



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Housing and Community
Development
Department No.: 055
For Agenda Of: 2/13/07
Placement: Administrative
Estimated Tme: 15 Minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: HCD Director John Torell, ext. 3520
Housing Finance Pat Gabel, ext. 3522
Manager
SUBJECT: Ted Zenich Gardens Apartments Housing Loan Documents, 5th Supervisorial
District

County Counsel Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- A. Consider and approve the Mitigated Negative Declaration prepared by the City of Santa Maria for the Ted Zenich Gardens multifamily affordable housing development [Attachment A].
- B. Approve the commitment of \$1,456,188 in HOME funds for development and financing costs associated with the Ted Zenich Gardens affordable housing project.
- C. Approve and Authorize the Chair of the Board of Supervisors to execute a Loan Agreement in the total amount of \$1,456,188 [Attachment B], Regulatory Agreement [Attachment C], and Subordination Agreement [Attachment G], for development of this project.
- D. Authorize the Director of Housing and Community to execute additional Subordination Agreements for this loan that are consistent with the Loan Agreement.
- E. That the Board of Supervisors approve the attached budget revision [Attachment F], to account for the disbursement of \$1,456,188 to the Ted Zenich construction escrow account.

Summary:

At its January 2, 2007 meeting, Santa Barbara County's HOME Consortium Affordable Housing Loan Committee recommended to staff the reservation of \$1,456,188 in federal HOME funds for development by the Housing Authority of the County of Santa Barbara of the 24-unit Ted Zenich

Gardens affordable housing project located at 1034 East Chapel Street in the City of Santa Maria, 5th Supervisorial District.

Background:

The Ted Zenich Gardens project is a proposed 24-unit multi-family affordable housing rental project located at 1034 East Chapel Street in the City of Santa Maria, 5th Supervisorial District.

The proposal encompasses new construction of 24 multi-family apartment units distributed as follows: Four (4), two- bedroom apartment units, thirteen (13) three-bedroom apartment units, and six (6) four- bedroom apartment units. One additional two-bedroom apartment will be made available for an on-site property manager. Six of the units in the development will be targeted to formerly homeless persons transitioning to permanent housing. A supportive services plan is also incorporated into the project design that places emphasis on self-sufficiency and self-determination. Overall, the apartments will rent at average rates affordable to families at or below 47% of area median income. This translates into estimated gross rents which range between \$371 to \$845 per month, depending on unit size and particular level of affordability attached to each unit.

At its February 2, 2005 public hearing, the City of Santa Maria Planning Commission granted the land use approvals for this project and a draft Mitigated Negative Declaration. A subsequent appeal of the project was heard by the Santa Maria City Council at its March 15, 2005 public meeting, and was denied. Based upon environmental approval by City of Santa Maria staff, county Housing and Community Development Department staff have completed their corollary National Environmental Protection Act (NEPA), requirements pursuant to award for federal HOME funds.

The City of Santa Maria staff has confirmed that Ted Zenich Gardens received its approval of construction documents and is ready to begin the building and permitting process and commence project development activities.

Concerning recent and past County financial support for the project, in the County Consolidated Plan's 2003, 2004 and 2005 Annual Action Plans, funding reservations were allocated to the Ted Zenich Gardens Project. Board action taken today would serve to consolidate and substantially commit past year's funding reservations and direct staff to move forward with the project's associated loan documents.

At the Loan Committee's January 2, 2006 meeting, it approved the following recommendations for subsequent Board Action related to the Ted Zenich project:

Recommend that, A) the Affordable Housing Loan Committee approve a HOME allocation in the amount of \$1,456,188 (\$1,028,821 of which is from City of Santa Maria HOME funds and \$427,367 of which is from Santa Barbara County unincorporated HOME funds), to Ted Zenich Gardens, Limited Partnership, to develop and construct twenty-four (24) units of affordable multi-family housing on a project site located at 1034 East Chapel Street in the City of Santa Maria; and

B) That the allocation of HOME funds is utilized for land acquisition, development/project fees and soft costs, subject to the following terms and conditions.

1. That the HOME loan be in the form of a residual receipts loan at 5% interest per annum, subject to a fifty-five (55) year amortization period.
2. That the HOME loan is subordinate to: i) construction financing and, ii) Bank first mortgage loan.
3. That letters of commitment for, and clarification of all issues related to construction financing, permanent financing (including commitment from LIHTC investor), as well as all information and document requirements as specified in the HOME loan documents, are submitted and approved by the County prior to close of escrow on the \$1,456,188 HOME loan.
4. That the HOME loan will be disbursed at close of escrow on the construction financing.
5. That Ted Zenich Gardens, Limited Partnership, (See attached partnership structure and articulation of roles and responsibilities) is the project sponsor.
6. That an appraisal documenting the value of the constructed project be submitted prior to draw down of funds.

All of these conditions have been incorporated in the loan documents before you.

Performance Measure:

Safe and Healthy Families: Housing for all Segments of the Population.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
Federal HOME Funds			\$1,456,188
Total	\$ -	\$ -	\$ 1,456,188.00

Narrative: The total project budget for the Ted Zenich Gardens affordable housing development is \$9,783,074. As the Lead Agency in the Santa Barbara County HOME Consortium, the County manages and administers the federal entitlement grant on behalf of participating jurisdictions. Therefore, the County HOME commitment of \$1,456,188 to the project represents \$1,028,821 in City of Santa Maria HOME funds and \$427,367 in Santa Barbara County unincorporated HOME funds.

Staffing Impacts:

Legal Positions:

n/a

FTEs:

n/a

Special Instructions:

Execute three (3) original copies of the Loan Agreement and two (2) original copies of the Regulatory Agreement and contact Miriam Gallardo at ext. 3529 to pick up two (2) copies of the Loan Agreement and one (1) copy of the Regulatory Agreement.

Attachments:

Attachment A: Ted Zenich Gardens Mitigated Negative Declaration

Attachment B: Ted Zenich Gardens Loan Agreement

Attachment C: Ted Zenich Gardens Regulatory Agreement

Attachment D: Ted Zenich Gardens Promissory Note

Attachment E: Ted Zenich Gardens Deed of Trust

Attachment F: Budget Revision

Attachment G: Subordination Agreement

Authored by:

Carlos Jimenez, Senior Housing Program Specialist

cc:



**CITY OF SANTA MARIA
INITIAL ENVIRONMENTAL STUDY/MITIGATED NEGATIVE
DECLARATION/STAFF REPORT
January 28, 2005**

TED ZENICH GARDENS, PD-2004-017, E-2004-037
FOR PLANNING COMMISSION MEETING OF FEBRUARY 2, 2005
1034 East Chapel Street

APPLICANT/OWNER: John Polanskey, Executive Director,
Housing Authority of Santa Barbara County
P.O. Box 397
Lompoc, CA 93438

AGENT: Sue Ehrlich
BSB Consulting
399 Poppinga Way
Orcutt, CA 93455

PROPOSED USE: 24 multi-family dwellings

SIZE OF PROPERTY: 1.16 acres

GENERAL PLAN CLASSIFICATION: HDR (High Density Residential)

ZONING CLASSIFICATION: PD/R-3 (Planned Development/High Density Residential)

ASSESSOR'S PARCEL NO.: 121-340-019

PROCEDURE: Planning Commission review of a Planned Development Permit application with a Density Bonus requesting two special considerations as allowed under SMMC 12-48.

LEGAL NOTICES:

Date Environmental Document Distributed	Date Notice Published in Santa Maria Times	Date Notice Posted on Property	Date Notice Mailed to Property Owners within 300 feet of property
December 29, 2004	December 29, 2004	January 21, 2005	January 20, 2005

PROJECT SUMMARY
Ted Zenich Gardens, PD-2004-017. E-2004-037

Site Information

Project Description	24 multi-family dwellings
Location	1034 East Chapel Street
Assessor's Parcel Nos.	121-340-019
General Plan Designation	HDR (High Density Residential)
Zoning	PD/R-3 (Planned Development/High Density Residential)
Size of Site	1.16 acres
Present Use	Vacant
Access	Chapel Street
Surrounding Uses/Zoning	North – Fesler Jr. High School – PF South – Commercial – PD/C-2 East – U.S. 101 – no zoning West – Townhomes East I – PD/R-2
Related files/actions	Townhomes East I – Tract 5121 Housing Element of the General Plan and City Attorney memorandum dated December 17, 2004

Project Details

Parking	Required: 48 parking spaces with one covered parking space per dwelling unit Provided: 43 parking spaces with 23 covered spaces for 24 units ¹
Setbacks	Front Yard: 20' required; 5' for an attached accessory structure and 12'-16' proposed ² for building #1 Side Yard: 10' required; 1.5' for detached carport structures and 5'-8.5' proposed ² for building #5 Rear Yard: 10' required; 2' for an attached accessory structure and 5' for building #4 and 9'-12' proposed ² for building #5

Landscape Area	Required: 10,106 square feet (20 percent of the site area) Provided: 12,630 square feet (25 percent)
Landscaped Open Space (excluding required setback area)	Minimum of 250 square feet per unit (calculations include interior space of community rooms)
Storm Water Retardation	Onsite retardation is required and must comply with City standards
Fencing	Existing 8' high concrete block wall along southern property line (to remain) New 6' high decorative masonry wall to be installed along the west property line New black wrought-iron or equivalent fencing to be installed along the east property line

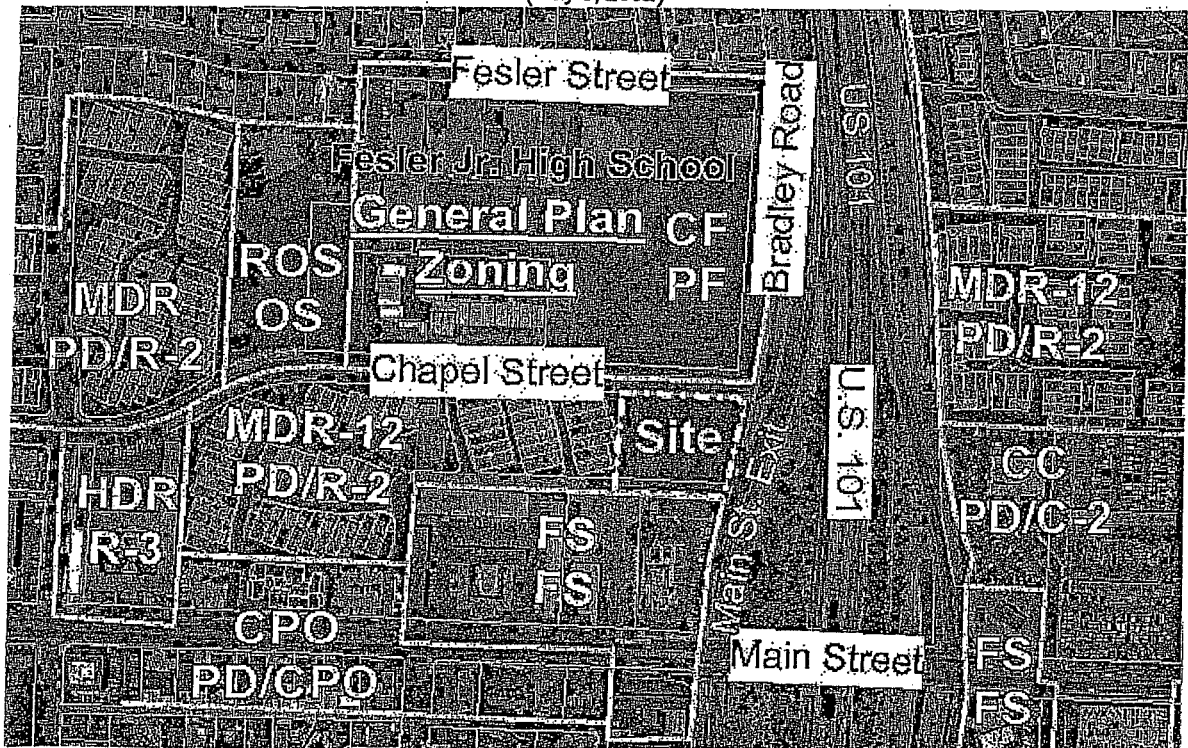
Notes:

1. Parking reductions are a density bonus concession
2. Setback reductions are a density bonus concession

BACKGROUND

The project site is located at the southeast corner of East Chapel Street and North Bradley Road and is shown on the aerial photo, below.

Aerial Photo
(May 9, 2002)



The site was created as part of the Townhomes East subdivision, Tract 5121, which was recorded in 1976. Because Caltrans realigned the southbound Main Street U.S. 101 off-ramp into the Bradley Road right-of-way in the early 1980's, the City abandoned Bradley Road to Caltrans from Chapel Street to Main Street. The private street connection from the Townhomes East project was abandoned and the project site area increased from 1.08 acres to 1.16 acres.

A Senior Citizen Housing overlay, to allow housing at 30 dwelling units per acre, was approved for the site on August 17, 1993 (GP-93-04, Z-93-14). Subsequently, the Centurion Senior Apartments (PD-94-05) project was approved. The project was approved for 35 "senior apartments" in two, two-story structures; it was never built.

The Housing Authority acquired the property in 2002 and submitted the PD Permit application (PD-2004-017) with a General Plan amendment and zone change application (GPZ-2004-003) requesting the removal of the senior housing overlay and approval of the proposed project with a density bonus granting two special considerations by the City.

The Planning Commission considered the General Plan amendment and zone change at a public hearing on September 1, 2004. The public hearing resulted in testimony about existing conditions generally related to parking, crime, vehicle speeds on Chapel Street, and location of carports. Most of the testimony centered around keeping the senior housing designation instead of allowing affordable housing for families. The public hearing was continued to the Commission's November 17, 2004, meeting to allow the staff and applicant to provide additional information about the inventory of senior housing sites in the City, crime and traffic statistics, and for the applicant to meet with the neighbors.

In response to the public testimony made at the September public hearing, the applicant revised the conceptual site plan to increase the amount of parking on the site, reduced one unit from the proposal, and relocated the carports and presented this concept to the Townhomes East I association. The Police Department ran a report, comparing calls for service for the Townhomes East and Evans Park reporting districts, but that report proved to be inconclusive. The Engineering Division looked at traffic counts and reported accidents on Chapel Street and concluded that an additional 16 peak hour trips per day (about one new trip every four minutes during the peak hour period) would not create a hardship because of the current low daily traffic volume on the street.

At the November 17, 2004 the Planning Commission considered the continued General Plan amendment and zone change with revised conceptual site plan and elevations—responding to Planning Commission comments. Public testimony still centered around vehicle speeds on Chapel Street, crime, and safety with most of the people expressing a preference to maintain the Senior Citizen Housing overlay designations. The City Attorney pointed out that on the recommendation of the Planning Commission, the Housing Element was amended by City Council. As applied to the Ted Zenich Gardens project, the adopted Senior Overlay zoning districts violated California Government Code §65008. To obtain State Housing and Community Development Department certification of the Housing Element, the code needs to be amended. Additional discussion focussed on the provision of secondary access and trash/recycling service issues. The Planning Commission directed the applicant to meet with all concerned citizens—not just the adjacent Townhomes East I neighbors—and the GPZ item was continued to the meeting of January 5, 2005.

A community forum between the Housing Authority and the neighbors was held in the Dorothea Nelson Room of the City Library on December 14, 2004. The Housing Authority presented a PowerPoint slide show that compared market-rate rental apartments with the Ted Zenich gardens proposal. Public questions and concerns were raised at the meeting and the Housing Authority staff responded to those concerns and met informally with people who stayed after the formal presentation was finished.

The City Attorney presented the opinion (Exhibit F) that the senior housing overlay zoning districts are unenforceable under State and Federal Fair Housing laws. The January 5, 2005, Planning Commission meeting was cancelled and items that were scheduled for that meeting agenda were rescheduled onto the next regularly scheduled Planning Commission meeting. Based on the legal opinion, staff withdrew the Housing Authority's GPZ application from the Planning Commission agenda on January 19, 2005.

GENERAL AREA DESCRIPTION:

The area to the north of the site is occupied by the Fesler Street School complex and is zoned PF (Public Facilities). The area to the south of the site is occupied by two restaurants that are zoned FS (Freeway Service). A sidewalk, a portion of the old Bradley Road right-of-way, and the U.S. 101 off-ramp occupy the area to the east of the site. The area to the west of the site is occupied by the Townhomes East planned unit development project and is zoned PD/R-2 (Planned Development/Medium Density Residential).

ENVIRONMENTAL SETTING:

The property under review is presently vacant and undeveloped. It is surrounded by urban development. There are several pepper trees located on the east portion of the site and other trees located on the west boundary adjacent to the Townhomes East I subdivision. Various grasses exist on site. However, based on the following sources, no rare, endangered, or threatened plants, animals, or habitats have been identified, or are expected, on the site:

- The fact that the site is an in-fill project with no natural corridors to undeveloped open spaces;
- A field review of the site made by staff in 1994, July and December 2004; and,
- The Resources Management Element of the General Plan does not identify significant habitat areas on this property.

The soil underlying the site is classified as a member of the Sorrento Sandy Loam soil series with zero to two-percent slopes. The permeability is moderately rapid and surface runoff is slow. The hazard of wind erosion is none to slight. The soil information was obtained from the Soil Survey of Northern Santa Barbara Area, California, U.S. Department of Agriculture, July 1972.

PROJECT DESCRIPTION/STAFF ANALYSIS

The Housing Authority of Santa Barbara County is the property owner and applicant. The applicant seeks a Planned Development (PD) Permit approval to construct a 24-unit affordable housing family apartment complex consisting of five 2-bedroom units, 13 3-bedroom units, and six 4-bedroom units (Exhibit A). Except for Building 3, which includes two, two-bedroom flats above the ground-floor community rooms and childcare center, all the buildings are proposed in a mixture of two- and three-story townhouse style apartments. Only this building includes an elevator; it is provided to meet ADA (accessibility) requirements.

The proposed project would provide a 1,130 square foot community room and daycare center that opens onto the central courtyard for the apartment complex. About 61 children under 18 years of age are expected to live in the project and would use the onsite facilities. In addition to the onsite programs, there are various parks and recreation opportunities afforded to the different age groups based on their needs and abilities. About 36 residents would attend public schools in grades K-8; about 11 residents would attend high school.

The applicant responded to public comments about parking by redesigning the site plan (Exhibit B) and the unit floor plans (Exhibit C) to increase the total parking provided on the property to 43 parking spaces for 24 units. This is 90 percent of the City parking standard. The Housing Authority agreed to lease restrict each unit to ownership of one vehicle. The plan proposes that two drive approaches be constructed on Chapel Street. Public service (trash and recycling) and emergency response vehicles would have access through the yard with a paved surface that connects the two parking lanes. The site plan shows 23 covered parking spaces; the applicant stated that these would be assigned to the residents and the project manager would not receive a covered parking space. Nine of the covered spaces would be placed beneath two buildings that are accessed off the west driveway. Along with 13 carport spaces that would be along the U.S. 101 side of the property, one handicap accessible covered parking space would be accessed from the east driveway.

Of the 19 uncovered parking spaces on the site, 18 would be for guest parking and require a guest parking permit from the Housing Authority's project manager; one uncovered parking space would be reserved for the resident manager of the property.

A six-foot high boundary wall is proposed along the west property line, which is shared with Townhomes East I. The site plan shows no carport structures along the proposed wall. The applicant is working with the Townhomes East I, association to discuss decorative wall and landscape treatments that would enhance the open areas between the two developments.

The landscape treatment includes trees to soften the scale of the buildings. Exhibit E shows that trees are used to shade the parking area and screen the site from the highway and commercial areas to the east and south. The concept plan shows that 25 percent of the site will be landscaped, which exceeds the 20 percent code requirement. The landscape theme incorporates native and drought tolerant species that also add color and texture.

The central courtyard would be landscaped with turf, trees, and shrubs. A fenced childcare play area is incorporated into the community room benches and seating area are shown on the

courtyard adjacent to Building #2. Each unit includes a semi-private 36 square foot porch overlooking the adjacent landscaped areas.

The project provides 9,013 square feet of landscaped open space plus 1,130 gross square feet in the community/daycare room. The project landscaping is sufficient to meet the minimum requirements of 250 square feet per unit, which requires at least 6,000 square feet of landscaped open space (exclusive of required setback areas) to be provided.

The proposed project includes a Density Bonus with two incentives requested.

1. The applicant requests a reduction for onsite parking from 2.0 spaces to 1.8 spaces per unit and 23 covered parking spaces – one less than required by code.
2. The applicant requests that all setbacks be reduced from the requirements in the zoning regulations to allow parts of the buildings to protrude within the established setback areas. In the front yard, the setback would be reduced from 20 feet to 5 feet for a single-story porch. The site plan identifies ground floor deck walls facing Chapel Street with supporting poles for a second floor balcony decks about five feet from the Chapel Street property line. The apartment building would be 12 feet from the property line. On the eastside yard, the setback would be reduced from 10 feet to 1.5 feet for the carport structures and 5 feet for a portion of the southeastern building. The rear yard setback is requested to be reduced from 10 feet to 5 feet for the southwestern building. The western end of the southeastern building is requested to be reduced from 10 feet to 9 feet and the single-story porch roof is requested to be reduced from 10 feet to 2 feet.

Staff recommends the project approval with the density bonus concessions for the following reasons.

1. The Housing Authority is a chartered non-profit corporation that has the legal ability to set and enforce rules, regulations, restrictions, and conditions associated with the proposed project.
2. The Housing Authority may be held accountable for reports about any violations of the development agreement with the City of Santa Maria.
3. The project will include an on-site (resident) manager to report to the Housing Authority and the City any problems related to the enforcement of these conditions of approval.
4. The requested setback reductions occur along the three non-residential frontages of the site and do not adversely effect the public health, safety, and welfare of present of future residents living in the vicinity of the proposed project.

Color and material samples have not been provided. Unless delegated to the Zoning Administrator, Planning Commission review and approval of the colors and materials would be required prior to issuance of a building permit. Building Elevations (Exhibit D) show that

be required prior to issuance of a building permit. Building Elevations (Exhibit D) show that the buildings present a Santa Barbara Mission architectural style that blends well within the project setting.

The North Elevation (Chapel Street) shows Building #1. Every other unit of the eight townhouse units in Building #1 include front doors that open onto Chapel Street; these units include covered porches with heavy timbers and Spanish tile roofs. The alternating four units are reversed images that include porch/patio areas along the interior courtyard of the project. The units include doors from each end of the unit. The back doors receive lesser overhanging timber treatments that define the lower hierarchy of this entrance.

The units are off-set from each other and provide variation and depth along the horizontal and vertical planes. The windows include a wide variety of styles that apply the appearance of muntins (or glazing bars) that are often found in older buildings in this style of architecture. Colors are used to distinguish units in the same building. The third floor bedroom windows include a recessed tile reveal below the window casing; the elevations appear to repeat this feature below the ground floor windows and include a run of tile around the back door jamb.

The west face elevation shows a similar treatment of buildings 1, 2, and 4, which would be seen by the adjacent neighbors living in the Townhomes East #1 properties. Although the three story buildings are 32 feet high, they are below the maximum (35') height allowed in the R-3 zoning district. These buildings would be set back at least 47 feet from the property line. No second and third level porches or balconies would overlook the adjacent Townhomes East #1 neighbors. A six-foot high architecturally treated masonry wall would be constructed on the property line to further ensure the privacy and security of the existing residents along the west property line. Covered parking occurs beneath Buildings #2 and #4; all parking spaces adjacent to the west property line would be uncovered guest parking; all over-night parking would require a special permit to be assigned by the property manager or the project manager shall cause the vehicle to be towed after 24 hours.

The south facing elevation shows the south sides of Buildings #4 and #5. Building #4 has two, two-bedroom townhouse units above ground level parking; view of the parking level would be obstructed from view by the existing 8-foot high block wall along the southern property line. One second-level balcony overlooks the wall, but the building design preserves the Townhomes East #1 residents privacy from the second level balconies of this building. With the rear yard building setback reduction, the plan shows that five feet of Building #4 encroaches into the setback.

Except for an attached exterior stairwell along the east face, Building #5 looks very similar to Building #1. With the rear yard building setback reduction, the plan shows that one foot of a portion of Building #5 encroaches into the setback. The setback reduction also allows the attached patio cover to be built within two-feet of the existing 8-foot high concrete block wall.

The east elevation faces U.S. 101 and the southbound Main Street highway off-ramp. With the realignment of the Main Street off-ramp in the 1980's, the City abandoned Bradley Road from Chapel Street to Main Street, but maintains the existing sidewalk located between the off-ramp and the project property. Treatment of the perimeter fencing along this property line is recommended to match the black wrought iron style fencing to the south of the site

and extend at least to the carport structure. Staff is not recommending installation of access gates, but the recommended conditions do not preclude the applicant from providing direct access, through this fence, from the property to the sidewalk.

Buildings #1 and #5 present side elevations to the highway. Building #3 shows the structural rear elevation to US 101. At the closest point to the Main Street off-ramp, Buildings #1 and #3 are about 50 feet from the ramp; Building #5 is physically about 20 feet from the Main Street off-ramp at the closest point. All three buildings include a Santa Maria City logo attached to the buildings. The elevations show two, 2' x 2' (each, four square feet) logos and one 3' x 3' (nine square feet) logo at different heights, varying between 12 and 15 feet. Staff recognizes that field decisions may need to make adjustments to the precise size and location and makes no recommendation about the uniformity of size or height of these building adornments.

Building #3 includes three 4' x 4' tile murals depicting the same images installed on the reconstructed highway bridges over US 101 at Donovan Road and Stowell Road. The logos are recommended to be permanently integrated into the buildings using colors and materials similar to the ornamentation affixed to the highway bridges at Donovan Road and Stowell Road.

PROJECT REVIEW:

The environmental impacts associated with the development of the site were determined using the City of Santa Maria Staff Project Environmental Checklist (attached), on-site inspections, photographs, aerial photographs, information provided by the applicant, an acoustic analysis dated June 7, 2004, a computer impact assessment, and public hearings and community meetings.

The above sources identified potentially significant adverse environmental impacts in the area of noise.

Based on the above sources, no potentially significant impacts are associated with aesthetics, agricultural resources, air quality, biological resources, cultural resources, energy, geology/soils, hazards/hazardous materials, human health and safety, hydrology/water, land use/planning, mineral resources, population and housing, public services, recreation, traffic/circulation, or utilities and service systems.

Except as noted, the data shown in the Impact Summary Table is based on the methodology set forth in Volume 2 of the City of Santa Maria's Project Assessment Manual, and information provided by the applicant.

IMPACT SUMMARY TABLE

Size of Site	1.16 acres
Size of Buildings (1)	24 Multiple-family Units 5 – 2-bedroom units 13 – 3-bedroom townhouse units 6 – 4-bedroom townhouse units Community/Daycare Building 2,304 gross square feet
Water (2)	14.24 acre-feet/year (Worst Case)
Sewage Generation (2)	8,906 gallons/day (Worst Case)
Average Daily Traffic (3)	161 trips per day
P.M. Peak Hour Trips (3)	16 peak hour trips per day
Mobile Source Emissions: (4)	
Reactive Hydrocarbons:	9.0 pounds per day.
Nitrogen Oxides:	11.8 pounds per day.

Notes:

- (1) Information submitted by project applicant.
- (2) Project Assessment Model (2002-04)
- (3) ITE 6th Edition, Trip Generation Rates for Apartments (ITE Use # 220)
- (4) "Urbemis 2002, Air Quality Model, worst case scenario (unmitigated)

The following discussion of the potential adverse environmental impacts incorporates mitigation measures which would reduce all identified impacts to a level of insignificance, and are recommended to be included in the conditions of approval for the project.

If the decision-makers wish to delete a mitigation measure, which is proposed to mitigate a significant impact, an alternative mitigation measure should be agreed to by the applicant and made a part of this study. Verification that these mitigation measures have been implemented will be monitored as described in Section 8 of the City of Santa Maria's Environmental Procedures. The mitigation-monitoring checklist is attached.

NOISE IMPACTS:

The adjacent highway and off ramp would expose persons to noise levels that exceed the indoor and outdoor standards of the City. The noise impacts to future project residents were addressed in a project Noise Analysis and Mitigation Recommendations, dated June 7, 2004, which is incorporated herein by reference and is on file with the Community Development Department. The study, prepared by David Lord, PH.D., Acoustics and Noise Consulting, found that the sound levels at the east side of the proposed dwellings do not exceed the maximum allowable noise exposure level and that mitigation is not required for outdoor activity areas and for first floor construction. Because the off-ramp traffic is decelerating, which generates much less noise than accelerating traffic, and the majority of the US 101 southbound traffic is both higher in elevation and much further away from the ground level,

ground level noise mitigation measures are not needed. With Building #5 physically about 20 feet from the Main Street off-ramp at the closest point, second and third level noise mitigation measures are required.

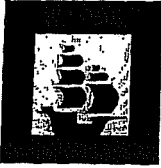
Above the first floor, however, noise resistant construction is recommended only on the east side of the dwelling units. The mitigation measures identified would offer a safety factor that enhances noise reduction along the east side of the residential units. These mitigation measures are contained in the recommended conditions of the PD Permit.

The following mitigation measures would reduce all noise impacts to a level of insignificance:

1. Vents and Roof Penetrations. Soffit vents, eave vents, dormer vents and other wall and roof penetrations shall be located on the walls and roofs facing away from the noise source. If soffit or eave or dormer vents or doors or windows or skylights or other roof or wall penetrations face toward the transportation noise source, they shall be acoustically rated and designed to have an S.T.C. rating of 30 or greater.
2. Walls. The dwelling units nearest the noise source shall have wall construction with an S.T.C. (Sound Transmission Class) rating of 30 or greater.
3. Walls. Common acoustic leaks in wall construction, such as electrical outlets, pipes, vents, ducts, flues and other breaks in the integrity of the wall, ceiling or roof construction on the side of the dwellings nearest transportation noise source shall receive special attention during construction. All construction openings and joints on the walls on the noise facing side of the site shall be insulated, sealed and caulked with resilient, non-hardening caulking material. All such openings and joints shall be airtight to maintain sound isolation.
4. Windows. To meet and exceed the interior CNEL 45 DBA requirements, windows facing the noise source shall be of double-glazed construction with one light of laminated glass, and installed in accordance with the recommendations of the manufacturer. The windows shall be a fully gasketed assembly, with an overall S.T.C. rating of 28 or better, as determined in testing by an accredited acoustical laboratory. Windows may be operable, but if the user decides to shut the window, an alternate means of ventilation shall be provided.
5. Doors. To meet the interior CNEL 45 DBA requirements, exterior doors facing the noise source shall be fully gasketed and sealed assembly, with an overall S.T.C. rating of 28 or better, as determined in testing by an accredited acoustical laboratory.

ENVIRONMENTAL RECOMMENDATION:

Based upon the information available at the time of the preparation of this report and without benefit of additional information which may come to light at the public hearing, the Environmental Officer recommends that a negative declaration be filed for PD-2004-017 based upon information contained in E-2004-037.



PREPARED BY:

City of Santa Maria
Community Development Department
110 South Pine Street, #101
Santa Maria, CA 93458

B. Shypsey
Environmental Analyst

JANUARY 27, 2005
Date

for Mark R. [Signature]
Environmental Officer

1-27-05
Date

STAFF RECOMMENDATION

Based on the facts available at the time of writing this report and without benefit of additional information, which may be discussed at the meeting, staff recommends approval in accordance with the preliminary draft of the Planned Development Permit.

B. Shypsey
Project Planner

JANUARY 27, 2005
Date

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Attachment B

**LOAN AGREEMENT
(\$1,456,188)**

Between

County of Santa Barbara

and

Ted Zenich Gardens, LP

TABLE OF CONTENTS

	Page
RECITALS	1
ARTICLE 1 DEFINITIONS	2
1.1 "ANNUAL FINANCIAL STATEMENT"	2
1.2 "ASSISTED UNIT"	2
1.3 "BORROWER"	2
1.4 "BUDGET"	2
1.5 "COUNTY"	2
1.6 "DEED OF TRUST"	2
1.7 "ESCROW HOLDER"	2
1.8 "HAZARDOUS MATERIALS"	2
1.9 "HOME FUNDS"	3
1.10 "HUD"	3
1.11 "IMPROVEMENTS"	3
1.12 "INSURANCE REQUIREMENTS"	3
1.13 "LENDER"	3
1.14 "LOAN"	3
1.15 "LOAN AGREEMENT"	3
1.16 "LOAN DOCUMENTS"	3
1.17 "MANAGEMENT PLAN"	3
1.18 "MARKETING PLAN"	3
1.19 "MEDIAN INCOME"	3
1.20 "NOTE"	3
1.21 "NOTICE OF COMPLETION"	4
1.22 "OPERATING EXPENSES"	4
1.23 "PAYMENT DATE"	4
1.24 "PROJECT"	4
1.25 "PROPERTY"	4
1.26 "QUALIFYING HOUSEHOLD"	4
1.27 "QUALIFYING RENT"	4
1.28 "REGULATORY AGREEMENT"	4
1.29 "RESIDUAL RECEIPTS"	4
1.30 "REVENUE"	5
1.31 "SCOPE OF WORK"	5
1.32 "VERY LOW INCOME HOUSEHOLD"	5
ARTICLE 2 TERMS OF THE LOAN	5
2.1 LOAN	5
2.2 AMOUNT	5
2.3 INTEREST	5
2.4 DEFAULT INTEREST	5
2.5 TERM OF LOAN	5
2.6 HOME PROGRAM FUNDS	5
2.7 USE OF FUNDS	5

TABLE OF CONTENTS
(continued)

	Page
2.8 SECURITY.....	6
2.9 REPAYMENT OF THE LOAN.....	6
2.10 PREPAYMENT OF LOAN	6
2.11 OPERATING AND REPLACEMENT RESERVE FUND	6
2.12 RECORDING.....	7
ARTICLE 3 LOAN DISBURSEMENT	7
3.1 CONDITIONS PRECEDENT TO DISBURSEMENT	7
3.2 DISBURSEMENT OF LOAN PROCEEDS	8
3.3 AMOUNT OF DISBURSEMENT	8
ARTICLE 4 DEVELOPMENT OF PROJECT	8
4.1 SCOPE OF WORK	8
4.2 COMMENCEMENT OF PROJECT.....	8
4.3 COMPLETION OF PROJECT	8
4.4 FINANCING	8
4.5 CONTRACTS AND SUBCONTRACTS	9
4.6 ADDITIONS OR CHANGES IN WORK.....	9
4.7 INSPECTIONS.....	9
4.8 SITE SUPERVISION	9
4.9 CONSTRUCTION RESPONSIBILITIES.....	9
4.10 BARRIERS TO THE DISABLED	9
4.11 LEAD-BASED PAINT AND ASBESTOS REMOVAL	9
4.12 QUALITY OF WORK	10
4.13 MECHANICS LIENS AND STOP NOTICES	10
4.14 COMPLIANCE WITH HOME PROGRAM REQUIREMENTS.....	10
4.15 RELOCATION.....	11
4.16 UNAVOIDABLE DELAY IN PERFORMANCE	11
ARTICLE 5 OPERATION	12
5.1 OPERATION OF PROJECT	12
5.2 ASSISTED UNITS	12
5.3 MARKETING PLAN	12
5.4 MANAGEMENT PLAN.....	12
5.5 LEASING THE PROJECT.....	12
5.6 TENANT SELECTION.....	13
5.7 INCOME CERTIFICATION.....	13
5.8 AFFORDABILITY RESTRICTIONS	13
5.9 ASSISTED UNIT RENTS	13
5.10 MAXIMUM RENTAL CHARGES	13
5.11 CONFLICTS BETWEEN COVENANTS OR RESTRICTIONS AFFECTING THE PROPERTY	14

5.12	NONDISCRIMINATION	14
5.13	RECORDS	14
5.14	AUDITS	14
5.15	ENCUMBRANCE OF PROPERTY	14
5.16	TRANSFER OF PROPERTY.....	15
5.17	FEES, TAXES, AND OTHER LEVIES.....	15
5.18	DAMAGE TO PROPERTY	15
5.19	EQUAL EMPLOYMENT OPPORTUNITY	15
ARTICLE 6 INDEMNITY AND INSURANCE		15
6.1	INDEMNITY AND INSURANCE	15
6.2	NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS	16
ARTICLE 7 HAZARDOUS MATERIALS		16
7.1	REPRESENTATIONS AND WARRANTIES.....	16
7.2	NOTIFICATION TO LENDER	16
7.3	USE AND OPERATION OF PROPERTY	16
7.4	REMEDIAL ACTIONS.....	16
7.5	RIGHT OF CONTEST	17
7.6	ENVIRONMENTAL INDEMNITY	17
ARTICLE 8 DEFAULT AND REMEDIES		17
8.1	EVENTS OF DEFAULT	17
8.2	NOTICE OF DEFAULT AND OPPORTUNITY TO CURE.....	18
8.3	LENDER'S REMEDIES.....	19
ARTICLE 9 GENERAL PROVISIONS		20
9.1	BORROWER'S WARRANTIES.....	20
9.2	MONITORING AND EVALUATION	20
9.3	CONFLICTS OF INTEREST	21
9.4	POLITICAL ACTIVITY	21
9.5	PUBLICITY.....	21
9.6	TERM OF THIS AGREEMENT	21
9.7	GOVERNING LAW.....	21
9.8	STATUTORY REFERENCES.....	21
9.9	TIME	21
9.10	CONSENTS AND APPROVALS.....	22
9.11	NOTICES, DEMANDS AND COMMUNICATIONS	22
9.12	BINDING UPON SUCCESSORS.....	22
9.13	RELATIONSHIP OF PARTIES.....	22
9.14	ASSIGNMENT AND ASSUMPTION.....	22
9.15	WAIVER.....	23
9.16	INTEGRATION	23
9.17	OTHER AGREEMENTS	23
9.18	AMENDMENTS AND MODIFICATIONS	23
9.19	SEVERABILITY	23

Exhibit A	Legal Description
Exhibit B	Project Budget
Exhibit C	Deed of Trust
Exhibit D	Promissory Note
Exhibit E	Insurance Requirements
Exhibit F	Regulatory Agreement
Exhibit G	Project Scope of Work
Exhibit H	Management Plan
Exhibit I	Marketing Plan
Exhibit J	Supportive Services Plan

**LOAN AGREEMENT
(TED ZENICH GARDENS APARTMENTS)**

This Loan Agreement is made as of this 31st day of January, 2007, by and between the County of Santa Barbara, a political subdivision of the State of California (hereinafter referred to as the "Lender"), and Ted Zenich Gardens, L.P., a California limited partnership, (hereinafter referred to as the "Borrower").

RECITALS

A. Lender wishes to promote the development of more affordable rental housing in neighborhoods in need of revitalization Santa Barbara County and to provide a greater choice of housing opportunities for persons and families with low incomes.

B. Borrower has acquired a property in order to construct twenty-four units of multi-family affordable housing. The property is located at 1034 East Chapel Street in the City of Santa Maria, which is located in Santa Barbara County, California, as more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property").

C. Lender 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.

D. Borrower wishes to borrow from Lender and Lender wishes to extend to Borrower a loan in the amount of One Million Four Hundred Fifty-Six Thousand One Hundred Eighty-Eight Dollars (\$1,456,188) to pay for certain land acquisition and development costs (the "Loan"). The terms of the Loan are set out in this Loan Agreement.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the Loan, Borrower and Lender hereby agree as follows:

ARTICLE 1 DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.

1.1 **"ANNUAL FINANCIAL STATEMENT"** means the financial statement of Operating Expenses and Revenues, prepared at Borrower's expense, by an independent certified accountant reasonably acceptable to Lender, which shall form the basis for determining the Residual Receipts.

1.2 **"ASSISTED UNIT"** means any of the eleven (11) housing units on the Property which are supported by HOME Funds.

1.3 **"BORROWER"** is Ted Zenich Gardens, L.P., a California limited partnership and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

1.4 **"BUDGET"** means that budget for acquisition of the Property and certain development costs of the Project attached as Exhibit B, which is hereby incorporated into this Loan Agreement by this reference and which identifies the eligible items on which Loan proceeds may be spent.

1.5 **"COUNTY"** means the County of Santa Barbara, political subdivision of the State of California.

1.6 **"DEED OF TRUST"** is that deed of trust, assignment of rents, and security agreement placed on the Property and the improvements to be constructed thereon as security for the Loan by Borrower as trustor with Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust, attached hereto as Exhibit C. The terms of the Deed of Trust have been incorporated into this Loan Agreement.

1.7 **"ESCROW HOLDER"** means the person or entity designated by the Borrower and approved by Lender to hold all Loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.8 **"HAZARDOUS MATERIALS"** means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards at the time of such use.

1.9 **"HOME FUNDS"** means funds provided by the Lender from the HOME Investment Partnership Program, as stated in 42 U.S.C. Sections 12701, et seq., 24 C.F.R. Part 92.

1.10 **"HUD"** means the United States Department of Housing and Urban Development.

1.11 **"IMPROVEMENTS"** means any improvements and development of the Property.

1.12 **"INSURANCE REQUIREMENTS"** means the insurance coverage which must be in full force and effect during the construction work and during the term of the Regulatory Agreement, as specified in Exhibit E.

1.13 **"LENDER"** means the County of Santa Barbara, political subdivision of the State of California and its authorized representatives, officers, officials, directors, employees, and agents.

1.14 **"LOAN"** means the loan of funds in the amount of One Million Four Hundred Fifty-Six Thousand One Hundred Eighty-Eight Dollars (\$1,456,188) from the Lender to the Borrower as provided in this Loan Agreement to finance the acquisition of the Property and certain development and costs of the Project.

1.15 **"LOAN AGREEMENT"** means this loan agreement entered into between Lender and Borrower.

1.16 **"LOAN DOCUMENTS"** are collectively the Loan Agreement, the Note, the Deed of Trust, and the Regulatory Agreement, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.17 **"MANAGEMENT PLAN"** means Borrower's plan for the operation of the Project and is attached hereto as Exhibit H and incorporated by reference.

1.18 **"MARKETING PLAN"** means the Borrower's plan for affirmatively market the Project according to HUD guidance and is attached as Exhibit I and incorporated by reference.

1.19 **"MEDIAN INCOME"** means the median income for SantaBarbara/SantaMaria/Lompoc Primary Metropolitan Statistical Area as determined by HUD with adjustments for household size.

1.20 **"NOTE"** means the promissory note executed by the Borrower in favor of Lender in the amount of One Million Four Hundred Fifty-Six Thousand One Hundred Eighty-Eight Dollars (\$1,456,188) to evidence the Loan as well as any amendments to, modifications of, or restatements of said promissory note, substantially in the form attached hereto as Exhibit D.

1.21 "**NOTICE OF COMPLETION**" shall mean the notice that shall be filed by the Borrower with the Santa Barbara County Recorder at completion of construction. Borrower shall not unreasonably delay filing the Notice of Completion.

1.22 "**OPERATING EXPENSES**" shall mean, actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance, and management of the Project, including without limitation painting, cleaning, repairs and alterations, landscaping, utilities, rubbish removal, certificates, permits and licenses, sewer charges, real and personal property taxes and assessments, insurance, security, advertising, promotion and publicity, office, janitorial, cleaning and building supplies, lease payments if any, cash deposited into reserves for capital replacements with respect to the Project in an amount not to exceed reserve requirements reasonably imposed by any lender, cash deposited into an operating reserve in an amount not to exceed the amount reasonably required by any lender, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of accountants, attorneys, consultants and other professionals, and any required debt service under senior loans. Operating Expenses may include the payment to Borrower of a reasonable partnership management fee and a reasonable asset management fee. Operating Expenses may also include a deferred developer fee so long as the total amount of developer fees over the life of the project does not exceed One Million Two Hundred Fifty Thousand Dollars (\$1,250,000). The Operating Expenses shall be reported in the Annual Financial Statement.

1.23 "**PAYMENT DATE**" shall mean April 1, 2009 for the first payment and April 1st for each year thereafter until the loan is paid in full or otherwise terminated.

1.24 "**PROJECT**" means the development of the Property according to the terms of this Loan Agreement.

1.25 "**PROPERTY**" is located at 1034 East Chapel Street, in the City of Santa Maria, which is located in Santa Barbara County, California, as more particularly described in Exhibit A, which is incorporated into this Loan Agreement by this reference.

1.26 "**QUALIFYING HOUSEHOLD**" means a household that qualifies as a Low Income Household or Very Low Income Household.

1.27 "**QUALIFYING RENT**" means the total annual charges for rent, utilities, and related services to each Very Low Income Household which shall not exceed thirty percent (30%) of fifty percent (50%) of Median Income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD with adjustments for household size.

1.28 "**REGULATORY AGREEMENT**" means the regulatory agreement executed by Borrower and Lender, attached as Exhibit F, and recorded against the Property prior to or contemporaneously with the Loan which regulates the use of all units in the Project.

1.29 "**RESIDUAL RECEIPTS**" means for any calendar year Revenues reduced by Operating Expenses.

1.30 **"REVENUE"** means all income derived from the Project, including but not limited to rent from the units and income from laundry operations.

1.31 **"SCOPE OF WORK"** means the work items directly related to certain development costs of the Project approved by Lender as well as any change orders approved by Lender; as set forth in Exhibit G.

1.32 **"VERY LOW INCOME HOUSEHOLD"** means a household whose annual income does not exceed fifty percent (50%) of the median income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD with adjustments for household size.

ARTICLE 2 TERMS OF THE LOAN

2.1 **LOAN.** On and subject to the terms and conditions of the Loan Documents, Lender agrees to make and Borrower agrees to accept a loan with the following terms:

2.2 **AMOUNT.** The principal amount of the Loan shall be an amount not to exceed One Million Four Hundred Fifty-Six Thousand One Hundred Eighty-Eight Dollars (\$1,456,188) and shall be evidenced by the Note.

2.3 **INTEREST.** Subject to the provisions of Section 2.4, the Note shall bear interest at a rate of five percent (5%) from the date on which the principal amount of the Loan is initially advanced to Borrower through the fifty-five year amortizing loan term.

2.4 **DEFAULT INTEREST.** In the event of a default by Borrower of any of its obligations under this Loan Agreement and expiration of applicable cure periods, Borrower shall pay to Lender interest on the outstanding principal of the Loan, at an annual rate equal to the lesser of (i) ten percent (10%) or (ii) the highest interest allowed by law, from the date of the default until the date that the default is cured or the Loan is repaid in full.

2.5 **TERM OF LOAN.** The principal of the Loan shall be due and payable on the earlier of: (a) fifty-five (55) years from the date of the Note, or (b) the date the Property is sold. In the Event of Default by Borrower, which has not been cured as provided for in this Loan Agreement, all current and accrued interest shall be due and payable.

2.6 **HOME PROGRAM FUNDS.** Any and all repayment or prepayment of Loan is paid to Home Program Fund and will be invested in future projects in accordance with Federal Rules and Regulations regarding the HOME Program.

2.7 **USE OF FUNDS.** Loan proceeds shall be used only for those certain Property acquisition and Project development costs as specified in the Budget.

2.8 **SECURITY.** Borrower shall secure its obligation to repay the Loan by executing a Deed of Trust, in substantially the form attached hereto as Exhibit C and recording it as a lien against the Property.

2.9 **REPAYMENT OF THE LOAN.** Borrower shall make annual payments on the Loan from Residual Receipts. On or before each Payment Date the Borrower shall submit its Annual Financial Statement to Lender for the preceding calendar year together with an amount equal one hundred percent (100%) of the Residual Receipts for the preceding calendar year. Lender shall review and approve such statement, or request revisions, within sixty (60) days after receipt. In the event Lender fails to approve or disapprove the Annual Financial Statement within the sixty (60) day period, Borrower may request a written determination of approval or disapproval following the expiration of such period. In the event Lender fails to provide a written determination to Borrower within ten (10) days following the receipt of Borrower's request for determination, the Annual Financial Statement shall be deemed approved. In the event that Lender determines that there is an understatement in the amount and payment of Residual Receipts due to Lender, Borrower shall promptly pay to Lender such understatement, but in any event, within twenty (20) days of notice of such understatement. In the event that Lender determines that there is an overpayment in the amount and payment of Residual Receipts due to Lender, Lender shall promptly pay to Borrower the amount of overpayment, but in any event, within twenty (20) days of such determination. If contested, Borrower has the right to pay under protest. Any payments made by Borrower pursuant to this Section shall be applied first to pay current annual interest due, if any, then the cumulative interest owed, if any, then to reduce the principal amount of the Loan. In any event all principal owed and all current and accrued interest of the Loan shall be due and payable as provided in Section 2.5 above.

Once the amount of Residual Receipts has been finally determined as set forth above, the Lender shall deposit all funds received under this Agreement in conformity with its HOME Consortium Agreement.

2.10 **PREPAYMENT OF LOAN.** No prepayment penalty will be charged to Borrower for payment of all or any portion of the Loan amount prior to the end of the term described herein. However, prepayment of the Loan shall not affect Borrower's obligations under the Regulatory Agreement.

2.11 **OPERATING BUDGET.** Thirty (30) days prior to end of the calendar year, Borrower shall submit to Lender, for Lender's approval, a proposed operating budget for the Property, for the following calendar year. The proposed operating budget shall include scheduled payments to be made into operating and replacement reserve accounts in amounts to be approved by Lender in its reasonable discretion. If the amount of the proposed budget for the following calendar year does not exceed the budget for the prior calendar year by greater than five percent (5%) (or any one line item has not increased by greater than ten percent (10%)), the proposed budget shall be approved by Lender. Only Operating Expenses incurred by Borrower which do not exceed one hundred twenty percent (120%) of the amount approved by Lender in the approved operating budget may be used in the calculation of Residual Receipts without Lender's prior written consent which consent shall not be unreasonably withheld or conditioned.

2.12 **RECORDING.** Upon closing date, Escrow Holder shall record the Deed of Trust and the Regulatory Agreement with the Recorder for the County of Santa Barbara, and shall deliver conformed copies of the recorded documents to the Lender and Borrower.

ARTICLE 3 LOAN DISBURSEMENTS

3.1 **CONDITIONS PRECEDENT TO DISBURSEMENT.** Lender shall not be obligated to make any disbursements of the Loan proceeds or take any other action under the Loan Documents unless the following conditions precedent are satisfied prior to the disbursement of the Loan:

A. There exists no Event of Default nor any act, failure, omission or condition that with the giving of notice or passage of time would constitute an Event of Default;

B. Borrower has executed and delivered to Lender all documents, instruments, and policies required under the Loan Documents, including but not limited to an ALTA Lender's policy of title insurance from a title insurance company approved by the Lender in a form reasonably acceptable to Lender which demonstrates that only loans that the Loan shall be subordinate to are a loan for construction financing in an amount not to exceed Three Million Five Hundred Thousand Dollars (\$3,500,000) and, upon completion of construction, a long term loan not to exceed One Million Three Hundred Fifty Thousand Dollars (\$1,350,000);

C. Borrower has submitted and the Lender has approved an appraisal for the Property as constructed;

D. Concurrently with the disbursement, Borrower shall acquire a fee interest in the Property;

E. Borrower has provided to Lender a certificate of insurance or copy of the insurance policy, which policy shall be satisfactory to the Lender and which conforms to Exhibit E;

F. Lender has reviewed and approved the Management Plan. Lender has approved the Management Plan attached hereto as Exhibit H. Any requested changes to the Management Plan shall be submitted to Lender in writing which approval shall not be unreasonably withheld or conditioned;

G. Borrower has complied with all reporting requirements set forth in this Loan Agreement;

H. Lender has reviewed and approved the Scope of Work and Project development and construction schedule;

I. Lender has reviewed and approved subcontractor contract language; and

J. The undisbursed Loan proceeds together with other financing commitments for the Project are not less than the amount which the Lender reasonably determines is necessary to complete the development of the Project in accordance with the Scope of Work;

K. Borrower has provided and Lender has approved letters of commitment for long-term financing demonstrating to Lender's reasonable satisfaction that Borrower has adequate financing to develop and to operate and maintain the Project.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds shall not exceed One Million Four Hundred Fifty-Six Thousand One Hundred Eighty-Eight Dollars (\$1,456,188). Lender must approve all requests for payment prior to disbursement of Loan proceeds for payment of land acquisition and development costs incurred on the Project. As a special disbursement condition, Lender shall holdback One Thousand Dollars (\$1,000) of HOME Funds for general development costs until 30 days after Borrower has completed the Project and any and all liens against the Property are released. All HOME Funds shall be used exclusively for property acquisition costs and such certain development costs as are specified in the Sources and Uses identified in the Budget attached hereto as Exhibit B and incorporated herein by this reference.

3.3 AMOUNT OF DISBURSEMENT. Loan proceeds shall be disbursed up to the amount of the Loan shown in the Budget and only for Lender approved items. Changes in individual items comprising the Budget shall require the prior consent of Lender which consent shall not be unreasonably withheld. However, Lender's obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above this amount necessary for the completion of the Project shall be the sole responsibility of Borrower.

ARTICLE 4 DEVELOPMENT OF PROJECT

4.1 SCOPE OF WORK. Before commencement of any development and construction of the Project site, Borrower shall submit to Lender for its review and approval the final Scope of Work for the Project. Borrower shall develop and construct the Project in substantial conformance with the Scope of Work and any modifications thereto approved in writing by Lender.

4.2 COMMENCEMENT OF PROJECT. Borrower shall commence development of the Project by February 28, 2007.

4.3 COMPLETION OF PROJECT. Borrower shall diligently prosecute development of the Project to completion, and shall complete development activities of the Project no later than March 20, 2008. Borrower shall provide proof of completion as evidenced by the recording of a Notice of Completion.

4.4 FINANCING. Borrower shall promptly inform Lender in writing of any changes in the amount, terms, and/or sources of financing or funding for the Property acquisition and Project development work.

4.5 CONTRACTS AND SUBCONTRACTS. All development work and professional services for the Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California.

Unless otherwise approved by Lender, to ensure that all costs incurred are reasonable and appropriate, all contracts entered into for development and construction work on the Project shall be the result of either competitive or negotiated bids.

All costs incurred in acquisition of the Property and development, construction and operation of the Project shall be the responsibility and obligation solely of Borrower.

4.6 ADDITIONS OR CHANGES IN WORK. Lender must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement. A written change order authorized by Lender must be obtained before any changes, additions, or deletions may be performed. If Lender has not responded to a written request for a change order by Borrower within ten (10) days of receipt of such request by Lender, such request shall be deemed approved by Lender. Consent to any additions, changes, or deletions to the work shall not release Borrower from any other obligations in the Loan Documents.

4.7 INSPECTIONS. Borrower shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by Lender and by public authorities during reasonable business hours for the purposes of determining compliance with this Loan Agreement.

4.8 SITE SUPERVISION. During the development of the Project, Borrower shall maintain a full time site superintendent to supervise all development and construction work on the Property. The site superintendent shall be on-site during all work hours.

4.9 CONSTRUCTION RESPONSIBILITIES. Borrower shall be solely responsible for all aspects of Borrower's conduct in connection with the Project, including, but not limited to, the quality and suitability of the construction work, the supervision of construction work, the qualifications, financial condition, and performance of all contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by Lender with reference to the Project is solely for the purpose of determining whether Borrower is properly discharging its obligations to Lender, and should not be relied upon by Borrower or by any third parties as a warranty or representation by Lender as to the quality of the development and construction of the Project.

4.10 BARRIERS TO THE DISABLED. The Project shall be developed and the Property shall be maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.11 LEAD-BASED PAINT AND ASBESTOS REMOVAL. Borrower and its contractors and subcontractors shall not use lead-based paint or asbestos in the development and construction of the Property and shall comply with Federal Regulations 24 C.F.R., 29 C.F.R., 40

C.F.R., Title X, California O.S.H.A., California health codes, and all County standards. Borrower shall incorporate or cause to be incorporated this provision in all contracts and subcontracts for work performed on the Property which involves the application of paint and/or other construction-related surfaces.

4.12 **QUALITY OF WORK** Borrower shall insure that all work conducted on the Project is in conformance with the Lender's construction standards and shall employ building materials of a quality suitable for the requirements of the Project. Borrower shall develop the Project in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to, meeting the HUD quality standards set out in 24 C.F.R. Section 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. part 39.

4.13 **MECHANICS LIENS AND STOP NOTICES.** If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on Lender or any other lender or other third party in connection with the Project, Borrower shall, within sixty (60) days of such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to Lender a surety bond in sufficient form and amount, provide Lender with a lien-free endorsement or provide Lender with other assurance reasonably satisfactory to Lender that the claim of lien or stop notice will be paid or discharged.

If Borrower fails to discharge any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, Lender may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternatively, Lender may require Borrower to immediately deposit with Lender the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof Lender may use such deposit to satisfy any claim or lien that is adversely determined against Borrower.

Borrower shall file a valid notice of cessation or notice of completion upon cessation of work on the Project for a continuous period of 30 days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Property. Borrower authorizes Lender, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that Lender deems necessary or desirable to protect its interest in the Project and Property.

4.14 **COMPLIANCE WITH HOME PROGRAM REQUIREMENTS.** All requirements imposed on properties assisted under the HOME program as contained in 42 U.S.C. Sections 12701, et seq., 24 C.F.R. Part 92, and other implementing rules and regulations are incorporated by this reference. In the event of any conflict between this Loan Agreement and the HOME regulations, the HOME regulations shall govern, unless otherwise waived by the Lender.

The laws and regulations governing the use of the Loan proceeds include (but are not limited to) the following:

A. Applicability of OMB Circulars. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102, Revised, A-110 and A-122.

B. Architectural Barriers. The requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157).

C. Handicap Discrimination. The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), and federal regulations issued pursuant thereto, which prohibits discrimination against the handicapped in any federally assisted program.

D. Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701, requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. Developer agrees to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project."

E. HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to HOME.

4.15 **RELOCATION.** If and to the extent that development of the Project results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, Borrower shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

4.16 **UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of this Loan Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this Loan Agreement which is caused by: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; quarantine restrictions; or freight embargoes or other events beyond the reasonable control of the party claiming the delay. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within five (5) calendar days from the commencement of the cause, and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten calendar days of receipt of the notice. In any event, construction of the Project

must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any unavoidable delay notwithstanding. Times of performance under this Loan Agreement may also be extended for any cause for any period of time by the mutual written agreement of Lender and Borrower.

ARTICLE 5 OPERATION

5.1 OPERATION OF PROJECT. Borrower shall operate and manage the Project after completion in full conformance with the terms of the Regulatory Agreement.

Borrower shall agree to maintain and operate the Assisted Units so as to provide decent, safe, and sanitary housing and provide each of the Assisted Units in the Project with the same level of services (including security), amenities, and maintenance as are applied to the other dwelling units in the Project. Any optional services provided must be available to all residents under the same terms and conditions.

Borrower agrees that during the term of the Regulatory Agreement, Lender shall have the right to review, approve and request material changes to the Property Management Plan, operation of the building and Property management entity, in order to preserve the affordability, physical appearance and condition of the Project. Any changes not disapproved by Lender within thirty (30) days after receipt of such changes shall be deemed approved.

5.2 ASSISTED UNITS. The eleven designated Assisted Units shall meet the following standards:

- A. Be similarly constructed and of comparable quality to all other units in the Project and;
- B. Provide tenants access and enjoyment of all common areas and facilities of the Project on the same basis as tenants of other units.

The size of the Assisted Units shall be as follows:

- Two Two-bedroom Units
- Six Three-bedroom Units
- Three Four-bedroom Units

5.3 MARKETING PLAN. No later than thirty (30) days following the date of commencement of Project development, the Borrower shall submit to the Lender for approval its plan for marketing the rental units, including information on affirmative marketing efforts and compliance with fair housing laws and the Lender's affirmative fair marketing guidelines.

5.4 MANAGEMENT PLAN. Borrower has submitted its proposed Management Plan to Lender as attached as Exhibit H which Lender has reviewed and approved.

5.5 LEASING THE PROJECT. Before leasing any portion of the Project, Borrower shall submit its proposed form of lease for Lender's review and approval. The term of the Lease shall be for no less than one year and shall not contain any provision which is prohibited by 24 C.F.R. Section 92.253(b) and any modifications thereto. No rent increase shall occur at any time

during the term of the lease. Any termination of the lease or refusal to renew must be in conformance with 24 C.F.R. 92.253(c) and any modifications thereof and must be preceded by not less than 30 days written notice to the tenant by the Borrower specifying the grounds for the action.

5.6 TENANT SELECTION. No later than thirty (30) days following the date of commencement of Project development, Borrower shall submit to the Lender for approval its tenant selection plan for the Assisted Units, including information on affirmative marketing efforts and compliance with fair housing laws and the Lender's affirmative fair marketing guidelines. The Borrower's tenant selection plan must, at a minimum, meet the requirements for tenant selection set out in 24 C.F.R. 92.253(e) and any modifications thereto.

Borrower shall rent the Assisted Units to any Qualifying Household according to the tenant selection plan. Borrower shall verify the prospective tenant's eligibility and require from each tenant a statement that such household's income from all sources does not exceed allowable limits as described the Regulatory Agreement.

5.7 INCOME CERTIFICATION. Borrower shall limit for the full term of the Regulatory Agreement the rental of Assisted Units to Qualifying Households according to the schedule contained in Regulatory Agreement. The income levels and other qualifications of applicants for Assisted Units shall be certified within sixty (60) business days of the household's expected occupancy of one of the Assisted Units and annually thereafter.

5.8 AFFORDABILITY RESTRICTIONS. Eleven (11) units in the Project shall be designated as Assisted Units. The Assisted Units must be occupied, or reserved for occupancy by, Qualifying Households.

5.9 ASSISTED UNIT RENTS. Rents for Assisted Units shall be limited to Qualifying Rents as set forth in the Regulatory Agreement. At least sixty (60) calendar days prior to increasing rents on any Assisted Unit on the Project, Borrower shall submit to the Lender for review and approval a written request for such increase. Qualifying Households shall be given at least thirty (30) days written notice prior to any rent increase. Provided such increased rent does not exceed the Qualifying Rents for such year, Lender shall approve such request.

5.10 MAXIMUM RENTAL CHARGES. For each Very Low Income Assisted Unit, the total charges for rent, utilities, and related services to each Very Low Income Household shall not exceed thirty percent (30%) of fifty percent (50%) of Median Income. For each Low Income Assisted Unit, the total charges for rent, utilities, and related services to each Low Income Household shall not exceed thirty percent (30%) of eighty percent (80%) of Median Income. Initial rents for each Assisted Unit shall be as set forth in the Regulatory Agreement. Annual rent increases shall be calculated by Lender based on the change in permissible rents published annually by HUD. For all Assisted Units, Borrower shall annually certify each tenant household's gross income and make any rent adjustment pursuant to the terms of the Regulatory Agreement.

5.11 CONFLICTS BETWEEN COVENANTS OR RESTRICTIONS AFFECTING THE PROPERTY. Any conflicts between the restrictive provisions contained in this Loan Agreement, Note, Deed of Trust, Regulatory Agreement, and any other agreements in connection with the Loan which affect the Property, are to be resolved by applying the more restrictive covenants or restrictions which affect the Property.

5.12 NONDISCRIMINATION. Borrower shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Property on the basis of race, color, ancestry, national origin, religion, sex, sexual preference or orientation, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC) acquired or perceived, or any other arbitrary basis. Borrower shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

5.13 RECORDS. Borrower shall be accountable to Lender for all funds disbursed to Borrower pursuant to the Loan Documents. Borrower agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than three years after completion of the Project. Records must be kept accurate and current. Lender shall notify Borrower of any records it deems insufficient. Borrower shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by Lender in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Borrower shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

Borrower shall promptly comply with all requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. Borrower shall promptly supply, upon the request of Lender, any and all information and documentation which involves the Project and cooperate with Lender in the development and construction of the Project.

5.14 AUDITS. Borrower shall make available for examination at reasonable intervals and during normal business hours to Lender all books, accounts, reports, files, and other papers or property with respect to all matters covered by these Loan Documents, and shall permit Lender to audit, examine, and make excerpts or transcripts from such records. Lender may make audits of any conditions relating to this Loan.

5.15 ENCUMBRANCE OF PROPERTY. Except as otherwise provided in this Loan Agreement, Borrower shall not engage in any financing or any other transaction creating any security interest or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or allow any encumbrance or lien to be made on or attached to the Property, except with the prior written consent of Lender. Borrower shall notify Lender in writing in advance of any financing secured by any deed of trust, mortgage, or other similar lien instrument that it proposes to enter into with respect to the Project or Property, and of any encumbrance or

lien that has been created on or attached to the Property whether by voluntary act of Borrower or otherwise.

5.16 TRANSFER OF PROPERTY. Borrower has not made or created, and shall not, make or permit any sale, assignment, conveyance, lease (other than the leasing of units in the Project pursuant to an approved lease), or other transfer of this Loan Agreement, the Project, or the Property, or any part thereof, without the prior written consent of Lender. Notwithstanding the above, Lender hereby agrees that a transfer of the interests of Borrower's limited partners is permitted and shall not constitute a default of this Loan Agreement. In addition, notwithstanding anything contained in this Loan Agreement, a removal of the general partner of the Borrower for cause by the limited partners, pursuant to the terms of the Borrower's partnership agreement is permitted and does not constitute a default of this Loan Agreement.

5.17 FEES, TAXES, AND OTHER LEVIES. Borrower shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by Lender, Borrower deposits with Lender any funds or other forms of assurance Lender in good faith from time to time determines appropriate to protect Lender from the consequences of the contest being unsuccessful.

5.18 DAMAGE TO PROPERTY. If any building or structure on the Property is damaged or destroyed by an insurable cause, Borrower shall, at its cost and expense, diligently undertake to repair or restore said buildings and structures consistent with the original Scope of Work for the Project if Borrower reasonably determines that such restoration or repair is economically feasible. Such work or repair shall be commenced within 120 days after the damage or loss occurs and shall be complete within one year from such commencement, subject to any extensions of time granted pursuant to the provisions of Section 4.16. Subject to Borrower's election to rebuild, all insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Borrower shall make up the deficiency.

5.19 EQUAL EMPLOYMENT OPPORTUNITY. Borrower and any contractors, subcontractors, and professional service providers for the Project shall comply with all requirements concerning equal employment opportunity. Borrower and any contractors, subcontractors, and professional service providers for the Project shall have comply with all requirements concerning equal opportunities for business and lower-income persons (referred to as a Section 3 clause, of the HUD Act of 1968, 12 U.S.C.).

ARTICLE 6 INDEMNITY AND INSURANCE

6.1 INDEMNITY AND INSURANCE. Borrower hereby agrees to defend, indemnify and save harmless the Lender and to procure and maintain insurance in accordance with the provisions of Exhibit E attached hereto and incorporated herein by reference.

6.2 **NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No officials, employees and agents of Lender shall be personally liable to Borrower for any obligation created under the terms of these Loan Documents.

ARTICLE 7 HAZARDOUS MATERIALS

7.1 **REPRESENTATIONS AND WARRANTIES.** After reasonable investigation and inquiry, Borrower hereby represents and warrants to the best of its knowledge, as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by Lender or as disclosed by the reports based on environmental audit(s) performed on the Property and submitted to Lender, that (a) the Property is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials in violation of Federal or State law; (b) the Property is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the Property by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the Property (including in the soil, surface water, or groundwater under the Property) or any other occurrences or conditions on the Property or on any other real property that could cause the Property or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

7.2 **NOTIFICATION TO LENDER.** Borrower shall promptly notify Lender in writing of: (a) the discovery of any concentration or amount of Hazardous Materials of which Borrower becomes aware on or under the Property requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by Borrower (after verification of the veracity of such knowledge to Borrower's reasonable satisfaction) that the Property does not comply with any Hazardous Materials Laws; (c) the receipt by Borrower of written notice of any Hazardous Materials claims; and (d) the discovery by Borrower of any occurrence or condition on the Property or on any real property located within 2,000 feet of the Property that could cause the Property or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

7.3 **USE AND OPERATION OF PROPERTY.** Neither Borrower, nor any agent, employee, or contractor of Borrower, nor any authorized user of the Property shall use the Property or allow the Property to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. Borrower shall comply and cause the Project to comply with Hazardous Materials Laws.

7.4 **REMEDIAL ACTIONS.** If Borrower has actual knowledge of the presence of any Hazardous Materials on or under the Property, Borrower shall take, at no cost or expense to Lender, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or

requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to Borrower's right of contest below.

7.5 RIGHT OF CONTEST. Borrower may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if. (a) the contest is based on a material question of law or fact raised by Borrower in good faith, (b) Borrower promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by Lender, Borrower deposits with Lender any funds or other forms of assurance Lender in good faith from time to time determines appropriate to protect Lender from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by Borrower under the conditions of this section.

7.6 ENVIRONMENTAL INDEMNITY. Borrower shall defend, indemnify, and hold Lender free and harmless against any claims, demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and reasonable attorney's fees, that Lender may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not Borrower knew of same) of any Hazardous Materials occurring prior to or during Borrower's use or occupancy of the Property.

ARTICLE 8 DEFAULT AND REMEDIES

8.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall constitute an "Event of Default" under this Loan Agreement:

A. Monetary. (1) Borrower's failure to pay when due any sums payable under the Note or any advances made by Lender under the Deed of Trust or this Loan Agreement; (2) Borrower's use of Loan funds for costs other than approved costs or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) Borrower's failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) Borrower's failure to make any other payment or assessment due under the Loan Documents; (5) Borrowers failure to pay taxes; (6) Borrower's default under other debt secured by the Property after the applicable notice and cure periods have expired;

B. Project Development and Construction. (1) Borrower's substantial deviation in the development and construction work specified in the Scope of Work submitted to Lender, without Lender's prior written consent; (2) Borrower's use of defective or unauthorized materials or defective workmanship in development and construction of the Project; (3) Borrower's failure to commence or complete construction work according to the schedule specified in this Loan Agreement; (4) the cessation of construction work prior to completion of

the Project for a period of more than twenty-one (21) continuous calendar days without proper justification; (5) failure to comply with the provisions of Section 4.14 herein; (6) Borrower's failure to remedy any deficiencies in recordkeeping or failure to provide records to Lender upon Lender's reasonable request; (7) Borrower's failure to substantially comply with any applicable federal, state, or local laws or Lender policies governing Project development and construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and women-owned business enterprises, disabled access, lead paint, Hazardous Materials, and provision or relocation benefits and assistance;

C. Operation. (1) Discrimination by Borrower on the basis of characteristics prohibited by this Loan Agreement or applicable law or (2) the imposition of any encumbrances or liens on the Property without Lender's prior written approval that are prohibited under this Loan Agreement or that have the effect of reducing the priority of or invalidating the Deed of Trust;

D. General performance of Loan obligations. Any substantial breach by Borrower beyond applicable notice and cure periods of any material obligations on Borrower imposed in the Loan Documents;

E. General performance of other obligations. Any substantial or continuous breach by Borrower beyond applicable notice and cure periods of any material obligations on Borrower imposed by any other agreements, including any grant agreements, with respect to the financing, construction, or operation of the Project or the Property, whether or not Lender is a party to such agreement which may materially impair Lender's security;

F. Representations and warranties. A determination by Lender that its security has or will be materially impaired due to the fact that any of Borrower's representations or warranties made in the Loan Documents, or any certificates, documents, or schedules supplied to Lender by Borrower were untrue in any material respect when made, or that Borrower concealed or failed to disclose a material fact from Lender;

G. Damage to Property. Material damage or destruction to the Property by fire or other casualty, if Borrower does not take steps to reconstruct the Property as required by the Loan Documents;

H. Bankruptcy, dissolution, and insolvency. Borrower's (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

8.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For all Events of Default, Lender shall give written notice to Borrower of any Event of Default by specifying: (a)

the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken or if a cure is not possible within thirty (30) days, to begin such cure and diligently prosecute such to completion which shall, in any event, not exceed ninety (90) days from the date of receipt of the notice to cure. The Lender has the sole discretion to determine whatever additional reasonable time is needed to cure. Notwithstanding anything to the contrary contained herein, a cure by the limited partner of Borrower shall be accepted as if cured by Borrower itself.

8.3 LENDER'S REMEDIES. Upon the happening of an Event of Default by Borrower and a failure to cure said Event of Default within the time specified in Section 8.2 above, Lender's obligation to disburse Loan proceeds shall terminate, and Lender may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination Lender may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal amount outstanding and all accrued interest under the Note, as well as any other monies advanced to Borrower by Lender under the Loan Documents including administrative costs, shall immediately become due and payable at the option of Lender;

B. Bring an action in equitable relief (1) seeking the specific performance by Borrower of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding and all accrued interest under the Note, as well as any other monies advanced to Borrower by Lender under the Loan Documents;

D. Enter the Property and take any actions necessary in its judgment to complete development of the Project, including without limitation (1) making changes in the Scope of Work or other work or materials with respect to the Project, (2) entering into, modifying, or terminating any contractual arrangements (subject to Lender's right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that Lender deems necessary to comply with Hazardous Materials Laws or to render the Property suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete development of Project as needed to preserve Lender's interest in seeing the Project completed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that Lender or the receiver deems necessary to comply with Hazardous Materials Laws or to render the Property suitable for occupancy);

F. Order immediate stoppage of development of Project and demand that any condition leading to the Event of Default be corrected before development of Project may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary default;

H. Enter upon, take possession of, and manage the Property, either in person, by agent, or by a receiver appointed by a court, and collect rents and other amounts specified in the assignment of rents in the Deed of Trust and apply them to operate the Property or to pay off the Loan or any advances made under the Loan Documents, as provided for by the Deed of Trust;

I. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

J. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

K. Pursue any other remedy allowed at law or in equity. Nothing in this section is intended or shall be construed as precluding Lender from proceeding with a nonjudicial foreclosure under the power of sale contained in the Deed of Trust in the Event of Default by Borrower.

ARTICLE 9 GENERAL PROVISIONS

9.1 **BORROWER'S WARRANTIES.** Borrower represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable Borrower to fully comply with the terms of these Loan Documents and the Regulatory Agreement, and to otherwise carry out the Project, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the Project and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of Borrower, (5) that there has been no substantial adverse change in Borrower's financial condition since the date of application for this loan such as judgment liens, tax liens, mechanic's liens, bankruptcy, etc.; and (6) that all representations in the Borrower's loan application (including all supplementary submissions) are true, correct and complete in all material respects and are offered to induce Lender to make this loan.

9.2 **MONITORING AND EVALUATION.** Except as otherwise provided for in this Loan Agreement, Borrower shall maintain and submit records to Lender within ten (10) business days of Lender's request which clearly document Borrower's performance under each requirement of the Loan Documents.

9.3 **CONFLICTS OF INTEREST.** Borrower covenants that:

A. Except for approved eligible administrative or personnel costs, no person described in subsection (B) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this contract or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. The Borrower shall exercise due diligence to ensure that the prohibition in this Section is followed.

B. The conflict of interest provisions of Section 9.3(A) above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the County, or any person related within the third (3rd) degree of such person.

9.4 **POLITICAL ACTIVITY.** None of the funds, materials, property or services contributed by Lender or Borrower under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

9.5 **PUBLICITY.** Any publicity produced by Borrower for the Project during the term of this Loan and for one year thereafter shall make reference to the contribution of Lender in making the Project possible. The words "The County of Santa Barbara and The City of Santa Maria" will be prominently displayed in any and all pieces of publicity, including but not limited to flyers, press releases, posters, signs, brochures, public service announcements, interviews, and newspaper articles. Borrower further agrees to cooperate with authorized staff and officials of Lender in any Lender-generated publicity or promotional activities undertaken with respect to the Project.

9.6 **TERM OF THIS AGREEMENT.** This Loan Agreement shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

9.7 **GOVERNING LAW.** The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

9.8 **STATUTORY REFERENCES.** All references in the Loan Documents or Regulatory Agreement to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the County of Santa Barbara shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject as the provision to which specific reference was made.

9.9 **TIME.** Time is of the essence in these Loan Documents.

9.10 **CONSENTS AND APPROVALS.** Any consent or approval of Lender or Borrower required under the Loan Documents shall not be unreasonably withheld or conditioned. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

9.11 **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between Borrower and Lender shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Borrower and Lender as follows:

LENDER: County of Santa Barbara
105 E Anapamu Street, Room 105
Santa Barbara, CA 93101
Attn: Program Manager
Housing Finance and Development

BORROWER: Ted Zenich Gardens, LP
815 West Ocean Avenue
Lompoc, Ca. 93436
Attn: Executive Director

With copy to Apollo Housing Capital, LLC
600 Superior Avenue, Suite 2300
Cleveland, Ohio, 99114.
Attn: President and General Counsel

9.12 **BINDING UPON SUCCESSORS.** All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this section does not waive the prohibition on assignment of this Loan Agreement by Borrower without Lender's consent.

9.13 **RELATIONSHIP OF PARTIES.** The relationship of Borrower and Lender for this Project under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Lender neither undertakes nor assumes any responsibility or duty to Borrower (except as provided for herein) or any third party with respect to the Project, the Property, or the Loan.

9.14 **ASSIGNMENT AND ASSUMPTION.** Borrower shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except as specifically permitted under the terms of the Loan Documents, without the prior written consent of Lender. Any unauthorized assignment shall be void.

9.15 **WAIVER.** Any waiver by Lender of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by Lender to take action on any breach or default of Borrower or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to Borrower to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by Lender to any act or omission by Borrower shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for Lender's written consent to future waivers.

9.16 **INTEGRATION.** This Loan Agreement and the other Loan Documents, including exhibits, executed by Borrower for the Property, if any, contain the entire agreement of the parties and supersede any and all prior negotiations.

9.17 **OTHER AGREEMENTS.** Borrower represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. Borrower shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by Lender in writing.

9.18 **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both Borrower and Lender.

9.19 **SEVERABILITY.** Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, Lender and Borrower have caused this Loan Agreement to be executed by their duly authorized representatives.

ATTEST:

MICHAEL F. BROWN
Clerk of the Board

COUNTY:

County of Santa Barbara,
political subdivision of the State of California

By: _____
Deputy Clerk of the Board

By: _____
Brooks Firestone, Chair
Board of Supervisors

APPROVED AS TO FORM:

BOB GEIS
AUDITOR CONTROLLER

BORROWER:

Ted Zenich Gardens, L.P.
a California limited partnership

By: _____
Mark Paul
Senior Financial Analyst

By: _____
Its: _____

Expenditure Accounting Information
Fund: 0066 Dept: 055
Line Item: 7650 Program: 6000

APPROVED AS TO FORM:

STEPHEN SHANE STARK
COUNTY COUNSEL

Deputy County Counsel

APPROVED AS TO FORM:

RAY AROMATORIO
RISK MANAGER

By: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B
PROJECT BUDGET

EXHIBIT C
DEED OF TRUST

EXHIBIT D
PROMISSORY NOTE

EXHIBIT E
INSURANCE REQUIREMENTS

EXHIBIT F
REGULATORY AGREEMENT

EXHIBIT G
PROJECT SCOPE OF WORK

EXHIBIT H
MANAGEMENT PLAN

EXHIBIT I
MARKETING PLAN

EXHIBIT J

SUPPORTIVE SERVICES PLAN

NO FEE DOCUMENT

**Recording requested by and
When recorded, mail to:**

County of Santa Barbara
105 East Anapamu Street, Room 105
Santa Barbara, CA 93101
Attn: Housing and Community Development

NO FEE DOCUMENT PURSUANT TO
GOVERNMENT CODE SECTION 27383

REGULATORY AGREEMENT

This Regulatory Agreement (the "Agreement") is made this 31st day of January, 2007 by and between the County of Santa Barbara, a political subdivision of the State of California (the "Lender"), and Ted Zenich Gardens, L.P., a California limited partnership (the "Owner").

RECITALS

A. The Owner has acquired and wishes to develop a parcel of real property at 1034 East Chapel Street in the City of Santa Maria, in Santa Barbara County, as more particularly described in Exhibit A (the "Property") upon which the Owner intends to develop 24 units of multi-family rental housing (the "Project").

B. The Lender 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. Owner has received a loan from Lender of HOME Funds in the amount of One Million Four Hundred Fifty-Six Thousand One Hundred Eighty-Eight Dollars (\$1,456,188) to finance the acquisition and development of the Property (the "Loan").

D. As further consideration for this funding and to further the interests of the Lender, the Owner has agreed to enter into and record this Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, the ownership, and management of the Project. The covenants in this Agreement are intended to run with the land and be binding on the Owner and its successors and assigns in the Property.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the aforementioned funding, the Owner and the Lender hereby agree as follows:

DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement or attached exhibits.

1. "**ASSISTED UNIT**" means each one of the eleven (11) Assisted Units with restricted occupancy and rents as set forth in this Agreement.

2. "**AREA MEDIAN INCOME**" means the median income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area, with adjustments for household size, as determined from time to time by HUD pursuant to the United States Housing Act of 1937, as amended, or such other method of median income calculation applicable to the Lender that HUD may hereafter adopt in connection with said Act.

3. "**DEED OF TRUST**" means that certain deed of trust assignment of rents and security agreement, recorded on the Property as security for the Loan, with the Owner as trustor and the Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust.

4. "**LENDER**" is the County of Santa Barbara, political subdivision of the State of California, and its officers, officials, directors, employees, agents and authorized representatives.

5. "**LOAN**" means the Loan made by the Lender to the Owner for the Project pursuant to the Loan Agreement and the Note.

6. "**LOAN AGREEMENT**" is the Loan Agreement executed by and between the Owner and the Lender, setting forth the terms and conditions governing the Loan.

7. "**LOAN DOCUMENTS**" are collectively the Loan Agreement, the Note evidencing the Loan, the Deed of Trust securing the Note, and this Agreement as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

8. "**NOTE**" means the promissory note executed by the Owner in favor of the Lender in the amount of One Million Four Hundred Fifty-Six Thousand One Hundred Eighty-Eight Dollars (\$1,456,188) to evidence the Loan, which is secured by the Deed of Trust, as well as any amendments to, modifications of, or restatements of said promissory note.

9. "**OWNER**" means Ted Zenich Gardens, L.P., a California limited partnership.

10. "**PROJECT**" means the Twenty-Four (24) units of multi-family housing to be developed on the Property according to the terms of the Loan Agreement, and all parking, landscaping, and other improvements appurtenant thereto.

11. **"PROPERTY"** means the real property described in Exhibit A attached hereto and incorporated herein, including the Project to be developed thereon pursuant to the Loan Agreement.

12. **"QUALIFYING HOUSEHOLD"** means a household that qualifies as a Very Low-Income Household.

13. **"QUALIFYING RENT"** means the total annual charges for rent, utilities, and related services to each Very Low Income Household which shall not exceed thirty percent (30%) of fifty percent (50%) of Median Income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD with adjustments for household size.

14. **"TERM"** means the term of this Agreement described herein.

15. **"UNIT"** means a housing unit in the Project.

16. **"VERY LOW-INCOME HOUSEHOLD"** means a household whose annual income does not exceed fifty percent (50%) of the Area Median Income as determined by HUD with adjustments for smaller and larger households.

THE OWNER'S OBLIGATIONS

17. **COMPLIANCE WITH LOAN DOCUMENTS.** The Owner's actions with respect to the Property and the use of funds from the Loan shall at all times be in full conformity with all of the requirements of the Loan Documents, including but not limited to the insurance requirements contained therein.

18. **TERM OF AGREEMENT.** This Agreement shall commence upon execution and shall remain in full force and effect until fifty-five (55) years following the date of issuance of a final Certificate of Completion for the Project.

19. **COMPLIANCE WITH PROGRAM REQUIREMENTS.** The Owner shall comply with all requirements imposed on projects assisted under the HOME program as contained in 42 U.S.C. 12701, et seq., 24 CFR Part 92, and other implementing rules and regulations.

DEVELOPMENT OCCUPANCY AND RENTS

20. **OCCUPANCY OF DEVELOPMENT.** Eleven (11) Units in the Project shall be designated as Assisted Units. The Assisted Units must be occupied, or reserved for occupancy by, Qualifying Households.

21. **ASSISTED UNITS.** The Owner shall limit for the full term of this Agreement the rental of all Assisted Units, to Very Low- Income Households at rents that do not exceed the maximum rental charges for each Assisted Unit as set forth in this Agreement. The eleven designated Assisted Units shall meet the following standards:

- A. Be similarly constructed and of comparable quality to all other units in the Project and;
- B. Provide tenants access and enjoyment of all common areas and facilities of the Project on the same basis as tenants of other units.

The size of the Assisted Units shall be as follows:

Two Two-bedroom Units
Six Three-bedroom Units
Three Four-bedroom Units

22. MAXIMUM RENTAL CHARGES.

(a) For a household occupying an Assisted Unit, the total monthly charges for rent, utility allowances, and any related services that the HOME program considers in limiting the housing cost shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income.

(b) Initial maximum rents for each Assisted Unit shall be set by the Lender at the time of initial occupancy of the Project. The initial lease and all subsequent leases for each household occupying an Assisted Unit shall provide for a term of no less than twelve (12) months. Rents shall be increased no more than once annually and annual rent increases shall be calculated by the Owner and the Lender based on the change in permissible rents published annually by HUD. At least sixty (60) calendar days prior to increasing rents on any Assisted Unit, the Owner shall submit to the Lender for review and approval a written request for such increase, which the Lender shall approve if the increased rent will comply with any applicable HOME Fund requirements. Households occupying Assisted Units shall be given at least thirty (30) days written notice prior to any rent increase.

23. INCOME CERTIFICATION AND INCREASES IN TENANT INCOMES. The income levels and other qualifications of Very Low-Income Household applicants for Assisted Units shall be certified prior to initial occupancy and recertified yearly by the Owner. In the event that recertification of a Very Low-Income Household's income indicates that the household's income exceeds the maximum designated income for a Very Low-Income Household, the Owner may increase rents on such Unit as permitted by HUD to no more than 30% of 1/12 of the household's income, and the household may be permitted to continue to occupy the Unit. In such event, Owner shall rent the next available Unit with a similar bedroom

count to a Qualified Household at no more than the rent set forth in Section 21. Upon such rental, the Unit occupied by the non-qualified household shall no longer be classified as an Assisted Unit and the newly rented unit to a Qualified Household shall be deemed an Assisted Unit.

24. LEASING THE DEVELOPMENT.

(a) Before leasing any Assisted Unit, the Owner shall submit its proposed lease for the Lender's review and approval. The term of the Lease shall be for no less than one year and shall not contain any provision which is prohibited by 24 CFR Section 92.253(b) and any modifications thereto. Any termination of the Lease or refusal to renew must be in conformance with 24 CFR 92.253(c), as amended, and must be preceded by not less than thirty (30) days written notice to the tenant by the Owner specifying the grounds for the action. The Owner shall include in leases for all Assisted Units provisions which provide that the household is subject to annual certification of income and that the tenancy of the household shall be immediately terminated should one or more of the household's members misrepresent any material fact regarding the household's qualification as a Very Low-Income Household. The Owner shall include in all leases for Assisted Units provisions which prohibit the household from subleasing the Assisted Unit.

(b) In addition to executing a lease for an Assisted Unit, the Owner shall require that each household leasing an Assisted Unit execute a declaration of intent to occupy which shall require the household to occupy the Assisted Unit as the household's primary residence.

25. TENANT SELECTION. Before leasing the Project, the Owner must provide Lender for its review and approval the Owner's written tenant selection plan. The Owner's tenant selection plan must, at a minimum, meet the requirements for tenant selection set out in 24 CFR 92.253(e) and any modifications thereto.

26. SECTION 8 CERTIFICATE HOLDERS. The Owner will accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of units by such prospective tenants.

27. CONDOMINIUM CONVERSION. The Owner shall not convert Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights in the Property during the term of this Agreement.

28. NONDISCRIMINATION. The Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status,

source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Owner shall include a statement in all advertisements, notices and signs for the availability of Units for rent to the effect that the Owner is an Equal Housing Opportunity Provider. The Owner shall also comply with the Lender's Nondiscrimination ordinance.

29. **MARKETING PLAN.** No later than thirty (30) days following the date of commencement of construction work, the Owner shall submit to the Lender for approval its plan for marketing the rental units, including information on affirmative marketing efforts and compliance with fair housing laws and the Lender's affirmative fair marketing guidelines. Upon receipt of the marketing plan, the Lender shall promptly review the Marketing Plan and shall approve or disapprove it within thirty (30) days after submission. If the Marketing Plan is not approved, Lender shall specify its reasons for disapproval. The Owner shall submit a revised Marketing Plan within thirty (30) days of Lender's notice of disapproval. If the Lender does not approve the revised Marketing Plan, the Owner shall be in default under the terms of the Loan Agreement.

PROPERTY MANAGEMENT

30. **MANAGEMENT RESPONSIBILITIES.** The Owner is responsible for all management functions with respect to the Project, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Lender shall have no responsibility over management of the Project. The Owner shall submit to the Lender for its approval its proposed property manager. The Owner may only remove and/or replace the property manager with the prior written consent of the Lender.

31. **APPROVAL OF MANAGEMENT POLICIES.** The Owner shall submit its written management policies with respect to the Project to the Lender for its review, and shall amend such policies in any way necessary to insure that such policies comply with the provisions of this Agreement, the requirements of the existing housing program under Section 8 of the United States Housing Act, or its successors, and the requirements of all lenders providing financing for the Development.

32. **INSPECTION AND RECORDS.** The Owner shall maintain records that clearly document the Owner's performance of its obligations to operate the Property under the terms of this Agreement. The Owner shall submit any records to the Lender within ten (10) business days of the Lender's request. The Owner shall permit the Lender to enter and inspect the Project for compliance with obligations under this Agreement upon twenty-four (24) hours advance notice of such visit by the Lender to the Owner or the Owner's management agent and to tenants of any Units.

33. **ANNUAL REPORT.** The Owner shall submit to the Lender (i) not later than March 1st of each year, a report for the preceding period of February 1st through December 31st, showing the necessary information to allow the Lender to determine the Owner's compliance

with this Agreement, and (ii) within thirty (30) days after receipt of a written request, any other information or completed forms requested by the Lender in order to comply with reporting requirements of the United States Department of Housing and Urban Development, or the Lender.

34. **FEES, TAXES, AND OTHER LEVIES.** The Owner shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency.

35. **PROPERTY TAX EXEMPTION.** The Owner shall not apply for a property tax exemption for the Property under any provision of law other than Revenue and Taxation Code Section 214(g) without the Lender's prior written consent.

GENERAL PROVISIONS

36. **SUBORDINATION.** This Agreement shall be subordinated in priority only as provided in the Loan Agreement or to liens and encumbrances otherwise approved in writing by the Lender in its sole and absolute discretion.

37. **DEFAULT AND REMEDIES** In the event of any breach of any agreement or obligation under this Agreement by the Owner, the Lender shall provide written notice to the Owner of such breach. The Owner shall have an opportunity to cure such breach within thirty (30) days from the Owner's receipt of such written notice or such longer period of time as the Lender determines is necessary to cure the breach if the Owner diligently undertakes to cure such breach. Notwithstanding anything to the contrary contained herein, a cure by the limited partner of Borrower shall be accepted as if cured by the Borrower itself. If the Owner fails to perform a timely cure of the specified breach, the Lender may proceed with any or all of the following remedies upon the Owner's failure to cure:

(a) Bring an action in equitable relief seeking the specific performance by the Owner of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;

(b) Enter upon, take possession of, and manage the Property and the Project, either in person, by agent, or by a receiver appointed by a court, and collect any rents, income, deposits, or reserves and apply them to operate the Property;

(c) After notice provided for herein, make such repairs or replacements to the Property and Project as are necessary and provide for payment thereof; or

(d) Pursue any other remedy provided under the Loan Agreement or allowed at law or in equity.

38. **NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No officers, directors, employees and agents of the Lender shall be personally liable to the Owner for any obligation created under the terms of this Agreement.

39. **INDEMNITY.** The Owner shall indemnify and hold the Lender free and harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys' fees) which the Lender may incur as a direct or indirect consequence of the Owner's failure to perform any obligations as and when required by this Agreement. This indemnity obligation shall not extend to any claim arising solely from the gross negligence or willful acts of the Lender, its agents, and its employees. The Owner's duty to indemnify the Lender shall survive the term of this Agreement.

40. **GOVERNING LAW.** This Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

41. **AGREEMENT CONTROLS.** In the event that any provisions of this Agreement and any Loan Document conflict, the terms of this Agreement shall control.

42. **ATTORNEYS' FEES AND COSTS.** In the event that any legal or administrative action is commenced to interpret or to enforce the terms of this Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

43. **TIME.** Time is of the essence in this Agreement.

44. **CONSENTS AND APPROVALS.** Any consent or approval of the Lender required under this Agreement shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of the Lender.

45. **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between the Owner and the Lender shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of the Owner and the Lender as follows:

Lender: County of Santa Barbara
105 E. Anapamu Street, Room 105
Santa Barbara, CA 93101
Attn: Housing Finance and Development Division

Owner: Ted Zenich Gardens, LP
815 W. Ocean Ave.
Lompoc, CA 93436
Attn: Executive Director

With a copy to Owner's limited partner at

Apollo Housing Capital LLC
600 Superior Avenue, Suite 2300
Cleveland, Ohio 44114

46. **BINDING UPON SUCCESSORS.** All provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferee, and assigns of the Owner, and the Lender, and shall run with the land for the full term of this Agreement, regardless of any assignment, payment, prepayment, expiration, extinguishment of the Loan or Note, any reconveyance of the Deed of Trust, or any conveyance or transfer of the Property or portion thereof.

47. **RELATIONSHIP OF PARTIES.** The relationship of the Owner and the Lender during the term of this Agreement is solely that of lender and borrower shall not be construed as a joint venture, equity venture, or partnership.

48. **WAIVER.** Any waiver by the Lender of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Lender to take action on any breach or default of the Owner or to pursue any remedy allowed under this Agreement, the Loan Documents, or applicable law. Any extension of time granted to the Owner to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Lender to any act or omission by the Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the Lender's written consent to future waivers.

49. **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Agreement must be in writing, and shall be made only if executed by both the Owner and the Lender.

50. **SEVERABILITY.** Every provision of this Agreement is intended to be severable. if any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, Lender and Borrower have caused this Regulatory Agreement to be executed by their duly authorized representatives.

COUNTY:

APPROVED AS TO FORM:

County of Santa Barbara,
Political subdivision of the State of California

STEPHEN SHANE STARK
COUNTY COUNSEL

By: _____
Brooks Firestone
Chair, Board of Supervisors

By: _____
Deputy County Counsel

APPROVED AS TO FORM:

OWNER:

BOB GEIS
AUDITOR CONTROLLER

Ted Zenich Gardens, L.P., a
California limited partnership

By: _____
Mark Paul
Senior Financial Analyst

By: _____
Name: _____
SIGNATURE MUST BE NOTORIZED

Expenditure Accounting Information
Fund: 0066 Dept: 055
Line Item: 7650 Program: 6000

Exhibit A
Legal Description of Property

State of _____) ss

County of _____) ss

On _____, 2007 before me, _____, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that she/he/they executed the same in her/his/their authorized capacity, and that by her/his/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

State of _____) ss

PROMISSORY NOTE

Santa Barbara, California

\$1,456,188

January 31, 2007

FOR VALUE RECEIVED, Ted Zenich Gardens, LP, a California Limited Partnership (the "Borrower"), hereby promises to pay to the order of the County of Santa Barbara, a political subdivision of the State of California (the "Lender"), the principal amount equal to One Million Four Hundred Fifty-Six Thousand One Hundred Eighty-Eight Dollars (\$1,456,188), or so much thereof as may be advanced by the Lender to the Borrower, together with interest thereon, as set forth below.

1. **PURPOSE.** In order to assist Borrower in acquiring and developing real property and providing twenty-four (24) units of affordable housing, Lender has agreed to lend the amount of One Million Four Hundred Fifty-Six Thousand One Hundred Eighty-Eight Dollars (\$1,456,188) to Borrower. Such funds have been received by the County from the United States Department of Housing and Urban Development under the HOME Investment Partnership Program (the "HOME Funds").

2. **BORROWER'S OBLIGATION.** This promissory note (the "Note") evidences the Borrower's obligation to pay the Lender such amount as has been disbursed under the Loan Agreement but not to exceed the principal amount of One Million Four Hundred Fifty-Six Thousand One Hundred Eighty-Eight Dollars (\$1,456,188) (the "Loan") plus any current or accumulated interest thereon for the funds loaned to the Borrower by the Lender to finance the acquisition, development and construction of certain real property, as more particularly described in Exhibit A, (the "Property") upon which the Borrower will build twenty-four (24) units of affordable housing (the "Project").

3. **INTEREST.** Subject to Section 4, this Note shall bear five percent interest (5%) per annum.

4. **DEFAULT INTEREST.** In the event of a default by Borrower of any of its obligations under this Note, Borrower shall pay to Lender interest on the outstanding principal of this Note, at an annual rate equal to the lesser of (i) ten percent (10%) compounded annually or (ii) the highest interest allowed by law, from the date of the default until the date that the default is cured or the Loan is repaid in full.

5. **AMOUNT AND TIME OF PAYMENT.** The principal and all current and accrued interest of the Loan shall be due and payable on the earlier of: (a) fifty-five (55) years from the date of the Note, or (b) the date the Property is sold. In the Event of Default by Borrower, which has not been cured as provided for in this Loan Agreement, all current and accrued interest shall be due and payable.

6. **DEFINITIONS.** The following shall have the meanings as defined below. All initially capitalized terms in this which are not defined below shall have the definition ascribed to such term in Loan Agreement:

- a. "Annual Financial Statement" means the financial statement of Operating Expenses and Revenues, prepared at the Borrower's expense, by an independent certified accountant reasonably acceptable to Lender, which shall form the basis for determining the Residual Receipts.
- b. "Operating expenses" shall mean, actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance, and management of the Project, including without limitation painting, cleaning, repairs and alterations, landscaping, utilities, rubbish removal, certificates, permits and licenses, sewer charges, real and personal property taxes and assessments, insurance, security, advertising, promotion and publicity, office, janitorial, cleaning and building supplies, lease payments if any, cash deposited into reserves for capital replacements with respect to the Project in an amount not to exceed reserve requirements reasonably imposed by any lender, cash deposited into an operating reserve in an amount not to exceed the amount reasonably required by any lender, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of accountants, attorneys, consultants and other professionals, and any required debt service under senior loans. Operating Expenses may include the payment to Borrower of a reasonable partnership management fee and a reasonable asset management fee. Operating Expenses may also include a deferred developer fee so long as the total amount of developer fees over the life of the project does not exceed One Million Two Hundred Fifty Thousand Dollars (\$1,250,000). The Operating Expenses shall be reported in the Annual Financial Statement.
- c. "Payment Date" shall mean April 1, 2009 for the first payment and April 1st for each year thereafter until the loan is paid in full or otherwise terminated.
- d. "Residual Receipts" shall mean Revenues reduced by Operating Expenses.
- e. "Revenue" shall mean all income derived from the Project, including but not limited to rent from the units, laundry operations, and parking fees.

7. **PAYMENTS.** Borrower shall make annual payments to Lender on the Loan from Residual Receipts. On or before each Payment Date the Borrower shall submit its Annual Financial Statement to Lender for the preceding calendar year together with an amount equal one hundred percent (100%) of the Residual Receipts for the preceding calendar year. Lender shall review and approve such statement, or request revisions, within sixty (60) days after receipt. In the event Lender fails to approve or disapprove the Annual Financial Statement within the sixty (60) day period, Borrower may request a written determination of approval or disapproval following the expiration of such period. In the event Lender fails to provide a written determination to Borrower within ten (10) days following the receipt of Borrower's request for determination, the Annual Financial Statement shall be deemed approved. In the event that

Lender determines that there is an understatement in the amount and payment of Residual Receipts due to Lender, Borrower shall promptly pay to Lender such understatement, but in any event, within twenty (20) days of notice of such understatement. In the event that Lender determines that there is an overpayment in the amount and payment of Residual Receipts due to Lender, Lender shall promptly pay to Borrower the amount of overpayment, but in any event, within twenty (20) days of such determination. If contested, Borrower has the right to pay under protest. Any payments made by Borrower pursuant to this Section shall be applied first to pay current annual interest due, if any, then the cumulative interest owed, if any, then to reduce the principal amount of the Loan. In any event all principal owed and all current and accrued interest of the Loan shall be due and payable as provided in Section 5 above.

Once the amount of Residual Receipts has been finally determined as set forth above, the Lender shall deposit all funds received under this Agreement in conformity with its HOME Consortium Agreement.

8. PLACE AND MANNER OF PAYMENT. All amounts due and payable under this Note are payable at the office of Lender at the address set forth below, or at such other place as Lender may designate to the Borrower in writing from time to time, in any coin or currency of the United States which on the respective dates of payment thereof shall be legal tender for the payment of public and private debts.

County of Santa Barbara
105 E Anapamu Street, Room 105
Santa Barbara, CA 93101
Attn: Director, Housing and Community Development.

9. DEFAULT AND ACCELERATION. This Note is secured by a Deed of Trust. All covenants, conditions and agreements contained in the Deed of Trust and the Loan Agreement are hereby made a part of this Note. Borrower agrees that the unpaid balance of the then principal amount of this Note and any default interest as set forth in Section 4, shall, at the option of Lender, become immediately due and payable upon any Event of Default as defined in the Loan Agreement which has not been cured pursuant to that Loan Agreement. Upon any Event of Default, Lender may exercise any other right or remedy permitted under the Loan Agreement, this Note and the Deed of Trust (collectively, the "Loan Documents"). Notwithstanding the above, Borrower's limited partner may, but is not obligated to, cure any default of Borrower hereunder which cure will be accepted by Lender as if it was made by Borrower.

10. NO OFFSET. Borrower hereby waives any rights of offset it now has or may hereafter have against Lender, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this Note.

11. WAIVERS. Presentment, notice of dishonor, and protest are waived by all makers, sureties, guarantors, and endorsers of this Note, if any.

12. CONSENTS AND APPROVALS. Any consent or approval of Lender required under this Note shall not be unreasonably withheld or delayed.

13. **NOTICES.** Except as may be otherwise specifically provided herein, any approval, notice, direction, consent request or other action by Lender shall be in writing and may be communicated to the Borrower at the principal office of the Borrower set forth below, or at such other place or places as the Borrower shall designate in writing, from time to time, for the receipt of communications from Lender.

Ted Zenich Gardens, LP
815 W. Ocean Ave.
Lompoc, CA 93436
Attn: Executive Director

With a copy to the Borrowers limited partner at:
Apollo Housing Capital, LLC
600 Superior Avenue, Suite 2300
Cleveland, Ohio, 99114.
Attn: President and General Counsel

14. **BINDING UPON SUCCESSORS.** All provisions of this Note shall be binding upon and inure to the benefit of the successors-in-interest, transferees, and assigns of the Borrower and Lender.

15. **GOVERNING LAW.** This Note shall be interpreted under and governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

16. **SEVERABILITY.** Every provision of this Note is intended to be severable. If any provision of this Note shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

17. **TIME.** Time is of the essence in this Note.

18. **ATTORNEYS' FEES AND COSTS.** In the event any legal action is commenced to interpret or to enforce the terms of this Note, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

19. **WAIVER.** Any waiver by Lender of any obligation in this Note must be in writing. No waiver shall be implied from any failure of Lender to take, or any delay or failure by Lender to take action on any breach or default by the Borrower or to pursue any remedy allowed under this Note or applicable law. Any extension of time granted to the Borrower to perform any obligation under this Note shall not operate as a waiver or release from any of its obligations under this Note.

20. **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Note must be in writing, and shall be made only if executed by both the Borrower and Lender.

21. **NONRECOURSE.** Except as expressly provided in the second paragraph of this Section 21, the Borrower, and the Borrower's partners, officers, directors, employees and agents shall not have any direct or indirect personal liability for payment of the principal of, or interest on, this Note. The sole recourse of the Lender with respect to the principal of, or interest on, the Note shall be to the property securing the indebtedness evidenced by the Note. However, nothing contained in the foregoing limitation of liability shall (i) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the Lender, or (ii) be deemed in any way to impair the right of the Lender to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note, except as hereafter set forth; nothing contained herein is intended to relieve the Borrower of personal liability to the extent of actual damages for (i) Borrower's fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges (which are not contested by Borrower in good faith) which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust or other Loan Documents; (iv) the material misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; (v) the Borrower's indemnification obligations under Article 6 and Article 7 of the Loan Agreement; and (vi) payment to the Lender of any rental income or other income arising with respect to the Property received by the Borrower after the Lender has given notice to the Borrower of the occurrence of an Event of Default and after the expiration of all applicable notice and cure periods, subject to the rights of any lender providing a loan secured by the Property to which the Lender has subordinated the Deed of Trust.

22. **LOAN AGREEMENT CONTROLS.** In the event that any provisions of this Note and the Loan Agreement conflict, the terms of the Loan Agreement shall control.

IN WITNESS WHEREOF, the parties hereby have executed this Note as of the date first above written.

BORROWER:

Ted Zenich Gardens, L.P.
A California limited partner

By: _____
Its: _____

NO FEE DOCUMENT

**Recording requested by and
when recorded, mail to:**

County of Santa Barbara
105 E. Anapamu. Street, Room 105
Santa Barbara, CA 93101
Attn: Housing and Community Development

NO FEE DOCUMENT PURSUANT TO
GOVERNMENT CODE SECTION 6103

**DEED OF TRUST, ASSIGNMENT OF RENTS, AND
SECURITY AGREEMENT**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT ("Deed of Trust") is made as of this 31st day of January, 2007, by Ted Zenich Gardens, L.P., a California limited partnership ("Trustor"), to _____ Title Company, as trustee ("Trustee"), for the benefit of the County of Santa Barbara, a political subdivision of the State of California ("Beneficiary").

GRANT IN TRUST

1. **GRANT.** Trustor, in consideration of the indebtedness referred to below, hereby irrevocably grants and conveys to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, all of Trustor's interest in the property located at 1034 East Chapel Street in the City of Santa Maria, which is located in Santa Barbara County, California, as more particularly described in Exhibit A (the "Property") incorporated herein by this reference;

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property; all buildings, structures, fixtures, improvements, signs, and landscaping now or hereafter erected or located on the Property, including all equipment and machinery used for supplying or distributing heating, cooling, electricity, gas, water, air, and light, all kitchen and laundry appliances such as washers, dryers, refrigerators, garbage disposals, ovens, ranges, dishwashers, all plumbing and bathroom fixtures, all security and access control equipment, fire prevention and extinguishment equipment, elevators, floor coverings, window coverings, paneling, cabinets, (provided, however, that Trustor shall have the right to remove, if necessary, such fixtures, furnishings, and equipment for the purpose of replacement with similar items of the same quality performing the same functions, which replacements shall themselves become part of this grant); all building material and equipment either now or hereafter delivered to the Property and intended to be installed therein or any such material and equipment purchased with the Loans' proceeds whether or not located on the Property; all reserves, accounts, deferred payments, and refunds relating to

development on the Property; all rents and income generated by the Property or improvements thereon (subject however to the assignment of rents to Lender contained herein); all leases, subleases and rental agreements covering the Property or any portion thereof now existing or hereafter entered into, and all interests of Trustor in security deposits, advance rentals, accounts, or payments of similar nature with respect to such leases, subleases, or rental agreements; all easements and rights-of-way appurtenant to the Property, including parking and recreational easements, and all interests of Trustor in any land lying within the right-of-way of any street, sidewalks, and areas of land adjacent to or used in connection with the Property; all development rights and credits, air rights, water rights, and oil, gas or mineral rights with respect to the Property; all claims or demands with respect to insurance proceeds, and all awards made for a taking by eminent domain; all interests and rights in any private or government grants, subsidies, loans, or other financing with respect to development on the Property; all interests in personal property used in and about the Property (except furniture and other personal property of occupants of dwelling units on the Property); all intangible property and rights relating to the Property or operations on the Property, including trade names, goodwill, trademarks, and service marks; all government permits, approvals, and map rights related to construction on the Property; all architectural, structural, and mechanical plans, specifications, designs, studies, and data with respect to construction of improvements on the Property; all environmental tests, studies and reports with respect to the Property; all current and future claims and rights of action of Trustor against prior owners and operators of the Property, neighboring property owners and operators, tenants and former tenants, consultants, advisors, and other third parties with respect to environmental or Hazardous Materials contamination and cleanup of the Property under any federal, state, or local ordinances, statutes, regulations, or administrative decisions or common law.

All of the foregoing, together with the Property, is herein referred to as the "Security."

OBLIGATIONS SECURED

2. **OBLIGATIONS.** Trustor makes this grant for the purpose of securing the following obligations:

A. Repayment of the indebtedness of Trustor to Beneficiary in the principal sum of One Million Four Hundred Fifty-Six Thousand One Hundred Eighty-Eight Dollars (\$1,456,188), with interest thereon, evidenced by a promissory note executed by Trustor on file at the offices of Beneficiary and hereby incorporated by reference into this Deed of Trust (the "Note"), or as much as has been disbursed to Trustor therewith; and

B. Payment of any sums advanced by Beneficiary to protect the security and priority of this Deed of Trust; and

C. Performance of every obligation, covenant or agreement of Trustor contained in this Deed of Trust, the Note, the loan agreement executed between Trustor and Beneficiary concerning the loan from Beneficiary to Trustor of One Million Four Hundred Fifty-Six Thousand One Hundred Eighty-Eight Dollars (\$1,456,188) (the "Loan Agreement"), and the regulatory agreement executed between Trustor and Beneficiary and recorded against the

Property (the "Regulatory Agreement"), including all modifications, extensions and renewals of these obligations; and

D. Performance of any other obligation or repayment of any other indebtedness of Trustor to Beneficiary, where such evidence of obligation or indebtedness specifically recites that it is secured by this Deed of Trust; and

E. Performance of any obligations of Trustor in any other agreements with respect to financing of the Project or the Security the absence of which would adversely affect Beneficiary, whether or not Beneficiary is a party to such agreements.

ABSOLUTE ASSIGNMENT OF RENTS AND RIGHT TO POSSESSION

3. **ASSIGNMENT.** As additional security, Trustor hereby assigns to Beneficiary: (a) all of the rents, revenues, profits, and income from the Security, any deposits now or hereafter in Trustor's possession which have been collected with respect to the Security, and any reserve or capital funds now or hereafter held by Trustor with respect to construction or operation of the Security (collectively, the "Rents"); and (b) the right to enter, take possession of, and manage the Security; provided however that Trustor shall have, before an Event of Default, the exclusive right to possess the Security and to collect Rents and use them in accordance with the documents described in Section 2.C. above (collectively, the "Loan Documents"). This assignment is intended to be an absolute and present transfer of Trustor's interest in existing and future Rents, effective as of the date of this Deed of Trust.

4. **ENFORCEMENT.** Upon the happening of an Event of Default which remains uncured after expiration of the applicable cure period pursuant to the terms of the Loan Agreement or other Loan Documents, Beneficiary may, in addition to other rights and remedies permitted by the Loan Agreement, this Deed of Trust, or applicable law: (a) enter upon, take possession of, and manage the Security, either in person as a mortgagee-in-possession, by agent, or by a receiver appointed by a court, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Security, (b) collect all Rents, including those past due and unpaid, and apply the same to pay for the costs and expenses of operation of the Security, including attorneys' fees, and pay off any indebtedness secured by this Deed of Trust, all in such order as Beneficiary may determine, (c) enter upon and take possession of the Security, and complete construction of any improvements on the Security as provided for in the Scope of Work approved under the Loan Agreement or any modifications to the Scope of Work or the Project that Beneficiary in its sole discretion believes is appropriate, and/or (d) Beneficiary may make, cancel, enforce, and modify leases and rental agreements, obtain and evict tenants, set and modify rent terms, sue for rents due, enter into, modify, or terminate any contracts or agreements, or take any legal action, as it deems necessary with respect to the Rents or to development or operation of the Security, subject to the rent restrictions imposed against the Property.

5. **APPOINTMENT OF A RECEIVER.** In any action to enforce this assignment, Beneficiary may apply for the appointment of a receiver to take possession of the Security and take whatever measures are necessary to preserve and manage the Security for the benefit of

Beneficiary and the public interest. Trustor hereby consents to the appointment of a receiver. The receiver shall have all of the authority over the Security that Beneficiary would have if Beneficiary took possession of the Security under this assignment as a mortgagee-in-possession, including the right to collect and apply Rents and the right to complete construction of improvements.

6. NO WAIVER OF POWER OF SALE. The entering upon and taking possession of the Security and the collection of Rents shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or notice of default and, notwithstanding the continuance in possession of the Security or the collection and application of Rents, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon occurrence of any Event of Default, including the right to exercise the power of sale.

COMMERCIAL CODE SECURITY AGREEMENT

7. GRANT. This Deed of Trust is intended to be a security agreement and financing statement pursuant to the California Commercial Code for any of the items specified above as part of the Security which under applicable law may be subject to a security interest pursuant to the Commercial Code, and Trustor hereby grants Beneficiary a security interest in said items. Beneficiary may file a copy of this Deed of Trust in the real estate records or other appropriate index as a financing statement for any of the items specified as part of the Security. Trustor shall execute and deliver to Beneficiary at Beneficiary's request any financing statements, as well as extensions, renewals, and amendments thereof, and copies of this instrument in such form as Beneficiary may require to perfect a security interest with respect to said items. Trustor shall pay all costs of filing such financing statements and shall pay all reasonable costs of any record searches for financing statements and releases. Without the prior written consent of Beneficiary, Trustor shall not create or permit any other security interest in said items. This Deed of Trust constitutes a fixture filing under Sections 9313 and 9402(6) of the California Commercial Code.

8. REMEDIES. Upon Trustor's breach of any obligation or agreement in the Loan Documents, after expiration of any applicable cure period, Beneficiary shall have the remedies of a secured party under the Commercial Code and at Beneficiary's option may also invoke the remedies provided for elsewhere in this Deed of Trust with respect to said items. Beneficiary may proceed against the items of real property and personal property specified above separately or together and in any order whatsoever.

RIGHTS AND OBLIGATIONS OF TRUSTOR

9. PERFORMANCE OF SECURED OBLIGATION. Trustor shall promptly perform each obligation secured by this Deed of Trust in accordance with the Loan Documents.

10. PAYMENT OF PRINCIPAL AND INTEREST. Trustor shall promptly pay when due the principal and any interest due on the indebtedness evidenced by the Note.

11. MAINTENANCE OF THE SECURITY. Trustor shall, at the Trustor's own expense, maintain and preserve the Security or cause the Security to be maintained and preserved in good condition, in good repair, and in a decent, safe, sanitary, habitable and tenantable condition. Trustor shall not cause or permit any violations of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitudes as they pertain to improvements, alterations, maintenance or demolition on the Security. Trustor shall not commit or permit waste on or to the Security. Trustor shall not abandon the Security. Beneficiary shall have no responsibility over maintenance of the Security. In the event Trustor fails to maintain the Security in accordance with the standards in this Deed of Trust, the Loan Agreement, or the Regulatory Agreements, Beneficiary and after any applicable cure periods, may, but shall be under no obligation to, make such repairs or replacements as are necessary and provide for payment thereof. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of interest as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

12. INSPECTION OF THE SECURITY. Trustor shall permit Beneficiary to enter and inspect the Security during normal business hours for compliance with these obligations upon at least 24 hours advance notice of such visit by Beneficiary to Trustor or Trustor's management agent.

13. LIENS, ENCUMBRANCES, AND CHARGES. Trustor shall discharge any lien or encumbrance not approved by Beneficiary in writing that may attain priority over this Deed of Trust, as provided for in the Loan Agreement.

14. DEFENSE AND NOTICE OF CLAIMS AND ACTIONS. Trustor shall appear in and defend, at its own expense, any action or proceeding purporting to affect the Security and/or the rights of Beneficiary. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding and of any condemnation offer or action with respect to the Security upon Trustor's receipt of notice thereof.

15. SUITS TO PROTECT THE SECURITY. Beneficiary shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Security or the rights of Beneficiary, (b) to preserve or protect its interest in the Security and in the Rents, and (c) to restrain the enforcement of or compliance with any governmental legislation, regulation, or order, if the enforcement of or compliance with such legislation, regulation, or order would impair the Security or be prejudicial to the interest of Beneficiary.

16. DAMAGE TO SECURITY. Trustor shall give Beneficiary and Trustee prompt notice in writing of any damage to the Security. If any building or improvements erected on the Property is damaged or destroyed by an insurable cause, Trustor shall, at its cost and expense, repair or restore said buildings and improvements consistent with the original plans and specifications if Trustor reasonably determines that such restoration or repair is economically feasible. Such work or repair shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be complete within one year thereafter. Subject to Trustor's

election to rebuild, all insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Trustor shall make up the deficiency.

17. **TITLE.** Trustor warrants that Trustor lawfully has legal title to the Security without any limitation on the right to encumber other than those limitations set forth in the Loan Documents or other financing documents approved by Lender.

18. **GRANTING OF EASEMENTS.** Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to the Security except those required or desirable for installation and maintenance of public utilities including water, gas, electricity, sewer, cable television, telephone, or those required by law.

19. **TAXES AND LEVIES.** Trustor shall pay prior to delinquency, all taxes, fees, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security. However, Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any contested liabilities. In the event that Trustor fails to pay any of the foregoing items, Beneficiary may, but shall be under no obligation to, pay the same, after Beneficiary has notified Trustor of such failure to pay and Trustor fails to fully pay such items within seven business days after receipt of such notice. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of interest as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

20. **INSURANCE.** Trustor shall provide such insurance as required under the Loan Agreement and the Regulatory Agreement. In the event Trustor fails to maintain the full insurance coverage required by this Deed of Trust, Beneficiary, after at least seven business days prior notice to Trustor, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

21. **CONDEMNATION.** Subject to the rights of any senior lienholders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of taking all or any part of or interest in the Security under assertion of the power of eminent domain ("Funds") are hereby assigned to and shall be paid to Beneficiary. Beneficiary is authorized (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as Beneficiary shall determine at its sole option. All or any part of the amounts so collected and recovered by

Beneficiary may be released to Trustor upon such conditions as Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust.

Notwithstanding anything to the contrary set forth herein, Beneficiary shall, prior to the application of the Funds or any portion thereof to the indebtedness or other obligations, apply such portion of the Funds as is reasonable and necessary to repair and preserve the value, marketability and rentability of the Security. Trustor shall have the right to rebuild the Project, and to use all available condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the Loans in balance and rebuild the Project in a manner that provides adequate security to Lender for repayment of the Loans or, if such proceeds are insufficient or such security is inadequate, then Trustor shall have funded any deficiency and/or provided additional security; (b) Lender shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement; and (c) no material default then exists under the Loan Documents other than any default which is a direct result of the condemnation.

22. ACCELERATION ON TRANSFER OF SECURITY; ASSUMPTION. In the event that Trustor, without the prior written consent of the Beneficiary, sells, agrees to sell, transfers, or conveys its interest in the Security or any part thereof or interest therein, Beneficiary may at its option declare all sums secured by this Deed of Trust to be immediately due and payable. This option shall not apply in case of:

A. The grant of a leasehold interest to qualifying households who will occupy units in the Project as provided for under the Loan Documents; or

B. Sale or transfer of fixtures or personal property pursuant to the grant provisions in this Deed of Trust. Consent to one sale or transfer shall not be deemed to be a waiver of the right to require such consent to future or successive transactions.

23. RECONVEYANCE BY TRUSTEE. This trust is intended to continue for the entire term of the Loan. Upon written request of Beneficiary stating that all sums secured by this Deed of Trust have been paid and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee' reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

DEFAULT AND REMEDIES

24. EVENTS OF DEFAULT. Any of the events listed in the Loan Agreement as an Event of Default shall also constitute an Event of Default under this Deed of Trust.

25. ACCELERATION OF MATURITY. Upon the happening of an Event of Default which has not been cured within the times and in the manner provided in the Loan Agreement, Beneficiary may declare all sums advanced to Trustor under the Note and this Deed of Trust immediately due and payable.

26. **BENEFICIARY'S REMEDIES.** Upon the happening of an Event of Default which has not been cured within the times and in the manner provided in the Loan Agreement, Beneficiary may, in addition to other rights and remedies permitted by the Loan Agreement, the Note, or applicable law, proceed with any or all of the following remedies:

A. Enforce the assignment of rents and right to possession as provided for in this Deed of Trust, and/or seek appointment of a receiver to take over possession of the Security and collect Rents;

B. Enter the Security and take any actions necessary in its judgment to complete construction on the Security, either in person or through a receiver appointed by a court;

C. Disburse from the Loans' proceeds any amount necessary to cure any Monetary Default under this Deed of Trust, the Loan Agreement, or the Notes;

D. Commence an action to foreclose this Deed of Trust pursuant to California Code of Civil Procedure Section 725(a) *et seq.* as amended, and/or seek appointment of a receiver from a court of competent jurisdiction with the authority to protect Beneficiary's interests in the Security, including the authority to complete construction of improvements;

E. Deliver to Trustee a written declaration of Default and demand for sale, and a written Notice of Default and election to cause Trustor's interest in the Security to be sold and exercise its power of sale as provided for below; or

F. Pursue any other rights and remedies allowed at law or in equity.

27. **FORECLOSURE BY POWER OF SALE.** Should Beneficiary elect to foreclose by exercise of the power of sale contained in this Deed of Trust, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust (the deposit of which shall be deemed to constitute evidence that the unpaid sums disbursed under the Notes are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as they may determine unless specified otherwise by Trustor, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to the purchaser its deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof.

Any person, including, without limitation, Trustor, Trustee, or Beneficiary, may purchase at the sale.

Trustee may postpone the sale of all or any portion of the property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

28. APPLICATION OF SALE PROCEEDS. After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale as follows: first, to the payment of all sums then secured by this Deed of Trust, in such order and amounts as Beneficiary in its sole discretion determines; and second, the remainder, if any, to the person or persons legally entitled thereto.

29. REMEDIES CUMULATIVE. No right, power or remedy conferred upon or reserved to Beneficiary by this Deed of Trust is intended to be exclusive of any other rights, powers or remedies, but each such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

GENERAL PROVISIONS

30. GOVERNING LAW. This Deed of Trust shall be interpreted under and governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

31. STATEMENT OF OBLIGATION. Beneficiary may collect a fee not to exceed the maximum allowable under applicable law for furnishing a statement of obligations as provided in the California Civil Code.

32. CONSENTS AND APPROVALS. Any consent or approval of Beneficiary required under this Deed of Trust shall not be unreasonably withheld.

33. TIME. Time is of the essence in this Deed of Trust.

34. NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between Trustor and Beneficiary shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Trustor and Beneficiary as follows:

BENEFICIARY: County of Santa Barbara
Housing and Community Development Department
105 E. Anapamu Street, Room 105
Santa Barbara, CA 93101
Attn: Executive Director

TRUSTOR: Ted Zenich Gardens, LP
815 W. Ocean Ave.
Lompoc, CA 93436

With copy to Trustor's limited partner at:

Apollo Housing Capital, LLC
600 Superior Avenue, Suite 2300
Cleveland Ohio 44114
Attn: President and General Counsel

35. **BINDING UPON SUCCESSORS.** All provisions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Trustor, Trustee, and Beneficiary.

36. **WAIVER.** Any waiver by Beneficiary of any obligation of Trustor in this Deed of Trust must be in writing. No waiver will be implied from any delay or failure by Beneficiary to take action on any breach or default of Trustor or to pursue any remedy allowed under the Deed of Trust or applicable law. Any extension of time granted to Trustor to perform any obligation under this Deed of Trust shall not operate as a waiver or release Trustor from any of its obligations under this Deed of Trust. Consent by Beneficiary to any act or omission by Trustor shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's written consent to future waivers.

37. **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Deed of Trust must be in writing, and shall be made only if mutually agreed upon by Beneficiary and Trustor.

38. **LOAN AGREEMENT CONTROLS.** If there is any contradiction between this instrument and the Loan Agreement, the terms of the Loan Agreement shall control, except that Trustor shall have no defense or claim that this instrument does not establish a valid lien on the Property or the Security.

39. **DEFINITIONS.** Capitalized terms not otherwise defined in this Deed of Trust shall have the same meaning as defined terms in the Loan Agreement.

40. **PROOFS OF CLAIM.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, recomposition or other proceedings affecting Trustor, its creditors or its property, Trustee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by Trustor hereunder after such date.

41. **SEVERABILITY.** Every provision of this Deed of Trust is intended to be severable. If any term or provision of this Deed of Trust is declared to be illegal, invalid, or unenforceable

by a court of competent jurisdiction, the legality, validity, and enforceability of the remaining provisions shall not be affected. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt and all payments made on the debt (whether voluntary or under foreclosure or other enforcement action or procedure) shall be considered to have been first paid or applied to the payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

42. SUBSTITUTION OF TRUSTEE. Beneficiary may from time to time appoint another trustee to act in the place and stead of Trustee or any successor. Upon such appointment and without conveyance, the successor trustee shall be vested with all title, powers, and duties conferred upon Trustee.

43. ACCEPTANCE BY TRUSTEE. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee are not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

44. NONRECOURSE OBLIGATION. Except as expressly provided in the second paragraph of this section, the Trustor, and the Trustor's officers, directors, employees and agents shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Note or the performance of the covenants of the Trustor under the Deed of Trust securing the Note. The sole recourse of the Beneficiary with respect to the principal of, or interest on, the Note shall be to the property securing the indebtedness evidenced by the Note. However, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the Beneficiary, or (b) be deemed in any way to impair the right of the Beneficiary to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note, except as hereafter set forth; nothing contained herein is intended to relieve the Trustor of personal liability for (a) fraud or willful misrepresentation; (b) the failure to pay taxes, assessments or other charges (which are not contested by Trustor in good faith) which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (c) the fair market value of any personal property or fixtures removed or disposed of by Trustor other than in accordance with the Deed of Trust; (d) the misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; (e) the Trustor's indemnification obligations under Article 6 and Article 7 of the Loan Agreement; and (f) payment to the Beneficiary of any rental income or other income arising with respect to the Property received by the Trustor after the Beneficiary has given notice to the Trustor of the occurrence of an Event of Default, subject to

the rights of any lender providing a loan secured by the Property to which the Lender has subordinated the Deed of Trust.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:
Ted Zenich Gardens, LP, a California
limited partnership

By: _____

Name: _____

Its: _____

Signature must be notarized

State of _____) ss

) ss.

County of _____)

On _____, 2007 before me, _____, a Notary Public
in and for said County and State, personally appeared

_____, personally known to me (or proved to me on the
basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within
instrument and acknowledged to me that she/he/they executed the same in her/his/their
authorized capacity, and that by her/his/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

State of _____) ss

Budget Journal Entry (On-Line)

Batch ID: 000-086-3885

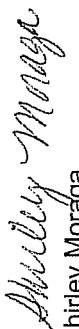
Document # BJE
2006559

Page # 1 of 1 Posting Date 2/13/2007 Audit Trail # TedZ021307

ATTACHMENT F

Fund	Department	GL Account	Line Item Account	Debit Amount	Credit Amount	Program	Org Unit	Project	Bdgt. Period	Descr ID
0066	055	2420	4789	1,457,000.00		6001			02/2007	A
0066	055	2420	4789	73,000.00		6000			02/2007	B
0066	055	2530	7650		1,457,000.00	6001			02/2007	A
0066	055	2530	7901		73,000.00	6000			02/2007	B
0001	055	2420	5911	73,000.00		6000			02/2007	B
0001	055	2530	9799		73,000.00	6000			02/2007	B
						AMOUNTS WILL BE ACTUALIZED AS				
						TRANSACTIONS OCCUR - NO JOURNALIC				
						ENTY INLUDED				
						Form Totals				
				1,603,000.00	1,603,000.00					

Descr ID	Description
A	Budget Grant Funding for Ted Zenich Gardens Apts
B	HCD Operating Admin Transfer to Fund 0001


 Shirley Moraga Phone # 3524 Departmental Authorized Signature _____ Date _____
 Form Prepared By _____ Posted By _____ Date _____
 County of Santa Barbara, FIN

Budget Revision Request

BJE 2006559
Budget Journal Entry #

Gov. Code Sec. 29125 & 29130

JE
Related Journal Entry #

Subject / Title: Provide a short description for this budget revision request. For example: "Designate funds for zoning ordinance amendments" or "Distribute proceeds from sale of 2005 COPS".

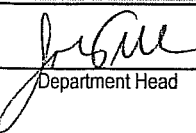
Housing and Community Development: Increase revenue and expenditure budget appropriations for Ted Zenich Gardens Apartments funded by the Department of Housing and Urban Developments' HOME program.

Justification: For all changes: explain what the change is for and why it is needed. Attach additional justification, board Letters or spreadsheet, if appropriate. When moving Appropriation: explain why it's available. When Revenue is adjusted: explain the reason for the increase or decrease. For adjustments to General Fund Contingency: explain why no other alternative funding source is available.

This budget revision recognizes unanticipated revenues and expenditures totaling \$1,530,000 for Ted Zenich Gardens Apartments, a proposed 24-unit multi-family affordable housing rental project located in the City of Santa Maria, 5th Supervisorial District. The project cost is \$1,457,000 and is funded by the Department of Housing and Urban Developments' HOME program. HOME regulations provide for project costs of 5% which will be recognized as an operating transfer from Fund 0066 to Fund 0001 to support program costs. No journal entry is required as transactions will be actualized as they occur.

Financial Summary

Increase or (Decrease) in Appropriation for / Uses:	Department / Fund 055 / 0066		Department / Fund 055 / 0001		Department / Fund /		Department / Fund /	
	Salaries & Benefits	00	00	00	00	00	00	00
Services & Supplies	1,457,000	00	00	00	00	00	00	
Other Charges	00	00	00	00	00	00	00	
Fixed Assets	00	00	00	00	00	00	00	
Other Financing Uses	73,000	00	00	00	00	00	00	
Intrafund Transfers	00	00	00	00	00	00	00	
Reserve or Designation	00	00	73,000	00	00	00	00	
Sources:								
Revenue	1,530,000	00	00	00	00	00	00	
Other Financing Sources	00	00	73,000	00	00	00	00	
Intrafund Transfers	00	00	00	00	00	00	00	
Reserve or Designation	00	00	00	00	00	00	00	
Effect on Contingency / RE	-	00	00	00	00	00	00	

Departmental Authorization	Auditor-Controller	CEO's Recommendation	Board of Supervisor's Action
 Department Head Date 7-31-07	Budget Journal Entry and Related Journal Entry if applicable Approved as to Accounting Form. _____ Auditor-Controller	<input type="checkbox"/> Approve <input type="checkbox"/> Disapprove Date _____ Transfer/Revision in Accordance with Board Policy dated 8/3/93. _____ County Executive Officer	<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved Date _____ Agenda Item _____ Clerk of the Board of Supervisors