



Good Neighbors

San Diego  
Housing Commission

## REPORT

DATE ISSUED: November 10, 2006 REPORT NO: HCR 06-90  
ATTENTION: Chair and Members of the Housing Commission  
For the Agenda of November 17, 2006  
SUBJECT: Preliminary Items Pursuant to Issuing Multifamily Housing Revenue Bonds for Merrill Gardens at Banker's Hill (Council District 2)

### REQUESTED ACTION:

Take the initial steps to issue Housing Authority mortgage revenue bonds to fund the development of an 84-unit, mixed-income senior housing facility located in Bankers Hill. Borrower would develop the property and restrict rents on 20% of the units below market; issuance of bonds would require Housing Authority approval at a later date.

### STAFF RECOMMENDATION:

1. Housing Commission recommend the:
  - A. Housing Authority approve a bond inducement resolution (a "declaration of official intent") for up to \$35 million in multifamily housing revenue bonds for development of the Merrill Gardens at Bankers Hill by Merrill Gardens at Banker's Hill, LLC ("Merrill Gardens");
  - B. Housing Authority approve an application (and subsequent applications if necessary) to the California Debt Limit Allocation Committee ("CDLAC") for an allocation of authority to issue tax-exempt "private activity bonds" in an amount up to \$35 million for Merrill Gardens at Banker's Hill; and,
  - C. City Council hold a public hearing (*known as a TEFRA hearing - Tax Equity and Fiscal Responsibility Act*) and adopt a resolution approving the issuance of tax-exempt bonds in an amount up to \$35 million by the Housing Authority for Merrill Gardens at Banker's Hill located at 222 Laurel Street in the City of San Diego.
2. Housing Commission approve a financing team of Stradling Yocca Carlson & Rauth as bond counsel and CSG Advisors as financial advisor to begin work on the project.

### BACKGROUND

#### The Project

Merrill Gardens at Banker's Hill is being planned as a complete senior residential community. The project will include independent and assisted living units and a host of on-site services and amenities. The proposed project would be located on the northeast corner of 2<sup>nd</sup> Avenue and Laurel Street in close proximity to Balboa Park and downtown San Diego (See attachment 1 for a site map).



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Merrill Gardens recently purchased the site from a limited liability corporation headed by Peter Janopaul and is currently working on the design of the project. Preliminary plans call for 84 dwelling units in a four to six story structure with one level of underground parking. Common area amenities would include a large outdoor courtyard, commercial dining room, library, activity room, beauty salon and wellness center.

Detailed design plans and a development permit application will be submitted to the City's Development Services Department in early 2007. The bond inducement and TEFRA actions described in this report are being undertaken at this time in order to preserve the opportunity to issue tax exempt housing revenue bonds for the project in the future; these items do not grant any authority from the City of San Diego to construct the proposed project.

#### Housing Affordability

Merrill Gardens at Banker's Hill will include 18 studios, 46 one-bedroom units, and 20 two-bedroom units. 20% of the units (17 units) will be restricted at 50% area median income (AMI) (\$27,600 for a family of two). The remaining units will be rented at market rates. In addition to paying for rents, tenants would also make payments for services, such as meals, transportation, housecleaning, and varying levels of medical and personal care. Rent and income restrictions for the project are outlined in the chart below. The proposed rents do not include payments for services which will be charged in addition to the proposed rents.

Type	AMI	Number of Units	Restricted Rent (including utility allowance)
Studio	50% AMI	4	\$604
Studio	Market	14	\$900*
One Bedroom	50% AMI	9	\$690
One Bedroom	Market	37	\$1,300*
Two Bedroom	50% AMI	4	\$776
Two Bedroom	Market	16	\$1,750*
<b>Total</b>		<b>84</b>	

\*Estimated market rents

#### The Developer

The project is being developed by Merrill Gardens at Banker's Hill, LLC a partnership of Merrill Gardens and SRM Development. The developer's Statement for Public Disclosure and most recent financials are included as Attachments 2 and 3. Merrill Gardens is a subsidiary of the R.D. Merrill Company, a private holding company formed in the early 1890's by timber pioneer R.D. Merrill. The R.D. Merrill Company formed Merrill Gardens in 1993 to provide an alternative to traditional retirement housing.

In its thirteenth year of operation, Merrill Gardens has grown from 8 employees to 2,700. Merrill Gardens currently owns and operates 70 communities in 23 states, including California. Merrill Gardens owns and operates 17 senior communities in the following California locations:

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Apple Valley	Oceanside	Stockton
Citrus Heights	Rohnert Park	Vacaville
Fremont	Sacramento	Vallejo (North Bay)
Hemet	San Ramon	Vallejo (Central)
Lancaster	Santa Maria	Whittier
Manteca	Sonoma	

SRM Development (SRM) is a privately funded real estate development company primarily focused on the development of high quality multi-family, retirement, and mixed-use communities. SRM has over \$500 million of projects in development throughout Washington, Arizona, Oregon, Idaho, and California. In addition, SRM and Merrill Gardens are partners on nine retirement communities in California and Washington.

In downtown San Diego, SRM has recently completed two projects: Entrada and Market Street Village. Entrada is a 172-unit apartment project located at 13<sup>th</sup> Street and Island Avenue that includes 40 affordable units. Of the 40 affordable units, 22 are restricted at 70% AMI (\$48,300 for a family of four) and 18 are restricted at 100% AMI (\$64,900 for a family of four). Market Street Village, located at 14th Street and Market Street, is a mixed-use development that includes 225 apartments and a 43,000 square-foot Albertson's supermarket.

#### Selection of the Financing Team Members

Staff recommends assigning CSG Advisors as financial advisor and Stradling Yocca Carlson & Rauth as bond counsel to work on the project. The proposed financing team members have been selected in accordance with the existing policy for the issuance of bonds. Financial advisors and bond counsels are designated on a rotating basis from the firms selected under the program through a competitive RFP process.

#### Proposed Housing Bonds

The Housing Commission utilizes the Housing Authority's tax-exempt borrowing status to pass on lower interest rate financing (and make federal tax credits available) to developers of affordable housing. The Housing Authority's ability to issue bonds is limited under the U.S. Internal Revenue Code. To issue bonds for a project, the Housing Authority must first submit an application to CDLAC for a bond allocation. Prior to submitting applications to CDLAC, projects are brought before the Housing Commission, Housing Authority, and City Council. Housing Authority bond inducement resolutions must be obtained prior to application submittal and City Council TEFRA resolutions must be secured no later than 30 days after application submittal.

The action item for the Housing Authority will be to approve a bond inducement resolution for the project. The bond inducement resolution establishes a date after which (and up to 60 days prior to which) costs incurred can be reimbursed from bond proceeds. Merrill Gardens purchased the site for the proposed project on October 2, 2006. For the site acquisition cost to be an eligible use of bond proceeds, the Housing Authority must approve the bond inducement resolution by

December 1<sup>st</sup>. It is important to maintain the land cost as a reimbursable bond expense for the proposed senior facility because expenses such as the commercial kitchen and dining and laundry facilities cannot be paid for from bond proceeds. In order to meet the December 1<sup>st</sup> deadline, this item will be docketed for consideration by the Housing Authority on November 21<sup>st</sup>.

Approval of the bond inducement resolution by the Housing Authority and the TEFRA resolution by the City Council would also permit staff to submit an application to CDLAC in 2007 for an allocation of bond issuing authority. If the project moves forward as proposed, it is anticipated that bonds would be issued in late 2007. A general description of the Multifamily Bond Program and actions that must be taken by the Housing Authority and by the City Council to initiate and finalize proposed financings are described in Attachment 4.

The total development cost of the project is estimated to be approximately \$40 million. In addition, to housing revenue bonds, the project will also be financed with developer equity. At present, no Housing Commission loan funds are proposed for the project.

The developer currently proposes to issue the bonds through a public offering. The bonds would meet all the requirements of the Housing Commission's Multifamily Housing Revenue Bond Program policy and would fully comply with the City's ordinance on bond disclosure.

FISCAL CONSIDERATIONS:

There are no fiscal impacts to the Housing Commission, City, or Housing Authority associated with the requested actions. Approval of the bond inducement and TEFRA resolutions do not commit the Housing Authority to issue bonds. The bonds would not constitute a debt of the City of San Diego. If bonds are ultimately issued for the project, the bonds will not financially obligate the City, the Housing Authority or the Housing Commission because security for the repayment of the bonds will be limited to specific private revenue sources. Neither the faith and credit nor the taxing power of the City or the Authority would be pledged to the payment of the bonds. The developer is responsible for the payment of all costs under the financing, including the Housing Commission's annual administrative fee.

PREVIOUS HOUSING AUTHORITY And/Or COMMITTEE ACTIONS: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The developer anticipates presenting an informational item to the Uptown Planners on November 15, 2006. Uptown Planners will also hear an action item on the project once a development permit application is submitted.

ENVIRONMENTAL REVIEW:

The proposed bond inducement and TEFRA items are not subject to review under the California Environmental Quality Act (CEQA) per Section §15060(C)(2) of the CEQA Guidelines. The issuance of any bonds for the project will be contingent upon proper environmental review of the project under CEQA by the City of San Diego.

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KEY STAKEHOLDERS & PROJECTED IMPACTS:

Seniors are the intended residents of the project. Merrill Gardens at Banker's Hill, LLC is the developer of the project. The owners of Merrill Gardens at Banker's Hill, LLC are listed in Attachment 2.

Respectfully submitted,

Approved by,

Cissy Fisher

Director of Housing Finance & Development

Elizabeth C. Morris

President & Chief Executive Officer

**Signature on File  
With Original Document**

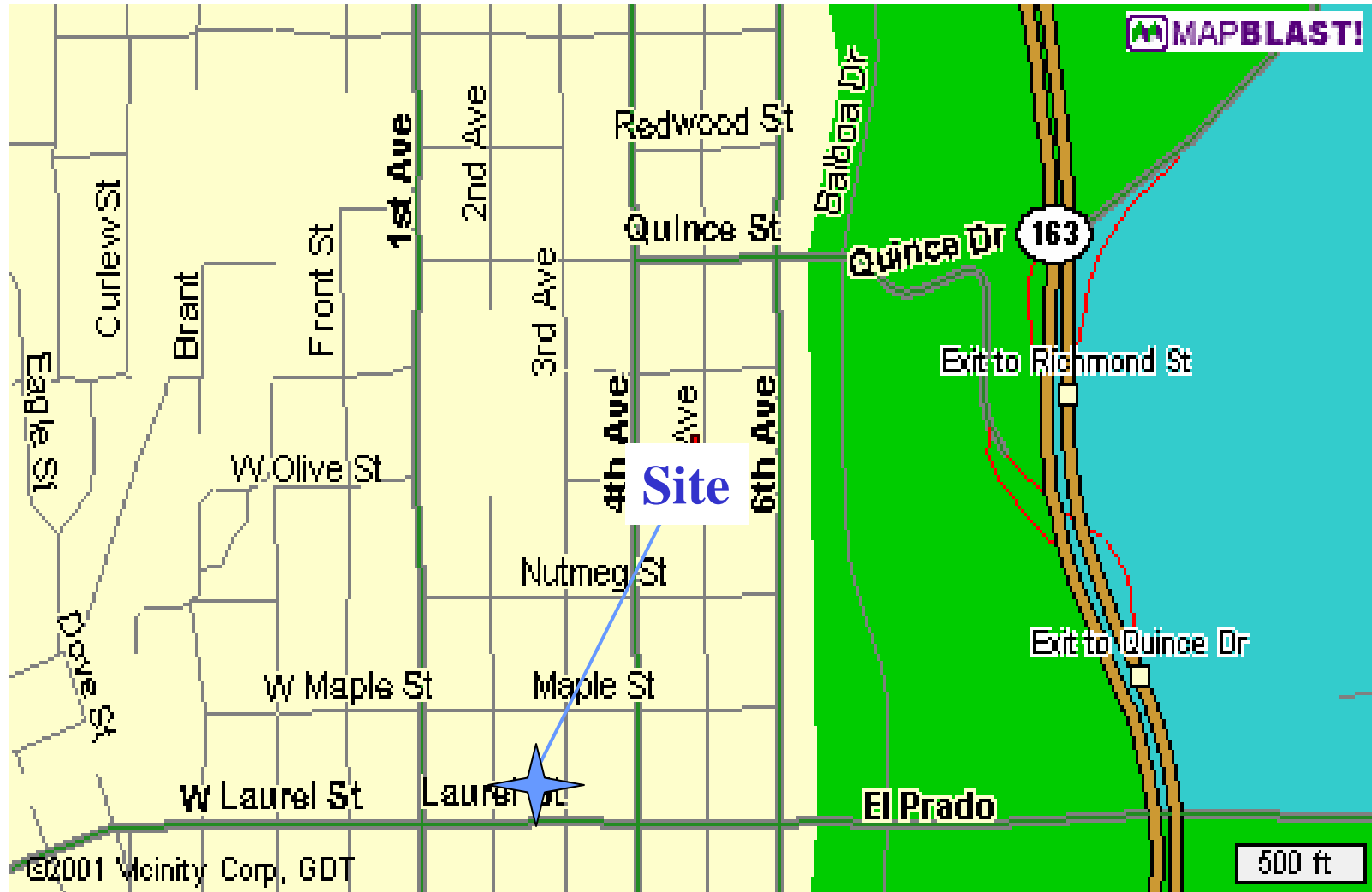
G:\hfshare\Reports\Bonds reports\Merrill Gardens Seniors HC Report

Attachments:

1. Site Map
2. Merrill Gardens' Disclosure Statement\*
3. Merrill Gardens' Financial Statement\*
4. Multifamily Bond Program Summary

\* Distribution of the attachment is limited. A copy is available for review at the Housing Commission office located at 1625 Newton Avenue

# Attachment 1: Site Map



**Site Address: 222 Laurel Street, San Diego**



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**San Diego  
Housing Commission**

- 1625 Newton Avenue
- San Diego, California 92113-1038
- 619/231 9400
- FAX: 619/544 9193

DEVELOPER'S STATEMENT FOR PUBLIC DISCLOSURE

(add extra **sheets** if you need more **space**)

1. Name of developer:

**Merrill Gardens at Banker's Hill, LLC. (A Washington Limited Liability Company)**

2. Address, phone number and ZIP Code:

**Merrill Gardens at Banker's Hill, LLC  
C/O SRM Development, LLC  
104 South Division  
Spokane, WA 99202  
Phone: (509) 455-5477**

3. IRS Number of Developer:

**EIN 20-5578468**

4. If the developer is not an individual doing business under his own name, the developer has the status indicated below and is organized or operating under the laws of California as:

\_\_\_\_\_ A corporation

\_\_\_\_\_ A nonprofit or charitable institution or corporation

\_\_\_\_\_ A partnership known as: \_\_\_\_\_

\_\_\_\_\_ A business association or a joint venture known as \_\_\_\_\_

\_\_\_\_\_ A Federal, State or local government or instrumentality thereof.

  **X**   Other (explain) A Washington Limited Liability Company

5. If the developer is not an individual or a government agency or instrumentality, give date of organization:

**September 20, 2006**



6. Names, addresses, phone numbers, title of position (if any) and nature and extent of the interest of the officers and principal members, shareholders, and investors of the developer, other than a government agency or instrumentality, are set forth as follows:

**Merrill Gardens at Banker's Hill, LLC Member:**

<b>MGJV Investment II, LLC</b>	<b>72.333 %</b>
<b>SRMMGBH, LLC</b>	<b>7.666 %</b>
<b>SRMJV</b>	<b>20.000 %</b>

- a. If the developer is a corporation, the officers, directors or trustees, and each stockholder owning more than 10% of any class of stock.
- b. If the developer is a nonprofit or charitable institution or corporation, the members who constitute the board of trustees or board of directors or similar governing body.  
N/A
- c. If the developer is a partnership, each partner, whether a general or limited partner, and either the percent of interest or a description of the character and extent of interest.  
N/A
- d. If the developer is a business association or a joint venture, each participant and either the percent of interest or a description of the character and extent of interest.
- e. If the developer is some other entity, the officers, the members of the governing body, and each person who has an interest of more than 10%.

**MGJV Investments II, LLC (A 72.333% owner of Merrill Gardens at Banker's Hill)**

**48 Owners**

**Three major owners:**

<b>Merrill Gardens L.L.C.—20%</b>	<b>14.46% of MGBH</b>
<b>LCM Merrill Gardens LLC—20%</b>	<b>14.46% of MGBH</b>
<b>Sims Merrill Gardens I LLC—38.14%</b>	<b>27.58% of MGBH</b>

**\*next highest share is 3.72%**

**Merrill Gardens L.L.C.**

91 different partners

Merrill Associates Limited Partnership—56.3113% which is 8.14% of MGBH

\*next highest share is 6%

\*The LCM Merrill Gardens LLC and Sims Merrill Gardens I LLC are both made up of several individual investors. Merrill Gardens is comfortable saying that none of those individual investors would own more than 10% of Merrill Gardens at Banker's Hill, LLC.

**SRMJV, LLC**

**MEMBER LIST 2002**

(A 20.00 % owner of Merrill Gardens at Banker's Hill)

<u>Name, Address &amp; Zip Code</u>	<u>Phone Number</u>	<u>Position Title (if any) and percent of interest or description of character and extent of interest</u>	<u>Percent</u>
Stone Rivard McGonigle 104 S. Division Spokane, WA 99202	(509) 455- 5477	Development, LLC, Manager	0.00
John M. Stone 104 S. Division Spokane, WA 99202	(509) 455- 5477	Member	23.82
Bryan P. Stone 2718 S. Rhyolite Rd Spokane, WA 99202	(509) 455- 5477	Member	23.82
James D. Rivard 5202 S. Hogan Court Spokane, WA 99223	(509) 455- 5477	Member	23.82
Dee J. McGonigle III 1424 E. Woodcliff Road Spokane, WA 99203	(509) 455- 5477	Member	23.82
SRMPS, LLC 104 S. Division Spokane, WA 99202	(509) 455- 5477	Member	4.7

**SRMMGBH, LLC  
MEMBER LIST 2006  
(A 7.66% owner of Merrill Gardens at Banker's Hill)**

<u>Name, Address &amp; Zip Code</u>	<u>Phone Number</u>	<u>Position Title (if any) and percent of interest or description of character and extent of interest</u>	<u>Percent</u>
Stone Rivard McGonigle 104 S. Division Spokane, WA 99202	(509) 455-5477	Development, LLC, Manager	0.00
John M. Stone 104 S. Division Spokane, WA 99202	(509) 455-5477	Member	43.473
Bryan P. Stone 2718 S. Rhyolite RD. Spokane, WA 99203	(509) 455-5477	Member	17.391
James D. Rivard 5202 S. Hogan Court Spokane, WA 99223	(509) 455-5477	Member	17.391
Dee J. McGonigle III 1424 E. Woodcliff Road Spokane, WA 99203	(509) 455-5477	Member	17.391
Ryan Leong 700 West 7 <sup>th</sup> Ave., Apt 102 Spokane, WA 99204	(509) 455-5477	Member	4.34

7. Name, address and nature and extent of interest of each person or entity (not named in response to Item 6) who has a beneficial interest in any of the shareholders or investors named in response to Item 6 which gives such person or entity more than a computed 10% interest in the developer (for example, more than 20% of the stock in a corporation which holds 50% of the stock of the developer; or more than 50% of the stock in a corporation which holds 20% of the stock of the developer):

Name, Address and  
Zip Code

Description of character and  
extent of interest

N/A

8. Names (if not given above) of officers and directors or trustees of any corporation or firm listed under Item 6 or Item 7 above:

Listed Above

9. Is the developer a subsidiary of or affiliated with any other corporation or corporations or any other firm or firms? If yes, list each such corporation or firm by name and address, specify its relationship to the developer, and identify the officers and directors or trustees common to the developer and such other corporation or firm.
10. The financial condition of the developer, as of **October 4, 2006** is reflected in the attached financial statement.
11. If funds for the development are to be obtained from sources other than the developer's own funds, a statement of the developer's plan for financing the development:

**Developer has completed an equity offering for this project and has used the equity to acquire the land. Land purchase price was \$7,660,000.**

12. Sources and amount of cash available to developer to meet equity requirements of the proposed undertaking:

**See answer to question 11 above.**

- a. In banks:

<u>Name, Address and ZIP Code of Bank</u>	<u>\$ Amount</u>
-------------------------------------------	------------------

- b. By loans from affiliated or associated corporations or firms:

<u>Name, Address and ZIP Code of Source</u>	<u>\$ Amount</u>
---------------------------------------------	------------------

- c. By sale of readily salable assets:

<u>Description</u>	<u>Market Value</u>	<u>Mortgages or Liens</u>
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13. Name and addresses of bank references:

**Allan Jones  
Bank of America  
800 Fifth Ave. 37<sup>th</sup> Floor  
Seattle, WA 98104  
Business: (206) 358-7145  
Business Fax: (206) 358-3486**

14. Has the developer or any of the developer's officers or principal members, shareholders or investors, or other interested parties been adjudged bankrupt, either voluntary or involuntary, within the past 10 years? Yes \_\_\_ No X  
If yes, give date, place, and under what name.

15. Has the developer or anyone referred to above as "principals of the developer" been indicted for or convicted of any felony within the past 20 years? Yes \_\_\_\_\_ No X

If yes, give for each case (1) date, (2) charge, (3) place, (4) Court, and (5) action taken. Attach any explanation deemed necessary.

16. Undertakings, comparable to the proposed project, which have been completed by the developer including identification and brief description of each project and date of completion:

**The R. D. Merrill Company is a private holding company formed in the early 1890's by timber pioneer R. D. Merrill. The Seattle, Washington based company is still owned and directed by Merrill family descendants. Charles B. Wright, III, a fourth generation Merrill, is the current chairman.**

**It is the vision of Wright and his team that led the R. D. Merrill Company to form Merrill Gardens in 1993. Merrill Gardens is committed to providing an alternative to traditional retirement housing. As the company celebrates 13 years of operations, it has grown from eight employees to over 2,700. Merrill Gardens currently owns and operates 70 communities in 12 states. The communities are located in Alabama, Arizona, California, Florida, Georgia, Indiana, Louisiana, Nevada, Oklahoma, Tennessee, Texas and Washington.**

**The company is now the fifth largest senior housing operator in the United States and the second largest private operator, according to the latest survey by the Assisted Living Federation of America. The company has 2,700 employees. Merrill Gardens entered the senior housing market 13 years ago with just one community in Seattle and has grown steadily to become a respected leader in the industry. The private company posted revenues of \$124 million in 2002.**

**Merrill Gardens purchased its first independent and assisted living community in Seattle, gaining insight into the basic operating profile of the industry. The company then built a community from the ground up in Monroe,**

Washington, learning design and construction. Through new construction and timely acquisition of existing communities, Merrill Gardens is now the fifth largest operator of senior housing. Merrill Gardens is and second largest private company in the industry.

Each Merrill Gardens community is different in physical structure, reflecting the characteristics of the area where it is located and the needs of residents. The management and resources of the R. D. Merrill Company ensure high standards of service and long-term commitment to quality, security, choice and privacy in all Merrill Gardens communities.

Merrill Gardens owns and operates 17 communities in the following California locations:

Apple Valley	Oceanside	Stockton
Citrus Heights	Rohnert Park	Vacaville
Fremont	Sacramento	Vallejo, North Bay
Hemet	San Ramon	Vallejo, Vallejo
Lancaster	Santa Maria	Whittier
Manteca	Sonoma	

Merrill Gardens is, above all, a company dedicated to quality and built on a strong foundation of family, community, long-term commitment and entrepreneurial spirit.

17. If the developer or a parent corporation, a subsidiary, an affiliate, or a principal of the developer is to participate in the development as a construction contractor or builder:
- Name and address of such contractor or builder:  
  
**SRM Construction, Inc.**  
**104 S. Division**  
**Spokane, WA 99202**
  - Has such contractor or builder within the last 10 years ever failed to qualify as a responsible bidder, refused to enter into a contract after an award has been made, or failed to complete a construction or development contract?  
Yes \_\_\_\_\_ No X If yes, explain:
  - Total amount of construction or development work performed by such contractor or builder during the last three years: \$ 150,000,000

General description of such work:

- Retirement- Assisted Living Facilities
- Multi-Family Mixed Use Projects- Apartments w/ Office and/or Retail Over Below Grade Parking Structures
- Condominium/ Mixed Use

d. Construction contracts or developments now being performed by such contractor or builder:

<u>Identification of Contract or Development</u>	<u>Location</u>	<u>Amount</u>	<u>Date to be Completed</u>
Market St. Village	San Diego, CA	35,000,00	Oct. 2006
Riverstone Center Condo Shops	Coeur d'Alene, ID	40,000,000	March 2008

e. Outstanding construction-contract bids of such contractor or builder:

<u>Awarding Agency</u>	<u>Amount</u>	<u>Date Opened</u>
Merrill Gardens Santa Maria Santa Maria, CA	18,000,000	Oct. 2006

18. Brief statement respecting equipment, experience, financial capacity, and other resources available to such contractor or builder for the performance of the work involved in the proposed project, specifying particularly the qualifications of the personnel, the nature of the equipment, and the general experience of the contractor:

**SRM construction, Inc. and its relate affiliates have successfully completed mixed use multi-family retirement and condominium project in Washington, Idaho, Nevada, and California for over 20 years. SRM Development has retained ownership in all the projects it has developed and constructed. SRM group of companies only constructs projects where they retain an ownership position in the projects.**

19. Does any member of the governing body of the San Diego Housing Commission, to which the accompanying proposal is being made, or any officer or employee of the San Diego Housing Commission who exercises any functions or responsibilities

DISCLOSURE STATEMENT: PAGE 9

in connection with the carrying out of the project covered by the developer's proposal, have any direct or indirect personal financial interest in the developer or in the proposed contractor? Yes \_\_\_\_\_ No X  
If yes, explain.

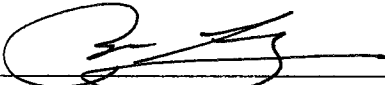
20. Statements and other evidence of the developer's qualifications and financial responsibility (other than the financial statement referred to in Item 10) are attached hereto and hereby made a part hereof as follows:

CERTIFICATION

I (We) Ryan Leong certify that this Developer's Statement for Public Disclosure and the attached evidence of the developer's qualifications and financial responsibility, including financial statements, are true and correct to the best of my (our) knowledge and belief.

Date: 10-23-2006

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

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Title: Development Manager

Title: \_\_\_\_\_

Address & ZIP Code

104 S DIVISION

\_\_\_\_\_

Spokane, WA 99202

\_\_\_\_\_

4:51 PM  
10/04/06  
Accrual Basis

**Merrill Gardens at Bankers Hill, LLC**  
**Balance Sheet**  
As of October 4, 2006

	<u>Oct 4, 06</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
Checking/Savings	0.00
<b>Total Current Assets</b>	<u>0.00</u>
<b>Fixed Assets</b>	
150 · Land	7,660,000.00
160 · Construction in Process	
00-080 · Property Taxes	-2,586.35
00-870 · Legal	2,088.00
00-950 · Title/Recording/Escrow Fees	2,578.00
<b>Total 160 · Construction in Process</b>	<u>2,079.65</u>
<b>Total Fixed Assets</b>	<u>7,662,079.65</u>
<b>TOTAL ASSETS</b>	<u><u>7,662,079.65</u></u>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
Accounts Payable	
205 · Accounts Payable	2,088.00
<b>Total Accounts Payable</b>	<u>2,088.00</u>
Other Current Liabilities	
260 · Short Term Note	1,659,225.57
<b>Total Other Current Liabilities</b>	<u>1,659,225.57</u>
<b>Total Current Liabilities</b>	<u>1,661,313.57</u>
<b>Total Liabilities</b>	1,661,313.57
<b>Equity</b>	
305 · Contributed Capital	
305.1 · Contributed Capital - MGJV II	5,425,000.00
305.2 · Contributed Capital - SRMMGBH	575,000.00
<b>Total 305 · Contributed Capital</b>	<u>6,000,000.00</u>
Net Income	766.08
<b>Total Equity</b>	<u>6,000,766.08</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>7,662,079.65</u></u>

**HOUSING COMMISSION MULTIFAMILY  
HOUSING REVENUE BOND PROGRAM  
Summary**

**General Description:** The multifamily housing bond program provides below-market financing (based on bond interest being exempt from income tax) for developers willing to set aside a percentage of project units as affordable housing. Multifamily housing revenue bonds are also known as “private activity bonds” bonds because the projects are owned by private entities, often including nonprofit sponsors and for-profit investors.

**Bond Issuer:** Housing Authority of the City of San Diego. There is no direct legal liability to the City, the Housing Authority or the Housing Commission in connection with the issuance or repayment of bonds; there is no pledge of the City’s or the Housing Authority’s faith, credit or taxing power. The bonds do not constitute a general obligation of the issuer because security for repayment of the bonds is limited to specific private revenue sources, such as project revenues. The developer is responsible for the payment of costs of issuance and all other costs under each financing.

**Affordability:** Minimum requirement is that at least 20% of the units are affordable at 50% of Area Median Income (AMI). Alternatively, a minimum of 10% of the units may be affordable at 50% AMI with an additional 30% of the units affordable at 60% AMI. The Housing Commission requires that the affordability restriction be in place for a minimum of 15 years. In practice, projects financed by multifamily housing bonds are affordable for a minimum of 30 years. Bonds may also be combined with other financing sources to create deeper affordability and longer terms of restriction.

**Rating:** Generally “AAA” or its equivalent with a minimum rating of “A” or, under conditions that meet IRS and Housing Commission requirements, bonds may be unrated for private placement with institutional investors (typically, large banks). Additional security is normally achieved through the provision of outside credit support (“credit enhancement”) by participating financial institutions that underwrite the project loans and guarantee the repayment of the bonds. The credit rating on the bonds reflects the credit quality of the credit enhancement provider.

**Approval Process:**

- **Inducement Resolution:** The bond process is initiated when the issuer (Housing Authority) adopts an “Inducement Resolution” to establish the date from which project costs may be reimbursable from bond proceeds (if bonds are later issued) and to authorize staff to work with financing team to perform a due diligence process. The Inducement Resolution does not represent any commitment by the Housing Commission, Housing Authority, or the developer to proceed with the financing.
- **TEFRA Hearing and Resolution (Tax Equity and Fiscal Responsibility Act of 1982):** To assure that projects making use of tax-exempt financing meet appropriate governmental purposes and provide reasonable public benefits, IRS Code requires that a public hearing be held and that the issuance of bonds be approved by representatives of the governmental unit with jurisdiction over the area in which the project is located (City Council). This process does not make the City financially or legally liable for the bonds or for the project.

[Note: It is uncommon for the members of the City Council to be asked to take two actions at this stage in the bond process---one in their capacity as the City Council (TEFRA hearing and resolution) and another as the Housing Authority (bond inducement). Were the issuer (Housing Authority) a more remote entity, the TEFRA hearing and resolution would be the only opportunity for local elected officials to weigh in on the project.]

- **Application for Bond Allocation:** The issuance of these “private activity bonds” (bonds for projects owned by private developers, including projects with nonprofit sponsors and for-profit investors) requires an allocation of bond issuing authority from the State of California. To apply for an allocation, an application approved by the Housing Authority and supported by an adopted inducement resolution and by proof of credit enhancement (or bond rating) must be filed with the California Debt Limit Allocation Committee (CDLAC). In addition, evidence of a TEFRA hearing and approval must be submitted prior to the CDLAC meeting.
- **Final Bond Approval:** The Housing Authority retains absolute discretion over the issuance of bonds through adoption of a final resolution authorizing the issuance. Prior to final consideration of the proposed bond issuance, the project must comply with all applicable financing, affordability, and legal requirements and undergo all required planning procedures/reviews by local planning groups, etc.
- **Funding and Bond Administration:** All monies are held and accounted for by a third party trustee. The trustee disburses proceeds from bond sales to the developer in order to acquire and/or construct the housing project. Rental income used to make bond payments is collected from the developer by the trustee and disbursed to bond holders. If rents are insufficient to make bond payments, the trustee obtains funds from the credit enhancement provider. No monies are transferred through the Housing Commission or Housing Authority, and the trustee has no standing to ask the issuer for funds.

**Bond Disclosure:** The offering document (typically a Preliminary Offering Statement or bond placement memorandum) discloses relevant information regarding the project, the developer, and the credit enhancement provider. Since the Housing Authority is not responsible, in any way, for bond repayment, there are no financial statements or summaries about the Housing Authority or the City that are included as part of the offering document. The offering document includes a paragraph that states that the Housing Authority is a legal entity with the authority to issue multifamily housing bonds and that the Housing Commission acts on the behalf of the Housing Authority to issue the bonds. The offering document also includes a paragraph that details that there is no pending or threatened litigation that would affect the validity of the bonds or curtail the ability of the Housing Authority to issue bonds. This is the extent of the disclosure required of the Housing Authority, Housing Commission, or the City. However, it is the obligation of members of the Housing Authority to disclose any material facts known about the project, not available to the general public, which might have an impact on the viability of the project.