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RECORDING INFORMATION

INSTR # 200522993
OR BK 01328 PGS 0542-0549
RECORDED 06/24/2005 11:19:14 AM
JOHN A. CRAWFORD
CLERK OF CIRCUIT COURT
NASSAU COUNTY, FLORIDA
RECORDING FEES 69.50

Prepared By and Return To:

David F. Leon, L.L.C.
Broad and Cassel
Suite 1100
390 North Orange Avenue
Orlando, Florida 32801

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For Recording Purposes Only

IMPACT FEE AGREEMENT

THIS IMPACT FEE AGREEMENT (this "Agreement") is made and entered into as of this 8th day of June, 2005, by and between the **NASSAU COUNTY BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA, a political subdivision of the State of Florida**, (hereinafter referred to as the "Board") and **NASSAU CLUB PARTNERS, LTD., a Florida limited partnership**, (hereinafter referred to as the "Owner").

WITNESSETH:

WHEREAS, the Board and Nassau County, Florida (hereinafter referred to as "County") wish to facilitate and encourage the provision of Affordable Housing (as hereinafter defined); and

WHEREAS, the Owner owns certain real property located in the unincorporated area of Nassau County, Florida, which property is more particularly described on Exhibit "A", attached hereto and by this reference made a part hereof (hereinafter referred to as "Property"); and

WHEREAS, the Owner is building a 192-unit multifamily rental apartment complex (hereinafter referred to as the "Project"), intended to be rented in compliance with the affordable housing criteria as determined by the Clay County Housing Finance Authority or the Florida Housing Finance Corporation ("Affordable Housing"); and

WHEREAS, the Board has adopted and implemented Ordinance No. 87-17, (hereinafter referred to as the "Ordinance"), as codified in the Nassau County Code at Article X, Section 7-151—7-162 (hereinafter referred to as the "County Code"), pursuant to which certain impact fees (hereinafter referred to as "Impact Fees") are required to be paid in connection with all new development in the unincorporated areas of the County and in all municipalities within the County; and

WHEREAS, the Board has adopted and implemented Ordinance 2005-02, which provides an exemption of Impact Fees for Affordable Housing; and

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WHEREAS, the County has determined that the Project qualifies as Affordable Housing, and is therefore exempt from paying the aforesaid Impact Fees; and

WHEREAS, the Owner desires to enter into an Agreement with the Board to meet the requirements of Ordinance 2005-02 to qualify for the exemption from payment of the Impact Fees; and

WHEREAS, the Board and Owner agree that the Owner has paid, prior to the adoption and implementation of Ordinance 2005-02, certain Impact Fees in the amount of \$358,974.72 (the "Previously Paid Impact Fees"), and further agree to provide for Owner to obtain a refund of the Previously Paid Impact Fees.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **RECITALS.** The Board and Owner hereby declare that the recitals set forth hereinabove are true and correct and incorporated herein by this reference.

2. **SCOPE.** This Agreement shall include and be solely limited to all residential rental units, excluding units for management, maintenance, and security personnel (the "Units"), constructed by the Owner on the Property.

3. **TERM.** This Agreement shall be in effect for thirty (30) years from the date of recording of this Agreement (the "Thirty Year Period"); provided, however, that if the Project ceases to be rented as Affordable Housing, this Agreement shall terminate automatically upon payment of the Impact Fees as provided in Section 6 below. At the end of the Thirty Year Period, all obligations under this Agreement shall cease and all Impact Fees shall no longer be due and payable, irrespective of the Affordable Housing restrictions and qualifications set forth herein.

4. **IMPACT FEE EXEMPTION.** The Owner shall not be required to pay the Impact Fees set forth in Article X, Section 7-151—7-162 of the County Code for all Units within the Project for so long as the Project constitutes Affordable Housing or upon completion of the Thirty Year Period. At all times during the term of this Agreement, the Project shall be leased and rented as Affordable Housing. Accordingly, no Impact Fees will be due upon the issuance of any building or Certificate of Occupancy permits for the Project.

5. **IMPACT FEE REFUND.** Owner is entitled to a refund of the Previously Paid Impact Fees (the "Refund"). The Refund shall be provided by the County to the Owner within 30 days of full execution of this Agreement.

6. PAYMENT OF IMPACT FEES WITH REGARD TO DISQUALIFIED UNITS.

a. Notwithstanding Paragraph 4 above, if the Owner, or its successors and assigns, no longer leases, rents and manages the Project as Affordable Housing, then the Impact Fees shall be due as specified in 6.b. below.

b. During the Thirty Year Period, if any Unit in the Project is occupied on a permanent basis by any person or persons who at the time of initial occupancy do not comply with the affordable housing criteria as determined by Nassau County, the Clay County Housing Finance Authority or the Florida Housing Finance Corporation, then the Impact Fee shall be due for such Unit using the rate set forth in the Nassau County Code as of the date of the recording of this Agreement; provided, however, that this Agreement shall not be breached in the event that (i) a person who does not comply with the affordable housing criteria as determined by Nassau County, the Clay County Housing Finance Authority or the Florida Housing Finance Corporation occupies a Unit on a temporary basis (where such occupancy does not exceed 90 days per calendar year) as a guest of the tenant of such Unit, or (ii) a person who does comply with the affordable housing criteria as determined by Nassau County, the Clay County Housing Finance Authority or the Florida Housing Finance Corporation occupies a Unit in breach of the lease of such Unit and, upon obtaining knowledge of such fact, the Owner has promptly used and is continuing to use all commercially reasonable efforts to cause the removal of such person from occupancy.

c. Any such Impact Fee payment which becomes due and payable as a result of disqualification under Paragraph 6.b. shall be due and payable as of the date that the disqualified unit no longer qualifies as Affordable Housing.

d. Until paid, any amounts due hereunder shall constitute a lien on the Property which will be subordinate to any then existing encumbrances.

e. Upon the expiration of the Thirty Year Period, all Impact Fees will be deemed paid and/or forgiven.

7. COVENANT RUNNING WITH LAND. All rights and obligations arising as described herein are intended to appurtenances and covenants running with the Property and shall be binding upon and inure to the benefit of the parties, their respective assigns or successors in interest or title.

8. LIMITATION. This Agreement is exclusively limited to the payment of Impact Fees for the Property. Any other fees required by the Board or Nassau County in the development of any unit within the Project, or any other development located on the Property, shall not be considered a part of this Agreement, and this Agreement shall not be construed as a waiver, or deferral of those fees. In addition, in the event of redevelopment of the Project or the Property to a land use not exempt from the payment of Impact Fees, the prior use shall be deemed to have been vacant land, except that any Impact Fees actually paid hereunder shall be subtracted from any

Impact Fees then owing on account of the redevelopment of the Property so long as satisfactory proof of payment thereof is submitted to the Board.

9. **COVENANTS OF OWNER.** The Owner hereby agrees:

a. That all Units in the Project shall be built, set aside, owned, leased and managed by the Owner as Affordable Housing.

b. That the Property shall be held, sold and conveyed subject to this Agreement and that the covenants contained herein shall run with the Project and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, creditors and assigns and the benefits shall inure respectively to the Owner and the Board and their respective successors and assigns during the term of this Agreement.

c. The Owner shall not sell, lease, assign, transfer, or in any manner convey legal or equitable title without notifying the County and obtaining the County's consent.

10. **NOTICES.**

a. Neither party shall be held in default under the terms of this Agreement until the non-defaulting party shall have provided the defaulting party with a written notice of the default, and the defaulting party shall have failed to cure such default within thirty (30) days after its receipt of such notice; provided, however, if the default is not one involving the payment of money, and the default cannot be reasonably cured within such thirty (30) day period, then the defaulting party shall not be held in default so long as it commences such actions as are required to cure default within such thirty (30) day period, and diligently pursues such curative action until the default has been fully cured.

b. Any notices which are required or permitted hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same is (i) personally delivered or (ii) deposited in the U.S. Mail, postage prepaid, by registered or certified mail, return receipt requested, or (iii) deposited with Federal Express or other equivalent overnight delivery company, and addressed as follows:

Board:

Nassau County Board of County Commissioners
c/o County Attorney
Post Office Box 1010
Fernandina Beach, Florida 32035-1010
Facsimile: (904) 321-2658

With a copy to:

County Administrator
Post Office Box 1010
Fernandina Beach, Florida 32035-1010
Facsimile: (904) 321-5784

Owner: Nassau Club Partners, Ltd.
1551 Sandspur Road
Maitland, Florida 32751
Attention: Jay P. Brock
Facsimile: (407) 629-6979

With a copy to: David F. Leon, L.L.C.
Broad and Cassel
390 N. Orange Avenue, Suite 1100
Orlando, Florida 32801
Facsimile: (407) 650-0928

Any party may change its address for notices by providing all other parties with a notice of change of address in accordance with the foregoing provisions.

11. **RECORDATION EXPENSES.** Upon execution by both parties hereto, this Agreement shall be recorded, at Owner's expense, in the Public Records of Nassau County, Florida.

12. **AMENDMENTS.** This Agreement shall not be amended, unless such amendment is in writing and is executed by the Board and the Owner.

13. **CHOICE OF LAW.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida, governing both substantive law and remedies.

14. **COUNTERPART SIGNATURES.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same Agreement.

[Signatures contained on the following pages]



IN WITNESS WHEREOF, the parties have caused these presents to be executed on this date and year set out above.

Signed, sealed and delivered in the presence of:

[Signature]
Print Name: Sheryl L. Norbeck

[Signature]
Print Name: Ammon E. Smith

OWNER:

NASSAU CLUB PARTNERS, LTD., a Florida limited partnership

By: CED Capital Holdings 2003 W, L.L.C., a Florida limited liability company, its general partner

By: *[Signature]*
Jay P. Brock, Manager

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing Agreement was acknowledged before me this 5th day of May, 2005, by Jay P. Brock, as Manager of CED Capital Holdings 2003 W, L.L.C., a Florida limited liability company, the general partner of Nassau Club Partners, Ltd., a Florida limited partnership, on behalf of said limited liability company and said partnership. She/he is personally known to me or has produced _____ as identification.

Signature *Peggy A Baker*
Print Name: _____
Commission No. _____
Commission Expires: _____

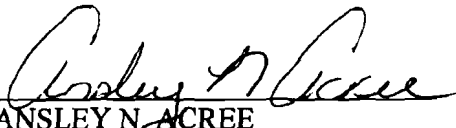
(Notary Seal)

(Signatures continue on next page)

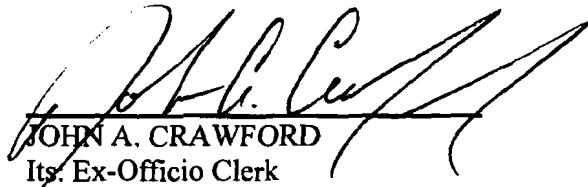


Peggy A Baker
My Commission DD988804
Expires November 26, 2008

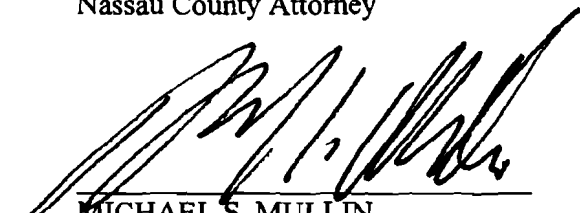
BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA


ANSLEY N. ACREE
Its: Chairman

ATTEST:


JOHN A. CRAWFORD
Its: Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney


MICHAEL S. MULLIN

STATE OF FLORIDA
COUNTY OF NASSAU

The foregoing Agreement was acknowledged before me this 8th day of June, 2005, by ANSLEY N. ACREE, as Chairman, of NASSAU COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the state of Florida, on behalf of said political subdivision. They are personally known to me and did not take an oath.

Signature Connie H. Arthur
Print Name: CONNIE H. ARTHUR
Commission No. DD 262558
Commission Expires: 12/19/07

(Notary Seal)

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CONNIE H. ARTHUR
Notary Public, State of Florida
My comm. expires Dec 19, 2007
Comm No DD 262558

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROJECT

A PORTION OF SECTIONS 27 & 40, TOWNSHIP 2 NORTH, RANGE 28 EAST, NASSAU COUNTY, FLORIDA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE COMMENCE AT A FOUND 1/2" IRON ROD AND PLASTIC CAP MARKED "PLS-1558" AT THE SOUTHWEST CORNER OF SECTION 42, TOWNSHIP 2 NORTH, RANGE 28 EAST, NASSAU COUNTY, FLORIDA; THENCE SOUTH 85°47'27" EAST (SOUTH 85°48'04" EAST PER DEED), ALONG THE SOUTHERLY LINE OF SAID SECTION 42, A DISTANCE OF 607.85 FEET(590.27 FEET PER DEEDS) TO A FOUND 1/2" IRON PIPE WITH PLASTIC CAP MARKED "FL-3718/GA-2365"; THENCE NORTH 04°38'54" WEST A DISTANCE OF 3138.33 FEET; THENCE SOUTH 85°21'06" WEST A DISTANCE OF 977.40 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 85°21'06" WEST A DISTANCE OF 690.85 FEET TO INTERSECT THE EASTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD NO. 107(AN 80 FOOT RIGHT-OF-WAY AS SHOWN ON D.O.T. RIGHT-OF-WAY MAP SECTION NO. 74050-2501); THENCE NORTH 04°38'54" WEST (NORTH 04°39'32" WEST PER D.O.T.), ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1208.42 FEET TO INTERSECT THE SOUTHERLY LINE OF A FLORIDA PUBLIC UTILITIES POWER LINE EASEMENT; THENCE ALONG LAST SAID SOUTHERLY LINE, THE FOLLOWING TWO COURSES; (1) NORTH 89°30'23" EAST A DISTANCE OF 266.86 FEET; (2) NORTH 74°14'08" EAST A DISTANCE OF 567.22 FEET; THENCE SOUTH 15°45'42" EAST A DISTANCE OF 398.94 FEET; THENCE SOUTH 73°32'23" WEST A DISTANCE OF 213.27 FEET; THENCE SOUTH 04°38'51" EAST A DISTANCE OF 863.29 FEET TO THE POINT OF BEGINNING.