



September 10, 2024

NOTICE OF NONCOMPLIANCE WITH AGREEMENTS, MAINTENANCE DEFICIENCIES AND INTENTION TO CAUSE REPLACEMENT OF MANAGEMENT AGENT AT WINDSOR POINTE

Mr. James Silverwood
Carlsbad Veteran Housing, L.P.
c/o Affirmed Housing Group, Inc.
13520 Evening Creek Drive North, Suite 160
San Diego, CA 92128

VIA CERTIFIED MAIL AND
EMAIL TO: jim@affirmedhousing.com

Dear Mr. Silverwood:

This letter is to notify Carlsbad Veteran Housing, L.P. and Affirmed Housing Group, Inc. (collectively Affirmed Housing) that you have violated the terms of the Ground Lease, Regulatory Agreement, Loan Agreement, and Deed of Trust with the City of Carlsbad for the Windsor Pointe development (Windsor Pointe or the Property). This letter is also to notify you that Affirmed Housing's Management Agent, CONAM Management Corporation (CONAM) has failed to meet its obligations under Windsor Pointe's Management Plan and, consequently, the city intends to cause Affirmed Housing to replace CONAM.

Background

On September 5, 2023, the City of Carlsbad Police Chief sent a letter informing Affirmed Housing of a number of criminal acts that occurred at the Windsor Pointe property, including many committed by individuals who did not reside there or were trespassing on the property. The Police Chief requested Affirmed Housing implement additional security measures, including:

- Requiring visitors to check in and out of the property;
- Maintaining surveillance cameras covering all exterior locations and parking areas; and
- Providing uniformed security onsite at both locations, 24 hours a day, seven days a week.

The same day, the City of Carlsbad's Housing & Homeless Services Director sent a letter offering to assist Affirmed Housing identify and develop changes to property maintenance and operations to address the security concerns identified by the Police Chief.

The Housing & Homeless Services Director also recommended Affirmed Housing:

- Provide onsite security at both locations, seven days a week;

City Manager

City Hall 1200 Carlsbad Village Drive | Carlsbad, CA 92008 | 442-339-2821 t

Oct. 22, 2024

Item #6

Page 12 of 26

- Require visitors to check in and out of the property and to be escorted by a tenant while on the property;
- Ensure management staff is onsite 24 hours a day and accessible for after-hours emergencies; and
- Meet with Carlsbad Police Department representatives at least quarterly to discuss security concerns.

Affirmed Housing did not fully implement these recommendations. Instead, Affirmed Housing increased onsite security from three onsite rounds per night to one onsite security guard 12 hours per night covering both Windsor Pointe buildings. Affirmed Housing also increased remote video surveillance from 12 hours Monday through Friday and 24 hours on weekends to 24 hours, seven days a week.

Additionally, CONAM began meeting weekly with Carlsbad Police Department representatives. The Housing & Homeless Services Department and the Carlsbad Police Department also began conducting monthly progress review meetings with Affirmed Housing and CONAM.

Despite these efforts, security, maintenance, and operations concerns continued. At a City Council meeting on March 12, 2024, the city again requested Affirmed Housing take steps to deter criminal activity at Windsor Pointe by increasing the onsite security to at least 6 p.m. to 6 a.m. at both Windsor Pointe buildings, implementing remote video surveillance monitoring 24 hours a day, seven days a week, and requiring visitors to check in and out of the Property. In addition, the City Council directed staff to work with Affirmed Housing to amend Windsor Pointe's Management Plan to include these requirements. To help with the cost for the additional security, the City Council also directed city staff to advocate for the County of San Diego to release operating subsidiary reserve funding, which the County of San Diego did.

At a City Council meeting on April 9, 2024, city staff reported on the status of the updates to the Management Plan. The amendments, which were approved, required Affirmed Housing to have:

- A security guard onsite at each Windsor Pointe building from 6 p.m. to 6 a.m., during which time the guards would monitor issues on the Property, including noise complaints, guest entry and suspicious activity;
- Remote video surveillance 24 hours a day, seven days a week to identify criminal activity, suspicious activity, or entry by unauthorized people; and
- A procedure requiring residents to check their visitors in and out.

Continued Security, Maintenance, and Operations Deficiencies

Notwithstanding these requirements, on the morning of August 20, 2024, Police Chief Christie Calderwood went to Windsor Pointe to view the Property in preparation for a progress review on that evening's City Council meeting agenda. While she was sitting in her unmarked police vehicle, a barefoot woman passed by her and approached the security gate for Windsor Pointe's Oak Avenue building. The woman flung a bag over the gate, using the bag to engage a bar on the interior side of

the gate. Once the bar was engaged, the gate opened, allowing the woman access to the property. Although the gate had signage indicating it was alarmed, no alarm sounded.

The woman, who Chief Calderwood subsequently learned had been banned from the property, left the gate ajar and Chief Calderwood entered onto the property to locate her. Chief Calderwood went to the exterior of the building to search for the woman. Chief Calderwood climbed the building's exterior staircase and tried the entrance door for each floor. Although the doors require a keycard to enter and were lighted in a way suggesting they were locked and secure, Chief Calderwood was able to readily pull open the doors on three of the building's four floors. Chief Calderwood also noticed a mattress topper and other items in or around the staircase suggesting someone may have been camping in or around the staircase.

Chief Calderwood attempted to contact the onsite manager, but the manager was not on duty even though the manager's work hours had begun. In addition, none of the service providers who have office hours in the building were on duty.

Since onsite security went off duty at 6 a.m., Chief Calderwood called the company that is supposed to provide monitored security for the building 24 hours a day, seven days a week. The representative who fielded Chief Calderwood's call was unaware of either the woman intruder's presence in the building or of Chief Calderwood's presence in the building. Once Chief Calderwood alerted the representative to the intruder, the representative had to search through the security records to learn what occurred.

Chief Calderwood left the Oak Avenue building and went to Windsor Pointe's Harding Street building. There she spoke with Windsor Pointe's onsite maintenance technician. The maintenance technician advised that the onsite Property Manager at the Oak location would be there at approximately 11 a.m. Chief Calderwood reported the unalarmed gate and the broken security doors, to which the maintenance technician already had knowledge.

When this information was relayed to the City Council at the meeting that evening, the Affirmed Housing representative and the CONAM representative who attended the meeting were asked to address the matter. Neither provided a satisfactory explanation for why an intruder was so easily able to access the property, why the security company hired to provide monitored surveillance for the building did not notice either the intruder or the Police Chief, why the access gate and security doors had not been promptly repaired, why the mattress topper and debris were allowed to be in or around the exterior stairway, and why no property manager or substitute was on duty during work hours.

These security, maintenance and operations deficiencies violate the following provisions of Affirmed Housing's agreements with the city:

Ground Lease

Section 5.1(a) – Quality of Operations
Section 5.2 – Limitations on Use

Section 5.4 – Maintenance of Improvements

Regulatory Agreement

Section 5.1 – Management Responsibilities

Section 5.5 – Property Maintenance

Section 5.6 – Safety Conditions

Loan Agreement

Section 4.3(a) – Operation of Development as Affordable Housing

Section 4.4(a) – Maintenance

Deed of Trust

Section 2.1 – Maintenance and Modification of the Property by Trustor

Section 5.1 – Other Agreements Affecting Property

Section 5.6 – Operation of the Security

These security, maintenance and operations deficiencies also violate CONAM's obligations under the following provisions of the Management Plan:

Section 2.A. – Agent Roles and Responsibilities

Section 2.B. – Community Manager Roles and Responsibilities

Section 18.G – Guest Policy and Procedures

Section 24 – Maintenance and Security

To cure these violations, Affirmed Housing must take the following steps within 30 days from the date of this letter:

1. Secure all access gates and doors and repair any broken or malfunctioning locks or access control systems
2. Remove all hazards and debris from exterior common areas
3. Update the Management Plan to incorporate the following provisions:
 - a. Daily exterior inspections of gates, access doors, access control systems and interior and exterior common areas with any needed repairs to be made within 24 hours unless otherwise agreed to by the city.
 - b. A detailed staffing and security plan that ensures there is sufficient on-duty management and security staff to ensure: (i) entryways are controlled and visitors are screened at both locations 24 hours a day, seven days a week; and (ii) exterior and interior common areas at both locations are regularly patrolled throughout the day, but no less than once every two hours in each 24-hour period.

Additionally, as permitted by Section 5.3 of the Regulatory Agreement, the city intends to cause Affirmed Housing to replace CONAM as its management agent for failure to operate Windsor Pointe in a manner that provides decent, safe, and sanitary housing.

Within 15 days from the date of this letter, Affirmed Housing must meet with city staff, including the Housing & Homeless Services Director and the Police Chief, to consider methods for improving

Mr. James Silverwood
September 10, 2024
Page 5

Windsor Pointe's financial and operating status. If, within 30 days of that meeting, the city determines the property is still not being appropriately managed, the city will require Affirmed Housing to replace CONAM with an experienced agent that has demonstrated an ability to operate residential projects like Windsor Pointe in a manner that will provide decent, safe, and sanitary housing.

We look forward to your prompt attention to these concerns. To schedule the meeting to discuss CONAM's replacement, please contact Mandy Mills, Housing & Homeless Services Director by phone at (442) 339-2907 or by email at mandy.mills@carlsbadca.gov.

Sincerely,



SCOTT CHADWICK
City Manager



CINDIE K. McMAHON
City Attorney

- c: Mayor Keith Blackburn (via email)
Mayor Pro Tem Priya Bhat-Patel (via email)
Council Member Teresa Acosta (via email)
Council Member Melanie Burkholder (via email)
Council Member Carolyn Luna (via email)
Geoff Patnoe, Assistant City Manager (via email)
Mandy Mills, Housing & Homeless Services Director (via email)
David Cohen, Katten Muchin Rosenman LLP (via email and regular mail)
Steven J. Kropf, Raymond James Tax Credit Funds, Inc. (via facsimile and regular mail)
Kyle Arndt, Bocarsly Emden Cowan Esmail & Arndt LLP (via email and regular mail)
Joseph M. Michaels, Las Palmas Foundation (via email and regular mail)
Jason A. Hobson, Hobson Bernardino (via email and regular mail)
Community Development, County of San Diego, Housing & Community Development Services (via email and regular mail)
Executive Director, California Tax Credit Allocation Committee (via certified mail)



October 17, 2024

NOTICE OF CONTINUED NONCOMPLIANCE WITH AGREEMENTS

Mr. David P. Cohen
2121 Avenue of the Stars, Suite 1100
Los Angeles, CA 90067-5010

VIA REGULAR MAIL AND
EMAIL TO: david.cohen@katten.com

Mr. James Silverwood
Carlsbad Veteran Housing, L.P.
c/o Affirmed Housing Group, Inc.
13520 Evening Creek Drive North, Suite 160
San Diego, CA 92128

VIA CERTIFIED MAIL AND
EMAIL TO: jim@affirmedhousing.com

Dear Mr. Cohen:

On September 10, 2024, the City of Carlsbad sent a letter (September 10 Letter) notifying your client, Carlsbad Veteran Housing, L.P., through Affirmed Housing Group, Inc. (collectively Affirmed Housing), that it was in violation of specified terms of its Ground Lease, Regulatory Agreement, Loan Agreement, and Deed of Trust with the City of Carlsbad for the Windsor Pointe development (Windsor Pointe or the Property). The city's letter also notified Affirmed Housing that its management agent, CONAM Management Corporation (CONAM), is failing to meet its obligations under Windsor Pointe's Management Plan and, consequently, the city intended to cause Affirmed Housing to replace CONAM.

City's Requirements

The September 10 Letter included supporting factual information and required Affirmed Housing to cure the identified violations by taking the following steps within 30 days, or by October 10:

1. Secure all access gates and doors and repair any broken or malfunctioning locks or access control systems.
2. Remove all hazards and debris from exterior common areas.
3. Update the Management Plan to incorporate the following provisions:

City Attorney

City Hall 1200 Carlsbad Village Drive | Carlsbad, CA 92008 | 442-339-2891 t

Oct. 22, 2024

Item #6

Page 20 of 26

- a. Daily exterior inspections of gates, access doors, access control systems and interior and exterior common areas with any needed repairs to be made within 24 hours unless otherwise agreed to by the city.
- b. A detailed staffing and security plan that ensures there is sufficient on-duty management and security staff to ensure: (i) entryways are controlled and visitors are screened at both locations 24 hours a day, seven days a week; and (ii) exterior and interior common areas at both locations are regularly patrolled throughout the day, but no less than once every two hours in each 24-hour period.

Affirmed Housing's Response to Notice and Unwillingness to Fully Cure Deficiencies

Failures as Violations

On September 18, 2024, following a meeting with Affirmed Housing and city staff on September 11, 2024, your office sent a letter to the City Manager and City Attorney asserting the security, maintenance and operation deficiencies identified in the city's letter were routine in nature and, therefore, not violations of the Ground Lease. The parties' agreements contradict this assertion.¹

The manner in which the Property is used and operated is of critical importance to the city because of the city's significant financial investment in the Property. Consequently, Affirmed Housing agreed to and is obligated to maintain a quality of character and operation of the Property consistent with and in full compliance with the Ground Lease and the parties' other agreements (Ground Lease, § 5.1(a); Loan Agreement, § 4.3(a); Deed of Trust, §§ 5.1 & 5.6).

This obligation includes operating and maintaining the Property in a manner to provide safe and sanitary housing to the tenants of the Property (Ground Lease, § 5.4). This obligation also includes maintaining all interior and exterior improvements in good condition and repair and providing security measures to prevent unlawful entry into the Property **in a manner acceptable to the city** (Regulatory Agreement, §§ 5.1, 5.5 & 5.6(c); Loan Agreement, § 4.4(a); Deed of Trust, § 2.1).

The security, operations and maintenance deficiencies identified in the September 10 Letter show the Property is not being maintained in a safe manner, in good condition and repair, and in a manner that prevents unlawful entry into the Property. Accordingly, the Property is not being secured, operated and maintained in a manner acceptable to the city.

¹ As your letter does not dispute that the identified security, maintenance and operation deficiencies violate the Regulatory Agreement, Loan Agreement, Deed of Trust and the management agent's obligations under the Management Plan, Affirmed Housing has impliedly conceded these points.

Although the parties' agreements make some allowances for reasonable wear and tear (see Deed of Trust, § 2.1), the deficiencies identified in the September 10 Letter do not fall within this category. Rather, the deficiencies evidence systemic problems requiring systemic solutions to resolve.

Cured Items

Your letter indicated Affirmed Housing has repaired the broken doors, locks, access gates and control systems. Your letter also indicated Affirmed Housing had removed all hazards and debris from exterior common areas. On October 15, 2024, Mandy Mills, the city's Housing & Homeless Services Director, inspected the property and confirmed the main doors to enter the building or elevator at each site are secure and require key fob access. Ms. Mills also confirmed that the alarm system was operational and hazards and debris had been removed from exterior common areas.

Uncured Items

However, Ms. Mills determined that the locked access points for some exterior stairwells still require additional action to cure. She also determined the gate door access at the Oak Avenue building required additional action to cure.

Regarding the required Management Plan update, your letter indicated Affirmed Housing was willing to update the plan to provide for daily inspections of access doors, gates, control systems, and exterior common areas and to require Affirmed Housing to make needed repairs to these items, but only as soon as reasonably possible and not within the time period required by city. Affirmed Housing further declined to update the plan to provide a detailed staffing and security plan with sufficient on-duty management and security staff to ensure: (i) entryways are controlled and visitors are screened at both locations 24 hours a day, seven days a week; and (ii) exterior and interior common areas at both locations are regularly patrolled throughout the day, but no less than once every two hours in each 24-hour period.

Affirmed Housing's unwillingness to amend the Management Plan as the city requested is unavailing and counterproductive. The purpose of the plan is to guide the work of Affirmed Housing's management agent to ensure that the security, operation and maintenance of the Property complies with the parties' agreements. Regardless of the contents of the plan, Affirmed Housing remains obligated to secure, operate and maintain the property in compliance with the parties' agreement **in a manner acceptable to the city**. Updating the plan to assure compliance ultimately benefits Affirmed Housing.

Moreover, as discussed below, Affirmed Housing has recently agreed to replace its current management agent. The change in management agent will necessitate an update to the

Management Plan because the current Management Plan is written for the current management agent. The update will be subject to the city's approval. Because the Management Plan must set forth Affirmed Housing's commitment and ability to operate the Property in accordance with the parties' agreements **in a manner acceptable to the city**, the city will not approve an update that does not adequately address the systemic security, operations and maintenance deficiencies identified by the city. Failure to obtain the city's approval of the update within 120 days from initial submission is an event of default under the Regulatory Agreement and Loan Agreement. Consequently, working with the city to update the Management Plan to address the city concerns is obligatory.

Additional Security, Maintenance, and Operations Deficiencies

Separate from the security, maintenance and operations deficiencies identified in the September 10 Letter, the city has recently received reports and photos showing the access gate at the Harding Street building was propped open for multiple days, including September 21-22 and October 5-6, 2024. Although one instance was for a planned event, the other instances were not planned or approved by the management agent. The fact the gate remained or was repeatedly propped open without management or security intervention illustrates the need for adjustments to the Property's management and security staffing plan.

Additionally, a City Council member went with a resident into the Harding Street building on October 4, 2024. While on the resident's floor, the City Council member noted a strong odor emanating from the trash chute, mold and water damage on the wall outside one of the units, and blood, feces, or some other substance rendering the only washing machine on the floor unusable. The City Council member also noted an odor of urine in the stairwell.

The resident reported to the City Council member there was a severe fruit fly infestation throughout the building. The resident also reported maintenance staff did not respond on weekends and the on-site manager was not accessible because she floats between buildings, her voicemail box is always full, and she blocks resident calls.

During Ms. Mills's inspection on October 15, 2024, she determined the mold and water damaged wall had been repaired and the laundry room had been cleaned. She did not note a fruit fly infestation throughout the building, but she did note an infestation in one unit. She did not note an odor of urine in the stairwell and determined the odor in the trash rooms were customary of trash rooms in multifamily properties. However, she noted some residents on some floors had left trash outside of the trash chute, which increases odor and pests.

Regarding access to management and maintenance staff, Ms. Mills was able to confirm onsite management staff are required to carry their phones with them at all times and that residents receive a list of phone numbers to call for service during regular hours and after hours. These

phone numbers are also posted on each floor. However, Ms. Mills was unable to confirm whether management and maintenance staff were, in fact, reachable by the residents when needed or whether phone storage or other impediments prevented residents from reaching them. This circumstance further illustrates the need for adjustments to Property's management and security staffing plan.

The uncured and additional security, maintenance and operations deficiencies violate the provisions of Affirmed Housing's agreements with the city, including:

Ground Lease

Section 5.1(a) – Quality of Operations

Section 5.2 – Limitations on Use

Section 5.4 – Maintenance of Improvements

Regulatory Agreement

Section 5.1 – Management Responsibilities

Section 5.5 – Property Maintenance

Section 5.6 – Safety Conditions

Loan Agreement

Section 4.3(a) – Operation of Development as Affordable Housing

Section 4.4(a) – Maintenance

Deed of Trust

Section 2.1 – Maintenance and Modification of Property by Trustor

Section 5.1 – Other Agreements Affecting Property

Section 5.6 – Operation of the Security

These uncured and additional security, maintenance and operations deficiencies also violate the management agent's obligations under the Management Plan, including:

Section 2.A. – Agent Roles and Responsibilities

Section 2.B. – Community Manager Roles and Responsibilities

Section 24 – Maintenance and Security

To cure these violations, Affirmed Housing must take the following steps within 30 days from the date of this letter:

1. Cure all uncured items noted in the September 10 Letter.
2. Ensure the trash rooms on each floor are checked daily and trash is properly disposed of.
3. Ensure laundry rooms are checked daily and laundry machines are clean and usable.

4. Work with the Harding Street building tenant to remedy the fruit fly infestation in the tenant's unit.
5. Update the Management Plan to incorporate the following provisions:
 - a. Daily exterior inspections of gates, access doors, access control systems and interior and exterior common areas with any needed repairs to be made within 24 hours unless otherwise agreed to by the city.
 - b. A detailed staffing and security plan providing for sufficient on-duty management and security staff to ensure: (i) entryways are controlled and visitors are screened at both locations 24 hours a day, seven days a week; (ii) exterior and interior common areas at both locations are regularly patrolled throughout the day, but no less than once every two hours in each 24-hour period; and (iii) management and maintenance staff are reasonably available to residents.

Replacement of Management Agent

As previously indicated, the September 10 Letter notified Affirmed Housing that the city intended to cause Affirmed Housing to replace CONAM as management agent for failure to operate the Property in a manner that provides decent, safe, and sanitary housing. To that end, the city required Affirmed housing to meet with city staff within 15 days. That meeting took place on September 11, 2024.

Section 5.3 of the Regulatory Agreement permits the city to require Affirmed Housing to replace its management agent if within 30 days of the meeting held on September 11, 2024, or by October 11, 2024, the city determines the property is still not being appropriately managed.

In a letter dated October 9, 2024, Affirmed Housing requested approval to change its management agent from CONAM Management Corporation to Solari Enterprises, Inc. Ms. Mills will reach out to Affirmed Housing to obtain the necessary information for the city to evaluate the requested change.

The city looks forward to your prompt attention to these concerns. To schedule a meeting to discuss curing the ongoing and additional security, operations and maintenance deficiencies and updating the Management Plan, please contact Ms. Mills by phone at (442) 339-2907 or by email at mandy.mills@carlsbadca.gov.

Sincerely,

Cindie K. McMahon

CINDIE K. McMAHON

City Attorney

- c: Mayor Keith Blackburn (via email)
- Mayor Pro Tem Priya Bhat-Patel (via email)
- Council Member Teresa Acosta (via email)
- Council Member Melanie Burkholder (via email)
- Council Member Carolyn Luna (via email)
- Scott Chadwick, City Manager (via email)
- Geoff Patnoe, Assistant City Manager (via email)
- Mandy Mills, Housing & Homeless Services Director (via email)
- Steven J. Kropf, Raymond James Tax Credit Funds, Inc. (via facsimile and regular mail)
- Kyle Arndt, Bocarsly Emden Cowan Esmail & Arndt LLP (via email and regular mail)
- Joseph M. Michaels, Las Palmas Foundation (via email and regular mail)
- Jason A. Hobson, Hobson Bernardino (via email and regular mail)
- Community Development, County of San Diego, Housing & Community Development Services (via email and regular mail)
- Executive Director, California Tax Credit Allocation Committee (via certified mail)