

AGREEMENT BIBLIOGRAPHY

Agreement With:	Tamerlane Associates, LLC
Agreement Type:	Affordable Housing Loan Agreement and First Amendment for the property at 12171 Tamerlane Drive
Date Approved:	08 08 2006
Start Date:	08 08 2006
End Date:	03 19 2030
Contract Amount:	\$628,094
Comments	File No. 117.16Y Community Development
Insurance Expiration:	N/A
Date Archived:	ARCHIVED 01/11/2017

FIRST AMENDMENT TO AFFORDABLE HOUSING
LOAN AGREEMENT
AMENDED AND RESTATED OPTION AGREEMENT

BY AND BETWEEN

THE CITY OF GARDEN GROVE

AND

TAMERLANE ASSOCIATES, LLC

FOR THE PROPERTY LOCATED AT
12171 TAMERLANE DRIVE

APPROVED
JUNE 8, 2010

**FIRST AMENDMENT TO AFFORDABLE HOUSING
LOAN AGREEMENT
(12171 Tamerlane Drive)**

This **FIRST AMENDMENT TO AFFORDABLE HOUSING LOAN AGREEMENT** (the "First Amendment") is made and entered into as of June 8, 2010, by and between the **CITY OF GARDEN GROVE**, a California municipal corporation (the "City"), and **TAMERLANE ASSOCIATES, LLC**, a California limited liability company (the "Owner").

RECITALS

A. The Owner and the City have entered into that certain Affordable Housing Loan Agreement dated as of August 8, 2006 with respect to property located at 12171 Tamerlane Drive, Garden Grove, California (the "Agreement"). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

B. The Agreement provides, among other things, the right of the City to exercise an Option, pursuant to the Option Agreement attached hereto as Exhibit F, to acquire the Property for the Option Price set forth in the Option Agreement.

C. The parties now desire to amend the Agreement and the Option Agreement so as to (i) extend the period within which the Option can be exercised and (ii) redefine the Option Price.

NOW, THEREFORE, the parties agree to amend the Agreement and the Option Agreement, as follows:

Section 1. Section 401 is hereby deleted and restated as follows:

401. Option. The Owner hereby grants to the City, and the City shall have, subject to any deeds of trust which have been approved pursuant to Section 211 of this Agreement, an option (the "Option") to purchase the Property from Owner at the Option Price set forth in the Option Agreement. The City shall have the right but not the obligation to exercise the Option at any time commencing upon the date of the Owner's acquisition of the Property (the "Option Commencement Date"). If the Option has not been exercised on or before March 19, 2030, the Option shall automatically expire. Upon such expiration, the City shall, upon receipt of request therefor by the Owner, provide written confirmation in recordable form that such Option no longer remains in effect. The terms and conditions of the Option shall be set forth in an Option Agreement substantially in the form of Exhibit F, which is attached hereto and incorporated herein, which shall be executed by the parties to the Option and recorded as an encumbrance to the Property concurrently with the Owner's acquisition of the Property.


Section 2. Exhibit F attached to the Agreement is hereby deleted, superseded and replaced in its entirety with the document attached hereto as Attachment No. 1 and incorporated herein by reference.

Except as amended herein, the Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by duly authorized representatives as of the day and year first written above.

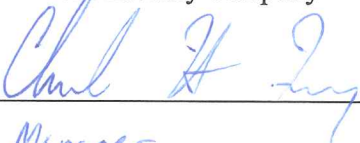
CITY:

CITY OF GARDEN GROVE,
a California municipal corporation

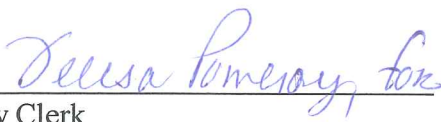
By: 
Matthew J. Fertal, City Manager

OWNER:

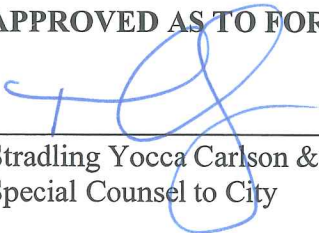
TAMERLANE ASSOCIATES, LLC,
a California limited liability company

By: 
Its: Manager

ATTEST:


City Clerk

APPROVED AS TO FORM:


Stradling Yocca Carlson & Rauth
Special Counsel to City

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Garden Grove
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, California 92842
Attention: City Manager

RECEIVED
CITY OF GARDEN GROVE
CLERK'S OFFICE
2008 SEP -7 P

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

NO FEE
1:2010000420474 2:21 pm 08/27/10
10 416 006 10
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This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

AMENDED AND RESTATED OPTION AGREEMENT

This **AMENDED AND RESTATED OPTION AGREEMENT** amends and restates the Original Option Agreement previously recorded as Instrument No. 2006000544902, Official Records, Orange County, California.

11
100
CF
NF

CONFIRMED COPY

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Garden Grove
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, California 92842
Attention: City Manager

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

AMENDED AND RESTATED OPTION AGREEMENT

This **AMENDED AND RESTATED OPTION AGREEMENT** ("Option Agreement") is entered into as of June 8, 2010, by and between **TAMERLANE ASSOCIATES, LLC**, a California limited liability company (the "Owner"), and the **CITY OF GARDEN GROVE**, a California municipal corporation (the "City").

RECITALS

A. Owner and the City have entered into an Affordable Housing Loan Agreement dated as of August 8, 2006 ("AHLA"). Under the terms of the AHLA, Owner has, with the assistance of the City, purchased real property located at 12171 Tamerlane Drive, which is improved with a four (4) Unit apartment complex thereon (the "Property"), as particularly described in the Legal Description attached hereto as Exhibit A, and incorporated herein by reference. All capitalized terms not defined herein shall have the meaning set forth in the AHLA.

B. Pursuant to Section 401 of the AHLA, the Owner has granted to the City an Option to purchase the Property upon payment of an Option Price pursuant to the Option Agreement dated August 10, 2006 attached to the AHLA as Exhibit F (the "Original Option Agreement").

C. The parties now want to amend and restate the Original Option Agreement in its entirety as set forth herein. To this end, the Original Option Agreement is deleted, superseded and restated in its entirety by this Option Agreement. For purposes of this Option Agreement, "Property" shall also be deemed to include any and all improvements located on the real property, any and all security deposits held by Owner, operating and capital replacement reserve accounts, operating accounts, Owner's rights to payment for rent and other items, and all of Owner's right, title and interest in and to any and all easements, rights of way, licenses, permits, applications, reports or other personal property utilized in conjunction with or in any way related to or appurtenant to such real property and improvements (but excluding Owner's trade fixtures and equipment).

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and conditions contained herein, the parties hereto agree as follows:

1. Grant of Option. Owner grants to City an option (the "Option") to purchase the Property on the terms and conditions set forth in this Option Agreement. The purchase price payable by the City to the Owner for the Property shall be the amount of the then current balance under (i) the

Bank Loan and (ii) the Promissory Note plus an amount equal to One Thousand, One Hundred Eighty-Eight Dollars (\$1,188) per month for each month from August 15, 2009 until escrow is closed, less Net Profits retained by Owner plus operating losses (collectively, the "Option Price"). The Option created hereby shall be irrevocable by Owner and shall be binding upon the successors and assigns of Owner. The City shall have the right of specific performance to enforce the terms of this Option Agreement.

2. Term for Option. The term of the Option ("Option Term") commenced on August 10, 2006, and, unless extended by mutual written agreement of the Owner and the City, shall automatically expire on March 19, 2030 in which event, the City shall, upon written request by Owner, provide written request of such termination in recordable form.

3. Exercise of Option. The Option may be exercised at any time before the expiration of the Option Term by City's delivery to Owner of written notice of such exercise (the "Exercise Notice").

4. Escrow and Completion of Sale. Within five (5) days after City has exercised the Option, or as soon thereafter as reasonably practicable, an escrow shall be opened with an escrow company mutually acceptable to City and Owner for the conveyance of the Property to the City. The City shall deposit the Option Price in escrow not later than one (1) business day prior to the anticipated close of escrow date. The City's obligation to close escrow shall be subject to the City's approval of a then-current preliminary title report and, at City's option, environmental and other site testing. Any exceptions shown on such preliminary title report created on or after the Owner's acquisition of the Property shall be removed by Owner at its sole expense prior to the close of escrow pursuant to this Section 4 unless such exception(s) is(are) accepted by City in its reasonable discretion; provided, however, that City shall accept the following exceptions to title: (i) current taxes not yet delinquent, (ii) matters affecting title existing on the date of Owner's acquisition of the Property, (iii) liens and encumbrances in favor of the City of Garden Grove, and (iv) matters shown as printed exceptions in the standard form CLTA owner's policy of title insurance. In the event the Property or any portion thereof is encumbered by a mortgage or deed of trust, the City shall be permitted to unilaterally instruct the escrow agent to satisfy the indebtedness secured thereby out of the proceeds payable to the Owner through the foregoing escrow, or the City may satisfy all or a portion of the Option Price through the City's assumption of the promissory note or notes held by the holders of the deeds of trust encumbering the Site, if such holder or holders consent thereto. City shall pay all of the escrow fees, documentary transfer taxes, recording fees, the cost of any owner's policy of title insurance desired by the City, and any other costs and expenses of the escrow. City shall have thirty (30) days after exercise of the Option to enter upon the Property to conduct any tests, inspections, investigations, or studies of the condition of the Property. Owner shall permit the City access to the Site for such purposes. The City shall indemnify, defend, and hold harmless Owner and its officers, directors, shareholders, partners, employees, agents, and representatives from and against all claims, liabilities, or damages, and including expert witness fees and reasonable attorney's fees and costs, caused by City's activities with respect to or arising out of such testing, inspection, or investigatory activity on the Site. Escrow shall close promptly after acceptance by City of the condition of title and the physical and environmental condition of the Property. Until the Closing, the terms of the AHLA and the Regulatory Agreement executed and recorded pursuant thereto shall remain in full force and effect. At the Closing, the Owner shall repay any amount due under the Promissory Note.

5. Failure to Exercise Option. If the Option is not exercised in the manner provided in Section 3 above before the expiration of the Option Term, the Option shall terminate. Upon receipt of the written request of Owner, City shall cause a quitclaim deed terminating or releasing any and all rights City may have to acquire the Property (the "Quitclaim Deed") to be recorded in the Official Records of Orange County, California.

6. Assignment. City shall have the right to assign its interest hereunder. In connection with any assignment, any assignee shall execute all documents reasonably necessary to assume all of the obligations imposed under this Option Agreement on City as if the assignee were the original party in this Option Agreement.

7. Representations and Warranties of Owner. Owner hereby represents, warrants and covenants to City as follows, which representations and warranties shall survive the exercise of the Option and the Close of Escrow:

(a) that this Option Agreement and the other documents to be executed by Owner hereunder, upon execution and delivery thereof by Owner, will have been duly entered into by Owner, and will constitute legal, valid and binding obligations of Owner;

(b) neither this Option Agreement, nor anything provided to be done under this Option Agreement, violates or shall violate any contract, document, understanding, agreement or instrument to which Owner is a party or by which it is bound; and

(c) Owner shall pay, prior to delinquency or default, any and all real property taxes and assessments which affect the Property.

Owner agrees to indemnify, protect, defend, and hold City and the Property harmless from and against any damage, claim, liability, or expense of any kind whatsoever (including, without limitation, reasonable attorneys' fees and fees of expert witnesses) arising from or in connection with any breach of the foregoing representations, warranties and covenants. Such representations and warranties of Owner, shall be true and correct on and as of the date of this Option Agreement and on and as of the date of the Close of Escrow.

8. Title. Following the date hereof, Owner agrees not to cause, and shall use commercially reasonable efforts not to permit, any lien, easement, encumbrance or other exception to title to be recorded against the Property without City's prior written approval, such approval not to be unreasonably withheld.

9. Representations and Warranties of City. City hereby represents and warrants and covenants to Owner, as follows, which representations and warranties shall survive the Close of Escrow:

(a) that this Option Agreement and the other documents to be executed by City hereunder, upon execution and delivery thereof by City, will have been duly entered into by City, and will constitute legal, valid and binding obligations of City, and

(b) neither this Option Agreement, nor anything provided to be done under this Option Agreement, violates or shall violate any contract, document, understanding, agreement or instrument to which City is a party or by which it is bound.

City agrees to indemnify, protect, defend, and hold Owner and the Property harmless from and against any damage, claim, liability, or expense of any kind whatsoever (including, without limitation, reasonable attorneys' fees and fees of expert witnesses) arising from or in connection with any breach of the foregoing representations, warranties and covenants. Such representations and warranties of City, and any other representations and warranties of City contained elsewhere in this Option Agreement shall be true and correct on and as of the date of this Option Agreement and on and as of the date of the Close of Escrow.

10. Relocation. In the event that the City purchases the Property pursuant to this Option Agreement and any displacement of tenants of the Property occurs, the City shall provide relocation assistance in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Act, 42 U.S.C. § 4601, *et seq.*, the California relocation law, Government Code Section 7260, *et seq.*, and the regulations adopted pursuant thereto by the United States, State of California and the City (collectively, the "Relocation Laws"), and in a manner approved by the City to each displaced tenant household required to temporarily or permanently vacate a unit within the Property as a result of the City's acquisition of the Property pursuant to this Option Agreement. The City shall indemnify, defend, and hold harmless Owner and its officers, directors, shareholders, partners, employees, agents, and representatives from and against all claims for relocation assistance caused by or arising out of City's purchase of the Property pursuant to this Option Agreement.

11. General Provisions.

11.1 Paragraph Headings. The paragraph headings used in this Option Agreement are for purposes of convenience only. They shall not be construed to limit or extend the meaning of any part of this Option Agreement.

11.2 Notices. Any notice, demand, approval, consent, or other communication required or desired to be given under this Option Agreement shall be in writing and shall be either personally served, sent by telecopy or mailed in the United States mails, certified, return receipt requested, postage prepaid, addressed to the party to be served with the copies indicated below, at the last address given by that party to the other under the provisions of this section. All communications shall be deemed delivered at the earlier of actual receipt, the next business day after deposit with Federal Express or other overnight delivery service or two (2) business days following mailing as aforesaid, or if telecopied, when sent, provided a copy is mailed or delivered as provided herein:

City: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92642
Attention: City Manager

Owner: Tamerlane Associates, LLC
14 Corporate Plaza, Suite 100
Newport Beach, CA 92660
Attention: Charles Fry

11.3 Binding Effect. The terms, covenants and conditions of this Option Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and transferees.

11.4 Entire Agreement. This Option Agreement sets forth the entire agreement between the parties hereto respecting the Option, and supersedes all prior negotiations and agreements, written or oral, concerning or relating to the subject matter of this Option Agreement.

11.5 California Law. This Option Agreement shall be governed by the laws of the State of California and any question arising hereunder shall be construed or determined according to such laws.

11.6 Time of the Essence. Time is of the essence of each and every provision of this Option Agreement.

11.7 Counterparts. This Option Agreement may be signed by the parties hereto in duplicate counterparts which together shall constitute one and the same agreement between the parties and shall become effective at such time as both of the parties shall have signed such counterparts.

11.8 Attorneys' Fees. If either party commences an action against the other to enforce any of the terms hereof or because of the breach by either party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including appeal of and/or enforcement of a judgment.

11.9 Computation of Time. All periods of time referred to in this Option Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time is specified as business days (which shall not include Saturdays, Sundays and state or national holidays), provided that if the date or last date to perform any act or give any notice with respect to this Option Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

11.10 Definition of Terms. Terms not otherwise defined in this Option Agreement are defined in the AHLA.

IN WITNESS WHEREOF, this Option Agreement is executed by the parties hereto on the date first above written.

CITY:

CITY OF GARDEN GROVE,
a California municipal corporation

By: Matthew Jertal
Matthew J. Fertal, City Manager

OWNER:

TAMERLANE ASSOCIATES, LLC,
a California limited liability company

By: Charles J. J...
Its: Manager

ATTEST:

Kathleen Baird 4/23/10
City Clerk

APPROVED AS TO FORM:

[Signature]
Stradling Yocca Carlson & Rauth
Special Counsel to City

EXHIBIT A

LEGAL DESCRIPTION

All that certain real property In the County of Los Angeles, State of California, described as follows:

Lot 1 of Tract No, 3050. in the City of Garden Grove, County of Orange.
State of California, as per map recorded in Book 92 Page(s) 31-32, inclusive
of Miscellaneous Maps, in the office of the County Recorder of said County.

APN No. 231-471-42

STATE OF CALIFORNIA

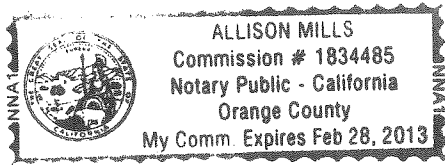
COUNTY OF Orange)
) ss.
)

On June 15, 2010 before me, Allison Mills, Notary Public,
personally appeared Matthew Fertal, who proved
to me on the basis of satisfactory evidence to be the person(s) whose names(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

Allison Mills
SIGNATURE OF NOTARY PUBLIC



STATE OF CALIFORNIA

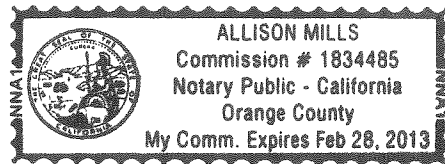
COUNTY OF Orange)
) ss.
)

On June 17, 2010 before me, Allison Mills, Notary Public,
personally appeared Charles H. Fry, who proved
to me on the basis of satisfactory evidence to be the person(s) whose names(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

Allison Mills
SIGNATURE OF NOTARY PUBLIC



FIRST AMENDMENTS TO AFFORDABLE HOUSING AGREEMENTS WITH
TAMERLANE ASSOCIATES, LLC (F: 117.16Q-V, X & Y)

Staff report dated June 8, 2010, was introduced and reviewed by staff.

It was moved by Council Member Broadwater, seconded by Council Member Jones, and carried by unanimous vote that the eleven First Amendments to the Affordable Housing Loan Agreements by and between the City of Garden Grove and Tamerlane Associates, LLC to extend the City's terms to repurchase the properties from the Owner (Option Terms) and amend the definitions of the repurchase prices for the properties (Option Prices), be and hereby is approved; and the City Manager is authorized to execute the agreements on behalf of the City and all other documents necessary to implement the agreements.

CITY OF GARDEN GROVE
INTER-DEPARTMENT MEMORANDUM

To: Matthew Fertal
Dept: City Manager
Subject: APPROVAL OF FIRST AMENDMENTS TO AFFORDABLE HOUSING AGREEMENTS WITH TAMERLANE ASSOCIATES, LLC

From: Chet Yoshizaki
Dept: Economic Development
Date: June 8, 2010

OBJECTIVE

To consider the approval of amendments to eleven (11) affordable housing loan agreements (AHLAs) with Tamerlane Associates, LLC (Owner) to extend the City of Garden Grove's (City's) terms to repurchase the property from the Owner (Option Terms) and amend the definitions of the repurchase prices for the properties (Option Prices).

BACKGROUND/ANALYSIS

In February 2004, the City's Neighborhood Improvement Division began working with the Owner for the acquisition of several apartment buildings near the Harbor Corridor located on Tamerlane Drive for the purpose of rehabilitating those buildings and allowing the units to be affordable to low and very-low income families through affordability covenants. Since that time, the City has entered into eleven (11) AHLAs with the Owner and the Garden Grove Agency for Community Development (Agency) has entered into two (2) AHLAs with the Owner for the acquisition, rehabilitation, and affordability of properties located on Tamerlane Drive (Attachment 1).

The AHLAs between the City and the Owner currently provide for an Option Term of ten (10) years from the Owner's acquisition of the properties. The agreements between the Agency and the Owner are for a period of twenty (20) years terminating in 2030. City staff has prepared amendments to the City AHLAs to amend the Option Terms so that they will expire on March 19, 2030 to be consistent with the Agency AHLAs. The extended term will allow the City and the Agency to ensure the long-term health, safety and welfare of the neighborhood, by permitting the City or the Agency to repurchase the properties if necessary.

The Owner has agreed to extend the Option Terms in exchange for amending the Option Price to include a monthly Asset Management Fee that accrues beginning in the 37th month following the acquisition of the property until the Option Term expires. The amended Option Price will be calculated as the amount of the then current balance under the Owner's Bank Loan and the then current balance of the City loan plus the asset management fees accrued, less Net Profits retained by

APPROVAL OF FIRST AMENDMENTS TO AFFORDABLE HOUSING AGREEMENTS WITH
TAMERLANE ASSOCIATES, LLC

June 8, 2010

Page 2

Owner plus operating losses. The Option Purchase price becomes payable if and when the City exercises the Option to repurchase the property. The amount of the asset management fee for each property is calculated based upon the amount of the Developer Fee in the original AHLA for the property divided by twenty-four (24) months. The table below describes the original Developer Fee and Asset Management Fee for each property:

Address	Acquisition date	Original Developer Fee	Monthly Asset Management Fee
12131 Tamerlane	12/21/2006	\$ 28,500	\$ 1,188
12132 Tamerlane	9/20/2006	\$ 28,500	\$ 1,188
12141 Tamerlane	7/12/2005	\$ 35,000	\$ 1,458
12161 Tamerlane	6/2/2006	\$ 28,500	\$ 1,188
12171 Tamerlane	8/15/2006	\$ 28,500	\$ 1,188
12181 Tamerlane	12/17/2004	\$ 42,350	\$ 1,765
12182 Tamerlane	1/4/2006	\$ 44,000	\$ 1,833
12201 Tamerlane	12/17/2004	\$ 42,350	\$ 1,765
12202 Tamerlane	12/16/2004	\$ 42,350	\$ 1,765
12212 Tamerlane	5/4/2004	\$ 31,471	\$ 1,311
12222 Tamerlane	5/4/2004	\$ 88,529	\$ 3,689

FINANCIAL IMPACT

There is no fiscal impact unless the City exercises the Option to repurchase any of the properties before the expiration of the Option Term. If the City exercises the Option, the fiscal impact will be equivalent to the monthly asset management fees accrued up until the time the Option is exercised for each property to be repurchased net of operating expenses or losses.

RECOMMENDATION

Staff recommends that the City Council

- Approve the attached amendments to the AHLAs between the City and the Owner.
- Authorize the City Manager to execute the amendments to and all other documents necessary to implement the amendments.

APPROVAL OF FIRST AMENDMENTS TO AFFORDABLE HOUSING AGREEMENTS WITH
TAMERLANE ASSOCIATES, LLC

June 8, 2010

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CHET YOSHIZAKI
Economic Development Director

By: Kathleen McCall Angel 
Economic Development Specialist

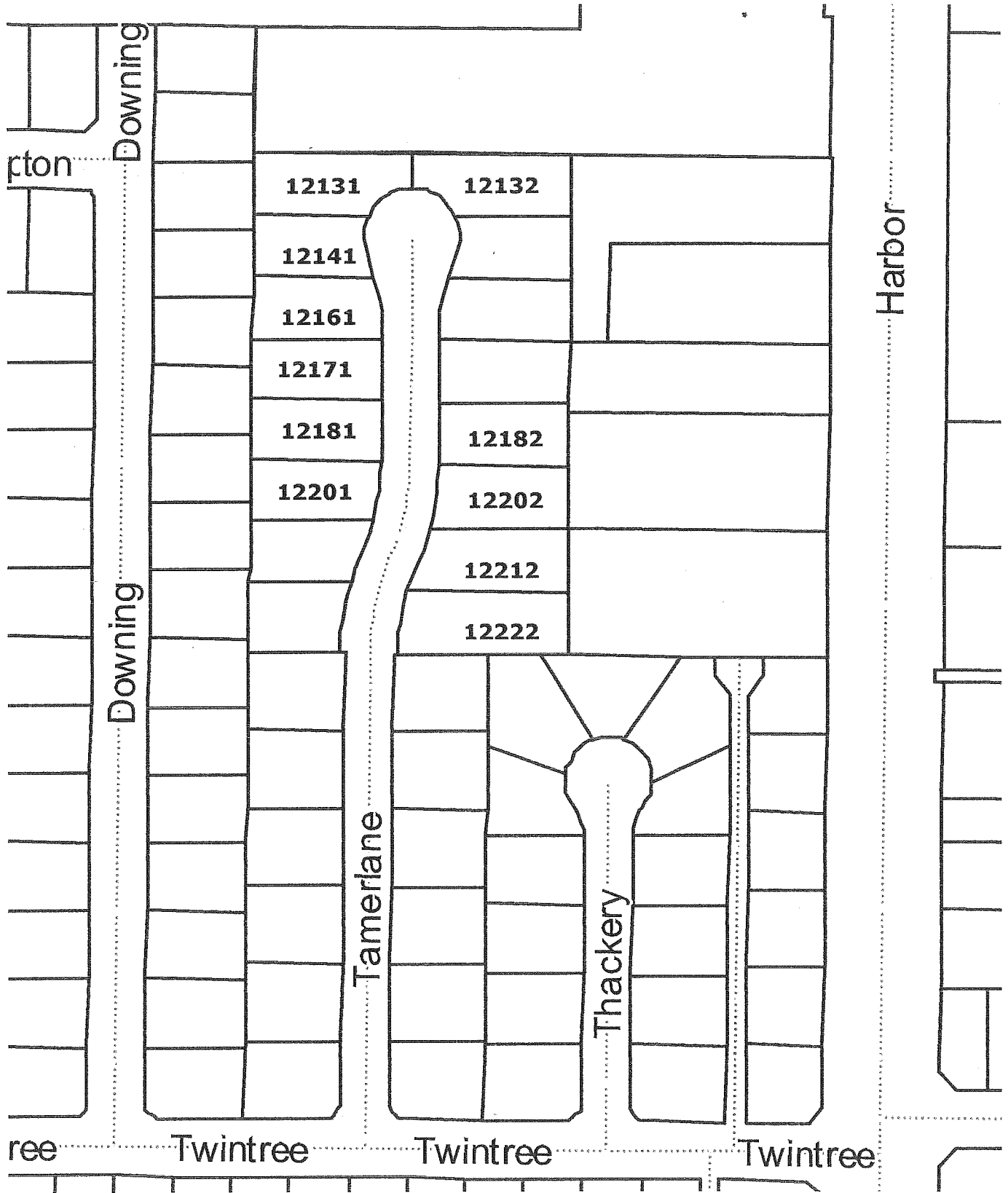
- Attachment 1: Site Map
- Attachment 2: Amendment to AHLA- 12131 Tamerlane
- Attachment 3: Amendment to AHLA- 12132 Tamerlane
- Attachment 4: Amendment to AHLA- 12141 Tamerlane
- Attachment 5: Amendment to AHLA- 12161 Tamerlane
- Attachment 6: Amendment to AHLA- 12171 Tamerlane
- Attachment 7: Amendment to AHLA- 12181 Tamerlane
- Attachment 8: Amendment to AHLA- 12182 Tamerlane
- Attachment 9: Amendment to AHLA- 12201 Tamerlane
- Attachment 10: Amendment to AHLA- 12202 Tamerlane
- Attachment 11: Amendment to AHLA- 12212 Tamerlane
- Attachment 12: Amendment to AHLA- 12222 Tamerlane

mm(h:Staff/KMA/Tamerlane Associates LLC sr 060810.doc)

Recommended for Approval


Matthew Fertal
City Manager

Site Map



AFFORDABLE HOUSING LOAN AGREEMENT

BY AND BETWEEN

THE CITY OF GARDEN GROVE

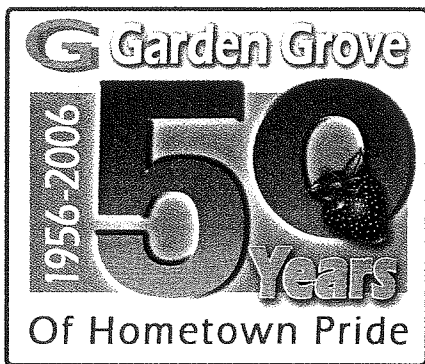
AND

TAMERLANE ASSOCIATES, LLC

FOR THE PROPERTY LOCATED AT
12171 TAMERLANE DRIVE

APPROVED

AUGUST 8, 2006



CITY OF GARDEN GROVE

(714) 741-5040

William J. Dalton
Mayor

Mark Rosen
Mayor Pro Tem

Harry J. Krebs
Council Member

Mark Leyes
Council Member

Janet Nguyen
Council Member

October 10, 2006

Tamerlane Associates, LLC
Attn: Charles Fry
19800 MacArthur Boulevard, Suite 1150
Irvine, CA 92612

Enclosed is the Affordable Housing Loan Agreement by and between the City of Garden Grove and Tamerlane Associates, LLC for property located at 12171 Tamerlane Drive.

The Agreement was approved by the City Council on August 8, 2006.

Sincerely,

Ruth E. Smith
City Clerk

A handwritten signature in cursive script that reads 'Kathy Bailor'.

By: Kathy Bailor
Deputy City Clerk

Enclosure

c: Finance Department
Community Development

AFFORDABLE HOUSING LOAN AGREEMENT

by and between

CITY OF GARDEN GROVE

and

**TAMERLANE ASSOCIATES, LLC
(12171 Tamerlane Drive)**

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AFFORDABLE HOUSING LOAN AGREEMENT

THIS AFFORDABLE HOUSING LOAN AGREEMENT (the "Agreement") is entered into as of August 8, 2006, by and between the **CITY OF GARDEN GROVE**, a California municipal corporation (the "City"), and **TAMERLANE ASSOCIATES, LLC**, a California limited liability company (the "Owner").

RECITALS

- A. The City has received funds from the federal HOME Investment Partnership Act, 42 U.S.C. § 12701, *et seq.*, for the purpose of the production and operation of housing affordable to lower and very low income families.
- B. Owner has entered or will enter into an agreement or agreements to purchase a parcel of real property located within the City of Garden Grove, at 12171 Tamerlane Drive, which is improved with a four (4) unit apartment complex thereon (the "Property"), as particularly described in the Legal Description attached hereto as Exhibit A, and incorporated herein by reference.
- C. By this Agreement, and subject to the terms and conditions herein, the City desires to provide financial assistance to Owner in the form of a loan of HOME funds in the amount of Six Hundred Twenty-Eight Thousand Ninety-Four Dollars (\$628,094) to acquire the Property (the "HOME Loan"), and the Owner desires to acquire and operate the Property with the assistance of the HOME Loan. Owner reasonably believes that Owner will acquire the Property within one hundred eighty (180) days from the effective date of this Agreement.
- D. In consideration of the HOME Loan, Owner agrees to rent each of the four units on the Property to households earning 60% of the median income in Orange County or less for a period of at least fifteen (15) years from the date of the acquisition of the Property.
- E. The acquisition, rehabilitation and operation of the Property pursuant to this Agreement is in the vital and best interest of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, the parties hereto agree as follows:

100. CITY ASSISTANCE

101. HOME Loan. The City hereby agrees to loan to the Owner and the Owner hereby agrees to borrow from the City the amount of Six Hundred Twenty-Eight Thousand Ninety-Four Dollars (\$628,094) (the "HOME Loan"), subject to the terms and conditions set forth in this Agreement, and subject further to the terms and conditions set forth within the documents and instruments executed by the Owner in connection with this transaction, including the "Promissory Note," in substantially the form set forth in Exhibit B, the "Deed of Trust," in substantially the form set forth in Exhibit C, the "Regulatory Agreement," in substantially the form set forth in Exhibit E, and the "Option Agreement" in substantially the form set forth in Exhibit F. The HOME Loan shall accrue simple interest at the rate of three percent (3%) per annum. Payments of the HOME Loan shall be made on an annual basis from seventy-five percent (75%) of the residual cash flow ("Net

Profits”) from the operation of the Property until the entire principal amount of the Promissory Note is repaid in full.

The City shall be entitled to review the books and records of the Owner pertaining to the Operating Expenses and Net Profits of the Property, during normal business hours and upon reasonable advance notice. For the purposes of this Section 101, “Net Profits” means gross income from the Property and any other income the Owner receives from the operation of the Property, less deposits to reserve accounts and “Operating Expenses,” as hereafter defined. “Operating Expenses” shall mean actual, reasonable and customary costs, fees and expenses directly incurred and attributable to the financing, operation, maintenance, and management of the Property, including without limitation payment of debt service on the loans approved by the City as set forth herein, painting, cleaning, repairs and alterations, landscaping, utilities, rubbish removal, sewer charges, real and personal property taxes and assessments, insurance, securities, advertising, promotion and publicity, office, janitorial, cleaning and building supplies, a management fee not to exceed five percent (5%) of gross rents and other income of the Property pursuant to Section 309 hereof; purchase, repairs, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of accountants, attorneys, consultants and other professionals, capital repairs and improvements, and other payments by the Owner pursuant to this Agreement, including indemnity obligations; provided, however, that payments to parties related to or affiliated with Owner for Operating Expenses must not exceed market rates. The Operating Expenses shall not include non-cash expenses, including without limitation, depreciation. The Operating Expenses shall be reported to the City not less than annually in annual financial statements accompanied by a certification of the Owner that such financial statements present the financial position, results of operations, and cash flows fairly and in accordance with generally accepted accounting principles. Owner shall transmit to the City copies of any audited financial statements received by Owner, if any, promptly after receipt.

The City’s financial assistance under this Agreement will include HOME funds; however, the City reserves the right, in its sole and absolute discretion, to substitute another funding source(s) for the HOME funds committed by this Agreement. In the event the City changes the funding source(s), the parties hereby agree to amend this Agreement, as reasonably necessary, and to execute additional documents that may be required to comply with applicable law as a result of the change in funding source(s).

102. Disbursement of the HOME Loan. The HOME Loan shall be disbursed into the escrow established for the acquisition of the Property. The HOME Loan shall be disbursed on behalf of the Owner upon satisfaction of all of the following conditions precedent:

(a) **Execution and Delivery of Documents.** Owner shall have executed and delivered into Escrow the Promissory Note, the Deed of Trust, the Regulatory Agreement, the Option Agreement, and any other documents and instruments required to be executed and delivered by Owner (collectively, the “HOME Loan Documents”). The Deed of Trust shall be subordinate only to those documents required in connection with the financing which is permitted or approved by the City as provided in Section 211 hereof, and shall not be subordinate to the lien of any other loans, mortgages or deeds of trust, except as provided in Section 211 hereof.

(b) **Financing.** The City shall have approved the financing, and all documentation related thereto, for the acquisition and operation of the Property pursuant to Section 211 hereof and such financing shall close concurrently with the HOME Loan.

(c) **Property Appraisal.** The Owner shall have submitted to City a true and correct copy of an appraisal of the fair market value of the Property, and City shall have conducted any appraisals of the Property and/or evaluations of market data which it desires, demonstrating to the satisfaction of the City that the purchase price to be paid by the Owner for the Property is not greater than the fair market value of the Property.

(d) **Title Insurance.** The City shall have received from a title insurance company approved by the City a policy of lender's title insurance, together with such endorsements as the City may require, which shall insure the Deed of Trust as a lien upon the Property, junior and subordinate only to financing approved by the City as provided in Section 211 hereof.

(e) **Title to Land.** The Owner shall, as of the closing, have good and marketable fee title to the Property, and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and assessments not yet due and payable, the deeds of trust and other documents in connection with financing approved by the City pursuant to Section 211 hereof, and any other matters approved in writing by the City. The Owner's acquisition of the Property shall be completed no later than one hundred eighty (180) days from the effective date of this Agreement.

(f) **Recordation.** The Deed of Trust, the Regulatory Agreement, and the Option Agreement shall be recorded against the Property concurrently with or prior to the time of the disbursement of the HOME Loan.

(g) **Management Plan.** City shall have approved the Management Plan pursuant to Section 309 hereof.

(h) **No Default.** There shall exist no condition, event or act which would constitute an Event of Default (as hereinafter defined) hereunder or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(i) **Representations and Warranties.** All representations and warranties of Owner herein contained shall be true and correct.

The parties shall attempt to complete all of their pre-closing obligations as soon as possible after the execution of this Agreement, and no later than one hundred eighty (180) days from the effective date of this Agreement, unless the parties mutually agree to a later date. The Owner shall use a portion of the HOME Loan proceeds in the amount of Fourteen Thousand Dollars (\$14,000) to establish an Operating Reserve, pursuant to Section 308 hereof. The proceeds of the HOME Loan shall not be used for other Property reserve accounts, monitoring, servicing and origination fees, or for expenditures made or incurred more than one year after Property acquisition.

103. Assumption of HOME Loan. Except in connection with transfers approved or permitted pursuant to Section 604 hereof, the Promissory Note shall not be assignable by the Owner or assumable by successors and assigns of Owner. In no event, however, shall the Promissory Note be assigned except in connection with the conveyance of the Property to the person or entity which acquires the Promissory Note.

104. Payment of Developer's Fee. The City shall grant to Vista Communities, Inc., from the City's HOME funds, a "Developer's Fee" in the amount of Twenty-Eight Thousand Five Hundred Dollars (\$28,500), payable upon Owner's acquisition of the Property.

105. Condition of the Property. The following requirements shall apply to the Property:

105.1 Environmental Condition Prior to HOME Loan Disbursement. Except as otherwise disclosed in reports obtained by or provided to the City, the Owner represents to the City that it is not aware of, to the best of its actual knowledge, and it has not received any notice or communication from any governmental agency having jurisdiction over the Property, or any other person or entity, or any reports or studies, notifying it of the presence of Hazardous Materials or Hazardous Materials Contamination in, on, or under the Property, or any portion thereof, or any violation of applicable laws. The Owner further represents that it knows of no circumstances, conditions or events that may, now or with the passage of time, give rise to any environmental or other legal claim against or affecting the Property. The Owner represents that any inspection reports, environmental audits, reports or studies which concern the Property, or inspection reports from applicable regulatory authorities with respect to the Property, which the Owner has received, have been delivered to the City.

105.2 Indemnification. Owner shall save, protect, pay for, defend, indemnify and hold harmless the City and its officers, employees, representatives and agents, from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by the City or its officers, employees, representatives or agents by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials or Hazardous Materials Contamination, which is caused by Owner, or its agents, employees, representatives, agents, contractors or invitees.

105.3 Release. The Owner hereby waives, releases and discharges forever the City and its employees, officers, agents and representatives, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with the City's or the Owner's use, maintenance, ownership or operation of the Property, any Hazardous Materials on the Property, or the existence of Hazardous Materials Contamination in any state on the Property, however they came to be placed there, except that arising out of the negligence or misconduct of the City or its employees, officers, agents or representatives.

The Owner acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

As such relates to this Section 105.3, the Owner hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

105.4 Duty to Prevent Hazardous Material Contamination. During its ownership and operation of the Property, the Owner shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment on or under the Property. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. The Owner shall notify the City, and provide to the City a copy or copies, of any 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 the Owner 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.

105.5 Definitions. For purposes of this Section 105, "Governmental Requirements" shall mean all 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 of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Owner or the Property.

For purposes of this Section 105, "Hazardous Materials" means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State of California, 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 biphenyls, (viii) methyl tertiary butyl ether, (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.* Hazardous Materials shall not include such products in quantities as are customarily used in the construction, maintenance, or management of multifamily residential developments or associated buildings or grounds, or typically used in multifamily residential activities in a manner typical of comparable multifamily residential developments, or substances commonly and lawfully ingested by a significant population living within the City, including without limitation alcohol, aspirin, tobacco and saccharine.

106. Timing of Acquisition. The Owner hereby covenants and agrees to acquire the Property no later than one hundred eighty (180) days from the effective date of this Agreement.

200. REHABILITATION OF THE PROPERTY

201. Rehabilitation of the Property. The Owner agrees to rehabilitate the Property in accordance with the Schedule of Performance which is attached hereto as Exhibit G and incorporated herein by reference, the Federal Housing Quality Standards, 24 CFR § 982.401, the City Municipal Code, and all other applicable local codes, rehabilitation standards, ordinances and zoning ordinances, and the Work Write-up which is approved by the City pursuant to Section 203 hereof (the "Rehabilitation"). The Rehabilitation shall be conducted on a unit-by-unit basis and in such a manner so as to avoid or minimize tenant displacement to the greatest extent feasible in accordance with the provisions of Section 210.2 below. The Owner further agrees to comply with and to cause any contractors and/or subcontractors to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, and the implementing regulations, in connection with the Rehabilitation of the Property. Owner shall submit to the City one or more construction contracts with a duly licensed contractor or contractors reasonably acceptable to the City providing for the Rehabilitation of the Property in conformance with the terms of this Agreement. Each such contractor or contractors shall have provided to the City the certification required by 24 CFR § 24.510 that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from this project, and the City shall be responsible for determining whether each contractor has been debarred. The City Manager or his designee shall reasonably approve such contract or contracts if the City Manager or his designee finds that such contractor or contractors have sufficient experience and expertise necessary to perform the Rehabilitation of the Property in a first class manner in accordance with all of the requirements of this Agreement.

202. Cost of Rehabilitation. The cost of Rehabilitation shall be paid using funds allocated for rehabilitation, as set forth in a City-approved proforma which estimates a cost of Eighteen Thousand Three Hundred Thirty Dollars (\$18,330) per unit, in the total amount of Seventy-Three Thousand Three Hundred Dollars (\$73,300) (the "Rehabilitation Allocation"). In the event the Rehabilitation Allocation is insufficient to pay for the total cost of Rehabilitation, the Owner shall locate and utilize another non-HOME Program funding source(s) for the remainder of such costs. The Rehabilitation of the Property shall not be paid with the proceeds of the HOME Loan. The Owner shall submit to the City a final line item budget for any proposed Rehabilitation of the Property, which budget shall include without limitation a description of uses by phase and total development cost. The City shall reasonably approve such budget if the budget is reasonably calculated to fund the Rehabilitation of the Property in accordance with Federal Housing Quality Standards and all of the requirements of this Agreement.

203. Work Write-up. Within six months after the date of this Agreement, the Owner shall submit to the City detailed plans, materials and drawings describing the Rehabilitation of the Property (collectively, the "Work Write-up"), and the City shall have the right to review and approve or disapprove, in its reasonable discretion, the Work Write-up. During the preparation of the Work Write-up, staff of the City and the Owner shall communicate and consult informally as frequently as necessary to coordinate the preparation and review of the Work Write-up. If the Owner desires to propose any revisions to the City-approved Work Write-up, it shall submit such proposed changes to the City and the City shall review the proposed change and notify the Owner in writing within thirty (30) days after submission to the City as to whether the proposed change is approved or disapproved. The City shall not be responsible either to the Owner or to third parties in any way for any defects in the Work Write-up, nor for any structural or other defects in any work done according to the approved Work Write-up, nor for any delays reasonably caused by the review and approval processes

established by this Section 203. The Owner shall hold harmless, indemnify and defend the City and its officers, employees, agents and representatives from and against any claims, suits for damages to property or injuries to persons arising out of or in any way relating to defects in the Work Write-up, including without limitation the violation of any laws, and for defects in any work done according to the approved Work Write-up.

204. Timing of Rehabilitation. The Owner hereby covenants and agrees to commence the Rehabilitation of the Property within the time set forth in the Schedule of Performance. The Owner further covenants and agrees to diligently prosecute to completion the Rehabilitation of the Property in accordance with the approved Work Write-up and to file a Notice of Completion pursuant to California Civil Code Section 3093 within the time set forth in the Schedule of Performance. Notwithstanding the Schedule of Performance, the deadlines for performance under this Agreement set forth therein may be extended if the completion of improvements according to the Schedule of Performance would displace a resident, unless the resident can be transferred to another unit on the Property, or by mutual written agreement of the parties.

205. City and Other Governmental City Permits. Before commencement of the Rehabilitation for the Property, the Owner shall secure or cause its contractor to secure any and all permits which may be required by the City or any other governmental agency affected by such construction, including without limitation building permits. The Owner shall pay all necessary fees and timely submit to the City final drawings with final corrections to obtain such permits; the staff of the City will, without obligation to incur liability or expense therefor, use its best efforts to expedite the City's issuance of building permits and certificates of occupancy for construction that meets the requirements of the City Code, and all other applicable laws and regulations.

206. Right of the City to Satisfy Other Liens on the Property After HOME Loan Disbursement. After the disbursement of the HOME Loan and prior to the completion of the Rehabilitation of the Property, and after the Owner has had written notice and has failed after a reasonable time, but in any event not less than forty-five (45) days, to challenge, cure, adequately bond against, or satisfy any liens or encumbrances on the Property which are not otherwise permitted under this Agreement, the City shall have the right but no obligation to satisfy any such liens or encumbrances. Notwithstanding the above, the Owner shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance applicable to the Owner in respect thereto.

207. Release of Construction Covenants. Promptly after the completion of the Rehabilitation of the Property in conformity with this Agreement (as reasonably determined by the City Manager or his or her designee), upon the written request of the Owner, the City shall furnish the Owner with a Release of Construction Covenants (in the form attached hereto as Exhibit D) which evidences and determines the satisfactory completion of the Rehabilitation of the Property, in accordance with this Agreement. The issuance and recordation of the Release of Construction Covenants with respect to the Property shall not supersede, cancel, amend or limit the continued effectiveness of any obligations relating to the maintenance, or uses, or payment of monies, or any other obligations, except for the obligation to complete the Rehabilitation of the Property as of the time of the issuance of the Release of Construction Covenants.

208. Insurance and Indemnity. The Owner shall take out and maintain or shall cause its contractor to take out and maintain during the term of the Affordability Period (as set forth in Section 301 hereof) a comprehensive general liability policy in the amount of not less than One Million Dollars (\$1,000,000) combined single limit policy, and a comprehensive automobile liability

policy in the amount of One Million Dollars (\$1,000,000), combined single limit, including contractual liability, as shall protect the Owner and the City from claims for such damages, and which policy shall be issued by an insurance carrier reasonably acceptable to the City which holds a California license. Such policy or policies shall be written on an occurrence form. The Owner shall also furnish or cause to be furnished to the City evidence satisfactory to the City that Owner and any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. The Owner shall furnish a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by the City setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the City and its officers, agents, and employees as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by the Owner shall be primary insurance and not be contributing with any insurance maintained by the City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City. The required certificate shall be furnished by the Owner prior to the commencement of the Rehabilitation, if applicable.

In addition, Owner shall, at its expense, defend, indemnify, and hold harmless the City and its officers, agents, employees and representatives harmless from any and all losses, liabilities, claims, lawsuits, causes of action, judgments, settlements, court costs, attorneys' fees, and other legal expenses, costs of evidence of title, costs of evidence of value, and other damages of whatever nature arising out of or in connection with, or relating in any manner to any act or omission of Owner or its agents, employees, contractors and subcontractors of any tier and employees thereof in connection with or arising from Owner's negligent performance or default of its obligations under this Agreement, except that arising from the negligence or misconduct of the City or its officers, agents, employees or representatives.

209. Entry by the City. Owner shall permit the City, through its officers, agents or employees, at all reasonable times to enter onto the Property and inspect the work of Rehabilitation to determine that the same is in conformity with the Work Write-up and all the requirements hereof. Owner acknowledges that the City is under no obligation to supervise, inspect, or inform Owner of the progress of construction, and Owner shall not rely upon the City or City therefor. Any inspection by the City is entirely for the purpose of determining whether Owner is in default under this Agreement and is not for the purpose of determining or informing Owner of the quality or suitability of construction. Owner shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

210. Compliance With Laws. The Owner shall carry out the acquisition, Rehabilitation, if applicable, and operation of the Property in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, 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.*

210.1 Taxes and Assessments. The Owner shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Owner's right to contest in good faith any such taxes or to receive an exemption from the payment of such taxes.

210.2 Relocation. Owner shall conduct and submit to the City a tenant survey, completed by each tenant household currently residing on the Property and such other information as reasonably required by City to evaluate the relocation obligations, if any, required by federal, state and/or local law with respect to the Owner's acquisition and Rehabilitation of the Property. The acquisition and Rehabilitation, if applicable, shall be conducted in such a manner as to prevent, to the maximum extent feasible, any displacement of existing tenants in accordance with applicable law. The Owner and the City shall attempt to obtain Section 8 certificates or other housing subsidies as necessary to provide relocation assistance to the existing tenants of the Property who are not participants in the Owner's program (as hereinafter described). Immediately after the execution of this Agreement, the City and Owner shall cooperate in sending notices (the "Lease Notice") to the existing tenants of the Property notifying and advising such tenants of their right to lease and occupy a unit in the Property, for reasonable terms and conditions, including, but not limited to: (i) term of lease not less than one year, (ii) monthly rent and estimated average utility costs that do not exceed the greater of: (a) the tenant's monthly rent before this Agreement and estimated average monthly utility costs; or (b) Rent calculated pursuant to HOME Program requirements if the tenant is low income, or 30% of gross income if the tenant is not low income. In addition, if any existing tenant is required to move temporarily from the Property and will not be permanently displaced, such tenant(s) will receive temporary relocation assistance and benefits set forth in HOME Regulations Section 92.353(b) ("HOME Regulations" shall mean 24 C.F.R. Part 92. The form of such notice shall be approved by the City prior to its delivery to the tenants. The Owner shall enter into a written lease with each tenant, in a form approved by the City, that shall implement the monthly rent limit set forth in the Lease Notice. In the event that any permanent displacement of tenants of the Property occurs, the City shall provide relocation assistance in accordance with the HOME Regulations Section 92.353, Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. § 4601, *et seq.*, the California Relocation Assistance Law, Government Code Section 7260, *et seq.*, and the regulations adopted pursuant thereto by the United States, State of California and the City (collectively, the "Relocation Laws"), and in a manner approved by the City to each displaced tenant household required to temporarily or permanently vacate a unit within the Property as a result of the Owner's acquisition of the Property or for purposes of completing the Rehabilitation of the Property. In the event of permanent displacement of existing tenants due to the implementation of this Agreement, despite the Owner's efforts to prevent such displacement as provided above, the City shall be fully responsible for administering determinations of eligibility and payments pursuant to the Relocation Laws. The City shall bear the cost of such relocation.

210.3 Liens and Stop Notices. The Owner shall not allow to be placed on the Property or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Property the Owner shall within thirty (30) days of such recording or service or within five (5) days of the City's demand, whichever last occurs: pay and discharge the same; or effect the release thereof by recording and delivering to the City a surety bond in sufficient form and amount, or otherwise; or provide the City with other assurance which the 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.

210.4 HOME Program Requirements. The HOME Loan will be provided through funds provided to the City from the HOME Investment Partnership Act, 42 U.S.C. § 12701, *et seq.*, as it now exists and as it may hereafter be amended, as implemented by the HOME Regulations, as they now exist and as they may hereafter be amended (the "HOME Program"). Accordingly, the Owner shall comply with all applicable requirements of the HOME Program, as it now exists or may hereafter be amended. Specifically, without limitation, the Rehabilitation shall comply, to the extent applicable, with the requirements of the Davis-Bacon Act (40 U.S.C. §276a - 276a-5), and as applicable, the Contract Work Hours and Safety Standards Act (40 U.S.C. §3701 *et seq.*), and other applicable federal laws and regulations pertaining to labor standards. Upon request, the City shall provide to the Owner a copy of applicable HOME Program requirements.

210.5 City Parking Programs and Requirements. The Owner shall comply with all ordinances and other requirements or programs established by the City with respect to parking, including, without limitation, any ordinances, building code provisions or housing code provisions which require that the garages in the Property shall not be used for human habitation or commercial uses.

211. Financing of the Property. Prior to and as a condition precedent to the disbursement of the HOME Loan, the City shall approve the mortgages and deeds of trust which are proposed to encumber the Property, and any equity contributions necessary to finance the Property. The City acknowledges that the Owner intends to obtain financing from private funding sources for a portion of the costs of acquisition of the Property ("Owner Financing") which, together with the HOME Loan and Owner's resources would be sufficient to pay the full costs of the acquisition of the Property. Until the HOME Loan is repaid in full, the Owner shall not enter into any financing for the Property without the prior written approval of the City, which approval City agrees to give if such proposed financing is provided by a responsible financial institution and the ratio of total debt and equity financing (including the HOME Loan) to the purchase price of the Property does not exceed One Hundred Percent (100%). The City's approval of such financing shall not be unreasonably withheld or delayed. Upon the request of the Owner, the HOME Loan Deed of Trust shall be made subordinate to the deed of trust of financing approved by the City for the Owner's acquisition of the Property pursuant to this Section 211.

211.1 Holder Performance of Rehabilitation. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to perform the Rehabilitation of the Property, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Whenever the City may deliver any notice or demand to Owner with respect to any breach or default by the Owner in completion of Rehabilitation of the Property, the City may at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. Each such holder shall (insofar as the rights granted by the City are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, upon expressly assuming the Owner's obligations to the City by written agreement reasonably satisfactory to the City, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage.

300. OPERATION OF HOUSING

301. Affordable Units. The Owner agrees to make available, restrict occupancy to, and lease three (3) two bedroom Housing Units, and one (1) three bedroom Housing Unit on the Property to Lower Income Households at an Affordable Rent (collectively, the "Affordable Units"), pursuant to the terms set forth below and in the Regulatory Agreement which is attached hereto as Exhibit E and incorporated herein by reference.

For purposes of this Agreement, "Lower Income Households" shall mean those households with incomes that do not exceed sixty percent (60%) of Orange County median income, adjusted for family size, as established and amended from time to time by the United States Department of Housing and Urban Development ("HUD").

Upon the Owner's acquisition of the Property, and annually thereafter, the Owner shall submit to the City a completed income computation and certification form, in a form to be provided by the City. The Owner shall certify that each tenant leasing an Affordable Unit meets the income restrictions of this Section 301. The Owner shall obtain an income certification from the tenant of each Affordable Unit which shall certify that the income of the tenant is truthfully set forth in the income certification form. The Owner shall verify the income certification of the tenant in one or more of the following methods:

- (1) obtain two (2) paycheck stubs from the tenant's two (2) most recent pay periods, if any.
- (2) obtain a true copy of an income tax return from the tenant for the most recent tax year in which a return was filed, if any.
- (3) obtain an income verification certification from the employer of the tenant, if any.
- (4) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the tenant receives assistance from such agencies, if any.
- (5) obtain an alternate form of income verification reasonably requested by the Owner, if none of the above forms of verification is available to the Owner, if any.

Current tenants of the Property as of the date of this Agreement shall not be compelled to vacate their units solely because their income exceeds the applicable requirements for renting an Affordable Unit. Any tenant who, because of an increase in income, is no longer qualified to rent an Affordable Unit shall not be required to vacate the apartment unit solely because of such change of income, and shall be entitled to remain as a tenant of the same apartment unit at a rent which does not exceed the fair market rental value for such unit. Upon the Owner's determination that any such tenant is no longer so qualified, such tenant's unit shall no longer be deemed an Affordable Unit, and the Owner shall make the next available Housing Unit, which is comparable in terms of size, features and number of bedrooms, an Affordable Unit, or take such other actions as may be necessary to ensure that the total required number of Housing Units are rented to Lower Income Households.

The Property shall be subject to the requirements of this Section 300 from the date of Owner's acquisition of the Property until the fifteenth (15th) anniversary of such date. The duration of this requirement shall be known as the "Affordability Period."

302. Affordable Rent. The maximum Monthly Rent chargeable for the Affordable Units shall be annually determined by the City in accordance with the HOME Program requirements and the following requirements.

The Affordable Units shall be rented to Lower Income Households at maximum HOME Rent limits defined under 24 CFR 92.252 as the lesser of (a) the fair market rent for comparable housing units in the area as determined by HUD under 24 CFR 888.111, or (b) a rent that does not exceed thirty percent (30%) of sixty-five percent (65%) of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit, less the monthly allowance for utilities and services to be paid by each tenant. Notwithstanding the foregoing, however, if after the tenant's initial occupancy of the housing unit, the tenant's income increases to a level greater than maximum income for Lower Income Households, adjusted for family size, the rent charged by Owner shall not exceed the fair market rent for comparable housing units in the area as determined by the City.

For purposes of this Agreement, "Monthly Rent" means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Owner which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Owner.

303. Lease Requirements. Prior to disbursement of the HOME Loan, the Owner shall submit a standard lease form to the City for the City's approval. The City shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement and contains all of the provisions required pursuant to the HOME Program and the HOME Regulations. The Owner shall enter into a written lease, in the form approved by the City, with each tenant of an Affordable Unit. Each lease shall be for a period of not less than one year, and shall not contain any of the provisions which are prohibited pursuant to Section 92.253 of the HOME Regulations.

304. Affirmative Marketing. The rental of the Affordable Units shall be conducted in accordance with the affirmative marketing requirements which have been adopted by the City and the requirements of Section 92.351, or successor regulation, of the HOME Regulations and other applicable HOME Program requirements.

305. Selection of Tenants. Each Affordable Unit shall be leased to tenants selected by the Owner who meet all of the requirements provided herein. The City may, from time to time, assist in the leasing of the Property by providing to the Owner names of persons who have expressed interest in renting Affordable Units. The Owner shall adopt a tenant selection system in conformance with Section 92.253(d) of the HOME Regulations, which shall be approved by the City in its reasonable discretion, which establishes a chronological waiting list system and/or random lottery system for selection of tenants. The Owner shall not refuse to lease to a holder of a certificate of family participation under 24 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing

participation in a HOME Program, Section 8 program or other tenant-based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria; provided that Owner shall not be required to give any priority or preference to participants in the foregoing programs.

306. Occupancy Standards. Notwithstanding other applicable requirements, occupancy of one bedroom Housing Units shall be limited to three persons, occupancy of two bedroom Housing Units shall be limited to five persons, and occupancy of three bedroom Housing Units shall be limited to seven persons. Notwithstanding the foregoing, however, no current residents of Housing Units as of the date of this Agreement shall be evicted from their apartment units solely because such residents do not meet the occupancy requirements of this Section 306.

307. Maintenance. The Owner shall maintain or cause to be maintained the interior and exterior of the Property in a decent, safe and sanitary manner, in accordance with the HUD Housing Quality Standards and the maintenance standards required by Section 92.251 of the HOME Regulations, and the standard of maintenance of similar housing units within Orange County, California. If at any time Owner fails to maintain the Property in accordance with this Agreement and such condition is not corrected within five days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance, or thirty days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever remedy it may have at law or at equity, shall have the right to enter upon the applicable portion of the Property and perform all acts and work necessary to protect, maintain, and preserve the Property and landscaped areas on the Property, and to attach a lien upon the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, including a reasonable administrative charge, which amount shall be promptly paid by Owner to the City, as appropriate, upon demand.

308. Reserve Requirements. The Owner shall set aside in a separate interest-bearing account, commencing upon the Owner's acquisition of the Property, the sum of Fourteen Thousand Dollars (\$14,000) (the "Operating Reserve"), and shall thereafter retain such amount in the Operating Reserve to cover shortfalls between Property income and actual Property operating expenses. If the Owner fully complies with the terms of this Agreement, any HOME funds used to initially fund the Operating Reserve that remain in such account, as of eighteen (18) months after the establishment of the Operating Reserve, shall thereafter be retained in the Operating Reserve. If the Owner fails to comply with the terms of this Agreement, any HOME funds used to initially fund the Operating Reserve that remain in such account, as of eighteen (18) months after the establishment of the Operating Reserve, shall be returned to the City. The Owner shall replenish the Operating Reserve to the full amount from project revenues within sixty (60) days of its use to cover any such shortfall. The Owner shall provide, no less than once per every twelve (12) months, evidence reasonably satisfactory to the City of compliance herewith.

Concurrently with the establishment of the Operating Reserve as set forth herein, the Owner shall also set aside, on a monthly basis, in a separate interest-bearing account, the greater of two percent (2%) of the gross rents received from the Property or Sixty-Six Dollars and Sixty-Seven Cents (\$66.67) (the "Capital Replacement Reserve"). When funds in the Capital Replacement Reserve equal the amount of Twelve Thousand Dollars (\$12,000), the Owner may cease depositing additional appropriations to the Capital Replacement Reserve until twenty-four (24) months after the Owner's acquisition of the Property, after which time the Owner shall continue making monthly deposits of the greater of two percent (2%) of the gross rents received from the Property or Sixty-Six

Dollars and Sixty-Seven Cents (\$66.67). Funds in the Capital Replacement Reserve shall be used for capital replacements to the Property fixtures and equipment which are normally capitalized under generally accepted accounting principles. As capital repairs and improvements of the Property become necessary, the Capital Replacement Reserve shall be the first source of payment therefor. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve the Owner of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Property in the manner prescribed in this Agreement. Not less than once per year, Owner, at its expense, shall submit to the City an accounting for the Capital Replacement Reserve. Capital repairs to and replacement of the Property shall include only those items with a long useful life of five or more years, including without limitation the following: carpet and drape replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement and irrigation pipe and controls replacement; gas line pipe replacement; lighting fixture replacement; elevator replacement and upgrade work; miscellaneous motors and blowers; common area furniture replacement, and common area repainting.

In the event there are insufficient funds in the Capital Replacement Reserve for Owner to undertake necessary capital repairs and improvements as required in this Agreement, Owner may request additional funding from the City to complete such repairs and improvements. The City agrees that it will reasonably consider a request for additional funds made pursuant to this Section 308.

309. Long Term Management of the Property. The parties acknowledge that the City is interested in the long term management and operation of the Property and in the qualifications of any person or entity retained by the Owner for that purpose (the "Property Manager"). The Owner shall, upon the date of acquisition of the Property, either contract with an experienced and reputable party to be the Property Manager or Owner shall itself serve as the Property Manager. During the term of the Affordability Period, the City may from time to time review and evaluate the identity and performance of the Property Manager of the Property as it deems appropriate. If the City determines that the performance of the Property Manager is deficient based upon the standards and requirements set forth in this Agreement, the City shall provide notice to the Owner of such deficiencies and the Owner shall use its best efforts to correct such deficiencies. In the event such deficiencies have not been cured within the time set forth in Section 501 hereof, the City shall have the right to require the Owner to immediately remove and replace the Property Manager and to appoint another property manager or property management company which is reasonably acceptable to the City, which is not related to or affiliated with the Owner, and which has not less than five (5) years experience in property management, including significant experience managing affordable multifamily residential developments of the size, quality and scope of the Property.

In addition, prior to the acquisition of the Property the Owner shall submit for the approval of the City a "Management Plan" which sets forth in detail the Owner's property management duties, the affirmative marketing procedures in accordance with Section 304 hereof, the tenant selection process in accordance with Section 305 hereof, a security system and crime prevention program, the procedures for the collection of rent, the procedures for monitoring of occupancy levels, the procedures for eviction of tenants, the rules and regulations of the Property and manner of enforcement, a standard lease form in accordance with Section 303 hereof, the identity of the Property Manager, and other matters relevant to the management of the Property. The Management

Plan shall require the Property Manager to adhere to a fair lease and grievance procedure and provide a plan for tenant participation in management decisions. The management of the Property shall be in compliance with the Management Plan which is approved by the City.

Until the HOME Loan has been fully repaid, the Owner shall annually submit to the City for its reasonable approval a budget for the operation of the Property. The fee paid to Property Manager shall not exceed five percent (5%) of the gross income of the Property per annum. Other fees and payments shall be consistent with prevailing market rates for the services performed and goods provided in consideration for such fees and payments. The Owner shall ensure that the expenses of operating the Property do not materially exceed the budget which has been approved by the City. The Owner shall annually provide to the City a detailed accounting of operating expenses and shall make its books and records available to the City for inspection and copying, upon reasonable advance notice during its normal hours of business.

310. Monitoring and Recordkeeping. Throughout the Affordability Period, Owner shall comply with all applicable recordkeeping and monitoring requirements set forth in Section 92.508 (or successor regulation) of the HOME Regulations and shall annually complete and submit to City a Certification of Continuing Program Compliance in the form provided by the City. Representatives of the City shall be entitled to enter the Property, upon at least twenty-four (24) hours notice, to monitor compliance with this Agreement, to inspect the records of the Property with respect to the HOME Program compliance, and to conduct an independent audit or inspection of such records. The Owner agrees to cooperate with the City in making the Property available for such inspection or audit. If for any reason the City is unable to obtain the Owner's consent to such an inspection or audit, the Owner understands and agrees that the City may obtain at Owner's expense an administrative inspection warrant or other appropriate legal order to obtain access to and search the Property. Owner agrees to maintain records in businesslike manner, and to maintain such records for the term of this Agreement.

311. Non-Discrimination Covenants. Owner covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Owner itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. Owner shall also comply with the equal opportunity and fair housing requirements set forth in Section 92.350 of the HOME Regulations. The covenants established in this Section 311 shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City and its successors and assigns, and shall remain in effect in perpetuity.

312. Regulatory Agreement. The requirements of this Agreement which are applicable after the disbursement of the HOME Loan are set forth in the "Regulatory Agreement" which is attached hereto as Exhibit E and incorporated herein by reference. The execution and recordation of the Regulatory Agreement is a condition precedent to the disbursement of the HOME Loan, as set forth in Section 102 hereof. The Regulatory Agreement shall run with the land and shall be subordinate to the lien of the deeds of trust and other financing documents which secure the financing approved by the City pursuant to Section 211 hereof, provided that the City finds that an economically feasible method of financing for the acquisition and operation of the Property, without

the subordination of the covenants as may be set forth in this Agreement and the Regulatory Agreement, is not reasonably available. Upon making such a finding, the City Manager (or designee) is hereby authorized to execute such subordination agreements and/or such other documents as may be necessary to evidence such subordination, provided that such subordination agreements contain written commitments which the City Manager (or designee) finds are reasonably designed to protect the City's investment in the event of default, such as any of the following: (a) a right of the City to cure a default on the loan prior to foreclosure, (b) a right of the City to negotiate with the lender after notice of default from the lender and prior to foreclosure, (c) an agreement that if prior to foreclosure of the loan, the City takes title to the property and cures the default on the loan, the lender will not exercise any right it may have to accelerate the loan by reason of the transfer of title to the City, and (d) a right of the City to purchase the Property from the Owner at any time after a default on the loan.

400. OPTION TO PURCHASE

401. Option. The Owner hereby grants to the City, and the City shall have, subject to any deeds of trust which have been approved pursuant to Section 211 of this Agreement, an option (the "Option") to purchase the Property from Owner at the original purchase price paid by Owner for the Property plus any cost paid by Owner for City-approved Rehabilitation work which is over and above the Rehabilitation Allocation set forth in Section 202 herein (collectively, the "Option Price"). In the event that the Option Price is insufficient to repay all outstanding indebtedness approved by the City which encumbers the Property, the City shall cancel the unpaid portion of the HOME Loan. The City shall have the right but not the obligation to exercise the Option at any time commencing upon the date of the Owner's acquisition of the Property (the "Option commencement date"). If the Option has not been exercised within ten (10) years of the Option commencement date, it shall automatically expire. Upon such expiration, the City shall, upon receipt of request therefor by the Owner, provide written confirmation in recordable form that such Option no longer remains in effect. The terms and conditions of the Option shall be set forth in an Option Agreement substantially in the form of Exhibit F, which is attached hereto and incorporated herein, which shall be executed by the parties to the Option and recorded as an encumbrance to the Property concurrently with the Owner's acquisition of the Property.

500. DEFAULT AND REMEDIES

501. Events of Default. A failure by any party to perform any action or covenant required by this Agreement, the Regulatory Agreement, the Promissory Note, the Deed of Trust, or any loan or deed of trust for the Property which is senior to the HOME 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 parties 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 thirty (30) days from receipt of such notice of such Default hereunder. 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 Owner is in default on any loan or deed of trust senior to the HOME Loan, the Owner 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 each have the right (but not be obligated) to cure such default. In such event, the City shall be entitled to reimbursement from the Owner of all costs and expenses it has actually incurred in curing such default. The City shall be entitled to add the amount incurred by it to the amounts owing pursuant to the Promissory Note, and secured by the Deed of Trust.

502. Remedies. The occurrence of any Event of Default shall give the nondefaulting party the right to proceed with any and all remedies set forth in this Agreement and/or the Promissory Note, Deed of Trust or Regulatory Agreement (collectively, the "HOME Loan Documents"), including an action for damages, an action or proceeding at law or in equity to require the defaulting party to perform its obligations and covenants under the HOME Loan Documents or to enjoin acts or things which may be unlawful or in violation of the provisions of the HOME Loan Documents, and the right to terminate this Agreement. In addition, the occurrence of any Event of Default by Owner will relieve the City of any obligation to perform hereunder, including without limitation to make or continue the HOME Loan, and the right to cause all indebtedness of the Owner to the City under this Agreement and the Promissory Note, together with any accrued interest thereon, to become immediately due and payable.

503. Force Majeure. Subject to the party's compliance with the notice requirements as set forth below, performance by either party hereunder shall not be deemed to be a default hereof, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to causes beyond the control and without the fault of the party claiming an extension of time to perform, which may include the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, acts or failures to act of any public or governmental entity (except that the City's acts or failure to act shall not excuse performance of the City hereunder). An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Inability to obtain financing for the acquisition or operation of the Property shall not constitute an event beyond the control of the Owner for purposes of this Section 503.

504. Attorneys' Fees. In addition to any other remedies provided hereunder or available pursuant to law, if either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder or under any of the HOME Loan Documents, the prevailing party shall be entitled to recover from the other party its costs of suit and reasonable attorneys' fees.

505. Remedies Cumulative. No right, power, or remedy given to the City by the terms of this Agreement or the HOME Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against Owner and any other person.

506. Waiver of Terms and Conditions. The City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or

condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

507. Non-Liability of City Officials and Employees. No member, official, employee or agent of the City shall be personally liable to the Owner, 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 the Owner or its successors, or on any obligations under the terms of this Agreement.

600. GENERAL PROVISIONS

601. Time. Time is of the essence in this Agreement.

602. Notices. 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:

Owner: Tamerlane Associates, LLC
19800 MacArthur Boulevard, Suite 1150
Irvine, CA 926912
Attn: Charles Fry

City: City of Garden Grove
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, California 92842
Attn: Community Development Director

Such addresses may be changed by notice to the other party given in the same manner as provided above.

603. Representations and Warranties of Owner. Owner hereby represents and warrants to the City as follows:

(a) **Organization.** Owner is a duly organized, validly existing limited liability company in good standing under the laws of the State of California and has the power and authority to own property and conduct such business as now being conducted.

(b) **Authority of Owner.** Owner has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the HOME Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, to acquire and operate the Property, and to perform and observe the terms and provisions of all of the above.

(c) **Valid Binding Agreements.** This Agreement and the HOME Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so

executed and delivered constitute, legal, valid and binding obligations of Owner enforceable against it in accordance with their respective terms.

(d) **Pending Proceedings.** Owner is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Owner, threatened against or affecting Owner or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Owner, materially affect Owner's ability to repay the HOME Loan or impair the security to be given to the City pursuant hereto.

(e) **Layering Review.** The Owner acknowledges that a layering review was performed in accordance with 24 CFR 92.250 (b). The Owner hereby represents and certifies to the City that no government assistance other than the HOME Loan has been obtained or is contemplated to be obtained for the acquisition of the Property. The Owner agrees to notify the City in the event that it applies for or proposes to use other governmental funds for the Property prior to the end of the Affordability Period.

604. Limitation Upon Change in Ownership, Management and Control of the Owner.

(a) **Prohibition.** The identity and qualifications of Owner as an experienced and successful operator of multifamily housing are of particular concern to the City. It is because of this identity and these qualifications that the City has entered into this Agreement with the Owner. No voluntary or involuntary successor in interest of the Owner shall acquire any rights or powers under this Agreement by assignment or otherwise, nor shall Owner make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Property without the prior written approval of the City pursuant to Subparagraph (c) hereof, except as expressly set forth herein, which approval shall not be unreasonably withheld.

(b) **Permitted Transfers.** Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment or transfer of this Agreement, the HOME Loan, the Promissory Note, the Deed of Trust, the Regulatory Agreement, or conveyance of the Property or any part thereof pursuant to subparagraph (c) of this Section 604, shall not be required in connection with any of the following (the "Permitted Transfers"):

(i) Subject to the restrictions of Sections 301 through 312 of this Agreement and the Regulatory Agreement, the lease of units within the Property to qualified tenants.

(ii) Assignment for financing purposes, subject to such financing being considered and approved by the City pursuant to Section 211 hereof.

(iii) Assignment of this Agreement and the conveyance of the Property to family members or a trust for estate planning purposes, or transfer of this Agreement and the Property to an entity in which Owner owns not less than fifty percent (50%) of the beneficial interest in the Property, and is under the management and control of the Owner, and the transferee entity executes an agreement reasonably acceptable to the City assuming all of the obligations under this Agreement.

In the event of an assignment by Owner not requiring the City's prior approval, Owner nevertheless agrees that at least ten (10) days prior to such assignment or transfer it shall give written notice to City of such assignment or transfer.

(c) **City Consideration of Requested Transfer.** The City agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 604, provided (a) the Owner delivers written notice to the City requesting such approval, and (b) the proposed assignee or transferee possesses comparable operational experience and capability with respect to the operation of similar types of multifamily rental property, and comparable net worth and resources as necessary to operate the Property, and (c) the proposed assignee or transferee assumes the obligations of the Owner under this Agreement and the Promissory Note in a form which is reasonably acceptable to the City. Such notice shall be accompanied by evidence regarding the proposed assignee's or purchaser's qualifications and experience and its financial commitments and resources sufficient to enable the City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 604(c) and other criteria as reasonably determined by the City. The City shall approve or disapprove the request within thirty (30) days of its receipt of the Owner's notice and all information and materials required herein. In no event, however, shall the City be obligated to approve the assignment or transfer of the HOME Loan, Promissory Note or Deed of Trust pursuant to this Section 604, except to an approved transferee or assignee of the Owner's rights in and to the Property.

(d) **Successors and Assigns.** This Agreement shall run with the land, and all of the terms, covenants and conditions of this Agreement shall be binding upon the Owner and the permitted successors and assigns of the Owner. Whenever the term "Owner" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

605. No Third Parties Benefited. This Agreement is made and entered into for the sole protection and benefit of the City, its successors and assigns, and Owner, its permitted successors and assigns, and no other person or persons, except the rights granted to the Garden Grove Agency for Community Development ("Agency") herein, shall have any right of action hereon. The Agency shall be a third party beneficiary of the Affordability covenants of this Agreement and the Regulatory Agreement and shall have the right to enforce such covenants.

606. Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

607. Governing Law. This Agreement and the HOME Loan Documents and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto.

608. Amendment. This Agreement may not be changed orally, but only by agreement in writing signed by Owner and the City.


609. Approvals. Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the City, such approval may be given on behalf of the City by the City Manager or his or her designee. The City Manager or his or her designee is

hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement on behalf of the City, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement, and amendments which do not substantially change the uses or restrictions hereunder, or substantially add to the costs of the City hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth below.

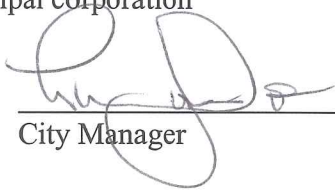
OWNER:

TAMERLANE ASSOCIATES, LLC, a California limited liability company

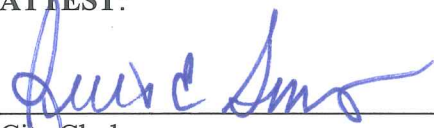
By: 
Its: Manager

CITY:

CITY OF GARDEN GROVE, a California municipal corporation

By: 
City Manager

ATTEST:


City Clerk

APPROVED AS TO FORM:

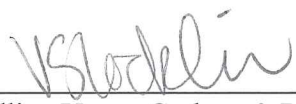

Stradling Yocca Carlson & Rauth
City Special Counsel

EXHIBIT A
LEGAL DESCRIPTION

All that certain real property In the County of Los Angeles, State of California, described as follows:

Lot 1 of Tract No, 3050. in the City of Garden Grove, County of Orange. State of California, as per map recorded in Book 92 Page(s) 31-32, inclusive of Miscellaneous Maps, in the office of the County Recorder of said County.

APN No. 231-471-42

PROMISSORY NOTE

\$628,094

August 10, 2006

Garden Grove, California

FOR VALUE RECEIVED, TAMERLANE ASSOCIATES, LLC, a California limited liability company ("Owner"), promises to pay to the **CITY OF GARDEN GROVE**, a California municipal corporation (the "City"), or order at the City's office at 11222 Acacia Parkway, Garden Grove, California 92840, or such other place as the City may designate in writing, the principal sum of Six Hundred Twenty-Eight Thousand Ninety-Four Dollars (\$628,094) (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 Affordable Housing Loan Agreement executed by the City and the Owner, dated as of August 8, 2006 (the "Agreement"). The rights and obligations of the Owner and the City under this Note shall be governed by the Agreement and by the additional terms set forth in this Note.

2. Interest. The Note Amount shall accrue simple interest at the rate of three percent (3%) per annum.

3. Repayment of Note Amount. The Owner shall make payments on this Note as follows, until the full Note Amount is repaid in full: the Owner shall pay to the City an amount equal to seventy-five percent (75%) of the Net Profits from the Property on January 15th of each calendar year during the term of this Note. The City shall be entitled to review the books and records of the Owner pertaining to the Operating Expenses and Net Profits of the Property, during normal business hours and upon reasonable advance notice. For the purposes of this Section 3, "Net Profits" means gross income from the Property and any other income the Owner receives from the operation of the Property, less deposits to reserve accounts and "Operating Expenses," as hereafter defined. "Operating Expenses" shall mean actual, reasonable and customary costs, fees and expenses directly incurred and attributable to the financing, operation, maintenance, and management of the Property, including without limitation payment of debt service on the loans approved by the City as set forth herein, painting, cleaning, repairs and alterations, landscaping, utilities, rubbish removal, sewer charges, real and personal property taxes and assessments, insurance, securities, advertising, promotion and publicity, office, janitorial, cleaning and building supplies, a management fee not to exceed five percent (5%) of gross rents and other income of the Property pursuant to Section 309 of the Agreement; purchase, repairs, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of accountants, attorneys, consultants and other professionals, capital repairs and improvements, and other payments by the Owner pursuant to the Agreement, including indemnity obligations; provided, however, that payments to parties related to or affiliated with Owner for Operating Expenses must not exceed market rates. The Operating Expenses shall not include non-cash expenses, including without limitation, depreciation. The Operating Expenses shall be reported to the City not less than annually in annual financial statements accompanied by a certification of the Owner that such financial statements present the financial position, results of operations, and cash flows fairly and in accordance with generally accepted accounting principles. Owner shall transmit to the City copies of any audited financial statements received by Owner, if any, promptly after receipt.

Notwithstanding the above, however, the total amount of the principal, interest and any other amounts owed under this Note shall become immediately due and payable upon the earlier to occur of the following:

- (a) the sale, lease, exchange or other conveyance of the Property, as that term is defined in the Agreement (other than transfers permitted pursuant to Section 604 of the Agreement); or
- (b) in the event of a default by the Owner under the Agreement, the Deed of Trust securing this Note, the Regulatory Agreement, or this Note, which has not been cured within the period of time set forth in those documents.
- (c) the Agency's purchase of the Property pursuant to Section 400 of the Agreement.

Failure to declare such amounts due shall not constitute a waiver on the part of the City to declare them due subsequently.

4. Sale or Conveyance of the Property. Notwithstanding the provisions of Section 3, if the Property is sold or transferred by Owner to a Buyer and/or Transferee who is approved by the City pursuant to Section 604 of the Agreement, then the Note Amount together with accrued simple interest thereon, if any, is immediately due and payable or, Buyer and/or Transferee may, with the express written consent of the City in its sole and reasonable discretion, fully assume this Note and the Deed of Trust.

5. Security. This Note is secured by a Deed of Trust dated the same date as this Note.

6. Waivers

- (a) Owner 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 Owner.
- (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 Owner under this Note, either in whole or in part.
- (c) The obligations of Owner under this Note shall be absolute and Owner waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

7. **Attorneys' Fees and Costs.** Owner agrees that if any amounts due under this Note are not paid when due, Owner shall 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.

8. **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.

9. **Deed of Trust Acceleration.** The Deed of Trust and the Agreement provide for acceleration of the payments due under this Note in the event of default under the Deed of Trust or Agreement.

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

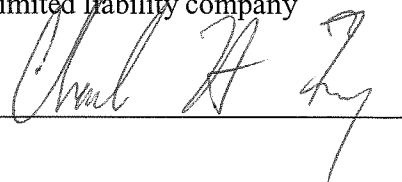
11. **City May Assign.** City may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Owner.

12. **Owner Assignment Prohibited.** Except in connection with transfers permitted pursuant to Section 604 of the Agreement, in no event shall Owner assign or transfer any portion of this Note without the prior express written consent of the City, which consent may be given or withheld in the City's sole discretion.

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

TAMERLANE ASSOCIATES, LLC,
a California limited liability company

By: _____



Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Garden Grove
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, California 92842
Attention: Housing Development Manager



NO FEE

2006000544900 02:21pm 08/15/06

117 48 D11 A36 14

0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

This document is exempt from the payment of a recording
fee pursuant to Government Code Section 6103.

**EXEMPT
CODE 6103**

DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS is made as of the 10th day of August, 2006, by and among **TAMERLANE ASSOCIATES, LLC**, a California limited liability company (the "Trustor"), whose address is 19800 MacArthur Boulevard, Suite 1150, Irvine CA 92612, **ALLIANCE TITLE COMPANY** (the "Trustee"), whose address is 18831 Von Karman, Suite 380, Irvine, California 92612, and the **CITY OF GARDEN GROVE**, a California municipal corporation (the "Beneficiary"), whose address is 11222 Acacia Parkway, P.O. Box 3070, Garden Grove, California 92842.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, the property located in the City of Garden Grove, County of Orange, State of California, that is described in Attachment A, attached hereto and by this reference incorporated herein (the "Property");

TOGETHER WITH all rents, issues, profits, royalties, income and other benefits derived from the Property (collectively, the "rents"), provided that so long as Trustor is not in default hereunder, it shall be permitted to collect rents and operate the Property in accordance with the requirements of that certain Affordable Housing Loan Agreement entered into between Trustor and the Beneficiary as of August 8, 2006 (the "Agreement"), which Agreement is on file with the Beneficiary as a public record and is incorporated by reference herein;

TOGETHER WITH all interests, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including, without limiting the generality of the foregoing, all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property, including, without limitation, all fixtures, attachments, appliances, furnishings, equipment and machinery (whether fixed or movable) and other articles (including, in each instance, improvements, restorations, replacements, repairs, additions, accessions or substitutions thereto or therefor);

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TOGETHER WITH all leasehold estate, right, title and interest of Trustor in and to all leases or subleases covering the Property or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

TOGETHER WITH all right, title and interest of Trustor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property;

TOGETHER WITH all the estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages;

All of the foregoing, together with the Property, is herein referred to as the "Security".

FOR THE PURPOSE OF SECURING:

1. Repayment of the HOME Loan of Six Hundred Twenty-Eight Thousand Ninety-Four Dollars (\$628,094), payable pursuant to the Promissory Note.
2. Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period and upon fifteen (15) business days notice to the Trustor, with interest thereon as provided herein;
3. Payment of such additional sums and interest thereon which may hereafter be loaned to Trustor, or its successors or assigns, by Beneficiary, when evidenced by a promissory note or notes or other documents reciting that they are secured by this Deed of Trust; and
4. Performance of every material obligation, covenant or agreement of Trustor contained herein or in the Promissory Note or the Agreement (and any amendments thereto).

ARTICLE I

DEFINITIONS

1. "Agreement" means that Affordable Housing Loan Agreement entered into by and among Trustor and the Beneficiary hereof, dated as of August 8, 2006, said Agreement (a copy of which is on file with the Beneficiary at the address stated above, and including all of its attachments) is incorporated herein by reference.

2. The term "Expiration Date" means the date upon which the HOME Loan amount due pursuant to the Promissory Note (if any), has been paid in full, and all other obligations the performance of which is secured by this Deed of Trust have been satisfied.

3. "Mortgage" means any permanent or long-term loan (other than a loan by an entity related to or controlled by the Trustor), or any other financing device (including without limitation deeds of trust) the proceeds of which were used by Trustor to acquire the Property, which loan is secured by a security interest in the Property;

4. "Promissory Note" collectively means the Promissory Note of even date herewith from Trustor in favor of Beneficiary evidencing Trustor's obligation to repay the HOME Loan.

5. "Property" means the real property referred to in Attachment A attached hereto.

6. "Security" means the Property and all appurtenant improvements.

7. "Standards" means those standards of rehabilitation and operation required by the Agreement and in accordance with the Federal Housing Quality Standards, 24 CFR § 982.401.

8. "Trustor" means Tamerlane Associates, LLC, a California limited liability company, and each of its transferees and successors in interest. Where an obligation is created herein binding upon Trustor, the obligation shall be joint and several and shall also apply to and bind any transferees or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligation of the Trustor and such transferee.

Unless the context clearly otherwise requires, any capitalized term used herein and not defined herein shall have the meaning given to it under the Agreement (and any amendments thereto).

ARTICLE II

MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY; RELEASE UPON PAYMENT

Section 2.1 Maintenance and Modification of the Property by Trustor. The Trustor agrees that at all times prior to the Expiration Date, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Property or cause the Property to be maintained, preserved and kept in a condition conforming to the Standards and with only those uses allowed by the Agreement. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Property.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of completion upon completion of construction of any part of the Security, diligently file or procure the filing of a notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security or any part thereof.

Section 2.2 Release of Security. Upon its receipt of the repayment of all amounts due under the Promissory Note, and all amounts secured by this Deed of Trust, and provided that the Trustor is not in default under the Agreement, the Beneficiary shall, upon the request of the Trustor, deliver to the Trustor such instruments as are reasonably necessary to confirm the release of the Security from the lien of this Deed of Trust.

ARTICLE III

TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges. Trustor shall pay, or cause to be paid prior to delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1 in accordance with generally accepted accounting principles.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay any such item within seven (7) business days of the earlier of the receipt or mailing of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by the law of the State of California, shall become an additional obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor hereby agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance.

(a) Trustor agrees to provide insurance for the Security of the kind and in the amounts required by the Agreement.

(b) All such insurance policies and coverages (i) shall be maintained at Trustor's sole cost and expense so long as any part of the amounts secured by this Deed of Trust have not been paid, (ii) shall be with insurers of recognized responsibility, and in form and substance satisfactory to the Beneficiary, (iii) shall name Beneficiary as additional insured, and (iv) shall contain a provision to the effect that the insurer shall not cancel the policy or modify it materially and adversely to the interests of Beneficiary without first giving at least thirty (30) days' prior written notice thereof. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to the Expiration Date.

Section 3.3 Advances. In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Property in good repair and operating condition, the Beneficiary may (but shall be under no obligation to) take out the required policies of insurance and pay the premium on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and, provided that the Beneficiary provides ten (10) business days' notice to the Trustor all amounts so advanced therefor by the Beneficiary shall

become an additional obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the maximum rate permitted by the law of the State of California.

ARTICLE IV

DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Damage and Destruction. If, prior to the Expiration Date, the Property or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty, the Trustor shall if feasible (a) cause any insurance proceeds arising from insurance referred to in Section 3.2 hereof and any other coverage acquired by the Trustor to be used to promptly rebuild and replace the Property, and (b) repair and replace the Property as necessary to bring the Property into conformity with the Standards; provided that such covenants shall be subordinate to the provisions of all senior obligations to which this Deed of Trust is subordinate. There shall be no abatement in, and Trustor shall be obligated to continue to pay, the amounts payable under the Promissory Note and this Deed of Trust.

Section 4.2 Condemnation. Subject to the provisions of senior obligations to which this Deed of Trust is subordinate, if title to or any interest in or the temporary use of the Property or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, including any proceeding or purchase in lieu thereof, the proceeds as a result of such taking shall be paid as provided by the law of the State of California.

ARTICLE V

REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE TRUSTOR

Section 5.1 Defense of the Title. The Trustor covenants that it is lawfully seized and possessed of title in fee simple to the Property, that it has good right to sell, convey or otherwise transfer or encumber the same, and that the Trustor, for itself and its successors and assigns, warrants and will forever defend the right and title to the foregoing described and conveyed property unto the Beneficiary, its successors and assigns, against the claims of all persons whomsoever, excepting only encumbrances approved by the Beneficiary.

Section 5.2 Inspection of the Property. The Trustor covenants and agrees that at any and all reasonable times and upon reasonable notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Property.

ARTICLE VI

AGREEMENTS AFFECTING THE PROPERTY; FURTHER ASSURANCES; PAYMENT OF THE NOTE AMOUNT

Section 6.1 Other Agreements Affecting Property. The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Agreement or any

other agreement of any nature whatsoever now or hereafter involving or affecting the Property or any part thereof.

Section 6.2 Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Beneficiary, the Trustor shall make, execute and deliver, or cause to be made, executed and delivered, to the Beneficiary and, where appropriate, cause to be recorded and/or filed, and from time to time thereafter to be recorded and/or filed, at such time and in such offices and places as shall be deemed desirable by the Beneficiary, any and all such other and further deeds of trust, security agreements, financing statements respecting personal property, instruments of further assurance, certificates and other documents as may, in the opinion of the Beneficiary, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve, (a) the obligations of the Trustor under this Deed of Trust, and (b) the lien of this Deed of Trust as a lien prior to all liens except those obligations which shall be senior obligations pursuant to the provisions of this Deed of Trust. Upon any failure by the Trustor to do so, the Beneficiary may make, execute, record, file re-record and/or refile any and all such deeds of trust, security agreements, instruments, certificates and documents for and in the name of the Trustor, and the Trustor hereby irrevocably appoints the Beneficiary the agent and attorney-in-fact of the Trustor to do so. The lien hereof shall automatically attach, without further act, to all after-acquired property deemed to be part of the Security as defined herein.

Section 6.3 Agreement to Pay Attorney's Fees and Expenses. In the event of an Event of Default hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are incurred at the maximum rate permitted by the law of the State of California.

Section 6.4 Repayment of the HOME Loan. The Trustor shall repay to the Beneficiary the HOME Loan in the amount and by the time set out in the Promissory Note.

Section 6.5 Subrogation; Payment of Claims. Provided that the Beneficiary gives notice of at least five (5) business days to the Trustor, the Beneficiary shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid by the Beneficiary pursuant to the provisions hereof. If permitted in a Mortgage, the Beneficiary shall have the right to pay and discharge the obligations secured by the Mortgage.

Section 6.6 Operation of the Property. The Trustor agrees and covenants to operate the Property (and, in case of a transfer of the Property, the transferee shall operate the Property) in full compliance with the Agreement.

Section 6.7 Transfer. No sale, transfer, lease, pledge, encumbrance, creation of a security interest in or other hypothecation of the Security shall relieve or release the Trustor from primary liability under this Deed of Trust or the Agreement, as the case may be, except in connection with transfers permitted pursuant to Section 604 of the Agreement provided that the Transferee fully assumes the Agreement and this Deed of Trust.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default Defined. The occurrence of any failure of the Trustor to pay the Promissory Note or to perform under this Deed of Trust, and the continuation of said failure for a period of thirty (30) business days as to monetary obligations and sixty (60) business days as to non-monetary obligations, after written notice specifying such failure and requesting that it be remedied shall have been given to Trustor from the Beneficiary, shall be an "Event of Default" or a "Default" under this Deed of Trust.

Section 7.2 Acceleration of Maturity. If an Event of Default shall have occurred and be continuing, then the entire indebtedness secured hereby shall, at the option of the Beneficiary, immediately become due and payable without notice or demand which are hereby expressly waived, and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 7.3 The Beneficiary's Right to Enter and Take Possession. If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Property and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Property, or part thereof or interest therein, increase the income therefrom or protect the Security hereof and, with or without taking possession of the Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof, as aforesaid, shall not cure or waive any Default or notice of Default hereunder or invalidate any act done in response to such Default or pursuant to such notice of Default and, notwithstanding the continuance in possession of the Property or the collection, receipt and application of rents, issues or profits, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, the Agreement or by law upon occurrence of any Event of Default, including the right to exercise the power of sale. Trustor requests that a copy of any Notice of Default and a copy of any Notice of Sale hereunder be mailed to Trustor if at its address given herein;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the property to be sold, which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of the County in which the Property is located; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to the Property, including any Security, or in any other document or

agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

Section 7.4 Foreclosure By Power of Sale. Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust (and the deposit of which shall be deemed to constitute evidence that the amount of the Promissory Note is immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(a) Upon receipt of such notice from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Property, at the time and place of sale fixed by it in said Notice of Sale, either as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine, at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the Promissory Note; (ii) all other sums then secured hereby; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

Section 7.5 Receiver. If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under Security, and without regard to the then value of the Property or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment. Any such receiver or receivers shall have all the powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Property, unless such receivership is sooner terminated.

Section 7.6 Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.7 No Waiver.

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. No consent or waiver, expressed or implied, by the Beneficiary to or of any breach by the Trustor in the performance of the obligations hereunder shall be deemed or construed to be a consent to or waiver of obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, powers or remedies consequent on any breach or Default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted herein, or in the Agreement, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements of this Deed of Trust or the Agreement, (v) consents to the filing of any map, plat or replat affecting the Security, (vi) consents to the granting of any easement or other right affecting the Security, or (vii) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in the event of any Default then made or of any subsequent Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, the Beneficiary, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Security (or a part thereof) or the indebtedness secured hereby, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the Trustor and without in any way releasing or discharging any liabilities, obligations or undertakings of the Trustor.

Section 7.8 Suits to Protect the Security. The Beneficiary shall have power (upon ninety (90) days notice to the Trustor) to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security (and the rights of the Beneficiary as secured by this Deed of Trust) by any acts which may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security and in the rents, issues, profits and revenues arising therefrom, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the security thereunder or be prejudicial to the interests of the Beneficiary.

Section 7.9 Trustee May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in

order to have the claims of the Beneficiary allowed in such proceedings for the entire amount due and payable by the Trustor under this Deed of Trust at the date of the institution of such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Amendments. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 8.2 Reconveyance by Trustee. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or person legally entitled thereto."

Section 8.3 Notices. Whenever Beneficiary, Trustor or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request, or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by registered or certified mail, postage prepaid, return receipts requested, or by telegram, addressed to the address set forth in the first paragraph of this Deed of Trust. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

Section 8.4 Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

Section 8.5 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 8.6 Invalidity of Certain Provisions. Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

Section 8.7 No Merger. If title to the Property shall become vested in the Beneficiary, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the

rights and privileges of Beneficiary under this Deed of Trust. In addition, upon foreclosure under this Deed of Trust pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Security 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 any such foreclosure 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 of termination to such tenant or subtenant.

Section 8.8 Governing Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

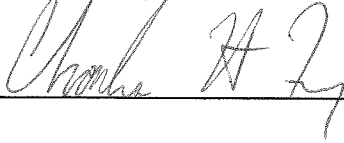
Section 8.9 Gender and Number. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 8.10 Nondisturbance Agreement. In the event of any foreclosure of this Deed of Trust or a transfer in lieu of foreclosure, Beneficiary or other transferee shall recognize and not disturb the possession, tenancy, leasehold estate and rights of all tenants and occupants of the Property or any portion thereof, and shall honor and abide by all of the terms, covenants and conditions of each lease for the remaining balance of the term or extension thereof with the same force and effect as if Beneficiary or such other transferee were the original lessor under the lease; provided, however, that the tenant is not in default under its lease and Beneficiary or such other transferee shall not be (a) liable for any damage, loss or expense arising from any act or omission of any prior lessor (including Trustor) under any lease, (b) subject to any offsets, abatements, rent reductions or defenses which the tenant may be entitled to assert against any prior lessor (including Trustor) under any lease, or (c) liable or responsible for or with respect to the retention, application and/or return to the tenant of any security deposit paid to any prior lessor (including Trustor) under any lease, whether or not still held by any prior lessor (including Trustor), unless and until Beneficiary or such other transferee has actually received for its own account as lessor under the lease the full amount of such security deposit or a credit therefor. Each tenant and occupant of the Property shall, upon any foreclosure of this Deed of Trust or transfer in lieu of foreclosure, be bound to Beneficiary or such other transferee under all of the terms, covenants and conditions of the tenant's lease for the remaining balance of the term thereof or extension thereof, with the same force and effect as if Beneficiary or such other transferee were the original lessor under such lease, and the tenant shall attorn to Beneficiary or such other transferee as its lessor, such attornment to be effective and self-operative without the execution of any further instruments by either party, immediately upon the tenant's receipt of written notice from Beneficiary or such other transferee or from Trustor that title to the Property has vested in Beneficiary or such other transferee. Rent paid by a tenant or occupant to the transferee after receipt of such notice shall be considered to be rental payment under the lease.

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

TAMERLANE ASSOCIATES, LLC, a California limited liability company

By:



STATE OF CALIFORNIA)

COUNTY OF Orange)

) ss.
)
)

On August 10, 2006, before me, Kelly E. Curran, Notary Public,
(Print Name of Notary Public)

personally appeared Charles H. Fry

personally known to me

-or-

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



WITNESS my hand and official seal.

Kelly E. Curran
Signature Of Notary

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title(s)

Title Or Type Of Document

- Partner(s) Limited
- General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

Number Of Pages

Signer is representing:
Name Of Person(s) Or Entity(ies)

Date Of Documents

Signer(s) Other Than Named Above

ATTACHMENT A

LEGAL DESCRIPTION

All that certain real property In the County of ^{Orange}~~Los Angeles~~, State of California, described as follows:

Lot 1 of Tract No, 3050. in the City of Garden Grove, County of Orange. State of California, as per map recorded in Book 92 Page(s) 31-32, inclusive of Miscellaneous Maps, in the office of the County Recorder of said County.

APN No. 231-471-42

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Terri Pomeroy
Dept: City Clerk
Subject: TAMERLANE DRIVE PROJECT AREA ACQUISITION FILES

From: Michael Salazar
Dept: Community Development
Date: April 16, 2007

OBJECTIVE

The purpose of this memorandum is to clarify references to EXHIBITS described in the various TABLE OF CONTENTS for the AFFORDABLE HOUSING LOAN AGREEMENTS in the TAMERLANE DRIVE PROJECT AREA. The AGREEMENTS mention RELEASE OF CONSTRUCTION COVENANTS and SCHEDULE OF PERFORMANCE. A RELEASE OF CONSTRUCTION COVENANTS or a SCHEDULE OF PERFORMANCE are inapplicable due to the nature of these activities, which include acquisition and only minor rehabilitation.

At the present time, the TAMERLANE DRIVE PROJECT AREA includes properties located at the following TAMERLANE DRIVE addresses:

12131	12141	12171	12201	12212
12132	12161	12181	12202	12222
		12182		

BACKGROUND/DISCUSSION

In February 2004, Neighborhood Improvement began working with Vista Communities for the acquisition of several apartment buildings near the Harbor Corridor on Tamerlane Drive. The purpose of the acquisitions is to acquire and rehabilitate the units, and to provide restricted covenants to low and very-low income households on a portion of those units. At the present time, the City of Garden Grove has acquired eleven properties (11) in the TAMERLANE DRIVE PROJECT AREA.

SUMMARY

A RELEASE OF CONSTRUCTION COVENANTS or a SCHEDULE OF PERFORMANCE are inapplicable due to the specific nature of these activities, which include acquisition and *only minor* rehabilitation. It is requested that a copy of this memo should be placed in each file at the City Clerk's office.



MICHAEL SALAZAR
Administrative Analyst

ALLIANCE TITLE

This Document was electronically recorded by
Alliance Title Irvine

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Garden Grove
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, California 92842
Attention: Housing Development Manager

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder



NO FEE

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

REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT (the "Agreement") is entered into as of August 10, 2006, by and between the CITY OF GARDEN GROVE, a California municipal corporation (the "City"), and TAMERLANE ASSOCIATES, LLC, a California limited liability company (the "Owner").

RECITALS

A. Owner has acquired real property located within the City of Garden Grove, located at 12171 Tamerlane Drive, which is improved with a four (4) unit apartment complex thereon (the "Property"), as particularly described in the Legal Description attached hereto as Attachment A, and incorporated herein by reference.

B. The Owner and the City have entered into an Affordable Housing Loan Agreement, dated August 8, 2006, pursuant to which the City has agreed to provide financial assistance to Owner to acquire the Property (the "HOME Loan"), and the Owner has agreed to acquire and operate the Property with the assistance of the HOME Loan. The execution and recordation of this Regulatory Agreement is a requirement of the Affordable Housing Loan Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

100. CONDITION OF THE PROPERTY

101. **Indemnification.** Owner shall save, protect, pay for, defend, indemnify and hold harmless the City and its officers, employees, representatives and agents, from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by the City or its officers, employees, representatives or agents by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials or Hazardous Materials Contamination, which is caused by Owner, or its agents, employees, representatives, agents, contractors or invitees.

15194996

102. Release. The Owner hereby waives, releases and discharges forever the City and its employees, officers, agents and representatives, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with the City's or the Owner's use, maintenance, ownership or operation of the Property, any Hazardous Materials on the Property, or the existence of Hazardous Materials Contamination in any state on the Property, however they came to be placed there, except that arising out of the negligence or misconduct of the City or its employees, officers, agents or representatives.

The Owner acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

As such relates to this Section 102, the Owner hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

103. Duty to Prevent Hazardous Material Contamination. During its ownership operation of the Property, the Owner shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment on or under the Property. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. The Owner shall notify the City, and provide to the City a copy or copies, of any 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 the Owner 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.

104. Definitions. For purposes of this Article 100, "Governmental Requirements" shall mean all 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 of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Owner or the Property.

For purposes of this Article 100, "Hazardous Materials" means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State of California, 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 biphenyls, (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.* Hazardous Materials shall not include such products in quantities as are customarily used in the construction, maintenance, or management of multifamily residential developments or associated buildings or grounds, or typically used in multifamily residential activities in a manner typical of comparable multifamily residential developments, or substances commonly and lawfully ingested by a significant population living within the Property, including without limitation alcohol, aspirin, tobacco and saccharine.

200. REHABILITATION OF THE PROPERTY

201. Rehabilitation of the Property. Subject to the provisions of Section 202 hereof, the Owner agrees to rehabilitate the Property in accordance with the Federal Housing Quality Standards, 24 CFR § 982.401, the City Municipal Code, and all other applicable local codes, rehabilitation standards, ordinances and zoning ordinances, and the Work Write-up which is approved by the City pursuant to Section 202 hereof (the “Rehabilitation”). The Rehabilitation shall be conducted on a unit-by-unit basis and in such a manner so as to avoid or minimize tenant displacement to the greatest extent feasible in accordance with the provisions of Section 210.2 below. The Owner further agrees to comply with and to cause any contractors and/or subcontractors to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170u, and the implementing regulations, in connection with the Rehabilitation of the Property. Owner shall submit to the City one or more construction contracts with a duly licensed contractor or contractors reasonably acceptable to the City providing for the Rehabilitation of the Property in conformance with the terms of this Agreement. Each such contractor or contractors shall have provided to the City the certification in appendix B of 24 CFR part 24 that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from this project, and the City shall be responsible for determining whether each contractor has been debarred. The City Manager or his designee shall reasonably approve such contract or contracts if the City Manager or his designee finds that such contractor or contractors have sufficient experience and expertise necessary to perform the Rehabilitation of the Property in a first class manner in accordance with all of the requirements of this Agreement.

202. Work Write-up. Within six months after the date of this Agreement, the Owner shall submit to the City detailed plans, materials and drawings describing the Rehabilitation of the Property (collectively, the “Work Write-up”), and the City shall have the right to review and approve or disapprove, in its reasonable discretion, the Work Write-up. During the preparation of the Work Write-up, staff of the City and the Owner shall hold shall communicate and consult informally as frequently as necessary to coordinate the preparation and review of the Work Write-up. If the Owner desires to propose any revisions to the City-approved Work Write-up, it shall submit such proposed changes to the City and the City shall review the proposed change and notify the Owner in writing within thirty (30) days after submission to the City as to whether the proposed change is approved or disapproved. The City shall not be responsible either to the Owner or to third parties in any way for any defects in the Work Write-up, nor for any structural or other defects in any work done according to the approved Work Write-up, nor for any delays reasonably caused by the review and approval processes established by this Section 202. The Owner shall hold harmless, indemnify and defend the

City and its officers, employees, agents and representatives from and against any claims, suits for damages to property or injuries to persons arising out of or in any way relating to defects in the Work Write-up, including without limitation the violation of any laws, and for defects in any work done according to the approved Work Write-up.

203. Cost of Rehabilitation. The Rehabilitation of the Property shall not be paid with the proceeds of the HOME Loan. In the event Rehabilitation is required, the Owner shall locate and utilize another non-HOME Program funding source(s). The Owner shall submit to the City a final budget for any proposed Rehabilitation of the Property, which budget shall include without limitation a description of uses by phase and total development cost. The City shall reasonably approve such budget if the budget is reasonably calculated to fund the Rehabilitation of the Property in accordance with Federal Housing Quality Standards and all requirements of this Agreement.

204. Timing of Rehabilitation. The Owner hereby covenants and agrees to commence the Rehabilitation of the Property within the time set forth in the Schedule of Performance. The Owner further covenants and agrees to diligently prosecute to completion the Rehabilitation of the Property in accordance with the approved Work Write-up and to file a Notice of Completion pursuant to California Civil Code Section 3093 within the time set forth in the Schedule of Performance.

205. City and Other Governmental City Permits. Before commencement of the Rehabilitation of the Property, the Owner shall secure or cause its contractor to secure any and all permits which may be required by the City or any other governmental agency affected by such construction, including without limitation building permits. The Owner shall pay all necessary fees and timely submit to the City final drawings with final corrections to obtain such permits; the staff of the City will, without obligation to incur liability or expense therefor, use its best efforts to expedite the City's issuance of building permits and certificates of occupancy for construction that meets the requirements of the City Code, and all other applicable laws and regulations.

206. Right of the City to Satisfy Other Liens. After the disbursement of the HOME Loan and prior to the completion of the Rehabilitation of the Property, and after the Owner has had written notice and has failed after a reasonable time, but in any event not less than forty-five (45) days, to challenge, cure, adequately bond against, or satisfy any liens or encumbrances on the Property which are not otherwise permitted under this Agreement, the City shall have the right but no obligation to satisfy any such liens or encumbrances. Notwithstanding the above, the Owner shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance applicable to the Owner in respect thereto.

207. Release of Construction Covenants. Promptly after the completion of the Rehabilitation of the Property on the Property, in conformity with this Agreement (as reasonably determined by the City Manager or his or her designee), upon the written request of the Owner, the City shall furnish the Owner with a Release of Construction Covenants (in the form attached to the Affordable Housing Loan Agreement as Exhibit D) which evidences and determines the satisfactory completion of the Rehabilitation of the Property in accordance with this Agreement. The issuance and recordation of the Release of Construction Covenants with respect to the Property shall not supersede, cancel, amend or limit the continued effectiveness of any obligations relating to the maintenance, or uses, or payment of monies, or any other obligations, except for the obligation to complete the Rehabilitation of the Property as of the time of the issuance of the Release of Construction Covenants.

208. Insurance and Indemnity. The Owner shall take out and maintain or shall cause its contractor to take out and maintain during the term of the Affordability Period (as set forth in Section 301 hereof) a comprehensive general liability policy in the amount of not less than One Million Dollars (\$1,000,000) combined single limit policy, and a comprehensive automobile liability policy in the amount of One Million Dollars (\$1,000,000), combined single limit, including contractual liability, as shall protect the Owner and the City from claims for such damages, and which policy shall be issued by an insurance carrier reasonably acceptable to the City which holds a California license. Such policy or policies shall be written on an occurrence form. The Owner shall also furnish or cause to be furnished to the City evidence satisfactory to the City that Owner and any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. The Owner shall furnish a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by the City setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the City and its officers, agents, and employees as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by the Owner shall be primary insurance and not be contributing with any insurance maintained by the City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City. The required certificate shall be furnished by the Owner prior to commencement of the Rehabilitation, if applicable.

In addition, Owner shall, at its expense, defend, indemnify, and hold harmless the City and its officers, agents, employees and representatives harmless from any and all losses, liabilities, claims, lawsuits, causes of action, judgments, settlements, court costs, attorneys' fees, and other legal expenses, costs of evidence of title, costs of evidence of value, and other damages of whatsoever nature arising out of or in connection with, or relating in any manner to any act or omission of Owner or its agents, employees, contractors and subcontractors of any tier and employees thereof in connection with or arising from Owner's negligent performance or default of its obligations under this Agreement, except that arising from the negligence or misconduct of the City or its officers, agents, employees or representatives.

209. Entry by the City. Owner shall permit the City, through its officers, agents or employees, at all reasonable times to enter onto the Property and inspect the work of Rehabilitation to determine that the same is in conformity with the Work Write-up and all the requirements hereof. Owner acknowledges that the City is under no obligation to supervise, inspect, or inform Owner of the progress of construction, and Owner shall not rely upon the City or City therefor. Any inspection by the City is entirely for its purposes in determining whether Owner is in default under this Agreement and is not for the purpose of determining or informing Owner of the quality or suitability of construction. Owner shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

210. Compliance With Laws. The Owner shall carry out the acquisition, Rehabilitation, if applicable, and operation of the Property in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing,

mechanical and electrical codes, and all other provisions of the City Municipal Code, 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.*

210.1 Taxes and Assessments. The Owner shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Owner's right to contest in good faith any such taxes or to receive an exemption from the payment of such taxes.

210.2 Relocation. Owner shall conduct and submit to the City a tenant survey, completed by each tenant household currently residing in the Property and such other information as reasonably required by City necessary to evaluate the relocation obligations, if any, required by federal, state and/or local law with respect to the Owner's acquisition and Rehabilitation of the Property. The acquisition and Rehabilitation, if applicable, shall be conducted in such a manner as to prevent, to the maximum extent feasible, any displacement of existing tenants in accordance with applicable law. The Owner and the City shall attempt to obtain Section 8 certificates or other housing subsidies as necessary to provide relocation assistance to the existing tenants of the Property who are not participants in the Owner's program (as hereinafter described). Immediately after the execution of this Agreement, the City and Owner shall cooperate in sending notices (the "Lease Notice") to the existing tenants of the Property notifying and advising such tenants of their right to lease and occupy a unit in the Property, for reasonable terms and conditions, including, but not limited to: (i) term of lease not less than one year, (ii) monthly rent and estimated average utility costs that do not exceed the greater of: (a) the tenant's monthly rent before this Agreement and estimated average monthly utility costs; or (b) Rent calculated pursuant to HOME Program requirements if the tenant is low income, or 30% of gross income if the tenant is not low income. In addition, if any existing tenant is required to move temporarily from the Property and will not be permanently displaced, such tenant(s) will receive temporary relocation assistance and benefits set forth in HOME Regulations Section 92.353(b). The form of such notice shall be approved by the City prior to its delivery to the tenants. The Owner shall enter into a written lease, in a form approved by the City, with each tenant that shall implement the monthly rent limit set forth in the Lease Notice. In the event that any permanent displacement of tenants of the Property occurs, the City shall provide relocation assistance in accordance with the HOME Regulations Section 92.353, Federal Uniform Relocation Assistance and Real Property Policies Acquisition Act, 42 U.S.C. § 4601, *et seq.*, the California Relocation Assistance Law, Government Code Section 7260, *et seq.*, and the regulations adopted pursuant thereto by the United States, State of California and the City (collectively, the "Relocation Laws"), and in a manner approved by the City to each displaced tenant household required to temporarily or permanently vacate a unit within the Property as a result of the Owner's acquisition of the Property or for purposes of completing the Rehabilitation of the Property. In the event of permanent displacement of existing tenants due to the implementation of this Agreement, despite the Owner's efforts to prevent such displacement as provided above, the City shall be fully responsible for administering determinations of eligibility and payments pursuant to the Relocation Laws. The City shall bear the cost of such relocation.

210.3 Liens and Stop Notices. The Owner shall not allow to be placed on the Property or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Property the Owner shall within thirty (30) days of such recording or service or within five (5) days of the City's demand, whichever last occurs: pay and discharge the same; or effect the release thereof by recording and delivering to the City a surety bond in sufficient form and

amount, or otherwise; or provide the City with other assurance which the 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.

210.4 HOME Program Requirements. The HOME Loan will be provided through funds provided to the City from the HOME Investment Partnership Act, 42 U.S.C. § 12701, *et seq.*, as it now exists and as it may hereafter be amended, pursuant to the implementing regulations set forth at 24 CFR 92, as they now exist and as they may hereafter be amended (the “HOME Program”). Accordingly, the Owner shall comply with all applicable requirements of the HOME Program, as it now exists or may hereafter be amended. Specifically, without limitation, the Rehabilitation, shall comply, to the extent applicable, with the requirements of the Davis-Bacon Act (40 U.S.C. §276a - 276a-5), and as applicable, the Contract Work Hours and Safety Standards Act (40 U.S.C. §3701 *et seq.*), and other federal laws and regulations pertaining to labor standards. Upon request, the City shall provide to the Owner a copy of applicable HOME Program requirements.

210.5 City Parking Programs and Requirements. The Owner shall comply with all ordinances and other requirements or programs established by the City with respect to parking, including, without limitation, any ordinances, building code provisions or housing code provisions which require that the garages in the Property shall not be used for human habitation or commercial uses.

300. OPERATION OF HOUSING

301. Affordable Units. The Owner agrees to make available, restrict occupancy to, and lease three (3) two bedroom Housing Units and one (1) three bedroom Housing Unit on the Property to Lower Income Households at an Affordable Rent (collectively, the “Affordable Units”), pursuant to the terms set forth below.

For purposes of this Agreement, “Lower Income Households” shall mean those households with incomes that do not exceed sixty percent (60%) of Orange County median income, adjusted for family size, as established and amended from time to time by the United States Department of Housing and Urban Development (“HUD”).

Upon the Owner’s acquisition of the Property, and annually thereafter, the Owner shall submit to the City a completed income computation and certification form, in a form to be provided by the City. The Owner shall certify that each tenant leasing an Affordable Unit meets the income restrictions of this Article 300. The Owner shall obtain an income certification from the tenant of each Affordable Unit which shall certify that the income of the tenant is truthfully set forth in the income certification form. The Owner shall verify the income certification of the tenant in one or more of the following methods:

- (1) obtain two (2) paycheck stubs from the tenant’s two (2) most recent pay periods, if any.
- (2) obtain a true copy of an income tax return from the tenant for the most recent tax year in which a return was filed, if any.
- (3) obtain an income verification certification from the employer of the tenant, if any.

(4) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the tenant receives assistance from such agencies, if any.

(5) obtain an alternate form of income verification reasonably requested by the Owner, if none of the above forms of verification is available to the Owner, if any.

Current tenants of the Property as of the date of this Agreement shall not be compelled to vacate their units solely because their income exceeds the applicable requirements for renting an Affordable Unit. Any tenant who, because of an increase in income is no longer qualified to rent an Affordable Unit shall not be required to vacate the apartment unit solely because of such change of income, and shall be entitled to remain as a tenant of the same apartment unit at a rent which does not exceed the fair market rental value for such unit. Upon the Owner's determination that any such tenant is no longer so qualified, such tenant's unit shall no longer be deemed an Affordable Unit, and the Owner shall make the next available Housing Unit, which is comparable in terms of size, features and number of bedrooms, an Affordable Unit, or take such other actions as may be necessary to ensure that the total required number of Housing Units are rented to Lower Income Households.

The Property shall be subject to the requirements of this Article 300 from the date of Owner's acquisition of the Property until the fifteenth (15th) anniversary of such date. The duration of this requirement shall be known as the "Affordability Period."

302. Affordable Rent. The maximum Monthly Rent chargeable for the Affordable Units shall be annually determined by the City in accordance with the HOME Program requirements and the following requirements.

The Affordable Units will be rented to Lower Income Households at maximum HOME Rent limits defined under 24 CFR 92.252 as the lesser of (a) the fair market rent for comparable housing units in the area as determined by HUD under 24 CFR 888.111, or (b) a rent that does not exceed thirty percent (30%) of sixty-five percent (65%) of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit, less the monthly allowance for utilities and services to be paid by each tenant. Notwithstanding the foregoing, however, if after the tenant's initial occupancy of the housing unit, the tenant's income increases to a level greater than maximum income for Lower Income Households, adjusted for family size, the rent charged by Owner shall not exceed the fair market rent for comparable housing units in the area as determined by the City.

For purposes of this Agreement, "Monthly Rent" means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Owner which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Owner.

303. Lease Requirements. Prior to disbursement of the HOME Loan, the Owner shall submit a standard lease form to the City for the City's approval. The City shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement and contains all of the provisions required pursuant to the HOME Program and the HOME Regulations. The Owner

shall enter into a written lease, in the form approved by the City, with each tenant of an Affordable Unit. Each lease shall be for a period of not less than one year, and shall not contain any of the provisions which are prohibited pursuant to Section 92.253 of the HOME Regulations.

304. Affirmative Marketing. The rental of the Affordable Units shall be conducted in accordance with the affirmative marketing requirements which have been adopted by the City and the requirements of Section 92.351, or successor regulation, of the HOME Regulations and other applicable HOME Program requirements.

305. Selection of Tenants. Each Affordable Unit shall be leased to tenants selected by the Owner who meet all of the requirements provided herein. The City may, from time to time, assist in the leasing of the Property by providing to the Owner names of persons who have expressed interest in renting Affordable Units. The Owner shall adopt a tenant selection system in conformance with Section 92.253(d) of the HOME Regulations, which shall be approved by the City in its reasonable discretion, which establishes a chronological waiting list system and/or random lottery system for selection of tenants. The Owner shall not refuse to lease to a holder of a certificate of family participation under 24 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME Program, Section 8 program or other tenant-based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria; provided that Owner shall not be required to give any priority or preference to participants in the foregoing programs.

306. Occupancy Standards. Notwithstanding other applicable requirements, occupancy of one bedroom Housing Units shall be limited to three persons, occupancy of two bedroom Housing Units shall be limited to five persons, and occupancy of three bedroom Housing Units shall be limited to seven persons. Notwithstanding the foregoing, however, no current residents of Housing Units as of the date of this Agreement shall be evicted from their apartment units solely because such residents do not meet the occupancy requirements of this Section 306.

307. Maintenance. The Owner shall maintain or cause to be maintained the interior and exterior of the Property in a decent, safe and sanitary manner, in accordance with the HUD Housing Quality Standards and the maintenance standards required by Section 92.251 of the HOME Regulations, and the standard of maintenance of similar housing units within Orange County, California. If at any time Owner fails to maintain the Property in accordance with this Agreement and such condition is not corrected within five days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance, or thirty days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever remedy it may have at law or at equity, shall have the right to enter upon the applicable portion of the Property and perform all acts and work necessary to protect, maintain, and preserve the Property and landscaped areas on the Property, and to attach a lien upon the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, including a reasonable administrative charge, which amount shall be promptly paid by Owner to the City, as appropriate, upon demand.

307. Reserve Requirements. The Owner shall set aside in a separate interest-bearing account, commencing upon the Owner's acquisition of the Property, the sum of Fourteen Thousand Dollars (\$14,000) (the "Operating Reserve"), and shall thereafter retain such amount in the Operating Reserve to cover shortfalls between Property income and actual Property operating expenses. If the

Owner fully complies with the terms of the Affordable Housing Loan Agreement and this Agreement, any HOME funds used to initially fund the Operating Reserve that remain in such account, as of eighteen (18) months after the establishment of the Operating Reserve, shall thereafter be retained in the Operating Reserve. If the Owner fails to comply with the terms of the Affordable Housing Loan Agreement or this Agreement, any HOME funds used to initially fund the Operating Reserve that remain in such account, as of eighteen (18) months after the establishment of the Operating Reserve, shall be returned to the City. The Owner shall replenish the Operating Reserve to the full amount from project revenues within sixty (60) days of its use to cover any such shortfall. The Owner shall provide, no less than once per every twelve (12) months, evidence reasonably satisfactory to the City of compliance herewith.

Concurrently with the establishment of the Operating Reserve as set forth herein, the Owner shall also set aside, on a monthly basis, in a separate interest-bearing account, the greater of two percent (2%) of the gross rents received from the Property or Sixty-Six Dollars and Sixty-Seven Cents (\$66.67) (the "Capital Replacement Reserve"). When funds in the Capital Replacement Reserve equal the amount of Twelve Thousand Dollars (\$12,000), the Owner may cease depositing additional appropriations to the Capital Replacement Reserve until twenty-four (24) months after the Owner's acquisition of the Property, after which time the Owner shall continue making monthly deposits of the greater of two percent (2%) of the gross rents received from the Property or Sixty-Six Dollars and Sixty-Seven Cents (\$66.67). Funds in the Capital Replacement Reserve shall be used for capital replacements to the Property fixtures and equipment which are normally capitalized under generally accepted accounting principles. As capital repairs and improvements of the Property become necessary, the Capital Replacement Reserve shall be the first source of payment therefor. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve the Owner of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Property in the manner prescribed in this Agreement. Not less than once per year, Owner, at its expense, shall submit to the City an accounting for the Capital Replacement Reserve. Capital repairs to and replacement of the Property shall include only those items with a long useful life of five or more years, including without limitation the following: carpet and drape replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement and irrigation pipe and controls replacement; gas line pipe replacement; lighting fixture replacement; elevator replacement and upgrade work; miscellaneous motors and blowers; common area furniture replacement, and common area repainting.

In the event there are insufficient funds in the Capital Replacement Reserve for Owner to undertake necessary capital repairs and improvements as required in this Agreement, Owner may request additional funding from the City to complete such repairs and improvements. The City agrees that it will reasonably consider a request for additional funds made pursuant to this Section 308.

309. Long Term Management of the Property. The parties acknowledge that the City is interested in the long term management and operation of the Property and in the qualifications of any person or entity retained by the Owner for that purpose (the "Property Manager"). The Owner shall, upon the date of acquisition of the Property, either contract with an experienced and reputable party to be the Property Manager or Owner shall itself serve as the Property Manager. During the term of the Affordability Period, the City may from time to time review and evaluate the identity and

performance of the Property Manager of the Property as it deems appropriate. If the City determines that the performance of the Property Manager is deficient based upon the standards and requirements set forth in this Agreement, the City shall provide notice to the Owner of such deficiencies and the Owner shall use its best efforts to correct such deficiencies. In the event such deficiencies have not been cured within the time set forth in Section 401 hereof, the City shall have the right to require the Owner to immediately remove and replace the Property Manager and to appoint another property manager or property management company which is reasonably acceptable to the City, which is not related to or affiliated with the Owner, and which has not less than five (5) years experience in property management, including significant experience managing affordable multifamily residential developments of the size, quality and scope of the Property.

In addition, prior to the acquisition of the Property the Owner shall submit for the approval of the City a "Management Plan" which sets forth in detail the Owner's property management duties, the affirmative marketing procedures in accordance with Section 304 hereof, the tenant selection process in accordance with Section 305 hereof, a security system and crime prevention program, the procedures for the collection of rent, the procedures for monitoring of occupancy levels, the procedures for eviction of tenants, the rules and regulations of the Property and manner of enforcement, a standard lease form in accordance with Section 303 hereof, the identity of the Property Manager, and other matters relevant to the management of the Property. The Management Plan shall require the Property Manager to adhere to a fair lease and grievance procedure and provide a plan for tenant participation in management decisions. The management of the Property shall be in compliance with the Management Plan which is approved by the City.

Until the HOME Loan has been fully repaid, the Owner shall annually submit to the City for its reasonable approval a budget for the operation of the Property. The fee paid to Property Manager shall not exceed five percent (5%) of the gross income of the Property per annum. Other fees and payments shall be consistent with prevailing market rates for the services performed and goods provided in consideration for such fees and payments. The Owner shall ensure that the expenses of operating the Property do not materially exceed the budget which has been approved by the City. The Owner shall annually provide to the City a detailed accounting of operating expenses and shall make its books and records available to the City for inspection and copying, upon reasonable advance notice during its normal hours of business.

310. Monitoring and Recordkeeping. Throughout the Affordability Period, Owner shall comply with all applicable recordkeeping and monitoring requirements set forth in Section 92.508 (or successor regulation) of the HOME Regulations and shall annually complete and submit to City a Certification of Continuing Program Compliance in the form provided by the City. Representatives of the City shall be entitled to enter the Property, upon at least twenty-four (24) hours notice, to monitor compliance with this Agreement, to inspect the records of the Property with respect to the HOME Program compliance, and to conduct an independent audit or inspection of such records. The Owner agrees to cooperate with the City in making the Property available for such inspection or audit. If for any reason the City is unable to obtain the Owner's consent to such an inspection or audit, the Owner understands and agrees that the City may obtain at Owner's expense an administrative inspection warrant or other appropriate legal order to obtain access to and search the Property. Owner agrees to maintain records in businesslike manner, and to maintain such records for the term of this Agreement.

311. Non-Discrimination Covenants. Owner covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination

against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Owner itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. Owner shall also comply with the equal opportunity and fair housing requirements set forth in Section 92.350 of the HOME Regulations. The covenants established in this Section 311 shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City and its successors and assigns, and shall remain in effect in perpetuity.

312. Subordination. This Agreement shall run with the land and shall be subordinate to the lien of the deeds of trust and other financing documents which secure the financing approved by the City pursuant to Section 211 of the Affordable Housing Loan Agreement, provided that the City finds that an economically feasible method of financing for the acquisition and operation of the Property, without the subordination of the covenants as may be set forth in this Agreement and the Affordable Housing Loan Agreement, is not reasonably available. Upon making such a finding, the City Manager (or designee) is hereby authorized to execute such subordination agreements and/or such other documents as may be necessary to evidence such subordination, provided that such subordination agreements contain written commitments which the City Manager (or designee) finds are reasonably designed to protect the City's investment in the event of default, such as any of the following: (a) a right of the City to cure a default on the loan prior to foreclosure, (b) a right of the City to negotiate with the lender after notice of default from the lender and prior to foreclosure, (c) an agreement that if prior to foreclosure of the loan, the City takes title to the Property and cures the default on the loan, the lender will not exercise any right it may have to accelerate the loan by reason of the transfer of title to the City, and (d) a right of the City to purchase the Property from the Owner at any time after a default on the loan.

400. DEFAULT AND REMEDIES

401. Events of Default. A failure by any party to perform any action or covenant required by this Agreement, the Regulatory Agreement, the Promissory Note, the Deed of Trust, or any loan or deed of trust for the Property which is senior to the HOME 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 parties 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 thirty (30) days from receipt of such notice of such Default hereunder. 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 Owner is in default on any loan or deed of trust senior to the HOME Loan, the Owner 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 each have the right (but not be obligated to) cure such default. In such event, the City shall be entitled to reimbursement from the Owner of all costs and expenses it has actually incurred in curing such default. The City

shall be entitled to add the amount incurred by it to the amounts owing pursuant to the Promissory Note, and secured by the Deed of Trust.

402. Remedies. The occurrence of any Event of Default shall give the nondefaulting party the right to proceed with any and all remedies set forth in this Agreement, including an action for damages, an action or proceeding at law or in equity to require the defaulting party to perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement. In addition, the occurrence of any Event of Default by Owner will relieve the City of any obligation to perform hereunder.

403. Force Majeure. Subject to the party's compliance with the notice requirements as set forth below, performance by either party hereunder shall not be deemed to be a default hereof, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to causes beyond the control and without the fault of the party claiming an extension of time to perform, which may include the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, acts or failures to act of any public or governmental entity (except that the City's acts or failure to act shall not excuse performance of the City hereunder). An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Inability to obtain financing for the acquisition or operation of the Property shall not constitute an event beyond the control of the Owner for purposes of this Section 403.

404. Attorneys' Fees. In addition to any other remedies provided hereunder or available pursuant to law, if either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover from the other party its costs of suit and reasonable attorneys' fees.

405. Remedies Cumulative. No right, power, or remedy given to the City by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against Owner and any other person.

406. Waiver of Terms and Conditions. The City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

407. Non-Liability of City Officials and Employees. No member, official, employee or agent of the City shall be personally liable to the Owner, 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 the Owner or its successors, or on any obligations under the terms of this Agreement.

500. GENERAL PROVISIONS

501. Time. Time is of the essence in this Agreement.

502. Notices. 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:

Owner: Tamerlane Associates, LLC
19800 MacArthur Boulevard, Suite 1150
Irvine, CA 92612
Attn: Charles Fry

City: City of Garden Grove
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, California 92842
Attn: Community Development Director

Such addresses may be changed by notice to the other party given in the same manner as provided above.

503. Representations and Warranties of Owner. Owner hereby represents and warrants to the City as follows:

(a) **Organization.** Owner is a duly organized, validly existing limited liability company in good standing under the laws of the State of California and has the power and authority to own property and conduct such business as now being conducted.

(b) **Authority of Owner.** Owner has full power and authority to execute and deliver this Agreement and to perform and observe the terms and provisions of this Agreement.

(c) **Valid Binding Agreement.** This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Owner enforceable against it in accordance with their respective terms.

(d) **Pending Proceedings.** Owner is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Owner, threatened against or affecting Owner or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Owner, materially affect Owner's ability to perform its obligations hereunder.

(e) **Layering Review.** The Owner acknowledges that a layering review was performed in accordance with 24 CFR 92.250 (b). The Owner hereby represents and certifies to the

City that no government assistance other than the HOME Loan has been obtained or is contemplated to be obtained for the acquisition of the Property. The Owner agrees to notify the City in the event that it applies for or proposes to use other governmental funds for the Property prior to the end of the Affordability Period.

504. Limitation Upon Change in Ownership, Management and Control of the Owner.

(a) **Prohibition.** The identity and qualifications of Owner as an experienced and successful operator of multifamily housing are of particular concern to the City. It is because of this identity and these qualifications that the City has entered into this Agreement with the Owner. No voluntary or involuntary successor in interest of the Owner shall acquire any rights or powers under this Agreement by assignment or otherwise, nor shall Owner make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Property without the prior written approval of the City pursuant to Subparagraph (c) hereof, except as expressly set forth herein, which approval shall not be unreasonably withheld.

(b) **Permitted Transfers.** Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment or transfer of this Agreement or conveyance of the Property or any part thereof pursuant to subparagraph (c) of this Section 504, shall not be required in connection with any of the following (the "Permitted Transfers"):

(i) Subject to the restrictions of Sections 301 through 312 of this Agreement, the lease of units within the Property to qualified tenants.

(ii) Assignment for financing purposes, subject to such financing being considered and approved by the City pursuant to Section 211 of the Affordable Housing Loan Agreement.

(iii) Assignment of this Agreement and the conveyance of the Property to family members or a trust for estate planning purposes, or transfer of this Agreement and the Property to an entity in which Owner owns not less than fifty percent (50%) of the beneficial interest in the Property, and is under the management and control of the Owner, and the transferee entity executes an agreement reasonably acceptable to the City assuming all of the obligations under this Agreement.

In the event of an assignment by Owner not requiring the City's prior approval, Owner nevertheless agrees that at least ten (10) days prior to such assignment or transfer it shall give written notice to City of such assignment or transfer.

(c) **City Consideration of Requested Transfer.** The City agrees that it will not unreasonably withhold approval of a request made pursuant to this Section, provided (a) the Owner delivers written notice to the City requesting such approval, and (b) the proposed assignee or transferee possesses comparable operational experience and capability with respect to the operation of similar types of multifamily rental property, and comparable net worth and resources as necessary to operate the Property, and (c) the proposed assignee or transferee assumes the obligations of the Owner under this Agreement in a form which is reasonably acceptable to the City. Such notice shall be accompanied by evidence regarding the proposed assignee's or purchaser's qualifications and experience and its financial commitments and resources sufficient to enable the City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 504(c) and other

criteria as reasonably determined by the City. The City shall approve or disapprove the request within thirty (30) days of its receipt of the Owner's notice and all information and materials required herein. In no event, however, shall the City be obligated to approve the assignment or transfer of the HOME Loan, Promissory Note or Deed of Trust pursuant to this Section 504, except to an approved transferee or assignee of the Owner's rights in and to the Property.

(d) **Successors and Assigns.** This Agreement shall run with the land, and all of the terms, covenants and conditions of this Agreement shall be binding upon the Owner and the permitted successors and assigns of the Owner. Whenever the term "Owner" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

505. No Third Parties Benefited. This Agreement is made and entered into for the sole protection and benefit of the City, its successors and assigns, and Owner, its permitted successors and assigns, and no other person or persons, excepting the right granted to the Garden Grove Agency for Community Development pursuant to Section 401 of the Affordable Housing Loan Agreement, shall have any right of action hereon.

506. Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

507. Governing Law. This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto.

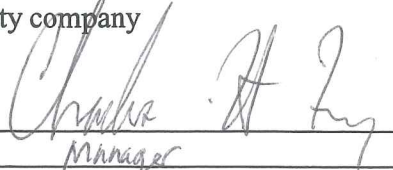
508. Amendment. This Agreement may not be changed orally, but only by agreement in writing signed by Owner and the City.

509. Approvals. Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the City, such approval may be given on behalf of the City by the City Manager or his or her designee. The City Manager or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement on behalf of the City, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement, and amendments which do not substantially change the uses or restrictions hereunder, or substantially add to the costs of the City hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Regulatory Agreement as of the date and year set forth below.

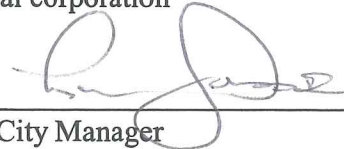
OWNER:

TAMERLANE ASSOCIATES, LLC, a California limited liability company

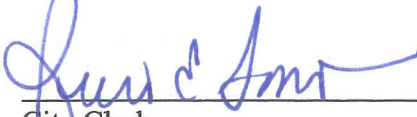
By: 
Its: Manager

CITY:

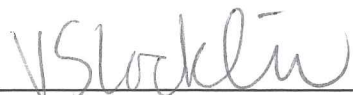
CITY OF GARDEN GROVE, a California municipal corporation

By: 
City Manager

ATTEST:


City Clerk

APPROVED AS TO FORM:


Stradling Yocca Carlson & Rauth
City Special Counsel

ATTACHMENT A

LEGAL DESCRIPTION

All that certain real property In the County of ~~Los Angeles~~^{Orange}, State of California, described as follows:

Lot 1 of Tract No, 3050. in the City of Garden Grove, County of Orange. State of California, as per map recorded in Book 92 Page(s) 31-32, inclusive of Miscellaneous Maps, in the office of the County Recorder of said County.

APN No. 231-471-42

STATE OF CALIFORNIA)

COUNTY OF Orange)

) ss.

On August 10, 2006, before me, Kelly E. Curran, Notary Public,
(Print Name of Notary Public)

personally appeared Charles H. Fry

personally known to me

-or-

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



WITNESS my hand and official seal.

Kelly E. Curran
Signature Of Notary

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title(s)

Title Or Type Of Document

- Partner(s) Limited
- General

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

Number Of Pages

Signer is representing:
Name Of Person(s) Or Entity(ies)

Date Of Documents

Signer(s) Other Than Named Above

STATE OF CALIFORNIA)

COUNTY OF Orange)

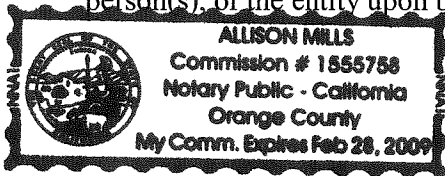
) ss.
)

On August 11, 2006, before me, Allison Mills, Notary Public, Notary Public,
(Print Name of Notary Public)

personally appeared Leslie M. Jones II

personally known to me
-or-

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



WITNESS my hand and official seal.

Allison Mills
Signature Of Notary

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title(s)

Title Or Type Of Document

- Partner(s) Limited
- General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

Number Of Pages

Signer is representing:
Name Of Person(s) Or Entity(ies)

Date Of Documents

Signer(s) Other Than Named Above

ALLIANCE TITLE

This Document was electronically recorded by Alliance Title Irvine

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of Garden Grove
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, California 92842
Attention: Housing Development Manager

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder



NO FEE

2006000544902 02:21pm 08/15/06

117 48 A12 9

0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

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

OPTION AGREEMENT

THIS **OPTION AGREEMENT** is entered into as of August 10, 2006, by and between **TAMERLANE ASSOCIATES, LLC**, a California limited liability company (the "Owner"), and the **CITY OF GARDEN GROVE**, a California municipal corporation (the "City").

RECITALS

A. Owner and the City of Garden Grove have entered into an "Affordable Housing Loan Agreement" dated as of August 8, 2006. Under the terms of the Affordable Housing Loan Agreement, Owner has with the assistance of the City purchased real property located within the City of Garden Grove, located at 12171 Tamerlane Drive, which is improved with a four (4) unit apartment complex thereon (the "Property"), as particularly described in the Legal Description attached hereto as Attachment A, and incorporated herein by reference.

B. Pursuant to Section 400 of the Affordable Housing Loan Agreement, the Owner has agreed to grant to the City an option to purchase the Property upon payment of a purchase price as set forth therein.

C. Owner desires to grant to City an option to purchase the Property on the terms and conditions set forth hereinbelow. For purposes of this Option Agreement, "Property" shall also be deemed to include any and all improvements located on the real property, any and all security deposits held by Owner, operating and capital replacement reserve accounts, operating accounts, Owner's rights to payment for rent and other items, and all of Owner's right, title and interest in and to any and all easements, rights of way, licenses, permits, applications, reports or other personal property utilized in conjunction with or in any way related to or appurtenant to such real property and improvements (but excluding Owner's trade fixtures and equipment).

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and conditions contained herein, the parties hereto agree as follows:

1. **Grant of Option.** Owner grants to City an option (the "Option") to purchase the Property on the terms and conditions set forth in this Option Agreement. The purchase price payable by the City to the Owner for the Property shall be the amount of the original purchase price paid by the Owner for the Property plus any cost paid by Owner for City-approved Rehabilitation work which is over and above the Rehabilitation Allocation set forth in Section 202 of the Affordable Housing Loan Agreement (collectively, the "Option Price"). In the event that the Option Price is

15194996

insufficient to repay all outstanding indebtedness approved by the City which encumbers the Property, the City shall cancel the unpaid portion of the HOME Loan (as defined in the Affordable Housing Loan Agreement). The Option created hereby shall be irrevocable by Owner and shall be binding upon the successors and assigns of Owner. The City shall have the right of specific performance to enforce the terms of this Option Agreement.

2. Term for Option. The term of the Option ("Option Term") shall commence on the date of this Option Agreement, and, unless extended as provided below, shall expire on the expiration of ten (10) years from the date that Owner acquires the Property.

3. Exercise of Option. The Option may be exercised at any time before the expiration of the Option Term by City's delivery to Owner of written notice of such exercise (the "Exercise Notice").

4. Escrow and Completion of Sale. Within five (5) days after City has exercised the Option, or as soon thereafter as reasonably practicable, an escrow shall be opened with an escrow company mutually acceptable to City and Owner for the conveyance of the Property to the City. The City shall deposit the Option Price in escrow not later than one (1) business day prior to the anticipated close of escrow date. The City's obligation to close escrow shall be subject to the City's approval of a then-current preliminary title report and, at City's option, environmental and other site testing. Any exceptions shown on such preliminary title report created on or after the Owner's acquisition of the Property shall be removed by Owner at its sole expense prior to the close of escrow pursuant to this Section 4 unless such exception(s) is(are) accepted by City in its reasonable discretion; provided, however, that City shall accept the following exceptions to title: (i) current taxes not yet delinquent, (ii) matters affecting title existing on the date of Owner's acquisition of the Property, (iii) liens and encumbrances in favor of the City of Garden Grove, and (iv) matters shown as printed exceptions in the standard form CLTA owner's policy of title insurance. In the event the Property or any portion thereof is encumbered by a mortgage or deed of trust, the City shall be permitted to unilaterally instruct the escrow agent to satisfy the indebtedness secured thereby out of the proceeds payable to the Owner through the foregoing escrow, or the City may satisfy all or a portion of the Option Price through the City's assumption of the promissory note or notes held by the holders of the deeds of trust encumbering the Site, if such holder or holders consent thereto. City shall pay all of the escrow fees, documentary transfer taxes, recording fees, the cost of any owner's policy of title insurance desired by the City, and any other costs and expenses of the escrow. City shall have thirty (30) days after exercise of the Option to enter upon the Property to conduct any tests, inspections, investigations, or studies of the condition of the Property. Owner shall permit the City access to the Site for such purposes. The City shall indemnify, defend, and hold harmless Owner and its officers, directors, shareholders, partners, employees, agents, and representatives from and against all claims, liabilities, or damages, and including expert witness fees and reasonable attorney's fees and costs, caused by City's activities with respect to or arising out of such testing, inspection, or investigatory activity on the Site. Escrow shall close promptly after acceptance by City of the condition of title and the physical and environmental condition of the Property. Until the Closing, the terms of the Affordable Housing Loan Agreement and the Regulatory Agreement executed and recorded pursuant thereto shall remain in full force and effect.

5. Failure to Exercise Option. If the Option is not exercised in the manner provided in Section 3 above before the expiration of the Option Term, the Option shall terminate. Upon receipt of the written request of Owner, City shall cause a quitclaim deed terminating or releasing any and

all rights City may have to acquire the Property (the "Quitclaim Deed") to be recorded in the Official Records of Orange County, California.

6. Assignment. City shall have the right to assign its interest hereunder. In connection with any assignment, any assignee shall execute all documents reasonably necessary to assume all of the obligations imposed under this Option Agreement on City as if the assignee were the original party in this Option Agreement.

7. Representations and Warranties of Owner. Owner hereby represents, warrants and covenants to City as follows, which representations and warranties shall survive the exercise of the Option and the Close of Escrow:

(a) that this Option Agreement and the other documents to be executed by Owner hereunder, upon execution and delivery thereof by Owner, will have been duly entered into by Owner, and will constitute legal, valid and binding obligations of Owner;

(b) neither this Option Agreement, nor anything provided to be done under this Option Agreement, violates or shall violate any contract, document, understanding, agreement or instrument to which Owner is a party or by which it is bound; and

(c) Owner shall pay, prior to delinquency or default, any and all real property taxes and assessments which affect the Property.

Owner agrees to indemnify, protect, defend, and hold City and the Property harmless from and against any damage, claim, liability, or expense of any kind whatsoever (including, without limitation, reasonable attorneys' fees and fees of expert witnesses) arising from or in connection with any breach of the foregoing representations, warranties and covenants. Such representations and warranties of Owner, shall be true and correct on and as of the date of this Option Agreement and on and as of the date of the Close of Escrow.

8. Title. Following the date hereof, Owner agrees not to cause, and shall use commercially reasonable efforts not to permit, any lien, easement, encumbrance or other exception to title to be recorded against the Property without City's prior written approval, such approval not to be unreasonably withheld.

9. Representations and Warranties of City. City hereby represents and warrants and covenants to Owner, as follows, which representations and warranties shall survive the Close of Escrow:

(a) that this Option Agreement and the other documents to be executed by City hereunder, upon execution and delivery thereof by City, will have been duly entered into by City, and will constitute legal, valid and binding obligations of City, and

(b) neither this Option Agreement, nor anything provided to be done under this Option Agreement, violates or shall violate any contract, document, understanding, agreement or instrument to which City is a party or by which it is bound.

City agrees to indemnify, protect, defend, and hold Owner and the Property harmless from and against any damage, claim, liability, or expense of any kind whatsoever (including, without limitation, reasonable attorneys' fees and fees of expert witnesses) arising from or in connection with

any breach of the foregoing representations, warranties and covenants. Such representations and warranties of City, and any other representations and warranties of City contained elsewhere in this Option Agreement shall be true and correct on and as of the date of this Option Agreement and on and as of the date of the Close of Escrow.

10. Relocation. In the event that the City purchases the Property pursuant to this Option Agreement and any displacement of tenants of the Property occurs, the City shall provide relocation assistance in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Act, 42 U.S.C. § 4601, *et seq.*, the California relocation law, Government Code Section 7260, *et seq.*, and the regulations adopted pursuant thereto by the United States, State of California and the City (collectively, the "Relocation Laws"), and in a manner approved by the City to each displaced tenant household required to temporarily or permanently vacate a unit within the Property as a result of the City's acquisition of the Property pursuant to this Option Agreement. The City shall indemnify, defend, and hold harmless Owner and its officers, directors, shareholders, partners, employees, agents, and representatives from and against all claims for relocation assistance caused by or arising out of City's purchase of the Property pursuant to this Option Agreement.

11. General Provisions.

11.1 Paragraph Headings. The paragraph headings used in this Option Agreement are for purposes of convenience only. They shall not be construed to limit or extend the meaning of any part of this Option Agreement.

11.2 Notices. Any notice, demand, approval, consent, or other communication required or desired to be given under this Option Agreement shall be in writing and shall be either personally served, sent by telecopy or mailed in the United States mails, certified, return receipt requested, postage prepaid, addressed to the party to be served with the copies indicated below, at the last address given by that party to the other under the provisions of this section. All communications shall be deemed delivered at the earlier of actual receipt, the next business day after deposit with Federal Express or other overnight delivery service or two (2) business days following mailing as aforesaid, or if telecopied, when sent, provided a copy is mailed or delivered as provided herein:

City: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92642
Attention: Community Development Director

Owner: Tamerlane Associates, LLC
19800 MacArthur Boulevard, Suite 1150
Irvine, CA 92612
Attention: Charles Fry

11.3 Binding Effect. The terms, covenants and conditions of this Option Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and transferees.

11.4 Entire Agreement. This Option Agreement sets forth the entire agreement between the parties hereto respecting the Option, and supersedes all prior negotiations and agreements, written or oral, concerning or relating to the subject matter of this Option Agreement.

11.5 California Law. This Option Agreement shall be governed by the laws of the State of California and any question arising hereunder shall be construed or determined according to such laws.

11.6 Time of the Essence. Time is of the essence of each and every provision of this Option Agreement.

11.7 Counterparts. This Option Agreement may be signed by the parties hereto in duplicate counterparts which together shall constitute one and the same agreement between the parties and shall become effective at such time as both of the parties shall have signed such counterparts.

11.8 Attorneys' Fees. If either party commences an action against the other to enforce any of the terms hereof or because of the breach by either party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including appeal of and/or enforcement of a judgment.

11.9 Computation of Time. All periods of time referred to in this Option Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time is specified as business days (which shall not include Saturdays, Sundays and state or national holidays), provided that if the date or last date to perform any act or give any notice with respect to this Option Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

11.10 Definition of Terms. Terms not otherwise defined in this Option Agreement are defined in the Affordable Housing Loan Agreement.

IN WITNESS WHEREOF, this Option Agreement is executed by the parties hereto on the date first above written.

CITY:

CITY OF GARDEN GROVE, a California municipal corporation

By: _____

[Signature]
City Manager

ATTEST:

[Signature]

City Clerk

APPROVED AS TO FORM:

[Signature]

Stradling Yocca Carlson & Rauth
Agency Special Counsel

OWNER:

TAMERLANE ASSOCIATES, LLC, a California limited liability company

By: _____

Its: _____

[Signature]

Manager

STATE OF CALIFORNIA)

COUNTY OF Orange)

) ss.
)

On August 10, 2006, before me, Kelly E. Curran, Notary Public,
(Print Name of Notary Public)

personally appeared Charles H. Fry

personally known to me
-or-

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



WITNESS my hand and official seal.

Kelly E. Curran
Signature Of Notary

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title(s)

Title Or Type Of Document

- Partner(s) Limited
- General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

Number Of Pages

Signer is representing:
Name Of Person(s) Or Entity(ies)

Date Of Documents

Signer(s) Other Than Named Above

STATE OF CALIFORNIA)

COUNTY OF Orange)

)
) ss.
)

On August 11, 2006, before me, Allison Mills, Notary Public,
(Print Name of Notary Public)

personally appeared Leslie M. Jones II

personally known to me
-or-

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



WITNESS my hand and official seal.

Allison Mills
Signature Of Notary

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

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- Trustee(s)
- Guardian/Conservator
- Other: _____

Number Of Pages

Signer is representing:
Name Of Person(s) Or Entity(ies)

Date Of Documents

Signer(s) Other Than Named Above

ATTACHMENT A

LEGAL DESCRIPTION

All that certain real property In the County of ^{Orange}~~Los Angeles~~, State of California, described as follows:

Lot 1 of Tract No, 3050. in the City of Garden Grove, County of Orange. State of California, as per map recorded in Book 92 Page(s) 31-32, inclusive of Miscellaneous Maps, in the office of the County Recorder of said County.

APN No. 231-471-42

Alliance Title

18831 Von Karman Avenue, Suite 380, Irvine, CA 92612
(949) 724-4900 – Fax: (949) 790-9149

AUG 21 2006

August 16, 2006

City of Garden Grove
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, CA 92842
Attention: Michael Salazar

Escrow No.: 15194790 - 383 - AEE
Property Address: 12171 Tamerlane Drive, Garden Grove, CA 92843
Borrower: Tamerlane Associates, LLC

The above referenced escrow transaction is now completed. In accordance with the terms of your lender's instructions, enclosed herewith please find the following documentation:

- Evidence of Insurance
- Copy of Recorded Documents

We appreciate this opportunity of serving you and look forward to working with you again in future transactions.

Sincerely,



Adriana Cacucciolo for
Arwen Estelle, CSEO
Commercial Escrow Manager

ac

Enclosure(s)

ACORD EVIDENCE OF PROPERTY INSURANCE

08/11/06 CA

DATE (MM/DD/YY)
08/11/06

THIS IS EVIDENCE THAT INSURANCE AS IDENTIFIED BELOW HAS BEEN ISSUED, IS IN FORCE, AND CONVEYS ALL THE RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICY.

PRODUCER CLARKE GARVEY INSURANCE 245 FISCHER AVENUE, SUITE D-8 COSTA MESA CA 92626 Clarke Marine Insurance CODE: _____ SUB CODE: _____ AGENCY CUSTOMER ID #: VISTA-3		PHONE/FAX (AC, No, Ext) 714-444-2679 / 714-444-0176 COMPANY Clarendon America Insurance Co c/o W.K. Cooper & Co.	
INSURED Tamerlane Associates, LLC a CA Limited Liability Company 1980 MacArthur Blvd. #1150 Irvine CA 92612		LOAN NUMBER 070215294	POLICY NUMBER A00800017400
		EFFECTIVE DATE 05/03/06	EXPIRATION DATE 05/03/07
		<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED	
THIS REPLACES PRIOR EVIDENCE DATED:			

PROPERTY INFORMATION

LOCATION/DESCRIPTION
001
Apartments - 1 building - 9 units

12171 Tamerlane Drive
Garden Grove CA 92843

COVERAGE/PERILS/FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Buildings	\$500,000	\$2,500
Loss of Rents - 12 months	\$100,000	\$2,500
Business Personal Property	\$10,000	\$2,500
Building Ordinance	\$100,000	\$2,500

Coverage is written on special form, replacement cost coverage, agreed value, no coinsurance, including building ordinance. Excludes Earthquake and Flood.

REMARKS (including Special Conditions)

Mortgagee in favor of: PFF Bank & Trust, its successors and/or assigns
 Major Loans Department
 9467 Milliken Avenue
 P.O. Box 2729
 Rancho Cucamonga, CA 91729-2729

2nd Mortgagee in favor of: City of Garden Grove

*except 10 day notice of cancellation for non payment of premium.

CANCELLATION

THE POLICY IS SUBJECT TO THE PREMIUMS, FORMS, AND RULES IN EFFECT FOR EACH POLICY PERIOD. SHOULD THE POLICY BE TERMINATED, THE COMPANY WILL GIVE THE ADDITIONAL INTEREST IDENTIFIED BELOW 30* DAYS WRITTEN NOTICE, AND WILL SEND NOTIFICATION OF ANY CHANGES TO THE POLICY THAT WOULD AFFECT THAT INTEREST, IN ACCORDANCE WITH THE POLICY PROVISIONS OR AS REQUIRED BY LAW.

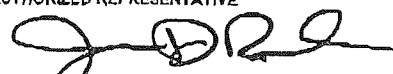
ADDITIONAL INTEREST

NAME AND ADDRESS

City of Garden Grove
 11222 Acacia Parkway
 P.O. Box 3070
 Garden Grove CA 92642

<input checked="" type="checkbox"/> MORTGAGEE	<input type="checkbox"/> ADDITIONAL INSURED
<input checked="" type="checkbox"/> LOSS PAYEE	<input checked="" type="checkbox"/> 438BFUNS

LOAN #
2ND

AUTHORIZED REPRESENTATIVE


S.F. Form

Form 438BFU NS
(Rev. May 1, 1942)**LENDER'S LOSS PAYABLE ENDORSEMENT**

1. Loss or damage, if any, under this policy shall be paid to the Payee named on the first page of this policy, its successors and assigns, hereinafter referred to as "the lender", in whatever form or capacity its interests may appear and whether said interest be vested in said Lender in its individual or in its disclosed or undisclosed fiduciary or representative capacity, otherwise, or vested in a nominee or trustee of said Lender.

2. The insurance under this policy, or any rider or endorsement attached thereto, as to the interest only of the Lender, its successors and assigns, shall not be invalidated nor suspended: (a) by any error, omission, or change respecting the ownership, description, possession, or location of the subject of the insurance or the interest therein, or the title thereto; (b) by the commencement of foreclosure proceedings or the giving of notice of sale of any of the property covered by this policy by virtue of any mortgage or trust deed; (c) by any breach of warranty, act, omission, neglect, or non-compliance with any of the provisions of this policy, including any and all riders now or hereafter attached thereto, by the named insured, the borrower, mortgagor, trustor, vendee, owner, tenant, warehouseman, custodian, occupant, or by the agents of either or any of them or by the happening of any event permitted by them or either of them, or their agents, or which they failed to prevent, whether occurring before or after the attachment of this endorsement, or whether before or after a loss, which under the provisions of this policy of insurance or of any rider or endorsement attached thereto would invalidate or suspend the insurance as to the named insured, excluding herefrom, however, any acts or omissions of the lender while exercising active control and management of the property.

3. In the event of failure of the insured to pay any premium or additional premium which shall be or become due under the terms of this policy or on account of any change in occupancy or increase in hazard not permitted by this policy, this Company agrees to give written notice to the Lender of such non-payment of premium after sixty (60) days from and within one hundred and twenty (120) days after due date of such premium and it is a condition of the continuance of the rights of the Lender hereunder that the Lender when so notified in writing by this Company of the failure of the insured to pay such premium shall pay or cause to be paid the premium due within ten (10) days following receipt of the Company's demand in writing therefor. If the Lender shall decline to pay said premium or additional premium, the rights of the Lender under this Lender's Loss Payable Endorsement shall not be terminated before ten (10) days after receipt of said written notice by the Lender.

4. Whenever this Company shall pay to the Lender any sum for loss or damage under this policy and shall claim that as to the insured no liability therefor exists, this Company, at its option, may pay to the Lender the whole principle sum and interest and other indebtedness due or to become due from the insured, whether secured or unsecured, (with refund of all interest not accrued), and this Company, to the extent of such payment, shall thereupon receive a full assignment and transfer, without recourse, of the debt and all rights and securities held as collateral thereto.

5. If there be any other insurance upon the within described property, this Company shall be liable under this policy as to the Lender for the proportion of such loss or damage that the sum hereby insured bears to the entire insurance of similar character on said property under policies held by, payable to and expressly consented to by the Lender. Any Contribution Clause included in any Fallen Building Clause Waiver or any Extended Coverage Endorsement attached to this contract of insurance is hereby nullified, and also any Contribution Clause in any other endorsement or rider attached to this contract of insurance is hereby nullified except Contribution Clauses for the compliance with which the insured has received reduction in the rate charged or has received extension of the coverage to include hazards other than fire and compliance with such Contribution Clause is made a part of the consideration for insuring such other hazards. The Lender upon the payment to it of the full amount of its claim, will subrogate this Company (pro rata with all other insurers contributing to said payment) to all of the Lender's rights of contribution under said other insurance.

6. This Company reserves the right to cancel this policy at any time, as provided by its terms, but in such case this policy shall continue in force for the benefit of the Lender for ten (10) days after written notice of such cancellation is received by the Lender and shall then cease.

7. This policy shall remain in full force and effect as to the interest of the Lender for a period of ten (10) days after its expiration unless an acceptable policy in renewal thereof with loss thereunder payable to the Lender in accordance with the terms of this Lender's Loss Payable Endorsement, shall have been issued by some insurance company and accepted by the Lender.

8. Should legal title to and beneficial ownership of any of the property covered under this policy become vested in the Lender or its agents, insurance under this policy shall continue for the term thereof for the benefit of the Lender but, in such event, any privileges granted by this Lender's Loss Payable Endorsement which are not also granted the insured under the terms and conditions of this policy and/or under other riders or endorsements attached thereto shall not apply to the insurance hereunder as respects such property.

9. All notices herein provided to be given by the Company to the Lender in connection with this policy and this Lender's Loss Payable Endorsement shall be mailed to or delivered to the Lender at its office or branch described on the first page of the policy.

Approved:

Board of Fire Underwriters of the Pacific,
California Bankers' Association,
Committee on Insurance

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID CA
VISTA-3

DATE (MM/DD/YYYY)
08/11/06

PRODUCER CLARKE GARVEY INSURANCE 245 FISCHER AVENUE, SUITE D-8 COSTA MESA CA 92626 Phone: 714-444-2679 Fax: 714-444-0176	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED Tamerlane Associates, LLC a CA Limited Liability Company 19800 MacArthur Blvd. #1150 Irvine CA 92612	INSURER A: Clarendon America Insurance Co	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	A00800017400	05/03/06	05/03/07	EACH OCCURRENCE \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO. JECT <input type="checkbox"/> LOC				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	A00800017400	05/03/06	05/03/07	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
					BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY: <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder is named as 2nd mortgagee, loss payee and additional insured with respect to property at 12222, 12212, 12202, 12181, 12201, 12182 12141 & 12171 Tamerlane Drive, Garden, Grove, CA 93843.
 *except 10 day notice of cancellation for non payment of premium.

CERTIFICATE HOLDER

CANCELLATION

GARD001

City of Garden Grove
 11222 Acacia Parkway
 P.O. Box 3070
 Garden Grove CA 92642

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE



Form No. 1056.92
(10/17/92)
ALTA Loan Policy
Form 1
1100111C109400



POLICY OF TITLE INSURANCE

ISSUED BY

First American Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
 - (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
 - (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
8. Any assessments for street improvements under construction or completed at Date of Policy which now have gained or hereafter may gain priority over the insured mortgage; or
9. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

First American Title Insurance Company

BY  PRESIDENT

ATTEST  SECRETARY



EXCLUSIONS FROM COVERAGE

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

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

CONDITIONS AND STIPULATIONS

1. DEFINITIONS OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A. The term "insured" also includes:

(i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

(iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1 (a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE.

(a) **After Acquisition of Title.** The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) **After Conveyance of Title.** The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

(c) **Amount of Insurance.** The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

(i) the amount of insurance stated in Schedule A;

(ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS: LIABILITY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of either of the options provided for in paragraphs a(i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION AND EXTENT OF LIABILITY.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the amount of insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2(c) of these Conditions and Stipulations;

(ii) the amount of unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable for:

(i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or

(ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

9. REDUCTION OF INSURANCE; REDUCTION OF LIABILITY; TERMINATION OF LIABILITY.

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the amount of insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE.

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

11. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

12. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

(b) The Insured's Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(c) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

13. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The laws of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

15. SEVERABILITY.

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

16. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at 1 First American Way, Santa Ana, California 92707, or to the office which issued this policy.

POLICY OF TITLE INSURANCE

SCHEDULE A

Our Order No.:	15194996124	Policy No.:	CW8852944
Loan No.	TAMERLANE	Premium:	\$675.00
Date of Policy:	August 15, 2006 at 8:00 A.M.	Amount of Insurance:	\$628,094.00

1. Name of Insured:

The City of Garden Grove, a California municipal corporation

2. The estate or interest in the land which is encumbered by the insured mortgage is:

A Fee

3. Title to the estate or interest in the land is vested in:

Tamerlane Associates, LLC, a California Limited Liability Company

4. The insured mortgage and assignments thereof, if any, are described as follows:

A deed of trust to secure an original indebtedness of \$628,094.00 recorded August 15, 2006 as Instrument No. 2006000544900 of Official Records.

Dated: August 10, 2006
Trustor: **Tamerlane Associates, LLC, a California Limited Liability Company**
Trustee: Alliance Title Company
Beneficiary: City of Garden Grove, a California municipal corporation

SCHEDULE A (Continued)

5. The land referred to in this policy is described as follows:

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

Lot 1 of Tract No. 3050, in the City of Garden Grove, County of Orange, State of California, as per map recorded in Book 92, Page(s) 31-32, inclusive of Miscellaneous Maps, in the office of the County Recorder of said County.

SCHEDULE B

Exceptions From Coverage

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

PART I

- 1. General and special taxes and assessments for the fiscal year 2006-2007, a lien not yet due or payable.
- 2. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
- 3. Assessments, for community facility districts, if any, affecting said land which may exist by virtue of assessment maps or notices filed by said districts.
- 4. Water rights, claims or title to water, whether or not shown by the public records.
- 5. An easement shown or dedicated on the Map as referred to in the legal description
For: public utilities and incidental purposes.

- 6. An easement for public utilities and incidental purposes, recorded in Book 3703, Page(s) 83 of Official Records.
In Favor of: Southern California Edison Company
Affects: a portion of said land

- 7. An easement for public utilities and incidental purposes, recorded in Book 3711, Page(s) 7 of Official Records.
In Favor of: The Pacific Telephone and Telegraph Co.
Affects: a portion of said land

- 8. A deed of trust to secure an original indebtedness of \$400,000.00 recorded August 15, 2006 as Instrument No. 2006000544898 of Official Records.
Dated: August 10, 2006
Trustor: **Tamerlane Associates, LLC, a California Limited Liability Company**
Trustee: Pomona Financial Services, Inc., a California Corporation
Beneficiary: PFF Bank & Trust

SCHEDULE B

PART II

In addition to the matters set forth in part I of this schedule, the Title to the estate or interest in the land described or referred to in Schedule (A) is subject to the following matters, if any be shown. But the company insured that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

1. A document entitled "Assignment of Leases and Rents" recorded August 15, 2006 as Instrument No. 2006000544899 of Official Records, as additional security for the payment of the indebtedness secured by the deed of trust recorded August 15, 2006 as Instrument No. 2006000544898 of Official Records.
2. A document entitled "Regulatory Agreement" recorded August 15, 2006 as Instrument No. 2006000544901 of Official Records.
3. The effect of a deed executed by Tamerlane Associates, LLC, a California Limited Liability Company to the City of Garden Grove, a California municipal corporation, recorded August 15, 2006 as Instrument No. 02006000544902 of Official Records.

The grantee/one of the grantees named in the deed does not appear to be an entity capable of acquiring title to real property.

4. An unrecorded lease dated August 10, 2006 executed by PFF Bank & Trust as lessor and Tamerlane Associates, LLC, a California Limited Liability Company as lessee, as disclosed by a Subordination Agreement recorded August 17, 2006 as Instrument No. 2006000550277 of Official Records.

A document recorded August 17, 2006 as Instrument No. 2006000550277 of Official Records provides that the above document was subordinated to the document recorded August 15, 2006 as Instrument No. 2006000544900 of Official Records.

The endorsements attached to this policy are:

100, 116, 110.9

MAC

ENDORSEMENT

ATTACHED TO POLICY NO. CW8852944

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

The Company hereby insures the owner of the indebtedness secured by the insured mortgage against loss or damage which the insured shall sustain by reason of:

1. The existence of any of the following:
 - (a) Covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be cut off, subordinated, or otherwise impaired;
 - (b) Present violations on the land of any enforceable covenants, conditions or restrictions;
 - (c) Except as shown in Schedule B, encroachments of buildings, structures or improvements located on the land onto adjoining lands, or any encroachments onto the land of buildings, structures or improvements located on adjoining lands.
2.
 - (a) Any future violations on the land of any covenants, conditions or restrictions occurring prior to acquisition of title to the estate or interest referred to in Schedule A by the insured, provided such violations result in impairment or loss of the lien of the mortgage referred to in Schedule A, or result in impairment or loss of the title to the estate or interest referred to in Schedule A if the insured shall acquire such title in satisfaction of the indebtedness secured by the insured mortgage;
 - (b) Unmarketability of the title to the estate or interest referred to in Schedule A by reason of any violations on the land, occurring prior to acquisition of title to the estate or interest referred to in Schedule A by the insured, of any covenants, conditions or restrictions.
3. Damage to existing improvements, including lawns, shrubbery or trees
 - (a) Which are located or encroach upon that portion of the land subject to any easement shown in Schedule B, which damage results from the exercise of the right to use or maintain such easement for the purposes for which the same was granted or reserved;
 - (b) Resulting from the exercise of any right to use the surface of the land for the extraction or development of the minerals excepted from the description of the land or shown as a reservation in Schedule B.
4. Any final court order or judgment requiring removal from any land adjoining the land of any encroachment shown in Schedule B.

Wherever in this endorsement the words "covenants," "conditions" or "restrictions" appear, they shall not be deemed to refer to or include the terms, covenants and conditions or restrictions contained in any lease.

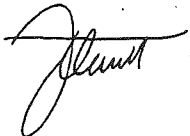
For purposes of this endorsement, the words "covenants," "conditions" or "restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection, except to the extent that a notice of a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy and is not excepted in Schedule B.

Order No. 15194996124
CLTA Form 100 (Rev. 6-14-96)

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: August 15, 2006 at 8:00 a.m.

FIRST AMERICAN TITLE INSURANCE COMPANY



Authorized Signatory

Order No. 15194996124
CLTA Form 116 (Rev. 6-14-96)

ENDORSEMENT

ATTACHED TO POLICY NO. CW8852944

ISSUED BY

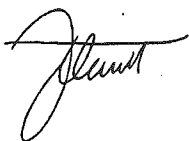
FIRST AMERICAN TITLE INSURANCE COMPANY

The Company hereby insures the owner of the indebtedness secured by the insured mortgage against loss or damage which the insured shall sustain by reason of the failure of (i) a multi-family dwelling known as **12171 Tamerlane Drive #A,B,C,D, City of Garden Grove, County of Orange, California**, to be located on the land at Date of Policy, or (ii) the map attached to this policy to correctly show the location and dimensions of the land according to the public records.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: **August 15, 2006 at 8:00 a.m.**

FIRST AMERICAN TITLE INSURANCE COMPANY



Authorized Signatory

Order No. 15194996124
CLTA Form 110.9

ENDORSEMENT

ATTACHED TO POLICY NO. CW8852944

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

The insurance afforded by this endorsement is only effective if the land is to be used primarily for residential purposes.

The Company insures the Insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

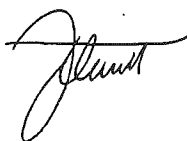
- (a) any environmental protection lien which, at Date of Policy, is recorded in those records established under State statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or filed in the records of the clerk of the United States District Court for the district in which the land is located, except as set forth in Schedule B; or
- (b) any environmental protection lien provided for by any State statute in effect at Date of Policy, except environmental protection liens provided by the following State statutes:

NONE

This endorsement is made a part of said policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: August 15, 2006 at 8:00 a.m.

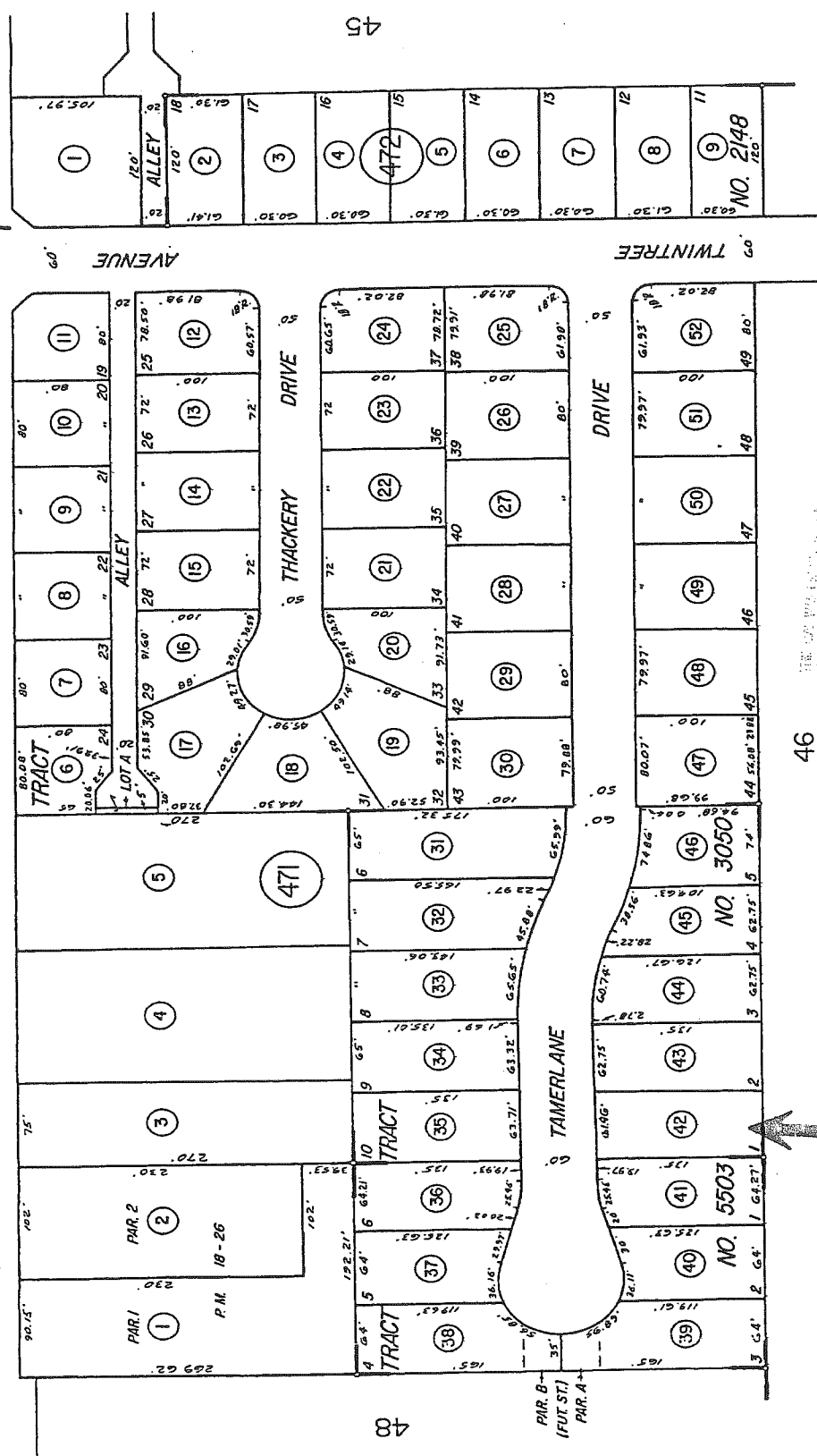
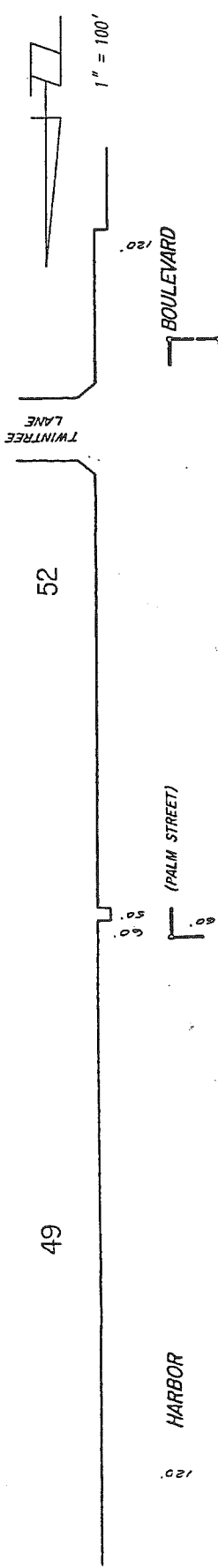
FIRST AMERICAN TITLE INSURANCE COMPANY



Authorized Signatory

POR. E 1/2, NW 1/4, SEC. 34, T 4 S, R 10 W

231-47



ASSESSOR'S MAP
 BOOK 231 PAGE 47
 COUNTY OF ORANGE

NOTE - ASSESSOR'S BLOCK &
 PARCEL NUMBERS
 SHOWN IN CIRCLES

TRACT NO. 2148
 M.M. 58-46, 47, 48
 TRACT NO. 3050
 M.M. 92-31, 32
 TRACT NO. 5503
 M.M. 201-29, 30
 PARCEL MAP
 P.M. 18-26

AFFORDABLE HOUSING LOAN AGREEMENT WITH TAMERLANE ASSOCIATES
FOR THE PURCHASE OF A MULTI-FAMILY RENTAL APARTMENT PROPERTY
LOCATED AT 12171 TAMERLANE DRIVE (F: 117.16Y)

Staff report dated August 8, 2006, was introduced.

It was moved by Council Member Rosen, seconded by Council Member Leyes, and carried by unanimous vote of those present, that the Affordable Housing Loan Agreement by and between the City of Garden Grove and Tamerlane Associates for the purchase of a multi-family rental apartment property located at 12171 Tamerlane Drive, be and hereby is approved; and the City Manager and City Clerk are authorized to execute the agreement and all other documents necessary to implement the agreement.

On April 22, 2004, the City published a 30-day notice inviting the broader public to provide input regarding and Environmental Assessment prepared for the Tamerlane Neighborhood Revitalization Program. No comments were received. On May 28, 2004, HUD approved the City's request to utilize CDBG and HOME funds to implement the Tamerlane Neighborhood Revitalization Program; because the City has met all of its environmental requirements, projects in association with the Program do not require additional environmental assessment or public noticing.

ANALYSIS/FISCAL IMPACT

This project advances the City of Garden Grove's stated obligation to utilize HOME funds, provided through the federal Department of Housing and Urban Development (HUD), to preserve and expand the supply of quality affordable housing. City Council has consistently set aside a portion of the City's annual HOME entitlement grants towards multi-family housing of this type.

The salient points of the attached City affordable housing loan agreement with Tamerlane Associates for 12171 Tamerlane Drive are (Attachment 2):

- The total development cost for this 4-unit property is \$1,056,594, which was negotiated down by the developer from an initially higher amount of \$1,086,594, and therefore reduced the project cost by \$30,000. The City HOME loan to Tamerlane Associates will be for approximately \$656,594 and will be used for acquisition and to create an operating reserve. A development fee of \$28,500 is included as a HOME grant to Vista Communities, LLC, the parent company of Tamerlane Associates. The combined cost to the City is \$656,594 including the HOME loan and development fee.
- Tamerlane Associates will repay the HOME loan, made at 3% simple annual interest, through a profit-sharing arrangement whereby 75% of annual residual receipts will be paid to the City.
- In exchange for this HOME funding assistance, Tamerlane Associates will commit, for the next 15 years, three (3) 2-bedroom and one (1) 3-bedroom units to be affordable to households earning up to 60% of the area median income.
- Keyser Marston Associates reviewed the proposed assistance package and found it within acceptable limits given the fiscal viability of the project and 15-year affordability covenants (Attachment 3).
- The building is in generally good condition and requires minimal exterior and interior rehabilitation. Tamerlane Associates will submit a rehabilitation plan for City staff approval within six months of this agreement, and will comply with federal Housing Quality Standards (HQS) throughout the duration of the agreement.

- Vista Communities has an established track record of professional property management on several properties with the City of Garden Grove. However, the City shall review and approve the annual property management and operating plan, and reserve for ten years the option to repurchase the property at the current acquisition price should any need for City oversight arise.
- HUD has accepted the City's environmental review, which found this acquisition to be categorically exempt.

Summary

Staff recommends that the City Council:

1. Approve the attached affordable housing loan agreement between the City and Tamerlane Associates for the purchase of 12171 Tamerlane Drive.
2. Authorize the City Manager and City Clerk to execute the agreement and all other documents necessary to implement the agreement.



SUSAN EMERY
Community Development Director

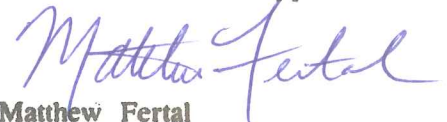


By: Michael Salazar
Administrative Analyst/HOME/Housing Coordinator

Attachments:

1. Tamerlane Drive Acquisition Map
2. Affordable Housing Loan Agreement
3. Keyser Marston Associates' Financial Gap Analysis (layering review)

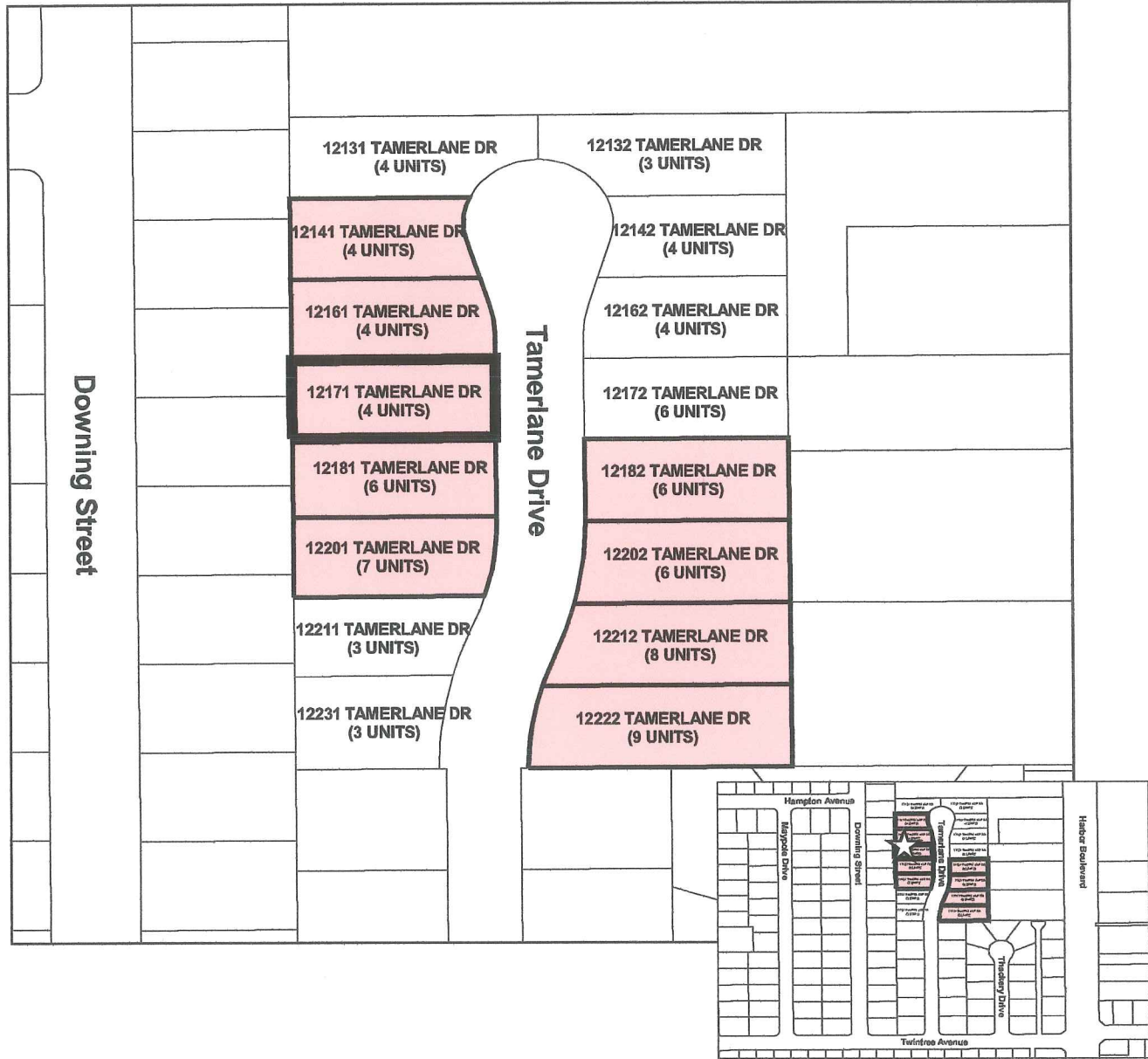
Recommended for Approval



Matthew Fertal
City Manager



TAMERLANE DRIVE ACQUISITION MAP (PROPOSED ACQUISITION OF 12171 TAMERLANE)

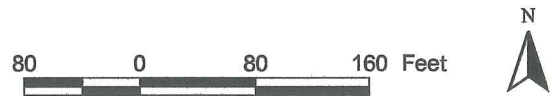


LEGEND

- Vista Communities
- Proposed Acquisition of 12171 Tamerlane (4 units)

STATISTICS

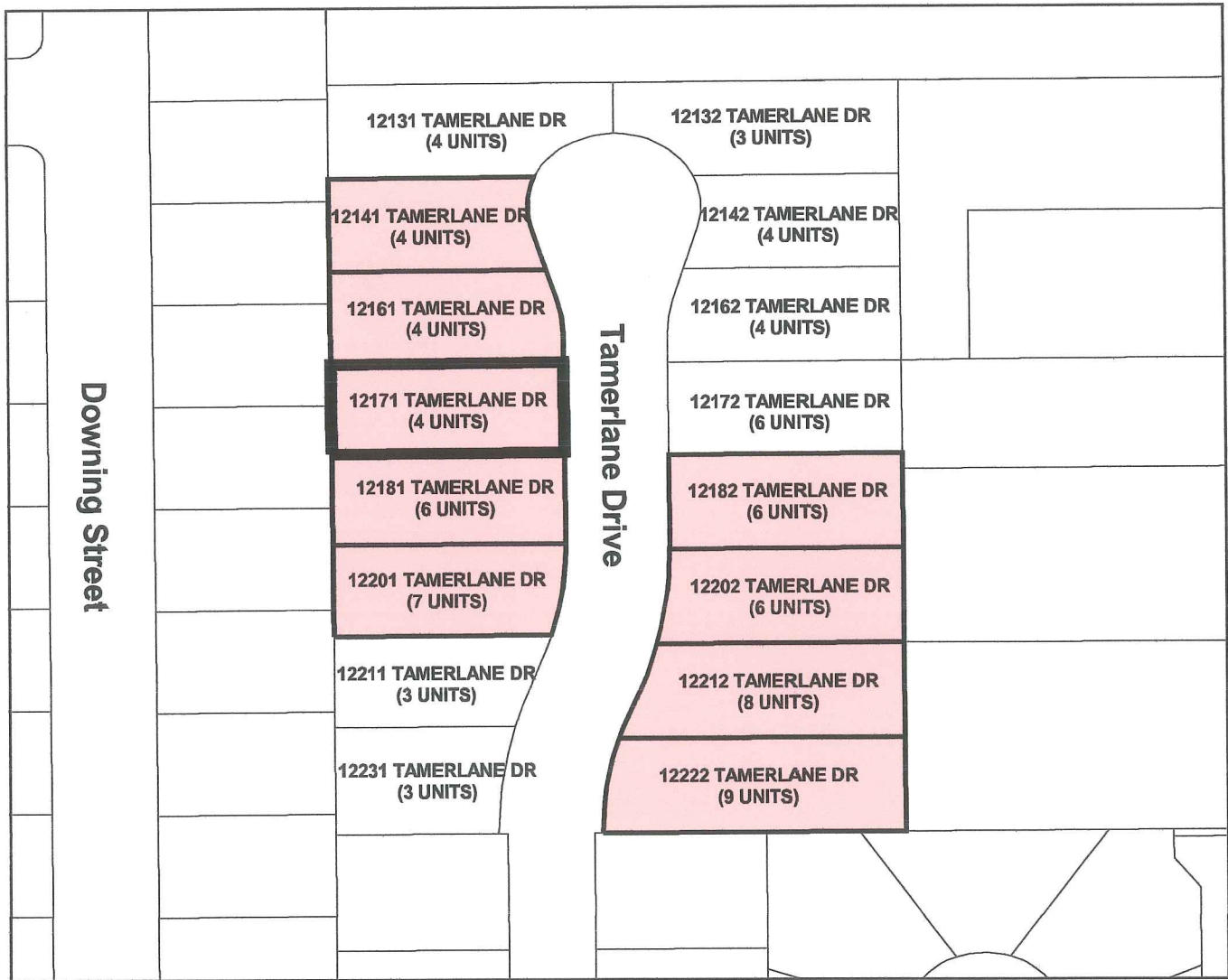
- 81 total units in the proposed Tamerlane Acquisition.
- 50 units have been acquired to date.
- 4 units to be added with 12171 Tamerlane acquisition.



CITY OF GARDEN GROVE
COMMUNITY DEVELOPMENT DEPARTMENT
NEIGHBORHOOD IMPROVEMENT DIVISION
GIS SYSTEM
REF. TAMERLANE_12171.APR
JULY 2006



TAMERLANE DRIVE ACQUISITION MAP (PROPOSED ACQUISITION OF 12171 TAMERLANE)

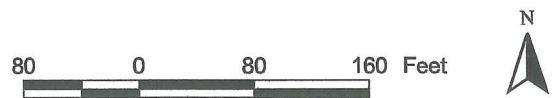


LEGEND

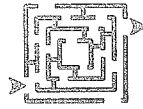
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CITY OF GARDEN GROVE
COMMUNITY DEVELOPMENT DEPARTMENT
NEIGHBORHOOD IMPROVEMENT DIVISION
GIS SYSTEM
REF. TAMERLANE_12171.APR
JULY 2006



KEYSER MARSTON ASSOCIATES

ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

MEMORANDUM

ADVISORS IN:
REAL ESTATE
REDEVELOPMENT
AFFORDABLE HOUSING
ECONOMIC DEVELOPMENT

SAN FRANCISCO
A. JERRY KEYSER
TIMOTHY C. KELLY
KATE EARLE FUNK
DEBBIE M. KERN
ROBERT J. WETMORE

LOS ANGELES
CALVIN E. HOLLIS, II
KATHLEEN H. HEAD
JAMES A. RABE
PAUL C. ANDERSON
GREGORY D. SOO-HOO

SAN DIEGO
GERALD M. TRIMBLE
PAUL C. MARRA

To: Ms. Mary Ann Hamamura, Deputy Director
City of Garden Grove

From: Julie Romey

Date: June 29, 2006

Subject: 12171 Tamerlane Apartments – Financial Gap Analysis

At your request, Keyser Marston Associates, Inc. (KMA) prepared a layering review for the acquisition and rehabilitation of a four unit apartment project located at 12171 Tamerlane Drive (Project). The Project will be undertaken by Vista Communities, Inc. (Developer), and will be subject to long-term income and affordability restrictions.

The Developer is requesting \$686,594 in United States Department of Housing and Urban Development (HUD) HOME Program funds to bridge the financial gap associated with the Project. The purpose of the KMA analysis is to estimate the amount of assistance warranted by the Project, and to quantify the maximum amount of assistance allowed under the 2006 HOME Program subsidy limits.

FINANCIAL GAP ANALYSIS

KMA prepared a pro forma analysis to provide the City of Garden Grove (City) with an estimate of the financial assistance required to make the Project financially feasible. The pro forma is presented at the conclusion of this memorandum, and is organized as follows:

Table 1:	Estimated Development Costs
Table 2:	Stabilized Net Operating Income
Table 3:	Financial Gap/HOME Program Calculation

Estimated Development Costs (Table 1)

The total development costs are estimated as follows:

1. The Developer proposal indicates that the property is being acquired for \$930,000, or \$232,500 per unit.
2. The Developer is planning to allow all the existing tenants to continue residing in the Project, and to complete the rehabilitation work without displacing any tenants. As such, it is not anticipated that any relocation obligations will be imposed on the Project.
3. The Developer is proposing to undertake a minor rehabilitation scope to bring the units up to HUD Housing Quality Standards (HQS). The direct costs are estimated at \$73,300, or \$18,330 per unit.
4. Indirect Costs:
 - a. The general indirect costs include public permits and fees costs; taxes, legal and accounting fees; insurance costs; and a soft cost contingency allowance. KMA provided an allowance equal to 3% of the direct costs plus acquisition costs for these costs.
 - b. The City has agreed to allow the Developer to receive a \$28,500 fee for undertaking the Project.
5. Financing Costs:
 - a. KMA has assumed that the Project will generate sufficient income during the rehabilitation period to fund the debt service on the Project's first trust deed mortgage. Therefore, it is assumed that the Developer will not be required to make any out-of-pocket expenditure to fund carrying costs during the rehabilitation period.
 - b. KMA assumed that the Project could support a conventional first trust deed mortgage at a 75% loan to value ratio, or \$439,000. Assuming the loan origination fees are set at two points, the fees are estimated at \$8,800.

To: Ms. Mary Ann Hamamura, City of Garden Grove
Subject: 12171 Tamerlane Apartments – Financial Gap Analysis

June 29, 2006
Page 3

- c. KMA included a \$3,500 per unit allowance to fund a capitalized reserve account. The reserve amount totals \$14,000.
6. City policy requires the Developer not to increase the rent levels above the amounts being paid by the current occupants for at least one year. Based on the projected future rent revenues, KMA estimated that the Developer will have to absorb \$4,140 in foregone rent income during the first year.¹

As can be seen in Table 1, the total development costs are estimated at \$1.08 million, which equates to \$271,200 per unit. The KMA estimate is approximately \$2,000 lower than the Developer's \$1.09 million estimate. This less than 1% differential can be considered inconsequential.

HOME Units Allocation

The minimum number of HOME units is equal to the ratio of the HOME assistance to the total eligible development costs multiplied times the total number of units in the Project. Based on the Developer's request for \$686,594 in financial assistance, the Project must include at least three HOME units ($\$686,594 \text{ assistance} / \$1.08 \text{ million} \times 4 \text{ units} = 2.5$).

Net Operating Income (Table 2)

Any development that receives HOME Program assistance must comply with the income and affordability restrictions imposed by the HOME Program regulations Section 24 CFR 92.254. These regulations require that when there are four or fewer designated HOME units, all of the HOME units can be rented to households that earn less than 60% of the Orange County median income (Median) at the High HOME rents established by HUD.

The Developer is proposing to set-aside four units for low income households. As a result, the four units can be rented at High HOME rents. As a practical matter, the achievable rents for the income restricted units are equal to the lesser of the rent allowed by the HOME Program or the currently prevailing market rents.

¹ The Developer projects market rate rents for the three two-bedroom units at \$1,150 and HOME rents at \$1,115 versus the current rents at \$1,000; and the one market rate three-bedroom unit at \$1,450, which equals the current \$1,450 rent but is higher than the \$1,262 HOME rent.

The resulting rents for the income restricted units are illustrated in the following table:

	Income Level	HOME Rent ²	Projected Market Rent	Achievable Rent
Unit A: Three-Bedrooms	Low	\$1,262	\$1,450	\$1,262
Unit B: Two-Bedrooms	Low	\$1,115	\$1,150	\$1,115
Unit C: Two-Bedrooms	Low	\$1,115	\$1,150	\$1,115
Unit D: Two-Bedrooms	Low	\$1,115	\$1,150	\$1,115

In addition to the rent income, the Project is projected to receive \$13 per unit per month in laundry/miscellaneous income. As can be seen in Table 2, the combination of the rent income and laundry/miscellaneous income is estimated to total \$55,900. When this is reduced by a 5% allowance for vacancy and collection costs, the resulting effective gross income (EGI) is \$53,100.

The EGI must be reduced by the following ongoing operating expenses:

1. The general operating expenses include administrative, maintenance, utilities, insurance and security costs. These costs are estimated at \$3,800 per unit per year.
2. The property tax expense is estimated based on the assumption that the Project's value is approximately \$585,000, and that a 1.1% tax rate is applied. The annual property tax costs are estimated at \$1,608 per unit.
3. An allowance of \$200 per unit per year is provided to fund reserve accounts.

The total annual operating expenses are estimated at \$22,400. When the \$53,100 in EGI is reduced by the \$22,400 in operating expenses, KMA estimated the stabilized net operating income (NOI) at \$30,700.

The Developer estimated the NOI at \$33,611, which is \$2,900 higher than the KMA estimate. This represents a 9% difference due to the following:

1. Due to the City's requirement that the existing rents not be increased for one-year, the Developer estimated the Project value based on the current rents. This represents a \$4,200 per year difference.

² Equal to the 2006 HOME rents for Orange County minus utility allowances of \$49 per month for two-bedroom units and \$74 per month for three-bedroom units.

2. The Developer's operating expense estimate is \$15,600, which is \$6,800 less than the KMA estimate.

Financial Gap Calculation (Table 3)

KMA estimated the warranted private debt and equity investment in the Project based on the assumption that apartment investors are currently investing in developments at a +/- 6.75% return on total investment.³ Given \$30,700 in stabilized NOI and a 6.75% return on total investment, the Project can support \$454,800 in private debt and equity. When this is compared to the \$1.08 million in estimated development costs, the Project demonstrates a financial gap of \$629,900.

The Developer is requesting \$686,594 in assistance, which is approximately \$57,000 higher than the financial gap identified in the KMA analysis estimate. The reason for this difference is solely due to KMA's lower required return on investment assumption. As this equals a 9% difference, KMA concludes that the Developer's request for financial assistance is reasonable.

HOME Funds Assistance Limit

The amount of HOME funds that can be invested in affordable housing projects may not exceed the dollar limits established by HUD. The 2006 assistance limits for Orange County projects are \$160,212 per two-bedroom units and \$207,259 per three-bedroom units. This equates to \$687,895 for the three two-bedroom units and one three-bedroom unit being designated as HOME units.

As can be seen in Table 3, both the \$629,900 financial gap identified by the KMA analysis and the Developer's \$686,594 assistance request are lower than the established HOME assistance limit. Thus, the City's determination of how much money to contribute to the Project is not constrained by the HOME Program assistance limits.

³ The Developer estimates the stabilized NOI at \$33,611 and the warranted investment at \$400,000. This equates to an 8.40% return on investment.

To: Ms. Mary Ann Hamamura, City of Garden Grove
Subject: 12171 Tamerlane Apartments – Financial Gap Analysis

June 29, 2006

Page 6

CONCLUSIONS

Based on the results of the preceding layering analysis, KMA has reached the following conclusions:

1. The Developer's request for \$686,594 in financial assistance is slightly higher than the gap identified in the KMA analysis and lower than the assistance limit imposed by the HOME Program. Thus, the City can reasonably provide the Project up to \$686,594 of the amount of assistance being requested the Developer with HOME funds.
2. If \$686,594 in HOME Program assistance is provided to the Project, the HOME Program regulations require the income and affordability covenants to be imposed over a 15-year term.

TABLE 1

ESTIMATED DEVELOPMENT COSTS
 4 LOW INCOME UNITS
 12171 TAMERLANE APARTMENTS
 GARDEN GROVE, CALIFORNIA

I.	Property Acquisition Cost ¹	4 Units	\$232,500 /Unit	\$930,000
II.	Direct Rehabilitation Costs ²	4 Units	\$18,330 /Unit	\$73,300
III.	<u>Indirect Costs</u>			
	General Indirect Costs ³	3.0% Direct Cost + Acq		\$30,100
	Developer Fee ¹			28,500
	Total Indirect Costs			\$58,600
IV.	<u>Financing Costs</u>			
	Interest During Construction ⁴			\$0
	Loan Origination Fees ⁵	2.00 Points	\$439,000 Loan	8,800
	Capitalized Operating Reserve	4 Units	\$3,500 /Unit	14,000
	Total Financing Costs			\$22,800
V.	Total Development Costs	4 Units	\$271,200 /Unit	\$1,084,700

¹ Based on Developer estimate.

² Based on Developer estimates. Includes a 20% allowance for contractor's cost and a direct cost contingency allowance.

³ Includes Public Permits & Fees; Taxes, Legal & Accounting; Insurance; & Contingency costs.

⁴ Assumes that income generated during the rehabilitation period is sufficient to fund debt service costs.

⁵ Based on a 75% loan to value ratio. The value is projected based on the Project's net operating income capitalized at a 5.25% rate.

TABLE 2

STABILIZED NET OPERATING INCOME
 4 LOW INCOME UNITS
 12171 TAMERLANE APARTMENTS
 GARDEN GROVE, CALIFORNIA

I. IncomeVery-Low Income: Low HOME¹

2 Bdrms	0 Units @	\$863 /Month	\$0
3 Bdrms	0 Units @	\$980 /Month	0

Low Income: High HOME¹

2 Bdrms	1 Unit @	\$1,115 /Month	13,400
2 Bdrms	1 Unit @	\$1,115 /Month	13,400
2 Bdrms	1 Unit @	\$1,115 /Month	13,400
3 Bdrms	1 Unit @	\$1,262 /Month	15,100

Market Rate Units

2 Bdrms	0 Units @	\$1,150 /Month	0
3 Bdrms	0 Units @	\$1,450 /Month	0

Laundry/Miscellaneous Income	4 Units @	\$13.00 /Unit/Month	600
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Gross Income			\$55,900
(Less) Vacancy and Collection	5.0% Gross Income		(2,800)
Effective Gross Income			\$53,100

II. Operating Expenses

General Operating Expenses ³	4 Units @	\$3,800 /Unit	\$15,200
Property Taxes ⁴	4 Units @	\$1,608 /Unit	6,400
Reserves	4 Units @	\$200 /Unit	800

Total Operating Expenses			(22,400)
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III. Stabilized Net Operating Income			\$30,700
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¹ Based on 2006 OC incomes distributed by HUD/HCD & the lesser of the rents allowed by the HOME Program or the prevailing market rents. Restricted rents are net of the following utilities allowances: 2-Bdrm \$49 & 3-Bdrm \$74.

³ Includes administrative, maintenance, utilities, insurance and security costs.

⁴ Based on a 5.25% capitalization rate and a 1.10% tax rate.

TABLE 3

FINANCIAL GAP CALCULATION
 4 LOW INCOME UNITS
 12171 TAMERLANE APARTMENTS
 GARDEN GROVE, CALIFORNIA

I. <u>Supportable Private Investment</u>			
Net Operating Income	See TABLE 2	\$30,700	
Threshold Return on Total Investment		6.75%	
Total Private Investment			\$454,800
II. Total Development Cost	See TABLE 1		\$1,084,700
III. Financial Gap	4 Units	\$157,500 /Unit	\$629,900
IV. <u>Maximum Allowable HOME Program Assistance</u>			
2 Bdrms	3 Units	\$160,212 /Unit	\$480,600
3 Bdrms	1 Unit	\$207,259 /Unit	207,300
Maximum HOME Program Assistance	4 Unit	\$171,975 /Unit	\$687,900
V. HOME Units Required ¹	2.32 Units		

¹ The Project must designate HOME units at the same ratio as the percentage of the Total Development Costs that are being paid for with HOME funds. This requires 58% of the units to be designated as HOME units.