



Meeting Date: 01/12/2010

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: William E. Wilkins, WEW Agenda Item No. I-6  
 Reviewed By: City Manager \_\_\_\_\_ City Attorney [Signature] Finance [Signature] Other (Specify) \_\_\_\_\_

**DATE:** December 7, 2009

**TO:** Housing Authority Board of Commissioners

**FROM:** William E. Wilkins, Housing Director

**SUBJECT:** Rescission of Three Agreements Pertaining to Development of a Non-Profit Housing Project located East of Rose Avenue, South of Camino Del Sol, Known as 31-1 The Courts

**RECOMMENDATION**

That the Commissioners approve and authorize the Chairman to execute three agreements of rescission, each attached hereto as an exhibit, rescinding three agreements (Agreement Nos. A-7256; A-7257 and A-7258) pertaining to development of the 31-1 The Courts Housing Project.

**DISCUSSION**

On October 18, 2005, the Commissioners approved three agreements pertaining to the development of 31-1 The Courts. These agreements provided for planning, entitlement, financing, and development of approximately 500 units of housing on 30 acres, 262 of which housing units were to replace existing public housing, and the remainder of which were to be a combination of non-profit and for-profit rental and for sale units. The agreements contemplated a financing plan which involved multi-family housing revenue bonds, state grant funds, tax credit financing, and the sale of for-profit units to be used to finance construction of the non-profit portion of the project. The ongoing recession has resulted in a decline of housing prices. This source of funds for construction of non-profit housing is therefore very limited. The market for tax credits has declined, with similar results. Grant fund opportunities have dwindled. Housing Authority staff and Steadfast have concluded that as contemplated by the three agreements, the project is no longer feasible. Staff desires to explore different configurations of the project and financing methods which may result in a feasible project to replace the existing 262 units of public housing in the near future.

**FINANCIAL IMPACT**

There is no financial impact associated with this action.

- Attachment No. 1 - Mutual Rescission Agreement (Non-Profit Housing Project)
- Attachment No. 2 - Mutual Rescission Agreement (Affordable Rental Project)
- Attachment No. 3 - Mutual Rescission Agreement (065 Townhome and for Sale Projects)

## MUTUAL RECISSION AGREEMENT

This MUTUAL RECISSION AGREEMENT (this "*Agreement*") is entered into as of \_\_\_\_\_, 20\_\_, by and between THE HOUSING AUTHORITY OF THE CITY OF OXNARD, a public corporation ("*Authority*"), and STEADFAST RESIDENTIAL DEVELOPMENT, LLC, a Delaware limited liability company ("*Steadfast*"). Authority and Steadfast are sometimes referred to herein individually as "Party" and collectively as the "Parties."

### WITNESSETH:

WHEREAS, the Parties entered into that certain Disposition and Development Agreement (Non-Profit Housing Project) dated as of October 18, 2005 (the "*DDA*"), which provided for, among other things, development of approximately 260 residential units to replace exiting HUD-financed units in the City of Oxnard (the "*Project*");

WHEREAS, unanticipated economic conditions have made performance of the DDA impossible within the expectations set forth therein; and

WHEREAS, as a result of these conditions, the Parties desire to dissolve and rescind the DDA in all respects;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

1. Incorporation of Recitals. The Parties agree that the recitals set forth above are true and correct and are incorporated into this Agreement by reference.
2. Rescission. Upon mutual execution of this Agreement, the Parties individually and jointly agree that the DDA shall be rescinded and deemed null and void, effective as of January 1, 2010 (the "*Rescission Date*"), and that all terms, conditions, covenants, representations and warranties contained in said DDA shall terminate immediately and shall be deemed null and void and of no further effect whatsoever as of the Rescission Date.
3. Mutual Release.
  - A. Authority and Steadast, each on its own behalf and on behalf of its officers, directors, employees, managers, affiliates, agents, attorneys, representatives, contractors, successors and assigns, hereby releases and absolutely discharges the other party hereto, and all of such Party's officers, directors, employees, managers, affiliates, agents, attorneys, representatives, contractors, successors and assigns, and each of them, from and against any and all actions, causes of action, claims, judgments, liabilities, obligations, demands, costs, fees, and expenses of whatever kind or nature, including, without limitation, attorneys' fees and costs, whether known or

unknown, foreseen or unforeseen, related in any way, directly or indirectly, to the DDA. Notwithstanding any other provision of this Agreement, the releases contained herein shall not limit, affect, or apply to any of the parties' obligations under this Agreement.

B. In giving this release, the Parties knowingly relinquish all rights which it now or in the future may have under California Civil Code section 1542, which provides as follows:

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

Authority's Initials: DA

Steadfast's Initials: [Signature]

4. Return/Transfer of Development Documents. Steadfast agrees to return and/or transfer to Authority any tangible or intangible property that was created or obtained with respect to the DDA, including but not limited to all reports regarding the Property prepared by third party consultants, engineers, geologists, architects and similar professionals, entitlements, permits and plans (collectively, "**Development Documents**"), within 30 days after execution of this Agreement. Steadfast's interests in the Development Documents shall, to the maximum extent permitted by law, be assigned and transferred to Authority.

5. Covenant of Non-Disparagement. The Parties hereby covenant and agree that each shall not make, at any time or place, any disparaging remarks, verbally or in writing, concerning any of the Parties' actions or perceived omissions, regarding any matter connected with the DDA or otherwise take any action that would disparage or cast doubt upon the business acumen or judgment of the other Party. Each Party understands and acknowledges that each other Party's business and reputation are of special, unique, and extraordinary character, which gives them a particular value, the loss of which cannot reasonably be compensated in damages in an action at law. Accordingly, each Party further agrees that in addition to any other rights or remedies that any other Party may possess at law, any aggrieved Party shall be entitled to injunctive and other equitable relief in order to prevent or remedy a breach of the provisions of this section by any other Party hereto.

6. No Assignment. The Parties represent and warrant that they or their affiliated persons or entities have not assigned or transferred any claims or any interest therein or authorized any other person or entity to assert any claim or claims on its or their behalf with respect to the subject matter of this Agreement.

7. Interpretation. This Agreement has been drafted on the basis of mutual contribution of language and is not to be construed against any Party hereto as being the drafter or causing the same to be drafted.

8. Further Assurances. The Parties agree to cooperate with one another with respect to the completion of the transactions contemplated by this Agreement to take such reasonable actions and execute such other documents as the other Party may reasonably require to carry out the intent of this Agreement.

9. Governing Law. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of California. The prevailing party in any proceeding brought to interpret or enforce the provisions of this Agreement, or for damages for any alleged breach, shall be entitled to an award of reasonable attorneys' fees and costs incurred at both the trial and appellate levels incurred in enforcing such Party's rights hereunder.

10. Binding Effect. This Agreement and all provisions herein shall be binding upon and inure to the benefit and detriment of the Parties and their respective legal representatives, successors and assigns.

11. Entire Agreement; Modification. This Agreement represents and contains the entire understanding between the Parties hereto in connection with the subject matter of this Agreement. This Agreement shall not be altered or varied except in writing duly executed by the Parties hereto affected. There are no other agreements, restrictions, promises, warranties, covenants, or undertakings, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the subject matter.

12. Counterparts and Facsimile Execution. This Agreement may be executed in two (2) or more counterparts and via facsimile transmission, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. If the Agreement is executed via facsimile transmission the Party so executing the Agreement shall forward an original executed Agreement to the other Party as soon as possible.

13. Authorization. Each individual executing this Agreement represents and warrants that he or she has all requisite right, power, and authority to do so and to bind such Party to each and all of the terms hereof.

*[Remainder of page intentionally left blank.]*

THE UNDERSIGNED have caused this Agreement to be executed by an authorized representative on the date first set forth above.

THE HOUSING AUTHORITY OF THE  
CITY OF OXNARD, CALIFORNIA

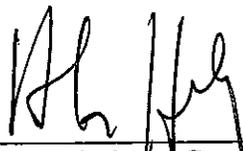
Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

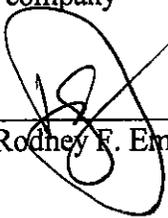
Title: \_\_\_\_\_

APPROVED AS TO FORM:  
ALAN HOLMBERG, GENERAL COUNSEL

By:   
Alan Holmberg, General Counsel

STEADFAST RESIDENTIAL  
DEVELOPMENT, LLC, a Delaware limited  
liability company

Dated: 12-21-09

By:   
Rodney F. Emery, Manager 

## MUTUAL RECISSION AGREEMENT

This MUTUAL RECISSION AGREEMENT (this "*Agreement*") is entered into as of \_\_\_\_\_, 20\_\_, by and between THE HOUSING AUTHORITY OF THE CITY OF OXNARD, a public corporation ("*Authority*"), and STEADFAST THE COURTS I, L.P., a California limited partnership ("*Steadfast*"). Authority and Steadfast are sometimes referred to herein individually at "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the Parties entered into that certain Disposition and Development Agreement (Affordable Rental Project) dated as of October 18, 2005 (the "*DDA*"), which provided for, among other things, development of an affordable rental residential apartments complex that consists of approximately eighty (80) rental units in the City of Oxnard (the "*Project*");

WHEREAS, unanticipated economic conditions have made performance of the DDA impossible within the expectations set forth therein; and

WHEREAS, as a result of these conditions, the Parties desire to dissolve and rescind the DDA in all respects;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

1. Incorporation of Recitals. The Parties agree that the recitals set forth above are true and correct and are incorporated into this Agreement by reference.
2. Rescission. Upon mutual execution of this Agreement, the Parties individually and jointly agree that the DDA shall be rescinded and deemed null and void, effective as of January 1, 2010 (the "*Rescission Date*"), and that all terms, conditions, covenants, representations and warranties contained in said DDA shall terminate immediately and shall be deemed null and void and of no further effect whatsoever as of the Rescission Date.
3. Mutual Release.

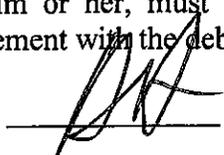
A. Authority and Steadast, each on its own behalf and on behalf of its officers, directors, employees, managers, affiliates, agents, attorneys, representatives, contractors, successors and assigns, hereby releases and absolutely discharges the other party hereto, and all of such Party's officers, directors, employees, managers, affiliates, agents, attorneys, representatives, contractors, successors and assigns, and each of them, from and against any and all actions, causes of action, claims, judgments, liabilities, obligations, demands, costs, fees, and expenses of whatever kind or nature, including, without limitation, attorneys' fees and costs, whether known or

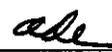
ATTACHMENT NO. 2  
PAGE 1 OF 4

unknown, foreseen or unforeseen, related in any way, directly or indirectly, to the DDA. Notwithstanding any other provision of this Agreement, the releases contained herein shall not limit, affect, or apply to any of the parties' obligations under this Agreement.

B. In giving this release, the Parties knowingly relinquish all rights which it now or in the future may have under California Civil Code section 1542, which provides as follows:

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

Authority's Initials: 

Steadfast's Initials: 

4. Return/Transfer of Development Documents. Steadfast agrees to return and/or transfer to Authority any tangible or intangible property that was created or obtained with respect to the DDA, including but not limited to all reports regarding the Property prepared by third party consultants, engineers, geologists, architects and similar professionals, entitlements, permits and plans (collectively, "**Development Documents**"), within 30 days after execution of this Agreement. Steadfast's interests in the Development Documents shall, to the maximum extent permitted by law, be assigned and transferred to Authority.

5. Covenant of Non-Disparagement. The Parties hereby covenant and agree that each shall not make, at any time or place, any disparaging remarks, verbally or in writing, concerning any of the Parties' actions or perceived omissions, regarding any matter connected with the DDA or otherwise take any action that would disparage or cast doubt upon the business acumen or judgment of the other Party. Each Party understands and acknowledges that each other Party's business and reputation are of special, unique, and extraordinary character, which gives them a particular value, the loss of which cannot reasonably be compensated in damages in an action at law. Accordingly, each Party further agrees that in addition to any other rights or remedies that any other Party may possess at law, any aggrieved Party shall be entitled to injunctive and other equitable relief in order to prevent or remedy a breach of the provisions of this section by any other Party hereto.

6. No Assignment. The Parties represent and warrant that they or their affiliated persons or entities have not assigned or transferred any claims or any interest therein or authorized any other person or entity to assert any claim or claims on its or their behalf with respect to the subject matter of this Agreement.

7. Interpretation. This Agreement has been drafted on the basis of mutual contribution of language and is not to be construed against any Party hereto as being the drafter or causing the same to be drafted.

8. Further Assurances. The Parties agree to cooperate with one another with respect to the completion of the transactions contemplated by this Agreement to take such reasonable actions and execute such other documents as the other Party may reasonably require to carry out the intent of this Agreement.

9. Governing Law. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of California. The prevailing party in any proceeding brought to interpret or enforce the provisions of this Agreement, or for damages for any alleged breach, shall be entitled to an award of reasonable attorneys' fees and costs incurred at both the trial and appellate levels incurred in enforcing such Party's rights hereunder.

10. Binding Effect. This Agreement and all provisions herein shall be binding upon and inure to the benefit and detriment of the Parties and their respective legal representatives, successors and assigns.

11. Entire Agreement; Modification. This Agreement represents and contains the entire understanding between the Parties hereto in connection with the subject matter of this Agreement. This Agreement shall not be altered or varied except in writing duly executed by the Parties hereto affected. There are no other agreements, restrictions, promises, warranties, covenants, or undertakings, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the subject matter.

12. Counterparts and Facsimile Execution. This Agreement may be executed in two (2) or more counterparts and via facsimile transmission, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. If the Agreement is executed via facsimile transmission the Party so executing the Agreement shall forward an original executed Agreement to the other Party as soon as possible.

13. Authorization. Each individual executing this Agreement represents and warrants that he or she has all requisite right, power, and authority to do so and to bind such Party to each and all of the terms hereof.

*[Remainder of page intentionally left blank.]*

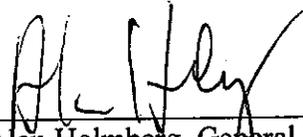
THE UNDERSIGNED have caused this Agreement to be executed by an authorized representative on the date first set forth above.

THE HOUSING AUTHORITY OF THE  
CITY OF OXNARD, CALIFORNIA

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

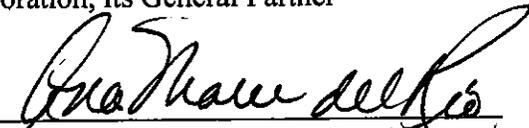
APPROVED AS TO FORM:  
ALAN HOLMBERG, GENERAL COUNSEL

By:   
Alan Holmberg, General Counsel

STEADFAST THE COURTS I, L.P., a California  
limited partnership

Dated: Dec. 18, 2009

By: SRP Urban Development, Inc., a California  
corporation, its General Partner

By:   
Ana Marie del Rio, Vice President

**MUTUAL RECISSION AGREEMENT**

This MUTUAL RECISSION AGREEMENT (this "*Agreement*") is entered into as of \_\_\_\_\_, 20\_\_, by and between THE HOUSING AUTHORITY OF THE CITY OF OXNARD, a public corporation ("*Authority*"), and STEADFAST THE COURTS II, L.P., a California limited partnership ("*Steadfast I*") and STEADFAST THE COURTS III, L.P., a California limited partnership ("*Steadfast III*" and Steadfast III referred to herein collectively as "*Steadfast*"). Authority and Steadfast are sometimes referred to herein individually at "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the Parties entered into that certain Disposition and Development Agreement (Townhome and for Sale Projects) dated as of October 18, 2005 (the "*DDA*"), which provided for, among other things, development of for-sale units in the City of Oxnard (the "*Project*");

WHEREAS, unanticipated economic conditions have made performance of the DDA impossible within the expectations set forth therein; and

WHEREAS, as a result of these conditions, the Parties desire to dissolve and rescind the DDA in all respects;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

1. Incorporation of Recitals. The Parties agree that the recitals set forth above are true and correct and are incorporated into this Agreement by reference.
2. Rescission. Upon mutual execution of this Agreement, the Parties individually and jointly agree that the DDA shall be rescinded and deemed null and void, effective as of January 1, 2010 (the "*Rescission Date*"), and that all terms, conditions, covenants, representations and warranties contained in said DDA shall terminate immediately and shall be deemed null and void and of no further effect whatsoever as of the Rescission Date.
3. Mutual Release.
  - A. Authority and Steadast, each on its own behalf and on behalf of its officers, directors, employees, managers, affiliates, agents, attorneys, representatives, contractors, successors and assigns, hereby releases and absolutely discharges the other party hereto, and all of such Party's officers, directors, employees, managers, affiliates, agents, attorneys, representatives, contractors, successors and assigns, and each of them, from and against any and all actions, causes of action, claims, judgments, liabilities, obligations, demands, costs, fees, and expenses of whatever kind or nature, including, without limitation, attorneys' fees and costs, whether known or

unknown, foreseen or unforeseen, related in any way, directly or indirectly, to the DDA. Notwithstanding any other provision of this Agreement, the releases contained herein shall not limit, affect, or apply to any of the parties' obligations under this Agreement.

B. In giving this release, the Parties knowingly relinquish all rights which it now or in the future may have under California Civil Code section 1542, which provides as follows:

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

Authority's Initials: AA      Steadfast's Initials: all

4. Return/Transfer of Development Documents. Steadfast agrees to return and/or transfer to Authority any tangible or intangible property that was created or obtained with respect to the DDA, including but not limited to all reports regarding the Property prepared by third party consultants, engineers, geologists, architects and similar professionals, entitlements, permits and plans (collectively, "**Development Documents**"), within 30 days after execution of this Agreement. Steadfast's interests in the Development Documents shall, to the maximum extent permitted by law, be assigned and transferred to Authority.

5. Covenant of Non-Disparagement. The Parties hereby covenant and agree that each shall not make, at any time or place, any disparaging remarks, verbally or in writing, concerning any of the Parties' actions or perceived omissions, regarding any matter connected with the DDA or otherwise take any action that would disparage or cast doubt upon the business acumen or judgment of the other Party. Each Party understands and acknowledges that each other Party's business and reputation are of special, unique, and extraordinary character, which gives them a particular value, the loss of which cannot reasonably be compensated in damages in an action at law. Accordingly, each Party further agrees that in addition to any other rights or remedies that any other Party may possess at law, any aggrieved Party shall be entitled to injunctive and other equitable relief in order to prevent or remedy a breach of the provisions of this section by any other Party hereto.

6. No Assignment. The Parties represent and warrant that they or their affiliated persons or entities have not assigned or transferred any claims or any interest therein or authorized any other person or entity to assert any claim or claims on its or their behalf with respect to the subject matter of this Agreement.

7. Interpretation. This Agreement has been drafted on the basis of mutual contribution of language and is not to be construed against any Party hereto as being the drafter or causing the same to be drafted.

8. Further Assurances. The Parties agree to cooperate with one another with respect to the completion of the transactions contemplated by this Agreement to take such reasonable actions and execute such other documents as the other Party may reasonably require to carry out the intent of this Agreement.

9. Governing Law. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of California. The prevailing party in any proceeding brought to interpret or enforce the provisions of this Agreement, or for damages for any alleged breach, shall be entitled to an award of reasonable attorneys' fees and costs incurred at both the trial and appellate levels incurred in enforcing such Party's rights hereunder.

10. Binding Effect. This Agreement and all provisions herein shall be binding upon and inure to the benefit and detriment of the Parties and their respective legal representatives, successors and assigns.

11. Entire Agreement; Modification. This Agreement represents and contains the entire understanding between the Parties hereto in connection with the subject matter of this Agreement. This Agreement shall not be altered or varied except in writing duly executed by the Parties hereto affected. There are no other agreements, restrictions, promises, warranties, covenants, or undertakings, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the subject matter.

12. Counterparts and Facsimile Execution. This Agreement may be executed in two (2) or more counterparts and via facsimile transmission, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. If the Agreement is executed via facsimile transmission the Party so executing the Agreement shall forward an original executed Agreement to the other Party as soon as possible.

13. Authorization. Each individual executing this Agreement represents and warrants that he or she has all requisite right, power, and authority to do so and to bind such Party to each and all of the terms hereof.

*[Remainder of page intentionally left blank.]*

THE UNDERSIGNED have caused this Agreement to be executed by an authorized representative on the date first set forth above.

THE HOUSING AUTHORITY OF THE  
CITY OF OXNARD, CALIFORNIA

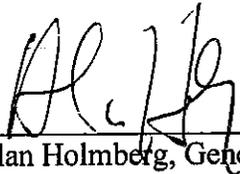
Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

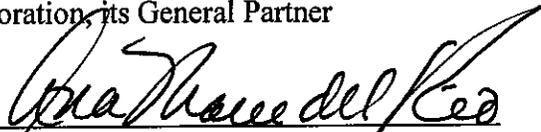
Title: \_\_\_\_\_

APPROVED AS TO FORM:  
ALAN HOLMBERG, GENERAL COUNSEL

By:  \_\_\_\_\_  
Alan Holmberg, General Counsel

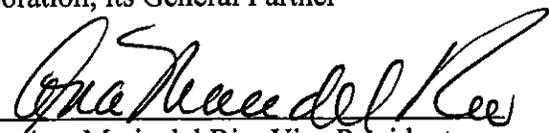
STEADFAST THE COURTS II, L.P., a California  
limited partnership

By: SRP Urban Development, Inc., a California  
corporation, its General Partner

By:  \_\_\_\_\_  
Ana Marie del Rio, Vice President

STEADFAST THE COURTS III, L.P., a California  
limited partnership

By: SRP Urban Development, Inc., a California  
corporation, its General Partner

By:  \_\_\_\_\_  
Ana Marie del Rio, Vice President