STAFF REPORT

ITEM NO. 11

CITY OF OCEANSIDE

DATE: May 7, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development Department

SUBJECT: **COUNTRY CLUB APARTMENTS**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 to the Acquisition and Rehabilitation Agreement with Country Club Apartments, L.P., related to the purchase and rehabilitation of the apartment complex at 201 Country Club Lane as an affordable multifamily residential rental property, and authorize the Mayor to execute the document; authorize the City Clerk to accept the conveyance of a portion of the site on behalf of the City; approve revisions to the regulatory agreement and loan documents relating to affordability requirements, unit type and number, and adjustment to the lot line; reaffirm the assignment of the purchase and sale agreement and escrow with Jorbon, LLC, to Country Club Apartments, L.P., by the City; and authorize the execution of the regulatory and loan agreement, as revised, by the City Manager and closing of escrow by staff.

BACKGROUND

In March 2007, the City entered into a purchase agreement with Jorbon, LLC, owner of the Country Club Apartments, located at 201 Country Club Lane, to assist in meeting the City's affordable housing goals by adding and preserving an additional 90 affordable residential rental units to its stock. That transaction contemplated the City purchasing the property and leasing it to Wakeland Housing and Development Corporation ("Wakeland"). Under that transaction, Wakeland would take over majority control of the membership and management of the Jorbon, LLC, at the soft closing of escrow in July 2007 and manage the property under such ownership through April 2008 to satisfy the IRS 10-year ownership rule to qualify for low-income housing tax credit financing for the purchase and rehabilitation of the property. Upon reaching the 10-year IRS threshold the hard close of escrow would occur with Jorbon, LLC, conveying the property to the City and Wakeland operating the complex through a nonprofit partnership. However, this transaction was canceled due to various pitfalls discovered during the feasibility period.

On January 9, 2008, the City entered into a new purchase and sale agreement with Jorbon, LLC, and an acquisition and rehabilitation agreement with Country Club

Apartments, L.P. (a/k/a Wakeland) for the purchase and operation of the property as an affordable housing project. The purchase and sale agreement was deposited into escrow on January 23, 2008, with the City as Buyer. Under this revamped transaction, Wakeland will be assigned the City's rights and interests under the Purchase and Sale Agreement between the City and Jorbon, LLC, and take the City's position as Buyer prior to the close of escrow and own, rehabilitate, and operate the property under the terms and conditions of a regulatory agreement that requires the property be restricted as an affordable housing complex for qualified very-low-income persons and households in perpetuity. Wakeland's purchase of the property will be financed through a City loan in the amount of $10,163,098, Multifamily Housing Revenue Bonds and other affordable housing financing.

ANALYSIS

Amendment 1 to the Acquisition and Rehabilitation Agreement with Wakeland amends the number of units from 91 to 90. This results in unit mix of 11 studio apartments, 57 one-bedroom apartments, and 22 two-bedroom apartments (including 1 two-bedroom manager's apartment). The complex will also have a community/multi-purpose room to provide programs for the residents. Revising the unit count necessitated corresponding changes to the regulatory agreement and loan documents so that they reflect the correct unit total and mix to be consistent with the Acquisition and Rehabilitation Agreement, as amended. These changes are reflected in the documents to be executed upon the approval of this item.

While performing a boundary survey of the property it was discovered that a small portion of the site lies outside the perimeter wall adjacent to Ron Ortega Park. Research unveiled that a portion of the wall collapsed due to subsidence of the adjacent landfill on more than one occasion in the early to mid-1980s. Following these events the perimeter wall in the location of the failure was moved further into the property to maintain security.

Over the years the portion of the property outside the perimeter wall has been incorporated into the park area and maintained by City forces. Since this portion of the property is not being used as part of the complex, Wakeland and its other lenders recommend that it be severed from the site and conveyed to the City, who has been using it as part of the park. The Subdivision Map Act and City Subdivision Ordinance allow the conveyance of a portion of a parcel to a governmental agency without the need of processing a map or lot line adjustment.

Residents may be required to temporarily relocate during the remodeling of the interior of their apartment units. All efforts will be made to minimize disrupting tenants during construction. Those tenants currently living in the complex that exceed the targeted

income levels and qualify for relocation assistance will be moved in accordance with relocation regulations. Funds for relocation are included in the project budget.

Following the completion of the rehabilitation of all the interiors, the occupancy of the apartment units will be restricted to persons and households qualified as having very-low-income. This restriction will remain in effect in perpetuity, thereby preserving affordable rents and assisting the City in meeting its mandated goals for low-income housing.

FISCAL IMPACT

The $10,163,098 loan from the City will be evidenced by a promissory note and secured by a deed of trust. The loan agreement provides for the disbursement of $7,600,000 of the loan proceeds at the closing of the tax credit financing to be used toward the purchase of the property. The remaining $2,563,098 will be deposited with the construction loan administrator at Wells Fargo Bank National Association and disbursed during the course of construction along with other construction funds.

Interest on the City loan will accrue interest at 3% commencing at the close of escrow for a term of 55 years. Payment of the loan will be made from 50% of the residual receipts through the first 30 years and from 75% of residual receipts commencing with the 31st year of the loan.

COMMISSION OR COMMITTEE REPORT

The Housing Commission supports the acquisition, rehabilitation and conversion of the Country Club Apartment to an affordable complex.

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:

1. Approve Amendment 1 to Acquisition and Rehabilitation Agreement with Country Club Apartments, L.P., related to the purchase and rehabilitation of the apartment complex at 201 Country Club Lane as an affordable multifamily residential rental property, and authorize the Mayor to execute the document;

2. Authorize the City Clerk to accept the conveyance of a portion of the site on behalf of the City;

3. Approve revisions to the regulatory agreement and loan documents relating to affordability requirements, unit type and number, and adjustment to the lot line;

4. Reaffirm the assignment of the purchase and sale agreement and escrow with Jorbon, LLC, to Country Club Apartments, L.P., by the City; and

5. Authorize the execution of the regulatory and loan agreement, as revised, by the City Manager and closing of escrow by staff.

PREPARED BY:

William F. Marquis
Senior Property Agent

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Jane McVey, Economic and Community Development Director

Douglas E. Eddow, Real Property Manager

AMENDMENT NO. 1
TO ACQUISITION AND REHABILITATION AGREEMENT
BETWEEN THE CITY OF OCEANSIDE
AND COUNTRY CLUB APARTMENTS, L.P.

This Amendment No. 1 to Acquisition and Rehabilitation Agreement, (this "Amendment") dated, solely for identification, as of May 1, 2008, is made by and between the **City of Oceanside**, a municipal corporation (the "City"), and **Country Club Apartments, L.P.**, a California limited partnership (the "Developer").

RECITALS

WHEREAS, City and Developer are the parties to that certain Acquisition and Rehabilitation Agreement, dated December 19, 2007, and having an effective date of January 9, 2008 (the "Agreement"), wherein Developer has agreed to acquire and rehabilitate that certain multi-family residential apartment complex located at 201 Country Club Lane, Oceanside, California, commonly known as the Country Club Apartments (the "Complex");

WHEREAS, upon completion of the rehabilitation of the improvements Developer shall operate, maintain, and restrict the use of the Complex as an affordable multi-family residential apartment complex to qualified persons and households;

WHEREAS, City and Developer desire to clarify the number and type of units comprising the Complex; and

WHEREAS, City and Developer mutually desire to amend and modify certain terms and conditions of the Agreement as more particularly set forth in this Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of which and other valuable considerations set forth herein the parties hereto do mutually agree that the Acquisition and Rehabilitation Agreement be modified as follows:

1. Section 1.5 (The Complex) of the Agreement shall be and hereby is amended to read in its entirety as follows:

"**1.5 <u>The Complex</u>.** The "Complex" is that certain 90-unit multi-family residential apartment building located on the Site, comprised of eleven (11) studio apartments, fifty-seven (57) one-bedroom apartments, and twenty-two (22) two-bedroom apartments (including one (1) two-bedroom manager's apartment), a community/multipurpose room, and all related fixtures, parking, common space and other amenities associated with the Site, together with other appurtenances on-site. For the purpose of this Agreement the "Site" and the "Complex" are sometimes, collectively, referred to as the "Real Property".

2. Attachment No. 1 (Legal Description) and Attachment No. 2 (Site Map) of the Agreement shall be and hereby are amended and superseded with Attachment No. 1 (Legal Description) and Attachment No. 2 (Site Map), attached to this Amendment and incorporated herein by this reference.

3. Unless otherwise defined, or the context otherwise indicates, the terms as used herein have the meaning defined in the Agreement.

4. The provisions of this Amendment shall control over any inconsistent provisions of the Agreement.

5. All provisions in the Agreement that are not addressed and amended in this Amendment shall remain in full force and effect, and are hereby ratified and reaffirmed.

6. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective entities of the City and Developer.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Acquisition and Rehabilitation Agreement as of, but not necessarily on, the day and year first written hereinabove.

"City"
City of Oceanside

By: _____
Mayor

Dated: _____

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____, ASST.
City Attorney

"Developer"
Country Club Apartments, L.P., a California limited partnership

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

By: Wakeland Housing and Development Corporation, a California non-profit corporation, its Manager and Sole Member

By: _____
Kenneth L. Sauder,
President and CEO

Dated: 4/16/08

DEVELOPER'S SIGNATURE MUST BE NOTARIZED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO

On 16TH DAY OF APRIL 2008 (Date) before me, KENTON HOPPAS NOTARY PUBLIC (Here Insert Name and Title of the Officer),

personally appeared KENNETH SAUDER (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 _____ (Signature of Notary Public)

KENTON HOPPAS
Comm. # 1567397
NOTARY PUBLIC - CALIFORNIA
San Diego County
My Comm. Expires Apr. 22, 2009

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

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

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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ATTACHMENT NO.1

LEGAL DESCRIPTION

Lot 9 of Maxon & Griffin's Subdivision of Tyson Tract in the City of Oceanside, County of San Diego, State of California per Map thereof No. 433, filed in the Office of the County Recorder of San Diego County, December 29, 1887.

Excepting therefrom, that portion of said Lot 9 described as follows:

Commencing at the Southwest corner of said Lot 9, being the Southwest corner of Section 24, Township 11 South, Range 5 West, San Bernardino Meridian; as shown on said Map;
thence North 00°38'38" West along the westerly line of said Lot 9, 109.81 feet to the **True Point of Beginning**;
thence continuing along said westerly line North 00°38'38" West, 275.80 feet;
thence leaving said westerly line South 89°47'06" East, 8.88 feet;
thence South 00°19'57" East 57.31 feet;
thence North 89°53'43" East, 5.94 feet;
thence South 00°19'15" East, 75.63 feet;
thence South 01°12'13" East, 68.44 feet;
thence South 88°40'09" West, 3.84 feet;
thence South 00°55'55" East 73.83 feet;
thence South 87°30'17" West, 11.28 feet to the **True Point of Beginning.**

Contains 2.780 acres, more or less.

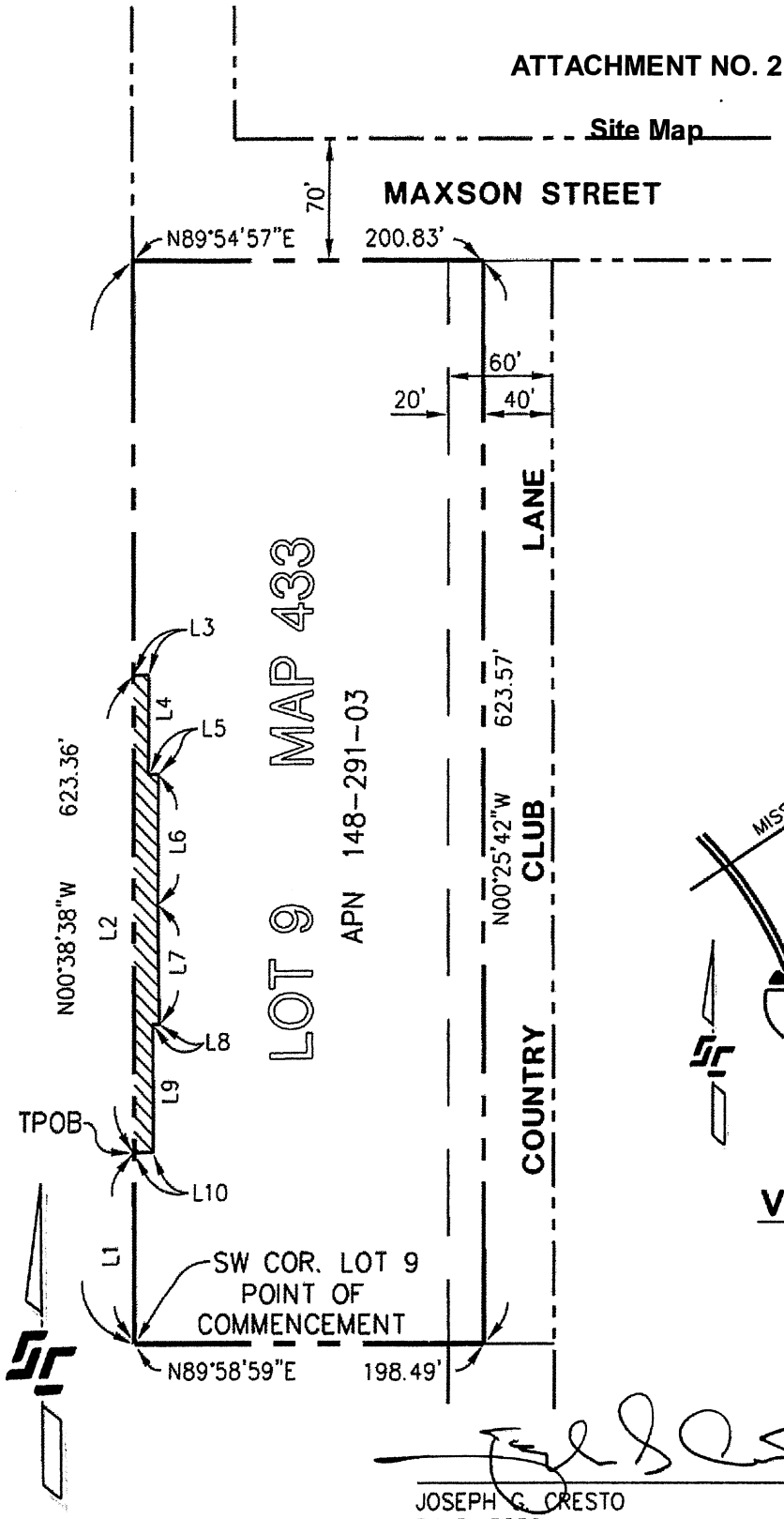
This legal description was prepared by me or under my direction in conformance with the Professional Land Surveyors Act.

4/28/08

Joseph G. Cresto — Date
PLS 8050

LICENSED LAND SURVEYOR ★ JOSEPH G. CRESTO ★ No. 8050 Exp. 12/31/09 ★ STATE OF CALIFORNIA

ATTACHMENT NO. 2

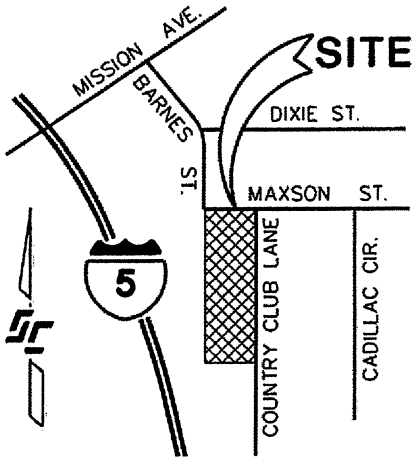


LEGEND

PORTION OF LOT 9 TO BE QUITCLAIMED 0.078 ACRES

DATA TABLE

NO.	BEARING	DISTANCE
L1	N00°38'38"W	109.81'
L2	N00°38'38"W	275.80'
L3	S89°47'06"E	8.88'
L4	S00°19'57"E	57.31'
L5	N89°53'43"E	5.94'
L6	S00°19'15"E	75.63'
L7	S01°12'13"E	68.44'
L8	S88°40'09"W	3.84'
L9	S00°55'55"E	73.83'
L10	S87°30'17"W	11.28'



VICINITY MAP

NO SCALE

LICENSED LAND SURVEYOR
JOSEPH G. CRESTO
No. 8050
Exp. 12-31-09
STATE OF CALIFORNIA

4/28/08

JOSEPH G. CRESTO
P.L.S. 8050

DATE

STEVENS·CRESTO ENGINEERING, INC.
CIVIL ENGINEERS · PLANNERS · LAND SURVEYORS

9665 CHESAPEAKE DRIVE
SUITE 370
SAN DIEGO, CA 92123-1324

PHONE: 858.694.5660
FAX: 858.694.5661
www.scengr.com

BOUNDARY ADJUSTMENT
LOT 9, MAP 433
OCEANSIDE, CA

RECORDING REQUESTED BY AND
WHEN RECORDED PLEASE MAIL TO:

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

Space above this line for Recorder's use

City Document No.

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

REGULATORY AGREEMENT

This Regulatory Agreement (hereinafter this "Regulatory Agreement") dated, solely for identification purposes, as of this 1st day of May, 2008, is made and entered into by and between the City of Oceanside, a municipal corporation (hereinafter the "City"), and Country Club Apartments, L.P., a California limited liability company (hereinafter the "Developer").

The effective date hereof shall be the date this Regulatory Agreement is filed in the Office of the County Recorder of San Diego County (hereinafter the "Effective Date").

RECITALS

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

WHEREAS, the Property is improved with a 90-unit multifamily rental residential complex commonly referred to as the Country Club Apartment (the "Complex");

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

WHEREAS, Developer has applied to the City for financial assistance in order to rehabilitate and operate the Complex as an affordable multifamily rental residential development, consisting of ninety (90) units consisting of eleven (11) studio apartments, fifty-seven (57) one-bedroom apartments, twenty-two (22) two-bedroom apartments, with one (1) two-bedroom apartment set aside for the onsite manager, a community/multipurpose room, together with all appurtenant fixtures, common use areas, amenities and parking spaces related thereto. That the financial assistance provided by the City is subject to the requirements of the specific source of funds utilized

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

WHEREAS, as an inducement for the City to provide the financial assistance made available under the Program and that certain loan agreement, of the same date as this Regulatory Agreement, by and between the Developer and City (the "Loan Agreement"), Developer has agreed to enter into this Regulatory Agreement and has consented to be regulated and restricted as to the use, occupation and operation of the Complex and Property as provided herein.

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

1. **Recitals.** The foregoing recitals, and Developer's application package for financial assistance for the development of the Property as approved by the City, on file in the Offices of the Housing and Neighborhood Services Department of the City of Oceanside, are a part of this Regulatory Agreement. Developer agrees to comply with all income targeting and affordability requirements as described herein.

1.1 **Term of Agreement.** This Regulatory Agreement shall be for a term commencing on the Effective Date hereof (the "Commencement Date") and continuing in perpetuity (the "Term"), unless terminated earlier as provided for herein. As used hereinafter the terms the "Term" and the "Term of this Regulatory Agreement" and similar phrases relating to the duration of this Regulatory Agreement, shall mean Term.

2. **Developer's Obligation to Rehabilitate Improvements.** This Regulatory Agreement is executed with the understanding and agreement that Developer is obligated to rehabilitate and make certain improvements to the Property as set forth in the Acquisition and Rehabilitation Agreement (the "Improvements"). Developer covenants and agrees that the buildings, facilities, improvements and appurtenances thereto must be rehabilitated and paid for wholly at the expense of Developer. Before submitting plans and specifications for approval by City and before commencing the rehabilitation of the Improvements, Developer agrees that it will furnish evidence, satisfactory to City, that it has arranged for financing so that at all times there will be available to Developer sufficient funds to pay for the cost of rehabilitation of the proposed Improvements.

2.1 **Relocation,**

(a) During the times of renovations of the interior of the Housing Units and the manager's residence, the Developer shall provide the affected qualified tenants (i.e. households or persons meeting the targeted income levels set forth in Section 4 and who meet established industry standards with regard to background and credit history, below) with temporary relocation/residential lodging. Notwithstanding the foregoing, Developer shall use best management practices to minimize the need for temporary displacement of tenants during the renovation of the interior of the Housing Units.

(b) Developer shall provide permanent relocation assistance for all eligible tenants (displacees) who are in occupancy of a Housing Unit as of the initial written offer to purchase the Property (i.e. February 20, 2007) in accordance with provisions of the

Uniform Act.

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

3. Restrictive Use of the Property. Developer covenants and agrees for itself, its authorized successors and assigns, that during the term of this Regulatory Agreement the Complex and Property shall be rehabilitated, devoted, maintained and operated as an affordable rental residential apartment complex containing ninety (90) units consisting of the eleven (11) studio apartments, fifty-seven (57) one-bedroom apartments, twenty-two (22) two-bedroom apartments, (the "Housing Units" or "Housing Unit") with one (1) two-bedroom apartment set aside for the onsite manager (the "Manager's Residence"), a community/multipurpose room, together with all appurtenant fixtures, common use areas, amenities and parking spaces (the "Complex") on the Property, all of which Housing Units, except for the Manager's Residence, shall be leased at affordable rental rates to qualified very low income persons and households, in conformance with the affordability restrictions stipulated in this Regulatory Agreement. In the event of any inconsistency regarding affordability requirements between this Regulatory Agreement and any other document or instrument concerning the use and occupancy of the Property the provisions of this Regulatory Agreement shall control.

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

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

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

4.3 Income of Residents. Following the completion of the renovation of the interior Improvements of all the Housing Units and the Manager's Residence, and annually thereafter, on or

before the thirtieth (30th) day of June of each year during the term of this Regulatory Agreement, the Developer shall submit to the City, at Developer's expense, a summary of the income, household size and rent payable by each of the residents of the Housing Units. At the City's request, Developer shall also provide to the City copies of completed income computation and certification forms, pursuant to California Tax Credit Allocation Committee ("TCAC"), or successor requirements, for any such tenant or residents. Developer shall obtain, or shall cause to be obtained by the Property Manager, a certification from each tenant leasing a Housing Unit demonstrating that such tenant is a Very Low Income Household, and meets the eligibility requirements established for the Housing Unit.

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

4.5 **Resident Selection Procedures.** Developer shall be responsible for the selection of residents for the Housing Units in compliance with state and federal fair housing laws. An applicant is eligible for admission to a Housing Unit if the individual or household meets the requirements of the Program Regulations as described in this Regulatory Agreement.

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

(a) Developer shall establish reasonable rules of conduct and occupancy that shall be consistent with state and federal law and the Program Regulations and as approved in writing by the City Manager (or designee(s)). The rules shall be in writing and shall be given to each applicant and resident. Any amendment to said rules shall be effective no less than thirty (30) days after giving written notice thereof to each resident.

(b) All occupancy or rental agreements, leases, and the landlord-tenant relationship shall be subject to California law, the Program Regulations, and the provisions of this Regulatory Agreement. Residents of the Housing Units shall pay rents, in advance, on a monthly basis. Developer may require the resident to move out if the resident has violated terms of the occupancy agreement or lease. Developer shall not collect or accept payment of any rents more than two (2) months prior to the due dates of such Rents.

5. **Maintenance and Repair.** Developer shall manage, operate and maintain the Complex and the Property throughout the Term without expense to the City, and perform all repairs and replacements necessary to maintain and preserve the Complex and the Property in good repair, in a neat, clean, safe and orderly condition reasonably satisfactory to the City and in compliance with all applicable laws. Developer agrees that the City shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Complex and the Property.

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

(a) Developer shall maintain the Complex, including individual Housing Units, all common areas and buildings, all exterior facades, all sidewalks, and all exterior areas, in a safe and sanitary fashion suitable for a high quality multifamily housing development. The Developer shall remove, or cause the removal of, all graffiti within twenty-four (24) hours of the discovery of such being on any portion of the Complex or Property, including, but not limited to, buildings, walls, fences, hardscaped areas, windows, signs, fixtures and equipment. The Developer agrees to provide utility services, administrative services, supplies, contract services, maintenance, maintenance reserves, and management which are necessary for the maintenance of the entire Complex including, but not limited to, exterior and interior tenant spaces, exterior and interior common areas and parking areas.

(b) Landscape maintenance shall include, but not be limited to: watering and irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; staking for support of trees; and pest control.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all paths, sidewalks, parking areas, driveways, curbs, gutters and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of, and all tools and implements removed.

(d) The Complex shall be maintained in conformance with, in accordance with, and in compliance with the approved construction and architectural and landscape plans and design scheme, as the same may be amended from time to time with the prior written approval of the City.

(e) All maintenance work shall conform to all applicable federal and state standards and regulations for the performance of maintenance, including without limitation the Occupation Safety and Health Act.

(f) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance performed by Developer, Property Manager or their contractors shall be applied in strict accordance with all governing regulations and in accordance with the manufacturer's directions for their use. Precautionary measures shall be employed recognizing that all areas are open to public access.

(g) Parking lots, lighting fixtures, trash enclosures, and all areas which can be seen from the adjacent streets shall be kept free from any debris or waste materials by regularly scheduled maintenance.

(h) **Annual Operating Budget.** Developer will submit to the City a proposed Operating Budget (the "Annual Operating Budget") for the Complex no later than ninety (90) days prior to the completion of the Improvements and on or before sixty (60) days prior to the start of the next operating year of the Complex (defined as being the fiscal year of the Complex as stipulated in the Partnership Agreement executed between the Developer and the low income housing tax credit investor ("Investor") (the "Operating Year")) and continuing annually thereafter.

The Annual Operating Budget shall set forth the anticipated Gross Income of the Complex, including residential rents, laundry revenues, and such payments as may be provided from the Program and other public and private sources, and a detailed estimate of all operating costs, capital improvements, deposits to all accounts required by the City, and all other expenses in conformance with customary accounting procedures and in the format required by the City.

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

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

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

(i) **Operating Reserve.** Developer shall, or shall cause the Property Manager to, set aside in a separate interest-bearing trust account an initial amount of One Hundred Seventy-Five Thousand Dollars ($175,000.00) (the "Operating Reserve"). Interest earned on funds in the Operating Reserve shall remain in the Operating Reserve. Notwithstanding the foregoing, however, the Developer shall not be obligated to place any further amounts in the Operating Reserve whenever the balance of the Operating Reserve equals or exceeds the Operating Reserve Threshold Amount (defined as the amount equal to nine (9) months of the current year Annual Operating Budget for operating expenses (the "Operating Reserve Threshold Amount")). Developer shall provide, to the City, at the same times and manner as required for the submittal of the Operating Year reports related to the Annual Operating Budget as stated in Subsection (h) above, evidence reasonably

satisfactory to the City Manager (or designee(s)) of compliance herewith. Developer shall retain such amount in the Operating Reserve to cover shortfalls between Complex income, including, but not limited to, rents, such payments as may be provided from the Program and other public and private sources and actual Complex operating expenses. Developer shall not make any disbursements from the Operating Reserve in excess of the approved annual budgeted line items for the Operating Reserve without the prior written consent of the City Manager (or designee(s)). Upon making such disbursements, the Operating Reserve shall be replenished to the Operating Reserve Threshold Amount at the times set forth above. In the event the Operating Reserve cannot be replenished to the level required herein through a single month's deposit, Developer shall develop a plan for restoring the required balance, subject to the review and approval of the City through the budget review process.

(j) **Capital Replacement Reserve.** Developer shall also, or cause the Property Manager to, annually set aside no less than Twenty-eight Thousand Six Hundred Sixty-five Dollars ($28,665.00) into a separate interest bearing trust account (the "Capital Replacement Reserve"). The Capital Replacement Reserve shall be increased Two and One Half Percent (2.5%) per year and that amount deposited each year in the Capital Replacement Reserve. Funds in the Capital Replacement Reserve shall be used for capital replacements to the Complex fixtures and equipment which are normally capitalized under generally accepted accounting principles. As capital repairs and improvements of the Complex become necessary, the Capital Replacement Reserve shall be the first source of payment therefor; provided, however, Developer shall not make any disbursements from the Capital Replacement Reserve in excess of the approved annual budgeted line items for Capital Replacement Reserve, without the prior written consent of the City Manager (or designee(s)). A failure by the City to approve, disapprove or respond to a reserve withdrawal request within fifteen (15) days of the date of receipt of the written request shall be deemed approval, provided that the written request states that failure to approve or disapprove such request within such fifteen (15) day period shall be deemed approval. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Developer of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Property in the manner prescribed in this Section 5.

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

For the purposes of determining the adequacy of the funds retained in the Capital Replacement Reserve, the Developer shall conduct, or cause to be conducted, an analysis of the Capital Replacement Reserve and a replacement study of the various components of the Complex, including, without limitation, all appurtenant improvements, fixtures, furniture and equipment, excluding personal property of the residents and occupants of the Site, shall be conducted at five (5) year intervals throughout the Term of this Regulatory Agreement, commencing on the sixth (6th) year of the Term hereof, assessing and evaluating the condition and

effective life of such improvements, fixtures, furniture and equipment. The purpose of this replacement study is to advise the Developer and the City as to replacement requirements of the Complex and Property conditions and the current funding and future deposits to be placed in the Capital Replacement Reserve account to meet the updated replacement projections and Developer shall make additional deposits to the account to maintain adequate funding for future replacements as so determined and approved in writing by the City.

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

6. **Accounting Records.** The Developer shall provide an audited financial statement of the Complex, conforming to customary accounting standards, to the City no later than ninety (90) days following the end of each Operating Year. In a manner subject to City approval, which shall not be unreasonably withheld, Developer shall maintain an accrual or modified accrual basis general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Complex. All records and books relating to this system shall be retained for not less than seven years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to City inspection and audit, upon reasonable notice from City, the location of which shall be mutually acceptable to the parties and during normal working hours.

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

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

In the event of "Gross Mismanagement" (as that term is defined below) of the Complex, the City shall have the authority to require that such Gross Mismanagement cease immediately, and further to require the immediate replacement of the Property Manager if such condition is not corrected after expiration of sixty (60) days from the date of written notice from the City. For purposes of this Agreement, the term "Gross Mismanagement" shall mean management of the

Complex in a manner which violates the terms and/or intention of this Regulatory Agreement and the Management Plan to operate a high quality multifamily housing complex, and shall include, but is not limited to, the following:

(a) Repeatedly leasing to residents who exceed the prescribed income levels or are otherwise ineligible for tenancy; or,

(b) Repeatedly allowing the residents to exceed occupancy limits prescribed by law or set forth in the Management Plan without taking immediate action to stop such overcrowding; or,

(c) Repeatedly under funding the prescribed Capital Replacement and Operating Reserves (Sections 5(i) and 5(j)); or,

(d) Failure to pay property taxes, special assessments and liens levied against the Site or any personal property related thereto; or,

(e) Failure to resolve or remove mechanical, workmens' or any other type of lien placed against the Site or the improvements thereon; or,

(f) Failure to maintain insurance as required pursuant to terms and conditions of this Regulatory Agreement; or,

(g) Repeatedly failing to timely maintain the Complex and the Property in accordance with the Management Plan and the manner prescribed in this Section 7; or,

(h) Repeatedly failing to submit timely and/or adequate annual resident income certification reports as required in Section 4.3; or,

(i) Commitment of fraud or embezzlement of Complex monies, including without limitation, the funds in the Capital Replacement Reserve and Operating Reserve; or,

(j) Repeatedly failing to fully cooperate with the Oceanside Police Department, or other local, State or Federal law enforcement agencies with jurisdiction over the Development, in attempting to maintain a crime-free environment on the Site.

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

8. Utilities and Taxes.

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

costs to be made by the residents. Services provided for the common use areas of the Property and the Development shall be an expense to the Complex.

8.2 Real Estate Taxes.

(a) As used herein, the term "real estate taxes" shall mean all real estate taxes, assessments for improvements to the benefit of the Property, municipal or county water and sewer rates and charges, or any other assessments, flat rate charges or possessory interest taxes, which shall be levied against the Property or the Complex, or any interest therein, and which become a lien thereon and accrues during the Term.

(b) Developer covenants and agrees to pay all such real estate taxes levied against the Property and Complex prior to the delinquency date thereof.

(c) Developer shall have the right to file exemption applications pursuant to Revenue and Taxation Code §214 and to contest the amount or validity of any real estate taxes, in whole or in part, by appropriate administrative and legal proceedings, without any costs or expense to the City.

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

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

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

10. Indemnification: Faithful Performance. Developer shall not suffer or permit any liens to be enforced against the Property and Complex by reason of work, labor, services or materials supplied or claimed to have been supplied to Developer or anyone holding the Property and the Complex, or any part thereof, through or under Developer. Developer agrees to defend, indemnify, and hold the City and its officers, officials, employees, agents, and representatives, harmless against such liens. If any such lien shall at any time be filed against the Property or the Complex, Developer shall, within thirty (30) days after notice to Developer of the filing thereof, cause the same to be discharged of record; provided, however, that Developer shall have the right to contest the amount or validity, in whole or in part, of any such lien by appropriate proceedings, but in such event, Developer shall notify the City and promptly bond such lien in the manner authorized by law with a responsible surety company qualified to do business in the State of

California or provide other security acceptable to the City. Developer shall prosecute such proceedings with due diligence. Nothing in this Regulatory Agreement shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of the City, express or implied, by inference or otherwise, to any person, firm or limited partnership for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Property, the Complex, or any part thereof. Prior to commencement of rehabilitation of the Complex on the Property, or any repair or alteration thereto, Developer shall give the City not less than thirty (30) days advance notice in writing of intention to begin said activity in order that non-responsibility notices may be posted and recorded as provided by state and local laws.

11. Environmental Matters.

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

(a) The term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the County of San Diego, the State of California, regional governmental authority or the United States Government, including, but not limited to, any material or substance which is:

(i) Defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law));

(ii) Defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act);

(iii) Defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory);

(iv) Defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances);

(v) Petroleum;

(vi) Friable asbestos,

(vii) Polychlorinated biphenyl,

(viii) Listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article II of Title 22 of the California Administrative Code, Division 4, Chapter 20,

(ix) Designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317),

(x) Defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903) or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. Notwithstanding the foregoing, "Hazardous Materials" shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation or management of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable

residential developments, or substances commonly ingested by a significant population living within the Complex, including without limitation alcohol, aspirin and saccharine.

(b) The term "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the Date of Regulatory Agreement) emanating from the Property.

(c) The term "Governmental Requirements" shall mean all past, present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Property is located, and any other state, county, city, political subdivision, agency, instrumentality or other entity exercising jurisdiction over the City, Developer or the Property.

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

11.3 **Indemnification.** Upon and after the Effective Date of this Regulatory Agreement Developer agrees to indemnify, defend and hold the City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property after Developer's acquisition of title to the Property and during the Term of this Regulatory Agreement, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property after Developer's acquisition of title to the Property and during the Term of this Regulatory Agreement. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. Developer's obligations under this Section 11.3(a) shall survive the expiration of this Regulatory Agreement.

11.4 **Duty to Prevent Hazardous Material Contamination.** Developer shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment from the Property or the Complex. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially

reasonable standards generally applied by apartment complexes in San Diego County, California as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials.

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

11.6 Right of Entry. Notwithstanding any other term or provision of this Regulatory Agreement, Developer shall permit the City or its agents or employees to enter the Property at any time during normal business hours (except in the event of an emergency), without prior notice in the event of an emergency, and with not less than twenty-four (24) hours advance notice if no emergency is involved, to inspect, monitor and/or take emergency or long-term remedial action with respect to Hazardous Materials and Hazardous Materials Contamination on or affecting the Property, or to discharge Developer's obligations hereunder with respect to such Hazardous Materials and Hazardous Materials Contamination when Developer has failed to do so after notice from the City and a reasonable opportunity to cure or commence to cure and diligently pursue to completion such deficiency. All reasonable costs and expenses incurred by the City in connection with performing Developer's obligations hereunder shall be reimbursed by Developer to the City within thirty (30) days of Developer's receipt of written request therefor.

11.7 Storage or Handling of Hazardous Materials. Developer, at its sole cost and expense, shall comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials on or about the Property; provided, however, that nothing contained in this Section shall preclude the Developer, its agents, contractors or employees from bringing, keeping or using on or about the Property such materials, supplies, equipment and machinery as are appropriate or customary in the construction or repair, operation and maintenance of the Property and the Complex and used or applied in accordance with manufacturer's directions and requirements. In the event Developer does store, use, transport, handle or dispose of any Hazardous Materials which are in violation of applicable law, Developer shall notify the City in writing at least ten (10) days prior to their first appearance on the Property, and Developer's failure to do so shall constitute a material default under this Regulatory Agreement. Developer shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. In addition, in the event of any complaint or governmental inquiry, or if otherwise deemed necessary by the City in its reasonable judgment, the City may require Developer, at Developer's sole cost and expense, to conduct specific monitoring or testing activities with respect to Hazardous Materials on the Property. Developer's monitoring programs shall be in compliance with applicable Governmental Requirements, and any program related to the specific monitoring of or testing for Hazardous Materials on the Property shall be satisfactory to the City, in the City's reasonable discretion. Developer shall further be solely responsible, and shall reimburse the City, for all costs and expenses incurred by the City arising out

of or connected with the removal, clean-up and/or restoration work and materials necessary to return the Property and any property adjacent to the Property affected by Hazardous Materials emanating from the Property to their condition existing at the time of the Developer's Property Evaluation. Developer's obligations hereunder shall survive the termination of this Regulatory Agreement and shall not merge with any grant deed.

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

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

12. Alteration of Improvements. Upon completion of the rehabilitation of the Complex, Developer shall not make or permit to be made any structural alteration of the Complex, nor demolish all or any part of the Complex, without obtaining all required City permits and entitlements, and without obtaining the prior written consent of the City; provided, however, that the foregoing shall not prohibit or restrict the repair and/or replacement of the Complex by Developer in accordance with Section 10 hereof. In requesting such consent of the City, Developer shall submit to the City detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor. This provision shall not limit or set aside any obligation of Developer under this Regulatory Agreement to maintain the Complex and the Property in a clean and safe condition, including structural repair and restoration of damaged Complex improvements. The City shall not be obligated by this Regulatory Agreement to make any improvements to the Property or to assume any expense therefor. Developer shall not commit or suffer to be committed any waste or impairment of the Property or the Complex, or any part thereof, except as otherwise permitted pursuant to this Regulatory Agreement.

13. Damage or Destruction.

13.1 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. Subject to Section 13.3 below, if during the period of rehabilitation, the Complex shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Developer, Developer shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Complex to substantially the same condition as the Complex is required to be maintained in pursuant to this Regulatory Agreement, whether or not the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Developer shall complete the same as soon as possible thereafter so that the Complex can be occupied in accordance with this Regulatory Agreement. Subject to Section 25.22, in no event shall the repair, replacement, or restoration period exceed one

(1) year from the date Developer obtains insurance proceeds unless the City Manager (or designee(s)), in his or her sole and absolute discretion, approves a longer period of time. The City shall cooperate with Developer, at no expense to the City, in obtaining any governmental permits required for the repair, replacement, or restoration.

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

In the event Developer elects not to repair, replace, or restore and give the City notice of such election as provided in this Section 13.1, this Regulatory Agreement shall terminate.

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

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

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

assignee or transferee.

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

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

(b) Any transfer to Wakeland or an Affiliate after the expiration of the fifteen (15) year tax credit compliance period.

(c) Any requested assignment for financing purposes (subject to such financing being considered and approved by the City pursuant to Section 15 herein), including the grant of a deed of trust to secure the funds necessary for construction and permanent financing of the Complex.

In the event of an assignment by Developer under subparagraphs (a) through (c), inclusive, above, not requiring the City's prior approval, Developer nevertheless agrees that at least sixty (60) days prior to such assignment it shall give written notice to the City of such assignment and satisfactory evidence that the assignee or sublessee has assumed jointly with Developer the obligations of this Regulatory Agreement. The City agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 14, provided Developer delivers written notice to the City requesting such approval. Such notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 14 and as reasonably determined by the City. The City shall evaluate such proposed transferee or assignee on the basis of its development qualifications and experience and/or qualifications and experience in the operation of facilities similar to the Complex, and its financial commitments and resources, and may reasonably disapprove any proposed transferee or assignee, which the City reasonably determines does not process sufficient qualifications. An assignment and assumption agreement in form satisfactory to the City Attorney (or designee(s)) shall also be required for all proposed assignments. Within sixty (60) days after the receipt of the Developer's written notice requesting approval of an assignment or transfer pursuant to this Section 14, the City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Developer shall promptly furnish to the City such further information as may be reasonably requested. Review of experience in operating similar complexes shall not be required with respect to institutional lenders providing financing pursuant to Section 15 hereof so long as the original Developer (or a successor that has been expressly approved in writing by the City) remains responsible for operating the Complex and performing as Developer pursuant to this Regulatory

Agreement. Approval by the City of any such sale, assignment, sublease or transfer shall be deemed to relieve Developer or any approved or permitted assignee or successor from any obligations under this Regulatory Agreement. Developer shall only sell, assign, sublease, or transfer the Property and the Complex as a whole and is not permitted to subdivide the Property and the Complex for the Term of this Regulatory Agreement without the prior written approval of the City.

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

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

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

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

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

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

15.1 Hypothecation. The Developer may, from time to time, with the prior written consent

of the City, hypothecate, mortgage, pledge, convey in trust or alienate (collectively, a "deed of trust or mortgage") the Property as security for payment of any indebtedness and/or the performance of any obligation. The holder of any such deed of trust or mortgage upon the Property, is herein referred to as a "Mortgagee". A Mortgagee may enforce such deed of trust or mortgage and acquire title to the Property in any lawful way and, pending foreclosure of such deed of trust or mortgage, the Mortgagee may take possession of and operate the Complex performing all obligations performable by Developer, and upon foreclosure of such lien by power of sale, judicial foreclosure, or upon acquisition of the Property by deed in lieu of foreclosure, the Mortgagee may sell and assign the estate hereby created. A Mortgagee shall at all times have the right to assign its rights under the deed of trust or mortgage and any other security instruments and/or documents relating to the deed of trust or mortgage to a nominee for the purpose of taking title to the Complex following a foreclosure of the deed of trust or mortgage or deed-in-lieu thereof. Such nominee shall be entitled to all of the rights and protections afforded a Mortgagee in this Regulatory Agreement. Any person or entity acquiring such leasehold estate so sold or assigned by the Mortgagee shall be liable to perform the obligations imposed on Developer by this Regulatory Agreement only during the period such person has ownership of said leasehold estate. The rights and privileges hereunder of any Mortgagee shall be subject to the rights and privileges of any other Mortgagee whose lien has priority over the lien of such Mortgagee.

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

In the event Developer shall default in the performance of any of the terms, conditions, covenants and agreements of this Regulatory Agreement on Developer's part to be performed, each Mortgagee shall have the right, but not the obligation, to cure or make good such monetary and/or non-monetary default or cause the same to be cured or made good and City shall accept such performances on the part of any such Mortgagee as though the same had been done or performed by Developer. In the case of a default by Developer in the payment of money, after the expiration of all applicable grace and cure periods, City will take no action to exercise any other remedy by reason thereof unless such default is not cured within sixty (60) days after each Mortgagee receives written notice from City that such default was not timely cured, it being the intent hereof and the understanding of the parties that each such Mortgagee entitled to such notice shall be allowed up to but not in excess of sixty (60) days after the service of such notice to cure any default of Developer in the making of any other monetary payment required under the terms of this Regulatory Agreement. In the case of any other default by Developer, City will take no action to exercise any remedy by reason thereof if, within one-hundred-twenty (120) days after the expiration of all applicable grace and cure periods available to Developer for curing said default and City's delivery of written notice thereof to each Mortgagee, any Mortgagee commences a non-monetary cure and thereafter diligently prosecutes the same to completion within a reasonable period of time. The commencement of judicial or non-judicial foreclosure proceedings by the Mortgagee shall be deemed the commencement of such a non-monetary cure provided that: (i) the Mortgagee thereafter diligently prosecutes the same (provided, however, that if the Mortgagee is prevented or restrained by a court of competent jurisdiction or by reason of any law, regulation, order, stay or rule from so proceeding, the time period set forth above, and the time within when such Mortgagee shall be required to cure such default, shall be tolled, and provided further that if the default is cured, the Mortgagee may discontinue such proceedings and/or possession); and (ii) upon acquisition by either the Mortgagee or any other direct purchaser or direct transferee of Developer's interest under

this Regulatory Agreement, whether at a judicial foreclosure, trustee's sale or by deed or assignment in lieu of foreclosure, such Leasehold Mortgagee, purchaser or transferee commences, within one-hundred twenty (120) days after acquiring such interest, and thereafter diligently prosecutes to completion, the cure of all defaults hereunder reasonably capable of being cured by such Mortgagee or transferee. The time available to any Mortgagee to initiate foreclosure proceedings as aforesaid shall be deemed extended by the reasonable number of days of delay occasioned by circumstances beyond the Mortgagee's control. During the period that such Mortgagee shall be in possession of the Property and/or during the pendency of any foreclosure proceedings instituted by any Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid all charges of what ever nature payable by Developer hereunder which have been accrued and are unpaid and which will thereafter accrue during said period (subject to the provisions of the preceding paragraph). Following the acquisition of the Property by the Mortgagee, or its designee, either as a result of judicial foreclosure or trustee sale proceedings or acceptance of an assignment in lieu of foreclosure, the Mortgagee or party acquiring title to Developer's leasehold estate shall, as promptly as reasonably possible, commence the cure of all defaults hereunder reasonably susceptible to being cured by the Mortgage and thereafter diligently process such cure to completion, Any such purchaser, including, without limitation, any Mortgagee, shall be liable to perform the obligations imposed on Developer by this Regulatory Agreement incurred or accrued only during the period such person or entity has ownership of the Property.

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

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

15.4 New Regulatory Agreement. In the event that this Regulatory Agreement is terminated for any reason, including, without limitation, any termination or rejection through bankruptcy or chapter proceedings, City shall give each Mortgagee written notice of such termination, each Mortgagee shall have the right within one-hundred twenty (120) days of receipt of notice of such termination, to demand a new agreement to replace this Regulatory Agreement covering the Property for a term to commence on the date of procurement by City of possession of the Property and to expire on the same date as this Regulatory Agreement would have expired if it had otherwise continued uninterrupted until its scheduled date of termination, and containing all of the same rights, terms, covenants, considerations and obligations as set forth in this Regulatory Agreement; provided however, that should more than one Mortgagee make such a demand, only the senior-most Mortgagee's demand shall be honored. Such new agreement shall be executed and delivered by the City to such Mortgagee within one-hundred twenty (120) days after receipt by the City of written notice from the Mortgagee of such election and upon payment by such Mortgagee of all sums owing by Developer under the provisions of the Regulatory Agreement (less the rent and other income actually collected by City in the meantime from any lessees or other

occupants of the Property). After such termination and cancellation of this Regulatory Agreement and prior to the expiration of the period within which any Mortgagee may elect to demand such new agreement from City, City shall refrain from terminating any existing lease and from executing any new leases or otherwise encumbering the real property regulated hereby without the prior written consent of each Mortgagee and City shall account to each Mortgagee for all rent collected from lessees during such period. Any new agreement granted any such Mortgagee shall be in a form substantially identical to this Regulatory Agreement and shall enjoy the same priority in time and in right as this Regulatory Agreement over any lien, encumbrance or other interest created by City before or after the date of such new agreement and shall have the benefit of and vest in such Mortgagee all right, title, interest, power and privileges of Developer hereunder in the Property, including specifically, without written limitation, the assignment of Developer's interest in and to all then existing leases and lease rentals, and the automatic vesting of title to all buildings, Improvements, and appurtenances, as well as to all equipment, fixtures and machinery therein until the expiration or termination of the Term of this Regulatory Agreement. Such new Regulatory Agreement shall provide, with respect to each and every lease which immediately prior to the termination of this Regulatory Agreement was superior to the lien of the Mortgagee executing the new agreement and Developer, or to which such Mortgagee has executed a nondisturbance agreement, that such Developer thereunder shall by deemed to have recognized the lessee under the lease, pursuant to the terms of the lease, as modified by any applicable nondisturbance or attornment agreement, as though the lease had never terminated but had continued in full force and effect after the termination of this Regulatory Agreement, and to have assumed all of the obligations of the sublessor accruing from and after the termination of this Regulatory Agreement, except that the obligation of the new Developer, as sublessor, under any covenant of quiet enjoyment, express or implied, contained in any such sublease, shall be limited to the acts of such Developer and those claiming by, under and through such Developer.

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

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

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

17. Insurance.

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

(a) A policy or policies of all-risk property insurance. Such insurance policy shall be maintained in an amount not less than one hundred percent (100%) of the "Full Insurable Value" of the Complex, as defined herein in Section 17.2.

(b) Upon the commencement of the occupancy of the Housing Units, use and occupancy or business interruption or rental income insurance against the perils of fire, lightning, vandalism, malicious mischief, and such other perils ordinarily included in extended coverage fire insurance policies, in an amount equal to not less than twelve (12) months gross rental income payable to Developer from residents on the Property, assuming one hundred percent (100%) occupancy.

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

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

incurring or suffering injury or death in connection with the Property or the Complex or the operation thereof by Developer or Property Manager.

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

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

Developer agrees to timely pay or cause to be timely paid all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Developer agrees to submit policies of all insurance required by this Section 17 of this Regulatory Agreement, or certificates evidencing the existence thereof, to the City on or before the effective date of this Regulatory Agreement, indicating the coverage of the contractual liability imposed by this Regulatory Agreement. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to the City. All policies shall be written by good and solvent insurers qualified to do business in California, or holding an AM Best rating (or its reasonable equivalent) of A-X or better, and reasonably acceptable to the City Manager (or designee(s)). All policies or certificates of insurance shall also: (i) provide that such policies shall not be canceled or limited in any manner without at least thirty (30) days prior written notice to the City; and (ii) provide that such coverage is primary and not contributing with any insurance as may be obtained by the City and shall contain a waiver of subrogation for the benefit of the City.

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

17.5 Insurance Proceeds Resulting from Loss or Damage to Complex. Subject to the requirements of senior Mortgagees, all proceeds of insurance with respect to loss or damage to the Complex during the term of this Regulatory Agreement shall be payable, under the provisions of the policy of insurance, to Developer, and said proceeds shall constitute a trust fund to be used for the restoration, repair and rebuilding of the Complex in accordance with plans and specifications approved in writing by the City. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, then such proceeds shall be used to repay any outstanding loans secured by encumbrances upon the Property, and any remaining proceeds shall be apportioned

between Developer and the City as their interests may appear. Notwithstanding the foregoing, within the period during which there is an outstanding mortgage upon the Complex, such proceeds shall be payable in accordance with mortgage loan documents.

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

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

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

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

released from all obligations under this Regulatory Agreement, except for those specified in Section 18.3 herein.

18.2 Partial Taking-Improvements. If at any time during the Term of this Regulatory Agreement and the Lease a taking occurs that is less that a Total Taking and affects the Complex, including appurtenant buildings, structures, and/or parking spaces, all compensation and damages payable for that taking shall be made available to and used, to the extent reasonably needed, by the Developer to provide replacement Improvements or to restore the remaining Improvements of the Complex, provided that such replacement and/or restoration is then permitted by the existing law with only such modifications as will not materially reduce the value of the restored Improvements, as compared to the damaged Improvements; Plans and specifications for such replacements and restoration must be compatible, in terms of architecture and quality of construction, with the Improvements not taken. Any material changes in the quality of construction, must be first approved in writing by the City, which approval will not be unreasonably withheld or delayed.

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

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

Developer shall refrain from restricting the rental or lease of the Property and the Complex, or any portion thereof, on the basis of sex, familial status, race, color, creed, religion, ancestry or national origin of any person. All such leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) **In Leases:** "The lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased

nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of residents, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(b) **In Contracts:** "There shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of residents, lessees, subtenants, sublessees or vendees of the premises."

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

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

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

23. Right to Maintain. In the event that the entry or inspection by the City pursuant to

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

24. Events of Default and Remedies.

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

(a) Developer shall abandon or surrender the Property, or the Complex; or

(b) Notwithstanding the provisions of Section 23 herein, Developer shall fail or refuse to pay, within ten (10) days of notice from the City that the same is due, or any sum required by this Regulatory Agreement to be paid by Developer; or

(c) Developer shall fail to materially perform any covenant or condition of this Regulatory Agreement, and/or any loan documents or regulatory agreements executed by Developer which are permitted pursuant to the foregoing, other than as set forth in subparagraphs (a) or (b) above, and any such failure shall not be cured within thirty (30) days following the service on Developer of a written notice from the City specifying the failure complained of, or if it is not reasonably practicable to cure or remedy such failure within such thirty (30) day period, then Developer shall not be deemed to be in default if Developer shall commence such cure within such thirty (30) day period and thereafter diligently prosecute such cure to completion; or

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

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

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

(b) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by the City in enforcing this provision) from the proceeds of any insurance;

(c) Exercise its right to maintain any and all actions at law or suits in equity to compel Developer to correct or cause to be corrected said default;

(d) Make application to the court for an order to have a receiver appointed to take possession of Developer's interest in the Property and the Complex, with power in said receiver to administer Developer's interest in the Property and the Complex, to collect all funds available to Developer in connection with its operation and maintenance of the Property and the Complex; and to perform all other acts and duties consistent with Developer's obligation under this Regulatory Agreement as the court deems proper;

(e) Maintain and operate the Property and the Complex, without terminating this Regulatory Agreement;

(f) Require the replacement of one or more general partners of the Developer with other general partners, which are reasonably acceptable to the City;

(g) Require the replacement of the Property Manager under circumstances of Gross Mismanagement after notice of such has been given pursuant to this Section 24 and after the time for an opportunity to cure has lapsed.

24.3 **Damages.** Subject to Section 24.5, damages which the City recovers in the event of default under this Regulatory Agreement shall be those which are then available under applicable California case and statutory law to lessors for leases in the State of California including, but not limited to, any accrued but unpaid rent and the worth at the time of award of the amount by which the unpaid rent for the balance of the term of the Loan Agreement after the date of award exceeds the amount of such rental loss for the same period that Developer proves could be reasonably avoided.

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

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

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

(b) intentional bad faith waste of the Complex or Property;

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

25. Miscellaneous.

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

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

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

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

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

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

of this Regulatory Agreement. Developer also has the right (at the City's office, upon not less than forty-eight (48) hours' notice, and during normal business hours) to inspect the books and records of the City pertaining to the Property as pertinent to the purposes of this Regulatory Agreement.

25.6 Interest. Any amount due the City that is not paid when due shall bear interest from the date such amount becomes due until it is paid. Interest shall be at a rate equal to the lesser of (i) the Prime Rate, plus two percent (2%), on the first day of the month such amount becomes due, and (ii) the maximum rate permitted by applicable law.

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

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

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

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

With Copy To:
Pillsbury Winthrop Shaw Pittman
50 Fremont Street
San Francisco, CA 94105
Attention: Gary Downs, Counsel

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

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

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

25.9 Conflict of Interest. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Regulatory Agreement nor shall any such member,

official or employee participate in any decision relating to the Regulatory Agreement which affects his personal interests or the interests of any limited partnership, partnership or association in which he is directly or indirectly interested. Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Regulatory Agreement.

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

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

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

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

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

25.14 Entire Agreement; Duplicate Originals; Counterparts. Except as set forth in Section 25.15, this Regulatory Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof. This Regulatory Agreement is executed in one (1) original and shall be filed in the Office of the County Recorder of San Diego County and be made a part of the Official Records pursuant to Section 25.17 herein.

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

25.16 Terminology. All personal pronouns used in this Regulatory Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall

include the plural, and vice versa. Titles of sections are for convenience only, and neither limit nor amplify the provisions of this Regulatory Agreement itself.

25.17 Recordation. An original of this Regulatory Agreement, and any amendment thereof, shall, at the expense of Developer, be acknowledged by each of the parties hereto and recorded and referenced in the official records of the County of San Diego, California, and concurrently with the recordation of the "Conveyance".

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

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

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

25.21 Quiet Enjoyment. The City does hereby covenant, promise and agree to and with Developer that Developer, for so long as Developer is not in default hereof, shall and may at all times peaceably and quietly have, hold, use, occupy and possess the Property throughout the Term of this Regulatory Agreement.

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

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

(a) Assign or transfer any right to operate or manage the Complex, except pursuant

to Section 14;

(b) Require, as a condition of the occupancy or leasing of any Housing Unit in the Complex, any consideration or deposit in excess of that permitted by the Program Regulations to guarantee the performance of the covenants of the lease. Any funds collected as security deposits shall be kept separate and apart from all other funds of the Complex in a trust account with a depository insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The balance of such account shall at all times equal or exceed the aggregate of all outstanding obligations under said account;

(c) Permit the use of the Housing Units and other areas of the Property and Complex for any purpose except that which was approved by the City;

(d) Enter into any contract or contracts for supervisory or managerial services except as permitted by this Regulatory Agreement; or

(e) Invest any funds from the Complex in any property, real or personal, except as authorized by this Regulatory Agreement or by the City, or deposit any such funds in a depository not authorized by this Regulatory Agreement or approved by the City or in financially risky investments. Permissible investments, for invested funds, as first approved in writing by the City Manager (or designee(s)), shall maintain a minimum credit quality standard to preserve the principal thereof with an financial or securities institution which maintains a credit rating of not less than AA.

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

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

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

25.25 Compliance with Law. Developer agrees that, at all times, its acts regarding the development, operation of the Property and Complex, Developer shall not use the Property or the Complex for any purpose that is in violation of any law, ordinance or regulation of any federal, state,

county or local government agency, body or entity. Developer shall not maintain or commit any nuisance or unlawful conduct (as now or hereinafter defined by any applicable statutory or decisional law) on the Property, the Complex, or any parts thereof.

Furthermore, Developer shall at all times be in conformity with all provisions of the Program including the statutes, rules and regulations and such policies and procedures of the City pertaining thereto, as amended and in effect from time to time (the "Program Regulations"). Developer acknowledges that it is aware of such applicable Program Regulations, and that professional advice is available as necessary for the purpose of enabling Developer to fully comply with such statutes, rules and regulations.

In the event that any Program Regulations promulgated after the execution of the Regulatory Agreement, are in conflict with this Regulatory Agreement, the provisions of this Regulatory Agreement shall prevail.

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

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

City:
City of Oceanside, a municipal corporation

_____
City Manager

Developer:
Country Club Apartments, L.P., a California limited partnership

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

By: Wakeland Housing and Development Corporation, a California nonprofit corporation, its Manager and Sole Member

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

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

By: Peter Hamilton, ASST.
City Attorney

NOTARY ACKNOWLEDGEMENT OF SIGNATORIES MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On 16th Day of April 2008 (Date) before me, KENTON HOPPAS, NOTARY Public (Here Insert Name and Title of the Officer),

personally appeared KENNETH SAUDER (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/the~~ir signature(~~s)~~ on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

KENTON HOPPAS
Comm. # 1567397
NOTARY PUBLIC - CALIFORNIA
San Diego County
My Comm. Expires Apr. 22, 2009

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)

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

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

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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EXHIBIT "A"

LEGAL DESCRIPTION

Lot 9 of Maxon & Griffin's Subdivision of Tyson Tract in the City of Oceanside, County of San Diego, State of California per Map thereof No. 433, filed in the Office of the County Recorder of San Diego County, December 29, 1887.

Excepting therefrom, that portion of said Lot 9 described as follows:

Commencing at the Southwest corner of said Lot 9, being the Southwest corner of Section 24, Township 11 South, Range 5 West, San Bernardino Meridian; as shown on said Map;
thence North 00°38'38" West along the westerly line of said Lot 9, 109.81 feet to the **True Point of Beginning**;
thence continuing along said westerly line North 00°38'38" West, 275.80 feet;
thence leaving said westerly line South 89°47'06" East, 8.88 feet;
thence South 00°19'57" East 57.31 feet;
thence North 89°53'43" East, 5.94 feet;
thence South 00°19'15" East, 75.63 feet;
thence South 01°12'13" East, 68.44 feet;
thence South 88°40'09" West, 3.84 feet;
thence South 00°55'55" East 73.83 feet;
thence South 87°30'17" West, 11.28 feet to the **True Point of Beginning.**

Contains 2.780 acres, more or less.

This legal description was prepared by me or under my direction in conformance with the Professional Land Surveyors Act.

4/28/08

Joseph G. Cresto — Date
PLS 8050

LICENSED LAND SURVEYOR
JOSEPH G. CRESTO
No. 8050
Exp. 12/31/09
STATE OF CALIFORNIA

LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") dated, solely for identification purposes, as of May 1, 2008, is entered into by and between the **CITY OF OCEANSIDE**, a municipal corporation ("City"), and **COUNTRY CLUB APARTMENTS, L.P.**, a California limited partnership (the "Developer").

RECITALS

The following recitals are a substantive part of this Agreement:

A. The City is a California municipal corporation which has received funds through its Inclusionary Housing In-lieu Trust Funds program to provide decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low income and lower income households in the City.

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

C. The City and the Developer have entered into an Acquisition and Rehabilitation Agreement, dated December 19, 2007 (the "ARA"). Pursuant to the ARA, (i) the City has agreed to assign its interest in that certain Purchase and Sale Agreement, dated December 19, 2007, by and between the City, as "Buyer" and Jorbon, LLC, as "Seller", (the "Purchase Agreement") and related escrow concerning real property located in the City of Oceanside at 201 Country Club Lane (the "Site") to the Developer and the Developer has agreed to accept said assignment and assume and perform all acts required of "Buyer" under the Purchase Agreement, (ii) the City has agreed to provide certain financial assistance to the Developer for the acquisition of the Site and rehabilitation of certain improvements located on the Site, (iii) the Developer has agreed to rehabilitate and renovate certain improvements on the Site which is improved with a 91-unit multifamily rental residential apartment complex, commonly referred to as the Country Club Apartments, consisting of eleven (11) studio, fifty-seven (57) one-bedroom, and twenty-two (22) two-bedroom units (the "Housing Units"), with one (1) two-bedroom unit set aside for the onsite manager (the "Manager's Residence"), a community/multipurpose room, together with appurtenant common use areas, amenities and parking spaces (the "Development" and sometime referred to herein as the "Project"), and (iv) the Developer has agreed to rent the Housing Units to Very Low Income Households at an affordable rent. The ARA is hereby incorporated herein by reference. The City and the Developer have also agreed to execute and record in the official records of San Diego County a "Regulatory Agreement" which sets forth certain obligations of the parties with respect to the rehabilitation and operation of the Development. The Regulatory Agreement is hereby incorporated by reference.

D. The City has agreed to provide a loan of <u>an amount not to exceed</u> **Ten Million One Hundred Sixty-three Thousand Ninety-eight Dollars ($10,163,098.00)** to the

Developer (the "City Loan") to be used in connection with the acquisition of the Site and the rehabilitation of the Development.

E. The provision of financial assistance to the Developer and the rehabilitation and operation of the Development at affordable rental rates pursuant to the terms and conditions of this Agreement are in the vital and best interest of the City.

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

1. City Loan. Subject to Developer's performance of all of the terms, covenants and conditions which are set forth herein, the City hereby agrees to loan to the Developer, and the Developer (as "Borrower") agrees to borrow from the City, the not to exceed sum of **Ten Million One Hundred Sixty-three Thousand Ninety-eight Dollars ($10,163,098.00)** (the "City Loan"). City shall make the City Loan to Developer from available funds. The City has received Inclusionary Housing In-lieu Trust Funds which shall be disbursed to Developer as provided herein.

1.1 Repayment of City Loan. The Developer's obligation to repay the City Loan shall be set forth in the Promissory Note in the form of Exhibit "A" attached hereto, which is incorporated herein. The Promissory Note shall be for a term of fifty-five (55) calendar years from the date of close of escrow on the acquisition of the Site by the Developer ("Close of Escrow"), and shall bear simple interest at the rate of three percent (3%) per annum commencing upon the disbursement of the proceeds of the City Loan. The Promissory Note shall be paid as follows: 1) any cost savings between the approved total sources of funds in the Financing Plan and the total cost of development as documented in the Development's post-completion cost certification will be repaid by the Borrower, in full, within five (5) business days of the date of the post-completion cost certification, to the City; 2) from fifty percent (50%) of the "Residual Receipts" of the Development commencing on the issuance of a Certificate of Completion for the Development and through the first thirty-eight (38) calendar years following the Close of Escrow or through the date the bond indebtedness is paid off, whichever occurs first, and thereafter, from seventy-five percent (75%) of the "Residual Receipts" of the Development, after payment of (i) actual, reasonable and customary (for comparable high quality multifamily rental housing developments in San Diego County) "Operating Expenses" directly incurred, paid, and attributable to the operation, maintenance, and management of the Development, (ii) "Debt Service" which is senior to the Promissory Note, (iii) deposits to required reserve accounts ("Reserve Deposits"), (iv) asset management fees payable to the managing general partner and investor limited partner of the Developer ("Partnership Management Fees"), and (v) social program fees, (vi) bond monitoring/trustee/servicing fees, and (vii) "Deferred Developer Fee" payments (as all of those terms are defined in Section 3 of the Promissory Note), which are in accordance with the Operating Budget approved by the City pursuant to Section 5(h) of the Regulatory Agreement. The Developer shall annually, on or before ninety (90) days after the end of the Developer's fiscal year, commencing in the year after the issuance of a Certificate of Completion for the Development, submit to the City a Residual Receipts Report, in the form attached hereto as Schedule "1" and incorporated herein, which shall provide the basis for the Developer's payment of Residual Receipts to the City.

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

1.3 Disbursement of City Loan. The entire proceeds of the City Loan shall be disbursed as follows: 1) the initial disbursement of the City Loan proceeds, in the not to exceed sum

of **Seven Million Six Hundred Thousand Dollars ($7,600,000.00)** shall made at the time of the closing of the tax credit financing (or as soon as reasonably possible thereafter, but no later than the date set for the close of escrow (the "Closing") for the acquisition of the Site) be deposited into the escrow for the acquisition of the Site and Development and shall be used solely for the purpose of purchasing the Site and Buyer's escrow closing costs; and 2) the remaining balance of the City Loan proceeds in the amount of **Two Million Five Hundred Sixty-three Thousand Ninety-eight Dollars ($2,563,098.00)** shall be deposited with and held by the servicing agent [Wells Fargo Bank, National Association] (the "Servicing Agent") and shall be disbursed only to pay for actual and reasonable hard and soft costs of the rehabilitation of the Development, including without limitation costs of architectural, engineering, planning, legal and related professional services, and the costs of permits and fees required for the performance of the rehabilitation of the Development, all in accordance with the Financing Plan which is approved by the City pursuant to Section 3.12 of the ARA, and the construction contract which has been approved by the City pursuant to Section 3.3(i) of the ARA (the "Construction Contract"). The disbursement of the City Loan proceeds shall be made in accordance with the provisions of Section 1.4 herein and is subject to the fulfillment or waiver by City of each and all of the conditions precedent (a) through (h), inclusive, described below ("Conditions Precedent"), which are solely for the benefit of City, any of which may be waived by the City Manager or designee in his or her sole and absolute discretion:

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

b. Permits and Land Use Approvals. Developer shall have obtained each and all building permits and approvals necessary for the rehabilitation of the Development, in accordance with Section 3, *et seq.*, of the ARA.

c. Evidence of Financing. Developer shall have provided written proof reasonably acceptable to City that the Developer has obtained a commitment for equity contributions, subject to customary conditions, for construction and permanent financing of the Development, and City shall have reasonably approved such financing commitments and the Financing Plan pursuant to Section 3.12 of the ARA. The construction financing for the Development shall close prior to or concurrently with the closing of escrow for the acquisition of the Site and Development and initial disbursement of the City Loan. In addition, a partnership agreement reasonably acceptable to the City in accordance with the approved Financing Plan shall have been executed and a Certificate of Limited Partnership shall have been filed with the California Secretary of State, under which the limited partners are committed to make equity contributions in an amount which together with the proceeds of the construction loan and the City Loan is sufficient to finance the development of the Development. In addition, the Developer shall have certified in writing to the City that the City Loan, together with the construction loan, are together projected to be sufficient to pay for the rehabilitation of the Development.

d. Construction Contract. Developer shall have provided to the City a signed copy of the Construction Contract between the Developer and one or more duly licensed general contractors for the rehabilitation of the Development, certified by the Developer to be true and correct copies thereof, and the City Manager or designee shall have reasonably approved such contractor or contractors as having the experience and financial resources necessary to rehabilitate the Development in accordance with the provisions of the ARA.

Portrait Homes is hereby initially approved by the City to be the general contractor. Notwithstanding the foregoing, in the event Portrait Homes' bid amount for the rehabilitation of the Development is not consistent with the established construction budget as set forth in the Financing Plan, the identity of the general contractor may change subject to City's prior written approval.

e. Acquisition of Site. The City and the Developer shall have executed the Assignment of the Purchase Agreement, and the Developer shall have obtained possession of the Site pursuant thereto. The Regulatory Agreement shall be in full force and effect, and there shall be no defaults thereunder, or any matters which, with the passage of time and/or giving of appropriate notice, would become a default thereunder.

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

g. Proof of Insurance. Developer shall have provided to the City a certificate of insurance that satisfies the requirements of Section 3.13 of the ARA.

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

1.4 Conditions for Each City Loan Disbursement. Disbursement of the City Loan proceeds by the Trustee is subject to the fulfillment or waiver by City of each and all of the following conditions described below:

a. Application for Payment. The Developer shall, at the same time and in the same form as Developer makes an application for disbursement with the Trustee, or as applicable with the Servicing Agent or Lender, (the "Application for Disbursement"), provide the City with a true and exact copy of the Application for Disbursement. City shall have five (5) business days after receipt of each Application for Disbursement to object to the payment of all or any portion of the work for which the Developer is requesting payment. City shall notify the Developer and the Servicing Agent under the Developer's bond financing, by facsimile transmittal of its written notice of objection, with hard copy mailed to Developer at the address provided for in Section 5.1 herein and to the Servicing Agent at 707 Wilshire Boulevard, 18th Floor, Los Angeles, California 90017, Attention: Loan Administration Officer, or any other address as may be required by the Servicing Agent. Any objection by the City shall not prevent the Servicing Agent from disbursing the City Loan proceeds pursuant to the Loan and Financing Agreement dated May 1, 2008, between California Statewide Communities Development Authority and the Developer, and any failure of the City to provide written objection to an Application for Disbursement as provided for herein shall not be deemed as the waiver of same.

b. Inspection of Work. The City may retain a construction administrator that monitors the construction of the Development (the "Construction Administrator"). If retained, the Construction Administrator shall have approved the Application for Disbursement and accompanying documents, and shall have inspected the work for which the Application for Disbursement is being requested and shall have certified to the City that (i) such work has been completed substantially in accordance with the ARA, the Scope of Development and the approved Development Plans, (ii) the amount requested corresponds with the percentage of work completed, (iii) there are adequate funds remaining from the City Loan proceeds and other approved funding to complete the construction of the Development, (iv) the work for which payment is being requested has been completed in a good and workmanlike manner in accordance with the standards of the construction industry, and (v) the expenses are reasonable and in accordance with the Construction Contract budget.

c. Lien Waivers. If requested by City or the Construction Administrator, City shall have received appropriate conditional (conditioned solely on payment) waivers of mechanics' and materialmen's lien rights and stop notice rights executed by all contractors and other persons rendering services or delivering materials covered by requests made in the Request for Disbursement. City Loan proceeds used for hard construction costs may at the City's discretion be subject to a retention of ten percent (10%), with retained proceeds to be released thirty-five (35) days after lien-free completion of such items of construction.

d. Use and Order of Disbursements. Developer shall use or apply all City Loan disbursements solely for the purposes described in the Application for Disbursement pursuant to which the disbursement was made. The order of funding the disbursements shall be equity first, City Loan proceeds second, and bond proceeds third.

1.5 Subordination. The Deed of Trust shall be made subordinate to the deeds of trust to be held by the lender or lenders which are approved by the City pursuant to Section 1.3(c) hereof.

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

2. Development Requirements.

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

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

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

2.3 Insurance. Developer shall furnish the City with proper evidence of the insurance that is required pursuant to Section 3.13 of the ARA.

2.4 Indemnification and Hold Harmless. Developer shall, subject to Section 17 of the Note, indemnify, hold harmless and defend, with attorney(s) reasonably acceptable to the City, its officers, elected and appointed boards and officials, employees, representatives and agents, from and against any and all liability, damages, costs, losses, claims and expenses, suits, actions, proceedings and judgments, including attorney's fees, however caused, resulting directly or indirectly from or connected with the Development, the Site and/or the performance of this Agreement by Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf, except to the extent caused by the sole and active negligence or willful misconduct of the City or its officers, boards, officials, employees, representatives or agents.

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

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

2.7 Condition of the Site.

a. Developer Precautions. Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials that may be located in, on or under the Site commencing upon the Closing and during the term of this Agreement. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

b. Environmental Indemnity. Developer shall indemnify, defend and hold City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the release from the Site, use on the Site, generation on the Site, discharge from the Site, storage on the Site, disposal on or from the Site, or transportation to or from the Site, of any Hazardous Materials during the term of this Agreement arising after the Closing, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site during the term of this Agreement and arising after the Closing. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment; provided, however, under no circumstances shall these indemnity obligations of Developer include any obligation for payment of punitive damages assessed against City, its officers, employees, agents or representatives, or arising from the sole and active negligence or willful misconduct of the City, its officers, employees, agents or representatives.

c. Definitions. For purposes of this Agreement, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, San Diego County, the State of California, regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903) or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.* Notwithstanding the foregoing, "Hazardous Materials" shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation or management of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Development, including without limitation alcohol, aspirin, tobacco and saccharine.

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

a. pay and discharge the same; or

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

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

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

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

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

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

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

3.5 Notice of Changed Conditions. Until the final disbursement of the City Loan, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3 not to be true in any material respect, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder, but shall constitute an exception which City shall have a right to approve or disapprove if such exception would have a material adverse effect on the rehabilitation and/or operation of the Development. If City elects

to disburse the City Loan to the Developer following disclosure of such information, Developer's representations and warranties contained herein shall be deemed to have been made as of the date of the disbursement of the City Loan, subject to such exception(s). If following the disclosure of such information the Developer fails to cure such matter within the time set forth in Section 4 hereof for the cure of defaults, City may elect in its sole and exclusive discretion to terminate this Agreement by written notice to the Developer.

4. Remedies for Default. A failure by either party to perform any action or covenant required by this Agreement, the ARA, the Regulatory Agreement, the Promissory Note, the Deed of Trust, or any loan or deed of trust for the Development which is senior to the City Loan, within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party cures such default within ten (10) days if the claimed Default is a failure to pay amounts due pursuant to the Promissory Note, or thirty (30) days from receipt of such notice for all other claimed Defaults hereunder, unless a longer cure period is provided in the ARA, Regulatory Agreement, Promissory Note, Deed of Trust or other applicable document. However, in the event that such Default is other than a failure to pay money and is of such a nature that it cannot reasonably be cured within thirty (30) days from receipt of such notice, the claimant shall not institute any proceeding against the other party, and the other party shall not be in Default if such party immediately upon receipt of such notice, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence as soon as reasonably possible thereafter. In the event that the Developer is in default on any loan or deed of trust senior to the City Loan, the Developer shall immediately deliver to the City a copy of such notice of default. Even if the holder of such loan or deed of trust has not exercised its rights or remedies with respect to such default, the City shall have the right (but not be obligated to) cure such default. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses actually incurred by the City in curing such default, plus interest at the rate of seven percent (7%) per annum. The City shall be entitled to add such amount to the amounts owing pursuant to the Promissory Note, and secured by the Leasehold Deed of Trust.

4.1 Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. The City may also cause all indebtedness of the Developer under this Agreement and the Promissory Note to become immediately due and payable, and may institute an action for judicial or nonjudicial foreclosure pursuant to the Deed of Trust. Legal actions must be instituted in the Superior Court of the County of San Diego, State of California, or in the United States District Court for the Southern District of California.

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

shall be made in such manner as may be provided by law and shall be effective whether served inside or outside of California.

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

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

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

4.6 Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

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

5. General Provisions.

5.1 Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice:

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

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

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

With a copy to: Pillsbury Winthrop Shaw Pittman
50 Fremont Street
San Francisco, CA 94105
Attention: Gary Downs

With a copy to: Wells Fargo Bank
707 Wilshire Boulevard, 18th Floor
Los Angeles, CA 90017
Attention: Loan Administration Officer

With a copy to: Best Best & Kreiger
3750 University Avenue, Suite 400
Riverside, CA 92502
Attention: John Rottshaefer, Counsel

With a copy to: SCDC, LLC
C/O Red Capital Markets, Inc.
Two Miranova Place, 12th Floor
Columbus, OH 43215
Attention: Tax Credit Asset Management

Any written notice, demand or communication shall be deemed received immediately upon receipt; provided, however, that refusal to accept delivery after reasonable attempts thereto shall constitute receipt. Any notices attempted to be delivered to an address from which the receiving party has moved without notice shall be effective on the third day from the date of the attempted delivery or deposit in the United States mail.

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

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

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

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

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

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

5.8 Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

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

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

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

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

APPROVED AS TO FORM:

_____ ASST.
City Attorney

CITY:
CITY OF OCEANSIDE, a municipal corporation

By: _____
City Manager

DEVELOPER:
COUNTRY CLUB APARTMENTS, L.P., a California limited partnership

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

By: Wakeland Housing and Development Corporation, a California nonprofit corporation, its Manager and Sole Member

By: _____
Kenneth L. Sauder, President and CEO

Developer's Signature(s) Must be Notarized

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On 16th Day of April 2008 (Date) before me, KENTON HOPPAS, NOTARY Public (Here Insert Name and Title of the Officer),

personally appeared KENNETH SAUDER (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.

KENTON HOPPAS
Comm. # 1567397
NOTARY PUBLIC - CALIFORNIA
San Diego County
My Comm. Expires Apr. 22, 2009

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 Kenton Hoppas (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

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

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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EXHIBIT "A"

PROMISSORY NOTE

Not to Exceed $10,163,098.00
May 1, 2008 Oceanside, California

FOR VALUE RECEIVED, COUNTRY CLUB APARTMENTS, L.P., a California limited partnership (the "Borrower"), promises to pay to the **CITY OF OCEANSIDE,** a municipal corporation (the "City"), or order, at the City's office at 300 North Coast Highway, Oceanside, California, or such other place as the City may designate in writing, the not to exceed sum of **Ten Million One Hundred Sixty-three Thousand Ninety-eight Dollars ($10,163,098.00)** or so much of such sum as has been disbursed by the City (the "Note Amount"), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

1. Agreement. This Promissory Note (the "Note") is given in accordance with that certain Loan Agreement executed by the City and Borrower, dated as of May 1, 2008 (the "Agreement"). The rights and obligations of the Borrower and the City under this Note shall be governed by the Agreement and by the additional terms set forth in this Note. In the event of any inconsistencies between the terms of this Note and the terms of the Agreement or any other document related to the Note Amount, the terms of this Note shall prevail.

2. Interest. The Note Amount shall bear simple interest at the rate of three percent (3%) per annum. Interest shall commence to accrue upon the close of escrow for the acquisition of the Site by Borrower (the "Close of Escrow"), as set forth in that certain Acquisition and Rehabilitation Agreement by and between the City of Oceanside, as "City", and Borrower, as "Developer", dated as of December 19, 2007, having an Effective Date of January 9, 2008, and as amended by that certain Amendment No. 1, dated as of May 1, 2008 (collectively the "ARA").

3. Repayment of Note Amount. The Note Amount shall be paid by the Borrower as follows: 1) any cost savings between the approved total sources of funds in the Financing Plan and the total cost of development as documented in the Development's post-completion cost certification will be repaid in full by the Borrower to the City within five (5) business days of the date of the post-completion cost certificate; 2) an annual payment to the City of an amount equal to fifty percent (50%) of the Residual Receipts (as defined below) from operation of the Development (as defined in the Agreement), as determined by a residual receipts calculation from the operation of the Development during the preceding calendar year during the first thirty-eight (38) calendar years following the issuance of a Certificate of Completion for the Development or through the date of the bond indebtedness is paid off, whichever occurs first, and thereafter, from seventy-five percent (75%) of the Residual Receipts of the Development. Annual Residual Receipts payments shall be delivered on or before ninety (90) days after the end of the Borrower's fiscal year, of each year during the term of this Note first following the date of the issuance of a Certificate of Completion for the Development, until the Note Amount and all unpaid interest thereon has been repaid in full. Any remaining portion of the Note Amount shall be due and payable on the fifty-fifth (55th) anniversary of the date of the Close of Escrow. Notwithstanding the foregoing, the full Note Amount may be accelerated as set forth in Section 12 hereof.

As used herein, "Annual Project Revenue" shall mean all gross income and all revenues of any kind from the Development in a fiscal year, including without limitation, Development rents,

Section 8 housing assistance payments, if any, late charges, vending machine income, and any other revenues of whatever kind or nature from the Development, except that interest on security deposits and required reserves shall not be considered Annual Project Revenue.

As used herein, "Debt Service" means payments made in a calendar year pursuant to the approved financing obtained for the acquisition and rehabilitation of the Development pursuant to Section 1.3(c) of the Agreement and Section 3 of the ARA, but excluding payments made pursuant to this Note.

As used herein, "Deferred Developer Fees" shall mean any deferred developer fee allowable under the Financing Plan that has been approved by the City pursuant to Section 3.12 of the ARA.

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

As used herein, "Partnership Management Fees" shall mean the asset management fee payable to the managing general partner and/or any special limited partner of the Borrower, which is allowable under the Financing Plan which has been approved by the City pursuant to Section 3.12 of the ARA.

As used herein, "Reserve Deposits" shall mean and payments to the Operating Reserve account pursuant to Section 5(i) of the Regulatory Agreement and payments to the Capital Replacement Reserve account pursuant to Section 5(j) of the Regulatory Agreement.

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

On or before ninety (90) days after the end of the Borrower's fiscal year, of each fiscal year commencing in the year of the issuance of the Certificate of Occupancy for the Development, the Borrower shall annually provide the City a Residual Receipts report, in the form attached to the Agreement as Schedule "1", which shall describe in detail the Annual

Project Revenue, Debt Service, Operating Expenses, Reserve Deposits, Partnership Management Fees, Deferred Developer Fees, and Residual Receipts for that fiscal year. The Borrower shall also submit to the City, on or before ninety (90) days after the end of the Borrower's fiscal year, of each fiscal year commencing in the year of the issuance of the Certificate of Occupancy for the Development, annual financial statements with respect to the Development that have been reviewed by an independent certified public accountant, together with an expressed written opinion of the certified public accountant that such financial statements present the financial position, results of operations, and cash flows fairly and in accordance with generally accepted accounting principles.

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

5. Waivers

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

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

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

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

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

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

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

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

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

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

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

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

13. Consents. Borrower hereby consents to: (a) any renewal, extension or modification (whether one or more) of the terms of the Agreement or the terms or time of payment under this Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof, (c) the granting of any other indulgences to Borrower, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Any such renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to Borrower or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder.

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

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

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

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

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

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

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

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

BORROWER:

COUNTRY CLUB APARTMENTS, L.P.,
a California limited partnership

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

By: Wakeland Housing and Development Corporation, a California nonprofit corporation, its Manager and Sole Member

By: _____
Kenneth L. Sauder, President and CEO
I

EXHIBIT "B"

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

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

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

THIS CONSTRUCTION DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust"), made as of May 1, 2008 is entered into by and between **COUNTRY CLUB APARTMENTS, L.P.**, a California limited partnership ("Trustor"), the **CITY OF OCEANSIDE**, a municipal corporation ("Trustee"), and the **CITY OF OCEANSIDE**, a municipal corporation ("Beneficiary").

ARTICLE 1. GRANT IN TRUST

1.1 GRANT. For the purposes of and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, IN TRUST FOR THE BENEFIT OF BENEFICIARY, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's right, title and interest, whether now owned or hereafter acquired, in and to that certain real property located in the City of Oceanside, County of San Diego, State of California, described on Exhibit A attached hereto (the "Real Property"), including, but not necessarily limited to, (i) Trustor's fee interest in the Real Property, including, but not limited to, that certain interest created by that certain Grant Deed dated May 1, 2008, (the "Grant Deed"), by and between Jorbon, LLC, a California limited liability company, as Grantor, and Country Club Apartments, L.P., as Grantee; (ii) all buildings and other improvements and fixtures now or hereafter located on the Real Property, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the Real Property, it being intended by the parties that all such items shall be conclusively considered to be a part of the Real Property, whether or not attached or affixed to the Real Property (collectively, the "Improvements"); (iii) all development rights or credits, air rights, water, water rights and water stock related to the Real Property or the Improvements (the Real Property and the Improvements are collectively referred to herein as the "Property"); (iv) all minerals, oil and gas, and other hydrocarbon substances in, on or under the Property, (v) all appurtenances, easements, rights and rights of way appurtenant or related to the Property; (vi) all interest or estate which Trustor may hereafter acquire in any of the property described above; and (vii) all additions and accretions to, and the proceeds of, any of the foregoing (all of the foregoing being collectively referred to as the

"Subject Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

1.2 ADDRESS. The subject property is located at 201 Country Club Lane, Oceanside, California. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Deed of Trust on the Subject Property as described on Exhibit A.

ARTICLE 2. OBLIGATIONS SECURED

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

a. Payment to Beneficiary of all sums at any time owing under that certain Promissory Note ("Note") of even date herewith, in the principal amount of not to exceed Ten Million One Hundred Sixty-three Thousand Ninety-eight Dollars ($10,163,098.00) executed by Trustor and payable to the order of Beneficiary, as lender; and

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

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

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

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

2.2 OBLIGATIONS. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all principal, interest, prepayment charges (if any), late charges, other charges, and loan fees at any time accruing or assessed on any of the Secured Obligations.

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

reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

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

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

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

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

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

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

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

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

> All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use thereon, (i) the Real Property described on Exhibit A attached hereto and incorporated by reference herein (to the extent the same are not effectively made a part of the Real Property pursuant to Section 1.1 above) or (ii) the improvements constructed or to be constructed on the Subject Property, as described in the Acquisition and Rehabilitation Agreement between Trustor and Beneficiary, dated December 19, 2007 (which real property and improvements are, pursuant to Section 1.1 above,

collectively referred to herein, along with the other property described in Section 1.1 above, as the Subject Property); together with all rents, issues, deposits and profits of the Subject Property (to the extent, if any, they are not subject to Article III); all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Subject Property or any business now or hereafter conducted thereon by Trustor; all permits consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Subject Property; all advance payments of insurance premiums made by Trustor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

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

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

4.3 RIGHTS OF BENEFICIARY. In addition to Beneficiary's rights as a "secured party" under the California Uniform Commercial Code, as amended or recodified from time to time ("UCC"), Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person or entity of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC §9505, or other applicable law.

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

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

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

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

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

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

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

5.1 TITLE. Trustor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty, Trustor lawfully holds and possesses valid title to the Subject Property without limitation on the right to encumber (except for the Lessor's approval right for encumbrances specifically set forth in that certain Regulatory Agreement of even date herewith entered into by and between Trustor, as Developer, and Beneficiary, as City).

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

5.3 TAX AND INSURANCE IMPOUNDS. At Beneficiary's option and upon its demand, Trustor, shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments and levies imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property (or which are required to be paid by Trustor pursuant to the Regulatory Agreement) and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, other hazard and mortgage insurance next due. If Beneficiary determines that any amounts paid by Trustor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Beneficiary shall notify Trustor of the increased amounts required to pay all amounts due, whereupon Trustor shall pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Beneficiary shall, unless Trustor is otherwise in Default hereunder or under any Secured Obligation, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Trustor hereunder or under any Secured Obligation, Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee whereupon Beneficiary and its Trustee shall be released from all liability with respect thereto. Within ninety-five (95) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Beneficiary may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor and no other party shall have any right or claim thereto.

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

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

5.6 DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.

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

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

5.7 MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY. Trustor covenants, subject to the provisions of the Loan Agreement: (a) to insure the Subject Property against such risks as Beneficiary may reasonably require and, at Beneficiary's request, to provide evidence of such insurance to Beneficiary, and to comply with the requirements of

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

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

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

5.10 COMPENSATION; EXCULPATION; INDEMNIFICATION.

a. Trustor shall pay Trustee's fees and reimburse Trustee for expenses in the administration of this trust, including attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limit any statement of amounts owing under any Secured Obligation. Beneficiary shall not

directly or indirectly be liable to Trustor or any other person or entity as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Subject Property or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to sell, lease or sublease the Subject Property after a Default (hereinafter defined) or from any other act or omission of Beneficiary in managing the Subject Property after a Default, unless the loss is caused by the gross negligence or willful misconduct of Beneficiary, and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

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

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

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

5.12 DUE ON SALE OR ENCUMBRANCE. If the Subject Property or any interest therein shall be sold, assigned, leased, subleased, transferred (including, without limitation, through sale or transfer of a majority or controlling interest of the corporate stock or general partnership interests or limited liability company interests of Trustor), mortgaged, collaterally assigned, or further encumbered (other than leases of individual apartment units within the Improvements), whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, THEN Beneficiary, in its sole discretion, may declare all Secured Obligations immediately due and payable. Notwithstanding the

foregoing, the removal of the general partner and the replacement of the general partner by an affiliate of the tax credit investor [Red Capital Marketing, Inc.] in accordance with the terms and conditions of the partnership agreement may be permitted without the consent of Beneficiary.

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

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

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

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

5.17 AFFORDABLE HOUSING MATTERS. This Deed of Trust is subject to the requirements that the Subject Property be used solely as an affordable multifamily rental apartment complex whose residents are qualified persons or households as set forth in the Regulatory Agreement. The use of the Subject Property shall be at all times during the Term of the Affordability Period rental units and not converted to condominiums or other non-rental use. For the purposes of this Deed of Trust the following definitions shall apply:

a. "Affordable Rental Rates" (including a utility allowance) may not exceed 30% of 50% of the area median income for Very Low Income Households or 30% of 80% of the area median income for Low Income Households for the annual rent, adjusted for family size appropriate for the unit.

b. "Affordability Period" means all of the Housing Units on the Property shall, in perpetuity commencing on the date of the issuance of the Certificate of Completion, be

rented at Affordable Rental Rates to qualifying households and persons who are also Very Low-Income Households.

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

d. **"Area Median Income"** means the median family income of a geographic area of the state, as annually estimated by HUD pursuant to the United States Housing Act of 1937.

e. **"Housing Unit"** shall mean all the units in the Subject Property, except one (1) two-bedroom unit set aside for the onsite manager's residence, reserved for occupancy by Very Low-Income Households.

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

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

h. **"Very Low Income Households"** means persons and families whose income does not exceed fifty percent (50%) of Area median income, adjusted for family size in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. The determination of a household's status as a Very Low Income Household shall be made upon the initial occupancy of a unit by the household.

5.18. OBLIGATION TO REFRAIN FROM DISCRIMINATION. The Borrower covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Subject Property, nor shall the Borrower itself or any person claiming under or through the Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Subject Property. The foregoing covenants shall run with the land through the Term of the Affordability Period.

5.19 FORM OF NONDISCRIMINATION AND NONSEGREGATION CLAUSES. The Developer shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation, of any person. All such deeds, leases (including rental agreements) or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

> "That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased."

c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, or shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

ARTICLE 6. DEFAULT PROVISIONS

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

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

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

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

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

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

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

f. To execute a written notice of such Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Subject Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in

the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person or entity, including Trustee, Trustor or Beneficiary may purchase at the sale;

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

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

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

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

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

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

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

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 NO MERGER. No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary consents to a merger in writing. If both the lessor's and lessee's estate under any lease or any portion thereof which now or hereafter constitutes a part of Subject Property shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the

Subject Property pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Subject Property shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

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

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

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

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

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

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

7.8 NOTICES. All notices or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class U.S. mail, postage prepaid, except that notice of a Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the addresses set forth below. For purposes of notice, the addresses of the parties shall be:

Trustor:	Country Club Apartments, L.P. c/o Wakeland Housing and Development Corporation 1230 Columbia Street, Suite 950 San Diego, CA 92101 Attention: Executive Director
With a copy to:	Wells Fargo Bank 707 Wilshire Boulevard, 18th Floor Los Angeles, CA 90017 Attention: Loan Administration Officer
With a copy to:	SCDC, LLC C/O Red Capital Markets, Inc. Two Miranova Place, 12th Floor Columbus, OH 43215 Attention: Tax Credit Asset Management
With a copy to:	Best Best & Kreiger 3750 University Avenue, Suite 400 Riverside, CA 92502 Attention: John Rottshaefer, Counsel
Trustee and/or Beneficiary:	City of Oceanside 300 North Coast Highway Oceanside, CA 92054 Attention: City Manager

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

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

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

Country Club Apartments, L.P., a California limited partnership

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

By: **Wakeland Housing and Development Corporation**, a California nonprofit corporation, its Manager and Sole Member

By: _____
Kenneth L. Sauder, President and CEO

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
County of _____)SS.

On _____ before me, _____,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____,
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 9 of Maxon & Griffin's Subdivision of Tyson Tract in the City of Oceanside, County of San Diego, State of California per Map thereof No. 433, filed in the Office of the County Recorder of San Diego County, December 29, 1887.

Excepting therefrom, that portion of said Lot 9 described as follows:

Commencing at the Southwest corner of said Lot 9, being the Southwest corner of Section 24, Township 11 South, Range 5 West, San Bernardino Meridian; as shown on said Map;
thence North 00°38'38" West along the westerly line of said Lot 9, 109.81 feet to the **True Point of Beginning**;
thence continuing along said westerly line North 00°38'38" West, 275.80 feet;
thence leaving said westerly line South 89°47'06" East, 8.88 feet;
thence South 00°19'57" East 57.31 feet;
thence North 89°53'43" East, 5.94 feet;
thence South 00°19'15" East, 75.63 feet;
thence South 01°12'13" East, 68.44 feet;
thence South 88°40'09" West, 3.84 feet;
thence South 00°55'55" East 73.83 feet;
thence South 87°30'17" West, 11.28 feet to the **True Point of Beginning.**

Contains 2.780 acres, more or less.

This legal description was prepared by me or under my direction in conformance with the Professional Land Surveyors Act.

4/28/08

Joseph G. Cresto — Date
PLS 8050

LICENSED LAND SURVEYOR ★ JOSEPH G. CRESTO ★ No. 8050 Exp. 12/31/09 ★ STATE OF CALIFORNIA

Schedule 1

FORM OF RESIDUAL RECEIPTS REPORT

City of Oceanside
Country Club Apartments

Residual Receipts Report
for the Year Ending _____

Date Prepared _____

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

Annual Project Revenue

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

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

Operating Expenses[1]

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

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

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

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

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

Additional Cash Flow Payments

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

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

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

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

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

Percentage of Residual Receipts to be Paid to the City (as shown in the 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
LandAmerica Commonwealth Land Title
AND WHEN RECORDED MAIL TO

CITY CLERK
CITY OF OCEANSIDE
300 NORTH COAST HIGHWAY
OCEANSIDE, CA 92054

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. Portion of 148-291-03 CITY DOCUMENT NO.

NO DOCUMENTARY TRANSFER TAX DUE R&T CODE §11922
FOR BENEFIT OF PUBLIC AGENCY – NO FEES DUE GOV"T CODE §27383

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

JORBON, LLC, a California limited liability company

hereby GRANT(S) to the CITY OF OCEANSIDE, a municipal corporation, of the State of California, that certain real property situated in the City of Oceanside, County of San Diego, State of California, more particularly described as follows:

See Legal Description marked Exhibit "A" and Sketch thereof marked Exhibit "B" attached hereto and incorporated herein by reference

Dated: May 1, 2008

Jorbon, LLC, a California limited liability company

By: _____
Peter Julius Jordan,
Managing Member

By: _____
Bonita Henrietta Jordan,
Managing Member

EXHIBIT "A"

LEGAL DESCRIPTION FOR PORTION OF LOT 9, MAP 433

That portion of Lot 9 Maxon & Griffin's Subdivision of Tyson Tract in the City of Oceanside, County of San Diego, State of California per Map thereof No. 433, filed in the Office of the County Recorder of San Diego County, December 29, 1887, described as follows:

Commencing at the Southwest corner of said Lot 9, being the Southwest corner of Section 24, Township 11 South, Range 5 West, San Bernardino Meridian; as shown on said Map;
thence North 00°38'38" West along the westerly line of said Lot 9, 109.81 feet to the **True Point of Beginning**;
thence continuing along said westerly line North 00°38'38" West, 275.80 feet;
thence leaving said westerly line South 89°47'06" East, 8.88 feet;
thence South 00°19'57" East 57.31 feet;
thence North 89°53'43" East, 5.94 feet;
thence South 00°19'15" East, 75.63 feet;
thence South 01°12'13" East, 68.44 feet;
thence South 88°40'09" West, 3.84 feet;
thence South 00°55'55" East 73.83 feet;
thence South 87°30'17" West, 11.28 feet to the **True Point of Beginning.**

Contains 0.078 acres, more or less.

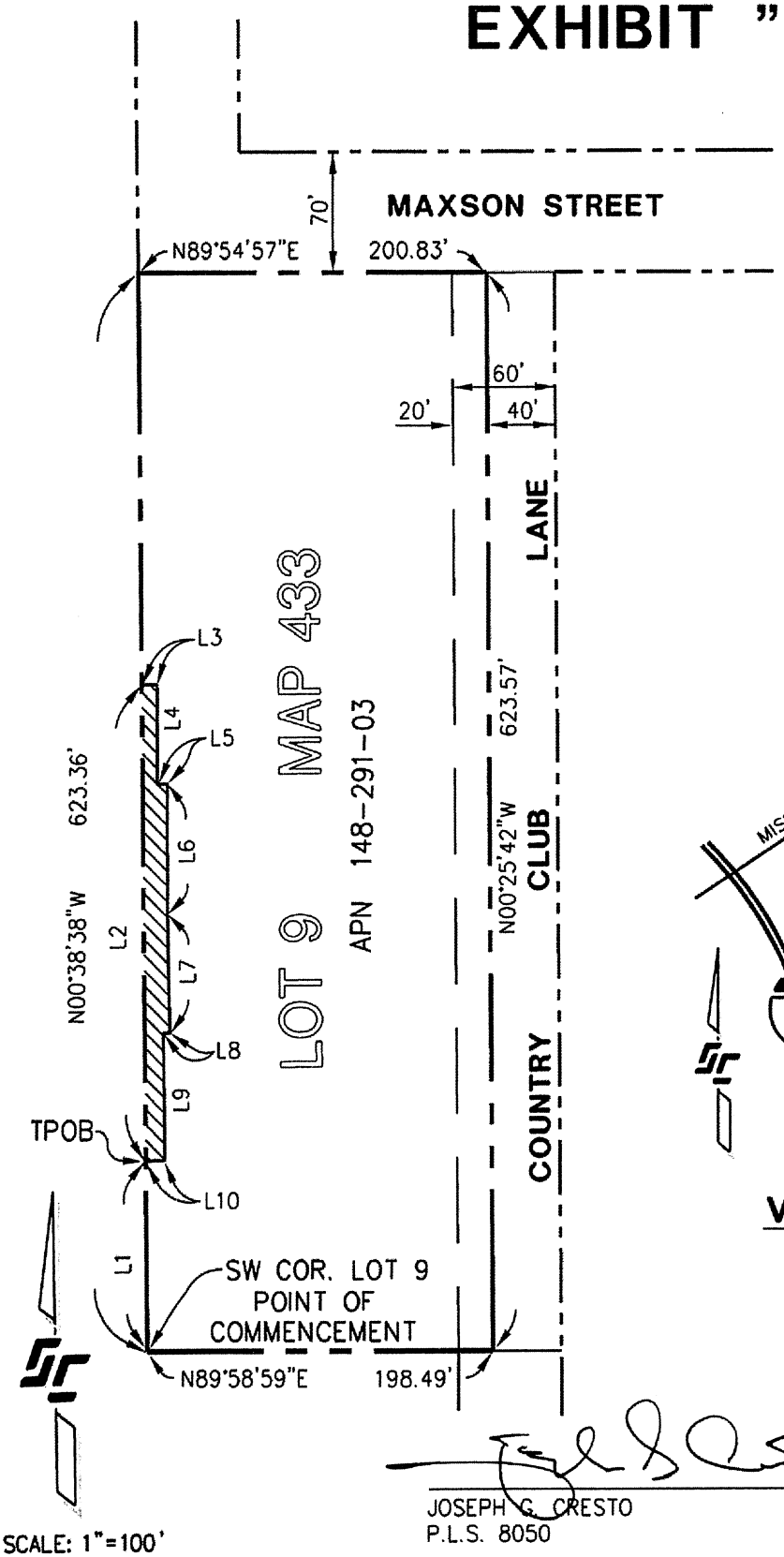
This legal description was prepared by me or under my direction in conformance with the Professional Land Surveyors Act.

4/28/08

Joseph G. Cresto — Date
PLS 8050

LICENSED LAND SURVEYOR
JOSEPH G. CRESTO
No. 8050
Exp. 12/31/09
STATE OF CALIFORNIA

EXHIBIT "B"



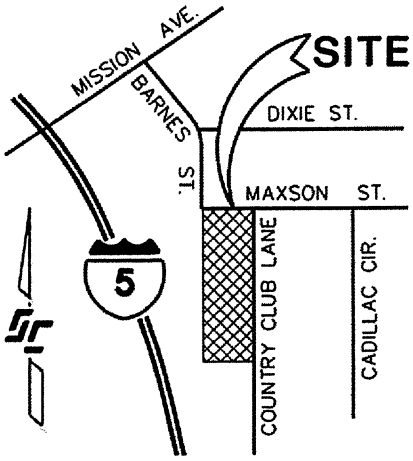
SCALE: 1"=100'

LEGEND

PORTION OF LOT 9 TO BE QUITCLAIMED 0.078 ACRES

DATA TABLE

NO.	BEARING	DISTANCE
L1	N00°38'38"W	109.81'
L2	N00°38'38"W	275.80'
L3	S89°47'06"E	8.88'
L4	S00°19'57"E	57.31'
L5	N89°53'43"E	5.94'
L6	S00°19'15"E	75.63'
L7	S01°12'13"E	68.44'
L8	S88°40'09"W	3.84'
L9	S00°55'55"E	73.83'
L10	S87°30'17"W	11.28'



VICINITY MAP

NO SCALE

LICENSED LAND SURVEYOR
JOSEPH G. CRESTO
No. 8050
Exp. 12-31-09
STATE OF CALIFORNIA

4/28/08

JOSEPH G. CRESTO
P.L.S. 8050

DATE

STEVENS·CRESTO ENGINEERING, INC.
CIVIL ENGINEERS · PLANNERS · LAND SURVEYORS

9665 CHESAPEAKE DRIVE
SUITE 320
SAN DIEGO, CA 92123-1324

PHONE 858.694.5660
FAX: 858.694.5661
www.scengr.com

BOUNDARY ADJUSTMENT
LOT 9, MAP 433
OCEANSIDE, CA