

*III.3.*

# City of Costa Mesa

## Inter Office Memorandum

**TO:** Planning Commission

**FROM:** Mel Lee, Senior Planner

**DATE:** April 13, 2006

**SUBJECT:** PLANNING APPLICATION PA-05-54  
1940 MAPLE AVENUE, UNITS A1 THROUGH C9  
PLANNING COMMISSION MEETING OF APRIL 24, 2006

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### DESCRIPTION

The applicant is proposing to convert 12 units of an existing 2-story, 16-unit apartment complex into a common interest development (condominiums) to allow all but four of the units to be sold independent of one another.

### APPLICANT

The applicant is Suzanne Levesque, representing Dennis and Jeanne Carpenter, the owners of the property.

### BACKGROUND

The hearing for the above item was continued to the meeting of April 24, 2006 to allow the applicant time to provide 10-day certified notice of the hearing to the tenants. The staff report and related exhibits are attached to this memo for reference.

  
\_\_\_\_\_  
MEL LEE, AICP  
Senior Planner

  
\_\_\_\_\_  
R. MICHAEL ROBINSON, AICP  
Asst. Development Services Director

Attachment: Planning Commission Agenda report

cc: Deputy City Manager - Dev. Svs. Director  
Sr. Deputy City Attorney  
City Engineer  
Fire Protection Analyst  
Staff (4)  
File (2)

Suzanne Levesque, Ph.D.  
Impact Real Estate  
27742 Vista Del Lago, Suite J-3  
Mission Viejo, CA 92692

Dennis & Jeanne Carpenter  
c/o Impact Real Estate  
27742 Vista Del Lago, Suite J-3  
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Occupant  
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# **PLANNING COMMISSION AGENDA REPORT**

*III.2*  
ITEM NUMBER:

MEETING DATE: APRIL 10, 2006

SUBJECT: PLANNING APPLICATION PA-05-54  
1940 MAPLE AVENUE, UNITS A1 THROUGH C9

DATE: MARCH 30, 2006

FOR FURTHER INFORMATION CONTACT: MEL LEE, AICP SENIOR PLANNER (714) 754-5611

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## **DESCRIPTION**

The applicant is proposing to convert 12 units of an existing 2-story, 16-unit apartment complex into a common interest development (condominiums) to allow all but four of the units to be sold independent of one another.

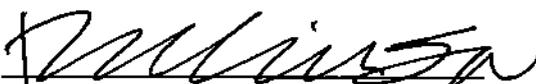
## **APPLICANT**

The applicant is Suzanne Levesque, representing Dennis and Jeanne Carpenter, the owners of the property.

## **RECOMMENDATION**

Approve by adoption of Planning Commission resolution, subject to conditions.

  
\_\_\_\_\_  
MEL LEE, AICP  
Senior Planner

  
\_\_\_\_\_  
MICHAEL ROBINSON, AICP  
Asst. Development Services Director

## PLANNING APPLICATION SUMMARY

Location: 1940 Maple Avenue Application: PA-05-54

Request: To convert an existing apartment complex to a common interest development (condominiums).

Zone: R3 North: Surrounding properties  
 General Plan: High Density Residential South: are zoned residential and  
 Lot Dimensions: Irregular East: contain residential  
 Lot Area: 24,121 SF West: dwelling units  
 Existing Development: 2-story, 16-Unit Apartment Complex

### **DEVELOPMENT STANDARD COMPARISON**

Development Standard	Required/Allowed	Proposed/Provided
<b>Lot Size:</b>		
Lot Width	100 FT	167 FT
Lot Area	12,000 SF	24,121 SF
<b>Density:</b>		
Zone	1 du/2,178 SF	1 du/1,507 SF*
General Plan	1 du/2,178 SF	1 du/1,507 SF*
<b>Building Coverage:</b>		
Buildings	NA	9,114 SF (38%)
Paving	NA	5,358 SF (22%)
Open Space	9,649 SF (40%)	9,649 SF (40%)
TOTAL		24,121 SF (100%)
<b>Building Height:</b>		
	2 Stories/27 FT	2 Stories/30 FT (w/basement)*
Private Open Space	10 FT minimum dimension	10 FT min.
Private Storage	200 CU FT/unit	200 CU FT/unit
<b>Selbacks</b>		
Front	20 FT	20 FT
Side (left/right)	5 FT/ 5 FT	5 FT/5 FT
Rear	20 FT	18 FT*
<b>Rear Yard Lot Coverage</b>		
	NA	NA
<b>Parking:</b>		
Covered	16	32
Open	32	0
TOTAL	48 Spaces	32 Spaces*
Driveway Width	25 FT	25 FT

NA = Not Applicable or No Requirement

\*The property is existing nonconforming

CEQA Status Exempt, Class 1 (Existing Facilities)  
 Final Action Planning Commission

## **BACKGROUND**

The subject property contains a 16-unit, two-story, apartment complex. The development was approved in 1989. The project approval included four density bonus units. Per the recorded Land Use Restriction and Density Bonus Agreement (a copy of which is attached to this report) these four units are required to remain as rental units for low or moderate income persons or families for 30 years (until 2019). In 1991, Planning Commission denied a request to convert the project to condominiums with a variance from parking. At that time, the Zoning Code had higher parking requirements for condominiums than for apartments. Therefore, a variance was required before the units could be converted.

The applicant proposes to convert all but the four density bonus units to condominiums. Pursuant to Code Section 13-42(g), Planning Commission review is required when occupied apartments are proposed to be converted to a common interest development. The review is required to confirm compliance with applicable development standards and to consider potential impacts on the rental housing supply and displacement of tenants if the City's vacancy rate is below 3%.

If the request is approved, the applicant would be required to obtain a approval of a tentative tract map to facilitate the conversion.

## **ANALYSIS**

### **Common Interest Development Conversion**

Common interest developments must comply with additional development standards above those applicable to apartments. These additional development standards include: minimum 10-foot by 10-foot private open space; having a break in the façade of at least 4 feet for every 2 dwelling units; and provision of on-site lighting. The existing development already complies with these requirements.

The development was constructed in 1990 and is legal nonconforming - whether as apartments or as condominiums - with regard to density and parking. The proposed conversion will not increase the project's degree of nonconformity.

The Zoning Code establishes a "critical vacancy rate" of 3% as the threshold for discouraging conversion of apartments to common interest developments, the idea being that conversions could diminish the supply of rental housing and displace residents unreasonably, particularly senior citizens and very low- and low-income families, as well as families with school age children. When the citywide rental vacancy rate is 3% or less, Planning Commission may deny any requested conversions. The 2000 census data indicates the City's rental vacancy rate is 2.8%.

The property contains 16 two-bedroom units. The tenants of the non-density bonus units are currently paying approximately \$1,500 - \$1,600 a month in rent, which

exceeds the affordable rental rate of \$1,234 for a 2-bedroom unit<sup>1</sup>. Therefore, conversion of the units would not result in a loss of affordable units. Conversion of the units could result in the displacement of long-term residents and families with school age children. To mitigate the displacement of these residents, the owner will be required, as a condition of approval (condition no. 7) to offer right of first refusal to the tenants, with terms more favorable than those offered to the general public. As conditioned, if the tenants confirm that they are not interested in purchasing the units, the property owner will be required to pay the registration fee for an apartment referral service.

The property is located within the Mesa West Residential Ownership Urban Plan area, which was recommended for approval to the City Council by the Planning Commission on March 13, 2006. According to the plan, the properties within this area are 81% renter occupied and 19% owner occupied. The intent of the plan is to increase the supply of ownership units. Therefore, it is staff's opinion that the conversion of the rental units to ownership units is consistent with the intent of the Mesa West Residential Ownership Urban Plan that was recently recommended for adoption by the Commission.

As required by Code, a property inspection report and a termite report were submitted by the applicant, and a City property inspection was conducted by Building Safety staff. A copy of all three reports are attached for reference. Based on those reports, and to allow a general upgrading of the site, staff recommends the following improvements:

1. Improvements listed in applicant's property report dated February 3, 2006 (a copy of which is attached to this report). This condition is required to be completed under the direction of the Planning staff.
2. Comply with all building, plumbing, and electrical, and mechanical corrections and upgrades listed in the January 18, 2006, memo prepared by the Building Safety Division.
3. Treat termite infestations and repair dryrot damage as recommended by a termite control company.

#### Existing Density Bonus Units

As indicated earlier, the project was approved with four density bonus units – those units are currently A4, B3, C2, and C6. These units are required to remain as rental units for low or moderate income persons or families until 2019; as a result, they cannot be converted to ownership units. Staff has included as a condition of approval that these units be held by a single property owner or ownership entity until December 28, 2019 (30 years from the date the Land Use Restriction and Density Bonus Agreement for the project was approved).

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<sup>1</sup> Affordable Rental Rate Based Upon Fair Market Rent Established by US Dept. of Housing and Urban Development (HUD) for 2005 and 2006

**GENERAL PLAN CONFORMITY**

Approval of the conversion is consistent with the City's General Plan, particularly Goal LU-1A.4, which encourages additional home ownership opportunities in the City to improve the balance between rental and ownership housing within the City.

**ALTERNATIVES**

The units could continue as rental units without the site upgrades, if the request is denied.

**ENVIRONMENTAL DETERMINATION**

The project is exempt from the provisions of the California Environmental Quality Act under Section 15301 for Existing Facilities.

**CONCLUSION**

Conversion of all but four of the apartment units will result in a general upgrading of the property, as well as providing additional home ownership opportunities within the newly approved Mesa West Residential Ownership Urban Plan area. Conversion of the units will not diminish affordable housing stock. Additionally, current tenants will be offered right of first refusal to purchase, or the property owner will pay registration fees for an apartment search service to help them find a new apartment if they decide not to purchase. The four density bonus units will be required to continue as affordable rental housing until 2019, per the previously approved Land Use Restriction and Density Bonus Agreement for the project.

Attachments:           Draft Planning Commission Resolution  
                               Exhibit "A" - Draft Findings  
                               Exhibit "B" - Draft Conditions of Approval  
                               Applicant's Project Description and Justification with Attachments  
                               Land Use Restriction and Density Bonus Agreement  
                               Inspection Reports  
                               Zoning/Location Map  
                               Plans

cc:     Deputy City Manager - Dev. Svs. Director  
           Sr. Deputy City Attorney  
           City Engineer  
           Fire Protection Analyst  
           Staff (4)  
           File (2)

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File: 041006PA0554	Date: 032406	Time: 3:35 p.m.
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**RESOLUTION NO. PC-06-**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF COSTA MESA APPROVING PLANNING  
APPLICATION PA-05-54**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY  
RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Suzanne Levesque, representing Dennis and Jeanne Carpenter, owners of the real property located at 1940 Maple Avenue, requesting approval to convert 12 Units of an existing 2-story, 16-unit apartment complex into a common interest development (condominiums) to allow all but four of the units to be sold independent of one another, in an R3 zone; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on April 24, 2006.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", and subject to the conditions contained in Exhibit "B", the Planning Commission hereby **APPROVES** Planning Application PA-05-54 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the Staff Report for Planning Application PA-05-54 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B". Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

**PASSED AND ADOPTED this 24<sup>th</sup> day of April, 2006.**

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Bill Perkins, Chair  
Costa Mesa Planning Commission



## EXHIBIT "A"

**FINDINGS**

- A. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29(10) in that, although the critical vacancy rate is less than the rate established in Section 13-42(c) (Residential Common Interest Development Conversions), the condominium conversion will not diminish affordable housing stock within the City. Conversion of the apartments will result in a general upgrade of the property, as well as satisfying General plan Goal LU-1A.4 of providing additional home ownership opportunities within the City. To ensure that existing tenants are not displaced unreasonably, tenants will be offered right of first refusal to purchase, or the property owner pay registration fees for an apartment search service to help them find a new apartment if they decide not to purchase. The four density bonus units will be required to continue as affordable rental housing until 2019, per the previously approved Land Use Restriction and Density Bonus Agreement.
- B. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29(e) in that:
- a. The project is compatible and harmonious with existing development and uses in the general neighborhood.
  - b. Safety and compatibility of the design of buildings, parking areas, landscaping, luminaries and other site features, which includes functional aspect of the site development such as automobile and pedestrian circulation, have been considered.
  - c. The project is consistent with the General Plan.
  - d. The planning application is for a project-specific case and is not to be construed to be setting a precedent for future development.
  - e. The cumulative effect of all the planning applications has been considered.
- C. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA under Section 15301 (Existing Facilities).
- D. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

**EXHIBIT "B"****CONDITIONS OF APPROVAL**

- Plng.
1. The conversion is approved for 12 of the 16 units and does not include the four density bonus units required to be retained as affordable rental units as noted in condition no. 8 below.
  2. All improvements listed in the applicant's letter dated February 3, 2006, shall be completed in all 16 units under the direction of the Planning staff.
  3. Applicant shall contact the Building Safety Division to provide proof that the Uniform Building Code requirements for condominiums have been satisfied prior to final Planning Division inspection.
  4. Applicant shall treat termite infestations and repair dryrot damage as recommended by a termite control company prior to Planning Division final.
  5. The conditions of approval and ordinance or code provisions and special district requirements of Planning Application PA-05-54 shall be blueprinted on the face of the site plan.
  6. The applicant shall contact the Planning Division to arrange for an inspection of the site prior to the final Building Safety Division inspections. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
  7. The applicant shall offer the existing tenants right of first refusal to purchase the units with terms more favorable than those offered to the general public. If the existing tenants confirm in writing that they are not interested in purchasing the units, the property owner will pay the registration fee for an apartment referral service. The applicant shall provide Planning Division staff a copy of the written offer and the tenant's written response to the offer prior to final inspections. The applicant shall also provide evidence of the payment of the registration fee for an apartment referral service for tenants not accepting the purchase offer.
  8. The CC&R's shall include a provision stating that the four density bonus units cannot be owner occupied and are regulated and monitored by the City of Costa Mesa through a Land Use Restriction and Density Bonus Agreement recorded on December 28, 1989, as Instrument No. 89-701974 in the Official Records of Orange County, or subsequent agreement amendments as required under condition of approval no 10 below.
  9. The four density bonus units shall be held by a single property owner or ownership entity until December 28, 2019 (30 years from the date of the approval of the Land Use Restriction and Density Bonus Agreement for the project). Separate ownership of any density bonus units is expressly prohibited.
  10. Prior to the approval of the final map, the property owner shall identify the four density bonus units by unit number on the map; submit a request to the City Attorney's Office to amend the current Land Use Restriction and Density Bonus Agreement on the property; and reimburse the City for any legal expenses incurred to prepare the amended agreement. The agreement shall set forth affordable housing

- requirements through December 28, 2019.
- Bldg. 11. Comply with all building, plumbing, electrical, and mechanical corrections listed in the January 18, 2006, Building Safety Division memo.

PLAN ZONING DIVISION - CITY OF COCHISE MESA  
DESCRIPTION/JUSTIFICATION

Application #: PA-05-54  
Address:

Environmental Determination: *EXEMPT*

1940 Maple Avenue (APN 422-103-40)

1. Fully describe your request:

Applicant is requesting city approval of an application for a common interest conversion of ~~16~~ *housing* 16 existing rental units in four buildings located at 1940 Maple Avenue. The ~~four remaining units~~ *of* are included in the city's density bonus program and will remain *affordable* ~~units~~ units. All 16 units located at this address are 2-bedroom units, approximately 1,197 square feet in size, and are identical in terms of floor plan. All units have direct access to/from subterranean parking (2 spaces per unit) All existing leases would be honored and existing tenants would have first right of refusal or acceptance to purchase their unit. No major structural or common area revisions are anticipated; *as the units were originally constructed for sale as condominiums.*

2. Justification

A. For a Conditional Use Permit or Minor Conditional Use Permit: Describe how the proposed use is substantially compatible with uses permitted in the same general area and how the proposed use would not be materially detrimental to other properties in the same area.

N/A

B. For a Variance or Administrative Adjustment: Describe the property's special circumstances, including size, shape, topography, location or surroundings that deprive the property of privileges enjoyed by other properties in the vicinity under the identical zoning classification due to strict application of the Zoning Code.

N/A

3. This project is: (check where appropriate) N/A

In a flood zone.

Subject to future street widening.

In the Redevelopment Area.

In a Specific Plan Area.

4. I have reviewed the HAZARDOUS WASTE AND SUBSTANCES SITES LIST published by the office of Planning and Research and reproduced on the rear of this page and have determined that the project:

Is not included in the publication indicated above.

Is included in the publication indicated above.

*Suzanne M. Lavoie*  
Signature

*9/16/05*  
Date



RECEIVED  
CITY OF COSTA MESA  
DEVELOPMENT SERVICES DEPARTMENT

FEB 27 2006  
Hand delivered

February 24, 2006

To: City of Costa Mesa  
Development Services Department  
77 Fair Drive  
Costa Mesa, California 92629-1200

Attn: Wendy Shih, Development Services Department

Re: 1940 Maple Avenue  
Common Interest Conversion

Dear Ms. Shih:

In response to your letter dated February 22, 2006, we are providing the following information related to the existing residents of the apartment complex located at 1940 Maple Avenue in the City of Costa Mesa:

1. Approximate age of existing tenants: Ages range from 4 months to 86 years; however, there are only two children in the complex and only one person is over the age of 50. The vast majority of tenants are in their 20s or 30s, with a few tenants in their 40s. Please refer to the attached listing of tenant ages.
2. Income level of existing tenants: Tenant incomes range from \$30,000 (2 students) to \$244,000. Please refer to the attached listing of tenant incomes.
3. Length of tenancy of existing tenants: Tenancy ranges from 3 months to 11 years. Please refer to attached listing of tenancy lengths.
4. Current rental rates: Rental rates average \$1,500 for tenants with longer occupancy periods; however, newer tenants are paying an average of \$1,600 per month. Please refer to the attached listing of rental rates.
5. Proposed plan for the mitigation of displacement impacts:

A: All existing tenants will be given first right of refusal to purchase the units they currently occupy. A significant number of the existing residents (approximately half) have expressed interest in purchasing the units they currently rent. Based on their income levels, half of the existing tenants would easily qualify to buy the units without secondary financial assistance.

B. The management company for the property, Impact Real Estate, is an active real estate company. Impact Real Estate will assist any tenants who do not wish, or cannot afford, to purchase their units to find replacement apartment rental housing in the surrounding area.

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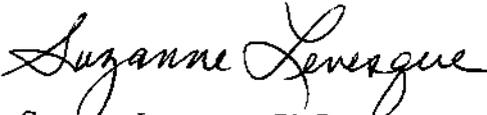
C. All tenants will be given ample time to locate replacement rental units. In addition, the owner will be flexible in allowing tenants to relocate quickly if they wish to do so, even allowing for early vacating of the month-to-month lease agreements that currently exist.

In addition, conversion of the apartment complex to a condominium complex would offer the following benefits to the City of Costa Mesa and its citizenry:

1. We will be creating opportunities for low-income people to purchase and own their own homes. If the 1,200-square foot units at the site were available for sale today, their market value would approximate \$475,000 per unit. Today, February 24, 2006, there are only eight comparable properties available for sale in the entire City of Costa Mesa. If approved, our project would double the existing inventory in this price range.
2. Under the City's current tax structure, the City is collecting \$26,000 annually from the owner of the rental units. If the units were sold as individual condominiums, the City's tax revenues would increase to approximately \$76,000. The increased tax revenues would benefit the City and its residents.
3. It is likely that some of the units would be purchased by investors who would rent the units back to their existing tenants rather than attempt to find new tenants. If this were the case, fewer displacements would occur and the number of rental units available in the City would be reduced by a lesser amount. If, conversely, new tenants were sought, there would still be a reduction in the loss of available rental units in the City.

We strongly feel that approval of this common interest conversion project will provide numerous benefits to the City and to potential future owners of the proposed condominiums. We hope that the above and the attached information will assist the City in its decision making. We will be happy to provide any additional information. Please feel free to contact Suzanne Levesque at 949.374.1527 or at 949.707.5011 if you have any questions.

Sincerely,



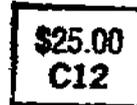
Suzanne Levesque, Ph.D.

When recorded mailed to:  
City of Costa Mesa  
Planning Division  
P.O. Box 1200  
Costa Mesa, CA 92628-1200

89-701974

RECORDED IN OFFICIAL RECORDS  
OF ORANGE COUNTY, CALIFORNIA

-115 PM DEC 28 '89



*Lee A. Branch* RECORDER

**LAND USE RESTRICTION AND  
DENSITY BONUS AGREEMENT**

This agreement is entered into this 22nd day of December 1989, by and between Pacific A & S Properties II, hereinafter referred to as "APPLICANT", and THE CITY OF COSTA MESA, a municipal corporation, hereinafter referred to as "CITY".

**R E C I T A L S:**

A. APPLICANT is the owner of real property located in the City of Costa Mesa, County of Orange, State of California, located at 1940 Maple Avenue and more particularly described on Exhibit "A", attached and incorporated herein, (the "Subject Property"); and

B. APPLICANT has filed with the CITY an application for a sixteen (16) unit apartment project and therein seeks a density bonus incentive pursuant to Government Code Section 65915 et seq.

C. The purpose of this agreement is to implement the density bonus program and procedures as promulgated in Government Code Section 65915 et seq. and to designate four (4) units as "Density Bonus" housing as more particularly described herein.

The parties mutually represent and agree for themselves and any and all of their successors in interest as follows:

1. APPLICANT shall promptly notify CITY of any and all changes whatsoever in the ownership of the subject property including any lease of the entire premises;

2. APPLICANT agrees to comply with all applicable federal, state and local laws and to secure or cause to be secured any and all permits which may be required by the CITY or any other governmental agency having jurisdiction over the Subject Property.

3. The covenants, promises, conditions and agreements established herein, shall, without regard to technical classification and designation, be binding on APPLICANT and any and all successors in interest, heirs, and assigns of the Subject Property or any part thereof. The covenants, promises and agreements herein shall remain in full force and effect for thirty (30) years from the date of this Agreement.

4. In addition to any other rights or remedies, either party may institute an action for legal or equitable relief, including but not limited to injunction and specific performance to cure, correct, or remedy any default or breach, to recover damages for any violation, default or breach, or to obtain any other remedy consistent with the purposes of this Agreement. Such legal or equitable actions must be instituted in the Superior Court of Orange County, State of California, in any other appropriate court in that County, or in the United States District Courts in the Central District of California. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

5. The rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the

same or at other times, of any other rights or remedies for the same default or any other default by the other party.

6. CITY has the right at all reasonable times to inspect the books and records of APPLICANT as pertinent to the purposes of this Agreement. APPLICANT shall keep full and accurate books of accounts, records, receipts and other pertinent data showing its financial operations and compliance with this Agreement. [ APPLICANT shall provide to CITY an annual financial report on March 1 during each year of the term of this Agreement, which annual report will certify compliance with this Agreement. CITY shall be entitled at CITY's expense, once during each calendar year during the term of this Agreement, upon forty-eight (48) hours prior notice to APPLICANT, to an independent audit, conducted by a certified public accountant to be designated by CITY. Any such audit shall be conducted during usual business hours at APPLICANT's place of business or some other mutually convenient and arranged place in the City of Costa Mesa.

7. APPLICANT shall establish the following rental restrictions for the housing units to be constructed on the Subject Property in consideration for the CITY's implementing the density bonus incentive on the Subject Property.

a. Density Bonus Units

(1) Four (4), two-bedroom units of the total number of units on the Subject Property shall be provided as rental apartment units for persons and families whose combined household income does not exceed the standards for low or moderate income as

defined in Section 50093 of the California Health and Safety Code.

(2) Prior to release of final occupancy, APPLICANT shall submit a letter to the CITY indicating the initial monthly rent to be charged to APPLICANT's tenants for the Density Bonus units. The monthly rent for the Density Bonus units shall not exceed fair market rent schedules prescribed pursuant to HUD's Section 8 Program for Orange County. The initial monthly rent levels shall be adjusted each year by APPLICANT as provided by the Section 8 Program.

(3) The Density Bonus units at the Subject Property shall be occupied by individuals and/or families whose combined household income does not exceed the standard set forth in paragraph 7.a. (1) above.

(4) APPLICANT acknowledges receipt of the attached Exhibit "B", Fair Market Rents schedule. APPLICANT acknowledges the Section 8 fair market rent schedule is adjusted annually. APPLICANT agrees to comply with and to implement the Section 8 fair market rent schedule as fixed by HUD during the entire term of this Agreement.

(5) The four (4) Density Bonus units at Subject Property shall be continuously rented or offered for rent at Section 8 fair market rent levels. In the event a tenant of a Density Bonus unit at the Subject Property enjoys a change in circumstances and, as a result, no longer meets the applicable income standard, APPLICANT may permit such tenant to remain in the rental unit occupied by such tenant, without restriction to Section

8 fair market rent schedules. APPLICANT shall then assign another unit, when available, for rental and occupancy under the density bonus program.

8. In the event any inspection or audit conducted pursuant to Paragraph six (6) herein reveals and proves a deficiency or default in the number or type of Density Bonus units agreed herein to be maintained under the density bonus program conditions, APPLICANT shall reimburse CITY for any and all expenses incurred in conducting the inspection or audit; and APPLICANT shall begin immediately to adjust the number of units required to be rented or occupied as Density Bonus units to correct the deficiency, such that as units become available or vacant, such units shall be rented and occupied continuously and consistently with the density bonus program, and this Agreement.

9. During the entire term of this Agreement and with respect to any and all claims arising during such term, APPLICANT agrees to defend, indemnify and hold harmless the CITY and its agents, officers and employees, from and against all claims, suits, judgments or liabilities, for damage to real or personal property, or for personal injury to or death of any person as well as any costs and expenses incurred by CITY on account of any of the foregoing arising out of or related in any respect to negligence or intentional misconduct on the part of APPLICANT or his employees or agents, or relating to a breach of this Agreement by APPLICANT.

10. In the event that either CITY or APPLICANT brings or commences an action to enforce the terms and conditions of this

Agreement or to obtain damages against the other party arising from any default under or violation of this Agreement, the prevailing party, as determined by the Court, shall be entitled to and shall be paid reasonable attorney's fees and any and all court costs therefor.

11. This Agreement, and the terms, provisions, promises, covenants and conditions herein, shall be binding upon and shall inure to the benefit of the parties hereto, and to any and all of their respective heirs, legal representatives, successors in interest and assigns.

12. All notices, requests and authorizations relating to this Agreement shall be in writing and addressed as follows:

CITY OF COSTA MESA  
DIRECTOR OF DEVELOPMENT SERVICES  
77 FAIR DRIVE  
P.O. BOX 1200  
COSTA MESA, CALIFORNIA 92628-1200

APPLICANTS:

MIKE KASHANI  
- PACIFIC A & S PROPERTIES II  
180 NEWPORT CENTER DRIVE  
SUITE 180  
NEWPORT BEACH, CA 92660

or such other address as either party shall later designate for such purposes by written notice to the other party.

13. The provisions herein shall become effective on the last date of execution of this Agreement and shall automatically terminate upon:

a. Expiration of thirty (30) years from the last date of execution of this Agreement; or

b. Change of use of the building(s) in which the Density Bonus units are located from residential apartment rentals to a different, non-residential use, pursuant to approval by the appropriate governmental agencies.

14. If total or partial destruction occurs, APPLICANT or its successors in interest may elect not to reconstruct such additional units that would constitute a Density Bonus, and if so, will be released from the provisions herein on those units that are deleted.

15. If a partial condemnation of the Subject Property should occur, the number of Density Bonus units may be reduced proportionately to the total reduction of units.

16. A breach of the provisions hereof shall not defeat nor render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Subject Property, but such provisions shall be binding upon and effective against any owner whose title is acquired by foreclosure, trustee sale, or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by themselves or by their lawfully authorized officers.

CITY OF COSTA MESA

BY: Perry L. Valantine  
Perry L. Valantine  
Asst. Dev. Svs. Dir./Plng.

DATE: 12-27-89

STATE OF CALIFORNIA )  
                                  ) SS.  
COUNTY OF ORANGE )

On December 27, 1989, before me, the undersigned, a Notary Public in and for the County of Orange, State of California, personally appeared Perry L. Valantine, Asst. Dev. Svs. Dir./Plng. for the City of Costa Mesa, on behalf of the City of Costa Mesa, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Elaine Steinhardt  
(Signature)  
ELAINE STEINHARDT  
Name (typed or printed)



PACIFIC  
APPLICANT A & S PROPERTIES II

BY: Mehrood Kashani

DATE: Dec 22, 1989

STATE OF CALIFORNIA )  
                                  ) SS.  
COUNTY OF ORANGE )

On DECEMBER 22, 1989, before me, the undersigned, a Notary Public in and for the County of Orange, State of California, personally appeared MICHAEL WASHALIT (MIKE)

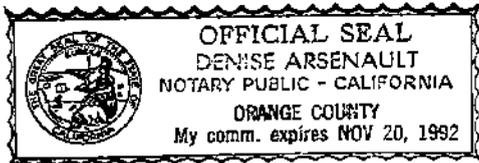
**PARTNERSHIP ACKNOWLEDGMENT**

NO. 20X

State of CALIFORNIA )  
County of ORANGE ) SS.

On this the 28 day of DECEMBER 1989, before me,

DENISE ARSENAULT  
the undersigned Notary Public, personally appeared  
MEHROD KASHANI - PACIFIC  
ATS PROPERTIES  
REPRESENTATIVE



personally known to me  
 proved to me on the basis of satisfactory evidence  
to be the person(s) who executed the within instrument on behalf of the partnership, and acknowledged to me that the partnership executed it.  
WITNESS my hand and official seal.

Denise Arsenault  
Notary's Signature

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# **CITY OF COSTA MESA**

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

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DEVELOPMENT SERVICES DEPARTMENT

**FOR ATTACHMENTS NOT INCLUDED IN THIS REPORT,  
PLEASE CONTACT THE PLANNING DIV. AT (714)754-5245.**