirements: (i) was residing with a Qualifying Resident or Senior Citizen prior to the death, hospitalization or other prolonged absence of, or the dissolution of marriage with, the Qualifying Resident or Senior Citizen, and (ii) was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the Qualifying Resident or Senior Citizen. 'Qualified Permanent Resident' also means a disabled person or person with a disabling illness or injury who is a child or a grandchild of a Senior Citizen or a Qualified Permanent Resident who needs to live with the Senior Citizen or Qualified Permanent Resident because of the disabling condition, illness or injury. For the purposes hereof, 'disabled' means a person who has a disability as defined in California Civil Code §54(b). A 'disabling injury or illness' means an illness or injury which results in a condition meeting the definition of disability set forth in California Civil Code §54(b). For any person who is a Qualified Permanent Resident hereunder whose disabling condition ends, Trustor may require the formerly disabled resident to cease residing in the Property upon receipt of six months written notice; however, Trustor may allow the person to remain a resident for up to one year after the disabling condition ends without being deemed in violation of any provisions of this Deed of Trust or of the Regulatory Agreement. Trustor may take action to prohibit or terminate occupancy of the Property by a person who is a Qualified Permanent Resident hereunder if Trustor finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that the action to prohibit or terminate the occupancy may be taken only after doing both of the following: (a) providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the co-resident parent or grandparent of that person, and (b) giving due consideration to the relevant, credible and objective information provided in the hearing (which evidence shall be taken and held in a confidential manner by Trustor in order to preserve the privacy of the affected persons). The affected person shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

For purposes hereof 'cohabitant' refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of California Family Code §297. 'Permitted Healthcare Resident' means a person hired to provide live-in, long-term or terminal healthcare to a Qualifying Resident, or a family member of the Qualifying Resident providing that care. For the purposes of this provision, the care provided by a Permanent Healthcare Resident must be substantial in nature and

must provide either assistance with necessary daily activities or medical treatment, or both. A Permitted Healthcare Resident shall be entitled to continue his or her occupancy, residency or use of the dwelling unit as a permitted resident thereof in the absence of the Senior Citizen from the dwelling unit only if both of the following are applicable: (A) the Senior Citizen becomes absent from the dwelling unit due to hospitalization or other necessary medical treatment and expects to return to his or her residence within ninety days from the date the absence began, and (B) the absent Senior Citizen or an authorized person acting for the Senior Citizen submits a written request to Trustor stating that the Senior Citizen desires that the Permanent Healthcare Resident be allowed to remain in order to be present when the Senior Citizen returns to reside in the Property. Upon written request by the Senior Citizen or an authorized person acting for the Senior Citizen, Trustor shall have the discretion to allow a Permitted Healthcare Resident to remain for a time period longer than ninety days from the date that the Senior Citizen's absence began, if it appears that the Senior Citizen will return within a period of time not to exceed an additional ninety days. At all times during the Affordability Period, one person in residence in each of the dwelling units of the Property (except for the dwelling unit reserved for occupancy by the manager) shall be required to be a Senior Citizen and every other resident in that same dwelling unit shall be a Qualified Permanent Resident or a Permitted Healthcare Resident. Temporary residency by persons who are guests of a Senior Citizen or Qualified Permanent Resident and who are less than 55 years of age may be permitted but not for more than a cumulative total of sixty days in any calendar year (which may not be accumulated from year to year). Upon the death or dissolution of marriage or upon the hospitalization or other prolonged absence of the Qualifying Resident or Senior Citizen, any Qualified Permanent Resident shall be entitled to continue his or her occupancy, residency or use of the Dwelling Unit as a Permitted Resident. This entitlement shall not apply to a Permitted Healthcare Resident.

Any changes in the provisions and definitions set forth in California Civil Code §51.3 which modify or amend the definitions used herein shall be deemed incorporated herein by reference to modify and amend the definitions used herein when they become effective.

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

"Very Low Income Households" means persons and families whose income does not exceed fifty percent (50%) of Area median income. Income limits are based on family size and the annual income the family receives. The determination of a household's status as a Very Low Income Household shall be made through third party verification and prior to the initial occupancy of a unit by the household.

- (b) **Duration of Affordability Requirements.** The Housing Units shall be subject to the requirements of this Section 4 for the ninety-nine (99) years commencing on the date of the occurrence of conversion of the Construction Loan to the Permanent Loan and the City's funding of the Additional Amount (the "Conversion Date"), which date shall be evidenced by the filing of the Permanent Loan Deed of Trust in the Office of the County Recorder of San Diego County, a conformed copy of which shall be delivered to the City Clerk from the Developer or by such other evidence as may be reasonably

acceptable to the City. The duration of this requirement shall be known as the "Affordability Period."

- (c) **Income of Residents.** Following the purchase of the Development from the Seller, and annually thereafter, on or before one hundred-five (105) days after the end of the Developer's fiscal year (i.e. April 15<sup>th</sup>) of each year during the Term of this Regulatory Agreement, the Developer shall submit to the City, at Developer's expense, a summary of the income, household size and rent payable by each of the residents of the Housing Units. At the City's request, Developer shall also provide to the City completed income computation and certification forms, in a form acceptable to the City, for any such tenant or residents. Developer shall obtain, or shall cause to be obtained by the Property Manager, a certification from each tenant leasing a Housing Unit demonstrating that such tenant is either a Low-Income Senior Citizen or Household, Very-Low Income Senior Citizen or Household, or Qualified Permanent Resident, and meets the eligibility requirements established for the Housing Unit.
- (d) **Verifications.** Developer shall verify, or shall cause to be verified by the Property Manager through third party verification, the income of each proposed and existing tenant of the Housing Units in an appropriate manner. Following the Close of Escrow for the purchase of the Development from the Seller, and on or before one hundred-five (105) days after the end of the Developer's fiscal year of each year during the Term of this Regulatory Agreement, Developer, as an expense of the Development, shall submit to the City the reports required pursuant to Health and Safety Code Section 33418, as the same may be amended from time to time, with each such report to be in a form reasonably acceptable to the City. Each annual report shall cover the immediately preceding fiscal year.
- (e) **Rent Schedule.** At the time the Development vests in that of the Developer, Developer shall charge only those rents approved by the City and which are established pursuant to the Program Regulations. Subsequent increases or decreases in rent including special rent increases, shall be charged only if consistent with the Program Regulations. Failure to observe this regulation shall be considered a material breach of the Regulatory Agreement.
- (f) **Resident Selection Procedures.** Developer shall be responsible for the selection of residents for the Housing Units in compliance with state and federal fair housing laws. An applicant is eligible for admission to a Housing Unit if the household meets the requirements of the Program Regulations as described in this Regulatory Agreement. Developer may determine that an applicant is not eligible for admission if, on the basis of substantial, factual evidence of that person's prior actions there is good cause to believe that the applicant will repeatedly fail to pay rent, will create a substantial threat to the health and safety of other residents, or will repeatedly breach material requirements of the lease or rental agreement.
- (g) **Lease and Occupancy Procedures.** Each eligible applicant selected to occupy a Housing Unit shall enter into a written lease or rental agreement with Developer, or its designated management agent, the form of which shall contain those provisions as are required by the Program Regulations and this Regulatory Agreement.
  - (i) Developer shall establish reasonable rules of conduct and occupancy that

shall be consistent with State and Federal law and the Program Regulations. The rules shall be in writing and shall be given to each resident. Any amendment to said rules shall be effective not less than thirty (30) days after giving written notice thereof to each resident.

- (ii) All leases or rental agreements and the landlord-tenant relationship shall be subject to California law, the Program Regulations, and the provisions of this Regulatory Agreement. Residents of the Housing Units shall pay rents, in advance, on a monthly basis for the period the resident actually occupied the Housing Unit. Developer may require the resident to move out if the resident has seriously or repeatedly violated important terms of the lease agreement.

**5. Maintenance and Repair.** Developer agrees to assume full responsibility for the management, operation and maintenance of the Development throughout the Term without expense to the City, and to perform all repairs and replacements necessary to maintain and preserve the Development 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 Development. Developer hereby waives all rights to make repairs or to cause any work to be performed at the expense of the City as may be provided for in Section 1941 and 1942 of the California Civil Code, if applicable. Developer shall manage and maintain the Development in conformity with the Oceanside Municipal Code.

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

- (a) Developer shall maintain the Development, 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 senior citizen housing development. The Developer agrees to provide utility services, administrative services, supplies, contract services, maintenance, maintenance reserves, and management which are necessary for the maintenance of the entire Development including interior tenant spaces, common area spaces and interior and exterior common areas.
- (b) Landscape maintenance shall include, but not be limited to: watering and irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.
- (c) Clean-up maintenance shall include, but not be limited to: maintenance of all private paths, sidewalks, parking areas, driveways, curbs, gutters and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of.

- (d) The Development shall be maintained in conformance with, in accordance with and in compliance with the approved construction and architectural and landscape plans and design scheme, as the same may be amended from time to time with the approval of the City.
- (e) All maintenance work shall conform to all applicable federal and state standards and regulations for the performance of maintenance, including without limitation the Occupation Safety and Health Act.
- (f) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance performed by Developer, Property Manager or their contractors shall be applied in strict accordance with all governing regulations and in accordance with the manufacturer's directions for their use. Precautionary measures shall be employed recognizing that all areas are open to public access.
- (g) Parking lots, lighting fixtures, trash enclosures, and all areas which, can be seen from the adjacent streets shall be kept free from any debris or waste materials by regularly scheduled maintenance.
- (h) **Annual Operating Budget.** Developer will submit to the City a proposed Operating Budget for the Development no later than ninety (90) days after the Developer's purchase of the Development from the Seller and on or before ninety (90) days after the end of Developer's fiscal year of each year thereafter during the Term of this Regulatory Agreement.

The Annual Operating Budget shall set forth the anticipated Gross Income of the Development, including rents, day care and 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 Development and normal upkeep of all buildings, structures, landscaping and appurtenant improvements made to the Property.

Unless the City objects to the proposed budget within fifteen (15) days after submission of a complete proposed budget, such proposed operating budget shall be the Operating Budget for the fiscal year of the Development, provided that the written submittal states that failure to approve or disapprove within such fifteen (15) day period shall be deemed an approval. In the event that the City objects to the proposed operating budget, the City and Developer shall use reasonable and diligent efforts to reach mutual agreement to determine the Operating Budget.

- (i) **Operating Reserve.** Developer shall, or shall cause the Property Manager to, annually set aside in a separate interest-bearing trust account three percent (3%) of the Annual Operating Budget from the Effective Gross Income until the balance reaches nine (9) months of the Annual Operating Budget, increased each year by an amount equal to the increase in the Consumer Price Index, All Items Index, All Urban Consumers for San Diego, or superseding index, over the preceding year (the

"Operating Reserve"). Developer shall provide, to the City, at the same times and manner as required for the submittal of the reports related to the Annual Operating Budget as stated in the Subsection (h) above, evidence reasonably satisfactory to the Director of Neighborhood Services of compliance herewith. Developer shall retain such amount in the Operating Reserve to cover shortfalls between Development income, including, but not limited to, rents, such payments as may be provided from the Program and other public and private sources and actual Development operating expenses. Developer shall not make any disbursements of the Operating Reserve, in a cumulative amount in excess of twenty-five thousand Dollars (\$25,000) per year for both the Operating Reserve and Capital Replacement Reserve, without the prior consent of the City's Director of Neighborhood Services.

- (j) **Capital Replacement Reserve.** Developer shall also, or cause the Property Manager to, annually set aside no less than Eighteen Thousand Dollars (\$18,000.00), subject to annual increases of two and one-half percent (2.5%), into a separate interest-bearing trust account (the "Capital Replacement Reserve"). Funds in the Capital Replacement Reserve shall be used for capital replacements to the Development fixtures and equipment which, are normally capitalized under generally accepted accounting principles. As capital repairs and improvements of the Development become necessary, the Capital Replacement Reserve shall be the first source of payment therefor; provided, however, Developer shall not make any disbursements of the Capital Replacement Reserve, in a cumulative amount in excess of twenty-five thousand Dollars (\$25,000) per year for both the Operating Reserve and Capital Replacement Reserve, without the prior consent of the Director of Neighborhood Services. 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 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 Development in the manner prescribed in this Section 5.

Developer, as an expense of the Development, shall submit to the City, at the same times and manner as required for the submittal of the reports related to the Annual Operating Budget as stated in the Subsection (h) above, a budget and an accounting for the Capital Replacement Reserve. Capital repairs to and replacement of the Development shall include only those items with a long useful life (generally five years or longer), except as may be approved by the Director of Neighborhood Services.

- (k) For purposes of this Section 5, "Effective Gross Income" of the Development shall mean the gross income actually generated by the Development, including without limitation rents, laundry revenues, such payments as may be provided from the Program and other public and private sources, without deduction for any expenses, but shall not include Security Deposits received from tenants or interest on required Reserves, which shall be added to amounts on deposit in such Reserve Accounts.
- (l) If other funding entities have differing requirements, the City and Developer may mutually amend this paragraph in writing to be consistent with those other requirements.

6. **Accounting Records.** In a manner subject to City approval, which shall not be unreasonably withheld, Developer shall maintain an accrual or modified accrual basis general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Development. 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.

7. **Management.** Developer shall manage or cause the Development to be managed in a prudent and business-like manner, consistent with professional standards for senior rental housing developments in San Diego County, CA. Developer may contract with a Property Manager or manager to operate and maintain the Development and the Development in accordance with the terms of this Regulatory Agreement (hereinafter "Property Manager" ) provided, however, that the selection and hiring of such Property Manager shall be subject to approval by the City's Director of Neighborhood Services. Approval of a Property Manager by the City shall not be unreasonably withheld. Furthermore, the identity of the Property Manager shall not be changed without the prior approval of the City, which approval shall not be unreasonably withheld.

Developer and its Property Manager shall submit for the approval of the City a detailed "Management Plan" which sets forth in detail the duties of the Property Manager, tenant policies and procedures, rules and regulations of the Development and manner of enforcement, a standard lease form, and other matters relevant to the management of the Development. The management of the Development shall be in compliance with the Management Plan, which is approved by the City. Developer and Property Manager may from time to time submit proposed amendments to the Management Plan, which shall also be subject to the prior written approval of the City.

In the event of "Gross Mismanagement" (as that term is defined below) of the Development, 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 Development in a manner which violates the terms and/or intention of this Regulatory Agreement to operate a high quality multifamily housing complex, and shall include, but is not limited to, the following:

- (a) Repeatedly leasing to residents who exceed the prescribed income levels or are otherwise ineligible for tenancy;
- (b) Repeatedly allowing the residents to exceed occupancy limits prescribed by law or set forth in the Management Plan without taking immediate action to stop such overcrowding;
- (c) Repeatedly under funding the prescribed Capital Replacement and Operating Reserves (Sections 10(h) and 10(i));
- (d) Repeatedly failing to timely maintain the Development in accordance with the Management Plan and the manner prescribed in Section 5 hereof; and,
- (e) Fraud or embezzlement of Development monies, including without limitation the funds in the Capital Replacement Reserve and Operating Reserve.

Notwithstanding the above, Developer shall use its best efforts to correct any defects in management at the earliest feasible time and, if necessary, to replace the Property Manager as provided above.

**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 furnished to the Development and all sewer use charges, hookup or similar charges or assessments for utilities levied against the Development for any period included within the Term.

**8.2 Real Estate Taxes.**

- (a) As used herein, the term "real estate taxes" shall mean all real estate taxes, assessments for improvements to the Development, municipal or county water and sewer rates and charges, or any other assessments or taxes, which shall be levied against the Development, or any interest therein, and which become a lien thereon and accrues during the Term.
- (b) Any and all real estate taxes levied against the Development shall be paid prior to delinquency thereof at Developer's sole cost and expense, subject to the Developer's right to file claims for "welfare exception" from the payment of ad valorem taxes available under California Revenue and Taxation Code §214(g). City shall have no liability or obligation to pay the real estate taxes.
- (c) Developer shall have the right to contest the amount or validity of any real estate taxes, in whole or in part, by appropriate administrative and legal proceedings, without any costs or expense to the City.

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

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

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

**10. Indemnification: Faithful Performance.** Developer shall not suffer or permit any liens to be enforced against the fee simple estate of Property, nor against Developer's interest therein by reason of work, labor, services or materials supplied or claimed to have been supplied to Developer or anyone holding the Property, 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, 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 Development or any part thereof.

**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 Development, including without limitation alcohol, aspirin, tobacco and saccharine.
- (b) The term "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the Date of Regulatory Agreement) emanating from the Property.
- (c) The term "Governmental Requirements" shall mean all past, present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Property is located, and any other state, county, city, political subdivision, agency, instrumentality or other entity exercising jurisdiction over the City, Developer or the Property.

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

**11.3 Indemnification.** Upon and after the Commencement Date of this Regulatory Agreement Developer agrees to indemnify, defend and hold the City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, of the transportation of any such Hazardous Materials to or from, the Development 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 Development 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 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. 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 and the Loan 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 and the Loan 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. In the event Developer does store, use, transport, handle or dispose of any Hazardous Materials, Developer shall notify the City in writing at least ten (10) days prior to their first appearance on the Property and Developer's failure to do so shall constitute a material default under this Regulatory Agreement. Developer shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. In addition, in the event of any complaint or governmental inquiry, or if otherwise deemed necessary by the City in its reasonable judgment, the

City may require Developer, at Developer's sole cost and expense, to conduct specific monitoring or testing activities with respect to Hazardous Materials on the Property. Developer's monitoring programs shall be in compliance with applicable Governmental Requirements, and any program related to the specific monitoring of or testing for Hazardous Materials on the Property, shall be satisfactory to the City, in the City's reasonable discretion. Developer shall further be solely responsible, 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.** If any of the following events occur after the conveyance of the property to the Developer from the Seller, Developer shall notify the City, and provide to the City a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Property: notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Developer shall report to the City, as soon as possible after each incident, any unusual, potentially important incidents.

In the event of a release of any Hazardous Materials into the environment, Developer shall, as soon as possible after the release, furnish to the City a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the City, Developer shall furnish to the City a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

**12. Alteration of Improvements.** Upon completion of the rehabilitation of the Development, Developer shall not make or permit to be made any structural alteration of the Development, nor demolish all or any part of the Development, 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 Development by Developer in accordance with Section 13 hereof. In requesting such consent of the City, Developer shall submit to the City detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor. This provision shall not limit or set aside any obligation of Developer under this Regulatory Agreement to maintain the Development and the Development in a clean and safe condition, including structural repair and restoration of damaged Development. 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 Development, or any part thereof, except as otherwise permitted pursuant to this Regulatory Agreement.

**13. Damage or Destruction.**

**13.1 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance.** Subject to Section 13.3 below, if during the period of construction/rehabilitation, the Development 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 Development to substantially the same condition as the Development 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 Development 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, 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 Development do not permit the repair, replacement, or restoration, Developer may elect not to repair, replace, or restore the Development by giving notice to the City (in which event Developer will be entitled to all insurance proceeds, subject to Developer's obligations to lenders or other third parties, but Developer shall be required to remove all debris from the Property) or Developer may reconstruct such other improvements on the Property as are consistent with applicable land use regulations and approved by the City and any other governmental agency or agencies with jurisdiction.

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

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

**13.3 Damage or Destruction Due to Cause Not Required to be Covered by Insurance.** If during the period of construction the Development is completely destroyed or substantially damaged by a casualty for which Developer is not required to (and has not) insured against, then the City shall deliver written notice to Developer of its obligations under this Section 13.3 within thirty (30) days of such event of substantial damage or destruction, and Developer shall not be required to repair, replace, or restore such improvements and may elect not to do so by providing the City with written notice of election not to repair, replace, or restore within ninety (90) days after such substantial damage or destruction. In such event, Developer shall remove all debris from the applicable portion of the Property. As used in this Section 13.3, "substantial damage caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction which is fifteen percent (15%) or more of the replacement cost of the improvements comprising the Development. In the event that the City delivers such notice to Developer but Developer does not timely elect not to repair, replace, or restore the Development 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 Development and thereafter Developer shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed Development in accordance with Section 13.1 above and continue operation of the Development during the period of repair (if practicable) in accordance with Section 13.2 above. In no event, however, shall the Developer be obligated to expend more than One Hundred Twenty Thousand Dollars (\$120,000.00) of its own funds (as adjusted as provided below) to satisfy its obligations under this Section 13.3 to repair, replace or restore the Development. Such maximum expense number shall increase annually by the percentage change in the Consumer Price Index (All Urban Consumers) (Base Year 1982-84 100) for the San Diego area, as published by the United States Department of Labor, Bureau of Labor Statistics, or its successor index, during the last reported one

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

**14. Sale, Assignment, Sublease or Other Transfer.** Except for (a) leases of particular dwelling units to residents, (b) the lease of or grant of an easement or license to the City, (c) the lease of space within the community center portion of the Development to outside parties, and (d) transfers permitted pursuant to Section 5.12 of the Loan 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 Development or the Development (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 such assignment absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee.

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

- (a) Any transfers to an entity or entities in which the Developer retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest, or, if a limited partnership is the proposed transferee, if the Developer or an Affiliate of Developer is the general partner thereof and retains management and control of the transferee entity or entities.
- (b) The conveyance or dedication of any portion of the Property to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Development.

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

of experience in operating similar complexes shall not be required with respect to institutional lenders providing financing pursuant to Section 15 hereof so long as the original Developer (or a successor that has been expressly approved in writing by the City) remains responsible for operating the Development and performing as Developer pursuant to this Regulatory Agreement. Approval by the City of any such sale, assignment, sublease or transfer shall be deemed to relieve Developer or any approved or permitted assign or successor from any obligations under this Regulatory Agreement. Developer shall only sell, assign, sublease, or transfer the Property as a whole and is not permitted to subdivide the Property for the duration of this Regulatory Agreement without the prior written approval of the City.

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

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

The City may assign or transfer any of its rights or obligations under this Regulatory Agreement with the approval of the Developer, which approval shall not be unreasonably withheld; provided, however, that the City may assign or transfer any of its interests hereunder to any commission or agency of the City at any time without the consent of the Developer.

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

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

Notwithstanding anything in this Section 15 to the contrary, Developer shall not, without the prior

written consent of the City, which may be given or withheld in its sole discretion, obtain any Capital Improvement Loan or other conveyance for financing secured by the Development or this Regulatory Agreement, the term of which Capital Development Loan or other conveyance for financing purposes extends beyond the Term.

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

**17. Insurance.**

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

- (a) Maintain or cause to be maintained a policy or policies of all-risk property insurance. Such insurance policy shall be maintained in an amount not less than one hundred percent (100%) of the "Full Insurable Value" of the Development, as defined herein in this Section 17.
- (b) Maintain or cause to be maintained, upon the commencement of the occupancy of the Housing Units, use and occupancy or business interruption or rental income insurance against the perils of fire, lighting, vandalism, malicious mischief, and such other perils ordinarily included in extended coverage fire insurance policies, in an amount equal to not less than twelve (12) months gross rental income payable to Developer from residents of the Development, assuming one hundred percent (100%) occupancy.
- (c) Maintain or cause to be maintained, in an amount not less than Two Million Dollars (\$2,000,000), combined single limit, comprehensive general liability insurance. The

required amount of insurance shall be subject to increases as the City may reasonably require from time to time, but not more frequently than every twenty-four (24) months. In no event shall such increase or increases exceed the increase during such period in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Subgroup "All Items," in the geographical area applicable to the Oceanside area. Developer agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Developer may be held responsible for the payment of damages to persons or property resulting from Developer's activities, activities of its lessees or the activities of any other person or persons for which Developer is otherwise responsible.

- (d) Maintain or cause to be maintained by the Property Manager worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Developer and/or Property Manager in connection with the Property and the Development 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 Development 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 Development, including the cost of construction of the Development, 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 Development.

**17.3 General Insurance Provisions.** All policies of insurance provided for in this Section 17, except for the workers' compensation insurance, shall name Developer and any subtenant as the insured and the City, and its officers, employees, agents, and representatives, as additional insureds, as their respective interests may appear. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City, its officers, employees, agents, and representatives shall be excess only and not contributing with insurance provided pursuant to this Section 17. All property casualty insurance policies shall include the interest of any Developer's Mortgagee, and may provide that any loss is payable jointly to Developer and Developer's Mortgagee in which event such policies shall contain standard mortgage loss payable clauses.

Developer agrees to timely pay or cause to be timely paid all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Developer agrees to submit policies of all insurance required by this Section 17 of this Regulatory Agreement, or certificates evidencing the existence thereof, to the City on or before the effective date of this Regulatory Agreement, indicating the coverage of the contractual liability imposed by this Regulatory Agreement. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to the City. All policies shall be written by good and solvent insurers qualified to do business in California and reasonably acceptable to the City Manager or designee or insurers having financial ratings of A-X or higher from A.M. Best, or its equivalent acceptable to the City. 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 Development.** All proceeds of insurance with respect to loss or damage to the Development 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 Development 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.

In the event this Regulatory Agreement is terminated by mutual agreement of the City and Developer and the Development is not restored, repaired or rebuilt, the insurance proceeds and proceeds of the Capital Replacement Reserve and Operating Reserve shall be jointly retained by the City and Developer and shall be applied first to any payments due under this Regulatory Agreement from Developer to the City, second to restore the Development to its 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 Development. 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 Development is not restored, repaired or rebuilt, a pro rata portion of the insurance proceeds and proceeds of the Capital Replacement Reserve and Operating Reserve attributable to the portion of the Improvements which has been terminated shall be jointly retained by the City and Developer and shall be applied first to any payments due under this Regulatory Agreement from Developer to the City, second to restore the applicable portion of the Development to its original condition and to a neat and clean condition, third to repay any outstanding loans secured by encumbrances upon the Development, 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 Development subject to termination; provided, however, that within any period when there is an outstanding mortgage upon the Development, 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 Development or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then, as between the City and Developer (or mortgagee, if a mortgage is then in effect), the interests of the City and Developer (or mortgagee) in the award and the effect of the taking upon this Regulatory Agreement shall be as follows:

- (a) In the event of such taking of only a part of the Property, leaving the remainder of the Development in such location and in such form, shape and size as to be used effectively and practicably for the conduct thereon of the uses permitted hereunder, this Regulatory Agreement shall terminate and end as to the portion of the Property so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Property and the Development not so taken and from and after such date the rental required by this Regulatory Agreement to be paid by Developer to the City shall be reduced in the proportion which the number of square feet of dwelling units so taken bears to the total number of square feet of dwelling units in the Development.
- (b) In the event of taking of only a part of the Property, leaving the remainder of the Development in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, for the conduct thereon of the uses permitted hereunder, this Regulatory Agreement and all right, title and interest thereunder shall cease on the date title to the Property or the portion thereof so taken vests in the condemning authority.
- (c) In the event the entire Property is taken, this Regulatory Agreement and all of the right, title and interest thereunder, shall cease on the date title to the Property so taken vests in the condemning authority.
- (d) Promptly after a partial taking, at Developer's expense and in the manner specified in provisions of this Regulatory Agreement related to maintenance, repairs, alterations, Developer shall restore the Development, to the extent possible and as permitted by law, and to the extent of condemnation proceeds received by Developer, so as to place them in a condition suitable for the uses and purposes for which the Property was purchased.
- (e) In the event of any taking under subparagraphs (a), (b) or (c) hereinabove, that portion of any award of compensation attributable to the fair market value of the Property and Improvements or portion thereof taken, valued as subject to this Regulatory Agreement, shall belong to the Developer and applied towards the expenses of the Development. That portion of any award attributable to the fair market value of the Development or portion thereof taken shall belong to the City and Developer, as their interests may appear, except that in the event of a partial taking, where the Regulatory Agreement remains in effect and Developer is obligated to restore or repair the Development, then Developer shall be entitled to any portion of the award attributable to severance damages to the remaining Development to the extent necessary to restore or repair the Development. Said award shall be used for the restoration, repair or rebuilding of the Development in accordance with plans and specifications approved in writing by the City to the extent necessary to restore or repair the Development and any remaining severance damages shall be payable to the Developer and applied towards the expenses of the Development. The value of each interest for the purpose of apportionment under this

Section shall be the fair market value of such interests at the time of the taking.

- (f) Any excess portion of the award attributable to the condemnation of the Development shall be payable to the City and Developer on the basis of the apportionment set out in Section 17.5 of this Agreement.
- (g) Notwithstanding the foregoing provisions of this Section, the City may, in its discretion and without affecting the validity and existence of this Regulatory Agreement, transfer the City's interests in the Property in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by the City, Developer (or mortgagee if a mortgage is then in effect), the City shall retain whatever rights they may have to recover from said authority the fair market value of their respective interests in the Development taken by the authority.
- (h) All valuations to be made pursuant to this Section 18 shall be made by mutual agreement of the City and Developer.

**19. Obligation to Refrain from Discrimination.** Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of residents, lessees, subtenants, sublessees or vendees of the Development 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 Development, or any portion thereof, on the basis of sex, marital 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 sex, familial status, race, color, creed, religion, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of residents, lessees, sublessees, subtenants, or vendees in the premises herein leased."
- (b) **In Contracts:** "There shall be no discrimination against or segregation of, any person or group of persons on account of sex, familial status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of residents, lessees, subtenants, sublessees or vendees of the premises."

- (c) **In Deeds:** "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of sex, familial status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

**20. Nondiscrimination in Employment.** Developer, for itself and its successors and assigns, agrees that during the operation of the Development provided for in this Regulatory Agreement, and during any work of repair or replacement, Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, familial status, physical or mental disability, sexual orientation, ancestry or national origin, or on the basis of any other category or status not permitted by law.

**21. Compliance with Law.** Developer agrees, at its sole cost and expense, to comply and secure compliance by all contractors and residents of the Property and Development 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 Development, as well as operations conducted thereon, and to faithfully observe and secure compliance by all contractors and residents of the Development with, in the use of the Property 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, 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 Development. Developer shall use good faith efforts to prevent residents from maintaining any nuisance or other unlawful conduct on or about the Development, and shall take such actions as are reasonably required to abate any such violations by residents of the Development. 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 Development shall be conclusive of that fact as between the City and Developer, or such sublessee or permittee.

**22. Entry and Inspection.** The City reserves and shall have the right during reasonable business hours (except in cases of emergency), upon twenty-four (24) hours prior notice (except in cases of emergency) to Developer by the City Manager or designee, to enter the Property and Development for the purpose of viewing and ascertaining the condition of the same, or to protect its and the City's interests in the Property and Development 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 and/or Development 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 Development in a decent, safe and sanitary condition, provided that the City delivers such notice which is required hereunder. The rights reserved in this Section shall not create any obligations on the City or increase obligations elsewhere in this Regulatory Agreement imposed on the City.

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

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

- (a) Developer shall abandon or surrender the Property; or
- (b) Developer shall fail or refuse to pay, within ten (10) days of notice from the City that the same is due, 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 the Loan Agreement, 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, 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) Have a receiver appointed to take possession of Developer's interest in the Property and Development, with power in said receiver to administer Developer's interest in the Property and Development, to collect all funds available to Developer in connection with its operation and maintenance of the Property and Development; and to perform all other consistent with Developer's obligation under this Regulatory Agreement as the court deems proper;
- (e) Maintain and operate the Property and Development, 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.

**24.3 Damages.** Subject to the limitations contained in Section 17 of the Promissory Note from Developer to City, damages which the City recover in the event of default under this Regulatory Agreement shall be those which are then available under applicable California case and statutory law to lenders for real estate loans in the State of California including, but not limited to, any accrued but unpaid principle and interest and the worth at-the time of award of the amount by which the unpaid principle and interest for the balance of the term of this Regulatory Agreement after the date of award exceeds the amount of such loss for the same period that Developer proves could be reasonably avoided.

**24.4 Rights and Remedies are Cumulative.** The remedies provided by this Section 24 are not exclusive and shall be cumulative to all other rights and remedies possessed by the City. 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.

**25. Miscellaneous.**

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

**25.2 Legal Actions.** In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Regulatory Agreement. Such legal actions must be instituted in the Superior Court of San Diego County, State of California, in any other appropriate court in that County, or in the Federal District Court in the District of California in which the Development 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, 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 Executive Director of the Developer or in such other manner as may be provided by law, and shall be effective whether made within or without the State of California.

**25.4 Attorneys' Fees and Court Costs.** In the event that either the City 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-five (105) days after the end of Developer's fiscal year of each calendar year during the Term of this Regulatory Agreement, a financial statement for the operation of the Development, which is prepared by a certified public accounting firm. In addition, the City shall have the right (at Developer's office, upon not less than forty-eight (48) hours' notice, and during normal business hours) to inspect the books and records of Developer pertaining to the Development as pertinent to the purposes of this Regulatory Agreement. Developer also has the right (at the City's office, upon not less than forty-eight (48) hours' notice, and at all reasonable times) to inspect the books and records of the City pertaining to the Development 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 twelve percent (12%).

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

If to City:

City of Oceanside  
300 North Coast Highway  
Oceanside, California 92054  
Attention: City Manager  
With Copy To: City Attorney

If to Developer:

Southern California Housing Development  
Corporation  
9065 Haven Boulevard, Suite 100  
Rancho Cucamonga, CA 91730  
Attention: President

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 Non-Merger of Fee and Leasehold Estates.** If the City's and Developer's estates in the Property become vested in the same owner, this Regulatory Agreement shall nevertheless not be destroyed by application of the doctrine of merger except at the express election of the City. The voluntary or other surrender of this Regulatory Agreement by Developer, or a mutual cancellation thereof, shall not work as a merger and shall, at the option of the City, terminate all or any existing sublease or subtenancies or may, at the option of the City, operate as an assignment to the City of any or all such existing subleases or subtenancies.

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

**25.12 Non-Liability of 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.

**25.13 Relationship.** The relationship between the parties hereto shall at all times be deemed to be that of Lender and Borrower. The parties do not intend nor shall this Regulatory Agreement be deemed to create a partnership or joint venture.

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

**25.15 Waivers and Amendments.** All waivers of the provisions of this Regulatory Agreement must be in writing and signed by the appropriate authorities of the City or Developer. The waiver by the City of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of sums due hereunder by the City shall not be deemed to be a waiver of any preceding breach of Developer of any term, covenant or condition of this Regulatory Agreement, regardless of the City's knowledge of such preceding breach at the time of acceptance of such sums. 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.

**25.16 Entire Agreement; Duplicate Originals; Counterparts.** This Regulatory Agreement sets forth the entire understanding of the parties with respect to Developer's use and occupation of the Property and Development. This Regulatory Agreement is executed in two (2) duplicate originals and counterparts, each of which is deemed to be an original.

**25.17 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.

**25.18 Terminology.** All personal pronouns used in this Regulatory Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of sections are for convenience only, and neither limit nor amplify the provisions of the Regulatory Agreement itself.

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

**25.20 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.

**25.21 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.

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

**25.23 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.

**25.24 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 his or her designee is authorized to act on behalf of the City unless specifically provided otherwise or the law otherwise requires.

**25.25 Certain Acts Prohibited.** Developer shall not make any sale, encumbrance, assignment or conveyance, or transfer in any other form, of the Property or Development or any part thereof or of any of its interest therein other than in accordance with the terms of this Regulatory Agreement and shall not, without the prior approval of the City:

- (a) Make any distribution not permitted by the terms of this Regulatory Agreement;
- (b) Assign or transfer any right to operate or manage the Project and Development, except pursuant to Paragraph 14;
- (c) Require, as a condition of the occupancy or leasing of any Housing Unit in the Development, any consideration or deposit in excess of that permitted by the Program Regulations to guarantee the performance of the covenants of the lease or rental agreement. Any funds collected as security deposits shall be kept separate and apart from all other funds of the Development 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;
- (d) Permit the use of the units in the Development for any purpose except that which was approved by the City;
- (e) Enter into any contract or contracts for supervisory or managerial services except as permitted by this Regulatory Agreement; or
- (f) Invest any funds from the Development in any property, real or personal, except as authorized by this Regulatory Agreement or deposit any such funds in a depository not authorized by this Regulatory Agreement.

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

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 Development in accordance with the terms of this Regulatory Agreement, or for such other relief as may be appropriate, the venue for any such proceedings shall be in the County San Diego, State of California.

It being agreed by Developer that the injury to the City arising from a default under any of the terms of this Regulatory Agreement would be irreparable and that it would be extremely difficult to ascertain the amount of compensation of the City which afford adequate relief in light of the purposes and policies of the Program.

**25.27 Compliance with Law.** Developer agrees that, at all times, its acts regarding the development, operation of the Property and Development, Developer shall not use the Property or Development 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 or Development, 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 (hereinafter the "Program Regulations"). Developer acknowledges that it is aware of such applicable Program Regulations, and that professional advice is available as necessary for the purpose of enabling Developer to fully comply with such statutes, rules and regulations.

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

**25.29 Other Federal Regulations.** Developer agrees to carry out all activities in compliance with Title 24, Subtitle A, Part 92 of the Code of Federal Regulations; the Housing and Community Development Act of 1974 as amended; Title 24, Chapter V, Part 570 of the Code of Federal Regulations; Title 24, Subtitle A, Part 58 of the Code of Federal Regulations; Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; Section 109 of the Housing and Community Development Act of 1974; Section 3 of the Housing and Urban Development Act of 1968; Executive Orders 11246, 11063 and 11593; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Title 24, Part 42 of the Code of Federal Regulations; OMB Circular A-122 and Attachments A, B, C, F, H, N and O; the Archeological and Historical Preservation Act of 1974; the Architectural Barriers Act of 1968; the Hatch Act (Chapter 15 of Title 5, U.S.C.); the Flood Disaster Protection Act of 1974; the Clean Air Act (42 U.S.C. Section 1857 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et seq.); the Drug-Free Workplace Act of 1988; and, San Diego Board of Supervisors Policy B-39a (Disabled Veterans Business Enterprise Program). The lender agrees to comply with the provisions of Section 42 (h)(6)(E)(ii) of the Internal Revenue Code of 1989.

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

IN WITNESS WHEREOF, this Regulatory Agreement constitutes the terms and conditions for the use of the Property and Development 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:  
The Southern California Housing  
Development Corporation,  
a California nonprofit public benefit  
corporation

BY: \_\_\_\_\_  
City Manager

BY:  \_\_\_\_\_  
Its: Richard J. Whittingham, CPA  
Chief Financial Officer

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE

By:  \_\_\_\_\_  
City Attorney

**NOTARY ACKNOWLEDGEMENT**

STATE OF CALIFORNIA  
COUNTY OF San Bernardino

On October 31, 2006 before me,

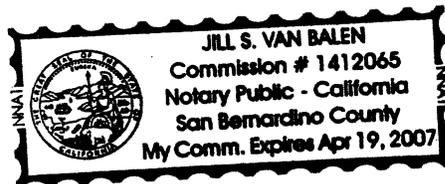
Jill S. Van Balen, notary public

a Notary Public in and for said State, personally appeared

Richard J. Whittingham

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

**WITNESS** my hand and official seal.



Signature Jill S. Van Balen

(This area for official notary seal)

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

On \_\_\_\_\_ before me,

\_\_\_\_\_ a Notary Public in and for said State, personally appeared

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

**WITNESS** my hand and official seal.

Signature \_\_\_\_\_

(This area for official notary seal)

**EXHIBIT "A"**

**Legal Description of the Property**

**THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS PARCEL 1 OF PARCEL MAP NO. 14748, FILED IN THE OFFICE OF SAID COUNTY RECORDER, MARCH 30, 1987.**