



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: Community Services  
Department No.: 057  
For Agenda Of: September 16, 2014  
Placement: Administrative  
Estimated Tme:  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

**TO:** Board of Supervisors  
**FROM:** Department *RE* Renée E. Ball, Interim Community Services Director (805) 568-2467  
Director(s)  
Contact Info: Margo Wagner, Sr. Housing Program Specialist (805) 568-3529  
**SUBJECT:** Sandpiper Apartments – Subordination of County Regulatory Agreement and Declaration of Restrictive Covenants to U.S. Bank and California Community Reinvestment Corporation, Third Supervisorial District.

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Risk Management

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

A. Approve and authorize the Chair of the Board of Supervisors to execute a Subordination Agreement (Attachment A) that subordinates the following County documents currently recorded against the Sandpiper Apartments in Goleta (the Project) to a deed of trust and other senior loan documents securing a construction loan from U.S. Bank and a subsequent permanent loan with California Community Reinvestment Corporation (CCRC):

1. County Regulatory Agreement and Declaration of Restrictive Covenants;
2. Agreement to Grant Mitigation Funds to the Housing Authority; and

B. Determine that approval of the Subordination Agreement is not the approval of a project that is subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(4), finding that the project is the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment, and direct staff to file a Notice of Exemption (NOE) (Attachment B).

Summary Text:

Sandpiper Apartments (Project) consists of three properties located at 3709-390 Mathilda Drive and 355-375 Ellwood Beach Drive in Goleta. The L.C.Grossman Homes consists of seven buildings located at 5575-5595 Armitos Avenue in Goleta. This request is being made by the Housing Authority of the County of Santa Barbara (Housing Authority). The Projects are presently owned by the Housing Authority, which has formulated a limited partnership with its affiliate Surf Development Company. The name of the limited partnership is Leland Grossman Sandpiper, L.P. a California limited partnership (Limited Partnership). The Housing Authority and Surf Development Company will be the general partners on this Project. Surf Affordable Housing Enterprises, Inc., A California corporation, is the Limited Partner. It is the intent of the Limited Partnership to acquire the property from the current owner and rehabilitate 82 multi-family affordable housing rental units. This transaction will also facilitate the Housing Authority's participation in HUD's Rental Assistance Demonstration Program (RAD).

Under the RAD program housing authorities would be able to convert public housing rental subsidies to Section 8 Project based rental subsidies on an individual development basis, which in turn assists public housing authorities borrow funds for renovations, accumulate reserves and otherwise preserve and reinvest in their public housing stock. RAD seeks to give public housing authorities more flexibility to access private and public funding sources, including low income housing tax credits (LIHTCs), for needed improvements to its public housing stock. The program also aims to improve public housing authorities' long-term financial outlook by easing their reliance on less stable appropriations from the Federal government. In early 2012 the U. S. Department of Housing and Urban Development (HUD) invited housing authorities throughout the country to participate in a demonstration program entitled the Rental Assistance Demonstration Program (RAD).

The Housing Authority applied to the RAD program and in December 2012 was approved to transition the Sandpiper Apartments and L.C. Grossman Homes to this program. In May, 2014, the Housing Authority applied to the State of California for 4% Federal tax credits and tax exempt bonds for the property. In July 2014, the tax credits and bonds were approved by the California Tax Credit Allocation Committee.

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~~In order for the interest on these bonds to be tax-exempt (i.e. be excluded from the gross incomes of the owner of the bonds), TEFRA and the Internal Revenue Service (IRS) required that a public hearing be held two weeks prior to approval of bond financing by the Housing Authority's Board of Directors. The public hearing was held in the City of Goleta because it has jurisdiction of the project area. The City of Goleta adopted Resolution No. 14-03 in January, 2014, approving the issuance of bonds for purpose of financing the acquisition of the Project.~~

The formation of the Limited Partnership was required to obtain the low income housing tax credits. These tax credits and tax exempt bonds will enable the Limited Partnership to purchase and renovate the Project. U.S. Bank intends to provide approximately \$7,378,917 in construction loan proceeds to facilitate this effort. After the construction period ends and certain tax exempt bonds are sold, the remaining construction loan balance in an amount of approximately \$3,620,000 will be converted into a permanent loan made by the California Community Reinvestment Corporation (CCRC). The Housing Authority is requesting that the County subordinate the following documents to the construction and permanent loans in order to induce these lenders to invest in the Project:

1. County Regulatory Agreement and Declaration of Restrictive Covenants; and
2. Agreement to Grant Mitigation Funds to the Housing Authority.

During the rehabilitation period, the current residents will be provided full relocation assistance which could include Section 8 vouchers or other adequate assistance based on their needs and income levels. The Housing Authority's intent is to preserve the income restrictions on the units in perpetuity; the project will be subject to a 55-year affordability housing covenant. The proposed rehabilitation of these low income units preserves a critical affordable housing resource on the south coast.

**Background:**

In August, 1985, the Housing Authority was awarded a grant of Countywide local funds in the amount of \$104,000 to assist the Housing Authority in developing fourteen residential low income rental units located at 5575-5595 Armitos Avenue in Goleta, California. The term of this grant was a 30 year term and is expected to expire in August, 2015. In relation to this grant, the County recorded an Agreement to Grant Mitigation Funds to the Housing Authority against this property, which requires the owner to provide low income housing. This property has been included in the Housing Authority's Project and will secure the loans necessary for acquisition and rehabilitation. In the event of foreclosure and sale of the property, the County's grant agreement may be extinguished in a foreclosure; however there will be no requirement of repayment to HUD since mitigation funds are non-federally related.

In November 2000, the Housing Authority received a \$600,000 loan of HOME funds (\$499,394) and Countywide local funds (\$100,606) to acquire the 68 unit apartment complex of 20 efficiency units (studios) and 48 one-bedroom units and townhomes located at 3709-390 Mathilda Drive and 355-375 Ellwood Beach Drive in Goleta. The HOME program requires that HOME-assisted units remain affordable for a *minimum* period of 15 years. This minimum affordability period ends on March 11, 2017. The County recorded the County's Regulatory Agreement and Declaration of Restrictive Covenants (Regulatory Agreement), which requires that the eight (8) units remain affordable for a period of 40 years. In April 2003, the Board approved the Subordination of the Regulatory Agreement to facilitate a new first trust deed in the amount of \$5,360,070.00 with a more favorable financing interest rate. At that time, the County's loan was repaid in full including interest for a total of \$642,460; as a result there is no outstanding County loan on this property.

**Risk Analysis:**

The Project has eight (8) units that are income and rent restricted by the County's HOME Regulatory Agreement. The subordination of the County HOME Regulatory Agreement to a new senior deed of trust securing a construction loan in the amount of approximately \$7,378,917 with U.S. Bank and subsequent permanent senior financing in an amount of approximately \$3,620,000 with CCRC bank will not alter those HOME program requirements. The current loan with Rabobank will be paid off through the construction financing. Although the affordability period to HUD expires on 3/11/2017, the County will continue to monitor the Project's financial statements annually, as well as financial statements from the Limited Partnership for the entire regulatory period which expires in 2040. The HOME units will continue to be monitored through the County's HOME program to ensure that the units are occupied by eligible tenants.

The subordination agreement will result in the County's rights under the County Regulatory Agreement and Agreement to Grant Mitigation Funds to the Housing Authority becoming subordinate to the construction financing and subsequent permanent financing. In the event of foreclosure and sale of the property, the County's Regulatory Agreement and Agreement to Grant Mitigation Funds may be

extinguished in a foreclosure. The Agreement to Grant Mitigation Funds to the Housing Authority is expected to expire in August, 2015, which will be prior to the permanent loan with CCRC being placed on the properties. If the Regulatory Agreement is extinguished, the County will lose the authority to enforce HUD's requirement that the HOME-assisted units remain affordable until 3/11/2017. Violation of this requirement could subject the County to remedial action by HUD, including the repayment of HOME funds.

HCD has evaluated the risks associated with the Project and determined that such risks are within industry standards and that there are safeguards in place to prevent or mitigate risks. Projects that receive low-income housing tax credits are subject to ongoing financial and property compliance monitoring to meet the requirements of the IRS tax codes. Investors risk losing tax credits for non-compliance, therefore, the Project has been fully vetted and underwritten by the tax credit investor(s).

The Subordination Agreement makes reference to several documents currently in draft form. If the Subordination Agreement or the referenced documents are revised in a substantive manner that materially affects the County's risk, then HCD will bring this matter back to the Board for further consideration.

**Fiscal Analysis:**

Resources associated with processing the paperwork for the subordination agreement were absorbed by the existing 2 FTE inclusionary housing section, which is funded by the Affordable Housing Fund. On-going monitoring will continue through the monitoring position funded through the General Fund.

**Staffing Impacts:**

As referenced in the Budget Page D-188, there are no staffing impacts other than for on-going monitoring of the original Project.

**Special Instructions:**

- Execute three (3) original copies of Attachment A and contact Margo Wagner at ext. 3529 to pick up two (2) original signed copies.
- Provide a copy of the minute order reflecting Board Action

**Attachments:**

~~Attachment A – Subordination Agreement~~

Attachment B – CEQA NOE

Attachment C – County Regulatory Agreement and Declaration of Restrictive Covenants

Attachment D – Agreement to Grant Mitigation Funds to the Housing Authority

**Authored by:**

Margo Wagner, Senior Housing Program Specialist

**cc:**

Scott Greenwood, Deputy County Counsel

Bob Havlicek, Housing Authority of the County of Santa Barbara

# ATTACHMENT A

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WHEN RECORDED MAIL TO:

Davis Wright Tremaine LLP  
865 S. Figueroa Street  
Suite 2400  
Los Angeles, California 90017  
Attention: Mark L. Nelson, Esq.

(SPACE ABOVE FOR RECORDER'S USE)

## SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE ESTATES IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT ("Agreement") is made as of \_\_\_\_\_, 2014, by and among \_\_\_\_\_, a California limited partnership ("Borrower"), COUNTY OF SANTA BARBARA, a political subdivision of the State of California ("Junior Lienholder"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association ("U.S. Bank"), in its capacity as agent (in such capacity, "Agent") for the HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA, a political subdivision of the State of California ("Issuer"), under and pursuant to the Master Agency Agreement dated as of \_\_\_\_\_, 2014, between the Issuer and Agent ("Agency Agreement") (Issuer and its successors in interest in and to this Agreement acting through Agent during the term of Agent's agency and acting on their own behalf or through other agents thereafter, are referred to herein as "Senior Lienholder").

### RECITALS

A. Borrower owns (i) certain real estate more particularly described on Exhibit A, and all improvements now or hereafter located thereon (collectively, the "Real Property"), and (ii) that certain personal property more particularly described in the Senior Loan Documents (the "Personal Property"; together with the Real Property, the "Property").

~~B. Each of the documents listed on Exhibit B together with all other documents and materials entered into with Junior Lienholder with respect to the Property shall be referred to collectively as the "Junior Obligation Documents".~~

C. As used herein, the term "Junior Obligations" means any and all indebtedness, claims, debts, liabilities or other obligations from Borrower to Junior Lienholder under the Junior Obligation Documents, together with all costs and expenses, including attorneys' fees, of collection thereof, whether the same accrues or is incurred before or after the commencement of any bankruptcy case by or against Borrower.

D. Issuer has issued, or will issue, its Multifamily Housing Revenue Bonds (\_\_\_\_\_ Apartments) Series \_\_\_\_\_, in the aggregate principal amount of ///[\$7,378,917]/// (the "Bonds"). Issuer desires to make a loan ("Senior Loan") to Borrower in a maximum principal amount equal to the maximum principal amount of ///[\$7,378,917]///. The Bonds are being issued pursuant to that certain Master Pledge and Assignment dated as of \_\_\_\_\_, 2014, by and among Issuer, Agent, and U.S. Bank National Association, in its capacity as holder of the Bonds

(in such capacity, "Holder"). The Senior Loan is evidenced by (i) a Construction Loan Agreement ("Senior Loan Agreement") dated as of \_\_\_\_\_, 2014 by and between Borrower and Senior Lienholder, and (ii) a promissory note (the "Senior Note") dated as of \_\_\_\_\_, 2014, made by Borrower in favor of Senior Lienholder, in the maximum aggregate principal sum of the Senior Loan. The Senior Note is secured by, among other things, a Construction and Permanent Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing ("Senior Deed of Trust") dated as of \_\_\_\_\_, 2014, made by Borrower, as trustor, for the benefit of Senior Lienholder, as beneficiary, to be recorded substantially concurrently herewith in the Official Records of the County of Santa Barbara (the "Official Records"). The Senior Loan Agreement, the Senior Note, the Senior Deed of Trust and the other "Loan Documents" (as defined in the Senior Loan Agreement) are hereinafter sometimes collectively referred to as the "Senior Loan Documents". The Senior Loan Agreement, Senior Note, Senior Deed of Trust and the other Senior Loan Documents are, substantially concurrently herewith, being assigned by Senior Lienholder to U.S. Bank National Association, a national banking association, in its capacity as the Holder of the Bonds.

E. As used herein, the term "Senior Lienholder Indebtedness" means any and all indebtedness, claims, debts, liabilities or other obligations from Borrower to Senior Lienholder under the Senior Loan Documents, together with all interest accruing thereon and all costs and expenses, including attorneys' fees, of collection thereof, whether the same accrues or is incurred before or after the commencement of any bankruptcy case by or against Borrower.

F. Upon the timely satisfaction of the "Conversion Conditions" set forth in that certain Bond Purchase Agreement (the "Loan Purchase Agreement") dated as of even date herewith by and among Borrower, U.S. Bank and California Community Reinvestment Corporation, a California nonprofit public benefit corporation ("CCRC"), CCRC has agreed to purchase the Bonds from U.S. Bank for a purchase price in the maximum amount of ///[\$2,780,000]///. Upon CCRC's purchase of the Bonds, the Senior Loan Agreement shall be amended and restated in its entirety by that certain Permanent Loan Agreement dated as of \_\_\_\_\_, 2014 (the "Permanent Loan Agreement") by and between Borrower and CCRC. Effective as of the Conversion Date (as defined in the Loan Purchase Agreement) and CCRC's purchase of the Bonds, any reference herein to "Agent" or "U.S. Bank" shall mean CCRC and any reference to the Loan Agreement shall mean the Permanent Loan Agreement.

G. Pursuant to the Senior Deed of Trust and the other Senior Loan Documents, Borrower is not entitled to further encumber the Property without the prior written consent of Senior Lienholder, which consent may be withheld in Senior Lienholder's sole discretion.

H. It is a condition precedent to Senior Lienholder to entering into the Senior Loan Documents that the Senior Deed of Trust and the other Senior Loan Documents be and remain at all times a lien or charge upon the Property, prior and superior to the liens or charges of the Junior Obligation Documents.

I. Senior Lienholder is willing to enter into the Senior Loan Documents provided that, among other things, (1) the Senior Deed of Trust and the other Senior Loan Documents are a lien or charge upon the Property prior and superior to the liens or charges of the Junior Obligation Documents, and (2) Junior Lienholder will specifically subordinate the liens or charges of the Junior Obligation Documents to the lien or charge of the Senior Deed of Trust and the other Senior Loan Documents.

J. Junior Lienholder is willing that the Senior Deed of Trust shall constitute a lien or charge upon the Property which is prior and superior to the liens or charges of the Junior Obligation Documents. The parties hereto enter into this Agreement for the purposes set forth in these Recitals.



K. Capitalized terms used herein and not otherwise defined shall have the meanings set forth for them in the Senior Loan Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Senior Lienholder to make the "Loan" described in the Loan Agreement, it is hereby declared, understood, and agreed as follows:

1. Subordination. The Senior Deed of Trust in favor of Senior Lienholder, and all amendments, modifications, extensions and renewals thereof shall unconditionally be and remain at all times a lien or charge on the Property prior and superior to the lien or charge of the Junior Obligation Documents. Junior Lienholder intentionally and unconditionally subordinates the lien or charge of the Junior Obligation Documents in favor of the lien or charge upon said land of the Senior Deed of Trust and all amendments, modifications, extensions and renewals thereof, and understands that in reliance upon and in consideration of this subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this subordination.

2. Only Agreement Regarding Subordination. Senior Lienholder would not enter into the Senior Loan Documents without this Agreement. This Agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Junior Obligation Documents to the lien or charge of the Senior Deed of Trust and shall supersede and cancel, but only insofar as would affect the priority between said deeds of trust and said covenants, conditions and restrictions, any prior agreements as to such subordination, including, but not limited to, those provisions, if any, contained in the Junior Obligation Documents which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to another mortgage or mortgages.

3. Loan Disbursements. In making disbursements pursuant to any of the Senior Loan Documents, Senior Lienholder is under no obligation or duty to, nor has Senior Lienholder represented that it will, see to the application of such proceeds by the person or persons to whom Senior Lienholder disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such Senior Loan Document(s) shall not defeat the subordination herein made in whole or in part.

4. Consent and Approval. Junior Lienholder has received and consents to and approves the Senior Loan Documents, including but not limited to any extension, modification and/or amendment of said agreements, between Borrower and Senior Lienholder. No decision by Junior Lienholder to review or not review the Senior Loan Documents, including but not limited to the disbursement provisions contained therein, shall impair or otherwise limit the enforceability of this Agreement.

5. Other Agreements. Junior Lienholder and Borrower declare, agree, and acknowledge that:

5.1 Subordination of Indebtedness. Any and all Junior Obligations are hereby subordinated and subject to any and all Senior Lienholder Indebtedness, as set forth herein.

5.2 Permitted Payments. Borrower may make payments under the Junior Obligation Documents, if required, as long as all payments under the Senior Deed of Trust and the other Senior Loan Documents are current and not delinquent or in arrears, and only so long as at the time of such payment:

(i) no default exists under the Senior Lienholder Indebtedness and no event exists which, with the lapse of time or the giving of notice or both, would be such a default under the Senior Lienholder Indebtedness of which Junior Lienholder has received notice; and (ii) such payment would not result in a violation of any of Borrower's financial covenants set forth in any of the documents evidencing the Senior Lienholder Indebtedness ("Permitted Payments").

5.3 Payment Subordination. Except for any Permitted Payments, (a) all of the Senior Lienholder Indebtedness now or hereafter existing shall be first paid in full by Borrower before any payment shall be made by Borrower on the Junior Obligations, and (b) this priority of payment shall apply at all times until all of the Senior Lienholder Indebtedness has been repaid in full. In the event of any assignment by Borrower for the benefit of Borrower's creditors, or any bankruptcy proceedings instituted by or against Borrower, or the appointment of any receiver for Borrower or Borrower's business or assets, or of any dissolution or other winding up of the affairs of Borrower or of Borrower's business, and in all such cases respectively, Borrower's officers and any assignee, trustee in bankruptcy, receiver and other person or persons in charge are hereby directed to pay to Senior Lienholder the full amount of the Senior Lienholder Indebtedness before making any payments to Junior Lienholder due under the Junior Obligations.

5.4 Return of Prohibited Payments. Except as otherwise expressly agreed to herein, if Junior Lienholder shall receive any payments or other rights in any property of Borrower in connection with the Junior Obligations in violation of this Agreement, such payment or property shall immediately be delivered and transferred to Senior Lienholder after notice to Junior Lienholder.

5.5 Repayment of Senior Lienholder Indebtedness. This Agreement shall remain in full force and effect until all Senior Lienholder Indebtedness is fully repaid in accordance with its terms and all of the terms of this Agreement have been complied with.

5.6 Standstill. Junior Lienholder agrees that, without the Senior Lienholder's prior written consent, it will not accelerate the Junior Obligations, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action.

5.7 Refinance. The Junior Lienholder additionally consents to the refinancing of the Senior Loan at its maturity, provided that such refinancing is made on terms substantially similar to those set forth in the Permanent Loan Agreement.

6. Senior Lienholder Agreements. Senior Lienholder agrees that it shall not complete a foreclosure sale of the Property or record a deed-in-lieu of foreclosure with respect to the Property (each, a "Foreclosure Remedy") unless Junior Lienholder has first been given ninety (90) days written notice of the Event(s) of Default giving Senior Lienholder the right to complete such Foreclosure Remedy, and unless Junior Lienholder has failed, within such ninety (90)-day period, to cure such Event(s) of Default; provided, however, that Senior Lienholder shall be entitled during such ninety (90)-day period to continue to pursue all of its rights and remedies under the Senior Loan Documents, including, but not limited to, acceleration of the Senior Loan (subject to any de-acceleration provisions specifically set forth in the Senior Loan Documents), commencement and pursuit of a judicial or non-judicial foreclosure (but not completion of the foreclosure sale), appointment of a receiver, enforcement of any guaranty (subject to any notice and cure provisions contained therein), and/or enforcement of any other Senior Loan Document. In the event Senior Lienholder has accelerated the Senior Loan and Junior Lienholder cures all Events of Default giving rise to such acceleration within the ninety (90)-day cure period described above, such cure shall have the effect of de-accelerating the Senior Loan; provided, however, that such de-acceleration shall not waive or limit any of Senior Lienholder's rights to accelerate the Senior Loan or

exercise any other remedies under the Senior Loan Documents as to any future or continuing Events of Default. It is the express intent of the parties hereunder that Senior Lienholder shall have the right to pursue all rights and remedies, except completion of a Foreclosure Remedy, without liability to Junior Lienholder for failure to provide timely notice to Junior Lienholder required hereunder, and that Senior Lienholder's liability hereunder shall be expressly limited to actual and consequential damages to Junior Lienholder directly caused by Senior Lienholder's completion of a Foreclosure Remedy without Junior Lienholder receiving the notice and opportunity to cure described above, including, if applicable, any amount which Junior Lienholder may be required to pay to the U.S. Department of Housing and Urban Development pursuant to the HOME Investment Partnership Program, codified in 42 U.S.C. Section 12701, *et seq.* and 24 C.F.R. Part 92, on account of any HOME loan previously made by Junior Lienholder on account of the Property. Senior Lienholder shall give Junior Lienholder notice at the address set forth below or such other address as Junior Lienholder may instruct Senior Lienholder in writing from time to time:

County of Santa Barbara  
123 East Anapamu Street  
2<sup>nd</sup> Floor  
Santa Barbara, California 93101  
Attention: Housing Finance Program Manager

7. Conversion. Junior Lienholder hereby consents to the Senior Loan, the terms and provisions of the Senior Loan Documents and the execution and delivery by Borrower to Senior Lienholder of the Senior Loan Documents. Junior Lienholder specifically acknowledges that subject to completion of certain improvements on the Property and the satisfaction by Borrower of certain other conditions within the time set forth in the Loan Purchase Agreement, CCRC shall purchase the Bonds from U.S. Bank. If such purchase occurs, then upon such purchase, the Senior Loan will become nonrecourse with certain exceptions and will automatically convert from an interest only construction loan into an amortizing term loan, all as more particularly set forth in the Senior Note. Junior Lienholder acknowledges that upon the purchase of the Bonds by CCRC, the following Senior Loan Documents shall terminate:

7.1 ///[Assignment of Development Services Agreement and Developer Fee Subordination Agreement;

7.2 Repayment and Completion Guaranty;

7.3 Assignment of Partnership Interests, Capital Contributions and Credits; and

7.4 Collateral Assignment of Contract Rights.]///

Junior Lienholder acknowledges that if CCRC should become the owner and holder of the Bonds, the Senior Loan and the Senior Note, then CCRC shall become the "Senior Lienholder" hereunder and this Agreement shall continue to inure to the benefit of CCRC and its successors and assigns.

8. Bankruptcy Provisions. To the extent any payment under any Senior Loan Document (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or other similar party under the Bankruptcy Code or any federal or state bankruptcy, insolvency, receivership or similar law, then if such payment is recovered by, or paid over to, such trustee, receiver or

other similar party, the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

9. Casualty Insurance Proceeds; Condemnation Proceeds. In the event Senior Lienholder shall release, for the purposes of restoration of all or any part of the improvements, its right, title and interest in and to the proceeds under policies of insurance thereon, and/or its right, title and interest in and to any awards, or its right, title and interest in and to other compensation made for any damages, losses or compensation for other rights by reason of a taking in eminent domain, Junior Lienholder shall simultaneously release (and hereby agrees that it shall be irrevocably and unconditionally deemed to have agreed to release) for such purpose all of Junior Lienholder's right, title and interest, if any, in and to all such insurance proceeds, awards or compensation. Junior Lienholder agrees that the balance of such proceeds remaining after such restoration, or all of such proceeds in the event Senior Lienholder elects, in accordance with California law, not to release any such proceeds for any such restoration, shall be applied to the payment of amounts due under the Senior Loan Documents until all such amounts have been paid in full, prior to being applied to the payment of any amounts due under the Junior Obligation Documents. If Senior Lienholder holds such proceeds, awards or compensation and/or monitors the disbursement thereof, Junior Lienholder agrees that Senior Lienholder may also elect, in its sole and absolute discretion, to hold and monitor the disbursement of such proceeds, awards and compensation to which Junior Lienholder is or may be entitled. Nothing contained in this Agreement shall be deemed to require Senior Lienholder, in any way whatsoever, to act for or on behalf of Junior Lienholder or to hold or monitor any proceeds, awards or compensation in trust for or on behalf of Junior Lienholder, and all or any of such sums so held or monitored may be commingled with any funds of Senior Lienholder.

10. Effect of Other Agreements. The relationship between Borrower and Senior Lienholder under the Senior Loan Documents is, and shall at all times remain, solely that of borrower and lender. Based thereon, Junior Lienholder acknowledges and agrees that Senior Lienholder neither undertakes nor assumes any fiduciary responsibility or other responsibility or duty to Borrower or Junior Lienholder to guarantee or assist in Borrower's or Junior Lienholder's performance under any of the agreements between those parties and other third parties, including without limitation the Junior Obligation Documents.

11. Miscellaneous. This Agreement may be executed in multiple counterparts and the signature page(s) and acknowledgment(s) assembled into one original document for recordation, and the validity hereof shall not be impaired by reason of such execution in multiple counterparts. This Agreement is to be governed according to the laws of the State of California. In the event of action, suit, proceeding or arbitration to enforce any term of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, as determined by the court or arbitrator, all of the prevailing party's costs and expenses, including without limitation attorneys' fees and expert witness fees, incurred by the prevailing party in connection therewith. If Junior Lienholder or any affiliate of Junior Lienholder shall acquire, by indemnification, subrogation or otherwise, any lien, estate, right or other interest in the Property, that lien, estate, right or other interest shall be subordinate to the Senior Deed of Trust and the other Senior Loan Documents as provided herein, and Junior Lienholder hereby waives, on behalf of itself and such affiliate, until all amounts owed under the Senior Loan Documents have been indefeasibly paid in full and all Senior Lienholder's obligations to extend credit under the Senior Loan Documents have terminated, the right to exercise any and all such rights it may acquire by indemnification, subrogation or otherwise. The Agreement shall inure to the benefit of, and the binding upon, the parties hereto and the respective successors and assigns.

*[Signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

**ATTEST:**

MONA MIYASATO  
Clerk of the Board

By: \_\_\_\_\_  
Deputy Clerk of the Board

**JUNIOR LIENHOLDER:**

County of Santa Barbara,  
a political subdivision of the State of California

By: \_\_\_\_\_  
Steve Lavagnino, Chair  
Board of Supervisors

**APPROVED AS TO FORM**

Michael C. Ghizzoni  
COUNTY COUNSEL

By:  \_\_\_\_\_  
Deputy County Counsel

BORROWER:

LELAND GROSSMAN SANDPIPER, L.P.  
a California limited partnership

By: SURF DEVELOPMENT COMPANY,  
a California nonprofit public benefit corporation,  
its managing general partner

By: \_\_\_\_\_  
Alfred Holzheu, President

By: HOUSING AUTHORITY OF THE COUNTY OF  
SANTA BARBARA,  
a public body, corporate and politic,  
its administrative general partner

By: \_\_\_\_\_  
Frederick C. Lamont, Executive Director

SENIOR LIENHOLDER:

U.S. BANK NATIONAL ASSOCIATION,  
a national banking association, as Agent,  
pursuant to that certain Master Agency Agreement  
dated \_\_\_\_\_, 2014 by and between  
Agent and Lender

By:

\_\_\_\_\_  
Waheed Karim  
Vice President

ACKNOWLEDGEMENT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2014, before me \_\_\_\_\_,  
a Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



ACKNOWLEDGEMENT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2014, before me \_\_\_\_\_,  
a Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

ACKNOWLEDGEMENT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2014, before me \_\_\_\_\_,  
a Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

EXHIBIT A

Legal Description

Real property in the City of Goleta, County of Santa Barbara, State of California, described as follows:

## EXHIBIT B

### Junior Obligation Documents

1. Regulatory Agreement and Declaration of Restrictive Covenants dated as of November 21, 2000, executed by the Housing Authority of the County of Santa Barbara, predecessor-in-interest to Borrower (the "**Housing Authority**"), in favor of Junior Lienholder, which was recorded in the Official Records on December 19, 2000 as Instrument No. 2000-0080081.

2. Agreement to Grant Mitigation Funds to the Housing Authority, dated as of August 5, 1985, between the Housing Authority and Junior Lienholder, which was recorded in the Official Records on August 9, 1985 as Instrument No. 1985-041702.

# ATTACHMENT B



NOTICE OF EXEMPTION

TO: Santa Barbara County Clerk of the Board of Supervisors

FROM: Community Services Department

The project or activity identified below is determined to be exempt from further environmental review requirements of the California Environmental Quality Act (CEQA) of 1970, as defined in the State and County Guidelines for the implementation of CEQA.

APN(s): N/A Case No.: N/A

Location: City of Goleta, Santa Barbara County

Project Title: Sandpiper Apartments – Subordination of County Regulatory Agreement and Declaration of Restrictive Covenants, and Agreement to Grant Mitigation Funds to the Housing Authority

**Project Description:** Sandpiper Apartments (Project) consists of three properties located at 3709-390 Mathilda Drive and 355-375 Ellwood Beach Drive in Goleta. The L.C. Grossman Homes consists of seven buildings located at 5575-5595 Armitos Avenue in Goleta. The Projects are presently owned by the Housing Authority, which has formulated a limited partnership with its affiliate, Surf Development Company. The name of the limited partnership is Leland Grossman Sandpiper, L.P. a California limited partnership (Limited Partnership). The Housing Authority and Surf Development Company will be the general partners on this Project. Surf Affordable Housing Enterprises, Inc., a California corporation, is the Limited Partner. It is the intent of the Limited Partnership to acquire the property from the current owner and rehabilitate 82 multi-family affordable housing rental units which will facilitate the Housing Authority’s participation in HUD’s Rental Assistance Demonstration Program (RAD) and give public housing authorities more flexibility to access private and public funding sources, including low income housing tax credits (LIHTCs), for needed improvements to its public housing stock. The program also aims to improve public housing authorities’ long-term financial outlook by easing their reliance on less stable appropriations from the Federal government. The Housing Authority applied to the RAD program and in December 2012 was approved to transition the Sandpiper Apartments and L.C. Grossman Homes to this program. The Housing Authority is requesting that the County subordinate the County Regulatory Agreement and Declaration of Restrictive Covenants, and Agreement to Grant Mitigation Funds to the Housing Authority to the construction and permanent loans in order to induce these lenders to invest in the Project.

**Exempt Status:** (Check one)

- Ministerial,  Statutory,  Categorical Exemption,  Emergency Project
- No Possibility of Significant Effect [§15061(b,3)],  Other

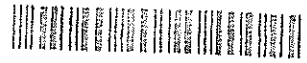
**Cite specific CEQA Guideline Section:** 15378(b)(4); The creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project are not a project as defined by CEQA.





# ATTACHMENT C





2000-0080001

NO FEE DOCUMENT

Recorded Official Records County Of SANTA BARBARA KENNETH A. PETTIT Recorder LARRY G. HERRERA Assistant	REC FEE .00
02:09PM 19-Dec-2000	bgc Page 1 of 13

Recording requested by and  
When recorded, mail to:

County of Santa Barbara  
105 East Anapamu Street, Room 105  
Santa Barbara, CA 93101  
Attn: Affordable Housing Manager

NO FEE DOCUMENT PURSUANT TO  
GOVERNMENT CODE SECTION 27383

13

### REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This Regulatory Agreement and Declaration of Restrictive Covenants (this "Agreement") is made as of this 21 day of ~~NOVEMBER~~ 2000 by and between the County of Santa Barbara, a political subdivision of the State of California (hereinafter referred to as the "Lender"), and Housing Authority of the County of Santa Barbara, a political subdivision of the State of California, (hereinafter referred to as the "Owner").

#### RECITALS

A. The Owner owns real property located at 370 Mathilda and 375 Ellwood Beach Drive, in the community of Goleta, County of Santa Barbara, California as more particularly described in Exhibit A (the "Property") upon which the Owner has purchased four residential buildings which include sixty - eight (68) units of multi-family rental housing (the "Development").

B. The Lender has received HOME Investment Partnership Program funds ("HOME Funds") from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 for the purpose of expanding the supply of decent, safe, sanitary and affordable housing for low income persons and families.

C. Owner has received a loan from Lender of HOME Funds in the amount of Six Hundred Thousand Dollars (\$600,000) to provide permanent financing for the Development (hereinafter referred to as the "Loan").

D. As further consideration for this funding and to further the interests of the Lender, the Owner has agreed to enter into and record this Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, the ownership, and management of the

Development. The covenants in this Agreement are intended to run with the land and be binding on the Owner and its successors and assigns in the Property.

E. Lender intends to apply the Assisted Units restricted through this Agreement towards satisfaction of its redevelopment inclusionary housing requirement under Health and Safety Code Section 33413(b) as permitted in Health and Safety Code Section 33413(b)(2)(A)(ii).

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the aforementioned funding, the Owner and the Lender hereby agree as follows:

## 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement or attached exhibits.

1.1 "ASSISTED UNIT" means one of the eight (8) Units with restricted occupancy and rents pursuant to this Agreement that has been designated as an Assisted Unit. A Unit shall not be considered an Assisted Unit until the Unit has been made available for occupancy.

1.2 "AREA MEDIAN INCOME" means the median income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area, with adjustments for household size, as determined from time to time by the United States Department of Housing and Urban Development ("HUD") pursuant to the United States Housing Act of 1937, as amended, or such other method of median income calculation applicable to the Lender that HUD may hereafter adopt in connection with said Act.

1.3 "DEED OF TRUST" means that certain deed of trust, placed on the Property as security for the Loan with the Owner as trustor and the Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust.

1.4 "DEVELOPMENT" means the six residential buildings located on the Property containing no less than sixty – eight (68) units of housing with appurtenant parking and site improvements on the Property.

1.5 "LENDER" is the County of Santa Barbara, a political subdivision of the State of California, and its officers, officials, directors, employees, agents and authorized representatives.

1.6 "LOAN" means the loan of HOME funds made by the Lender to the Owner for the Development pursuant to the Loan Agreement and the Note.

1.7 "LOAN AGREEMENT" is the Loan Agreement executed by and between the Owner and the Lender, setting forth the terms and conditions governing the Loan.

1.8 "LOAN DOCUMENTS" are collectively the Loan Agreement, the Note evidencing the Loan, the Deed of Trust securing the Note, and this Agreement as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.9 "NOTE" means the promissory note executed by the Owner in favor of the Lender evidencing the Loan, which is secured by the Deed of Trust, as well as any amendments to, modifications of, or restatements of said promissory notes.

1.10 "OWNER" means the County of Santa Barbara, a political subdivision of the State of California.

1.11 "PROPERTY" means the real property described in Exhibit A attached hereto and incorporated herein, including the Development.

1.12 "QUALIFYING HOUSEHOLD" means a household that qualifies as a Very Low Income Household.

1.13 "VERY LOW-INCOME HOUSEHOLD" means a household whose annual income does not exceed fifty percent (50%) of the Area Median Income.

1.14 "UNIT" means a housing unit in the Development.

1.15 "TERM" means the term of this Agreement described herein.

## **2. THE OWNER'S OBLIGATIONS**

2.1 **COMPLIANCE WITH LOAN DOCUMENTS.** The Owner's actions with respect to the Property and the use of funds from the Loan shall at all times be in full conformity with all of the requirements of the Loan Documents, including but not limited to the insurance requirements contained therein.

2.2 **TERM OF AGREEMENT.** This Agreement shall commence upon execution and shall remain in full force and effect until forty (40) years following the date of close of escrow the Loan.

2.3 **COMPLIANCE WITH PROGRAM REQUIREMENTS.** The Owner shall comply with all requirements imposed on projects assisted under the HOME program as contained in 42 U.S.C. 12701, et seq., 24 CFR Part 92, and other implementing rules and regulations.

### 3. DEVELOPMENT OCCUPANCY AND RENTS

3.1 **OCCUPANCY OF DEVELOPMENT.** The Owner shall limit for the full term of this Agreement the rental of eight (8) Units, which shall be designated as Assisted Units. The Assisted Units must be occupied, or reserved for occupancy by, Qualifying Households. Assisted Units restricted by this Agreement shall be of comparable quality with comparable amenities as unrestricted Units. Within thirty (30) days close of escrow on the Loan the Owner shall identify the eight (8) Units in the Development which will be the Assisted Units for the Term of this Agreement. The sizes and the affordability of the Assisted Units shall be as follows:

<u>No. of Units</u>	<u>Bedrooms</u>	<u>Rents</u>
1	Studio	50%
2	Studio	60%
1	One - Bedroom	50%
4	One - Bedroom	60%

3.2 **MAXIMUM RENTAL CHARGES.** For each Assisted Unit, the total charges for monthly rent, utilities, and related services to each Qualifying Household shall not exceed the lesser of one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Median Income or the fair market rents as determined by HUD. Maximum rents for each Assisted Unit shall be set by the Lender within sixty (60) days of the close of escrow. Annual rent increases shall be calculated by Lender based on the change in permissible rents published annually by HUD. Households occupying Assisted Units shall be given at least thirty (30) days written notice prior to any rent increase. *Handwritten: 20% 20% 75% Jan*

3.3 **INCOME CERTIFICATION AND INCREASES IN TENANT INCOMES.** The income levels and other qualifications of applicants for Assisted Units shall be certified prior to initial occupancy and recertified yearly by the Owner. In the event that recertification of a Very Low-Income Household's income indicates that the household's income exceeds the maximum designated for a Very Low-Income Household, the household shall be permitted to continue to occupy the Assisted Unit.

In such event, Borrower shall rent the next available Unit to a Qualified Household. Upon rental of the next available unit to a Qualified Household, the rent restrictions of Section 3.2 above shall no longer apply with respect to the Assisted Unit whose household experienced the increase in income and the next available unit shall become an Assisted Unit.

### 3.4 **LEASING THE DEVELOPMENT.**

Before leasing any Assisted Unit, the Owner shall submit its proposed lease for the Lender's review and approval. The term of the Lease shall be for no less than one year and shall not contain any provision which is prohibited by 24 CFR Section 92.253(b) and any modifications thereto. Any termination of the Lease or refusal to renew must be in conformance with 24 CFR 92.253(c), as amended, and must be preceded by not less than thirty (30) days written notice to the tenant by the Owner specifying the grounds for the action. The Owner shall include in leases for all Assisted Units provisions which provide that the household is subject to annual certification of income and that the tenancy of the household shall be immediately

regarding the household's qualification as a Very Low-Income Household or Low Income Household, as applicable. The Owner shall include in all leases for Assisted Units provisions which prohibit the household from subleasing the Assisted Unit.

B. In addition to executing a lease for an Assisted Unit, the Owner shall require that each household leasing an Assisted Unit execute a declaration of intent to occupy which shall require the household to occupy the Assisted Unit as the household's primary residence.

3.5 **TENANT SELECTION.** Before leasing the Development, the Owner must provide Lender for its review and approval the Owner's written tenant selection plan. The Owner's tenant selection plan must, at a minimum, meet the requirements for tenant selection set out in 24 CFR 92.253(e) and any modifications thereto.

3.6 **SECTION 8 CERTIFICATE HOLDERS AND VOUCHER HOLDERS.** The Owner will accept as tenants, *has* on the same basis as all other prospective tenants, persons who are recipients of federal *VOUCHERS AND* certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective tenants.

3.7 **CONDOMINIUM CONVERSION.** The Owner shall not convert Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights in the Property during the term of this Agreement.

3.8 **NONDISCRIMINATION.** The Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Owner shall include a statement in all advertisements, notices and signs for the availability of Units for rent to the effect that the Owner is an Equal Housing Opportunity Provider.

3.9 **MARKETING PLAN.** Prior to close of escrow, the Owner shall submit to the Lender for approval its plan for marketing the rental units, including information on affirmative marketing efforts and compliance with fair housing laws and the Lender's affirmative fair marketing guidelines. Upon receipt of the marketing plan, the Lender shall promptly review the Marketing Plan and shall approve or disapprove it within thirty (30) days after submission. If the Marketing Plan is not approved, Lender shall specify its reasons for disapproval. The Owner shall submit a revised Marketing Plan within thirty (30) days of Lender's notice of disapproval. If the Lender does not approve the revised Marketing Plan, the Owner shall be in default under the terms of the Loan Agreement.

#### 4. PROPERTY MANAGEMENT

4.1 **MANAGEMENT RESPONSIBILITIES.** The Owner is responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Lender shall have no responsibility over management of the Development. The Owner shall submit to the Lender for its approval its proposed property manager. The Owner may only remove and/or replace the property manager with the prior written consent of the Lender.

4.2 **APPROVAL OF MANAGEMENT POLICIES.** The Owner shall submit its written management policies with respect to the Development to the Lender for its review, and shall amend such policies in any way necessary to insure that such policies comply with the provisions of this Agreement, the requirements of the existing housing program under Section 8 of the United States Housing Act, or its successors, and the requirements of all lenders providing financing for the Development.

4.3 **INSPECTION AND RECORDS.** The Owner shall maintain records which clearly document the Owner's performance of its obligations to operate the Property under the terms of this Agreement. The Owner shall submit any records to the Lender within ten (10) business days of the Lender's request. The Owner shall permit the Lender to enter and inspect the Development for compliance with obligations under this Agreement upon twenty - four (24) hours advance notice of such visit by the Lender to the Owner or the Owner's management agent and to tenants of any Units.

4.4 **ANNUAL REPORT.** The Owner shall submit to the Lender (i) not later than not later than March 1st of each year, a report for the preceding period of January 1st through December 31st, showing the necessary information to allow the Lender to determine the Owner's compliance with this Agreement, and (ii) within thirty (30) days after receipt of a written request, any other information or completed forms requested by the Lender in order to comply with reporting requirements of the United States Department of Housing and Urban Development, or the State of California, or the Lender.

4.5 **FEEES, TAXES, AND OTHER LEVIES.** The Owner shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency.

#### 5. GENERAL PROVISIONS

5.1 **SUBORDINATION.** This Agreement shall be subordinated in priority only as provided in the Loan Agreement or to liens and encumbrances otherwise approved in writing by the Lender in its sole and absolute discretion.

5.2 **DEFAULT AND REMEDIES** In the event of any breach of any agreement or obligation under this Agreement by the Owner, the Lender shall provide written notice to the



Owner of such breach. The Owner shall have an opportunity to cure such breach within thirty (30) days from the Owner's receipt of such written notice or such longer period of time as the Lender determines is necessary to cure the breach if the Owner diligently undertakes to cure such breach. If the Owner fails to perform a timely cure of the specified breach, the Lender may proceed with any or all of the following remedies upon the Owner's failure to cure:

- A. Bring an action in equitable relief seeking the specific performance by the Owner of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;
- B. Enter upon, take possession of, and manage the Property and the Development, either in person, by agent, or by a receiver appointed by a court, and collect any rents, income, deposits, or reserves and apply them to operate the Property;
- C. After notice provided for herein, make such repairs or replacements to the Property and Development as are necessary and provide for payment thereof; or
- D. Pursue any other remedy provided under the Loan Agreement or allowed at law or in equity.

**5.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No officers, directors, employees and agents of the Lender shall be personally liable to the Owner for any obligation created under the terms of this Agreement.

**5.4 INDEMNITY.** The Owner shall indemnify and hold the Lender free and harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys' fees) which the Lender may incur as a direct or indirect consequence of the Owner's failure to perform any obligations as and when required by this Agreement. This indemnity obligation shall not extend to any claim arising solely from the gross negligence or willful acts of the Lender, its agents, and its employees. The Owner's duty to indemnify the Lender shall survive the term of this Agreement.

**5.5 GOVERNING LAW.** This Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

**5.6 AGREEMENT CONTROLS.** In the event that any provisions of this Agreement and any Loan Document conflict, the terms of this Agreement shall control.

**5.7 ATTORNEYS' FEES AND COSTS.** In the event that any legal or administrative action is commenced to interpret or to enforce the terms of this Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

**5.8 TIME.** Time is of the essence in this Agreement.

**5.9 CONSENTS AND APPROVALS.** Any consent or approval of the Lender required under this Agreement shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of the Lender.

**5.10 NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between the Owner and the Lender shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of the Owner and the Lender as follows:

**Lender:** County of Santa Barbara  
105 E. Anapamu Street  
Santa Barbara, CA 93101  
Attn: Housing Finance Program Manager

**Owner:** Housing Authority of the County of Santa Barbara  
815 W. Ocean Avenue  
Lompoc, CA 93436  
Attn: Executive Director

**5.11 BINDING UPON SUCCESSORS.** All provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferee, and assigns of the Owner, and the Lender, and shall run with the land for the full term of this Agreement, regardless of any assignment, payment, prepayment, expiration, extinguishment of the Loan or Note, any reconveyance of the Deed of Trust, or any conveyance or transfer of the Property or portion thereof.

**5.12 RELATIONSHIP OF PARTIES.** The relationship of the Owner and the Lender during the term of this Agreement is solely that of lender and borrower shall not be construed as a joint venture, equity venture, or partnership.

**5.13 WAIVER.** Any waiver by the Lender of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Lender to take action on any breach or default of the Owner or to pursue any remedy allowed under this Agreement, the Loan Documents, or applicable law. Any extension of time granted to the Owner to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Lender to any act or omission by the Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the Lender's written consent to future waivers.

**5.14 AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Agreement must be in writing, and shall be made only if executed by both the Owner and the Lender.

**5.15 SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a

court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

5.16 . **THIRD PARTY BENEFICIARIES.** The Redevelopment Agency of the County of Santa Barbara is hereby made a third party beneficiary of this Covenant and is authorized to enforce all of the terms contained herein. This Covenant constitutes an agreement pursuant to Health and Safety Code Section 33413(b)2(B). There are no other third party beneficiaries under this Agreement.

*(BALANCE OF PAGE LEFT INTENTIONALLY BLANK)*

IN WITNESS WHEREOF, Lender and Owner have caused this Loan Agreement to be executed by their duly authorized representatives.

APPROVED AS TO FORM:  
STEPHEN SHANE STARK  
COUNTY COUNSEL

By: Mary McMaster  
Mary McMaster  
Deputy County Counsel

**LENDER:**

County of Santa Barbara,  
a political subdivision of the State of California

By: Gary L. Peramisco  
Gary L. Peramisco  
Treasurer/Tax Collector  
*Signature Must Be Notarized*

**OWNER:**

Housing Authority of the County of Santa Barbara,  
a political subdivision of the State of California

APPROVED AS TO FORM:  
ANDREA SMUTZ  
RISK MANAGER

By: Andrea Smutz  
Andrea Smutz  
Risk Manager

By: Hawthorne  
Its: EXECUTIVE DIRECTOR  
*Signature Must Be Notarized*

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
*Signature Must Be Notarized*

MA Han

APPROVED AS TO FORM:  
BOB GEIS  
AUDITOR CONTROLLER

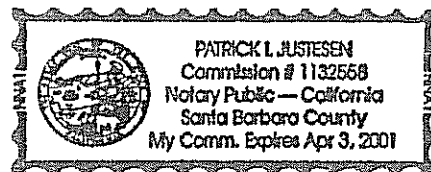
By: Brian Richard  
Brian Richard  
Specialty Accounting Division Chief

Expenditure Accounting Information  
Fund: 0066 Dept: 065  
Line Item: Program:

STATE OF CALIFORNIA )  
 )ss  
COUNTY OF Santa Barbara

On November 29, <sup>2000</sup>~~199~~, before me, the undersigned, a Notary Public, personally appeared Gary L. Fernandez, 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.



STATE OF CALIFORNIA )  
 )ss  
COUNTY OF SANTA BARBARA

On DECEMBER 11, <sup>2000</sup>~~199~~, before me, the undersigned, a Notary Public, personally appeared KAREN A. WEITZEL, 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.

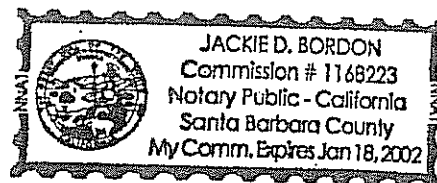
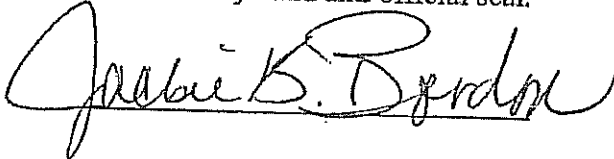


EXHIBIT A  
SANDPIPER LEGAL DESCRIPTION

DESCRIPTION:

All that certain land situated in the State of California in the unincorporated area of the County of Santa Barbara, described as follows:

PARCEL ONE:

Lot 9 Block 2, Ellwood Acres No. 2, in the County of Santa Barbara, State of California according to the map thereof filed in Book 15, Page 156 of Maps, in the office of the County Recorder of said County.

EXCEPTING therefrom that portion lying Easterly of a line that is parallel with and distant Westerly 30.00 feet, measured at right angles from the center line of Ellwood Beach Drive as shown on the map of a survey entitled "Lot A and portion of Lot B of Ellwood Acres" filed in Book 66, Pages 25, 26, 27 and 28 of Record of Surveys, in the office of the County Recorder of said County.

PARCEL TWO:

Lot 10, Block 2, Ellwood Acres No. 2 in the County of Santa Barbara, State of California, according to the map thereof filed in Book 15, Page 156 of Maps, in the office of the County Recorder of said County.

EXCEPTING therefrom that portion thereof lying Easterly of a line that is parallel with and distant Westerly 30.00 feet, measured at right angles from the center line of Ellwood Beach Drive as shown on a map of a survey entitled "Lot A and a portion of Lot B of Ellwood Acres" filed in Book 66, Pages 25, 26, 27 and 28 of Record of Surveys, in the office of the County Recorder of said County.

PARCEL THREE:

Lot 11, Block 2, Ellwood Acres No. 2 in the County of Santa Barbara, State of California, according to the map thereof filed in Book 15, Page 156 in the office of the County Recorder of said County.

EXCEPTING therefrom that portion thereof lying Easterly of line that is parallel with and distant Westerly 30.00 feet, measured at right angles from the center line of Ellwood Beach Drive as shown on the map of a survey from the center line of Ellwood Beach Drive as shown on the Map of Survey entitled "Lot A & Portion of Lot B of Ellwood Acres" filed in Book 66, Pages 25, 26, 27 and 28 of Record of Surveys in the office of the County Recorder of said County.

PARCEL FOUR:

Lot 14 Block 2, Ellwood Acres No. 2 in the County of Santa Barbara, State of California, according to the map thereof filed in Book 15, Page 156 in the office of the County Recorder of said County.

EXCEPTING therefrom that portion lying Westerly of line that is parallel with and distant Easterly 30.00 feet measured at right angles from the center line of Mathilda Drive as shown on the map of a survey entitled "Lot A and a portion of Lot B of Ellwood Acres" filed in Book 66, Page 25, 26, 27 and 28 of Record of Surveys, in the office of the County Recorder of said County.

PARCEL FIVE:

Lot 13, Block 2 Ellwood Acres No. 2 in the County of Santa Barbara, State of California, according to the map thereof filed in Book 15, Page 156 in the office of the County Recorder of said County.

EXCEPTING therefrom that portion thereof lying Westerly and Southerly of the following described line:

Beginning at the intersection of a line that is parallel with and distant Easterly 30.00 feet, measured at right angles from the center line of Mathilda Drive as shown on the map of a survey, entitled "Lot A and a portion of Lot B of Ellwood Acres" filed in Book 66, Pages 25, 26, 27 and 28 of Record of Surveys, in the office of the County Recorder of said County with the Northerly line of said Lot 13; thence 1<sup>st</sup>, South  $0^{\circ}25'30''$  East along said parallel line 52.00 feet to the beginning of a curve concave Northeasterly having a delta of  $90^{\circ}01'03''$  and a radius of 20.00 feet; thence 2<sup>nd</sup>, Southerly and Easterly along the arc of said curve 31.42 feet to the end of said curve and point in a line that is parallel with and distant Northerly 27.00 feet, measured at right angles, from the center line of Strehle Lane, as shown on said map of a survey, filed in Book 66, Pages 25, 26, 27 and 28 of Record Surveys; thence 3<sup>rd</sup> North  $89^{\circ}33'22''$  East along said parallel line, 99.98 feet to a point in the Easterly line of said Lot 13.





# ATTACHMENT D



Date: August 5, 1985  
Recording requested by and  
when recorded return to

H.C. HENZEL  
1985-041702

SANTA BARBARA CO, CA  
1985 AUG -9 PH 2:57

CLERK OF THE BOARD

Elizabeth M. Hall

10

7/27/85 .0.0.0.0

AGREEMENT TO GRANT MITIGATION FUNDS TO THE HOUSING AUTHORITY

NO FEE PER  
GOV. CODE 6103

This Agreement entered into this 5th day of Aug., 1985, between the COUNTY OF SANTA BARBARA (Hereinafter "COUNTY") and the Housing Authority of the County of Santa Barbara (hereinafter HOUSING AUTHORITY).

WHEREAS, COUNTY has received in-lieu housing mitigation funds from the Santa Barbara Business Park as a condition of project approval of 83-DP-5, to mitigate a portion of the housing demand generated by the development of their project, to be used to "augment affordable housing opportunities..."; and

WHEREAS, HOUSING AUTHORITY has requested funds to assist in the development of fourteen (14) low income rental units in the Goleta Valley area, which will be maintained as low income throughout the life of the project.

NOW THEREFORE, COUNTY AND HOUSING AUTHORITY AGREE AS FOLLOWS:

1. COUNTY agrees that the use of the in-lieu housing mitigation funds by the HOUSING AUTHORITY will provide the mitigation required of the Santa Barbara Business Park, and that the conditions concerning affordable housing for the Santa Barbara Business Park are met by implementation of this Agreement.

2. The mitigation funds provided HOUSING AUTHORITY by COUNTY under this Agreement shall be exclusively used for HOUSING AUTHORITY's development of the multi-unit residential rental property known as 5575 Armitos Avenue in Goleta, California. The property is more fully described in Exhibit A attached hereto and made a part hereof for all purposes ("Project Site").

3. HOUSING AUTHORITY agrees that occupancy and affordability requirements regarding low income group households/persons shall remain in effect for at least thirty years unless COUNTY consents to a shorter term.

4. Subject to the terms and conditions contained in this Agreement, COUNTY agrees to make HOUSING AUTHORITY a grant in an amount not to exceed the sum of One Hundred and Four Thousand Dollars (\$104,000) to assist HOUSING AUTHORITY in developing fourteen residential low income rental units on the project site which are intended to be maintained as an affordable rental housing project for low income tenants, as defined in HOUSING AUTHORITY regulations.

88-11,025

5. It is understood by the parties hereto that the funds being used for the purposes of the Agreement are in-lieu housing mitigation funds furnished to the COUNTY as a condition of project approval for Santa Barbara Business Park, 83-DP-14, and that the COUNTY will only be obligated to furnish project funds to HOUSING AUTHORITY up to \$104,000. COUNTY shall incur no liability to HOUSING AUTHORITY, its officers, agents, employees, suppliers or contractors for any failure or delay in dispensing the grant. Further, HOUSING AUTHORITY shall indemnify and hold COUNTY harmless from any liability or damage resulting from any delay in making any such payments.

6. If at any time within applicable statutory periods of limitation it is determined by COUNTY that funds provided for under the terms of this Agreement have been used by or on behalf of HOUSING AUTHORITY in a manner or for a purpose not authorized or prohibited by said Agreement, HOUSING AUTHORITY shall, at COUNTY's request, pay immediately to COUNTY an amount equal to one hundred ten percent (110%) of any amount expended in violation of said Agreement.

7. HOUSING AUTHORITY shall indemnify, defend and save the COUNTY, its agents, officers and employees harmless from and against any and all active and passive liability, claims, suits, actions, damages, and/or causes of action arising during the term of this Agreement or arising out of the development of the project site, out of any personal injury, bodily injury, loss of life or damage to property, violation of any federal, state or municipal law or ordinance or other cause in connection with the activities of HOUSING AUTHORITY, its employees or agents or on account of the performance or character of the work, unforeseen difficulties, accidents, occurrences or other causes and from and against all costs, counsel fees, expenses incurred in obtaining expert testimony and the attendance of witnesses, expenses and liability incurred in and about any such claim, the investigation thereof or the defense of any action or proceedings brought thereon, and from and against any orders, judgments or decrees which may be entered therein.

8. HOUSING AUTHORITY agrees that it shall comply with all the provisions of this agreement and regulations adopted pursuant thereto and with all other local, State and Federal laws and regulations applicable to the project to be conducted hereunder. Without limiting the generality of the foregoing, HOUSING AUTHORITY:

A. Shall not, on the grounds of race, color, national origin, sex, religion, age or handicap when otherwise qualified:

- 1.) Deny any person any service or other benefit provided under the project;
- 2.) Provide any person any service or other benefit which is different, or is provided in a different form from that provided to others under the project;
- 3.) Subject any person to segregated or separate treatment in any facility in, or in any matter or process related to receipt of any service or benefit under the project;
- 4.) Restrict in any way the enjoyment of an advantage or privilege enjoyed by others receiving any service or benefit under the project;
- 5.) Treat an individual differently from others in determining whether he satisfied any admission, enrollment eligibility membership, or other requirement or condition which individuals must meet in order to be provided any service or other benefit provided under the project;
- 6.) Deny an opportunity to participate in the project as an employee.

B. Shall comply with the provisions of COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code), attached hereto as Exhibit B and made a part hereof for all purposes.

C. Shall incorporate and follow any procedures, practice, rules, indexes and guidelines required by any local, State or Federal law, regulation or guideline.

9. HOUSING AUTHORITY understands that COUNTY's objective in this Agreement is to satisfy the conditions of approval of Santa Barbara Business Park, 83-DP-14, for use of housing mitigation funds to augment affordable housing opportunities, and to obtain and provide housing affordable to eligible income families.

10. The conditions of this Agreement and the respective rights and obligations of the parties hereunder shall be binding upon the heirs, assigns and successors in interest of each of the parties.

IN WITNESS WHEREOF, the parties have entered into this agreement on the date appearing below.

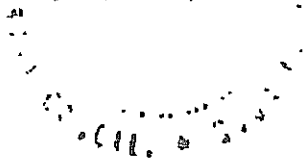
COUNTY OF SANTA BARBARA

Dated: Aug 5 1985 By *William H. ...*

ATTEST:

HOWARD C. MENZEL  
County Clerk-Recorder

By *Thomas ...*  
Deputy Clerk-Recorder



Signature(s) must be notarized

Housing Authority of the  
County of Santa Barbara  
By *Richard L. ...*  
Vice-Chairman

Dated: July 11, 1985

APPROVED AS TO FORM:

KENNETH L. NELSON  
COUNTY COUNSEL

By *Suzanne R. Feldman*  
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

KRISTI M. JOHNSON  
AUDITOR CONTROLLER

By *Daniel P. Vitos*

STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

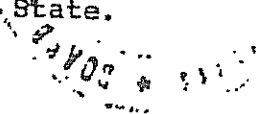
)  
) ss.  
)

On August 5, 1985 before me, the undersigned,  
a Deputy Clerk-Recorder in and for said County and State, personally  
appeared DeWayne Holmdahl, personally known to me to  
be the Chairman of the Santa Barbara County Board of Supervisors,  
State of California, and that he acknowledged to me that he executed  
the foregoing Agreement to Grant Mitigation Funds to the Housing Authority  
on behalf of the County of Santa Barbara.

WITNESS my hand and official seal this 5th day of August  
1985.

HOWARD C. MENZEL, County Clerk-Recorder  
and ex-officio Clerk of the Santa  
Barbara County Board of Supervisors.

By *Howard C. Menzel*  
Deputy Clerk-Recorder in and for  
said County and State.



State of California )  
County of Santa Barbara) ss.

On this 11th day of July, in the year 1985, before me MARY ELLEN JACOBS, a Notary Public in and for the County and State above shown, personally appeared Leland I. Gerber, personally known to me to be the person who executed this instrument as Vice-Chairman of the HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA and acknowledged to me that the HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA executed it.

(Seal)



*Mary Ellen Jacobs*



On 09.1  
E # 149.  
Loan No.

1340350 VZW



09-14707  
of 15 3:27 PM '83

OFFICIAL RECORDS  
SANTA BARBARA CO. CLERK  
ROSEMARY C. HENKEL  
CLERK-RECORDS

WHEN RECORDED MAIL TO:  
Housing Authority of the County  
of Santa Barbara  
815 West Ocean Avenue  
Lompoc, CA. 93436

NO FEE FOR  
SOC. CODE 6109

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:  
N/A

DOCUMENTARY TRANSFER TAX & EXEMPT

..... Computed on the consideration or value of property conveyed OR  
..... Computed on the consideration or value less liens or encumbrances  
remaining at time of sale.

Signature of Declarant or Agent determining tax Firm Name

### CORPORATION GRANT DEED

JAPH 71-090-73 (P74)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

MCR TECHNOLOGY, INC., A MICHIGAN CORPORATION, formerly Minicars, Inc.

a corporation organized under the laws of the State of Michigan

, does hereby

GRANT to

HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA

the real property in the ~~unincorporated~~ unincorporated area of the  
County of Santa Barbara

, State of California, described as

Parcel 2 of Parcel Map No. 13430 as shown on Map filed in Book 31, Pages 97 and 98 of  
Parcel Maps, in the Office of the County Recorder of Santa Barbara County.

Dated September 13, 1983

MCR TECHNOLOGY, INC., a Michigan  
Corporation

STATE OF CALIFORNIA  
COUNTY OF  
Santa Barbara

By Donald Friedmann President

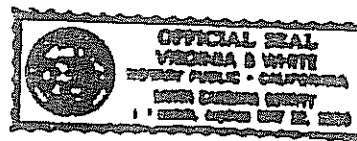
On September 13, 1983

before me, the undersigned, a Notary Public in and for said  
State, personally appeared Donald Friedmann

By \_\_\_\_\_ Secretary

known to me to be the \_\_\_\_\_ President, MCR

Witness my hand and official seal.



R. 100

Print name for official recorded deed. \$5.00

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY THAT THE INTEREST IN THE REAL PROPERTY CONVEYED BY THE GRANT DEED DATED SEPTEMBER 13, 1983 FROM MCR TECHNOLOGY TO HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA, A PUBLIC AGENCY OF THE STATE OF CALIFORNIA, IS HEREBY ACCEPTED BY ITS DULY AUTHORIZED OFFICER AND CONSENTS TO THE RECORDATION THEREOF BY ITS DULY AUTHORIZED OFFICER.

DATED THIS 16<sup>th</sup> DAY OF SEPTEMBER, 1983.

HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA,  
A PUBLIC AGENCY OF THE STATE OF CALIFORNIA

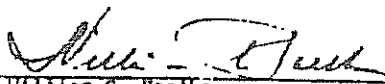
BY:   
William C. Poelke  
Executive Director

EXHIBIT B  
UNLAWFUL DISCRIMINATION

The Board of Supervisors of the County of Santa Barbara do ordain as follows.  
SECTION 1.

A new article is hereby added to Chapter 2 of the Santa Barbara County Code reading as follows:

ARTICLE XIII. UNLAWFUL DISCRIMINATION, COUNTY CONTRACTS

Sec. 2-94. Exceptions.

The provisions of this article shall not apply to contracts or agreements for the acquisition, exchange or disposition of real property or interests therein, nor to contracts or agreements with the State of California, or its political subdivisions, or with the United States of America. (Ord. 2946, § 1)

Sec. 2-95. Prohibition of Unlawful Discrimination in Employment Practices.

The County of Santa Barbara reserves the right to terminate forthwith each and every written contract and agreement (except purchase orders) for goods and/or services entered into by the County of Santa Barbara or by its joint powers agencies or agents with the consent of the other parties (hereinafter called "contractor") including but not limited to concessions, franchises, construction agreements, leases, whether now in effect or hereinafter made if the county finds that the contractor is discriminating or has discriminated against any employee or applicant for employment in violation of any applicable state or federal laws, rules or regulations which may now or hereafter specifically prohibit such discrimination on such grounds as race, religion, sex, color, national origin, physical handicap when otherwise qualified, Vietnam era veteran/disabled, or age.

Such finding may only be made after contractor has had a full and fair hearing on notice of thirty (30) days before an impartial hearing officer at which hearing contractor may introduce evidence, produce witnesses and have the opportunity to cross-examine witnesses produced by the county. Further, any finding of discrimination must be fully supported by the facts developed at such hearing and set forth in a written opinion; and in addition, contractor may move in the appropriate court of law for damages and/or to compel specific performance of a contract or agreement if any of the above procedures are not afforded to the contractor. If contractor is not found to have engaged in unlawful discriminatory practices, county shall pay all costs and expenses of such hearing, including reasonable attorneys' fees to contractor in accordance with current Santa Barbara County Superior Court schedule of attorneys' fees for civil trials. If contractor is found to have engaged in such unlawful discriminatory employment practices, contractor shall pay all such costs, expenses and attorneys' fees.

Whether or not a contract or agreement is still in existence at the time of final determination of such unlawful discrimination, the contractor shall forthwith reimburse the county for all damages directly stemming from such discrimination; however, those damages shall not exceed and are not reimbursable in an amount which exceeds amounts paid to contractor under the terms of the contract or agreement.

Nothing in this section 2-95 shall directly or by interpretation give a private cause of action to any third party (not a signatory to the contract or agreement) including employees past or present, or applicants for employment to contractor, it being the sole purpose of this clause to administratively assure compliance with the nondiscrimination clauses contained herein.

Employment practices shall include, but are not limited to employment, promotion, demotion, transfer, recruitment and advertising for recruitment, layoff or other termination, rate of pay, employee benefits and all other forms of compensation selection for training and apprenticeship and probationary periods.

Contractor shall permit access at all reasonable times and places to all of its records of employment, advertising, application forms, tests and all other pertinent employment data and records, to the County of Santa Barbara, its officers, employees and agents for the purpose of investigation to ascertain if any unlawful discrimination as described herein has occurred or is being practiced, provided that such records are relevant to a complaint of an unlawful discriminatory practice which has been forwarded to contractor reasonably prior to the time contractor

is asked to make such records available. In addition, all such records shall be deemed "Confidential" by the officers, employees and agent of the county. No records or copies of such records may be removed from the premises of contractor and no disclosure, oral or written of such record, may be made to third parties except as provided within the agreement. Provided, however, that in the event of a hearing to determine whether or not contractor is engaging in unlawful discrimination in employment practices as defined herein, the board of supervisors of Santa Barbara County may issue subpoenas to require that certified copies of such records be made available at the hearing.

Failure to fully comply with any of the foregoing provisions relating to unlawful discrimination in employment practices shall be deemed to be a material breach of any contract or agreement with the County of Santa Barbara. All persons contracting with or who have contracts for goods or services with the county shall be notified that this chapter applies to their contract or agreement with the County of Santa Barbara. (Ord. No. 2946, § 1; Ord. No. 2993, § 1; Ord. No. 3018, § 1)

#### Sec. 2-95.5. Exceptions

Notwithstanding any other provisions in this article, any party contracting with the County of Santa Barbara having an affirmative action program which has been approved within twelve (12) months from the date of the contract by an agency of the federal government shall be deemed to be in compliance with the provisions of this article upon furnishing documentary evidence of such approval satisfactory to the county affirmative action officer. Loss of such approval shall be immediately reported by such party to the county affirmative action officer.

#### Sec. 2-96. Purchase Orders.

Purchase orders shall contain the following clause as grounds for termination of such purchase order.

"If complaint is made that seller is engaging in discriminatory employment practices made unlawful by applicable state and federal laws, rules or regulations, and the state Fair Employment Practice Commission or the federal Equal Employment Opportunities Commission determines that such unlawful discrimination exists, then the County of Santa Barbara may forthwith terminate this order." (Ord. No. 2946, § 1)

#### Sec. 2-97. Affirmative Action Officer.

At the discretion of the county affirmative action officer, he or she shall promptly and thoroughly investigate, or cause to be investigated reports and complaints from whatever source, that any party contracting with the County of Santa Barbara is engaging, or during the term of a contract or agreement with the County of Santa Barbara has engaged, in any unlawful discriminatory employment practices as described in section 2-95 of this Code. If the investigation discloses reason to believe such unlawful discrimination does exist or has existed and the conditions giving rise thereto have not been changed so as to prevent further such unlawful discrimination, and the said party shall not forthwith terminate such unlawful discrimination, take all appropriate steps to prevent a recurrence of such or other unlawful practices, and compensate the person or persons unlawfully discriminated against for any and all loss incurred by reason of such unlawful discrimination, all to the satisfaction of the affirmative action officer, then the affirmative action officer shall cause the matter to be presented for action to the state Fair Employment Practices Commission or the federal Equal Employment Opportunities Commission, or both, and to any other concerned state or federal agencies or officers.

If and when it has been finally determined by the affirmative action officer, county counsel, or state or federal regulatory agencies that such unlawful discriminatory employment practice has in fact so occurred or are being carried on, then the affirmative action officer shall forthwith present the entire matter to the board of supervisors of the county, together with all damages, costs and expenses related thereto and incurred by county, for appropriate action by the board of supervisors in accord with the intent and purposes of this article and of the affirmative action program of the County of Santa Barbara. (Ord. No. 2946, § 1)