

**LOAN AGREEMENT
(\$630,000)**

Between

County of Santa Barbara

and

Sumida Gardens L.P.

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**LOAN AGREEMENT
(SUMIDA GARDENS APARTMENTS)**

This Loan Agreement is made as of this __ day of _____, 2009, by and between the County of Santa Barbara, political subdivision of the State of California ("Lender"), and Sumida Gardens L.P., a California Limited Partnership ("Borrower").

RECITALS

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

B. Borrower has developed a property with 200 units of multi-family housing, eleven (11) of which will be made affordable pursuant to Santa Barbara County HOME Consortium Program funding ("Project"). The project is located at 5505-5585 Sumida Gardens Lane in the City of Goleta, which is located in Santa Barbara County, California, as more particularly described in Exhibit A (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 Six Hundred Thirty Thousand Dollars (\$630,000) as part of the Borrower's permanent financing for the Project (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 "**ASSISTED UNIT**" means any of the eleven (11) housing units on the Property which are supported by HOME Funds.

1.2 "**BORROWER**" is Sumida Gardens L.P., a California Limited Partnership, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

1.3 **"BUDGET"** means that budget 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.

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

1.5 **"DEED OF TRUST"** is that deed of trust, assignment of rents, and security agreement placed on the Borrower's Interest in the Property and improvements 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.

1.6 **"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.

1.7 **"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.

1.8 **"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.

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

1.10 **"INSURANCE REQUIREMENTS"** means the insurance coverage which must be in full force and effect during the term of the Regulatory Agreement, as specified in Exhibit E, attached hereto and incorporated by this reference.

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

1.12 **"LOAN"** means the loan of Santa Barbara County HOME funds in the amount of Six Hundred Thirty Thousand Dollars (\$630,000) from the Lender to the Borrower as provided in this Loan Agreement for permanent financing for the Sumida Gardens Project.

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

1.14 **"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.

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

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

1.17 **"MEDIAN INCOME"** means the median income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD with adjustments for household size.

1.18 **"NOTE"** means the promissory note executed by the Borrower in favor of Lender in the amount of Six Hundred Thirty Thousand Dollars (\$630,000) 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.

1.19 **"PAYMENT DATE"** shall mean on or before April 1st, 2020 and on or before each April 1st thereafter until April 1st, 2030, or until such time that the Loan is paid in full or otherwise terminated.

1.20 **"PROJECT"** means the operation and management of the Property and the improvements constructed thereon according to the terms of this Loan Agreement.

1.21 **"PROPERTY"** is located at 5505-5585 Sumida Gardens Lane in the City of Goleta, 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.

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

1.23 **"QUALIFYING RENT"** means the total annual charges for rent, utilities, and related services to each Very Low-Income Household which shall not exceed one twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income derived from data provided for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD annually with adjustments for household size.

1.24 **"REGULATORY AGREEMENT"** means the 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 eleven (11) units in the Project.

1.25 **"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 Six Hundred Thirty Thousand Dollars (\$630,000) and shall be evidenced by the Note.

2.3 **INTEREST.** Subject to the provisions of Section 2.4, the Note shall bear simple interest at a rate of four and one-half percent (4.5%) from the date on which the principal amount of the Loan is initially advanced to Borrower through year Twenty (20) of the 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 and any outstanding interest accrued on the Loan shall be due and payable on the earlier of: (a) April 1, 2030 or (b) the date the Property is sold or otherwise transferred or (c) an Event of Default by Borrower which has not been cured as provided for in this Loan Agreement. In any event, the principal of the Loan shall be due and payable no later than April 1, 2030. 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 will be 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 may be used only for the purpose of providing permanent financing for the costs related to the Project 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.** Payment of principal and interest shall be deferred for the initial ten (10) years of the Loan term. Borrower shall make annual amortized fixed payments on the Loan and accrued interest over the ten year period commencing on April 1, 2020. The outstanding principal balance remaining after each payment during the 10 year period will accrue interest at 4.5%.

Payment of this Loan shall be made to the County of Santa Barbara. All payments made by Borrower under this Agreement 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. Upon receipt, Lender shall deposit payments received into the City of Goleta's HOME account.

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 **SUBORDINATION OF LOAN.** This Loan shall be secured against the property in third (3rd) position subordinate only to the following financing: 1) a loan by City National Bank for construction financing in the amount of \$30,500,000 ("Construction Loan"), and; 2) a loan made by the Redevelopment Agency of the City of Goleta in an amount of \$2,959,816 ("Goleta RDA"). When the City National Bank loan is repaid through a permanent financing loan from a FDIC-insured bank or savings and loan association which is licensed to engage in the business of providing mortgage financing (purchase money or refinance) for residential real property or the United States Department of Housing and Urban Development ("Institutional Lender") in an amount not to exceed 85% of the appraised value, this Loan shall be subordinate to that loan. In addition, should Borrower refinance the permanent funding loan with a loan from an Institutional Lender in an amount not to exceed 85% of the appraised value, this loan shall be subordinate to said refinance loan. Lender shall review and shall not unreasonably refuse to execute a subordination agreement to implement this section.

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 DISBURSEMENT

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;

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

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

E. Lender has reviewed and approved the Management Plan;

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

G. If applicable, Lender has reviewed and approved completed Relocation files pertaining to the Property in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987; and

H. Borrower has complied with all California Relocation Assistance Act of 1970 (CA Gov't Code Sec 7260 et seq.) requirements, as applicable.

I. Any and all liens related to construction of the project are released.

3.2 **DISBURSEMENT OF LOAN PROCEEDS.** Disbursement of Loan proceeds shall not exceed Six Hundred Thirty Thousand Dollars (\$630,000) to be disbursed through escrow in one payment. All HOME funds shall be used only as specified in the Budget.

ARTICLE 4 OPERATION

4.1 **OPERATION OF PROJECT.** Upon disbursement of Loan proceeds Borrower shall operate and manage the Project 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 the Assisted Units with the same level of services (including security), amenities, and maintenance as are applied to the other dwelling units in the Project. Optional services provided must be available to all residents under the same terms and conditions. Borrower shall permit and facilitate Lender's verification of this consistency, which

may include inspection of both Assisted Units and other units in the Project for comparison purposes.

Borrower agrees that during the term of the Regulatory Agreement, Lender shall have the right to review and approve the Management Plan and any changes thereto, including changes in the 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.

4.2 DESIGNATED ASSISTED UNITS. Eleven (11) units in the Project shall be designated Assisted Units and shall meet the following standards:

- A. Of the total number of the eleven Assisted Units in the Project, two (2) shall be designated as one-bedroom units, eight (8) shall be designated as two-bedroom units, and one (1) shall be designated as a three-bedroom unit, all of which shall be designated to serve Very Low- Income households. The eleven (11) Assisted Units are designated as “floating” HOME units.
- B. Assisted Units shall be similarly constructed and of comparable quality to all other units in the Project;
- C. Assisted Units shall be dispersed throughout the Project; and
- D. Provide tenants access and enjoyment of all common areas and facilities of the Project on the same basis as tenants of other units.

4.3 AFFIRMATIVE MARKETING PLAN. Borrower has submitted to the Lender and Lender has reviewed and approved a plan for marketing the Assisted Units, including information on affirmative marketing efforts and compliance with fair housing laws and the Lender’s affirmative fair housing marketing guidelines, a copy of which is attached hereto as Exhibit H.

4.4 MANAGEMENT PLAN. Borrower has submitted and Lender has approved a Management Plan, attached hereto as Exhibit G, and management contract for the on-going management and operation of the Project for Lender's review and approval.

4.5 LEASING THE PROJECT. Borrower has submitted and Lender has reviewed and approved its proposed form of lease. The term of the Lease shall be for no less than one year, unless mutually agreed upon by tenant and owner, 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 initial 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 must be preceded by not less than 30 days written notice to the tenant by the Borrower specifying the grounds for the action.

4.6 TENANT SELECTION. Before leasing the Project, Borrower shall provide Lender for its review and approval Borrower's written tenant selection plan. 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(d) 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 Project Regulatory Agreement.

4.7 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 and methods contained in the 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 an Assisted Unit and annually thereafter.

On an annual basis, Borrower shall provide Lender with a copy of an occupancy summary report which lists all Units in the project and identifies the Assisted Units, the Assisted Units' rents, the name(s) of the present occupants and such occupants' family size, occupants' income at the time of the last income certification, the size of the Assisted Units, and any other information which the Lender requests and which relates to the eligibility of these households. If the household size of a Qualifying Household changes, the Lender may request additional income documentation to determine eligibility. If Lender determines that the Qualifying Household is no longer a Qualifying Household, such unit will continue to be treated as an Assisted Unit until the next available unit of comparable size in the Project is rented at the Qualifying Rent to a household that qualifies for an Assisted Unit.

4.8 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 Very Low-Income Households.

4.9 ASSISTED UNIT RENTS. Rents for Assisted Units shall be limited to Qualifying Rents as set forth in 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.

4.10 MAXIMUM RENTAL CHARGES. For each Assisted Unit, the total charges for rent, utilities, and related services to each Very Low-Income Household shall not exceed one twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income adjusted for household size. 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.

4.11 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.

4.12 **NONDISCRIMINATION.** Borrower shall not discriminate or segregate in the development, construction, 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, including the County's antidiscrimination ordinance, Santa Barbara County Code Chapter 2, Article XIII, as it may be amended from time to time.

4.13 **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 (3) years after completion of the Project as evidenced by the recording of a Notice of Completion. 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 of the Project.

4.14 **AUDITS.** Borrower shall make available to Lender for examination at reasonable intervals and during normal business hours 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.

4.15 **ENCUMBRANCE OF PROPERTY.** Except as provided for in Section 2.11 of 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.

4.16 **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 the Property, or any part thereof, without the prior written consent of Lender. Notwithstanding anything to the contrary contained herein, a transfer of limited partner interests as defined in the Agreement of Limited Partnership, as amended, shall not be deemed a transfer under this Agreement.

4.17 **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.

4.18 **PROPERTY STANDARDS.** The Development shall meet all applicable local codes and zoning ordinances at the time of construction completion. These property standards shall apply throughout the affordability period.

4.19 **DAMAGE TO PROPERTY.** If any building or Improvements erected by Borrower 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 Improvements consistent with the original Plans and Specifications 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 thereafter. 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.

4.20 **EQUAL EMPLOYMENT OPPORTUNITY.** Borrower and any contractors, subcontractors, and professional service providers for the Project shall 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.).

4.21 **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 applicable HUD regulations in effect on the date the Loan is funded pertaining to HOME.

ARTICLE 5 INDEMNITY AND INSURANCE

5.1 **INDEMNITY AND INSURANCE.** Borrower shall agree to defend, indemnify and save harmless the Lender for any claim or liability arising out of this Agreement, except to the extent caused by Lender’s gross negligence or willful misconduct as set forth in Exhibit E attached hereto and incorporated herein by reference, and to procure and maintain insurance in accordance with the provisions of Exhibit E.

5.2 **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 6 HAZARDOUS MATERIALS

6.1 **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.

6.2 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.

6.3 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.

6.4 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.

6.5 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.

6.6 **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 7 DEFAULT AND REMEDIES

7.1 **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. Operation. (1) Discrimination by Borrower on the basis of characteristics prohibited by this Loan Agreement or applicable law or (2) except as provided in Section 2.11 hereof, the imposition of any encumbrances or liens on the Property without Lender's prior written approval;

C. 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;

D. 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 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;

E. 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;

F. 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;

G. 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.

H. Programmatic compliance. Any non-compliance with HOME Program requirements described in this Loan Agreement and associated Regulatory Agreement pursuant to the HOME Investment Partnerships Program Final Rule at 24 CFR § 92.

7.2 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 cure 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 in the Loan Documents, Lender hereby agrees that any cure of any default made or tendered by Borrower's Limited Partners shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

7.3 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 7.2 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 construction of the Project, including without limitation (1) making changes in the Scope of Construction 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 construction as needed to preserve Lender's interest in seeing the Project developed 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. Disburse from Loan proceeds any amount necessary to cure any monetary default;

G. 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;

H. 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;

I. 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

J. 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 and failure to cure as provided in Section 7.2.

ARTICLE 8 GENERAL PROVISIONS

8.1 **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.

8.2 **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.

8.3 **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.

8.4 **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.

8.5 **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.

8.6 **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.

8.7 **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.

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

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

8.10 **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
Housing and Community
Development Department
Attn: Grants Administration Manager
123 E Anapamu Street, Room 27
Santa Barbara, CA 93101

With a copy to: City of Goleta
Planning and Environmental
Services Department
Attn: Director
130 Cremona Drive, Suite B
Goleta , CA 93117

BORROWER: Sumida Gardens L.P.
c/o The Towbes Group, Inc.

Attn: Michael Towbes
21 East Victoria Street, #200
Santa Barbara, CA 93101

With a copy to: Peter N. Brown, Esq.
Hatch and Parent
21 East Carrillo Street
Santa Barbara, Ca. 93101

8.11 **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.

8.12 **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.

8.13 **ASSIGNMENT AND ASSUMPTION.** Subject to Section 4.16 hereof, 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.

8.14 **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 a consent to any other or subsequent act or omission or to waive the requirement for Lender's written consent to future waivers.

8.15 **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.

8.16 **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.

8.17 **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.

8.18 **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.

Remainder of Page Left Intentionally Blank

In witness whereof, the parties have executed this Amendment as of the date first written above.

ATTEST:

MICHAEL F. BROWN
Clerk of the Board

By: _____
Deputy Clerk of the Board

APPROVED AS TO FORM:

BOB GEIS
AUDITOR CONTROLLER

By: _____
Mark Paul
Division Chief

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

APPROVED AS TO FORM:

DENNIS MARSHALL
COUNTY COUNSEL

By: _____
Deputy County Counsel

APPROVED AS TO FORM:

RISK MANAGEMENT

By: _____
Ray Aromatorio
Risk Program Administrator

COUNTY

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

By: _____
Joseph Centeno, Chair
Board of Supervisors

Sumida Gardens L.P.
a California Limited Partnership

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

By: _____
Michael Towbes
President

AND

By: _____
Craig Zimmerman
Vice President

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION:

ALL THAT CERTAIN LAND SITUATED IN THE CITY OF GOLETA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF RANCHO LA GOLETA, IN THE CITY OF GOLETA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE NORTHERLY LINE OF HOLLISTER AVENUE, DISTANT WESTERLY THEREON NORTH 86°45'06" WEST, 1026.55 FEET FROM CORNER NO.47, AS SHOWN ON THE PARTITION MAP OF THE SUBDIVISION OF THE LANDS OF DANIEL A. HILL, DECEASED (FILED IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT OF SAID COUNTY IN SAID MATTER); THENCE CONTINUING WESTERLY THEREON, NORTH 86°45'06" WEST DISTANCE OF 446.87 FEET TO THE WESTERLY LINE OF TRACT NO.1 OF TRACT A AS SHOWN ON MAP FILED IN BOOK 11, PAGE 172 OF MAPS AND SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTHERLY ALONG SAID WESTERLY LINE, NORTH 5°27'54" EAST AS DISTANCE OF 467.51 FEET TO A POINT IN THE LINE BETWEEN CORNER NOS. 48 AND 62 OF SAID PARTITION MAP AS SHOWN ON MAP FILED IN BOOK 16, PAGE 16 OF MAPS AND SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE TRUE POINT OF BEGINNING FOR HIS DESCRIPTION;

THENCE 1ST, CONTINUING NORTHERLY ALONG SAID WESTERLY LINE NORTH 5°27'54" EAST A DISTANCE OF 561.52 FEET TO NORTHERLY LINE OF THE LAND OF THE LAND DESCRIBED IN DEED TO JOSEPH SEXTON RECORDED MAY 22, 1868 IN BOOK G, PAGE 126 OF DEEDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID NORTHERLY LINE ALSO BEING THE NORTHERLY LINE OF SAID TRACT NO. 1;

THENCE 2ND, EASTERLY ALONG SAID NORTHERLY LINE SOUTH 85°32'30" EAST A DISTANCE OF 446.60 FEET TO THE NORTHEASTERLY CORNER OF SAID LAND DESCRIBED IN DEED TO JOSEPH SEXTON, SAID CORNER ALSO BEING THE NORTHERLY CORNER OF SAID TRACT NO. 1, SAID CORNER ALSO BEING A POINT IN THE SOUTHERLY LINE OF PARTITION OF MAP OF THE LANDS OF J.D. PATTERSON, AS SHOWN ON MAP FILED IN BOOK B, PAGE 500 OF MISCELLANEOUS RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

THENCE 3RD, EASTERLY ALONG SAID SOUTHERLY LINE SOUTH 85°32'30" EAST A DISTANCE OF 365.68 FEET TO A POINT IN SAID LINE DISTANT THEREON NORTH 85°32" WEST, 657.37 FEET FROM THE SOUTHEASTERLY CORNER OF SAID LANDS OF J.D. PATTERSON;

THENCE 4TH, SOUTHERLY ALONG A LINE PARALLEL WITH SAID WESTERLY LINE TRACT NO. 1, SOUTH 5°27'54" WEST A DISTANCE OF 538.73 FEET TO A POINT IN SAID LINE BETWEEN CORNER NOS. 48 AND 62;

THENCE 5TH, WESTERLY ALONG SAID LINE NORTH 87°08'53" WEST A DISTANCE OF 813.00 FEET TO THE POINT OF BEGINNING.

SAID LAND IS ALSO SHOWN AS PARCEL 2 OF LOT LINE ADJUSTMENT NO. 00-LA-002 RECORDED JULY 8, 2002 AS INSTRUMENT NO. 02-0065586 OF OFFICIAL RECORDS.

EXHIBIT B
PROJECT BUDGET

**The Towbes Group, Inc.
Sumida Gardens
Sources and Uses in (\$'s)**

May 20, 2009

Sources and Uses

Description	Amount
Sources:	
City National Bank Construction Loan	\$ 30,500,000
City of Goleta GTIP Reimbursement	\$ 250,000
Partner Equity (land)	\$ 5,000,000
RDA Assistance (up front funds)	\$ 2,959,216
HOME Funds	\$ 630,000
Partnership Loan (reimbursed through tax increment)	\$ 2,935,159
Total Sources:	\$ 42,274,375
Uses:	
Land Cost	\$ 5,000,000
Construction Costs	\$ 28,006,573
Permits and Fees	\$ 4,136,258
Indirect Costs	\$ 4,810,578
Permanent Loan Fees	\$ 320,966
Total Uses:	\$ 42,274,375

The Towbes Group, Inc.
Sumida Gardens
Investment Summary in (\$'s)

Schedule 1.0
PROJECT RETURNS ANALYSIS WITH HOME FUNDS

5/28/2009

COSTS:

Total Construction		<u>Total</u>
Total Permits & Fees		28,006,573
Total Indirect Costs		4,136,258
Land Value		5,131,544
RDA Assistance (partially deferred)	Per Unit	25,000
		<u>(6,875,600)</u>

TOTAL PROJECT COSTS: 35,398,774

PROJECTED PERMANENT LOAN:

Projected	Yr. 1
Gross Income:	4,001,093
Less Expenses & Reserves:	<u>(1,430,428)</u>
NOI:	<u>2,570,665</u>

Proposed Rate:	7.00%
Proposed Amort.:	30
Capitalization Rate:	7.00%
Project Value:	36,723,785
LTV:	76%
DCR:	1.15
Annual Payment:	2,228,237
Permanent Loan Amount: (1)	27,910,077
HOME Funds	<u>630,000</u>
	6,858,697

CASH/EQUITY REQUIREMENT (2):

SUMMARY OF INVESTMENT YIELDS

Return on Costs:	<u>7.26%</u>
Cash on Cash Return:	<u>4.99%</u>

(1) Permanent Loan is sized by the lesser of 80% LTV or 1.15X coverage.
 (2) Actual Cash/Equity Requirement is \$10,208,547 due to deferred RDA assistance in the amount of \$3,665,784.

The Towbes Group, Inc.

Schedule 2.0

Sumida Gardens

Area Summary/Square Footage

Building	Plan	# of Units	Bed	Bath	Per Unit Sq. Ft.	Total		Decks	Patios	Storage	Common Area	GRAND TOTAL
						Rentable Sq. Ft.	Sq. Ft.					
C	4	60	1	1	674	40,440						40,440
B	2 - Ends	12	2	1	880	10,560						10,560
B	2	36	2	1	858	30,888						30,888
C	5	12	2	1	840	10,080						10,080
A	1	48	2	2	907	43,536						43,536
A	1-Ends	16	2	2	927	14,832						14,832
B	3	16	3	2	1108	17,728						17,728
TOTAL:					200	TOTAL LIVABLE AREA:	168,064	7,416	7,872	5,884	17,929	<u>207,165</u>

Maintenance Building: 700
 Laundry Rooms: 1,217
 Recreational/offices Bldg.: 2,227
 Subtotal: 4,144

TOTAL ENCLOSED AREA: 211,309

The Towbes Group, Inc.
Sumida Gardens
Projected Unit Rents in (\$'s)

Unit Type	# of Units	# of Bedrooms	# of Baths	Sq./Ft. per Unit	Rent per Sq. Ft.	Gross Rent Unit	Gross Monthly Rent
-----------	------------	---------------	------------	------------------	------------------	-----------------	--------------------

VERY LOW (50% OF AMI)

4	5	1	1	674 \$	0.92 \$	620 \$	3,100
5	8	2	1	840 \$	0.83 \$	697 \$	5,575
3	1	3	2	1108 \$	0.70 \$	772 \$	772
							14
							11,198
							9,447

LOW (60% OF AMI)

4	3	1	1	674 \$	1.11 \$	749 \$	2,248
5	5	2	1	840 \$	1.00 \$	842 \$	4,212
2	1	2	1	858 \$	0.98 \$	842 \$	842
3	1	3	2	1108 \$	0.84 \$	934 \$	934
							10
							7,330
							8,236

MODERATE (110% OF AMI)

4	3	1	1	674 \$	2.07 \$	1,396 \$	4,189
2	6	2	1	858 \$	1.83 \$	1,570 \$	9,422
3	1	3	2	1108 \$	1.57 \$	1,742 \$	1,742
							10
							8,278
							15,353

MARKET

4	49	1	1	674 \$	2.30 \$	1,550 \$	75,950
2 - Ends	12	2	1	880 \$	2.22 \$	1,950 \$	23,400
2	28	2	1	858 \$	2.24 \$	1,925 \$	53,900
5	0	2	1	840 \$	2.26 \$	1,900 \$	-
1	48	2	2	907 \$	2.21 \$	2,000 \$	96,000
1-Ends	16	2	2	927 \$	2.18 \$	2,025 \$	32,400
3	13	3	2	1108 \$	1.94 \$	2,150 \$	27,950
							166
							118,074
							309,600

TOTAL: 166 118,074 \$ 309,600
Average Rent/Sq.Ft. for Total Rentable Area \$ 2.04

SUMMARY	
TOTAL MONTHLY REVENUE AFFORDABLE:	\$ 33,037
TOTAL MONTHLY REVENUE MARKET:	\$ 309,600
TOTAL MONTHLY REVENUE:	\$ 342,637
TOTAL YEARLY REVENUE:	\$ 4,111,639

Sumida Gardens
Project Costs in (\$'s)

DESCRIPTION	Total		% of Total Costs
	Cost Per Sq. Ft.	Cost Per Unit	
HARD COSTS			
JobSite Operations:	\$ 8.99	\$ 9,500	5.10%
Offsite Improvements:	\$ 8.71	\$ 9,198	4.94%
Onsite Improvements:	\$ 22.28	\$ 23,541	12.63%
Landscaping (irrigation and planting):	\$ 2.36	\$ 2,496	1.34%
Base Buildings	\$ 76.00	\$ 80,297	43.08%
Recreational Facilities Furnishing:	\$ 1.06	\$ 1,123	0.60%
TOTAL HARD COSTS:	\$ 119.40	\$ 126,156	67.69%
HARD COST CONTINGENCY @:	3.00%	\$ 3,785	2.03%
GENERAL CONTRACTOR FEE @:	8.00%	\$ 10,092	5.42%
SUBTOTAL:	\$ 132.54	\$ 140,033	75.14%
PERMITS & FEES			
Permits & Fees	\$ 19.00	\$ 20,079	10.77%
Fee Contingency @:	3.00%	602	0.32%
TOTAL PERMITS & FEES:	\$ 19.57	\$ 20,681.29	11.10%
INDIRECT COSTS			
Design and Engineering Costs	\$ 6.71	\$ 7,090	3.80%
Carry during lease up	\$ 1.60	\$ 1,690	0.91%
Marketing	\$ 0.95	\$ 1,000	0.54%
Constr. Loan Points & Fees @	\$ 1.51	\$ 1,600	0.86%
Constr. Loan Interest (1)	\$ 6.53	\$ 6,894	3.70%
Developer Fee	\$ 4.73	\$ 5,000	2.68%
Permanent Loan Fees (2)	1.15%	\$ 1,605	0.86%
Soft Cost Contingency	2.00%	779	0.42%
TOTAL INDIRECT COSTS:	\$ 24.28	\$ 25,658	13.77%
TOTAL PERMITS, FEES, AND INDIRECT COSTS:	\$ 43.86	\$ 25,658	24.86%
TOTAL NEW CONSTRUCTION COSTS:	\$ 176.40	\$ 165,691	100.00%
LAND VALUE:	\$ 23.66	\$ 25,000	
TOTAL PROJECT COSTS:	\$ 200.06	\$ 211,372	
		\$ 42,274,374	

(1) Full recourse loan to Michael Towbes.
(2) 1 pt. origination fee plus costs on non-recourse permanent financing.

The Towbes Group, Inc.
 Sumida Gardens
 NOI Analysis in (\$'s)

DESCRIPTION	Avg. Unit per		
	Month	Monthly	Annual
INCOME			
Rents	1,713	342,637	4,111,639
Rental Applications Fees	1	100	1,200
Interest	3	600	7,200
Late Charges	1	100	1,200
Parking Income	-	-	-
Washer/Dryer Income	1	200	2,400
Misc. Income	1	100	1,200
Subtotal Income	1,718.68	343,737	4,124,839
Less Vacancy Factor =	3.00%	(52)	(123,745)
EFFECTIVE GROSS INCOME	1,667	333,424	4,001,093
EXPENSES			
Operating Expenses (per unit)	4,800	(400)	(960,000)
Real Property Taxes (assessed value/unit)	208,710	(176)	(35,202)
TOTAL EXPENSES (% of EGI yr. 1)	34.55%	(576)	(1,382,428)
REPLACEMENT RESERVES (% of EGI yr. 1)	1.20%	(20)	(48,000)
TOTAL EXPENSES AND RESERVES	35.75%	(596)	(1,430,428)
NET OPERATING INCOME	1,071	214,222	2,570,665

The Towbes Group, Inc.
 Sumida Gardens
 Cash on Cash Returns in (\$'s)

DESCRIPTION	Proforma Annual Yr. 1
EFFECTIVE GROSS INCOME	4,001,093
OPERATING EXPENSES	(960,000)
REAL ESTATE TAXES	(422,428)
RESERVES	<u>(48,000)</u>
NET OPERATING INCOME	<u>2,570,665</u>
DEBT SERVICE HOME Funds	2,228,237
CASH FLOW AFTER DEBT SERVICE	<u>342,428</u>
CASH ON CASH RETURN	<u>4.99%</u>

The Towbes Group, Inc.
Sumida Gardens
15 Year Cash Flow Projection In (\$'s)

Schedule 6.1

Annual Escalations:
Effective Gross Income 2.5%
Operating Expenses and Reserves 4.0%
Real Estate Taxes 2.0%

DESCRIPTION	Proforma Annual Yr. 1	Proforma Year 2	Proforma Year 3	Proforma Year 4	Proforma Year 5	Proforma Year 6	Proforma Year 7	Proforma Year 8	Proforma Year 9	Proforma Year 10	Proforma Year 11	Proforma Year 12	Proforma Year 13	Proforma Year 14	Proforma Year 15
EFFECTIVE GROSS INCOME	4,001,093	4,101,121	4,203,649	4,308,740	4,416,459	4,526,870	4,640,042	4,756,043	4,874,944	4,996,817	5,121,738	5,249,781	5,381,026	5,515,552	5,653,440
OPERATING EXPENSES	(960,000)	(998,400)	(1,038,336)	(1,079,869)	(1,123,064)	(1,167,987)	(1,214,706)	(1,263,295)	(1,313,826)	(1,366,379)	(1,421,035)	(1,477,876)	(1,536,991)	(1,598,471)	(1,662,409)
REAL ESTATE TAXES	(422,428)	(430,877)	(439,495)	(448,284)	(457,250)	(466,395)	(475,723)	(485,238)	(494,942)	(504,841)	(514,938)	(525,237)	(535,741)	(546,456)	(557,385)
RESERVES	(48,000)	(49,920)	(51,917)	(53,993)	(56,153)	(58,399)	(60,735)	(63,165)	(65,691)	(68,319)	(71,052)	(73,894)	(76,850)	(79,924)	(83,120)
NET OPERATING INCOME	2,570,665	2,621,924	2,673,901	2,726,593	2,779,991	2,834,089	2,888,877	2,944,346	3,000,484	3,057,278	3,114,714	3,172,775	3,231,444	3,290,701	3,350,525
DEBT SERVICE	2,228,237	2,228,237	2,228,237	2,228,237	2,228,237	2,228,237	2,228,237	2,228,237	2,228,237	2,228,237	2,228,237	2,228,237	2,228,237	2,228,237	2,228,237
HOME Funds Debt Service	-	-	-	-	-	-	-	-	-	-	113,608	113,608	113,608	113,608	113,608
CASH FLOW AFTER DEBT SERVICE	342,428	393,686	445,664	498,355	551,754	605,851	660,640	716,109	772,247	829,041	772,868	830,930	889,599	948,856	1,008,680

The Towbes Group, Inc.
Sumida Gardens
Construction Debt Service in (\$'s)

Schedule 8.0

DESCRIPTION	Month	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Beginning Balance	-	1,500,000	2,415,000	3,330,000	4,245,000	5,465,000	6,685,000	9,125,000	11,565,000	14,005,000	16,445,000	18,885,000	21,325,000	23,765,000	26,205,000	28,645,000	29,865,000	31,085,000	32,000,000
Draw	1,500,000	906,875	901,919	896,963	1,197,006	1,190,398	2,403,790	2,390,573	2,377,356	2,364,140	2,350,923	2,337,706	2,324,490	2,311,273	2,298,056	1,064,840	1,058,231	746,623	
Balance	1,500,000	2,406,875	3,316,919	4,226,963	5,442,006	6,655,398	9,088,790	11,515,573	13,942,356	16,369,140	18,795,923	21,222,706	23,649,490	26,076,273	28,503,056	29,709,840	30,923,231	31,831,623	
Interest Costs	-	8,125	13,081	18,038	22,994	29,602	36,210	49,427	62,644	75,860	89,077	102,294	115,510	128,727	141,944	155,160	161,769	168,377	
Ending Balance	1,500,000	2,415,000	3,330,000	4,245,000	5,465,000	6,685,000	9,125,000	11,565,000	14,005,000	16,445,000	18,885,000	21,325,000	23,765,000	26,205,000	28,645,000	29,865,000	31,085,000	32,000,000	
Interest Rate	6.50%																		
Loan Amount	32,000,000																		
Total Interest Costs	1,378,840	3.00%	3.00%	3.00%	3.00%	4.00%	4.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	4.00%	4.00%	3.00%	

EXHIBIT C
DEED OF TRUST

NO FEE DOCUMENT

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

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

NO FEE DOCUMENT PURSUANT TO
GOVERNMENT CODE SECTION 27383

**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 ____ day of _____, 2009, by Sumida Gardens L.P. 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 5505-5508 Sumida Gardens Lane in the City of Goleta, California, (the "Property"), as more particularly described in the attached Exhibit A, 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, panelling, 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 Loan's 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 Six Hundred Thirty Thousand Dollars (\$630,000) 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. Payment of any sums advanced by Beneficiary following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein; and

D. 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 on file at the offices of Beneficiary and hereby incorporated into this Deed of Trust by this reference (the "Loan Agreement"), and the regulatory agreement executed between Trustor and Beneficiary of even date herewith (the "Regulatory Agreement"), including all modifications, extensions and renewals of these obligations; and

E. 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

F. Performance of any obligations of Trustor in any other agreements with respect to financing of development of the Property 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.D. 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 Plans and Specifications approved under the Loan Agreement or any modifications to the Plans

and Specifications or the Development 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. Except as authorized in Section 2.11 of the Loan Agreement, Trustor shall not create or permit any other security interest in said items without the prior written consent of Beneficiary. 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 Agreements. 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 Development, and to use all available condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the Loans in balance and rebuild the Development 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 Development as provided for under the Loan Documents and the Regulatory Agreements; 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; or

C. Transfers of Trustor's limited partner interests.

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's 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 Note;

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 Note 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 it 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
Attn: Grants Administration Manager
123 E Anapamu Street, Room 27
Santa Barbara, CA 93101

With a copy to: City of Goleta
Planning and Environmental
Services Department
Attn: Director
130 Cremona Drive, Suite B
Goleta , CA 93117

BORROWER: Sumida Gardens L.P.
c/o The Towbes Group, Inc.
Attn: Michael Towbes
21 East Victoria Street, #200
Santa Barbara, CA 93101

With a copy to: Peter N. Brown, Esq.
Hatch and Parent
21 East Carrillo Street
Santa Barbara, Ca. 93101

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 TRUSTEES. 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 is 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 partners, 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 to the extent of actual damages for (a) Trustor's 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 or other Loan documents; (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 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:
Sumida Gardens L.P.
A California Limited Partnership

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

By: _____
Michael Towbes
President

AND

By: _____
Craig Zimmerman
Vice President

[TRUSTOR'S SIGNATURE MUST BE ACKNOWLEDGED]

EXHIBIT A

Legal Description of the Property

All that certain Land situated in the State of California in the County of Santa Barbara, described as follows:

EXHIBIT D

PROMISSORY NOTE

PROMISSORY NOTE
(HOME Funds Loan)

Santa Barbara, California

\$630,000

December ____, 2009

FOR VALUE RECEIVED, Sumida Gardens L.P., a California Limited Partnership ("Borrower"), whose address is 21 East Victoria Street, #200 Santa Barbara, CA 93101, hereby promises to pay to the order of the County of Santa Barbara, a political subdivision of the State of California ("Lender"), whose address is 123 E. Anapamu Street, Room 27, Santa Barbara, California 93101, the principal amount equal to Six Hundred Thirty Thousand Dollars (\$630,000), or so much thereof as may be advanced by Lender to Borrower, together with interest thereon, as set forth below.

1. **PURPOSE.** In order to assist Borrower in operating a two hundred (200) unit apartment complex, consisting of thirty four (34) affordable units, eleven (11) of which are HOME Assisted, Lender loaned the amount of Six Hundred Thirty Thousand Dollars (\$630,000) to Borrower, all of which is derived from funds received by the County from the Federal Department of Housing and Urban Development HOME Investment Partnerships Program.

2. **BORROWER'S OBLIGATION.** This promissory note (the "Note") evidences Borrower's obligation to pay Lender the principal amount of Six Hundred Thirty Thousand Dollars (\$630,000) (the "Loan") for the Funds loaned to Borrower by Lender for the specific uses designated in a loan agreement of even date herewith, between Borrower and Lender (the "Loan Agreement").

3. **INTEREST.** Subject to Section 4, this Note shall bear simple interest at the rate of four and one-half percent (4.5%) 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%) 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 the earlier of: (a) April 1, 2030; or (b) the date the Property is sold or otherwise transferred (c) an Event of Default by Borrower which has not been cured as provided for in the Loan Agreement. In any event, the principal and all current and accrued interest of the Loan shall be due and payable no later than December 15, 2030.

6. **DEFINITIONS.** All initially capitalized terms in this Note shall have the definition ascribed to such terms in the Loan Agreement. The following terms are defined in the Loan Agreement and repeated here for convenience of reference:

- a. "Payment Date" shall mean April 1st, 2020 and each April 1st thereafter until April 1st, 2030, or until such time that the Loan is paid in full or otherwise terminated.

7. **PAYMENTS.** Payments of principal and interest shall be deferred during the first ten years of the Loan and shall commence on April 1st, 2020. Borrower shall make annual, fully-amortizing payments of principal and interest thereafter until April 1st, 2030, or until such time that the Loan is paid in full or otherwise terminated.

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 above, or at such other place as Lender may designate to 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.

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, 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, including without limitation the failure of Borrower to make any payment when due. 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 anything to the contrary contained in the Loan Documents, Lender hereby agrees that any cure of any default made or tendered by Borrower's Limited Partners shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered 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 Borrower at the principal office of Borrower set forth below, or at such other

place or places as Borrower shall designate in writing, from time to time, for the receipt of communications from Lender. Written notices and communications shall be directed as follows:

To Lender: County of Santa Barbara
Housing and Community Development Department
123 East Anapamu Street, Room 27
Santa Barbara, Ca 93101
Attn: Grants Administration Manager

With a copy to: City of Goleta
Planning and Environmental
Services Department
Attn: Director
130 Cremona Drive, Suite B
Goleta , CA 93117

To Borrower: Sumida Gardens L.P.
c/o The Towbes Group, Inc.
Attn: Michael Towbes
21 East Victoria Street, #200
Santa Barbara, CA 93101

With a copy to: Peter N. Brown, Esq.
Hatch and Parent
21 East Carrillo Street
Santa Barbara, Ca. 93101

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 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 Borrower or to pursue any remedy allowed under this Note or applicable law. Any extension of time granted to 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 Borrower and Lender.

21. **NONRECOURSE.** Except as expressly provided in the second paragraph of this section, Borrower, and 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 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 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) Borrower's indemnification obligations under the Loan Agreement; and (vi) payment to the Lender of any rental income or other income arising with respect to the Property received by Borrower after the Lender has given notice to 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 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.

BORROWER:

Sumida Gardens L.P., a California Limited Partnership.

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

By: _____
Michael Towbes
President

AND

By: _____
Craig Zimmerman
Vice President

EXHIBIT E
INSURANCE REQUIREMENTS

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS

INDEMNIFICATION

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

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

INSURANCE

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

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

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

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

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

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

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

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

EXHIBIT F
REGULATORY AGREEMENT

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: Grants Administration Manager

NO FEE DOCUMENT PURSUANT TO
GOVERNMENT CODE SECTION 27383

**REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(COUNTY)**

This Regulatory Agreement and Declaration of Restrictive Covenants (this "Agreement") is made as of this ___ day of _____, 2009 by and between the County of Santa Barbara, a political subdivision of the State of California (the "Lender"), and Sumida Gardens, L.P., A California Limited Partnership (the "Owner").

RECITALS

A. The Owner has acquired the property located 5505-5585 Sumida Gardens Lane in the City of Goleta, in the County of Santa Barbara, as more particularly described in Exhibit A (the "Property") upon which the Owner has constructed two hundred (200) units of multi-family rental housing (the "Development").

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 Six Hundred Thirty Thousand Dollars (\$630,000) to provide financing for the Development (the "Loan").

E. 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, ownership, and management of the Development. 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 for the twenty (20) year term of this Agreement.

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:

1. DEFINITIONS

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

1.1 **"AFFORDABILITY PERIOD"** means the twenty (20) year term of this Agreement during which the Assisted Units must meet the affordability requirements imposed under the HOME Program.

1.2 **"ANNUAL INCOME"** means the Section 8 Program definition of Annual (gross) Income as more particularly defined at 24 CFR 5.609

1.3 **"ASSISTED UNIT"** means any of the eleven (11) Units in the Development with restricted occupancy and rents pursuant to this Agreement which has been designated by Owner as an Assisted Unit.

1.4 **"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 the United States Department of Housing and Urban Development ("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.

1.5 **"DEED OF TRUST"** means that certain deed of trust, placed 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.

1.6 **"DEVELOPMENT"** means the two hundred (200) unit housing project constructed by the Owner on the Property according to the terms of the Loan Agreement.

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

1.8 **"LOAN"** means the loan of HOME funds made by the Lender to the Owner for the Development pursuant to the Loan Agreement and the Note.

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

1.10 **"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.

1.11 **"NOTE"** means the promissory note executed by the Owner in favor of the Lender evidencing the Loan, which is secured by the Deed of Trust.

1.12 **"OWNER"** means Sumida Gardens L.P., a California Limited Partnership.

1.13 **"PROPERTY"** means the real property described in Exhibit A attached hereto and incorporated herein, including the improvements constructed thereon pursuant to the Loan Agreement.

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

1.15 **"QUALIFYING RENT"** means the total charges for monthly rent, utilities, and related services which do not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income derived from data provided for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD annually with adjustments for household size.

1.16 **"UNIT"** means a housing unit in the Development.

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

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

2. THE OWNER'S OBLIGATIONS

2.1 **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.

2.2 **TERM OF AGREEMENT.** This Agreement shall commence upon execution and shall remain in full force and effect until twenty (20) years following the date the project is closed out in the federal Integrated Disbursement and Information System ("Affordability Period"). Lender shall notify Owner in writing at the start of the Affordability Period. The requirements of this Agreement shall apply throughout the Term without regard to the term of any loan or mortgage or the transfer of ownership.

2.3 **COMPLIANCE WITH PROGRAM REQUIREMENTS.** The Owner shall comply with all applicable requirements imposed on projects assisted under the HOME program in effect on the date the HOME Loan is funded.

3. DEVELOPMENT OCCUPANCY AND RENTS

3.1 **OCCUPANCY OF DEVELOPMENT.** Eleven (11) Units in the Project shall be designated as Assisted Units. At the discretion of the Owner, one or more of the Assisted Units may also be funded through the funds from the City of Goleta Redevelopment Agency (“Goleta RDA”). The Assisted Units must be occupied, or reserved for occupancy by, Qualifying Households.

3.2 **ASSISTED UNITS.** The Owner shall limit for the full term of this Agreement the rental of 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 size of the Assisted Units shall be as follows:

<u>No. of Units</u>	<u>Bedrooms</u>
2	1 bedroom
8	2 bedrooms
1	3 bedrooms

The eleven Assisted Units shall meet the following standards:

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

3.3 MAXIMUM RENTAL CHARGES.

A. For a Very Low-Income household occupying an Assisted Unit, the total charges for monthly rent, utilities, and related services shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income as determined by HUD annually with adjustments for household size and allowances for utilities and services. Allowances for utilities and services shall be updated periodically in accordance with the Utility Allowance Schedule published annually by the Housing Authority of the County of Santa Barbara for the Goleta Housing Market Area.

B. Maximum rents for each Assisted Unit shall be set by the Lender at the time of initial occupancy of the Development. Annual rent increases shall be calculated based on the change in Area Median Income published annually by HUD, and shall be submitted by Owner to

Lender for approval prior to tenant notification of said change in rent. Households occupying Assisted Units shall be given at least sixty (60) days written notice prior to any rent increase.

3.4 INCOME CERTIFICATION. The income levels and other qualifications of applicants for Assisted Units shall be certified by Owner within sixty (60) business days of the household's expected occupancy of an Assisted Unit and recertified annually thereafter by the Owner.

A. Initial Income Verification. Before the household occupies an Assisted Unit, tenant eligibility must be determined and documented with source documents, such as wage statements, interest statements and unemployment compensation statements.

B. Annual Income Recertification. At the time of lease renewal or pursuant to an annual schedule adopted by the Owner, and no later than the anniversary of the original income evaluation and annually thereafter, Owner shall recertify the household income of each household occupying an Assisted Unit in compliance with one of the methods described in 24 CFR § 92.203. In addition, Owner shall collect full source documentation of households, as described in Section 3.4 A of this Agreement, every sixth year during the Term of this Agreement.

3.5 INCREASES IN TENANT INCOMES.

In the event that recertification of a household occupying an Assisted Unit 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 3. 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.

4. LEASING THE DEVELOPMENT.

4.1 TENANT LEASES. The Owner shall execute a written lease with tenants of HOME-assisted units for a term of at least one year, unless the Owner and the tenant mutually agree to a shorter period. A lease may not be for a period less than thirty (30) days. The tenant lease and any changes thereof must be approved by Lender.

A. 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.

C. The lease for each Assisted Unit shall not contain any the prohibited provisions identified at 24 CFR §92.253(b) including the following.

1. *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
2. *Treatment of property.* Agreement by the tenant that the owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
3. *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
4. *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
5. *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
6. *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;
7. *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
8. *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

D. Owner shall not terminate the tenancy or refuse to renew the lease of a tenant of an Assisted Unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing; or for other good cause. To terminate or refuse to renew the tenancy, the owner shall serve written notice upon the tenant specifying the grounds for the action at least thirty (30) days prior to termination of tenancy.

4.2 **TENANT SELECTION.** At the time of execution of this Agreement, the Owner has provided Lender and Lender has approved a written tenant selection plan demonstrating the marketing efforts and outreach performed for this development.

4.3 **SECTION 8 CERTIFICATE HOLDERS.** The Owner will accept as tenants of Assisted Units, 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 Development which have the effect of precluding occupancy of units by such prospective tenants.

4.4 **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.

4.5 **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 County of Santa Barbara Anti-discrimination Ordinance codified as Santa Barbara County Code Chapter 2, Article XIII.

4.6 **MARKETING PLAN.** Owner has submitted 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. Lender has reviewed and approved the Marketing Plan submitted by the Owner.

5. PROPERTY MANAGEMENT

5.1 **MANAGEMENT RESPONSIBILITIES.** The Owner is responsible for all management functions with respect to the Development, 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 Development. The Owner has submitted to the Lender, and the Lender approved, its proposed property manager. The Owner may only remove and/or replace the property manager with the prior written consent of the Lender which consent shall not be unreasonably withheld.

5.2 **APPROVAL OF MANAGEMENT POLICIES.** The Owner has submitted and Lender has approved Owner's written management policies with respect to the Development. Any amendment to the written management plan must be approved in advance in writing by County with approval shall not be unreasonably delayed or withheld.

5.3 **INSPECTION AND RECORDS.** The Owner shall maintain records which 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 Development 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.

5.4 **COMPLIANCE MONITORING.** The Owner shall operate the property in full compliance with this Agreement and the HOME Program Regulations at 24 CFR Part 92 in effect on the date the HOME Loan is funded, and shall remain in compliance therewith throughout the term of this Agreement. The Owner shall permit the Lender to conduct annual compliance monitoring, including performing on-site records review and property inspections, as required by regulation or reasonably requested by County.

5.5 **ANNUAL REPORT.** The Owner shall submit to the Lender a report for the preceding period of January 1st through December 31st, containing the necessary information to allow the Lender to determine the Owner's compliance with this Agreement. The report shall be submitted annually no later than March 1st, and shall include, at a minimum, (i) a statement of the fiscal condition, (ii) occupancy of the project, (iii) a statement of the physical condition, and (iv) general management performance.

Within thirty (30) days after receipt of a written request, Owner shall submit 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 State of California, or the Lender.

5.6 **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.

6. GENERAL PROVISIONS

6.1 **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.

6.2 **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. 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 Development, 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 Development 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.

6.3 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.

6.4 INDEMNITY. The Owner is subject to all of the provisions contained in Exhibit B attached hereto and incorporated by this reference and shall maintain the insurance required therein for the term of this Agreement.

6.5 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.

6.6 AGREEMENT CONTROLS. In the event that any provisions of this Agreement and any Loan Document conflicts such conflict is to be resolved by applying the more restrictive covenants or restrictions which affect the Property.

6.7 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.

6.8 TIME. Time is of the essence in this Agreement.

6.9 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.

6.10 **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
Housing and Community
Development Department
Attn: Grants Administration Manager
123 E Anapamu Street, Room 27
Santa Barbara, CA 93101

With a copy to: City of Goleta
Planning and Environmental
Services Department
Attn: Director
130 Cremona Drive, Suite B
Goleta , CA 93117

BORROWER: Sumida Gardens L.P.
c/o The Towbes Group, Inc.
Attn: Michael Towbes
21 East Victoria Street, #200
Santa Barbara, CA 93101

With a copy to: Peter N. Brown, Esq.
Hatch and Parent
21 East Carrillo Street
Santa Barbara, Ca. 93101

6.11 **BINDING UPON SUCCESSORS.** This Agreement shall be recorded and 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.

6.12 **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.

6.13 **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.

6.14 **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.

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

SUMIDA GARDENS L.P.
a California limited partnership

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

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

By: _____
Joseph Centeno
Chairman of the Board of Supervisors

By: _____
Michael Towbes
President

AND

By: _____
Craig Zimmerman
Vice President

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DENNIS MARSHALL
COUNTY COUNSEL

RISK MANAGEMENT

By: _____
Mary McMaster
Deputy County Counsel

By: _____
Ray Aromatorio
Risk Program Administrator

APPROVED AS TO FORM:

BOB GEIS
AUDITOR CONTROLLER

By: _____
Mark Paul
Division Chief

State of California
County of Santa Barbara

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Legal Description of the Property

EXHIBIT G
MANAGEMENT PLAN

Management Plan

- A. The Owner is responsible for all management functions with respect to the Subject Property, including without limitation the selection of Tenants, certification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Such management functions shall be performed by, or on behalf of, Owner by an experienced, professional management company or organization which must be approved by the Director. County shall have no responsibility over management of the Subject Property. The Owner shall submit to the County for its approval its proposed property manager, if other than The Towbes Group, Inc. (which Owner has indicated it will hire as its management company and which management company is approved by County). The Owner may only remove and/or replace the property manager with the prior written consent of County, which shall not be unreasonably Withheld or delayed.
- B. Owner shall submit its written management policies with respect to the Subject Property to the Director for review and approval, which approval shall not be unreasonably withheld or delayed. If no action to approve or disapprove such management policies has been taken by the Director within thirty (30) days of submittal, then the proposed management policies shall be deemed approved so long as they do not violate this covenant. The Director may subsequently review such policies and Owner shall amend such policies in any way necessary to insure that such policies comply with the provisions of this covenant.
- C. Owner shall maintain records which clearly document the Owner's performance of its obligations to operate the Subject Property under the terms of this Covenant. The Owner shall submit any records relating to its performance under this Covenant to the Director within ten (10) business days of County's request. The owner shall permit County or its designee to enter and inspect the Subject Property for compliance with obligations under this Covenant, as follows: (i) general site visits (i.e., all common areas of the Project) upon twenty-four (24) hours advance notice by the County to Owner or Owner's management Agent, and (ii) file review in the project office and/ or inspection of an occupied Affordable Unit upon forty-eight (48) hours advance notice of such visit by County to Owner or Owner's Management agent and to the tenants of such occupied unit.
- D. During the term of this Covenant
1. Owner shall submit to the Director no later than March 31st of each year, a report for the preceding period of January 1 through December 31 which list a all Units in the project and identifies those Units which are affordable Units, the Affordable Units rents, the name(s) of the Tenant(s) occupying such Affordable Units and such Tenants' family size and income at the time of the last income certification of such Tenant; and
 2. Owner shall submit to the Director any other information or completed forms requested by the County which are needed by the County to comply with any State or Federal reporting requirements of the County, within thirty (30) days after receipt of a written request from County.

EXHIBIT H
MARKETING PLAN

Marketing Plan for Initial Rentals of Affordable Units

- A. The Rental Restrictive Covenant shall be recorded and binds the Owner to this Marketing Plan. If the Owner determines that changes may be necessary in this Plan after the Covenant has been recorded, the Owner must provide thirty (30) days advance written notice to the Director regarding these changes and must receive approval of the revised Marketing Plan from the Director. If no objection to the changes are received by owner within thirty (30) days of submission, they shall be deemed approved.
- B. Owner will advertise the project in at least one newspaper of general circulation in the South Coast portion of the County. Should there be insufficient response during the initial application availability, the application availability shall be extended and advertising shall be added to include the northern portion of the County. Each newspaper advertisement shall include the official "Equal Opportunity" logo.
- C. Advertising shall conform to the requirements of the Fair Housing Act. The location office hours and telephone number contact in order to obtain additional information regarding income requirements shall also be provided in the advertising.
- D. Owner's marketing Plan for the project:
 1. Local Advertisements shall target for initial occupancy:
 - ❖ Families currently residing in the County
 - ❖ Families whose family members are currently employed in the County, even if residing outside of the County
 2. Owner shall run at least one advertisement in the real estate section of the *Santa Barbara News-Press*, which circulates in the area of this project, at least one time per week for six weeks. At a minimum, the *Santa Barbara News-Press* advertisement shall be placed in the Sunday Paper.
 3. At minimum, the Owner shall provide a notice of availability of the units to community groups, the County Housing Authority and housing advocacy groups. The City of Goleta will furnish names and addresses of the organizations to receive notice. The Notice shall be provided concurrent with commencement of the advertisements described above.

Community Outreach shall include, but not be limited to:

- ❖ Provision of information to the City of Goleta information distribution list.
- ❖ Provision of information to County Housing Authority

❖ Local Employers

❖ Local Churches

4. During the time period of initial lease-up, Owner will have a phone number identified where inquiries concerning these units can be made. A phone-recording device will be included on the phone when it is not being directly answered.
 5. During the time period of initial lease-up, an Information sheet will be available to prospective renters of these units, identifying the rents, level of affordability for the units, qualifying income levels, an explanation of the income certification process, applicable floor plans, a site plan and other information as appropriate. This package shall be subject to the review and approval by the Planning and environmental Services Department.
- E. All tenants must meet standard qualifications, including but not limited to income, credit and landlord references.

EXHIBIT I
PAYMENT SCHEDULE

EXHIBIT I

Sumida Gardens L.P. Loan

Loan Amount: \$630,000
Loan Date: 1/1/2010
Interest Rate: 4.5%

Year Ending	A P R I L 1			Interest Expense	Principal Balance
	Principal	Interest	Payment		
					630,000
2010				28,350.00	658,350
2011				28,350.00	686,700
2012				28,350.00	715,050
2013				28,350.00	743,400
2014				28,350.00	771,750
2015				28,350.00	800,100
2016				28,350.00	828,450
2017				28,350.00	856,800
2018				28,350.00	885,150
2019				28,350.00	913,500
2020	74,340	41,107.50	115,447.05		839,160
2021	77,685	37,762.22	115,447.05		761,476
2022	81,181	34,266.40	115,447.05		680,295
2023	84,834	30,613.27	115,447.05		595,461
2024	88,651	26,795.75	115,447.05		506,810
2025	92,641	22,806.45	115,447.05		414,169
2026	96,809	18,637.62	115,447.05		317,360
2027	101,166	14,281.19	115,447.05		216,194
2028	105,718	9,728.73	115,447.05		110,476
2029	110,476	4,971.41	115,447.09		0.00
Total	913,500	240,971	1,154,470.54		

EXHIBIT I

(\$115,447.05)