

AGREEMENT BIBLIOGRAPHY

Agreement With:	Tamerlane Associates, LLC
Agreement Type:	Affordable Housing Loan Agreement and First Amendment for the property at 12202 Tamerlane Drive
Date Approved:	12 14 2004
Start Date:	12 14 2004
End Date:	03 19 2030
Contract Amount:	\$388,504
Comments	File No. 117.16R Community Development
Insurance Expiration:	N/A
Date Archived:	ARCHIVED 01/10/2017

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
12202 TAMERLANE DRIVE

APPROVED
JUNE 8, 2010

**FIRST AMENDMENT TO AFFORDABLE HOUSING
LOAN AGREEMENT
(12202 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 December 14, 2004 with respect to property located at 12202 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
Matthew J. Fertal, City Manager

OWNER:

TAMERLANE ASSOCIATES, LLC,
a California limited liability company

By: Chal H. Long
Its: Manager

ATTEST:

Deeisa Sanchez, Clerk
City Clerk

APPROVED AS TO FORM:

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

RECEIVED
CITY OF GARDEN GROVE
CLERK'S OFFICE

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

2010 SEP -7 P 1:37

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

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

NO FEE

2010000420479 2:21 pm 08/27/10

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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. 2004001120626, Official Records, Orange County, California.

10/17
CF
NF

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 December 14, 2004 ("AHLA"). Under the terms of the AHLA, Owner has, with the assistance of the City, purchased real property located at 12202 Tamerlane Drive, which is improved with a six (6) 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 December 15, 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, Seven Hundred Sixty-Five Dollars (\$1,765) per month for each month from December 16, 2007 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 December 15, 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 Jertel
Matthew J. Fertal, City Manager

OWNER:

TAMERLANE ASSOCIATES, LLC,
a California limited liability company

By: Charles H. Fung
Its: Manager

ATTEST:

Kathleen Babin 4/22/10
City Clerk

APPROVED AS TO FORM:

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

EXHIBIT A
LEGAL DESCRIPTION

The real property located in the State of California, County of Orange, City of Garden Grove, and described as follows:

Assessor parcel number: 231-471-33
12202 Tamerlane Drive, Garden Grove, California

Lot 8 of Tract No. 3050, as per Miscellaneous Maps recorded in Book 92, Pages 31-32, in the office of the County Recorder of the County of Orange, State of California

STATE OF CALIFORNIA

)

)

ss.

COUNTY OF Orange

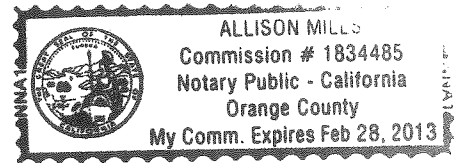
)

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

Page 3


CHET YOSHIZAKI
Economic Development Director

By: Kathleen McCall Angel 
Economic Development Specialist

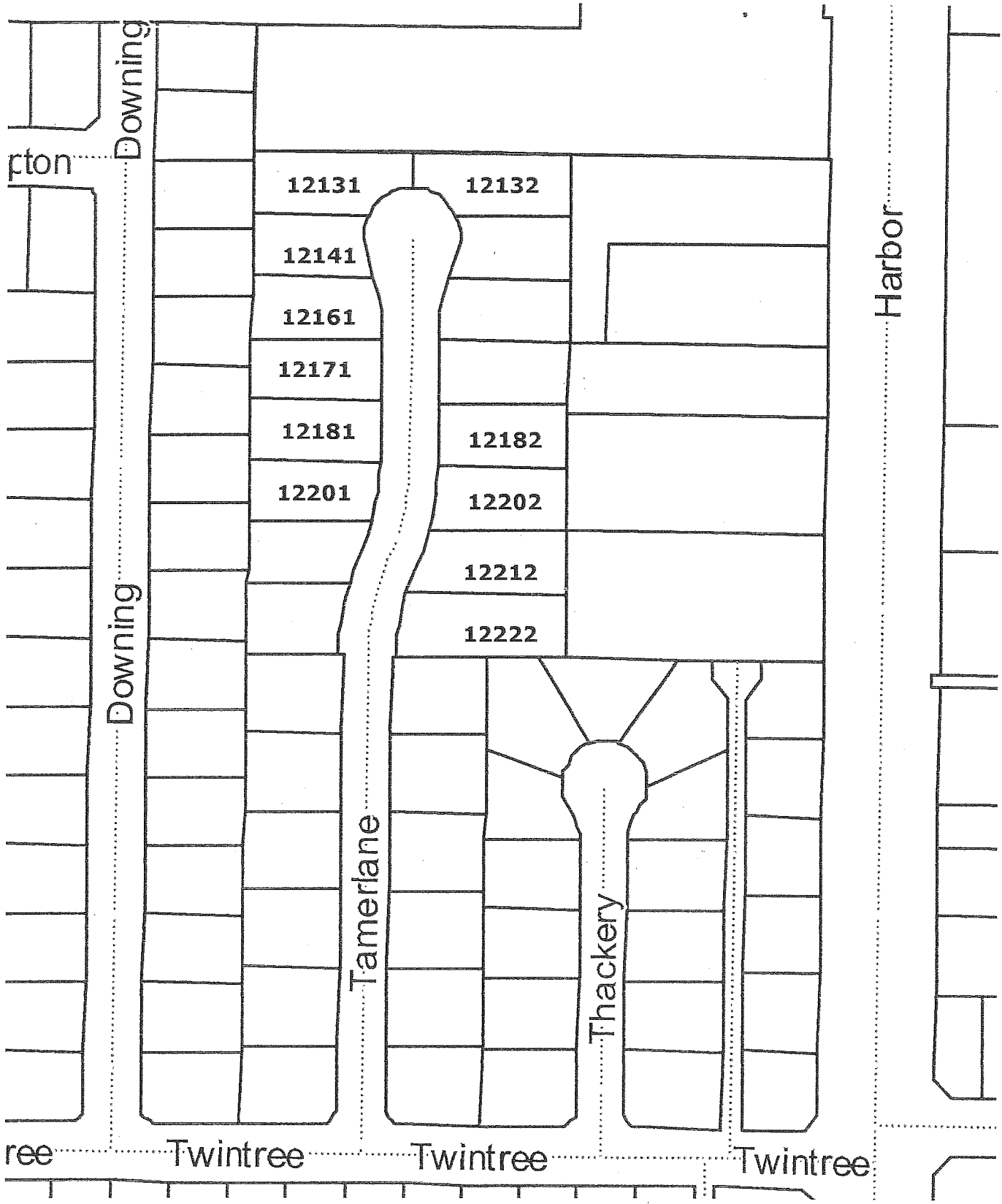
- Attachment 1: Site Map
- Attachment 2: Amendment to AHLA- 12131 Tamerlane
- Attachment 3: Amendment to AHLA- 12132 Tamerlane
- Attachment 4: Amendment to AHLA- 12141 Tamerlane
- Attachment 5: Amendment to AHLA- 12161 Tamerlane
- Attachment 6: Amendment to AHLA- 12171 Tamerlane
- Attachment 7: Amendment 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 Ferial
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
12202 TAMERLANE DRIVE

APPROVED

DECEMBER 14, 2004

12202 Tamerlane Final Documents

Affordable Housing Loan Agreement

Promissory Note

Deed of Trust

Release of Construction Covenants

**(to be signed by City and Tamerlane-original to Clerk's Office & copy in file
see Schedule of Performance for date- last page of this packet)**

Regulatory Agreement

Option Agreement

AFFORDABLE HOUSING LOAN AGREEMENT

by and between

CITY OF GARDEN GROVE

and

**TAMERLANE ASSOCIATES, LLC
(12202 Tamerlane Drive)**

AFFORDABLE HOUSING LOAN AGREEMENT

THIS AFFORDABLE HOUSING LOAN AGREEMENT (the "Agreement") is entered into as of December 14, 2004, 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 HOME Investment Partnership Act of the United States, 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 12202 Tamerlane Drive, which is improved with a six (6) 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 Three Hundred Eighty-Eight Thousand Five Hundred Four Dollars (\$388,504) 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. 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 Three Hundred Eighty-Eight Thousand Five Hundred Four Dollars (\$388,504) (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. 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 and any asset management fee paid to Owner 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 Eighteen Thousand Dollars (\$18,000) 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. In addition to the disbursement of the HOME Loan, the City shall grant to Owner, or Vista Communities, Inc., from the City's HOME funds a "Developer's Fee" in the amount of Forty-Two Thousand Three Hundred Fifty Dollars (\$42,350), 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 with respect to the Property, environmental audits, reports and studies which concern the Property, or inspection reports from applicable regulatory authorities with respect to the Property, which the Owner has received, has 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) 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.

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 § 882.109, 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. 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. 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 Twelve Thousand Forty Five Dollars (\$12,045) per unit, in the amount of Seventy Two Thousand Two Hundred Seventy Four Dollars (\$72,274) (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 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 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.

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 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 Acquisition Act, 42 U.S.C. § 4201, *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. §27a - 276a-5), and as applicable, the Contract Work Hours and Safety Standards Act (40 U.S.C. §327a - 332), 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 not less than four (4) of the one bedroom Housing Units 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. The initial location of the Affordable Units shall be the first units available in the Property for rental to tenants of the appropriate income limits. The Affordable Units to be rented to Lower Income Households shall be of a quality equal to all of the other apartment units in the Property.

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 which 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.

Lower Income Households. Four one-bedroom units will be Affordable Units that 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 four persons; provided however,

priority in selection of tenants for one bedroom Housing Units shall be given to households consisting of three 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, an amount not to exceed the sum of Forty Five Thousand Dollars (\$45,000) (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, not less than two percent (2%) of the gross rents received from the Property (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 depositing not less than two percent (2%) of the gross rents received from the Property. 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 available its books and records 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 750
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 its property and carry on its 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: _____

Chad H Zy
Manager

CITY:

CITY OF GARDEN GROVE, a California municipal corporation

By: _____

Mayor

William Dalk

ATTEST:

Luis C. Amis

City Clerk

APPROVED AS TO FORM:

Apr. B. J.

Stradling Yocca Carlson & Rauth
City Special Counsel

EXHIBIT A

LEGAL DESCRIPTION

The real property located in the State of California, County of Orange, City of Garden Grove, and described as follows:

Assessor parcel number: 231-471-33

12202 Tamerlane Drive, Garden Grove, California

Lot 8 of Tract No. 3050, as per Miscellaneous Maps recorded in Book 92, Pages 31-32, in the office of the County Recorder of the County of Orange, State of California

PROMISSORY NOTE
(12202 Tamerlane Drive)

\$388,504

December 15, 2004

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 Three Hundred Eighty-Eight Thousand Five Hundred Four Dollars (\$388,504) (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 Agreement executed by the City and the Owner, dated as of December 14, 2004 (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 and any asset management fee paid to Owner 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. Nothing withstanding 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, to pay in addition, all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

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: *Chad H. Ly*, Manager

RECORDING REQUESTED BY:
LandAmerica Commonwealth Title

This Document was electronically recorded by
Common Wealth

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)

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

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



NO FEE

2004001120624 04:30pm 12/16/04

105 21 D11 14
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This document is exempt from the payment of a recording
fee pursuant to Government Code Section 6103.

DEED OF TRUST AND ASSIGNMENT OF RENTS
(12202 Tamerlane Drive)

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS is made as of the 15th day of December, 2004, by and among **TAMERLANE ASSOCIATES, LLC**, a California limited liability company (the "Trustor"), whose address is 19800 MacArthur Boulevard, Suite 750, Irvine CA 92612, Commonwealth Land Title Company (the "Trustee"), whose address is 28 Executive Park #300, Irvine, California 92614, 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 Agreement entered into between Trustor and the Beneficiary as of December 14, 2004 (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

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machinery (whether fixed or movable) and other articles (including, in each instance, improvements, restorations, replacements, repairs, additions, accessions or substitutions thereto or therefor);

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 Three Hundred Eighty-Eight Thousand Five Hundred Four Dollars (\$388,504), 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 the Promissory Note or Affordable Housing Agreement (and any amendments thereto).

ARTICLE I

DEFINITIONS

1. "Agreement" means that Affordable Housing Agreement entered into by and among Trustor and the Beneficiary hereof, dated as of December 14, 2004, 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 § 882.109.

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 its 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 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: Charles H Fry, Manager
Charles H Fry

ATTACHMENT A
LEGAL DESCRIPTION

The real property located in the State of California, County of Orange, City of Garden Grove, and described as follows:

Assessor parcel number: 231-471-33
12202 Tamerlane Drive, Garden Grove, California
Lot 8 of Tract No. 3050, as per Miscellaneous Maps recorded in Book 92, Pages
31-32, in the office of the County Recorder of the County of Orange, State of California

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

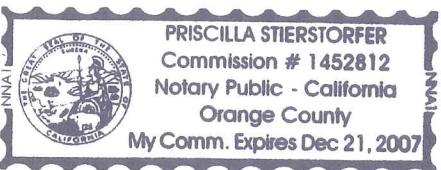
State of California

County of Orange

On December 14, 2004 before me, PRISCILLA STIERSTORFER
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared CHARLES H. FRY,
Name(s) of Signer(s)

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/his/their authorized capacity(ies), and that by his/his/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.

Priscilla Stierstorfer
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Deed of Trust 12202 Tanelone Dr.

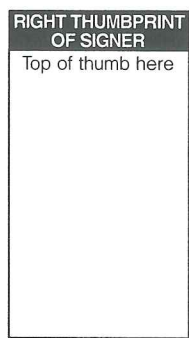
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

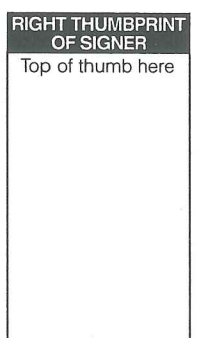
- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

Signer's Name: _____

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



Signer Is Representing:

RECORDING REQUESTED BY:
LandAmerica Commonwealth Title

This Document was electronically recorded by
Common Wealth

RECORDATION REQUESTED BY:
PFF Bank & Trust
Major Loans Department
9467 Milliken Avenue
P.O. Box 2729
Rancho Cucamonga, CA 92629-2729

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



2004001120622 04:30pm 12/16/04

WHEN RECORDED MAIL TO:
PFF Bank & Trust
Major Loan Department
9467 Milliken Avenue
Rancho Cucamonga, CA 91730-6004

105 21 D11 10
0.00 0.00 0.00 0.00 27.00 0.00 0.00 0.00

SEND TAX NOTICES TO:
TAMERLANE ASSOCIATES, LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY
19800 MACARTHUR BLVD., STE 750
IRVINE, CA 92612

FOR RECORDER'S USE ONLY

DEED OF TRUST

THIS DEED OF TRUST is dated December 7, 2004, among TAMERLANE ASSOCIATES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, whose address is 19800 MACARTHUR BLVD., STE 750, IRVINE, CA 92612 ("Trustor"); PFF Bank & Trust, whose address is Major Loans Department, 9467 Milliken Avenue, P.O. Box 2729, Rancho Cucamonga, CA 92629-2729 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Pomona Financial Services, Inc., A California Corporation, whose address is 9467 Milliken Avenue, Rancho Cucamonga, CA 91730-6004 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Orange County, State of California:

Lot 8, 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 and 32 of Miscellaneous maps, in the office of the County Recorder of said County.

Assessor's Parcel Number: 231-471-33

The Real Property or its address is commonly known as 12202 Tamerlane Dr, Garden Grove, CA 92840.

Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. This is an absolute assignment of Rents made in connection with an obligation secured by real property pursuant to California Civil Code Section 2938. In addition, Trustor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF THE TRUSTOR UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Trustor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Trustor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Trustor agrees that Trustor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Trustor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Trustor represents and warrants to Lender that: (1) During the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Trustor nor

67883-3

Maintenance of Insurance. Trustor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a fair value basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Trustor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Trustor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Notwithstanding the foregoing, in no event shall Trustor be required to provide hazard insurance in excess of the replacement value of the improvements on the Real Property. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Trustor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Trustor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Trustor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Trustor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Trustor fails to do so within fifteen (15) days of the casualty. If in Lender's sole judgment Lender's security interest in the Property has been impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If the proceeds are to be applied to restoration and repair, Trustor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Trustor from the proceeds for the reasonable cost of repair or restoration if Trustor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Trustor as Trustor's interests may appear.

Trustor's Report on Insurance. Upon request of Lender, however not more than once a year, Trustor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Trustor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Trustor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Trustor's failure to discharge or pay when due any amounts Trustor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Trustor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Trustor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Trustor warrants that: (a) Trustor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Trustor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Trustor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Trustor's title or the interest of Trustee or Lender under this Deed of Trust, Trustor shall defend the action at Trustor's expense. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Trustor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Trustor warrants that the Property and Trustor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Trustor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Trustor's Indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to eminent domain and inverse condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any eminent domain or inverse condemnation proceeding is commenced affecting the Property, Trustor shall promptly notify Lender in writing, and Trustor shall promptly take such steps as may be necessary to pursue or defend the action and obtain the award. Trustor may be the nominal party in any such proceeding, but Lender shall be entitled, at its election, to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Trustor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**DEED OF TRUST
(Continued)**

Loan No: 070210595

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Default on Other Payments. Failure of Trustor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Default in Favor of Third Parties. Should Trustor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Trustor's property or Trustor's ability to repay the indebtedness or perform their respective obligations under this Deed of Trust or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Trustor or on Trustor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Trustor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Trustor's existence as a going business or the death of any member, the insolvency of Trustor, the appointment of a receiver for any part of Trustor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Trustor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Trustor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Trustor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Trustor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Trustor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Trustor under the terms of any other agreement between Trustor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Trustor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Trustor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If such a failure is curable and if Trustor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Trustor, after Lender sends written notice demanding cure of such failure: (a) cures the failure within fifteen (15) days; or (b) if the cure requires more than fifteen (15) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Trustor under this Deed of Trust, after Trustor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Foreclosure by Sale. Upon an Event of Default under this Deed of Trust, Beneficiary may declare the entire indebtedness secured by this Deed of Trust immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the Property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note, other documents requested by Trustee, and all documents evidencing expenditures secured hereby. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels, 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 time of sale. 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 may postpone such sale by public announcement at the time fixed by the preceding postponement in accordance with applicable law. Trustee shall deliver to such purchaser its deed 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 Trustor, Trustee or Beneficiary may purchase at such sale. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

Judicial Foreclosure. With respect to all or any part of the Real Property, Lender shall have the right in lieu of foreclosure by power of sale to foreclose by judicial foreclosure in accordance with and to the full extent provided by California law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code, including without limitation the right to recover any deficiency in the manner and to the full extent provided by California law.

**DEED OF TRUST
(Continued)**

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is more than one Trustor, any notice given by Lender to any Trustor is deemed to be notice given to all Trustors.

STATEMENT OF OBLIGATION FEE. Lender may collect a fee, not to exceed the maximum amount permitted by law, for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

CURRENT INDEX. Beginning with the first change date, my interest will be based on an Index. The "Index" is the monthly average yield on United States Treasury Securities adjusted to the constant maturity of 1 year, as made available by the Federal Reserve Board, and rounded up to the next 1/8%. The most recent Index figure available as of the date 45 days before each change date is called the "Current Index".

CHANGE DATE. The Interest Rate I will pay may change on January 1, 2006 and on that day of the month every year thereafter. Each date on which my rate could change is called a "Change Date".

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Trustor's residence, Trustor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Trustor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by, construed and enforced in accordance with federal law and the laws of the State of California. This Deed of Trust has been accepted by Lender in the State of California.

Choice of Venue. If there is a lawsuit, Trustor agrees upon Lender's request to submit to the jurisdiction of the courts of San Bernardino County, State of California.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Trustor, shall constitute a waiver of any of Lender's rights or of any of Trustor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Trustor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Trustor, Lender, without notice to Trustor, may deal with Trustor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Trustor from the obligations of this Deed of Trust or liability under the Indebtedness.

Time Is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waive Jury. All parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means PFF Bank & Trust, and its successors and assigns.

Borrower. The word "Borrower" means TAMERLANE ASSOCIATES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY and includes all co-signers and co-makers signing the Note.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Trustor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., Chapters 6.5 through 7.7 of Division 20 of the California Health

DEED OF TRUST
(Continued)

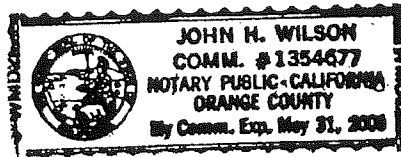
Loan No: 070210595

Page 9

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) SS
COUNTY OF ORANGE)

On 12-14, 2004 before me, John H Wilson, 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.

Signature [Handwritten Signature]

(Seal)

(DO NOT RECORD)
REQUEST FOR FULL RECONVEYANCE
(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all Indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

Date: _____ Beneficiary: _____
By: _____
Its: _____

ILLEGIBLE NOTARY SEAL DECLARATION

GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary John H. Wilson

Commission Number 1354677

Date Commission Expires 5-31-06

County Where Bond is Filed Orange

Place of Execution of this Declaration Irvine, CA 92614

Date 12-16-04


Commonwealth Land Title Company

RECORDING REQUESTED BY:
LandAmerica Commonwealth Title

This Document was electronically recorded by
Common Wealth

RECORDATION REQUESTED BY:

PFF Bank & Trust
Major Loans Department
9467 Milliken Avenue
P.O. Box 2729
Rancho Cucamonga, CA 92629-2729

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



2004001120623 04:30pm 12/16/04

WHEN RECORDED MAIL TO:

PFF Bank & Trust
Major Loan Department
9467 Milliken Avenue
Rancho Cucamonga, CA 91730-6004

105 21 A34 A36 6
0.00 0.00 0.00 0.00 15.00 0.00 0.00 0.00

SEND TAX NOTICES TO:

TAMERLANE ASSOCIATES, LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY
19800 MACARTHUR BLVD., STE 750
IRVINE, CA 92612

FOR RECORDER'S USE ONLY

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS dated December 7, 2004, is made and executed between TAMERLANE ASSOCIATES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, whose address is 19800 MACARTHUR BLVD., STE 750, IRVINE, CA 92612 (referred to below as "Grantor") and PFF Bank & Trust, whose address is 9467 Milliken Avenue, P.O. Box 2729, Rancho Cucamonga, CA 92629-2729 (referred to below as "Lender").

ASSIGNMENT. For valuable consideration, Grantor hereby assigns, grants a continuing security interest in, and conveys to Lender all of Grantor's right, title, and interest in and to the Leases and Rents from the following described Property located in Orange County, State of California:

Lot 8, 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 and 32 of Miscellaneous maps, in the office of the County Recorder of said County.

Assessor's Parcel Number: 231-471-33

The Property or its address is commonly known as 12202 Tamerlane Dr, Garden Grove, CA 92840.

This is an absolute assignment of Leases and Rents made in connection with an obligation secured by property pursuant to California Civil Code section 2938.

THIS ASSIGNMENT IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THIS ASSIGNMENT, AND THE RELATED DOCUMENTS. THIS ASSIGNMENT IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Assignment or any Related Documents, Grantor shall pay to Lender all amounts secured by this Assignment as they become due, and shall strictly perform all of Grantor's obligations under this Assignment. Unless and until Lender exercises its right to collect the Leases and Rents as provided below and so long as there is no default under this Assignment, Grantor may remain in possession and control of and operate and manage the Property and collect the Leases and Rents, provided that the granting of the right to collect the Leases and Rents shall not constitute Lender's consent to the use of cash collateral in a bankruptcy proceeding.

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE LEASES AND RENTS. With respect to the Leases and Rents, Grantor represents and warrants to Lender that:

Ownership. Grantor is entitled to receive the Leases and Rents free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Assign. Grantor has the full right, power and authority to enter into this Assignment and to assign and convey the Leases and Rents to Lender.

No Prior Assignment. Grantor has not previously assigned or conveyed the Leases and Rents to any other person by any instrument now in force.

No Further Transfer. Grantor will not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Leases and Rents except as provided in this Assignment.

LENDER'S RIGHT TO COLLECT LEASES AND RENTS. Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Leases and Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:

Notice to Tenants. Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Leases and Rents to be paid directly to Lender or Lender's agent.

ASSIGNMENT OF LEASES AND RENTS (Continued)

Loan No: 070210595

Page 3

this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Property Damage or Loss. The Property is lost, stolen, substantially damaged, sold, or borrowed against.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Assignment within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment fee which Grantor would be required to pay.

Collect Leases and Rents. Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Leases and Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender shall have all the rights provided for in the Lender's Right to Collect Leases and Rents Section, above. If the Leases and Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Leases and Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Other Remedies. Lender shall have all other rights and remedies provided in this Assignment or the Note or by law.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Assignment, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Assignment, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Assignment:

Amendments. This Assignment, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment. No alteration of or amendment to this Assignment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Caption Headings. Caption headings in this Assignment are for convenience purposes only and are not to be used to interpret or define the provisions of this Assignment.

Governing Law. This Assignment will be governed by, construed and enforced in accordance with federal law and the laws of the State of California. This Assignment has been accepted by Lender in the State of California.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of San Bernardino County, State of California.

Merger. There shall be no merger of the interest or estate created by this assignment with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

ASSIGNMENT OF LEASES AND RENTS
(Continued)

Loan No: 070210595

Page 5

receive and collect payment and proceeds thereunder.

Lender. The word "Lender" means PFF Bank & Trust, its successors and assigns.

Note. The word "Note" means the promissory note dated December 7, 2004, in the original principal amount of \$563,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Assignment" section of this Assignment.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

THE UNDERSIGNED ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT, AND NOT PERSONALLY BUT AS AN AUTHORIZED SIGNER, HAS CAUSED THIS ASSIGNMENT TO BE SIGNED AND EXECUTED ON BEHALF OF GRANTOR ON DECEMBER 7, 2004.

GRANTOR:

TAMERLANE ASSOCIATES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

By: Charles H. Fry, Manager
CHARLES H. FRY, Manager of TAMERLANE ASSOCIATES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

CERTIFICATE OF ACKNOWLEDGMENT

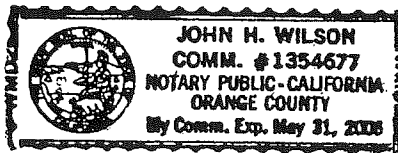
STATE OF California)

COUNTY OF Orange)

On 12-14-04, 20 before me, John H. Wilson, 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.

Signature [Signature]



(Seal)

ILLEGIBLE NOTARY SEAL DECLARATION

GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary John H. Wilson

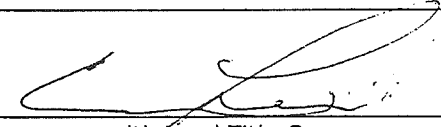
Commission Number ~~5-31-06~~ 1354677

Date Commission Expires 5-31-06

County Where Bond is Filed Orange

Place of Execution of this Declaration Irvine, CA 92614

Date 12-16-04


Commonwealth Land Title Company

RECORDING REQUESTED BY:
LandAmerica Commonwealth Title

This Document was electronically recorded by
Common Wealth

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

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)



NO FEE

2004001120624 04:30pm 12/16/04

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

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

DEED OF TRUST AND ASSIGNMENT OF RENTS
(12202 Tamerlane Drive)

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS is made as of the 15th day of December, 2004, by and among **TAMERLANE ASSOCIATES, LLC**, a California limited liability company (the "Trustor"), whose address is 19800 MacArthur Boulevard, Suite 750, Irvine CA 92612, Commonwealth Land Title Company (the "Trustee"), whose address is 28 Executive Park #300, Irvine, California 92614, 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 Agreement entered into between Trustor and the Beneficiary as of December 14, 2004 (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

6718863.03

machinery (whether fixed or movable) and other articles (including, in each instance, improvements, restorations, replacements, repairs, additions, accessions or substitutions thereto or therefor);

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 Three Hundred Eighty-Eight Thousand Five Hundred Four Dollars (\$388,504), 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 the Promissory Note or Affordable Housing Agreement (and any amendments thereto).

ARTICLE I

DEFINITIONS

1. "Agreement" means that Affordable Housing Agreement entered into by and among Trustor and the Beneficiary hereof, dated as of December 14, 2004, 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 § 882.109.

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 its 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 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.

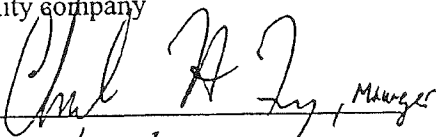
Section 8.10. Nondisturbance Agreement. In the event of any foreclosure of this Deed of Trust or a transfer in lieu of foreclosure, Beneficiary or other transferee shall recognize and not disturb the possession, tenancy, leasehold estate and rights of all tenants and occupants of the Property or any 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:



Charles H Fry

ATTACHMENT A
LEGAL DESCRIPTION

The real property located in the State of California, County of Orange, City of Garden Grove, and described as follows:

Assessor parcel number: 231-471-33
12202 Tamerlane Drive, Garden Grove, California
Lot 8 of Tract No. 3050, as per Miscellaneous Maps recorded in Book 92, Pages
31-32, in the office of the County Recorder of the County of Orange, State of California

ATTACHMENT A

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

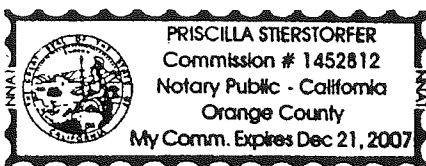
State of California

County of Orange

On December 14, 2004 before me, PRISCILLA STIERSTORFER
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared CHARLES H. FRY,
Name(s) of Signer(s)

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.

Priscilla Stierstorfer
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Deed of Trust 12202 Tamedone Dr.

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing:

Signer's Name: _____

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

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing:

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Terri Pomeroy From: Michael Salazar
Dept: City Clerk Dept: Community Development
Subject: TAMERLANE DRIVE PROJECT AREA Date: April 16, 2007
ACQUISITION FILES

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

EXHIBIT D

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)
)

(Space above for Recorder's Use)

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

RELEASE OF CONSTRUCTION COVENANTS

THIS RELEASE OF CONSTRUCTION COVENANTS (the "Release") is hereby made as of this ___ day of _____, 200_, by the **CITY OF GARDEN GROVE**, a California municipal corporation (the "City"), in favor of **TAMERLANE ASSOCIATES, LLC**, a California limited liability company (the "Owner").

RECITALS

A. On or about December 14, 2004, the City and the Owner entered into an Affordable Housing Agreement (the "Agreement"), which Agreement provides for the rehabilitation of improvements to certain real property (the "Property") situated in the City of Garden Grove, California, and more particularly described on Attachment A attached hereto and made a part hereof by this reference (the "Rehabilitation"). As required in the Agreement, the City shall furnish the Owner with a Release of Construction Covenants upon completion of the Rehabilitation, which Release shall be in such form as to permit it to be recorded in the Orange County Recorder's Office.

B. The City has conclusively determined that the Rehabilitation required by the Agreement to be made to the Property has been satisfactorily completed.

NOW, THEREFORE, the City hereto certifies as follows:

1. As provided in the Agreement, the City does hereby certify that all of the Rehabilitation of the Property has been fully and satisfactorily performed and completed in accordance with the Agreement.

2. After the recordation of this Release, any person or entity then owning or thereafter purchasing, or otherwise acquiring any interest in the Property will not (because of such ownership, purchase, or acquisition) incur any obligation or liability under the Agreement, except that such party shall be bound by any and all of the covenants, conditions, and restrictions which survive such recordation.

3. This Release is not a notice of completion as referred to in Section 3093 of the California Civil Code.

4. The recitals above are incorporated in full as part of the substantive text of this Release.

IN WITNESS WHEREOF, the City has executed this Release as of the date set forth above.

CITY OF GARDEN GROVE, a California
municipal corporation

By: _____
Its: _____

ATTEST:

City Clerk

APPROVED FOR RECORDING:

TAMERLANE ASSOCIATES, LLC, a California
limited liability company

By: _____
Its: _____

ATTACHMENT A

LEGAL DESCRIPTION OF PROPERTY

The real property located in the State of California, County of Orange, City of Garden Grove, and described as follows:

Assessor parcel number: 231-471-33

12202 Tamerlane Drive, Garden Grove, California

Lot 8 of Tract No. 3050, as per Miscellaneous Maps recorded in Book 92, Pages 31-32, in the office of the County Recorder of the County of Orange, State of California

STATE OF CALIFORNIA

)
) ss.
)

COUNTY OF _____

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

personally known to me
-or-

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

WITNESS my hand and official seal.

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

RECORDING REQUESTED BY:
LandAmerica Commonwealth Title

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)

2004001120625 04:30pm 12/16/04

105 21 A12 19
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.

REGULATORY AGREEMENT
(12202 Tamerlane Drive)

This **REGULATORY AGREEMENT** (the "Agreement") is entered into as of December 15, 2004, 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 12202 Tamerlane Drive, which is improved with a six (6) 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 Agreement, dated December 14, 2004, 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 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.

6718863-3

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 § 882.109, 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 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 Acquisition Act, 42 U.S.C. § 4201, *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. §27a - 276a-5), and as applicable, the Contract Work Hours and Safety Standards Act (40 U.S.C. §327a - 332), 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 not less than four (4) of the one bedroom Housing Units on the Property to Lower Income Households at an Affordable Rent (collectively, the "Affordable Units"), pursuant to the terms set forth below. The initial location of the Affordable Units shall be the first units available in the Property for rental to tenants of the appropriate income limits. The Affordable Units to be rented to Lower Income Households shall be of a quality equal to all of the other apartment units in the Property.

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 which 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.

Lower Income Households. Four one-bedroom units will be Affordable Units that 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 four persons; provided however, priority in selection of tenants for one bedroom Housing Units shall be given to households consisting of three 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.

~~EXHIBIT E-9~~

308. Reserve Requirements. The Owner shall set aside in a separate interest-bearing account, commencing upon the Owner's acquisition of the Property, an amount not to exceed the sum of Forty Five Thousand Dollars (\$45,000) (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, not less than two percent (2%) of the gross rents received from the Property (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 depositing not less than two percent (2%) of the gross rents received from the Property. 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 available its books and records 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 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 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

~~EXHIBIT~~ E-12

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 750
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 its property and carry on its 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.

~~EXHIBIT~~ E-14

(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 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 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: Charles H. Fry
Its: Manager

CITY:

CITY OF GARDEN GROVE, a California municipal corporation

By: William D. Allen
Mayor

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM:

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

ATTACHMENT A
LEGAL DESCRIPTION

The real property located in the State of California, County of Orange, City of Garden Grove, and described as follows:

Assessor parcel number: 231-471-33
12202 Tamerlane Drive, Garden Grove, California
Lot 8 of Tract No. 3050, as per Miscellaneous Maps recorded in Book 92, Pages
31-32, in the office of the County Recorder of the County of Orange, State of California

ATTACHMENT A

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On December 14, 2004 before me, PRISCILLA STIERSTORFER
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared CHARLES H. FRY
Name(s) of Signer(s)

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.

Priscilla Stierstorfer
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Regulatory Agreement 12202 Tanelan Rd

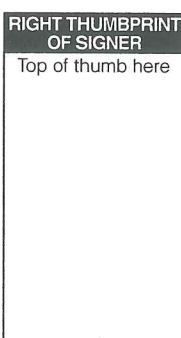
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

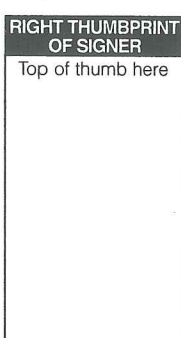
- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

Signer's Name: _____

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



Signer Is Representing:

RECORDING REQUESTED BY
LandAmerica Commonwealth title

This Document was electronically recorded by
Common Wealth

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

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

OPTION AGREEMENT
(12202 Tamerlane Drive)

THIS **OPTION AGREEMENT** is entered into as of December 15, 2004, 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 Agreement" dated as of December 14, 2004. Under the terms of the Affordable Housing Agreement, Owner has with the assistance of the City purchased real property located within the City of Garden Grove, located at 12202 Tamerlane Drive, which is improved with a six (6) 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 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

6718823.3

Housing Agreement (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 (as defined in the Affordable Housing 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 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. § 4201, 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 750
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 Agreement.

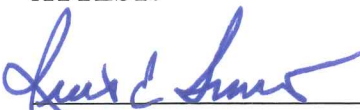
IN WITNESS WHEREOF, this Option Agreement is executed by the parties hereto on the date first above written.

CITY:

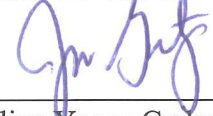
CITY OF GARDEN GROVE, a California municipal corporation

By: 
Mayor

ATTEST:

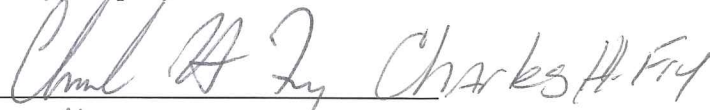

City Clerk

APPROVED AS TO FORM:


Stradling Yocca Carlson & Rauth
Special Counsel to City

OWNER:

TAMERLANE ASSOCIATES, LLC, a California limited liability company

By: 
Its: Manager

ATTACHMENT A
LEGAL DESCRIPTION

The real property located in the State of California, County of Orange, City of Garden Grove, and described as follows:

Assessor parcel number: 231-471-33
12202 Tamerlane Drive, Garden Grove, California
Lot 8 of Tract No. 3050, as per Miscellaneous Maps recorded in Book 92, Pages
31-32, in the office of the County Recorder of the County of Orange, State of California

ATTACHMENT A

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On December 14, 2004 before me, PRISCILLA STIERSTORFER
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared CHARLES H. FRY,
Name(s) of Signer(s)

personally known to me – OR – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) 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.

Priscilla Stierstorfer
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Options Agreement 12202 Tomolone Dr.

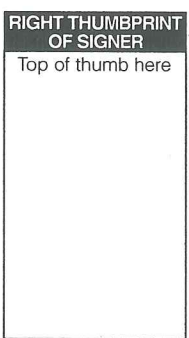
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

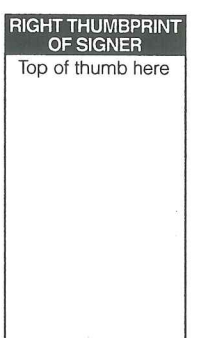
- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

Signer's Name: _____

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



Signer Is Representing:

EXHIBIT G

SCHEDULE OF PERFORMANCE

1.	Owner shall satisfy all conditions precedent to disbursement of the HOME Loan, including acquisition of the Property.	Within 180 days of the effective date of this Agreement.
2.	Owner shall submit Rehabilitation Work Write-up for City approval	Within 180 days of the effective date of this Agreement.
3.	City shall review and either approve or disapprove Developer's Rehabilitation Work Write-up.	Within 30 days of City receipt of Rehabilitation Work Write-up.
4.	Owner shall supply the City with the certificate(s) of insurance required by Section 208 of the Agreement.	Prior to the commencement of Rehabilitation.
5.	Developer shall commence Rehabilitation of the Property.	Within 30 days following City approval of the Rehabilitation Work Write-up.
6.	Developer shall complete the Rehabilitation of the Property.	Within 180 days of commencing implementation of the Rehabilitation.


I hereby certify that this is a true and correct copy of the original thereof.
 TALENTED ENGINEERS CORP.


EXHIBIT G-1

AFFORDABLE HOUSING LOAN AGREEMENTS WITH TAMERLANE ASSOCIATES, LLC, FOR THE PURCHASE OF THREE SIX-UNIT APARTMENT BUILDINGS LOCATED AT 12181, 12201, AND 12202 TAMERLANE DRIVE (F: 117.160)

Staff report dated December 14, 2004, was introduced and reviewed by staff. Staff noted that care will be taken to ensure that the documents are clear in light of some pending legal issues with another property. ^R

It was moved by Council Member Rosen, seconded by Council Member Leyes, and carried by unanimous vote, that the Loan Agreements by and between the City of Garden Grove and Tamerlane Associates, LLC, for the purchase of 12181, 12201, and 12202 Tamerlane Drive, be and hereby are approved, and the Mayor and City Clerk are authorized to execute the agreement.

and maintenance standards. Both the Police Department and the code enforcement team report a disproportionate number of cases from Tamerlane Drive.

On April 22, 2004 the City published a 30-day notice inviting the broader public to provide input regarding an 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, this project in association with the Program does not require additional environmental assessment and 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 loan agreements with Tamerlane Associates for 12181, 12201, and 12202 Tamerlane Drive are (Attachments 1.a, 1.b and 1.c):

- The total development costs for the three 6-unit properties is \$2,940,376. The City HOME loans to Tamerlane Associates will be \$1,172,326 and will be used to create operating and capital replacement reserves and towards the acquisition cost. A development fee of \$127,050 is included as a HOME grant to Vista Communities, LLC, the parent company of Tamerlane Associates. The combined cost to the City is \$1,299,376 including the HOME loans 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, 12 1-bedroom units to be affordable to households earning 50% to 60% of the area median income.
- The buildings are in fair condition, however, exterior and interior rehabilitation will be necessary. 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 throughout the duration of the agreement.
- Vista Communities has established a strong record of professional property management on several properties in 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.

- Staff has reviewed the proposed assistance packages and found it within acceptable limits given the fiscal viability of the project and 15-year affordability covenants (Attachments 2.a, 2.b and 2.c).
- HUD has accepted the City's environmental review, which found these acquisitions to be categorically exempt (Attachment 3).

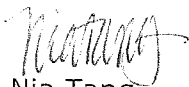
SUMMARY

Staff recommends that the City Council:

1. Approve the attached loan agreements between the City and Tamerlane Associates for the purchase of 12181, 12201, and 12202 Tamerlane Drive.
2. Authorize the Mayor and City Clerk to execute the agreements and all other documents necessary to implement the agreements.



SUSAN EMERY
Community Development Director




By: Nia Tang
Senior Administrative Analyst

Attachments:

1. Loan Agreements (1.a, 1.b, and 1.c)
2. Financial Gap Reviews (2.a, 2.b and 2.c)
3. Environmental categorical exemption: Authority to Use Grant Funds Certification

P:\neigh-im\HUD PY 2004\council reports\12181, 12201, 12202 Tamerlane agreement - Council.doc
F\HOME 04-05\12181, 12201, 12202 Tamerlane - contract

Recommended for Approval



Matthew Fertal
City Manager

FINANCIAL GAP REVIEW FOR 12181 TAMERLANE APARTMENTS PROJECT

The following financial gap analysis has been prepared for the 12181 Tamerlane apartments in Garden Grove. The developer, Vista Communities, Inc., is to acquire one parcel with a total of six one-bedroom units and rehabilitate the units first by eliminating health and safety code deficiencies and then to complete improvements when the units turn over (Project). The Developer is also proposing to impose income and affordability restrictions. As currently proposed, the gap between the available funding sources and the Project costs will be funded by the City of Garden Grove (City) using HOME Investment Partnerships Act (HOME) funds.

Development Costs

1. *Site Assemblage Costs*

- The Developer has indicated that the purchase price of the Project is \$800,000, which is equivalent to \$133,333 per unit.
- 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.

2. *Direct Costs*

- The Developer is proposing to undertake a minor rehabilitation scope to bring the units up to HUD Housing Quality Standards (HQS) and the City's property standards set forth in 24 CFR 92.251 (a) of the HOME Final Rule. The direct costs are estimated at \$62,020 or \$10,336 per unit. A ten percent construction contingency and a ten percent construction management fee are included.
- No allowance was made for off-site improvements.
- No allowance was provided for landscaping or hardscaping activities.
- Subject to the pending lead-based paint (LBP) survey and risk assessment, the Developer may need to include an allowance to mitigate the presence of LBP by placing interim controls combined with an LBP management plan.
- The Developer estimates rehabilitation costs accordingly:

	Total Rehabilitation Costs	Cost Per Unit
Exterior Improvements	\$12,714	\$2,119
Interior Improvements	\$38,970	\$6,495
Contingency (10%)	\$5,168	
Construction Management (10%)	\$5,168	
Total Rehabilitation Costs	\$62,020	(a)\$8,614

(a) includes contingency and construction management

3. Indirect Costs

- The general indirect costs include public permits and fee costs; taxes, legal and accounting fees; insurance costs; and a soft cost contingency allowance.
- The Developer budgeted \$500 for permits; \$8,000 or one percent of the purchase price for acquisition closing costs and escrow fees; and \$10,000 or \$1,667 per unit for insurance costs.
- The Developer will receive a \$42,350 fee for undertaking the project.
- The Developer proposes to fund a \$45,000 operating reserve from the City's loan proceeds instead of incorporating an operating reserve account in the operating budget. Under HOME regulations, an operating deficit reserve is permissible for a period of up to 18 months during lease-up.¹

4. Financing Cost

- The Developer is obtaining a conventional loan of \$539,000 from PFF Bank and Trust to purchase the property. The mortgage loan is an adjustable rate that starts at five percent, with monthly principal and interest payments of \$2,893.
 - The Developer estimates financing costs for his permanent loan at \$5,390 or one percent of the loan amount.
 - The Developer assumes the six tenants will remain in place through the rehabilitation period and will generate estimated \$2,736 in monthly (projected annually at \$32,826) in net operating income (NOI), an amount insufficient to service a monthly debt payment of \$2,893.
5. City policy requires the Developer not to increase the rent levels above the amounts being paid by the current occupants for a least one year. Based on the projected future rent revenues, it is estimated that the Developer will have to absorb approximately \$1,896 in foregone rent income during the first year.²

¹ See HOME Final Rule under 24 CFR 92.206(d)(5)

² The Developer projects the two market one-bedroom units at \$875 rent versus the current \$850 rent; the four High HOME one-bedroom units at \$877 rent versus the current \$850 rent.

Stabilized Net Operating income

The restricted rents less the utility allowance provided by the City's Housing Authority are as follows:

	Low HOME Rent	High Home Rent
Maximum Rent	708	901
Less: Utility Allowance	24	24
Allowable HOME Rent	684	877

The Developer suggests that the total revenue from rent, inclusive of two market rate units proposed at \$850 per month and laundry income at \$13 monthly, will be approximately \$47,106. When this effective gross income or EGI (gross income minus vacancy and collection loss of five percent) is reduced by operating expenses \$23,400 (\$1,950 monthly), the Project's NOI available to support debt is \$21,276 (\$1,773) at time of stabilization.

The Developer has not provided an operating budget as yet; however, operating expenses are approximately 40 percent of EGI or \$3,900 per unit, which is within an acceptable range for adequate maintenance of the Project.

Available Sources of Funds

The Developer has identified these sources of funding for the Project:

Conventional Loan (at 67 percent LTV)	\$539,000
HOME Funds	<u>\$434,261</u>
Total Development Cost	\$973,261

Financial Gap Calculation

The Developer estimates that the cost of development is \$973,261 and the \$539,000 can be financed from a conventional lender, leaving a financial gap of \$434,261. This amount can be supported by HOME using the proposed rent structure as the following chart illustrates.

	One-Bedroom Units
HOME Limit ³	\$124,438
Number of Units	4
Maximum HOME Assistance	\$497,752

³ HOME maximum per unit subsidy limits are based on the Section 221(d) (3) for elevator-type projects. These limits are determined by HUD's Office of Multifamily Housing Programs.

The chart below demonstrates that increasing the HOME designated units to four units has virtually no effect on the Project at time of stabilization. Because of requirements set forth under the Federal Uniform Relocation Act, residents occupying units at the time of initiation of negotiations must not be rent burdened. Thus, a resident is to pay the greater of an affordable rent (30 percent of household gross income) or current rent otherwise the resident is eligible for relocation assistance an economically displaced household. The Project current rents are less than the HOME rent limit (\$877/month for the one-bedroom High HOME unit), which result in a maximum rent less than allowed under HOME rent levels. There may be an effect, however, in the subsequent three years because the aforementioned relocation standard would continue for the current tenants in HOME units for a 42-month period. If market rents escalated, HOME rents might not keep pace.

Income

High HOME Rent	4 units@	\$800 month	\$38,400
Market Rent	1 unit@	\$800 month	\$9,600
	1 unit@	\$850 month	\$10,200
Laundry Income	6 units@	\$13/month	\$900
Gross Income			\$59,100
Less: Vacancy	5% of Gross Income		\$2,900
Effective Gross Income			<u>\$56,200</u>

Operating Expenses

Expenses	6 units@	\$3,900/year	<u>\$23,400</u>
Total Operating Expenses			<u>\$23,400</u>
NOI *			<u>\$32,800</u>
Less: Debt Service		\$2,893/month	<u>\$34,700</u>
Cash Flow			<u>(\$1,900)</u>

**If the Developer includes an annualized replacement reserve of \$300 per unit, the negative cash flow in this static pro forma increases \$1,800 to (\$3,700).*

HOME Funds Assistance Limit & Minimum Number of HOME Designated Units

The amount of HOME funds that can be invested in affordable housing project may not exceed the dollar limits established by HUD. Based upon a review of the Developer's pro forma, the City may lend up to the HOME subsidy limits for a minimum of four HOME-restricted units. CPD Notice 98-02, which superseded 94-12, sets forth guidelines relative to ascertaining the minimum number of HOME-assisted units that may be designated for a HOME project. As such, the subsidy must be the lesser of the maximum HOME per unit subsidy or the cost allocation methodology as described in CPD Notice 98-02 for comparable units.

- The average per-unit HOME investment may not exceed the HOME maximum per unit subsidy for the City. The one-bedroom maximum subsidy for Los Angeles, Orange, San Bernardino, and Riverside Counties is \$124,438.

- This Project will use the pro-rating cost allocation method in which the total HOME investment divided by the number of HOME-assisted units determines the per unit HOME investment. The ratio of HOME to total development costs is approximately 67 percent, thus, the number of HOME restricted units is four and the resultant Home subsidy would be permitted.

HOME-Assisted Units/Total Number of Units	4/6
Equals	
HOME Investment/Total Development Costs	\$434,261/\$973,261

Affordability Period

As stipulated under 24 CFR 92.252 (e), the minimum period of affordability for rehabilitation of the Project is predicated upon the amount of HOME funds per unit. Insofar as the HOME assistance exceeds \$40,000 per unit, the minimum period of affordability is fifteen years.

A Certification of Federal Assistance

A Certification of Federal Assistance is to be provided by the Developer representing that no other governmental assistance is to not being provided, and that should other sources be sought subsequent to City assistance, the City will be notified promptly.

Conclusion

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

1. The City can reasonably provide the Project the amount of assistance being requested by the Developer, \$434,261.
2. If the Developer's assistance request is granted, at least four units in the Project must be designated as High HOME units.
3. If \$434,261 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.

FINANCIAL GAP REVIEW FOR 12201 TAMERLANE APARTMENTS PROJECT

The following financial gap analysis has been prepared for the 12201 Tamerlane apartments in Garden Grove. The developer, Vista Communities, Inc., is to acquire one parcel with a total of six one-bedroom units and rehabilitate the units first by eliminating health and safety code deficiencies and then to complete improvements when the units turn over (Project). The Developer is also proposing to impose income and affordability restrictions. As currently proposed, the gap between the available funding sources and the Project costs will be funded by the City of Garden Grove (City) using HOME Investment Partnerships Act (HOME) funds.

Development Costs

1. *Site Assemblage Costs*

- The Developer has indicated that the purchase price of the Project is \$800,000, which is equivalent to \$133,333 per unit.
- 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.

2. *Direct Costs*

- The Developer is proposing to undertake a minor rehabilitation scope to bring the units up to HUD Housing Quality Standards (HQS) and the City's property standards set forth in 24 CFR 92.251 (a) of the HOME Final Rule. The direct costs are estimated at \$62,020 or \$10,336 per unit. A ten percent construction contingency and a ten percent construction management fee are included.
- No allowance was made for off-site improvements.
- No allowance was provided for landscaping or hardscaping activities.
- Subject to the pending lead-based paint (LBP) survey and risk assessment, the Developer may need to include an allowance to mitigate the presence of LBP by placing interim controls combined with an LBP management plan.
- The Developer estimates rehabilitation costs accordingly:

	Total Rehabilitation Costs	Cost Per Unit
Exterior Improvements	\$12,714	\$2,119
Interior Improvements	\$38,970	\$6,495
Contingency (10%)	\$5,168	
Construction Management (10%)	\$5,168	
Total Rehabilitation Costs	\$62,020	(a)\$8,614

(a) includes contingency and construction management

3. *Indirect Costs*

- The general indirect costs include public permits and fee costs; taxes, legal and accounting fees; insurance costs; and a soft cost contingency allowance.
- The Developer budgeted \$500 for permits; \$8,000 or one percent of the purchase price for acquisition closing costs and escrow fees; and \$10,000 or \$1,667 per unit for insurance costs.
- The Developer will receive a \$42,350 fee for undertaking the project.
- The Developer proposes to fund a \$45,000 operating reserve from the City's loan proceeds instead of incorporating an operating reserve account in the operating budget. Under HOME regulations, an operating deficit reserve is permissible for a period of up to 18 months during lease-up.¹

4. *Financing Cost*

- The Developer is obtaining a conventional loan of \$539,000 from PFF Bank and Trust to purchase the property. The mortgage loan is an adjustable rate that starts at five percent, with monthly principal and interest payments of \$2,893.
 - The Developer estimates financing costs for his permanent loan at \$5,390 or one percent of the loan amount.
 - The Developer assumes the six tenants will remain in place through the rehabilitation period and will generate estimated \$2,783 in monthly (projected annually at \$33,396) in net operating income (NOI), an amount insufficient to service a monthly debt payment of \$2,893.
5. City policy requires the Developer not to increase the rent levels above the amounts being paid by the current occupants for a least one year. Based on the projected future rent revenues, it is estimated that the Developer will have to absorb approximately \$1,896 in foregone rent income during the first year.²

¹ See HOME Final Rule under 24 CFR 92.206(d)(5)

² The Developer projects the two market one-bedroom units at \$875 rent versus the current \$850 rent; the four High HOME one-bedroom units at \$877 rent versus the current \$850 rent.

Stabilized Net Operating income

The restricted rents less the utility allowance provided by the City's Housing Authority are as follows:

	Low HOME Rent	High Home Rent
Maximum Rent	708	901
Less: Utility Allowance	24	24
Allowable HOME Rent	684	877

The Developer suggests that the total revenue from rent, inclusive of two market rate units proposed at \$850 per month and laundry income at \$13 monthly, will be approximately \$47,106. When this effective gross income or EGI (gross income minus vacancy and collection loss of five percent) is reduced by operating expenses \$23,400 (\$1,950 monthly), the Project's NOI available to support debt is \$21,276 (\$1,773) at time of stabilization.

The Developer has not provided an operating budget as yet; however, operating expenses are approximately 40 percent of EGI or \$3,900 per unit, which is within an acceptable range for adequate maintenance of the Project.

Available Sources of Funds

The Developer has identified these sources of funding for the Project:

Conventional Loan (at 67 percent LTV)	\$539,000
HOME Funds	<u>\$434,261</u>
Total Development Cost	\$973,261

Financial Gap Calculation

The Developer estimates that the cost of development is \$973,261 and the \$539,000 can be financed from a conventional lender, leaving a financial gap of \$434,261. This amount can be supported by HOME using the proposed rent structure as the following chart illustrates.

	One-Bedroom Units
HOME Limit ³	\$124,438
Number of Units	4
Maximum HOME Assistance	\$497,752

³ HOME maximum per unit subsidy limits are based on the Section 221(d) (3) for elevator-type projects. These limits are determined by HUD's Office of Multifamily Housing Programs.

The chart below demonstrates that increasing the HOME designated units to four units has virtually no effect on the Project at time of stabilization. Because of requirements set forth under the Federal Uniform Relocation Act, residents occupying units at the time of initiation of negotiations must not be rent burdened. Thus, a resident is to pay the greater of an affordable rent (30 percent of household gross income) or current rent otherwise the resident is eligible for relocation assistance an economically displaced household. The Project current rents are less than the HOME rent limit (\$877/month for the one-bedroom High HOME unit), which result in a maximum rent less than allowed under HOME rent levels. There may be an effect, however, in the subsequent three years because the aforementioned relocation standard would continue for the current tenants in HOME units for a 42-month period. If market rents escalated, HOME rents might not keep pace.

Income

High HOME Rent	4 units@	\$800 month	\$38,400
Market Rent	2 units@	\$850 month	\$20,400
Laundry Income	6 units@	\$13/month	\$900
Gross Income			\$59,700
Less: Vacancy	5% of Gross Income		\$2,900
Effective Gross Income			<u>\$56,800</u>

Operating Expenses

Expenses	6 units@	\$3,900/month	<u>\$23,400</u>
Total Operating Expenses			<u>\$23,400</u>
NOI *			<u>\$33,400</u>
Less: Debt Service		\$2,893/month	<u>\$34,700</u>
Cash Flow			<u>(\$1,300)</u>

**If the Developer includes an annualized replacement reserve of \$300 per unit, the negative cash flow in this static pro forma increases \$1,800 to (\$3,100).*

HOME Funds Assistance Limit & Minimum Number of HOME Designated Units

The amount of HOME funds that can be invested in affordable housing project may not exceed the dollar limits established by HUD. Based upon a review of the Developer's pro forma, the City may lend up to the HOME subsidy limits for a minimum of four HOME-restricted units. CPD Notice 98-02, which superseded 94-12, sets forth guidelines relative to ascertaining the minimum number of HOME-assisted units that may be designated for a HOME project. As such, the subsidy must be the lesser of the maximum HOME per unit subsidy or the cost allocation methodology as described in CPD Notice 98-02 for comparable units.

- The average per-unit HOME investment may not exceed the HOME maximum per unit subsidy for the City. The one-bedroom maximum subsidy for Los Angeles, Orange, San Bernardino, and Riverside Counties is \$124,438.

- This Project will use the pro-rating cost allocation method in which the total HOME investment divided by the number of HOME-assisted units determines the per unit HOME investment. The ratio of HOME to total development costs is approximately 67 percent, thus, the number of HOME restricted units is four and the resultant Home subsidy would be permitted.

HOME-Assisted Units/Total Number of Units	4/6
Equals	
HOME Investment/Total Development Costs	\$434,261/\$973,261

Affordability Period

As stipulated under 24 CFR 92.252 (e), the minimum period of affordability for rehabilitation of the Project is predicated upon the amount of HOME funds per unit. Insofar as the HOME assistance exceeds \$40,000 per unit, the minimum period of affordability is fifteen years.

A Certification of Federal Assistance

A Certification of Federal Assistance is to be provided by the Developer representing that no other governmental assistance is to not being provided, and that should other sources be sought subsequent to City assistance, the City will be notified promptly.

Conclusion

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

1. The City can reasonably provide the Project the amount of assistance being requested by the Developer, \$434,261.
2. If the Developer's assistance request is granted, at least four units in the Project must be designated as High HOME units.
3. If \$434,261 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.

FINANCIAL GAP REVIEW FOR 12202 TAMERLANE APARTMENTS PROJECT

The following financial gap analysis has been prepared for the 12202 Tamerlane apartments in Garden Grove. The developer, Vista Communities, Inc., is to acquire one parcel with a total of six one-bedroom units and rehabilitate the units first by eliminating health and safety code deficiencies and then to complete improvements when the units turn over (Project). The Developer is also proposing to impose income and affordability restrictions. As currently proposed, the gap between the available funding sources and the Project costs will be funded by the City of Garden Grove (City) using HOME Investment Partnerships Act (HOME) funds.

Development Costs

1. *Site Assemblage Costs*

- The Developer has indicated that the purchase price of the Project is \$810,000, which is equivalent to \$135,000 per unit.
- 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.

2. *Direct Costs*

- The Developer is proposing to undertake a minor rehabilitation scope to bring the units up to HUD Housing Quality Standards (HQS) and the City's property standards set forth in 24 CFR 92.251 (a) of the HOME Final Rule. The direct costs are estimated at \$72,274 or \$12,046 per unit. A ten percent construction contingency and a ten percent construction management fee are included.
- No allowance was made for off-site improvements.
- No allowance was provided for landscaping or hardscaping activities.
- Subject to the pending lead-abased paint (LBP) survey and risk assessment, the Developer may need to include an allowance to mitigate the presence of LBP by placing interim controls combined with an LBP management plan.
- The Developer estimates rehabilitation costs accordingly:

	Total Rehabilitation Costs	Cost Per Unit
Exterior Improvements	\$21,858	\$3,643
Interior Improvements	\$38,370	\$6,395
Contingency (10%)	\$6,023	
Construction Management (10%)	\$6,023	
Total Rehabilitation Costs	\$72,274	(a)\$12,046

(a) includes contingency and construction management

3. Indirect Costs

- The general indirect costs include public permits and fee costs; taxes, legal and accounting fees; insurance costs; and a soft cost contingency allowance.
- The Developer budgeted \$500 for permits; \$8,100 or one percent of the purchase price for acquisition closing costs and escrow fees; and \$10,000 or \$1,667 per unit for insurance costs.
- The Developer will receive an \$42,350 fee for undertaking the project.
- The Developer proposes to fund a \$45,000 operating reserve from the City's loan proceeds instead of incorporating an operating reserve account in the operating budget. Under HOME regulations, an operating deficit reserve is permissible for a period of up to 18 months during lease-up.¹

4. Financing Cost

- The Developer is obtaining a conventional loan of \$563,000 from PFF Bank and Trust to purchase the property. The mortgage loan is an adjustable rate that starts at five percent, with monthly principal and interest payments of \$3,022.
 - The Developer estimates financing costs for his permanent loan at \$5,630 or ten percent of the loan amount.
 - The Developer assumes the six tenants will remain in place through the rehabilitation period and will generate estimated \$2,973 in monthly (projected annually at \$35,676) in net operating income (NOI), an amount insufficient to service a monthly debt payment of \$3,022.
5. City policy requires the Developer not to increase the rent levels above the amounts being paid by the current occupants for a least one year. Based on the projected future rent revenues, it is estimated that the Developer will have to absorb approximately \$1,464 in foregone rent income during the first year.²

¹ See HOME Final Rule under 24 CFR 92.206(d)(5)

² The Developer projects the two market one-bedroom units at \$875 rent versus the current \$850 rent; the four High HOME one-bedroom units at \$868 rent versus the current \$850 rent.

Stabilized Net Operating income

The restricted rents less the utility allowance provided by the City's Housing Authority are as follows:

	Low HOME Rent	High Home Rent
Maximum Rent	708	901
Less: Utility Allowance	33	33
Allowable HOME Rent	673	868

The Developer suggests that the total revenue from rent, inclusive of two market rate units proposed at \$850 per month and laundry income at \$13 monthly, will be approximately \$59,076. When this effective gross income or EGI (gross income minus vacancy and collection loss of five percent) is reduced by operating expenses \$23,400 (\$1,950 monthly), the Project's NOI available to support debt is \$32,616 (\$2,718) at time of stabilization.

The Developer has not provided an operating budget as yet; however, operating expenses are approximately 40 percent of EGI or \$3,900 per unit, which is within an acceptable range for adequate maintenance of the Project.

Available Sources of Funds

The Developer has identified these sources of funding for the Project:

Conventional Loan (at 70 percent LTV)	\$563,000
HOME Funds	<u>\$430,854</u>
Total Development Cost	\$993,854

Financial Gap Calculation

The Developer estimates that the cost of development is \$993,854 and the \$563,000 can be financed from a conventional lender, leaving a financial gap of \$430,854. This amount can be supported by HOME using the proposed rent structure as the following chart illustrates.

	One-Bedroom Units
HOME Limit ³	\$124,438
Number of Units	4
Maximum HOME Assistance	\$497,752

³ HOME maximum per unit subsidy limits are based on the Section 221(d) (3) for elevator-type projects. These limits are determined by HUD's Office of Multifamily Housing Programs.

The chart below demonstrates that increasing the HOME designated units to four units has virtually no effect on the Project at time of stabilization. Because of requirements set forth under the Federal Uniform Relocation Act, residents occupying units at the time of initiation of negotiations must not be rent burdened. Thus, a resident is to pay the greater of an affordable rent (30 percent of household gross income) or current rent otherwise the resident is eligible for relocation assistance an economically displaced household. The Project current rents are less than the HOME rent limit (\$868/month for the one-bedroom High HOME unit), which result in a maximum rent less than allowed under HOME rent levels. There may be an effect, however, in the subsequent three years because the aforementioned relocation standard would continue for the current tenants in HOME units for a 42-month period. If market rents escalated, HOME rents might not keep pace.

Income

High HOME Rent	4 units@	\$850 month	\$40,800
Market Rent	2 units@	\$850 month	\$20,400
Laundry Income	6 units@	\$13/month	\$900
Gross Income			\$62,100
Less: Vacancy	5% of Gross Income		\$3,100
Effective Gross Income			<u>\$59,100</u>

Operating Expenses

Expenses	6 units@	\$3,900/year	<u>\$23,400</u>
Total Operating Expenses			<u>\$23,400</u>
NOI *			<u>\$35,700</u>
Less: Debt Service		\$2,970/month	<u>\$39,100</u>
Cash Flow			<u>(\$3,400)</u>

**If the Developer includes an annualized replacement reserve of \$300 per unit, the negative cash flow in this static pro forma increases \$1,800 to (\$5,200).*

HOME Funds Assistance Limit & Minimum Number of HOME Designated Units

The amount of HOME funds that can be invested in affordable housing project may not exceed the dollar limits established by HUD. Based upon a review of the Developer's pro forma, the City may lend up to the HOME subsidy limits for a minimum of four HOME-restricted units. CPD Notice 98-02, which superseded 94-12, sets forth guidelines relative to ascertaining the minimum number of HOME-assisted units that may be designated for a HOME project. As such, the subsidy must be the lesser of the maximum HOME per unit subsidy or the cost allocation methodology as described in CPD Notice 98-02 for comparable units.

- The average per-unit HOME investment may not exceed the HOME maximum per unit subsidy for the City. The one-bedroom maximum subsidy for Los Angeles, Orange, San Bernardino, and Riverside Counties is \$124,438.

- This Project will use the pro-rating cost allocation method in which the total HOME investment divided by the number of HOME-assisted units determines the per unit HOME investment. The ratio of HOME to total development costs is approximately 67 percent, thus, the number of HOME restricted units is four and the resultant Home subsidy would be permitted.

HOME-Assisted Units/Total Number of Units	4/6
Equals	
HOME Investment/Total Development Costs	\$430,854/\$993,854

Affordability Period

As stipulated under 24 CFR 92.252 (e), the minimum period of affordability for rehabilitation of the Project is predicated upon the amount of HOME funds per unit. Insofar as the HOME assistance exceeds \$40,000 per unit, the minimum period of affordability is fifteen years.

A Certification of Federal Assistance

A Certification of Federal Assistance is to be provided by the Developer representing that no other governmental assistance is to not being provided, and that should other sources be sought subsequent to City assistance, the City will be notified promptly.

Conclusion

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

1. The City can reasonably provide the Project the amount of assistance being requested by the Developer, \$430,854.
2. If the Developer's assistance request is granted, at least four units in the Project must be designated as High HOME units.
3. If \$430,854 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.

Authority to Use Grant Funds

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

02-S307

To: (name & address of Grant Recipient & name & title of Chief Executive Officer) Matthew Fertal, City Manager (Attn: Kathy Quick) City of Garden Grove 11222 Acacia Parkway Garden Grove, CA 92840	Copy To: (name & address of Sub Recipient or Secondary Contact)
We received your Request for Release of Funds and Certification, form HUD-7015.15 on	05/12/04
Your Request was for HUD/State Identification Number	B-04/05/06-MC-06-0505 and M-04/05/06-MC-06-0511

All objections, if received, have been considered. And the minimum waiting period has transpired. You are hereby authorized to use funds provided to you under the above HUD/State Identification Number. File this form for proper record keeping, audit, and inspection purposes.

Project/Activity:

Tamerlane Neighborhood Revitalization Program

Location:


Residential areas east of Buaro St, south of Hampton Ave, west of Thackery Dr. & north of Twintree Ave

Funding Source:

CDBG and HOME

Comments:

Revised RROF was requested and received on 6/7/04. CDBG funds \$285,000. HOME funds \$2,750,000. Funds in excess of publication funds are Categorically Excluded (not subject to 58.5) per 24CFR58.35(b)(7). Funds are not available until 7/1/04.

Typed Name of Authorizing Officer: William G. Vasquez, Director Office of CPD Los Angeles Field Office	Signature of Authorizing Officer 	Effective Release Date: 05/28/04
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EO: 06/08/04

Action Number: 02-S307
 form HUD-7015.16 (2/94)
 ref. Handbook 6513.0

03-046