

PHAT APARTMENT TRUST

111 Phat Highway
Phat City, California



May 1, 2003

Mr. B.D. Developer
President and Chief Executive Officer
B.D. Properties, LLC
301 B.D. Court
Pleasantville, CA 94555

Re: **Bay View Apartments, Pleasantville, CA**

Dear B.D.:

This shall serve as our non-binding Letter of Intent to enter into an Agreement (“Agreement”) whereby B.D. Properties, LLC (“BD”) as General Partner of Bay View Partners, L.P., (“Existing LP”) owner of Bay View Apartments, a 703 unit rental community located in Pleasantville, CA (the “Property”) agrees to convert to a limited liability company, and admit Phat Apartment Trust (“PHAT”) as a member, subject to the terms and conditions stated herein.

Structure: Existing LP will be converted to a limited liability company (“Existing LLC”). PHAT will thereafter be admitted to Existing LLC.

Existing LLC will be named at the election of PHAT. It is anticipated that the Existing LLC operating agreement will reflect the terms and conditions as contemplated by this Agreement.

Upon closing, PHAT will be admitted as a member of Existing LLC. Simultaneous with PHAT’s admittance, B.D. Investments, Inc’s existing 1% limited partner interest in Existing LLC will be redeemed or bought by a BD affiliate at BD’s sole cost and expense.

In exchange for its interest in Existing LLC, PHAT will make a cash capital contribution of \$1,000,000 at closing (“Initial PHAT Capital Contribution”) and will agree to make additional cash capital contributions (“Additional PHAT Capital Contributions”) upon five business days’ written notice from BD, until such time as its Initial PHAT Capital Contribution and Additional PHAT Capital Contributions equal the Equity Value (defined below).

The Initial PHAT Capital Contribution and all Additional PHAT Capital Contributions (collectively, “Total PHAT Capital Contributions”) will be used to facilitate the acquisition of properties by Existing LLC, such properties to be designated by BD. Each new property acquired as designated by BD (the “New Properties”) will be held by a special purpose limited liability company (“New Property LLCs”) owned entirely by the Existing LLC. BD (or an affiliate) shall be the non-member manager of each New Property LLC. The New Property LLC shall be a California LLC.

Contribution Value: For purposes of this transaction, the Property shall be valued at \$132,500,000, which shall be deemed the “Contribution Value.”

Equity Value: For purposes of this transaction, the “Equity Value” shall be defined as the difference between the Contribution Value and the existing debt as of the date of admission of PHAT to Existing LLC, subject to standard prorations and adjustments. We understand there is approximately \$66,000,000 in outstanding debt from Mega Insurance Co. (the “Lender”) with a weighted average interest cost of approximately 7.88%. BD shall obtain an estoppel from the Lender and ensure that Existing LLC has full authority from the Lender to enter into and execute all transactions contemplated pursuant to this Letter of Intent.

LLC Units: The Existing LLC shall elect to “book up” under Treas. Reg. section 1.704-1(b)(2)(iv)(f). BD shall receive a capital account credit equal to the Equity Value, and a membership interest denominated as Class A Units. PHAT shall receive a capital account credit at closing in an amount equal to its Initial PHAT Capital Contribution and a membership interest denominated as Class B Units. PHAT shall receive additional capital account

credit as and when Additional PHAT Capital Contributions are made.

**Terms of the
LLC:**

Management of Existing LLC. To the extent Existing LLC meets the criteria set forth in Section 6231(a)(1)(B)(i) of the Code, it shall not elect to be subject to the unified partnership audit procedures under Section 6231(a)(1)(B)(ii) of the Code. BD shall be the Tax Matters Partner of Existing LLC for 2003; thereafter PHAT shall be the Tax Matters Member of Existing LLC. BD shall have the right to control any tax controversy as it relates to the items of income, gain, deduction or loss attributable to the admission of PHAT or its Total PHAT Capital Contributions. In the event of such a BD-controlled controversy, PHAT shall have the right to participate in any audit and appeal therefrom and will be included under the power of attorney. In any settlement of any Federal tax controversy, neither party shall consent to any adjustment that could negatively impact the economic position of the other. The tax return of Existing LP has been prepared and the tax return of Existing LLC for the 2003 taxable year will be prepared by the public accounting firm of Big 4 #1 in its San Francisco office. PHAT shall designate Big 4 #2 as the tax return preparer for the year 2004 and forward. Financing and other arrangements will be structured so that a creditor of a New Property LLC could not attach or foreclose upon the Property and a creditor of the Property could not attach or foreclose upon the New Properties.

PHAT shall be the managing member of Existing LLC. However, BD shall have approval rights over whether Existing LLC files for bankruptcy or transfers or sells the Property to a non-affiliated party (except Section 1031 of the Code exchanges which shall require no approval by BD). In addition, BD shall have approval rights over the recourse nature of any future debt secured by the Property.

Management of New Property LLCs. BD shall be the non-member manager of the New Property LLCs. However, PHAT shall have approval rights over whether New Property LLCs file for bankruptcy or transfer or sell the New Properties to a non-

affiliated party. In addition, PHAT shall have approval rights over certain major decisions with respect to the recourse nature of any debt securing the New Properties.

Capital Calls. Events triggering a capital call shall be clearly delineated in the operating agreements of Existing LLC and the New Property LLCs. In the event a member fails to make a capital contribution with respect to a capital call (a “Defaulting Member”), such Defaulting Member’s percentage interest in the Existing LLC’s profits and losses and cash flow shall be reduced by the 125% of the proportionate dilution. The dilution will be measured by each member’s capital contributions (including BD’s Equity Value).

Distributions. Following the closing, cash flows attributable to the Property will be distributed quarterly first to BD until BD has received a cumulative, compounded preferred return on its Coupon Equity Value. For the eighteen (18) months subsequent to closing, the preferred return rate shall be 7.5% per annum, compounded quarterly to the extent unpaid, on its Coupon Equity Value and thereafter the preferred return rate shall be 8.5% per annum, compounded quarterly to the extent unpaid, on its Coupon Equity Value. For this purpose, BD’s “Coupon Equity Value” shall initially be 95% of its Equity Value (i.e., \$63,175,000), subject to adjustment as set forth below. Cash flows attributable to the Property in excess of the preferred return will be distributed 95% to PHAT and 5% to BD. Cash flows attributable to New Properties shall be distributed 95% to BD and 5% to PHAT.

As PHAT makes the Initial PHAT Capital Contribution and any Additional PHAT Capital Contributions to facilitate the acquisition of New Properties, BD’s Coupon Equity Value shall be reduced by an amount equal to 95% of the Initial PHAT Capital Contribution and Additional PHAT Capital Contributions. After PHAT makes Total PHAT Capital Contributions in the amount of \$66,500,000, BD’s Coupon Equity Value would be reduced to \$0. PHAT’s obligation to make Total PHAT Capital Contributions shall be reduced dollar