



SAN DIEGO
HOUSING
COMMISSION

HOUSING AUTHORITY REPORT

DATE ISSUED: April 6, 2011

REPORT NO: HAR 11-018

ATTENTION: Chair and Members of the Housing Authority of the City of San Diego
For the Agenda of April 12, 2011

SUBJECT: Mariner's Village Apartments – Encroachment Disposition

COUNCIL DISTRICT: 4

REQUESTED ACTION:

Approve a Settlement Agreement between Bay Terraces, LLC ("Bay Terraces") and the San Diego Housing Commission ("Housing Commission") for the sale of a .14 acre land encroachment (6,447 square feet) in an amount equal to \$215,182.24 on the Mariner's Village Apartments ("Mariner's Village") property which is located at 6847 Potomac Street.

STAFF RECOMMENDATION:

That the Housing Authority of the City of San Diego ("Housing Authority") approve the following actions:

1. Dispose of a .14 acre land parcel (6,447 square feet) for an amount equal to \$215,182.24, subject to the approval of a lot line adjustment by the City of San Diego.
2. Approve the Settlement Agreement, as agreed to by Bay Terraces, to be effective and binding by the Housing Authority.
3. Authorize the Housing Commission's Chief Executive Officer ("CEO"), or designee, to execute any and all documents necessary to allow the Commission to sell the land on terms discussed in this report.
4. Approve a revision to the FY11 budget to add \$215,182.24 into the replacement reserves account for Mariner's Village.

SUMMARY:

Mariner's Village is a 172 unit apartment complex located on a 9.46 acre site at the southeast corner of Potomac Street and Paradise Valley Road in the Skyline-Paradise Hills planning community. On October 27, 2010, the Housing Commission closed escrow and acquired Mariner's Village.

During the due diligence period for the acquisition of Mariner's Village, Housing Commission staff hired Project Design Consultants to prepare an American Land Title Association ("ALTA") survey which revealed an encroachment along the southern boundary of the Mariner's Village property. The encroachment consists of a drive aisle and parking lot, landscaping, retaining walls, and fencing from the adjacent property owner, known as Bay Terraces.

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Following advice from the Housing Commission's legal counsel, Christiansen & Spath, LLC, the Housing Commission agreed to proceed with the acquisition of Mariner's Village despite the identified encroachment. The agreement to proceed was accompanied by an agreement that Mariner's Investors, Inc. ("seller") would provide a \$250,000 reduction in purchase price to the Housing Commission to account for any future legal fees associated with the encroachment issue.

Following the acquisition of Mariner's Village, the Housing Commission entered into a Settlement Agreement with Bay Terraces outlining the terms by which the encroachment issue would be resolved, including the disposition of the encroachment area to Bay Terraces contingent upon successful processing of a lot line adjustment through the City of San Diego. The Settlement Agreement was executed by Bay Terraces on January 1, 2011.

FISCAL CONSIDERATIONS:

On January 12, 2011, staff engaged the services of Froebose Realty Group to determine the appraised value of the encroachment. Froebose Realty Group completed the appraisal on February 19, 2011, and determined the land value of the encroachment to be \$130,000.

According to the Settlement Agreement the sale price for the encroachment area is determined by the appraised value, or the prorated cost per square foot that the Housing Commission paid for the land. Additionally, in no case would the sale price be less than the prorated square footage cost paid by the Housing Commission for Mariner's Village, regardless of the appraised amount.

Therefore, since the appraised value is less than the cost paid by the Housing Commission, the sales price is determined by the cost paid by the Housing Commission. The following table outlines the land transfer value calculation:

Table 1

ENCROACHMENT SALE PRICE CALCULATION	
Purchase Price	\$31,259,000.00
Purchase Price Per Acre	\$3,304,334.00
Purchase Price Per Square Foot	\$75.86
Total Encroachment Square Footage	6,447
Land & Improvement Value of Encroachment	\$489,050.54
Percentage of Value Attributed to Land	44%*
Land Transfer Value	\$215,182.24

*Per the Assessor's Office, Land Value is 44% of the Total Value of Mariner's Village

The Housing Commission's legal counsel, Christensen & Spath LLP, has reached an agreement to sell the land under the encroaching area to the adjacent property owner, Bay Terraces, for a sum of \$215,182.24 plus all costs of engineering, legal fees and appraisals. The land will be transferred by adjusting the lot line, which is subject to the approval by the City of San Diego. Housing Commission staff is recommending that the funds received from the land sale be deposited into the Mariner's Village replacement reserve account for future capital or operational expenditures.

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In addition, upon the land closing of the Mariner's Village property, a \$250,000 purchase price reduction was negotiated with the seller to offset potential costs associated with litigation of the encroachment issue. In view of the proposed settlement, there is no anticipated litigation costs associated with the sale of the encroachment area.

Housing Commission staff is requesting approval of the Settlement Agreement and approval to sell the encroachment area to Bay Terraces, contingent on the successful processing of a lot line adjustment through the City of San Diego. In the event that the City does not approve the lot line adjustment, the encroachment must be removed by Bay Terrace, at its sole cost and expense. The settlement agreement and the sale of the property are subject to the approval of both the Housing Commission Board and the Housing Authority. Approval of this action will amend the Housing Commission's FY2011 budget into replacement reserves by \$215,182.24.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

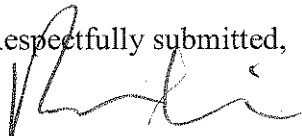
On August 6, 2010, the Housing Commission Board of Directors unanimously approved staff's recommendation to acquire Mariner's Village Apartments property.

On March 18, 2011, the Housing Commission Board unanimously approved the sale of this encroachment.

ENVIRONMENTAL REVIEW:

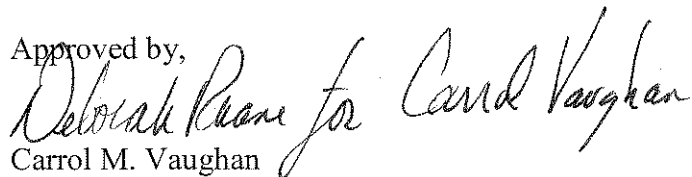
This project is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA guidelines Section 15301 ("existing facilities"). The proposed activity is categorically excluded under the National Environmental Policy Act pursuant to 24 CFR Part 58.35(a)(3)(ii).

Respectfully submitted,



Ryan Granito
Assistant Real Estate Manager
Real Estate Department

Approved by,



Carol M. Vaughan
Executive Vice President &
Chief Operating Officer

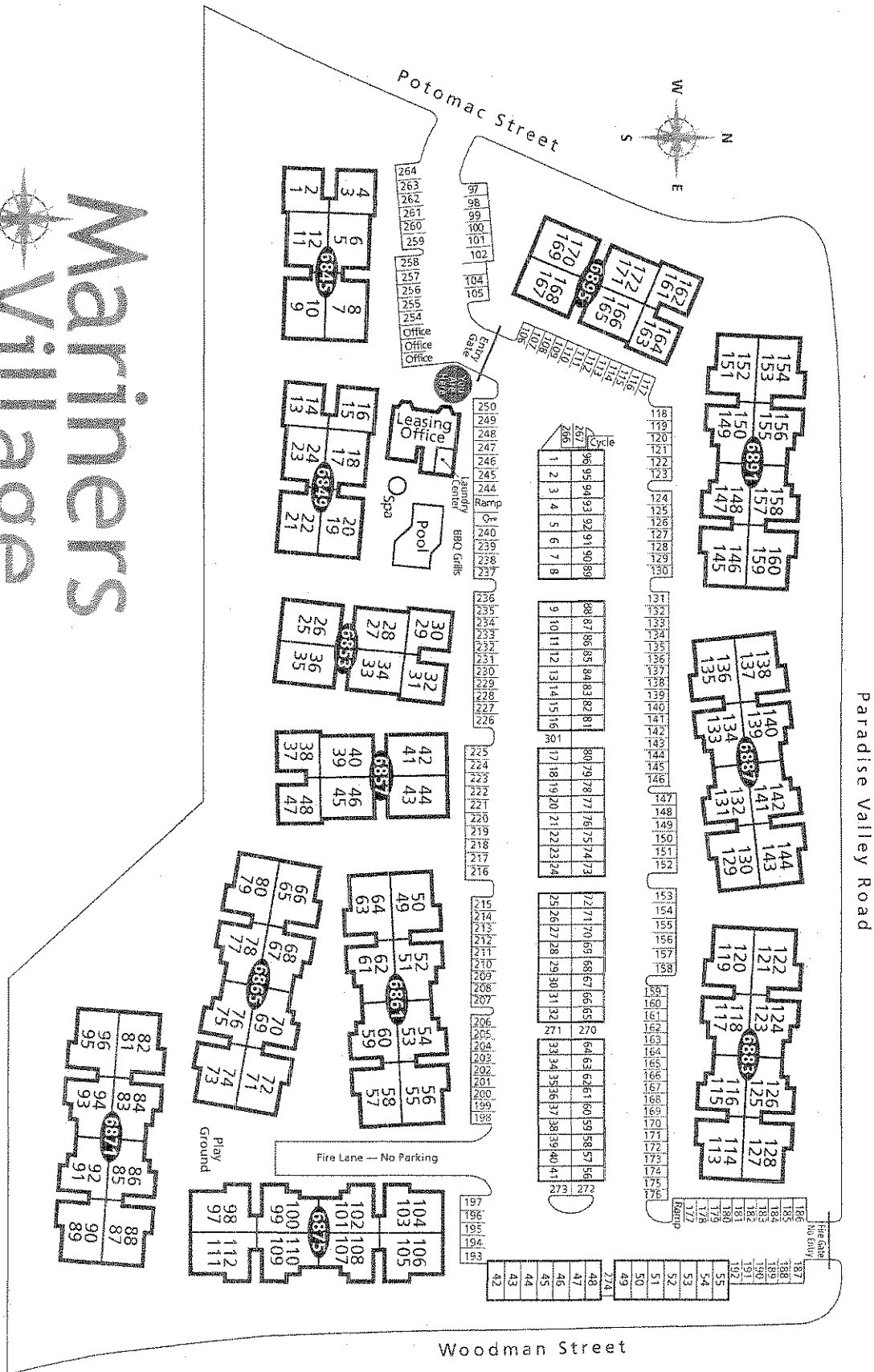
Attachments:

1. Mariner's Village Site Plan
2. Mariner's Village Encroachment Area
3. Encroachment Legal Description
4. Settlement Agreement

Hard copies are available for review during business hours in the main lobby of the San Diego Housing Commission offices at 1122 Broadway, San Diego, CA 92101 and at the Office of the San Diego City Clerk, 202 C Street, San Diego, CA 92101. You may also review complete docket materials on the San Diego Housing Commission website at www.sdhc.org.

Mariners Village

APARTMENT HOMES



Attachment 3

LEGAL DESCRIPTION FOR ENCROACHMENT AREA LOT LINE ADJUSTMENT

BEING THAT PORTION OF LOT 1 OF MARINER'S VILLAGE, ACCORDING TO MAP THEREOF NO. 15484 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON DECEMBER 4, 2006, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

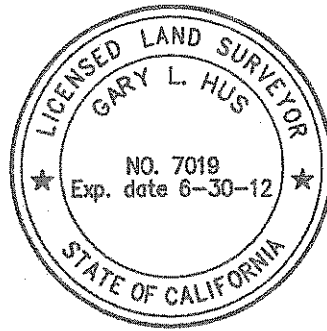
COMMENCING AT THE MOST SOUTHEASTERLY CORNER OF SAID LOT 1, SAID CORNER ALSO BEING A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF WOODMAN STREET AND THE MOST NORTHEASTERLY CORNER OF LOT 804 OF BAY TERRACES UNIT NO. 7, ACCORDING TO MAP THEREOF NO. 6910 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MARCH 31, 1971; THENCE ALONG THE COMMON BOUNDARY LINE BETWEEN THE SOUTHERLY LINE OF SAID LOT 1 AND THE NORTHERLY LINE OF SAID LOT 804 SOUTH 71°09'09" WEST (NORTH 71°09'09" EAST PER SAID MAP NO. 15484 AND NORTH 71°10'00" EAST PER SAID MAP NO. 6910) A DISTANCE OF 41.81 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING SOUTH 71°09'09" WEST A DISTANCE OF 622.52 FEET TO AN ANGLE POINT IN SAID SOUTHERLY LINE OF LOT 1, SAID POINT ALSO BEING THE MOST NORTHERLY COMMON CORNER OF LOTS 802 AND 803 OF SAID MAP NO. 6910; THENCE ALONG THE COMMON BOUNDARY LINE BETWEEN SAID SOUTHERLY LINE OF LOT 1 AND THE NORTHERLY LINE OF SAID LOT 802 NORTH 77°39'33" WEST (NORTH 77°39'33" WEST PER SAID MAP NO. 15484 AND NORTH 77°38'42" WEST PER SAID MAP NO. 6910) A DISTANCE OF 2.87 FEET; THENCE LEAVING SAID COMMON BOUNDARY LINE NORTH 25°03'41" WEST A DISTANCE OF 8.04 FEET; THENCE NORTH 71°14'48" EAST A DISTANCE OF 111.71 FEET; THENCE NORTH 71°15'28" EAST A DISTANCE OF 23.99 FEET; THENCE NORTH 71°06'46" EAST A DISTANCE OF 57.52 FEET; THENCE NORTH 71°09'32" EAST A DISTANCE OF 70.30 FEET; THENCE NORTH 52°06'10" EAST A DISTANCE OF 12.91 FEET; THENCE NORTH 30°59'42" EAST A DISTANCE OF 18.47 FEET; THENCE NORTH 40°55'23" EAST A DISTANCE OF 9.07 FEET; THENCE NORTH 55°05'31" EAST A DISTANCE OF 34.86 FEET; THENCE NORTH 64°34'13" EAST A DISTANCE OF 9.91 FEET; THENCE SOUTH 73°55'38" EAST A DISTANCE OF 38.76 FEET; THENCE SOUTH 83°37'49" EAST A DISTANCE OF 21.88 FEET; THENCE NORTH 82°49'27" EAST A DISTANCE OF 21.88 FEET; THENCE NORTH 78°28'53" EAST A DISTANCE OF 9.55 FEET; THENCE NORTH 74°26'47" EAST A DISTANCE OF 10.72 FEET; THENCE NORTH 71°49'00" EAST A DISTANCE OF 76.47 FEET; THENCE NORTH 71°42'07" EAST A DISTANCE OF 92.31 FEET; THENCE NORTH 74°10'40" EAST A DISTANCE OF 22.90 FEET TO THE **TRUE POINT OF BEGINNING**.

SAID PARCEL CONTAINS 6,447 SQUARE FEET OR 0.148 ACRE, MORE OR LESS.

DRAFT

GARY L. HUS
LS 7019

DATE



Attachment 4

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is dated as of the 1st day of January, 2011, by and between the San Diego Housing Commission ("Commission") and Bay Terraces, LLC, a California limited liability company ("Bay Terraces").

RECITALS

A. The Commission is the owner of that certain property generally located at 6847 Potomac Street, San Diego, California 92139, commonly known as Mariners Village Apartments, as more fully described on the attached Exhibit "A" (hereinafter "Mariners Village").

B. Bay Terraces is the owner of: (i) that certain property generally located at 6822-6842 Doriana Street, San Diego, California 92139, commonly known as Bonita Terrace, as more fully described on the attached Exhibit "B" (hereinafter "Bonita Terrace"); and (ii) that certain property generally located at 6850-6890 Doriana Street, San Diego, California 92139, commonly known as Bonita Woods, as more fully described on the attached Exhibit "C" (hereinafter "Bonita Woods").

C. The Commission alleges that certain improvements that benefit Bonita Terrace and/or Bonita Woods have been constructed and/or placed upon a portion of Mariners Village, which improvements are shown in more detail on that certain "A.L.T.A./A.C.S.M. Land Title Survey Mariners Village Apartments, San Diego, CA" dated October 18, 2010, prepared by Project Design Consultants (the "Alleged Encroachments"). The Commission has asserted that Bay Terraces is required to remove the Alleged Encroachments; Bay Terraces has responded that it would prefer not to remove the Alleged Encroachments (the "Dispute").

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and for good and valuable consideration, in order to settle the Dispute without litigation and without admitting fault, the Commission and Bay Terraces agree to settle the Dispute as set forth in this Settlement Agreement and hereby agree as follows:

1. Effectiveness of Agreement. This Settlement Agreement shall be effective and binding upon the Commission and Bay Terraces concurrently with the last to occur of the following (the "Effective Date"): (i) this Settlement Agreement has been duly executed by Bay Terraces and delivered by Bay Terraces to the Commission; (ii) this Settlement Agreement has been formally approved by resolution of the Commission's board; (iii) this Settlement Agreement has been formally approved by resolution of the Housing Authority of the City of San Diego; and (iv) this Settlement Agreement has been duly executed by the Commission, including the Commission's General Counsel, and delivered by the Commission to Bay Terraces. Under no circumstances will this Settlement Agreement be effective before all of the preceding have occurred.

2. Definitions. The terms defined in the heading and recitals to or elsewhere in this Settlement Agreement shall have the meanings ascribed to them in the heading and recitals to or elsewhere in this Settlement Agreement. The following terms shall have the meanings set forth below:

“Appraiser” means Froboese Realty Group, Inc.

“Appraised Value of the Encroachment Area” is the value of the Encroachment Area after the Lot Line Adjustment is obtained, to the owner of Bonita Terrace and/or Bonita Woods in a theoretical arm’s-length transaction as determined by the Appraiser, provided, however, in no event shall the Appraised Value of the Encroachment Area be less than the prorata square foot cost that the Commission paid for Mariners Village. The appraisal shall appraise the value of the Encroachment Area to Bay Terraces.

“Closing” means the closing of the Escrow.

“Closing Deadline” means July 1, 2011. Notwithstanding the foregoing, in the event that Bay Terraces is diligently processing the Lot Line Adjustment through the City of San Diego, Bay Terraces shall have the right to extend the Closing Deadline until not later than December 31, 2011, by delivering to the Commission written notice of the exercise of such extension on or before June 15, 2011. Such extended date shall be the Closing Deadline for all purposes under this Settlement Agreement.

“Encroachment Area” means all of the real property upon which the Alleged Encroachments have been constructed and/or placed, as determined in accordance with Section 4(b), below, which has been estimated to be approximately 6600 square feet.

“Engineer and Surveyor” means Project Design Consultants.

“Escrow” means the escrow depository and disbursement services to be performed by Escrow Agent pursuant to the provisions of this Settlement Agreement.

“Escrow Holder” means Chicago Title Company.

“Lot Line Adjustment” means the lot line adjustment that Bay Terraces shall seek from the City of San Diego. The Lot Line Adjustment, if obtained, shall adjust the common boundary shared by Mariner’s Village and Bonita Terrace and the common boundary shared by Mariner’s Village and Bonita Woods, by the smallest amount necessary for all of the Alleged Encroachments to be included entirely within the boundaries of Bonita Terrace and/or Bonita Woods.

3. Settlement. The Commission will sell the "Encroachment Area" to Bay Terraces, for an amount equal to the "Appraised Value of the Encroachment Area," provided that all of the conditions set forth in this Settlement Agreement are satisfied on or before the Closing Deadline. Time is of the essence. In the event all of the conditions set forth in this Settlement Agreement are not satisfied on or before the Closing Deadline, then Bay Terraces shall cause all of the Alleged Encroachments to be removed from the Encroachment Area not later than thirty (30) days after the Closing Deadline. During the period commencing on the date first set forth above, through the Closing, Bay Terraces shall maintain any and all landscaping and improvements located on the Encroachment Area. This Settlement Agreement constitutes the granting of a temporary license from the Commission to Bay Terraces to allow Bay Terraces to: (i) maintain any and all landscaping and improvements located on the Encroachment Area during the period commencing on the date first set forth above, through the Closing; and (ii) remove the Alleged Encroachments from the Encroachment Area in the event the Closing does not occur, i.e., in the event all of the conditions set forth in this Settlement Agreement are not satisfied on or before the Closing Deadline. In no event shall the temporary license ripen into a fee.

4. Encroachment Area.

(a) Engagement of the Engineer and Surveyor. Within ten (10) business days of the Effective Date, Bay Terraces shall engage the Engineer and Surveyor to survey the Alleged Encroachments, determine the Encroachment Area and perform any and all mapping, surveying and engineering that is necessary or desirable in order for the Lot Line Adjustment to be obtained. Any and all costs and expenses of the Engineer and Surveyor shall be paid for by Bay Terraces.

(b) Procedure for Determining the Encroachment Area.

(1) Determining the Proposed Encroachment Area. The Engineer and Surveyor shall draft a description of the real property upon which the Alleged Encroachments have been constructed and/or placed ("Proposed Encroachment Area") and shall deliver to the Commission and Bay Terraces copies of any and all surveys, maps and other documents generated by the Engineer and Surveyor (or its subcontractors) in order to determine the Proposed Encroachment Area.

(2) Review and Approval. Within ten (10) business days of the Engineer and Surveyor's delivery of the documents evidencing the Proposed Encroachment Area, the Commission and Bay Terraces in their sole discretions shall approve or reject the Proposed Encroachment Area in writing delivered by the other party hereto. If both the Commission and Bay Terraces approve the Proposed Encroachment Area in writing, the Proposed Encroachment Area shall become the Encroachment Area. If either or both of the Commission and Bay Terraces reject the Proposed Encroachment Area in writing, the Commission and Bay Terraces shall either (i) direct the Engineer and Surveyor to revise the Proposed Encroachment Area so that the Proposed Encroachment Area encompasses an area that is acceptable to both the Commission and Bay Terraces in which event the Proposed Encroachment Area as revised shall become the Encroachment Area; or (ii) engage a mediator to assist the Commission and Bay Terraces in coming to an agreement with respect to the boundaries of the Encroachment Area.

(3) Encroachment Area Determined by an Arbitrator. If after mediation, the Commission and Bay Terraces cannot come to an agreement with respect to the boundaries of the Encroachment Area, the real property upon which the Alleged Encroachments have been constructed and/or placed shall be finally determined by an arbitrator acceptable to both the Commission and Bay Terraces and such real property shall be the Encroachment Area. The arbitrator's determination of the boundaries of the Encroachment Area shall resolve the dispute and shall be binding upon the Commission and Bay Terraces. The Commission and Bay Terraces shall respond as expeditiously as reasonably possible to any requests for information from the arbitrator and hold all reasonably necessary meetings with the arbitrator, if any, no later than five (5) business days after notifying the arbitrator of the dispute. The arbitrator shall make its determination and submit a report to both the Commission and Bay Terraces, no later than seven (7) business days after receiving notice of the dispute. Each party shall bear their own costs and expenses relating to any such resolution, however, the cost of the arbitrator shall be shared equally by the Commission and Bay Terraces.

(c) Processing of Lot Line Adjustment. Bay Terraces shall engage any and all professionals and agents and take any and all actions reasonably necessary to: (i) cause the Lot Line Adjustment to be processed with the City of San Diego; (ii) cause any required maps to be filed in the Office of the Recorder of the County of San Diego; and (iii) process adjustments of the legal descriptions for all encumbrances upon the Commission and the Bay Terrace properties, at its sole cost and expense. Bay Terraces shall direct the Engineer and Surveyor to provide to the Commission copies of any and all surveys, maps and other documents generated by the Engineer and Surveyor (or its subcontractors) with respect to the Encroachment Area and/or the Lot Line Adjustment. Bay Terraces acknowledges that the Commission and the City of San Diego are separate legal entities. The Commission specifically disclaims any and all representations or warranties, express or implied, with respect to the approval and processing the Lot Line Adjustment and/or the likelihood that Bay Terraces will be able to obtain the Lot Line Adjustment. The Commission shall have no liability or responsibility to Bay Terraces or any other person with respect to the Lot Line Adjustment, provided, however, the Commission agrees to cooperate with Bay Terraces and to execute and deliver any and all consents, documents and instruments, in a form and format acceptable to the Commission in its sole discretion, which are reasonably necessary or desired by Bay Terraces in order to obtain the Lot Line Adjustment. Provided, however, in no event shall the Lot Line Adjustment cause Mariners Village to violate any applicable code compliance requirements or zoning laws, including without limitation density limitations. Any and all costs and expenses incurred or otherwise payable with respect to the Lot Line Adjustment shall be paid for by Bay Terraces.

(d) Engagement of the Appraiser. Within ten (10) business days of the final determination of the Encroachment Area, the Commission shall engage the Appraiser to determine the Appraised Value of the Encroachment Area. Any and all costs and expenses of the Appraiser shall be paid for by Bay Terraces. Bay Terrace shall deposit an amount equal to the estimated cost of the appraisal with the Commission upon five (5) days written notice. The appraisal shall appraise the value of the additional property to Bay Terraces, provided, however, in no event shall the amount of the payment be less than the prorata square footage cost that the Commission paid for Mariners Village, regardless of the appraisal.

(e) Closing and Escrow.

(1) Payment. The total consideration payable by the Bay Terraces to the Commission for the Encroachment Area shall be an amount equal to the Appraised Value of the Encroachment Area.

(2) Opening of Escrow. The Commission and Bay Terraces agree that this Settlement Agreement shall also constitute instructions to the Escrow Holder. Within ten (10) days following the Appraiser's determination of the Appraised Value of the Encroachment Area, the Commission and Bay Terraces shall open the Escrow with Escrow Holder in San Diego, California. The parties shall sign the escrow instructions prepared by the Escrow Holder within ten (10) days of receipt thereof, so long as the instructions (i) state that it is the sole purpose of the Escrow Holder to comply with and carry out the terms and conditions of this Settlement Agreement, and (ii) contain such other general provisions as are then customarily found in Escrow Holder's escrow instructions, provided, however, that any standard extension provisions in such escrow instructions shall not apply, and in the event of any conflict or inconsistency between the provisions of such escrow instructions and the provisions of this Settlement Agreement, the provisions of this Settlement Agreement shall control. Either party failing to sign the Escrow Holder's escrow instructions as provided above shall be deemed to be in breach of this Settlement Agreement. If the requirements relating to the duties or obligations of Escrow Holder are unacceptable to Escrow Holder, or if Escrow Holder requires additional instructions, the parties agree to make any deletions, substitutions and additions, as counsel for Commission and Bay Terraces shall mutually approve, and which do not materially alter the terms of this Settlement Agreement. Any supplemental instructions shall be signed only as an accommodation to Escrow Holder and shall not be deemed to modify or amend the rights of the Commission or Bay Terraces, as between Commission and Bay Terraces, unless those signed supplemental instructions expressly so provide.

(3) Closing Date. The Escrow shall provide for the Closing to occur concurrently with filing of the subdivision map evidencing the Lot Line Adjustment, which shall occur, if ever, on or before the Closing Deadline. Any and all costs and expenses of the Escrow and the Escrow Holder shall be paid for by Bay Terraces.

(4) Deposits to be Made by Bay Terraces. On or before the Closing, Bay Terraces shall deliver to Escrow Holder: (i) immediately available funds in a total amount equal to the Appraised Value of the Encroachment Area and any other sums payable by Bay Terraces hereunder; (ii) any additional funds and/or instruments, properly executed and acknowledged by Bay Terraces, as appropriate, as may be necessary to comply with this Settlement Agreement; and (iii) the amount of the attorneys fees incurred by counsel for the Commission in drafting the Settlement Agreement and in monitoring the lot line adjustment.

(5) Deposits to be Made by the Commission. On or before the Closing, the Commission shall deliver to Escrow Holder: (i) a grant deed conveying the Commission's interest in the Encroachment Area to Bay Terraces; and (ii) any additional instruments, signed and properly acknowledged by the Commission if appropriate, as may be necessary to comply with this Settlement Agreement.

(6) Delivery of Documents and Funds. Upon Closing, Escrow Holder shall deliver to the Commission and Bay Terraces all documents and funds to which each is entitled and for whose benefit those documents and funds were delivered to Escrow Holder.

(7) Performance by Escrow Holder. Escrow Holder is to be concerned only with those paragraphs under this Settlement Agreement where Escrow Holder is given instructions to perform certain acts or with those paragraphs where escrow holders generally and reasonably would be expected to act.

(8) Termination and Cancellation of Escrow. If the Escrow fails to close by the Closing Deadline, unless mutually extended by both parties in writing, then the Escrow shall terminate automatically without further action by Escrow Holder or any party.

5. Representations and Warranties of Bay Terraces. Bay Terraces hereby represents and warrants to the Commission as follows, which representations and warranties are true in all material respects as of the date hereof and such representations and warranties shall be true at Closing:

(a) Ownership of Bonita Terrace and Bonita Woods and Legal Description. Bay Terraces is the fee simple owner of Bonita Terrace and Bonita Woods and there are no other persons with a fee simple interest in Bonita Terrace or Bonita Woods. The description of Bonita Terrace attached hereto as Exhibit "B", is the true and correct legal description for Bonita Terrace. The description of Bonita Woods attached hereto as Exhibit "C", is the true and correct legal description for Bonita Woods.

(b) Authority. Bay Terraces has the legal power, right and authority to enter into this Settlement Agreement and to consummate the transactions contemplated hereby. The individuals executing this Settlement Agreement on behalf of Bay Terraces have the legal power, right and actual authority to bind Bay Terraces to the terms and conditions of this Settlement Agreement.

(c) Requisite Action. As of the date hereof, all requisite action (corporate, partnership or otherwise) has been taken by Bay Terraces in connection with the entering into of this Settlement Agreement and the consummation of the transactions contemplated hereby.

(d) Validity. This Settlement Agreement and all documents required hereby to be executed by Bay Terraces are and shall be valid, legally binding obligations of and enforceable against Bay Terraces in accordance with their terms.

(e) Comprehension. (i) Bay Terraces fully understands and accepts the terms of this Settlement Agreement; (ii) Bay Terraces relied upon the legal advice of its attorneys or Bay Terraces has freely and independently chosen not seek the advice of an attorney; (iii) Bay Terraces has had a full and ample opportunity to consult with any other professionals of their choice in connection with the rights and liabilities created by this Settlement Agreement; (iv) Bay Terraces does not have any questions with regard to the legal import of any term, word, phrase, or portion of this Settlement Agreement, or this Settlement Agreement in its entirety; and (v) Bay Terraces accepts the terms of this Settlement Agreement as written.

6. Representations and Warranties of the Commission. The Commission hereby represents and warrants to Bay Terraces as follows, which representations and warranties are true in all material respects as of the date hereof and such representations and warranties shall be true at Closing:

(a) Ownership of Mariners Village and Legal Description. The Commission is the fee simple owner of Mariners Village and there are no other persons with a fee simple interest in Mariners Village. The description of Mariners Village attached hereto as Exhibit "A", is the true and correct legal description for Mariners Village.

(b) Authority. As of the Effective Date, as defined in Section 1, above, the Commission has the legal power, right and authority to enter into this Settlement Agreement and to consummate the transactions contemplated hereby. The individuals executing this Settlement Agreement on behalf of the Commission have the legal power, right and actual authority to bind the Commission to the terms and conditions of this Settlement Agreement.

(c) Requisite Action. As of the Effective Date, as defined in Section 1, above, all requisite action (corporate, partnership or otherwise) has been taken by the Commission in connection with the entering into of this Settlement Agreement and the consummation of the transactions contemplated hereby.

(d) Validity. As of the Effective Date, as defined in Section 1, above, this Settlement Agreement and all documents required hereby to be executed by the Commission are and shall be valid, legally binding obligations of and enforceable against the Commission in accordance with their terms.

(e) Comprehension. (i) The Commission fully understands and accepts the terms of this Settlement Agreement; (ii) the Commission relied upon the legal advice of its attorneys or the Commission has freely and independently chosen not seek the advice of an attorney; (iii) the Commission has had a full and ample opportunity to consult with any other professionals of their choice in connection with the rights and liabilities created by this Settlement Agreement; (iv) the Commission does not have any questions with regard to the legal import of any term, word, phrase, or portion of this Settlement Agreement, or this Settlement Agreement in its entirety; and (v) the Commission accepts the terms of this Settlement Agreement as written.

7. Tolling.

(a) Extension of Time. Pursuant to *California Code of Civil Procedure* §§360 and 360.5, the Commission and Bay Terraces hereby agree to extend and toll the time in which Commission is permitted to bring an lawsuit or other legal proceeding arising out of the Alleged Encroachment and the Dispute, by the period commencing on December 1, 2010, and ending 180 days after the Closing Deadline (the "Tolling Period"). This extension of time to bring an action preserves the rights, if any, that Commission has or had on December 1, 2010, to bring an action or actions and/or causes of action against Bay Terrace and tolls expiration of the statutory period during the Tolling Period. Nothing contained within this Settlement Agreement shall serve to restore an action or right that has already expired and/or lapsed as of December 1, 2010.

(b) Reservation of Rights. This Settlement Agreement shall not prejudice any of the rights, remedies or defenses of Commission or Bay Terraces and shall not be deemed to be a waiver of any remedy, right and/or defense that one party may have against the other party under California law, except as otherwise expressly provided in this Settlement Agreement. Nothing contained herein shall preclude Bay Terraces from asserting any defense to the extent that such defenses already exist as of December 1, 2010.

8. Release of Claims.

(a) Scope of Releases. The Commission and Bay Terraces agree that this Section 8 shall be effective only in the event that the Closing occurs. Provided, that the Closing occurs, the Commission and Bay Terraces each hereby acknowledges and agrees that the scope of the mutual releases and discharges of claims recited in Sections 8(b) and (c), below, shall be interpreted to the broadest extent permissible under law.

(b) Mutual Release and Discharge of Claims. The Commission and Bay Terraces, each, freely and without coercion, fully and forever releases, acquits and discharges each other party hereto and their attorneys, sureties, agents, servants, representatives, subsidiaries, affiliates, partners, predecessors, successors-in-interest, heirs, executors and assigns, and all persons acting by, through, under or in concert with them, of and from any and all past, present, or future claims, demands, obligations, actions, causes of action, damages, costs, losses of service, expenses, liabilities, suits, and compensation of any kind or nature whatsoever, whether based on tort, contract, or other theory of recovery, claimed by any of them which arise from or relate to facts or events occurring on or before the date of this Settlement Agreement with respect to the Alleged Encroachments. The parties expressly acknowledge and agree that this release shall extend to any and all claims, whether judicial, administrative or otherwise, including, without limitation, claims made with any court, commission, tribunal, board or administrative body with jurisdiction to consider such claims. This release expressly extends to and bars any and all complaints, actions and/or proceedings, whether judicial or administrative, actually instituted by either the Commission or Bay Terraces, or which could be instituted by either the Commission or Bay Terraces, with respect to the Alleged Encroachments. Nothing in this Settlement Agreement shall be construed to mean that either the Commission or Bay Terraces is waiving any right to enforce this Settlement Agreement.

(c) Waiver of California Civil Code Section 1542.

(1) The release and discharge specified in Section 8(b), above, shall be effective to bar all claims, damages, claims for disability benefits, personal injuries, claims for compensation, controversies, actions, causes of action, obligations, liabilities, costs, expenses, attorneys' fees and damages of any character, nature and kind, whether known or unknown, suspected or unsuspected. In furtherance of this intention, the Commission and Bay Terraces each expressly waives and relinquishes any and all rights and benefits conferred on them by the provisions of Section 1542 of the California Civil Code.

(2) The Commission and Bay Terraces each understands that California Civil Code Section 1542 provides as follows:

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

(3) It is expressly understood and agreed by the Commission and Bay Terraces that the possibility of unknown claims exists and has been explicitly taken into account in determining the consideration to be given for this Settlement Agreement and that a portion of the consideration, having been bargained for with full knowledge of the possibility of such unknown claims, was given in exchange for the release and discharge of the matters, claims and/or rights covered by this Settlement Agreement.

(4) Each of the Commission and Bay Terraces agrees that either of them hereafter commences, joins in, or in any manner seeks relief through any suit arising out of, based upon, or relating to any of the settled claims released hereunder, then he/she/it shall pay to the other parties, in addition to any other damages caused to the other parties thereby, all attorneys' fees incurred by the other parties in defending or otherwise responding to said suit of settled claims.

(5) This release shall not operate to release any claims the Commission or Bay Terraces may later have for the enforcement of the obligations created by this Settlement Agreement.

9. Compromise. This Settlement Agreement is the result of a compromise and shall never at any time or for any purpose be considered an admission of liability or responsibility on the part of any party hereto, nor shall the payment of any sum of money in consideration for the execution of this Settlement Agreement constitute or be construed as an admission of any liability whatsoever by any of the parties hereto.

10. General Provisions.

(a) Attorneys' Fees. The parties hereto acknowledge and agree that each of them shall bear their own costs, expenses and attorneys' fees arising out of this Settlement Agreement, including without limitation, the negotiation, drafting, and execution of this Settlement Agreement, and all matters connected therewith. In the event any action or proceeding is brought to enforce this Settlement Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs against the non-prevailing parties, in addition to all other relief to which that party or those parties may be entitled.

(b) Construction of Settlement Agreement. This Settlement Agreement is the product of negotiation and preparation by and among each party hereto and their respective attorneys. Accordingly, all parties hereto acknowledge and agree that this Settlement Agreement shall not be deemed prepared or drafted by one party or another, or the attorneys for one party or another, and this Settlement Agreement shall be construed accordingly.

(c) Binding Effect. This Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parents, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, plaintiffs, defendants and/or persons or entities connected with each of them, including, without limitation, their insurers, sureties, attorneys, consultants and experts.

(d) Severability. If any provision or any part of any provision of this Settlement Agreement shall for any reason be held to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this Settlement Agreement shall not be affected thereby and shall remain in full force and effect.

(e) Entire Agreement. This Settlement Agreement contains the entire understanding among the parties to this Settlement Agreement with regard to the Alleged Encroachments and the Dispute, and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the parties hereto relating to the terms and conditions of this Settlement Agreement that are not fully expressed herein.

(f) Incorporation of Exhibits and Recitals. The Exhibits and Recitals to this Settlement Agreement are hereby incorporated into this Settlement Agreement by this reference.

(g) Facsimile Signatures. Facsimiles of signatures shall be acceptable and treated as original signatures.

(h) No Assignment. Neither party shall not assign it's rights nor delegate it's duties under this Settlement Agreement without the prior written consent of the other party hereto. Any attempt at the assignment or delegation in violation of this section shall be void.

(i) Further Assurances. All parties agree to cooperate fully and execute any and all supplementary documents and take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

(j) Time of the Essence. Time is of the essence of this Settlement Agreement and of each and every provision hereof. The extension of any deadlines or timeframes set forth in this Settlement Agreement shall be in writing approved by the Commission and Bay Terraces.

(k) Commission Approval. As used in this Settlement Agreement, the approval or consent of the Commission shall mean the approval or consent of the President and CEO of the Commission.

BAY TERRACES:

Bay Terraces, LLC, a California limited liability company

By: James T. Bashore
Print Name: JAMES T. BASHORE
Its: OWNER

COMMISSION:

San Diego Housing Commission

By: _____
Richard C. Gentry
President & Chief Executive Officer

Approved as to form:
Christensen & Spath LLP

By: _____
Charles B. Christensen, General Counsel
San Diego Housing Commission

Exhibit "A"

Mariners Village Apartments

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

Lot 1 of Mariners Village, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 15484, filed in the Office of the County Recorder of San Diego County, December 4, 2006.

APN: 582-270-01

Exhibit "B"

Bonita Terrace

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

Lot 803 of Map No. 6910, filed in the Office of the County Recorder of San Diego County.

APN: 582-270-03

Exhibit "C"

Bonita Woods

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

Lot 804 of Map No. 6910, filed in the Office of the County Recorder of San Diego County.

APN: 582-270-04