



A G E N D A

IRVINE COMMUNITY LAND TRUST *SPECIAL MEETING*

MAY 18, 2011

**CITY OF IRVINE
1 CIVIC CENTER PLAZA
Second Floor Room B-203 (NOTE Location)
IRVINE, CA 92606**

CALL TO ORDER

3:30 p.m.

ROLL CALL

PRESIDENT:
SECRETARY/TREASURER:
BOARDMEMBER:
BOARDMEMBER:
BOARDMEMBER:
BOARDMEMBER:
BOARDMEMBER:

MARY ANN GAIDO
NANCY DONNELLY
SCOTT DARRELL
BETH KROM
BRYAN STARR
PATRICK STRADER
VACANT

ADDITIONS AND DELETIONS TO THE AGENDA

(NOTE: Additions to the agenda are limited by California Government Code Section 54954.2 of the Brown Act and for those items that arise after the posting of the Agenda and must be acted upon prior to the next Irvine Community Land Trust meeting)

INTRODUCTIONS

EXECUTIVE DIRECTOR'S REPORT

PUBLIC COMMENTS

THE PRESIDENT OF THE IRVINE COMMUNITY LAND TRUST WILL CALL FOR PUBLIC COMMENTS

Any member of the public may address the Board of the Irvine Community Land Trust on items within the Board's subject matter jurisdiction but which are not listed on the agenda during PUBLIC COMMENTS. However, no action may be taken on matters that are not part of the posted agenda. PUBLIC COMMENTS are scheduled for 30 minutes and should be limited to three minutes per person.

BOARD BUSINESS

1. APPROVAL OF MINUTES

RECOMMENDED ACTION:

Approve the minutes of the Annual Meeting of the Irvine Community Land Trust held on March 16, 2011.

2. BOARD OF DIRECTORS VACANCY

RECOMMENDED ACTION:

Approve Subcommittee nominee to the Irvine Community Land Trust Board.

3. BOARD RETREAT

RECOMMENDED ACTION:

Provide staff direction regarding a Land Trust Board Retreat.

4. CITY OF IRVINE GRANT AGREEMENT UPDATE

RECOMMENDED ACTION:

Receive and file.

5. POLICY DIRECTION ON FORECLOSURE

RECOMMENDED ACTION:

Confirm Land Trust policy on foreclosure of units and termination of affordability restrictions.

6. DISPOSITION OF LAND TRUST HOMES

RECOMMENDED ACTION:

Discuss disposition of homes and provide staff direction.

BOARD COMMENTS

ADJOURNMENT

Next meeting: Special Meeting, **June 1, 2011**, at the City of Irvine, City Hall, 1 Civic Center Plaza, **Second Floor Room B-203**, Irvine, CA 92606.

NOTICE TO THE PUBLIC

SERVICES TO FACILITATE ACCESS TO PUBLIC MEETINGS

It is the intention of the Irvine Community Land Trust to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the Irvine Community Land Trust will attempt to accommodate you in every reasonable manner. Please contact Mark Asturias, Executive Director, or Terri Goggin, Administrative Secretary at 949-724-7444.

Assisted listening devices can be made available at the meeting for individuals with hearing impairments. Notification 48 hours prior to the meeting will enable staff to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35. 102-35. 104 ADA Title II).

STATE OF CALIFORNIA)
CITY OF IRVINE) SS
COUNTY OF ORANGE)

I declare under penalty of perjury that I am employed by the City of Irvine, Community Development Department and that I posted this agenda in the binder located in the Police Department lobby of the Irvine City Hall, 1 Civic Center Plaza, Irvine, CA 92606.

Dated: _____
Secretary

AGENDA ITEM NO. 1

MINUTES OF THE ANNUAL MEETING OF THE IRVINE COMMUNITY LAND TRUST MARCH 16, 2011

CALL TO ORDER:

The Regular Meeting of the Irvine Community Land Trust was called to order by President Gaido at 3:40 p.m., March 16, 2011, at the City of Irvine City Hall, 1 Civic Center Plaza, Room L-102, Irvine, CA 92606.

ROLL CALL:

Present:	President:	Mary Ann Gaido
	Secretary/Treasurer:	Nancy Donnelly
	Board Member:	Scott Darrell
	Board Member:	Beth Krom
	Board Member:	Patrick Strader
	Board Member:	Vacant
Absent:	Board Member:	Bryan Starr (excused)

Also present were: Mark Asturias, Executive Director; Bill Ihrke, Legal Counsel; Adam Eliason, CivicStone; and Terri Goggin, Recording Secretary.

ADDITIONS OR DELETIONS TO THE AGENDA:

None.

INTRODUCTIONS:

None.

EXECUTIVE DIRECTOR'S REPORT:

Mark Asturias reminded the Board that this is the 5 year anniversary of the Irvine Community Land Trust. He also reported that the State Assembly is in ongoing discussions regarding the future of Redevelopment Agencies in California. Mark will keep the Board updated on any announcements from Sacramento.

Mark updated the Board on the progress of the 3.4 acres being developed for affordable housing. He stated that the area is being graded and should be ready for possession by the City then to the Land Trust in December. He and Scott Darrell will be meeting soon to process the Grant Deed.

Mark informed the Board that there is a Land Trust Conference coming up in Portland Oregon this fall. He will provide more information as it is received.

PUBLIC COMMENTS:

There were no public comments.

BOARD BUSINESS:

1. APPROVAL OF MINUTES

MOTION: It was moved by Board Member Krom, seconded by Secretary/Treasurer Donnelly, and approved by the following vote to approve the minutes of the Special Meeting of the Irvine Community Land Trust held on February 23, 2011:

AYES: 5 Darrell, Donnelly, Gaido, Krom, Strader
NOS: 0
ABSENT: 1 Starr

NOTE: Under the “Additions and Deletions to the Agenda” there was one motion to add an emergency item and vote on it. There should have been two motions, one to add the item and one to vote on it.

2. APPOINTMENT OF BOARD CHAIR AND OFFICERS

MOTION: It was moved by Board Member Krom, seconded by Board Member Strader, and approved by the following vote to ask the current Board Officers to continue in their appointed positions for the next year, March 2011 to March 2012. The Board appointed Mary Ann Gaido as Chair of the ICLT Board, Mary Ann Gaido as President of the ICLT Board, and Nancy Donnelly as Secretary/Treasurer. Unanimous vote.

AYES: 5 Darrell, Donnelly, Gaido, Krom, Strader
NOS: 0
ABSENT: 1 Starr

MOTION: It was moved by President Gaido, seconded by Board Member Krom, and approved by the following vote to acknowledge and re-appoint Mark Asturias as the Executive Director. Unanimous vote.

AYES: 5 Darrell, Donnelly, Gaido, Krom, Strader
NOS: 0
ABSENT: 1 Starr

3. AMENDMENT TO BYLAWS

This amendment is to establish the meeting time, which is 3:30 p.m. and place, Irvine City Hall, for the Annual Meeting of the Irvine Community Land Trust and to establish the address of the principal place office of the office of the Corporation as 1 Civic Center Plaza, Irvine, CA 92606.

MOTION: It was moved by Board Member Krom, seconded by Chair Gaido, and approved by the following vote to approve Resolution 11-012 A RESOLUTION OF THE IRVINE COMMUNITY LAND TRUST AMENDING THE BYLAWS OF THE CORPORATION to change the Annual Meeting time and location to 3:30 p.m. at Irvine City Hall and to change the address of the principal business office to 1 Civic Center Plaza, Irvine, CA 92606.

AYES: 5 Darrell, Donnelly, Gaido, Krom, Strader
NOS: 0
ABSENT: 1 Starr

4. PROPOSED SALES PRICES FOR LAND TRUST CONDOMINIUMS

MOTION: It was moved by Board Member Darrell, seconded by Board Member Krom, and approved by the following vote to approve the recommended sales prices for two Land Trust-owned condos as \$300,000 for 21 Goldenrod and \$325,000 for 20 Van Buren.

AYES: 5 Darrell, Donnelly, Gaido, Krom, Strader
NOS: 0
ABSENT: 1 Starr

5. COMMITTEE UPDATES

- a. Financial Subcommittee - Boardmember Beth Krom reported on the financial subcommittee activities. Recently the committee and staff contacted two large financial institutions, Wells Fargo and Bank of America, to request assistance with funding qualified applicants for Land Trust-owned condos. Both lenders have staff familiar with Land Trusts and forming an identifiable partnership with them would make the purchase process easier and more expedient. The subcommittee and staff will be moving forward with discussions with the lenders and will report to the Board at the next meeting. Board Member Krom asked Executive Director Mark Asturias to contact both lenders. Consultant Adam Eliason with CivicStone inquired if the subcommittee asked the lenders how we outreach to local people to inform them of the opportunities that are available.

Mark and Adam have done the preliminary work and now that there are specific staff members at the lending institutions that we can contact we will let them build the network for us. They will follow up with the lenders and report to the Board on the progress.

- b. Nominating Subcommittee – Board Member Beth Krom suggested that the Board and staff notice widely and make people you know aware of the vacancy on the Land Trust Board. She also stated that a notice should be posted by Monday, March 21 and to allow three weeks to accept applications. The Board was provided with hard copies of the applications to circulate. She also reminded the group that they are not limited to the seven board positions we currently have and this is an opportunity to expand the Board if they wish.

ACTION:
Receive and file.

BOARD COMMENTS

Board Member Patrick Strader asked about any legislative action that might affect the Land Trust. Counsel Bill Ihrke responded that they are in session this afternoon and he will report on any actions taken that would affect the Land Trust.

ADJOURNMENT

Chair Gaido recommended the Board adjourn to the May 18 meeting at 4:15 p.m.:

AYES:	5	Darrell, Donnelly, Gaido, Krom, Strader
NOS:	0	
ABSENT:	1	Starr

NEXT MEETING

The next meeting of the Irvine Community Land Trust will be A Special Meeting held on **Wednesday, May 18, 2011 at 3:30 p.m. at Irvine City Hall, SECOND FLOOR ROOM B-203.**

SECRETARY

AGENDA ITEM NO. 2



Irvine Community Land Trust

REQUEST FOR IRVINE COMMUNITY LAND TRUST BOARD ACTION

LAND TRUST BOARD MEETING DATE:

MAY 18, 2011

TITLE: Board of Directors Vacancy

A handwritten signature in blue ink that reads "Mark Astumian".

Executive Director

RECOMMENDED ACTION:

Approve Subcommittee nominee to the Irvine Community Land Trust Board.

BACKGROUND:

At the February 23 meeting the Board, by motion, approved moving forward with a review of applications for a vacant position on the Board of Directors. A Subcommittee was established comprised of Board Members Krom and Starr.

Applications were solicited for approximately one month through posting on the Land Trust web site and contacts with individuals who had expressed interest in serving on the Land Trust Board of Directors and whose information was on file in the Land Trust offices. In addition, the Board was asked to contact prospective individuals each Board member felt would be willing to serve on the Land Trust. Applications were then forwarded to the Subcommittee for their review prior to interviews that were held on April 25.

The Subcommittee interviewed and discussed with the applicants their interest in serving on the Land Trust Board. Each candidate had background and interest that could complement the Board. The applications and interviews established a qualified list of candidates for the Subcommittee to make a recommendation to the Board.

The Subcommittee has considered all the applicants' qualifications and responses during interviews and determined that a specific candidate can be recommended to the Board for consideration. The Subcommittee will report their findings to the Board and recommend a candidate to fill the vacant Board position.

AGENDA ITEM NO. 3



Irvine Community Land Trust

REQUEST FOR IRVINE COMMUNITY LAND TRUST BOARD ACTION

LAND TRUST BOARD MEETING DATE:

MAY 18, 2011

TITLE: Board Retreat

A handwritten signature in blue ink, appearing to read "Mark Astumery", is written over a horizontal line.

Executive Director

RECOMMENDED ACTION:

Provide staff direction regarding a Land Trust Board Retreat.

BACKGROUND:

The Irvine Community Land Trust (Land Trust) Business Plan (Plan) was previously reviewed by the Board during its May 16, 2007 and May 5, 2010 meetings. Subsequent to the May 2010 meeting there have been significant changes in the economy, lending practices, and efforts to reduce public funding sources including the Federal Community Development Block Grant and HOME Investment Partnership Act programs. The State of California has unsuccessfully initiated efforts to eliminate redevelopment housing set-aside funds. All these actions, which are outside the control of the Land Trust, have the potential to affect the mission and the development programs identified in the Plan.

The Land Trust recently approved a grant agreement with the City of Irvine's Redevelopment Agency that would transfer all the housing set-aside funds to the Land Trust to assist in the development of affordable housing. The grant agreement provides an initial funding source of approximately \$2 million for this calendar year and an ongoing revenue stream, to the extent these funds are not eliminated by State action for the next 40 years. In addition, the grant agreement provides that the Land Trust will implement the obligations of the Redevelopment Agency when developing affordable housing per State law, which includes ensuring affordability for the longest feasible time and ongoing monitoring of affordable housing developments.

The Land Trust has initiated its first partnership for the development of an affordable rental housing project, the Doria Apartments located near Sand Canyon Avenue and Irvine Boulevard. The City of Irvine is also preparing to accept and hold land on behalf of the Land Trust for a housing development opportunity that will commence by the end of this calendar year and there will be additional land the City of Irvine will obtain that can be transferred to the Land Trust over the next four years for affordable housing.

All of the above have significant implications for the Land Trust and staff is seeking direction on the priorities and actions the Board wants implemented both short and long term. Given the scope of the issues that will need to be discussed staff is recommending the Board consider a retreat where goals, objectives and priorities can be set along with specific time frames for actions to be implemented and completed by staff. Staff believes this would give proper guidance on implementing current and future programs and projects of the Land Trust.

A Board retreat could be scheduled in July after the Land Trust obtains its first deposit of funds from the Irvine Redevelopment Agency. In addition, there may be greater certainty on the possible elimination of housing set-aside funds that could be discussed as part of the retreat program.

Should the Board approve a retreat staff recommends the Board also provide direction on having a facilitator to provide structure and a program. This was partially done during past Board meetings when CivicStone facilitated the discussion of the Plan and it would be beneficial when discussing the goals, objectives, programs, and future funding and projects the Board determines appropriate for the Land Trust.

FISCAL IMPACT:

The existing contract with CivicStone, the Land Trust consultant has sufficient funds remaining to permit contracting with a facilitator.

AGENDA ITEM NO. 4



Irvine Community Land Trust

REQUEST FOR IRVINE COMMUNITY LAND TRUST BOARD ACTION

LAND TRUST BOARD MEETING DATE:

MAY 18, 2011

TITLE: Policy Direction on Foreclosure


Executive Director

RECOMMENDED ACTION:

Confirm Land Trust policy on foreclosure of units and termination of affordability restrictions.

BACKGROUND:

The Board established a Subcommittee to contact mortgage lenders to further market the Land Trust sales program and to encourage mortgage lenders to work with home buyers of Land Trust homes. The Subcommittee, comprised of Board President Gaido and Board Member Krom, reported at the March 16 meeting of their contact with Bank of America and Wells Fargo Bank. Subsequent to the meetings with both lenders, staff has been working with the lenders' special programs departments that must approve the Land Trust legal documents to participate in bank mortgage lending programs. Bank of America has reviewed both the Ground Lease and Covenant templates and advised staff that a Fannie Mae Rider is needed and must be a component of the Land Trust documents. Wells Fargo has advised they are also looking for the Rider as a component of their approval of the Land Trust documentation.

The National Community Land Trust Network (LTN) has acknowledged that the mortgage lending industry has significantly changed its lending standards and that they affect all community land trusts across the nation. This caused LTN to review the national model ground lease and advise land trusts on how to work in this new environment with lenders. The LTN suggests that should a land trust agree to work with lenders that participate in programs with Fannie Mae that they consider two recommendations from LTN:

1. LTN recommends the adoption of a new model ground lease that includes an approved Fannie Mae Rider for land trust properties; and
2. That land trusts consider, if accepting the Rider, creating a reserve fund for properties that may ultimately be foreclosed by mortgage lenders.

If a reserve fund is created, the LTN has discussed with staff that funding be set aside based on the size of the land trust portfolio and that it be adjusted annually after a review of the number of existing loans and any foreclosure activity that has occurred with land trust homes.

Fannie Mae has acknowledged its role in purchasing or securitizing mortgage loans affected by a land trust ground lease or covenant and has prepared a Community Land Trust Ground Lease Rider (Attachment 1) that mortgage lenders may use when financing first mortgage loans. The Community Land Trust Ground Lease Rider (Rider) includes provisions for mortgage default or foreclosure that impacts land trusts. In Section E.5 there is a provision that in the event of foreclosure all the provisions of a land trust ground lease or covenant shall be of no further force or effect. This provision wipes out all affordability provisions of the Land Trust unit allowing the mortgage lender to sell a foreclosed property without restrictions or affirmative marketing to certain income populations or selling at a price that is deemed affordable when the unit was initially restricted by a land trust. In addition to the foreclosure provision in the Rider, there are additional provisions that require notice and cure rights in the event of a default or foreclosure. These provisions were added to ensure that if a land trust has the ability, interest and funds to purchase the foreclosed property it will be able to do so per provisions in the Rider. This time frame to act is generally 60 days following the land trust notification to the lender that it intends to purchase the lender's loan.

POLICY DIRECTION:

The Board previously approved the Ground Lease template that incorporates no provision to eliminate affordability provisions in the event of a foreclosure by a lender. The Ground Lease template is also the base document for the Land Trust covenant, when property is part of a condominium complex, and as such the covenant does not contain foreclosure provisions.

The Board had requested the Subcommittee to contact lenders who might work with the Land Trust to provide mortgage financing to home buyers of Land Trust homes. However the two largest lenders in the community, Bank of America and Wells Fargo, have requested that the Land Trust amend its documents to incorporate the Rider to address their concerns on foreclosure. If the Board agrees to such an amendment, the provisions in the Rider, as discussed above, will modify Board policy that states mortgage financing must remain subordinate to the Land Trust agreements requiring permanent affordability. This amendment to the policy would affect all properties sold by the Land Trust since the Rider would be available to all lenders. The outcome of this policy amendment is that the Land Trust would need to step into future transactions where a foreclosure is imminent to retain the affordability of the home.

FISCAL IMPACT:

There is no fiscal impact to amend Board policy requiring permanent affordability even in the event of a foreclosure. This amendment from a practical perspective requires the Land Trust to consider two fiscal alternatives, one of which would create a future fiscal impact:

1. The Land Trust could include in its future budgets reserve accounts that would be available to purchase a foreclosed property from a lender to ensure ongoing affordability, or
2. The Land Trust could allow foreclosed properties to revert to market rate after foreclosure.

Policy Direction on Foreclosure

May 18, 2011

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Prior to further discussion with lenders staff is seeking Board direction on this policy amendment request. There are no other document issues in discussion with the lenders that rise to the level of proposing an amendment to Board policy. Should the Board amend its foreclosure policy as requested by the lenders staff will work with Board legal counsel to incorporate the Rider into the Land Trust documents and forward them to the lenders for final review.

Attachment: Fannie Mae Community Land Trust Ground Lease Rider

Community Land Trust Ground Lease Rider

[For use with CLT ground leases substantially based on either the Institute for Community Economics or the National Community Land Trust Network model ground lease as identified in Fannie Mae's *Selling Guide*]

THIS COMMUNITY LAND TRUST GROUND LEASE RIDER (the "Rider") is made this _____ day of _____, _____, and amends and supplements a certain ground lease (referred to herein as "the CLT Ground Lease") dated _____ that is by and between _____ as lessor (herein referred to as "the "Lessor" but may otherwise be referred to in the CLT Ground Lease as the "CLT") and _____, as lessee (herein referred to as "the "Lessee" but may otherwise be referred to in the CLT Ground Lease as "Homeowner"). This Rider shall be deemed incorporated into the CLT Ground Lease, and the CLT Ground Lease as amended by this Rider, shall hereafter be referred to as the "Lease," unless otherwise indicated.

The CLT Ground Lease is a long-term lease of the Lessor's fee interest in the land located at _____, referred to herein as the "Leased Land," as improved by a residential structure or unit, referred to herein as the "Improvements." The Leased Land and the Improvements are collectively referred to herein as the "Leased Premises."

This Rider amends the CLT Ground Lease for the purpose of enabling the Lessee to obtain Fannie Mae financing in the form of a mortgage or deed of trust given this ___ day of _____, _____, by Lessee to _____ (the "Specified Mortgage"), and the interest of the Specified Mortgagee in the Leased Premises as secured by such mortgage or deed of trust may be referred to herein as the "Leasehold Estate." The Specified Mortgage is recognized by Lessor as a "Permitted Mortgage" (or as such concept is otherwise defined) under the CLT Ground Lease, and the holder of the Specified Mortgage (the "Specified Mortgagee") is recognized as a "Permitted Mortgagee" (or as such concept is otherwise defined) under the CLT Ground Lease.

ADDITIONAL COVENANTS. Notwithstanding anything to the contrary contained in the CLT Ground Lease, and in addition to the covenants and agreements made in the CLT Ground Lease, the Lessor and the Lessee further covenant and agree, so long (but only so long) as the Specified Mortgagee, its successors and assigns shall have an interest in the Leased Premises, as a holder of the Specified Mortgage or as an owner of the Lessee's interest pursuant to any sale after or in lieu of foreclosure, the following provisions shall apply to the CLT Ground Lease as modifications thereof:

A. No Assignment or Transfer. The making of the Specified Mortgage shall not be deemed to constitute an assignment or transfer of the Lease or Leasehold Estate so as to require the Specified Mortgagee to assume the performance of any of the Lessee's obligations under the Lease.

B. Status of the Fee Estate. The Lessor represents and warrants that there is no existing mortgage on the fee estate, and so long as the Specified Mortgage shall remain on the Leased Premises, the Lessor and the Lessee shall not subordinate the Lease to any mortgage or lien that may hereafter be placed on the fee estate. Notwithstanding the foregoing, a state- or local-government entity ("Government Entity") may hold a prior recorded interest (represented by recorded covenants, a mortgage or deed of trust, other lien) on the fee estate **if** the Government Entity has agreed that in the event it (including its successors and assigns) succeeds to the interest of the Lessor under the Lease by any remedy available to the Government Entity by law or pursuant to its lien, the Government Entity shall recognize all the terms of the Lease and this Rider as though the Government Entity were acting as the Lessor. Such recognition

must include, but is not limited to, the provisions of this Rider whereby all provisions of the Lease regarding (a) occupancy of the Leased Premises as a primary residence by the Lessee, (b) limitation on assignment of, or sublease under, the Lease, (c) the price at which the Leasehold Estate may be transferred, and (d) the income of successive transferees, assignees or successors, shall, in the event of foreclosure or assignment in lieu of foreclosure of the Specified Mortgage, be of no further force or effect with respect to such Specified Mortgagee or its successive transferees, assignees or successors. Further, in such event of the Government Entity succeeding to the interests of the Lessor, the Lessee hereby agrees to recognize the Government Entity as exercising all rights and privileges of the Government Entity as lessor under the Lease and this Rider.

Such agreement by the Government Entity may be evidenced by the agreement between the Government Entity and the Lessor under which the Government Entity's prior recorded interest is derived, or by use of a recognition agreement derived from a sample the Specified Mortgagee may obtain from Fannie Mae. Irrespective of any interest by a Government Entity, the Specified Mortgage shall constitute a first leasehold lien on the Leased Premises, and shall have priority over the Lessor's reversionary interest. If the Lessor conveys title to the Leased Land while the Specified Mortgage remains on the Leased Premises, the Lease shall remain in effect with the same priority thereto.

C. Termination, Forfeiture and Modification of Lease. There shall be no termination, forfeiture, or modification of the Lease, except as provided in this Rider, without the prior written consent of the Specified Mortgagee. The Lessor and Lessee shall amend the Lease from time to time as reasonably requested by the Specified Mortgagee, as long as the requested changes do not change the periodic fee, charge or payment due the Lessor for the rights accorded the Lessee under the Lease (the "Ground Lease Fee"), and do not materially or adversely affect the rights of Lessor or Lessee or their respective interests in the Leased Premises. An adjustment of the Ground Lease Fee may be made by the Lessor as provided in the Lease, without prior approval of the Specified Mortgagee, so long as written notice has been delivered to the Specified Mortgagee at least 60 days prior to the effective date of such adjustment with respect to adjustments other than those (i) that were scheduled at the time the Specified Mortgage was given, and (ii) reflecting routine, periodic updates to variable expenses such as property taxes and liability insurance premiums; provided, however, that the Specified Mortgagee shall have the right to arbitrate (as provided herein) any dispute as to an adjustment of the Ground Lease Fee.

D. New Lease. In the event the Lessee's interest in the Lease has been terminated, forfeited, or surrendered as provided in the Lease, and the Specified Mortgage remains outstanding, a new Lease shall automatically be created between the Lessor and the Specified Mortgagee, which Lease shall be for the remainder of the term of the Lease, with the same priority thereto, and shall be subject to the same terms of the Lease as would be applicable pursuant to Section E.1. below where the Specified Mortgagee had accelerated its note, foreclosed on the Specified Mortgage, taken an assignment in lieu of foreclosure, or exercised its other remedies for default.

E. Mortgage Default or Foreclosure. Subject to the following, upon the occurrence of an event of default under the Specified Mortgage (as determined by the Specified Mortgagee—an "Event of Default"), and without the consent of the Lessor, the Specified Mortgagee shall be permitted to accelerate its note, foreclose on the Specified Mortgage, take an assignment in lieu of foreclosure, or exercise its other remedies for default.

Further:

1. Upon the occurrence of an Event of Default under the Specified Mortgage, the Lessee shall immediately notify the Lessor of such Event of Default and shall submit to Lessor copies of all notices the Lessee received from the Specified Mortgagee relating thereto. The Specified Mortgagee

and the Lessor shall endeavor to communicate and cooperate in efforts to deal with the circumstances of the Event of Default and the actions the parties may take relating thereto; provided, however, the Specified Mortgagee shall have no obligation to give formal legal notice of the Event of Default to the Lessor.

2. The Lessee and the Specified Mortgagee agree that the Lessor shall have the right, but not the obligation, to cure an Event of Default in the Lessee's name and on the Lessee's behalf. If such cure is not effective and continuing, nothing herein shall be construed to prevent or delay the Specified Mortgagee from its pursuit of foreclosure and any other available remedies. The Lessee shall be responsible to the Lessor for all payments made, and expenses incurred, by the Lessor in curing such default.
3. Should the Lessor not choose to cure an Event of Default as specified above, the Lessor shall nevertheless have the option to purchase from the Specified Mortgagee its interest in the Leasehold Estate on the Leased Premises for the full amount owing to the Specified Mortgagee under the Specified Mortgage as of the date of closing of the purchase, upon written notice given by the Specified Mortgagee (the "Mortgagee Option Notice") not later than 60 days following acquisition of title to the Leasehold Estate by the Specified Mortgagee by foreclosure or by an assignment in lieu of foreclosure; provided, however, the Specified Mortgagee may give such written notice following the occurrence of an Event of Default under the Specified Mortgage and prior to the completion of foreclosure proceedings. If the Lessor elects to exercise such option to purchase, the Lessor shall give written notice to the Specified Mortgagee of the Lessor's intent to purchase the Leasehold Estate (the "Lessor Option Notice") within 45 days following the Specified Mortgagee's giving of the Mortgagee Option Notice; provided, however, at the option of the Lessor, in the event the Mortgagee Option Notice is given prior to the completion of foreclosure proceedings by the Specified Mortgagee, the Lessor shall, within such 45-day period, be able to give a written notice to the Specified Mortgagee that it will delay giving the Lessor Option Notice until a date that is not later than 30 days following written notice from the Specified Mortgagee of its acquisition of title to its interest in the Leasehold Estate on the Leased Premises.

The Lessor shall complete the purchase of the Specified Mortgagee's interest in the Leasehold Estate within 60 days of giving the Lessor Option Notice. If the Lessor does not complete the purchase within the allotted 60 days, the Specified Mortgagee shall be free to sell its interest to another person or entity. Further, if the Lessor does not complete the purchase within the allotted 60 days, the Lessor agrees to pay to the Specified Mortgagee its costs of holding its interest in the Leasehold Estate from the date of the Lessor Option Notice until the expiration of such 60-day period. If the Lessor does not purchase the Specified Mortgagee's interest in the Leasehold Estate as described herein, the Leasehold Estate may be transferred, mortgaged and sublet an unlimited number of times, and the Lessor shall not require a credit review or impose other qualifying criteria on any such transferee, mortgagee or sublessee.

4. In the event of foreclosure or assignment in lieu of foreclosure, which results in the conveyance of the Leasehold Estate on the Leased Premises from the Lessee, any adjustment of the Ground Lease Fee to reflect then current fair market rental value as provided in the Lease, shall be subject to the approval of the Specified Mortgagee. The Specified Mortgagee and the Lessor shall attempt to resolve any dispute concerning such adjustment of the Ground Lease Fee, through the normal interaction of the parties, or through formal mediation as the case may warrant. If the dispute remains unresolved, the Specified Mortgagee and the Lessor shall submit the dispute as to the fair market rental value to binding arbitration.
5. In the event the Specified Mortgagee acquires title to the Leasehold Estate on the Leased Premises through foreclosure or assignment in lieu of foreclosure of the Specified Mortgagee, all provisions of the Lease regarding (a) occupancy of the Leased Premises as a primary residence by the Lessee, (b)

any limitation on the assignment of, or sublease under, the Lease, (c) any obligation to target certain populations in marketing the Leasehold Estate to potential transferees, (d) the price at which the Leasehold Estate on the Leased Premises may be transferred, and (e) the income of successive transferees, and their successors and assigns, shall be of no further force or effect with respect to such Specified Mortgagee or its successive transferees, assignees or successors. The foregoing sentence shall not be construed to invalidate other Lease provisions regarding permitted use of the Leased Premises. Any transfer or assignment of the Leasehold Estate encumbered by the Specified Mortgage as provided for in this paragraph shall be deemed a permitted sale, transfer or assignment of the Lease and the Leasehold Estate. Further, in such event, the Leasehold Estate may be transferred, mortgaged and sublet an unlimited number of times, and the Lessor shall not require a credit review or impose other qualifying criteria on any such transferee, mortgagee or sublessee.

F. Lease Default. There shall be no forfeiture or termination of the Lease except for (i) the nonpayment of amounts due under the Lease, and (ii) violation of one or more provisions of the Lease addressing the following: (a) prohibition or restrictions on the sale or transfer of the Lessee's interest (however, non-sale transfers resulting from marriage, divorce, death of a spouse, or a transfer otherwise permitted by applicable federal law, may not constitute a basis for default under the Lease, though the Lessor may require such transferee to agree to assume the transferor's obligations under the Lease), and (b) requirement that the Lessee occupy the Leased Premises as primary residence. Provided, however, such forfeiture or termination shall be subject to the Specified Mortgagee's right to cure a monetary default, or otherwise foreclose or take an assignment of the Leasehold Estate in lieu of foreclosure with respect to the Lessee's monetary or non-monetary default. Notwithstanding the foregoing, nothing herein shall be construed to require the Specified Mortgagee to cure any non-monetary default. Further, the Specified Mortgagee shall become subrogated to any and all rights of the Lessee with respect to such curing of a default. If the Lessee's default shall be cured as provided in the Lease, and the Specified Mortgagee shall discontinue its foreclosure or assignment in lieu of foreclosure proceedings, the Lease shall continue in full force and effect as if the Lessee had not defaulted. A default by the Lessee under the Lease shall constitute a default under the Specified Mortgage.

G. Lease Default Notice. Notwithstanding the notice requirements provided in the Lease, no default notice by the Lessor shall be deemed to have been given unless and until a copy thereof shall have been so given to the Specified Mortgagee.

H. Insurance. All insurance policies covering the Improvements shall by endorsement name the Specified Mortgagee as an additional insured and loss payee, and provide the Specified Mortgagee with 30 days' cancellation notice.

I. Casualty and Condemnation. If the Leased Premises are destroyed or taken to such an extent that the Lease is to be terminated, the insurance proceeds or condemnation award, as the case may be, shall be applied first in an amount sufficient to satisfy the Specified Mortgage. Upon the termination of the Lease as a result of a partial destruction or a condemnation of less than the entire Leased Premises, the total insurance proceeds or condemnation award, as the case may be, shall be paid to an appointed trustee, who shall first apply such insurance proceeds or condemnation award in accordance with the Specified Mortgage for restoration of the Improvements (if such trustee determines that the Improvements may reasonably be restored to a residential use consistent with the Lease), with the balance of such insurance proceeds or condemnation award to be allocated between the Lessor and Lessee as otherwise provided in the Lease. The Specified Mortgagee shall be entitled to participate in (i) the adjustment of all casualty losses and (ii) all condemnation proceedings and settlement discussions. Any insurance proceeds or condemnation award shall be applied in accordance with the Specified Mortgage. The Specified

Mortgagee shall also be entitled to participate in the adjustment of the Ground Lease Fee as a result of a partial destruction or taking.

J. Force Majeure. The Lessee shall not be in default where performance is delayed or prevented by "Acts of God," war, civil commotion, strikes, labor disputes or the like.

K. Easements and Alterations. Additions to and alternations in the Improvements may be made as provided in the Lease, as long as the value of the Leased Premises is not diminished. The Lessor, as owner of the fee interest in the Leased Land, shall join in all easements, permits and applications necessary for such development of the Leased Premises as is permitted under the Lease, provided that the Lessor shall have no liability or obligation under such easement, permit or application.

L. Arbitration. The Specified Mortgagee shall have the right to participate in any arbitration or legal proceedings between the Lessor and the Lessee. Any arbitration proceedings shall be conducted in accordance with arbitration statutes applicable in the state where the Leased Premises are located.

M. Merger. If the estates of the Lessor and Lessee are at any time owned by the same person, so long as the Specified Mortgagee has any interest in the security or in the Specified Mortgage, such person shall take all necessary steps to ensure that the Specified Mortgage constitutes a first lien on the combined estate.

N. Sublease. There shall be no modification, cancellation, or surrender of any subleases, or prepayment of rent thereunder without the consent of the Specified Mortgagee. If the Specified Mortgagee forecloses on the Leased Premises, or takes an assignment in lieu of foreclosure, all subtenants shall attorn to such Specified Mortgagee or its assignee.

O. Estoppel Certificate. The Lessor shall, from time to time, with 10 days written notice from the Specified Mortgagee, certify by written instrument, duly executed and acknowledged, to such Specified Mortgagee that the Lease has not been amended, the Lease is in full force and effect, that neither party is in default thereunder, and shall certify as to the existence of any offsets, counterclaims or defenses on the part of the Lessee.

P. Conflict. In the event of a conflict between the terms and provisions of this Rider and the terms and provisions of the Lease, the terms and provisions of this Rider shall control.

BY SIGNING BELOW, the Lessor and the Lessee accept and agree to the terms and conditions of this Rider.

IN WITNESS WHEREOF, the parties have executed this Rider at _____, on the day and year first written above.

LESSOR:

By: _____

Title: _____

LESSEE:

(Add notaries)

AGENDA ITEM NO. 5



Irvine Community Land Trust

REQUEST FOR IRVINE COMMUNITY LAND TRUST BOARD ACTION

LAND TRUST BOARD MEETING DATE:

MAY 18, 2011

TITLE: City of Irvine Grant Agreement Update

A handwritten signature in blue ink that reads "Mark Astumian".

Executive Director

RECOMMENDED ACTION:

Receive and file.

BACKGROUND:

The Land Trust has obtained various grants from the City of Irvine (City) for the acquisition, rehabilitation and sale of existing homes in the City. The grants include federal funds through the Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) programs as well as funding through Workforce Housing from the State of California. The Land Trust has not expended all the HOME funds allocated by two City grants because there is a maximum per unit expenditure allowed by the HOME program.

The City has advised Land Trust staff that the federal Department of Housing and Urban Development (HUD) is reviewing various grants throughout the nation to ensure compliance with the HOME program. The City understands the primary intent of HUD's review is to identify what grants have either not been fully expended or if expended have not completed their project activity. The City also notified staff that per federal regulations, if a project activity will not be completed in a timely manner, HUD may request return of federal funds from the City and/or its grantee.

In 2008, the Land Trust obtained a CDBG (\$289,133) and HOME (\$617,184) grant and in 2009 obtained a second grant of CDBG (\$45,324) and HOME (\$673,821) grant for the home ownership program. The 2008 grant has been completely expended however the Land Trust has not completed the sale of the homes acquired with these funds. The 2009 grant has a HOME fund balance of approximately \$300,000 because of the limitation on how much HOME can be spent per home.

Staff is currently discussing with the City options the Land Trust can consider to address the concern from HUD and will be presenting additional information at the May 18 meeting. After the May 18 meeting, staff intends to present options for the Board's consideration and direction at the June meeting. City staff has requested that the Land Trust provide an update on how it will complete the project and expend the remaining HOME funds after the June meeting so that they are able to respond to HUD.

AGENDA ITEM NO. 6



Irvine Community Land Trust

REQUEST FOR IRVINE COMMUNITY LAND TRUST BOARD ACTION

LAND TRUST BOARD MEETING DATE:

MAY 18, 2011

TITLE: Disposition of Land Trust Homes

A handwritten signature in blue ink that reads "Mark Costanzo".

Executive Director

RECOMMENDED ACTION:

Discuss disposition of homes and provide staff direction.

BACKGROUND:

At the January 2011 meeting staff presented an update on the status of sales of Land Trust condominiums. The Board requested staff return with a follow up report on the status of efforts to market and sell these units as well as options for the Board to consider. To date, the Land Trust has been actively marketing units and working with lenders to secure mortgage financing.

Two factors have contributed to the delay in selling these units. The first is the difficulty in working with lenders willing to work with the Land Trust resale controls. The second is the difficulty buyers are having in qualifying for mortgages. Mortgage lending has also become more difficult and buyers are not able to secure financing unless they have high credit scores and significant down payments. While the current lending situation has proven difficult for Land Trust home buyers, the need to provide home ownership opportunities to home buyers has never been greater. Staff has reviewed various options that are presented to the Board.

Options

The Land Trust could market the homes at the current price and subsidy levels using a lease-to-own program, where the homes would be leased to prospective buyers that due to lender underwriting criteria, are not currently qualified to obtain a first mortgage loan. Buyers would be screened to ensure that within a predetermined time frame (a maximum of five years is typical of lease to own programs) they would be obligated to close escrow on the sale of the home. A portion of the Buyers lease payment would be credited as part of the future down payment to be brought at close of escrow. Staff would work with Neighborhood Housing Services of Orange County and CivicStone, Inc., to prepare a program that would be reviewed and approved by the Board prior to implementation. This program would be offered to home buyers who have been reviewed but not approved by lenders for mortgage financing for a specific reason, such as insufficient funds available for a down payment.

Disposition of Land Trust Homes

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The Land Trust could consider providing a greater subsidy on the sale of each unit. The Land Trust currently provides up to \$62,000 in soft financing and could increase this amount up to \$120,000. This would be in addition to the funding provided from other lenders such as Neighborhood Housing Services of Orange County. The additional subsidy could make it easier for home buyers to qualify for a first mortgage. The additional subsidy would mean the Land Trust would be limited in the total number of homes it would develop under its current grants from 16 to 10 homes.

The Land Trust could amend the ownership program and convert all or some of the unsold units to rental units. This would create a gross rental revenue stream of \$1,177 per month per unit. The units would be maintained as rental for a minimum period of 20 years which is required by Federal funding programs for rental projects. After the 20 years, the Land Trust could maintain the rentals or convert the units to ownership. This option would require that the Land Trust seek the services of a company to provide ongoing, long term property management services for rental property such as collecting rents and ordering repairs when necessary. Management fees would be negotiated based on current industry standards and would be approved by the Board. Until such a company is secured and approved, staff would work with the Land Trust's current consultant, CivicStone, Inc., to provide interim services and immediately begin leasing units.

Staff is recommending the Board consider options for the disposition of the Land Trust units and provide direction to staff at the June 1 meeting.