

*STAFF REPORT**CITY OF OCEANSIDE*

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DATE: September 10, 2008

TO: Mayor and City Councilmembers  
Chairman and Members of the Community Development Commission

FROM: Neighborhood Services Department  
Housing and Code Enforcement Division

SUBJECT: **APPROVAL OF A LOAN AGREEMENT, REGULATORY AGREEMENT, AND ASSOCIATED DOCUMENTS FOR THE ACQUISITION AND REHABILITATION OF SHADOW WAY APARTMENTS LOCATED AT 4707 YUMA AVENUE, APPROPRIATION OF FUNDS FOR THE PROJECT, AND ADOPTION OF A RESOLUTION APPROVING THE USE OF LOW AND MODERATE INCOME HOUSING (SET-ASIDE) FUNDS OUTSIDE THE REDEVELOPMENT PROJECT AREA**

**SYNOPSIS**

Staff recommends that the City Council approve a Loan Agreement in the amount of \$5,600,000, Regulatory Agreement, and associated documents with Shadow Way Apartments, LP, (Wasatch Advantage Group, LLC, and Western Community Housing, Inc.) for the acquisition and rehabilitation of Shadow Way Apartments located at 4707 Yuma Avenue; authorize the City Manager to execute the agreements; approve the appropriation of Low and Moderate Income Housing (Set-Aside) Funds, Condo Conversion Fees, and Inclusionary Housing (In-lieu) Trust Funds in the amounts of \$3,821,141, \$1,321,154, and \$457,705, respectively, for the project; and adopt a resolution approving the use of Low and Moderate Income Housing (Set-Aside) Funds outside the Redevelopment Project Area.

**BACKGROUND**

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

**ANALYSIS**

Wasatch Advantage Group, LLC, currently owns and manages 1,515 affordable housing units in seven states throughout the western United States with an additional 1,741 units that are under construction or will be under construction in the next 12 months. Wasatch proposes to partner with Western Community Housing, a nonprofit

affordable housing developer, to acquire and rehabilitate Shadow Way Apartments, an existing 144-unit apartment complex located at 4707 Yuma Street. The complex, consisting of all two-bedroom units, was constructed in 1987. Forty of the units had affordable rent restrictions. The restrictions on these units expired in 2007. Wasatch has entered into a purchase option with original and current owner of the property, Wasatch Pool Holdings, LLC, which is a separate legal entity from Wasatch Advantage Group, LLC. Wasatch is requesting financial assistance from the City in the form of a loan. Wasatch will maintain the units as affordable through the Regulatory Agreement. The affordability restrictions will be for a period of 55 years. Ninety percent of the units will be made available to residents at 60 percent or below the Area Median Income (AMI). Ten percent of the units will be available to residents at 50 percent or below the AMI. The estimated monthly rents range from \$776 – \$1,032. Initial review of the current rent roll also shows that up to 85 percent of the existing tenants will remain on-site based upon income guidelines. This project will add 144 affordable units to the City's affordable housing inventory and will assist in meeting the City's affordable housing goals.

Wasatch has completed a property condition assessment as part of predevelopment activities for this project. The complex has been maintained in good condition and will require basic exterior and interior improvements. Also included in the project will be the construction of a new community building for social services and leasing activities. Wasatch anticipates completing the rehabilitation work in early 2010.

### **FISCAL IMPACT**

The total project cost is \$28,122,839. The proposed sources of financing for the project include \$14,000,000 of Tax-Exempt permanent financing, \$7,489,266 of 4 percent Low-Income Housing Tax Credits, a \$1,033,573 Developer Fee deferment, and a \$5,600,000 loan of City Housing funds. The City's loan will earn 3 percent simple interest and will be amortized over a 55-year period.

Staff recommends appropriating \$5,600,000 to the Shadow Way Apartment Rehab Project (594.298711.5392), utilizing \$3,821,141 from the available balance in the Low and Moderate Income Housing Fund 594 leaving a balance of \$351,952 as of June 29, 2008; transferring \$1,321,154 from Condo Conversion Fees (284.6990.00594) leaving a balance of \$178,550 as of June 29, 2008; and transferring \$457,705 from the available balance in the Inclusionary Housing In-lieu Fund (278.6990.00594) leaving a balance of \$57,705 as of June 29, 2008.

### **COMMISSION OR COMMITTEE REPORT**

At its June 25, 2008, meeting, the Redevelopment Advisory Committee unanimously recommended that the City Council approve the documents for the project and adopt a resolution approving the use of Low and Moderate Income Housing (Set-Aside) Funds outside the Redevelopment Project Area.

At a special meeting conducted on July 3, 2008, the Housing Commission recommended that the project be reviewed by a professional financial consultant, that the documents be approved by the City Attorney's Office, and that the item be returned for additional review by the Commission. The aforementioned items have been

completed. At its August 26, 2008, meeting, the Commission recommended approval of the project. It was also requested that the Commission be involved in discussions regarding disabled access and Universal Design elements of the project. The Housing Commission's recommendations are attached.

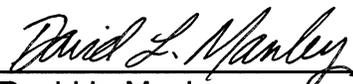
**CITY ATTORNEY'S ANALYSIS**

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

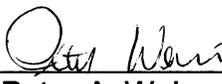
**RECOMMENDATION**

Staff recommends that the City Council approve a Loan Agreement in the amount of \$5,600,000, Regulatory Agreement, and associated documents with Shadow Way Apartments, LP, (Wasatch Advantage Group, LLC, and Western Community Housing, Inc.) for the acquisition and rehabilitation of Shadow Way Apartments located at 4707 Yuma Avenue; authorize the City Manager to execute the agreements; approve the appropriation of Low and Moderate Income Housing (Set-Aside) Funds, Condo Conversion Fees, and Inclusionary Housing (In-lieu) Trust Funds in the amounts of \$3,821,141, \$1,321,154, and \$457,705, respectively, for the project; and adopt a resolution approving the use of Low and Moderate Income Housing (Set-Aside) Funds outside the Redevelopment Project Area.

PREPARED BY:

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

SUBMITTED BY:

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

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Margery Pierce, Neighborhood Services Director

Kathy Baker, Redevelopment Manager

Teri Ferro, Financial Services Director

  
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Attachments:

1. Loan Agreement
2. Regulatory Agreement
3. Promissory Note
4. Deed of Trust
5. Security Agreement
6. Set-Aside Funds Resolution

## LOAN AGREEMENT

This Loan Agreement (“**Loan Agreement**”), effective \_\_\_\_\_, 2008 (“**Effective Date**”), is made and entered into by and between the CITY OF OCEANSIDE, a California municipal corporation and the OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION, a California public entity (hereinafter collectively referred to as “**Agency**”), on one hand, and SHADOW WAY APARTMENTS, LP, a California limited partnership, and its successors and assigns, (“**Borrower**”), on the other.

### RECITALS

- A. Borrower is or is about to become the owner of, or holder of, a fee estate in the real property located at 4707 Yuma Avenue, Oceanside, California (“**Property**”), which is more fully described in Attachment A.
- B. Borrower has proposed to acquire, develop, construct, rehabilitate and operate on the Property an affordable multi-family apartment complex (“**Project**”). The Project will consist of:

One Hundred Forty-four (144) units of multi-family housing including: 144 two-bedroom/one bathroom units.
- C. The Project shall be financed and regulated in accordance with the loan documents approved by the Agency and the rules and regulations governing the applicable funding program(s) (hereinafter, the “**Program**”). Borrower agrees to be bound and abide by all applicable local, state and federal rules and regulations; to the terms of the financial assistance provided by the Agency; and to the plans and specifications submitted by Borrower and approved by Agency as described in Attachment B, “**Rehabilitation Specifications**” and Attachment C, “**Project Budget**”.
- D. The Development and Construction costs of the Project are to be financed in part by a loan from the Agency in a principal amount not to exceed \$5,600,000.00 (the “**Loan**”). The Project budget is described in Attachment C. A portion of the Development and Construction costs of the Project will be financed by a loan (the “**Bond Loan**”) provided by the proceeds of the issuance of tax exempt bonds (the “**Bonds**”).
- E. In addition to the Loan from the Agency, the Borrower has received, or will receive, funds for the development and construction of the Project from the sources identified in Attachment C. All such funds shall be used, and secured, in the manner specified in Attachment C.
- F. The purpose of this Loan Agreement is to set forth the scope, amount and tenor of the Agency’s financial assistance to the Borrower and the Project. Agency and Borrower acknowledge and understand that the Agency’s participation in the Project is solely as a

lender and that the Agency is not participating in the Project as a developer or owner. Any actions by the Agency which are not fully consistent with the Agency's role as a lender are intended only to carry out routine government functions and impose constitutionally or statutorily authorized conditions acceptable to the Borrower. Furthermore, the Project and the Agency's participation through this Loan Agreement are outside the scope of California Constitution Article XXXIV and its enabling legislation.

NOW, THEREFORE, the parties hereto agree as follows:

### GENERAL

1. **Definitions.** The following definitions apply:

- (a) **"Development"** or **"Construction"** shall include any site development, mitigation of hazardous substances (as described in Attachment I), acquisition of land and existing buildings, rehabilitation of existing buildings, or other activities financed by the Loan.
- (b) **"Loan Documents"**, as used herein, includes the Regulatory Agreement, the Loan Agreement, the Promissory Note, the Deed of Trust, the Security Agreement and the Financing Statement and any other instruments incorporated by reference or otherwise referred to in those agreements.

2. **Attachments/Schedules.** The following attachments and Schedules are hereby incorporated into this Agreement by reference:

Attachment A Property Description  
Attachment B Rehabilitation Specifications  
Attachment C Project Budget  
Attachment D Work Program/Time Line  
Attachment E Special Conditions  
Attachment F Hazardous Conditions  
Attachment G Non-Discrimination Clause  
Attachment H Income Guidelines  
Attachment I Management Plan  
Schedule 1 Residual Receipts Report

3. **Work Description.** Borrower shall cause the Development and Construction of the Project to be performed in an expeditious and professional manner in accordance with Attachments B, C and D.

4. **Amount, Term, and Repayment.** The loan amount shall not exceed \$5,600,000. To the extent Borrower is able to obtain additional loan proceeds from sources other than the Agency, the additional sources shall be applied first to pay down the Deferred Developer Fee (as defined in the Promissory Note), but in no event shall the Deferred Developer Fee be less than \$500,000. Any proceeds from the additional sources not applied to the

reduction of the Deferred Developer Fee shall be applied to reduce the principal of the Loan. The terms of Borrower's obligation to repay the 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 Completion Certificate. The Loan shall bear simple interest at the rate of three percent (3%) per annum. No payments of either the principal of or the interest on the unpaid principal of the Promissory Note shall be required during the period when any Deferred Developer Fee remains outstanding and unpaid. The Borrower shall annually, on or before ninety (90) days after the end of the Borrower's fiscal year, commencing in the year after the date of the Completion Certificate, 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 Borrower's payment or nonpayment of Residual Receipts to the City.

### **REPRESENTATIONS AND WARRANTIES**

5. **Representations and Warranties.** Borrower represents and warrants to the Agency as follows:
- (a) **Organization.** Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own or lease the Property and carry on its business as now being conducted. The copies of the documents evidencing the organization of Borrower delivered to the Agency are true, complete, and correct copies of the originals, as amended to the date of the Loan Agreement.
  - (b) **Authority of Borrower.** Borrower has full power and authority to execute and deliver the Loan Documents and all documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Loan Agreement, and to perform and observe the terms and provisions of all of the above.
  - (c) **Valid Binding Agreements.** The Loan Documents and all documents or instruments executed and delivered pursuant to or in connection with this Loan Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms.
  - (d) **No Breach of Law or Agreement.** None of the execution or delivery of the Loan Documents or of any document or instrument executed and delivered, or to be executed or delivered, pursuant to this Loan Agreement, or the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission, or agency whatsoever binding on Borrower or any provision of the organizational documents of Borrower, will conflict with or constitute a breach of or a default under any agreement to which

Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens approved by the Agency.

- (e) **Compliance with Laws; Consents and Approvals.** The Project will comply with all applicable laws, ordinances, rules, regulations and directives of local, state and/or federal agencies having jurisdiction over either the Borrower, the Property, or the Project. In addition, Borrower shall comply with the requirements described in Attachments J and K. Except as specified in Attachment B, all permits, consents, permissions and licenses required by any local, state and/or federal agencies, government or agency to which Borrower, the Property or the Project is subject, which may be necessary in relation to this Loan Agreement or the acquisition, Development, Construction or ownership operation of the Project, at or prior to the commencement of Construction will have been obtained, and none of such consents, permissions and licenses are subject to appeal or to conditions which have not been met.
- (f) **Environmental Conditions.** The Project will comply with any requirements applicable to the Project pursuant to the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA).
- (g) **Pending Proceedings.** To the best of Borrower's knowledge, Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower, the Property or the Project, at law or in equity before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to acquire, construct or develop the Project.
- (h) **Title.** Upon disbursement of the Loan and recordation of the Deed of Trust, Borrower shall have title to the Property.
- (i) **Adequacy of Loan.** As of the date hereof and to the best of Borrower's current actual knowledge, the amount of the Loan, together with any funds to be provided by the Borrower or to the Borrower from any other source, is adequate to pay all costs incurred in connection with the Construction and Development of the Property. In addition, funds provided by Borrower and from other sources will be adequate to pay for the Construction and Development of the Project and to enable Borrower to satisfy the covenants contained in this Loan Agreement. The costs set forth in the sources and uses charts in Attachment C are the anticipated costs of constructing and developing the Project.
- (j) **Payment of Taxes.** To the best of Borrower's actual current knowledge, all local, state and federal taxes required to be paid by the Borrower or on account of the

Property due and payable as of the date of this Loan Agreement have been paid in full as of such date.

- (k) **Conflict of Interest.** No person who is an employee, agent, consultant, officer, or elected official or appointed official of the Borrower and who exercises or has exercised any functions or responsibilities with respect to any activities assisted with any Agency funds, or who is in a position to participate in a decision-making process or gains inside information with regard to these activities, may obtain a financial interest or benefit from a City or Program assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or one year thereafter.
  
- 6. **Construction Contract.** Prior to the commencement of the Construction of the Project, Borrower shall enter into a written contract, as may be amended from time to time, with the general contractor(s) for the performance of the construction work as set forth in Attachment B. The contract shall include any addendum required by the Agency that relates to the use of the Agency funds. Borrower shall monitor and enforce the terms and conditions of that contract.
  
- 7. **Responsibilities.** Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Property and the Project including, but not limited to, the quality and suitability of the plans and specifications and the equipment and materials used in the construction of the Project; the supervision of the work of Construction; the qualifications, financial condition and performance of all architects, engineers, contractors, and subcontractors of any tier; material suppliers; consultants; and property managers. In addition Borrower shall be solely responsible for the accuracy of all applications for payment and the proper application of all disbursements.
  
- 8. **Purchase of Materials Under Title Retention Agreement.** With respect to the Project, the Borrower shall not purchase or install or permit to be purchased or installed any materials, equipment, fixtures or other part of the Project under any agreements or arrangements wherein the supplier or seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation into the Project, unless authorized in writing by the Agency.
  
- 9. **Material Warranties.** The Borrower shall procure from the general contractor all warranty documents, including warranties on appliances and on building components (such as the roof and siding), and all service manuals and operating instructions pertaining to the Project.
  
- 10. **Inspections.**
  - (a) Authorized representatives and agents of the Agency shall be permitted upon three (3) days prior written notice to the Borrower to inspect all work, materials,

payrolls, personnel records, materials invoices and other relevant data pertaining to the Project, and shall have the right of entry and full access to the Property and the Project.

- (b) Agency shall not have any affirmative duty to make any inspection, to make any investigation, or to supervise or inform Borrower or any third party as to any aspect of the construction of the Project and shall not incur any liability for failing to do so. Any inspection, investigation, or review undertaken by the Agency shall be solely to determine whether the Borrower is properly discharging its obligations to the Agency and may not be relied upon by Borrower or any third party to protect against or to inform Borrower or any third party of any negligent, faulty, inadequate, or defective design or construction of the Project.
- (c) The fact that inspection, investigation or review of the design or construction of the Project may or may not have been made by the Agency shall not relieve the Borrower or the general contractor of any obligation that they may otherwise have to inspect the Project or to otherwise comply with the terms of this Loan Agreement.

11. **Completion Certificate.** Borrower shall submit to the Agency a Notice of Completion in the form determined in the Borrower's sole discretion or Certificate of Occupancy, if applicable, for the Project upon the occurrence of all of the following:

- (a) Completion of the Construction and Development of the Project in accordance with Attachment B as modified in accordance with the terms of this Loan Agreement and acceptance thereof by the Agency;
- (b) Compliance by Borrower with all applicable laws, ordinances, rules and regulations of State and Local governments, and all the terms and provisions of this Loan Agreement; and,
- (c) Satisfaction of the conditions precedent to payment to, or on behalf of Borrower of the final disbursement of funds due and payable pursuant to this Agreement.

#### **DISBURSEMENT OF FUNDS**

12. **Conditions Precedent to Disbursements.** Agency shall not be obligated to make the disbursement of proceeds of the Loan to Borrower, which shall be a single disbursement for the full amount of the Loan made when the Borrower closes the Bond Loan shown on Attachment C hereto, or take any other action under the Loan Documents unless all of the following conditions are satisfied prior to the time of such action:

- (a) There exists no event of default hereunder or any default under any of the other Loan Documents, or event, omission or failure of condition which would constitute such a default or event of default after notice or lapse of time, or both;

- (b) The Loan proceeds, and all sums (if any) to be provided by or to Borrower, and all sums (if any) shown in Attachment C to be provided by other sources, shall at all times be not less than the amount which the Agency, in its reasonable judgment, determines necessary to: (i) pay all costs of acquisition and costs related thereto; (ii) pay all sums which may be payable under the Loan Documents during the term of this Loan Agreement; and (iii) enable the Borrower to perform and satisfy all of the covenants of the Borrower contained in this Loan Agreement;
- (c) Borrower has executed and delivered to Agency all Loan Documents, other documents, instruments, policies, and forms of evidence or other materials required under the terms of this Loan Agreement or any of the other Loan Documents, all in form and substance satisfactory to Agency;
- (d) The Regulatory Agreement has been recorded in the Office of the County Recorder for the County of San Diego;
- (e) The applicable Special Conditions of Attachment F, if any, have been met;
- (f) There shall be no mechanic's liens or stop notices in connection with the Project or otherwise, and Borrower shall have furnished to the Agency, if demanded by the Agency, full waivers of lien claims from the general contractor and all subcontractors and materials suppliers for all work performed and materials supplied to date;
- (g) Borrower shall have obtained for the Agency such endorsements to the title policy as the Agency may require including but not limited to an endorsement that the Regulatory Agreement is prior to any liens, encumbrances, or matters of record affecting the Project except for those approved in writing by the Agency, and to any statutory lien for labor or material arising out of the Construction;
- (h) Approval by the Agency of the implementation of Borrower's Relocation Plan, as specified in the Borrower's Management Plan;
- (i) Funds disbursed may only be for the amount needed for payment of actual eligible expenses, and the amount requested must be limited to the amount needed as evidenced by actual invoices and/or signed statements of cost; and
- (j) Borrower shall furnish Agency with a copy of its current title insurance policy and certificates.

13. **Title Insurance.** Borrower shall procure from a title insurer acceptable to the Agency an ALTA Lender's Policy of Title Insurance, with any endorsement the Agency may require, insuring the Agency of the validity and the priority of the lien of the Regulatory

Agreement upon the Property and Project, in the principal amount of the Loan, subject only to matters of record approved by the Agency in writing. The Agency acknowledges and agrees that the priority of the liens of its Regulatory Agreement and Deed of Trust shall be subordinate to Bond Loan financing shown on Schedule D and such other financing as shall require such subordination. The Agency agrees to execute, deliver, and cause or permit to be recorded subordination agreements necessary to cause the subordination of its Regulatory Agreement and Deed of Trust. During the term of this Agreement, Borrower shall procure and deliver to the Agency, within ten (10) working days of the Agency's request, other endorsements to the Title Policy as the Agency may reasonably require.

14. **Methods and Conditions of Payment.** Agency agrees to provide to or on behalf of Borrower Loan funds in the amount and in accordance with the manner, timing, and terms, including retention, as specified in this Loan Agreement. All amounts paid to or on behalf of Borrower hereunder shall be considered payments subject to the Regulatory Agreement.
15. **Liens and Stop Notices.** If a claim of lien is recorded affecting the Property or Project, or a bonded stop notice is served upon the Agency which affects the Loan or the Borrower's funds, Borrower shall, within ninety (90) days of such recording or service or within thirty (30) days of the Agency's demand (whichever last occurs): (i) pay and fully discharge the same; or (ii) effect the release thereof by recordings, or delivering to the Agency, a surety bond in sufficient form and amount, or otherwise; or (iii) provide the Agency with other assurance which the Agency deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of the Agency from the effect of such lien or bonded stop notice. If Borrower has not received actual notice of the claim of lien or bonded stop notice prior to the Agency's demand, then the thirty (30) day period described above shall be extended to sixty (60) days. Borrower shall give the Agency prompt written notice of all lien claims affecting the Property or Project.
16. **Eligible Use of Funds.**
  - (a) Funds advanced to Borrower shall be used only for payment of amounts set forth in Attachment C.
  - (b) In addition, to be eligible, costs must be reasonable and necessary for the completion of the Project.

#### **DEFAULTS, REMEDIES AND ENFORCEMENT**

17. **Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default" hereunder following notice to the Borrower by the Agency, specifying (1) the applicable event, (2) the action required to prevent such event becoming an Event

of Default, and (3) a date, which shall be not less than ninety (90) days after the date the notice is mailed to Borrower, by which such action must be taken:

- (a) **Monetary.** (i) Borrower's failure or inability to secure anticipated financing from parties other than the Agency as specified in Attachment C, regardless of fault of the Borrower, (ii) Borrower's failure to use or apply Loan funds or other party's funds in the manner specified by, or consistent with the purposes of this Loan Agreement and as specified in Attachment C; or (iii) the occurrence of an event of default under the terms of any of the grants or loans received from the financing sources specified in the sources and uses charts in Attachment C
  
- (b) **Construction; Use of Materials and Workmanship.** (i) Borrower's failure to remedy any material deviation in the work of Construction from the Plans and Specifications that occurred with the Agency's approval or defective workmanship or materials in, or use of defective workmanship or materials in Constructing the Project, within thirty (30) days of the Agency's written demand to do so; or (ii) Borrower's failure to complete Construction and obtain a Notice of Completion within twenty four (24) months of the closing of the Bond Loan.
  
- (c) **Liens; Attachment; Condemnation; Encroachments.** (i) the filing of any claim of lien against the Property or the Project, or any part thereof, or service on the Agency of any bonded stop notice relating to the Loan and the continuance of the claim for lien or bonded stop notice for ninety (90) days after Borrower receives actual notice thereof without discharge, satisfaction or provision for payment being made as provided for in Paragraph 15 hereof, (ii) the condemnation, seizure or appropriation of, or the occurrence of an uninsured casualty with respect to, any material portion of the Property or the Project; (iii) the sequestration or attachment of, assignment by Borrower for the benefit of its creditors of, or any levy or execution upon, the Property, the Project, other contribution provided by Borrower under any of the Loan Documents, monies in accounts established for the deposit of operating income, or substantial portion of the other assets of Borrower, which is not released, expunged or dismissed prior to the earlier of sixty (60) days after sequestration, attachment or execution or the sale of the assets affected thereby, or (iv) any survey provided to the Agency upon a request for a disbursement of Loan funds showing any encroachment that adversely affects the Property and which the Agency requires to be removed or corrected, and the failure to remove or correct any such encroachments within ninety (90) days after receipt of the survey.
  
- (d) **Performance of Obligations.** Borrower's default under any of the other Loan Documents, or Borrower's failure to perform its obligations under this Loan Agreement and, in each case, the expiration of any time provided for the remedy of such failure after the notice thereof has been given.

- (e) **Representations and Warranties.** (i) Any of Borrower's representations or warranties in any of the Loan Documents or any statements, certificates or schedules furnished by Borrower to the Agency, shall prove to have been untrue in any material respect when made or the Borrower shall have concealed any material fact from the Agency, (ii) any of the Borrower's representations or warranties in any of the Loan Documents or any statement, certificates or schedules furnished by Borrower to the Agency, other than representations, warranties, statements and certificates as to the financial condition of Borrower or any other person, shall cease to be true and shall remain untrue for thirty (30) days after notice of such change to Borrower by the Agency, or (iii) any material adverse change in the financial condition of Borrower or any other person or entity obligated in any manner to the Agency under the Loan Documents from the financial condition represented to the Agency as of the date of this Loan Agreement.
- (f) **Voluntary Bankruptcy; Insolvency; Dissolution.** Borrower's (i) filing of a petition for relief under any state or federal law regarding bankruptcy, reorganization or other relief to debtors if not dismissed within ninety (90) days thereafter; (ii) filing any pleading in any involuntary proceeding under any state or federal law regarding bankruptcy, reorganization or other relief to debtors which admits the jurisdiction of the court or the petition's material allegations regarding their insolvency if not dismissed within ninety (90) days thereafter; (iii) making a general assignment for the benefit of creditors; (iv) applying for, or the appointment of, a receiver, trustee, custodian or liquidator of any of the above; (v) inability or admission in writing of inability to pay debts as they are due; or (vi) death, if an individual, or the filing by or against Borrower of a petition seeking its liquidation or dissolution or the commencement of any other procedure to liquidate or dissolve it.
- (g) **Involuntary Bankruptcy.** Borrower's failure to effect a full dismissal of any involuntary (i) petition under any state or federal law regarding bankruptcy, reorganization or other relief to debtors; (ii) proceeding for the appointment of a receiver, trustee or liquidator of it or all or a material part of its assets, or (iii) petition or proceeding under other state or federal law regarding bankruptcy, reorganization or other relief to debtors that is filed against it or in any way restrains or limits it or the Agency regarding the Loan, the Property or the "Project" in any event prior to the earlier of the entry of any order granting relief sought in the involuntary petition or proceeding, or ninety (90) days after the date of filing of the petition or beginning of the proceeding.
- (h) **General.** Borrower's material breach of any condition, covenant, warranty, promise or representation contained in this Loan Agreement not otherwise resulting in an event of default hereunder and the continuance of such breach for a period of ninety (90) days after written notice thereof to Borrower.

Neither the Agency nor the Borrower shall be deemed to be in default in the performance of the terms of this Agreement if either party is prevented from performing the terms of this Agreement by causes beyond its control, including without being limited to: acts of God or the public enemy; acts of terrorism; interference, rulings or decisions by Municipal, Federal, State or other governmental agencies, boards or commissions; any laws and/or regulations of such Municipal, State, Federal, or other governmental bodies; or any catastrophe resulting from flood, fire, explosion, or other causes beyond the control of the defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other parties written notice of the cause of delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, the party delayed shall immediately give the other parties written notice of due diligence thereof and shall resume operations under this Agreement.

18. **Notice and Cure in the Event of Default.** In the event of any material breach of this Agreement, the Agency shall give written notice to the Borrower or Borrower's Agent of breach by specifying: (a) the nature of the event or deficiency giving rise to the breach; (b) the action required to cure the deficiency, if an action to cure is possible; (c) a date, which shall not be less than ninety (90) calendar days from the mailing of the notice by which such action to cure must be accomplished (or if such breach is not reasonably susceptible to cure within such a ninety (90) day period, then within such additional time, as is reasonably necessary to cure such failure, provided Borrower has commenced cure within the initial ninety (90) day period and diligently pursues cure to completion). After expiration of all applicable notice and cure periods as specified, the Agency may without any prejudice to any of its other legal remedies terminate this Agreement upon fifteen (15) days' written notice to the Borrower.
19. **Remedies upon an Event of Default.** Upon the happening of any Event of Default, the Agency's obligation to disburse proceeds of the Loan shall terminate and the Agency shall have the right to terminate this Loan Agreement. In addition, the Agency or a receiver appointed at the Agency's request shall have the right to enter into possession of the Property and the Project, to take over and complete the Project in accordance with the Plans and Specifications, to discharge and replace the general contractor and to employ personnel to protect the Property and the Project and, for those purposes, to make disbursements of proceeds of the Loan including roll-over funds. All such disbursements shall be deemed to have been paid to the Borrower by the Agency.
20. **Rights Cumulative; No Waiver.** All the Agency's rights and remedies provided in the Loan Documents, or granted by law or otherwise, are cumulative and may be exercised by the Agency at any time. No waiver shall be implied from any failure of the Agency to take, or any delay by the Agency in taking, action concerning any Event of Default or failure of condition under the Loan Documents, or from any previous waiver of any similar or unrelated Event of Default or failure of condition. Any waiver or approval under any of the Loan Documents must be in writing and shall be limited to its specific terms.

21. **Enforcement of the Construction Contract.** The parties hereto agree that the Agency shall have, and is hereby assigned, the right of the Borrower to enforce the provisions of the Architect's Contract and the Construction Contract(s) and all documents related thereto in the event of a default which remains uncured after the expiration of all applicable notice and cure periods.
  
22. **Attorneys' Fees; Enforcement.** If any attorney, including Oceanside City Agency Counsel, is engaged by the Agency to enforce, construe or defend any provision of any of the Loan Documents, or as a consequence of any Event of Default hereunder or default under any other Loan Document, with or without the filing of any legal action or proceeding, Borrower shall pay to the Agency, immediately upon demand, the amount of all attorneys' fees and costs incurred by the Agency or the Agency in connection therewith, together with interest thereon from the date of such demand at the rate of eight (8%) percent per annum of interest.
  
23. **Indemnification and Waiver.**
  - (a) **Indemnification.** Borrower agrees to indemnify the Agency and its agents, employees and officers against, and holds the Agency and its agents, employees and officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees), of every name, kind and description, which the Agency may incur as a direct or indirect consequence of: (i) the making of the Loan to the Borrower, except for violations of banking laws or regulations by the Agency; (ii) Borrower's failure to perform any obligations as and when required by this Loan Agreement or any of the Loan Documents; (iii) any failure at any time of any of Borrower's representations or warranties to be true and correct; (iv) any act or omission by Borrower, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or Project; or (v) the presence of Hazardous Substances at the Project or on the Property as described in Attachment I hereto. Borrower shall pay immediately upon the Agency's demand any amounts owing under this indemnity together with interest from the date of the demand until paid at the rate of eight percent (8%) per annum. The duty of the Borrower to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the Civil Code. Borrower shall indemnify and hold harmless the Agency and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Agency or the Borrower or their respective agents, officers, employees, contractors or subcontractors; provided, however, that Borrower's duty to indemnify and hold harmless hereunder shall not extend to liability arising from sole negligence or willful misconduct of the Agency. Borrower's duty to indemnify the Agency shall survive the term of this Loan Agreement.

- (b) **Waiver and Release.** The Borrower waives and releases any and all rights to any types of express or implied indemnity against the Agency or its agents, officers or employees.

#### MISCELLANEOUS

24. **Insurance and Bond Requirements.** Borrower shall comply with the insurance requirements set forth in the Regulatory Agreement.
25. **Non-Liability of Agency.** Use of Borrower's and its subcontractor's tools and equipment will be at the sole risk of Borrower and Agency will have no responsibility therefor.
26. **Further Assurances.** At the Agency's request and at Borrower's expense, Borrower shall execute, acknowledge and deliver any other instrument and perform any other act necessary, desirable or proper (as determined by the Agency) to carry out the purpose of the Loan Documents or to perfect and preserve any liens created by the Loan Documents.
27. **Notices.** All written notices and demands under the Loan Documents shall be deemed served upon delivery or, if mailed, upon the date shown on the delivery receipt (or the date on which delivery was refused as shown on the delivery receipt) after deposit in United States Postal Service certified mail, postage prepaid, return receipt requested, or after delivery or attempted delivery by an express delivery service, and addressed to the address of Borrower or to the primary place of business or the mailing address of the Agency, as applicable, appearing below. Notice of change of address may be given in the same manner, provided Borrower's address shall be in the State of California or the state where Borrower's principal place of business is located, as represented to the Agency in the Loan Documents.

Borrower:  
Shadow Way Apartments, LP  
26522 La Alameda, Suite 260,  
Mission Viejo, California 92691  
Attention: Kipling Sheppard

Agency:  
Community Development Commission of the City of Oceanside  
300 North Coast Highway  
Oceanside, California 92054  
Attention: Margery M. Pierce, Director of Neighborhood Services

28. **Displacement and Relocation.** If the Construction or Development of the Project will result in the temporary or permanent displacement of tenants, the Borrower shall provide relocation payments and assistance in accordance with a relocation plan (the "**Relocation Plan**"), which shall be pre-approved by the Agency. The Relocation Plan shall be in compliance with the provisions of Title 49 Code of Federal Regulations (49 CFR 24), i.e.,

the Uniform Relocation Act and Real Property Acquisition Policies Act of 1970, as amended (the “**Uniform Act**”)

29. **Prevailing Wages.** Contractor is responsible for complying with all applicable federal and state prevailing wage laws. It is the Borrower’s obligation to determine whether payment of prevailing wages is required. Borrower agrees to defend indemnify and hold harmless the Agency and its officers and employees from and against any claim, lawsuit, administrative proceeding, damages, fines or penalties relating to the issue of non-payment of prevailing wages.
30. **Amendments and Additional Agreements.** This Agreement shall not be altered or amended except in writing executed by all parties. The Borrower agrees that any other agreements entered into by the Borrower relating to the performance of this Agreement shall be subject to the written approval of the Agency.
31. **Books and Records.** Borrower shall maintain complete books of accounts and other records for the Project and for the use of the Loan proceeds and other sources of funds during Project development. Such records shall include, but not be limited to property, personnel and financial records as deemed necessary by the Agency and the Loan Documents. Records shall include preliminary notices, lien releases, invoices and receipts, and certificates of insurance pertaining to the general contractor and each subcontractor. Borrower shall maintain such records and accounts for at least three years after the final payment under this Agreement, or after expiration of the Regulatory Agreement, whichever is later. The Agency shall have access to and the right to examine and audit all reports, records, books, papers, and other documents related to the Borrower’s performance under this Agreement.
32. **No Third Parties Benefited.** No person other than the Agency and Borrower, and their permitted successors and assigns or, in the case of the Regulatory Agreement, the tenants of the Project to the extent specified therein, shall have any right of action under any of the Loan Documents.
33. **RESERVED.**
34. **Actions.** The Agency may commence, appear in or defend any action or proceeding purporting to affect the Property, Project, Loan Documents or the rights, duties or liabilities of Borrower or the Agency under the Loan Documents. In exercising this right, the Agency may incur and pay reasonable costs and expenses including, without limit, attorneys' fees and court costs and Borrower agrees to pay all such expenses so incurred and reimburse the Agency for any expense so paid.
35. **Relationship of Parties.** The relationship of Borrower and the Agency under the Loan Documents is, and shall at all times remain, solely that of Borrower and Lender. The Agency neither undertakes nor assumes any responsibility or duty to Borrower or to any

third party with respect to the Property for the Project, except as expressly provided in the Loan Documents.

36. **Assignment of Loan Documents.** Borrower may assign Borrower's interest, or any portion thereof, under any of the Loan Documents, or in any monies due or to become due thereunder, with notice to the Agency, so long as the assignment is to a limited partnership in which the Borrower, or an affiliate of the Borrower, is a general partner. Except as expressly permitted herein, Borrower shall not make an assignment under any of the Loan Documents without the prior written approval of the Agency.
37. **Restrictions on Transfer of Property, Project and Interest in Borrower.** Borrower shall not assign, sell, transfer or convey any interest in the Borrower, the Property, or the Project, including, without limitation, any interest in the Borrower, without written notice to Agency. The foregoing notwithstanding, the Borrower may, without notice to the Agency: (1) assign its general partner interest as collateral for an loan obtained in connection with the Development and Construction of the Project; (2) transfer its limited partner interests to a third party equity investor in exchange for equity capital to be used in connection with the Development and Construction of the Project; and (3) transfer the Property as security to any lender providing a loan for the Development and Construction of the Project, and the refinancing of any such loan.
38. **Agency's Agents.** The Agency may designate an agent or independent contractor to exercise any of the Agency's rights under the Loan Documents. Any reference to the Agency in any of the Loan Documents shall include the Agency's agents, employees or independent contractors.
39. **Severability.** If any provision of the Loan Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from the Loan Documents and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion had never been part of the Loan Documents. However, if the Agency in its sole discretion, determines that the invalid portion of the Agreement has a material effect on the interests of the State and the Agency, the Agency may thereafter declare the entire Agreement invalid.
40. **Heirs, Successors and Assigns.** The terms of the Loan Documents shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties.
41. **Time.** Time is of the essence of each term of the Loan Documents.
42. **Headings.** All headings appearing in any of the Loan Documents are for convenience only and shall be disregarded in construing the Loan Documents.
43. **Governing Law.** The Loan Documents shall be governed by, and construed in accordance with, the laws of the State of California, except to the extent preempted by Federal laws. Borrower and all persons and entities in any manner obligated to the

Agency under the Loan Documents consent to the jurisdiction of any Federal or State Court within the State of California having proper venue and also consent to service of process by any means authorized by California or Federal law.

44. **Integration; Interpretation.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated herein and supersede all prior negotiations. The Loan Documents shall not be modified except by written instrument executed by all the parties thereto. Any reference in any of the Loan Documents to the Property or Project shall include all or any parts of the Property or Project. Any reference to the Loan Documents in any of the Loan Documents includes any amendments, renewals or extensions approved by the Agency. Any reference in this Loan Agreement to the Loan Documents shall include all or any of the provisions of this Loan Agreement and the Loan Documents unless otherwise specified.
45. **Joint and Several Liability.** The liability of all persons and entities who are in any manner obligated under any of the Loan Documents shall be joint and several.
46. **Signs.** During the rehabilitation period the Borrower will place on the Property signs indicating the project is a development which involves funding from the Agency and other applicable local government entities.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Borrower and Agency have executed this Loan Agreement on the day and year set forth above.

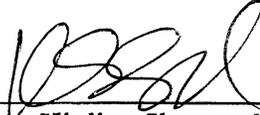
**BORROWER:**

Shadow Way Apartments, LP,  
a California limited partnership

By: Western Community Housing, Inc., a  
California nonprofit public benefit corporation  
Managing General Partner

By: \_\_\_\_\_  
Name: Graham Espley-Jones  
Title: President

By: Shadow Way Holdings, LLC,  
a Utah limited liability company  
Administrative General Partner

By:  \_\_\_\_\_  
Name: Kipling Sheppard  
Title: Manager

**AGENCY:**

City of Oceanside

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager

Oceanside Community Development  
Commission

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Director

**APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE**

By:  \_\_\_\_\_  
Name: BARBARA L. HAMILTON  
Title: ASSISTANT CITY ATTORNEY

[NOTARY ACKNOWLEDGEMENT OF SIGNATORIES MUST BE ATTACHED]

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On 09/02/2008 before me, L. Martin, Notary Public  
(Here insert name and title of the officer)

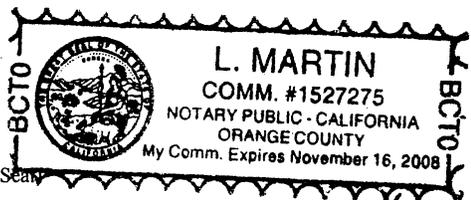
personally appeared Kipling Sheppard

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

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

WITNESS my hand and official seal.

[Signature]  
 Signature of Notary Public



(Notary Seal) L. Martin, Notary Public my comm. expires: 11/16/2008

## ADDITIONAL OPTIONAL INFORMATION

**DESCRIPTION OF THE ATTACHED DOCUMENT**  
Loan Agreement  
(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages 16 Document Date \_\_\_\_\_

\_\_\_\_\_  
(Additional information)

**CAPACITY CLAIMED BY THE SIGNER**

Individual (s)  
 Corporate Officer

\_\_\_\_\_  
(Title)

Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

- INSTRUCTIONS FOR COMPLETING THIS FORM**
- Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*
- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
  - Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
  - The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
  - Print the name(s) of document signer(s) who personally appear at the time of notarization.
  - Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
  - The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
  - Signature of the notary public must match the signature on file with the office of the county clerk.
    - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
    - ❖ Indicate title or type of attached document, number of pages and date.
    - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
  - Securely attach this document to the signed document

IN WITNESS WHEREOF, Borrower and Agency have executed this Loan Agreement on the day and year set forth above.

**BORROWER:**  
Shadow Way Apartments, LP,  
a California limited partnership

By: Western Community Housing, Inc., a  
California nonprofit public benefit corporation  
Managing General Partner

By: [Signature]  
Name: Graham Espley-Jones  
Title: President

By: Shadow Way Holdings, LLC,  
a Utah limited liability company  
Administrative General Partner

By: \_\_\_\_\_  
Name: Kipling Sheppard  
Title: Manager

**AGENCY:**  
City of Oceanside

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager

Oceanside Community Development  
Commission

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Director

**APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE**

By: [Signature]  
Name: BARBARA L. HAMILTON  
Title: ASSISTANT CITY ATTORNEY

[NOTARY ACKNOWLEDGEMENT OF SIGNATORIES MUST BE ATTACHED]

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Orange }

On Sept 2, 2008 before me, Barbara Defeo, Notary Public  
Date Here Insert Name and Title of the Office

personally appeared Graham Espley - Jones  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: Shadas Way - Loan Agreement

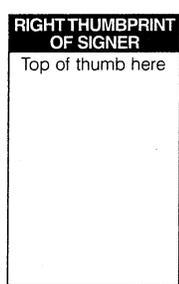
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

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

**Capacity(ies) Claimed by Signer(s)**

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

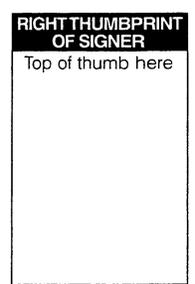
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



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

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

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



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

## **ATTACHMENT A**

### **PROPERTY DESCRIPTION**

Lots 1 and 2 of Murray Mission Unit No. 10 in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 11270, filed in the Office of the County Recorder of San Diego County on June 28, 1985.

APN: 157-080-47

## ATTACHMENT B

### REHABILITATION SPECIFICATIONS

**Shadow Way Apartments  
Renovation Budget and Scope**

	<b>Budget Amount</b>
<b>Site Work</b>	
<b>Parking Lot</b>	Restripe and apply new seal coat 35,000
<b>Walkways</b>	Perform misc concrete R&R 20,000
<b>Site Fencing</b>	Perform minor repairs and paint to pool fence 10,000
	Perform minor repairs and paint to perimeter fence 5,000
<b>Trash Enclosures</b>	Repair doors and walls 5,500
<b>Landscaping</b>	Remove trees (as needed) 15,000
	Provide general upgrades to irrigation and plants 75,000
<b>Outdoor common area</b>	Update BBQ areas 1,900
	Install new pet stations 1,500
	Install common area trash cans
	Install new playground equipment 25,000
<b>Signage</b>	Update monument sign 10,000
<b>Carports / Garages</b>	Enclose Carports to Garages 155,000
	<b>Site Work Total 358,900</b>
<b>Building Architecture</b>	
<b>Wood trim / fascia</b>	Replace and repair misc. trim 5,000
<b>Paint</b>	Paint all buildings, trim and common areas 125,000
<b>Building Lighting</b>	Replace security lighting as needed 15,000
	Replace patio and porch lighting as needed 7,200
	Replace building lighting 10,800
	Repair carport lighting 5,000
<b>Building Signage</b>	Replace building and unit numbers 2,500
<b>Decks / Walkways / Rails</b>	Repair covered walkways 10,000
	(Patio decks were all rebuilt in 2006)
<b>Windows</b>	Install dual-pane, low-E vinyl windows and Sliders 322,800
<b>Stairs</b>	Replace faulty concrete stairs as needed 5,500
	(Replace weld strips as needed)
<b>Exterior doors</b>	Replace damaged doors as needed 2,500
<b>Roof Coverings</b>	Repair and/or replace all roofing 280,000
	(Install new underlayment)
	<b>Building Architecture Total 791,300</b>

**Interior Common Areas**

<b>Leasing Office</b>	Build new leasing office	400,000
<b>Laundry Room</b>	Renovation of laundry facility	10,000
	<b>Interior Common Areas Total</b>	<b>410,000</b>

**Dwelling Units**

<b>Appliances</b>	Install new energy saving appliances	187,200
<b>Window Coverings</b>	Install blinds as needed	10,095
	Install new carpet, pad, and vinyl as needed	194,400
<b>Carpet/Vinyl Flooring</b>		
<b>Doors</b>	Replace interior doors as needed	103,169
	Replace light fixtures, plumbing hardware, and misc trim	122,400
<b>Hardware</b>		
<b>Paint</b>	Paint complete interior unit	36,000
	Install new knotty alder cabinets and countertops	345,600
<b>Cabinets and Countertops</b>		
	Perform installation of interior DU line items	418,216
<b>Labor</b>		
<b>Interior plumbing</b>	Repipe plumbing throughout unit	304,200
<b>Tub / Showers</b>	Resurface all bathtubs	36,000
<b>Ceilings</b>	Remove acoustical ceiling and retexture	197,520
	<b>Dwelling Unit Total</b>	<b>1,954,800</b>

**Mechanical & Electrical & Plumbing Systems**

<b>Water Heaters</b>	Replace all water heaters older than 5 yrs (Replacement of all pans and shutoffs)	140,800
<b>HVAC Replacement</b>	Replace all heat pumps and air handlers	232,200
	<b>Dwelling Unit Total</b>	<b>373,000</b>

---

**Total Hard Costs** **3,888,000**

---

**General Conditions and Contractor Profit/Overhead**

<b>General Conditions</b>		233,280
<b>Contractor Profit and Fee</b>		194,400
<b>Contractor Overhead</b>		116,640
	<b>GC/Profit/Overhead Total</b>	<b>544,320</b>

---

**Total Construction Budget** **4,432,320**

---

**Total Construction Contingency** **206,064**

# ATTACHMENT C

## PROJECT BUDGET

**SHADOW WAY - OCEANSIDE, CA**  
**DEVELOPMENT COSTS / SOURCES AND USES**  
 Acquisition/Rehab

18-Jul-08

**SOURCES OF FUNDS**  
**CONSTRUCTION**

CONSTRUCTION LOAN	\$14,000,000
WAG PREDEVELOPMENT LOAN	
COSTS PAID AT PERM CLOSING	2,154,334
EQUITY	6,279,351
DEVELOPER NOTE	0
CONSTRUCTION PERIOD CASH FLOW	89,153
CITY OF OCEANSIDE LOAN	5,600,000
	\$28,122,839

**PERMANENT**

TAX CREDIT EQUITY	\$7,489,266
PERMANENT FINANCING	14,000,000
DEVELOPER NOTE	1,033,573
OTHER	0
SELLER NOTE	0
GP LOAN	0
CITY OF OCEANSIDE LOAN	5,600,000
	\$28,122,839

**USES OF FUNDS**

**ACQUISITION & PRE DEVELOPMENT**

PURCHASE PRICE	\$19,290,000
CLOSING AND TITLE	30,000
LEGAL/BROKER	0
ARCHITECTURE/ENGINEERING/FEASIBILITY	85,825
PRE DEV. FIN. AND CARRY	0
	\$19,405,825

**CONSTRUCTION**

FEES AND PERMITS	\$25,000
ONSITE/OFFSITE	0
BASE CONSTRUCTION	4,199,040
EXTERIOR COMMON AREA	0
MODELS, REC. BUILDING, AND FURNISHINGS	0
INDIRECT/ONSITE SUPERVISION	233,280
DEVELOPER OVERHEAD & FEE	2,500,000
BRIDGE LOAN FEES & INTEREST	0
CREDIT ENHANCEMENT FEES	0
CONSTR. INTEREST	0
CONST FEES/APPRaisal/TAXES/TITLE	34,000
CONSTRUCTION CONTINGENCY	206,064
SOFT COSTS CONTINGENCY/INT CAP	35,656
	\$7,233,040

**LEASE UP AND SALES**

OPERATING RESERVE	366,166
MARKETING/LEASING/LEGAL/RELOCATION	525,800
LEASE UP PERIOD INTEREST & CARRY	8,169
PERMANENT FINANCING COSTS	477,864
SYNDICATION EXPENSE	15,000
TCAC APPLICATION/MONITOR. FEES	90,975
	\$1,483,974
<b>SUBTOTAL</b>	<b>\$1,483,974</b>
<b>TOTAL USES</b>	<b>\$28,122,839</b>

## ATTACHMENT D

### WORK PROGRAM/TIME LINE

Work Program/Timeline  
Shadow Way Apartments

<b>Task</b>	<b>Date</b>
Selection of General Contractor	07/01/08
Start of Construction	11/01/08
Start Leasing	11/01/08
Completion of Construction	11/01/09
90% Occupancy	01/01/10

**ATTACHMENT E**  
**SPECIAL CONDITIONS**

**NONE**

## ATTACHMENT F

### HAZARDOUS SUBSTANCES

In implementing this Agreement, Borrower shall be responsible for performing those obligations required by the Agency related to hazardous substances as follows:

- a. For the purpose of this Agreement, a "Hazardous Substance":

is any hazardous or toxic material, substance or waste which is or may become regulated in any manner, including but not limited to, statute, law, ordinance, resolution, code, rule, regulation, order, or decree, by the federal government of the United States, the State of California, or any local or regional government body with regulatory authority and jurisdiction;

includes, but is not limited to those materials or wastes that are defined or which come to be defined by the federal government of the United States, the State of California, or any local or regional government body with regulatory authority and jurisdiction as "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," or "hazardous substance;"

includes, but is not limited to, any substance, product, waste or other material which may give rise to liability under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict liability, or any reported decisions of a state or federal court;

includes, but is not limited to, petroleum and or petroleum products not contained in regularly operated motor vehicle for the purpose of fuel and/or lubrication;

includes, but is not limited to, asbestos, lead-based paint, radon gas, landfill gas, natural gas, formaldehyde, fuel or chemical storage tanks; and

includes, but is not limited to, any soil or water contaminated by a material noted above.

- b. For the purpose of this Agreement, "Hazardous Substance Laws" are all Local, State, and Federal environmental laws, ordinances, and regulations relating to any Hazardous Substance.
- c. Prior to the draw down of funds for acquisition of the Property or for the construction of improvements, or for the rehabilitation of existing property, the Borrower shall perform, or cause to be performed, a "Phase I" environmental audit to determine the possible presence of Hazardous Substances on the Property and in any improvements thereon. For the completion of any environmental audits, Hazardous Substance removal plans, Hazardous Substance operations and maintenance plans, or other Hazardous Substance work done pursuant to this paragraph, the Borrower shall employ personnel with the training, experience, references, and insurance coverage that evidence an ability to

competently complete the relevant task. It is fully understood that the Agency may, in its sole discretion, decline to release any funds for acquisition, construction, or rehabilitation work until all possible violations of Hazardous Substance have been resolved. The Borrower, or the consultant preparing the environmental audit shall provide a copy of the environmental audit for the Agency and shall provide a certification as to the accuracy of the environmental audit and the methodology employed in its preparation. The "Phase I" environmental audit shall include at a minimum:

- (1) A historical review of the uses and improvements made to the Property. This historical review shall include an appropriately designed chain-of-title search using the complete records of the appropriate county recorder in order to discover relevant deeds, property descriptions, covenants, restrictions, and other recorded documents;
- (2) An analysis of old aerial photographs to determine the construction or destruction of buildings and the existence of ponds and disposal areas on the Property over time;
- (3) An investigation of the Property and sites within 2,000 feet of the Property with regard to the Environmental Protection Agency's National Priority List, Comprehensive Environmental Response Compensation and Liability Information System (CERCI-IS) list, and any similar state or county lists;
- (4) A description of sites within 2,000 feet of the Property which may contain Hazardous Substances that could impact the Property;
- (5) A review of building, zoning, planning, sewer, water, fire, environmental, and other records that would have information on the Property and the sites described in subparagraph b-4 above;
- (6) A review of the files and records of the Department of Health Services, Solid Waste Management Board, Regional Water Quality Control Board, Air Quality Management District, and other relevant boards or agencies whose actions may affect, or may have affected, the Property or the sites described in subparagraph b-4 above;
- (7) An inspection of the Property and all existing improvements with particular attention to the use of Hazardous Substances on the land, within structures, as building components, or in operating equipment;
- (8) Findings from interviews with neighbors to determine prior uses of the Property (when appropriate and acceptable to the parties involved);
- (9) An indication as to whether present or past owners or tenants have stored, created, or discharged hazardous materials or wastes, and a review of whether appropriate procedures, safeguards, permits and notices are in place;

- (10) An asbestos report based on comprehensive inspection for asbestos-containing building materials. The inspection must be performed by an inspector certified by the Environmental Protection Agency. The report must provide enough information to enable any building demolition or removal that may occur to comply with applicable local, state, and federal laws and regulations regarding the demolition of buildings containing asbestos;
  - (11) A discussion of the hazards, if any, posed by the presence of radon gas, underground storage tanks, contaminated soil, contaminated ground water, landfill gas, or other dangerous soil gases;
  - (12) A clear, concise, and prominent summary of the reports' findings, conclusions, and recommendations; and
  - (13) An indication of the qualifications of the environmental auditor and the subcontractors used in preparing the report.
- d. In the event the "Phase 1" environmental audit indicates the possible presence of Hazardous Substances, and the Borrower desires to proceed with the project, the Borrower shall determine if Hazardous Substances are actually present, and to what extent they are present. This "Phase 2" environmental audit may include: (1) testing underground storage tanks for content and integrity, (2) analyzing soil gas, (3) bulk soil sampling, (4) groundwater and surface water sampling, (5) analyzing local geology for potential chemical spill pathways and, (6) listing individual groundwater wells and subsurface water bodies that may be affected by a Hazardous Substance release. In the event that the Agency determines, based on the Phase II audit, that Hazardous Substances are actually present, the Borrower shall prepare and submit to the Agency a detailed plan it would be willing to follow to remove or mitigate these hazards in a manner which will result in full compliance with all applicable Hazardous Substance Laws. This plan shall include time frames, costs, sources of funds, necessary governmental approvals and any other relevant information related to the scope of the work needed to remove or mitigate the presence of Hazardous Substances.
- e. The Agency may waive or reduce any of the requirements in subparagraphs c and d if it determines that equivalent studies or plans have been completed or that other evidence satisfactory to the Agency exist which eliminates the necessity of undertaking any of the activities required by subparagraphs c and d herein.
- f. Upon the completion of an environmental audit, Hazardous Substance removal or any related work required under this paragraph, the Borrower shall certify that the work has been appropriately completed.
- g. At all times the Borrower shall comply and cause all subcontractors, agents, or employees to comply with all Hazardous Substance Laws. The Borrower shall immediately notify the Agency in writing of:

- (1) the discovery by the Borrower, or any of its subcontractors, agents or employees working with the Property, of any concentration or amount of Hazardous Substance on or under the Property requiring notice to be given to any governmental entity or agency under Hazardous Substance Laws. In the event of such a discovery, work shall be halted on any portion of the project that may result in violation of occupational health and safety regulations, in violations of public health regulations, in waste or increased costs of hazard removal or mitigation, or in exposing project residents to an unreasonable risk of harm. Work may be resumed when the Agency determines that appropriate precautions are taken to avoid these results;
  - (2) any knowledge by the Borrower or its subcontractors, agents or employees that the project does not comply with any Hazardous Substance Laws;
  - (3) the receipt by the Borrower or its subcontractors, agents or employees of written notice of any legal actions or claims regarding Hazardous Substances affecting the project; and
  - (4) the discovery by Borrower or its subcontractors, agents or employees, of any occurrence or condition on any real property located within 2,000 feet of the Property that could cause the Property or any part thereof to be designated as "border zone property" under the provisions of Health and Safety Code Section 25220, et seq.
- h. In the event the Borrower or its subcontractors, agents or employees is not in compliance with all Hazardous Substance Laws, the Borrower shall attain compliance, or ensure compliance not more than ninety (90) days after Borrower's receipt of written notice by the Agency to do so.
- i. The Borrower hereby agrees to indemnify and hold the Agency harmless for any and all liability arising out of the presence of Hazardous Substances at the project during the longer of the term of this Agreement or the term of the Regulatory Agreement. Liability may be established by, among other forms of demands, a demand in the form of a judgment, a settlement, or an administrative order, and may include costs, fees, penalties, interest, and other costs related thereto. Whereas the purpose of this indemnity is to protect the Agency from harm, the Agency's rights to recover accrue as soon as the liability is incurred. "Any and all liability" includes, but is not limited to, liability for: (1) the clean-up of Hazardous Substances; (2) claims for contribution or apportionment of remedies and; (3) claims for physical or other damages to persons, property, or natural resources. The duty of the Borrower to indemnify and hold harmless includes the duty to defend. The Borrower's duties herein arise regardless of the existence or degree of fault or negligence, whether active or passive, on the part of the Agency.

- j. This subparagraph is in addition to any other indemnity provision of this Agreement and is not to be considered in any manner to supersede any other indemnity provision of this Agreement.

The Borrower releases the Agency from any and all claims that the Borrower may currently or subsequently have against the Agency, arising out of the presence of hazardous substances at the Development. The Borrower expressly waives the protection of Civil Code Section 1542.

- k. Notwithstanding the foregoing, Hazardous Substances shall not include substances or materials of a type and in quantities used in the reasonable Development, Construction, occupation, operation and maintenance of the Property and the Project.

## **ATTACHMENT G**

### **NONDISCRIMINATION CLAUSE**

All activities carried out by the Borrower and/or agents of the Borrower shall be in accordance with the requirements of the Federal Fair Housing Act. The Fair Housing Amendments Act of 1988 became effective on March 12, 1989. The Fair Housing Amendments Act of 1988 and Title VIII of the Civil Rights Act of 1968, taken together, constitute THE FAIR HOUSING ACT. The Act provides protection against the following discriminatory housing practices if they are based on race, sex, religion, color, handicap, familial status, or national origin: denying or refusing to rent housing, denying or refusing to sell housing, treating differently applicants for housing, treating residents differently in connection with terms and conditions, advertising a discriminatory housing preference or limitation, providing false information about the availability of housing, harassing, coercing or intimidating people from enjoying or exercising their rights under the Act, blockbusting for profit, persuading owner to sell or rent housing by telling them that people of a particular race, religion, etc. are moving into the neighborhood, imposing different terms for loans for purchasing, constructing, improving, repairing, or maintaining a home, or loans secured by housing; denying use of or participation in real estate services, e.g. brokers' organizations, multiple listing services, etc.

The Fair Housing Act gives HUD the authority to hold administrative hearings unless one of the parties elects to have the case heard in U.S. District Court and to issue subpoenas. Both civil and criminal penalties are provided.

The Act also provides protection for people with disabilities and proscribes those conditions under which senior citizen housing is exempt from the prohibitions based on familial status.

The following State of California Laws also govern housing discrimination: Fair Employment and Housing Act, Unruh Civil Rights Act of 1959, and Civil Code Section 54.1.

## ATTACHMENT H INCOME GUIDELINES

Revised per HUD Notice  
Effective: February 13, 2006

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE  
2008

### Maximum Income Levels

County	One Person	Two Person	Three Person	Four Person	Five Person	Six Person	Seven Person	Eight Person
<b>SAN BERNARDINO</b>								
100% Income Level	\$46,600	\$53,300	\$59,900	\$66,600	\$71,900	\$77,300	\$82,600	\$87,900
60% Income Level	\$27,960	\$31,980	\$35,940	\$39,960	\$43,140	\$46,380	\$49,560	\$52,740
55% Income Level	\$25,630	\$29,315	\$32,945	\$36,630	\$39,545	\$42,515	\$45,430	\$48,345
50% Income Level	\$23,300	\$26,650	\$29,950	\$33,300	\$35,950	\$38,650	\$41,300	\$43,950
45% Income Level	\$20,970	\$23,985	\$26,955	\$29,970	\$32,355	\$34,785	\$37,170	\$39,555
40% Income Level	\$18,640	\$21,320	\$23,960	\$26,640	\$28,760	\$30,920	\$33,040	\$35,160
35% Income Level	\$16,310	\$18,655	\$20,965	\$23,310	\$25,165	\$27,055	\$28,910	\$30,765
30% Income Level	\$13,980	\$15,990	\$17,970	\$19,980	\$21,570	\$23,190	\$24,780	\$26,370
<b>SAN DIEGO</b>								
100% Income Level	\$55,300	\$63,200	\$71,100	\$79,000	\$85,300	\$91,600	\$98,000	\$104,300
60% Income Level	\$33,180	\$37,920	\$42,660	\$47,400	\$51,180	\$54,960	\$58,800	\$62,580
55% Income Level	\$30,415	\$34,760	\$39,105	\$43,450	\$46,915	\$50,380	\$53,900	\$57,365
50% Income Level	\$27,650	\$31,600	\$35,550	\$39,500	\$42,650	\$45,800	\$49,000	\$52,150
45% Income Level	\$24,885	\$28,440	\$31,995	\$35,550	\$38,385	\$41,220	\$44,100	\$46,935
40% Income Level	\$22,120	\$25,280	\$28,440	\$31,600	\$34,120	\$36,640	\$39,200	\$41,720
35% Income Level	\$19,355	\$22,120	\$24,885	\$27,650	\$29,855	\$32,060	\$34,300	\$36,505
30% Income Level	\$16,590	\$18,960	\$21,330	\$23,700	\$25,590	\$27,480	\$29,400	\$31,290
<b>SAN FRANCISCO</b>								
100% Income Level	\$79,200	\$90,500	\$101,800	\$113,100	\$122,100	\$131,200	\$140,200	\$149,300
60% Income Level	\$47,520	\$54,300	\$61,080	\$67,860	\$73,260	\$78,720	\$84,120	\$89,580
55% Income Level	\$43,560	\$49,775	\$55,990	\$62,205	\$67,155	\$72,160	\$77,110	\$82,115
50% Income Level	\$39,600	\$45,250	\$50,900	\$56,550	\$61,050	\$65,600	\$70,100	\$74,650
45% Income Level	\$35,640	\$40,725	\$45,810	\$50,895	\$54,945	\$59,040	\$63,090	\$67,185
40% Income Level	\$31,680	\$36,200	\$40,720	\$45,240	\$48,840	\$52,480	\$56,080	\$59,720
35% Income Level	\$27,720	\$31,675	\$35,630	\$39,585	\$42,735	\$45,920	\$49,070	\$52,255
30% Income Level	\$23,760	\$27,150	\$30,540	\$33,930	\$36,630	\$39,360	\$42,060	\$44,790
<b>SAN JOAQUIN</b>								
100% Income Level	\$42,900	\$49,000	\$55,200	\$61,300	\$66,200	\$71,100	\$76,000	\$80,900
60% Income Level	\$25,740	\$29,400	\$33,120	\$36,780	\$39,720	\$42,660	\$45,600	\$48,540
55% Income Level	\$23,595	\$26,950	\$30,360	\$33,715	\$36,410	\$39,105	\$41,800	\$44,495
50% Income Level	\$21,450	\$24,500	\$27,600	\$30,650	\$33,100	\$35,550	\$38,000	\$40,450
45% Income Level	\$19,305	\$22,050	\$24,840	\$27,585	\$29,790	\$31,995	\$34,200	\$36,405
40% Income Level	\$17,160	\$19,600	\$22,080	\$24,520	\$26,480	\$28,440	\$30,400	\$32,360
35% Income Level	\$15,015	\$17,150	\$19,320	\$21,455	\$23,170	\$24,885	\$26,600	\$28,315
30% Income Level	\$12,870	\$14,700	\$16,560	\$18,390	\$19,860	\$21,330	\$22,800	\$24,270
<b>SAN LUIS OBISPO</b>								
100% Income Level	\$46,900	\$53,600	\$60,300	\$67,000	\$72,400	\$77,700	\$83,100	\$88,400
60% Income Level	\$28,140	\$32,160	\$36,180	\$40,200	\$43,440	\$46,620	\$49,860	\$53,040
55% Income Level	\$25,795	\$29,480	\$33,165	\$36,850	\$39,820	\$42,735	\$45,705	\$48,620
50% Income Level	\$23,450	\$26,800	\$30,150	\$33,500	\$36,200	\$38,850	\$41,550	\$44,200
45% Income Level	\$21,105	\$24,120	\$27,135	\$30,150	\$32,580	\$34,965	\$37,395	\$39,780
40% Income Level	\$18,760	\$21,440	\$24,120	\$26,800	\$28,960	\$31,080	\$33,240	\$35,360
35% Income Level	\$16,415	\$18,760	\$21,105	\$23,450	\$25,340	\$27,195	\$29,085	\$30,940
30% Income Level	\$14,070	\$16,080	\$18,090	\$20,100	\$21,720	\$23,310	\$24,930	\$26,520

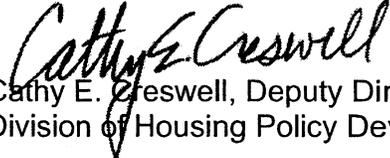
**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT****Division of Housing Policy Development**

1800 Third Street, Suite 430  
P. O. Box 952053  
Sacramento, CA 94252-2053  
(916) 323-3177 / FAX (916) 327-2643  
www.hcd.ca.gov

**MEMORANDUM**

**DATE:** February 28, 2008

**TO:** Interested Parties

**FROM:**   
Cathy E. Creswell, Deputy Director  
Division of Housing Policy Development

**SUBJECT:** Official State Income Limits for 2008

Attached are Official State Income Limits for 2008 for all counties reflecting extremely low-, very low-, lower-, median-, and moderate-income for households of various sizes. These income limits are posted at the Department of Housing and Community Development's (Department) website (<http://www.hcd.ca.gov/hpd/hrc/rep/state/incNote.html>) and replaces those in effect during 2007. When State income limits are to be used for a program, the limits in the table are to be applied in determining the household's income category in qualifying the household.

Note that use of these Official State Income Limits is subject to a particular program's definition of income, family, family size, effective dates, and other factors. Also, definitions applicable to income categories, criteria, and areas sometimes differ between programs. The Department of Housing and Urban Development (HUD) for the second year has used the Census American Community Survey (ACS) samples collected in 2006.

California Health and Safety Code (H&SC) provides that limits for the extremely low- (H&SC 50106), very low- (H&SC 50105), and low- (H&SC 50079.5) income categories are the same as those in the equivalent levels established by the U.S. Department of Housing and Urban Development (HUD) for its Section 8 Housing Choice Voucher (HCV) Program. Pursuant to State law, the Department is required to publish these State income limits after HUD's release of its new income limits which occurred on February 13, 2008.

In addition, H&SC 50093(c) requires the Department to file with the Office of Administrative Law changes that revise Section 6932 of Title 25 of the California Code of Regulations. The changes contain: (1) HUD's updated income limits for extremely low-, very low-, low-income households, and area medians and, (2) the Department's updated income limits for moderate-income households and adjustments to some area medians.

If you have any questions concerning these income limits, please contact Department staff at (916) 445-4728.

Attachment

**State Income Limits for 2008**

County	Income Category	Number of Persons in Household							
		1	2	3	4	5	6	7	8
San Diego County	Extremely Low	16,600	18,950	21,350	<b>23,700</b>	25,600	27,500	29,400	31,300
Area Median Income:	Very Low Income	27,650	31,600	35,550	<b>39,500</b>	42,650	45,800	49,000	52,150
72,100	Lower Income	44,250	50,550	56,900	<b>63,200</b>	68,250	73,300	78,350	83,400
	Median Income	50,500	57,700	64,900	<b>72,100</b>	77,900	83,600	89,400	95,200
	Moderate Income	60,500	69,200	77,900	<b>86,500</b>	93,400	100,300	107,300	114,200
San Francisco County	Extremely Low	23,750	27,150	30,550	<b>33,950</b>	36,650	39,400	42,100	44,800
Area Median Income:	Very Low Income	39,600	45,250	50,900	<b>56,550</b>	61,050	65,600	70,100	74,650
95,000	Lower Income	63,350	72,400	81,450	<b>90,500</b>	97,700	104,950	112,200	119,450
	Median Income	66,500	76,000	85,500	<b>95,000</b>	102,600	110,200	117,800	125,400
	Moderate Income	79,800	91,200	102,600	<b>114,000</b>	123,100	132,200	141,400	150,500
San Joaquin County	Extremely Low	12,900	14,700	16,550	<b>18,400</b>	19,850	21,350	22,800	24,300
Area Median Income:	Very Low Income	21,450	24,500	27,600	<b>30,650</b>	33,100	35,550	38,000	40,450
61,300	Lower Income	34,350	39,250	44,150	<b>49,050</b>	52,950	56,900	60,800	64,750
	Median Income	42,900	49,000	55,200	<b>61,300</b>	66,200	71,100	76,000	80,900
	Moderate Income	51,500	58,900	66,200	<b>73,600</b>	79,500	85,400	91,300	97,200
San Luis Obispo County	Extremely Low	14,050	16,100	18,100	<b>20,100</b>	21,700	23,300	24,900	26,550
Area Median Income:	Very Low Income	23,450	26,800	30,150	<b>33,500</b>	36,200	38,850	41,550	44,200
67,000	Lower Income	37,500	42,900	48,250	<b>53,600</b>	57,900	62,200	66,450	70,750
	Median Income	46,900	53,600	60,300	<b>67,000</b>	72,400	77,700	83,100	88,400
	Moderate Income	56,300	64,300	72,400	<b>80,400</b>	86,800	93,300	99,700	106,100
San Mateo County	Extremely Low	23,750	27,150	30,550	<b>33,950</b>	36,650	39,400	42,100	44,800
Area Median Income:	Very Low Income	39,600	45,250	50,900	<b>56,550</b>	61,050	65,600	70,100	74,650
95,000	Lower Income	63,350	72,400	81,450	<b>90,500</b>	97,700	104,950	112,200	119,450
	Median Income	66,500	76,000	85,500	<b>95,000</b>	102,600	110,200	117,800	125,400
	Moderate Income	79,800	91,200	102,600	<b>114,000</b>	123,100	132,200	141,400	150,500
Santa Barbara County	Extremely Low	16,350	18,700	21,000	<b>23,350</b>	25,200	27,100	28,950	30,800
Area Median Income:	Very Low Income	27,250	31,100	35,000	<b>38,900</b>	42,000	45,100	48,250	51,350
67,100	Lower Income	43,600	49,800	56,050	<b>62,250</b>	67,250	72,200	77,200	82,150
	Median Income	47,000	53,700	60,400	<b>67,100</b>	72,500	77,800	83,200	88,600
	Moderate Income	56,400	64,400	72,500	<b>80,500</b>	86,900	93,400	99,800	106,300
Santa Clara County	Extremely Low	22,300	25,500	28,650	<b>31,850</b>	34,400	36,950	39,500	42,050
Area Median Income:	Very Low Income	37,150	42,450	47,750	<b>53,050</b>	57,300	61,550	65,800	70,050
105,500	Lower Income	59,400	67,900	76,400	<b>84,900</b>	91,650	98,450	105,250	112,050
	Median Income	73,900	84,400	95,000	<b>105,500</b>	113,900	122,400	130,800	139,300
	Moderate Income	88,600	101,300	113,900	<b>126,600</b>	136,700	146,900	157,000	167,100
Santa Cruz County	Extremely Low	18,250	20,900	23,500	<b>26,100</b>	28,200	30,300	32,350	34,450
Area Median Income:	Very Low Income	30,450	34,800	39,150	<b>43,500</b>	47,000	50,450	53,950	57,400
81,300	Lower Income	48,700	55,700	62,650	<b>69,600</b>	75,150	80,750	86,300	91,850
	Median Income	56,900	65,000	73,200	<b>81,300</b>	87,800	94,300	100,800	107,300
	Moderate Income	68,300	78,100	87,800	<b>97,600</b>	105,400	113,200	121,000	128,800
Shasta County	Extremely Low	11,300	12,900	14,550	<b>16,150</b>	17,450	18,750	20,050	21,300
Area Median Income:	Very Low Income	18,850	21,500	24,200	<b>26,900</b>	29,050	31,200	33,350	35,500
53,800	Lower Income	30,150	34,450	38,750	<b>43,050</b>	46,500	49,950	53,400	56,850
	Median Income	37,700	43,000	48,400	<b>53,800</b>	58,100	62,400	66,700	71,000
	Moderate Income	45,200	51,700	58,100	<b>64,600</b>	69,800	74,900	80,100	85,300

Note: See instructions/example on last page to determine income limit for households larger than 8 persons

**ATTACHMENT I  
MANAGEMENT PLAN**

**MANAGEMENT AGREEMENT**

**Between**

**Shadow Way Apartments, LP**

**and**

**WASATCH PROPERTY MANAGEMENT, INC.,  
Property Manager**

*For:*

**Shadow Way Apartments**

*Located at:*

**4707 Yuma Avenue  
Oceanside, CA**

Dated as of:

## TABLE OF CONTENTS

		<u>Page</u>
<b>Article I</b>	APPOINTMENT; TERM OF AGREEMENT	3
<b>Article II</b>	GENERAL OBLIGATIONS OF THE PROPERTY MANAGER	3
<b>Article III</b>	ADDITIONAL OBLIGATIONS OF PROPERTY MANAGER	5
<b>Article IV</b>	AGREEMENTS OF OWNER	7
<b>Article V</b>	TERMINATION OF AGREEMENT; EVENTS OF DEFAULT	8
<b>Article VI</b>	TRANSFER OF RECORDS	8
<b>Article VII</b>	SUCCESSORS	9
<b>Article VIII</b>	GENERAL	9

## MANAGEMENT AGREEMENT

This Management Agreement (the "Agreement"), dated as of \_\_\_\_\_, between Shadow Way Apartments, L.P., a California limited partnership (the "Owner"), and Wasatch Property Management, Inc., a Utah corporation (the "Property Manager"). The Owner is the owner of the multifamily housing development known as the Shadow Way Apartments located at 4707 Yuma Avenue, Oceanside, Ca 92057 (the "Development"). The Owner desires to appoint the Property Manager to manage the Development and to perform the duties and obligations set forth in this Agreement. In consideration of the agreements and covenants herein contained, the Owner and the Property Manager hereby agree as follows:

### ARTICLE I

#### APPOINTMENT; TERM OF AGREEMENT

Section 1.1. *Appointment and Acceptance.* The Owner hereby appoints the Property Manager to be the exclusive Agent of Owner to rent and manage the Development on behalf of the Owner upon the terms and conditions hereinafter set forth. The Property Manager hereby accepts such appointment.

Section 1.2. *Term.* The initial term of the appointment (the "Initial Term") shall be for one year (1) year period beginning on \_\_\_\_\_, and ending on that date one (1) year following the beginning date. On each one (1) year anniversary after expiration of the initial term this Agreement will be extended for an additional term (each such term, a "Subsequent Term") consisting of the next one (1) year, unless terminated pursuant to the provisions of Article 5, below.

### ARTICLE II

#### COVENANTS AND AGREEMENTS OF THE PROPERTY MANAGER

The Property Manager hereby covenants and agrees during the term of this Agreement:

Section 2.1. *Management.* To accept the management of the Development to the extent, for the period and upon the terms herein provided, and to continually maintain management offices at the Development and to furnish the services of its organization for the rental, operation and management of the Development.

Section 2.2. *Books and Records.* To maintain a complete system of records, books and accounts with respect to the Development. All records, books and accounts relating to the Development will be available for examination by the Owner during regular business hours at the corporate offices of the Property Manager upon one (1) business day's notice. The Property Manager further agrees to prepare and submit, monthly reports due on the 15th day of each month, the monthly reports listed on Exhibit A attached hereto (the "Monthly Reports") to the Owner at 399 North Main, Suite 200, Logan, Utah 84321.

Section 2.3. *Operating Account.* To open a separate banking account for the deposit of receipts collected as described herein in a bank or other institution whose deposits are insured by the federal government (the "Operating Account"). All expenses incurred by Property Manager in operation of the Development shall be paid from the Operating Account. In the event Property Manager elects to advance money in connection with the Development ("Advances"), such advances shall be considered a loan subject to repayment at a reasonable rate of interest. Funds in the Operating Account shall not be co-mingled with Property Manager's own funds.

Section 2.4. *Operating Budget.* On or before December 1st of each year during the Initial Term and on or before December 1st of each year of each Subsequent Term, to submit to the Owner for approval a proposed budget (the "Operating Budget") of monthly operating expenses to be incurred in connection with operation of the Development for the succeeding calendar year. Each Operating Budget shall include a statement of assumptions upon which the Operating Budget is based. The Property Manager will make any reasonable and prudent changes to the Operating Budget required by the Owner.

Section 2.5. *Capital Plan.* Within thirty (30) days of execution of this Agreement and on or before December 1st of each year during the Initial Term and on or before December 1st of each year of each Subsequent Term, to submit to the Owner a capital expenditure plan for the Development for the next three calendar-year period (each a "Capital Plan"). Each Capital Plan shall detail descriptions of all planned capital improvements to be made to the Development during the related calendar years, an estimate of expenditures to be incurred therewith each month of such calendar years and a timetable for completion of such improvements. The Owner shall inform the Property Manager of any changes reasonably required to such plan by Owner.

Section 2.6. *Authorized Costs.* If any duties and responsibilities to be carried out by the Property Manager involve the expenditure of money or the incurring of obligations or settlement of a claim over five thousand dollars (\$5,000.00), the Property Manager shall not incur the same unless the expense, obligation or cost is provided for in the current Operating Budget or Capital Plan, is permitted pursuant to Section 3.4 of this Agreement or is otherwise approved by the Owner.

Section 2.7. *Fidelity Bond.* To cause all employees and officers of the Property Manager who handle or are responsible for the safekeeping of any rents or other moneys of the Owner to be covered by an employee crime and dishonesty policy or fidelity bond, naming the Owner in an amount not less than \$50,000.

Section 2.8. *Collection of Rents; Application of Funds.* To collect all rents, charges and/or assessments and other items due or to become due on the Owner's account in connection with the management and operation of the Development and give receipts therefor and to collect security deposits and deposit such amounts in the Operating Account for the Development. The collection, deposit and disbursing of security deposits shall be done in accordance with the appropriate federal, state and local laws governing the same.

Section 2.9. *Tenant Compliance.* To use reasonable commercial efforts to secure full compliance by each tenant with the terms of his, her or their lease. Voluntary compliance will be emphasized; nevertheless, the Property Manager will lawfully terminate any tenancy when, in the Property Manager's judgment, sufficient cause (including, but not limited to, nonpayment of rent) for such termination occurs under the terms of the tenant's lease. The Property Manager is authorized to bring actions for eviction and to recover possession of the units in the Development, to execute notices to vacate and judicial pleadings incident to such actions, to sue for and recover rent and, when expedient, to settle, compromise and release such actions or suits or reinstate such tenancies. The Property Manager may take such actions or select with due care the attorney of its choice to handle such litigation. The Property Manager shall also attempt to obtain reimbursement from such tenants for all legal expenses, including attorneys' fees incurred on behalf of the Owner in connection with such legal action. Such fees shall be operating expenses of the Development.

Section 2.10. *Indemnification.* The Property Manager agrees to indemnify and hold harmless Owner from claims and damages arising from the gross negligent activities of Property Manager. Owner agrees to indemnify, defend and hold harmless Property Manager for all claims and damages arising from claims to property for other than the gross negligence or willful misconduct of Property Manager. Owner's coverage shall be primary for all such claims.

Section 2.11. *Additional Covenants of Property Manager.* The Property Manager hereby further covenants and agrees that it will:

(a) Not knowingly and willingly do anything which will cause the violation of any statute, ordinance, law, rule, regulation, order or requirement of any federal, state or municipal government, and appropriate departments, commissions, boards and officers having jurisdiction over the use of manner of use of the Development or the maintenance or operation thereof, as well as any orders and requirements of the local board of fire underwriters, or any other body which may hereafter exercise similar functions;

(b) Be available at all reasonable times to consult with the Owner on matters of general policy, planning and goals;

(c) Assist, as requested and directed by the Owner, in claims under any insurance policy.

Section 2.12 *Tax Credit Compliance.* The Property Manager acknowledges that the Development is intended to be rented and managed such that it will qualify for the low-income housing tax credit available under Section 42 of the Internal Revenue Code of 1986, as amended ("Section 42"). The Property Manager covenants to manage the development hereunder such that the requirements of Section 42 are met at all times, including without limitation performing the proper tenant income qualifications and the maintenance of all records of the development in compliance with Section 42.

### ARTICLE III POWERS OF PROPERTY MANAGER

The Property Manager shall have, and hereby accepts, the following authority, powers and obligations (all or any of which may be exercised in the name of the Owner and are subject to the terms and provisions of the Operating Budget and the Capital Plan):

3.1. *Market.* Aggressively lease/market the Development in compliance with Section 42 and periodically make recommendations to the Owner regarding the leasing/marketing efforts. The Property Manager has discretion to charge rents in compliance with Section 42 and offer concessions consistent with the projected Operating Budget. The Property Manager shall conduct the leasing of the Development to comply with the applicable Mortgage Loan Documents or, if applicable, so as to preserve the tax-exempt nature of the financing for the Development.

3.2. *Leases.* Cause references of prospective tenants to be investigated on behalf of Owner, sign leases for terms not in excess of one year for rents not less than Owner-approved rent schedules, including concessions thereon, and renew and/or cancel the existing leases and prepare and execute the new leases without additional charge to the Owner.

3.3. *Collect.* On the Owner's behalf, collect from tenants, to the best of the Property Manager's ability, all or any of the following: late rent administrative charges, non-negotiable check charges, credit report fees and subleasing administrative charges.

3.4. *Hire.* Hire, discharge and pay all engineers, janitors and other employees; make or cause to be made all ordinary repairs and replacements necessary to preserve the Development and continue the operating efficiency thereof and all alterations required to comply with lease requirements and do decorating of common areas on the Development. Any person employed in the management or maintenance operations of the Development shall be employed by the Property Manager. The Property Manager shall also have authority to negotiate contracts for nonrecurring repair items, to enter into agreements for all necessary repairs, maintenance, minor alterations and utility services and to purchase supplies and pay all bills incurred in operation of the

Development; provided, however, that, unless such expenditure is detailed in the Capital Plan, the Property Manager shall secure the approval of the Owner for any alterations, repairs or expenditures in excess of \$5,000 for any one item, except quarterly or recurring operating charges which are included in the Operating Budget and emergency repairs in excess of the \$5,000, if, in the reasonable opinion of the Property Manager, such emergency repairs are necessary to protect the Development from damage or to maintain services to the tenants as called for by their tenancy. All costs incurred by Manager for the operation and management of the property shall be an expense of the project and be paid for from funds of the property. Any cost for third party training of on-site employees for bond and tax credit compliance shall be the cost of the property. Any training costs for off-site personnel involved with compliance shall be the cost of the manager.

3.5. *Contracts.* Obtain services at a reasonable additional fee for laundry services, security, rehabilitation and repair, landscape, collections, real property tax protests, evictions, and employee training programs, which services may be provided by affiliated entities, and enter into such service contracts as Property Manager deems advisable. Any such contract shall be cancelable by Property Manager or Owner on not less than (30) days written notice.

3.6. *Alterations.* Make any structural changes in any building or make any other major alteration or addition in or to any such building or equipment therein, or incur any expense chargeable to the Owner in connection with such alterations at the fee set forth in Section 4.7, below.

3.7. *Preventative Maintenance.* Initiate and maintain a preventative maintenance program, in accordance with the current approved Operating Budget and Capital Plan, designed to promote the useful life of the Development and its mechanical systems. Such program shall include regular inspection of all units.

3.8. *Regular Maintenance.* Cause buildings, appurtenances and grounds of the Development to be maintained according to standards acceptable to the Owner, including, but not limited to, interior and exterior cleaning, painting and decorating of the areas, and repair and maintenance of the plumbing, HVAC, electrical and other systems within the areas subject to any limitations imposed by the Owner in addition to those contained herein.

#### ARTICLE IV AGREEMENTS OF OWNER

Section 4.1. *Construction of Development.* Promptly upon commencement of this Agreement, the Owner will furnish the Property Manager with a complete set of plans and specifications and copies of all guarantees and warranties within its possession, which are pertinent to construction and/or rehabilitation of the Development and fixtures thereon.

Section 4.2. *Indemnification of Property Manager.* Except as to any claims arising from the willful misconduct or gross negligence of the Property Manager, the Owner will indemnify, defend and save the Property Manager harmless from all claims, investigation and suits in connection with the Development and from liability for damage to property, injuries to or death of any employee or other person whatsoever, violation of any labor laws or ordinances or any awards arising out of any matter referred to in subparagraph 4.3 below. This indemnification shall survive termination of this Agreement.

Section 4.3. *Expenses.* Owner will pay or permit the Property Manager to pay all reasonable expenses incurred by the Property Manager, including, but not limited to, reasonable attorneys' fees and the Property Manager's costs in connection with any state or federal labor law, any law pertaining to fair employment, fair credit reporting, environmental protection, rent control, taxes, or fair housing, including, but not limited to, any religion, national origin, or mental or physical handicap. Overhead costs, for which Property Manager shall not be reimbursed, include, among others, corporate rent, utilities and payroll, photocopy, postage, telephone and

teletype charges. In addition, nothing contained herein shall obligate the Property Manager to employ counsel to represent it in any such proceeding or suit, and the Owner may elect to employ counsel to represent it in any such proceeding or suit. The Owner also agrees, to pay reasonable expenses (or an apportioned amount of such expenses where other employers of the Property Manager also benefit from the expenditure) incurred by the Property Manager in obtaining legal advice regarding compliance with any law affecting the Development or activities related thereto.

Section 4.4. *Insurance.* The Owner shall cause to be placed and kept in force at all times during the term of this Agreement all insurance of the type and in the amounts required to be maintained pursuant to the terms of the Mortgage. The Property Manager shall be a named insured on all liability policies. The Property Manager may place such insurance and charge the cost thereof to the Operating Account.

Section 4.5. *Management Fee.* The Owner agrees to pay the Property Manager a fee (the "Management Fee"), payable monthly. The Management Fee will not exceed five (5%) of "Gross Receipts". "Gross Receipts" are all amounts received from the operation of the Development, including, but not limited to, rents, parking fees, laundry income, forfeited security deposits, legal fees billed, other fees and deposits and other miscellaneous income, but not including receipts from insurance proceeds except rent reimbursement, refunds, the sale of the Development, sales tax, security deposits or any other non-operating income. Any advance rental payments shall be included in Gross Monthly Income when received. For accounting purposes only, Property Manager may classify the Management Fee at three percent (3%) for property management functions and two percent (2%) for asset management functions. The two percent (2%) fee for asset management functions shall be paid solely out of available net cash flow immediately after payment of debt service on the permanent loan. Property Manager's scope of work would not be affected thereby.

Section 4.6. *Repayment of Advances.* Owner agrees to repay any advances made to the Development by the Property Manager, and hereby authorizes Property Manager to pay such amount from the Operating Account.

Section 4.7. *Construction Management Fee.* Owner agrees to pay Property Manager a fee of five (5%) percent of the cost of construction for all repairs exceeding Five Thousand Dollars (\$5,000) managed by the Property Manager. Owner agrees to reimburse property manager for costs of on-site construction supervision and personnel.

Section 4.8. *Additional Fees.* Owner agrees to pay Property Manager or any affiliate of Property Manager retained to perform the services set forth in Section 3.5 above, a reasonable fee for the service provided so long as the fee is included in the operating budget or capital plan or is otherwise approved by the Owner and one of its independent members.

## **ARTICLE V**

### **TERMINATION OF AGREEMENT; EVENTS OF DEFAULT**

Section 5.1. *Termination.* This Agreement may be terminated at any time by either party upon sixty (60) days' advance written notice to the other party.

Section 5.2. *Termination for Cause.* This Agreement also may be terminated at any time by Owner if Property Manager breaches any of the material terms hereof and such breach continues for a period of thirty (30) days after written notice of such breach is given to the Property Manager by the Owner.

## **ARTICLE VI**

### **TRANSFER OF RECORDS**

Section 6.1. *Transfer of Records.* In the event the Property Manager's duties, responsibilities and liabilities hereunder are terminated pursuant to Article V of this Agreement, the Property Manager shall discharge such duties and responsibilities during the period from the date it acquires knowledge of such termination until the effective date thereof with the same degree of diligence and prudence which it is obligated to exercise hereunder, and shall take no action whatsoever that might impair or prejudice the rights or financial condition of its successor or the Owner. Furthermore, the Property Manager agrees to cooperate with the Owner and any successor Property Manager in effecting the termination of the Property Manager's duties and responsibilities hereunder and shall promptly also transfer to such successor Property Manager, all files, documents and records (including computer tapes and diskettes, including data but not programs) relating to the Development and an accounting of any amounts collected and held by the Property Manager and otherwise use its best efforts to effect the orderly and efficient transfer of its rights, duties and responsibilities to the assuming party.

## **ARTICLE VII SUCCESSORS**

Section 7.1. *Assignment.* This Agreement, including any asset management, refinancing, conversion, sale or other functions referenced at Article 4 above may be assigned by Property Manager without Owner consent.

Section 7.2. *Binding.* This Agreement shall be binding upon the successors and assigns of the Property Manager and the successors and assigns of the Owner.

## **ARTICLE VIII GENERAL**

Section 8.1. *Counterparts.* This Agreement may be executed in counterparts by the parties hereto, and all such counterparts shall constitute one and the same agreement.

Section 8.2. *Facsimile.* This Agreement may be executed by the Members hereto and each Member authorizes each of the other Members to accept a telecopied transmission of this Agreement with telecopied signatures in lieu of delivery of the original Agreement with original signatures.

Section 8.3. *Governing Law.* This Agreement shall be governed by the laws of the State of California.

Section 8.4. *Entire Agreement.* This Agreement constitutes the entire understanding of the Owner and the Property Manager with respect to the management and operation of the Development. This Agreement supersedes and replaces any agreement or understanding that may have existed between the parties prior to the date hereof in respect of such subject matter. This Agreement may not be changed, amended or modified except by another agreement in writing executed by the Owner and the Property Manager.

IN WITNESS WHEREOF, the parties hereto have affixed or caused to be affixed their respective signatures effective as of the \_\_\_\_\_ day of \_\_\_\_\_.

**OWNER:**

Shadow Way Apartments, LP,  
a California limited partnership

By: Shadow Way Apartments, LLC  
a Utah limited liability company

By: \_\_\_\_\_  
Jeff Nielson, Manager

By: Western Community Housing, a  
California non-profit public benefit  
corporation

By: \_\_\_\_\_  
Graham P. Espley-Jones, President

**PROPERTY MANAGER:**

WASATCH PROPERTY MANAGEMENT,  
INC., a Utah corporation

By: \_\_\_\_\_  
John Taylor, Vice President

EXHIBIT A

MONTHLY REPORTS

1. MONTHLY OPERATING STATEMENTS – monthly statements on an accrual basis in a format provided by the Property Manager.
2. BALANCE SHEET
3. MONTHLY BUDGET COMPARISON
4. EXECUTIVE SUMMARY OF OPERATIONS

OWNER'S INITIALS:

PROPERTY MANAGER'S INITIALS:

**SCHEDULE 1**

**RESIDUAL RECEIPTS REPORT**

**City of Oceanside**  
*Shadow Way Apartments*

**Residual Receipts Report for the Year Ending** \_\_\_\_\_  
**Date Prepared** \_\_\_\_\_

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

**Annual Project Revenue**

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

Rent Payments (including Section 8 tenant assistance payments, if any) (1) \$ \_\_\_\_\_

Interest Income (do **not** include interest income from replacement and operating reserves nor interest income on tenant security deposits) (2) \$ \_\_\_\_\_

Additional Income Related to Project Operations (for example, vending machine income, tenant forfeited deposits, laundry income not paid to the residents' association) (3) \$ \_\_\_\_\_

**Total Annual Project Revenue (Add lines 1, 2, and 3)** (4) \$ \_\_\_\_\_

**Operating 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) \$ \_\_\_\_\_

**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) \$ \_\_\_\_\_

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)

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

**The City of Oceanside  
300 North Coast Highway  
Oceanside, California 92054  
Attention: City Clerk**

(Space above this line for Recorder's use)

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**City Document No.:**

*This Instrument is recorded at the request and for the benefit of the City of Oceanside and is exempt from recording fee pursuant to Government Code § 27383*

**REGULATORY AGREEMENT**

This Regulatory Agreement, dated \_\_\_\_\_, 2008, is made and entered into by and between the CITY OF OCEANSIDE, a California municipal corporation, and the OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION, a California public entity (hereinafter collectively referred to as "**Agency**"), on one hand, and Shadow Way Apartments, LP, a California limited partnership, and its successors and assigns ("**Borrower**"), on the other.

**RECITALS**

- A. Borrower is or is about to become the owner of real property ("**Property**") described in Attachment A, which is attached hereto and made a part hereof. Borrower has applied to the Agency for financial assistance in order to develop and operate a multi-family housing project more particularly described herein ("**Project**"). Agency has loaned to Borrower funds under the Redevelopment Agency Tax Increment Low/Moderate Income Housing Funds, Condo Conversion Fee, and Inclusionary Housing (In-Lieu) Trust Funds programs (hereinafter the "**Program**") which such funds are to be used for the development and operation of the Project. Borrower agrees to be bound by all applicable Program statutes, rules, and regulations and all agreements concerning the financial assistance provided by the Agency.
  
- B. As an inducement to the Agency to provide the financial assistance made available under the Program, the Borrower has agreed to enter into this Regulatory Agreement and has consented to be regulated and restricted as provided herein. Borrower's application package, as approved by the Agency, the Loan Documents which consist of this Regulatory Agreement, Loan Agreement, the Promissory Note, the Deed of Trust, the Security Agreement and the Financing Statement, and all attachments and exhibits referred to therein, are incorporated herein by reference.

- C. All references to the Project in this Regulatory Agreement that apply to rents, reporting, and operating procedures shall apply only to units with rents restricted under this Regulatory Agreement.

**NOW, THEREFORE, the parties hereto agree as follows:**

1. **AFFORDABILITY REQUIREMENTS.**

Borrower agrees to comply with all income targeting and affordability requirements described in the Program regulations and as follows:

- (a) All 144 units shall be income and rent restricted for 55 years.
- (b) For the purposes of this Regulatory Agreement the following definitions shall apply:
  - 1) **“Low Income Household”** shall mean a household earning not greater than 60% of San Diego County area median income, adjusted for household size, which is set forth by the California Tax Credit Allocation Committee.
  - (2) **“Lower Income Households”** shall mean a household earning not greater than sixty (60%) of San Diego County area median income, adjusted for household size, which is set forth by regulation of the U.S. Department of Housing and Urban Development, and adjusted periodically.
  - (3) **“Very Low Income Household”** shall mean a household earning not greater than fifty (50%) of San Diego County area median income, adjusted for household size, which is set forth by regulation of the U.S. Department of Housing and Urban Development, and adjusted periodically.
- (c) Fifteen (15) of the units shall be restricted to Very Low Income Households.
- (d) Sixty-four (64) of the units shall be restricted to Lower Income Households.
- (e) Sixty-five (65) of the units shall be restricted to Low Income Households.

2. COMPLIANCE WITH LAW.

The Borrower agrees that at all times its acts regarding the Project shall be in conformity with all applicable Program statutes, rules and regulations; board policies and procedures; and local, state and federal laws and regulations.

3. TERM OF AGREEMENT.

The term of this Agreement shall commence on the date this Regulatory Agreement is recorded on the title of the Property and shall continue for 55 years from the date that the Project is purchased.

4. RENT SCHEDULE.

At the time of initial occupancy of the units, Borrower shall charge only those rents which are established pursuant to the Programs as follows:

- (a) For the sixty-five (65) Low Income two-bedroom units, maximum rents shall be calculated as 30% of 60% of Area Median Income (“AMI”) per the U.S. Department of Housing and Urban Development (“HUD”) for a three-person household per the California Tax Credit Allocation Committee (“TCAC”), less a reasonable utility allowance as published by the City of Oceanside.
- (b) For the sixty-four (64) Lower Income two-bedroom units, maximum rents shall be calculated as 30% of 60% of AMI per the State of California Department of Housing and Community Development (“HCD”) for a three-person household per California Health & Safety Code (“H&SC”) Section 50053, less a reasonable utility allowance as published by the City of Oceanside.
- (c) For the fifteen (15) Very Low Income two-bedroom units, maximum rents shall be calculated as 30% of 50% of AMI per HCD for a three-person household per H&SC Section 50053, less a reasonable utility allowance as published by the City of Oceanside.

Subsequent increases or decreases in rent including special rent increases shall be charged only if consistent with the Program statutes and regulations. Failure to observe this regulation shall be considered a material breach of this Agreement.

5. ELIGIBILITY FOR ADMISSION.

An applicant is eligible for admission to a Project if he or she meets the requirements described in paragraphs 1, 6 and 7 of this Regulatory Agreement. Borrower 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.

6. OCCUPANCY STANDARDS.

An applicant is eligible for admission to a Project if he or she meets all of the occupancy requirements of the Program regulations.

7. RESIDENT SELECTION PROCEDURES.

Borrower shall rent a housing unit in the Project to eligible residents in accordance with the Program regulations and the Management Plan approved by and on file with the Agency pursuant to Paragraph 17 of this Regulatory Agreement. Wherever possible and subject to Section 5 above, applicants currently on the Housing Authority Section 8 waiting list will be given preference for available units. That Management Plan shall include at least the following:

- (a) detailed actions to be taken by Borrower to affirmatively market and rent all units in a manner which ensures equal access to all persons in any category protected by federal, state, or local laws governing discrimination, and without regard to any arbitrary factor;
- (b) specific and reasonable criteria for determination of resident eligibility consistent with Paragraphs 6 and 7, including occupancy standards outlined in the Program regulations;
- (c) a requirement that eligible residents be selected based on the order of application, lottery, or other reasonable method;
- (d) provisions requiring notification to applicants of eligibility and, based on turnover history, when a unit may be available;
- (e) requirement that ineligible applicants be notified in writing or by telephone of the reason for their ineligibility;
- (f) specific procedures through which applicants deemed to be ineligible may appeal this determination;
- (g) procedures for maintaining a waiting list of eligible applicants;
- (h) a prohibition against discrimination of any prospective resident on the basis of race, religion, sex, age, disability, marital status, or any other arbitrary factor in violation of any state, federal, or local law governing discrimination in rental housing; and
- (i) other selection issues provided for in the Program regulations.

8. LEASE AND OCCUPANCY PROCEDURES.

- (a) Each eligible applicant selected to occupy a unit shall enter into a written occupancy agreement (“lease”) with the Borrower and which shall contain those provisions as are required by the Program regulations and this Regulatory Agreement. The lease shall provide for good cause eviction and appeal and grievance procedures, all of which shall be in accordance with the Program regulations.
- (b) The Borrower shall establish reasonable rules of conduct and occupancy that shall be consistent with local, state and federal laws and the Program regulations. The rules shall be in writing and shall be given to each resident. Any amendment shall be effective no less than 30 days after giving written notice thereof to each resident.
- (c) Leases and the landlord-tenant relationship shall be subject to California law, Program statutes and regulations, and the provisions of this Regulatory Agreement.

9. REPLACEMENT CHARGES.

The charges to residents covering damages to the Project property attributable to the resident shall be made in accordance with a schedule of replacement costs which shall be adopted by the Borrower, posted in the management office of each Project, and shown to applicant at the time the lease is signed.

10. TERMINATION OF LEASE.

- (a) Rent is paid only for the period the resident actually occupies the housing unit. Any unused rent shall be returned to the resident. Rent and security deposits will be held, used, and disposed of in accordance with applicable California law.
- (b) The Borrower may require the resident to move out if the resident has seriously or repeatedly violated important terms of the lease agreement such as not paying rent, causing serious interference with the rights of other residents, knowingly giving false statements of important facts to the Borrower concerning eligibility for the Project, or for other good cause.
- (c) In order for the Borrower to begin termination of the lease, it must give the resident a written notice as required by applicable California law.
- (d) If the resident has not paid rent, the Borrower shall give the resident a three (3) day notice to either pay the rent or move out. If the resident's actions cause an immediate threat to the health and safety of the other residents, the Borrower shall give the resident a reasonable time to move out, but not less than three (3) days.

- (e) In all other cases, the resident shall be given at least 30 days' notice to either comply with the terms of the lease or move out.

11. BORROWER RESPONSIBILITIES.

Borrower shall provide administrative, fiscal, and management services, employ staff and purchase, rent, and use supplies and materials as needed to operate, maintain and protect each Project in accordance with this Regulatory Agreement and the Program statutes and regulations. This shall include, but not be limited to, compliance with the grounds and procedures governing grievance hearings as set forth in the Program regulations. In addition, grievance hearings, conferences, notices, and summaries pursuant to this Regulatory Agreement shall be in English or in the language of the majority of residents.

12. ANNUAL OPERATING BUDGET.

- (a) The fiscal year for the Project shall be the same as the calendar year and commence on January 1 of each year after the initial period of occupancy, and conclude on December 31 of each year.
- (b) The Borrower will submit to the Agency a proposed operating budget for the Project ninety (90) days after the conversion of the Bond Loan to its permanent phase and at the beginning of each fiscal (calendar) year of the Project thereafter. The proposed operating budget shall set forth the anticipated Project income, including 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, and all other. "Operating costs" are defined as all expenses associated with providing decent, safe, and sanitary housing at the Project.

13. USE OF INCOME FROM OPERATIONS

- (a) The Borrower or Borrower's management agent shall promptly deposit all Operating Income, or all income generated by the Project, into a segregated account established in the Borrower's name exclusively for the Project. There shall be no commingling of Project funds with other funds controlled by the Borrower.
- (b) Withdrawals from the account shall be made only in accordance with the provisions of the annual operating budget, and shall be disbursed, applied or reserved and set aside for payment when due, in the following priority, to the extent available: (1) salaries, wages and other compensation due and payable to the employees or agents of the Borrower employed on site in connection with the maintenance, administration or operation of the Project, along with all withholding taxes, insurance premiums, Social Security payments, and other

payroll taxes or payments required in connection with such employee; (2) all charges incurred in the operation of the Project in connection with utilities, real estate taxes and assessments, and liability, fire and other hazard insurance; (3) payments of required interest, principal, impounds, fees and charges, if any on loans which are secured by the Property; (4) all other expenses incurred to cover operating costs, including the fee of the managing agent and any extraordinary expenses in accordance with the annual operating budget of the Project; (5) deposits to reserve accounts if applicable; and (6) distributions to the Borrower or other person or entity as permitted in the Promissory Note definition of Residual Receipts.

- (c) If other funding entities have differing requirements, such differing requirements shall control.

#### 14. FINANCIAL ASSISTANCE

Borrower acknowledges that the Agency will not provide additional financial assistance to the Borrower in the form of operational or capital subsidies for the Project. If Project Income, including those rents charged pursuant to Paragraph 4 of this Regulatory Agreement, is insufficient to cover operating, maintenance, and capital costs, Borrower agrees to assume full financial responsibility for the operating and maintenance of the Project throughout the term of this Agreement.

#### 15. ACCOUNTING RECORDS

Borrower shall maintain an accrual or modified accrual basis general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Project. All records and books relating to this system shall be retained for not less than seven years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to Agency inspection and audit.

#### 16. MANAGEMENT AND MAINTENANCE

- (a) Borrower is specifically responsible for all maintenance, repair, and management functions including, without limitation, the following: selection of residents, occupancy standards, complaint and grievance proceedings, evictions, collection of rents and security deposits, routine and extraordinary repairs, and replacement of capital items. Borrower shall maintain units and common areas in a safe and sanitary manner in accordance with local health, building, and housing codes, the Management Plan provided for in this Regulatory Agreement, and in accordance with applicable Housing Quality Standards described in 24 CFR 982.401.

- (b) Borrower is responsible for operating the Project in accordance with the Management Plan developed by the Borrower and on file with the Agency (“**Management Plan**”). The Management Plan shall include at least the following:
- (i) detailed actions to be taken by Borrower to affirmatively market and rent all units in a manner which ensures equal access to all persons in any category protected by federal, state, or local laws governing discrimination, and without regard to any arbitrary factor;
  - (ii) specify reasonable criteria for determination of resident eligibility consistent with Paragraphs 5 and 6, including occupancy standards outlined in the Program regulations;
  - (iii) require that eligible residents be selected based on the order of application, lottery, or other reasonable method approved by Agency;
  - (iv) require eligible applicants to be notified of eligibility and, based on turnover history, be notified of when a unit may be available;
  - (v) require ineligible applicants to be notified in writing or telephone of the reason for their ineligibility;
  - (vi) specify procedures through which applicants deemed to be ineligible may appeal this determination;
  - (vii) require maintenance of a waiting list of eligible applicants;
  - (viii) prohibit discrimination against any prospective resident on the basis of race, religion, sex, age, disability, marital status, or any other arbitrary factor in violation of any state, federal, or local law governing discrimination in rental housing; and
  - (ix) address other selection issues provided for in the Program Regulations.
- (c) Borrower may contract with a management agent for the performance of the services or duties required in subparagraphs (a) and (b). However, such an arrangement does not relieve the Borrower of responsibility for proper performance of these duties. Such a contract shall contain a provision allowing the Borrower to terminate the contract without penalty upon 30 days’ written notice. Upon a determination by the Agency and written notice to the Borrower that the management agent performing the functions required in subparagraphs (a) and (b) has failed to operate the Project in accordance with this Regulatory Agreement and the approved Management Plan, the Borrower shall exercise such

right to termination forthwith and shall make immediate arrangements for continuing performance of the functions required in subparagraphs (a) and (b).

- (d) Upon a determination by the Agency and a sixty (60) day written notice to the Borrower that the Borrower has failed to operate the Project in accordance with this Regulatory Agreement, the Agency may require the Borrower to contract with a qualified management agent to operate the Project to ensure performance of the functions required in subparagraphs (a) and (b).
- (e) Borrower agrees to assume full financial and management responsibility for all operating and maintenance costs, including all repairs, corrections and replacements necessary to maintain and preserve the Project in a safe and sanitary condition in accordance with all obligations of this Regulatory Agreement, and all applicable local, state and federal laws and regulations.

#### 17. REPORTING REQUIREMENTS.

The Borrower shall file with the Agency an annual report no later than 90 days after the end of each fiscal year established for the Project. The report shall contain such information as the Agency may then require, including, but not limited to, the following:

- (a) An audit of the fiscal condition of the Project is required whenever the Agency provides financial assistance. This includes a financial statement indicating surplus or deficits in operating accounts, a detailed itemized listing of income and expenses, and the amounts of any fiscal reserves, if any. Such audit shall be certified by an independent certified public accountant licensed in California or other accountant acceptable to the Agency;
- (b) In accordance with Office of Management and Budget OMB Circular A-133, any non-federal entity, including States, Local Governments, and Non-Profit Organizations, that expend \$500,000 or more in a year in Federal awards shall have an A-133 single audit conducted for that year.
  - (i) Borrower will provide written notification to the Agency's Community Development Division of the results of the OMB Circular A-133 audit no more than thirty days after the audit is completed.
  - (ii) In compliance with all Federal requirements, Borrower shall correct any deficiencies identified in OMB Circular A-133 audits.
- (c) Any substantial physical defects in the Project, including a description of any major repair or maintenance work undertaken in the reporting year;

- (d) The occupancy of the Project indicating:
  - (i) Each tenant's gross annual household income, family size and composition, race, length of tenancy, actual monthly rent paid;
  - (ii) Records demonstrating the Borrower's efforts to comply with its Fair Housing Marketing and Equal Opportunity Plan;
  - (iii) The number of residents actually occupying the project;
  - (iv) The number of assisted households earning at or below 50 percent of median income; and
  - (v) General management performance, including tenant relations and other relevant information.
- (e) A description of any fiscal or program difficulties related to the operation of the Project consistent with the Program requirements;
- (f) At any time during the term of this Regulatory Agreement, the Agency or its designee may enter and inspect the physical premises and inspect all accounting and resident records pertaining to the construction, development, or operation of the Project. Upon a minimum 48-hour request by the Agency, Borrower shall notify residents of upcoming inspections of their units or records in accordance with California State law.
- (g) The Agency may perform or cause to be performed audits of any and all phases of the Borrower's activities related to the Project. At the Agency's request, Borrower shall provide, at its own expense, an audit of the Project certified by an independent certified public accountant.
- (h) The Agency may request any other information that it deems necessary to monitor compliance with requirements set forth in the Loan Documents. Borrower shall promptly provide such information.
- (i) Prior to the commitment of funds, the Borrower will submit to the Agency certified copies of: (i) its Equal Opportunity and Fair Housing marketing plan; (ii) records demonstrating that the units meet or will meet all applicable property standards; (iii) certification that no layering of federal funds has or will occur; (iv) records showing compliance with relocation requirements; (v) conflict of interest statements; (vi) evidence of flood insurance if applicable; and (vii) evidence that the Borrower, any subcontractor, agent, representative, or consultant working on the Project is not debarred or suspended from participation in federal programs.

18. PROJECT RECORDS:

The Borrower shall maintain the following records for a period consistent with the Program regulations:

- (a) Records that demonstrate that the Project meets the property standards in Program regulations;
- (b) Records that demonstrate that the Project meets the requirements of Program regulations for the required period of affordability for each family assisted;
- (c) Records that demonstrate compliance with the requirements of Program regulations for tenant and participant protections;
- (d) Records that demonstrate compliance with the requirements in Program regulations for affordable housing including, but not limited to, rental housing production including the initial purchase price and appraised value (after rehabilitation, if required) of the Project for each family assisted;
- (e) Records that indicate whether the Project is mixed-income, mixed-use, or both in accordance with Program regulations;
- (f) Equal opportunity and fair housing records containing:
  - (1) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with Agency funds;
  - (2) Documentation of actions undertaken to meet the requirements of section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).
  - (3) Documentation and data on the steps taken to implement the Agency's outreach programs to minority-owned and female-owned businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with Agency funds; the amount of the contract or subcontract, and documentation of Borrower's affirmative steps to assure that minority-business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services;
  - (4) Documentation of the actions the Borrower has taken to affirmatively further fair housing;

- (5) Records indicating the affirmative marketing procedures and requirements under 24 CFR part 92.351;
- (6) Records that demonstrate compliance with environmental review requirements in 24 CFR part 92.352 (and part 58 of this title);
- g) Records that demonstrate compliance with the requirements regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property, moving into the property, and occupying the property upon completion of the Project;
- (h) Records demonstrating compliance with federal and state labor requirements including contract provisions and payroll records;
- (i) Records concerning lead-based paint;
- (j) Records supporting requests for waivers of the conflict of interest prohibition;
- (k) Records of certifications concerning debarment and suspension in 24 CFR part 24;
- (l) Records demonstrating compliance with flood insurance requirements as applicable; and
- (m) Records concerning intergovernmental review.

19. **INSURANCE AND BOND REQUIREMENTS**

1. **BORROWER'S INSURANCE**

Borrower's insurance requirements under this provision are attached hereto as Attachment B, which terms are incorporated herein.

2. **CONTRACTOR'S INSURANCE**

A. All building contractors utilized to carry out the Agency funded contract for property improvement shall have a valid contractor's license and within 10 working days prior to the inception of their contract with Borrower shall submit to Agency certificates of insurance and appropriate separate endorsements to the actual insurance policy, evidencing that the contractor has obtained for the period of the Contract insurance in the following forms of coverage and minimum amounts specified from insurance carriers with an A. M. Best rating of A VII and above.

B. All certificates of insurance provided by contractor must evidence that the insurer providing the policy will give the Agency thirty (30) days' written notice, at the address shown below in advance of any cancellation, lapse, reduction or other adverse change respecting such insurance.

(1) An occurrence policy of Commercial General Liability insurance insuring contractor against liability for bodily injury, including death, personal injury or property damage arising out of all operations of the contractor during the execution of the said contract of not less than One Million Dollars (\$1,000,000) per occurrence with Excess/Umbrella coverage of not less than Ten Million dollars (\$10,000,000). The Borrower and Agency, its officers, agents, employees, and volunteers shall be added as Additional Insured by separate endorsement to the policy.

(2) Unless contractor is a sole proprietorship, Statutory Workers' Compensation insurance along with Employer's Liability of not less than One Million Dollars (\$1,000,000).

(3) A Comprehensive Automobile Liability Insurance policy for bodily injury, including death, and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence and is applicable to all owned, non-owned and hired vehicles.

Notwithstanding the foregoing, Borrower compliance with the Bond Loan Lender's insurance requirements shall constitute compliance with this Agreement, so long as Borrower names the Agency as an additional insured in all of its insurance policies.

## 20. CERTAIN ACTS PROHIBITED.

Borrower shall not make any sale, encumbrance, assignment or conveyance, or transfer in any other form, the Property or Project or any part thereof or of any of its interest therein other than in accordance with the terms of this Regulatory Agreement and the loan documents and shall not, without prior written notice to the Agency:

- (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;
- (c) Remodel, remove, add to, reconstruct or demolish any part of the Project or impair any real or personal property of the Project without prior written approval by the Agency;
- (d) Require, as a condition of the occupancy or leasing of any dwelling unit in the Project, any consideration or deposit in excess of that permitted by the Program regulations to guarantee the performance of the covenants of the lease. Any funds

collected as security deposits shall be kept separate and apart from all other funds of the Project in a trust account with a depository insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, and shall be held and disbursed in accordance with applicable law. The balance of such account shall at all times equal or exceed the aggregate of all outstanding obligations under said account, plus accrued interest thereon;

- (e) Permit the use of the units in the Project for any purpose except that which was approved by the Agency;
- (f) Incur any liability or obligation in connection with the Project, contingent or otherwise;
- (g) Enter into any contract or contracts for supervisory or managerial services except as permitted by this Regulatory Agreement; or
- (h) Invest any funds from the Project in any property, real or personal, except as authorized by this Regulatory Agreement or by the Agency or deposit any such funds in a depository not authorized by this Regulatory Agreement or approved by the Agency.

## 21. VIOLATION OF REGULATORY AGREEMENT BY THE BORROWER.

In the event of the material violation of any of the provisions of this Regulatory Agreement by the Borrower, the Agency shall give written notice thereof to the Borrower of 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 ninety (90) 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 ninety (90) day period, then within such additional time as is reasonably necessary to cure such failure, provided Borrower has commenced cure within the initial ninety (90) day period and diligently pursues such cure to completion. After the expiration of all applicable notice and cure periods as specified here, the Agency 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 Agency may apply to any court, state or federal, for specific performance of this Regulatory Agreement; for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Regulatory Agreement, or for such other relief as may be appropriate, it being agreed by the Borrower that the injury to the Agency 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 Agency which afford adequate relief in light of the purposes and policies of the Program.

22. AMENDMENTS

This Regulatory Agreement shall not be altered or amended except by writing executed between the parties.

23. PARTIAL INVALIDITY.

If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, except to the extent that the Agency determines, at its discretion, that the remaining provisions will not adequately protect the interests of the Agency or fulfill the purposes of this Regulatory Agreement.

24. BINDING ON SUCCESSORS.

This Regulatory Agreement shall bind, and the benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in the office or interest, and assigns; provided, however, that the Borrower may not assign this Regulatory Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior approval of the Agency.

25. GENDER.

The use of the plural in this Regulatory Agreement shall include the singular and the singular shall include the plural and the use of one gender shall be deemed to include all genders.

26. RECORDING AGREEMENT.

This Regulatory Agreement, and any amendments thereof, shall, at the expense of the Borrower, be acknowledged by each of the parties and recorded or referenced in the official records of the county in which the Project is situated.

27. ELECTION OF REMEDIES.

The remedies of the Agency hereunder or under any other instrument providing for or evidencing the financial assistance provided herein are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the Agency of any one or more of its other remedies.

28. WAIVER

No waiver by the Agency of any breach of or default under this Regulatory Agreement shall be deemed to be a waiver of any other or subsequent breach or default hereunder.

29. CAPTIONS.

The captions used in this Regulatory Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this Regulatory Agreement.

30. GOVERNING LAW.

This Regulatory Agreement shall be construed in accordance with and governed by the laws of the State of California.

31. OTHER FEDERAL REGULATIONS.

Borrower agrees to carry out all activities in compliance with 24 CFR Parts 42, 58, 92, 570 and 574; the Housing and Community Development Act of 1974, as amended; 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 (as amended), 11063 and 11593; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; OMB Circular A-122 and Attachments A, B, C, F, H, N and O; OMB Circular A-133; the Archaeological and Historical Preservation Act of 1974; the Architectural Barriers Act of 1968; the Hatch Act (5 U.S.C. § 7321, *et seq.*); the Flood Disaster Protection Act of 1974; the Clean Air Act (42 U.S.C. Section 7401, *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 Section 42 (h)(6)(E)(ii) of the Internal Revenue Code of 1989.

32. NOTICES.

Written notices and other written communications by and between the parties hereto shall be addressed as follows unless and until a party hereto has in writing, communicated a different address to the other party hereto.

Borrower:

Shadow Way Apartments, LP  
% Shadow Way Holdings, LLC  
26522 La Alameda, Suite 260,  
Mission Viejo, California 92691  
Attention: Kipling Sheppard

Agency:

Community Development Commission of the City of Oceanside  
300 North Coast Highway  
Oceanside, California 92054  
Attention: Margery M. Pierce, Director of Neighborhood Services

33. INDEMNIFICATION AND WAIVER.

- (a) Borrower agrees to indemnify the Agency and to hold the Agency harmless from any losses, damages, liabilities, claims, actions, judgments, court costs, and legal or other expenses (including attorneys' fees) of every name, kind and description, which the Agency may incur as a direct or indirect consequence of (i) the making of the Program Loan to Borrower, (ii) Borrower's failure to perform any obligations as and when required by this Regulatory Agreement; (iii) any failure at any time of any of Borrower's representations or warranties to be true and correct; (iv) any act or omission by Borrower, any borrower, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the construction, management, maintenance or operation of the Project; or (v) the presence of Hazardous Substances at the Project or on the Property. Borrower shall pay immediately upon the Agency's demand any amounts owing under this indemnity together with interest thereon from the date the indebtedness arises until paid, at the rate of eight percent (8%) per annum. The duty of Borrower to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. Borrower shall indemnify and hold harmless the Agency regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Agency or the Borrower or their respective agents, officers, employees, contractors or subcontractors provided, however, that Borrower's duty to indemnify and hold harmless hereunder shall not extend to liability arising from sole negligence or willful misconduct of the Agency. Borrower shall reimburse the Agency for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which Borrower is obligated to indemnify, defend and hold harmless the Agency under this Agreement.
- (b) The Borrower waives and releases any and all rights to any types of express or implied indemnity against the Agency.
- (c) Borrower expressly waives the protections of Section 1542 of the Civil Code in relation to subparagraphs (a) and (b) above.

[SIGNATURES ON NEXT PAGE]

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

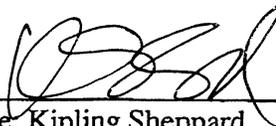
**BORROWER:**

Shadow Way Apartments, LP,  
a California limited partnership

By: Western Community Housing, Inc., a California  
nonprofit public benefit corporation  
Managing General Partner

By: \_\_\_\_\_  
Name: Graham Espley-Jones  
Title: President

By: Shadow Way Holdings, LLC, a Utah limited  
liability company  
Administrative General Partner

By:  \_\_\_\_\_  
Name: Kipling Sheppard  
Title: Manager

**AGENCY:**

City of Oceanside

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager

Oceanside Community Development  
Commission

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Director

**APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE**

By:  \_\_\_\_\_  
Name: BARBARA L. HAMILTON  
Title: ASSISTANT CITY ATTORNEY

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On 09/02/2008 before me, L. Martin, Notary Public  
(Here insert name and title of the officer)

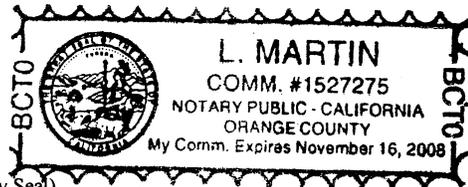
personally appeared Kipping Sheppard

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

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

WITNESS my hand and official seal.

[Signature]  
 Signature of Notary Public



L. Martin, Notary Public my comm. expires: 11/16/2008  
(Notary Seal)

## ADDITIONAL OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

*Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*

**DESCRIPTION OF THE ATTACHED DOCUMENT**  
Regulatory Agreement  
(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages 17 Document Date \_\_\_\_\_

\_\_\_\_\_  
(Additional information)

**CAPACITY CLAIMED BY THE SIGNER**

Individual (s)  
 Corporate Officer

\_\_\_\_\_  
(Title)

Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

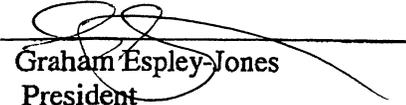
- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ✦ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ✦ Indicate title or type of attached document, number of pages and date.
  - ✦ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

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

**BORROWER:**

Shadow Way Apartments, LP,  
a California limited partnership

By: Western Community Housing, Inc., a California  
nonprofit public benefit corporation  
Managing General Partner

By:   
Name: Graham Espley-Jones  
Title: President

By: Shadow Way Holdings, LLC, a Utah limited  
liability company  
Administrative General Partner

By: \_\_\_\_\_  
Name: Kipling Sheppard  
Title: Manager

**AGENCY:**

City of Oceanside

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager

Oceanside Community Development  
Commission

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Director

**APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE**

By:   
Name: BARBARA L. HAMILTON  
Title: ASSISTANT CITY ATTORNEY

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Orange }

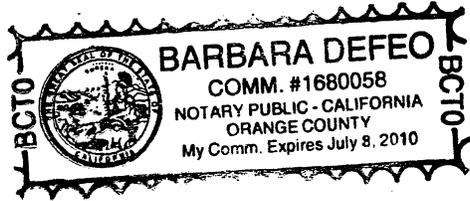
On Sept 2, 2008 before me, Barbara Defeo, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Graham Espley-Jones  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Place Notary Seal Above

Signature [Handwritten Signature]  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: Shadow Way Regulatory Agreement

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

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

**Capacity(ies) Claimed by Signer(s)**

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

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

**RIGHT THUMBPRINT OF SIGNER**  
 Top of thumb here

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

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

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

**RIGHT THUMBPRINT OF SIGNER**  
 Top of thumb here

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

**Attachment A**  
Property Description

Lots 1 and 2 of Murray Mission Unit No. 10 in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 11270, filed in the Office of the County Recorder of San Diego County on June 28, 1985.

APN: 157-080-47

**Attachment B**  
Insurance Requirements

The Borrower shall keep the Property and all improvements thereon insured by carriers at all times satisfactory to the Agency against direct physical loss, and such other hazards, casualties, liabilities and contingencies as the Agency may require and in such amounts and for such periods as the shall require. Borrower shall submit to Agency Certificates of Insurance and appropriate separate endorsements to the actual insurance policy, evidencing that the Borrower, and all contractors utilized to carry out the Agency funded Project, has obtained for the period of the contract insurance in the following forms of coverage and minimum amounts specified from insurance carriers with an A.M. Best rating of A- VII and above. Notwithstanding this Attachment B, Borrower shall be deemed to be in compliance with this Attachment B if it complies with the insurance requirements of the Bond Loan Lender and names the Agency as an additional insured in all of its insurance.

a. An occurrence policy of Commercial General Liability insurance insuring Borrower against liability for bodily injury, including death, personal injury or property damage arising out of all operations of the Borrower during the execution of the said contract of not less than One Million Dollars (\$1,000,000) per occurrence with Excess/Umbrella coverage of not less than Ten Million dollars (10,000,000). The Agency, its officers, agents, employees, and volunteers shall be added as Additional Insured by separate endorsement to the policy.

b. Statutory Workers' Compensation insurance along with Employer's Liability of not less than One Million Dollars (\$1,000,000).

c. A standard fire policy including all-risk or special form perils, in an amount of ninety percent 90% of the full replacement cost of the Building and Improvements, without deduction for depreciation, including costs of demolition and debris removal. Such policy or policies of insurance shall include coverage for (i) fixtures owned by Borrower, (ii) any items identified as improvements to the Premises constructed or owned by Borrower, and (iii) the personal property of Borrower, its agents and employees.

d. Rental income insurance which shall assure Borrower of receiving the minimum monthly rent from the time the Project is damaged or destroyed by a risk insured against by the standard fire policy including all-risk or special form perils, until such time as they are returned to a tenantable condition, with a minimum period of coverage of one (1) year.

Insurance proceeds and condemnation awards for any loss to or taking of the Project shall be applied or utilized in a manner which ensures that Agency's and Program interests are reasonably fulfilled. Agency will be included as loss payee on Borrower's property insurance covering building.

**CITY OF OCEANSIDE AND THE OCEANSIDE  
COMMUNITY DEVELOPMENT COMMISSION**

**PROMISSORY NOTE**

**NOTICE TO BORROWER  
THIS DOCUMENT CONTAINS PROVISIONS RESTRICTING  
ASSUMPTIONS AND IS SECURED BY A DEED OF TRUST**

\$5,600,000

\_\_\_\_\_, 2008

FOR VALUE RECEIVED, the undersigned, SHADOW WAY APARTMENTS, LP, a California limited partnership, and its successors and assigns (“**Borrower**”), hereby promises to pay to the order of the CITY OF OCEANSIDE, a California municipal corporation and the OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION, a California public entity (hereinafter collectively referred to as “**Agency**”), a principal amount equal to \$5,600,000.00 or so much thereof as may be advanced by the Agency to the Borrower pursuant to a loan provided to Borrower through the Redevelopment Agency Tax Increment Low/Moderate Income Housing Funds, Condo Conversion Fees, and Inclusionary Housing (In-Lieu) Trust Funds (hereinafter referred to as the “**Loan**”), which is secured by a Deed of Trust between the Borrower and Agency. The obligations of the Borrower and Agency are subject to the terms of the Loan Documents, which are incorporated by reference herein. The term “**Loan Documents**” means the Regulatory Agreement, Loan Agreement, this Promissory Note (“**Note**”), the Deed of Trust, the Security Agreement and the Financing Statement.

1. Borrower’s Obligation. This Note evidences the obligation of the Borrower to the Agency for the repayment of funds loaned to the Borrower by Agency to partially finance the construction and development costs of real property, appurtenances, improvements and fixtures thereon (hereinafter, the “**Property**”), as described in the Loan Documents.

2. Payment of Indebtedness.

a. The principal amount of the Loan shall bear interest at the rate of three percent (3%) compounded annually, which interest shall accrue from the date amounts are disbursed pursuant to the Loan Documents for 55 years (“**Maturity Date**”), at which time all principal and interest shall be due and payable. This Note may be prepaid in whole or in part at any time, and from time to time, without notice to or consent from the Agency, and without penalty.

b. As used herein, the term “**Residual Receipts**” means the excess of all operating revenues actually collected from the Property (“**Gross Receipts**”) other than cash receipts (i) from a sale or refinancing transaction, (ii) security deposits from tenants at the Property and interest thereon (except to the extent retained by the Borrower as a result of a default by a tenant under its lease or otherwise), (iii) capital contributions, (iv) the net reduction in any year in the amount of any escrow account or reserve maintained by or for the Borrower, and (v) insurance

proceeds (except as received for loss of rents) and condemnation proceeds, over all expenses actually paid in connection with the operation of the Property, including but not limited to, property taxes, assessments and bonds, deposits to operating and replacement reserves, deferred developer fees (the "Deferred Developer Fee"), a property management fee, which shall not exceed 3% of Gross Receipts, and an asset management fee payable to the property manager in an amount not to exceed 2% of Gross Receipts, provided such asset management fee shall not be paid until all other items deducted from Gross Receipts to determine Residual Receipts have been paid, and partnership administrative fees payable to any General Partner and/or Limited Partner, the total of which does not exceed \$30,000 annually, plus 2.75% annual escalation, insurance premiums, maintenance costs, capital improvements in excess of proceeds from the operating and replacement reserve accounts, eviction costs, and any loan payments to or for the benefit of any lender whose indebtedness is senior in time or priority to the Agency's Loan for any Calendar Year. The term "**Calendar Year**" shall refer to each one-year period beginning January 1 and ending December 31. Commencing in the Calendar Year in which the Bond Loan financing described in the Loan Agreement converts to its permanent phase (the "Conversion Year"), the Note shall be paid from Residual Receipts as follows: (a) no payments of either principal or interest on the unpaid principal shall be required during the period when any Deferred Developer Fee remains outstanding and unpaid; (2) after the payment in full of the Deferred Developer Fee, and continuing until the end of the 40<sup>th</sup> Calendar Year following the Conversion Year, fifty percent (50%) of the annual Residual Receipts shall be paid on the principal and interest of the Loan, and shall be applied first to accrued but unpaid interest and thereafter to principal; and (3) commencing in the 41<sup>st</sup> Calendar Year following the Conversion Year, eighty percent (80%) of the annual Residual Receipts shall be paid on the principal and interest of the Loan, and shall be applied first to accrued but unpaid interest and thereafter to principal. Residual Receipts are not part of the receipts owed to other lenders.

3. Place and Manner of Payment. All amounts due and payable under this Note and the Loan Documents are payable at the principal office of the Agency set forth below, or at such other place or places as the Agency may designate to the Borrower in writing from time to time, in any coin or currency of the United States of America, which on the respective dates of payment thereof shall be legal tender for the payment of public and private debts.

4. Borrower's Waiver. Except as otherwise provided in this Note and the other Loan Documents of which it is a part and only to the extent permitted by law, Borrower hereby waives (a) notice of default or delinquency, if any; (b) notice of acceleration; (c) notice of nonpayment; (d) notice of costs, expenses, losses and interest therein; (e) notice of interest on interest and late charges; (f) diligence in taking any action to collect any sums owing under the Note or in proceeding against any of the rights and presentment for payment, demand, protest, and notices of dishonor and/or protest; (g) the benefits of all waivable exemptions; and (h) all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice provided that Borrower does not waive, and the Agency shall deliver, all notices to Borrower to which Borrower is entitled under this Note or under any of the other Loan Documents, as applicable.

5. Attorneys' Fees. Borrower hereby agrees to pay all costs and expenses, including reasonable attorneys' fees, including any such fees paid to the Counsel of the Agency, which

may be incurred by the Agency in the enforcement of this Note, the Loan Documents or any term or provision of any thereof. This provision shall be construed in accordance with California Civil Code Section 1717.

6. Default under other Loan Documents and Acceleration. All covenants, conditions, and agreements contained in the Loan Documents are hereby made a part of this Note. Borrower agrees that the unpaid balance of the principal amount of this Note, shall, at the option of the Agency, if so provided in the Loan Documents executed by the Borrower, become immediately due and payable, and thereafter bear interest at the rate of eight percent (8%) per annum until paid if any of the following events occur: (a) Borrower fails to make any payment hereunder as and when due; (b) Borrower fails to perform or observe any other term or provision of this Note; or (c) any event occurs (whether termed default, event of default or similar term) which, under the terms of the Loan Documents, shall entitle the Agency to exercise rights or remedies thereunder.

If Borrower materially violates any of the provisions of the Loan Documents, the Agency shall give written notice thereof to Borrower of the violation(s) 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 ninety (90) 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 ninety (90) day period, then within such additional time as is reasonably necessary to cure such failure, provided Borrower has commenced cure within the initial ninety (90) day period and diligently pursues such cure to completion.

After the expiration of all applicable notice and cure periods as specified here, the Agency may, without further notice, declare in writing a default effective on the date of such declaration of default. Upon any such declaration of default, the Agency may apply to any court, state or federal, for specific performance of this Note, for the appointment of a receiver to take over and operate the Project in accordance with the terms of the Loan Documents, or for such other relief as may be appropriate, it being agreed by the Borrower that the injury to the Agency arising from a default under any of the terms of the Loan Documents would be irreparable and that it would be extremely difficult to ascertain the amount of compensation of the Agency which afford adequate relief in light of the purposes and policies of the Project.

7. Nonrecourse Obligation. Neither the Borrower nor any partner, member, officer, director, or stockholder of the Borrower or Borrower's partners shall have any direct or indirect personal liability for payment of the principal of, or interest on, this Note. Agency's sole recourse with respect to the principal of, or interest on, this Note shall be to the property, real and/or personal, securing the indebtedness evidenced by the Note. No judgment, or execution thereon, entered in any action, legal or equitable, on this Note or the Deed of Trust securing this Note shall be enforced personally against the Borrower, or any partner, officer, director or stockholder of the Borrower, but shall be enforced only against the property described in the Loan Documents and such other or further security as, from time to time, may be hypothecated for this Note provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the endorsement against all such security for this Note of all the rights

and remedies of the Agency, or (b) be deemed in any way to impair the right of the Agency to assert the unpaid principal amount of this Note as a demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of and payment of interest on this Note. Nothing contained herein is intended to relieve the Borrower or any successors thereto of liability for (a) fraud or willful misrepresentation; (b) the amount of unpaid taxes, assessments or other charges which may create liens on the real property described in the Loan Documents that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (c) the retention of any rental income or other income arising with respect to the Development actually collected by Borrower after the Agency has given any notice that Borrower is in default to the full extent of the rental income or other income retained and collected by Borrower after the giving of any such notice; (d) the fair market value as of the time of the giving of any notice referred to in subparagraph (c) above of any personal property removed or disposed of by Borrower other than in accordance with the Loan Documents after the giving of any notice referred to in subparagraph (c) above; and (e) the misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction of any portion to the Development.

8. Governing Law. This Note shall be construed in accordance with and be governed by laws of the State of California.

9. Time. Time is of the essence in this Note.

10. No Waiver by the Agency. No waiver of any breach, default or failure of conditions under the terms of the Note or the Loan Documents or the obligations secured thereby shall be implied from any failure of the Agency to take, or any delay by the Agency in taking, action with respect to such breach, default, or failure from any previous waiver of any similar or unrelated breach, default or failure. A waiver of any term of the Note or the Loan Documents or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

11. Notices. Except as may be otherwise specifically provided herein, any approval, notice, direction, consent, request or other action by the Agency or Borrower shall be in writing and may be communicated to the addressee designated herein, or at such other place or places as the Borrower or Agency shall designate in writing. Notices required or permitted under the terms of this Note shall be given:

Borrower:  
Shadow Way Apartments, LP  
% Shadow Way Holdings, LLC,  
26522 La Alameda, Suite 260,  
Mission Viejo, California 92691  
Attention: Kipling Sheppard

Agency:  
City of Oceanside/Oceanside Community Development Commission  
300 North Coast Highway  
Oceanside, California 92054  
Attn: Margery M. Pierce, Director of Neighborhood Services

[SIGNATURE ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned Borrower has caused this Note to be executed on the day, month and year first written above.

**BORROWER:**

Shadow Way Apartments, LP,  
a California limited partnership

By: Western Community Housing, Inc., a California nonprofit public benefit corporation  
Managing General Partner

By: \_\_\_\_\_  
Name: Graham Espley-Jones  
Title: President

By: Shadow Way Holdings, LLC, a Utah limited liability company  
Administrative General Partner

By: \_\_\_\_\_  
Name: Kipling Sheppard  
Title: Manager

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

**City of Oceanside  
300 North Coast Highway  
Oceanside, California 92054  
Attention: City Clerk**

(Space above this line for Recorder's use)

City Document No.:

*This Instrument is recorded at  
the request and for the benefit of  
the City of Oceanside and is  
exempt from recording fee  
pursuant to Government Code §  
27383*

**DEED OF TRUST WITH ASSIGNMENT OF RENTS**

This Deed of Trust is made this \_\_\_\_ day of \_\_\_\_\_, 2008, by SHADOW WAY APARTMENTS, LP, a California limited partnership, and its successors and assigns (“**Borrower**”), to \_\_\_\_\_ (“**Trustee**”), in favor of the CITY OF OCEANSIDE, a California municipal corporation, and the OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION, a California public entity (herein collectively referred to as “**Agency**”).

1. BORROWER HEREBY IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee in trust, with power of sale and right of entry and possession, all of Borrower’s rights, title and interest now held or hereafter acquired in and to the following: (a) all of that certain real property located in the City of Oceanside, County of San Diego, State of California, described in Attachment A, which is hereby incorporated by reference; and (b) all buildings and improvements now or hereafter erected thereon, and all appurtenances, easements, and articles of property now or hereafter affixed to, placed upon or used in connection with the property and owned by Borrower or in which Borrower has an interest, together with all additions to, substitutions for, changes in or replacements of the whole or any part of said articles of property. All of such real and personal property are sometimes referred to as the “**Property**” and are hereby pledged and assigned, transferred, and set over unto Trustee, and for purposes of this Deed of Trust declared to be part of the realty.

2. BORROWER HEREBY ABSOLUTELY, UNCONDITIONALLY AND IRREVOCABLY ASSIGNS to the Agency all rents, royalties, issues, accounts and profits of or relating to the Property and all of Borrower’s interest under all leases, subleases, rental agreements and other contracts and occupancy agreements relating to the use and possession of

the Property, for the purposes and upon the terms and conditions hereinafter set forth. This assignment is absolute, primary and direct and is not intended to be a separate or secondary pledge, or other form of additional security, and no further act or step is or shall be required of Agency to perfect this assignment. Notwithstanding the foregoing, the Agency confers upon the Borrower a license to collect and retain the rents, issues and profits of the Property as they become due and payable unless an event of default occurs, upon the occurrence of which said license shall be automatically revoked. This assignment shall not impose upon Agency any duty to cause the Property to produce rents nor shall the Agency be deemed to be a mortgagee in possession by reason thereof for any purpose.

3. THE ABOVE GRANT, TRANSFER, AND ASSIGNMENT IS FOR THE PURPOSE OF SECURING:

(a) Payment of Borrower's indebtedness evidenced by a promissory note ("**Note**") of even date herewith in the principal amount of up to \$5,600,000.00 ("**Loan**"), together with interest on such indebtedness according to the terms of such Note, and any and all amendments, modifications, extensions or renewals of the Note and the indebtedness and all other sums becoming due and payable to the Agency, or Trustee, pursuant to the terms of this Deed of Trust;

(b) Payment of such additional indebtedness, when evidenced by a promissory note or notes reciting the same to be secured by this Deed of Trust, together with interest, as the Agency may advance to Borrower, or its successor in interest, from time to time and payment or performance of such other obligations as the then record owner of the Property may agree to pay or perform when evidenced by a promissory note or other instrument or agreement reciting that it is secured hereby; and

(c) Performance and observance of all of the terms, covenants and conditions to be performed or observed by Borrower under the Regulatory Agreement, the Loan Agreement, the Promissory Note, the Deed of Trust, the Security Agreement, the Financing Statement, and other instruments required and/or referenced by those agreements (collectively referred to as the "**Loan Documents**"), which are incorporated herein and made part of this Deed of Trust.

4. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, BORROWER AGREES:

4.1 Maintenance of the Property. (a) To keep the Property in a decent, safe, sanitary, and tenantable condition and repair and permit no waste thereof; (b) not to commit or suffer to be done or exist on or about the Property any condition causing the Property to become less valuable; and (c) to comply with all applicable laws or governmental regulations affecting the Property or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such laws, ordinances or governmental regulations, nor of any covenant, condition or restriction affecting the Property.

4.2 Insurance. Borrower shall comply with the insurance requirements set forth in the Regulatory Agreement, which is incorporated herein by reference.

4.3 Payment of Taxes and Utility Charges. Borrower shall pay, at least five (5) days prior to delinquency, all taxes and assessments, both general and special, fines, penalties, levies and charges of every type or nature levied upon or assessed against any part of the Property or upon Trustee's or the Agency's interest in the Property, subject to rights to challenge such charges in good faith.

4.4 Payment and Discharge of Liens. Borrower will pay, when due, all claims of every kind and nature which might or could become a lien on the Property or any part thereof of any kind or nature other than this Deed of Trust except for the following: (a) liens for taxes and assessments which are not delinquent although by law are given the status of a lien and (b) such of the above claims as are, and only during the time they are, being contested by Borrower in good faith and by appropriate legal proceedings.

4.5 Rights of Agency to Remedy Defaults. If Borrower defaults in payment of any tax, assessment, lien, claim, insurance premium, or any other proper charge in whole or in part, or defaults in the performance of any of the Loan Documents, Agency at any time, with or without notice or demand upon Borrower, may make such payments or perform any such acts required of Borrower, to such extent and in any form or manner deemed expedient by Agency and pay any other sums, expenses and charges, including attorneys' fees, necessary to protect the Property and the lien of this Deed of Trust, without incurring any obligation to do so or releasing Borrower from any obligations and without waiving or curing any default. Agency, at its option, shall be subrogated to any tax, assessment, lien, premium, claim or charge which it has paid under these provisions and any such subrogation rights shall be additional and cumulative security to those set forth in the Loan Documents.

4.6 Repayment to Agency. Upon Agency's payment of any tax, assessment, lien, claim, insurance premium or other charge which Borrower fails to pay or upon Agency's performance of any obligation which Borrower fails to perform, all as set forth in paragraph 4.5 above, the amount so paid or the cost of performing any such obligation, together with other sums paid or incurred by Agency, including charges, expenses and attorneys' fees thereon from date of payment at the rate of eight percent (8%) per annum, shall be paid by Borrower to Agency upon written demand. The aggregate of all such amounts, including interest, shall be secured by the lien of this Deed of Trust.

4.7 Defense of Actions. Borrower will appear in and defend all actions and proceedings purporting to affect the Property or any right or power of Agency or Trustee hereunder, provided that Agency and Trustee, or either of them, may appear in and defend any such action or proceeding, however, Agency is not authorized to pay, purchase or compromise on behalf of Borrower any lien or claim. Borrower shall give Agency prompt written notice in writing of (a) the assertion of any claim, (b) the filing of an action or proceeding, (c) the occurrence of any damage to any of the Property, or (d) any condemnation.

5. IT IS MUTUALLY AGREED THAT:

5.1 Awards and Damages. All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (b) any other injury or damage to all or any part of the Property, are hereby assigned to, and, at the request of the Agency, but subject to the prior rights any senior loan, shall be paid to Agency. Agency is authorized and empowered (but not required) to collect and receive any such sums and to apply them in whole or in part upon any indebtedness or obligation secured hereby, and entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by Agency may be released to Borrower upon such conditions as Agency may impose for its disposition.

5.2 Sale or Forbearance. No sale of the Property, forbearance on the part of Agency or extension of the time for payment of the indebtedness hereby secured shall operate to release, discharge, waive, modify, change or affect the liability of Borrower either in whole or in part.

5.3 Late Payment. Agency's acceptance of late payment of any sum shall not constitute a waiver of its rights to require prompt payment when due of all other indebtedness, or to declare a default for any failure so to pay, or to proceed with foreclosure or sale for any other default then existing. Agency's acceptance of partial payment of any sum after default shall not cure such default or affect any notice of default unless such notice of default is expressly revoked in writing by Agency.

5.4 Agency's Right to Release. Without affecting the liability of any person for payment of any indebtedness hereby secured (other than any person released pursuant hereto), including without limitation, any one or more endorsers or guarantors, and without affecting the lien hereof upon any of the Property not released pursuant hereto, at any time and from time to time without notice:

(a) Agency may, at its sole discretion, (i) release any person now or hereafter liable for payment of any or all such indebtedness, (ii) extend the time for or agree to alter the terms of payment of any or all of such indebtedness, and (iii) release or accept additional security for such indebtedness, or subordinate the lien or charge hereof; and

(b) Trustee, acting pursuant to the written request of Agency, may reconvey all or any part of the Property, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any such agreement of extension or subordination.

5.5 Reconveyance. Upon written request of Agency stating that all sums and obligations secured hereby have been discharged, or otherwise as requested in writing by Agency, and upon surrender of this Deed of Trust and the Note and any additional loan notes to Trustee for cancellation, and upon payment to Trustee of its fees and expense, Trustee shall reconvey, without warranty, the Property or that part thereof then held hereunder. The recitals in any reconveyance shall be conclusive proof of their truthfulness and the grantee in any such

reconveyance may be described “as the person or persons legally entitled thereto.” When the Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all of the rents, royalties, issues, accounts and profits of the Property to the person or persons legally entitled thereto unless such reconveyance expressly provides to the contrary.

## 5.6 Events of Default.

(a) Event Defined. After the giving of the written notice specified by Section 5.6(b) and the expiration of the applicable cure periods therein set forth, any one or more of the following events shall constitute a default (each an “Event of Default”) under this Deed of Trust: (1) failure of the Borrower to pay the indebtedness secured hereby or any installment thereof, whether principal or interest, payable, whether at maturity or by acceleration or otherwise; or (2) failure of Borrower to observe or to perform any covenant and/or condition to be observed or performed by Borrower pursuant to the Loan Documents.

(b) Notice of Default. In the event of any material breach of this Agreement, Agency shall give written notice to Borrower or Borrower’s Agent of breach by specifying: (a) the nature of the event or deficiency giving rise to the breach; (b) the action required to cure the deficiency, if an action to cure is possible; (c) a date, which shall not be less than ninety (90) calendar days from the mailing of the notice, by which such action to cure must be accomplished (or if such breach is not reasonably susceptible to cure within such a ninety (90) day period, then within such additional time as is reasonably necessary to cure such failure, provided that Borrower has commenced cure within the initial ninety (90) day period and diligently pursues cure to completion).

(c) Remedies. After the expiration of all applicable notice and cure periods, the Agency may, without further notice, declare in writing a default effective on the date of such declaration of default. Agency’s obligation to disburse Loan proceeds to Borrower shall terminate. Upon any such declaration of default, the Agency may apply to any court, state or federal, for specific performance, for the appointment of a receiver to take over and operate the Project in accordance with the terms of the Loan Documents, or for such other relief as may be appropriate, it being agreed by the Borrower that the injury to the Agency arising from a default under any of the terms of the Loan Documents would be irreparable and that it would be extremely difficult to ascertain the amount of compensation of the Agency which afford adequate relief in light of the purposes and policies of the Project.

## 5.7 Acceleration and Sale.

(a) Acceleration. In the event of any default as set forth in paragraph 5.6, Agency, without demand on Borrower, may declare all sums hereby secured immediately due and payable by notice thereof to the Borrower or by executing and recording or by causing the Trustee to execute and record a notice of default and election to cause the Property to be sold to satisfy the obligations secured hereby, or by the commencement of an appropriate action to foreclose this Deed of Trust or by any other appropriate manner.

(b) Foreclosure Procedure. Whenever a notice of default and intent to sell is issued pursuant to Civil Code Section 2924, the Agency will follow the notice and hearing procedures established in 25 C.C.R. § 7938 in addition to other applicable provisions of law. Agency agrees to comply with the provisions in Section 42 (h) (6) (E) (ii) of the Internal Revenue Code of 1989.

5.8 Entry, Possession and Receivership. In the event of any default hereunder and irrespective of whether Agency accelerates the maturity of all indebtedness secured hereby or files a notice of default hereunder, Agency at any time, without notice of demand or regard to the adequacy of any security for the indebtedness and obligations hereby secured, in person, or by any agent or employee, or by receiver appointed by court, may enter upon and take the possession of the Property or any part thereof and including the right to rent, lease, operate and maintain any part or all of the Property, and may sue for or otherwise collect and receive all rents, royalties, issues, accounts and profits thereof, including these past due as well as those accruing thereafter. Borrower hereby presently assigns to Agency, absolutely and regardless of possession of the Property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use of occupation of all or any part of the Property, now existing or hereafter made, reserving to Borrower such rents as they become due, but not otherwise. Borrower shall on demand execute such further assignments to Agency of any or all such leases, agreements, rents or monies as the Agency may require, and deliver to Agency a fully executed original of any or all such leases or agreements. Agency by any agent, employee or receiver, may also take possession of, and for these purposes use, any and all of Borrower's personal property contained in or on the Property and used by Borrower in the operation, rental or leasing thereof or any part thereof. The expense (including, but not limited to, receivers' fees, attorneys' fees and agents' compensation) incurred by Agency pursuant to the power herein contained shall be secured hereby. Agency may bring or defend any legal action in connection with the Property, as it may deem proper, and may, from time to time, make all necessary or proper repairs, replacements and alterations to the Property, as it may seem judicious, and may insure and reinsure the same, and may lease the property or any part or parts thereof in such parcels and for such periods and on such terms as it may seem fit, including leases for terms and for terms expiring after the maturity of the indebtedness hereby secured, and may terminate any lease for any case which would entitle Borrower to terminate it. After deducting the expenses of managing and operating the same and all maintenance, repairs, replacements and alterations and all payments which may be made for taxes, assessments, liens, claims, insurance premiums, or other proper charges of the Property or any part and for agents employed by Agency to manage and operate the Property, Agency may apply any and all remaining funds to the payments of the indebtedness hereby secured in such order and proportion as Agency may determine.

Neither application of said amounts to such indebtedness nor any other action taken by Agency under this paragraph shall cure or waive any default hereunder or nullify the effect of any such notice of default or invalidate any act done pursuant to such notice or any cause of action to foreclose this Deed of Trust. The right to enter and take possession of the Property, to manage and operate the same, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be in addition to any other right to remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Agency shall be

liable to account only for such rents, royalties, issues, accounts and profits actually received by it.

5.9 Attorneys' Fees. If Trustee or Agency shall be made parties to or shall intervene in any action or proceeding affecting the Property or the title thereto or the interest of Trustee or Agency under this Deed of Trust, or if Agency employs an attorney (including the Attorney General of the State of California) to collect any or all of the indebtedness hereby secured or to foreclose this Deed of Trust, or authorizes Trustee to act on its behalf, Agency shall be reimbursed by Borrower, immediately and without demand, for all reasonable costs, charges and attorneys' fees incurred by them or either of them in any such case whether or not a suit be commenced, and the same, together with interest thereon from the date of payment at the rate of eight percent (8%) per annum, shall be secured hereby as provided in paragraph 4.7.

5.10 Exercise of Remedies; Delay. No exercise of any right or remedy herein contained or provided by law, and no delay by Agency or Trustee in exercising any such right or remedy hereunder shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

5.11 Trustee Substitution. The irrevocable power to appoint a substitute trustee or trustees hereunder is hereby expressly granted to Agency to be exercised at any time hereafter, without specifying any reason therefore by filing for record in the office where this Deed of Trust is recorded a deed of appointment, and said power of appointment of successor trustee or trustees may be exercised as often as and whenever Agency deems advisable. The exercise of said power of appointment, no matter how often, shall not be deemed an exhaustion thereof, and upon recording of such deed or deeds of appointment, the trustee or trustees so appointed shall thereupon, without further act or deed of conveyance, succeed to and become fully vested with identically the same title and estate in and to the Property hereby conveyed and with all the rights, powers, trusts and duties of the predecessor in the trust hereunder, with the like effect as if originally named as trustee or as one of the trustees.

5.12 Remedies Cumulative. No remedy herein contained or conferred upon Agency or Trustee is intended to be exclusive of any other remedy or remedies afforded by law or by the terms hereof to the Agency or Trustee but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

5.12 Successors, Assigns, Gender, Number. The covenants and agreements herein contained shall bind, and the benefit and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

5.14 Headings. The headings are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Deed of Trust, or of any particular provision thereof, or the proper construction thereof.

5.15 Actions on Behalf of Agency. Except as is otherwise specifically provided herein, whenever any approval, notice, direction, consent, request or other action by Agency is required or permitted under this Deed of Trust, such action shall be in writing.

5.16 Obligations of Borrower. If more than one person has executed this Deed of Trust as Borrower, the obligations of all such persons hereunder shall be joint and several.

5.17 Miscellaneous Provisions.

(a) Beneficiary Statement. Agency may require reimbursement for actual costs incurred in preparing and furnishing any statement required by California Civil Code Section 2943.

(b) Severability. If any provision of this Deed of Trust shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

(c) Indemnification. Borrower will indemnify and hold the Agency harmless against any and all losses, claims, demands, penalties and liabilities which Agency may sustain or suffer by reason of anything done or omitted in good faith pursuant to or in connection with this Deed or Trust and not assert any claim against Agency by reason of any action so taken or omitted. Borrower shall, at Borrower's expense, defend, indemnify, save and hold expenses, damages (general, punitive or otherwise), causes of action (whether legal or equitable in nature) asserted by any person, firm, corporation or other entity arising out of this Deed of Trust and Borrower shall pay Agency upon demand all claims, judgments, damages, losses or expenses (including reasonable legal expense) incurred by Agency as a result of any legal action arising out of this Deed of Trust. Borrower shall indemnify and hold harmless Agency as set forth herein regardless of the existence or degree of fault or negligence, whether active or passive, primary or secondary, on the part of the Agency or the Borrower or their respective agents, officers, employees, contractors or subcontractors provided, however, that Borrower's duty to indemnify and hold harmless hereunder shall not extend to liability arising from sole negligence or willful misconduct of the Agency.

(d) Offset. Borrower shall not under any circumstances fail or delay to perform (or resist the enforcement of) any of its obligations to Agency in connection with this Deed of Trust or any other contract, note or instrument executed by Borrower in favor of Agency because of any indebtedness or obligation of Agency which has not been confirmed in a final judgment of a court of competent jurisdiction (sustained on appeal, if any) against Agency, and Borrower hereby waives any such rights of set-off (or offset) which it might otherwise have with respect to any such claims or causes of action against Agency or any such obligations or indebtedness of Agency, unless and until such right of set-off (or offset) is confirmed and liquidated by such final judgment. Borrower further waives any right which it might otherwise have (if any) to require a marshaling of any security of the Agency or to direct the order in which Agency pursues its rights or remedies with respect to any of its security.

(e) Tax Credits. If low-income housing tax credits under the provisions of Sections 17058 and 23610.5 of the Revenue and Taxation Code of the State of California and under Section 42 of the Internal Revenue Code of 1986, as amended (“Code”), are allocated to the Property, then the Property will be subject to certain requirements of Section 42 of the Code. Agency acknowledges the provisions of Section 42 of the Code and agrees to comply with the Code as required.

(f) 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 commercial courier service, charges prepaid. Notices so sent shall be deemed given when actually received at the addresses set forth below. For purposes of notice, the addresses of the parties shall be:

Borrower:  
Shadow Way Apartments, LP  
% Shadow Way Holdings, LLC  
26522 La Alameda, Suite 260,  
Mission Viejo, California 92691  
Attention: Kipling Sheppard

Agency:  
Community Development Commission of the City of Oceanside  
300 North Coast Highway  
Oceanside, California 92054  
Attention: Margery M. Pierce, Director of Neighborhood Services

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Borrower and Agency have executed this Deed of Trust on the day and year set forth above.

**BORROWER:**

Shadow Way Apartments, LP,  
a California limited partnership

By: Western Community Housing, Inc., a California  
nonprofit public benefit corporation  
Managing General Partner

By: \_\_\_\_\_  
Name: Graham Espley-Jones  
Title: President

By: Shadow Way Holdings, LLC,  
a Utah limited liability company  
Administrative General Partner

By:  \_\_\_\_\_  
Name: Kipling Sheppard  
Title: Manager

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On 09/02/2008 before me, L. Martin, Notary Public  
(Here insert name and title of the officer)

personally appeared Kipling Sheppard,

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

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



WITNESS my hand and official seal.

[Signature]  
 Signature of Notary Public  
L. Martin, Notary Public

(Notary Seal)

my comm. expires: 11/16/2008

## ADDITIONAL OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

*Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

**DESCRIPTION OF THE ATTACHED DOCUMENT**

Deed of Trust  
(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

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

\_\_\_\_\_  
(Additional information)

**CAPACITY CLAIMED BY THE SIGNER**

Individual (s)

Corporate Officer

\_\_\_\_\_  
(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other \_\_\_\_\_

IN WITNESS WHEREOF, Borrower and Agency have executed this Deed of Trust  
on the day and year set forth above.

**BORROWER:**

Shadow Way Apartments, LP,  
a California limited partnership

By: Western Community Housing, Inc., a California  
nonprofit public benefit corporation  
Managing General Partner

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

Name: ~~Graham Espley-Jones~~  
Title: ~~President~~

By: Shadow Way Holdings, LLC,  
a Utah limited liability company  
Administrative General Partner

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

Name: Kipling Sheppard  
Title: Manager

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Orange }

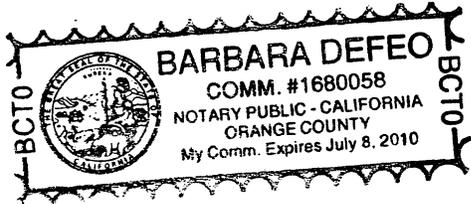
On Sept 21, 2008 before me, Barbara Defeo, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Graham Espley-Jones  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Place Notary Seal Above

Signature [Handwritten Signature]  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: Shadow Way - Deed of Trust

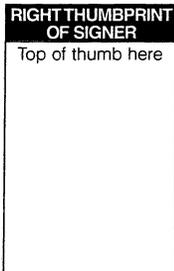
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

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

**Capacity(ies) Claimed by Signer(s)**

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

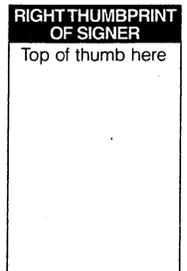
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



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

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

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



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

## **ATTACHMENT A**

### **LEGAL DESCRIPTION**

Lots 1 and 2 of Murray Mission Unit No. 10 in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 11270, filed in the Office of the County Recorder of San Diego County on June 28, 1985.

APN: 157-080-47

REQUEST FOR RECONVEYANCE

To be used only when note has been paid

TO: \_\_\_\_\_, Trustee:

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. When all sums secured by said Deed of Trust have been fully paid and satisfied, you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

By: \_\_\_\_\_, DIRECTOR

Mail Reconveyance to:

City of Oceanside/Oceanside Community Development Commission

300 North Coast Highway

Oceanside, CA. 92054

Attention: City Manager/Executive Director

Date: \_\_\_\_\_

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2008, by SHADOW WAY APARTMENTS, LP, a California limited partnership, and its successors and assigns, ("**Borrower**"), to the CITY OF OCEANSIDE, a California municipal corporation, and the OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION (hereinafter collectively referred to as "**Agency**").

Borrower hereby transfers and conveys to Agency a security interest in the following described property, hereinafter collectively referred to as the "Property":

All building materials and inventory, now or hereafter located or placed in, upon or adjacent to the premises in the City of Oceanside, County of San Diego, State of California, described as follows:

See Attachment A

together with all other personal property of every kind and description which may be annexed to, incorporated or used in connection with aforesaid premises, and together with all after-acquired property of the same general class and description, all products and proceeds of the aforesaid property as well as the proceeds of insurance thereof, all of which shall be included under the terms of this Agreement, for the purpose of securing:

- (a) Payment of the indebtedness evidenced by a Promissory Note or Notes, as of the date hereof, in the aggregate principal sum of up to \$5,600,000.00 made by Borrower, payable to Agency, and all extensions, modifications and renewals thereof;
- (b) Payment of all sums that may be advanced and expenditures that may be made by the Agency to or on behalf of Borrower and all indebtedness and obligations that may be incurred by Borrower to Agency subsequent to execution of this Agreement that specifically references this Agreement;
- (c) Performance and discharge of every obligation and agreement of Borrower owed to Agency contained in any instrument now or hereafter executed by Borrower.

All advances hereunder and all costs of litigation, collection (including reasonable attorneys' fees or other costs expended or incurred in connection with the discovering, location or taking possession of the Property) and any and all costs of returning the Property to the location above referred to (including costs of repairing, rehabilitating or the Property), together with any interest agreed to be paid thereof, are all likewise secured hereby.

The terms and conditions of this Agreement are as follows:

1. Borrower hereby warrants and represents that Borrower is the sole owner of the property described herein, and that the Property is free and clear of all liens, encumbrances, security interests or adverse claims of any kind whatsoever excepting those agreed to in writing by the Agency.

2. Borrower agrees that it will neither use, nor permit the use of, the Property for any unlawful purpose and that it will register, use, operate and control the same in accordance with all applicable statutes, laws, ordinances and regulations.

3. Borrower will not assign, pledge, mortgage, hypothecate or otherwise dispose of the Property, or any part thereof, during the terms of the Promissory Note ("Note") and this Agreement.

4. Borrower agrees to exhibit Property to Agency upon demand, to keep Property in as good condition and repair as it now is, ordinary wear and tear excepted, and to pay promptly all taxes levied or assessed thereon and all liens which may attach thereto. Service of any notice upon Borrower may be made by deposit in the United States mail, postage prepaid, directed to Borrower at his address set forth herein.

5. Borrower shall comply with the insurance requirements set forth in the Regulatory Agreement, which is hereby incorporated by reference.

6. Should Agency make any advance or advances or spend any money for the protection or preservation of its security, or should there accrue or be due any collection costs or other obligations arising under this Agreement, such advance or advances, together with such collection costs or other obligations arising under this Agreement and unpaid, shall be added to the unpaid balance of said Note and shall be secured hereby, and shall all become immediately due and payable with interest at the same rate per annum as in the Note hereinabove mentioned. Agency shall have the right upon receipt of any installment or payments due under the terms of said Note and this Agreement to apply the same, first, in satisfaction of any collection costs or other monies advanced by the Agency hereunder; second, to the satisfaction of any unpaid interest, and third, to payment of principal. Should there be a deficiency in the amount of any installment or payment after the payment of such costs, such deficiency shall be payable forthwith, and the failure on the part of the Borrower to pay or satisfy same shall accelerate for immediate payment the entire unpaid balance of said obligation, at the option of Agency, including all advances made and collection costs and interest accrued, and Agency may exercise such right or rights as are reserved to Agency under the terms of this Agreement or by law.

7. Should Borrower fail to make payment of any part of the principal or interest secured hereby when due, or should any breach be made of any obligation or promise of Borrower under any agreement between the parties, or should Borrower abandon the Property, or, regardless of any other default, should property be attached or should bankruptcy proceedings be instituted by or against Borrower, then the whole principal sum unpaid upon said Note, with interest accrued thereon, and all other sums of

money secured hereby at the time of said default, and interest thereon, shall immediately become due and payable at the option of the Agency and without notice to Borrower. Under any of the above conditions, Agency may at once proceed to foreclose under this Agreement according to law or it may, at its option, enter upon the premises where the property may be and take possession thereof. Agency may remove and sell and/or dispose of the Property at a public or private sale without any previous demand of performance or notice to Borrower of any such sale. Notice of sale and demand of performance and/or every other notice or demand whatsoever are herein and hereby expressly waived by Borrower. Borrower hereby and herein authorizes Agency to retain from the proceeds of any sale all costs and charges incurred by Agency in said Note under any provisions of this Agreement and/or secured hereby with interest thereon. Any surplus after all Agency's expenses and lawfully retained proceeds shall be paid to Borrower, or whoever may be lawfully entitled to receive same. If there is a deficit, the amount thereof shall be immediately due from Borrower to Agency. Agency, or its agent, may bid upon and/or purchase any of the Property at any sale made under this Agreement.

8. Borrower further agrees that if from neglect or malfeasance a substantial decrease in the value of said property occurs, Agency shall have the option of demanding that Borrower immediately produce further security in order to offset the decrease in value, and the failure of Borrower to give additional security shall constitute default under this Agreement and Agency may proceed in the same manner provided as Agency's remedy in case of any other default.

9. This Agreement shall bind and inure to the benefit of the parties hereto and their executors, administrators, heirs, successors and assigns, and the word "borrower" as used herein includes the masculine, feminine and neuter, singular and plural.

10. All the rights, privileges, options and remedies granted to Agency hereunder shall be deemed cumulative, and not alternative.

11. Time is declared to be of the essence hereof with respect to the performance of the covenants and obligations set forth herein, and no waiver by Agency or any breach or default of or by the Borrower, whether under the terms of the Note or any other agreement, shall be deemed a waiver of any breach or default thereafter occurring.

[SIGNATURE ON NEXT PAGE]

BORROWER DECLARES THAT HE HAS READ THIS SECURITY AGREEMENT AND UNDERSTANDS THE EFFECT AND PURPORT THEREOF.

**BORROWER:**

Shadow Way Apartments, LP,  
a California limited partnership

By: Western Community Housing, Inc., a  
California nonprofit public benefit  
corporation  
Managing General Partner

By: \_\_\_\_\_  
Name: Graham Espley-Jones  
Title: President

By: Shadow Way Holdings, LLC, a Utah  
limited liability company  
Administrative General Partner

By:   
Name: Kipling Sheppard  
Title: Manager

**AGENCY:**

City of Oceanside

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager

Oceanside Community Development  
Commission

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Director

**APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE**

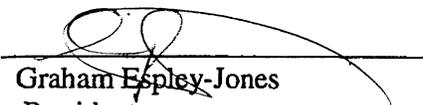
By:   
Name: BARBARA L. HAMILTON  
Title: ASSISTANT CITY ATTORNEY

BORROWER DECLARES THAT HE HAS READ THIS SECURITY AGREEMENT AND UNDERSTANDS THE EFFECT AND PURPORT THEREOF.

**BORROWER:**

Shadow Way Apartments, LP,  
a California limited partnership

By: Western Community Housing, Inc., a  
California nonprofit public benefit  
corporation  
Managing General Partner

By:   
Name: Graham Espley-Jones  
Title: President

By: Shadow Way Holdings, LLC, a Utah  
limited liability company  
Administrative General Partner

By: \_\_\_\_\_  
Name: Kipling Sheppard  
Title: Manager

**AGENCY:**

City of Oceanside

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager

Oceanside Community Development  
Commission

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Director

**APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Attachment A**  
Property Description

Lots 1 and 2 of Murray Mission Unit No. 10 in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 11270, filed in the Office of the County Recorder of San Diego County on June 28, 1985.

APN: 157-080-47

1 RESOLUTION NO.

2  
3 A RESOLUTION OF THE COMMUNITY DEVELOPMENT  
4 COMMISSION OF THE CITY OF OCEANSIDE FINDING THAT  
5 THE USE OF LOW- AND MODERATE- INCOME HOUSING  
6 FUNDS OUTSIDE THE REDEVELOPMENT AREA FOR THE  
7 PRODUCTION, IMPROVEMENT, OR PRESERVATION OF  
8 LOW- TO MODERATE-INCOME HOUSING WILL BE OF  
9 BENEFIT TO THE OCEANSIDE REDEVELOPMENT PROJECT  
10 AREA

11 WHEREAS, Section 33334.2 of the Community Development Law (commencing with  
12 Section 33000 of the California Health and Safety Code) provides that Low- and Moderate-  
13 Income Housing (Set-aside) Funds shall be used to increase, improve, and preserve the  
14 community's supply of low and moderate-income housing available; and,

15 WHEREAS, Section 33334.2(g)(1) provides that Housing Funds may be expended  
16 outside of a Project Area if a resolution is adopted by the legislative body of the city finding  
17 that the expenditure will benefit the Project Area; and,

18 WHEREAS, the development of low- and moderate-income housing in the Project Area  
19 is cost prohibitive; and,

20 WHEREAS, the Community Development Commission (CDC) is prepared to spend  
21 Housing Funds outside the Project Area in furtherance of the City's Comprehensive Affordable  
22 Housing Strategy; and,

23 WHEREAS, these expenditures will benefit the Project Area by improving the supply of  
24 affordable housing near the Project Area.

25 NOW, THEREFORE, the Community Development Commission of the City of  
26 Oceanside does resolve as follows:

- 27 1. The above recitals are true, correct, and hereby adopted.

28 /////

/////

/////



TO: OCEANSIDE CITY COUNCIL  
FROM: HOUSING COMMISSION  
RE: SHADOW WAY APARTMENTS  
DATE: JULY 3, 2008

THE HOUSING COMMISSION RECOMMENDS THAT THE CITY COUNCIL RETAIN A PROFESSIONAL TO ANALYZE THE PROPOSED FINANCIAL STRUCTURE FOR THE REQUEST OF A 5.6 MILLION DOLLAR LOAN OF HOUSING FUNDS FOR THE PURPOSE OF REHAB OF 144 UNITS. THE COMMISSION FURTHER RECOMMENDS THAT THE CITY ATTORNEY'S STAFF REVIEW THE LEGAL DOCUMENTS AND RETURN THIS ITEM TO US AT A LATER DATE. MOTION BY CAMP, SECONDED BY PARKER

CAMP	YES
CHRISTY	NO
COOPER	YES
DAVIS	ABSENT
FARMER	YES
HUSKEY	ABSENT
PARKER	YES
SORENSEN	NO
SAIZ (ALTERNATE)	ABSENT

#### Comments

My reason to motion for the necessity of the need for a Professional Hsg. Consultant as Kaiser Marston was because there were too many problems with the Shadow Way proposal. There were too many needed changes to be made and various company names that didn't make sense. Also the amount of the request was so high that staff admitted it would deplete our funds. There was no approval by the City Attorney . Staff stated that Redevelopment gave the OK on this project. The Developer Fees are way out of range. We as commissioners need a Professional Hsg Consultant to review this miss mash proposal. The developer was not certain of tax credits and stated if they weren't approved the deal would close. It was presented as sort of you either approve it or else we would lose our chances. When they were so set against Kaiser Marston reviewing this before we approved it, put up a red flag to me.

Submitted by Jackie Camp

July, 3, 2008

Subject: Wasatch Advantage Group

I Commissioner Geri Cooper of the Housing Commission explain the reason why I voted the way I did. Red flags started going up when we were informed that...

1. The city attorney had not yet approved the project.
2. I felt a squeeze when we were told that the owner had already purchase another property and needed the monies from this purchase to complete the deal.
3. We are a commission looking out for the city of Oceanside and are volunteers and are not legal professionals.

Submitted by Geri Cooper

Parker - My reasons for voting Yes = I have concerns about the financial structure and ownership issues. I also cannot support a 2.5 million dollar developer fee.

Farmer, expressed a desire to have the City Attorney review and questioned when it could be done.

To the Mayor and City Councilmembers:

The Housing Commission held a special meeting on Thursday, July 3, 2008 to discuss the acquisition and rehabilitation of Shadow Way Apartments by Wasatch Advantage Group, LLC. All 144 apartments would be made into affordable housing rental units. The Commission voted 4-2 to not recommend it. We were the two who voted "nay" for these reasons: We would like to have recommended that this project move forward on the condition that the city attorney and Kaiser Marston have favorable analyses. This is because time is of the essence. If deadlines are not met, this project will likely be sold for market rate rental housing rather than affordable. Providing affordable housing is our goal and being flexible with protocol may sometimes be necessary to make projects happen. The 144 units would assist the city in meeting its state-mandated Housing Element goals.

Respectfully submitted,  
Kathy Christy, Housing Commissioner  
"J.J" Joanne Sorensen

HOUSING COMMISSION REPORT

TO: CITY COUNCIL  
FROM: HOUSING COMMISSION  
RE: SHADOW WAY APARTMENTS  
DATE: AUGUST 26, 2008

THE HOUSING COMMISSION RECOMMENDS THAT THE CITY COUNCIL APPROVE STAFF'S RECOMMENDATION OF \$5,600,000 FOR REHAB OF 144 UNITS AT SHADOW WAY APARTMENTS FOR AFFORDABLE HOUSING.

CAMP	YES
COOPER	ABSENT
CHRISTY	YES
DAVIS	YES
FARMER	YES
HUSKEY	ABSENT
PARKER	NO
SORENSEN	YES

ALTERNATE SAIZ	ABSENT
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CAMP, OTHER THAN THE DEVELOPER FEE THAT IS TOO HIGH (2.5 MILLION), I FELT CONFIDENT WITH THE KM REPORT AND HAD QUESTIONS ANSWERED THAT WERE CLARIFIED FROM THE PREVIOUS PRESENTATION BY THE DEVELOPER.

PARKER, DIFFICULT BUT I VOTED "NO" BECAUSE I DO NOT THINK THE 2.5 MILLION DEVELOPER FEE WAS JUSTIFIED. THE 2.5 MILLION IS ALLOWABLE BUT THE FEE SHOULD BE DETERMINED BY A DIFFICULTY FACTOR, NOT JUST BECAUSE IT IS ALLOWED. I CONSIDER THIS PROJECT VERY EASY BECAUSE IT IS ALREADY THERE AND THE REHAB IS MORE DEFERRED MAINTENANCE THAN MAJOR REHAB. I HAVE EXPRESSED CONCERNS ABOUT THE PRINCIPAL BEING ON BOTH SIDES OF THIS TRANSACTION AND THE ATTORNEY HAS ADDRESSED THAT ISSUE BUT IT IS STILL CONFUSING TO ME.

I HAVE CONCERNS ABOUT CONCENTRATION ISSUES, 144 UNITS; IT USED TO BE 40 AFFORDABLE. I COULD HAVE SUPPORTED MAINTAINING 40 UNITS AND GIVING MUCH LESS MONEY. THE HOUSING ELEMENT STATES THAT WE WILL AVOID CONCENTRATION OF AFFORDABLE HOUSING.  
SIGNED KAY PARKER

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## MEMORANDUM

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TO: Honorable Mayor and Councilmembers

THROUGH: Michelle Skaggs-Lawrence, Deputy City Manager 

FROM: Margery M. Pierce, Neighborhood Services Director 

DATE: September 9, 2008

SUBJECT: Shadow Way Apartments – Developer Fee Discussion

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The following information is provided in response to an inquiry by Councilmember Sanchez and others regarding the amount of the Developer Fee associated with the Shadow Way Apartments Project.

Developer Fee Guidelines:

For affordable housing projects, the California Tax Credit Allocation Committee (“CTCAC”) has established a legal and reasonable developer fee as an amount equal to 15% of acquisition basis and 15% of rehabilitation basis of a given project. For Shadow Way, this calculation equals to a \$3,681,948. However, CTCAC has imposed a maximum allowable fee of \$2,500,000 for any single affordable housing community, resulting in a reduction of the calculated fee by almost \$1,200,000. The amount of developer fee for a project directly correlates to the amount of equity produced by private-investment tax credits.

Background:

At the request of the Housing Commission, the City proceeded to contract with Keyser Marston and Associates (“KMA”), a third-party financial consultant specializing in the affordable housing industry to review the proposed project, specifically with regard to the developer fee, the property appraisal, and the amount of City subsidy requested. KMA completed a financial analysis for the project.

The KMA analysis supports the proposed developer fee of \$2,500,000, however recommended that the fee be structured to reflect the following:

- \$1,466,427 as the standard developer fee, and
- \$1,033,573 as a deferred fee, to be paid over a span of approximately 11 years.  
(Note: the Net Present Value (NPV) of this fee is: \$584,484)

KMA reviewed the appraisal for the project. The complex was appraised at \$20,000,000 which supports the developer's purchase price of \$19,290,000.

KMA evaluated the requested City housing fund subsidy of \$5,600,000. KMA determined that the project supported this amount based upon the proposed rent structure and other sources of funding available for the project which included KMA's recommendation to defer a portion of the developer fee. Without the fee deferral, the City/Public subsidy would increase by approximately \$300,000 due to a correlating decrease in available private-investment tax credits.

Project/Fee Comparisons:

Over the past 10 years, the City has participated as a lender for two other acquisition/rehabilitation projects: Cape Cod Villas and Country Club Apartments. For purpose of comparison, Country Club Apartments is the most similar project with respect to size and scope versus Cape Cod Villas which is an age-restricted complex consisting of all 1-bedroom units.

It is necessary to look at all of fees associated with an affordable housing project to accurately compare value for the services provided. The attached matrix provides a fee comparison summary for the Country Club and Shadow Way projects. A main difference to note between the two projects is the fact that the fees associated with the development of Country Club are divided between the developer and general contractor. For the Shadow Way project, the developer owns its own construction company which will manage the rehabilitation process and also owns cabinet and carpet companies which results in greater economic efficiencies for the overall construction budget as is also reflected in the Construction Contract portion of the attached matrix. The Shadow Way project also includes the construction of a new community room/leasing center building which will expand the resident services.

Additional Project Considerations:

The Shadow Way Project involves the rehabilitation of existing housing units and does not increase density for the area. The project meets a goal of not concentrating affordable housing in one sector of the City. Additionally, approximately 85% of the current residents at Shadow Way already qualify to reside at the property upon conversion to affordable housing which will result in minimal changes to the existing tenant profile. The project will also add 144-units to the City's affordable housing inventory and will assist in meeting the City's State-mandated housing goals.

- Attachments: 1. Affordable Housing Project Comparisons  
2. Keyser Marston and Associates Financial Analysis

Affordable Housing Project Comparisons

**Country Club Apartments**

	<u>Total</u>	<u>Per Unit</u>
# of Units	91	
Purchase Price / Unit	\$ 10,215,000	\$ 112,253
City Loan	\$ 10,163,098	\$ 111,682

**Shadow Way Apartments**

	<u>Total</u>	<u>Per Unit</u>
# of Units	144	
Purchase Price / Unit	\$ 19,290,000	\$ 133,958
City Loan	\$ 5,600,000	\$ 38,889

**FEE SUMMARY**

Contractor Overhead, Profit & General Conditions	\$ 1,442,634	\$ 15,853	\$ 544,320	\$ 3,780
Construction Management Fee	\$ 75,000	\$ 9,650	\$ -	\$ -
Developer Fees - Cash	\$ 1,200,000	\$ 13,187	\$ 1,466,427	\$ 10,184
Developer Fees - Deferred (\$1,033,573)	\$ -	\$ -	\$ 584,484	\$ 4,059 (NPV)
Projected Cash Flow Yrs 1-9	\$ 117,849			
<b>Total Fees</b>	<b>\$ 2,835,483</b>	<b>\$ 31,159</b>	<b>\$ 2,595,231</b>	<b>\$ 18,022</b>

**CONSTRUCTION CONTRACT**

Construction Hard Costs	\$ 4,411,726	\$ 48,481	\$ 3,888,000	\$ 27,000	100%
Contractor Overhead, Profit & General Conditions	\$ 1,442,634	\$ 15,853	\$ 544,320	\$ 3,780	14%
Construction Contingency	\$ 878,154	\$ 9,650	\$ 206,064	\$ 1,431	5%
<b>Total Construction Contract</b>	<b>\$ 6,732,514</b>	<b>\$ 73,984</b>	<b>\$ 4,638,384</b>	<b>\$ 32,211</b>	

**Pro Forma Analysis**  
**Shadow Way Apartments**  
**City of Oceanside**

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**Prepared by: Keyser Marston Associates, Inc.**

**August 20, 2008**

**TABLE 1****PROJECT DESCRIPTION  
SHADOW WAY APARTMENTS  
CITY OF OCEANSIDE**

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<b>I. Site Area (1)</b>	437,778 SF	
	10.05 Acres	
<b>II. Construction Type</b>	Type V	
<b>III. Gross Building Area</b>		
Residential Net Building Area	108,000 SF	97.7%
Recreational Area	<u>2,500</u> SF	<u>2.3%</u>
Total Gross Building Area (GBA)	110,500 SF	100.0%
<b>IV. Unit Mix</b>		
Total Number of Units (2)	144 Units	
Average Unit Size	750 SF	
<b>V. Affordability Mix</b>		
50% of AMI	15 Units	10.4%
60% of AMI	<u>129</u> Units	<u>89.6%</u>
Total Units	144 Units	100.0%
Average Affordability	59% AMI	
<b>VI. Parking (1)</b>		
Type	Surface, carports, and garages	
Total Parking Spaces	319 Spaces (3)	
Parking Ratio	2.2 Spaces/Unit	

(1) Per Novogradac & Company, LLP appraisal, dated March 18, 2008.

(2) All units are two bedrooms with one bath.

(3) Parking consists of 104 carports, 36 garages, and an unspecified number of surface parking spaces for a minimum of 319 parking spaces.

TABLE 2

**DEVELOPMENT COSTS  
SHADOW WAY APARTMENTS  
CITY OF OCEANSIDE**

	<u>Totals</u>	<u>Per Unit</u>	<u>Comments</u>
<b>I. Direct Costs</b>			
Off-Site Improvements	\$0	\$0	\$0 Per SF Site Area
On-Sites/Landscaping	\$409,146	\$2,841	\$1 Per SF Site Area
Parking	\$0	\$0	Included above
Rehabilitation Costs	\$4,023,174	\$27,939	\$36 Per SF GBA
FF&E/Amenities	\$0	\$0	Allowance
Contingency	<u>\$206,064</u>	<u>\$1,431</u>	4.6% of Directs - excl. FF&E
<b>Total Direct Costs</b>	<b>\$4,638,384</b>	<b>\$32,211</b>	<b>\$42 Per SF GBA</b>
<b>II. Indirect Costs</b>			
Architecture & Engineering	\$85,825	\$596	1.9% of Directs
Permits & Fees (1)	\$25,000	\$174	\$0.23 Per SF GBA
Legal & Accounting	\$100,000	\$694	2.2% of Directs
Taxes & Insurance	\$0	\$0	0.0% of Directs
Developer Fee - Cash	\$1,466,000	\$10,181	31.6% of Directs
Developer Fee- Deferred	\$1,034,000	\$7,181	22.3% of Directs
Marketing/Lease-Up	\$58,800	\$408	Allowance
Contingency	<u>\$35,656</u>	<u>\$248</u>	1.3% of Indirects
<b>Total Indirect Costs</b>	<b>\$2,805,281</b>	<b>\$19,481</b>	<b>60.5% of Directs</b>
<b>III. Financing Costs</b>			
Loan Fees (2)	\$513,864	\$3,569	11.1% of Directs
Interest During Construction	\$0	\$0	0.0% of Directs
Interest During Lease-Up	\$0	\$0	0.0% of Directs
TCAC Fees	\$105,975	\$736	2.3% of Directs
Operating Lease-Up/Reserves	<u>\$374,335</u>	<u>\$2,600</u>	8.1% of Directs
<b>Total Financing Costs</b>	<b>\$994,174</b>	<b>\$6,904</b>	<b>21.4% of Directs</b>
<b>IV. Total Development Costs - w/o Acquisition</b>	<b>\$8,437,839</b>	<b>\$58,596</b>	<b>\$76 Per SF GBA</b>
<b>V. Acquisition Costs</b>			
Purchase Price	\$19,290,000	\$133,958	
Closing and Title	\$30,000	\$208	
Relocation	<u>\$365,000</u>	<u>\$2,535</u>	
<b>Total Acquisition Costs</b>	<b>\$19,685,000</b>	<b>\$136,701</b>	<b>\$178 Per SF GBA</b>
<b>VI. Total Development Costs w/Acquisition</b>	<b>\$28,122,839</b>	<b>\$195,297</b>	<b>\$255 Per SF GBA</b>

(1) Per Developer; not verified by KMA or City.

(2) Reflects costs related to the issuance of bonds, loan origination/permanent loan origination fees, guaranty fees, origination fees, and cost of the appraisal.

TABLE 3

**NET OPERATING INCOME  
SHADOW WAY APARTMENTS  
CITY OF OCEANSIDE**

<b>I. Gross Scheduled Income</b>	<b>Average Unit Size</b>	<b># of Units</b>	<b>Income Mix</b>	<b>\$/Month</b>	<b>\$/SF</b>	<b>Total Annual</b>
<b>A. Residential Income</b>						
Two Bedroom @ 50% of AMI - LIHTC Rent	750 SF	0	0%	\$0	\$0.00	\$0
Two Bedroom @ 60% of AMI - LIHTC Rent	750 SF	65	45%	\$1,032	\$1.38	\$804,960
Two Bedroom @ 50% of AMI - CRL Rent	750 SF	15	10%	\$724	\$0.97	\$130,320
Two Bedroom @ 60% of AMI - CRL Rent	<u>750 SF</u>	<u>64</u>	<u>44%</u>	<u>\$954</u>	<u>\$1.27</u>	<u>\$732,672</u>
Total/Average	750 SF	144	100%	\$965	\$1.29	\$1,667,952
<b>B. Add: Other Income</b>				\$55 /Unit/Month		\$95,040
(Less) Vacancy @				5.3%		(\$88,139)
(Less) Other Losses @				2.1%		<u>(\$35,256)</u>
<b>C. Effective Gross Income (EGI)</b>						\$1,639,597
<b>II. Operating Expenses</b>						
(Less) Operating Expenses (1)				\$3,990 /Unit/Year		(\$574,585)
(Less) Property Taxes (2)				\$84 /Unit/Year		(\$12,124)
(Less) Replacement Reserves				<u>\$300 /Unit/Year</u>		<u>(\$43,200)</u>
Total Expenses				\$4,374 /Unit/Year		(\$629,909)
				38.4% of EGI		
<b>III. Net Operating Income - Residential Or Say (Rounded)</b>						<b>\$1,009,688 \$1,010,000</b>

(1) Per Developer, includes payroll, administrative, leasing/marketing, utilities, cleaning and decorating, repair and maintenance, insurance, management fees, and service expense.

(2) Developer entity assumed to have non-profit partner to qualify for tax-exempt status.

TABLE 4

**FINANCING SURPLUS/(DEFICIT)  
SHADOW WAY APARTMENTS  
CITY OF OCEANSIDE**

---

	<u>Total</u>	<u>Per Unit</u>
<b>I. Sources of Funds</b>		
Supportable Debt (1)	\$14,000,000	\$97,222
Market Value of Tax Credits (2)	\$7,489,000	\$52,007
Deferred Developer Fee (3)	\$1,034,000	\$7,181
Net Income During Construction/Lease-Up	<u>\$0</u>	<u>\$0</u>
Total Sources of Funds	\$22,523,000	\$156,410
<b>II. Total Warranted Investment</b>		
(Less) Development Costs	<u>(\$28,123,000)</u>	<u>(\$195,299)</u>
<b>III. Financing Surplus/(Deficit)</b>	<b>(\$5,600,000)</b>	<b>(\$38,889)</b>
Per Bedroom	<b>(\$19,400)</b>	

TABLE 4 (CONT'D.)

**FINANCING SURPLUS/(DEFICIT)  
SHADOW WAY APARTMENTS  
CITY OF OCEANSIDE**

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(1) Supportable Debt

NOI		\$1,010,000
Interest Rate		5.60%
Term (in years)		40
Debt Coverage Ratio		1.15
Annual Debt Service		\$877,954
Supportable Debt		\$14,000,000

(2) Low Income Housing Tax Credits (Federal)

Estimate of Eligible Basis:

Total Development Costs		\$28,122,839
(Less) Ineligible Costs		<u>(\$4,758,464)</u>
Eligible Basis		\$23,364,375

Acquisition Basis		\$16,841,581
Rehabilitation Basis		<u>\$6,522,794</u>
Total Eligible Basis		\$23,364,375

Maximum Eligible Basis		\$23,364,375
Tax Credit Qualified Units/Applicable Factor	100.0%	\$16,841,581
Impacted Bonus Factor (Rehabilitation Basis)	130.0%	\$8,479,632
Acquisition Basis and Rehabilitation Basis (incl. Bonus Factor)		\$25,321,213
Tax Credit Rate @	3.48%	\$881,178
Total Tax Credits @	10	\$8,811,782
Limited Partner Share	100.0%	\$8,810,901
Present Market Value @	85.0%	\$7,489,000

(3) Estimate of Deferred Developer Fee

Eligible Basis		\$23,364,375
(Less) Developer Fee		<u>(\$2,500,000)</u>
Unadjusted Eligible Basis		\$20,864,375
Total Developer Overhead Fee	12.0%	\$2,500,000
Developer Overhead Fee		\$2,500,000
Total Deferred Developer Overhead Fee	41.4%	\$1,034,000

TABLE 5

CASH FLOW PROJECTION  
SHADOW WAY APARTMENTS  
CITY OF OCEANSIDE

	0	1	2	3	4	5	6	7	8	9	10
I. Gross Scheduled Income (GSI)	\$1,762,992	\$1,807,067	\$1,852,243	\$1,898,550	\$1,946,013	\$1,994,864	\$2,044,530	\$2,095,643	\$2,148,035	\$2,201,735	\$2,256,779
(Less) Vacancy	(\$123,395)	(\$126,460)	(\$129,642)	(\$132,883)	(\$136,205)	(\$139,610)	(\$143,100)	(\$146,678)	(\$150,345)	(\$154,103)	(\$157,956)
II. Effective Gross Income (EGI)	\$1,639,597	\$1,680,587	\$1,722,602	\$1,765,667	\$1,809,808	\$1,855,054	\$1,901,430	\$1,948,966	\$1,997,690	\$2,047,632	\$2,098,823
III. Total Operating Expenses	(\$574,585)	(\$594,695)	(\$615,510)	(\$637,053)	(\$659,350)	(\$682,427)	(\$706,312)	(\$731,033)	(\$756,619)	(\$783,100)	(\$810,509)
(Less) Operating Expenses	(\$12,124)	(\$12,366)	(\$12,614)	(\$12,866)	(\$13,123)	(\$13,386)	(\$13,654)	(\$13,927)	(\$14,205)	(\$14,489)	(\$14,779)
(Less) Property Taxes	(\$43,200)	(\$44,280)	(\$45,367)	(\$46,522)	(\$47,665)	(\$48,877)	(\$50,099)	(\$51,351)	(\$52,635)	(\$53,951)	(\$55,300)
(Less) Replacement Reserves	(\$629,909)	(\$651,342)	(\$673,511)	(\$696,440)	(\$720,158)	(\$744,889)	(\$770,064)	(\$796,310)	(\$823,459)	(\$851,541)	(\$880,588)
Total Operating Expenses											
IV. Total Net Operating Income	\$1,069,688	\$1,029,245	\$1,049,091	\$1,069,226	\$1,089,651	\$1,110,364	\$1,131,366	\$1,152,655	\$1,174,231	\$1,196,091	\$1,218,235
(Less) Debt Service - Supportable Debt	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)
V. Project Cash Flow	\$151,291	\$171,137	\$171,137	\$191,272	\$211,697	\$232,410	\$253,412	\$274,701	\$296,277	\$318,137	\$340,281
VI. (Less) Management Fee (Property Manager)	(\$33,612)	(\$34,452)	(\$34,452)	(\$35,313)	(\$36,196)	(\$37,101)	(\$38,029)	(\$38,979)	(\$39,954)	(\$40,953)	(\$41,976)
(Less) Partnership Administrative Fees	(\$30,000)	(\$30,000)	(\$30,825)	(\$31,673)	(\$32,544)	(\$33,439)	(\$34,358)	(\$35,303)	(\$36,274)	(\$37,271)	(\$38,296)
VII. Total Cash Flow	\$87,679	\$105,860	\$105,860	\$124,286	\$142,957	\$161,870	\$181,025	\$200,419	\$220,049	\$239,913	\$260,008
VIII. Developer Fee Repayment											
Beginning Balance	\$1,034,000	\$993,678	\$933,328	\$851,789	\$747,844	\$620,225	\$467,606	\$288,604	\$81,772		
Interest (1)	\$47,357	\$45,510	\$42,746	\$39,012	\$34,251	\$28,406	\$21,416	\$13,218	\$3,745		
(Less) Cash Flow Credit of	(\$87,679)	(\$105,860)	(\$124,286)	(\$142,957)	(\$161,870)	(\$181,025)	(\$200,419)	(\$220,049)	(\$239,913)	(\$260,008)	
Ending Balance	\$993,678	\$933,328	\$851,789	\$747,844	\$620,225	\$467,606	\$288,604	\$81,772			
IX. Cash Flow Available for Distribution	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$154,396	\$260,008
X. Agency Loan Repayment											
Beginning Balance	\$5,600,000	\$5,768,000	\$5,936,000	\$6,104,000	\$6,272,000	\$6,440,000	\$6,608,000	\$6,776,000	\$6,944,000	\$7,112,000	\$7,280,000
Interest	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000
(Less) Cash Flow Credit of	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Ending Balance	\$5,768,000	\$5,936,000	\$6,104,000	\$6,272,000	\$6,440,000	\$6,608,000	\$6,776,000	\$6,944,000	\$7,112,000	\$7,280,000	\$7,448,000
NPV of Payments to Agency @ Years 1-55	(\$871,000)										
XI. Remaining Cash Flow to Developer	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$77,198	\$130,004

Assumptions:	2.50%	2.50%	2.50%	2.50%
Income Escalation				2.50%
Vacancy Escalation				2.00%
Operating Expense Escalation				3.50%
Replacement Reserves Escalation				2.50%
Property Tax Escalation				2.00%
Partnership Administrative Fees Escalation				2.75%

(1) Reflects the Applicable Federal Rate for August 2008.  
Prepared by: Keyser Marston Associates, Inc.  
Filename: Copy of Shadow Way Apts Rehab\_FINAL.8/20/2008; ems

TABLE 5

CASH FLOW PROJECTION  
SHADOW WAY APARTMENTS  
CITY OF OCEANSIDE

	11	12	13	14	15	16	17	18	19	20	21	22
I. Gross Scheduled Income (GSI)	\$2,313,198	\$2,371,028	\$2,430,304	\$2,491,062	\$2,553,338	\$2,617,172	\$2,682,601	\$2,749,666	\$2,818,407	\$2,888,868	\$2,961,089	\$3,035,117
(Less) Vacancy	(\$161,905)	(\$165,953)	(\$170,101)	(\$174,354)	(\$178,713)	(\$183,181)	(\$187,760)	(\$192,454)	(\$197,265)	(\$202,197)	(\$207,252)	(\$212,433)
II. Effective Gross Income (EGI)	\$2,151,293	\$2,205,076	\$2,260,203	\$2,316,708	\$2,374,625	\$2,433,991	\$2,494,841	\$2,557,212	\$2,621,142	\$2,686,671	\$2,753,837	\$2,822,683
III. Total Operating Expenses												
(Less) Operating Expenses	(\$838,877)	(\$868,237)	(\$898,626)	(\$930,078)	(\$962,630)	(\$996,322)	(\$1,031,194)	(\$1,067,285)	(\$1,104,640)	(\$1,143,303)	(\$1,183,318)	(\$1,224,735)
(Less) Property Taxes	(\$15,075)	(\$15,376)	(\$15,684)	(\$15,997)	(\$16,317)	(\$16,644)	(\$16,977)	(\$17,316)	(\$17,662)	(\$18,016)	(\$18,376)	(\$18,743)
(Less) Replacement Reserves	(\$56,682)	(\$58,099)	(\$59,552)	(\$61,040)	(\$62,566)	(\$64,131)	(\$65,734)	(\$67,377)	(\$69,062)	(\$70,788)	(\$72,558)	(\$74,372)
Total Operating Expenses	(\$910,634)	(\$941,713)	(\$973,861)	(\$1,007,115)	(\$1,041,514)	(\$1,077,097)	(\$1,113,904)	(\$1,151,979)	(\$1,191,364)	(\$1,232,107)	(\$1,274,252)	(\$1,317,850)
IV. Total Net Operating Income	\$1,240,660	\$1,263,363	\$1,286,342	\$1,309,592	\$1,333,111	\$1,356,894	\$1,380,937	\$1,405,233	\$1,429,778	\$1,454,564	\$1,479,585	\$1,504,833
(Less) Debt Service - Supportable Debt	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)
V. Project Cash Flow	\$362,706	\$385,409	\$408,388	\$431,638	\$455,157	\$478,940	\$502,983	\$527,279	\$551,824	\$576,610	\$601,631	\$626,879
VI. (Less) Management Fee (Property Manager)	(\$43,026)	(\$44,102)	(\$45,204)	(\$46,334)	(\$47,493)	(\$48,680)	(\$49,897)	(\$51,144)	(\$52,423)	(\$53,733)	(\$55,077)	(\$56,454)
(Less) Partnership Administrative Fees	(\$39,350)	(\$40,432)	(\$41,544)	(\$42,686)	(\$43,860)	(\$45,066)	(\$46,305)	(\$47,579)	(\$48,887)	(\$50,231)	(\$51,613)	(\$53,032)
VII. Total Cash Flow	\$280,330	\$300,876	\$321,640	\$342,618	\$363,805	\$385,195	\$406,781	\$428,556	\$450,514	\$472,645	\$494,941	\$517,394
VIII. Developer Fee Repayment												
Beginning Balance												
Interest <sup>(1)</sup>												
(Less) Cash Flow Credit of												
Ending Balance												
IX. Cash Flow Available for Distribution	\$280,330	\$300,876	\$321,640	\$342,618	\$363,805	\$385,195	\$406,781	\$428,556	\$450,514	\$472,645	\$494,941	\$517,394
X. Agency Loan Repayment												
Beginning Balance	\$7,072,798	\$7,100,633	\$7,118,195	\$7,125,375	\$7,122,066	\$7,108,163	\$7,083,566	\$7,048,176	\$7,001,898	\$6,944,641	\$6,876,319	\$6,796,648
Interest	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000
(Less) Cash Flow Credit of	(\$140,165)	(\$150,438)	(\$160,820)	(\$171,309)	(\$181,902)	(\$192,597)	(\$203,390)	(\$214,278)	(\$225,257)	(\$236,323)	(\$247,471)	(\$258,697)
Ending Balance	\$7,100,633	\$7,118,195	\$7,125,375	\$7,122,066	\$7,108,163	\$7,083,566	\$7,048,176	\$7,001,898	\$6,944,641	\$6,876,319	\$6,796,648	\$6,706,151
NPV of Payments to Agency @ Years 1-55												
XI. Remaining Cash Flow to Developer	\$140,165	\$150,438	\$160,820	\$171,309	\$181,902	\$192,597	\$203,390	\$214,278	\$225,257	\$236,323	\$247,471	\$258,697

Cash Flow Distribution**		
Years 1-40	Agency	Developer
Years 41-55	50.0%	50.0%
	80.0%	20.0%

\* After payment of deferred developer fee.

(1) Reflects the Applicable Federal Rate for August 2003.  
Prepared by: Keyser Marston Associates, Inc.  
Filename: Copy of Shadow Way Agre Rehab\_FINAL/9/20/2008\_ama

TABLE 5

CASH FLOW PROJECTION  
SHADOW WAY APARTMENTS  
CITY OF OCEANSIDE

	23	24	25	26	27	28	29	30	31	32	33
I. Gross Scheduled Income (GSI)	\$3,110,995	\$3,188,769	\$3,268,489	\$3,350,201	\$3,433,956	\$3,519,805	\$3,607,800	\$3,697,995	\$3,790,445	\$3,885,206	\$3,982,336
(Less) Vacancy	(\$217,744)	(\$223,188)	(\$228,767)	(\$234,487)	(\$240,349)	(\$246,358)	(\$252,516)	(\$258,829)	(\$265,300)	(\$271,933)	(\$278,731)
II. Effective Gross Income (EGI)	\$2,893,250	\$2,965,582	\$3,039,721	\$3,115,714	\$3,193,607	\$3,273,447	\$3,355,283	\$3,439,166	\$3,525,145	\$3,613,273	\$3,703,605
III. Total Operating Expenses											
(Less) Operating Expenses	(\$1,287,600)	(\$1,311,966)	(\$1,357,885)	(\$1,405,411)	(\$1,454,600)	(\$1,505,512)	(\$1,558,204)	(\$1,612,742)	(\$1,669,188)	(\$1,727,609)	(\$1,788,075)
(Less) Property Taxes	(\$19,118)	(\$19,501)	(\$19,891)	(\$20,289)	(\$20,694)	(\$21,108)	(\$21,530)	(\$21,961)	(\$22,400)	(\$22,848)	(\$23,305)
(Less) Replacement Reserves	(\$76,231)	(\$78,137)	(\$80,080)	(\$82,063)	(\$84,145)	(\$86,249)	(\$88,405)	(\$90,615)	(\$92,880)	(\$95,202)	(\$97,582)
Total Operating Expenses	(\$1,362,950)	(\$1,409,604)	(\$1,457,866)	(\$1,507,792)	(\$1,559,440)	(\$1,612,868)	(\$1,668,140)	(\$1,725,317)	(\$1,784,468)	(\$1,845,660)	(\$1,908,963)
IV. Total Net Operating Income	\$1,530,301	\$1,555,978	\$1,581,855	\$1,607,922	\$1,634,167	\$1,660,579	\$1,687,144	\$1,713,848	\$1,740,677	\$1,767,614	\$1,794,542
(Less) Debt Service - Supportable Debt	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)	(\$877,954)
V. Project Cash Flow	\$652,347	\$678,024	\$703,901	\$729,968	\$756,213	\$782,625	\$809,190	\$835,894	\$862,723	\$889,660	\$916,588
VI. (Less) Management Fee (Property Manager)	(\$57,865)	(\$59,312)	(\$60,794)	(\$62,314)	(\$63,872)	(\$65,469)	(\$67,106)	(\$68,783)	(\$70,503)	(\$72,265)	(\$74,072)
(Less) Partnership Administrative Fees	(\$54,491)	(\$55,989)	(\$57,529)	(\$59,111)	(\$60,736)	(\$62,407)	(\$64,123)	(\$65,866)	(\$67,638)	(\$69,550)	(\$71,473)
VII. Total Cash Flow	\$539,991	\$562,723	\$585,578	\$608,543	\$631,605	\$654,749	\$677,961	\$701,225	\$724,522	\$747,835	\$771,143
VIII. Developer Fee Repayment											
Beginning Balance											
Interest(1)											
(Less) Cash Flow Credit of											
Ending Balance											
IX. Cash Flow Available for Distribution	\$539,991	\$562,723	\$585,578	\$608,543	\$631,605	\$654,749	\$677,961	\$701,225	\$724,522	\$747,835	\$771,143
X. Agency Loan Repayment											
Beginning Balance	\$6,706,151	\$6,604,156	\$6,490,794	\$6,366,005	\$6,229,734	\$6,081,931	\$5,922,557	\$5,751,576	\$5,568,964	\$5,373,772	\$5,161,068
Interest	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	\$167,069	\$161,213	\$154,832
(Less) Cash Flow Credit of	(\$269,995)	(\$281,361)	(\$292,789)	(\$304,271)	(\$315,802)	(\$327,375)	(\$338,981)	(\$350,612)	(\$362,261)	(\$373,917)	(\$385,572)
Ending Balance	\$6,604,156	\$6,490,794	\$6,366,005	\$6,229,734	\$6,081,931	\$5,922,557	\$5,751,576	\$5,568,964	\$5,373,772	\$5,161,068	\$4,930,328
NPV of Payments to Agency @ Years 1-55											
XI. Remaining Cash Flow to Developer	\$269,995	\$281,361	\$292,789	\$304,271	\$315,802	\$327,375	\$338,981	\$350,612	\$362,261	\$373,917	\$385,572

(1) Reflects the Applicable Federal Rate for August 2008.

TABLE 5

CASH FLOW PROJECTION  
SHADOW WAY APARTMENTS  
CITY OF OCEANSIDE

	34	35	36	37	38	39	40	41	42	43	44	45
I. Gross Scheduled Income (GSI)	\$4,081,894	\$4,185,942	\$4,286,540	\$4,395,754	\$4,505,648	\$4,618,289	\$4,733,746	\$4,852,080	\$4,973,382	\$5,097,727	\$5,225,170	\$5,355,799
(Less) Vacancy	<u>(\$285,699)</u>	<u>(\$292,842)</u>	<u>(\$300,163)</u>	<u>(\$307,667)</u>	<u>(\$315,358)</u>	<u>(\$323,242)</u>	<u>(\$331,323)</u>	<u>(\$339,607)</u>	<u>(\$348,097)</u>	<u>(\$356,799)</u>	<u>(\$365,719)</u>	<u>(\$374,862)</u>
II. Effective Gross Income (EGI)	\$3,796,195	\$3,891,100	\$3,986,378	\$4,088,087	\$4,190,289	\$4,295,046	\$4,402,423	\$4,512,483	\$4,625,295	\$4,740,928	\$4,859,451	\$4,980,937
III. Total Operating Expenses	<u>(\$1,850,658)</u>	<u>(\$1,915,431)</u>	<u>(\$1,982,471)</u>	<u>(\$2,051,858)</u>	<u>(\$2,123,673)</u>	<u>(\$2,198,001)</u>	<u>(\$2,274,931)</u>	<u>(\$2,354,554)</u>	<u>(\$2,436,963)</u>	<u>(\$2,522,257)</u>	<u>(\$2,610,536)</u>	<u>(\$2,701,905)</u>
(Less) Operating Expenses	<u>(\$23,771)</u>	<u>(\$24,247)</u>	<u>(\$24,732)</u>	<u>(\$25,226)</u>	<u>(\$25,731)</u>	<u>(\$26,245)</u>	<u>(\$26,770)</u>	<u>(\$27,306)</u>	<u>(\$27,852)</u>	<u>(\$28,409)</u>	<u>(\$28,977)</u>	<u>(\$29,557)</u>
(Less) Property Taxes	<u>(\$100,022)</u>	<u>(\$102,522)</u>	<u>(\$105,086)</u>	<u>(\$107,713)</u>	<u>(\$110,409)</u>	<u>(\$113,166)</u>	<u>(\$115,995)</u>	<u>(\$118,895)</u>	<u>(\$121,867)</u>	<u>(\$124,914)</u>	<u>(\$128,037)</u>	<u>(\$131,237)</u>
(Less) Replacement Reserves	<u>(\$1,974,451)</u>	<u>(\$2,042,200)</u>	<u>(\$2,112,286)</u>	<u>(\$2,184,797)</u>	<u>(\$2,259,809)</u>	<u>(\$2,337,412)</u>	<u>(\$2,417,696)</u>	<u>(\$2,500,754)</u>	<u>(\$2,586,682)</u>	<u>(\$2,675,579)</u>	<u>(\$2,767,549)</u>	<u>(\$2,862,699)</u>
Total Operating Expenses	<u>(\$1,850,658)</u>	<u>(\$1,915,431)</u>	<u>(\$1,982,471)</u>	<u>(\$2,051,858)</u>	<u>(\$2,123,673)</u>	<u>(\$2,198,001)</u>	<u>(\$2,274,931)</u>	<u>(\$2,354,554)</u>	<u>(\$2,436,963)</u>	<u>(\$2,522,257)</u>	<u>(\$2,610,536)</u>	<u>(\$2,701,905)</u>
IV. Total Net Operating Income	\$1,821,744	\$1,848,900	\$1,875,089	\$1,903,291	\$1,930,480	\$1,957,634	\$1,984,726	\$2,011,729	\$2,038,613	\$2,065,348	\$2,091,901	\$2,118,238
(Less) Debt Service - Supportable Debt	<u>(\$877,954)</u>											
V. Project Cash Flow	\$943,790	\$970,946	\$998,135	\$1,025,337	\$1,052,526	\$1,079,680	\$1,106,772	\$1,133,775	\$1,160,659	\$1,187,394	\$1,213,947	\$1,240,284
(Less) Management Fee (Property Manager)	<u>(\$75,924)</u>	<u>(\$77,822)</u>	<u>(\$79,766)</u>	<u>(\$81,762)</u>	<u>(\$83,806)</u>	<u>(\$85,901)</u>	<u>(\$88,048)</u>	<u>(\$90,250)</u>	<u>(\$92,506)</u>	<u>(\$94,819)</u>	<u>(\$97,189)</u>	<u>(\$99,619)</u>
(Less) Partnership Administrative Fees	<u>(\$73,438)</u>	<u>(\$75,458)</u>	<u>(\$77,533)</u>	<u>(\$79,665)</u>	<u>(\$81,856)</u>	<u>(\$84,107)</u>	<u>(\$86,420)</u>	<u>(\$88,796)</u>	<u>(\$91,238)</u>	<u>(\$93,747)</u>	<u>(\$96,325)</u>	<u>(\$98,974)</u>
VII. Total Cash Flow	\$794,428	\$817,666	\$840,835	\$863,910	\$886,865	\$909,673	\$932,304	\$954,779	\$977,121	\$999,327	\$1,021,393	\$1,043,210
VIII. Developer Fee Repayment												
Beginning Balance												
Interest (1)												
(Less) Cash Flow Credit of												
Ending Balance												
IX. Cash Flow Available for Distribution	\$794,428	\$817,666	\$840,835	\$863,910	\$886,865	\$909,673	\$932,304	\$954,779	\$977,121	\$999,327	\$1,021,393	\$1,043,210
X. Agency Loan Repayment												
Beginning Balance	\$4,930,328	\$4,681,024	\$4,412,621	\$4,124,582	\$3,816,365	\$3,487,424	\$3,137,210	\$2,765,174	\$2,381,983	\$2,000,000	\$1,618,000	\$1,236,000
Interest	<u>\$147,810</u>	<u>\$140,431</u>	<u>\$132,379</u>	<u>\$123,737</u>	<u>\$114,491</u>	<u>\$104,623</u>	<u>\$94,116</u>	<u>\$82,955</u>	<u>\$71,250</u>	<u>\$59,500</u>	<u>\$47,250</u>	<u>\$35,000</u>
(Less) Cash Flow Credit of	<u>(\$397,214)</u>	<u>(\$408,833)</u>	<u>(\$420,418)</u>	<u>(\$431,955)</u>	<u>(\$443,432)</u>	<u>(\$454,836)</u>	<u>(\$466,152)</u>	<u>(\$477,397)</u>	<u>(\$488,561)</u>	<u>(\$499,644)</u>	<u>(\$510,646)</u>	<u>(\$521,567)</u>
Ending Balance	\$4,681,024	\$4,412,621	\$4,124,582	\$3,816,365	\$3,487,424	\$3,137,210	\$2,765,174	\$2,381,983	\$2,000,000	\$1,618,000	\$1,236,000	\$854,000
NPV of Payments to Agency @ Years 1-55												
XI. Remaining Cash Flow to Developer	\$397,214	\$408,833	\$420,418	\$431,955	\$443,432	\$454,836	\$466,152	\$477,397	\$488,561	\$499,644	\$510,646	\$521,567

(1) Reflects the Applicable Federal Rate for August 2008.

TABLE 5

CASH FLOW PROJECTION  
SHADOW WAY APARTMENTS  
CITY OF OCEANSIDE

	46	47	48	49	50	51	52	53	54	55
I. Gross Scheduled Income (GSI)	\$5,489,694	\$5,626,937	\$5,767,610	\$5,911,800	\$6,059,595	\$6,211,065	\$6,366,362	\$6,525,521	\$6,688,659	\$6,855,876
(Less) Vacancy	(\$384,234)	(\$393,839)	(\$403,685)	(\$413,778)	(\$424,122)	(\$434,725)	(\$445,593)	(\$456,733)	(\$468,151)	(\$479,855)
II. Effective Gross Income (EGI)	\$5,105,461	\$5,233,097	\$5,363,924	\$5,498,023	\$5,635,473	\$5,776,360	\$5,920,769	\$6,068,788	\$6,220,508	\$6,376,021
III. Total Operating Expenses										
(Less) Operating Expenses	(\$2,796,471)	(\$2,894,348)	(\$2,995,650)	(\$3,100,488)	(\$3,209,015)	(\$3,321,331)	(\$3,437,577)	(\$3,557,893)	(\$3,682,419)	(\$3,811,303)
(Less) Property Taxes	(\$30,148)	(\$30,751)	(\$31,366)	(\$31,993)	(\$32,633)	(\$33,285)	(\$33,951)	(\$34,630)	(\$35,323)	(\$36,029)
(Less) Replacement Reserves	(\$134,518)	(\$137,881)	(\$141,328)	(\$144,862)	(\$148,483)	(\$152,195)	(\$156,000)	(\$159,900)	(\$163,898)	(\$167,995)
Total Operating Expenses	(\$2,961,137)	(\$3,062,980)	(\$3,168,344)	(\$3,277,352)	(\$3,390,131)	(\$3,506,811)	(\$3,627,529)	(\$3,752,423)	(\$3,881,639)	(\$4,015,328)
IV. Total Net Operating Income	\$2,144,323	\$2,170,117	\$2,195,580	\$2,220,670	\$2,245,342	\$2,269,549	\$2,293,240	\$2,316,365	\$2,338,869	\$2,360,693
(Less) Debt Service - Supportable Debt	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
V. Project Cash Flow	\$2,144,323	\$2,170,117	\$2,195,580	\$2,220,670	\$2,245,342	\$2,269,549	\$2,293,240	\$2,316,365	\$2,338,869	\$2,360,693
VI. (Less) Management Fee (Property Manager)	(\$102,109)	(\$104,662)	(\$107,278)	(\$109,960)	(\$112,709)	(\$115,527)	(\$118,415)	(\$121,376)	(\$124,410)	(\$127,520)
(Less) Partnership Administrative Fees	(\$101,696)	(\$104,493)	(\$107,366)	(\$110,319)	(\$113,352)	(\$116,470)	(\$119,673)	(\$122,964)	(\$126,345)	(\$129,820)
VII. Total Cash Flow	\$1,940,518	\$1,960,963	\$1,980,936	\$2,000,391	\$2,019,280	\$2,037,552	\$2,055,152	\$2,072,026	\$2,088,114	\$2,103,353
VIII. Developer Fee Repayment										
Beginning Balance										
Interest (1)										
(Less) Cash Flow Credit of										
Ending Balance										
IX. Cash Flow Available for Distribution	\$1,940,518	\$1,960,963	\$1,980,936	\$2,000,391	\$2,019,280	\$2,037,552	\$2,055,152	\$2,072,026	\$2,088,114	\$2,103,353
X. Agency Loan Repayment										
Beginning Balance	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Interest	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
(Less) Cash Flow Credit of	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Ending Balance	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
NPV of Payments to Agency @ Years 1-55										
XI. Remaining Cash Flow to Developer	\$1,940,518	\$1,960,963	\$1,980,936	\$2,000,391	\$2,019,280	\$2,037,552	\$2,055,152	\$2,072,026	\$2,088,114	\$2,103,353

(1) Reflects the Applicable Federal Rate for August 2008.