

EXHIBIT 28

LA JOLLA
VILLAGE TOWERS
— A CLASSIC RESIDENCE BY —
HYATT

December 20, 2000

Dear Resident:

We have concluded the budgeting process for our community for the next fiscal year. Not surprisingly, the largest single operating expense for our community is, and will continue to be, the wages and benefits for our employees. In fact, they comprise over 50% of our projected operating expenses.

Record low levels of unemployment both nationally and in the San Diego area continue to make our task of attracting and retaining quality employees increasingly more difficult. This factor has contributed to increases in the competitive wages and benefits we must provide to our employees, in addition to the normal increases we experience in procuring all of the other goods and services necessary to operate our community.

Another significant component of our operating expenses is utility costs which, as you may be aware, have increased 250% over the past 10 months due to the deregulation of electricity rates by the Public Utilities Commission. While we all recognize this is a difficult expense to control, we will continue to maximize energy-saving strategies throughout our community on an ongoing basis.

As we all know, factors such as these will, inevitably, necessitate increases in fees to residents. Therefore, please be advised that effective February 1, 2001, the first and second person monthly fees will be increased by 6%, the first such increase we have implemented since beginning operation as a Classic Residence by Hyatt community in April 1998. Also, please refer to the attached revised Schedule of Fees for Additional Services for a complete list of charges for ancillary services.

C You can rest assured that I, along with the entire staff, am always diligently working to minimize the impact of such increases through operating efficiencies, without sacrificing the quality of service that is the hallmark of La Jolla Village Towers.

Sincerely,



Vicky Simpson
Executive Director

Meehan/Yelle 0028

EXHIBIT 29

LA JOLLA VILLAGE TOWERS

— A CLASSIC RESIDENCE BY —
HYATT

December 15, 2003

Dear Residents:

The budgeting process for our community for the new fiscal year has been completed. This coming year we will experience significant increases in operating expenses related to workers compensation insurance, liability insurance and employee health insurance. A 3.5% merit increase for staff is also budgeted.

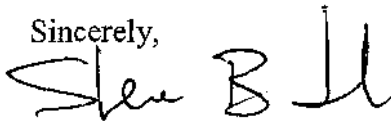
As we all know, cost of living factors such as these will, inevitably, necessitate increases in fees to residents. Therefore, please be advised that effective February 1, 2004, the first and second person monthly fees will increase by 6%.

Prior to the meeting, the following is provided for your review:

- Notice of Semiannual Meeting with the Provider
- Comparative budget data
- Revised Schedule of Fees for Additional Services

[Please be assured that it is our goal to continue to operate the community in a fiscally responsible manner and still maintain the amenities that allow us to deliver quality service consistent with the standards of Classic Residence by Hyatt.

Sincerely,



Steve Brudnick
Executive Director

Attachments

Meehan/Yelle 0132

EXHIBIT 30

CLASSIC RESIDENCE

BY
HYATT®
AT LA JOLLA VILLAGE

November 14, 2005

Dear Residents:

The budgeting process for our community for the new fiscal year has been completed. This coming year we will experience significant increases in operating expenses related to workers compensation insurance, liability insurance and employee health insurance. A 3.5% merit increase for staff is also budgeted.

As we all know, cost of living factors such as these will, inevitably, necessitate increases in fees to residents. Therefore, please be advised that effective ~~January 1, 2006~~ ^{FEBRUARY 1, 2006}, the first and second person monthly fees are scheduled to increase by 5%. However, in consideration of the renovation/construction inconveniences, the rate has been offset 1.5%, in effect reducing the increase to 3.5%.

[Please be assured that it is our goal to continue to operate the community in a fiscally responsible manner and still maintain the amenities that allow us to deliver quality service consistent with the standards of Classic Residence by Hyatt.

Sincerely,

Steve Brudnick

Steve Brudnick
Executive Director

$$\$2550 + 5\% = \$2680$$

$$\$2680 - 1.5\% = \$2640$$

(original mo. fee + 3.5%)

DUE FEBRUARY 1ST, 2006

Mildred Small

SIGNATURE

12-31-05

DATE

SHORT 1815

MILDRED SMALL

PRINTED NAME

EXHIBIT 31

FEE INCREASE

Fee increases, if any, will take place once a year. This has been Hyatt's experience with their other places. In some cases there has been a refund but no increase over 3 %

SNACK SHOP

There is plenty of room and it probably will be added.

MARKETING

Ads will be place in papers on May 25. There have been several hundred letters sent out. Tours will be conducted.

SHOWER IN THE POOL

Hyatt will investigate. It will be very expensive to construct at this time.

UNANSWERED QUESTIONS FOR PRESENT AGREEMENTS

TRAY SERVICE- Three days tray service free is very low for this age group.

AUTHORITY-----Who will act in making decisions over a week end and after hours when Administration is not present, including emergencies.

QUESTIONS THAT CAN BE ANSWERED AFTER APPLICATION ACCEPTANCE

DEED OF TRUST

Are loans from master trust contributed by the Residents to Hyatt secured by first priority deed of trust on project ?

ENTRANCE FEE REFUND

Are all entrance fees refundable 90 days after paying 100 % Entrance fee?

VACATING APARTMENT

When Residents vacate apartments awaiting refund from sale of apartment, how long are Resident liable for the monthly fee ?

COUPLES IF ONE VACATES APARTMENT

If one moves into smaller apartment, how are financial arrangements made ?

CARE

Requires an explanation of Continuing Care by Hyatt . What does Hyatt cover ?

PAYMENTS

The monthly fee goes down when we pay our 20 % deposit after a permit is obtained to sell deposits. How much does it go down ?

RC15

SHORT 0242

EXHIBIT 32

APPENDIX B
CCW LA JOLLA, L.L.C.

La Jolla Village Towers, A Classic Residence by Hyatt
Projected Monthly Fees

Apartment Type	Square Footage	1999	2000	2001	2002	2003
One Bedroom						
D	693	\$1,420	\$1,463	\$1,506	\$1,552	\$1,598
B-1	850	\$1,745	\$1,797	\$1,851	\$1,907	\$1,964
B-2	850	\$1,745	\$1,797	\$1,851	\$1,907	\$1,964
B-3	827	\$1,695	\$1,746	\$1,798	\$1,852	\$1,908
B-4	770	\$1,580	\$1,627	\$1,676	\$1,727	\$1,778
B-5	824	\$1,690	\$1,741	\$1,793	\$1,847	\$1,902
Two Bedrooms						
A	1112	\$1,950	\$2,009	\$2,069	\$2,131	\$2,195
F	1177	\$2,060	\$2,122	\$2,185	\$2,251	\$2,319
K	1210	\$2,120	\$2,184	\$2,249	\$2,317	\$2,386
L	1132	\$1,985	\$2,045	\$2,106	\$2,169	\$2,234
N	936	\$1,875	\$1,931	\$1,989	\$2,049	\$2,110
Three Bedrooms						
C*	1425*	\$2,325	\$2,395	\$2,467	\$2,541	\$2,617
E	1768	\$2,885	\$2,972	\$3,061	\$3,153	\$3,247
G	1520	\$2,480	\$2,554	\$2,631	\$2,710	\$2,791
H	1612	\$2,630	\$2,709	\$2,790	\$2,874	\$2,960
J	1632	\$2,660	\$2,740	\$2,822	\$2,907	\$2,994
M	1660	\$2,705	\$2,786	\$2,870	\$2,956	\$3,045
2nd Person Fee		\$550	\$567	\$583	\$601	\$619

Projected fees are an estimate only and may be changed without notice;
Projected fees are based on a 3% annual increase;

McClan/Yelle 0300

EXHIBIT 33

1 ERIC M. ACKER (BAR NO. 135805)

Email: E.Acker@mofo.com

2 LINDA L. LANE (BAR NO. 211206)

Email: LLane@mofo.com

3 MORRISON & FOERSTER LLP

12531 High Bluff Drive, Suite 100

4 San Diego, California 92130-2040

Telephone: 858.720.5100

5 Facsimile: 858.720.5125

6 Attorneys for Defendants

CC-LA JOLLA, INC. and CCW-LA JOLLA, L.L.C.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

11 DONALD R. SHORT, individually, and on
behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 CC-LA JOLLA, Inc., a Delaware Corporation,
15 CC-LA JOLLA, L.L.C., a Delaware limited
liability company, and DOES 1 to 70, inclusive,

16 Defendants.

Case No. GIC877707

**DEFENDANT CCW-LA JOLLA,
L.L.C.'S SUPPLEMENTAL
RESPONSE TO SPECIAL
INTERROGATORIES (SET ONE)**

Judge: Hon. Linda B. Quinn

Dept: 74

Date Action Filed: December 29, 2006

Trial Date: Not yet set

18 **PROPOUNDING PARTY: PLAINTIFF DONALD R. SHORT**

19 **RESPONDING PARTY: DEFENDANT CCW-LA JOLLA, L.L.C.**

20 **SET NO: ONE**

21 Pursuant to Section 2030.210 of the California Code of Civil Procedure, defendant CCW-La
22 Jolla, L.L.C. ("Responding Party") hereby provides supplemental responses and objections
23 (hereinafter referred to collectively as "Supplemental Response") as follows to Donald R. Short's
24 First Set of Special Interrogatories (the "Special Interrogatories"). Any responses and objections not
25 contained in this Supplemental Response remain unchanged.

26 **PRELIMINARY STATEMENT**

27 These supplemental responses are based upon information and documents presently available
28 to, located by, and analyzed by Responding Party. Responding Party has not completed its

1 investigation of the facts relating to this case, has not completed discovery in this action, and has not
2 completed preparation for trial in this matter. Further investigation and analysis may disclose the
3 existence of additional facts, give new meaning to the documents and facts that Responding Party
4 possesses, or possibly lead to additions, variations, or changes to these supplemental responses.
5 Without obligating itself to do so, Responding Party reserves the right to change or supplement these
6 supplemental responses as additional facts are discovered, revealed, recalled, or otherwise
7 ascertained, and as further analysis and research disclose additional facts, contentions, or legal
8 theories that may apply. These supplemental responses are given without prejudice to Responding
9 Party's right to object on any basis at the time of trial to the introduction to any or all of the
10 supplemental responses to these requests. These supplemental responses are made solely for the
11 purpose of, and in relation to, this action.

12 **GENERAL OBJECTIONS**

13 1. Responding Party objects to this set of Special Interrogatories on the ground that they
14 are overly burdensome and harassing in that they exceed the allotted number of Special
15 Interrogatories that may be propounded to Responding Party under the Code of Civil Procedure.

16 2. Responding Party objects generally to this set of Special Interrogatories to the extent
17 they seek information not relevant to the subject matter of this action or reasonably calculated to lead
18 to the discovery of admissible evidence. By these supplemental responses, Responding Party makes
19 no admission concerning the relevance or admissibility of any of the information contained herein or
20 of any of the subjects that are the subject of these Special Interrogatories. Responding Party hereby
21 reserves the right to make all pertinent evidentiary objections with regard to such matters at trial or at
22 any other stage of the proceedings.

23 3. Responding Party objects to each and every interrogatory to the extent that it calls for
24 information that is subject to any claim of privilege or protection, including, without limitation, the
25 attorney-client privilege, the work-product doctrine, the common interest privilege, any party or non-
26 party's right to privacy or any other privilege or evidentiary principle available under federal or state
27 statutory, constitutional or common law. Such information or documents, should they exist, are
28 immune from discovery. Responding Party does not waive any objection made in these

1 Supplemental Responses, nor any claim of privilege, whether expressly asserted or not, by providing
2 any information in response to the Interrogatories. Responding Party also objects to the Definitions
3 and Instructions accompanying the Special Interrogatories to the extent they purport to require
4 identification and information concerning privileged or work-product communications. None of
5 Responding Party's specific supplemental responses shall be construed to mean that Responding
6 Party intends to provide privileged information in the absence of an intentional waiver. The
7 inadvertent disclosure of such information or the inadvertent identification of any document shall not
8 constitute a waiver of any applicable privilege as to that information or document, or any other
9 document identified by Responding Party.

10 4. Responding Party specifically reserves the right to produce documents in lieu of
11 answers, as provided by Code of Civil Procedure Section 2030.230.

12 5. Responding Party objects to the Special Interrogatories to the extent that they are
13 compound, disjunctive, and/or are not full and complete in and of themselves as required by Code of
14 Civil Procedure section 2030.060.

15 6. Responding Party objects to each Special Interrogatory to the extent it imposes
16 obligations on Responding Party beyond those required by the California Code of Civil Procedure,
17 the California Rules of Court, the Local Rules of this Court, or other applicable rule of this Court.

18 7. Responding Party objects to each Special Interrogatory to the extent that it contains
19 any factual or legal misrepresentation.

20 8. Responding Party objects to each Special Interrogatory as unnecessary, unduly
21 burdensome, oppressive, and constituting annoyance, harassment, and oppression of Responding
22 Party to the extent it seeks the identification of documents or information that is publicly available or
23 a matter or public record, or already in the possession of, equally available to or readily ascertainable
24 by Plaintiffs/Cross-Defendants or their counsel from some other source.

25 9. Responding Party objects to each Special Interrogatory to the extent it seeks
26 information in violation of the constitutional rights of third parties.
27
28

1 10. Responding Party's specific objections and Supplemental Responses to any and all of
2 these Special Interrogatories are not intended to preclude, override or withdraw any of these general
3 objections.

4 11. These general objections and information are incorporated into each of the following
5 Supplemental Responses as if set forth in full. The assertion of the same, similar or additional
6 objections in Responding Party's specific objections and Supplemental Responses to specific
7 requests, or the failure to assert any additional objections to an interrogatory, does not waive any of
8 Responding Party's objections set forth in this section or the following sections.

9 **SUPPLEMENTAL RESPONSES TO SPECIFIC INTERROGATORIES**

10 Responding Party incorporates by reference into each of the following supplemental
11 responses, as if fully set forth therein, the Preliminary Statement and General Objections set forth
12 above:

13 **SPECIAL INTERROGATORIES**

14 **INTERROGATORY NO. 2:**

15 Please state by percentage, the amount of the annual increase in Tower I residents' monthly
16 fees since January 1, 1997.

17 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:**

18 Objection. The request is vague and ambiguous. This request is overbroad and therefore
19 unduly burdensome and oppressive. The request is vague as to time.

20 Subject to and without waiving any of the foregoing objections, defendant responds as
21 follows: Set forth below are the average rate increases (for illustrative purposes only) for residents
22 remaining in the community between 1998-2007. Rate increases for residents entering the
23 community in different years represent different amounts that are not set forth below.

24 1998-1999: 0%

25 1999-2000: 6%

26 2000-2001: 6% (excludes the utility surcharge implemented in April 2001 and eliminated in
27 January 2002)

28 2001-2002: 6%

1 2002-2003: 3%

2 2003-2004: 6%

3 2004-2005: 4%

4 2005-2006: 5% (excludes the benefit of a 1.5% abatement)

5 2006-2007: 5% (excludes the benefit of a 1.5% abatement)

6 **INTERROGATORY NO. 3:**

7 Please state, in dollars, the total amount of the annual increase in Tower I residents' monthly
8 fees for each year since January 1, 1997.

9 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

10 Objection. The request is vague and ambiguous. This request is overbroad and therefore
11 unduly burdensome and oppressive. The request is vague as to time.

12 Subject to and without waiving any of the foregoing objections, defendant responds as
13 follows: The average rates (for illustrative purposes only) for residents remaining in the community
14 between 1998-2007 are as follows. Rate increases for residents entering the community in different
15 years represent different amounts that are not set forth below.

16 1998: average rate \$2,137

17 1999: average rate \$2,137

18 2000: average rate \$2,265

19 2001: average rate \$2,401 (excludes the utility surcharge implemented in April 2001 and
20 eliminated in January 2002)

21 2002: average rate \$2,545

22 2003: average rate \$2,622

23 2004: average rate \$2,779

24 2005: average rate \$2,890

25 2006: average rate \$3,035 (excludes the benefit of a 1.5% abatement)

26 2007: average rate \$3,187

1 **INTERROGATORY NO. 17:**

2 Please identify each of your owners, partners, and/or shareholders, and for each such person
3 or entity state:

- 4 (a) that person's name or legal entity's name;
5 (b) the percentage of ownership stake of such person or entity; and
6 (c) the present (or last known address) and telephone number or [sic] of such person or
7 entity.

8 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 17:**

9 Objection. This request seeks information that is not reasonably calculated to lead to the
10 discovery of admissible evidence and is not relevant to the pending action. This request is overbroad
11 and therefore unduly burdensome and oppressive. This request invades the privacy of third parties.

12 Subject to and without waiving any of the foregoing objections, defendant responds as
13 follows:

- 14 1. (a) CC-La Jolla, Inc.
15 (b) 88%
16 (c) This entity can be contacted through Responding Party's attorney of record.
17 2. (a) AW Special Purpose Company
18 (b) 12%
19 (c) This entity can be contacted through Responding Party's attorney of record.

20 Dated: April 27, 2007

21 ERIC M. ACKER
22 LINDA L. LANE
23 MORRISON & FOERSTER LLP

24 By: 

Linda L. Lane

25 Attorneys for Defendants
26 CC-LA JOLLA, INC. AND CCW-LA
27 JOLLA, L.L.C.
28

EXHIBIT 34

CLASSIC RESIDENCE

BY
HYATT®

www.hyattclassic.com

Classic Residence by Hyatt
4171 Las Palmas Square
San Diego, CA 92122

Telephone (858) 646-3400
Facsimile (858) 646-0064

Wednesday, August 29, 2007

Beatrice Schoen
Lewis Schoen
8775 Costa Verde Blvd. #1219
San Diego, CA 92122

Re: Skilled Nursing Rate Increase

Dear Lewis Schoen,

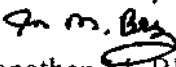
The staff at Classic Residence by Hyatt in La Jolla Village appreciates your continued confidence in our ability to provide quality care for your loved one.

Providing quality care for your loved one requires many resources, the cost of which has increased significantly over the last several years. To ensure that we can continue to offer outstanding care at the current fair market value, our room rates will be increasing **effective November 1, 2007** as outlined below:

Companion Suite (2 beds/room): **\$348/day**
Private Suite: **\$398/day**

Thank you for your understanding and continued trust. As always, feel free to contact me with any questions (858) 646-3401.

Sincerely,


Jonathan M. Bliss
Care Center Administrator

SHORT 2202

EXHIBIT 35

CLASSIC RESIDENCE

BY
HYATT®

www.hyattclassic.com

Classic Residence by Hyatt
4171 Las Palmas Square
San Diego, CA 92122

Telephone (858) 646-3400
Facsimile (858) 646-0064

Wednesday, September 05, 2007

Beatrice Schoen
Lewis Schoen
8775 Costa Verde Blvd. #1219
San Diego, CA 92122

Re: Skilled Nursing Rate Increase

Dear Lewis Schoen,

The staff at Classic Residence by Hyatt in La Jolla Village appreciates your continued confidence in our ability to provide quality care for your loved one.


Providing quality care for your loved one requires many resources, the cost of which has increased significantly over the last several years. To ensure that we can continue to offer outstanding care at the current fair market value, our room rates will be increasing **effective November 1, 2007** as outlined below:

Companion Suite (2 beds/room): **\$348/day**
Private Suite: **\$398/day**

Based on the Settlement Agreement and Release dated March 17, 2006, **your rate will increase to \$361/day** and CC-Palo Alto, Inc. will cover the difference between your listed rate and our Private suite rate of \$398/day. Your increase coincides with the 31% Private Suite increase mentioned above, **effective November 1, 2007.**

Thank you for your understanding and continued trust. As always, feel free to contact me with any questions (858) 646-3401.

Sincerely,



Jonathan M. Bliss
Care Center Administrator

SHORT 2203

EXHIBIT 36

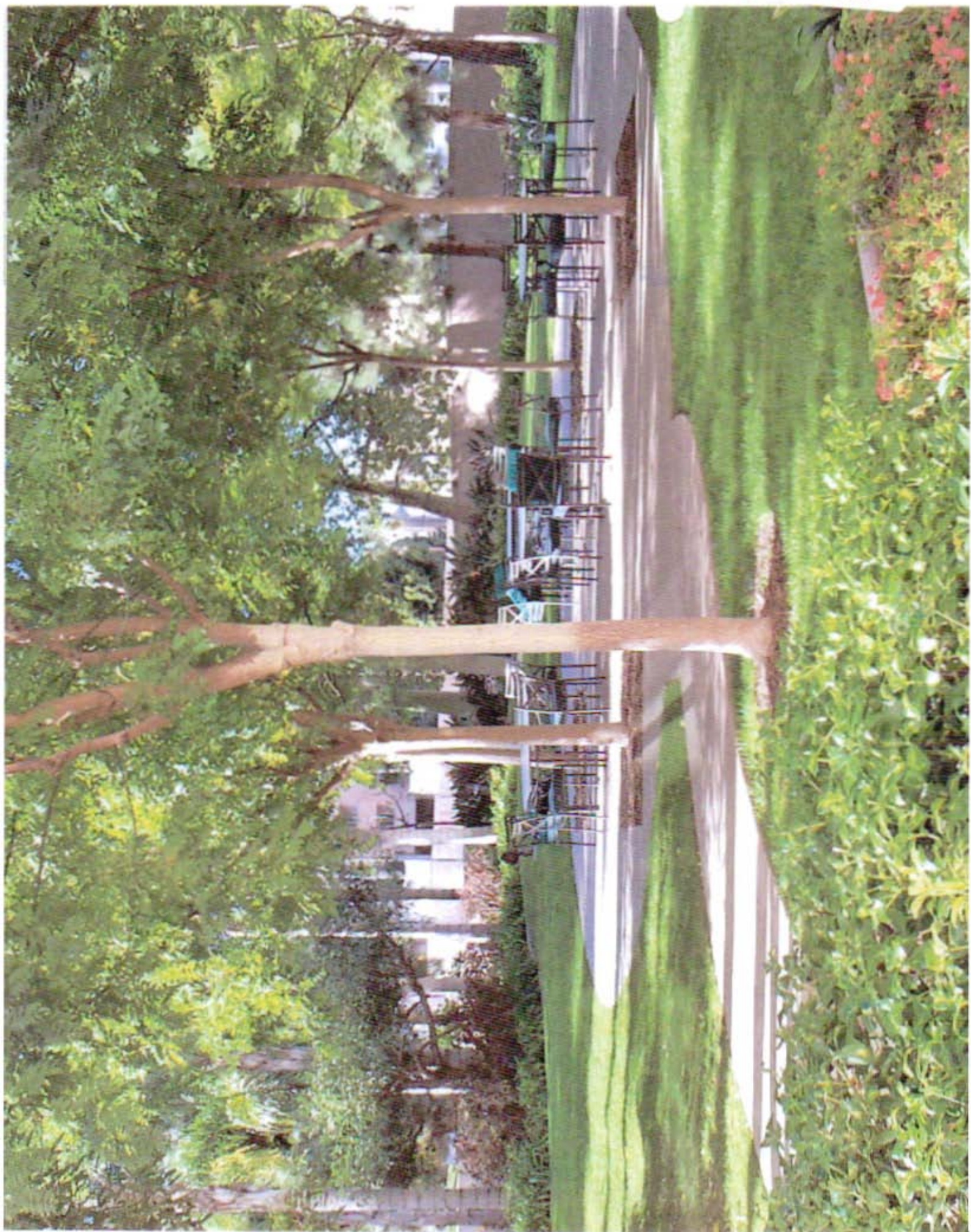


EXHIBIT 37



EXHIBIT 38

SHORT 2117

June 18, 2007

Dear Dad,

While staying in your apartment at the Classic Residence by Hyatt at La Jolla Village in San Diego, I was awakened this morning at 6:50 a.m. by a noise that sounded like a huge dumpster falling from a great height. I believe I also heard the sound of glass shattering. When, within minutes, these noises repeated, I got up and looked out your balcony window. The construction people who are building a second Hyatt tower next to yours were dropping huge chunks of broken concrete into a truck. Besides the noise of concrete being loaded, there was what sound like hammering sounds of piles being driven into the ground. For the next 30 minutes, the level of noise in the apartment was louder than what most people could sleep through.

When I learned that, during this period of construction, Hyatt has had the audacity to raise your monthly fees, I mentioned that such an action was unconscionable given your loss of your swimming pool, your front entrance, your easy access to the parking lot, not to mention your peace of mind, during these many months of heavy construction by Hyatt right outside your window. Of course, Hyatt realizes that the residents in this building cannot easily move in protest to the hike in rent since they are elderly, often in ill health, and tied to Hyatt with contracts that are extremely one-sided.

I understand that some of the people in this building recently have filed a class action regarding many of the ways in which its elder population have been misled and unfairly relieved of their remaining income after the first outlay to enter the tower. Today, I experienced one reason why residents are justifiably upset with how Hyatt is treating them during the period it is building its twin tower.

I am sorry that you have to live with the major disruption caused by Hyatt's construction project within feet of your apartment at the same time Hyatt is increasing your monthly rate.

If there is anything I can do to help alleviate your situation, let me know.

Love,

CLASSIC
RESIDENCE

BY
HYATT

www.hyattclassic.com

Jonathan Bliss
Care Center Administrator

4171 Las Palmas Square
San Diego, CA 92122

Telephone (858) 646-3401
Facsimile (858) 646-0064
jonbliss@hyattclassic.com

CLASSIC
RESIDENCE

BY
HYATT

www.hyattclassic.com

Concierge - LaJolla

4171 Las Palmas Square
San Diego, CA 92122

Telephone (858) 646-3400
Facsimile (858) 646-0064
cclajolla@hyattclassic.com

EXHIBIT 39

**La Jolla Village Towers,
A Classic Residence by Hyatt
Questions and Answers
June 1998**

Community Policies and Procedures

1. Will the following services remain in place?

The following services will continue to be provided to residents:

- Free personal transportation within 10 miles, based upon availability
- Free airport transportation, based upon availability
- Special diets provided at no additional charge
- Medical tray service at no charge for the first 3 days, or longer, if approved by the Wellness Center Supervisor
- Tray service for non-medical reasons provided at \$5.00 per meal
- Tray service served on china
- Rollaway bed at no charge
- Annual deep cleaning of apartment

The following services/procedures have been changed:

- Carpet cleaning will be completed for an extra charge -- we have found that normal "traffic" does not warrant the need for an annual deep cleaning
- Replacement keys will be provided at a cost of \$3 each
- While Continental breakfast may still be "carried out," it will be assembled by dining staff and distributed in a safe carrying container
- There has been a change in the refund policy, in your Agreement For Continued Residency, under Section VIII.D.1., TERMINATION. It should read, "There will be no additional charge upon vacating your apartment other than paying your monthly fee and other outstanding charges, plus paying for any damage caused to an apartment." We will follow up on this item by attaching a signed addendum to each Agreement for Continued Residency, with a copy to each resident.

WESTERVELT 0880

- 52. Are loans from the Master Trust which are contributed to La Jolla Village Towers by the residents secured by a first priority Deed of Trust?**

Loans from the Master Trust are secured by a Deed of Trust. These loans are subordinate to existing financing or future refinancing of the community. Remember that the use of your entrance fee is protected by a trustee and that entrance fees are utilized *only* to pay off loans and other trustee-approved expenditures.

- 53. When a resident vacates an apartment and is awaiting the re-sale of the apartment, what is the resident liable for in terms of ongoing monthly fees?**

You do not need to pay ongoing monthly fees once you have fulfilled the notice of termination requirements set forth in your Continuing Care Contract.

- 54. A statement made in the bankruptcy court indicated that the IRS has never collected imputed interest from residents of a CCRC which has been open for 14 years. Can this information be made available to residents?**

Yes, we will forward any information we are able to obtain.

- 55. You are charging an 8 percent long-term care fee. Please describe the care we will receive.**

We will share this information with you when we share information on entrance fee pricing.

WESTERVELT 0891

13. In December, we were told that our monthly fees would stay the same. In the Resident Handbook it says that they can be increased with 30-days' notice. Did you increase our monthly maintenance fees?

No, your monthly fee was not increased in your Agreement for Continued Residency. According to State law, we are required to provide you with advance notice prior to any increases in monthly fees. Monthly fees are evaluated once each year.

14. The Agreement for Continued Residency states that our monthly fees may go up. How often does this happen?

While there are no laws in the State of California governing monthly fee increases, we are as sensitive about increases as you are. We are working diligently to ensure that the community operates efficiently while maintaining the high level of service you've come to expect. Increases are implemented on an annual basis, upon the renewal of your Agreement for Continued Residency.

15. Why isn't the section about ambulatory aids still in our Resident Handbook?

That section was deleted because its provisions are protected by federal law. As such, we felt it was unnecessary to include it. We will be happy to add it to future Handbooks.

16. In the Handbook it states that drapes have to be lined with white or off-white fabric.

Yes, new residents will provide their own drapes. Since we want to be sure that the outside of the building looks uniform, drapes will need to be lined with a white or off-white fabric.

17. Do we still have to use the service elevator with our dogs when the main elevators are busy?

No, for safety reasons, residents should never utilize "back-of-the-house" areas or service elevators.

EXHIBIT 40

1 ERIC M. ACKER (BAR NO. 135805)
Email: EAcke@mofo.com
2 LINDA L. LANE (BAR NO. 211206)
Email: LLane@mofo.com
3 MORRISON & FOERSTER LLP
12531 High Bluff Drive, Suite 100
4 San Diego, California 92130-2040
Telephone: 858.720.5100
5 Facsimile: 858.720.5125

6 Attorneys for Defendants
CC-LA JOLLA, INC, CCW-LA JOLLA, L.L.C.,
7 CC-DEVELOPMENT GROUP, INC., AND
8 CLASSIC RESIDENCE MANAGEMENT
LIMITED PARTNERSHIP

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 DONALD R. SHORT, JAMES F. GLEASON,
13 CASEY MEEHAN, MARILYN SHORT,
14 PATTY WESTERVELT, AND DOTTIE
YELLE, individually, and on behalf of all others
similarly situated,

15 Plaintiffs,

16 v.

17 CC-LA JOLLA, Inc., a Delaware Corporation,
18 CC-LA JOLLA, L.L.C., a Delaware limited
liability company, CC-DEVELOPMENT
19 GROUP, INC. and CLASSIC RESIDENCE
MANAGEMENT LIMITED PARTNERSHIP, an
20 Illinois Limited Partnership, and DOES 1 to 70,
inclusive,

21 Defendants.
22

Case No. GIC877707

**DEFENDANT CC-LA JOLLA,
INC.'S RESPONSE TO FORM
INTERROGATORIES (SET TWO)**

Judge: Hon. Yuri Hofmann
Dept: C-60

Date Action Filed: December 29, 2006
Trial Date: Not yet set

23 **PROPOUNDING PARTY: PLAINTIFF DONALD R. SHORT**

24 **RESPONDING PARTY: DEFENDANT CC-LA JOLLA, INC.**

25 **SET NO: TWO**
26

27 Pursuant to Section 2030.210 of the California Code of Civil Procedure, defendant CC-La
28 Jolla, Inc. ("Responding Party") hereby responds and objects (hereinafter referred to collectively as

1 "Response") as follows to Donald R. Short's Second Set of Form Interrogatories (the "Form
2 Interrogatories").

3 PRELIMINARY STATEMENT

4 These responses are based upon information and documents presently available to, located by,
5 and analyzed by Responding Party. Responding Party has not completed its investigation of the facts
6 relating to this case, has not completed discovery in this action, and has not completed preparation for
7 trial in this matter. Further investigation and analysis may disclose the existence of additional facts,
8 give new meaning to the documents and facts that Responding Party possesses, or possibly lead to
9 additions, variations, or changes to these responses. Without obligating itself to do so, Responding
10 Party reserves the right to change or supplement these responses as additional facts are discovered,
11 revealed, recalled, or otherwise ascertained, and as further analysis and research disclose additional
12 facts, contentions, or legal theories that may apply. These responses are given without prejudice to
13 Responding Party's right to object on any basis at the time of trial to the introduction to any or all of
14 the responses to these requests. These responses are made solely for the purpose of, and in relation
15 to, this action.

16 GENERAL OBJECTIONS

17 1. Responding Party objects generally to this set of Form Interrogatories to the extent
18 they seek information not relevant to the subject matter of this action or reasonably calculated to lead
19 to the discovery of admissible evidence. By these responses, Responding Party makes no admission
20 concerning the relevance or admissibility of any of the information contained herein or of any of the
21 subjects that are the subject of these Form Interrogatories. Responding Party hereby reserves the
22 right to make all pertinent evidentiary objections with regard to such matters at trial or at any other
23 stage of the proceedings.

24 2. Responding Party objects to each and every interrogatory to the extent that it calls for
25 information that is subject to any claim of privilege or protection, including, without limitation, the
26 attorney-client privilege, the work-product doctrine, the common interest privilege, any party or non-
27 party's right to privacy or any other privilege or evidentiary principle available under federal or state
28 statutory, constitutional or common law. Such information or documents, should they exist, are

1 immune from discovery. Responding Party does not waive any objection made in these Responses,
2 nor any claim of privilege, whether expressly asserted or not, by providing any information in
3 response to the Interrogatories. None of Responding Party's specific responses shall be construed to
4 mean that Responding Party intends to provide privileged information in the absence of an intentional
5 waiver. The inadvertent disclosure of such information or the inadvertent identification of any
6 document shall not constitute a waiver of any applicable privilege as to that information or document,
7 or any other document identified by Responding Party.

8 3. Responding Party specifically reserves the right to produce documents in lieu of
9 answers, as provided by Code of Civil Procedure Section 2030.230.

10 4. Responding Party objects to each Form Interrogatory as unnecessary, unduly
11 burdensome, oppressive, and constituting annoyance, harassment, and oppression of Responding
12 Party to the extent it seeks the identification of documents or information that is publicly available or
13 a matter or public record, or already in the possession of, equally available to or readily ascertainable
14 by Plaintiffs/Cross-Defendants or their counsel from some other source.

15 5. Responding Party's specific objections and Responses to any and all of these Form
16 Interrogatories are not intended to preclude, override or withdraw any of these general objections.

17 6. These general objections and information are incorporated into each of the following
18 Responses as if set forth in full. The assertion of the same, similar or additional objections in
19 Responding Party's specific objections and Responses to specific requests, or the failure to assert any
20 additional objections to an interrogatory, does not waive any of Responding Party's objections set
21 forth in this section or the following sections.

22 RESPONSES TO SPECIFIC INTERROGATORIES

23 Responding Party incorporates by reference into each of the following responses, as if fully
24 set forth therein, the Preliminary Statement and General Objections set forth above:

25 INTERROGATORY NO. 1.1:

26 State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON**
27 who prepared or assisted in the preparation of the responses to these interrogatories.

28 ///

1 **RESPONSE TO INTERROGATORY NO. 1.1:**

2 Eric M. Acker
3 Linda L. Lane
4 Sara J. O'Connell
5 Morrison & Foerster LLP
6 12531 High Bluff Drive, Suite 100
7 San Diego, CA 92130-2040
8 Tel: 858.720.5100
9 Attorney for Defendants

7 Stephanie W. Fields
8 Senior Vice President & General Counsel
9 Classic Residence by Hyatt
10 71 South Wacker Drive, Suite 900
11 Chicago, IL 60606
12 Tel: 312.803.8520

11 **INTERROGATORY NO. 15.1:**

12 Identify each denial of a material allegation and each special or affirmative defense in your
13 pleadings and for each:

- 14 (a) state all facts upon which you base the denial or special or affirmative defense;
15 (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have
16 knowledge of those facts; and
17 (c) identify all **DOCUMENTS** and other tangible things that support your denial or
18 special affirmative defense, and state the name, **ADDRESS**, and telephone number of the **PERSON**
19 who has each document.

20 **RESPONSE TO INTERROGATORY NO. 15.1:**

21 CC-La Jolla, Inc. objects to this interrogatory as unduly burdensome and oppressive, and as
22 potentially implicating privacy rights. CC-La Jolla, Inc. objects to this interrogatory to the extent that
23 it seeks information protected by the attorney work product doctrine.

- 24 (a) CC-La Jolla, Inc. makes a general denial of any liability to Plaintiffs for the claims
25 made in the Third Amended Complaint, pursuant to Cal. Code of Civil Procedure § 431.30(f). Patty
26 Westervelt, Casey Meehan and Dottie Yelle signed their Continuing Care Residency Agreements
27 ("CCRAs") in March 2000; Donald and Marilyn Short signed their CCRA in August 2001; and
28

1 James Gleason signed his CCRA in April 2002. These CCRAs set forth each Plaintiff's "legal rights
2 and obligations toward[s]" the Defendants. Under their CCRAs, each Plaintiff agreed to pay a
3 monthly fee to live in the Community, including after they move to the Care Center, and agreed that
4 the Defendants "may increase or decrease [that fee] upon thirty (30) days' advance notice." Each
5 CCRA also provides that "[a]ll operating expenses of the Community, as well as a reserve for capital
6 repairs and replacements and a profit to [the Defendants], are intended to be paid with operating
7 revenue from monthly fees." Moreover, each CCRA provides that "long-term care" is a "service"
8 included in each resident's monthly fee. The CCRAs make clear that each Plaintiff's entrance fee
9 was a loan to the Defendants, secured by a promissory note, to be earned by the Defendants over
10 time. In return, each Plaintiff is entitled to reside in a private apartment as long as they are able to do
11 so, and then receive long-term care in the Care Center. The CCRA also makes clear that each of the
12 Plaintiff's "rights under this Agreement are limited to those expressly granted in it." Moreover, the
13 CCRA "constitutes the entire agreement between [each Plaintiff] and [the Defendants] and may not
14 be amended unless executed in writing by [the Defendants]." No Plaintiff has been denied any
15 continuing care promise made within their CCRA, or anything they were entitled to receive under
16 their CCRAs.

17 In June 2000, a Master Trust was established by Defendant CC La Jolla, LLC (d/b/a CCW La
18 Jolla, LLC). The Master Trust was created to hold the entrance fees paid by residents of the
19 Community until those funds were loaned by the trustee, First Union National Bank, to CC La Jolla,
20 LLC. Each Plaintiff signed a Joinder In Master Trust Agreement ("Joinder"), under which they
21 joined the Master Trust Agreement ("MTA") as though they were original parties to that agreement,
22 and agreed to be bound by all of its terms. Each Plaintiff's CCRA plainly states that their entrance
23 fees would be loaned to Defendant CC La Jolla, LLC from the Master Trust. Defendant CC La Jolla,
24 LLC granted a mortgage on the Community to the Master Trust to secure repayment of the loan, and
25 also provided each resident, including each Plaintiff, with a note equal to the amount each Plaintiff
26 contributed to the Master Trust. Moreover, to the extent Plaintiffs base any claim on the existence of
27 the Master Trust, which each Plaintiff joined, such claim is barred by the plain terms of the MTA
28

1 itself. The Master Trust sets forth a mandatory precondition for filing a lawsuit regarding the Master
2 Trust, and Plaintiffs admit this precondition has not been met.

3 With respect to Plaintiffs' first and second causes of action, intentional misrepresentation and
4 negligent misrepresentation, Plaintiffs' allegations are denied. First, no statement issued by the
5 Defendants was false when made, and no promise of future conduct was made without intent to
6 perform. Second, the Plaintiffs were not denied anything that they were entitled to receive under
7 their CCRAs or the MTA. Third, alleged representations or promises made by the Defendants
8 outside of the CCRAs are not "continuing care promises" under Health and Safety Code Section
9 1771(c)(10). Fourth, the allegations fail to state how, where, when, and by what means each
10 representation allegedly was made to each individual Plaintiff, or that any specific Plaintiff actually
11 received the statements at all, or when each statement was allegedly relied upon. Instead, Plaintiffs
12 allege that every Plaintiff relied on all allegedly issued statements by the Defendants, whether made
13 in 1998 or 2007, but Plaintiffs' own allegations establish that this conclusion cannot be accurate
14 because three of the six Plaintiffs did not reside in the Community until years after several of these
15 statements allegedly were made. Moreover, deposition testimony of the named Plaintiffs
16 demonstrates that not all Plaintiffs received, let alone relied upon, the alleged statements.

17 With respect to Plaintiffs' third cause of action, concealment, Plaintiffs' allegations are
18 denied. Defendants did not fail to disclose material facts to Plaintiffs. Defendants did not intend to
19 deceive Plaintiffs and others similarly situated by concealing facts. The claim fails to allege who
20 within the Defendants' entities failed to disclose facts and when the facts should have been disclosed.
21 Further, no Plaintiff reasonably relied on the alleged concealment. The claim fails to state why the
22 alleged failure to disclose those facts resulted in Plaintiffs' collective reliance and alleged harm, let
23 alone any individual Plaintiff's reliance and alleged harm. The claim also fails to allege that
24 Plaintiffs were denied anything that they were entitled to receive under their CCRAs or the MTA.

25 With respect to Plaintiffs' fourth cause of action, elder abuse, Plaintiffs' allegations are
26 denied. Defendants did not appropriate or retain Plaintiffs' property for wrongful use, or with an
27 intent to defraud. Each Plaintiff signed a CCRA with the Defendants, and no Plaintiff was denied
28 anything that they were entitled to receive under their CCRAs or the MTA. Defendants did not pay

1 themselves exorbitant management fees, commission, marketing fees and administrative expenses, or
2 deceive Plaintiffs that exorbitant fees were necessary. Defendants were aware of no probable
3 dangerous consequences of their conduct.

4 With respect to Plaintiffs' fifth cause of action, violations of the Consumer Legal Remedies
5 Act ("CLRA"), Plaintiffs' allegations are denied. The CLRA does not apply to the rental or sale of
6 residential property. Moreover, Plaintiffs failed to satisfy a mandatory requirement for bringing a
7 CLRA claim because they did not file an affidavit establishing proper venue "concurrently with the
8 filing of the complaint." Also, no statement issued by the Defendants was false when made, and no
9 promise of future conduct was made without intent to perform. Instead, Plaintiffs received
10 everything to which they were entitled to receive under their controlling CCRAs and MTA.

11 With respect to Plaintiffs' sixth cause of action, breach of fiduciary duty, Plaintiffs'
12 allegations are denied. Plaintiffs' allegations regarding the existence of a fiduciary relationship are
13 based primarily on their CCRAs and MTAs, which are arms-length contracts between the parties and
14 do not result in the formation of any fiduciary relationship between the parties. Furthermore, the
15 Defendants did not fail to provide the Plaintiffs with copies of the MTA, fail to fairly disclose the
16 terms of the MTA, or misrepresent that the terms of the MTA guaranteed that the funds would be
17 retained to provide for lifetime health care of the Plaintiffs. Defendants were aware of no probable
18 dangerous consequences of their conduct.

19 With respect to Plaintiffs' seventh cause of action, violations of Business and Professional
20 Code §17200, Plaintiffs' allegations are denied. Each Plaintiff signed a CCRA with the Defendants,
21 and no Plaintiff was denied anything that they were entitled to receive under their CCRAs or the
22 MTA. Defendants did not abandon their obligations under the CCRAs or MTA. Moreover, Plaintiffs
23 do not have adequate damages to support a claim for relief under Section 17200.

24 With respect to Plaintiffs' eighth cause of action, breach of contract, Plaintiffs' allegations are
25 denied. Each Plaintiff signed a CCRA with the Defendants, and no Plaintiff was denied anything that
26 they were entitled to receive under their CCRAs or the MTA. This claim attempts to use parol
27 evidence impermissibly to alter the rights and obligations defined by the fully-integrated CCRAs.
28 Plaintiffs allege that each Plaintiff's contract consists not only of the CCRA, but also "all of

1 defendants' continuing care promises, and implied covenants of good faith and fair dealing and quiet
2 enjoyment." The CCRAs and MTA contain none of these promises, and neither Plaintiffs (nor
3 Defendants) accepted any of them in signing those contracts. The CCRAs, however, all contain an
4 integration clause that specifically provides that each CCRA is the "entire agreement" between the
5 parties and that the CCRAs may only be amended in writing. And state law requires that "[a]ll
6 continuing care contracts be in writing," Cal. Health & Safety Code § 1787(a), and that each such
7 contract contain the entire agreement between the parties, *id.* at 1787(d). Defendants did not abandon
8 their obligations under the CCRAs or MTA, and Plaintiffs cannot base a breach of contract claim on
9 alleged prior agreements that are not part of the fully-integrated CCRAs or the MTA.

10 With respect to Plaintiffs' ninth cause of action, constructive fraud, Plaintiffs' allegations are
11 denied. As explained above, Plaintiffs failed to establish the existence of a fiduciary relationship,
12 which is necessary to state a cause of action for constructive fraud. Furthermore, Defendants did not
13 mislead any Plaintiff to his prejudice, nor profit by using trust funds or monthly fee increases for their
14 own benefit. Defendants were aware of no probable dangerous consequences of their conduct.

15 With respect to Plaintiffs' tenth cause of action, violations of Health and Safety Code
16 § 1793.5, Plaintiffs' allegations are denied. Such an action requires "abandoning" obligations under a
17 continuing care contract, but Plaintiffs were not denied anything that they were entitled to receive
18 under their CCRAs or the MTA.

19 Affirmative Defenses

20 The facts set forth above are incorporated in support each of the Affirmative Defenses alleged
21 in the Defendants' Answer. Additional information regarding each separate affirmative defense is set
22 forth below:

23 First Affirmative Defense: Failure to State a Claim (All Causes of Action)

24 As stated above, Defendants are not liable to Plaintiffs under any of the Causes of Action set
25 forth in Plaintiffs' Third Amended Complaint.
26
27
28

1 Second Affirmative Defense: Statute of Limitations (All Causes of Action)

2 Each and every claim in the TAC is barred in whole or in part by the applicable statute of
3 limitations. Plaintiffs have been aware of the facts alleged in the TAC for a period of time beyond
4 the applicable statute of limitations for each cause of action in the TAC.

5 Third Affirmative Defense: Laches (All Causes of Action)

6 As a result of Plaintiffs' unreasonable delay in asserting the claims that are the subject of the
7 TAC, the TAC is barred in whole or in part on the ground of laches. The Plaintiffs have been aware
8 of the facts alleged in the TAC for years prior to the filing of the original complaint in December
9 2006.

10 Fourth Affirmative Defense: Lack of Justifiable Reliance (First, Second, Third and Ninth
11 Causes of Action)

12 Each of the fraud claims of Plaintiffs and the putative class is barred in whole or in part
13 because Plaintiffs, and each member of the putative class, did not justifiably rely on Defendants'
14 alleged fraudulent representations or alleged material omissions. The CCRA between the Defendants
15 and each Plaintiff, and each putative class member, sets forth all the parties' respective rights and
16 obligations concerning Plaintiffs' and putative class members' residency in the La Jolla Community
17 and continuing care in the Care Center. Accordingly, Plaintiffs and the putative class members could
18 not have justifiably relied on any representations that are not contained in their CCRAs.

19 Fifth Affirmative Defense: Good Faith (Fifth Cause of Action)

20 Plaintiffs' claim for violation of the CLRA is barred, in whole or in part, because Defendants
21 at all times acted in good faith and did not directly or indirectly perform any act whatsoever that
22 would constitute a violation of any right of Plaintiff or the putative class or any duty owed to Plaintiff
23 or the putative class. No Plaintiff was denied anything that they were entitled to receive under their
24 CCRAs or the MTA.

25 Sixth Affirmative Defense: Bona Fide Error (Fifth Cause of Action)

26 The claim of Plaintiffs and the putative class for violation of the CLRA is barred because,
27 although Defendants deny each and every claim of the TAC and deny that Defendants engaged in
28

wrongdoing or error of any kind, any alleged error on Defendants' part was a bona fide error notwithstanding Defendants' use of reasonable procedures adopted to avoid any such error.

Seventh Affirmative Defense: Adequate Remedy at Law (Fifth and Seventh Causes of Action)

Plaintiffs, and any member of a putative class, are not entitled to any injunctive or equitable relief for their fifth and seventh claims for relief because they have an adequate remedy at law.

Eighth Affirmative Defense: Conduct Not Unfair (Seventh Cause of Action)

To the extent Plaintiffs prove that Defendants conducted any of the activities alleged in the TAC, those activities are not unfair within the meaning of Business & Professions Code Section 17200.

Ninth Affirmative Defense: Privilege (Seventh Cause of Action)

The claim of Plaintiffs and the putative class for violation of the Business & Professions Code Section 17200 is barred in whole or in part on the ground that Defendants' actions were privileged and justified in that Defendants were acting in furtherance of their legitimate economic interests.

Tenth Affirmative Defense: Justification (Seventh Cause of Action)

Defendants' alleged conduct as part of their business practices is not unfair within the meaning of Business & Professions Code Section 17200 because the business justifications for, and the benefits to consumers from, the practice outweighs any potential injury.

Eleventh Affirmative Defense: Abstention (Seventh Cause of Action)

The allegations of the TAC are barred, in whole or in part, by the doctrine of abstention by virtue of the fact that the challenged conduct is regulated by a detailed and comprehensive enforcement scheme established under Chapter 10 of the California Health and Safety Code regulating continuing care communities in the State of California.

Twelfth Affirmative Defense: Reasonably Available Alternatives Defense (Seventh Cause of Action)

Plaintiffs and members of the putative class had a reasonably available alternative source from where to obtain continuing care services in that numerous communities, other than Defendants,

1 provide such services and, as such, the TAC fails to state a claim for an unfair business practice
2 within the meaning of Business & Professions Code Section 17200.

3 Thirteenth Affirmative Defense: Frustration of Purpose (Eighth Cause of Action)

4 Unforeseeable risks caused the frustration of any alleged portions of the contract between the
5 parties that are not contained within the four corners of the CCRA and MTA.

6 Fourteenth Affirmative Defense: Mistake of Fact (Eighth Cause of Action)

7 There was no meeting of the minds between the parties regarding any alleged agreement that
8 is not contained within the four corners of the CCRA and MTA.

9 Fifteenth Affirmative Defense: Mitigation (Eighth Cause of Action)

10 Plaintiffs did not do everything reasonably possible to minimize any alleged losses or reduce
11 their alleged damages.

12 Sixteenth Affirmative Defense: Statute of Frauds (Eighth Cause of Action)

13 Any alleged oral representations by the Defendants do not create a binding and enforceable
14 oral contract because the CCRA and MTA are fully integrated contracts.

15 Seventeenth Affirmative Defense: Waiver (All Causes of Action)

16 Each and every claim in the TAC is barred in whole or in part on the ground that Plaintiffs,
17 and any member of a putative class, through their actions and inactions, waived their right to
18 complain about the alleged acts, alleged misrepresentations and alleged omissions at issue in this
19 matter.

20 Eighteenth Affirmative Defense: Estoppel (All Causes of Action)

21 Plaintiffs, and any member of a putative class, through their actions and inactions and
22 Defendants' reliance on the same, are estopped from complaining about the alleged acts, alleged
23 misrepresentations and alleged omissions at issue in the TAC.

24 Nineteenth Affirmative Defense: Lack of Standing (All Causes of Action)

25 Each Plaintiff and potential class member does not have standing to assert each cause of
26 action.

27 Twentieth Affirmative Defense: No Injury or Damage (All Causes of Action)

1 Defendants deny that Plaintiffs and/or any member of the putative class have suffered any
2 injury or damage whatsoever, and further deny that they are liable to Plaintiffs and/or to any member
3 of the putative class for any of the injuries or damage claimed or for any injury or damage
4 whatsoever.

5 Twenty-First Affirmative Defense: No Punitive Damages (All Causes of Action)

6 The claims of Plaintiffs and the putative class for punitive damages contravene Defendants'
7 rights under the due process and other applicable clauses of the United States and California
8 constitutions. No facts are asserted to demonstrate willful or malicious intent on the part of the
9 Defendants.

10 (b) The following individuals have knowledge regarding the conduct alleged in Plaintiffs'
11 Third Amended Complaint: Corporate representatives and employees of all the Defendants,
12 including but not limited to: Michael Krieger, Eric Popejoy, David Coluzzi, William Sciortino, Kelly
13 Parkins Aguirre, Gary Smith, Jonathon Bliss, Robin Adler, and Susan Compton, all of whom may be
14 contacted through counsel for the Defendants; former employees of Defendants, including but not
15 limited to: Steven Brudnick, James Hayes, Mary Leary, Carolyn Zuehl, Jeffrey Tipton, Kristin Cram
16 and Linda McGrath, all of whom may be contacted through counsel for the Defendants; all named
17 Plaintiffs and members of the proposed class; all witnesses, including but not limited to: John and
18 Carol Werner, Joan and Norm Eichberg, Phyllis Fishleder, Nancy Philips, Clayton Shehorn, Bea
19 Rose, Fran Buckley, Delores Pinkert, Ed Silva, Betty Baron, Rachel Grosvenor, Mel Stone, Joe
20 Keenan, Sandy Wells, Hugh and Marge Bradner.

21 (c) Pursuant to California Civil Procedure Code section 2030.210, in lieu of further
22 response, Defendants will produce responsive, non-privileged business records, if any, in their
23 possession, custody or control, subject to suitable confidentiality protections.

1 Dated: November 5, 2007

2 ERIC M. ACKER
3 LINDA L. LANE
4 MORRISON & FOERSTER LLP

5 By: 

6 Linda L. Lane

7 Attorneys for Defendants
8 CC-LA JOLLA, INC., CCW-LA
9 JOLLA, L.L.C., CC-DEVELOPMENT
10 GROUP, INC. and CLASSIC
11 RESIDENCE MANAGEMENT
12 LIMITED PARTNERSHIP
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VERIFICATION


I, Stephanie W. Fields, state:

1. I am the Senior Vice President & General Counsel for Classic Residence by Hyatt, and am authorized to make this verification on its behalf.

2. I have read the foregoing Form Interrogatories (Set Two) propounded by Plaintiff Donald R. Short, and know the contents thereof.

3. I am informed and believe that the matters stated in the foregoing Defendant CC-La Jolla, Inc.'s Response to Plaintiff Donald R. Short's Form Interrogatories (Set Two) correctly represent the legal theories of Defendant CC-La Jolla to the best of my knowledge, and on those grounds declare under penalty of perjury under the laws of the State of California that the same are true and correct.

Executed this Sunday of November, 2007, at Chicago, Illinois.



1 ERIC M. ACKER (BAR NO. 135805)
Email: EAcke@mofo.com
2 LINDA L. LANE (BAR NO. 211206)
Email: LLane@mofo.com
3 MORRISON & FOERSTER LLP
12531 High Bluff Drive, Suite 100
4 San Diego, California 92130-2040
Telephone: 858.720.5100
5 Facsimile: 858.720.5125

6 Attorneys for Defendants
CC-LA JOLLA, INC., CC-LA JOLLA, L.L.C.
7 (d/b/a CCW-LA JOLLA, L.L.C.), CC-DEVELOPMENT
GROUP, INC., CLASSIC RESIDENCE MANAGEMENT
8 LIMITED PARTNERSHIP

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO

11 DONALD R. SHORT, JAMES F. GLEASON,
12 CASEY MEEHAN, MARILYN SHORT,
13 PATTY WESTERVELT, AND DOTTIE
YELLE, individually, and on behalf of all others
similarly situated,

14 Plaintiff,

15 v.

16 CC-LA JOLLA, Inc., a Delaware Corporation,
17 CC-LA JOLLA, L.L.C., a Delaware limited
liability company, CC-DEVELOPMENT
18 GROUP, INC., CLASSIC RESIDENCE
MANAGEMENT LIMITED PARTNERSHIP, an
19 Illinois Limited Partnership, and DOES 1 to 110,
inclusive,

20 Defendants.
21

Case No. GIC877707

22 **DECLARATION OF SERVICE**

Judge: Hon. Yuri Hofmann
23 Dept: C-60

24 Date Action Filed: December 29, 2006
25 Trial Date: Not yet set

26 I, the undersigned, declare that I am employed with the law firm of Morrison & Foerster LLP,
27 whose business address is 12531 High Bluff Drive, Suite 100, San Diego, California 92130. I am
28 over the age of eighteen years and not a party to the within action. On November 5, 2007, I served
the documents named below on the parties in this action as follows:

Defendant CC-La Jolla, Inc.'s Response to Form Interrogatories (Set Two)

SERVED UPON:

Michael A. Conger
LAW OFFICE OF MICHAEL A. CONGER
16236 San Dieguito Road, Suite 4-14
Mailing: P.O. Box 9374
Rancho Santa Fe, CA 92067
Telephone: 858.759.0200
Facsimile: 858.759.1906

Attorneys for Plaintiffs DONALD R.
SHORT, JAMES F. GLEASON, CASEY
MEEHAN, MARILYN SHORT, PATTY
WESTERVELT, and DOTTIE YELLE

☐ (BY OVERNIGHT DELIVERY) I am readily familiar with the practice of Morrison & Foerster LLP for collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by UPS for overnight delivery.

☐ (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at San Diego, California. I am readily familiar with the practice of Morrison & Foerster LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

☐ (BY FACSIMILE) The above-referenced document was transmitted by facsimile transmission and the transmission was reported as complete and without error. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

☒ (BY PERSONAL SERVICE) I delivered to an authorized courier or driver authorized by Nationwide Legal, Inc. to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed with the court upon request.

☐ BY ELECTRONIC SERVICE [Code Civ. Proc. sec. 1010.6] by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system to the e-mail address(s) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6.

1 I declare under penalty of perjury under the laws of the State of California and United States
2 of America that the foregoing is true and correct, and that this declaration is executed on November
3 5, 2007, at San Diego, California.

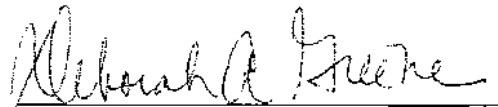
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5 Deborah A. Greene
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EXHIBIT 41

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN DIEGO

Certified Copy

3 DONALD R. SHORT, JAMES F.)
4 GLEASON, CASEY MEEHAN,)
5 MARILYN SHORT, PATTY)
6 WESTERVELT, and DOTTIE YELLE,)
7 individually, and on behalf of)
8 all other similarly situated,)
9 Plaintiffs,)

vs.) No. GIC877707

10 CC-LA JOLLA, INC., a Delaware) VOLUME II
11 Corporation, CC-LA JOLLA,)
12 L.L.C., a Delaware limited)
13 liability company,)
14 CC-DEVELOPMENT GROUP, INC.,)
15 CLASSIC RESIDENCE MANAGEMENT)
16 LIMITED PARTNERSHIP, an)
17 Illinois Limited Partnership,)
18 and DOES 1 to 110, inclusive,)
19 Defendants.)

20 Continued Videotaped Deposition of MARY
21 KATHERINE MEEHAN, at 12531 High Bluff Drive,
22 Suite 100, San Diego, California, commencing
23 at 9:07 a.m., Thursday, September 26, 2007,
24 before Shuri Gray, CSR No. 3786.

25 PAGES 223 - 300

1 property?

10:35

2 A. No.

3 Q. And have you ever spoken to any people that are
4 thinking about moving into the community about the
5 lawsuit?

10:35

6 A. No.

7 Q. Have you ever spoken to people that are
8 thinking about moving into the community about any of
9 your complaints about La Jolla Village Towers?

10 A. No.

10:35

11 Q. And do you believe that you are a good
12 representative of the residents that currently reside at
13 La Jolla Village Towers?

14 MR. CONGER: That question calls for a party's
15 legal conclusion. It does call for a legal conclusion.
16 It calls for speculation. It's vague and ambiguous.

10:35

17 But you can answer.

18 THE WITNESS: Yes, I feel that I am.

19 BY MS. LANE:

20 Q. Why?

10:36

21 A. Because I have control of my faculties, I am
22 much younger than many of them, and I feel I can speak
23 for some of those who are unable to.

24 Q. And do you think that your experiences are
25 similar to other people that live in the community?

10:36

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EXHIBIT 42

August 4, 1998

Dear Residents of La Jolla Village Towers:

Attached is a copy of Classic Residence by Hyatt's Corporate Brochure, an organizational chart for La Jolla Village Towers and related entities, and Audited Financial Statements for CC-Development Group, Inc. and subsidiaries for Fiscal Years 1998 and 1997.

As background, the organizational chart shows the entities which are involved with La Jolla Village Towers (LJVT):

1. Classic Residence Management Limited Partnership doing business as "**Classic Residence by Hyatt**" -- the management company which contracts with CCW La Jolla, LLC to provide management, sales, marketing, and development services to LJVT. Classic Residence by Hyatt, on behalf of CCW La Jolla, LLC, will contract with residents.
2. **Classic Residence Management, Inc.** -- the General Partner of Classic Residence Management Limited Partnership and a wholly-owned subsidiary of CC-Development Group, Inc.
3. **CCW La Jolla, LLC** -- the entity that owns LJVT, which was formed 4/28/98, and which has two members (A/W Company, Inc. and CC-La Jolla, Inc.). Residents will enter into a Continuing Care Residency Agreement with this entity.
4. **A/W Company, Inc.** -- a 20% owner of LJVT (subject to a preferred return to CC-La Jolla, Inc.) which has no control over the day-to-day management of development and operations of CCW La Jolla, LLC (A/W Company, Inc. is not affiliated with any Hyatt-related entity)

5. **CC-La Jolla, Inc.** -- a wholly-owned subsidiary of CC-Development Group, Inc., and an 80% owner of LJVT, which has exclusive control over the day-to-day management of development and operations of CCW La Jolla, LLC
6. **CC-Development Group, Inc.** -- the parent company of CC-La Jolla, Inc., which provides equity and debt financing to CC-La Jolla, Inc. for development purposes and to fund operating shortfalls. While this entity has no direct responsibility or obligation to residents, in the Disclosure Statement filed in Bankruptcy Court as part of the Plan of Reorganization, CC-Development Group, Inc. stated that it is willing to commit the necessary funds (up to \$18 million) to build the Care Center and provide working capital to cover operating shortfalls.

Because CCW La Jolla, LLC was formed on 4/28/98, it has no audited financial statements. We have provided audited Financial Statements for CC-Development Group, Inc., which are the statements that we have filed with regulatory authorities in the States of Florida and Arizona (and will provide in California, if required) as support for our licensure of the continuing care retirement communities we operate in these States.

The Financial Statements for the Fiscal Year ended 1/31/98 included five senior living communities, a management company and investment in 3 other communities. As of 1/31/98, CC-Development Group, Inc., controlled through partnerships, a total of 10 senior living communities. Gross sales of the 10 senior living communities and management company for the Fiscal Years ended 1/31/98 and 1/31/97 respectively, were \$93.6 million and \$81.5 million. Please note that while a Net Loss was generated during Fiscal Years 1998 and 1997, positive cash flows were generated before Depreciation and Amortization. The Net Loss in Fiscal Years 1997 and 1998 is the result of an acquisition in December 1996 of a start-up community in Lantana, Florida. Losses as a result of development, acquisitions or operating shortfalls are funded by the parent of CC-Development Group, Inc. Because the parent and affiliates of CC-Development Group, Inc. are privately-held companies, their financial statements are not public information. Please remember, however, that Hyatt Corporation has operated for more than 40 years and is a recognized leader in the hospitality industry.