

Recording Requested By  
CHICAGO TITLE COMPANY

137866

RECEIVED FOR RECORD  
AT 8:00 O'CLOCK

RECORDING REQUESTED BY:

City of Riverside

MAY - 2 1995

WHEN RECORDED MAIL TO:

CITY CLERK  
City of Riverside  
City Hall, 3900 Main Street  
Riverside, California 92522

Recorded in Official Records  
of Riverside County, California

Recorder 69  
Fees \$ 69

80-145095

REGULATORY AGREEMENT

69/21

THIS REGULATORY AGREEMENT ("AGREEMENT") is entered into this 29th day of June, 1994, by and between the CITY OF RIVERSIDE, a municipal corporation (hereinafter known as "City"), and PEACOCK FINANCIAL CORPORATION, a California corporation (hereinafter known as "Developer").

6/8-3

RECITALS

WHEREAS, Developer has acquired that certain real property located within the City and described in the legal description described in Exhibit A attached hereto (the "Property"); and

WHEREAS, Developer desires to rehabilitate the existing residential building on the Property for occupancy at Affordable Rent to Very Low-Income and Qualified Low-Income Households. The Developer will acquire and intends to rehabilitate the Property utilizing the proceeds of a loan from HOME funds allocated to the City in the amount of Nine Hundred Seventy-Five Thousand Dollars (\$975,000) (the "Loan").

WHEREAS, the City has agreed to extend the City Loan to the Developer pursuant to the terms and conditions of that certain HOME Investment Partnership Agreement No. 94-#1001, dated as of June 24, 1994, entered into by and between the Developer and the City (the "Loan Agreement").

WHEREAS, the City has agreed to make the City Loan to the Developer on the condition that the Project be maintained and operated in accordance with the HOME regulations and restrictions concerning affordability, operation, and maintenance of the Project, as specified in this Agreement.

WHEREAS, a purpose of this Agreement is to ensure that ninety percent (90%) of the Affordable Units developed pursuant to the requirements hereunder shall be available at an Affordable Rent to Very Low and Low-Income Households for not less than five (5) years from the date of issuance of a Certificate of Occupancy for the Affordable Units and that all rentals of each Affordable Unit shall be made only in accordance with the provisions of this Regulatory Agreement. For an additional five (5) years, fifty percent (50%) of the units shall be rented to those at eighty percent (80%) of the median income as established by the United States Department of Housing and Urban Development (HUD).

#### I. DEFINITIONS.

A. "Affordable Rent" shall mean the maximum rent allowed during years 1-5 for the Affordable Units in accordance with Section 92.252 of the HOME Regulations and, as set forth in Section III. B. hereof. For the following five (5) years (years 6 - 10), Affordable Rent shall mean the maximum rent established by the Department of Housing and Urban Development for those whose income does not exceed eighty percent (80%) of the area median income.

B. "Affordable Units" shall mean the units on the Property required to be available to, occupied by, or held vacant for occupancy only to tenants qualifying as Very Low-Income Households or Qualified Low-Income Households and rented at an Affordable Rent, as set forth in this Agreement.

C. "Agreement" shall mean this Regulatory Agreement.

D. "Certificate of Occupancy" shall mean the certificate of occupancy to be issued by the Building Official of the City upon the final completion of the Rehabilitation on the Property.

E. "City" shall mean the City of Riverside, a California municipal corporation.

F. "City Loan" shall mean the loan from HOME funds allocated to the City in the amount of Nine Hundred Seventy-Five Thousand Dollars (\$975,000) by the City to Developer, which loan is the subject of the Loan Agreement.

G. "HOME Program" shall mean the HOME Investment Partnership Act, 42 U.S.C. § 12701, et seq. as it now exists and, subject to the provisions of Section 2.2 herein, may hereafter be amended.

H. "HOME Regulations" shall mean the implementing regulations of the HOME Program set forth at 24 CFR 92 as it now exists and, subject to the provisions of Section 2.2 herein, as may hereafter be amended.

I. "Loan Agreement" shall mean that certain Home Investment Partnership Agreement dated as of June, 1994 entered into by and between the Developer and the City.

J. "Developer" shall mean the Peacock Financial Corporation, a California corporation.

K. "Parties" shall mean the City and the Developer.

L. "Project" shall mean the rehabilitation and operation of the Property in accordance with the provisions herein.

M. "Property" shall mean the real property located at 8405-8505 Arlington Avenue, Riverside, California, as more particularly described in the legal description marked as Exhibit A and attached hereto together with the buildings, fixtures and other improvements located thereon.

N. "Qualified Low-Income Households" shall mean those households whose annual incomes do not exceed sixty percent (60%) of Riverside County median income adjusted for family size as determined by the United States Department of Housing and Urban Development. Qualified Low-income Households satisfy the income criteria of Low-Income Households as defined in Section 92.2 of the HOME Regulations, but the maximum qualifying income of Qualified Low-income Households who are eligible to rent the Affordable Units shall not exceed eighty percent (80%) of area median income as determined by HUD.

O. "Term" shall mean the period commencing on the date of recordation of this Agreement and ending on the date which is ten (10) years following the date the Certificate of Occupancy is issued by the Building Official of the City.

P. "Very Low-Income Households" shall mean those households as defined in Section 92.2 of the HOME Regulations whose annual incomes do not exceed fifty percent (50%) of the Riverside County median income.

## II. LAND USE REGULATIONS

A. Permitted Uses. The Property shall be used only for private multi-family rental dwelling purposes and related amenity uses, unless such Property is rezoned by the City to another use inconsistent with its present zoning, but for no other purposes. Throughout the Term, the Developer covenants and agrees to make available, restrict occupancy to, and rent each of the dwelling units on the Property as Affordable Units at an Affordable Rent as set forth in Section B. hereinbelow. None of the dwelling units on the Property shall at any time be utilized on a transient basis, nor shall the Property or any portion thereof every be used as a hotel, motel, dormitory, fraternity or

sorority house, rooming house, hospital, nursing home, sanitarium or rest home. The Developer shall not convert the Property to condominium ownership during the Term without the prior written approval of the City, which approval the City may grant, withhold or deny in its sole and absolute discretion. Developer shall maintain the Property in accordance with the Conditional Use Permit issued for the Property.

B. Affordable Units. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that throughout the Term, the Developer, such successors and assigns, shall use, maintain and operate the Property as specified in this Agreement and consistent with the Conditional use Permit for the Property. During the ten (10) year term, all uses undertaken by the Developer pursuant to this Agreement, shall conform to the HOME Regulations and HOME Program and to all applicable provisions of the Riverside Municipal Code. In the event the Developer desires to change the affordable housing, maintenance or operation requirements for the Property from the specific requirements set forth in this Agreement in order to comply with a subsequently enacted amendment to the HOME Program or the HOME Regulations, Developer shall notify City in writing of such proposed change and the amendment related thereto at least thirty (30) days prior to implementing such change. In the event the City disapproves of such change and the Developer's interpretation of the amendment related thereto, City shall notify the Developer of its disapproval in writing and the parties shall seek clarification from the appropriate HUD Field Office. Only if HUD concurs with Developer's interpretation of the HOME Program and HOME Regulations shall Developer be permitted to implement the proposed change.

(1) Throughout the first five (5) year Term, the Developer shall devote ninety percent (90%) of the units located on the Property as Affordable Units which shall be rented and occupied by or, if vacant available for rental and occupancy by, Qualified Low-Income Households and Very Low-Income Households. During the second five (5) years of the term, the Developer shall rent fifty percent (50%) of the units located on the Property to Qualified Low Income Households who are at eighty percent (80%) or less of the median income for the area.

(2) Prior to leasing an Affordable Unit, Developer shall verify the income eligibility of the tenant applicant by obtaining a third party verification of all household sources of income in order to assure compliance with the rent and occupancy restrictions and monitoring requirements of this Agreement. The Developer shall, upon request by the City, complete such income verification on City-approved forms provided by the City.

(3) None of the dwelling units on the Property shall at any time be utilized on a transient basis nor shall the Property or any portion thereof ever be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium or rest home. The Developer shall not convert the Property to condominium ownership during the Term without the prior written approval of the City, which approval the City may grant, withhold or deny in its sole and absolute discretion.

C. Determination of Affordable Rent. All Affordable Units shall be rented at Affordable Rent in accordance with this Section C. and as required by Section 92.252 of the HOME Regulations.

1. Affordable Rents shall not be greater than the lessor of:

a. The fair market rent for existing housing for comparable units in the area is established by the United States Department of Housing and Urban Development ("HUD"), less the monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant; or

b. A rent that does not exceed 30 percent (30% of the adjusted income of a family whose gross income equals 65 percent of the median income for the area, as determined by HUD, with adjustments in accordance with Section 92.252. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the Developer must subtract a monthly allowance for any utilities and service (excluding telephone) to be paid by the tenant.

2. Increases in Tenant Income. The units shall qualify as affordable housing as required despite a temporary noncompliance with Section III. A. of this part, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected. Tenants who no longer qualify as low-income families must pay as rent not less than 30 percent of the family's adjusted monthly income, as recertified annually.

3. Adjustment of Affordable Rent. HUD may adjust the Affordable Rent established for the Project under paragraph (a) of this section, only if HUD finds that an adjustment is necessary to support the continued financial viability of the Project and only by an amount that HUD determines is necessary to maintain financial viability of the Project.

D. Tenant Protections.

1. Lease. The Developer shall execute or cause to be executed a written lease in a form with each tenant household identifying by name all permitted occupants, both adults and minors, occupying each Affordable Unit. The lease between tenants occupying the Affordable Units and Developer must be for not less than one year, unless by mutual agreement between the tenant and the Developer.

2. Prohibited Lease Terms. The lease may not contain any of the following provisions:

a. Agreement to be sued. Agreement by the tenant to be sued, to admit guilty, or to a judgment in favor of the Developer in a lawsuit brought in connection with the lease;

b. Treatment of property. Agreement by tenant that the Developer may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the unit after the tenant has moved out of the unit. The Developer may dispose of this personal property in accordance with state law;

c. Excusing Developer from responsibility. Agreement by the tenant not to hold Developer or Developer's agents legally responsible for any action or failure to act, whether intentional or negligent;

d. Waiver of notice. Agreement of the tenant that the Developer may institute a lawsuit without notice to the tenant;

e. Waiver of legal proceedings. Agreement by the tenant that the Developer may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

f. Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury;

g. Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

h. Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay

attorneys' fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

3. Termination of Tenancy. The Developer may not terminate the tenancy or refuse to renew the lease of a tenant of the Project except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the Developer's service upon the tenant of a written notice specifying the grounds for the action.

4. Tenant Selection. Developer shall not refuse to rent a unit in the Project to a holder of a Rental Voucher or a Rental Certificate or comparable document evidencing participation in the Section 8 Program or a HOME tenant-based assistance program. Developer must adopt written tenant selection policies and criteria approved by the City that:

a. Are consistent with the purpose of providing housing for Very-Low Income and Qualified Low-Income Households;

b. Are reasonably related to HOME Program eligibility and the applicants' ability to perform the obligations of the lease;

c. Give reasonable consideration to the housing needs of families that would have a federal preference under Section 960.211 of Title II of the Cranston-Gonzalez National Affordable Housing Act of 1992; and

d. Provide for

(1) The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(2) The prompt written notification to any rejected applicant of the grounds for any rejection.

E. Compliance with Use and Occupancy Laws. Developer agrees that for each lease, the Developer shall comply with all applicable State and local laws, statutes, ordinances, rules and regulations, which in any way restrict the use and occupancy and resale of the Property.

F. Nondiscrimination. All Units shall be available for occupancy on a continual basis to members of the general public

who are income eligible in accordance with Article II. hereof. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, or disability in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any unit nor shall the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the election, location, subtenants, or vendees of any unit or in connection with the employment of persons for the operation and management of the Property. All deeds, leases or contracts made or entered into by the Developer as to the Affordable Units or the Property or portion thereof, shall contain covenants concerning discrimination as prescribed by the Loan Agreement.

Nothing in this Section II. F. is intended to require the Developer to change the character, design, use or operation of the Project form, or to require the Developer to obtain licenses or permits other than those required for, a rental housing development for persons capable of independent living.

### III. OPERATION AND MANAGEMENT OF THE PROJECT

A. Compliance with Loan Agreement. The Developer shall comply with all the terms and provisions of the Loan Agreement between the parties.

B. Taxes and Assessments. The Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that the Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

C. Operation and Management. Developer shall contract with a property management company approved by the City to serve as property manager for the Property. In the event the Developer desires to designate a replacement property manager, Developer shall give written notice thereof to the City and shall obtain the consent of the City prior to the designation of the replacement property manager. City will not unreasonably withhold its consent of a replacement property manager demonstrating the experience and capability to manage the Property in accordance with this Agreement. Notwithstanding the designation and approval of a replacement property manager, the

Developer shall remain liable for the management, maintenance and operation of the Property in accordance with the requirements herein.

D. Management Plan and Security. Developer shall prepare and submit a Management Plan for the Property which will address issues of tenant responsibilities, owner responsibilities, property maintenance and security concerns therein. Such Management Plan shall be submitted to the City for approval at the Office of Neighborhoods and Community Services (formerly the Community Development Department) prior to the issuance of the Certificate of Occupancy by the City. City agrees to respond to such request for approval within fifteen (15) days of its submission by the Developer. If more information is required, then Developer agrees to provide such information to the satisfaction of the City.

Developer agrees to submit a Status Report to the City on the first day of each month for the first year of operation from the date of issuance of the Certificate of Occupancy, and thereafter on the first day of each quarter of each year for the term of this Regulatory Agreement. Such Status Report shall be completed in the form which is attached hereto as Exhibit B.

E. Record Keeping. Throughout the first five (5) years of the Term, Developer shall comply with all applicable record keeping and monitoring requirements set forth in Section 92.508 of the HOME Regulations and shall annually complete and submit to City a Certification of Continuing Program Compliance in the form attached to the Loan Agreement as Exhibit K and provided to Developer by City. Commencing in the sixth year of the Term, Developer shall be relieved of the record keeping requirements of Section 92.508 except Developer shall continue to be responsible for submitting the annual Certification of Continuing Program Compliance.

Representatives of the City shall be entitled to enter the Property, upon at least twenty-four (24) hours notice, to monitor compliance with this Agreement, to inspect the records of the Project with respect to the Affordable Units, and to conduct an independent audit of such records. The Developer agrees to cooperate with the City in making the Property available for such inspection. If for any reason the City is unable to obtain the Developer's consent to such an inspection, the Developer understands and agrees that the City may obtain at Developer's expense an administrative inspection warrant or other appropriate legal order to obtain access to and search the Property. Developer agrees to maintain records in a business-like manner and to make such records available to the City upon twenty-four (24) hours notice. Unless the City otherwise approves, such records shall be maintained throughout the Term.

## IV. OBLIGATION TO MAINTAIN, REPAIR AND REBUILD

A. Maintenance by Developer. The Developer shall, at its sole cost and expense, maintain and repair the Property keeping the same in good condition and making all repairs as they may be required by this Agreement and by all applicable Municipal Code and Uniform Code provisions.

B. Maintenance and Replacement. The Developer shall maintain the Property in good repair and working order, and in a safe, decent and sanitary condition, including the walkways, driveways, alleyways and landscaping, and from time to time make all necessary and proper repairs, renewals and replacements in order to keep the Property in a safe, decent and sanitary condition. Developer shall manage and maintain the Project in accordance with all applicable housing quality standards and local code requirements, concerning marketing, operation, maintenance, repair, security, rental policy and method of selection of tenants.

C. Interior Maintenance. Developer shall maintain the interior of buildings, including carpet, drapes and paint, in clean and habitable condition.

D. Exterior Building Maintenance. All exterior, painted surfaces shall be maintained at all times in a clean and presentable manner, free from chipping, cracking and defacing marks. All graffiti and defacement of any type, including marks, words and pictures must be removed and any necessary painting or repair completed within seventy-two (72) hours of their creation or within seventy-two (72) hours after notice to Developer. No exterior alterations of the buildings or landscaping shall be made without the prior consent of the City.

E. Landscaping. All front setback areas that are not buildings, driveways or walkways shall be adequately and appropriately landscaped in accordance with minimum standards established by the City and shall be maintained in good condition in accordance with the minimum standards established from time to time by the City.

F. Damage and Destruction Affecting Lots - Developer's Duty to Rebuild. If all or any portion of the Property and the improvements thereon is damaged or destroyed by fire or other casualty, it shall be the duty of the Developer to rebuild, repair or construct said portion of the Property and/or the improvements in a timely manner which will restore it to Code compliance condition.

In furtherance of the requirements of this Section IV. B., Developer shall keep the improvements on the Property insured by carriers at all times satisfactory to City against loss by fire,

rent loss and such other hazards, casualties, liabilities and contingencies as included within an all risk extended coverage hazard insurance policy, including earthquake, in an amount of the full replacement cost of the improvements. In the event of loss, Developer shall give prompt notice to the insurance carrier and the City.

If the Property is abandoned by the Developer, or if Developer fails to respond to City within thirty (30) days from the date notice is mailed by City to Developer that the insurance carrier offers to settle a claim for insurance benefits, City is authorized to collect and apply the insurance proceeds at City's option either to restoration or repair of the Property or to the sums secured by the Deed of Trust securing the City Loan.

G. Time Limitation. Upon damage to the Property or the improvements thereon, the Developer shall be obligated to proceed with all due diligence hereunder and commence reconstruction within two (2) months after the damage occurs and complete reconstruction within six (6) months after damage occurs, or demolition, and vacate within two (2) months, unless prevented by causes beyond its reasonable control.

#### V. MISCELLANEOUS PROJECT REQUIREMENTS

A. Equal Opportunity. As set forth in section 92.350 of the HOME Regulations, no person shall be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with HOME funds.

B. Affirmative Marketing. As required by Section 92.351 of the HOME Regulations, Developer must adopt affirmative marketing procedures and requirements. These must include:

1. Methods for informing the public;
2. Requirements and practices that Developer must adhere to in order to carry out the City of Riverside's affirmative marketing procedures and requirements;
3. Procedures used by Developer to inform and solicit applications from persons in the housing market area who are not likely to apply without special outreach;
4. Records that will be kept describing actions taken by Developer to affirmatively market units and records to assess the results of these actions; and
5. A description of how the Developer will assess the success of affirmative marketing actions and what corrective

actions will be taken where affirmative marketing requirements are not met.

C. Displacement, Relocation and Acquisition. The Developer must ensure that it has taken all reasonable steps to minimize the displacement of persons as a result of this Project assisted with HOME funds.

D. Lead-based paint. It is understood that the Project is subject to 24 CFR part 35. This cost will be incurred as a rehabilitation item and disclosed as such should testing and abatement be undertaken.

E. Conflict of Interest. Developer will hereby comply with all requirements set forth regarding conflict of interest provisions as they apply in Section 92.356 of the HOME Regulations.

F. Debarment and suspension. As required in Section 92.357 of the HOME Regulations, Developer will comply with all debarment and suspension certifications.

G. Flood Insurance. Under the Flood Disaster Protection Act of 1973, HOME funds may not be used with respect to the acquisition or rehabilitation of a project located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

1. The community in which the area is situated is participating in the National Flood Insurance Program, or less than a year has passed since FEMA notification regarding such hazards; and
2. Flood insurance is obtained as a condition of approval of the commitment.

## VI. COVENANTS

A. Term. The provisions of this Agreement shall apply to the Property, even if the City Loan is paid in full until the date which is ten (10) years after the Certificate of Occupancy for the Project. This Agreement shall bind any successor, heir or assign of the Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, with or without the approval of the City, except as expressly released by the City. The City makes the City Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

B. Covenants to Run with the Land. The City and the Developer hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the

land, and shall bind all successors in title to the Property. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

## VII ENFORCEMENT AND REMEDIES

A. Remedies. In the event of default or breach of any of the terms or conditions of this Agreement by Developer, its heirs, executors, administrators or assigns, City may pursue the remedy thereof by any and all means of enforcement, both in equity and at law, as provided by the laws of the State of California, including, but not limited to, injunctive relief and/or specific performance.

B. Rights of the City. The City has the right to enforce all of the provisions of this Agreement. This Agreement does not in any way infringe on the right or duties of the City to enforce any of the provisions of the Municipal Code including, but not limited to, the abatement of dangerous buildings. In addition to the general rights of enforcement, the City shall have the right, through its agents and employees, to enter upon any part of the Property for the purpose of enforcing the California Vehicle Code, and the ordinances and other regulations of the City, and for maintenance and/or repair of any or all publicly owned utilities.

C. Nuisance. The result of every act or omission whereby any of the covenants contained in this Agreement are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowable at law or equity, against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any owner or its successors in interest, without derogation of the City's rights under law.

D. Right of Entry. The City has the right of entry at reasonable hours and upon and after reasonable attempts to contact Developer or Operator, to effect emergency repairs or maintenance which the Developer or Owner has failed to perform. Subsequent to sixty (60) days written notice to the Developer or Owner specifically outlining the noncompliance, the City shall have the right of entry at reasonable hours to enforce compliance with this Agreement which the Developer or Operator has failed to perform.

E. Costs of Repair. The costs borne by the City of any such repairs or maintenance emergency and/or non-emergency, shall become a charge for which Developer shall be responsible; and may, if unpaid, be assessed as a lien against the Property.

F. Cumulative Remedies. The remedies herein provided for breach of the covenants contained in this Agreement shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

G. Failure to Enforce. The failure to enforce any of the covenants contained in this Agreement shall not constitute a waiver of the right to enforce the same thereafter.

#### VIII. HOLD HARMLESS

Developer agrees to defend and to hold City, and its officer, agents, employees, representatives, elected and appointed boards and officials harmless from liability for damage or claims for any type of damage including, but not limited to, personal injury and claims for property damage, which may arise from the activities of Developer or those of Developer's contractors, subcontractors, agents, employees or other persons acting on Developer's behalf and which relate to the Project. Developer agrees to and shall defend City, and its officers, agents, employees, representatives, elected and appointed boards and officials from any action for damages caused or alleged to have been caused by reason of Developer's activities in connection with the Project.

#### IV. ASSIGNMENT OF AGREEMENT

This Agreement shall be binding upon Developer, its executors, administrators and assigns and all persons claiming under or through Developer. Wherever this Agreement employs the term "Developer", it shall be deemed to include Developer, its executors, administrators and assigns and all persons claiming under or through Developer. Developer shall not voluntarily assign any of its rights or obligations under this Agreement without the prior written consent of the City and any purported assignment made without said consent shall be null and void for all purposes.

#### X. RECORDATION

Developer agrees that this Agreement and any amendment or cancellation hereof shall be recorded in the official records of Riverside County by Developer within ten (10) days after the effective date of this Agreement and within ten (10) days after any amendment or cancellation hereof. Developer agrees to provide City with two copies of the recorded Agreement within five (5) days of the recording date.

## XI. NOTICE

Written notice, demands and communications between City and Developer shall be deemed sufficient if dispatched by first class mail, postage prepaid, to the principal offices of City and Developer, the addresses of which are hereinafter set forth. Such written notices, demands and communications may be sent in the manner prescribed to each other's addresses as either party may, from time to time, designate by mail, or the same may be deliver in person to representatives of either party upon such premises. Said addresses are as follows:

If to City:                   Assistant to City Manager  
Office of Neighborhood and Community Services  
City of Riverside  
3900 Main Street  
Riverside, California 92522

If to Developer:   Peacock Financial Corporation  
1600 E. Florida Avenue, Suite 306  
Hemet, California 92544

Notices herein shall be deemed given as of the date of personal service or three (3) consecutive calendar days after deposit of the same in the custody of the United State Postal Service.

## XII. WAIVER

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party or the failure by the party to exercise its rights under or upon a default by the other party herein shall not constitute a waiver of such party's right to demand strict compliance from such other party in the future.

## XIII. SUBORDINATION

All sums owing to the City through the Loan Agreement and obligations set forth herein are subordinate to any deed of trust or mortgage on the Property, which deed of trust or mortgage is senior in recording priority to this Agreement, and are likewise subordinate to any deed of trust or mortgage made by or held by an institutional lender or investor which is given in connection with any refinancing of the loan secured by such senior deed of trust or mortgage, provided that the fixed debt service which would exist after such refinancing does not exceed an amount that is more than eighty percent (80% of the annualized net operating income for the Project based on its monthly reports to the City for the six (6) month period prior to the date of such financing. Any party, and its successors and assigns, receiving title to the

Property through a trustee's sale, judicial foreclosure sale, or deed in lieu of foreclosure of such senior deed of trust or mortgage, including a deed of trust or mortgage which is given in connection with such refinancing, and any conveyance or transfer thereafter, shall receive title free and clear of the provisions of this Agreement.

#### XIV. SEVERABILITY

If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

#### XV. CAPTION AND PRONOUNS

The captions and headings of the various sections of this Agreement are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and masculine, feminine and neuter shall be freely interchangeable.

#### XVI. ATTORNEYS' FEES

In any action to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to its costs and reasonable attorneys' fees.

#### XVII. MODIFICATION OF AGREEMENT

This Agreement may be modified or amended by mutual consent of all of the parties, provided that all amendments are in writing.

#### XVIII. SOLE AND ONLY AGREEMENT

This Agreement, including the documents referenced herein, contains the sole and entire agreement and understanding of the parties with respect to the subject matter hereof. No representations, oral or otherwise, express or implied, other than those contained herein, have been made by the parties.

IN WITNESS WHEREOF, the parties herein have caused this Agreement to be executed as of the day and year first above written.

CITY OF RIVERSIDE,  
a municipal corporation

PEACOCK FINANCIAL CORPORATION,  
a California corporation

By John E. Holmes  
City Manager

By Steven R. Peacock  
Title President

Attest Karen E. Lundquist  
City Clerk

By James G. Gotsis  
Title Vice-President

APPROVED AS TO FORM

Kathleen M. Anger  
ASST. CITY ATTORNEY

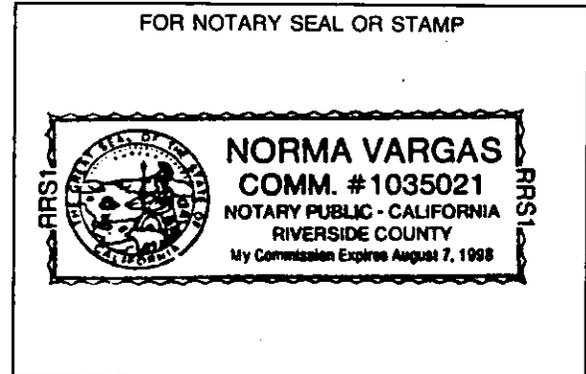
KMG/sb/jm  
6/23/94



STATE OF CALIFORNIA,  
COUNTY OF RIVERSIDE } S.S.

On APRIL 28, 1995, before me, NORMA VARGAS,  
a Notary Public in and for said County and State, personally  
appeared STEVEN R. PEACOCK

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



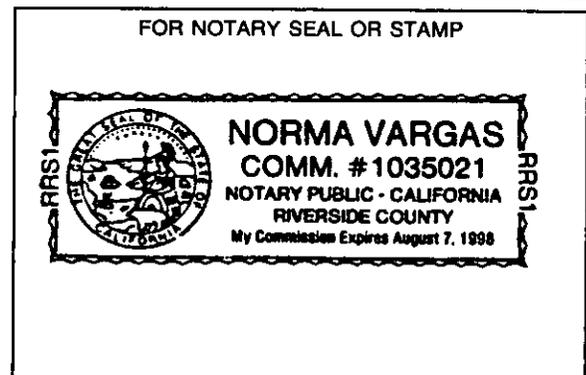
WITNESS my hand and official seal.

Signature *[Handwritten Signature]*

STATE OF CALIFORNIA,  
COUNTY OF RIVERSIDE } S.S.

On APRIL 27, 1995, before me, NORMA VARGAS,  
a Notary Public in and for said County and State, personally  
appeared JAMES G. GOTSSES

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



WITNESS my hand and official seal.

Signature *[Handwritten Signature]*

*CA-165*

## EXHIBIT "A"

That portion of Lots 22 and 23 of Bixmill Tract, as shown by map on file in Book 16, Pages 28 through 30 of Maps, records of Riverside County, California, described as follows:

BEGINNING at the southwesterly corner of Lot 53 of Arlington North Subdivision Unit No. 1, as shown by map on file in Book 26, Pages 38 through 40 of Maps, records of said Riverside County;

THENCE South  $79^{\circ}26'$  East, along the southerly line of said Arlington North Subdivision Unit No. 1, a distance of 395.52 feet to an angle point in the southerly line of Lot 59 of said Arlington North Subdivision Unit No. 1;

THENCE South  $89^{\circ}30'$  East, continuing along said southerly line of Arlington North Subdivision Unit No. 1, a distance of 124.08 feet to the westerly line of Lake Street, as shown by said map of Arlington North Subdivision Unit No. 1;

THENCE South  $2^{\circ}58'$  West, along said westerly line of Lake Street, a distance of 297.12 feet to the beginning of a curve concave northwesterly and having a radius of 20.00 feet;

THENCE southerly to the right along said curve through a central angle of  $87^{\circ}32'$  an arc length of 30.55 feet to the end of said curve; the end of said curve also being on the northerly line of Arlington Avenue, as shown by said map of Arlington North Subdivision Unit No. 1;

THENCE North  $89^{\circ}30'$  West, along said northerly line of Arlington Avenue, a distance of 460.74 feet to the beginning of a curve concave northeasterly and having a radius of 20.00 feet; the beginning of said curve also being the southeasterly corner of Lot B, Ben Lomond Way (formerly Delmar Rd), of said Arlington North Subdivision Unit No. 1;

THENCE westerly to the right along said last mentioned curve through a central angle of  $90^{\circ}$  an arc length of 31.42 feet to the end of said curve; the end of said curve also being on the easterly line of said Ben Lomond Way;

THENCE North  $0^{\circ}30'$  East, along said easterly line of said Ben Lomond Way, a distance of 365.12 feet to the POINT OF BEGINNING;

EXCEPTING THEREFROM that portion lying easterly of the westerly line of the land described in deed to Saturn Auto Services, a California corporation, by document recorded May 8, 1962, as Instrument No. 42855 of Official Records of said Riverside County;

ALSO EXCEPTING THEREFROM that portion described in deed to the City of Riverside

by document recorded August 6, 1971, as Instrument No. 88497 of Official Records of said Riverside County;

ALSO EXCEPTING THEREFROM that portion described in deed to the City of Riverside by document recorded 5-2-95, as Instrument No. 137859 of Official Records of said Riverside County.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.



Mark S. Brown 2/13/95 Prep. Kop  
Mark S. Brown, L.S. 5655 Date  
License Expires 9/30/95

ARLINGTON APARTMENTS  
Status Report

Month \_\_\_\_\_

Quarter \_\_\_\_\_

1. Number of leased units? \_\_\_\_\_

2. Number of Move-outs? \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Number of police inquiries, visits or responses  
logged during reporting period? \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Any complaints received by management or police from neighboring  
property owners: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

5. Information on critical complaints about damage, noise or disturbance  
made by one tenant against any others:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Reports of any other incidents which could be defined as disturbances  
of the peace, vandalism or other damage to the property or  
neighborhood: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_