

ATTACHMENT F

LOAN COMMITMENT AGREEMENT
BY AND BETWEEN
THE COUNTY OF SANTA BARBARA
AND
SUMIDA GARDENS L.P.

June 1, 2009

THIS LOAN COMMITMENT AGREEMENT (hereinafter the "Agreement") is made by and between the County of Santa Barbara, a political subdivision of the State of California ("County"), and Sumida Gardens, L.P., a California Limited Partnership ("Sumida Gardens L.P.").

RECITALS

- A. County wishes to foster the development of more affordable rental housing in neighborhoods in need of revitalization in Santa Barbara County community and provide a greater choice of housing opportunities for persons and families of low income.
- B. County has received Home Investment Partnership Program funds ("HOME Funds") from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 for the purpose of expanding the supply of decent, safe, sanitary and affordable housing for low – income persons and families.
- C. On May 13, 2008 the Board of Supervisors adopted a resolution approving the 2008 update to the County of Santa Barbara HOME Consortium Consolidated Plan ("Action Plan") governing the use of HOME funds. The Board action included an approval of a reservation of funds for the projects listed therein.
- D. The approved Action Plan included a reservation of \$630,000 in HOME funds for the Sumida Gardens Project, as defined below, involving the development of a two hundred unit apartment project in the City of Goleta.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements and representations, Sumida Gardens L.P. and County hereby agree as follows:

1. **PROPERTY SUBJECT TO THE AGREEMENT**

The property subject to the agreement is located at 5505-5585 Sumida Gardens Lane in the City of Goleta (the "Property").

2. **PROJECT SUBJECT TO THE AGREEMENT**

The project subject to the agreement is a two hundred unit apartment complex (the "Sumida Gardens Project"), eleven (11) of which will be designated as "HOME Units"

reserved for households earning up to 60% of the area Median Income in the City of Goleta.

3. PURPOSE OF THE AGREEMENT

This Agreement evidences the commitment of HOME Investment Partnerships Program funding for the Project (the “Loan”).

4. TERM OF THE AGREEMENT

This Agreement shall begin immediately and terminate on the earlier of July 1, 2010 or at such time that a Loan Agreement is negotiated and executed between the County and Sumida Gardens L.P. for the Project.

5. DEVELOPMENT OF THE PROJECT

Rules, Regulations and Policies. The rules, regulations and official policies governing the use(s) of the Property, with respect to and only with respect to the density and intensity of use of the Property are those rules, regulations and policies applicable to the Property pursuant to land use approvals and related agreements with the City of Goleta and the Redevelopment Agency of the City of Goleta..

6. COUNTY PROJECT FINANCING REQUIREMENTS

The County’s obligation to fund the Loan is contingent upon the occurrence of all of the following:

- A. Financial Feasibility. Sumida Gardens L.P.’s presentation in a proforma format of the development budget, project funding sources and uses, operating budget and cash flow projections that demonstrate the project’s viability over thirty years and the County’s approval of such budget.
- B. Financial Verification. Written, third – party documentation of commitments for all project financing as presented in a financing plan.
- C. Local Approvals. Documentation of attainment of all necessary local development approvals is required.
- D. Cost Efficiency. The County determines that costs are in amounts customary for the development of the project and reasonable in terms of industry standards. The County must also determine that the projected rates of return are reasonable and the applicant is not receiving excessive profit or windfalls from the Project.

The County reserves the right to stipulate the maximum fee limit for certain professional fees including those of tax credit consultants and architects. Additionally, the County provides specific cost control guidance regarding developer fees. Developer fees for ownership, lot sale type projects, or special

needs projects offering support services will be negotiated on a case-by-case basis.

E. The County and Sumida Gardens L.P. have agreed upon final loan documents.

7. NEGOTIATION OF TERMS OF COUNTY FUNDS

The County will negotiate the terms of the Loan with the understanding that the Loan will be structured so that it will be repaid and the loan funds will be available to fund other affordable housing projects. County will make every effort to recycle affordable housing funds through structuring project loan repayments.

A. Interest Rate. Unless agreed otherwise, the interest on the Loan will be between 3% and 5% depending on project need and other factors. The County may provide lower interest loans to not-for-profit organizations or public agencies when specific project circumstances require.

B. Loan Term. The loan term may be dictated by the specific project financing products; however, permanent financing must range between ten to fifty five years.

C. Maximum Financing Amount.

1. Permanent Financing. Permanent financing will not exceed the amount necessary to fill the financing gap identified in the total development budget substantiated by a documented gap analysis.

D. Affordability Requirements.

1. Term of Affordability. A regulatory agreement restricting the rents of Home Units in the Project, which is consistent with paragraph 2 above, shall be recorded against the Property. Unless the parties agree otherwise, the required term of the affordability covenant or regulatory agreement will be 30 years or longer and may be extended where the per unit subsidy from local funding sources (e.g. affordable housing funds, fee waivers, and the value of other incentives) exceeds \$15,000. The affordability covenant will remain in effect for not less than the agreed upon term regardless of the date upon which the County loan is fully repaid, and regardless of transfer of ownership of the Project.

The covenant will be consistent with the terms set forth in the Rental Restrictive Covenant that was entered into between the Redevelopment Agency of the City of Goleta and Sumida Family L.P.

If additional federal or state funding or incentives are also utilized in the Project, the covenant will be consistent with the terms set forth by that federal or state program.

2. Income Limits. Income limits for HOME Units in the Project shall be established based upon HUD's annual Revised Income Limits for Public Housing and Section 8 Programs and Median Incomes for the Fiscal year for the County of Santa Barbara
3. Determination of Income. Determination of eligible income for HOME Units will be assessed as a gross amount expected to be received and based on the U.S. Department of Housing and Urban Development Section 8 definition of "Annual Income" at 24 CFR part 813. Individual program guidelines adopted independently by the Board of Supervisors (usually applied to land use based programs) may provide for limited exceptions (e.g. incomes of full-time students under the age of 24 claimed as dependents for income tax purposes).
4. Income Targeting. HOME funds are made available to projects or units within projects that target households at or below 50%, 60% and 80% of area median income. The amount of assistance will be based on the degree of affordability proposed by the project.

E. Loan Documents

The Loan will be evidenced by a loan agreement, promissory note, second deed of trust (junior to Sumida Gardens L.P.'s construction and subsequent permanent financing) and regulatory agreement (collectively "Loan Documents"), all in a form which must be approved by the County. The County shall have no liability or obligation under this agreement if the parties are unable to agree on loan documents. County's obligations under this agreement are contingent upon Board of Supervisor approval of the Loan Documents.

8. COMPLIANCE WITH LAWS AND REGULATIONS

The Sumida Gardens L.P. agrees that it shall comply with all the provisions of all local, State and Federal laws and regulations applicable to the Project to be carried out hereunder. Without limiting the generality of the foregoing, Sumida Gardens L.P.:

- A. Shall obtain and maintain, at Sumida Gardens, L.P.'s own expense, any and all licenses and permits necessary to carry out the Project.
- B. Shall incorporate and follow any procedures, practice, rules, indexes and guidelines required by any local, State or Federal laws and regulations.

9. INDEMNIFICATION

In the Loan Documents, Sumida Gardens L.P. shall agree and shall comply with all insurance and indemnification requirements set forth on Exhibit A attached hereto and incorporated by this reference.

10. TERMINATION OF AGREEMENT

16. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof. No modification of this Agreement shall be valid or binding unless executed in writing by each of the parties on or after the date of representation, warranty, promise, statement or information, unless specifically set forth herein.

IN WITNESS WHEREOF, County and Sumida Gardens, L.P. have caused this Agreement to be executed by their respective duly authorized officer:

SUMIDA GARDENS L.P.
a California limited partnership

By: Michael Towbes Construction
& Development, Inc.
Its: General Partner

By: _____
Michael Towbes
President

COUNTY OF SANTA BARBARA
a political subdivision of the
State of California

By: _____
Joseph Centeno
Chairman of the Board of Supervisors

APPROVED AS TO FORM:

DENNIS MARSHALL
COUNTY COUNSEL

By: _____
Mary McMaster
Deputy County Counsel

APPROVED AS TO FORM:

BOB GEIS
AUDITOR CONTROLLER

By: _____
Mark Paul
Specialty Accounting Division Chief

APPROVED AS TO FORM:

RISK MANAGEMENT

By: _____
Ray Aromatorio
Risk Program Administrator

Exhibit A

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS

INDEMNIFICATION

CONTRACTOR shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the COUNTY.

CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

INSURANCE

Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.
2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTORS shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

In the event the CONTRACTOR is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Program Administrator is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

Exhibit B



Third Program Year Action Plan

This document consists of Narrative Responses to specific questions that the Santa Barbara HOME Consortium must respond to in order to be compliant with the Consolidated Planning Regulations.

GENERAL

Executive Summary

The United States Department of Housing and Urban Development (HUD) awards HOME Investment Partnerships (HOME) Program funds annually to entitlement jurisdictions, such as the Santa Barbara HOME Consortium. The Consortium includes the County of Santa Barbara as the lead agency and the six member cities of Buellton, Carpinteria, Goleta, Lompoc, Santa Maria, and Solvang. As a program requirement, entitlement jurisdictions such as the Santa Barbara HOME Consortium are required to annually submit this document called the *Action Plan*. It must be noted here that member cities of Goleta, Lompoc and Santa Maria are also entitlement jurisdictions for the federal Community Development Block Grant (CDBG) program. *As a requirement for the CDBG program, the three cities submit separate Action Plan(s) detailing their CDBG and HOME resources as well.*

The **2007-2008 Action Plan** details the Santa Barbara HOME Consortium's implementation plan for housing projects and other activities anticipated to be carried out using federal HOME funds for the program year 2007-2008. All activities to be undertaken are intended to meet the long-term strategies and priority needs identified in the County's **2006-2010 Consolidated Plan**.

During the Process of the 2006-2010 Consolidated Plan, the Santa Barbara HOME Consortium used a combination of community forums, consultations with area experts on housing/community affairs, and a housing needs assessment based on the CHAS (Comprehensive Housing Affordability Strategy) data to determine housing priorities and strategies. Consequent to these deliberations, the following housing priorities have been established for the upcoming Plan period:





- Rental housing opportunities for large extremely low, very low and low-income families.
- Rental housing opportunities for small, extremely low, very low, and low-income households including units for elderly and special needs households.
- Homeownership opportunities for low-income first time homebuyers.
- Permanent Supportive Housing / Transitional Homes / SROs to address the needs of the homeless and / or special needs clients and the extremely low, very low and low-income individuals and families who are at imminent risk of becoming homeless.

The Santa Barbara HOME Consortium uses several selection criteria relevant to the programs/projects before making a final selection. Each year's HOME allocation is distributed among the Consortium members based on the following formula:

A + B + 2C, where

A = Population
B = Overcrowding
C = Below Poverty

It is noteworthy that while Santa Barbara County is the lead agency for the Consortium, all member cities have total decision making power regarding choice of projects/activities within their respective jurisdiction. For the Santa Barbara HOME Consortium the highlights for the program year 2007-2008 are presented in the following table:

	For the Program Year 2007-08, the Santa Barbara HOME Consortium received a HOME entitlement award of \$1,649,163 . After a set-aside of 10 percent administration and 5 percent program implementation costs, a total of \$1,410,034 will be made available to fund HOME projects in the area.
	For the Program Year 2007-08, a total of \$1,054,945 in Reprogrammed HOME funds will be made available to fund HOME projects in the area.
	For the Program Year 2007-08, the Santa Barbara HOME Consortium received an ADDI (American Dream Downpayment Initiative) allocation of \$27,464 .
	For the Program Year 2007-08, the Santa Barbara HOME Consortium is considering reservation of HOME funds for the following projects: <ul style="list-style-type: none">• Project: Dahlia Court Apartments, City of Carpinteria Sponsor: People's Self-Help Housing Corporation Reserved: \$519,168 (City of Carpinteria HOME funds, Unincorporated County HOME funds) Type: Land Acquisition• Project: Casa De Familia, City of Santa Maria Sponsor: Good Samaritan Shelter, Inc. Reserved: \$778,201 (Unincorporated County HOME funds, City of Santa Maria HOME funds,) Type: New construction of a 16-unit affordable, multifamily apartment complex• Project: Recovery Way Home, City of Lompoc Sponsor: Good Samaritan Shelters, Incorporated Reserved: \$75,000 (Unincorporated County HOME funds) Type: Acquisition and rehabilitation of two existing structures to provide detoxification services and outpatient perinatal treatment• Project: Ted Zenich Gardens, City of Santa Maria Sponsor: Housing Authority of the County of Santa Barbara Reserved: \$350,000 (Unincorporated County HOME funds) Type: Project permanent financing costs• Project: Braddock House, City of Goleta Sponsor: Housing Authority of the County of Santa Barbara Reserved: \$150,000 (City of Goleta HOME funds) Type: New construction of permanent supportive housing project• Project: Transitions Mental Health, City of Lompoc Sponsor: Santa Barbara Housing Assistance Corporation Reserved: \$200,000 (Unincorporated County HOME funds) Type: New construction of supportive housing project
	<ul style="list-style-type: none">• Project: College Park Apartments, City of Lompoc Sponsor: Lompoc Housing and Community Development Corporation

Reserved: \$50,000 (Unincorporated County HOME funds)
Type: CHDO Capacity Building / Technical Assistance activities related to future lease-up and operation of the College Park Apartment project.

- Project: **Casa del Desarrollo**, City of Lompoc
Sponsor: Lompoc Housing and Community Development Corporation
Reserved: \$195,431 (City of Lompoc HOME funds)
Type: Development of a 19-unit Single Room Occupancy complex

- Project: **Tenant Based Rental Assistance Program**, City of Santa
Sponsor: City of Santa Maria
Reserved: \$130,000 (City of Santa Maria HOME funds)
Type: Tenant Based Rental Assistance Program that will provide security deposit loans and a rental subsidy that will be based on renters' income and will decrease each month.



For the Program Year 2007-08, the County's Continuum of Care program was awarded **\$1,365,764** in federal McKinney-Vento Homeless Assistance Funds.



For the Program Year 2007-08, two noteworthy affordable housing projects are currently underway. The Ted Zenich Gardens Apartments are new construction in the City of Santa Maria that will provide 24 affordable rental units; and the College Park apartments are new construction that will provide 35 affordable rental units