

ATTACHMENT C

FIRST IMPLEMENTATION AGREEMENT  
TO  
OWNER PARTICIPATION AGREEMENT

This First Implementation Agreement to Owner Participation Agreement (the "First Implementation Agreement") is entered into as of \_\_\_\_\_, 2010 by and among the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (the "Agency"), S.V.D.P. Management, Inc., a California corporation ("Prior Owner"), and 15<sup>th</sup> & Commercial, L.P., a California limited partnership ("New Owner").

For and in consideration of the mutual covenants and conditions herein set forth, the Agency, Prior Owner and the New Owner hereby agree as follows:

I.            [§ 100]            PURPOSE OF FIRST IMPLEMENTATION AGREEMENT

The Agency and the Prior Owner have heretofore entered into that certain Owner Participation Agreement dated as of July 29, 2009 (the "OPA"). Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the OPA and the hereinafter defined Amended Method of Financing.

The Project which is the subject of the OPA was originally to be funded by, among other things, a grant of federal tax credits by the California Tax Credit Allocation Committee and the purchase thereof by a Tax Credit Investor Limited Partner. Prior Owner has been unable to secure investment commitments for the tax credits reserved for the Project and, therefore, the tax credits have been or will be exchanged under the American Reinvestment and Recovery Act of 2009 for the hereinafter defined "TCAC Financing". The substitution of the tax credit financing with the TCAC Financing necessitates various changes to the OPA and several of its attachments, and provisions of the TCAC Financing program requires the subordination of the Agency Deed of Trust to the hereinafter defined TCAC Financing Deed of Trust.

Additionally, the OPA had originally contemplated the formation of a Tax Credit Limited Partnership by Prior Owner in connection with its tax credit financing. While the Tax Credit Limited Partnership will no longer be formed, the requirements of the HCD financing and the TCAC Financing necessitate a limited partnership structure in order to qualify for this financing. The Prior Owner has formed the New Owner, for this purpose, and Prior Owner will serve as the managing general partner of New Owner. On or before the Closing, Prior Owner will convey the Property to New Owner subject to a seller carry back note ("Carry Back Note"), which will be secured by a deed of trust executed by New Owner in favor of Prior Owner ("Prior Owner Deed of Trust") subordinated to all financing. Prior Owner will also require New Owner to grant Prior Owner an option to repurchase the Property at the expiration of the hereinafter defined Tax Credit Compliance Period pursuant to an option agreement between Prior Owner and New Owner which option agreement shall be in accordance with the terms of Internal Revenue Code Section 42 ("Option Agreement"). The Option Agreement would be also be subordinated to all financing. "Tax Credit Compliance Period" shall mean the initial 15 year compliance period (defined by Internal Revenue Code Section 42(i)(1)).

Finally, the Construction Lender has requested that certain changes be made to Section 320 of the OPA and the form of Subordination Agreement for the Construction Loan.

The purpose of this First Implementation Agreement is to effectuate and amend the OPA to accommodate the above by providing for: (i) the use of the TCAC Financing in lieu of tax credits; (ii) the subordination of the Agency Deed of Trust to the TCAC Financing Deed of Trust; (iii) the modification of the OPA to accommodate these changes; (iv) the Agency's consent to the conveyance of the Property and the assignment of the OPA from Prior Owner to New Owner; (v) the Agency's consent to the possible reconveyance of the Property and the assignment of the OPA from New Owner to Prior Owner at the expiration of the Tax Credit Compliance Period; (vi) the revision of Section 320 of the OPA and the Subordination Agreement in response to requirements of the Construction Lender, U.S. Bank National Association, a national banking association; and (vii) such other clarifications to the OPA and its attachments as mutually agreeable to the parties as set forth herein, subject to all of the terms and conditions of this First Implementation Agreement.

## II.            [§ 200]            EFFECT OF FIRST IMPLEMENTATION AGREEMENT

Except as expressly provided otherwise in this First Implementation Agreement, the OPA and each document executed or entered into pursuant to the OPA remains in full force and effect, enforceable in accordance with its terms, without diminution or waiver of any kind of any right or remedy of the Agency thereunder. The Agency, the Prior Owner and the New Owner agree and acknowledge that the OPA and all of its attachments and each document executed or entered into pursuant to the OPA remain in full force and effect, except as expressly modified or amended in this First Implementation Agreement on the terms and conditions as set forth below. The OPA attachments shall be modified to the extent necessary to conform the attachments to the provisions of this First Implementation Agreement.

## III.           [§ 300]            MODIFICATIONS TO OPA DEFINITIONS

The definitions in the OPA are modified as follows:

- a. The definition of "Affordable Project" contained in Section 102 of the OPA, entitled Definitions is hereby amended to replace the reference to "twelfth" in the 6<sup>th</sup> line with "eleventh".
- b. The definition of "Developer Fee" contained in Section 102 of the OPA, entitled Definitions is hereby deleted in its entirety and replaced with the following:  
  
    "Developer Fee" shall mean One Million Forty-Nine Thousand Five Hundred Seventy-Four Dollars (\$1,049,574)."
- c. The definition of "Housing Commission Regulatory Agreement" contained in Section 102 of the OPA, entitled Definitions is hereby deleted in its entirety and replaced with the following:

“Housing Commission Regulatory Agreement” shall mean the Declaration regarding the Affordable Units required by the Housing Commission in connection with the Housing Commission Loan.”

d. The following definitions are added to the OPA:

“Inclusionary Housing Agreement” shall mean the Declaration which is required under Chapter 14, Article 2, Division 13 of the San Diego Municipal Code.

“Inclusionary Housing Deed of Trust” shall mean the performance deed of trust securing the Inclusionary Housing Agreement.

e. The definition of “Investor Limited Partner Capital Contribution” contained in Section 102 of the OPA, entitled Definitions is hereby deleted in its entirety. Any and all references and/or provisions of the OPA, its attachments and any document executed in connection therewith as they refer and/or relate to the term “Investor Limited Partner Capital Contribution” are hereby deleted in their entirety.

f. The definition of “Permitted Transfer” contained in Section 102 of the OPA, entitled Definitions is hereby deleted in its entirety and replaced with the following:

“Permitted Transfer” means any of the following, provided Owner or a general partner of Owner retains day-to-day control over management and operations of the Property and the Improvements:

- a. A conveyance of the Property to any Affiliate;
- b. A conveyance of a security interest in the Property in connection with any Senior Loan and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection or following the same;
- c. The inclusion of equity participation by Owner by addition of limited partners to Owner, or similar mechanisms, and the purchase of any such limited partnership interest or interests by any general partner of the Owner;
- d. The removal for cause of any general partner by a limited partner of the Owner and the replacement thereof;
- e. The lease for occupancy of all or any part of the Improvements on the Property;

- f. The granting of easements, licenses, rights-of-way or permits to facilitate the development of the Property in accordance with this Agreement; and
- g. The withdrawal, removal and/or replacement of any limited partner of Owner pursuant to the terms of Owner's partnership agreement shall not constitute a default under this Agreement or any of the Agency Loan Documents, nor shall such actions accelerate the maturity of the Agency Loan, provided that any required substitute limited partner is reasonably acceptable to Agency and is selected with reasonable promptness.

Any transfer described in clauses a. through g. shall be subject to the reasonable approval of documentation by the Agency Executive Director."

- g. The following definitions are added to the OPA:

"TCAC Financing" shall mean that certain grant to Owner in lieu of tax credits from the California Tax Credit Allocation Committee derived from the American Recovery and Reinvestment Act (ARRA) of 2009 in such amount as set forth in the Amended Method of Financing.

"TCAC Financing Deed of Trust" shall mean the deed of trust required in connection with the TCAC Financing.

"TCAC Financing Regulatory Agreement" shall mean the regulatory agreement required in connection with the TCAC Financing.

"TCAC Financing Subordination Agreement" shall mean an instrument substantially conforming in form and substance to the Subordination Agreement attached to this Agreement as Attachment No. 22 and incorporated herein by this reference, with non-substantive modifications as may be agreed to by the Agency Executive Director and Agency General Counsel. Any and all substantive modifications prior to recordation shall be submitted to the Agency Board for approval.

"TOD Subordination Agreement" shall mean an instrument substantially conforming in form and substance to the Subordination Agreement attached to this Agreement as Attachment No. 23 and incorporated herein by this reference, with non-substantive modifications as may be agreed to by the Agency Executive Director and Agency General Counsel. Any and all substantive modifications prior to recordation shall be submitted to the Agency Board for approval.

(Attachment No. 22 of the OPA, "Form of TCAC Financing Subordination Agreement" is attached hereto as Exhibit G and incorporated herein by this reference.

Attachment No. 23 of the OPA, "Form of TOD Subordination Agreement" is attached hereto as Exhibit H and incorporated herein by this reference. )

- h. The definition of "Tax Credit Equity Investor" contained in Section 102 of the OPA, entitled Definitions is hereby deleted in its entirety. Any and all references and/or provisions of the OPA, its attachments and any document executed in connection as they refer and/or relate to the term "Tax Credit Equity Investor" are hereby deleted in their entirety.
- i. The definition of "Tax Credit Limited Partnership" contained in Section 102 of the OPA, entitled Definitions is hereby deleted in its entirety. Any and all references and/or provisions of the OPA, its attachments and any document executed in connection as they refer and/or relate to the term "Tax Credit Limited Partnership" are hereby deleted in their entirety.

IV.            [§ 400]            **CONSENT TO ASSIGNMENT TO NEW OWNER; CONSENT TO ASSIGNMENT BACK TO PRIOR OWNER**

a.            Subject to all of the following conditions precedent, the Agency consents to the conveyance of the Property and the assignment of the OPA from Prior Owner to New Owner as set forth in this First Implementation Agreement:

1.            Prior Owner and New Owner fully execute and deliver to the Agency an Assignment and Assumption Agreement substantially in the form attached to the OPA as Attachment No. 20;

2.            Review and prior written approval (which shall not be unreasonably withheld or delayed) by the Agency Executive Director and Agency General Counsel of all documents related to the conveyance of the Property and the assignment of the OPA from Prior Owner to New Owner, including, without limitation, the Carry Back Note, the Prior Owner Deed of Trust and the Option Agreement; and

3.            Any documents in connection with the conveyance of the Property and the assignment of the OPA from Prior Owner to New Owner, including, without limitation, the Prior Owner Deed of Trust and the Option Agreement are and shall remain junior and subordinate to the Agency Loan Documents.

b.            Subject to all of the following conditions precedent, if Prior Owner exercises its rights to purchase the Property pursuant to the Option Agreement, the Agency consents to the reconveyance of the Property and the assignment of the OPA from New Owner back to Prior Owner at the expiration of the Tax Credit Compliance Period as set forth in this First Implementation Agreement:

1.            Prior Owner and New Owner fully execute and deliver to the Agency an Assignment and Assumption Agreement substantially in the form attached to the OPA as Attachment No. 20;

2. The reconveyance of the Property and the assignment of the OPA from New Owner back to Prior Owner is in accordance with the terms and conditions of the Option Agreement approved by the Agency pursuant to subsection a.2., above; and

3. Review and prior written approval (which shall not be unreasonably withheld or delayed) by the Agency Executive Director and Agency General Counsel of all documents related to the reconveyance of the Property and the assignment of the OPA from New Owner to Prior Owner.

V. [§ 500] OTHER MODIFICATIONS TO OPA

a. The first full paragraph of Section 202.b of the OPA is deleted in its entirety and replaced by the following:

“b. Gap Assistance. The parties acknowledge that the Agency Loan is intended to be “gap” assistance, not to exceed the amount needed to bridge the gap between the total Demolition and Development Costs attributable to the Affordable Project and the maximum amount of other loans, grants, and available funds including Owner Equity (as defined in the Amended Method of Financing) for the Affordable Project and that the amount of the Agency Loan was originally determined based upon the total sources set forth in the Amended Method of Financing. In any event, the Agency Loan shall not exceed the dollar amount set forth in the Amended Method of Financing. The proceeds of the Agency Loan shall be used exclusively to pay for costs of the Affordable Project identified in the Amended Project Budget (Attachment No. 7). In the event and to the extent that actual Demolition and Development Costs for the Project in the Amended Project Budget are less than the Sources of Financing as defined in the Amended Method of Financing (“Cost Savings”), then such Cost Savings shall be used first to pay Owner Three Hundred Fifty Thousand Four Hundred Twenty-Six Dollars (\$350,426) (as an additional Developer Fee), and second to reduce or repay the amount of the Agency Loan and provided that, upon the Closing, the Housing Commission enters into the Housing Commission Agreement in substantially the form attached hereto as Attachment No. 21 with the Agency, the Cost Savings shall be used to reduce or repay the Housing Commission Loan as well as the Agency Loan in proportion to their original principal balances. The use of Cost Savings shall not apply to the extent that such use of Cost Savings is prohibited by any established federal or State law, regulation or policy governing the use of any Sources of Financing issued by federal or State agencies.”

b. Section 203.a (3) of the OPA is deleted in its entirety and replaced by the following:

“(3) Evidence documenting the 9% tax-credit allocation for the Project together with other documentation acceptable to the Agency Executive Director demonstrating the commitment of the California Tax Credit Allocation Committee to make the TCAC Financing, to demonstrate that Owner has adequate equity funds committed to provide the amount of Owner Equity as defined in and required by the Amended Method of Financing;”

c. Section 203.a (4) of the OPA is deleted in its entirety and replaced by the following:

“(4) Evidence of an irrevocable commitment for or receipt of the Mental Health Services Act Program funds in the amount of \$2,357,000;”

d. Section 203.a (12) of the OPA is deleted in its entirety and replaced by the following:

“(12) Evidence of the land transfer of the Property to 15<sup>th</sup> & Commercial, L.P., a California limited partnership, as described in the First Implementation Agreement to this Agreement;”

e. Section 203.c and 203.d of the OPA are deleted in their entirety and replaced by the following:

“c. Title At Construction Financing Event. At the Construction Financing Event, title to the Property shall be subject to the following encumbrances in the following order of priority (listed in progression from senior to junior priority):

- i. Inclusionary Housing Agreement
- ii. Agreement Affecting Real Property
- iii. Construction Lender Deed of Trust
- iv. TCAC Financing Deed of Trust
- v. Agency Deed of Trust (and other recordable Agency Loan Documents)
- vi. Housing Commission Regulatory Agreement
- vii. Housing Commission Deed of Trust
- viii. Inclusionary Housing Deed of Trust
- ix. MHSA Deed of Trust
- x. EHAP Deed of Trust
- xi. AHP Deed of Trust
- xii. MHSA Regulatory Agreement
- xiii. EHAP Regulatory Agreement
- xiv. TCAC Financing Regulatory Agreement

- xv. First Five Use Covenant
- xvi. Infill Infrastructure Grant Use Covenant
- xvii. Prior Owner Deed of Trust
- xviii. Option Agreement.

d. Title At Completion of Conversion. At completion of the Conversion, title to the Property shall be subject to the following encumbrances in the following order of priority (listed in progression from senior to junior priority):

- i. Inclusionary Housing Agreement
- ii. TOD Regulatory Agreement
- iii. Agreement Affecting Real Property
- iv. TCAC Financing Deed of Trust
- v. TOD Deed of Trust
- vi. Agency Deed of Trust (and other recordable Agency Loan Documents)
- vii. Housing Commission Regulatory Agreement
- viii. Housing Commission Deed of Trust
- ix. Inclusionary Housing Deed of Trust
- x. MHSA Deed of Trust
- xi. EHAP Deed of Trust
- xii. AHP Deed of Trust
- xiii. MHSA Regulatory Agreement
- xiv. EHAP Regulatory Agreement
- xv. TCAC Financing Regulatory Agreement
- xvi. First Five Use Covenant
- xvii. Infill Infrastructure Grant Use Covenant
- xviii. Prior Owner Deed of Trust
- xix. Option Agreement.”

f. Section 320 of the OPA is deleted in its entirety and replaced by the following:

“Whenever the Agency shall deliver any notice or demand to Owner with respect to any breach or default by Owner in completion of construction of the Project, the Agency shall at the same time deliver to any Permitted Mortgagee of record a copy of such notice or demand. Each such Permitted Mortgagee shall (insofar as the rights of the Agency are concerned) have the right at its option within ninety (90) days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such Permitted Mortgagee obtaining possession of the Property, subject to any applicable cure periods such Permitted Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) days after obtaining possession; provided that, as to Construction Lender only, Construction Lender shall be required to cure monetary defaults but shall only be required to use diligent, good faith efforts to provide such cure for non-monetary defaults and

any failure to cure non-monetary defaults on the part of Construction Lender shall not (i) result in a default under this Agreement (unless Construction Lender defaults under this Agreement after entering into the written assumption agreement described in the paragraph below); or (ii) adversely affect Construction Lender's rights, remedies and other protections under the Construction Loan Documents or as otherwise available under applicable law or in equity; provided further that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced within such 90 day period, such Permitted Mortgagee shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity.

Any Permitted Mortgagee who forecloses on its Permitted Mortgage Loan, or is assigned or otherwise succeeds to Owner's rights under this Agreement, shall have the right to undertake or continue the construction or completion of the Project upon execution of a written agreement with the Agency by which such Permitted Mortgagee expressly assumes Owner's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by Agency. Any such Permitted Mortgagee properly completing such improvements shall be entitled, upon written request made to the Agency, to a Release of Construction Covenants from the Agency."

g. Section 401.a(2)(B) of the OPA is hereby amended to add the following sentence:

"Three (3) guest rooms shall be permitted on the twelfth floor."

h. Owner will not be awarded CDBG-R funds as described in the OPA and some of its attachments. Accordingly, any and all references and/or provisions of the OPA, its attachments and any document executed in connection therewith to CDBG-R funds are hereby deleted.

VI. [§ 600] AMENDMENT OF PROJECT BUDGET, METHOD OF FINANCING, AGENCY NOTE, REPORTING AND MONITORING AGREEMENT, AND DISBURSEMENT AGREEMENT

a. The Project Budget shall be amended as attached hereto as Exhibit A, which is incorporated herein by this reference. Any and all references in the OPA and any attachments or other Project documents to the Project Budget shall refer to the Amended Project Budget, as amended hereby.

b. The Method of Financing shall be amended as attached hereto as Exhibit B, which is incorporated herein by this reference. Any and all references in the OPA and any attachments or other Project documents to the Method of Financing shall refer to the Amended Method of Financing, as amended hereby.

c. The Agency Note shall be amended as attached hereto as Exhibit C, which is incorporated herein by this reference. Any and all references in the OPA and any attachments or other Project documents to the Agency Note shall refer to the Agency Note, as amended hereby.

d. The Reporting and Monitoring Agreement shall be amended as attached hereto as Exhibit D, which is incorporated herein by this reference. Any and all references in the OPA and any attachments or other Project documents to the Reporting and Monitoring Agreement shall refer to the Reporting and Monitoring Agreement, as amended hereby.

e. The Disbursement Agreement shall be amended as attached hereto as Exhibit E, which is incorporated herein by this reference. Any and all references in the OPA and any attachments or other Project documents to the Disbursement Agreement shall refer to the Disbursement Agreement, as amended hereby.

## VII. [§ 700] AMENDMENT TO SUBORDINATION AGREEMENT

Attachment No. 18 to the OPA, the Subordination Agreement, is hereby deleted and replaced and superseded in its entirety by the Subordination Agreement, attached hereto as Exhibit F and incorporated herein by this reference.

## VIII. [§ 800] SUBORDINATION

### a. TCAC Financing

(1) The Agency Deed of Trust shall be subordinate and junior to the claims, liens or charges of the TCAC Financing Deed of Trust and all other instruments securing the TCAC Financing. The Agency Executive Director shall execute a subordination agreement (i) that is consistent with the Amended Method of Financing, the OPA, and this First Implementation Agreement, and (ii) which substantially conforms in form and substance to the Form of TCAC Financing Subordination Agreement attached hereto as Exhibit G.

(2) The Agency Executive Director is authorized to modify the Form of TCAC Financing Subordination Agreement to the extent reasonably required by the California Tax Credit Allocation Committee, so long as such modification (i) is a non-substantive modification as may be agreed to by the Agency Executive Director and Agency General Counsel, (ii) does not result in any increased financial risk to the Agency and does not otherwise materially impair the Agency's interests, and (iii) is consistent with the Amended Method of Financing, the OPA, and this First Implementation Agreement. Notwithstanding the foregoing, the Agency Executive Director is authorized to modify the Form of TCAC Financing Subordination Agreement to subordinate the Agreement Affecting Real Property to the TCAC Financing Deed of Trust and/or TCAC Financing Regulatory Agreement or to make other changes if such subordination or changes are consistent with Health and Safety Code Section 33334.14(1) as determined by Agency General Counsel. Any modifications to the Form of TCAC Financing Subordination Agreement that do not comply with the requirements set forth in the preceding sentences shall be submitted to the Agency Board for approval.

b. TOD Loan

(1) The Agency Deed of Trust shall be subordinate and junior to the claims, liens or charges of the TOD Deed of Trust, the TOD Regulatory Agreement, and all other instruments securing the TOD loan from the California Department of Housing and Community Development. The Agency Executive Director shall execute a subordination agreement (i) that is consistent with the Amended Method of Financing, the OPA, and this First Implementation Agreement, and (ii) which substantially conforms in form and substance to the Form of TOD Subordination Agreement attached hereto as Exhibit H.

(2) The Agency Executive Director is authorized to modify the Form of the TOD Subordination Agreement to the extent reasonably required by the Department of Housing and Community Development, so long as such modification (i) is a non-substantive modification as may be agreed to by the Agency Executive Director and Agency General Counsel, (ii) does not result in any increased financial risk to the Agency and does not otherwise materially impair the Agency's interests, and (iii) is consistent with the Amended Method of Financing, the OPA, and this First Implementation Agreement. Notwithstanding the foregoing, the Agreement Affecting Real Property may be subordinated to the TOD Deed of Trust and/or TOD Regulatory Agreement if such subordination is consistent with Health and Safety Code Section 33334.14(1) as determined by Agency General Counsel. Any modifications to the Form of the TOD Subordination Agreement that do not comply with the requirements set forth in the preceding sentences shall be submitted to the Agency Board for approval.

IX.            [§ 900]            TIME FOR ACCEPTANCE OF FIRST IMPLEMENTATION AGREEMENT BY THE AGENCY; DATE OF FIRST IMPLEMENTATION AGREEMENT

This First Implementation Agreement when executed by the Owner and delivered to the Agency, must be authorized, executed and delivered by the Agency on or before sixty (60) days after this First Implementation Agreement is signed by the Owner or this First Implementation Agreement may be terminated by the Owner on written notice to the Agency.

This First Implementation Agreement is executed in six (6) duplicate originals, each of which is deemed to be an original. This First Implementation Agreement includes thirteen (13) pages and eight (8) exhibits.

The date of this First Implementation Agreement shall be the date when the First Implementation Agreement shall have been executed by the Agency.

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IN WITNESS WHEREOF, the Agency, Prior Owner and the New Owner have signed this First Implementation Agreement as of the dates set opposite their signatures.

**REDEVELOPMENT AGENCY OF THE  
CITY OF SAN DIEGO**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Janice Weinrick  
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY

JAN I. GOLDSMITH  
Agency General Counsel

By: \_\_\_\_\_

Kevin Reisch  
Deputy General Counsel

KANE, BALLMER & BERKMAN  
Agency Special Counsel

By: *Stephan M. Ballmer*

[signatures continue on following page]

**"PRIOR OWNER"**

**S.V.D.P. MANAGEMENT, INC.,**  
a California corporation

Dated: 12/14/09

By: Father Joe Carroll  
Name: Father Joe Carroll  
Its: President

**"NEW OWNER"**

**15TH & COMMERCIAL, L.P.,**  
a California limited partnership

By: S.V.D.P. Management, Inc.,  
a California corporation,  
its Managing General Partner

By: Father Joe Carroll  
Father Joe Carroll  
President

By: 15th & Commercial CIC, LLC,  
a California limited liability company,  
its Administrative General Partner

By: Chelsea Investment Corporation,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
James J. Schmid  
President

**"PRIOR OWNER"**

**S.V.D.P. MANAGEMENT, INC.,**  
a California corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Father Joe Carroll  
Its: President

**"NEW OWNER"**

**15TH & COMMERCIAL, L.P.,**  
a California limited partnership

By: S.V.D.P. Management, Inc.,  
a California corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Father Joe Carroll  
President

By: 15th & Commercial CIC, LLC,  
a California limited liability company,  
its Administrative General Partner

By: Chelsea Investment Corporation,  
a California corporation,  
its Manager

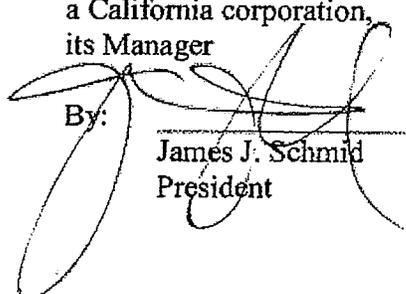
By: \_\_\_\_\_  
  
James J. Schmid  
President

Exhibit A

Amended Project Budget

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**ATTACHMENT 7**  
**15th and Commercial**  
**Revised Project Budget**  
**January 2010**

	<b>PROJECT TOTAL</b>	<b>RESIDENTIAL</b>
<b>I. Direct Costs</b>		
On-Sites/Landscaping	\$ 3,088,590	\$ 2,028,000
Parking	\$ 1,978,440	\$ 1,301,000
Shell Construction	\$ 31,196,986	\$ 20,750,000
Toddler Building	\$ 1,023,710	\$ -
Low Voltage (Owner Provided System)	\$ 700,000	\$ 445,000
FF&E/Amenities	\$ 352,000	\$ 352,000
Contingency	\$ 2,181,210	\$ 1,415,000
<i>Total Direct Costs</i>	\$ 40,520,936	\$ 26,291,000
<b>II. Indirect Costs</b>		
Architecture & Engineering	\$ 3,405,823	\$ 2,220,000
Environmental Study/Survey	\$ 117,500	\$ 77,000
Permits & Fees	\$ 1,587,650	\$ 1,035,000
Legal & Accounting	\$ 623,500	\$ 406,000
Taxes & Insurance	\$ 224,056	\$ 146,000
Developer Fee	\$ 1,049,574	\$ 1,049,574
Construction Management Fee	\$ 438,000	\$ 285,000
Marketing/Lease-Up	\$ 92,000	\$ 92,000
Contingency	\$ 600,426	\$ 423,000
<i>Total Indirect Costs</i>	\$ 8,138,529	\$ 5,733,574
<b>III. Financing Costs</b>		
Loan Fees	\$ 303,621	\$ 234,000
Interest During Construction	\$ 1,347,459	\$ 878,000
TCAC/Syndication Fees	\$ 159,400	\$ 159,400
Transition Reserve	\$ 1,075,941	\$ 1,075,941
Operating Deficit Reserve	\$ 180,034	\$ 180,034
<i>Total Financing Costs</i>	\$ 3,066,455	\$ 2,527,375
<b>IV. Acquisition Costs</b>		
Land Costs	\$ 5,500,000	\$ 3,584,000
Relocation	\$ 1,500,000	\$ 1,500,000
<i>Total Acquisition Costs</i>	\$ 7,000,000	\$ 5,084,000
<b>TOTAL COSTS - ROUNDED</b>	<b>\$ 58,726,000</b>	<b>\$ 39,636,000</b>

**SOURCES OF FUNDS**

	<b>PROJECT TOTAL</b>	<b>RESIDENTIAL</b>
TCAC Financing	\$ 20,000,000	\$ 11,364,000
MHSA	\$ 2,357,000	\$ 2,357,000
TOD Housing Program	\$ 6,638,000	\$ 6,638,000
Infill Infrastructure Grant	\$ 3,089,000	\$ 2,013,000
CDBG	\$ 291,000	\$ -
AHP	\$ 1,500,000	\$ 1,500,000
EHAP	\$ 1,000,000	\$ 1,000,000
First Five Commission	\$ 6,968,000	\$ -
CalReUSE	\$ 583,000	\$ 380,000
San Diego Housing Commission Loan	\$ 3,500,000	\$ 3,500,000
Land Note to Prior Owner	\$ 5,500,000	\$ 3,584,000
Redevelopment Agency Loan	\$ 7,300,000	\$ 7,300,000
<b>TOTAL SOURCES</b>	<b>\$ 58,726,000</b>	<b>\$ 39,636,000</b>

Exhibit B

Amended Method of Financing

[behind this page]

## ATTACHMENT NO. 3

### AMENDED METHOD OF FINANCING

This is the Amended Method of Financing attached to the Owner Participation Agreement by and between the Redevelopment Agency of the City of San Diego (“Agency”) and S.V.D.P Management, Inc., a California corporation (“Prior Owner”), as amended by that certain First Implementation Agreement to Owner Participation Agreement dated as of \_\_\_\_\_, 2010 by and among the Agency, Prior Owner, and 15<sup>th</sup> & Commercial, L.P., a California limited partnership (“New Owner” or “Owner”) (collectively, the “OPA”), pertaining to the demolition of existing improvements and the development of a mixed-use project containing sixty-five (65) units of multi-family housing (including sixty-four (64) Living Units and one (1) market-rate manager’s unit), one hundred-fifty (150) Transitional Housing Beds, three (3) guest rooms for visiting staff, and a Child Day Care/School Facility located at 15<sup>th</sup> Street and Commercial Street, in the City of San Diego, which shall be operated as rental and transitional housing that is affordable to Very Low Income and Extremely Low Income households (“Project”), as more specifically described in the OPA. The OPA as used herein shall mean, refer to and include the OPA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the OPA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the OPA, as amended by the First Implementation Agreement.

If the Agency Executive Director determines that it is necessary to revise the terms of this Amended Method of Financing in order to accomplish the project objectives or protect the Agency’s investment, this Amended Method of Financing may be amended by the Agency Executive Director to reflect such revisions, provided, however, that such amendment will be subject to, and conditioned on, such further review and approval by the Agency Board as is needed to satisfy applicable law and Agency policy and procedures.

The Project will be financed by a combination of the Construction Loan, Agency Loan, the Housing Commission Loan, TCAC Financing, EHAP Loan, MHSA Loan, AHP Loan, TOD Loan, CDBG grant, Infill Infrastructure grant, First Five Commission grant, other grants, Owner Equity, and other funds as set forth in this Amended Method of Financing. The Agency Loan will be in an amount not to exceed \$7,300,000, which shall be disbursed as described in Section 2.1 below. The Agency Loan shall be repaid from residual receipts as described in Section 2.1 below and in the Agency Note.

1. Total Demolition and Development Costs. The parties estimate that the cost of developing the Property will be approximately \$58,730,000, with the cost to develop the Affordable Project being approximately \$40,000,000 as set forth in Section 2 of this Amended Method of Financing.

2. Sources of Financing. The parties anticipate that the costs of demolition, constructing and developing the improvements thereon (the “Demolition and Development Costs”) shall be financed with a combination of loans and equity, as set forth in the following chart and as described below, which chart shall be updated if the costs of developing and constructing

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the Improvements change, or if the financing changes, all subject to the approval of the Agency (as updated, the “Sources of Financing”):

Source of Funds	Construction	Permanent
Construction Loan	\$13,130,000	\$0
Agency Loan	\$6,531,748	\$7,300,000
Housing Commission Loan	\$3,150,000	\$3,500,000
Mental Health Services Act Program (MHSA)	\$2,357,000	\$2,357,000
HCD Transit Oriented Development Housing Program (TOD)	\$0	\$6,638,000
Land Note to Prior Owner	\$5,500,000	\$5,500,000
Emergency Housing & Shelter Program (EHAP)*	\$1,000,000	\$1,000,000
Deferred Developer Fee	\$0	\$0
TCAC Financing	\$15,000,000	\$20,000,000
Owner Equity:		
First Five Commission**	\$6,556,000	\$6,968,000
FHLB Affordable Housing Program (AHP)**	\$1,500,000	\$1,500,000
Community Development Block Grant Program (CDBG)**	\$291,000	\$291,000
Infill Infrastructure Grant**	\$3,089,000	\$3,089,000
California Recycle Underutilized Sites (CALReUSE) Remediation Program**	\$583,000	\$583,000
<b>TOTALS</b>	<b>\$58,726,000</b>	<b>\$58,726,000</b>

**\* The EHAP funds will be provided to St. Vincent de Paul Village, Inc., as lessee of the transitional housing portion of the Affordable Project, for tenant improvements to that space.**

**\*\*The Sources of Financing marked with \*\* will be granted to Prior Owner and contributed by Prior Owner to Owner Equity.**

Owner shall be responsible for providing any additional funds which may be needed to pay for cost overruns and contingencies not otherwise funded by the sources described above.

## 2.1 CONSTRUCTION PERIOD FINANCING

a. Construction Loan. A construction loan in the approximate original principal amount of \$13,130,000 during the construction period (the “Construction Loan”) shall be used as part of the construction financing for the Project and shall be secured by a senior priority construction deed of trust (the beneficiary of which shall be the Construction Lender).

b. Agency Loan. A residual receipts loan from the Agency (the “Agency Loan”) in the original principal aggregate amount of up to SEVEN MILLION THREE

HUNDRED THOUSAND DOLLARS (\$7,300,000), subject to the following:

- (1) The proceeds of the Agency Loan shall be used exclusively to pay costs associated with the Affordable Project identified in the Amended Project Budget (Attachment No. 7 to the OPA) as reasonably determined by the Agency Executive Director; provided, however, that no portion of the Agency Loan may be used to pay for construction of the Child Day Care/School Facility.
- (2) The Agency Loan will be disbursed exclusively to pay Demolition and Development Costs identified in the Amended Project Budget for the costs of developing the Affordable Project only (as reasonably determined by the Agency Executive Director) pursuant the Disbursement Agreement (Attachment No. 19 to the OPA) which shall contain a detailed schedule approved in writing by the Agency Executive Director, and based upon Agency's receipt of contractor invoices and other information and documentation (e.g., lien releases) requested or required by the Agency Executive Director. The final twenty percent (20%) of the Agency Loan shall be held as a retention and paid as follows: ten percent (10%) shall be paid at Completion, and the remaining ten percent (10%) shall be paid at Conversion (unless there are "Cost Savings" or "Additional Proceeds" as discussed below at Section 2.1(b)(9)).
- (3) The term of the Agency Loan shall be fifty-five (55) years and the Agency Loan term shall commence upon Closing, subject to satisfaction of those conditions precedent to Closing set forth herein at Section 7, below.
- (4) The Agency Loan shall be secured by the Agency Deed of Trust (Attachment No. 9 to the OPA); an Assignment of Rents (Attachment No. 15 to the OPA); an Assignment of Agreements (Attachment No. 10 to the OPA); and a UCC-1 Financing Statement ("UCC-1") (Attachment No. 12 to the OPA) (collectively referenced herein as "Security Instruments"). The Security Instruments shall be a junior lien on the Property, subordinate only to the lien of the Construction Loan, TCAC Financing, and the Transit Oriented Development Housing Program funds.
- (5) The outstanding balance of the Agency Loan shall bear simple interest at the rate of three percent (3%) per annum.
- (6) The Agency Loan shall be repaid, to the extent of the Agency's share of residual receipts, as set forth in the Agency Note (Attachment No. 8 to the OPA).
  - (A) The payments received by the Agency as residual receipts shall

be applied as they are received to the outstanding balance of principal and interest of the Agency Loan;

- (B) the remaining outstanding balance together with all accrued interest thereon shall be due and payable on the fifty-fifth (55<sup>th</sup>) anniversary from conversion to permanent financing (“Conversion”).
- (7) The Agency Loan shall be subject to reduction or repayment as provided in Section 2.1(b)(9), below.
- (8) At Closing, the obligation to repay the Agency Loan shall be evidenced by the Agency Note (Attachment No. 8 to the OPA).
- (9) Notwithstanding any other provisions of this Agreement, the parties acknowledge that the Agency Loan is intended to be gap assistance, not to exceed the amount needed to bridge the gap between the total Demolition and Development Costs (as defined in the OPA and as further described in Section 1, above) and the maximum amount of other loans, grants, and available funds including Owner Equity for the Affordable Project and that the amount of the Agency Loan was originally determined based upon the total sources set forth in the herein (“Project Financing”), but in any event, the Agency Loan shall not exceed the dollar amount set forth herein. The Agency Loan shall be subject to reduction/repayment as follows:
  - i. Cost Savings. In the event and to the extent that actual Demolition and Development Costs for the Project in the Amended Project Budget are less than the Sources of Financing (“Cost Savings”), then such Cost Savings shall be used first to pay Borrower Three Hundred Fifty Thousand Four Hundred Twenty-Six Dollars (\$350,426) (as an additional Developer Fee), and second to reduce or repay the amount of the Agency Loan, and provided that, upon the Closing, the Housing Commission enters into the Housing Commission Agreement (Attachment No. 21) with the Agency, the Cost Savings shall be used to reduce or repay the Housing Commission Loan as well as the Agency Loan in proportion to their original principal balances. The use of Cost Savings shall not apply to the extent that such use of Cost Savings is prohibited by any established federal or State law, regulation or policy governing the use of any Sources of Financing issued by federal or State agencies.
  - ii. Additional Proceeds. In the event and to the extent that any of the financing sources for the Affordable Project exceed the amounts shown in the Amended Method of Financing

and the Amended Project Budget for the Affordable Project (“Additional Affordable Proceeds”), then such Additional Affordable Proceeds shall first be used to pay for any increased costs of the Affordable Project as set forth in a revised Project Budget approved in writing by the Agency Executive Director for which there are no other sources of funding, and thereafter to reduce or repay the Agency Loan, and provided that, upon the Closing, the Housing Commission enters into the Housing Commission Agreement with the Agency, such remaining Additional Affordable Proceeds shall be used to reduce or repay the Housing Commission Loan as well as the Agency Loan in proportion to their original principal balances. In the event and to the extent any of the financing sources for the Project exceed the amounts shown in the Amended Method of Financing and the Amended Project Budget (“Additional Proceeds”), then such Additional Proceeds shall first be used to pay for any increased costs of the Project as set forth in a revised Project Budget approved in writing by the Agency Executive Director for which there are no other sources of funding, and thereafter to reduce or repay the Agency Loan, and provided that, upon the Closing, the Housing Commission enters into that certain Housing Commission Agreement with the Agency, such remaining Additional Proceeds shall be used to reduce or repay the Housing Commission Loan as well as the Agency Loan in proportion to their original principal balances.

- c. TCAC Financing. Owner shall obtain the TCAC Financing in the amount of approximately \$20,000,000, which TCAC Financing shall be secured by a senior priority deed of trust. Approximately \$15,000,000 will be disbursed during the construction period and the balance will be disbursed following Completion;
- d. Deferred Developer Fee. Any deferred portion of the Developer Fee, which is currently contemplated to be in the amount of zero dollars (\$0) (the “Deferred Developer Fee”), with the balance of the Developer Fee in the amount of One Million Forty-Nine Thousand Five Hundred Seventy-Four Dollars (\$1,049,574) payable by Owner in accordance with the following schedule of disbursements and/or pursuant to Construction Lender’s schedule of disbursements, it being agreed that the schedule of disbursement to be followed for each milestone set forth below shall be whichever schedule of disbursement (Agency’s or Construction Lender’s) is more restrictive at each such milestone such that the following schedule of disbursements is the maximum disbursement of fees at each milestone:
  - i. Up to 20% upon Closing;

- ii. Up to 30% no sooner than 50% of disbursement of the Agency Loan in accordance with the Disbursement Agreement (Attachment No. 19 to the OPA);
  - iii. Up to 25% no sooner than 75% of disbursement of the Agency Loan in accordance with the Disbursement Agreement (Attachment No. 19 to the OPA); and
  - iv. The remaining amount upon Completion;
- e. Other Financing. Other financing in the approximate amount of \$12,357,000 to be paid from the San Diego Housing Commission Loan (\$3,500,000 total, of which approximately \$3,150,000 to be disbursed during construction), Emergency Housing & Shelter Program (\$1,000,000), MHSA Program (\$2,357,000 total), Land Note to Prior Owner (\$5,500,000), or other funding sources, all of which shall be Junior Loans, secured by deeds of trust subordinate to the Agency's Deed of Trust and other Agency Loan Documents; and
- f. Owner Equity. Equity from the Owner (the "Owner Equity") consisting of the Sources of Financing marked with \*\* in Section 2, above, will be granted to Prior Owner and contributed by Prior Owner to Owner Equity, including: First Five Commission (\$6,968,000 total, of which approximately \$6,556,000 to be disbursed during construction), Infill Infrastructure Grant (\$3,089,000), California Recycle Underutilized Sites (CALReUSE) Remediation Program (\$583,000), Community Development Block Grant Program (\$291,000), and FHLB Affordable Housing Program (\$1,500,000).

Owner Equity described in this subsection (f) shall consist of funds provided by Owner or borrowed funds, so long as repayment is not secured by any deed of trust on the Property except as set forth in Section 203c. and d. of the OPA. Owner shall be responsible for providing any additional funds which may be needed to pay for cost overruns and contingencies not otherwise funded by the Sources of Financing described above.

## 2.2 PERMANENT SOURCES OF FINANCING

- a. The Housing Commission Loan, as described in subsection (e) of Section 2.1 above.
- b. The Agency Loan, as described in subsection (b) of Section 2.1, above.
- c. Transit Oriented Development Housing Program funds in the amount of \$6,638,000, which will be senior to the Agency Deed of Trust.

- d. Owner Equity, as described in subsection (f) of Section 2.1, above.
- e. TCAC Financing as described in subsection 2.1(c) in the approximate amount of \$20,000,000.
- f. The Emergency Housing & Shelter Program funds, Land Note to Prior Owner, and MHPA Program funds.

3. Project Budget. The parties anticipate that all Demolition and Development Costs shall be as set forth in the Amended Project Budget (Attachment No. 7 to the OPA, as amended by the First Implementation Agreement), incorporated herein by this reference. Any change order in excess of Fifty Thousand Dollars (\$50,000) or any amendment to the total Amended Project Budget in excess of Fifty Thousand Dollars (\$50,000) (collectively referred to as a "Revision") shall require the approval of the Agency Executive Director in addition to any approval required by the Construction Lender; provided that the principal amount of the Agency Loan shall not be increased without the express approval of the governing body of the Agency in its sole and absolute discretion. Except as provided in the previous sentence, the Agency Executive Director shall not unreasonably withhold or delay approval of any requested Revision for which the Senior Lender's approval is not required, under the terms of the Senior Loan documents, or which has been approved by the Senior Lender if, within five (5) working days after receipt of the request, Agency receives such explanation and/or back-up information as was received and relied upon by the Senior Lender in connection with its approval of the Revision, and if the following conditions are satisfied:

- a. to the extent the Revision is limited to a reallocation of budgeted funds among Amended Project Budget line items without any increase in the total Project Budget or the Agency Loan, (i) the funds in the line item(s) to be reduced remain sufficient for completion of the Project, and (ii) the requested increase in one or more line item(s) is to be used to pay approved costs; and
- b. to the extent the Revision involves an increase in the total Amended Project Budget, (i) additional funds in an amount equal to the increase in the total Amended Project Budget will be provided by Owner or the Construction Lender and (ii) the requested increase in the Amended Project Budget is to be used to pay approved costs.

The Agency will be deemed to have approved a Revision meeting one of the above conditions if the Agency has not responded with disapproval within twenty (20) working days after receipt of a reasonable explanation and complete back-up information evidencing the satisfaction of the condition from Owner. Upon approval (or deemed approval) of any Revision, the Amended Project Budget shall be replaced by the approved revised Project Budget.

4. Evidence of Financing. The sum of the Sources of Financing described in Section 2.1, above, shall be sufficient at all times to pay all Demolition and Development Costs as set forth in the most recently approved Project Budget, and the sum of the permanent Sources of Financing described in Section 2.2, above, shall be at least equal at all times to the sum of the construction Sources of Financing plus all other Demolition and Development Costs. Within the time provided

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therefor in the Schedule of Performance (Attachment No. 5 to the OPA), Owner shall submit, for approval by the Agency Executive Director, evidence of such financing as set forth in Section 203 of the OPA, including all documents required by the Construction Lender relating to the Construction Loan and all documents evidencing the availability of permanent financing upon Completion. The Agency Executive Director shall not unreasonably withhold his or her approval. Owner shall provide written certification to the Agency that such financing documents are correct copies of the actual documents to be executed by Owner on or before the Closing Date. To the extent that the sum of the Sources of Financing described in Section 2.1 above, is insufficient to pay all Demolition and Development Costs, Owner shall demonstrate the availability prior to the Closing of other irrevocably committed or received funding sources and/or increased Owner Equity at least equal to the shortfall.

5. Subordination.

- a. The Agency Deed of Trust shall be subordinate only to the Inclusionary Housing Agreement, Construction Loan, the TCAC Financing, the Transit Oriented Development Housing Program funds and any deeds of trust in connection therewith.
- b. Prior to the recordation of the Agency Deed of Trust, the Agency Executive Director shall execute such subordination agreements consistent with this Amended Method of Financing and the OPA, as amended, as may be necessary to subordinate the Agency Deed of Trust to the lien of any Construction Loan Deed of Trust, any TCAC Financing Deed of Trust, and/or any TOD Deed of Trust provided such subordination agreements are substantially similar in form to Attachment No. 18, Attachment No. 22, and Attachment No. 23 (as applicable) to the OPA. The Agency Executive Director is authorized to modify the Form of Subordination Agreement, Form of TCAC Financing Subordination Agreement, and Form of TOD Subordination Agreement to the extent reasonably required by the applicable Senior Lender, so long as such modification (i) is a non-substantive modification as may be agreed to by the Agency Executive Director and Agency General Counsel, (ii) does not result in any increased financial risk to the Agency and does not otherwise materially impair the Agency's interests, and (iii) is consistent with this Amended Method of Financing and the OPA, as amended.
- c. Notwithstanding the foregoing, the Agency Executive Director is authorized to modify the Form of TCAC Financing Subordination Agreement to subordinate the Agreement Affecting Real Property to the TCAC Financing Deed of Trust and/or TCAC Financing Regulatory Agreement or to make other changes if such subordination or changes are consistent with Health and Safety Code Section 33334.14(1) as determined by Agency General Counsel.
- d. Notwithstanding the foregoing, the Agreement Affecting Real Property may be subordinated to the TOD Deed of Trust and/or TOD Regulatory

Agreement if such subordination is consistent with Health and Safety Code Section 33334.14(1) as determined by Agency General Counsel.

- e. Any modifications to the forms of the subordination agreement (Attachment No. 18, Attachment No. 22 or Attachment No. 23) that do not comply with the requirements set forth in the preceding subsections shall be submitted to the Agency Board for approval.

6. No Subordination of Affordability Covenants. Notwithstanding anything to the contrary herein or in the OPA, the affordability covenants in the Agreement Affecting Real Property (Attachment No. 6) shall be senior to the security instruments for all loans for the Project, including the Construction Deed of Trust and the Housing Commission Deed of Trust, except as provided in Section 5, above, as to the TCAC Financing and TOD Loan.

7. Conditions Precedent to Closing for the Benefit of the Agency. For the benefit of the Agency, Closing and disbursement of any portion of the Agency Loan, are conditioned upon the occurrence of each of the following conditions on or prior to the scheduled Closing Date as set forth in the Schedule of Performance (Attachment No. 5):

- a. Limited Partnership. The limited partnership agreement for Owner (but only with respect to whether such limited partnership agreement is consistent with the OPA and this Amended Method of Financing) has been approved by the Agency Executive Director.
- b. No Default. Owner is not then in material breach of any of its obligations under the OPA.
- c. Title Insurance Policies. The Title Company shall be committed to issue a standard form ALTA Lender's Title Insurance Policy to the Agency, subject to the Approved Title Conditions, together with such endorsements as Agency shall reasonably require, in the amount of the Agency Loan insuring the Agency Deed of Trust as a junior lien on the Property, subordinate only to the lien of the Construction Loan, the TCAC Financing and the Transit Oriented Development Housing Program funds.
- d. Final Construction Drawings. Owner shall have submitted and Agency shall have approved Final Construction Drawings.
- e. Project Budget. Owner shall have delivered to the Agency final revisions to the Amended Project Budget (Attachment No. 7 to the OPA), which have been approved by the Agency Executive Director, demonstrating to the satisfaction of the Agency the availability of sufficient funds to pay all Demolition and Development Costs ("Final Project Budget").
- f. Construction Contract. Owner shall have delivered to the Agency a general construction contract between the Owner and a licensed general contractor, covering all construction required by the OPA and the approved

Final Construction Drawings, in an amount that is consistent with the Final Project Budget, together with a construction schedule showing a detailed trade-by-trade breakdown of the estimated periods of commencement and completion of construction and complete fixturing of the Project, demonstrating that construction will be completed within the time provided in the Schedule of Performance (Attachment No. 5), and identifying those costs directly attributable to construction of the Improvements within the Affordable Project.

- g. Evidence of Financing. Owner shall have obtained approval of all financing described in this Amended Method of Financing, and submitted same to Agency Executive Director, and the Agency Executive Director shall have approved such evidence of financing, and all documents required to be executed in connection with such financing shall have been duly executed, acknowledged and delivered.
- h. Insurance. Owner shall have submitted to the Agency evidence of the insurance policies required by the OPA, naming as additional insureds the following:

“The City of San Diego, the Redevelopment Agency of the City of San Diego, the Centre City Development Corporation, and their respective officers, employees, contractors and agents.”
- i. Work Force Report/EO Plan and Report. Owner shall have prepared and delivered to the Agency its Work Force Report or Equal Opportunity Plan, and Initial Equal Opportunity Report, to the extent required by OPA.
- j. Permits. Owner shall have delivered to the Agency a list of all entitlements, approvals, variances, deferrals and permits (collectively, “Permits”) required for the construction of the Project, and shall have demonstrated that all Permits have been obtained and that all conditions for the issuance of all Permits have been satisfied (with the exception of payment of fees, which payment is provided for in the approved Final Project Budget). If only an excavation/ grading/ foundation permit is to be issued at Closing, Owner shall have delivered to the Agency a “will issue” letter from the City evidencing City’s commitment to issue building permits for the Project.
- k. Owner’s Formation Documents. Owner shall have delivered documentation relating to the corporate, partnership, limited liability or other similar status of Owner and its general partner(s), including, without limitation and as applicable: limited partnership agreements and any amendments thereto; articles of incorporation; Limited Liability Company Articles of Organization (LLC-1); Statement of Information and Operating Agreement (including any amendments thereto); copies of all resolutions or

other necessary actions taken by such entity to authorize the execution of the OPA and related documents; a certificate of status issued by the California Secretary of State; and a copy of any Fictitious Business Name Statement, if any, as published and filed with the Clerk of San Diego County.

- l. Determination of Principal Note Amount. Agency and Owner shall have agreed upon principal amount of the Agency Note.
- m. Recording Instructions. Escrow Agent shall have approved such supplemental recording instructions as may have been prepared on behalf of the Agency.
- n. Documents. Agency, Owner and/or other parties, as appropriate, shall have executed, and filed or recorded as appropriate, the following documents:
  - (1) Agreement Affecting Real Property (Attachment No. 6, to be signed and acknowledged by Owner and Agency);
  - (2) Agency Note (Attachment No. 8, to be signed by Owner);
  - (3) Agency Deed of Trust (Attachment No. 9, to be signed and acknowledged by Owner);
  - (4) Assignment of Agreements, (Attachment No. 10, to be signed by Owner, project architect and contractor);
  - (5) Environmental Indemnity (Attachment No. 11, to be signed by Owner);
  - (6) UCC-1 Financing Statement (Attachment No. 12, to be signed by Owner);
  - (7) Notice of Affordability Restrictions (Attachment No. 13, to be signed and acknowledged by Agency);
  - (8) Assignment of Rents (Attachment No. 15, to be signed and acknowledged by Owner);
  - (9) Reporting and Monitoring Agreement (Attachment No. 17 to be signed by Owner and Housing Commission);
  - (10) Subordination Agreement (Attachment No. 18, to be signed and acknowledged by Agency, Owner and Construction Lender);
  - (11) Disbursement Agreement (Attachment No. 19, to be signed by Agency and Owner); and

(12) Statutory Request for Notice of Default per California Civil Code section 2924b (to be signed and acknowledged by Agency).

- o. Closing Certificate. When all conditions precedent have been satisfied to the satisfaction of the Agency Executive Director, the Agency Executive Director shall execute and submit to the Escrow Agent a certificate (which may be in the form of an email communication) stating that all conditions precedent to recording of the documents have been satisfied or waived, if such be the case.

Exhibit C

Amended Agency Note

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**PROMISSORY NOTE  
TO THE REDEVELOPMENT AGENCY  
OF THE CITY OF SAN DIEGO**

3.0% Interest  
\$7,300,000.00

San Diego, California  
\_\_\_\_\_, 2010

FOR VALUE RECEIVED, 15th & Commercial, L.P., a California limited partnership (“Borrower”), hereby promises to pay to the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (“Agency”), a public body, corporate and politic, or order, a principal amount of SEVEN MILLION THREE HUNDRED THOUSAND DOLLARS (\$7,300,000) (the “Agency Loan”). This Promissory Note (the “Note”) is given pursuant to that certain Owner Participation Agreement dated July 29, 2009, between Borrower and Agency, as amended by that certain First Implementation Agreement to Owner Participation Agreement dated \_\_\_\_\_, 2010 (collectively, the “OPA”) and evidences the Agency Loan to Borrower, which provides part of the financing for the demolition of existing improvements on and the further development of that certain real property in the City of San Diego legally described in the Agency Deed of Trust securing this Note (the “Property”). The obligation of Borrower to Agency hereunder is subject to the terms of the OPA, this Note and the following instruments, each dated on or about the date hereof, and, where applicable, executed and delivered by Borrower for the purpose of securing this Note (which documents together with this Note may be referred to collectively as the “Agency Loan Documents”): an Agreement Affecting Real Property (Including Rental Restrictions) (“Agreement Affecting Real Property”); a Subordinate Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) (“Agency Deed of Trust”); an Assignment of Rents and Leases (“Assignment of Rents”); an Assignment of Agreements, Plans, Specifications and Entitlements (“Assignment of Agreements”); an Environmental Indemnity (“Environmental Indemnity”); and a UCC-1 Financing Statement (“UCC-1”). Said documents are public records on file in the offices of Agency, and the provisions of said documents are incorporated herein by this reference. The Borrower shall pay interest at the rate, in the amount and at the time hereinafter provided.

1. Definitions. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the OPA. In addition, the following terms shall have the following meanings:

“Demolition and Development Costs” shall mean costs of the development of the Property and the construction of the Improvements thereon in accordance with the OPA.

“Affiliate” shall mean (1) any Person directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, any company for which such Person acts in any

such capacity. The term “control” as used in the immediately preceding sentence, shall mean the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity.

“Agency Deed of Trust” shall mean the Subordinate Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents) executed by Borrower in favor of Agency and recorded in the Official Records of the San Diego County Recorder’s Office on or about the date hereof, which secures this Note and the Agency Loan evidenced hereby.

“Agency Loan” shall mean the loan made by the Agency to Borrower pursuant to the OPA in the maximum amount of \$7,300,000, which is evidenced by this Note.

“Agency Loan Documents” shall mean this Note, the Agency Deed of Trust, Assignment of Rents, Assignment of Agreements, Environmental Indemnity and the UCC-1 Financing Statement, each dated on or about the date hereof.

“Agency’s Share of Residual Receipts” shall mean the following:

- (A) For the first thirty (30) years following the Occupancy Date, the Agency’s Share of Residual Receipts shall be fifty percent (50%); and
- (B) Beginning in year 31 following the Occupancy Date and for the rest of the Term, the Agency’s Share of Residual Receipts shall be eighty percent (80%).
- (C) The Agency’s Share of Residual Receipts shall be shared pro rata with the Agency, the California Department of Housing and Community Development (for the TOD loan), the San Diego Housing Commission and the California Housing Finance Agency (for the MHSA loan) in proportion to the amount of their respective loans.

“Annual Financial Statement” shall mean the annual audited financial statement of Gross Revenue and Operating Expenses and balance sheet for the Improvements, prepared at the Borrower's expense, by an independent certified public accountant reasonably acceptable to the Agency Executive Director, which shall form the basis for determining the Residual Receipts.

“Asset Management Fee” shall mean any fee, regardless of how it is characterized, paid to the general partner of Borrower for the purpose of managing the affairs of the Borrower not to exceed \$12,500 annually, subject to annual increases of up to the lower of 2.75% or an annual

increase in the Consumer Price Index (CPI).

“Construction Lender” shall mean U.S. Bank National Association, a national banking association.

“Construction Loan” shall mean the loan by the Construction Lender to Borrower in an approximate amount of THIRTEEN MILLION ONE HUNDRED THIRTY THOUSAND DOLLARS (\$13,130,000), as described in the Method of Financing and the maker of such loan, and its successors and assigns, to be referred to as the “Construction Lender”), which shall be secured by a deed of trust that is senior and superior to the Agency Deed of Trust, or any other loan secured by a deed of trust or other instrument that replaces the Construction Loan to which the Agency agrees to subordinate this Note, the Agency Deed of Trust and the other Agency Loan Documents (“Permanent Loan”).

“Construction Loan Deed of Trust” shall mean that certain first priority lien deed of trust securing the promissory note evidencing the Construction Loan. The Construction Loan Deed of Trust will be recorded in a first priority lien position ahead of the Agency Deed of Trust.

“Construction Loan Documents” shall mean the Construction Loan Deed of Trust, Construction Loan promissory note, and any other document relating to the Construction Loan.

“Conversion” shall mean the date on which the Construction Loan is converted to permanent sources of financing.

“Developer Fee” shall mean One Million Forty-Nine Thousand Five Hundred Seventy-Four Dollars (\$1,049,574).

“Deferred Developer Fee” shall mean that portion of the Developer Fee which was not paid to Borrower prior to the Occupancy Date, but which may be subject to increase due to increased costs and the need for additional Owner Equity, and which shall be paid by Borrower to the developers, with interest at the minimum interest rate allowed by the rules applicable to tax-exempt bonds and Low Income Housing Tax Credits issued by the State of California and the IRS, from the Revenue remaining after payment of Operating Expenses, prior to any payment of Residual Receipts to the Agency.

“Gross Revenue” with respect to a particular calendar year, shall mean all revenue, income, receipts, and other consideration actually received from operation or leasing of the Improvements not including the Child Day Care/School Facility. “Gross Revenue” shall include, but not be limited to: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to

repair or rebuild the Project; and condemnation awards for a taking of part or all of the Project for a temporary period. "Gross Revenue" shall also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Project, except that the value of services provided by on-site manager(s) shall not be treated as "Gross Revenue" if no more than one dwelling unit is leased to or otherwise used by on-site manager(s). "Gross Revenue" shall not include tenants' security deposits, proceeds from the Agency Loan, Housing Commission Loan, TCAC Financing, TOD loan, MHSA loan, EHAP loan, AHP grant, the Carry Back Note, First Five grant, Infill Infrastructure grant, CALReUSE grant or CDBG funds (as all are described in the Amended Method of Financing), Deferred Developer Fee, if any, or interest that is earned on and allocated to the reserve accounts.

"Housing Commission" shall mean the San Diego Housing Commission and its successors and assigns.

"Housing Commission Deed of Trust" shall mean that certain deed of trust securing the promissory note evidencing the Housing Commission Loan. The Housing Commission Deed of Trust will be recorded in a junior priority lien position behind of the Agency Deed of Trust.

"Housing Commission Loan" shall mean the residual receipts loan by the Housing Commission to Borrower in a not-to-exceed amount of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000), as described in the Method of Financing and evidenced by a promissory note from Borrower in favor of the Housing Commission ("Housing Commission Promissory Note").

"Housing Commission Loan Documents" shall mean the Housing Commission Deed of Trust, Housing Commission Promissory Note, Housing Commission Regulatory Agreement and any other document relating to the Housing Commission Loan.

"Improvements" shall mean the 65-unit residential development with 150 Transitional Housing Beds to be constructed on the Property together with the Child Day Care/School Facility, all as described in the OPA.

"Low Income Housing Tax Credits" shall mean tax credits authorized by the Tax Reform Act of 1986 and governed by Section 42 of the Internal Revenue Code.

"Occupancy Date" shall mean the date on which the City of San Diego issues a Certificate of Occupancy for the Improvements.

"Operating Expenses" shall mean actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance and management of the Improvements not including the Child Day Care/School Facility, expressly including, without limitation: ground rent; debt service on any Senior Loan; property taxes and assessments; onsite administrative costs (including salaries and benefits); maintenance costs (including materials and

labor); reasonable and customary payments to a replacement reserve account, not to exceed \$600 per unit per year, subject to annual adjustments equal to the increase, if any, in the Consumer Price Index; the 0.42% mandatory debt service payments on the TOD loan and MHSA loan; painting, cleaning, repairs and alterations; landscaping; utilities; rubbish removal; certificates, permits and licenses; sewer charges; real and personal property taxes and assessments; insurance; security; advertising, promotion and publicity; office, janitorial, cleaning and building supplies; cable television, satellite and similar facilities; recreational amenities, supplies and services; a reasonable property management fee, not to exceed \$35/unit/month, which shall be subject to annual increases of 3.5% per year; reasonable Asset Management Fees not to exceed \$12,500 per year, which shall be subject to annual adjustments equal to the increase, if any, in the Consumer Price Index for the San Diego metropolitan area, All Urban Consumers, 1982-84=100, as published by the U.S. Department of Labor, Bureau of Labor Statistics, not to exceed two and three quarters percent (2.75%) per year; purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings (other than from reserves); fees and expenses of accountants, attorneys, consultants and other professionals, including annual audits and tax return preparation costs payable to a third party; and the amortized value of tenant improvements. The calculation of Operating Expenses shall be subject to the reasonable approval of the Agency .

“Partnership Agreement” shall mean the limited partnership agreement or other agreement governing the operation of Borrower.

“Permitted Mortgage” means any conveyance of a security interest in the Property to secure a loan for Permitted Financing Purposes (as defined in the OPA) which has been approved by the Agency as set forth in the OPA.

“Permitted Mortgagee” means the maker of any Permitted Mortgage Loan.

“Permitted Mortgage Loan” means the obligations secured by a Permitted Mortgage.

“Permitted Transfer” means any of the following, provided Borrower or a general partner of Borrower retains day-to-day control over management and operations of the Property and the Improvements:

- a. A conveyance of the Property to any Affiliate;
- b. A conveyance of a security interest in the Property in connection with any Senior Loan and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection or following the same;
- c. The inclusion of equity participation by Borrower by addition of limited partners to Borrower, or similar mechanisms, and the purchase of any such limited partnership interest or interests by any general partner of the Borrower;

- d. The removal for cause of any general partner by a limited partner of the Borrower and the replacement thereof;
- e. The lease for occupancy of all or any part of the Improvements on the Property;
- f. The granting of easements, licenses, rights-of-way or permits to facilitate the development of the Property in accordance with the OPA; and
- g. The withdrawal, removal and/or replacement of any limited partner of Borrower pursuant to the terms of Borrower's Partnership Agreement shall not constitute a default under this Note or any of the Agency Loan Documents, nor shall such actions accelerate the maturity of the Agency Loan, provided that any required substitute limited partner is reasonably acceptable to Agency and is selected with reasonable promptness.

Any transfer described in clauses a. through g. shall be subject to the reasonable approval of documentation by the Agency Executive Director.

"Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, domestic or foreign.

"Property" shall mean the real property described as the "Property" in and legally described as set forth in Exhibit "A" of the Agency Deed of Trust.

"Residual Receipts" shall mean (a) the Gross Revenue minus (b) the Operating Expenses, calculated on a 12-month basis, minus (c) the outstanding balance, if any, of the Deferred Developer Fee. All calculations of Residual Receipts shall be subject to verification and reasonable approval by the Agency.

"Term" of this Note shall mean fifty-five (55) years from the Occupancy Date or the date of recordation of the Release of Construction Covenants by the Agency pursuant to the OPA, whichever occurs later.

"Transfer" shall have the meaning set forth in Section 11 of this Note.

2. Evidence of Obligation. This Note evidences the obligation of the Borrower to the Agency for the repayment of the Agency Loan. None of the funds provided pursuant to the Agency Loan were funded directly or indirectly with any obligation the interest on which is exempt from tax under Section 103 of the Internal Revenue Code of 1986, as amended, or pursuant to any United States government federal source.

3. Where and How Payable. This Note is payable at the principal office of Agency, c/o Centre City Development Corporation, 401 B Street, Suite 400, San Diego, California

92101, or at such other place as the holder hereof may inform the Borrower in writing, in lawful money of the United States.

4. Security. This Note shall be secured by the Agency Deed of Trust.

5. Interest. Except in an event of acceleration described in paragraphs a. and b. of Section 7, below, this Note shall bear interest at the rate of three percent (3.0%) per annum, simple interest, which shall begin to accrue upon disbursement. In the case of an event of acceleration described in paragraphs a. and b. of Section 7, below, the unpaid balance shall bear interest at the highest rate of interest permitted by law, from the date of acceleration until paid in full.

6. Payments. Except in an event of acceleration described in paragraphs a. and b. of Section 7 below, no payments shall be due and payable under this Note except to the extent of (a) the Agency's Share of Residual Receipts as described in Section 8, below, and (b) the Agency's share of any refinancing, Cost Savings or Additional Proceeds.

7. Due on Expiration of Term or Upon Event of Acceleration. The entire unpaid principal balance of this Note and any accrued but unpaid interest shall be due and payable upon the expiration of the Term hereof, or immediately upon the occurrence of either of the following events of acceleration:

(a) the date on which the Property or any portion thereof or interest therein is sold, transferred, assigned or refinanced, without the prior written approval of the Agency, except as otherwise permitted in this Note and the OPA; or

(b) the date on which there is a default by the Borrower under the terms of this Note, the Agency Deed of Trust, the OPA, the Agreement Affecting Real Property or any deed of trust or other instrument securing any Senior Loan or other obligations secured by a deed of trust on the Property, which is not cured within the respective time period provided herein and therein.

8. Residual Receipts. Subject to the adjustments described in Section 10 of this Note, prior to the expiration of the 55-year Term hereof, Borrower shall be obligated to repay the Agency Loan exclusively from the Agency's Share of Residual Receipts, as follows:

a. Annually, not later than the first day of April, beginning with the year following the year in which the Occupancy Date occurs, Borrower shall submit to Agency an audited Annual Financial Statement for the preceding calendar year, prepared by a certified public accountant reasonably acceptable to the Agency, determining the amount of Residual Receipts, if any, generated in that year, together with payment of the Agency's Share of such Residual Receipts. The first such Annual Financial Statement shall be for the partial year beginning on the Occupancy Date and ending on December 31 of that year. The Agency shall review and approve

such Annual Financial Statement, or request revisions, within 30 days after receipt. In the event as the result of the Agency's review of the statement, there is an increase in the amount of any payment due and payable to Agency (as the result, for example, of a determination that the actual amount of Residual Receipts to which the Agency is entitled exceeds the amount of Agency's Share of Residual Receipts shown in the Annual Financial Statement submitted by Borrower), Borrower shall promptly pay to the Agency the difference, with interest, from the date on which such payment was due, at the rate of five percent (5%) per annum.

b. Annually, commencing with the year in which the City of San Diego issues a certificate of occupancy for the Property, Borrower shall calculate its Residual Receipts as provided in paragraph a. of this Section 8, and pay to the Agency on the Payment Date the Residual Receipts, which shall be allocated to the Agency as provided herein.

c. In addition, the Agency Loan shall be reduced/repaid by any "Cost Savings" or "Additional Proceeds" as set forth in Section 10:

9. Application of Payments. All payments to the Agency shall be applied first to interest, then to reduce the principal amount owed.

10. Mandatory Prepayments. The parties acknowledge that the Agency Loan is intended to be "gap" assistance, not to exceed the amount needed to bridge the gap between the total Demolition and Development Costs attributable to the Affordable Project and the maximum amount of other loans, grants, and available funds including Owner Equity (as defined in the Method of Financing) for the Affordable Project, and that the amount of the Agency Loan was originally determined based upon the total sources set forth in the Method of Financing. In any event, the Agency Loan shall not exceed the dollar amount set forth in the Method of Financing. The proceeds of the Agency Loan shall be used exclusively to pay for costs of the Affordable Project identified in the Project Budget (Attachment No. 7). The Agency Loan shall be subject to reduction/repayment as follows:

(a) Cost Savings. In the event and to the extent that actual Demolition and Development Costs for the Project in the Project Budget are less than the Sources of Financing ("Cost Savings"), then such Cost Savings shall be used first to pay Borrower Three Hundred Fifty Thousand Four Hundred Twenty-Six Dollars (\$350,426) (as an additional Developer Fee), and second to reduce or repay the amount of the Agency Loan, and provided that, upon the Closing, the Housing Commission enters into the Housing Commission Agreement (Attachment No. 21) with the Agency, the Cost Savings shall be used to reduce or repay the Housing Commission Loan as well as the Agency Loan in proportion to their original principal balances. The use of Cost Savings shall not apply to the extent that such use of Cost Savings is prohibited by any established federal or State law, regulation or policy governing the use of any Sources of Financing issued by federal or State agencies.

(b) Additional Proceeds. In the event and to the extent that any of the financing sources for the Affordable Project exceed the amounts shown in the Method of Financing and the Project Budget for the Affordable Project (“Additional Affordable Proceeds”), then such Additional Affordable Proceeds shall first be used to pay for any increased costs of the Affordable Project as set forth in a revised Project Budget approved in writing by the Agency Executive Director for which there are no other sources of funding, and thereafter to reduce or repay the Agency Loan, and provided that, upon the Closing, the Housing Commission enters into the Housing Commission Agreement with the Agency, such remaining Additional Affordable Proceeds shall be used to reduce or repay the Housing Commission Loan as well as the Agency Loan in proportion to their original principal balances. In the event and to the extent any of the financing sources for the Project exceed the amounts shown in the Method of Financing and the Project Budget (“Additional Proceeds”), then such Additional Proceeds shall first be used to pay for any increased costs of the Project as set forth in a revised Project Budget approved in writing by the Agency Executive Director for which there are no other sources of funding, and thereafter to reduce or repay the Agency Loan, and provided that, upon the Closing, the Housing Commission enters into that certain Housing Commission Agreement with the Agency, such remaining Additional Proceeds shall be used to reduce or repay the Housing Commission Loan as well as the Agency Loan in proportion to their original principal balances.

11. Transfers.

(a) Prior to the full reconveyance of the Agency Deed of Trust, the Borrower shall not, except as permitted by this Note or the OPA, effectuate or attempt to effectuate a “Transfer” (as defined in subsection 11(e)), without prior written approval of the Agency Executive Director. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Agency shall not unreasonably withhold or delay its consent. If consent should be given, any such transfer shall be subject to this Section 11, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein, subject to the provisions of subsection 11(e)(iii), below.

(b) Any such proposed transferee shall have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the Agency, to fulfill the obligations undertaken by Borrower in the OPA, the Agreement Affecting Real Property, the Agency Loan Documents and this Note. Any such proposed transferee, by instrument in writing satisfactory to the Agency and in form recordable among the land records of San Diego County, for itself and its successors and assigns, and for the benefit of the Agency shall expressly assume all of the obligations of the Borrower under the OPA, the Agency Loan Documents and the Agreement Affecting Real Property, and agree to be subject to all conditions and restrictions applicable to the Borrower in this Note, subject to the provisions of subsection 11(e)(iii). There shall be submitted to the Agency for review all instruments and other legal documents proposed to effect any such transfer; and if approved by the Agency its approval shall be indicated to the Borrower in writing.

(c) In the absence of specific written agreement by the Agency, no unauthorized Transfer, or any approval of any such Transfer by the Agency, shall be deemed to relieve the Borrower or any other party from any obligations under the OPA, this Note, the Agency Deed of Trust, the Agency Loan Documents or the Agreement Affecting Real Property.

(d) In the event of a Transfer prior to the time the Agency Loan is paid in full without the prior written consent of the Agency, the remaining principal balance of the Agency Loan and all accrued but unpaid interest shall be immediately due and payable.

(e) (i) As used herein, "Transfer" includes the sale, transfer or conveyance of the Property, the Improvements, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, or any agreement to do so; the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property or the Improvements; or the lease of all or substantially all of the Property or Improvements, except as provided in subparagraph (e)(iii) of this Section 11, below.

(ii) "Transfer" shall also include the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in Borrower, or any conversion of Borrower to an entity form other than that of Borrower at the time of execution of this Note, except for the following: (A) a cumulative change in the ownership interests of any individual limited liability company member of forty-nine percent (49%) or less shall not be deemed a "Transfer" for purposes of this Note; and (B) a transfer of a portion or a majority of stock of any corporation to a trust formed in connection with a qualified employee ownership plan shall not, by itself, be deemed to constitute a change in ownership for purposes of this Note.

(iii) Notwithstanding paragraphs (i) and (ii), "Transfer" shall not include any Permitted Transfers, as defined in the OPA, or a Transfer to S.V.D.P. Management, Inc., a California corporation, from Borrower after the expiration of the Tax Credit Compliance Period as described in the First Implementation Agreement to the OPA.

(f) The Agency shall not unreasonably withhold, condition or delay its approval of any matter for which its approval is required hereunder. Any disapproval shall be in writing and contain the Agency's reasons for disapproval.

12. Low and Moderate Income Housing. The Agency Loan is funded from the Agency's Low and Moderate Income Housing Fund. Accordingly, Borrower agrees for itself, its successors and assigns, that the use of the Property shall be subject to the restrictions on rent and occupancy set forth in the Agreement Affecting Real Property. Further, Borrower agrees that no portion of the Agency Loan shall be used for the development of the Child Day Care/School Facility.

13. Waivers. Borrower waives presentment for payment, demand, protest, and notices of dishonor and of protest; the benefits of all waivable exemptions; and all defenses and pleas on the ground of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice. Borrower hereby agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the holder hereof, in the enforcement of this Note, the Agency Deed of Trust or any term or provision of either thereof.

15. Exercise of Rights and Remedies. Upon the failure of Borrower to perform or observe any term or provision of this Note, upon any event of acceleration described in Section 7, or upon the occurrence of any other event of default under the terms of the Agency Deed of Trust, the OPA or the Agreement Affecting Real Property, the Agency Loan Documents or any deed of trust securing the Housing Commission Loan or any Senior Loan, or other obligations secured by a deed of trust on the Property, the holder may exercise its rights or remedies hereunder or thereunder.

16. Defaults.

(a) Subject to the further provisions of this Section 16, failure or delay by Borrower to perform any material term or provision of this Note, the Agency Deed of Trust, the OPA, the Agency Loan Documents or the Agreement Affecting Real Property, or any deed of trust securing the Housing Commission Loan or any Senior Loan or other obligations secured by a deed of trust on the Property, constitutes a default under this Note.

(b) Agency shall give written notice of default to Borrower, specifying the default complained of by the Agency. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Any failures or delays by Agency in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by Agency in asserting any of its rights and remedies shall not deprive Agency of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(d) If a monetary event of default occurs under the terms of this Note or the Agency Deed of Trust, or any deed of trust securing the Senior Loan or Permanent Loan or other obligations secured by a deed of trust on the Property, prior to exercising any remedies hereunder or thereunder Agency shall give Borrower written notice of such default. Borrower and its partners shall have ten (10) days after such notice is received or deemed received to cure any such default prior to exercise of remedies by Agency under this Note and/or the Agency Deed of Trust. In no event shall Agency be precluded from exercising remedies if its security becomes or is about to become materially impaired by any failure to cure a default or the default is not cured within ten (10) calendar days after the notice of default is received or deemed received.

(e) If a non-monetary event of default occurs under the terms of the OPA, this Note, the Agency Deed of Trust, the Agency Loan Documents, the Agreement Affecting Real Property or any document implementing the OPA or any deed of trust securing the Senior Loan or other obligations secured by a deed of trust on the Property, prior to exercising any remedies hereunder or thereunder, Agency shall give Borrower written notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Borrower shall have such period to effect a cure prior to exercise of remedies by the Agency under the OPA, the Agreement Affecting Real Property, the Agency Loan Documents, this Note and/or the Agency Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Borrower (i) initiates corrective action within said 30 day period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Agency. In no event shall Agency be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the notice of default is received or deemed received.

(f) There shall be no additional cure periods under this Note for defaults under the Agency Deed of Trust, the OPA, the Agency Loan Documents, the Agreement Affecting Real Property, any other Loan Document, and/or any deed of trust securing the Housing Commission Loan or any Senior Loan, or other obligations secured by a deed of trust on the Property.

(g) Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by Borrower; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

17. Partial Invalidity. If the rights created by this Note shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the remaining obligations shall be completely performed and paid.

18. Limited Recourse. Subject to the provisions and limitations of this Section 18, the obligation to repay the Agency Loan is a nonrecourse obligation of the Borrower. Borrower and any general or limited partner of the limited partnership shall not have any personal liability for repayment of the Agency Loan, except as provided in this Section 18. The sole recourse of Agency shall be the exercise of its rights against the Property and any related security for the Agency Loan. Provided, however, that the foregoing shall not (a) constitute a waiver of any obligation evidenced by this Note or the Agency Deed of Trust; (b) limit the right of the Agency

to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Note and the Agency Deed of Trust or any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against Borrower; (c) release or impair this Note or the Agency Deed of Trust; (d) prevent or in any way hinder Agency from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or any other instrument securing the Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder Agency from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of any deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing the Note; (f) relieve Borrower of any of its obligations under any indemnity delivered by Borrower to Agency; or (g) affect in any way the validity of any guarantee or indemnity from any person of all or any of the obligations evidenced and secured by this Note and the Agency Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of a default, Borrower and its successors and assigns shall have personal liability hereunder for any deficiency judgment, but only if and to the extent Borrower, its principals, shareholders, partners or its successors and assigns received rentals, other revenues, or other payments or proceeds in respect of the mortgaged Property after the occurrence of such default, which rentals, other revenues, or other payments or proceeds have not been used for the payment of ordinary and reasonable operating expenses of the mortgaged Property, ordinary and reasonable capital improvements to the mortgaged Property, debt service, real estate taxes in respect of the mortgaged Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Borrower in connection with the operation of the mortgaged Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, Agency may recover directly from Borrower, or from any other party, as applicable:

(A) any damages, costs and expenses incurred by Agency as a result of fraud or any criminal act or acts of Borrower or any member, partner, shareholder, officer, director or employee of Borrower, or of any member or general or limited partner of Borrower, or of any general or limited partner of such member or general or limited partner;

(B) any damages, costs and expenses incurred by Agency as a result of any misappropriation of funds provided to pay Demolition and Development Costs, as described in the OPA, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds;

(C) any and all amounts owing by Borrower pursuant to any indemnity set forth in the OPA or the indemnification regarding Hazardous Materials pursuant to the Environmental Indemnity (Attachment No. 11 to the OPA); and

(D) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions.

19. Right to Prepay. Borrower shall have the right to prepay the obligation evidenced by this Note, or any part thereof, without penalty.

IN WITNESS WHEREOF Borrower has executed this Note as of the day and year set forth above.

**15TH & COMMERCIAL, L.P.,**  
a California limited partnership

By: S.V.D.P. Management, Inc.,  
a California corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Father Joe Carroll  
President

By: 15th & Commercial CIC, LLC,  
a California limited liability company,  
its Administrative General Partner

By: Chelsea Investment Corporation,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
James J. Schmid  
President

Exhibit D

Amended Reporting and Monitoring Agreement

[behind this page]

**ADMINISTRATION AGREEMENT**  
**Rental Units**

15<sup>th</sup> & Commercial, L.P.

This Administration Agreement (“Agreement”) is entered into as of \_\_\_\_\_, 20\_\_\_\_ by and between the Redevelopment Agency of the City of San Diego, a public body, corporate and politic (“Agency”), the San Diego Housing Commission, a public agency (“Administrator”), and 15th & Commercial, L.P., a California limited partnership (“Owner”), which shall collectively be referred to as the “Parties”.

**RECITALS**

WHEREAS, Owner is developing a rental housing project on certain real property located at 15<sup>th</sup> & Commercial Street, San Diego, within the Centre City and occupied by Extremely Low Income and Very Low Income tenants for not less than fifty-five (55) years from the date of Completion at an Affordable Rent (collectively, the “Affordable Units”);

WHEREAS, the Affordable Units and the Property are the subject of that certain Agreement Affecting Real Property entered into by and between the Owner and the Agency dated \_\_\_\_\_, 2010 and recorded against the Property on \_\_\_\_\_, 2010 (“AARP”), and that certain Owner Participation Agreement dated as of July 29, 2009, as amended by that certain First Implementation Agreement to Owner Participation Agreement dated \_\_\_\_\_, 2010 (collectively, the “OPA”). The OPA and AARP are incorporated herein by this reference. OPA and AARP as used herein shall mean, refer to and include the OPA and AARP, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference). Any capitalized term not defined herein shall have the meaning ascribed to such term in the OPA;

WHEREAS, the OPA and the AARP collectively require the one hundred fifty (150) Transitional Housing Beds and the sixty-four (64) Living Units to be rented to and occupied by Extremely Low Income and Very Low Income tenants for not less than fifty-five (55) years from the date of issuance of a Release of Construction Covenants for the Project by Agency at an Affordable Rent, and that forty-nine (49) of the Living Units shall be Permanent Supportive Housing Units;

WHEREAS, pursuant to California Health and Safety Code Section 33418 *et seq.* of the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) (“CRL”), the Agency is a public agency charged with enforcing the affordable housing obligations of the Owner contained in the OPA and the AARP including, without limitation, determining the eligibility of renters and rental restrictions of the Affordable Units;

WHEREAS, the Agency desires to use the staff, skills, and facilities of the Administrator to provide monitoring and reporting requirements, as regulated by the OPA and the AARP;

WHEREAS, the Parties have the capability and the legal right to enter into this Agreement; and

WHEREAS, the Owner, the Agency and the Administrator desire to enter into this Agreement to, *inter alia*, provide that (i) Owner shall pay a fee to Administrator in consideration for monitoring the Affordable Units for the period of affordability; and (ii) Administrator shall administer and perform all monitoring and reporting requirements as regulated by the OPA and the AARP, and provide the reports set forth in Paragraph VII herein.

NOW, THEREFORE, the Parties hereby agree as follows:

## AGREEMENT

### **I. Purpose of Agreement**

The purpose of this Agreement is to provide for the administration of the affordable housing obligations of the Owner arising under the OPA and the AARP, in accordance with the CRL.

### **II. Scope of Work**

A. Services. In addition to the reporting requirements set forth in Paragraph VII below, the Administrator shall monitor Owner's compliance with the affordable housing requirements as set forth in the OPA and the AARP, including, without limitation: (i) establishing the eligibility criteria for renters of the Affordable Units in accordance with the requirements of the OPA and the AARP; and (ii) monitoring ongoing compliance with the terms of the OPA and the AARP as applicable, including an annual certification that the Affordable Units remain occupied by eligible tenants. The Agency will notify the Administrator of any amendments to the CRL that would affect the affordable housing requirements as set forth in the OPA and the AARP.

B. Administrator and Agency Approval of Rents. The maximum amount which Owner may charge for initial rent of each of the Affordable Units is set forth in Exhibit A attached hereto and incorporated herein by this reference.

C. Agency Rights and Obligations. All rights, obligations, and/or duties of the Agency under the OPA and the AARP, not otherwise the subject of this Agreement, shall remain the rights, obligations, and/or duties of the Agency.

### **III. Parties to Agreement**

The Parties to this Agreement are:

A. The Redevelopment Agency of the City of San Diego, California, a public entity, corporate and politic, having its principal office at the following address: Redevelopment

Agency of the City of San Diego, c/o Centre City Development Corporation, 401 B Street, Suite 400, San Diego, CA 92101, Attn: Executive Director.

B. The San Diego Housing Commission, a public agency, having its principal office at 1122 Broadway; Suite 300, San Diego, California 92101.

C. 15<sup>th</sup> & Commercial, L.P., a California limited partnership, with notices mailed to c/o S.V.D.P. Management, Inc., 3350 E Street, San Diego, CA 92102.

**IV. Representatives of the Parties**

The representatives of the respective Parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

A. The representative of the Agency shall be:

Redevelopment Agency of the City of San Diego  
c/o Centre City Development Corporation  
401 B Street, Suite 400  
San Diego, CA 92101  
Attn: Executive Director  
Tel: 619-533-7100  
Fax: 619-236-9148

B. The representative of the Administrator shall be:

Richard C. Gentry, President and Chief Executive Officer  
Occupancy Monitoring Department  
San Diego Housing Commission  
1122 Broadway, Suite 300  
San Diego, California 92101

C. The representative of the Owner shall be:

15<sup>th</sup> & Commercial, L.P.  
c/o S.V.D.P. Management, Inc.  
3350 E Street  
San Diego, CA 92102

Any Party may designate another representative by providing written notice to the other Parties.

**V. Time of Performance**

Services pursuant to this Agreement shall commence as of the date of the execution of this Agreement by all of the Parties and shall terminate upon the earlier of: (i) expiration of the affordable rental restriction requirements, as defined in the OPA and the AARP; or (ii) termination of this Agreement pursuant to Section XII or Section XV, below.

#### **VI. Monitoring of the Administrator by the Agency**

The Agency may monitor the Administrator's performance of its duties under this Agreement. The Administrator shall reasonably cooperate with the Agency in connection with such monitoring.

#### **VII. Monitoring and Reporting Requirements**

##### Administrator Requirements.

- A. The Administrator shall determine whether proposed applicants qualify as tenants for the Affordable Units.
- B. The Administrator shall monitor the following, pursuant to Exhibit A attached hereto:
  - (1) Each Affordable Unit's occupancy by eligible residents (i.e., at Extremely Low Income, Very Low Income, and Low Income levels); and
  - (2) The period of each Affordable Unit's affordability (i.e., not less than 55 years from Completion).
- C. The Administrator shall submit to the Agency annual reports of its monitoring activities pursuant to this Agreement, which may include the most recent Certification of Continuing Program Compliance report, no later than July 31<sup>st</sup> for the prior fiscal year (July 1- June 30).
- D. The Administrator shall re-certify household income annually. Owner shall be solely responsible for eviction of tenants; the Administrator shall have no obligation to evict any persons.

##### Agency Requirements.

- A. Provide evidence of the Owner's advance notification of any fees required under this Agreement, as demonstrated by Exhibit B attached hereto and incorporated herein by this reference.
- B. Annually, upon request from the Administrator, provide an updated rent chart based upon the San Diego Median Income and the CRL.

Owner Requirements.

- A. Provide complete and accurate information required by the Administrator with regard to the affordable housing obligations of the Owner contained in the OPA and the AARP, immediately upon request.
- B. Provide the tenants with a written notice from the Owner one (1) year prior to the expiration of an affordability restriction.
- C. Timely pay all fees to the Administrator as required by this Agreement.

**VIII. Books and Records**

A. Complete Books. The Administrator shall maintain or cause to be maintained complete and accurate books, reports, files, and records necessary to carry out its monitoring and reporting obligations under this Agreement, the OPA and the AARP. The Owner shall maintain or cause to be maintained in the City of San Diego complete and accurate books, reports, files, and records necessary to carry out its monitoring and reporting obligations under this Agreement, the OPA and the AARP.

B. Availability. All records prepared in accordance with this Agreement shall be made available to the Agency in the City of San Diego for copying and inspection at any time without notice during normal business hours.

**IX. Access to Records**

A. The Agency shall have full and free access to all books, papers, documents, and records of the Administrator and/or Owner that are pertinent to the obligations of all Parties under this Agreement.

B. The Administrator shall have full and free access to all books, papers, documents and records of the Owner and/or Agency that are pertinent to the Administrator's obligations under this Agreement.

**X. Ownership, Use and Distribution of Documents**

A. All records, reports, books, papers, documents, computer discs or other information prepared or developed by the Administrator or Owner on behalf of the Agency in connection with services rendered under this Agreement, are and shall remain the exclusive property of the Agency.

B. The Agency and Administrator may use and distribute in each of their sole discretions any records, reports, books, papers, documents, computer discs or other information prepared by the Administrator and/or Owner pursuant to this Agreement. Such purposes include, but are not limited to, annual reports, reports required by the CRL, and responses to public information requests. The Agency shall identify the Administrator as the author of any such

reports prepared by the Administrator that are distributed by the Agency. Neither the Agency, nor the Administrator shall be required to secure any prior authorization, written or otherwise, from one another prior to any such distribution.

C. Upon expiration of this Agreement or in the event of termination of this Agreement by the Agency or the Administrator as provided in Section XII or Section XV of this Agreement, the Administrator agrees to provide to the Agency and the Owner copies of all records, reports, books, papers, documents, computer discs or other information prepared as a result of this Agreement not previously provided to the Agency or the Owner.

## **XI. Payment of Compensation**

A. Amount. In consideration for the services provided by the Administrator with respect to the Affordable Units as referenced in this Agreement, the Administrator may establish and collect annually a fee ("Annual Monitoring Fee") from the Owner for services rendered pursuant to this Agreement to monitor and enforce the affordability covenants contained in the OPA and the AARP. The amount of the Annual Monitoring Fee charged shall be based upon the current San Diego Housing Commission Annual Occupancy Monitoring Fee Schedule, Exhibit B attached hereto, which Exhibit is subject to revision annually, based upon the increase in the Consumer Price Index for the San Diego Metropolitan Area. Each year the Annual Monitoring Fee shall be increased based upon the percentage of increase in the Cost of Living as referenced in the Consumer Price Index for the San Diego Metropolitan Area. In no event, however, shall the Annual Monitoring Fee decrease.

B. Time of Payment. Concurrently with Participant's execution and delivery of this Agreement, Participant shall pay to the Administrator a System Set-Up and Implementation Fee as referenced in Exhibit "B", attached hereto. The Administrator's right to the Annual Monitoring Fee referenced in Exhibit B shall commence concurrent with activities referenced in Section VII of this Agreement. The Owner shall pay to the Administrator the Annual Monitoring Fee in accordance with Exhibit B, and as calculated by, Section XI.A, above. Failure to timely pay the System Set-Up and Implementation Fee or Annual Monitoring Fee shall constitute a material default under this Agreement. Such breach shall entitle the Administrator, in addition to all other rights that it has at law, equity and under the terms of this Agreement, to terminate this Agreement in accordance with Section XII or Section XV of this Agreement.

C. Administrator Entitled to All Fees. The Owner also agrees to pay additional fees as necessary to reasonably compensate the Administrator in the event Administrator's monitoring results in a need to take additional steps to enforce the covenants and conditions contained in the AARP and referenced in this Agreement (see Exhibit B attached hereto). Owner further agrees that failure to pay all such fees within fifteen (15) business days after receipt of a billing statement for such fees shall constitute a material breach of the covenants and conditions of this Agreement. Such breach shall entitle the Administrator, in addition to all other rights that it has at law, equity and under the terms of this Agreement, to terminate this Agreement in accordance with Section XII or Section XV of this Agreement. In the event that Agency directs Administrator to take legal steps, including the initiation of litigation, to enforce the OPA and/or the AARP, then Administrator shall be entitled to the legal costs and fees and other court cost

associated with such enforcement actions, in addition to the fees set forth herein. The Agency shall compensate the Administrator for such fees and costs as incurred and the Administrator shall seek reimbursement of such fees and costs in any litigation against the Owner. The Agency may, in lieu of requesting the Administrator to enforce the terms of the OPA and/or AARP, enforce the obligations itself.

**XII. Default**

In the event of any breach or default hereunder, which the defaulting or breaching Party fails to satisfactorily cure within ten (10) calendar days of receiving written notice from a non-defaulting Party specifying the nature of the default or breach, the non-defaulting Party may immediately cancel and/or terminate this Agreement and/or maintain any and all legally permissible actions at law or in equity against the defaulting Party to enforce the correction of any such default or breach or to enjoin any such default or breach.

**XIII. No Partnership**

The Parties hereto are entering into this Agreement independently from one another and shall not be deemed officers, officials, agents, partners or employees of one another.

**XIV. Amendment or Assignment of Agreement**

All amendments to this Agreement must be in writing and executed with mutual consent of the Administrator, the Agency and the Owner. This Agreement may not be assigned by any Party without the written approval of the remaining Parties, and such approval shall not be unreasonably withheld.

**XV. Termination**

This Agreement may be terminated with or without cause by the Agency or the Administrator upon thirty (30) calendar days' written prior notice to all other Parties.

**XVI. Complete Agreement**

This Agreement contains the full and complete agreement between the parties concerning the matters contained herein. No verbal agreements or conversation with any officer, official, agent or employee of any Party shall effect or modify any of the terms and conditions of this Agreement.

**XVII. Limitations on Agreement**

The Parties agree that this Agreement is not in any way intended to, and does not, revise, amend or otherwise affect any of the terms, conditions or priority of the OPA or the AARP, nor the enforcement thereof, except as specifically set forth herein. The Parties hereby agree that, except as expressly provided herein, the provisions of the OPA and the AARP shall be and remain unmodified and in full force and effect.

**XVIII. Counterparts**

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

**XIX. Time of Essence**

Time is expressly declared to be of the essence in this Agreement, and of each and every provision in which time is an element.

**XX. Captions**

Section or paragraph titles and captions contained in this Agreement are inserted as a matter of convenience and for reference, and are not a substantive part of this Agreement.

**XXI. Additional Documents**

The Parties each agree to sign any additional documents, which are reasonably necessary to carry out this Agreement or to accomplish its intent.

**XXII. Benefit and Burden**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns. This Agreement is not intended to benefit any person other than the Parties hereto.

**XXIII. Governing Law**

This Agreement has been entered into in the State of California and shall be interpreted and enforced under California law.

**XXIV. Venue**

Any action that may be filed to enforce or interpret the terms of this Agreement shall be filed in a court located within the City of San Diego, California.

**XXV. Attorney's Fees**

The prevailing party in any action including, but not limited to, arbitration, a petition for writ of mandate, and/or an action for declaratory relief, brought to enforce, interpret or reform the provisions of this Agreement shall be entitled to reasonable attorneys' fees and costs

(including, but not limited to, expert's fees and costs, and including "costs" regardless of whether recoverable as such under statute) incurred in such action.

**XXVI. Waiver**

No breach of any provision hereof may be waived unless in writing by all Parties. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

**XXVII. Signing Authority**

The representative signing on behalf of each Party to this Agreement represents that authority has been obtained to sign on behalf of the Party.

**XXVIII. Exhibits and Recitals Incorporated**

All exhibits referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The recitals to this Agreement are hereby incorporated in this Agreement by this reference.

**XXIX. Severability of Provisions**

If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**XXX. Successors and Assigns**

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal and personal representatives, successors, and assigns.

[signatures on following pages]

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the dates set opposite their signatures.

**AGENCY:**

**REDEVELOPMENT AGENCY OF THE  
CITY OF SAN DIEGO**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: Janice Weinrick  
Its: Deputy Executive Director

**APPROVED AS TO FORM AND LEGALITY**

JAN I. GOLDSMITH  
Agency General Counsel

By: \_\_\_\_\_

Kevin Reisch  
Deputy General Counsel

**ADMINISTRATOR:**

**SAN DIEGO HOUSING COMMISSION**

By: \_\_\_\_\_

Richard C. Gentry  
President & Chief Executive Officer

Date: \_\_\_\_\_

**Approved as to form:**

**CHRISTENSEN & SPATH LLP**

By: \_\_\_\_\_

Walter F. Spath, III  
General Counsel  
San Diego Housing Commission

**OWNER:**

**15TH & COMMERCIAL, L.P.,**  
a California limited partnership

By: S.V.D.P. Management, Inc.,  
a California corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Father Joe Carroll  
President

By: 15th & Commercial CIC, LLC,  
a California limited liability company,  
its Administrative General Partner

By: Chelsea Investment Corporation,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
James J. Schmid  
President

**EXHIBIT A**

**QUALIFIED TENANT AND INITIAL RENT SCHEDULE**

***15th & Commercial, L.P.***

A "Qualified Tenant" shall be a person of Extremely Low Income and Very Low Income, as applicable, as defined in the OPA. Qualified Tenants shall meet the income limits and shall not pay more than the initial rental rates identified and illustrated in the following tables:

**RESTRICTIONS FOR TENANT ELIGIBILITY AND ILLUSTRATION OF INITIAL MAXIMUM RENTS\*\***

<b># of Units</b>	<b># of Bedrooms</b>	<b>Income Level<sup>1</sup></b>	<b>Permissible Initial Gross Rent</b>	<b>Less Utility Allowance<sup>2</sup></b>	<b>Initial Maximum Rent</b>	<b># of Years</b>
35	living units	Very Low Income households at 30% TCAC AMI	\$ ____	\$ ____	\$ ____	55
29	living units	Very Low Income households at 40% TCAC AMI	\$ ____	\$ ____	\$ ____	55
150	transitional beds	Extremely Low households at 30% AMI	\$ ____	\$ ____	\$ ____	55

<sup>1</sup> Income Level = Eligible Households earning up to respective AMI based on household size.

<sup>2</sup> Utility Allowance derived from San Diego Housing Commission 20\_\_ Utility Allowance Schedule.

<sup>3</sup>Maximum Rents = for "Extremely Low Income households at 30% AMI", based upon 30% of 30% AMI; for "Very Low Income households at 30% TCAC AMI", based on 30% of 30% TCAC AMI, adjusted for household size; for "Very Low Income households at 40% TCAC AMI", based upon 30% of 40% TCAC AMI, adjusted for household size. In no event shall any Maximum Rent exceed 30% of 30% of 50% AMI (less utility allowance) based upon household size. The rents in this chart are illustrative TCAC rents based upon median family income as estimated by HUD and published in 20\_\_ as "area median income" by HCD. [Health & Safety Code Sec. 50093.] Actual rents at time of lease-up may be different due to fluctuations in the San Diego Median Income.

\*\* Assumes one person household for living unit.

**ILLUSTRATION OF ELIGIBLE HOUSEHOLDS**

**Based upon 20\_\_ San Diego Median Income (HUD):**

**Size of Household**

**Maximum Household Income**

	Up to: 30% AMI (Extremely Low)
One Person Household	\$
Two Person Household	\$
	Up to: 40% AMI (Very Low)
One Person Household	\$

Two Person Household

\$

The Median Family Income for San Diego County is determined by the U.S. Department of Housing and Urban Development (HUD Schedule), revised periodically and distributed by the San Diego Housing Commission. Utility allowance calculations may vary depending on actual services provided.

## EXHIBIT B

### OCCUPANCY MONITORING FEE SCHEDULE – Rental Units

#### 15<sup>th</sup> & Commercial, L.P.

*The initial SDHC monitoring fee and a portion of the annual monitoring fee is to be credited against the annual Housing Commission bond fee of 23 basis points of the outstanding tax exempt debt. The term of the bonds is 35 years. The “per unit” SDHC monitoring fee will begin in year 36 and continue through year 55.*

#### **Initial Monitoring Fee**

System Set-up and Implementation (see explanation above)

The initial monitoring fee has been incorporated into the monitoring fees assessed by the San Diego Housing Commission in its bond fee.

#### **Annual Monitoring Fee**

The base monitoring fee per unit is: \$65 per unit for the first 40 units, and  
\$55 per unit for the next 40 units,  
\$45 per unit for all units in excess of 80.

The monitoring fee is subject to annual adjustments to reflect changes in the Consumer Price Index over the term of this Agreement as set forth below.

#### **Enforcement Fees**

In the event the Administrator, in monitoring compliance, determines that the Owner is not in compliance with the covenants and conditions in the Agreement or the AARP, the Owner shall pay Administrator’s additional reasonable costs of enforcement. Such costs shall be equal to Administrator’s total documented costs for employee and attorney time expended in securing compliance. In no event shall such additional fees exceed \$500 without Agency’s approval. If Agency disapproves such additional fees, Agency shall assume the enforcement function for the specific non-compliance situation then at issue.

#### **Billing and Payment of Fees**

The Administrator shall bill/invoice Owner for all fees at the address of record on an annual basis. Owner shall pay fees to the Administrator within fifteen (15) calendar days of the date of the invoice.

Exhibit E

Amended Disbursement Agreement

[behind this page]

**DISBURSEMENT AGREEMENT**  
**(15<sup>th</sup> and Commercial Project)**

THIS DISBURSEMENT AGREEMENT is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (“Agency”) and 15th & Commercial, L.P., a California limited partnership (“Borrower”), as of \_\_\_\_\_, 2010.

R E C I T A L S

A. Agency and Borrower’s predecessor-interest have entered into that certain Owner Participation Agreement dated July 29, 2009, as amended by that certain First Implementation Agreement to Owner Participation Agreement dated \_\_\_\_\_, 2010 (collectively, the “OPA”), relating to that real property legally described in Attachment No. 2 to the OPA (the “Property”). The OPA, the promissory note evidencing the Agency Loan (defined below), the deed of trust securing the Agency Loan, an Agreement Affecting Real Property dated on or about the date hereof, and other instruments referred to in the OPA, are sometimes referred to collectively as the “Agency Loan Documents.”

B. In accordance with the OPA, Borrower intends to construct a mixed-use development consisting of one hundred fifty (150) transitional housing beds and sixty-four (64) living units (with one (1) unrestricted Market Rate Unit for the manager) (the “Project”). In addition, the OPA provides for the development, without funding from the Agency, of a child day care/school facility on floors 1 through 3, and three (3) guest rooms for visiting staff on the 12<sup>th</sup> floor. The one hundred fifty (150) transitional beds will provide housing for Extremely Low Income persons, and the sixty-four (64) living units will include housing that is affordable to Very Low Income persons at 30% TCAC Area Median Income and Very Low Income persons at 40% TCAC Area Median Income. The costs of demolition of the existing improvements on the Property and developing the Project (“Costs”) are set forth in the Project Budget approved by the Agency, as the final project budget, which is attached to this Disbursement Agreement as Exhibit “A” and incorporated herein by this reference (the “Project Budget”). The Project Budget shall be subject to amendment from time-to-time, subject to the prior written approval by the Construction Lender and the Agency Executive Director, upon which approval the Project Budget shall be replaced by the approved revised Project Budget.

C. Pursuant to the OPA, Agency has agreed to make a loan to Borrower (the “Agency Loan” or “Agency Funds”), to be used to finance a portion of the Costs. The Agency Loan is in the original principal amount not to exceed \$7,300,000, and is evidenced by the Agency Promissory Note and secured by the Agency Deed of Trust.

D. A construction loan in the approximate original principal amount of \$13,130,00 during the construction period (the “Construction Loan” or “Construction Loan Funds”) shall be used as part of the construction financing for the Project and shall be secured by a senior priority construction deed of trust (the beneficiary of which shall be the Construction Lender). The Construction Loan Agreement, the promissory note evidencing the Construction Loan, the deed of

trust securing the Construction Loan and other instruments referred to in the Construction Loan Agreement are sometimes referred to collectively as the "Construction Loan Documents". This Disbursement Agreement does not concern the disbursement of the Construction Loan or affect any of the Construction Loan Documents.

E. Approximately \$20,000,000 will be provided for Project financing from the TCAC Financing which shall include approximately \$15,000,000 to be disbursed during the construction period and the balance to be disbursed following Completion.

F. The deferred portion of the Developer Fee, is currently contemplated to be zero dollars (\$0) (the "Deferred Developer Fee"). The balance of the Developer Fee in the amount of One Million Forty-Nine Thousand Five Hundred Seventy-Four Dollars (\$1,049,574) is payable to Borrower in accordance with the following schedule of disbursements and/or pursuant to Construction Lender's schedule of disbursements, it being agreed that the schedule of disbursement to be followed for each milestone set forth below shall be whichever schedule of disbursement (Agency's or Construction Lender's) is more restrictive at each such milestone such that the following schedule of disbursements is the maximum disbursement of fees at each milestone:

- i. 20% upon Closing;
- ii. 30% no sooner than 50% of disbursement of the Agency Loan in accordance with this Disbursement Agreement;
- iii. 25% no sooner than 75% of disbursement of the Agency Loan in accordance with this Disbursement Agreement; and
- iv. 25% upon Completion.

G. Other financing in the approximate amount of \$12,357,000 shall be paid from the San Diego Housing Commission Loan (\$3,500,000 total, of which approximately \$3,150,000 to be disbursed during construction), Emergency Housing & Shelter Program (\$1,000,000), MHSA Program (\$2,357,000 total), Land Note to Prior Owner (\$5,500,000), or other funding sources, all of which shall be Junior Loans, secured by deeds of trust subordinate to the Agency's Deed of Trust and other Agency Loan Documents.

H. Equity from the Borrower (the "Borrower's Funds") shall consist of the following sources of financing: First Five Commission (\$6,968,000 total), Infill Infrastructure Grant (\$3,089,000), California Recycle Underutilized Sites (CALReUSE) Remediation Program (\$583,000), Community Development Block Grant Program (\$291,000), and FHLB Affordable Housing Program (\$1,500,000). Borrower's Funds described in this Recital H shall consist of funds provided by Borrower or borrowed funds, so long as repayment is not secured by any deed of trust on the Property except as set forth in Section 203c. and d. of the OPA.

In addition, Borrower shall be responsible, during the construction period, to provide or obtain in a form readily available for Project Costs and expenditures any funds needed to pay for cost overruns and contingencies not otherwise funded by other sources of construction financing (“Additional Funds”).

I. The TCAC Financing funds described in Recital E., the Deferred Developer Fee described in Recital F., and the other financing described in Recital G., may be referred to herein collectively as “Other Financing”. The Agency Funds, Construction Lender Funds, Borrower’s Funds, Other Financing and Additional Funds are referred to herein collectively as the “Project Funds.”

I. The Agency and Borrower desire to enter into this Disbursement Agreement solely to provide for the disbursement of the Agency Funds for approved Costs.

J. All initially capitalized terms not defined in this Disbursement Agreement shall have the meanings ascribed to them in the OPA.

NOW, THEREFORE, the parties agree as follows:

1. Deposit and Use of Funds.

a. Borrower’s Account. Agency acknowledges that except to the extent Borrower’s Funds have been spent on Costs prior to the Closing, Borrower will deposit any Borrower’s Funds into a fully segregated disbursement account held by the Construction Lender (the “Borrower’s Account”).

b. Loan Balancing.

(i) In the event Agency determines, from time-to-time, that the mathematically combined amounts of the Agency Funds, Construction Loan Funds, Borrower’s Funds and Other Financing, as set forth in the attached Project Budget, are insufficient to pay all Costs, including increased costs due to change orders, cost overruns or otherwise, then, within fifteen (15) business days following written notice from the Agency (“Balancing Call”), Borrower shall deposit into the Borrower’s Account held by the Construction Lender such additional Borrower’s Funds as may be necessary to pay all such obligations.

(ii) To the extent funds from Borrower’s Account or any other Borrower Funds are used to pay such obligations, such funds shall be disbursed in accordance with the terms of the Construction Loan Documents, prior to the disbursement of any of the proceeds of the Agency Loan.

(iii) As used in this Disbursement Agreement, the term "Approved Costs" shall mean all hard and soft costs (and modifications thereto), which were approved by the Construction Lender and the Agency, which are needed for the completion of the Project in accordance with Plans and Specifications for the Project which were approved by the Construction Lender and the Agency.

c. Agency Funds. The Agency Funds shall be deposited and held by the Agency as the Agency shall determine, to be disbursed as provided in this Disbursement Agreement. The Agency Funds are not pledged to the Construction Lender nor shall they constitute security for the Construction Loan. No Agency Funds may be used for any portion of the construction of improvements for the Child Day Care/School Facility.

d. Disbursement Schedule. The Disbursement Schedule attached to this Disbursement Agreement as Exhibit "B" represents a good faith estimate of when the Project Funds will be disbursed to pay Costs. The Agency and the Borrower shall meet monthly, or more frequently as necessary, to update the Disbursement Schedule throughout the construction period.

e. Project Plans. Agency and Borrower acknowledge and agree that Borrower shall submit to Agency, for Agency's written approval, plans and specifications for the Project in phases in accordance with the Schedule of Performance (together with all required permits for the work described in the same). Borrower shall not commence any part of the Project until and unless the plans and specifications for that part of the Project have been approved in writing by Agency. Once a phase of the plans and specifications for the Project has been approved in writing, those plans and specifications shall become part of the "Plans" for the Project. Notwithstanding anything to the contrary contained elsewhere in this Disbursement Agreement, Agency shall have no obligation to make any hard cost disbursement for any work or materials which are not required under the Plans (or portion thereof) previously approved by Agency.

f. Cost Overruns. In the event that, at any time and for any reason, (a) the actual cost reasonably estimated by Agency or Borrower to be required to complete all matters included in the Project Budget exceeds the amount allocated in the Project Budget, or (b) Approved Costs for any matters not covered by a specific line item in the Project Budget have been or will be incurred, or (c) the undisbursed portion of the Agency Loan and Construction Loan and all other loans for the Project (together with the undisbursed portion of the Borrower's Account and the undisbursed portion of the Other Financing) is or may be insufficient to pay all Approved Costs that may be payable under the Agency Loan Documents, the Construction Loan Documents, and otherwise in connection with the Project or the Agency Loan (including, without limitation, a reserve for interest) (individually or collectively, "Excess Costs"), Agency shall have no obligation to make further Disbursements until Borrower has paid or otherwise provided for the Excess Costs as required above.

2. Use of Funds to Pay Costs.

The Agency Funds, Construction Loan Funds and the Borrower's Funds shall be used exclusively for the payment of, or reimbursement for, Approved Costs as shown in the Project Budget, as the same may be amended from time to time with the written approval of the Construction Lender and the written approval of the Agency Executive Director or designee. Such payment of, or reimbursement for, Costs shall be made only after the same have been incurred by the Borrower.

3. Draw Requests

a. Application for Payment. Disbursements of Agency Funds shall be made upon submission of a written itemized statement or draw request in a form that is acceptable to Agency (the "Application for Payment" or "Draw Request"), subject to the conditions set forth below. The term "disbursement" shall include, without limitation, disbursement of Agency Funds, Borrower's Funds that have been delivered to Construction Lender, Borrower's prior expenditures of Borrower's Funds, and Construction Loan Funds. An Application for Payment shall be submitted not more frequently than once monthly. Agency shall determine whether or not the conditions precedent to its obligation to advance Agency Funds have been satisfied or whether or not to waive any condition precedent to its obligation to advance Agency Funds which Agency determines has not been satisfied.

b. Order of Disbursement. Project Funds shall be disbursed in the order set forth below:

- (1) First, if a Balancing Call has been issued, all of the Additional Funds, if any, shall be disbursed from time to time as needed to pay for costs of the overall Project.
- (2) Second, the first installment(s) of the Other Financing and Borrower's Funds, if any.
- (3) Third, the Agency shall disburse at Closing an amount up to 47.38% of the Agency Loan, or \$3,458,740.
- (4) Fourth, during construction, subject to the retention of twenty percent (20% of the Agency Funds (i.e., \$1,460,000), the disbursements of the Agency Loan Funds shall (i) be in proportion to the Construction Loan disbursements, with such proportion based upon the amounts of the original loan balances of the Agency Loan and the Construction Loan, and (ii) be disbursed at the same time and frequency as the Construction Loan disbursements, subject to a cumulative total of Agency Loan disbursements during construction of up to \$2,381,260. Agency shall have the right to withhold a retention of each draw for hard costs (collectively, the

“Retention”) until Completion in the same proportion and on the same terms and conditions as provided for the Construction Lender under the in the Construction Loan Documents.

- (5) Fifth, the Agency shall release ten percent (10%) of the Agency Funds (i.e., \$730,000) upon Completion and the last ten percent (10%) of the Agency Funds (i.e., \$730,000) upon Conversion.

c. Contents of Application for Payment. Each Application for Payment shall set forth the following: (1) a description of the work performed, material supplied and/or Costs incurred or due for which disbursement is requested with respect to any Costs shown as a line item (“Item”) in the Project Budget; (2) the total amount incurred, expended and/or due for each requested Item, less prior disbursements; (3) the percentage of completion of the portion of the Work to be paid from the Item; and (4) a certification by Borrower that no Agency Funds will be used to pay for any portion of the construction of improvements for the Child Day Care/School Facility. Agency hereby consents to the use of the form of Application for Payment attached to the Construction Loan Agreement for draw requests, with the certification described in clause (4) above added.

d. Delivery of Applications for Payment. Borrower shall deliver copies of each Application for Payment concurrently to Construction Lender and Agency. Each Application for Payment shall be subject to the approval of the Agency and Construction Lender, with respect to their respective loans.

e. Documentation. Each Application for Payment shall be accompanied by the following: any applicable change order(s) to the general contract; and copies of paid invoices and unconditional lien releases for construction costs paid with the proceeds of the prior Application for Payment (except for the first Application for Payment), and conditional (upon receipt of payment) lien releases for construction costs to be paid with the proceeds of the instant Application for Payment, which invoices and lien releases shall be considered a part of each Application for Payment. Where Borrower is requesting Project Funds for Costs other than general contract payments, Borrower shall attach to the Application for Payment invoices or such other appropriate documentation to evidence, document, justify and support the request, which shall be an amount within the amount of the applicable line item in the Project Budget. Agency may require Borrower to separate lien waivers and hard cost invoices from the other materials provided with Applications for Payment.

f. Submission to Agency. Immediately after each disbursement pursuant to any Application for Payment, Borrower shall transmit to Agency, to the extent available to Borrower, a copy of Construction Lender's inspection report or other documentation indicating the Construction Lender's inspector's determination of the percentage of work complete pertaining to such Application for Payment. No representation or warranty of Construction Lender is made or shall be implied with respect to any matter shown in such inspection report or other documentation.

g. Statement of Previously Paid Costs. Prior to or concurrently with the execution of this Disbursement Agreement, Borrower shall prepare and submit to Agency a statement of all Costs previously paid by Borrower with Borrower's Funds, if any, accompanied by invoices or such other appropriate documentation to evidence, document, justify and support the payment, which shall be an amount within the amount of the applicable line item in the Project Budget. Expenditures previously made by Borrower and approved by the Agency pursuant to this paragraph g. shall be deemed included in Borrower's Funds disbursed pursuant to paragraph b.(1) of this Section 3.

#### 4. Approval of Draw Requests

a. General. Approval of each Draw Request shall be subject to satisfaction of the requirements of this Disbursement Agreement and the Agency Loan Documents.

b. Procedure. Agency shall, within fifteen (15) business days after receipt of an Application for Payment containing all of the items described in Section 3, above, determine whether the Application for Payment is approved or disapproved in accordance with this Disbursement Agreement; based on the Agency's approval of the Application for Payment or portions thereof, notify Borrower, appropriate members of the construction team and the Construction Lender of the amount of Agency Loan Funds to be disbursed according to the ratio described in Section 3.b(3) above; and, if and as required pursuant to paragraph b. of Section 3, above disburse the approved amount, by check, to Borrower, Construction Lender or to the respective contractor or subcontractor, as determined by the Agency Executive Director or designee.

c. Disapprovals. Any item in an Application for Payment which is not specifically approved within fifteen business days shall be deemed disapproved. In addition, any item in an Application for Payment which is approved by the Construction Lender and not expressly disapproved within fifteen days by the Agency as provided below shall be deemed approved. On the basis of the progress of the work performed on the Project and the conditions precedent to making disbursements contained in this Disbursement Agreement and the Agency Loan Documents, Agency may disapprove all or part of an Application for Payment. In the event Agency disapproves any portion of the amount requested by Borrower in an Application for Payment (the "disapproved amount"), Agency shall notify the Construction Lender and the Borrower within fifteen days of the disapproved amount and the reason therefor.

d. Concurrent Review of Applications for Payment. In the event any item shall be disapproved or deemed disapproved, the representatives of the Borrower and Agency shall meet promptly and in good faith to attempt to resolve the matter to their mutual satisfaction. To effectuate this paragraph, Borrower shall submit to the Agency and the Construction Lender each Application for Payment concurrently, and Agency shall notify the Construction Lender of its approval or disapproval of such request as required pursuant to Section 4.b. Borrower shall transmit to Agency any notice of approval or disapproval of an Application for Payment as soon as the same is received from the Construction Lender. Agency shall signify its approval of an

Application for Payment by signing and transmitting to the Construction Lender and Borrower a copy of the Application for Payment, by hard copy or facsimile transmission.

e. Disbursement of Undisputed Amounts. In the event of any dispute, the Agency shall disburse the amount of any Application for Payment not in dispute, and fund any disputed amounts promptly upon resolution of the dispute. Disputed amounts shall not be deducted from the Agency Loan, but shall be available for disbursement for other approved Costs in accordance with the Project Budget. The Agency and the Borrower shall seek to resolve any disputes promptly and in good faith.

g. Right to Condition Disbursements. The Agency shall have the right to condition any disbursement upon receipt and approval of such documentation, evidence or information that Agency may request, including, but not limited to, vouchers, invoices, and architect's, inspector's and/or engineer's periodic certifications of the percentage and/or stage of construction that has been completed.

h. General Conditions Applicable to Disbursements. Disbursements shall be subject to the following conditions:

(1) Agency shall use the disbursement procedures set forth in the Agency Loan Documents and this Disbursement Agreement; provided, however, Agency shall not be obligated to disburse any Agency Funds until the Construction Lender has approved all or a portion of the corresponding Application for Payment for the funds to be disbursed; and

(2) The Agency shall make disbursements of Agency Funds: to Borrower for reimbursement of soft costs incurred and paid by Borrower and for payment to third-party contractors, subcontractors or creditors of the Project, as the case may be. Notwithstanding the foregoing, Agency shall each have the right in its sole discretion to make disbursements of Project Funds directly to third parties entitled to such payment.

5. Early Release of Retention Amounts By Agency.

As to subcontracts or portions of subcontracts applicable to the Project, subject to the prior written consent of the Agency Executive Director or designee (which Agency, acting through its Executive Director or designee, shall not unreasonably withhold, condition or delay), the Borrower may request that the Agency release Retention amounts relating to work covered by subcontracts or portions thereof in categories designated by Borrower prior to Completion, within 30 days after substantial completion of such work to be performed with approval of the same by the inspectors for the applicable governing authorities and subject to the following conditions as to such subcontract or portion thereof:

a. submission to the Agency of unconditional lien releases or waivers relating

to the work performed under such subcontract or portion thereof;

- b. certification by the project architect that the work covered by such subcontract or portion thereof has been substantially completed in a good and workmanlike manner and in accordance with the approved plans and specifications; and
- c. delivery to Agency of satisfactory evidence of payment, settlement, bonding, discharge or other extinguishment of any mechanic's liens that have been recorded or stop notices that have been delivered to Agency, including without limitation all statutory waivers.

6. Approval of Final Draw Request Except as provided in Section 5, one-half of the Agency Loan Retention (*i.e.*, 10% of the Agency Loan) shall be disbursed to Borrower by Agency upon the submission by Borrower of documentation of the final cost of completing the Project, and the following (referred to as the "Completion"): (a) issuance of a certificate of occupancy for the Project by the City of San Diego, (b) recordation of a Notice of Completion, (c) submission to the Agency of unconditional lien releases or waivers obtained by Borrower or Borrower's agent, (d) certification by the project architect that the Project has been completed in a good and workmanlike manner and in accordance with the approved plans and specifications, (e) disposition of any mechanic's liens that have been recorded or stop notices that have been delivered to either Agency or Construction Lender, so that any such liens shall have been paid, settled, bonded around or otherwise extinguished or discharged and the Lenders have been provided satisfactory evidence of such payment, settlement, bond or discharge, including without limitation all statutory waivers, and (f) issuance by the Agency of its Release of Construction Covenants pursuant to the Owner Participation Agreement. Notwithstanding the foregoing and notwithstanding the provision of any other document, the first one-half of the Retention shall not be disbursed until at least thirty-five (35) days after the Notice of Completion has been recorded, and (B) the Agency shall not issue its Certificate of Completion until all other conditions for the release of the Retention have been met. The remainder of the Agency Loan Retention shall be disbursed at Conversion.

7. Disbursement of Borrower's Funds, Additional Funds and Other Financing. All of the Borrower's Funds, the Additional Funds and the Other Financing shall be disbursed to pay Costs on the basis of Applications for Payment approved by the Construction Lender and approved or deemed approved by the Agency in accordance with this Disbursement Agreement.

8. Inspection of the Project. Agency shall have the right to inspect the Property during construction and agrees to deliver to the Borrower copies of any inspection reports. Borrower shall deliver to Agency any inspection reports prepared on behalf of the Construction Lender, to the extent available to Borrower. Inspection of the Property shall be for the sole purpose of protecting the Agency's security and is not to be construed as a representation by Agency that there has been compliance with plans or that the Property will be free of faulty materials or workmanship. The Borrower may make or cause to be made such other independent inspections as the Borrower may desire for its own protection.

9. Supervision of Construction. Agency shall be under no obligation to perform any of the construction or complete the construction of the improvements on the Property, or to supervise any construction on the Property, and shall not be responsible for inadequate or deficient contractors, subcontractors, materials, equipment or supplies. Agency is not the agent for Borrower, nor are Agency and Borrower partners or joint venturers with each other.

10. Integrated Agreement. This Disbursement Agreement is made for the sole benefit and protection of the parties hereto and no other person or persons shall have any right of action or right to rely hereon. As this Disbursement Agreement contains all the terms and conditions agreed upon between the parties, no other agreement regarding the subject matter thereof shall be deemed to exist or bind any party unless in writing and signed by the party to be charged. Notwithstanding the foregoing sentence or any other provision of this Disbursement Agreement, this Disbursement Agreement does not supersede and shall not be deemed to amend any of the Agency Loan Documents.

11. Termination of this Disbursement Agreement. This Disbursement Agreement shall terminate when all of the Agency Loan Funds have been fully disbursed.

12. Counterparts. This Disbursement Agreement may be signed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument with the same effect as if all signatories had executed the same instrument.

13. Binding Effect. This Disbursement Agreement shall be binding on and inure to the benefit of the parties to this Disbursement Agreement and their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Disbursement Agreement.

14. Governing Law. This Disbursement Agreement has been negotiated and entered in the State of California, and shall be governed by, construed and enforced in accordance with the internal laws of the State of California, applied to contracts made in California by California domiciliaries to be wholly performed in California.

15. Titles and Captions. Titles or captions contained herein are inserted as a matter of conveniences and for reference, and in no way define, limit, extend or describe the scope of this Disbursement Agreement or any provision hereof.

16. Interpretation. No provision in this Disbursement Agreement is to be interpreted for or against either party because that party or his legal representatives drafted such provision.

17. Waiver; Amendments. No breach of any provision hereof may be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Disbursement Agreement may be amended only by a written agreement executed by the parties in interest at the time of the modification.

18. Further Assurances. The parties hereto hereby agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Disbursement Agreement.

19. Severance. If any provision of this Disbursement Agreement is determined by a court of competent jurisdiction to be illegal, invalid or enforceable, such provision will be deemed to be severed and deleted from the agreement as a whole and neither such provision, nor its severance and deletion shall in any way affect the validity of the remaining provisions of this Disbursement Agreement.

20. Independent Advice of Counsel. The parties hereto and each of them, represent and declare that in executing this Disbursement Agreement they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any of the parties hereto or by any person representing them, or any of them.

21. Voluntary Agreement. The parties hereto, and each of them, further represent and declare that they carefully read this Disbursement Agreement and know the contents thereof, and that they sign the same freely and voluntarily.

22. Attorneys' Fees. In the event of any dispute between the parties regarding this Disbursement Agreement, the prevailing party shall be entitled to recover costs and expenses, including but not limited to reasonable attorneys' fees.

[signatures begin on following page]

IN WITNESS WHEREOF, the Agency and the Borrower have executed this Disbursement Agreement as of the date set forth above.

**REDEVELOPMENT AGENCY OF THE  
CITY OF SAN DIEGO**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: Janice Weinrick

Its: Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY

JAN I. GOLDSMITH

Agency General Counsel

By: \_\_\_\_\_

Kevin Reisch

Deputy General Counsel

KANE, BALLMER & BERKMAN

Agency Special Counsel

By: \_\_\_\_\_

[signatures continue on following page]

**15TH & COMMERCIAL, L.P.,**  
a California limited partnership

By: S.V.D.P. Management, Inc.,  
a California corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Father Joe Carroll  
President

By: 15th & Commercial CIC, LLC,  
a California limited liability company,  
its Administrative General Partner

By: Chelsea Investment Corporation,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
James J. Schmid  
President

Exhibit "A" to Disbursement Agreement

PROJECT BUDGET

[Final Project Budget to be attached]

**EXHIBIT A**  
**15th and Commercial**  
**Revised Project Budget**  
**January 2010**

	<b>PROJECT TOTAL</b>	<b>RESIDENTIAL</b>
<b>I. Direct Costs</b>		
On-Sites/Landscaping	\$ 3,088,590	\$ 2,028,000
Parking	\$ 1,978,440	\$ 1,301,000
Shell Construction	\$ 31,196,986	\$ 20,750,000
Toddler Building	\$ 1,023,710	\$ -
Low Voltage (Owner Provided System)	\$ 700,000	\$ 445,000
FF&E/Amenities	\$ 352,000	\$ 352,000
Contingency	\$ 2,181,210	\$ 1,415,000
<i>Total Direct Costs</i>	\$ 40,520,936	\$ 26,291,000
<b>II. Indirect Costs</b>		
Architecture & Engineering	\$ 3,405,823	\$ 2,220,000
Environmental Study/Survey	\$ 117,500	\$ 77,000
Permits & Fees	\$ 1,587,650	\$ 1,035,000
Legal & Accounting	\$ 623,500	\$ 406,000
Taxes & Insurance	\$ 224,056	\$ 146,000
Developer Fee	\$ 1,049,574	\$ 1,049,574
Construction Management Fee	\$ 438,000	\$ 285,000
Marketing/Lease-Up	\$ 92,000	\$ 92,000
Contingency	\$ 600,426	\$ 423,000
<i>Total Indirect Costs</i>	\$ 8,138,529	\$ 5,733,574
<b>III. Financing Costs</b>		
Loan Fees	\$ 303,621	\$ 234,000
Interest During Construction	\$ 1,347,459	\$ 878,000
TCAC/Syndication Fees	\$ 159,400	\$ 159,400
Transition Reserve	\$ 1,075,941	\$ 1,075,941
Operating Deficit Reserve	\$ 180,034	\$ 180,034
<i>Total Financing Costs</i>	\$ 3,066,455	\$ 2,527,375
<b>IV. Acquisition Costs</b>		
Land Costs	\$ 5,500,000	\$ 3,584,000
Relocation	\$ 1,500,000	\$ 1,500,000
<i>Total Acquisition Costs</i>	\$ 7,000,000	\$ 5,084,000
<b>TOTAL COSTS - ROUNDED</b>	<b>\$ 58,726,000</b>	<b>\$ 39,636,000</b>

**SOURCES OF FUNDS**

	<b>PROJECT TOTAL</b>	<b>RESIDENTIAL</b>
TCAC Financing	\$ 20,000,000	\$ 11,364,000
MHSA	\$ 2,357,000	\$ 2,357,000
TOD Housing Program	\$ 6,638,000	\$ 6,638,000
Infill Infrastructure Grant	\$ 3,089,000	\$ 2,013,000
CDBG	\$ 291,000	\$ -
AHP	\$ 1,500,000	\$ 1,500,000
EHAP	\$ 1,000,000	\$ 1,000,000
First Five Commission	\$ 6,968,000	\$ -
CalReUSE	\$ 583,000	\$ 380,000
San Diego Housing Commission Loan	\$ 3,500,000	\$ 3,500,000
Land Note to Prior Owner	\$ 5,500,000	\$ 3,584,000
Redevelopment Agency Loan	\$ 7,300,000	\$ 7,300,000
<b>TOTAL SOURCES</b>	<b>\$ 58,726,000</b>	<b>\$ 39,636,000</b>

Exhibit "B" to Disbursement Agreement

DISBURSEMENT SCHEDULE

[Disbursement Schedule to be attached]

**15th & Commercial  
Preliminary Disbursement Schedule**

	Closing	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10
Construction Loan	-				919,107	919,107	919,107	919,107	919,107	919,107	919,107
CCDC	3,431,000				219,000	219,000	219,000	219,000	219,000	219,000	219,000
SDHC	3,150,000				-	-	-	-	-	-	-
MHSA	500,000	-	-	-	-	-	-	-	-	-	-
EHAP	-	-	-	-	-	-	-	-	250,000	750,000	-
IIG	-	772,257	772,257	772,257	772,257	-	-	-	-	-	-
CalReuse	-	291,250	291,250	-	-	-	-	-	-	-	-
SVDP Land Donation	5,500,000										
CDBG	291,279										
First 5 Commission	500,000	1,000,000	1,000,000	1,000,000	1,000,000	2,055,523	-	-	-	-	-
TOD											
Tax-Credit Equity	3,000,000	2,000,000	2,000,000	1,000,000	-	-	-	-	-	-	-
AHP	1,500,000										
<b>Total</b>	<b>17,872,279</b>	<b>4,063,507</b>	<b>4,063,507</b>	<b>2,772,257</b>	<b>2,910,364</b>	<b>3,193,630</b>	<b>1,138,107</b>	<b>1,138,107</b>	<b>1,388,107</b>	<b>1,888,107</b>	<b>1,138,107</b>

	Month 11	Month 12	Month 13	Month 14	Month 15	Month 16	Month 17	Month 18	Construction Subtotal	Conversion	Permanent Total
Construction Loan	787,806	656,505	656,505	656,505	656,505	656,505	1,313,010	1,313,010	13,130,099	(13,130,099)	-
CCDC	146,000	146,000	146,000	146,000	146,000	146,000	-	730,000	6,570,000	730,000	7,300,000
SDHC	-	-	-	-	-	-	-	-	3,150,000	350,000	3,500,000
MHSA	-	471,400	471,400	471,400	442,800	-	-	-	2,357,000	-	2,357,000
EHAP	-	-	-	-	-	-	-	-	1,000,000	-	1,000,000
IIG	-	-	-	-	-	-	-	-	3,089,027	-	3,089,027
CalReuse	-	-	-	-	-	-	-	-	582,500	-	582,500
SVDP Land Donation									5,500,000	-	5,500,000
CDBG									291,279	-	291,279
First 5 Commission	-	-	-	-	-	-	-	-	6,555,523	412,502	6,968,025
TOD									-	6,637,597	6,637,597
Tax-Credit Equity	-	-	-	-	-	-	-	7,000,000	15,000,000	5,000,000	20,000,000
AHP									1,500,000	-	1,500,000
<b>Total</b>	<b>933,806</b>	<b>1,273,905</b>	<b>1,273,905</b>	<b>1,273,905</b>	<b>1,245,305</b>	<b>802,505</b>	<b>1,313,010</b>	<b>9,043,010</b>	<b>58,725,428</b>	<b>-</b>	<b>58,725,428</b>

Exhibit F

Amended Subordination Agreement

[behind this page]

SUBORDINATION AGREEMENT

OFFICIAL BUSINESS  
Document entitled to free  
recording per Government  
Code Section 6103

Recording Requested by:  
REDEVELOPMENT AGENCY OF THE  
CITY OF SAN DIEGO

When recorded return to:

U.S. BANK NATIONAL ASSOCIATION  
Commercial Real Estate  
4747 Executive Drive, 3rd Floor  
San Diego, California 92121  
Attention: Paul Shipstead

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBORDINATION AGREEMENT

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

THIS SUBORDINATION AGREEMENT ("Agreement") is made as of \_\_\_\_\_, 2010, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic (hereinafter referred to as the "Agency"), 15th & Commercial, L.P., a California limited partnership, (hereinafter referred to as "Borrower") and U.S. BANK NATIONAL ASSOCIATION, a national banking association ("Construction Lender").

RECITALS

A. Borrower is the owner of that certain real property (the "Property") located in the City of San Diego, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

B. Pursuant to the California Community Redevelopment Law (Health and Safety Code sections 33000 *et seq.*), the Agency has established a Low and Moderate Income Housing Fund and has deposited therein certain tax revenues made available to the Agency exclusively for the purpose of increasing and improving the community's supply of affordable low and moderate income housing (referred to in this Agreement as the "Housing Funds"). For the

purpose of increasing the supply of housing in the City of San Diego that will be affordable to Very Low Income and Extremely Low Income households, Agency and Borrower have entered into that certain Owner Participation Agreement, dated as of July 29, 2009, as amended by that certain First Implementation Agreement to Owner Participation Agreement dated \_\_\_\_\_, 2010 (collectively, the "OPA"), which is a public document on file in the office of the Agency Secretary and which is incorporated herein by this reference (any capitalized term that is not otherwise defined in this Agreement shall have the meaning ascribed to such term in the OPA), providing, among other things, for a loan of Housing Funds to Borrower to provide a portion of the financing for the construction of a multi-family housing project containing one hundred fifty (150) Transitional Housing Beds and sixty-four (64) Living Units, to be rented exclusively to Very Low and Extremely Low Income persons.

C. Pursuant to the OPA, among other things, the Agency has made a loan to Borrower in the amount of SEVEN MILLION THREE HUNDRED THOUSAND DOLLARS (\$7,300,000) (the "Agency Loan"). The Agency Loan is evidenced by a promissory note in the principal amount of the Agency Loan, dated on or about the date hereof (the "Agency Note"), which is secured by the following, each of which is dated on or about hereof: a Deed of Trust, Security Agreement and Fixture Filing (the "Agency Deed of Trust"); an Assignment of Agreements, an Assignment of Rents; and a UCC-1 Financing Statement ("UCC-1") and all personal property security agreements, assignments of construction contracts, architect's contracts and related security documents. The documents referred to above in this paragraph are referred to individually as an "Agency Loan Document" and collectively as the "Agency Loan Documents". In addition, in connection with the Agency Loan, Agency and Borrower have executed and are recording in the Official Records of San Diego County an Agreement Affecting Real Property. The Agreement Affecting Real Property and its priority is not affected by this Agreement. The Agreement Affecting Real Property is not an Agency Loan Document.

D. Pursuant to a Loan Agreement ("Construction Loan Agreement") dated as of \_\_\_\_\_, 2010, by and between Construction Lender and Borrower, Construction Lender will provide a construction loan to Borrower in the approximate principal amount of [insert amount] (\$\_\_\_\_\_ ) consistent with the Agency approved Project Budget (the "Construction Loan"). The Construction Loan is evidenced by a promissory note in the amount equal to the Construction Loan (collectively, the "Construction Loan Note"). The Construction Loan Agreement, Construction Loan Note, the Construction Loan Deed of Trust (as defined below), and any other documents and instruments executed by Borrower in connection with the Construction Loan are referred to collectively as the "Construction Loan Documents". The Construction Loan Documents are secured by, among other things, a Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing in favor of the Issuer and Construction Lender (the "Construction Loan Deed of Trust"), which shall be recorded against the Property.

E. The Construction Loan Documents are being or have been executed, delivered and recorded, as the case may be, prior to or concurrently with this Agreement.

F. The Agency and Construction Lender have agreed and required as a condition of making their respective Loans that the order of priority of their respective liens against the Property be as follows: (1) the Agreement Affecting Real Property; (2) the Construction Loan

Documents; and (3) the Agency Loan Documents.

G. Agency is willing to specifically and unconditionally subordinate the Agency Loan Documents to achieve and maintain the order of priority listed in Recital F.

NOW THEREFORE, in consideration of the mutual benefits accruing to the Lenders and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agency and the Construction Lender hereby agree as follows:

1. The Construction Loan and the Construction Loan Documents, together with any advances by Construction Lender pursuant to the Construction Loan, shall at all times be prior and superior to the liens or charges of the Agency Loan and the Agency Loan Documents.

2. The Agency Loan and the Agency Loan Documents, together with any advances by the Agency pursuant to the Agency Loan Documents, shall at all times be junior and are hereby subordinated to the Construction Loan and the Construction Loan Documents.

3. The Construction Lender would not have made the Construction Loan, and the Agency would not have made the Agency Loan, without this Subordination Agreement.

4. This Agreement shall be the whole and only agreement with regard to the priority and subordination of the Construction Loan, the Construction Loan Documents and the Agency Loan and the Agency Loan Documents, and shall supersede and cancel, but only insofar as would affect the priority among the loans and documents referred to hereinabove, any prior agreements as to such subordination including, but not limited to, those provisions, if any, contained in any of such loans and documents which provide for the subordination of the lien or charge thereof to another loan or loans, document or documents, deed or deeds of trust or to a mortgage or mortgages.

5. Agency and Construction Lender declare, agree and acknowledge that:

(a) Agency consents to and approves (i) all provisions of the Construction Loan Note and Construction Loan Deed of Trust; (ii) all agreements, including but not limited to reserve agreements, loan agreements, development or escrow agreements, between Borrower and Construction Lender for the origination, disbursement and servicing of the Construction Loan, which prior to or concurrently herewith have been submitted to Agency;

(b) Construction Lender consents to all provisions of the Agency Loan Documents described in the Recitals, above; and

(c) Agency intentionally and unconditionally waives, relinquishes and subordinates the lien, charge and encumbrance of the Agency Loan Documents in favor of the prior lien, charge and encumbrance of the Construction Loan Documents as set forth in Paragraph 1 above upon the Property and improvements as referred to in this Agreement ("Improvements") in favor of the Construction Lender in the order of priority specified in this Agreement and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made, and specific monetary and other obligations are being and will be entered into which would not be

made or entered into but for Construction Lender's reliance upon this waiver, relinquishment and subordination.

6. Notwithstanding anything to the contrary contained in this Subordination Agreement, the Construction Lender hereby agrees as follows:

(a) Upon the occurrence of an event of default under the Construction Loan Deed of Trust and other Construction Loan documents, and prior to completion of a foreclosure sale thereunder, Construction Lender shall promptly notify Agency via written notice delivered by certified or registered U.S. Mail at the address set forth in the Agency Deed of Trust of the occurrence of such event of default ("Bank Notice of Default"), which notification shall be provided to Agency within the time provided pursuant to California Civil Code Section 2924b(b)(1), provided, however, that Agency's receipt of such notice shall be the date of actual delivery as shown by the addressee's registry or certification of receipt (or refusal to accept delivery), provided further that any failure to receive such notice shall not limit, restrict or otherwise affect Construction Lender's power and authority to exercise its rights and remedies under the Construction Loan Documents or under applicable law or in equity;

(b) The Agency shall have the right, during the cure periods which apply to the Borrower pursuant to the Construction Loan Documents to cure Borrower's default relative to the Construction Loan which cure shall be accepted when made under the same conditions applicable to the Borrower and in the same manner as required by Borrower under the Construction Loan Documents; and

(c) After a default on the Construction Loan Documents, but prior to a foreclosure sale or deed in lieu assignment of the Property and/or the Improvements under the Construction Loan Documents, the Agency shall have the right to purchase the Property and the Improvements from the Borrower, so long as it concurrently pays in full all amounts to Construction Lender owing under the Construction Loan Documents (and causes the termination of all of Construction Lender's disbursement obligations).

7. The insolvency or bankruptcy of Borrower shall not affect this Agreement, and the same shall remain in full force and effect. In any insolvency or bankruptcy proceeding for the complete liquidation of Borrower or any of its general partners, Construction Lender is hereby assigned the right to collect the proceeds with respect to the obligations of Borrower under the Agency Loan and apply the same to the Construction Loan and the Agency shall not receive any distribution from the bankruptcy estate of Borrower or its general partners (as the case may be) unless and until the Construction Loan has been satisfied in full. Agency agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, without the Construction Lender's prior, written consent.

8. If any of the provisions or terms of this Agreement shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other of the terms hereof, and this Agreement shall be construed as if such unenforceable term had never been contained herein, provided that the invalidity or unenforceability of such provision does not adversely affect the benefits accruing to, or the obligations imposed upon, any party hereunder.

9. In connection with the Agency Loan, Agency and Borrower have executed and are recording in the Official Records of San Diego County an Agreement Affecting Real Property. The Agreement Affecting Real Property and its priority are not affected by this Agreement, and shall not be extinguished, terminated or cancelled by a foreclosure sale under the Construction Loan.

10. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS PROVISIONS WHICH ALLOW THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN LOANS WHICH MAY BE OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT AND WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.**

[remainder of page left intentionally blank]

IN WITNESS WHEREOF, the Agency, Borrower, and Construction Lender have executed this Agreement as of the date set forth above.

REDEVELOPMENT AGENCY OF THE CITY OF  
SAN DIEGO

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Janice Weinrick  
Deputy Executive Director

APPROVED AS TO FORM AND  
LEGALITY

Jan I. Goldsmith  
Agency General Counsel

By: \_\_\_\_\_

Kevin Reisch  
Deputy General Counsel

KANE, BALLMER & BERKMAN  
Agency Special Counsel

By: \_\_\_\_\_

15TH & COMMERCIAL, L.P.,  
a California limited partnership

By: S.V.D.P. Management, Inc.,  
a California corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Father Joe Carroll  
President

By: 15th & Commercial CIC, LLC,  
a California limited liability company,  
its Administrative General Partner

By: Chelsea Investment Corporation,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
James J. Schmid  
President

U.S. BANK NATIONAL ASSOCIATION, a  
national banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, a 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)

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, a 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)

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, a 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

The land referred to herein is situated in the State of California, County of San Diego, City of San Diego, and described as follows:

Assessor Parcel Numbers:

Exhibit G

Form of TCAC Financing Subordination Agreement

[behind this page]

**Free recording in accordance  
with California Government  
Code section 27383**

**RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:**

California Tax Credit Allocation Committee  
915 Capitol Mall, Rm. 487  
Sacramento, CA 95814  
CA-2009-\_\_\_\_\_

**SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE**

**[DRAFTING NOTE: THE SUBSTANTIVE PROVISIONS OF THIS FORM SHALL BE USED EXCEPT FOR MODIFICATIONS (INCLUDING ADDITIONS) TO THE RIGHTS AFFORDED TO THE AGENCY REASONABLY REQUESTED BY THE AGENCY EXECUTIVE DIRECTOR OR DESIGNEE OR AGENCY GENERAL COUNSEL TO PROTECT THE AGENCY'S INTERESTS IN THE AGENCY LOAN AND AGENCY LOAN DOCUMENTS.]**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

**THIS SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE** (the "Agreement") is dated as of \_\_\_\_\_, 2010, for reference purposes only, and is entered into by and among the Redevelopment Agency of the City of San Diego, a public body corporate and politic (the "Junior Lienholder"), 15<sup>th</sup> & Commercial, L.P., a California limited partnership (the "Borrower"), and the California Tax Credit Allocation Committee, a public agency of the State of California (the "Senior Lender").

**RECITALS**

A. Borrower is the owner of a that real property described in Exhibit A attached hereto and made a part hereof (the "Property") and is developing a project with 64 Living Units (and 1 unrestricted Market Rate Unit for the manager) at Affordable Rents, 150 transitional beds for rental at Affordable Rents, and a Child Day Care/School Facility (the "Project").

B. The Junior Lienholder has made a loan to the Borrower in the principal sum of Seven Million Three Hundred Thousand Dollars (\$7,300,000.00) (the "Junior Lienholder Loan"). The Junior Lienholder Loan is evidenced by a certain promissory note (the "Junior Lienholder Note"), secured by a certain deed of trust (the "Junior Lienholder Deed of Trust") recorded concurrently herewith, in the Official Records of San Diego County, California (the "Official Records"), on \_\_\_\_\_, 2010, as Instrument No. \_\_\_\_\_. The Junior Lienholder

and Borrower have also entered into a regulatory agreement affecting the use of the Project, recorded on \_\_\_\_\_, 2010, as Instrument No. \_\_\_\_\_ in the Official Records (the "Junior Lienholder Regulatory Agreement"). (Except for the Junior Lienholder's Regulatory Agreement which is not a Junior Lienholder Document, the Junior Lienholder Deed of Trust and all other documents evidencing or securing the Junior Lienholder Loan are collectively referred to herein as the "Junior Lienholder Documents.")

C. In order to finance the development of the Improvements, the Senior Lender has agreed to grant the Borrower a sum not to exceed Nineteen Million Nine Hundred Eighty Thousand Dollars (\$[19,980,000.00]) (the "TCAC Financing"), subject to the terms and conditions of: (i) a regulatory agreement restricting the use and occupancy of the Project and the income derived therefrom which shall be dated as of even date herewith and recorded in the Official Records (the "California Tax Credit Allocation Committee (TCAC) Regulatory Agreement"), and (ii) other grant documents. The TCAC Financing will be evidenced by a promissory note (the "TCAC Financing Note") **[DRAFTING NOTE: THERE MAY NOT BE A NOTE]**, the repayment of which will be secured by, among other things, a deed of trust by Borrower as trustor, to Senior Lender as beneficiary recorded in the Official Records (the "TCAC Financing Deed of Trust") and by such other security as is identified in other grant documents. The TCAC Financing Deed of Trust, the TCAC Regulatory Agreement and all other documents evidencing or securing the TCAC Financing are referred to herein as the TCAC Financing Documents.

D. The Senior Lender is willing to make the TCAC Financing provided the TCAC Financing Deed of Trust and the TCAC Regulatory Agreement are liens, claims or charges upon the Project prior and superior to the Junior Lienholder Documents, and provided that the Junior Lienholder specifically and unconditionally subordinates and subjects the Junior Lienholder Documents to the liens, claims or charges of the TCAC Financing Deed of Trust.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce the Senior Lender to make its TCAC Financing, it is hereby declared, understood and agreed as follows:

1. The TCAC Financing Deed of Trust securing the TCAC Financing Note in favor of the Senior Lender, and any and all renewals, modifications, extensions or advances thereunder or secured thereby (including interest thereon) shall unconditionally be and remain at all times liens, claims, or charges on the Project prior and superior to the Junior Lienholder Documents, and to all rights and privileges of the Junior Lienholder thereunder; and the Junior Lienholder Documents, together with all rights and privileges of the Junior Lienholder thereunder are hereby irrevocably and unconditionally subject and made subordinate to the liens, claims or charges of the TCAC Financing Deed of Trust.

2. This Agreement shall be the whole and only agreement with regard to the subordination of the Junior Lienholder Documents, together with all rights and privileges of the Junior Lienholder thereunder, to the liens, claims or charges of the TCAC Financing Deed of Trust, and this Agreement shall supersede and cancel any prior agreements to subordinate the

claims, liens or charges of, but only insofar as would affect the priority between the claims, liens or charges of the Junior Lienholder Documents to the TCAC Financing Deed of Trust including, but not limited to, those provisions, if any, contained in the Junior Lienholder Documents, which provide for the subordination of the lien or charge thereof to another lien or charge on the Project.

3. The Junior Lienholder declares, agrees and acknowledges that:

(a) The Junior Lienholder consents and approves (i) all provisions of the TCAC Financing Note and the TCAC Financing Deed of Trust, and (ii) all agreements among the Junior Lienholder, Borrower and Senior Lender for the disbursement of the proceeds of the TCAC Financing, including without limitation any grant escrow agreements which have been provided to the Junior Lienholder for review;

(b) The Senior Lender, in making disbursements of the TCAC Financing pursuant to the TCAC Financing Note or any other agreement, is under no obligation or duty to, nor has the Senior Lender represented that it will, see to the application of such proceeds by the person or persons to whom the Senior Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;

(c) That none of the execution, delivery or recordation of any of the TCAC Financing Note or TCAC Financing Deed of Trust or the performance of any provision, condition, covenant or other term thereof, will conflict with or result in a breach of the Junior Lienholder Documents or the Junior Lienholder Note; and

(d) The Junior Lienholder intentionally and unconditionally waives, relinquishes, subjects and subordinates the claims, liens or charges upon the Project of the Junior Lienholder Documents, all present and future indebtedness and obligations secured thereby, in favor of the claims, liens or charges upon the Project of the TCAC Financing Deed of Trust, and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection, and subordination, the TCAC Financing and advances thereof are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment, subjection and subordination.

4. In connection with the Junior Lienholder Loan, Junior Lienholder and Borrower have executed and are recording in the Official Records of San Diego County the Junior Lienholder Regulatory Agreement. The Junior Lienholder Regulatory Agreement and its priority are not affected by this Agreement, and shall not be extinguished, terminated or cancelled by a foreclosure sale under the TCAC Financing.

5. The Senior Lender would not make the TCAC Financing without this Agreement.

6. All notices, requests, demands or other communications to the respective parties hereto (unless otherwise expressly stipulated in this Agreement) shall be deemed to have been duly given or made if addressed as follows:

If to Senior Lender, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Borrower, to:

15th & Commercial, L.P.  
3350 E Street  
San Diego, California 92102  
Attention: \_\_\_\_\_

and

Chelsea Investment Corporation  
5993 Avenida Encinas, Suite 101  
Carlsbad, California 92008  
Attention: \_\_\_\_\_

with a copy to:

Pillsbury Winthrop LLP  
50 Fremont Street, 10th Floor  
San Francisco, California 94105  
Attention: Gary P. Downs, Esq.

If to Junior Lienholder:

Redevelopment Agency of the City of San Diego  
1200 Third Avenue, Suite 1400  
Mail Stop MS56D  
San Diego, California 92101  
Attn: Deputy Executive Director  
Facsimile: (619) 553-3219

and

Redevelopment Agency of the City of San Diego  
c/o Centre City Development Corporation  
401 "B" Street, Suite 400  
San Diego, California 92101  
Attn: Ms. Eri Kameyama  
Centre City Affordable Housing  
Telephone: (619) 533-7177  
Facsimile: (619) 236-9148

With copies to:

Office of City Attorney

1200 Third Avenue, Suite 1100  
Mail Stop MS56D  
San Diego, California 92101  
Attention: Kendall Berkey, Esq.

and

Kane, Ballmer & Berkman  
515 S. Figueroa St. Suite 1850  
Los Angeles, California 90071  
Attention: Murray O. Kane, Esq.  
Facsimile: (213) 625-0931

or to such other address or such other person as either party may from time to time hereafter specify to the other in writing delivered in the manner provided herein. Any notice, request, demand or other communication to be given or made hereunder may (except to the extent otherwise required by law) be given or made by registered or certified U.S. mail, return receipt requested with postage prepaid, or by personal service (including service by a reputable overnight courier service, such as FedEx, DHL or other comparable courier). Unless otherwise expressly stipulated in this Agreement, notices shall be deemed to have been given or made on the documented date of receipt, in the case of notice by certified mail on the date reflected on the return receipt, or in the case of delivery by courier, on the date signed received by the addressee of the courier's delivery receipt.

7. This Agreement shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties.

8. Borrower hereby represents that the persons executing this Agreement on behalf of Borrower have full authority to do so and to bind Borrower to perform pursuant to the terms and conditions of this Agreement.

Senior Lender hereby represents that the persons executing this Agreement on behalf of Senior Lender have full authority to do so and to bind Senior Lender to perform pursuant to the terms and conditions of this Agreement.

Junior Lienholder hereby represents that the persons executing this Agreement on behalf of the Junior Lienholder have full authority to do so and to bind the Junior Lienholder to perform pursuant to the terms and conditions of this Agreement.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

10. In the event that any party to this Agreement brings an action to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in such action.

11. This Agreement may be signed by different parties hereto in counterparts with the

same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Agreement.

[signatures on following page]

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON (OR ENTITY) OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first set forth above and agree to be bound hereby:

**JUNIOR LIENHOLDER:**

AGENCY:  
REDEVELOPMENT AGENCY  
OF THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Janice Weinrick  
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY  
Jan I. Goldsmith  
Agency General Counsel

By: \_\_\_\_\_  
Kevin Reisch  
Deputy General Counsel

Agency Special Counsel  
KANE, BALLMER & BERKMAN

By: \_\_\_\_\_

[signatures continue on following page]

**BORROWER:**

**15TH & COMMERCIAL, L.P.,**  
a California limited partnership

By: S.V.D.P. Management, Inc.,  
a California corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Father Joe Carroll  
President

By: 15th & Commercial CIC, LLC,  
a California limited liability company,  
its Administrative General Partner

By: Chelsea Investment Corporation,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
James J. Schmid  
President

[signatures continue on following page]

Approved as to form:

**SENIOR LENDER:**

California Tax Credit Allocation Committee,  
a public agency of the State of California

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

***[Signatures must be acknowledged]***

**EXHIBIT A**

**Legal Description of the Property**

All that certain land situated in the State of California, County of San Diego, City of San Diego, described as follows:

[BEHIND THIS PAGE]

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, 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)

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, 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)

State of California

County of San Diego

On \_\_\_\_\_ before me, \_\_\_\_\_, 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)

---

State of California

County of Los Angeles

On \_\_\_\_\_ before me, \_\_\_\_\_, 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 H

Form of TOD Subordination Agreement

[behind this page]

**Free recording in accordance  
with California Government  
Code Section 27383**

RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:

State of California  
Department of Housing and  
Community Development  
P. O. Box 952052  
Sacramento, CA 94252-2052  
Attn: Transit Oriented Development Housing  
Program Documents Coordinator

DRAFT

**SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE**

**[DRAFTING NOTE: THE SUBSTANTIVE PROVISIONS OF THIS FORM SHALL BE USED EXCEPT FOR MODIFICATIONS (INCLUDING ADDITIONS) TO THE RIGHTS AFFORDED TO THE AGENCY REASONABLY REQUESTED BY THE AGENCY EXECUTIVE DIRECTOR OR DESIGNEE OR AGENCY GENERAL COUNSEL TO PROTECT THE AGENCY'S INTERESTS IN THE AGENCY LOAN AND AGENCY LOAN DOCUMENTS.]**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

THIS SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE (the "Agreement") is dated as of \_\_\_\_\_, 2010, for reference purposes only, and is entered into by and among Redevelopment Agency of the City of San Diego, a public body corporate and politic, (the "Junior Lienholder"), 15th & Commercial, L.P., a California limited partnership (the "Borrower"), and the Department of Housing and Community Development, a public agency of the State of California (the "Senior Lender").

**RECITALS**

A. Borrower is the owner of the fee simple interest in that real property described in Exhibit A attached hereto and made a part hereof (the "Property"). The Borrower is developing a project with 64 Living Units (and 1 unrestricted Market Rate Unit for the manager) at affordable rents and 150 transitional beds for rental at affordable rents (collectively, the Affordable Project"), and a Child Day Care/School Facility (collectively with the Affordable Project, the "Project").

B. Pursuant to the California Community Redevelopment Law, the Junior Lienholder has established a Low and Moderate Income Housing Fund and has deposited therein certain tax increment funds and bond proceeds, if applicable, made available to the Junior Lienholder exclusively for the purpose of increasing, improving, and preserving the community's supply of affordable low and moderate income housing (referred to in this Agreement as the "Housing Funds"). For the purpose of increasing the supply of housing in the City of San Diego that will be affordable to Extremely Low and Very Low Income households, Junior Lienholder and Borrower have entered into that certain Owner Participation Agreement, dated as of July 29, 2009, as amended by that certain First Implementation Agreement to the Owner Participation Agreement dated \_\_\_\_\_, 2010 (the Owner Participation Agreement and its First Implementation Agreement are collectively referred to herein as the "Owner Participation Agreement"), which is a public document on file in the office of the Agency Secretary and which is incorporated herein by this reference, providing, among other things, for a loan of Housing Funds to Borrower to provide a portion of the financing for the construction of the Affordable Project.

C. In conformance with the Owner Participation Agreement and in furtherance of the Junior Lienholder's utilization of the Housing Funds, the Junior Lienholder and Borrower entered into an Agreement Affecting Real Property, which, among other things specifically set forth therein, restricts the use of the Property to affordable housing ("Junior Lienholder Regulatory Agreement"). The Junior Lienholder Regulatory Agreement was recorded in the Official Records of the Office of the San Diego County Recorder ("Official Records") on \_\_\_\_\_, 2010 as Instrument No. \_\_\_\_\_.

D. Pursuant to the Owner Participation Agreement, among other things, the Junior Lienholder has made a loan to the Borrower in the principal sum of \$7,300,000 (the "Junior Lienholder Loan"). The Junior Lienholder Loan will be evidenced by a certain promissory note (the "Junior Lienholder Note"), to be secured by a certain deed of trust (the "Junior Lienholder Deed of Trust") to be recorded concurrently herewith, in the Official Records of San Diego County, California (the "Official Records"). (The Junior Lienholder Deed of Trust, the Junior Lienholder Regulatory Agreement, and all other documents evidencing or securing the Junior Lienholder Loan are collectively referred to herein as the "Junior Lienholder Documents.")

E. In order to finance the development of the Project, the Senior Lender has agreed to loan the Borrower a sum not to exceed \$6,638,000 (the "TOD Loan"), subject to the terms and conditions of: (i) a regulatory agreement restricting the use and occupancy of the Project and the income derived therefrom which shall be dated as of even date herewith and recorded as an encumbrance on the Property in the Official Records (the "TOD Regulatory Agreement"), and (ii) other loan documents. The TOD Loan will be evidenced by a promissory note (the "TOD Note"), the repayment of which will be secured by, among other things, a deed of trust by Borrower as trustor, to Senior Lender as beneficiary recorded as an encumbrance on the Property in the Official Records (the "TOD Deed of Trust") and by such other security as is identified in other loan documents. The TOD Regulatory Agreement, TOD Note, TOD Deed of Trust and all other documents evidencing or securing the Senior Lienholder Loan or TOD Loan are collectively referred to herein as the "Senior Loan Documents").

F. The Senior Lender is willing to make the TOD Loan provided the TOD Deed of Trust and the TOD Regulatory Agreement are liens, claims or charges upon the Project prior and superior to the Junior Lienholder Documents, and provided that the Junior Lienholder specifically and unconditionally subordinates and subjects the Junior Lienholder Documents to the liens, claims or charges of the TOD Deed of Trust and the TOD Regulatory Agreement.

G. California Code of Regulations, Title 25, Section 8315, provides that the Senior Lender's loan shall not be subordinated to the liens of a local government lender, here the Junior Lienholder, unless the amount of the local government loans is more than twice the amount of the Senior Lender's total assistance to the Project (the "Senior Lender Regulation").

H. California Health and Safety Code Section 33334.14(1), which is the applicable State Law governing the subordination of the Junior Lienholder Loan, permits the Junior Lienholder to subordinate the requirements contained in the Junior Lienholder Regulatory Agreement to the Senior Lender's lien only if the Senior Lender refuses to consent to the seniority of the Junior Lienholder's Regulatory Agreement on the basis that it is required to maintain its lien and regulatory agreement in a senior position due to regulatory requirements pertaining to the financing of the Project.

I. The Junior Lienholder Loan is not twice the amount of the Senior Lender's total assistance to the project.

J. Junior Lienholder committed Housing Funds in the Junior Lienholder Loan Documents in connection with the development of the Project. At the request of the Senior Lender and Borrower and in furtherance of the Junior Lienholder's duties to provide affordable housing to the community under the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*), Junior Lienholder agrees to enter into this Agreement to assure Borrower may access the additional funding sources provided by Senior Lender under the Senior Loan Documents to realize and construct the Project contemplated in the Owner Participation Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce the Senior Lender to make its TOD Loan, it is hereby declared, understood and agreed as follows:

1. The TOD Regulatory Agreement and the TOD Deed of Trust securing the TOD Note in favor of the Senior Lender, and any and all renewals, modifications, extensions or advances made to protect Senior Lender's interests in its security thereunder or secured thereby (including interest thereon) shall unconditionally be and remain at all times liens, claims, or charges on the Project prior and superior to the Junior Lienholder Documents, and to all rights and privileges of the Junior Lienholder thereunder; and the Junior Lienholder

Documents, together with all rights and privileges of the Junior Lienholder thereunder are hereby irrevocably and unconditionally subject and made subordinate to the liens, claims or charges of the TOD Deed of Trust and the TOD Regulatory Agreement.

2. This Agreement shall be the whole and only agreement with regard to the subordination of the Junior Lienholder Documents, together with all rights and privileges of the Junior Lienholder thereunder, to the liens, claims or charges of the TOD Deed of Trust and the TOD Regulatory Agreement; and this Agreement shall supersede and cancel any prior agreements to subordinate the claims, liens or charges of, but only insofar as would affect the priority between the claims, liens or charges of the Junior Lienholder Documents to the TOD Deed of Trust and the TOD Regulatory Agreement including, but not limited to those provisions, if any, contained in the Junior Lienholder Documents, which provide for the subordination of the lien or charge thereof to another lien or charge on the Property or the Project.

3. The Junior Lienholder declares, agrees and acknowledges that:

a. The Junior Lienholder consents and approves (i) all provisions of the TOD Note, the TOD Deed of Trust and the TOD Regulatory Agreement, and (ii) all agreements among the Junior Lienholder, Borrower and Senior Lender for the disbursement of the proceeds of the TOD Loan, including without limitation any loan escrow agreements which have been provided to the Junior Lienholder for review;

b. The Senior Lender, in making disbursements of the TOD Loan pursuant to the TOD Note or any other agreement, is under no obligation or duty to, nor has the Senior Lender represented that it will, see to the application of such proceeds by the person or persons to whom the Senior Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;

c. That none of the execution, delivery or recordation of any of the TOD Note, TOD Deed of Trust, or TOD Regulatory Agreement, or the performance of any provision, condition, covenant or other term thereof, will conflict with or result in a breach of the Junior Lienholder Documents or the Junior Lienholder Note; and

d. The Junior Lienholder intentionally and unconditionally waives, relinquishes, subjects and subordinates the claims, liens or charges upon the Project of the Junior Lienholder Documents, all present and future indebtedness and obligations secured thereby, in favor of the claims, liens or charges upon the Project of the TOD Deed of Trust and the TOD Regulatory Agreement in the order of priority specified in this Agreement and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection, and subordination, the TOD Loan and advances thereof made for the protection of the Senior Lender's security interest are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment, subjection and subordination.

4. Notwithstanding anything to the contrary contained in this Subordination Agreement, the parties hereto hereby acknowledge that California Health and Safety Code Section 33334.14(1), which is the applicable State Law governing the subordination of the Junior Lienholder Loan, permits the Junior Lienholder to subordinate the requirements contained in the Junior Lienholder Regulatory Agreement to the Senior Lender's lien only if the Senior Lender refuses to consent to the seniority of the Junior Lienholder's Regulatory Agreement on the basis that it is required to maintain its lien and regulatory agreement in a senior position due to regulatory requirements pertaining to the financing of the Project. California Code of Regulations, Title 25, Section 8315, requires the subordination of the Junior Lienholder Loan Documents, including the Junior Lienholder Regulatory Agreement to the lien of the Senior Lender Loan Documents. In order to protect the Junior Lienholder's investment in the event of default, Senior Lender hereby agrees, but only as a separate and independent covenant of the Senior Lender and not as a condition to the continued effectiveness of the covenants and agreements of the Borrower and the Junior Lienholder as set forth herein, as follows:

(a) Upon the occurrence of an event of default under the TOD Deed of Trust, TOD Regulatory Agreement and other Senior Lender Loan documents ("Event of Default"), Senior Lender shall promptly notify Junior Lienholder at the addresses set forth in Section 9 below of the occurrence of such Event of Default, which notification shall be provided to Junior Lienholder within the time provided pursuant to California Civil Code Section 2924b. (b)(1);

(b) Junior Lienholder shall have the right, but not the obligation, during the cure periods which apply to the Borrower pursuant to the Senior Loan Documents to cure Borrower's Event of Default relative to the TOD Loan. If the Event of Default is such that it is not reasonably capable of being cured within the period set forth in the Senior Loan Documents, and if the Junior Lienholder (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Senior Lender acknowledges and agrees to extend such cure period to accommodate Junior Lienholder's cure of the Event of Default prior to exercise of any remedies by Senior Lender;

(c) After an Event of Default, but prior to a foreclosure sale or deed in lieu assignment, Junior Lienholder shall have the right, but not the obligation, to take title to the Property and cure the Event of Default without the Senior Lender exercising any right it might otherwise have to accelerate the TOD Loan by reason of such title transfer;

(d) After an Event of Default, but prior to a foreclosure sale or deed in lieu assignment, Junior Lienholder shall have the right, but not the obligation, to purchase the Property from Borrower and pay all amounts due and owing under the Senior Lender Loan Documents; and

(e) If due to an event of foreclosure, the Junior Lienholder Regulatory Agreement is terminated and eliminated from title to the Property during the term of its affordability period, the Senior Lender shall allow the Junior Lienholder to re-record the Junior

Lienholder Regulatory Agreement, on any post foreclosure estate retained or acquired by Senior Lender pursuant to paragraph 6 below.

In no event shall Senior Lender be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred and eighty (180) days after the first notice of default is given, or such longer period of time as may be specified in the Senior Lender Documents.

Except as set forth herein, nothing in this Section 4 is intended to modify any covenant, term or condition contained in the Senior Lender Documents, including, without limitation, the covenant against creating or recording any liens or encumbrances against the Property by Borrower without the prior written approval of the Senior Lender, which shall not be unreasonably withheld or delayed.

The provisions of this paragraph 4 are intended to supplement, and not to limit, waive, modify or replace, those provisions of law pertaining to notice and cure rights of junior lenders including, without limitation, those set forth in California Civil Code Section 2924.

Senior Lender shall provide duplicate copies of all Borrower notices pertaining to an Event of Default under the Senior Loan Documents or any document executed in connection with the TOD Loan to the Junior Lienholder at the addresses set forth in paragraph 8 below at the same time Senior Lender notifies Borrower in writing of such Event of Default.

The Senior Lender's failure to provide a duplicate copy will not be a breach by the Senior Lender, nor will it impair the Senior Lender's foreclosure remedies in any way.

5. Senior Lender agrees that upon Junior Lienholder's initiation of receivership and/or judicial or non-foreclosure proceedings, deed in lieu of foreclosure or other proceeding or transaction whereby Junior Lienholder takes title to the Property in connection with the exercise of remedies under the Junior Lienholder Loan, Senior Lender shall not exercise its right to accelerate the amounts due under the TOD Promissory Note or the Senior Lender Documents if:

(a) Junior Lienholder is the successful bidder at its own foreclosure sale, or if Junior Lienholder institutes a receivership and/or actions for specific performance; and

(b) Junior Lienholder uses best efforts to ensure that Borrower's obligations to Senior Lender, including without limitation, the obligation to make timely payment of principal and interest and property taxes and to maintain insurance as required by the Senior Lender are met despite such foreclosure, receivership or action for specific performance.

Except as set forth herein, the provisions of this paragraph 5 are not intended to waive, limit, modify or replace Senior Lender's remedies under the Senior Lender Documents, including without limitation, Senior Lender's right to accelerate the amounts due under the Senior Lender Documents or the TOD Promissory Note by reason of nonpayment of principal or interest or property taxes or the failure to maintain insurance as required by the Senior Lender.

6. Senior Lender and Junior Lienholder acknowledge and agree that, if due to an event of foreclosure, the Junior Lienholder Regulatory Agreement is terminated and eliminated from title to the Property during the term of its affordability period, the Senior Lender will allow the Junior Lienholder to re-record the Junior Lienholder Regulatory Agreement, on any post foreclosure estate retained or acquired by Senior Lender. This paragraph does not obligate Senior Lender to cure any defaults or otherwise participate in any foreclosure proceedings to acquire the Property, nor is Senior Lender obligated to reinstate the Junior Lienholder Regulatory Agreement in any particular lien priority order.

7. Nothing in this Agreement, the Owner Participation Agreement, or the Junior Lienholder Deed of Trust shall impose on the Junior Lienholder the obligations of the Borrower under the Senior Loan Documents, or require the Junior Lienholder to cure events of default under the Senior Loan Documents or commence a Junior Lienholder foreclosure, unless and until the Junior Lienholder forecloses on the Property under the Junior Lienholder Deed of Trust, accepts a deed in lieu of foreclosure or accepts an assignment of Borrower's obligations therein.

8. All notices, requests, demands, or other communications to the respective parties hereto (unless otherwise expressly stipulated in this Agreement) shall be deemed to have been duly given or made if addressed as follows:

If to Senior Lender:

If to Borrower:

If to Junior Lienholder:

9. The Senior Lender would not make the TOD Loan without this Agreement.

10. This Agreement shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12. In the event that any party to this Agreement brings an action to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in such action.

13. This Agreement may be signed by different parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Agreement.

14. Borrower hereby represents that the persons executing this Agreement on behalf of Borrower have full authority to do so and to bind Borrower to perform pursuant to the terms and conditions of this Agreement.

Senior Lender hereby represents that the persons executing this Agreement on behalf of Lender have full authority to do so and to bind Senior Lender to perform pursuant to the terms and conditions of this Agreement.

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DISCUSSION

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON (OR ENTITY) OBLIGATED ON YOUR PROPERTY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first set forth above and agree to be bound hereby:

**JUNIOR LIENHOLDER:**

**BORROWER:**

Approved as to form:

**SENIOR LENDER:**

**The Department of Housing and Community Development,**  
a public agency of the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

***[Signatures must be acknowledged]***

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DISCUSSION

**EXHIBIT A**

**Legal Description of the Property**

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DISCUSSION