Attachment 1
Owner Participation Agreement
[Behind this Page]

OWNER PARTICIPATION AGREEMENT

(Verbena Affordable Apartments Project)

by and between

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, Agency,

and

VERBENA SAN YSIDRO, L.P.,

a California limited partnership, Owner.

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OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT [Agreement] is entered into on this ____ day of _____, 2007, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic [Agency], and VERBENA SAN YSIDRO, L.P., a California limited partnership [Owner]. Agency and Owner agree as follows:

PART 1. SUBJECT OF AGREEMENT

Section 101 Purpose of the Agreement

The purpose of this Agreement is to effectuate the Redevelopment Plan for the San Ysidro Redevelopment Project by providing part of the financing for the acquisition and development of the hereinafter defined Property, and the use of the Property for residential rental apartments that are affordable to very low income and low income persons, with attached one or two car garages. The development and use of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of San Diego and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

Section 102 Definitions

For purposes of this Agreement, the following capitalized terms shall have the following meanings:

"Acquisition and Development Costs" shall mean the total cost of acquiring the Property and developing and constructing the Improvements thereon, as set forth in the Project Budget.

"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, of 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.

"Affordable Rent" shall mean rent, including a reasonable utility allowance, that does not exceed the following respective amounts:

a. for a very low income person with an income not exceeding fifty percent (50%) of the area median income, the product of thirty percent (30%) times fifty percent

(50%) of the area median income adjusted for family size appropriate for the unit; and

b. for a low income person with an income exceeding fifty percent (50%) but not exceeding sixty percent (60%) of the area median income, the product of thirty percent (30%) times sixty percent (60%) of the area median income adjusted for family size appropriate for the unit.

"Agency Deed of Trust" shall mean the deed of trust securing the Agency Loan, to be recorded upon the occurrence of the Closing, subordinate to the deeds of trust securing any Senior Loan, substantially in the form attached to this Agreement as Attachment No. 9.

"Agency Loan" shall mean the Agency Residual Receipts Loan.

"Agency Loan Documents" shall mean the Agency Note, Agency Deed of Trust, Assignment of Rents, Assignment of Agreements, Environmental Indemnity and the UCC-1 Financing Statement.

"Agency Residual Receipts Loan" shall mean the residual receipts loan of Low and Moderate Income Housing Funds payable from the proceeds of the Line of Credit by the Agency to Owner in the principal amount not to exceed $5,586,000, as described in the Method of Financing, which shall be evidenced by the Agency Residual Receipts Note and secured by the Agency Deed of Trust and the other Agency Loan Documents.

"Agency Residual Receipts Note" shall mean the promissory note substantially in the form attached to this Agreement as Attachment No. 8.

"Agreement Affecting Real Property" shall mean the Agreement Affecting Real Property (Including Rental Restrictions) to be recorded upon the occurrence of the Closing, substantially in the form attached to this Agreement as Attachment No. 6.

"Approved Title Conditions" shall mean title that is subject to current property taxes and assessments, Permitted Mortgages, the Low Income Housing Tax Credit Regulatory Agreement and any other easements and other encumbrances specifically approved by the Agency Executive Director.

"Area Median Income" shall mean the median family income for San Diego County as annually estimated by the U.S. Department of Housing and Urban Development and published by the California Department of Housing and Community Development.

"Assignment of Rents" shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 10, to be recorded upon the occurrence of the Closing.

"Assignment of Agreements" shall mean an instrument substantially in the form attached to this Agreement as Attachment No.11.

"City" shall mean the City of San Diego, California.

"Closing" shall mean the point in time when (i) all conditions precedent to the Closing as set forth in the Method of Financing (Attachment No. 3) have been satisfied; and (ii) the Agency Deed of Trust and other Agency Loan Documents and Agreement Affecting Real Property are recorded.

"Closing Date" shall mean the date on which the Closing is scheduled to take place, as provided in the Schedule of Performance.

"Completion" shall mean the point in time when all of the following shall have occurred: (1) issuance of a permanent certificate of occupancy by the City of San Diego; (2) recordation of a Notice of Completion by Owner or its contractor; (3) certification by the project architect that construction of the Improvements (with the exception of minor "punch list" items) has been completed in a good and workmanlike manner and substantially in accordance with the approved plans and specifications; and (4) any mechanic's liens that have been recorded or stop notices that have been delivered have been paid, settled or otherwise extinguished, discharged, released, waived, bonded or insured against.

"Construction Loan" shall mean the conventional loan to be made to Owner at the time of the Closing, secured by the Construction Loan Deed of Trust.

"Construction Loan Deed of Trust" shall mean the deed of trust securing the Construction Loan.

"Deferred Developer Fee" shall mean that portion of Owner's Developer Fee, in an amount of up to $281,000, which shall be deferred for payment until after construction of Improvements is completed. The Deferred Developer Fee, plus interest at the minimum interest all owed under IRS rules, paid out of Residual Receipts until paid in full.

"Disbursement Agreement" shall mean an agreement substantially in the form attached to this Agreement as Attachment No. 15.

"Environmental Indemnity" shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 12.

"Escrow Agent" shall mean First American Title Insurance Company, or another escrow agent mutually acceptable to Agency and Owner.

"Hazardous Materials" shall have the meaning set forth in the Environmental Indemnity (Attachment No. 12).

"Improvements" shall mean the residential housing development to be constructed on the Property, consisting of eighty (80) dwelling units, with attached one or two car garages providing approximately one hundred seventy seven (177) parking spaces, and recreational amenities, all as described in the Scope of Development. The Improvements shall comply with the current California Building Code that includes comprehensive accessibility and adaptability requirements for multifamily new construction development. Owner shall incorporate Universal

Design components into the Improvements and shall use its best efforts, but is not required, to comply with the items in the Agency's Universal Design Checklist (Attachment No. 17).

"Investor Limited Partner Capital Contribution" shall mean funds provided to Owner by the Tax Credit Equity Investor in consideration of the Tax Credit.

"Legal Description" shall mean the legal description of the Property attached to this Agreement as Attachment No. 2 which is hereby incorporated herein by this reference.

"Line of Credit" shall mean the separate lines of credit available to the Agency pursuant to a Credit Agreement with San Diego National Bank for the Affordable Housing Collaborative Opportunity Fund and the City Heights and Naval Training Center Redevelopment Project Areas.

"Low Income" shall have, for purposes of this Agreement, the same meaning set forth in California Health & Safety Code Section 50079.5.

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

"Low and Moderate Income Housing Fund" shall mean the Low and Moderate Income Housing Fund established by the Agency pursuant to California Health and Safety Code Section 33334.3, which said funds therein are used for the purposes of increasing, improving, and preserving the City of San Diego's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50093, for lower income households, as defined by Section 50079.5, very low income households, as defined in Section 50105, and extremely low income households, as defined in Section 50106, that is occupied by these persons and families.

"Method of Financing" shall mean the document attached to this Agreement as Attachment No. 3 which is hereby incorporated herein by this reference.

"Permanent Loan" shall mean the conventional permanent loan to repay a portion of the Construction Loan, as described in the Method of Financing.

"Permanent Loan Deed of Trust" shall mean the deed of trust securing the Permanent Loan.

"Permitted Transfer" shall mean any of the following:

a. 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 therewith;

b. A conveyance of the Property to any Affiliate or a sale back from such Affiliate to Owner;

c. The inclusion of equity participation by Owner by the addition of limited partners to Owner's limited liability company or limited partnership, or similar mechanisms, and the purchase of any such limited partnership interest or interests by the General Partner;

d. With regard to the limited partnership interests of the Owner, the Tax Credit Equity Investor, which will become a limited partner in the Owner, may transfer less than forty-nine percent (49%) of the ownership interest of said limited partner;

e. With regard to the limited partnership of the Owner, the Tax Credit Equity Investor, which will become a limited partner in the Owner, may transfer forty-nine percent (49%) or more of the ownership interest of said limited partner only after the Tax Credit Equity Investor has made payment in full of the equity contribution required by this Agreement and the Method of Financing;

f. The lease for occupancy of all or any part of the Improvements on the Property; and

g. The granting of easements or permits to facilitate the development of the Property in accordance with this Agreement.

Any transfer described in clauses (a) through (e) shall be subject to the reasonable approval of documentation by the Agency Executive Director or designee in accordance with the standards set forth in the respective provisions of this Agreement.

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

"Project Budget" shall mean the schedule of sources and uses attached to this Agreement as Attachment No. 7 which is hereby incorporated herein by this reference.

"Property" shall mean the real property described in Section 104 of this Agreement.

"Redevelopment Plan" shall mean the Redevelopment Plan for the San Ysidro Redevelopment Project which was approved and adopted on April 16, 1996, by the City Council of the City of San Diego by Ordinance No. O-18295 (New Series), including subsequent amendments.

"Release of Construction Covenants" shall mean the certificate to be issued by the Agency in accordance with Section 324 of this Agreement.

"Residual Receipts" shall mean the Gross Income, less the Operating Expenses, calculated on a calendar year basis, as defined in the Residual Receipts Promissory Note. All calculations of Residual Receipts shall be subject to verification and reasonable approval by the Agency.

"Schedule of Performance" shall mean the document attached to this Agreement as Attachment No. 5 which is hereby incorporated herein by this reference.

"Scope of Development" shall mean the document attached to this Agreement as Attachment No. 4 which is hereby incorporated herein by this reference.

"Senior Lender" shall mean the maker of any Senior Loan or beneficiary of any Senior Loan deed of trust.

"Senior Loan" shall mean the Construction Loan and the Permanent Loan secured by a deed of trust or other instrument to which the Agency agrees to subordinate the Agency Loan Deed of Trust and the other Agency Loan Documents.

"Site Map" shall mean the document attached to this Agreement as Attachment No. 1 which is hereby incorporated herein by this reference.

"Subordination Agreement" shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 14, with such modifications as may be agreed to by the Agency Executive Director or designee, or as otherwise agreed to by the Agency Executive Director or designee.

"Tax Credit Equity Investor" shall mean a Person who will be an investor, and a limited partner who will purchase the Low Income Housing Tax Credits.

"Title Company" shall mean First American Title Insurance Company, or another title insurance company mutually acceptable to Agency and Owner.

"Title Insurance Policy" shall mean and include a standard form ALTA lender's policy of title insurance in favor of Agency, together with such endorsements as Agency may reasonably require, insuring the lien of the Agency Deed of Trust, in the amount of the Agency Loan (the "Agency's Title Policy").

"UCC-1" shall mean a Financing Agreement, substantially in the form attached to this Agreement as Attachment No. 13.

"Universal Design" shall mean the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design consistent with The Seven Principles of Universal Design developed by North Carolina State University's Center for Universal Design and includes the Universal Design Checklist attached to this Agreement as Attachment No. 17 which is hereby incorporated herein by this reference.

"Very Low Income" shall have the meaning set forth in California Health and Safety Code Section 50105.

Section 103 The Redevelopment Plan

This Agreement is subject to the provisions of the San Ysidro Redevelopment Plan which was approved and adopted on April 16, 1996, by the City Council of the City of San Diego by Ordinance No. O-18295 (New Series), including subsequent amendments.

The Redevelopment Plan is hereby incorporated herein by this reference and made a part hereto as though fully set forth herein.

Section 104 The Property

The "Property" or "Site" is that property consisting of seven contiguous parcels totaling approximately 6.47 acres and 296,200 square feet, located at 3774 Beyer Boulevard, near the intersection of Beyer Boulevard and Foothill Boulevard, within the San Ysidro Redevelopment Project Area of the City of San Diego, State of California, illustrated on the "Site Map" (Attachment No. 1) and as described in the "Legal Description of the Property" (Attachment No. 2).

The Property is currently owned in fee by Barratt American Incorporated, a Delaware corporation ("Fee Owner"). Owner represents that it has entered into a legally binding and valid purchase and sale agreement with the Fee Owner for the purchase and sale of the Property in its entirety by Owner. Therefore, the Property is to be transferred to Owner as a condition precedent to or concurrently with the Closing.

Section 105 Agency

a. Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California.

b. The address of the Agency for purposes of receiving notices pursuant to this Agreement is: 1200 Third Avenue; Suite 1400, San Diego, California 92101.

c. "Agency" as used in this Agreement includes the Redevelopment Agency of the City of San Diego, California, acting through its Board, and any assignee or successor to its rights, powers and responsibilities.

d. "Agency Executive Director" as used in this Agreement includes the Agency Executive Director, Agency Assistant Executive Director or designee.

Section 106 Owner

a. Owner is Verbena San Ysidro L.P., a California limited partnership. The address of Owner for purposes of receiving notices pursuant to this Agreement is: 5993 Avenida Encinas; Suite 101, Carlsbad, California 92008.

b. Whenever the term "Owner" is used herein, such term shall mean and include: (1) the Owner as of the date hereof; or (2) any other assignee of, or successor to its rights, powers and responsibilities permitted by this Agreement.

Section 107 Assignments and Transfers

a. Owner represents and agrees that its undertakings pursuant to this Agreement are for the purpose of redeveloping and providing affordable housing on the Property, and not for speculation in land holding. Owner further recognizes that the qualifications and identity of Owner are of particular concern to the City and the Agency, in light of the following: (1) the importance of the redevelopment of the Property to the general welfare of the community; (2) the public assistance that has been made available by law and by the government for the purpose of making such redevelopment possible; and (3) the fact that a change in ownership or control of Owner or any other act or transaction involving or resulting in a significant change in ownership or control of Owner, is for practical purposes a transfer or disposition of the property then owned by Owner. Owner further recognizes that it is because of such qualifications and identity that the Agency is entering into the Agreement with the Owner. Therefore, no voluntary or involuntary successor in interest of Owner shall acquire any rights or powers under this Agreement except as expressly set forth herein.

b. Prior to Completion, Owner shall not assign all or any part of this Agreement, or any interest herein, without the prior written approval of the Agency. Subject to review of documentation effectuating any such proposed assignment or transfer, the Agency agrees to reasonably give such approval if the assignment is a Permitted Transfer.

c. For the reasons cited above, the Owner represents and agrees for itself, each member and any successor in interest of itself and each member that prior to Completion, without the prior written approval of the Agency, there shall be no significant change in the ownership of the Owner or in the relative proportions thereof, or with respect to the identity of the parties in control of the Owner or the degree thereof, by any method or means, except Permitted Transfers.

d. Any assignment or transfer of this Agreement or significant change in ownership of the Owner, other than a Permitted Transfer, shall require the approval of the Agency, which shall not be unreasonably withheld. To the extent Agency approval of an assignment or transfer is required by this Agreement, in granting or withholding its approval, Agency shall base its decision upon the relevant experience, financial capability and reputation of the proposed assignee or transferee and the effect, if any, of such proposed transfer on the public purposes of this Agreement. In addition, Agency shall not approve any assignment or transfer of this Agreement or any interest herein or significant change in ownership of the Owner that results in payment of consideration to any Person prior to the issuance of the Release of Construction Covenants and that is not conditioned upon the issuance of the Release of Construction Covenants.

e. The Owner shall promptly notify the Agency of any and all changes whatsoever in the identity of the parties in control of the Owner or Assignee, or the degree thereof, of which it, or any of its officers have been notified or otherwise have knowledge or information. Except

for Permitted Transfers, this Agreement may be terminated by the Agency if there is any significant change (voluntary or involuntary) in membership, management or control, of the Owner or Assignee or its members (other than such changes occasioned by the death or incapacity of any individual) prior to Completion.

f. The restrictions of this Section 107 shall terminate upon the Completion.

PART 2. FINANCING

Section 201 Method of Financing

The Project shall be financed with a combination of sources of financing as provided in the Method of Financing (Attachment No. 3).

Section 202 Agency Assistance

a. Agency Residual Receipts Loan. On the condition that the Agency obtains the Line of Credit and is permitted to use proceeds from the Line of Credit for the acquisition and development of the Property and that the Owner obtains financing for the development of the Property including being awarded Low Income Housing Tax Credits as provided in the Method of Financing, and in accordance with and subject to the terms and conditions of this Agreement including the Method of Financing, the Agency agrees to lend to the Owner, and the Owner agrees to borrow from the Agency, the Agency Residual Receipts Loan, as defined in the Method of Financing. At or prior to the Closing, the Agency and Owner shall execute and deliver such instruments and documents as may be necessary to evidence and secure the Agency Residual Receipts Loan, consistent with the terms of this Agreement and the Method of Financing, and each in a form that is acceptable to the Agency Executive Director or designee. Disbursement of proceeds from the Agency Residual Receipts Loan shall be made in accordance with the Disbursement Agreement attached hereto in form as Attachment 15 and incorporated herein by this reference, to be executed by the Agency, Construction Lender and the Agency as a condition precedent to the Closing.

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 Acquisition and Development Costs (as defined herein and in the Method of Financing) and the maximum loans obtainable by Owner plus Owner's Equity, but in any event not to exceed the respective dollar amounts set forth in the Method of Financing. In no event shall the principal amount of the Agency Residual Receipts Loan exceed $5,586,000. The proceeds of the Agency Loan shall be used exclusively to pay Acquisition and Development Costs identified in the Project Budget (Attachment No. 7). In the event the actual amount of the Acquisition and Development Costs (as defined herein and in the Method of Financing) is less than $28,861,000, or in the event Owner finds alternative funding sources to pay the Acquisition and Development Costs, or in the event any of the permanent financing sources are greater than the respective amounts set forth in the Method of Financing and the Acquisition and Development Costs are not greater than $28,861,000, or in the event Owner (or its non-profit general partner) is granted Affordable Housing Program Grant funds, then the principal amount of the $5,586,000 Agency Residual Receipts Loan shall be reduced dollar-for-dollar. In the event any of the permanent

financing sources are greater than the respective amounts set forth in the Method of Financing but the Acquisition and Development Costs are greater than $28,861,000, then the increased amount of any of the permanent financing sources (excluding any Affordable Housing Program Grant funds awarded to Owner or its non-profit general partner) may first be used to pay the increase in Acquisition and Development Costs, then any remaining funds shall be used to reduce the Agency Residual Receipts Loan dollar-for-dollar. Except as otherwise provided by this Agreement, the Agency Residual Receipts Loan shall not be subordinated to such increased amount of any permanent financing sources beyond the sources and respective amounts allowed by this Agreement and in the Method of Financing, without the prior written approval of the Agency.

Section 203 Submission of Evidence of Financing

a. Within the time periods provided in the Schedule of Performance, Owner shall submit to the Agency evidence satisfactory to the Agency that the Owner has obtained the financing necessary for the acquisition and development of the Property in accordance with this Agreement. Such evidence of financing shall include the following:

(1) A copy of the commitment or commitments obtained by the Owner for the Construction Loan, including a final Project Budget approved by the Construction Lender, the Affordable Housing Program Grant if awarded, and all other commitments (all as described in the Method of Financing) to finance the construction of the Improvements, certified by the Owner to be a true and correct copy or copies thereof;

(2) A copy of the contract between the Owner and the general contractor or major subcontractors for the construction of the Improvements, certified by the Owner to be a true and correct copy thereof;

(3) A copy of substantially complete Construction Loan Documents (e.g. notes, trust deeds, indentures, loan agreements, etc.);

(4) Documentation acceptable to the Agency Executive Director of the commitment of the Tax Credit Equity Investor to provide the Investor Limited Partner Capital Contribution; and

(5) Documentation acceptable to the Agency Executive Director of other sources of capital sufficient to demonstrate that the Owner has adequate equity funds committed to provide the amount of Owner Equity required by the Method of Financing.

b. The Agency shall approve or disapprove such evidence of financing within the time established in the Schedule of Performance. Such approval shall not be unreasonably withheld. If the Agency shall disapprove any such evidence of financing, the Agency shall do so by written notice to the Owner stating the reasons for such disapproval.

PART 3. DEVELOPMENT OF THE PROPERTY

Section 301 Land Use Approvals

It is the responsibility of the Owner, without cost to Agency, to ensure that zoning of the Property and all applicable City land use requirements will be such as to permit development of the Property and construction of the Improvements and the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement. It shall be a condition of the Closing that Owner obtain all entitlements, approvals, variances and permits necessary for the construction of the Improvements. Nothing contained herein shall be deemed to entitle Owner to any City of San Diego permit or other City approval necessary for the development of the Property, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Owner, (b) supersede, nullify or amend any condition which may be imposed by the City of San Diego in connection with approval of the development described herein, (c) guarantee to Owner or any other party any profits from the development of the Property, or (d) amend any City laws, codes or rules. This is not a Development Agreement as provided in California Government Code Section 65864. Without cost to Agency, Agency shall provide appropriate technical assistance to Owner in connection with Owner's obtaining all necessary entitlements, permits and approvals for the construction of the Improvements.

Section 302 Condition of the Property

a. Agency makes no representation or warranty, express or implied, regarding any conditions of the Property. It shall be the sole responsibility of the Owner, at the Owner's expense, to investigate and determine all conditions of the Property and its suitability for the uses to which the Property is to be put in accordance with this Agreement. If the conditions of the Property are not in all respects entirely suitable for the use or uses to which the Property will be put, then it is the sole responsibility and obligation of the Owner, without cost to Agency, to take such action as may be necessary to place the Property in all respects in a condition entirely suitable for its development and use in accordance with this Agreement.

b. Owner agrees to perform and be solely responsible for the clean-up of any Hazardous Materials on, in, under or within the Property, at the sole cost, risk and expense of Owner. Owner shall defend, indemnify and hold harmless the Agency and its officers, agents, employees, contractors and attorneys from any claims, liability, injury, damages, costs and expenses (including, without limiting the generality of the foregoing, the cost of any required clean up of hazardous substances, and the cost of attorneys' fees) which may be sustained as the result of the presence or clean up of hazardous substances on, in, or under the Property. As a condition precedent to the Closing, Owner shall execute and deliver to the Agency the Environmental Indemnity (Attachment No. 12).

Section 303 Scope of Development

The Property shall be developed in accordance with and within the limitations established in the Scope of Development (Attachment No. 4).

Section 304 Basic Concept and Schematic Drawings

a. The Owner shall prepare and submit Basic Concept and Schematic Drawings and related documents for the development of the Property to the Agency for review and written approval within the time established in the Schedule of Performance. Basic Concept and Schematic Drawings shall include a site plan, elevations and sections of the Improvements as they are to be developed and constructed on the Property.

b. The Property shall be developed as established in the Basic Concept and Schematic Drawings and related documents except as changes may be mutually agreed upon between the Owner and the Agency Executive Director. Any such changes shall be within the limitations of the Scope of Development.

c. If the Owner desires to make any substantial change in the Basic Concept and Schematic Drawings after their approval, such proposed change shall be submitted to the Agency for approval.

d. The Owner shall incorporate Universal Design components into the Project and shall use its best efforts, but is not required, to specifically comply with the items outlined in the Agency's Universal Design Checklist, attached as Attachment No. 17.

Section 305 Landscaping and Grading Plans

a. The Owner shall prepare and submit to the Agency Executive Director for his/her approval the preliminary and final landscaping and preliminary and finish grading plans for the Property. These plans shall be prepared and submitted within the times established in the Schedule of Performance.

b. The landscaping plans shall be prepared by a professional landscape architect and the grading plans shall be prepared by a licensed civil engineer. Such landscape architect and/or civil engineer may be the same firm as the Owner's architect. Within the times established in the Schedule of Performance, the Owner shall submit to the Agency Executive Director for his/her approval the name and qualifications of its architect, landscape architect and civil engineer.

Section 306 Construction Drawings and Related Documents

a. The Owner shall prepare and submit construction drawings and related documents [collectively called the "Plans"] to the Agency Executive Director for his/her review (including but not limited to architectural review), and written approval within the times established in the Schedule of Performance. Such construction drawings and related documents shall be submitted as fifty percent (50%) and Final Construction Drawings. Final Construction Drawings are hereby defined as those in sufficient detail to obtain a building permit.

b. Approval of progressively more detailed Plans will be promptly granted by the Agency Executive Director or designee if developed as a logical evolution of Plans theretofore approved. Any items so submitted and approved by the Agency Executive Director shall not be subject to subsequent disapproval.

c. During the preparation of all Plans, the Agency Executive Director and the Owner shall hold regular progress meetings to coordinate the preparation of, submission to, and review of Plans and related documents by the Agency Executive Director. The Agency Executive Director and the Owner shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents can receive prompt and speedy consideration.

d. If any revisions or corrections of Plans approved by the Agency shall be required by any government official, agency, department, or bureau having jurisdiction over the development of the Property, the Owner and the Agency Executive Director shall cooperate in efforts to obtain a waiver of such requirements or to develop a mutually acceptable alternative.

Section 307 Agency Approval of Plans

a. Subject to the terms of this Agreement, the Agency or Agency Executive Director shall have the right of review (including without limitation architectural review) of all Plans and submissions, including any proposed substantial changes to any such Plans or submissions approved by Agency. The Agency Executive Director shall approve or disapprove the Plans referred to in Sections 304, 305 and 306 of this Agreement within the times established in the Schedule of Performance. Any disapproval shall state in writing the reasons for disapproval and the changes which the Agency Executive Director requests to be made. Such reasons and such changes must be consistent with the Scope of Development and any items previously approved hereunder. The Owner, upon receipt of a disapproval based upon powers reserved by the Agency hereunder, shall revise the Plans and resubmit them to the Agency Executive Director as soon as possible after receipt of the notice of disapproval.

b. If the Owner desires to make any substantial change in the Final Construction Drawings after their approval, such proposed change shall be submitted to the Agency for approval.

Section 308 Cost of Construction

The cost of demolishing any improvements on the Property and developing the Property and constructing the Improvements, including any offsite or onsite improvements required by the City in connection therewith, shall be the responsibility of the Owner, without any cost to Agency, subject to the terms of this Agreement.

Section 309 Schedule of Performance

a. Each party to this Agreement shall perform the obligations to be performed by such party pursuant to this Agreement within the respective times provided in the Schedule of Performance, and if no such time is provided, within a reasonable time. The Schedule of Performance shall be subject to amendment from time to time upon the mutual agreement of the Agency and Owner.

b. After the Closing, the Owner shall promptly begin and thereafter diligently prosecute to completion the construction of the Improvements as provided in the Scope of Development. The Owner shall begin and complete all construction and development within the

times specified in the Schedule of Performance or within such reasonable extensions of said dates as may be granted by the Agency.

c. During periods of construction, the Owner shall submit to the Agency a written report of the progress of construction when and as reasonably requested by the Agency, but not more frequently than once every quarter. The report shall be in such form and detail as may be reasonably required by the Agency and shall include a reasonable number of construction photographs (if requested) taken since the last report submitted by the Owner.

Section 310 Indemnification and Insurance

a. Owner's Indemnity. To the maximum extent permitted by law, Owner agrees to and shall defend, indemnify and hold harmless Agency, the City of San Diego, and their respective officers, officials, employees, contractors and agents from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person resulting or arising from or in any way connected with the following, provided Owner shall not be responsible for (and such indemnity shall not apply to) any negligence or willful misconduct of the Agency, City, or their respective officers, officials, employees, contractors or agents:

(1) The existence, release, presence or disposal on, in, under, about or adjacent to the Property of any Hazardous Materials, except to the extent it is due to the negligence or willful misconduct of Agency, City, or their respective officers, officials, employees, contractors or agents;

(2) The development, construction, marketing, use or operation of the Property by Owner, its officers, contractors, subcontractors, agents, employees or other persons acting on Owner's behalf (the "Indemnifying Parties");

(3) The displacement or relocation of any person from the Property as the result of the development of the Property by the Indemnifying Parties;

(4) Any Plans or designs for Improvements prepared by or on behalf of Owner or any of the Indemnifying Parties including, without limitation, any errors or omissions with respect to such plans or designs;

(5) Any loss or damage to Agency resulting from any inaccuracy in or breach of any representation or warranty of Owner, or resulting from any breach or default by Owner, under this Agreement; and

(6) Any and all actions, claims, damages, injuries, challenges and/or costs or liabilities arising from the approval of any and all entitlements or permits for the Improvements by the City of San Diego or the Agency.

The foregoing indemnity shall continue to remain in effect after the Completion.

b. Insurance Policies.

(1) Commencing upon the Closing or Owner's possession of the Property, whichever occurs first, and at all times prior to the issuance of the Release of Construction Covenants, Owner shall maintain in effect and deliver to Agency duplicate originals or appropriate certificates of the following insurance policies (the "Insurance Policies"):

(a) All-Risk Policies: Owner shall maintain or cause to be maintained coverage of the type now known as builder's completed value risk insurance, as delineated on an All Risk Builder's Risk 100% Value Non-Reporting Form. Such insurance shall insure against direct physical loss or damage by fire, lightning, wind, storm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage and such other causes as are covered by such form of insurance. Such policy shall include (1) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (2) a "Replacement Cost Endorsement" in amount sufficient to prevent Owner from becoming a co-insurer under the terms of the policy, but in any event in an amount not less than 100% of the then full replacement cost, to be determined at least once annually and subject to reasonable approval by Agency, and (3) an endorsement to include coverage for budgeted soft costs. The replacement cost coverage shall be for work performed and equipment, supplies and materials furnished to the Property or any adjoining sidewalks, streets and passageways, or to any bonded warehouse for storage pending incorporation into the work, without deduction for physical depreciation and with a deductible not exceeding $25,000 per occurrence (except that earthquake coverage, if obtained, shall carry a deductible not to exceed 25% of the policy amount, or such other deductible amount as Agency may reasonably determine is acceptable, in light of the cost of the premium for such insurance);

(b) Liability Insurance: Owner shall maintain or cause to be maintained general liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of Owner on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Owner, or any person acting for Owner, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused

directly or indirectly by or from acts or activities of Owner or its tenants, or any person acting for Owner, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect Agency against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the Term in the following amounts: commercial general liability in a general aggregate amount of not less than Two Million Dollars ($2,000,000), $2,000,000 Products and Completed Operations Aggregate, and $2,000,000 Each Occurrence. Owner shall deliver to Agency a Certificate of Insurance evidencing such insurance coverage prior to the occurrence of the Closing. Owner agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Owner may be held responsible for the indemnification of Agency or the payment of damages to persons or property resulting from Owner's activities, activities of its tenants or the activities of any other person or persons for which Owner is otherwise responsible.

(c) Automobile Insurance: Owner shall maintain or cause to be maintained automobile insurance, maintained in full force and effect in an amount of not less than Two Million Dollars ($2,000,000) per accident.

(d) Workers' Compensation Insurance: Owner shall maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Owner in connection with the Property and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Owner. Notwithstanding the foregoing, Owner may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Lessee shall deliver to Agency evidence that such self-insurance has been approved by the appropriate State authorities.

(2) All policies or certificates of insurance shall provide that such policies shall not be canceled, reduced in coverage or limited in any manner without at least ten (10) calendar days prior written notice to Agency. All

fire and liability insurance policies (not automobile and Workers' Compensation) may name the Agency and Owner as insureds, additional insureds, and/or loss payable parties as their interests may appear.

(3) The Insurance Policies shall name as additional insureds the following:

"The City of San Diego, the Redevelopment Agency of the City of San Diego, and their officers, officials, employees, contractors, agents and attorneys."

(4) Owner agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Owner agrees to submit binders or certificates evidencing such insurance to Agency prior to the Closing. Within thirty (30) calendar days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Agency. All insurance herein provided for under this Section shall be provided by insurers licensed to do business in the State of California and rated A-VII or better.

(5) If Owner fails or refuses to procure or maintain insurance as required by this Agreement, Agency shall have the right, but not the obligation, at Agency's election, and upon ten (10) calendar days prior notice to Owner, to procure and maintain such insurance. The premiums paid by Agency shall be treated as a loan, due from Owner, to be paid on the first day of the month following the date on which the premiums were paid. Agency shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

Section 311 Nondiscrimination and Equal Opportunity

a. Compliance with City's Equal Opportunity Contracting Requirements.

Owner and its contractors, subcontractors, consultants, subconsultants, vendors and suppliers shall comply with the City's Equal Opportunity Contracting Requirements, which are attached to this Agreement as Attachment No. 16 and incorporated herein by this reference.

b. Nondiscrimination

Owner shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of any contractors or consultants, to participate in subcontracting/subconsulting opportunities. Owner understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in termination, debarment or other sanctions. This language shall be incorporated into all contracts between Owner and any contractor, consultant, subcontractor, subconsultants, vendors and suppliers.

c. Compliance Investigations

Upon the City's request, Owner agrees to provide to the City, within sixty (60) calendar days, a truthful and complete list of the names of all contractors, subcontractors, consultants, subconsultants, vendors and suppliers that Owner has used in the past five (5) years on any of its contracts that were undertaken in San Diego County, including the total dollar amount paid by Owner for each subcontractor or supply contract. Owner further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's *Nondiscrimination in Contracting Ordinance*, Municipal Code Sections 22.3501 through 22.3517. Owner understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against Owner up to and including contract termination, debarment and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance.* Owner further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination in Contracting Ordinance* apply only to violations of the *Ordinance.*

d. Prior to commencing construction and in accordance with the Schedule of Performance, Owner shall contact the City's Equal Opportunity Contracting Program to determine compliance with all applicable rules and regulations.

Section 312 Local, State and Federal Laws

a. Owner hereby agrees to carry out development, construction (as defined by applicable law) and operation of the Property, including, without limitation, any and all public works (as defined by applicable law), in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, any requirement to pay state prevailing wages). Owner hereby expressly acknowledges and agrees that neither City nor Agency has ever previously affirmatively represented to Owner or its contractor(s) for the Property in writing or otherwise, in a call for bids or otherwise, that the work to be covered by the bid or contract is not a "public work," as defined in Section 1720 of the Labor Code. Owner hereby agrees that Owner shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726, 1776 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Owner hereby agrees that Owner shall have the obligation to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Owner hereby agrees that Owner shall have the obligation, at Owner's sole cost, risk and expense, to obligate any party as may be required by Labor Code Sections 1726, 1776 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Owner shall indemnify, protect, defend and hold harmless the Agency, City and their respective officers, officials, employees, contractors and agents, with counsel reasonably acceptable to Agency and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by

applicable law) and/or operation of the Property, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Owner of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) the implementation of Chapter 804, Statutes of 2003; (3) the implementation of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; (4) failure by Owner to provide any required disclosure, representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726, 1776 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; (5) failure by Owner to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; and/or (6) failure by Owner to obligate any party as may be required by Labor Code Sections 1726, 1776 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. It is agreed by the parties that, in connection with the development and construction (as defined by applicable law) of the Property, including, without limitation, any public work (as defined by applicable law), Owner shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of law. "Increased costs" as used in this Section shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after Completion and the recordation of the Release of Construction Covenants.

b. Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Property, Owner shall be responsible for obtaining all permits required by the City for the construction of the Improvements on the Property and ensuring that the use of the Property for the purposes described in this Agreement complies with the zoning and other City land use regulations (including any applicable exemptions and/or exceptions) applicable to the Property.

c. Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Property, Owner shall satisfy all conditions to the issuance of any permit required for the development of the Property. The Agency shall provide reasonable assistance to Owner in obtaining these permits.

d. This Agreement is not a "Development Agreement" under Section 65864 et seq. of the California Government Code. Owner shall comply with all applicable conditions of approval required by the City of San Diego.

Section 313 Permits

a. Before commencement of demolition, construction or development of any buildings, structures or other work of improvement upon any portion of the Property, Owner shall, at its own expense, secure or cause to be secured, any and all permits which may be

required by the City or any other governmental agency affected by such demolition, construction, development or work.

b. In cases where it is anticipated that Owner will demolish any structure, Owner shall contact the City of San Diego for the appropriate procedures pertaining to assessment, remediation and cleanup.

Section 314 Rights of Access

Representatives of the Agency and the City shall have the reasonable right of access to the Property, upon twenty-four (24) hours' written notice to Owner (except in the case of an emergency, in which case Agency shall provide such notice as may be practical under the circumstances), without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Improvements. Such representatives of the Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency.

Section 315 Disclaimer of Responsibility by Agency

The Agency neither undertakes nor assumes, nor will have any responsibility or duty to Owner or to any third party to review, inspect, supervise, pass judgment upon, or inform Owner or any third party of any matter in connection with the development or construction of the Improvements, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Property, any person furnishing the same, or otherwise. Owner and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Owner, or to any third party by the Agency in connection with such matter is for the public purpose of redeveloping the Property, and neither Owner (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. The Agency shall not be responsible for any of the work of construction, improvement or development of the Property.

Section 316 Taxes, Assessments, Encumbrances and Liens

Owner shall pay, when due, all real estate taxes and assessments assessed and levied on or against the Property. Prior to Completion, Owner shall not place, or allow to be placed, on title to the Property or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Agreement. In addition, Owner shall remove, or shall have removed, any levy or attachment made on title to the Property (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Owner from contesting the validity or amount of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Owner in respect thereto. The covenants of the Owner set forth in this Section 316 shall remain in effect only until the issuance and recordation of a Release of Construction Covenants.

Section 317 Prohibition against Transfer

a. Prior to Completion, Owner shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any right herein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property or the Improvements thereon, without prior written approval of the Agency. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property, nor shall it prohibit Permitted Transfers.

b. Except as permitted by paragraph a., in the event Owner does assign this Agreement or any of the rights herein, or does sell, transfer, convey or assign the Property or the buildings or structures thereon prior to Completion without the approval of the Agency, subject to the notice and cure provisions of Section 501, the Agency shall have the right to terminate this Agreement.

c. In the absence of a specific written agreement by the Agency, and except as otherwise provided in this Agreement, no such sale, transfer, conveyance or assignment of this Agreement or the Property (or any portion thereof), or approval by the Agency of any such sale, transfer, conveyance or assignment, shall be deemed to relieve Owner or any other party from any obligations under this Agreement.

Section 318 No Encumbrances except Senior Loans

a. Notwithstanding Section 317, upon and after the Closing, Owner shall have the right to encumber the Property with one or more Senior Loan Deed of Trust, but only for the purpose of securing loans of funds to be used for financing and refinancing the Acquisition and Development Costs, and other expenditures necessary and appropriate to develop the Property under this Agreement, all in accordance with the terms of the Method of Financing and consistent with the amounts to be financed by Owner per the Method of Financing [Permitted Financing Purposes]. Prior to Completion: (1) Owner shall not have any authority to encumber the Property for any purpose other than Permitted Financing Purposes; (2) the Owner shall notify the Agency in advance of any proposed financing; and (3) Owner shall not enter into any agreements for financing requiring a conveyance of security interests in the Property without the prior written approval of the Agency. The maker of any loan approved by the Agency pursuant to this Section 318 shall not be bound by any amendment, implementation agreement or modification to this Agreement subsequent to its approval without such lender giving its prior written consent.

b. In any event, the Owner shall promptly notify the Agency of any security interest created or attached to the Property whether by voluntary act of the Owner or otherwise.

c. The words "security interest" and "deed of trust" as used herein include all other appropriate modes of financing real estate acquisition, construction and land development.

d. The Agency Executive Director or designee shall have the authority to make reasonable modifications to Sections 317 through 323 that may be requested by a Senior Lender or Tax Credit Equity Investor, provided such modification does not adversely affect the receipt of any material benefit by Agency hereunder. Upon the reasonable request of a Senior Lender or

Tax Credit Equity Investor, the Agency Executive Director or designee shall execute from time-to-time such reasonable modifications, interpretations and estoppel certificates to the extent they are consistent with the terms of this Agreement.

e. The requirements of this Section 318 shall not apply following Completion.

Section 319 Lender Not Obligated to Construct Improvements

No lender shall be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit, or authorize any such lender to devote the Property to any uses, or to construct any improvements thereon, other than those uses or Improvements provided for or authorized by this Agreement.

Section 320 Notice of Default to Lenders; Right of Lenders to Cure Defaults

Whenever the Agency shall deliver any notice or demand to the Owner with respect to any breach or default by the Owner in completion of construction of the Improvements, the Agency shall at the same time deliver to each Senior Lender of record a copy of such notice or demand. Each such Senior Lender shall (insofar as the rights of the Agency are concerned) have the right at its option within ninety (90) calendar 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 Senior Lender upon obtaining possession of the Property, such Senior Lender shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) calendar days after obtaining possession; provided 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 ninety (90) calendar day period, such Senior Lender shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity; and provided further that such Senior Lender shall not be required to remedy or cure any non-curable default of the Owner. Any Senior Lender who forecloses on its Senior 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 Improvements upon execution of a written agreement with the Agency by which such Senior Lender expressly assumes the Owner's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by Agency. Any such Senior Lender that properly completes such Improvements shall be entitled, upon written request made to the Agency, to a Release of Construction Covenants from the Agency.

Section 321 Failure of Lender to Complete Improvements

In any case where, six (6) months after default by the Owner, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Property (or portion thereof) has not elected to complete construction of the Improvements, or if it has elected to complete the Improvements but has not proceeded diligently with construction, the Agency may purchase the mortgage, deed of trust or other security interest by payment to the holder of

the amount of the unpaid debt, plus any accrued and unpaid interest and other charges permitted by the mortgage instrument approved by the Agency. If the ownership of the Property (or portion thereof) has vested in the holder, the Agency, if it so desires, shall be entitled to a conveyance of the Property from the holder to the Agency upon payment to the holder of an amount equal to the sum of the following:

a. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings).

b. All expenses with respect to foreclosure.

c. The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent ownership or management of the Property (or portion thereof), such as insurance premiums and real estate taxes.

d. The cost of any improvements made by such holder.

e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Agency.

Section 322 Right of the Agency to Cure Defaults

In the event of a default or breach by the Owner of a Senior Loan prior to Completion, and the Senior Lender has not commenced to complete the development, the Agency may cure the default prior to completion of any foreclosure. In such event, the Agency shall be entitled to reimbursement from the Owner of all costs and expenses incurred by the Agency in curing the default. The Agency shall also be entitled to a lien upon the Property to the extent of such costs and disbursements. Any such lien shall be subordinate and subject to the Senior Loan.

Section 323 Right of the Agency to Satisfy Other Liens on the Property

Prior to Completion and after the Owner has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on its interest in the Property, the Agency shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Owner to pay or make provisions for the payment of any tax, assessment, lien or charge so long as the Owner in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Property to forfeiture or sale. In such event, the Agency shall be entitled to reimbursement from the Owner of all costs and expenses incurred by the Agency in satisfying any such liens or encumbrances. The Agency shall also be entitled to a lien upon the Property to the extent of such costs and expenses. Any such lien shall be subordinate and subject to any Senior Loan.

Section 324 Release of Construction Covenants

a. Promptly after Completion of the construction of the Improvements as required by this Agreement, Agency shall deliver to Owner a Release of Construction Covenants, upon written request therefor by Owner. Agency shall not unreasonably withhold any such Release of Construction Covenants. Such Release of Construction Covenants shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement.

b. The Release of Construction Covenants shall be in such form as to permit it to be recorded in the Office of the Recorder of San Diego County.

c. If Agency fails to deliver the Release of Construction Covenants within ten (10) calendar days after written request from Owner, Agency shall provide Owner with a written statement of its reasons [Statement of Reasons] within that ten (10) calendar day period. The statement shall also set forth the steps Owner must take to obtain the Release of Construction Covenants. If the reasons are confined to the immediate unavailability of specific items or materials for landscaping, or to so-called "punch list" items identified by Agency, Agency will issue the Release of Construction Covenants upon the posting of a bond by Owner with Agency in an amount representing Agency's estimate of the cost to complete the work.

d. Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Owner to any Senior Lender, or any insurer of a mortgage securing money loaned to finance the Improvements, nor any part thereof. Such Release of Construction Covenants is not notice of completion as referred to in the California Civil Code Section 3093.

PART 4. USE OF THE PROPERTY

Section 401 Uses

a. Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that Owner, such successors and such assignees shall use the Property only for the uses specified in the Redevelopment Plan, this Agreement (including the Scope of Development), and the Agreement Affecting Real Property. No change in the use of the Property shall be permitted without the prior written approval of Agency.

b. Without limiting the generality of the foregoing, Owner shall use the Property for the development and operation of a residential rental development consisting of eighty (80) residential rental units, seventy-nine (79) of which shall be rented exclusively to and occupied by Very Low Income and Low Income households at an Affordable Rent, and one of which shall be used as the manager's unit, with attached one to two car garages providing approximately one hundred seventy seven (177) parking spaces, and recreational amenities, all as described in the Scope of Development, in accordance with the requirements of the Agreement Affecting Real Property.

Section 402 Maintenance of the Property

Owner shall maintain the Property in accordance with the requirements of the Agreement Affecting Real Property.

Section 403 Obligation to Refrain from Discrimination

Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Owner itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. Owner, specifically and more particularly, covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Owner or any person claiming under or through it, him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the preceding paragraph.

Section 404 Form of Non-discrimination and Non-segregation Clauses

Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof or interest therein, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Owner, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her

heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the preceding paragraph.

b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

> That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the preceding paragraph.

c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her,

establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land."

Section 405 Effect and Duration of Covenants

The covenants established in this Agreement shall run with the land, without regard to technical classification and designation, and shall be for the benefit and in favor of the Agency and enforceable against the original Owner and successors in interest by the Agency or the City. The covenants described in this Part 4 shall commence upon the Closing, shall be set forth in the Agreement Affecting Real Property, and shall remain in effect for the respective periods specified therein.

Section 406 Agreement Affecting Real Property

Concurrently with the Closing, Owner and Agency shall execute and cause the recordation of an Agreement Affecting Real Property substantially in the form attached to this Agreement as Attachment No. 6, which is incorporated herein by this reference.

Section 407 Monitoring

a. The parties acknowledge that this Agreement is subject to the provisions of Section 33418 of the California Health and Safety Code, which provides in pertinent part:

> "(a) An Agency shall monitor, on an ongoing basis, any housing affordable to persons and families of low or moderate income developed or otherwise made available pursuant to any provisions of this part. As part of this monitoring, an Authority shall require owners or managers of the housing to submit an annual report to the Authority. The annual reports shall include for each rental unit the rental rate and the income and family size of the occupants . . . . The income information required by this section shall be supplied by the tenant in a certified statement of a form provided by the Authority."

b. To satisfy the requirements of said Section 33418, prior to initial occupancy of the Improvements, Owner shall enter into a reporting and monitoring agreement with the Agency and/or the San Diego Housing Commission, as provided in the Agreement Affecting Real Property. Owner shall pay customary monitoring fees.

PART 5. DEFAULTS AND REMEDIES

Section 501 Defaults - General

a. Subject to the extensions of time set forth in Section 602, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who fails or delays must commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

b. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party 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 either party in asserting any of its rights and remedies shall not deprive either party 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.

c. If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default written notice of such default. The party in default shall have a period of ten (10) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the injured party.

d. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default 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, the party in default shall have such period to effect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) calendar days, and the party in default (1) initiates corrective action within said period, and (2) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party. In no event shall the injured party be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default.

e. If Owner fails to take corrective action or cure the default within a reasonable time, the Agency shall give the Senior Lender and, as provided in paragraph f., below, the Tax Credit Equity Investor notice thereof. The Tax Credit Equity Investor may take such action, including removing and replacing the general partner of Owner with a substitute general partner, who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. The Agency agrees to accept cures tendered by any Senior Lender or Tax Credit Equity Investor within the cure periods provided in the Note. Additionally, in the event the Senior Lender or Tax Credit Equity Investor is precluded from curing a non-monetary default due to a bankruptcy, injunction, or similar proceeding by or against Owner or the general partner of Owner, the Agency agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Senior Lender or Tax Credit Equity Investor is so precluded from acting, not to exceed ninety (90) calendar days, provided such Tax Credit Equity Investor and Senior Lender are otherwise in compliance with the foregoing provisions. In no event shall the Agency be precluded from exercising remedies if its rights become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) calendar days after the first notice of default is given.

f. After Owner gives written notice to Agency that the Tax Credit Equity Investor has been admitted to Owner's limited liability company or limited partnership, Agency shall send to the Tax Credit Equity Investor a copy of all notices of default and all other notices that

Agency sends to Owner, at the address for the Tax Credit Equity Investor as provided by written notice to Agency by Owner.

Section 502 Institution of Legal Actions

In addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in any other appropriate court of that county, or in the United States District Court for the Southern District of California.

Section 503 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

Section 504 Acceptance of Service of Process

a. In the event that any legal action is commenced by the Owner against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director of the Agency, or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the Agency against the Owner, service of process on the Owner shall be made by personal service upon the Owner (or upon a general partner, managing member or officer of the Owner) and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

Section 505 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 506 Damages

Subject to the notice and cure provisions of Section 501, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 501, the defaulting party shall be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

Section 507 Specific Performance

Subject to the notice and cure provisions of Section 501, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 501, the non-defaulting party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

Section 508 Termination by Either Party

Prior to the Closing, either party shall have the right to terminate this Agreement, by providing written notice to the other party, in the event of a failure of any condition precedent to the occurrence of the Closing as set forth in the Method of Financing, provided that such condition is for the benefit of and such failure is outside the control of the party seeking to terminate this Agreement, whereupon neither the Agency nor Owner shall have any further rights against or liability to the other under this Agreement.

Section 509 Termination by Owner

Prior to the Closing, subject to the notice and cure provisions of Section 501, Owner shall have the right to terminate this Agreement, by providing written notice to the Agency, in the event of a default by Agency pursuant to this Agreement, provided that Owner has timely applied to the California Tax Credit Allocation Committee [CTCAC] for Low Income Housing Tax Credits.

Section 510 Termination by Agency

a. Agency shall have the right, prior to the Closing, to terminate this Agreement, by providing written notice to Owner, in the event the Agency does not obtain the Line of Credit or is not permitted to use proceeds from the Line of Credit, if obtained, for the development of the Property, whereupon the Agency shall not have any further liability to the Owner and the Owner shall have no further rights against the Agency under this Agreement.

b. Subject to the notice and cure provisions of Section 501, Agency shall have the right, prior to the Closing, to terminate this Agreement, by providing written notice to Owner, in the event of a default by Owner or failure of any condition precedent to the occurrence of the Closing, including but not limited to the following:

(1) Owner fails to apply timely to CTCAC for Low Income Housing Tax Credits within the time established therefor in the Schedule of Performance; or

(2) Owner, having timely applied for Low Income Housing Tax Credits by the time established therefor in the Schedule of Performance is not approved by CTCAC, and fails to re-apply timely to CTCAC for Low Income Housing Tax Credits within the time established therefor in the Schedule of Performance; or

(3) Owner, after having timely applied for three rounds of Low Income Housing Tax Credits within the time established therefor in the Schedule of Performance, is not approved by CTCAC; or

(4) Owner fails to submit to the Agency the evidence of financing commitments or fails to satisfy any other condition precedent to the occurrence of the Closing as provided in the Method of Financing within the time established therefor in the Schedule of Performance; or

(5) Owner (or any successor in interest) assigns or attempts to assign the Agreement or any right therein, or transfers the Property (or any portion thereof or interest therein), except as permitted by this Agreement; or

(6) There is substantial change in the ownership of the Owner, or with respect to the identity of the parties in control of Owner, or the degree thereof contrary to the provisions of Section 107 hereof;

(7) Owner fails to submit any of the plans, drawings and related documents required by this Agreement by the respective dates provided in this Agreement therefore;

(8) Owner fails to acquire fee title to the Property on or before the Closing Date; or

(9) There is any other material default by Owner under the terms of this Agreement which is not cured within the time provided herein.

c. After the Closing, but before Completion, Agency shall have the additional right to terminate this Agreement in the event any of the following defaults shall occur:

(1) Owner fails to commence construction of the Improvements as required by this Agreement and such breach is not cured within the time provided in Section 501 of this Agreement, provided that the Owner shall not have obtained an extension or postponement to which the Owner may be entitled pursuant to Section 602 hereof; or

(2) Owner abandons or substantially suspends construction of the Improvements and such breach is not cured within the time provided in Section 501 of this Agreement, provided the Owner has not obtained an extension or postponement to which the Owner may be entitled to pursuant to Section 602 hereof; or

(3) Owner assigns or attempts to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of the Property, or any part thereof, in violation of this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement; or

(4) Owner otherwise materially breaches this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement.

PART 6. GENERAL PROVISIONS

Section 601 Notices

Formal notices, demands and communications between Agency and Owner shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of Agency and Owner as set forth in Sections 105 and 106 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice 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; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 602 Enforced Delay: Extension of Time of Performance

a. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other party, acts or failure to act of the City of San Diego or any other public or governmental agency or entity (except that acts or failure to act of Agency shall not excuse performance of Agency), or any causes beyond the control or without the fault of the party claiming an extension of time to perform.

b. An extension of time for any such cause listed above [Force Majeure Delay] shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) calendar days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) calendar days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by the Agency and the Owner.

Section 603 Conflict of Interest

a. No member, official, or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his/her personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested.

b. Owner warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

Section 604 Non-liability of Agency Officials and Employees

No member, official, agent, legal counsel or employee of Agency shall be personally liable to Owner, or any successor in interest in the event of any default or breach by Agency or for any amount which may become due to Owner or successor or on any obligation under the terms of this Agreement.

Section 605 Inspection of Books and Records

Prior to Completion, the Agency shall have the right at all reasonable times to inspect the books and records of the Owner pertaining to the Property as pertinent to the purposes of this Agreement. The Owner shall also have the right at all reasonable times to inspect the books and records of the Agency pertaining to the Property as pertinent to the purposes of this Agreement.

Section 606 Approvals

a. Except as otherwise expressly provided in this Agreement, approvals required of Agency or Owner in this Agreement, including the attachments hereto, shall not be unreasonably withheld or delayed. All approvals shall be in writing. Failure by either party to approve a matter within the time provided for approval of the matter shall not be deemed a disapproval, and failure by either party to disapprove a matter within the time provided for approval of the matter shall not be deemed an approval.

b. Except as otherwise expressly provided in this Agreement, approvals required of the Agency shall be deemed granted by the written approval of the Agency's Executive Director or designee. Agency agrees to provide notice to Owner of the name of the Executive Director's designee on a timely basis, and to provide updates from time to time. Notwithstanding the foregoing, the Executive Director or designee may, in his/her sole discretion, refer to the governing body of the Agency any item requiring Agency approval, and will provide notice to the Owner of such action; otherwise, "Agency approval" shall mean and refer to approval by the Executive Director or designee.

Section 607 Real Estate Commissions

Neither Owner nor Agency shall be liable for any real estate commissions or brokerage fees which may arise from this Agreement. Owner and Agency each represents that it has engaged no broker, agent or finder in connection with this Agreement.

Section 608 Construction and Interpretation of Agreement

a. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in, or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

b. 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. It is the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

c. The captions of the articles, sections, and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

d. References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

e. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

Section 609 Time of Essence

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

Section 610 No Partnership

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or any other similar relationship between the parties hereto or cause Agency to be responsible in any way for the debts or obligations of Owner or any other Person.

Section 611 Compliance with Law

Owner agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the development and use of the Property and the Improvements, as well as operations conducted thereon. The judgment of any court of competent jurisdiction, or the admission of Owner or any lessee or permittee in any action or proceeding against them, or any of them, whether Agency be a party thereto or not, that Owner, lessee or permittee has violated any such ordinance or statute in the development and use of the Property shall be conclusive of that fact as between Agency and Owner.

Section 612 Binding Effect

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 613 No Third Party Beneficiaries

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of Agency and Owner, and not for the benefit, directly or indirectly, of any other person or entity, except for the City and as otherwise expressly provided herein.

Section 614 Authority to Sign

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

Section 615 Incorporation by Reference

Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

Section 616 Counterparts

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

PART 7. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

a. This Agreement is executed in five (5) duplicate originals, each of which is deemed to be an original. This Agreement includes thirty-seven (37) pages and seventeen (17) attachments, which constitutes the entire understanding and agreement of the parties.

b. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency or Owner, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Owner.

PART 8. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by Owner and delivered to Agency, must be authorized, executed and delivered by Agency within sixty (60) calendar days after date of signature by Owner or this Agreement may be terminated by Owner upon written notice to Agency. The effective date of this Agreement shall be the date when this Agreement has been executed by Agency.

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

REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO

Dated:_____

By:_____
James T. Waring
Assistant Executive Director

APPROVED the form and legality of this Agreement
this ____ day of _____, 2007.

MICHAEL J. AGUIRRE, General Counsel

By:_____
Kendall D. Berkey
Deputy General Counsel

VERBENA SAN YSIDRO, L.P., a California limited partnership

By: CIC Verbena, LLC, a California limited liability company, its Administrative General Partner

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

Dated: _____

By: _____
James J. Schmid, President

ATTACHMENT NO. 1

SITE MAP

[Behind this page.]

3774 Beyer Blvd, San Ysidro, CA 92173
© 2007 Europa Technologies
Google
Pointer 32°33'43.19" N 117°03'05.80" W elev 134 ft Streaming 100%
Eye alt 2099 ft

ATTACHMENT NO. 2

LEGAL DESCRIPTION

[Behind this page.]

LEGAL DESCRIPTION OF THE PROPERTY

Lot 1 of Map 15435 recorded in the office of the County Recorder for the County of San Diego on the 19th of September, 2006 under File Number 2006-0666317.

ATTACHMENT NO. 3

METHOD OF FINANCING

This is the Method of Financing attached to the Owner Participation Agreement [Agreement] between the Redevelopment Agency of the City of San Diego [Agency] and Chelsea Investment Corporation, a California corporation [Owner], pertaining to the development of a residential rental development consisting of eighty (80) residential rental units, seventy-nine (79) of which shall be rented exclusively to and occupied by Very Low Income and Low Income households at an Affordable Rent, and one of which shall be used as the manager's unit, with attached one or two car garages providing approximately one hundred seventy seven (177) parking spaces, and recreational amenities. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

1. **Total Acquisition and Development Costs**. The parties estimate that the costs of acquisition and development of the Property (including construction of the Improvements) by Owner will be approximately $28,861,000 [Acquisition and Development Costs], to be provided as follows in Section 2 of this Method of Financing. As detailed in the Project Budget, the portion of the Acquisition and Development Costs representing the land acquisition cost is $8,257,000. Any costs to acquire the land in excess of $8,257,000 shall be paid by the Owner with no additional financial assistance from the Agency.

2. **Sources of Financing**. The parties anticipate that the costs of acquisition and development of the Property and construction of the Improvements thereon [Acquisition and Development Costs] shall be financed with a combination of loans and Owner's equity, as set forth in the following chart and as described below:

Source of Funds

Acquisition and Construction

Construction Loan	$13,502,000
Developer Fee (Unpaid During Construction)	$ 700,000
Low Income Housing Tax Credit (LIHTC) – 9%	$ 9,073,000
Agency Residual Receipts Loan	$ 5,586,000[1]
TOTAL	$28,861,000

[1] Agency Residual Receipts Loan shall be reduced dollar-for-dollar if Owner is awarded Affordable Housing Program (AHP) Grant funds, which Owner shall apply for in the principal amount of $400,000.

Permanent

Permanent Loan	$ 4,301,000
LIHTC – 9%	$18,693,000
Deferred Developer Fee	$ 281,000
Agency Residual Receipts Loan	$ 5,586,000[2]
TOTAL FINANCING	$28,861,000

a. A construction loan to be made by a bank or other lender in the approximate original principal amount of $13,502,000, to be secured by a first priority deed of trust [Construction Loan], to be repaid upon Completion and rent-up in part by the proceeds of a permanent loan in the approximate original principal amount of $4,301,000 [Permanent Loan].

b. A fifty-five (55) year land-acquisition/construction/permanent loan from the Agency in the original principal amount of $5,586,000 [Residual Receipts Loan] disbursed in accordance with the Disbursement Agreement, attached to the Agreement as Attachment No. 15, to be secured by a deed of trust to be in second priority, subordinate only to the Construction Loan during construction and to the Permanent Loan upon repayment of the Construction Loan. The term of the loan shall be 55 years and commence upon the date of the issuance of the certificate of occupancy for the Improvements by the City of San Diego [Occupancy Date]. The Residual Receipts Loan shall be repaid to the extent of the Agency's Share of the Residual Receipts (as defined in the Residual Receipts Promissory Note), and shall be subject to a principal reduction in the event of "Cost Savings" of any line items of the Acquisition and Development Costs, including a reduction in the cost of the Property at time of acquisition, or "Additional Proceeds" available to Owner for funding the Acquisition and Development Costs as follows: To the extent final Acquisition and Development Costs are less than $28,861,000, to the extent the Owner finds alternative funding sources to pay for the Acquisition and Development Costs, or to the extent any of the permanent financing sources are greater than the respective amounts set forth in the Method of Financing and the Acquisition and Development Costs are not greater than $28,861,000, or to the extent the Owner (or its non-profit general partner) is granted Affordable Housing Program Grant funds, then the resulting cost savings [Cost Savings] or additional proceeds [Additional Proceeds] shall be allocated to reduce the Agency's Residual Receipts Loan amount dollar-for-dollar. The Agency's Share from Cost Savings and Additional Proceeds shall be one hundred percent (100%). The terms of repayment of the Residual Receipts Loan are set forth in the

[2] Agency Residual Receipts Loan shall be reduced dollar-for-dollar if Owner is awarded Affordable Housing Program (AHP) Grant funds, which Owner shall apply for in the principal amount of $400,000.

Residual Receipts Promissory Note attached to the Agreement as Attachment No. 8. The Agency and Owner agree that the Residual Receipts Loan shall be reduced dollar-for-dollar to the extent Owner obtains additional funding sources such as tax credits, Affordable Housing Program Grant funds, or other funding, or to the extent there are Cost Savings or basis reductions occasioned solely by the changes in the project's financing, such that all Acquisition and Development Costs may be paid with the sources of funds remaining available without consideration of the Residual Receipts Loan. However, in the event any of the permanent financing sources are greater than the respective amounts set forth in this Method of Financing but the Acquisition and Development Costs are greater than $28,861,000, then the increased amount of any of the permanent financing sources (excluding any Affordable Housing Program Grant funds awarded to Owner or its non-profit general partner) may first be used to pay the increase in Acquisition and Development Costs, then any remaining funds shall be used to reduce the Agency Residual Receipts Loan dollar-for-dollar. Except as otherwise provided by the Agreement, the Agency Residual Receipts Loan shall not be subordinated to such increased amount of any permanent financing sources beyond the sources and respective amounts allowed by the Agreement and stated above in this Section 2 of the Method of Financing, without the prior written approval of the Agency.

c. Equity from the Owner [Owner Equity], consisting of the following:

(1) Approximately $9,073,000 to be provided by the Tax Credit Equity Investor and disbursed during the construction period, increasing to $18,693,000 upon Completion, lease-up and stabilized operation;

(2) Approximately $700,000 in developer fee which shall be unpaid during construction; and

(3) Of the $700,000 developer fee referenced in subsection 2.1(c)(2) above, approximately $281,000 [Deferred Developer Fee], shall be deferred for payment until after construction of Improvements is completed. The Deferred Developer Fee, plus interest at the minimum interest all owed under IRS rules, shall be paid out of Residual Receipts in its entirety before Residual Receipts are distributed to Agency to pay against the Residual Receipts Loan.

Owner Equity consists of funds provided by Owner that are not secured by any deed of trust.

d. Owner shall apply in a timely manner, in accordance with the Schedule of Performance, for an Affordable Housing Program [AHP] Grant under the Federal Home Loan Bank Affordable Housing Program in the principal amount of $400,000, to be secured by a deed of trust that is junior and

subordinate to the Agency Residual Receipts Loan, which, if approved, would reduce the Agency Residual Receipts Loan by the amount of the AHP Grant dollar for dollar.

e. Owner shall be responsible for providing all funds which may be needed to pay for cost overruns and contingencies not otherwise funded by the funding sources described in Section 2 above.

3. **Project Budget**. The parties anticipate that all Acquisition and Development Costs shall be as set forth in the Project Budget attached to the Agreement as Attachment No. 7 [Project Budget], incorporated herein by this reference. The Project Budget shall be subject to change from time-to-time, subject to the prior written approval of material changes by the Agency Executive Director or designee (which approval shall not be unreasonably withheld), upon which approval, the Project Budget shall be replaced by the approved revised Project Budget.

4. **Evidence of Financing**. The sum of the sources of funds described in Section 2, above, shall be sufficient at all times to pay all Acquisition and Development Costs as set forth in the most recently approved Project Budget. Within the time provided in the Schedule of Performance, Owner shall submit, for Agency review and approval, evidence of such financing, including copies of all documents required by the Tax Credit Equity Investor relating to the Low Income Housing Tax Credit, all documents required by the construction lender relating to the Construction Loan, and all documents required for any other funding source. The Agency shall not unreasonably withhold its 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 funds described in Section 2, above, is insufficient to pay all Acquisition and Development Costs, Owner shall demonstrate to the satisfaction of the Agency Executive Director the availability of additional Owner's Equity sufficient to pay such costs.

5. **Subordination**. The Agency Residual Receipts Loan Documents and the Agreement Affecting Real Property (Including Rental Restrictions) shall be subordinate to the regulatory agreement to be recorded in connection with the Low Income Housing Tax Credits, and the lien of any deed of trust securing the Construction Loan and the Permanent Loan. Prior to the recordation of any such instrument, the Executive Director of the Agency or designee shall execute such instruments as may be necessary to subordinate the Agency Residual Receipts Loan Documents and the Agreement Affecting Real Property to the deed of trust securing such loan, any regulatory agreement recorded in connection with the funding, and the regulatory agreement between Owner and the California Tax Credit Allocation Committee to be recorded in connection with the Low Income Housing Tax Credits. Provided, however, that Agency's agreement to subordinate the Agency Residual Receipts Loan Documents and the Agreement Affecting Real Property to the Construction Loan and the Permanent Loan shall be subject to the lender agreeing to provide written commitments reasonably designed to protect the Agency's investment in the event of default, as provided in California Health and Safety Code Section 33334.14. The Federal AHP funding, if granted, will be subordinate to the Agency Residual Receipts Loan.

6. **Conditions Precedent to the Closing**. The Closing and the disbursement of any portion of the Agency Residual Receipts Loan is conditioned upon each of the following occurring prior to the scheduled Closing Date set forth in the Schedule of Performance:

a. Title Insurance Policies. Title Company to be committed to issue Lender's Title Insurance Policies to the Agency and to the Construction Lender, or other funding source.

b. Final Working Drawings. Owner to submit and Agency to approve final working drawings.

c. Project Budget. Owner to deliver to the Agency a final project budget or any revisions to the final Project Budget attached to the Agreement as Attachment No. 7, demonstrating to the satisfaction of the Agency the availability of sufficient funds to pay all Acquisition and Development Costs.

d. Construction Contract. Owner to deliver a general construction contract between the Owner and a licensed general contractor, covering all construction required by the Agreement and the approved final working 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 fixturization of the Project, demonstrating that construction will be completed within the time provided in the Schedule of Performance.

e. Evidence of Financing. Owner shall have submitted to the Agency all approvals or other evidences of lender commitments described in this Method of Financing, and the Agency Executive Director or designee shall have approved such evidence relating to the Construction Loan, Low Income Housing Tax Credit syndication and other Owner Equity or any other funding sources.

f. Insurance. Owner to submit to the Agency evidence of the Insurance Policies required by the Agreement, naming as additional insureds the following:

"The City of San Diego, the Redevelopment Agency of the City of San Diego, and their officers, officials, employees, contractors and agents."

g. Work Force Report/EO Plan and Report. Owner to prepare and deliver to the Agency its Work Force Report or Equal Opportunity Plan, and Initial Equal Opportunity Report, to the extent required by the Agreement.

h. Permits. Owner to deliver a list of all permits required for any demolition and the construction and use of the Improvements, demonstrating that all

variances, entitlements and approvals have been obtained and that all conditions for the issuance of all necessary permits have been satisfied (with the exception of payment of fees, which payment is provided for in the approved Project Budget). Subject to the foregoing, permits are not required to be issued until needed for the appropriate stage of development.

i. Resident Marketing and Selection Plan. Owner to deliver to Agency a Resident Marketing and Selection Plan.

j. Owner Formation Documents. Owner and Assignee, if applicable, to deliver documentation relating to the corporate, partnership, limited liability or other similar status of each entity, as the case may be (and if Owner or Assignee is a limited partnership, its general partners, and if Owner or Assignee is a limited liability company, its members), including, without limitation and as applicable: limited partnership agreement and any amendments thereto; articles of incorporation; State of California Limited Liability Company Articles of Incorporation (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 Agreement 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.

k. Evidence of Escrow. Owner to submit documentation to Agency evidencing the opening of escrow to acquire the Property.

l. Appraisal of Property. Owner to submit a current appraisal of the Property showing the then current fair market value of the Property during the escrow period prior to and during the scheduled Closing Date.

m. Recording Instructions. Owner to submit a true and correct copy of the final escrow instructions to Agency and Agency counsel to prepare such supplemental escrow instructions for the Escrow Agent as may be needed, as determined by the Agency in the Agency's sole discretion.

n. Closing Certificate. Agency to submit to Escrow a certificate stating that all conditions to recording of the documents have been satisfied.

o. Documents. Agency, Owner, and other parties, as appropriate, to execute the following documents:

(1) Agreement Affecting Real Property (to be signed by Owner and Agency);

(2) Residual Receipts Promissory Note (to be signed by Owner);

(3) Deed of Trust (to be signed by Owner);

(4) Assignment of Rents (to be signed by Owner);

(5) Assignment of Agreements (to be signed by Owner and project architect);

(6) Environmental Indemnity (to be signed by Owner);

(7) UCC-1 Financing Statement (to be signed by Owner);

(8) Subordination Agreement (to be signed by Agency, Owner and Construction Lender); and

(9) Disbursement Agreement (to be signed by Agency, Owner, and Construction Lender).

p. Annual Monitoring Contract. Owner shall provide annual funding to pay for an Annual Monitoring Contract, as well as any costs associated therewith, and shall deliver to the Agency such a Contract between the Owner and the San Diego Housing Commission and the Agency, for the purpose of the Housing Commission monitoring and reporting to the Agency of Owner's compliance with affordable housing operations, accounting and record keeping standards and requirements.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

I. DEVELOPER RESPONSIBILITIES

A. General

The development concept for the Verbena project is to convert a fully entitled 81 unit condominium project to an 80 unit 100% low income rental apartment development. The 6.47 acre "Site" is located at 3774 Beyer Boulevard in the San Ysidro community of San Diego, more specifically set forth in Attachment 1 of the OPA.

The project's physical design consists of 27 two-story triplex buildings located throughout the Project Site. Each triplex structure contains two 2-story three-bedroom units, and one single-story two-bedroom unit, all sitting on top of ground floor private garages. All units have attached one- or two- car garages. The Gross Building Area (GBA) is approximately 91,415 square feet with a total of 177 parking spaces, or approximately 2.2 spaces per unit.

B. Urban Design Standards

The proposed development, including its architectural design concepts, landscape features and off-site improvements, shall be subject to design review by the Agency in accordance with adopted procedures. The proposed development is currently undergoing architectural review by the City of San Diego and has been approved by the local planning group. The following description sets forth various design and site development aspects of the proposed project for the Agency's review of the design concepts and improvements:

1. Architectural Standards:

The architecture of the development shall establish a high quality of design and complement the surrounding San Ysidro community.

Building facades shall be varied horizontally and vertically to create visual interest. The 27 triplex structures shall be designed to emulate two-story single family houses with attached garages in order to suitably fit into the surrounding single family neighborhood. Additionally varying features, such as alcoves, recesses and appurtenances shall be included in the design.

2. Building Materials:

The building shall be Type V construction.

Exterior treatments shall include color cement plaster finish and color concrete tile roofing.

There will vinyl window frames and sliding glass doors.

No grates, grills, bars (permanent, retractable, or temporary) shall be permitted on windows, doors or alcoves.

Reflectivity of the glass shall be the minimum reflectivity required by Title 24.

A materials board which illustrates the location, color, quality and texture of proposed exterior materials shall be submitted with Design Development Drawings.

3. Street Level Design:

Landscaping, including street trees, pedestrian pathways, sidewalk elements and decorative street pavers along the internal streets are included.

Architectural features such as recessed awnings, or other design features which add human scale to the streetscape, are encouraged where they are consistent with the design theme of the structure.

4. Common Areas:
Landscaped and community room areas shall be provided substantially in conformance with the drawings provided.

5. Roof Tops:

Mechanical equipment, vents, and other roof top appurtenances must be groups, painted out, and architecturally screened or enclosed from view of surrounding buildings.

Ventilation devices shall conform to requirements set forth in the Uniform Building Code and Uniform Mechanical Code.

A rooftop equipment and appurtenance location and screening plan shall be prepared and submitted with Final Construction Drawings.

6. Noise Control:

All mechanical equipment, including but not limited to, air conditioning , heating and exhaust systems, shall comply with the City of San Diego Noise ordinance and California Noise Insulation Standards as set forth in Title 24 of the California Code of Regulations. The exhaust system for

mechanically ventilated structures shall be located to regulate noise and exhaust impacts on adjoining development, particularly residential.

7. Signing

All signage plans shall comply with the San Diego Municipal Code and standards contained in Chapter XI of the San Diego Municipal Code and shall be prepared and submitted in conjunction with submittal of Design Development Drawings.

No sign, inflatable display or banner may be located on the roof of any structure.

8. Lighting

A lighting plan for illumination of the project shall be submitted to the Agency for review and approval.

9. Energy Considerations

The design of the improvements shall include, where feasible, energy conservation construction techniques and design, including co-generation facilities and active and passive solar energy design. The Developer shall be required to demonstrate consideration of such energy features during the design review process.

10. Amenities:

The project shall include a 1,400 square foot community room, a tot-lot and open space. The community room will be used as a computer lab and classroom space.

C. Off-site Improvements

1. City Utilities (sewer, water, and storm drain):

The Developer shall be responsible for the connection of on-site sewer, water and roof drain laterals to the appropriate utility mains within the street and beneath the sidewalk. The Developer may use existing laterals if acceptable to the City, and if not, the Developer shall cut and plug existing laterals at such places and in the manner required by the City, and install new laterals.

2. Franchise Public Utilities:

The Developer shall submit a plan at the Design Development stage which illustrates installation of franchise utilities, including gas, cable television

and electrical distribution lines within the project as well as the connection of these utilities to franchised infrastructure adjoining the Site.

The Developer shall be responsible for the installation or relocation of franchise utility connections including, but not limited to, gas, electric, telephone and cable, to the project and all extensions of those utilities in public street. No overhead utility poles or wires shall be included in the project.

D. Site Preparation

The Developer, at its cost and expense, shall prepare the Site for development. Such Site preparations shall consist of the following:

1. Complete demolition and removal of all existing buildings, other structures and improvements including the removal of all asphalt concrete, concrete, bricks, lumber, pipes, equipment and other material and all debris and rubbish resulting from such demolition.

2. Complete removal of all subsurface improvements, foundations, walls, slabs, basements, tanks and abandoned utilities as necessary to construct the project.

3. Disconnection, capping and removal of utility lines, installations, facilities and related equipment within or on the Site.

All of items (1) through (3) inclusive shall be performed in accordance with City requirements.

E. Removal and/or Remedy of Soil and/or Water Contamination

The Developer shall (at its own cost and expense) remove and/or otherwise remedy to the level of clean-up identified in the environmental remediation plan prepared by a consultant mutually acceptable to Developer and Agency, as required by law and implementing rules and regulations, and as required by appropriate governmental authorities, any contaminated or hazardous soil and/or water conditions on the Site after conveyance of the Site to the Developer. Such work may include without limitation the following:

1. Remove (and dispose of) and/or treat any contaminated soil and/or water on the Site as necessary to comply with applicable governmental standards and requirements.

2. Design and construct all improvements on the Site in a manner which will assure protection of occupants and all improvements from any contamination, whether in vapor or other form, and/or from the direct and indirect effects thereof.

3. Prepare a site safety plan, if required by any governmental entity and submit it to such authority for approval in connection with obtaining a building a permit for the construction of improvements on the Site. Such Site safety plan shall assure workers and other visitors to the Site of protection from any health and safety hazards during development and construction of the improvements. Such Site safety plan shall include monitoring and appropriate protective action against vapors and/or the effect thereof.

4. Obtain from the County of San Diego and/or California Regional Water Quality Control Board and/or any other authorities required by law any permits or other approvals required in connection with the removal and/or remedy of soil and/or water contamination, in connection with the development and construction on the Site.

   The Developer agrees that the Agency, and its consultants and agents, shall have the right (but not the obligation) to enter upon the Site at any time to monitor the excavation and construction on the Site, to test the soils and/or water on the Site, and to take such other actions as may be reasonably necessary to assure compliance with this Section of the Scope of Development. Nothing herein (including without limitation the Agency's right to inspect) shall be construed to make the Agency, the City, or their respective officers, employees, contractors and agents liable for the responsibilities under the Agreement, including this Scope of Development, and the provisions and requirements of the Agreement shall apply with respect thereto.

F. Environmental Impact Mitigation and Archaeological Protection

The Developer shall implement all mitigation measures and/or mitigation monitoring requirements as identified in the Mitigated Negative Declaration (No. 41718), filed with the City Clerk of the City of San Diego.

The Developer shall conduct or cause to be conducted, archaeological monitoring of the Site prior to and during demolition and grading activities on the Site.

G. Assessment Districts

This section is not applicable, as there are no special assessment districts that contain the Site. The Developer does not waive any legal right as may exist at law or in equity, whether established by statute or otherwise, to appear and/or protest the mechanism for, the fairness of or the amount of any fee, tax, levy, assessment of exaction proposed to be imposed upon the Developer's development of the site or any portion thereof.

H. Construction Fence

The Developer shall install a temporary construction chain link. The construction fence shall be maintained free of litter and in good repair for the duration of its installation.

I. Development Identification Signs

Prior to commencement of construction on the Site, the Developer shall prepare and install, at its cost and expense, two signs - on the barricades around the Site (one on each side) which identifies the development. The signs shall be at least four (4) feet by six (6) feet and be visible to passing pedestrian and vehicular traffic. The design of the signs as well as their proposed locations shall be submitted to the Agency for review and approval prior to installation. The signs shall at a minimum include:

--- Illustration of the development
--- Development name
--- Developer
--- The phrase: A project of the Redevelopment Agency of the City of San Diego

Mayor Jerry Sanders

Council Members:

Scott Peters

Kevin Faulconer
Toni Atkins
Tony Young
Brian Maienschein
Donna Frye
Jim Madaffer
Ben Hueso

--- Completion Date _____
--- For information call _____

The Developer shall obtain a current roster of Redevelopment Agency members before signs are manufactured.

J. Americans with Disabilities Act (ADA)

The Developer acknowledges and agrees that it is aware of and will comply with City of San Diego Council Policy 100-04, adopted by Resolution No. R-282153 relating to the federally-mandated Americans with Disabilities Act (ADA).

K. Fees and Assessments

The Developer shall be responsible for all fees required by the City or other public agency for the construction of the proposed project.

L. Applicable City Codes and Ordinances

Notwithstanding the approval of the project plans by the Agency, the project must meet all requirements of the Uniform Building Code and Uniform Fire Code and all Applicable City Codes and Ordinances.

ATTACHMENT NO. 5

SCHEDULE OF PERFORMANCE

I. GENERAL PROVISIONS

1.	Execution of Owner Participation Agreement [Agreement] by Agency. Agency shall hold a public meeting on the Agreement, and, subject to making the requisite findings, authorize execution of, and execute and deliver, Agreement to Owner.	Not later than forty-five (45) calendar days after submission of executed Agreement by Owner.
2.	Submission – Architect, Landscape Architect and Civil Engineer. Owner shall submit to Agency for approval the name and qualifications of its Architect, Landscape Architect and Civil Engineer.	Not later than execution of Agreement by Owner.
3.	Approval – Architect, Landscape Architect and Civil Engineer. Agency shall approve or disapprove the Architect, Landscape Architect and Civil Engineer.	Concurrently with execution of Agreement by Agency.
4.	Submission - Basic Concept/Schematic Drawings. Owner shall submit to Agency for approval the Basic Concept/Schematic Drawings and related documents for the Property.	Not later than execution of Agreement by Owner.
5.	Approval - Basic Concept/Schematic Drawings. Agency shall approve or disapprove the Basic Concept/Schematic Drawings and related documents for the Property.	Concurrently with execution of Agreement by Agency.
6.	Submission of Marketing Plan. Owner shall submit Marketing Plan that incorporates, among other things, a plan to prohibit preferential or special treatment for family members or employees of Owner.	Not less than thirty (30) calendar days prior to the Closing Date.
7.	Approval of Marketing Plan. Agency shall review and approve or disapprove Owner's Marking Plan and shall notify the Owner.	Not later than thirty (30) calendar days after receipt of each such submission of marketing plan by the Agency.

8.	Submission of Contract with Housing Commission for Monitoring. Owner shall submit to Agency a copy of an executed Agreement between Owner and the San Diego Housing Commission and/or the Agency for monitoring of Affordable housing Rents.	Not less than thirty (30) calendar days prior to the Closing Date.
II.	FINANCING COMMITMENTS	
1.	Award of Tax Credits. Owner shall apply for and obtain a TCAC allocation of Low Income Housing Tax Credits for the Project.	Owner shall apply for Tax Credits in the second 2007 TCAC application cycle. If the Owner is not successful in the second 2007 round, Owner shall re-apply in the first and second 2008 rounds, as necessary. Either party may terminate this Agreement if Owner has not been awarded Tax Credits in or before the second 2008 TCAC application cycle.
2.	Affordable Housing Program Funding. Owner shall apply for Affordable Housing Program Funding.	Not later than the deadline imposed by the Affordable Housing Grant Program [AHP] for the second 2007 round application cycle. If the Owner is not successful in the second 2007 round, Owner shall re-apply not later than the deadlines imposed by the AHP for the first and second 2008 round application cycles, as necessary.
3.	Evidence of Financing. Owner shall submit to the Agency evidence of all financing proposed to pay for all Acquisition and Development Costs including, but not limited to, commitments for the Construction Loan, including Construction Loan documents, evidence of Owner's Equity, evidence of award and receipt of Low Income Tax Credits, and evidence and commitments of all other funding sources set forth in Section 2 of the Method of Financing.	Not later than thirty (30) calendar days after the award and Owner's receipt of Low Income Tax Credits.
4.	Approval of Financing. Agency shall approve or disapprove the Owner's evidence of financing.	Not later than thirty (30) calendar days after Agency receives complete submission of evidence of financing.

III. CLOSING AND CONSTRUCTION

1.	Closing Date. Owner shall satisfy all conditions precedent to the Agency Loan Closing as set forth in Section 6 of the Method of Financing, that are not otherwise already satisfied pursuant to the deadlines provided herein.	Not later than ninety (90) calendar days after Agency approves of Evidence of Financing.
2.	Submission – Design Development Drawings and Preliminary Grading and Landscape Plans. Owner shall prepare and submit to the Agency for approval the Design Development Drawings and Specifications and the Preliminary Grading and Landscape Plans for the Site.	Not later than thirty (30) calendar days after Closing Date.
3.	Approval – Design Development Drawings and Preliminary Grading and Landscape Plans. Agency shall approve or disapprove the Design Development Drawings and Specifications and the Preliminary Grading and Landscape Plans for the Site.	Not later than thirty (30) calendar days after receipt by the Agency.
4.	Submission – Final Construction Drawings and Specifications and Finish Grading and Landscape Plans. Owner shall prepare and submit to the Agency for approval the Final Construction Drawings and Specifications and the Finish Grading and Landscape Plans for the Site (and concurrently apply to the City for a building and grading permit). Note: These drawings will be submitted in normal increments as they are completed prior to the deadline for submission.	Not later than sixty (60) calendar days after the Agency's approval of the Design Development Drawings and Preliminary Grading and Landscape Plans.
5.	Approval – Final Construction Drawings and Specifications and Finish Grading and Landscape Plans. Agency shall approve or disapprove the Final Construction Drawings and Specifications and the Finish Grading and Landscape Plans for the Site.	Not later than thirty (30) calendar days after receipt by the Agency.

6.	Submission - Permits. Owner shall apply to and obtain from the City and submit to the Agency all permits required to develop the Property and construct the Improvements including, but not limited to, building and grading permits.	Not later than sixty (60) calendar days after the Agency's approval of the Design Development Drawings and Preliminary Grading and Landscape Plans.
7.	Equal Opportunity Contracting Program. Developer shall contact the City's Equal Opportunity Contracting Program for a determination of compliance with applicable laws and regulations.	Letter of Compliance stating Owner's compliance with applicable laws and regulations shall be submitted to the Agency not less than ten (10) calendar days prior to the commencement of construction.
8.	Commencement of Construction. Owner shall commence construction of the Improvements.	Not later than ninety (90) calendar days after the Closing Date.
9.	Completion of Construction. Owner shall complete construction of the Improvements on the Property (as shown on the Final Construction Drawings upon which the Owner's building permit is based).	Not later than eighteen (18) months after the commencement of construction of the Improvements.

ATTACHMENT NO. 6

AGREEMENT AFFECTING REAL PROPERTY

[Behind this page.]

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

Recording Requested by and When
Recorded Return to:

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO
1200 Third Avenue; Suite 1400
San Diego, California 92101

Attention: Project Manager – San Ysidro
Redevelopment Project Area

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT AFFECTING REAL PROPERTY
(INCLUDING RENTAL RESTRICTIONS)

THIS AGREEMENT AFFECTING REAL PROPERTY (including rental restrictions) [Agreement] is entered into as of this _____ day of _____, 200__, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic [Agency] and VERBENA SAN YSIDRO L.P., a California limited partnership [Owner].

A. Owner is the owner of that certain real property [Property] located in the City of San Diego, County of San Diego, State of California, legally described in the "Legal Description" attached hereto as Exhibit "A" and incorporated herein by this reference.

B. The Property is located within the San Ysidro Redevelopment Project Area of the City of San Diego, State of California, and is subject to the provisions of the San Ysidro Redevelopment Plan which was approved and adopted on April 16, 1996, by the City Council of the City of San Diego by Ordinance No. O-18295 (New Series), including subsequent amendments.

C. Agency has entered into that certain Owner Participation Agreement, dated as of _____ [OPA], with Owner.

D. Pursuant to the OPA, Agency has agreed to provide financial assistance to Owner, for financing costs of acquiring the Property and construction of certain improvements thereon [Improvements].

E. This Agreement is entered into and recorded in accordance with the Redevelopment Plan and the OPA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the OPA.

NOW, THEREFORE, AGENCY AND OWNER AGREE AS FOLLOWS:

1. Owner, on behalf of itself and its successors, assigns, and each successor in interest to Owner's interest in the Property or any part thereof, hereby covenants and agrees as follows:

a. Owner, its successors and assigns, shall use the Property only for the uses permitted in the OPA and this Agreement, specifically including the following:

(1) The Property shall be developed and used for the development and operation of a residential rental development consisting of eighty (80) residential rental units, seventy-nine (79) of which shall be rented exclusively to Very Low Income and Low Income households at an Affordable Rent [Units], and one of which shall be used as the manager's unit, with attached one or two car garages providing approximately one hundred seventy seven (177) parking spaces, and recreational amenities, all as described in the Scope of Development attached as Attachment No. 4 to the OPA.

(2) The number of Units by unit-types and the respective income levels and maximum rents applicable to the Units by unit-types (with the exception of a manager's unit) shall be as set forth in the "Unit Mix by Income Level" exhibit that is attached to this Agreement as Exhibit "B" and incorporated herein by this reference.

(3) The maximum incomes of residential tenants eligible to rent the Units shall be determined on the basis of the Area Median Income for San Diego, published approximately annually by the California Housing & Community Development Department [HCD].

(4) The maximum monthly rent, including a reasonable utility allowance, (which is published annually by the San Diego Housing Commission) that may be charged to tenants of the Units shall be calculated as follows:

(a) For Very Low Income tenants whose incomes exceed thirty percent (30%) but do not exceed fifty percent (50%) of the Area Median Income, shall not exceed one-twelfth (1/12) times the product of thirty percent (30%) times fifty percent (50%) of the area median income adjusted for family size appropriate for the unit.

(b) For Low Income tenants whose incomes exceed fifty percent (50%) but do not exceed sixty percent (60%) of the Area Median Income, shall not exceed one-twelfth (1/12) times the product of thirty percent (30%) times sixty percent (60%) of the area median income adjusted for family size appropriate for the unit.

(5) Owner agrees that among Low Income and Very Low Income tenants who are otherwise eligible under Owner's program to rent and occupy the Units, those persons who have been displaced by any redevelopment project within the City of San Diego shall be given first priority over other eligible persons. Owner agrees that prior to the initial rent-up of the Units, Owner shall consult with and obtain the approval of the Agency in developing a fair marketing plan for renting the Units. The Marketing Plan shall include, among other things, a provision that prohibits preferential treatment or any special advantage being given to the any family member or employee of Owner.

(6) No officer, employee, agent, official, consultant or contractor of Owner or any person having a family relationship or with any of them or any financial interest in Owner may rent or otherwise occupy a Unit (other than a resident manager in the course of his or her employment). Owner shall market the Units and select tenants in accordance with procedures approved by the Agency Executive Director that complies with all applicable fair housing requirements.

(7) Agency and the City of San Diego Housing Commission (the "Housing Commission"), and their respective successors and assigns, shall have the right, but not the obligation, to monitor and enforce the covenants contained in this Section 1(a). Owner covenants that it shall comply with any program required by the California Tax Credit Allocation Committee [CTCAC] to certify and monitor compliance with applicable rent and income restrictions, including the CTCAC Compliance Monitoring Procedure. Owner covenants that it shall comply with any monitoring program set up by Agency and/or the Housing Commission to enforce said covenants. In complying with such monitoring program, Owner or its agent shall prepare and submit to Agency (or the Housing Commission) an occupancy report, financial information and income verification documents for each tenant of a Unit, and all supporting documentation, on forms provided by Owner (or the Housing Commission), on a regular

basis, on the fifth day of each year, setting forth the required information for the preceding period. On an annual basis Owner or its agent shall additionally submit to Agency (or the Housing Commission) evidence of each Low Income and Very Low Income tenant's continuing eligibility for the Units. Agency (or the Housing Commission) shall review such reports within fourteen (14) calendar days of receipt for certification of continuing affordability of Units and eligibility of tenants. Moreover, Owner covenants and agrees that it shall pay all reasonable costs associated with said monitoring and enforcement efforts, which, except as otherwise determined by the Housing Commission, shall include initial system set-up and implementation and occupancy and rent-up transaction fees not to exceed $500, plus an annual monitoring fee not to exceed $2,145 per year calculated as follows: Units 1-40: 40 units multiplied by $65 per unit; Units 41-79: 39 units multiplied by $55 per unit; adjusted upward annually to reflect changes in the Consumer Price Index for the County of San Diego. Reasonable costs shall be those necessary to monitor and enforce said covenants.

b. Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Owner itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. Owner, specifically and more particularly, covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Owner or any person claiming under or through it, him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to

apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the preceding paragraph.

c. Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof or interest therein, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Owner, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the preceding paragraph.

(2) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the preceding paragraph.

(3) In contracts: "There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land."

2. Owner, its successors and assigns, shall maintain the Improvements on the Property in the same aesthetic and sound condition (or better) as the condition of the Property at the time Agency issues a Release of Construction Covenants pursuant to Section 324 of the OPA,

reasonable wear and tear excepted. This standard for the quality of maintenance of the Property shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include frequent and regular inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; sweeping of public sidewalks adjacent to the Property, on-site walks and paved areas and washing-down as necessary to maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as necessary; cleaning windows on a regular basis; painting the buildings on a regular program and prior to the deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; maintaining security devices in good working order. In the event Owner, its successors or assigns fails to maintain the Improvements in accordance with the standard for the quality of maintenance, Agency or its designee shall have the right but not the obligation to enter the Property upon reasonable notice to Owner, correct any violation, and hold Owner, or such successors or assigns responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the Property.

3. Owner shall be responsible for the operation of the Improvements either by direct management or by contracting its managerial functions to a third party property manager reasonably acceptable to the Agency which property manager will be charged with managing the Improvements on behalf of the Owner. The Agency shall have the right to review and approve any such entity prior to its selection by the Owner. Such approval shall not be unreasonably withheld. Owner shall include in any such property management agreement a provision providing for the termination of the agreement in the event that the property manager violates any federal, state or local health and safety laws and regulations which are not cured within thirty (30) calendar days following the giving of notice of such violations by the Agency or any other governmental entity; provided, however, that in the case of a violation that cannot be cured within such thirty (30) calendar day period, that such cure shall be commenced within thirty (30) calendar days of notification and shall be diligently prosecuted to completion.

4. All conditions, covenants and restrictions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Agency, its successors and assigns, and the City of San Diego [City] and its successors and assigns, against Owner, its successors and assigns, to or of the Property or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof. Agency and the City (and the Housing Commission to the extent provided in paragraph (7) of subsection 1.a. hereof) shall be deemed the beneficiaries of the covenants, conditions and restrictions of this Agreement both for and in their own rights and for the purposes of protecting the interests of the community. The covenants, conditions, and restrictions shall run in favor of the Agency and the City, without regard to whether the Agency or City has been, remains, or is a Developer or Owner of any land or interest therein in the Property or the Project Area. Except as provided in the preceding sentence, the covenants, conditions and restrictions contained in this Agreement shall not benefit nor be enforceable by any Developer or Owner of any other real property within or outside the Project Area or any person or entity having any interest in any such other real property.

5. Agency shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

6. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage permitted by the Agreement. This Agreement and the covenants contained herein shall be subordinate to the lien of the deed of trust securing any construction and/or permanent loan to which the Agency has given its consent. Prior to the recordation of the deed of trust securing any such loan, the Executive Director of the Agency or designee shall execute such instruments as may be necessary to subordinate this Agreement and the covenants contained herein to the lien of the maker of such loan. Any lender to whose lien this Agreement is subordinate, who acquires title to the Property by foreclosure, deed in lieu of foreclosure, trustee's sale or similar transfer of title, and the assignees and transferees of such holder, shall not be subject to or bound by the requirements of this Agreement.

7. Every covenant and condition and restriction contained in this Agreement shall remain in effect for the longest feasible time, but not less than fifty five (55) years from the date of recordation of the Release of Construction Covenants. For purposes of this Agreement, the "longest feasible time" shall include in perpetuity.

8. Prior to exercising any remedies hereunder, Agency shall give Owner notice of such default. Agency shall also give notice of default to Owner's Tax Credit Investor and to any person or entity having a security interest in the Property secured by a lien that is superior to this Agreement. If the default is reasonably capable of being cured within thirty (30) calendar days, Owner shall have such period to effect a cure prior to exercise of remedies by Agency. If the default is such that it is not reasonably capable of being cured within thirty (30) calendar days, and Owner (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 Owner 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 Agency's security in the Property becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) calendar days after the first notice of default is given.

9. If a violation of any of the covenants or provisions of this Agreement remains uncured after the respective time period set forth in Section 8, above, Agency and its successors and assigns, without regard to whether Agency or its successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by Owner of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

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.

[SIGNATURES APPEAR ON NEXT PAGE]

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

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

Dated:_____

By:_____
James T. Waring
Assistant Executive Director

APPROVED the form and legality of this Agreement this ____ day of _____, 2007.

MICHAEL J. AGUIRRE,
Agency General Counsel

By: _____
Kendall D. Berkey
Deputy General Counsel

VERBENA SAN YSIDRO, L.P., a California limited partnership

By: CIC Verbena, LLC, a California limited liability company, its Administrative General Partner

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

Dated: _____

By:_____
James J. Schmid, President

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On _____ before me, _____, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature_____

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On _____ before me, _____, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature_____

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On _____ before me, _____, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature_____

EXHIBIT "A"

LEGAL DESCRIPTION

All the certain real property located in the County of San Diego, State of California, described as follows:

[Added behind this page.]

LEGAL DESCRIPTION OF THE PROPERTY

Lot 1 of Map 15435 recorded in the office of the County Recorder for the County of San Diego on the 19th of September, 2006 under File Number 2006-0666317.

EXHIBIT "B"

UNIT MIX BY MAXIMUM INCOME LEVEL

[Added behind this page.]

VERBENA AFFORDABLE APARTMENTS PROJECT

Number of Bedrooms	Residential Income Level	Number of Units	Monthly Rent Level
2 Bedrooms	30% AMI	2	$438
2 Bedrooms	40% AMI	2	$594
2 Bedrooms	50% AMI	14	$750
2 Bedrooms	60% AMI	9	$907
Total/Avg.	**50% AMI**	**27**	**$768**
3 Bedrooms	30% AMI	6	$507
3 Bedrooms	40% AMI	6	$687
3 Bedrooms	50% AMI	26	$868
3 Bedrooms	60% AMI	14	$1,048
Total/Avg.	**50% AMI**	**52**	**$854**

ATTACHMENT NO. 7

PROJECT BUDGET

[Behind this page.]

VERBENA PROJECT

PROJECT BUDGET

18-Jun-07

SOURCES:		
Construction Sources:		
Construction Loan		$ 13,502,000
Developer Fee - deferred during construction		$ 700,000
Low Income Housing Tax Credit (LIHTC) - 9%		$ 9,073,000
Agency Residual Receipts Loan		$ 5,586,000
		$ 28,861,000
PERMANENT SOURCES:		
Permanent Loan		$ 4,301,000
LIHTC - 9%		$ 18,693,000
Deferred Developer Fee		$ 281,000
Affordable Housing Program[1]		$ 400,000
Agency Residual Receipts Loan		$ 5,186,000
		$ 28,861,000
USES:		
Land:		$ 8,257,000
Direct Costs:		
Off-site Improvements	$ -	
On-Sites/Landscaping	$ 4,530,000	
Parking	$ -	
Shell Construction	$ 9,161,000	
FF&E/Amenities	$ 20,000	
Contingency	$ 682,000	$ 14,393,000
Indirect Costs:		
Architecture & Engineering	$ 981,000	
Permits and Fees	$ 1,721,000	
Legal & Accounting	$ 192,000	
Taxes & Insurance	$ 100,000	
Developer Fee	$ 1,400,000	
Marketing/Lease-Up	$ 52,000	
Contingency	$ 140,000	$ 4,586,000
Financing Costs:		
Loan Fees	$ 236,000	
Interest During Construction	$ 699,000	
Interest During Lease-up	$ 503,000	
TCAC/Syndication Fees	$ 121,000	
Operating Lease-Up/Reserves	$ 175,000	
(Less) Income During Lease-Up	$ (109,000)	$ 1,625,000
		$ 28,861,000

(1) Agency funds will cover the shortfall in case AHP funds are not received in full.

ATTACHMENT NO. 8

RESIDUAL RECEIPTS PROMISSORY NOTE

[Behind this page.]

NON RECOURSE RESIDUAL RECEIPTS PROMISSORY NOTE
TO THE REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO

3% Interest
$5,586,000

San Diego, California
Date of Closing: _____

FOR VALUE RECEIVED, VERBENA SAN YSIDRO, 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 FIVE MILLION FIVE HUNDRED EIGHTY SIX THOUSAND DOLLARS and No/100 Cents ($5,586,000) [Agency Residual Receipts Loan]. This Note is given pursuant to that certain Owner Participation Agreement [OPA] dated _____, 200__, between VERBENA SAN YSIDRO, L.P., a California limited partnership, [Owner therein] and the Agency, and evidences the Agency Residual Receipts Loan to Borrower, which provides part of the financing for the acquisition and development of that certain real property in the City of San Diego legally described in the Agency Deed of Trust securing this Note [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 executed by Borrower for the purpose of securing this Note: 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 [Assignment of Agreements]; 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. The Note shall be paid in accordance with the provisions contained herein, and in any event shall be paid in full by that date which is fifty-five (55) years after the execution hereof.

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:

"Acquisition and Development Costs" shall mean the total costs of acquisition and development of the Property and 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, of 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 Residual Receipts Loan evidenced hereby.

"Agency Residual Receipts Loan" shall mean the land acquisition/construction/permanent loan made by the Agency to Borrower pursuant to the OPA in the amount of $5,586,000, which is evidenced by this Note.

"Agency's Share of Residual Receipts" shall mean the fifty percent (50%) of the Residual Receipts allocated to the Agency in years 1-30 and eighty percent (80%) of the Residual Receipts allocated to the Agency in years 31-55, pursuant to paragraphs (b) and (c) of Section 8 of this Note.

"Annual Financial Statement" shall mean the annual audited financial statement of 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, which shall form the basis for determining the Residual Receipts.

"Asset Management Fee" shall mean any fee paid to the Borrower for the purpose of managing the affairs of the Borrower's partnership, including any "syndication management fee" required by the Borrower's Tax Credit Equity Investor limited partner.

"Construction Loan" shall mean the construction period loan in the amount of $13,502,000 made by _____ to Borrower [the maker of such loan to be referred to as the Construction Lender], and to be secured by a deed of trust that is senior and superior to the Agency Deed of Trust.

"Deferred Developer Fee" shall mean that portion of Borrower's Developer Fee, in an amount of up to $281,000, which shall be deferred for payment until after construction of Improvements is completed. The Deferred Developer Fee, plus interest at the minimum interest all owed under IRS rules, will be paid out of Residual Receipts in its entirety before Residual Receipts are distributed to Agency to pay against the Residual Receipts Loan.

"Gross Income" shall mean the gross rental income from all residential and non-residential components of the Improvements, and any other income to the Borrower derived from the ownership, operation and management of the Property.

"Improvements" shall mean the residential rental development consisting of eighty (80) residential rental units, seventy-nine (79) of which shall be rented exclusively to and occupied by Very Low Income and Low Income households at an Affordable Rent, and one of which shall be used as the manager's unit, with attached one or two car garages providing

approximately one hundred seventy seven (177) parking spaces, and recreational amenities, all as described in the OPA and in the Scope of Development attached to the OPA as Attachment No. 4.

"Investor Limited Partner Capital Contributions" shall mean approximately $18,693,000 to be provided, in two or more disbursements, by the Tax Credit Equity Investor of Borrower as proceeds of a Low Income Housing Tax Credit syndication, including approximately $9,073,000 during the construction period.

"Operating Expenses" shall mean actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance, taxes and management of the Improvements and the Property, expressly including, without limitation: debt service on any loan that is senior in priority to the Agency Deed of Trust; onsite administrative costs (including salaries and benefits); maintenance costs (including materials and labor); reasonable and customary payments to an operating reserve account; reasonable and customary payments to a replacement reserve account, not to exceed two hundred fifty dollars ($250) per unit per year, subject to annual increases up to 3.5 percent; 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 forty dollars ($40) per unit, per month, to be increased at the rate allowable by HUD; 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. Operating Expenses shall not include any Asset Management Fee, syndication management fee or any other similar fee paid to the Tax Credit Equity Investor. The calculation of Operating Expenses shall be subject to the reasonable approval of the Agency.

"Permanent Loan" shall mean any loan approved by the Agency that repays all or a part of the Construction Loan as provided in the Method of Financing attached to the OPA.

"Permitted Transfer" shall mean any of the following:

(a) 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 therewith;

(b) A conveyance of the Property to any Affiliate or a sale back from such Affiliate to Owner;

(c) The inclusion of equity participation by Owner by the addition of limited partners to Owner's limited liability company or limited partnership, or similar mechanisms, and the purchase of any such limited partnership interest or interests by the General Partner;

(d) With regard to the limited partnership interests of the Owner, the Tax Credit Equity Investor, which will become a limited partner in the Owner, may transfer less than forty-nine percent (49%) of the ownership interest of said limited partner;

(e) With regard to the limited partnership of the Owner, the Tax Credit Equity Investor, which will become a limited partner in the Owner, may transfer forty-nine percent (49%) or more of the ownership interest of said limited partner only after the Tax Credit Equity Investor has made payment in full of the equity contribution required by this Agreement and the Method of Financing;

(f) The lease for occupancy of all or any part of the Improvements on the Property; and

(g) The granting of easements or permits to facilitate the development of the Property in accordance with this Agreement.

Any transfer described in clauses (a) through (e) shall be subject to the reasonable approval of documentation by the Agency Executive Director or designee in accordance with the standards set forth in the respective provisions of this OPA.

"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 the Gross Income, less the Operating Expenses, calculated on a calendar year basis. All calculations of Residual Receipts shall be subject to verification and reasonable approval by the Agency.

"Senior Lender" shall mean the maker of any Senior Loan or beneficiary of any Senior Loan deed of trust.

"Senior Loan" shall mean the Construction Loan and the Permanent Loan secured by a deed of trust or other instrument to which the Agency agrees to subordinate the Agency Loan Deed of Trust and the other Agency Loan Documents.

"Tax Credit Equity Investor" shall mean a Person who will be an investor, and a limited partner who will purchase the Low Income Housing Tax Credits.

"Transfer" shall have the meaning set forth in Section 10 of this Note.

2. This Note evidences the obligation of the Borrower to the Agency for the repayment of the Agency Residual Receipts Loan. None of the funds provided pursuant to the Agency Residual Receipts Loan were funded (i) 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 (ii) pursuant to any United States government federal source, except as provided below. (Check if appropriate):

☐ The funds were obtained from assistance provided under Section 106, 107 or 108 of the Housing and Community Development Act of 1974 (CDBG funds); or

☐ The funds were obtained pursuant to the Home Investment Partnership Act; or

☐ None of the above.

3. This Note is payable at the principal office of the Agency, 1200 Third Avenue; Suite 1400, San Diego, California 92101-4106, or at such other place as the holder hereof may inform the Borrower in writing, in lawful money of the United States.

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

5. This Note shall bear interest at the rate of three percent (3%) per annum, simple interest.

6. Except in the event of a default described in Section 7 hereof, 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) any refinancing, Cost Savings or Additional Proceeds, subject to the limitations set forth in Section 9, below.

7. The entire unpaid principal balance of this Note shall be due and payable immediately in the event, prior to the end of the fifty-five (55) year term hereof, either of the following shall occur:

(a) 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; or

(b) 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 the Construction Loan or Permanent 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. The term of the Agency Residual Receipts Loan shall be fifty-five (55) years and commence upon the date of the issuance of the certificate of occupancy for the Improvements by the City of San Diego [Occupancy Date]. Prior to the expiration of the fifty-five (55) year term hereof, Borrower shall be obligated to repay the Agency Residual Receipts Loan exclusively from the Agency's share of Residual Receipts, as follows:

(a) Annually, not later than the first day of April (commencing with such date occurring in the year after the year in which the City of San Diego issues a certificate of occupancy for the Property [First Operating Year]), 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. The first such Annual Financial Statement shall be for a partial year commencing upon the issuance of the certificate of completion. The Agency shall review and approve such Annual Financial Statement, or request revisions, within thirty (30) calendar 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 one percent (1%) over the Prime Rate announced by Bank of America, but in any event within ten (10) calendar days of notice of such increase.

(b) Annually, commencing the first day of April following the payment to Owner of the Deferred Developer Fee, Borrower shall calculate its Residual Receipts as provided in paragraph (a) of this Section 8, and allocate and pay to the Agency an amount equal to fifty percent (50%) of the Residual Receipts in years 1-30, then eighty percent (80%) of the Residual Receipts in years 31-55, until all principal and accrued interest due under this Note has been paid to the Agency in full. Any outstanding balance under this Note shall be immediately due and payable to the Agency on the date that is fifty five (55) years from the commencement of the First Operating Year.

(c) All payments to the Agency shall be applied first to interest, then to reduce the principal amount owed.

9. The Agency Residual Receipts Loan evidenced by this Note is based on the assumption that Borrower's construction loan in the approximate original principal amount of $13,502,000, to be secured by a first priority deed of trust [Construction Loan], would be repaid upon completion of construction and rent-up in part by the proceeds of a permanent loan in the approximate original principal amount of $4,301,000 [Permanent Loan].

(a) To the extent final Acquisition and Development Costs, as determined by a cost certification performed not later than ninety (90) calendar days following completion of construction, at Owner's expense, by a Certified Public Accountant acceptable to the Agency, are less than those described in Section 2 of the Method of Financing, subject to change to reflect total estimated Acquisition and Development Costs in the Project Budget approved by Agency prior to the Closing of Escrow, the resulting cost savings [Cost Savings] shall be allocated to reduce the principal amount of the Agency Residual Receipts Loan.

10. (a) Prior to the repayment in full of the Agency Residual Receipts Loan, the Borrower shall not assign or attempt to assign the OPA or any right therein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property, the Improvements thereon, or any portion thereof or interest therein [referred to hereinafter as a Transfer], without prior written approval of the Agency, except as otherwise permitted in this Note and in the OPA. 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 10, 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 10(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 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 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 10(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 approval thereof by the Agency, shall be deemed to relieve the Borrower or any other party from any obligations under the OPA or the Agreement Affecting Real Property.

(d) In the event of a Transfer prior to the time the Agency Residual Receipts Loan is paid in full, <u>without</u> the prior written consent of the Agency, the remaining principal balance of the Agency Residual Receipts 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 10, 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 the OPA, except for the following: (A) a cumulative change in ownership interest of any partner 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 <u>not</u> include any Permitted Transfers, as defined in this Note and 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.

11. The Agency Residual Receipts Loan is funded by the Agency's Low and Moderate Income Housing Fund payable from the proceeds of the Line of Credit. 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.

12. Subject to the provisions and limitations of this Section 12, the obligation to repay the Agency Residual Receipts Loan is a nonrecourse obligation of the Borrower. Borrower shall not have any personal liability for repayment of the loan, except as provided in this Section 12. The sole recourse of Agency shall be the exercise of its rights against the Property and any related security for the Agency Residual Receipts Loan. Provided, however, that the foregoing shall not (a) constitute a waiver of any obligation evidenced by this Note or the 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 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 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 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, up to the amount diverted, 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, 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:

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

(b) Any damages, costs and expenses incurred by Agency as a result of any misappropriation of funds provided for the construction of the Project, 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 the indemnification regarding Hazardous Substances pursuant to the Environmental Indemnity, and

(d) All court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that Agency shall pay Borrower's reasonable court costs and attorneys' fees if Borrower is the prevailing party in any such enforcement or collection action).

13. 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.

14. Upon the failure of Borrower to perform or observe any other term or provision of this Note, or upon the occurrence of any event of default under the terms of the Agency Deed of Trust, the OPA or the Agreement Affecting Real Property, or any deed of trust securing the Construction Loan or Permanent Loan, or other obligations secured by a deed of trust on the Property, the holder may exercise its rights or remedies hereunder or thereunder.

15. (a) Subject to the extensions of time set forth in Section 16, and subject to the further provisions of this Section 15, failure or delay by Borrower to perform any material term or provision of this Note, the Agency Deed of Trust, the OPA or the Agreement Affecting Real Property, or any deed of trust securing the Construction Loan or Permanent 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 Construction 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 shall have a reasonable period of time after such notice is given within which to cure the 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 Agreement Affecting Real Property or any document implementing the OPA or any deed of trust securing the Construction 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 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, 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) calendar days, and Borrower (i) initiates corrective action within said 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. If Borrower fails to take corrective action or cure the default within a reasonable time, the Agency shall give Borrower and, as provided in paragraph (f), below, the Tax Credit Equity Investor of Borrower notice thereof, whereupon the Tax Credit Equity Investor may remove and replace the general partner with a substitute general partner, who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. The Agency agrees to accept cures tendered by the Tax Credit Equity Investor within the cure periods provided in this Note or within the time periods provided in Civil Code Section 2924c, whichever is longer. Additionally, in the event the Tax Credit Equity Investor is precluded from curing a non-monetary default due to an inability to remove the [general partner or managing member] as a result of a bankruptcy, injunction, or similar proceeding by or against Borrower or the general partner of Borrower, the Agency agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Tax Credit Equity Investor is so precluded from acting, not to exceed ninety (90) calendar days, provided such Tax Credit Equity Investor is otherwise in compliance with the foregoing provisions. 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) calendar days after the notice of default is received or deemed received.

(f) After Borrower gives written notice to Agency that the Tax Credit Equity Investor has been admitted to Borrower's limited liability company or limited partnership, Agency shall send to the Tax Credit Equity Investor a copy of all notices of default and all other notices that Agency sends to Borrower, at the address for the Tax Credit Equity Investor as provided by written notice to Agency by Borrower.

(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.

16. Notwithstanding specific provisions of this Note, Borrower shall not be deemed to be in default for failure to perform any non-monetary performance hereunder where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the Agency or any other public or governmental agency or entity, or any causes beyond the control or without the fault of the Borrower. An extension of time for any such cause [a Force Majeure Delay] shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by Borrower is sent to the Agency within thirty (30) calendar days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Borrower delivers to the Agency written notice describing the event, its cause, when and how Borrower obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Borrower shall deliver such written notice within thirty (30) calendar days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by the Agency and Borrower.

17. 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. (a) The Agency Deed of Trust securing this Note shall be subordinate and junior during the construction period to the Construction Loan deed of trust.

(b) Following reconveyance of the Construction Loan deed of trust, the indebtedness evidenced by this Note shall be subordinate in right of payment to the prior payment in full of the Permanent Loan and the regulatory agreement recorded in connection with the Low Income Housing Tax Credits.

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19. 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.

BORROWER

VERBENA SAN YSIDRO, L.P., a California limited partnership

By: CIC Verbena, LLC, a California limited liability company, its Administrative General Partner

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

By: _____
James J. Schmid, President

ATTACHMENT NO. 9

DEED OF TRUST

[Behind this page.]

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

Recording Requested by and
When Recorded Mail to:

THE REDEVELOPMENT AGENCY OF THE CITY
OF SAN DIEGO
1200 Third Avenue; Suite 1400
San Diego, California 92101

Attn: Project Manager – San Ysidro
Redevelopment Project Area

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBORDINATE DEED OF TRUST,
SECURITY AGREEMENT AND FIXTURE FILING
(WITH ASSIGNMENT OF RENTS)

This Subordinate Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) is made as of _____, 20__, by VERBENA SAN YSIDRO, L.P., a California limited partnership [Trustor], whose address is 5993 Avenida Encinas; Suite 101, Carlsbad, California 92008, to _____, a California corporation [Trustee], for the benefit of the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic [Beneficiary], whose address is 1200 Third Avenue; Suite 1400, San Diego, California 92101.

Witnesseth: That subject to the rights of any senior lender, Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION the following property [Trust Estate]:

1. That certain real property in the City of San Diego, County of San Diego, State of California more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof [such interest in real property is hereafter referred to as the Subject Property];

2. All buildings, structures and other improvements now or in the future located or to be constructed on the Subject Property [Improvements];

3. All tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefiting or otherwise relating to the Subject Property or the Improvements, including easements, rights-of-way and development rights [Appurtenances]. [The Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to as the Real Property];

4. Subject to the assignment to Beneficiary set forth in Paragraph 4 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate or the ownership, use, management, operation leasing or occupancy of the Trust Estate, including those past due and unpaid [Rents];

5. All present and future right, title and interest of Trustor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code [UCC], and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, theater equipment, seating, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property, but not including personal property that is donated to Trustor [the "Goods," and together with the Real Property, the Property]; and

6. All present and future right, title and interest of Trustor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate) (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustor under any such agreements, (viii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types on intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property [Intangibles].

Trustor further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustor in and to all Goods and

Intangibles and all of the Trust Estates described above in which a security interest may be created under the UCC [collectively, the Personal Property]. This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Trustee and Beneficiary. Trustee and Beneficiary shall have, in addition to all rights and remedies provided herein, all the rights and remedies of a "secured party" under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Section 9334 and 9502(b) of the UCC.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may elect, the following:

1. Due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained herein or contained in the following:

(a) that certain Residual Receipts Promissory Note executed by Trustor [Borrower therein] of even date herewith [Residual Receipts Note or Note];

(b) the Owner Participation Agreement dated _____, 200_____ [OPA], between Trustor [Owner therein] and Beneficiary [Agency therein];

(c) the Agreement Affecting Real Property (Including Rental Restrictions) between Trustor [referred to as Owner therein] and Beneficiary [Agency therein], recorded concurrently herewith [Agreement Affecting Real Property]; and

2. Payment of indebtedness of the Trustor to the Beneficiary not to exceed $5,586,000 according to the terms of the Residual Receipts Note.

Said Residual Receipts Note [Note], OPA and Agreement Affecting Real Property [collectively, with the Note, referred to as the Secured Obligations] and all of their terms are incorporated herein by reference and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances evidenced by any note reciting that it is secured hereby.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. That Trustor shall pay the Note at the respective times and in the manner provided therein, and perform the obligations of the Owner as set forth in the OPA and Agreement Affecting Real Property at the time and in the manner respectively provided therein.

2. That Trustor shall not permit or suffer the use of any of the Property for any purpose other than the use set forth in the Agreement Affecting Real Property.

3. That the Secured Obligations are incorporated in and made a part of the Deed of Trust. Upon default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable.

4. That all rents, profits and income from the Property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the OPA and the Agreement Affecting Real Property.

5. That upon default hereunder or under the aforementioned agreements, and after the giving of notice and the expiration of any applicable cure period, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the Property described herein and operate same and collect the rents, profits and income therefrom.

6. That Trustor will keep the improvements now existing or hereafter erected on the Property insured against loss by fire and such other hazards, casualties, and contingencies as may reasonably be required in writing from time to time by the Beneficiary, and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies. In no event shall the amounts of coverage be less than one hundred percent (100%) of the insurable value of the Property. Such policies shall be endorsed with a standard mortgage clause with loss payable to the Beneficiary and certificates thereof together with copies of original policies shall be deposited with the Beneficiary. Unless approved otherwise in writing by the Executive Director of the Beneficiary, or his or her designee, Trustor shall maintain insurance as required by Exhibit "B" to this Deed of Trust, which is incorporated herein by this reference.

7. To pay, at least ten (10) calendar days before delinquency, any taxes and assessments affecting said Property; to pay, when due, all encumbrances, charges and liens, with interest, on said Property or any part thereof which appear to be prior or superior hereto; and to pay all costs, fees, and expenses of this Trust. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as Trustor is contesting the legality thereof in good faith and by appropriate proceedings, and Trustor has adequate funds to pay any liabilities contested pursuant to this Section 7.

8. To promptly begin and thereafter diligently prosecute to completion the construction of the Improvements as provided in the Scope of Development, attached to the OPA as Attachment No. 4, and to keep said Property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said Property or requiring any alterations or improvements to be made thereon (subject to Trustor's right to contest the validity or applicability of laws or regulations); not to commit or permit waste thereof; not to commit,

suffer or permit any act upon said Property in violation of law and/or covenants, conditions and/or restrictions affecting said Property; not to permit or suffer any material alteration of or addition to the buildings or improvements hereafter constructed in or upon said Property without the consent of the Beneficiary.

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and reasonable attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.

10. Should Trustor fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Following default, after the giving of notice and the expiration of any applicable cure period, Beneficiary or Trustee being authorized to enter upon said Property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay his/her reasonable fees.

11. Beneficiary shall have the right to pay fire and other property insurance premiums when due, should Trustor fail to make any required premium payments. All such payments made by the Beneficiary shall be added to the indebtedness and obligations secured hereby.

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the highest non-usurious rate of interest permitted by law.

13. That upon the failure of Trustor, after the giving of notice and the expiration of any applicable cure period, to keep and perform all the covenants, conditions, and agreements of said OPA and Agreement Affecting Real Property, the entire indebtedness evidenced by the Residual Receipts Note shall at the option of the Beneficiary of this Deed of Trust become due and payable, anything contained herein to the contrary notwithstanding.

14. Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the Property subject to this Deed of Trust any lien or liens except as authorized by Beneficiary and further that they will keep and maintain the Property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be obligated to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting, provided that Trustor shall, at Beneficiary's written request, within thirty (30) calendar days after the filing of any claim or lien (but in any event, and without any requirement that Beneficiary must first provide a written request, prior to foreclosure) record in the Office of the Recorder of San Diego County, a surety bond in an amount one-and-one-half times the amount of such claim

item to protect against a claim of lien, or provide such other security reasonably satisfactory to Beneficiary.

15. That any and all improvements made or about to be made upon the premises covered by the Deed of Trust, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other applicable regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office.

16. Trustor herein agrees to pay to Beneficiary or to the authorized loan servicing representative of the Beneficiary a reasonable charge for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2 Title 14, Division 3, of the California Civil Code.

IT IS MUTUALLY AGREED THAT:

17. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, subject to the rights of any beneficiary of a deed of trust senior in priority to this Deed of Trust [Senior Lender], Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor which are not used to reconstruct, restore or otherwise improve the Property or part thereof that was taken or damaged, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. Subject to the rights of any Senior Lender, all such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the Property or part thereof that was taken or damaged, including the proceeds of any policies of fire and other insurance affecting said Property, are hereby assigned to Beneficiary. After deducting therefrom all its expenses, including attorney's fees, the balance of the proceeds which are not used to reconstruct, restore or otherwise improve the Property or part thereof that was taken or damaged, shall be applied to the amount due under the secured hereby. No amount applied to the reduction of the principal shall relieve the Trustor from making regular payments as required by the Note secured hereby.

18. Upon default by Trustor in making any payments provided for herein or upon default by Trustor in making any payment required in the Note secured hereby, or if Trustor shall fail to perform any covenant or agreement in this Deed of Trust within thirty (30) calendar days after written demand therefor by Beneficiary (or, in the event that more than thirty (30) calendar days is reasonably required to cure such default, should Trustor fail to promptly commence such cure, and diligently prosecute same to completion), after the giving of notice and the expiration of any applicable cure period, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the Property to be sold, which notice Trustee shall cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary shall also deposit with Trustee this Deed, the Note, and all documents evidencing expenditures secured hereby;

19. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its Deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee's fees or attorney's fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto.

20. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

21. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

22. Upon written request of Beneficiary stating that all sums secured hereby have been paid and all obligations secured hereby have been satisfied, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

23. The trust created hereby is irrevocable by Trustor.

24. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder including pledgees, of the secured hereby. In this Deed of Trust, whenever the

context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustor hereunder are joint and several.

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

26. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address set forth in the first paragraph of this Deed of Trust.

27. Trustor agrees at any time and from time to time upon receipt of a written request from Beneficiary, to furnish to Beneficiary detailed statements in writing of income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases or tenancies and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the premises and their use as may be requested by Beneficiary.

28. Trustor agrees that the indebtedness secured by this Deed of Trust is made expressly for the purpose of financing the acquisition of the Property and construction of Improvements thereon as provided in the OPA and to be operated as provided in the Agreement Affecting Real Property.

29. Trustor agrees that, except as otherwise provided in the Note, upon sale or refinancing of the Property, the entire indebtedness secured by this Deed of Trust shall at the option of Beneficiary be immediately due and payable.

30. Notwithstanding specific provisions of this Deed of Trust, non-monetary performance hereunder shall not be deemed to be in default where delays or defaults are due to: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor or supplier; acts of the other party; acts or failure to act of the City of San Diego or any other public or governmental agency or entity (except that any act or failure to act of Beneficiary shall not excuse performance by Beneficiary); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause [a Force Majeure Delay] shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other party more than thirty (30) calendar days after the commencement of the cause, the period shall commence to run only thirty (30) calendar days prior to the giving of such notice. Times of performance under this Deed of Trust may also be extended in writing by the Beneficiary and Trustor. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until Trustor delivers to

Beneficiary written notice describing the event, its cause, when and how Trustor obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Trustor shall deliver such written notice within fifteen (15) calendar days after it obtains actual knowledge of the event.

31. If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the unsecured portion of such obligations shall be completely performed and paid prior to the performance and payment of the remaining and secured portion of the obligations, and all performance and payments made by Trustor shall be considered to have been performed and paid on and applied first to the complete payment of the unsecured portion of the obligations.

32. (a) Subject to the extensions of time set forth in Section 30, and subject to the further provisions of this Section 32, failure or delay by Trustor to perform any term or provision respectively required to be performed under the OPA, the Agreement Affecting Real Property or this Deed of Trust constitutes a default under this Deed of Trust.

(b) Beneficiary shall give written notice of default to Trustor, specifying the default complained of by the Beneficiary. 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 Beneficiary 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 Beneficiary in asserting any of its rights and remedies shall not deprive Beneficiary 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 either the Note or this Deed of Trust, prior to exercising any remedies hereunder or thereunder, Beneficiary shall give Trustor written notice of such default. Trustor shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by Beneficiary under the Note and/or this Deed of Trust. In no event shall Beneficiary 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, the Note, this Deed of Trust, the Agreement Affecting Real Property or any document implementing the OPA, prior to exercising any remedies hereunder or thereunder, Beneficiary shall give Trustor 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,

Trustor shall have such period to effect a cure prior to exercise of remedies by the Beneficiary under the OPA, the Agreement Affecting Real Property, the Note and/or this Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) calendar days, and Trustor (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary. If Trustor fails to take corrective action or cure the default within a reasonable time, the Beneficiary shall give Trustor and, as provided in paragraph (f), below, the "Tax Credit Equity Investor" of Trustor, notice thereof, whereupon the Tax Credit Equity Investor may remove and replace the general partner with a substitute general partner, who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. The Beneficiary agrees to accept cures tendered by the Tax Credit Equity Investor within the cure periods provided in the Note or within the time periods provided in Civil Code Section 2924c, whichever is longer. Additionally, in the event the Tax Credit Equity Investor is precluded from curing a non-monetary default due to an inability to remove the general partner as a result of a bankruptcy, injunction, or similar proceeding by or against Trustor or the general partner of Trustor, the Beneficiary agrees to forbear from completing a foreclosure (judicial or non-judicial) during the period during which the Tax Credit Equity Investor is so precluded from acting, not to exceed ninety (90) calendar days, provided such Tax Credit Equity Investor is otherwise in compliance with the foregoing provisions. In no event shall Beneficiary 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) calendar days after the notice of default is received or deemed received.

(f) Beneficiary shall send to the Tax Credit Equity Investor a copy of all notices of default and all other notices that Beneficiary sends to Trustor, at the address for the Tax Credit Equity Investor as provided by written notice to Beneficiary by Trustor.

33. Subject to the provisions and limitations of this Section 33, the obligation to repay the Agency Loan is a nonrecourse obligation of the Trustor. Trustor shall not have any personal liability for repayment of the Agency loan secured hereby, except as provided in this Section 33. The sole recourse of Beneficiary 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 the Note or this Deed of Trust; (b) limit the right of the Beneficiary to name Trustor as a party defendant in any action or suit for judicial foreclosure and sale under the Note and this 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 Trustor; (c) release or impair the Note or this Deed of Trust; (d) prevent or in any way hinder Beneficiary 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 Beneficiary 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 Trustor of any of its obligations under any indemnity delivered by Trustor to Beneficiary; 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 the Note and this Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of a default, Trustor and its successors and assigns shall have personal liability hereunder for any deficiency judgment, but only if and to the extent Trustor, its principals, shareholders, partners or its successors and assigns received rentals, other revenues, or other payments or proceeds in respect of the mortgaged Property, 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 Trustor in connection with the operation of the mortgaged Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, Beneficiary may recover directly from Trustor or from any other party:

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

(b) any damages, costs and expenses incurred by Beneficiary as a result of any misappropriation of funds provided for the acquisition of the Property and development and construction of the Project, 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 Trustor pursuant to any indemnity under the OPA or pursuant to the indemnification regarding Hazardous Substances pursuant to the Environmental Indemnity, and

(d) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that Beneficiary shall pay Trustor's reasonable court costs and attorneys' fees if Trustor is the prevailing party in any such enforcement or collection action).

34. This Deed of Trust shall be subordinate and junior to the Construction Deed of Trust (with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing) recorded concurrently herewith securing the Construction Loan made by _____ and the permanent loan that repays a portion of the Construction Loan. The Executive Director of the Beneficiary or his/her designee shall execute such instruments as may be necessary to subordinate the lien of this Deed of Trust and the

Agreement Affecting Real Property to the deed of trust described in this Section 34, above, any regulatory agreement recorded in connection therewith and the regulatory agreement between Trustor and the California Tax Credit Advisory Committee to be recorded in connection with the Low Income Housing Tax Credits. In the event of a default or breach by Trustor of any security instrument securing a senior obligation described in this Section 34, Beneficiary shall have the right to cure the default prior to completion of any foreclosure. In such event, Beneficiary shall be entitled to reimbursement by Trustor of all costs and expenses incurred by Beneficiary in curing the default. The amount of any such disbursements shall be a lien against the Subject Property and added to the obligation secured by this Deed of Trust until repaid, with interest at the highest rate permitted by law.

35. If the Project has allocated to it low-income housing tax credits under the provisions of Sections 17058 and 23610.5 of the Revenue and Taxation Code of the State of California and under Section 42 of the Internal Revenue Code of 1986, as amended [Code], then the Project will be subject to certain requirements of Section 42 of the Code, including but not limited to Section 42(h)(6)(e)(ii). Lender acknowledges the provisions of Section 42 of the Code and agrees that, if and to the extent applicable to Lender in connection with the Project, Lender will comply therewith.

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36. Subject to the rights of any Senior Lender, in the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part thereof, Trustor shall have the right to rebuild the Project, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the Loan in balance and rebuild the Project in a manner that provides adequate security to Lender for repayment of the Loan or if such proceeds are insufficient then Trustor shall have funded any deficiency, (b) Lender shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the Loan Documents. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to Lender for repayment of the remaining balance of the Loan.

IN WITNESS WHEREOF Trustor has executed this Deed of Trust as of the day and year set forth above.

TRUSTOR

VERBENA SAN YSIDRO, L.P., a California limited partnership

By: CIC Verbena, LLC, a California limited liability company, its Administrative General Partner

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

By: _____
James J. Schmid, President

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On ____ before me, _____, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____

EXHIBIT "A"

LEGAL DESCRIPTION

[TO BE ADDED]

LEGAL DESCRIPTION OF THE PROPERTY

Lot 1 of Map 15435 recorded in the office of the County Recorder for the County of San Diego on the 19th of September, 2006 under File Number 2006-0666317.

EXHIBIT "B"

INSURANCE REQUIREMENTS

1. At all times prior to the repayment in full of the Agency Loan secured hereby, Trustor shall maintain in effect and deliver to Beneficiary duplicate originals or appropriate certificates of the following insurance policies [Insurance Policies]:

a. All-Risk Policies: Trustor shall maintain or cause to be maintained coverage of the type now known as All Risk insurance. Such insurance shall insure against direct physical loss or damage by fire, lightning, wind, storm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage and such other causes as are covered by such form of insurance. Such policy shall include (1) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (2) a "Replacement Cost Endorsement" in amount sufficient to prevent Trustor from becoming a co-insurer under the terms of the policy, but in any event in an amount not less than 100% of the then full replacement cost, to be determined at least once annually and subject to reasonable approval by Beneficiary, and (3) an endorsement to include coverage for budgeted soft costs. The replacement cost coverage shall be for work performed and equipment, supplies and materials furnished to the Property or any adjoining sidewalks, streets and passageways, or to any bonded warehouse for storage pending incorporation into the work, without deduction for physical depreciation and with a deductible not exceeding $25,000 per occurrence (except that earthquake coverage, if obtained, shall carry a deductible not to exceed 25% of the policy amount, or such other deductible amount as Beneficiary may reasonably determine is acceptable, in light of the cost of the premium for such insurance), which deductible amount shall be subject to increases equal to increases in the Consumer Price Index;

b. Liability Insurance: Trustor shall maintain or cause to be maintained general liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of Trustor on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Trustor, or any person acting for Trustor, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Trustor or its tenants, or any person acting for Trustor, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect Beneficiary against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the Term in the following amounts: commercial general liability in a general aggregate amount of not less than Two Million Dollars ($2,000,000), $2,000,000 Products and Completed Operations Aggregate, and $2,000,000 Each Occurrence, which amounts shall be subject to increases equal to increases in the Consumer Price Index. Trustor agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Trustor may be held responsible for

the indemnification of Beneficiary or the payment of damages to persons or property resulting from Trustor's activities, activities of its tenants or the activities of any other person or persons for which Trustor is otherwise responsible.

c. Automobile Insurance: Trustor shall maintain or cause to be maintained automobile insurance, maintained in full force and effect in an amount of not less than Two Million Dollars ($2,000,000) per accident, which amount shall be subject to increases equal to increases in the Consumer Price Index.

d. Workers' Compensation Insurance: Trustor shall maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Trustor in connection with the Property and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Trustor. Notwithstanding the foregoing, Trustor may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Lessee shall deliver to Beneficiary evidence that such self-insurance has been approved by the appropriate State authorities.

2. All policies or certificates of insurance shall provide that such policies shall not be canceled, reduced in coverage or limited in any manner without at least ten (10) calendar days prior written notice to Beneficiary. All fire and liability insurance policies (not automobile and Workers' Compensation) may name the Beneficiary and Trustor as insureds, additional insureds, and/or loss payable parties as their interests may appear.

3. The Insurance Policies shall name as additional insureds the following:

> "The City of San Diego, the Redevelopment Beneficiary of the City of San Diego, and their officers, officials, employees, contractors, agents and attorneys."

4. Trustor agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Trustor agrees to submit binders or certificates evidencing such insurance to Beneficiary prior to the Closing. Within thirty (30) calendar days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Beneficiary. All insurance herein provided for under this Section shall be provided by insurers licensed to do business in the State of California and rated A-VII or better.

5. If Trustor fails or refuses to procure or maintain insurance as required by this Agreement, Beneficiary shall have the right, but not the obligation, at Beneficiary's election, and

upon ten (10) calendar days prior notice to Trustor, to procure and maintain such insurance. The premiums paid by Beneficiary shall be treated as a loan, due from Trustor, to be paid on the first day of the month following the date on which the premiums were paid. Beneficiary shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

ATTACHMENT NO. 10

ASSIGNMENT OF RENTS

[Behind this page.]

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:
Redevelopment Agency of the
City of San Diego
1200 Third Avenue; Suite 1400
San Diego, California 92101

Attn: Project Manager – San Ysidro
Redevelopment Project Area

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES [Assignment] is made as of this ____ day of _____, _____ by VERBENA SAN YSIDRO, L.P., a California limited partnership [Borrower], in favor of the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic, its successors, and assigns [collectively, the "Agency"].

RECITALS

A. Borrower is the owner of a fee interest in and to the real property described in Exhibit "A" attached hereto and incorporated herein by this reference, and the owner of all of the personalty, fixtures, and improvements now or hereafter located thereon or attached thereto now existing or to be constructed thereon. Said real property, personalty, fixtures, and the improvements are herein referred to collectively as the "Premises".

B. Agency has agreed to make a loan [Loan] to Borrower, in the original principal amount of $5,586,000, pursuant to the terms of that certain Owner Participation Agreement, by and between Agency and Borrower, dated as of _____ [OPA], as evidenced by that certain Promissory Note of even date herewith [Note]. The Loan is secured by that certain Subordinate Deed of Trust, Security Agreement and Fixture Filing, of even date herewith, executed by Borrower, as Trustor, for the benefit of Agency, as Beneficiary [Deed of Trust].

C. In order to induce Agency to make the Loan to Borrower, Borrower has agreed to execute this Assignment.

NOW, THEREFORE, with reference to the foregoing and in reliance thereon and for good and valuable consideration, the receipt of which is hereby acknowledged, Borrower agrees as follows:

AGREEMENT

1. All initially capitalized terms used herein, unless otherwise defined or required by context, shall have the meaning ascribed to them in the OPA.

2. Borrower hereby absolutely grants, sells, assigns, transfers, and sets over to Agency, by this Assignment, all of Borrower's interests, whether now existing or hereafter acquired, in all leases and other occupancy agreements of any nature, now or hereafter covering all or any part of the Premises, together with all extensions, renewals, modifications, or replacements of said leases and occupancy agreements, and together with any and all guarantees of the obligations of the lessees and occupants [Lessees] thereunder, whether now existing or hereafter executed, and all extensions and renewals of said guarantees. [Said leases and occupancy agreements, together with any and all guarantees, modifications, extensions and renewals thereof, are hereinafter referred to collectively as the "Leases" and individually as a "Lease".]

3. Borrower's purpose in making this Assignment is to relinquish to Agency its right to collect and enjoy the rents, royalties, issues, profits, income, and other benefits at any time accruing by virtue of the Leases [hereinafter called "Rents and Profits"].

4. The parties intend that this Assignment shall be a present, absolute and unconditional assignment, subordinate to the rights of _____, and its successors and assigns [Construction Lender], and shall, immediately upon execution, give the Agency the right to collect the Rents and Profits and to apply them in payment of the principal and interest and all other sums payable on the Indebtedness and other Obligations under the Note and other loan documents, as well as all other sums payable under the Deed of Trust or any other instrument given as security for the Indebtedness, subject to the rights of the Construction Lender. However, the Agency hereby grants to Borrower a license to collect and use, subject to the provisions set forth below, the Rents and Profits as they respectively become due and to enforce the Leases, so long as there is no Default by Borrower in performance of the terms, covenants, or provisions of the Deed of Trust, the Note, or the OPA, this Assignment or any other loan document, after the expiration of any applicable notice and cure periods. Nothing contained herein, nor any collection of Rents and Profits by Agency or by a receiver, shall be construed to make Agency a "mortgagee in possession" of the Premises so long as Agency has not entered into actual possession of the Premises.

5. Upon the occurrence of any Default or Event of Default, after the expiration of

any applicable notice and cure periods, under the terms and conditions of this Assignment, the Note, the Deed of Trust, the OPA or any other loan document, this Assignment shall constitute a direction and full authority to each Lessee under any Lease and each guarantor of any Lease to pay all Rents and Profits to Agency without proof of the Default relied upon. Borrower hereby irrevocably authorizes each Lessee and guarantor to rely upon and comply with any notice or demand by Agency for the payment to Agency of any Rents and Profits due or to become due.

6. Borrower represents and warrants as to each Lease now or hereafter covering all or any portion of the Premises, unless Agency has been otherwise advised in writing by Borrower:

a. That each Lease is in full force and effect;

b. That no material default exists on the part of the Lessee thereunder or Borrower;

c. That no rent in excess of one month's rent has been collected in advance;

d. That no Lease or any interest therein has been previously assigned or pledged;

e. That no Lessee under any Lease has any defense, setoff or counterclaim against Borrower; and

f. That all rent due to date under each Lease has been collected and no concession has been granted to any Lessee in the form of a waiver, release, reduction, discount, or other alteration of rent due or to become due except as previously disclosed to Borrower in writing.

7. Borrower agrees with respect to each Lease:

a. If any Lease provides for a security deposit paid by the Lessee to Borrower, this Assignment transfers to Agency all of Borrower's right, title, and interest in and to each such security deposit; provided, however, that Borrower shall have the right to retain said security deposit so long as Borrower is not in Default, after the expiration of any applicable notice and cure periods, under this Assignment, the Deed of Trust, the Note, the OPA or any other Loan Document; and provided further that Agency shall have no obligation to the Lessee with respect to such security deposit unless and until Agency comes into actual possession and control of said security deposit.

b. If any Lease provides for the abatement of rent during repair of the leased premises by reason of fire or other casualty, Borrower shall furnish rental insurance to Agency, the policies to be with companies and in form, content, policy limits, and terms as are customary in the case of entities owning similar property or assets similarly situated.

c. Each Lease shall remain in full force and effect despite any merger of the interest of Borrower and any Lessee thereunder. Except as otherwise provided in the OPA, Borrower shall not terminate any Lease (except pursuant to the terms of the Lease upon a Default by any Lessee thereunder), or materially modify or amend any Lease or any of the terms thereof, or grant any concessions in connection therewith or accept a surrender thereof, without the prior written consent of Agency, which consent shall not be unreasonably withheld.

d. Except as otherwise provided in the OPA, Borrower shall not hereafter execute any Lease, the terms and conditions of which have not been previously approved in writing by Agency, which approval shall not be unreasonably withheld or delayed.

e. Borrower shall not collect any Rents and Profits more than thirty (30) calendar days in advance of the date on which they become due under the terms of any Lease.

f. Borrower shall not discount any future accruing Rents and Profits.

g. Borrower shall not consent to any assignment of any Lease, or any subletting thereunder, whether or not in accordance with its terms, on any terms less favorable than those that would reflect an arm's length transaction in light of prevailing market conditions (subject to the rent restrictions applicable to the Premises), without the prior written consent of Agency, except as otherwise provided in the OPA.

h. Except as otherwise provided in the OPA, Borrower shall not execute any further assignment of any of the Rents and Profits or any interest therein or suffer or permit any such assignment to occur by operation of law.

i. Borrower shall not request, consent to, agree to, or accept a subordination of any Lease to any mortgage, deed of trust or other encumbrance, or any other lease, now or hereafter affecting the Premises or any part thereof, or suffer or permit conversion of any Lease to a sublease, without Agency's prior written consent.

j. Borrower shall faithfully perform and discharge all obligations of the lessor under each Lease, and shall give prompt written notice to Agency of any notice of Borrower's default received from any Lessee or any other person and furnish Agency with a complete copy of said notice. Borrower shall appear in and defend, at no cost to Agency, any action or proceeding arising under or in any manner connected with any Lease. If requested by Agency, Borrower shall enforce each Lease and all remedies available to Borrower against the Lessee in the case of default under the Lease by the Lessee.

k. Except as otherwise provided in the OPA, Borrower shall give Agency written notice immediately upon entering into a Lease of any part of the Premises and shall promptly upon request of Agency provide to Agency a true and correct copy of each executed Lease. Upon written notice from Agency to Borrower, such Lease shall be deemed included in

this Assignment as though originally listed herein. At Agency's option, such notice may be recorded in the Official Records of San Diego, California, which notice shall refer to this Assignment.

l. Except as otherwise provided in the OPA, at Agency's option, Borrower shall not hire, retain, or contract with any third party for property management services with respect to the Premises, other than the Manager, without the prior written approval of Agency of such party and the terms of its contract for management services.

m. Nothing herein shall be construed to impose any liability or obligation on Agency under or with respect to any Lease. Borrower shall indemnify, defend, and hold Agency, its officers, officials, directors, agents, employees, and representatives (the Indemnitees) harmless from and against any and all liabilities, losses, and damages that any Indemnitee may incur under any Lease or by reason of this Assignment, and of and from any and all claims and demands whatsoever that may be asserted against any Indemnitee by reason of any alleged obligations to be performed or discharged by Agency under any Lease or this Agreement, unless any of the foregoing arises from or results from the gross negligence or willful misconduct of any Indemnitee. Should any Indemnitee incur any liability, loss, or damage under any Lease or by reason of this Assignment and such liability, loss, or damage falls within the foregoing indemnification, Borrower shall immediately upon demand reimburse such Indemnitee for the amount thereof together with all costs and expenses and reasonable attorney's fees (based on itemized invoices for time and charges) and court costs incurred by such Indemnitee. All of the foregoing sums shall bear interest at the maximum rate permitted by law from demand by Indemnitee until paid. Any Rents and Profits collected by Agency may be applied by Agency, in its discretion, in satisfaction of any such liability, loss, damage, claim, demand, cost, expense, or fees.

8. Subject to the rights of the Construction Lender, Borrower hereby grants to Agency the following rights:

a. Upon an Event of Default as defined in the OPA, Agency shall be deemed to be the creditor of each Lessee in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership, or other debtor relief proceedings affecting such Lessee, without obligation on the part of Agency, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein.

b. Agency shall have the right to assign Borrower's right, title, and interest in the Leases to any subsequent holder of the Deed of Trust or any participating interest therein or to any person acquiring title to all or any part of the Premises through foreclosure or otherwise. Any subsequent Assignee shall have all the rights and powers herein provided to Agency.

c. Agency shall have the right (but not the obligation), upon any Event of Default under the Deed of Trust or the OPA, to take any action as Agency may deem necessary or appropriate to protect its security including, but not limited to, appearing in any action or

proceeding and performing any obligations of the lessor under any Lease; and Borrower agrees to pay, on demand, all costs and expenses including, without limitation, reasonable attorney's fees and court costs incurred by Agency in connection therewith, together with interest thereon at the highest rate of interest permitted by law per annum.

d. Upon any Default under this Assignment, the Deed of Trust, the Note, the OPA, or any other loan document (subject to any notice and cure provisions), and without notice to or consent of Borrower, Agency shall have the following rights (none of which shall be construed to be obligations of Agency):

i. Agency shall have the right under this Assignment to use and possess, without rental or charge, the Fixtures, Equipment, and Personal Property of the Borrower located in or on the Premises and used in the operation or occupancy thereof. Agency shall have the right to apply any of the Rents and Profits to pay installments due for Personal Property rented or purchased on credit, insurance premiums on Personal Property, or other charges relating to Personal Property in or on the Premises. However, this Assignment shall not make Agency responsible for the control, care, management, or repair of the Premises or any Personal Property or for the carrying out of any of the terms or provisions of any Lease.

ii. Agency shall have the right to apply the Rents and Profits and any sums recovered by Agency hereunder to the outstanding Indebtedness, as well as to charges for taxes, insurance, improvements, maintenance, and other items relating to the operation of the Premises.

iii. Agency shall have the right to take possession of the Premises, manage and operate the Premises and Borrower's business thereon, and to take possession of and use all books of account and financial records of Borrower and its property managers or representatives relating to the Premises.

iv. Agency shall have the right to execute new Leases of any part of the Premises, including Leases that extend beyond the term of the Deed of Trust.

v. Agency shall have the right to cancel or alter any existing Leases.

vi. Agency shall have the irrevocable authority, as Borrower's attorney-in-fact, such authority being coupled with an interest, to sign the name of Borrower and to bind Borrower on all papers and documents relating to the operation, leasing and maintenance of the Premises.

e. All of the foregoing rights and remedies of Agency are cumulative, and Agency shall also have upon the occurrence of any such Default or Event of Default all other rights and remedies provided under the Note, the OPA, the Deed of Trust, or any other loan document or other agreement between Borrower and Agency or between Borrower and Lessee, or otherwise available at law or in equity or by statute subject to the limited recourse clause set

forth in the Note.

9. Failure of Agency to avail itself of any terms, covenants, or conditions of this Assignment for any period of time or for any reason shall not constitute a waiver thereof.

10. Notwithstanding any future modification of the terms of the Note, the Deed of Trust, the OPA, or any other loan document, this Assignment and the rights and benefits hereby assigned and granted shall continue in favor of Agency in accordance with the terms of this Assignment.

11. This Assignment shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors, and assigns of the parties hereto (including without limitation in the case of Agency, any third parties now or hereafter acquiring any interest in the Indebtedness or other obligations of Borrower under the Note or Deed of Trust or a part thereof, whether by virtue of assignment, participation, or otherwise). The terms Borrower, Agency, and Lessee, wherever used herein, shall include the persons and entities named herein or in any Lease and designated as such and their respective heirs, legal representatives, successors and assigns, provided that any action taken by the named Agency or any successor, designated as such by an instrument recorded in the Official Records of San Diego County, California, referring to this Assignment, shall be sufficient for all purposes notwithstanding that Agency may have theretofore assigned or participated any interest in the obligation to a third party. All words, terms and phrases shall be taken to include the singular or plural number, and the masculine, feminine, or neuter gender, as may fit the case.

12. Any change, amendment, modification, abridgment, cancellation, or discharge of this Assignment or any term or provision hereof shall be invalid without the written consent of Agency.

13. Upon payment to Agency of the full amount of the Indebtedness and other obligations secured hereby and by the Note and Deed of Trust, as evidenced by a recorded satisfaction or release of the Deed of Trust, this Assignment shall be void and of no further effect.

14. All notices, demands, approvals, and other communications provided for in the Loan Documents shall be in writing and be delivered by telegraph, cable, overnight air courier, personal delivery, or registered or certified U.S. mail, postage prepaid with return receipt requested to the appropriate party at its address as follows:

If to Borrower:	VERBENA SAN YSIDRO, L.P., a California limited partnership 5993 Avenida Encinas; Suite 101 Carlsbad, California 92008 Attention: James J. Schmid
With a copy to:	Marshal A. Scarr Attorney at Law Peterson & Price, A.P.C. 655 W. Broadway; Suite 1600 San Diego, California 92101-8494
If to Agency:	Redevelopment Agency of the City of San Diego 1200 Third Avenue; Suite 1400 San Diego, California 92101 Attention: Project Manager – San Ysidro Redevelopment Project Area

Addresses for notice may be changed from time to time by written notice to all other parties. Any communications given by telegram or cable must be confirmed within forty-eight (48) hours by overnight air courier or mail in the manner hereinbefore described. If any communication is given by mail in the manner hereinabove described, it will be effective upon the earlier of (a) three (3) calendar days after deposit in a post office or other official depository under the care and custody of the United States Postal Service, or (b) actual receipt, as indicated by the return receipt; if given by telegraph or cable, when delivered to the telegraph company with charges prepaid; and if given by personal delivery, or by overnight air courier, when delivered to the appropriate address set forth above.

15. This Assignment may be recorded in the Official Records of San Diego County, California, and Borrower shall pay all fees, charges, costs, and expenses of such recording.

16. If any provision hereof is determined to be illegal or unenforceable for any reason, the remaining provisions hereof shall not be affected thereby.

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

18. If Agency should bring any action to enforce its rights hereunder at law or at equity, Borrower shall reimburse Agency for all reasonable attorney's fees and costs expended in connection therewith.

IN WITNESS WHEREOF, the undersigned Borrower has executed this Assignment as of the date first above written.

BORROWER

VERBENA SAN YSIDRO, L.P., a California limited partnership

By: CIC Verbena, LLC, a California limited liability company, its Administrative General Partner

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

By: _____
James J. Schmid, President

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____, a Notary Public, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____, a Notary Public, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____

EXHIBIT "A"

LEGAL DESCRIPTION

All that certain real property located in the County of San Diego, State of California, described as follows:

[BEHIND THIS PAGE]

LEGAL DESCRIPTION OF THE PROPERTY

Lot 1 of Map 15435 recorded in the office of the County Recorder for the County of San Diego on the 19th of September, 2006 under File Number 2006-0666317.

ATTACHMENT NO. 11

ASSIGNMENT OF AGREEMENTS

[Behind this page.]

ASSIGNMENT OF AGREEMENTS, PLANS, SPECIFICATIONS AND ENTITLEMENTS

FOR VALUE RECEIVED, the undersigned, VERBENA SAN YSIDRO, L.P., a California limited partnership [Borrower], pursuant to that certain Owner Participation Agreement entered into by and between Borrower and the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO [Agency] dated as of _____ [Owner Participation Agreement] for the development of that certain real property legally described in Exhibit "A" attached to this Assignment and incorporated herein by this reference, hereby assigns to the Agency, subordinate to the rights of _____ and its successors and assigns [Construction Lender], all of Borrower's rights and interest, but not its obligations, in, under and to the following, as they relate to the Improvements (as defined in the Owner Participation Agreement), as of the date hereof, _____, 20__ [Effective Date]:

1. All architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto [collectively, "Architectural or Engineering Agreements"] heretofore or hereafter entered into or prepared by any Architect/Engineer, engineer or other person or entity [collectively "Architect/Engineer(s)"], for or on behalf of Borrower in connection with the construction of the Improvements;

2. All plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto [collectively "Plans and Specifications"] heretofore or hereafter prepared by any architect, engineer or other person or entity [collectively "Architect/Engineer(s)"], for or on behalf of Borrower in connection with the construction of the Improvements; and

3. All governmental permits, approvals and entitlements [collectively "Entitlements"] relating to the construction and operation of the Improvements heretofore or hereafter granted by the City of San Diego or any other governmental authority having jurisdiction over the Site.

The Architectural or Engineering Agreements, Plans and Specifications and Entitlements consist of are those which Borrower has heretofore entered into, received or obtained and shall include, but not be limited to, those described in the Schedule of Architectural and Engineering Agreements, Plans and Specifications and Entitlements attached to this Assignment as Exhibit "B" and incorporated herein by this reference.

This ASSIGNMENT OF AGREEMENTS, PLANS AND SPECIFICATIONS AND ENTITLEMENTS [Assignment] constitutes a present and absolute assignment to Agency as of the Effective Date. Borrower represents and warrants to Agency, as of the Effective Date, that, to the actual knowledge of Borrower: (a) all Architectural or Engineering

Agreements entered into by Borrower are in full force and effect and are enforceable in accordance with their terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Architectural or Engineering Agreements; (b) all copies of the Architectural or Engineering Agreements and Plans and Specifications delivered to Agency are complete and correct copies; and (c) Borrower has not assigned any of its rights under the Architectural and Engineering Agreements or with respect to the Plans and Specifications.

This Assignment shall be governed by the laws of the State of California, except to the extent that Federal laws preempt the laws of the State of California, and Borrower consents to the jurisdiction of any Federal or State Court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorney's fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of Borrower and Agency.

The attached Consent, Schedule 1, Exhibit "A" and Exhibit "B" are incorporated by this reference.

Executed by Borrower as of _____, 20__.

BORROWER

VERBENA SAN YSIDRO, L.P., a California limited partnership

By: CIC Verbena, LLC, a California limited liability company, its Administrative General Partner

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

By: _____
James J. Schmid, President

CONSENT

[TO BE ADDED FOR EACH ARCHITECT, LANDSCAPE ARCHITECT AND ENGINEER PREPARING PLANS FOR THE IMPROVEMENTS]

The undersigned Architect/Engineer ["Architect" or "Engineer" as the case may be] hereby consents to the foregoing Assignment to which this Consent [Consent] is part, and acknowledges that there presently exists no unpaid claims due to the Architect/Engineer except as set forth on Schedule 1 attached hereto and incorporated herein by this reference, arising out of the preparation and delivery of the Plans and Specifications to Borrower and/or the performance of the Architect/Engineer's obligations under the Assignment.

Architect/Engineer agrees that if Agency shall become the owner of said Property and elects to undertake the operation or construction of the Improvements on any portion of the Property, in accordance with the Plans and Specifications, and gives Architect/Engineer written notice of such election; THEN, so long as Architect/Engineer has received, receives or continues to receive the compensation called for under the Agreements, Agency may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Architect/Engineer will continue to perform its obligations under the Agreements for the benefit and account of Agency in the same manner as if performed for the benefit or account of Borrower in the absence of the Assignment.

Architect/Engineer warrants and represents that they have no knowledge of any prior assignment(s) of any interest in the Plans and Specifications and/or the Agreements, except for an assignment to [INSERT NAME OF SENIOR LENDER]. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

Executed on _____.

ARCHITECT/ENGINEER:

By: _____

Architect/Engineer's Address:

Agency's Address:

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO
1200 Third Avenue; Suite 1400
San Diego, California 92101

SCHEDULE 1 TO ASSIGNMENT
SCHEDULE OF UNPAID CLAIMS

Schedule 1 to Assignment of Agreements, Plans and Specifications and Entitlements dated as of _____, 20__ between VERBENA SAN YSIDRO, L.P., a California limited partnership, as "Borrower", and REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, as "Agency".

EXHIBIT "A"
PROPERTY DESCRIPTION

Exhibit A to Assignment of Agreements, Plans and Specifications and Entitlements dated as of _____, 20__ between VERBENA SAN YSIDRO, L.P., a California limited partnership, as "Borrower", and REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, as "Agency".

All that certain real property located in the County of San Diego, State of California, described as follows:

LEGAL DESCRIPTION OF THE PROPERTY

Lot 1 of Map 15435 recorded in the office of the County Recorder for the County of San Diego on the 19th of September, 2006 under File Number 2006-0666317.

EXHIBIT "B"
LIST OF ARCHITECTURAL OR ENGINEERING AGREEMENTS, PLANS AND SPECIFICATIONS AND ENTITLEMENTS

[TO BE ADDED]

ATTACHMENT NO. 12

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY [Indemnity], is dated this _____ day of _____, 200__, and made by VERBENA SAN YSIDRO, L.P., a California limited partnership [Borrower], whose address for purposes of giving notices is 5993 Avenida Encinas; Suite 101, Carlsbad, California 92008, in favor of the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, whose address for purposes of giving notices is 1200 Third Avenue; Suite 1400, San Diego, California 92101 [Agency].

WITNESSETH

WHEREAS, Borrower has entered into a purchase agreement for the purchase as owner of certain real property in the City of San Diego, as more particularly described on Exhibit "A" attached hereto and made a part hereof, and the real property improvements thereon [collectively referred to as the Property]; and

WHEREAS, Agency and Borrower entered into that certain Owner Participation Agreement, dated as of _____ [OPA], concerning the acquisition and development by Borrower of the Property; and

WHEREAS, pursuant to the OPA, Agency agreed to make a loan to Borrower [Agency Loan] for the purpose of providing part of the financing for the acquisition and construction of a residential rental development consisting of eighty (80) residential rental units, seventy-nine (79) of which shall be rented exclusively to and occupied by Very Low Income and Low Income households at an Affordable Rent, and one of which shall be used as the manager's unit, with attached one or two car garages, and recreational amenities [Project], all as described in the Scope of Development, in accordance with the requirements of the Agreement Affecting Real Property [the OPA and the documents and instruments referred to therein which are being executed by Borrower concurrently herewith are referred to collectively as the Loan Documents]; and

WHEREAS, Borrower has agreed to execute and deliver to the Agency this Indemnity to induce the Agency to make the Agency Loan.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Borrower hereby agrees with the Agency as follows:

Section 1. DEFINITIONS

For the purpose of this Indemnity, "Hazardous Materials" or "Hazardous Substances" shall include, but not be limited to, substances defined as "extremely hazardous substances", "hazardous substances", "hazardous materials", "hazardous waste" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 11001-11050; the Hazardous Materials Transportation Act, 49 U.S.C. sections 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. sections 6901, *et*

seq.; and those substances defined as "hazardous waste" in section 25117 of the California Health and Safety Code, as "infectious waste" in section 25117.5 of the California Health and Safety Code, or as "hazardous substances" in section 25316 of the California Health and Safety Code or "hazardous materials" as defined in section 353 of the California Vehicle Code; and in the regulations adopted and publications promulgated pursuant to said laws. Other capitalized terms used in this Indemnity shall have the meanings ascribed to them in the OPA with the same force and effect as if set forth in full herein.

Section 2. COVENANTS AND INDEMNITY

The following covenants, and indemnities are hereby given and made by Borrower:

2.1 Covenants.

(a) Borrower covenants that it shall comply with any and all laws, regulations, and/or orders which may be promulgated, from time to time, with respect to the discharge and/or removal of Hazardous Materials, to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any such Hazardous Materials, and to keep the Property free of any lien imposed pursuant to any such laws, regulations, or orders.

(b) Borrower covenants that the Property will not, while Borrower is the owner or has any control thereof, be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials, except for de minimis quantities used at the Property in compliance with all applicable environmental laws and required in connection with the routine operation and maintenance of the Property.

(c) Borrower further agrees that Borrower shall not release or dispose of any Hazardous Materials at the Property without the express written approval of the Agency and that any such release or disposal shall be effected in strict compliance with all applicable laws and all conditions, if any, established by the Agency.

(d) The Agency shall have the right, at any time, to conduct an environmental audit of the Property at the Agency's expense, unless Hazardous Materials are found, then at Borrower's sole cost and expense, and Borrower shall cause Borrower to cooperate in the conduct of any such environmental audit but in no event shall such audit be conducted unless the Agency believes that such audit is warranted. Other than in an emergency, such audit shall be conducted only after prior notice has been given to Borrower and only in the presence of a representative of Borrower. Borrower shall give the Agency and its agents and employees access to the Property to remove, or otherwise to mitigate against the effects of, Hazardous Materials.

(e) Borrower shall not install, or permit to be installed, on the Property friable asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material, and, with respect to any such material currently present in the Property, Borrower shall promptly either (i) remove or cause to be removed any material that such regulations deem hazardous and require to be removed, or (ii) otherwise comply with such federal and state regulations, at Borrower's sole cost and expense. If Borrower shall fail to so do within the cure period permitted under applicable law, regulation, or order, the Agency may do

whatever is necessary to eliminate said substances from the premises or to otherwise comply with the applicable law, regulation, or order, and the costs thereof shall be added to the Obligations (as hereinafter defined) of Borrower under this Section 2.

(f) Borrower shall immediately advise the Agency in writing of any of the following: (i) any pending or threatened environmental claim against Borrower or the Property or (ii) any condition or occurrence on the Property that (A) results in noncompliance by Borrower with any applicable environmental law, (B) could reasonably be anticipated to cause the Property to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any environmental law, or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property or Borrower.

2.2 Indemnity. Borrower shall indemnify, protect, and hold the Agency harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses (including, without limitation, attorneys' and experts' fees and disbursements) of any kind or of any nature whatsoever [collectively, the "Obligations"] which may at any time be imposed upon, incurred by or asserted or awarded against the Agency and arising from or out of:

(1) The presence of any Hazardous Materials on, in, under, or affecting all or any portion of the Property or any surrounding areas, except to the extent such Hazardous Materials were caused by the Agency or its agents;

(2) The breach of any covenant made by Borrower in Section 2.1 hereof; or

(3) The enforcement by the Agency of any of the provisions of this Section 2.2 or the assertion by Borrower of any defense to its obligations hereunder.

Notwithstanding any other provision or as otherwise allowed by law, the Agency may also recover directly from Borrower or from any other party who may be responsible for:

(1) Obligations, including, but not limited to, any damages, costs and expenses incurred by Agency as a result of fraud or any criminal act or acts of Borrower or any partner, member, shareholder, officer, director, agent, or employee of Borrower, or of any general or limited partner of Borrower;

(2) Obligations, including, but not limited to, any damages, costs and expenses incurred by Agency as a result of any misappropriation of funds provided for the construction of the Project, as described in the OPA, rents and revenues from the operation of the Project following an Event of Default, any funds on deposit in a replacement reserve or operating reserve account or security deposits held by Borrower with respect to the Property, or proceeds of insurance policies or condemnation proceeds;

(3) Obligations, including, but not limited to, any damages, costs and expenses incurred by the Agency as a result of the negligence of such

person or entity, involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials; and

(4) all court costs and attorney's fees reasonably incurred in enforcing or collecting upon any of the foregoing Obligations (provided that Agency shall pay Borrower's reasonable court costs and attorney's fees if Borrower is the prevailing party in any such enforcement or collection action).

Section 3. BORROWER'S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations. Borrower hereby agrees that the Obligations will be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law, regulation, or order now or hereafter in effect in any jurisdiction affecting any of the Loan Documents or affecting any of the rights of the Agency with respect thereto. The obligations of Borrower hereunder shall be absolute and unconditional irrespective of:

(1) The validity, regularity, or enforceability of the Loan Documents or any other instrument or document executed or delivered in connection therewith;

(2) Any alteration, amendment, modification, release, termination, or cancellation of any of the Loan Documents, or any change in the time, manner, or place of payment of, or in any other term in respect of, all or any of the obligations of Borrower contained in any of the Loan Documents;

(3) Any extension of the maturity of the Agency Loan or any waiver of, or consent to any departure from, any provision contained in any of the Loan Documents;

(4) Any exculpatory provision in any of the Loan Documents limiting the Agency's recourse to property encumbered by the Deed of Trust securing the Agency Loan, or to any other security, or limiting the Agency's rights to a deficiency judgment against Borrower;

(5) Any exchange, addition, subordination, or release of, or non-perfection of any lien on or security interest in, any collateral for the Agency Loan, or any release, amendment, waiver of, or consent to any departure from any provision of, any other Borrower or guarantee given in respect of the Agency Loan;

(6) The insolvency or bankruptcy of Borrower, Agency, or of any indemnitor or guarantor under any other indemnity or guarantee given in respect of the Agency Loan; or

(7) Any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower, Borrower, or any other

indemnitor or guarantor with respect to the Agency Loan or any or all of the Obligations.

3.2 Continuation. This Indemnity (a) is a continuing indemnity and shall remain in full force and effect until the satisfaction in full of all of the Obligations (notwithstanding the payment in full of the Agency Loan or the release or other extinguishment of the Deed of Trust or any other security for the Agency Loan); and (b) shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Agency upon the insolvency, bankruptcy, or reorganization of Borrower or otherwise, all as though such payment had not been made.

3.3 Termination. Notwithstanding the payment (and performance) in full of all of the Obligations and the payment (or performance) in full of all of Borrower's obligations under the Loan Documents, this Indemnity shall not terminate if any of the following shall have occurred:

(1) The Agency has at any time or in any manner participated in the management or control of, taken possession of (whether personally, by agent or by appointment of a receiver), or taken title to the Property or any portion thereof, whether by foreclosure, deed in lieu of foreclosure, sale under power of sale or otherwise; or

(2) There has been a change, between the date hereof and the date on which all of the Obligations are paid and performed in full, in any Hazardous Materials laws, the effect of which may be to make a lender or mortgagee liable in respect of any of the Obligations, notwithstanding the fact that no event, circumstance, or condition of the nature described in paragraph (a) above ever occurred.

Section 4. WAIVER

Borrower hereby waives the following:

(1) Promptness and diligence;

(2) Notice of acceptance and notice of the incurrence of any obligation by Borrower;

(3) Notice of any action taken by the Agency, Borrower, or any other interested party under any Loan Document or under any other agreement or instrument relating thereto;

(4) All other notices, demands, and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Borrower of its Obligations hereunder;

(5) The right to a trial by jury with respect to any dispute arising under, or relating to, this Indemnity;

(6) Any requirement that the Agency protect, secure, perfect, or insure any security interest or lien in or on any property subject thereto;

(7) Any requirement that the Agency exhaust any right or take any action against Borrower or any other person or collateral; and

(8) Any defense that may arise by reason of:

(i) The incapacity, lack of authority, death or disability of, or revocation hereof by, any person or persons;

(ii) The failure of the Agency to file or enforce any claim against the estate (in probate, bankruptcy, or any other proceedings) of any person or persons; or

(iii) Any defense based upon an election of remedies by the Agency, including, without limitation, an election to proceed by nonjudicial foreclosure or which destroys or otherwise impairs the subrogation rights of Borrower or any other right of Borrower to proceed against any party.

Section 5. NOTICES

Any notice, demand, statement, request, or consent made hereunder shall be in writing and shall be personally served, mailed by first-class registered mail, return receipt requested, to the address set forth in the first paragraph of this Indemnity.

Any notice 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; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 6. MISCELLANEOUS

6.1 Borrower shall make any payment required to be made hereunder in lawful money of the United States of America, and in same day funds, to the Agency at its address specified in the first paragraph hereof.

6.2 No amendment of any provision of this Indemnity shall be effective unless it is in writing and signed by Borrower and the Agency, and no waiver of any provision of this Indemnity, and no consent to any departure by Borrower from any provision of this Indemnity, shall be effective unless it is in writing and signed by the Agency, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of the Agency to exercise, and no delay in exercising, any right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall

any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agency provided herein and in the other Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agency under any Loan Document against any party thereto are not conditional or contingent on any attempt by the Agency to exercise any of its rights under any other Loan Document against such party or against any other person or collateral.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity shall (a) be binding upon Borrower, and Borrower's successors and assigns; and (b) inure, together with all rights and remedies of the Agency hereunder, to the benefit of the Agency, its respective directors, officers, officials, employees, and agents, any successors to the Agency's interest in the Property, any other person who acquires any portion of the Property at a foreclosure sale or otherwise through the exercise of the Agency's rights and remedies under the Loan Documents, any successors to any such person, and all directors, officers, officials, employees, and agents of all of the aforementioned parties. Without limiting the generality of clause (b) of the immediately preceding sentence, the Agency may, subject to, and in accordance with, the provisions of the Loan Documents, assign or otherwise transfer all or any portion of its rights and obligations under any other Loan Document, to any other person, and such other person shall thereupon become vested with all of the rights and obligations in respect thereof that were granted to the Agency herein or otherwise. None of the rights or obligations of Borrower hereunder may be assigned or otherwise transferred without the prior written consent of the Agency.

6.6 Borrower hereby (a) irrevocably submits to the jurisdiction of any California or federal court sitting, in each instance, in San Diego County in any action or proceeding arising out of or relating to this Indemnity, (b) waives any defense based on doctrines of venue or forum non convenient or similar rules or doctrines, and (c) irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such California or federal court. Borrower irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. Borrower agrees that a final judgment in any such action or proceeding shall be inclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit, or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity shall be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein, except to the extent that the laws of the United States preempt the laws of the State of California.

6.9 This Indemnity may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, Borrower has duly executed this Indemnity as of the date first set forth above.

BORROWER

VERBENA SAN YSIDRO, L.P., a California limited partnership

By: CIC Verbena, 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"

LEGAL DESCRIPTION

LEGAL DESCRIPTION OF THE PROPERTY

Lot 1 of Map 15435 recorded in the office of the County Recorder for the County of San Diego on the 19th of September, 2006 under File Number 2006-0666317.

ATTACHMENT NO. 13

UCC-1 Financing Statement

Collateral Description:

All of the following described property located on the real property in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof, [Property].

All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Property.

Together with the rents, issues and profits thereof; and together with all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures including, but not limited to, all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot-water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantles, cabinets, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed to be permanently affixed to and a part of the realty.

Together with all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein.

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Together with all plans, drawings, specifications, etc., and articles of personal property now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the completion and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner.

VERBENA SAN YSIDRO, L.P., a California limited partnership

By: CIC Verbena, LLC, a California limited liability company, its Administrative General Partner

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

Dated: _____

By: _____
James J. Schmid, President

EXHIBIT "A"

LEGAL DESCRIPTION

LEGAL DESCRIPTION OF THE PROPERTY

Lot 1 of Map 15435 recorded in the office of the County Recorder for the County of San Diego on the 19th of September, 2006 under File Number 2006-0666317.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On _____ , 20__, before me,_____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature_____

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On _____ , 20__, before me,_____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature_____

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

1c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

1d. TAX ID #: SSN OR EIN | ADD'L INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION | 1f. JURISDICTION OF ORGANIZATION | 1g. ORGANIZATIONAL ID #, if any ☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

2c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

2d. TAX ID #: SSN OR EIN | ADD'L INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION | 2f. JURISDICTION OF ORGANIZATION | 2g. ORGANIZATIONAL ID #, if any ☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

3c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR | CONSIGNEE/CONSIGNOR | BAILEE/BAILOR | SELLER/BUYER | AG. LIEN | NON-UCC FILING

6. ☐ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) (optional) | All Debtors | Debtor 1 | Debtor 2

8. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

	9a. ORGANIZATION'S NAME		
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

	11a. ORGANIZATION'S NAME				
OR	11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

11d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any ☐ NONE

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

	12a. ORGANIZATION'S NAME				
OR	12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
12c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction — effective 30 years

☐ Filed in connection with a Public-Finance Transaction — effective 30 years

ATTACHMENT NO. 14

SUBORDINATION AGREEMENT

[Behind this page.]

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:
[Construction Lender]

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 this _____ day of _____, 200__, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic [Agency], VERBENA SAN YSIDRO, L.P., a California limited partnership [Borrower], and _____ [Construction Lender].

RECITALS

A. Borrower is the owner of that certain real property [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, 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"].

C. For the purpose of increasing the supply of housing in the City of San Diego that will be affordable to Low Income households, Agency and Borrower have entered into that certain Owner Participation Agreement, dated as of _____ [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 (any capitalized term that is not otherwise defined in this Agreement shall have the meaning ascribed to such term in the Owner Participation Agreement), providing, among other things, for a loan of Housing Funds to Borrower to provide a portion of the financing for the acquisition of the Property and the construction of an 80 unit residential development, including 79 units to be rented exclusively to and occupied by Low Income and Very Low Income persons.

D. Pursuant to the Owner Participation Agreement, among other things, the Agency has made a loan to Borrower in the amount of $5,586,000 [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 [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 [Agency Deed of Trust]; an Assignment of Rents and Leases [Assignment of Rents]; an Assignment of Agreements [Assignment of Agreements], and a UCC-1 Financing Statement [UCC-1]; 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 the Agency Loan Documents shall be referred to collectively as the "Agency Documents".

E. The Construction Lender will originate a first mortgage construction loan in the approximate principal amount of $13,502,000, consistent with the Agency approved Project Budget [Construction Loan]. The Construction Loan is evidenced by a promissory note in the amount of the Construction Loan [Construction Loan Note] and is secured by, among other things, a Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing in favor of the Construction Lender [Construction Loan Deed of Trust]. The Construction Loan Note and the Construction Loan Deed of Trust and any other documents and instruments executed by Borrower in connection with the Construction Loan are referred to collectively as the "Construction Loan Documents".

F. 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.

G. 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 be as follows: (1) the Construction Loan Documents; and (2) the Agency Documents.

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

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 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 originate 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 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; and

(b) Construction Lender consents to and approves 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 or encumbrance of the Agency Documents in favor of the prior lien, charge or encumbrance upon the Property and Improvements as referred to in this Agreement 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 said reliance upon this waiver, relinquishment and subordination.

6. Notwithstanding anything to the contrary contained in the Subordination Agreement, the parties hereto hereby acknowledge that California Health and Safety Code Section 33334.2 et seq., which is the applicable State Law governing the program pursuant to which the Agency is authorized to make the Agency Loan, permits the Agency to subordinate the requirements contained in the Agency Documents to the Construction Lender's lien only if the Agency obtains commitments from the Construction Lender designed to provide the Agency with an opportunity to protect its interests in the event of Borrower's default, as hereinafter set forth. Therefore, 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, Construction Lender shall promptly notify Agency at the address set forth in the Agency Deed of Trust of the occurrence of such event of default, which notification shall be provided to Agency within the time provided pursuant to California Civil Code Section 2924b.(b)(1);

(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; 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, the Agency shall have the right to propose to Construction Lender, without any obligation on the part of Construction Lender to accept, terms and conditions pursuant to which Construction Lender might agree to permit the restrictions on rent and occupancy of the Property as set forth in the Agreement Affecting Real Property to remain in effect following such foreclosure;

(d) 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, the Agency shall have the right to take title to the Property and/or the Improvements and cure the default relative to the Construction Loan Documents, without Construction Lender exercising any right it might otherwise have to accelerate the Construction Loan by reason of such title transfer; and

(e) After a default on the Construction Loan Documents, but prior to a foreclosure sale or deed in lieu assignment of the Property and the Improvements, the Agency shall have the right to purchase the Property and the Improvements from the Borrower and pay all amounts due and owing under the Construction Loan Documents.

7. 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.

IN WITNESS WHEREOF, the parties executed this Agreement as of the day and year set forth above.

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By:_____
James T. Waring
Assistant Executive Director

APPROVED the form and legality of this Agreement
this ___ day of _____, 200__.

Michael J. Aguirre
Agency General Counsel

By:_____

[SIGNATURES CONTINUE ON FOLLOWNG PAGE]

BORROWER

VERBENA SAN YSIDRO, L.P., a California limited partnership

By: CIC Verbena, LLC, a California limited liability company, its Administrative General Partner

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

By: _____
James J. Schmid, President

[CONSTRUCTION LENDER]

By: _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____, a Notary Public, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____, a Notary Public, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____, a Notary Public, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____, a Notary Public, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____

EXHIBIT "A"

LEGAL DESCRIPTION

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

[BEHIND THIS PAGE]

LEGAL DESCRIPTION OF THE PROPERTY

Lot 1 of Map 15435 recorded in the office of the County Recorder for the County of San Diego on the 19th of September, 2006 under File Number 2006-0666317.

ATTACHMENT NO. 15

DISBURSEMENT AGREEMENT

[Behind this page.]

DISBURSEMENT AGREEMENT

THIS DISBURSEMENT AGREEMENT [Agreement] is entered into on this _____ day of _____, 200__, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO [Agency], _____ [Construction Lender] and VERBENA SAN YSIDRO, L.P., a California limited partnership [Borrower].

RECITALS

A. Agency and Borrower have heretofore entered into that certain Owner Participation Agreement dated _____, 2007 [OPA], which is incorporated herein by this reference, relating to that real property [Property] legally described in Attachment No. 2 to the OPA and incorporated herein by this reference. The OPA, the promissory Note evidencing the Agency Loan (defined below), the Agency 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", and are incorporated herein by this reference.

B. In accordance with the OPA, Borrower intends to construct on the Property a residential rental development consisting of eighty (80) residential rental units, seventy-nine (79) of which shall be rented exclusively to and occupied by Very Low Income and Low Income households at an Affordable Rent [Units], and one of which shall be used as the manager's unit, with attached one or two car garages providing approximately one hundred seventy seven (177) parking spaces, and recreational amenities [Project], all as described in the Scope of Development attached as Attachment No. 4 to the OPA and incorporated herein by this reference. The costs of the acquisition of the Property and development and construction of the Project [Acquisition and Development Costs or Costs] are set forth in the Project Budget approved by the Agency and the Construction Lender as the final project budget, which is attached to this Agreement as Exhibit "A" and incorporated herein by this reference [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 or designee and as provided in this Agreement by the Construction Lender without the need for the Agency's consent, 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 [Agency Loan], to be used to finance a portion of the Acquisition and Development Costs. The Agency Loan is that Agency Residual Receipts Loan, in the original principal amount of $5,586,000, evidenced by the Agency Residual Receipts Promissory Note and secured by the Agency Deed of Trust.

D. Construction Lender and Borrower have entered into that certain Construction Loan Agreement [Construction Loan Agreement], pursuant to which Construction Lender has agreed to lend Borrower funds in the amount of approximately $13,502,000 [Construction Lender Funds or Construction Loan] to finance a portion of the Acquisition and Development Costs. 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."

E. In addition to the Agency Loan and the Construction Lender Funds, Borrower will provide certain additional funds [collectively referred to as Borrower's Funds] to pay the portion of the Acquisition and Development Costs in excess of the sum of the Agency Loan and the Construction Lender Funds. The Borrower's Funds consist of the following:

(1) Disbursement during the construction period of a portion of the capital contributions of the Tax Credit Equity Investor of Borrower [Tax Credit Equity Investor], as described in Borrower's Agreement of Limited Partnership, dated as of _____ [Partnership Agreement], in the amount of $9,073,000, sometimes also referred to as the "Tax Credit Proceeds", increasing to $18,693,000 upon Completion and lease-up and stabilized occupancy;

(2) Although Borrower is entitled to a developer fee, Borrower shall not receive a portion of the developer fee in the amount of $700,000 during the construction period until the Permanent Loan is funded. Upon the close of the Permanent Loan, Borrower has agreed to defer receipt of a portion thereof in the amount of up to $281,000 [Deferred Developer Fee] to be paid, with interest at the minimum interest rate allowed by the IRS, one hundred percent (100%) out of Residual Receipts in its entirety before Residual Receipts are distributed to Agency to pay against the Residual Receipts Loan; and

(3) Borrower shall be responsible, during the construction period, to provide funds if and as needed to pay for cost overruns and contingencies not otherwise funded by other sources of construction financing, in accordance with the requirements and procedures of the Construction Loan Documents.

F. The Agency Loan, Construction Lender Funds and Borrower's Funds are referred to herein collectively as the "Project Funds." Agency and Construction Lender are referred to herein collectively as the "Lenders."

G. The Lenders and Borrower desire to enter into this Agreement solely to provide for the disbursement of the Project Funds for approved Acquisition and Development Costs and to provide for cooperation among the Lenders.

NOW, THEREFORE, the parties agree as follows:

1. Deposit and Use of Funds.

a. Borrower's Account. Except as otherwise provided by the Construction Lender, Borrower shall deposit the Borrower's Funds into a fully segregated disbursement account held by the Construction Lender, which shall be a money market account acceptable to the Borrower

and Construction Lender and shall be pledged as security for the Construction Loan [Borrower's Account].

b. Loan Balancing.

(i) In the event either of the Construction Lender or Agency determines, from time-to-time, that the mathematically combined amounts of the Agency Loan, Construction Loan proceeds, Borrower's Funds and cash commitments, as set forth in the attached Project Budget, are insufficient to pay all Acquisition and Development Costs, including increased costs due to change orders, cost overruns or otherwise, then, upon notice from the Agency or the Construction Lender [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 Borrower fails to deposit such additional Borrower's Funds into the Borrower's Account, Construction Lender shall have the right (but not the obligation) to exercise all rights and remedies under the Construction Loan Documents, including, without limitation, to declare a default, to commence judicial and non-judicial foreclosure actions, to seek the appointment of a receiver or to advance additional Construction Loan proceeds to pay such additional Acquisition and Development Costs as Construction Lender may deem necessary to protect its collateral and cure such a default. In this regard, subject to the Agency's approval and in accordance with the terms of the OPA, any such additional amounts advanced by Construction Lender to pay such Acquisition and Development Costs may (to the extent such Costs constitute Approved Costs, as hereinafter defined) be added to the stated loan amount of the Construction Loan secured by the Construction Lender's deed of trust and shall be and remain senior to the lien of the deed of trust securing the Note, all on the terms and conditions set forth in any applicable subordination agreement.

(iii) 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 or the Construction Loan.

(iv) As used in this 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 completion of the Project in accordance with Plans and Specifications for the Project which were approved by the Construction Lender and the Agency.

c. Amendments to Project Budget. Subject to the terms and provisions of this Agreement, the OPA and the Construction Loan Documents, any change order or Project Budget amendment [collectively referred to as a Revision] shall require the approval of the Agency and Construction Lender. The Agency shall be deemed to have approved any requested Revision approved by the Construction 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 Construction Lender in connection with its approval of the Revision, and if the following condition exists:

(1) To the extent the Revision is limited to a reallocation of budgeted funds among Project Budget line items without any increase in the total Project Budget, (a) the funds in the line item(s) to be reduced remain sufficient for completion of the Project, and (b) the requested increase in one or more line item(s) is to be used to pay Approved Costs.

d. Agency Loan. The Agency Loan proceeds shall be deposited and held by the Agency as the Agency shall determine, to be disbursed as provided in this Agreement. The Agency Loan proceeds are not pledged to the Construction Lender nor shall they constitute security for the Construction Loan.

e. Construction Loan. The Construction Loan proceeds shall be deposited and held by the Construction Lender as the Construction Lender shall determine, to be disbursed as provided in the Construction Loan Agreement. The Construction Lender Funds are not pledged to the Agency, nor shall they constitute security for the Agency Loan.

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

2. Use of Funds to Pay Costs.

a. Approved Costs. The Agency Loan proceeds, Construction Loan proceeds 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 (subject to paragraph b. of this Section 2, below), such payment of, or reimbursement for, Acquisition and Development Costs, to be made only after the same have been incurred by the Borrower.

b. Budget Amendments: Construction Lender's Right to Disburse Funds without Agency Approval. Notwithstanding any provision of this Agreement requiring approval by the Agency of amendments to the Project Budget, the Construction Lender shall have the right, without Agency approval, to disburse Borrower's Funds and Construction Lender Funds to pay Approved Costs shown in an amendment to the Project Budget which the Agency has approved.

3. Draw Requests

a. Application for Payment. Disbursements of Project Funds shall be made upon submission of a written itemized statement or draw request in a form that is mutually acceptable to Construction Lender and Agency [Application for Payment or Draw Request], subject to the conditions set forth below. Prior to submitting any such Application for Payment to the Construction Lender or Agency for approval, Borrower shall first obtain such approval of the Tax Credit Equity Investor as may be required by applicable provisions of the Agreement of Limited Partnership, as may be amended. The term "disbursement" shall include, without limitation, disbursement of Agency Loan proceeds, Borrower's Funds that have been delivered to

Construction Lender as "Borrower's Funds," Borrower's prior expenditures of Borrower's Funds, and Construction Lender Funds. Each Lender shall determine whether or not the conditions precedent to its obligation to advance its loan have been satisfied or whether or not to waive any condition precedent to its obligation to advance its loan which such Lender determines has not been satisfied.

b. Order of Disbursement. Each Lender and Borrower shall disburse its respective Project Funds in the order set forth below:

(1) First, all of the Borrower's Funds.

(2) Second, all available Construction Loan and Agency Loan proceeds, concurrently on a per quarter and percentage basis during the construction phase, subject to the timing of disbursements of the Agency Loan proceeds set forth below. Disbursement of proceeds from the Construction Loan and Agency Loan shall be subject to a hard cost retention [Retention] equal to ten percent (10%) of all hard costs.

(3) Third, except to the extent the Agency and Construction Lender have released Retention amounts prior to Completion (as provided in Section 5 of this Agreement), the respective amounts of Retention relating to the Construction Loan and Agency Loan. Subject to any additional requirements of the Construction Lender, and except as provided in Section 5, the Retention shall be disbursed upon the last to occur of the following: (i) issuance of a certificate of occupancy for the development by the City of San Diego; (ii) recordation of a Notice of Completion; (iii) the project architect certifies that the Improvements have been completed in a good and workmanlike manner and in accordance with the approved plans and specifications; (iv) any mechanic's liens that have been recorded or stop notices that have been delivered to either the Agency or the Construction Lender have been paid, settled or otherwise extinguished, discharged, released, waived or bonded around, and the Agency and Construction Lender have been provided satisfactory evidence of such payment, settlement or discharge; and (v) the Agency issues its Release of Construction Covenants pursuant to Section 324 of the OPA. Notwithstanding the foregoing and notwithstanding the provision of any other document, and except as provided in Section 5, (A) the Retention shall not be disbursed until at least thirty-five (35) calendar days after the Notice of Completion has been recorded, and (B) the Agency shall not issue its Release of Construction Covenants until all other conditions for the release of the Retention have been met.

Retention shall not be withheld for those portions of a Draw Request that are not allocated to hard costs. Further, notwithstanding the foregoing, out of the Agency Loan proceeds, 68.5% of said proceeds will be available for disbursement upon the Closing Date; 10.4% of said proceeds will be available for disbursement upon the First Quarter of the construction phase; 9.0% of said proceeds will be available for disbursement upon the Second

Quarter of the construction phase; 3.0% of said proceeds will be available for disbursement upon the Third Quarter of the construction phase; 4.9% of said proceeds will be available for disbursement upon the Fourth Quarter of the construction phase; and 4.2% of said proceeds will be available for disbursement upon the Fifth and Sixth Quarter of the construction phase and lease-up.

c. Contents of Application for Payment. Subject to the requirements of the Construction Lender (which shall not, in any event, apply to the disbursement of Agency Loan proceeds), each Application for Payment shall set forth:

(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; and

(3) the percentage of completion of the portion of the Work to be paid from the Item. Agency hereby consents to the use of the form of Application for Payment attached to the Construction Loan Agreement for draw requests.

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 Loan, in accordance with this Agreement.

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. Either Agency or Construction Lender 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, Construction Lender shall transmit to Agency 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 Agreement, Borrower shall prepare and submit to the Construction Lender and Agency a statement of all Costs previously paid by Borrower with Borrower's Cash Equity, 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 and Construction Lender pursuant to this paragraph g. shall be deemed 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 Agreement and the respective Loan Documents.

b. Procedure. Each Lender shall, within fifteen (15) business days after receipt of an Application for Payment containing all of the items described in Section 3, above, determine the amount of the Application for Payment to be approved, notify Borrower, appropriate members of the construction team and the other Lenders of such amount, and, if and as required pursuant to paragraph b. of Section 3, above, disburse the approved amount. With respect to disbursements of Agency Loan proceeds, the Agency shall remit to Construction Lender, by check, the approved amounts and Construction Lender shall promptly disburse such funds as provided in the Application for Payment.

c. Disapprovals. Any item in an Application for Payment which is not specifically approved within fifteen (15) business days shall be deemed disapproved. On the basis of the progress of the work performed on the Project and the conditions precedent to making disbursements contained in their respective agreements with Borrower, either Construction Lender or Agency may disapprove all or part of a requested draw request. In the event either Construction Lender or Agency disapprove any portion of the amount requested by Borrower in an Application for Payment [disapproved amount], such Lender shall promptly notify the other Lenders and the Borrower of the disapproved amount and the reason therefor. The disapproval of any Lender of any amount requested in an Application for Payment is not binding on the other Lender.

d. Concurrent Review of Applications for Payment. In the event any item shall be disapproved or deemed disapproved, the representatives of the Borrower and the Lenders shall meet promptly and in good faith to attempt to resolve the matter to their mutual satisfaction. To effectuate this paragraph, the Lenders shall review each Application for Payment concurrently, and notify the other Lenders of its approval of such request as soon as possible. Each Lender shall signify its approval of an Application for Payment by signing and transmitting to the other Lenders 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 Lenders and Borrower shall each disburse the amount of any Application for Payment not in dispute, and fund any disputed amounts promptly upon resolution of the dispute. If Construction Lender elects to fund any amount disputed by Agency, and the Agency, Borrower and Construction Lender subsequently resolve such dispute so that the Agency agrees to fund the previously

disputed amount, the Agency shall so disburse its funds to reimburse the Construction Lender for the amount the Construction Lender previously funded. Disputed amounts shall not be deducted from the Lenders' respective Loan, but shall be available for disbursement for other approved Costs in accordance with the Project Budget. The Lenders and the Borrower shall seek to resolve any disputes promptly and in good faith.

f. Disbursement by Construction Lender to Pay Disputed Amounts. Notwithstanding any provision of this Agreement requiring approval by all Lenders of disbursements to be made by any Lender, the Construction Lender shall have the right, without Agency approval, to disburse Borrower's Funds and Construction Lender Funds to pay Approved Costs as provided in an Application for Payment that is not approved by Agency, including Costs to pay cost overruns. Subject to the Agency's approval and in accordance with the terms of the OPA, any such cost overruns paid by Construction Lender may (to the extent such costs constitute Approved Costs, as hereinafter defined) be added to the stated loan amount of the Construction Loan secured by the Construction Lender's deed of trust and shall be and remain senior to the lien of the deed of trust securing the Note, all on the terms and conditions set forth in any applicable subordination agreement.

g. Right to Condition Disbursements. The Agency and Construction Lender shall have the right to condition any disbursement upon receipt and approval of such documentation, evidence or information that such Lender 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) Disbursement of Agency Loan proceeds and Construction Loan proceeds for "hard costs" shall be subject to a ten percent (10%) Retention.

(2) Construction Lender shall use the disbursement procedures set forth in the Construction Loan Documents, Agency shall use the disbursement procedures set forth in the Agency Loan Documents and this Agreement; provided, however, none of the Lenders shall be obligated to disburse any Project Funds until all of the Lenders have approved, or shall be deemed to have approved, all or a portion of the Application for Payment for the funds to be disbursed; and

(3) The Lenders shall make disbursements of Project Funds: (a) 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; or (b) to Construction Lender for financing costs, including without limitation, loan fees, interest and reimbursement for Construction Lender's costs as set forth in the Construction Loan Documents and included in the Project Budget. Notwithstanding the foregoing, Agency and Construction Lender shall each have the right in its

sole discretion to make disbursements of Project Funds directly to third parties entitled to such payment.

5. Release of Retention Amounts Prior to Completion.

The Lenders shall have the right to do any of the following: (a) not withhold any Retention from subcontractors in certain categories designated by Borrower; (b) release Retention amounts relating to subcontractors in categories designated by Borrower prior to Completion upon satisfaction of the following conditions as to such subcontract: (i) submission to the Lenders of unconditional lien releases or waivers obtained by Borrower or Borrower's agent; (ii) the project architect certifies that the work covered by such subcontract has been completed in a good and workmanlike manner and in accordance with the approved plans and specifications; and (iii) any mechanic's liens that have been recorded or stop notices that have been delivered to either Agency or Construction Lender have been paid, settled, bonded around or otherwise extinguished or discharged and both Lenders have been provided satisfactory evidence of such payment, settlement, bond or discharge, including without limitation all statutory waivers; or (c) withhold Retention from subcontractors performing certain categories of work designated by Borrower until fifty percent (50%) of that scope of work is completed, as determined by the Construction Lender pursuant to the Construction Loan Agreement.

6. Approval of Final Draw Request

Subject to any additional conditions set forth in the Construction Loan Agreement (which shall not, in any event, apply to any disbursement of Agency Loan proceeds), the final contractor's invoice (representing any retention on the construction contract) shall be disbursed to Borrower 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 Lenders of unconditional lien releases or waivers obtained by Borrower or Borrower's agent, (d) the project architect certifies that the Project has been completed in a good and workmanlike manner and in accordance with the approved plans and specifications, (e) any mechanic's liens that have been recorded or stop notices that have been delivered to either Agency or Construction Lender 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) the Agency issues its Release of Construction Covenants pursuant to Section 324 of the OPA. Notwithstanding the foregoing and notwithstanding the provision of any other document, except as provided in Section 5, above, the Retention shall not be disbursed until at least thirty-five (35) calendar days after the Notice of Completion has been recorded.

7. Disbursement of Borrower's Funds and AHP Funds.

Construction Lender shall disburse all of the Borrower's Funds and AHP Funds to pay Costs on the basis of Applications for Payment approved by the Construction Lender and the Agency in accordance with this Agreement.

8. Allocation of Cost Savings

If, on the date of Completion, as defined in Section 6, above, the sum of all Project Funds disbursed, plus any Retention amounts then owing to contractors and others, plus any unpaid Costs set forth in the Project Budget which the Lenders agree are to be disbursed subsequent to the Completion Date (such as, by way of example only and without limiting the generality of the foregoing, Costs associated with funding final Tax Credit Equity Investor capital contributions, and Costs for commercial tenant improvements) is less than $28,861,000 (the amount of such savings being referred to herein as the "Cost Savings"), the following shall occur: (a) to the extent of the Cost Savings, the Agency Retention then held by Agency shall be released to the Agency as a reduction in the principal amount of the Agency Residual Receipts Loan; and (b) each Lender's unfunded commitment shall terminate.

9. Inspection of the Project.

The Lenders shall have the right to inspect the Property during construction and agree to deliver to each other copies of any inspection reports. Inspection of the Property shall be for the sole purpose of protecting the respective security of the Lenders and is not to be construed as a representation by such Lender 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.

10. Supervision of Construction.

The Lenders 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. Neither the Agency nor Construction Lender is the agent for the other or for Borrower, nor are they partners or joint venturers with each other or with Borrower. Neither the Agency nor the Construction Lender shall have any fiduciary duty or obligation to the other Lender.

11. Use of Agency Loan Proceeds by Construction Lender or Assignee after Foreclosure.

The Agency and Construction Lender agree as follows:

a. Construction Lender or Assignee May Assume Agency Owner Participation Agreement. In the event of (1) a default by Borrower under the terms of the OPA, which remains uncured after notice to the Borrower pursuant to the OPA which results in the termination of the OPA by the Agency, and/or (2) a foreclosure by the Construction Lender, or conveyance to Construction Lender by deed in lieu of foreclosure, the Construction Lender [and the assignee of such Lender, referred to herein as the Assignee] shall have the right to assume the rights and obligations of Borrower under the OPA, as if the OPA had not been terminated. The Construction Lender or Assignee, as the case may be, shall be referred to as the "Party in Possession".

b. Conditions to Continued Disbursement of Agency Loan. The Agency shall continue to disburse the un-disbursed portion of the Agency Loan for the payment of Project

Costs as provided herein, upon and subject to: (a) the execution of an Assumption Agreement acceptable to the Agency and the Party in Possession, pursuant to which the Party in Possession agrees to construct and operate the Project in accordance with the terms and conditions of the OPA, as the OPA may be further amended by mutual agreement of the Agency and the Party in Possession; and (b) to the extent necessary, the execution or re-execution and recordation or re-recordation, of the promissory Note evidencing the Agency Loan, the Agency Deed of Trust and other instruments securing the Agency Loan and the Agreement Affecting Real Property, provided, however, that nothing contained herein shall obligate the Party in Possession to cure any default of Borrower under the Agency OPA which is not curable by the Party in Possession.

c. Procedure if Party in Possession Fails to Assume Agency Owner Participation Agreement. In the event of a default by Borrower under the terms of the OPA, which remains uncured after notice to the Borrower pursuant to the OPA, and/or results in the termination of the OPA, by the Agency, or a default by Borrower under the Construction Loan Agreement, pursuant to which Construction Lender elects to foreclose on its deed of trust, or accept a deed in lieu of foreclosure, or otherwise become the owner of the Property, and the Agency and the Party in Possession fail to enter into an Assumption Agreement as described in paragraph b. within ninety (90) calendar days after such termination or foreclosure (or such later date as the Party in Possession and the Agency may agree to in writing), either party may terminate this Agreement by providing written notice of termination to the other party. Provided, however, that in the event of a default by the Borrower under the OPA, which is also a default under the Construction Lender Documents, the applicable cure periods set forth in the OPA, shall be stayed from the time the foreclosing Lender provides notice to the Agency and during the period provided for the Agency to cure the default. Upon termination of this Agreement, the Agency shall have no further obligation to disburse any un-disbursed portion of the Agency Loan to the Borrower, the Construction Lender or any other party, and the Construction Lender shall have no further obligation to the Agency or any other person to disburse any un-disbursed portion of the Construction Loan pursuant to this Agreement.

d. Reservation of Rights. Nothing contained herein shall be construed as restricting, limiting, amending or modifying the rights of the parties in the OPA, or the Construction Loan Agreement, as they relate to defaults or remedies, including, *inter alia,* the right of each party under its respective security instruments to foreclose on the Property, or to seek recourse under any guaranties.

12. Integrated Agreement.

This 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 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 Agreement, this Agreement does not supersede and shall not be deemed to amend any of the Construction Loan Documents or any of the Agency Loan Documents.

13. Termination of this Agreement.

This Agreement shall terminate when all of the Project Funds have been fully disbursed.

14. Counterparts.

This 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.

15. Binding Effect.

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

16. Governing Law.

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

17. 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 Agreement or any provision hereof.

18. Interpretation.

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

19. 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 Agreement may be amended only by a written agreement executed by the parties in interest at the time of the modification.

20. 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 Agreement.

21. Severance.

If any provision of this 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 Agreement.

22. Independent Advice of Counsel.

The parties hereto and each of them, represent and declare that in executing this 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.

23. Voluntary Agreement.

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

24. Attorneys' Fees.

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

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

AGENCY

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

By:_____
James T. Waring
Assistant Executive Director

BORROWER

VERBENA SAN YSIDRO, L.P., a California limited partnership

By: CIC Verbena, LLC, a California limited liability company, its Administrative General Partner

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

By: _____
James J. Schmid, President

CONSTRUCTION LENDER

By:_____

President

Exhibit "A" To Disbursement Agreement

PROJECT BUDGET

[Final Project Budget to be attached]

VERBENA PROJECT

PROJECT BUDGET

18-Jun-07

SOURCES:		
Construction Sources:		
Construction Loan		$ 13,502,000
Developer Fee - deferred during construction		$ 700,000
Low Income Housing Tax Credit (LIHTC) - 9%		$ 9,073,000
Agency Residual Receipts Loan		$ 5,586,000
		$ 28,861,000
PERMANENT SOURCES:		
Permanent Loan		$ 4,301,000
LIHTC - 9%		$ 18,693,000
Deferred Developer Fee		$ 281,000
Affordable Housing Program[1]		$ 400,000
Agency Residual Receipts Loan		$ 5,186,000
		$ 28,861,000
USES:		
Land:		$ 8,257,000
Direct Costs:		
Off-site Improvements	$ -	
On-Sites/Landscaping	$ 4,530,000	
Parking	$ -	
Shell Construction	$ 9,161,000	
FF&E/Amenities	$ 20,000	
Contingency	$ 682,000	$ 14,393,000
Indirect Costs:		
Architecture & Engineering	$ 981,000	
Permits and Fees	$ 1,721,000	
Legal & Accounting	$ 192,000	
Taxes & Insurance	$ 100,000	
Developer Fee	$ 1,400,000	
Marketing/Lease-Up	$ 52,000	
Contingency	$ 140,000	$ 4,586,000
Financing Costs:		
Loan Fees	$ 236,000	
Interest During Construction	$ 699,000	
Interest During Lease-up	$ 503,000	
TCAC/Syndication Fees	$ 121,000	
Operating Lease-Up/Reserves	$ 175,000	
(Less) Income During Lease-Up	$ (109,000)	$ 1,625,000
		$ 28,861,000

(1) Agency funds will cover the shortfall in case AHP funds are not received in full.

Exhibit "B" to Disbursement Agreement

DISBURSEMENT SCHEDULE

[Disbursement Schedule to be attached, providing among other things that: 68.5% of Agency Loan proceeds will be available for disbursement upon the Closing Date; 10.4% of said proceeds will be available for disbursement upon the First Quarter of the construction phase; 9.0% of said proceeds will be available for disbursement upon the Second Quarter of the construction phase; 3.0% of said proceeds will be available for disbursement upon the Third Quarter of the construction phase; 4.9% of said proceeds will be available for disbursement upon the Fourth Quarter of the construction phase; and 4.2% of said proceeds will be available for disbursement upon the Fifth and Sixth Quarter of the construction phase and lease-up]

Exhibit "B" to Disbursement Agreement

DISBURSEMENT SCHEDULE

This schedule below is a draft of the disbursement schedule of Agency Loan funds toward the Project. This schedule shall be modified by and between the Borrower, Construction Lender, and Agency once the Construction Lender is selected, to include the details of disbursement of the Borrower's Funds and the Construction Lender Funds in accordance with the OPA and Disbursement Agreement.

First Disbursement:	$3,824,155 to be disbursed at the Closing Date, following acquisition of Tax Credits and Construction Loan.
Second Disbursement:	$581,653 at Construction Quarter 1.
Third Disbursement:	$500,354 at Construction Quarter 2.
Fourth Disbursement:	$171,508 at Construction Quarter 3.
Fifth Disbursement:	$274,486 at Construction Quarter 4.
Final Disbursement:	$233,844 Remaining Funds at Construction Quarters 5 and 6 and at Lease Up.
Total Disbursements:	$5,586,000

ATTACHMENT NO. 16

EQUAL OPPORTUNITY CONTRACTING REQUIREMENTS

[Behind this page.]

EQUAL OPPORTUNITY CONTRACTING REQUIREMENTS

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I. **City's Equal Opportunity Commitment.** The City of San Diego (City) is strongly committed to equal opportunity for employees, developers, contractors, subcontractors, subconsultants and vendors/suppliers doing business with the City. The City encourages its developers to share this commitment.

II. **Demonstrated Commitment to Equal Opportunity.** The City seeks to foster a business climate of inclusion and to eliminate barriers to inclusion. Developers are encouraged to take positive steps to diversify and expand their contractor, subcontractor, subconsultant, and vendor/supplier solicitation base and to offer contracting opportunities to these groups. To support its Equal Opportunity Contracting commitment, the Developer is required to submit with its development proposal/application for Affordable Housing Program Funding (NOFA) a Letter of Commitment which must contain the following:

A. Subcontracting Commitment Goal. Anticipated subcontracting participation goal for utilization of Disadvantaged Business Enterprises (DBE's) and underrepresented firms during the course of the project.

B. Outreach Efforts. Network activities and outreach strategies intended to be utilized to recruit, hire, train and promote a diverse workforce.

C. Community Activities. Listing of Developer's current community activities such as membership and participation in local organizations, associations, scholarship programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.

III. Reporting Requirements.

A. Quarterly Update Report. Developer is required to submit quarterly reports detailing and explaining efforts made to reach its stated commitment goal.

1. Due Date: *Quarterly Update Report* must be submitted every three months by the 30th day of the month.

B. Monthly Invoicing Report. Developer must list monthly dollar amounts invoiced and paid by contractor to subcontractor, subconsultant and vendor/supplier.

C. Monthly Employment Report. Developer must have Contractor list each employee working on the specific project by full name, social security number, gender, ethnic category, craft and employee source. Developer is responsible for collecting and submitting *Monthly Employment Report* from prime contractor and all subcontractors at any level, working at the site. Contractors and all subcontractors must submit this report monthly until their portion of work is complete. Reporting period is from first day of calendar month through last day of calendar month and reflects total work hours performed on this project.

1. Due Date: *Monthly Invoicing Report* and *Monthly Employment Report* must be submitted by the 5th day of the subsequent month.

D. Certified Payroll. If project is federally and/or state funded prevailing wages apply and certified payrolls must be submitted weekly, bi-weekly or monthly.

During the course of the project, reports and certified payrolls must be submitted to the EOC Program Manager at 1200 Third Avenue, Suite 200, San Diego, CA 92101.

IV. Nondiscrimination in Contracting Ordinance. All developers, contractors, and consultants doing business with the City, and their subcontractors, subconsultants and vendors/suppliers must comply with requirements of the City's *Nondiscrimination in Contracting Ordinance,* San Diego Municipal Code Sections 22.3501 through 22.3517.

A. Developers Proposal/Application to include Disclosure of Discrimination Complaints. As part of its proposal/application, Developer shall provide to the City a list of all instances within the past ten (10) years where a complaint was filed or pending against Developer in a legal or administrative proceeding alleging that Developer discriminated against its employees, subcontractors, subconsultants and vendors/suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

B. Contract Language. The following language shall be included in contracts for City projects between the Developer and any contractor, subcontractor, subconsultant and vendor/supplier:

> Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Developer shall provide equal opportunity for subcontractors to participate in subconsulting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

C. Compliance Investigations. Upon the City's request, Developer agrees to provide to the City, within sixty (60) calendar days, a truthful and complete list of the names of all subcontractors, subconsultants, vendors, and suppliers that Developer has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Developer for each subcontract or supply contract. Developer further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's *Nondiscrimination in Contracting Ordinance,* Municipal Code Sections 22.3501 through 22.3517. Developer understands and agrees that violation of this clause

shall be considered a material breach of the contract and may result in remedies being ordered against the Developer up to and including contract termination, debarment and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance.* Developer further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination in Contracting Ordinance* apply only to violations of the *Ordinance.*

V. **Equal Employment Opportunity.** Developers shall comply with requirements of San Diego Ordinance No. 18173, Section 22.2701 through 22.2707, Equal Employment Opportunity Outreach Program. Developers must submit with its proposal/application a *Work Force Report* or an *Equal Employment Opportunity* (EEO) *Plan* to the Manager of the City of San Diego Equal Opportunity Contracting for approval. All submittals must be sent to 1200 Third Avenue, Suite 200, San Diego, CA 92101.

A. Work Force Report. If a *Work Force Report* (Attachment AA) is submitted, and the Work Force Analysis reflects under representations when compared to County Labor Force Availability data, Developer will be required to submit an *Equal Employment Opportunity Plan.*

B. Equal Employment Opportunity Plan. If an *Equal Employment Opportunity Plan* is submitted, it must include at least the following assurances that:

1. The Developer will maintain a working environment free of discrimination harassment, intimidation and coercion at all sites and in all facilities at which the Developer's employees are assigned to work;

2. A responsible official is designated to monitor all employment related activity to ensure the Developer's EEO Policy is being carried out and to submit reports relating to EEO provisions;

3. Developer disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination review and posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings;

4. The Developer reviews, at least annually, all supervisors' adherence to and performance under the EEO Policy and maintains written documentation of these reviews;

5. The Developer discusses its EEO Policy Statement with Subconsultants with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;

6. The Developer documents and maintains a record of all bid solicitations and outreach efforts to and from subcontractors and subconsultants, consultant associations, vendors/suppliers and other business associations;

7. The Developer disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;

8. The Developer disseminates its EEO Policy to union and community organizations;

9. The Developer provides immediate written notification to the City when any union referral process has impeded the Developer's efforts to maintain its EEO Policy;

10. The Developer maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;

11. The Developer maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;

12. The Developer encourages all present employees, including people of color and women employees, to recruit others;

13. The Developer maintains all employment selection process information with records of all tests and other selection criteria;

14. The Developer develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Developer's employment needs;

15. The Developer conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;

16. The Developer ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes;

17. The Developer establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and

18. The Developer is encouraged to participate in voluntary associations, which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a consultant association, consultant/community professional association, foundation or other similar group of which the Developer is a member will be considered as being part of fulfilling these obligations, provided the Developer actively participates.

VI. List of Subcontractors. Developers are required to submit a *Subcontractors List* for their Prime Contractor at the start of the project. As subcontractors are added to the project, the Developer is required to notify EOC by submitting an updated *Subcontractors List* within five (5) days of addition of subcontractor to the project.

A. Subcontractors List. The *Subcontractors List* (Attachment EOCP-7) shall indicate the name and address, scope of work, dollar amount and percent of total proposed subcontract amount, certification status and where certified for each proposed subcontractor.

1. Subcontractors must be named on the *Subcontractors List* if they receive more than one-half of one percent (0.5%) of the Developer's fee.

VII. Certification.

A. The City of San Diego is a signatory to a Memorandum of Agreement (MOA) in the statewide California Unified Certification Program, and therefore has adopted a policy regarding certification of DBE firms. Pursuant to the MOA, a DBE can be certified by any participating government agency in the State of California.

B. The City will accept a current certification by the State of California Department of Transportation (CALTRANS) or any other participating government agency in the State of California as an MBE or WBE: or

C. The City will accept current DVBE certification granted by the State of California's Department of General Services, Office of Small and Minority Business, (916) 322-5060.

VIII. Definitions.

Certified **"Minority Business Enterprise" (MBE)** means a business which is at least fifty-one percent (51%) owned by African Americans, American Indians, Asians, Filipinos, and/or

Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one

percent (51%) of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.

Certified **"Women Business Enterprise" (WBE)** means a business which is at least fifty one percent (51%) owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more women.

Certified **"Disadvantaged Business Enterprise" (DBE)** means a business which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

Certified **"Disabled Veteran Business Enterprise" (DVBE)** means a business which is at least fifty-one percent (51%) owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies).

"Other Business Enterprise" (OBE) means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

IX. List of Attachments.

EOC–7– *Subcontractors List*
EOC –8– *Subconsultants List*
EOC –AA (1-3) – *Work Force Report*
EOC-BB – *Developer Monthly Invoicing Report*
EOC-CC–*Monthly Employment Report*

SUBCONTRACTORS LIST

INFORMATION REGARDING SUBCONTRACTOR PARTICIPATION:

1. Subcontractor's List shall include name and complete address of all Subcontractors who will receive more than one half of one percent (0.5%) of the Developer's fee.

2. Developer shall also submit subcontractor commitment letters on subcontractor's letterhead, no more than one page each, from subcontractors listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

3. Subcontractors shall be used for scope of work listed. No changes to this Subcontractors List will be allowed without prior written City approval.

NAME AND ADDRESS OF SUBCONTRACTORS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	*MBE/WBE/ DBE/DVBE/ OBE	**WHERE CERTIFIED

**For information only*. As appropriate, Developer shall identify Subcontractors as:

Certified Minority Business Enterprise	MBE
Certified Woman Business Enterprise	WBE
Certified Disadvantaged Business Enterprise	DBE
Certified Disabled Veteran Business Enterprise	DVBE
Other Business Enterprise	OBE

***For information only*. As appropriate, Developer shall indicate if Subcontractor is certified by:

City of San Diego	CITY
State of California Department of Transportation	CALTRANS

SUBCONSULTANTS LIST

INFORMATION REGARDING SUBCONSULTANTS PARTICIPATION:

4. Subconsultant's List shall include name and complete address of all Subconsultants who will receive more than one half of one percent (0.5%) of the Prime Consultant's fee.

5. Developer shall also submit Subconsultant commitment letters on Subconsultant's letterhead, no more than one page each, from Subconsultants listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

6. Subconsultants shall be used for scope of work listed. No changes to this Subconsultants List will be allowed without prior written City approval.

NAME AND ADDRESS SUBCONSULTANTS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	*MBE/WBE/ DBE/DVBE/ OBE	**WHERE CERTIFIED

**For information only*. As appropriate, Developer shall identify Subconsultants as:

Certified Minority Business Enterprise	MBE
Certified Woman Business Enterprise	WBE
Certified Disadvantaged Business Enterprise	DBE
Certified Disabled Veteran Business Enterprise	DVBE
Other Business Enterprise	OBE

***For information only*. As appropriate, Developer shall indicate if Subconsultant is certified by:

City of San Diego	CITY
State of California Department of Transportation	CALTRANS
City of San Diego	CITY
State of California Department of Transportation	CALTRANS

THE CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING
1200 THIRD AVENUE, SUITE 200
SAN DIEGO, CA 92101
PHONE (619) 236-6000 • FAX (619) 235-5209

WORK FORCE REPORT

The objective of the Equal Employment Opportunity is to ensure that contractors doing business with the City, or receiving funds from the City, will not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship.

NO OTHER FORMS WILL BE ACCEPTED

CONTRACTOR IDENTIFICATION

Type of Contractor: □ Construction □ Vendor/Supplier □ Financial Institution □ Lessee/Lessor □ Consultant □ Grant Recipient □ Insurance Company □ Other

Name of Company: _____

ADA/DBA: _____

Address (Corporate Headquarters, where applicable): _____

City _____ County _____ State _____ Zip _____

Telephone Number: ( ) _____-_____ Fax Number: ( ) _____-_____

Name of Company CEO: _____

Address(es), phone and fax number(s) of company facilities located in San Diego County **(if different from above):**

Address: _____

City _____ County _____ State _____ Zip _____

Telephone Number: ( ) _____-_____ Fax Number: ( ) _____-_____

Type of Business: _____ Type of License: _____

The Company has appointed: _____

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: _____

Telephone Number: ( ) _____-_____ Fax Number: ( ) _____-_____

For Firm's: □ San Diego Work Force and/or □ Managing Office Work Force

I, the undersigned representative of _____
(Firm Name)

_____ (County) _____ (State)

hereby certify that information provided herein is true and correct. This document was executed on this day of _____, 20____

_____ (Authorized Signature) _____ (Print Authorized Signature Name)

WORK FORCE REPORT – Page 2

NAME OF FIRM: _____ DATE: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

(1) African-American, Black
(2) Latino, Hispanic, Mexican-American, Puerto Rican
(3) Asian, Pacific Islander
(4) American Indian, Eskimo
(5) Filipino
(6) Caucasian
(7) Other ethnicity; not falling into other groups

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial														
Professional Specialty														
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support/Clerical														
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*														

*Construction laborers and other field employees are not to be included on this page

TOTALS EACH COLUMN														

GRAND TOTAL ALL EMPLOYEES	

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														

NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

WORK FORCE REPORT – Page 3

NAME OF FIRM: _____ DATE: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

(1) African-American, Black
(2) Latino, Hispanic, Mexican-American, Puerto Rican
(3) Asian, Pacific Islander
(4) American Indian, Eskimo
(5) Filipino
(6) Caucasian
(7) Other ethnicity; not falling into other groups

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Carpenter														
Drywall Installer														
Electrician														
Elevator Installers														
Finishers, Concrete or Terrazzo														
Glaziers														
Helpers, Construction Trade														
Ironworkers, Structural Metal Workers														
Laborers														
Millwrights														
Masons, Bricklayers														
Tile setters														
Operators														
Painters														
Pipe fitter, Plumbers														
Plasterers														
Roofers														
Security, Protective Services														
Sheet Metal, Duct Installers														
Welders, Cutters														
TOTALS EACH COLUMN														

GRAND TOTAL ALL EMPLOYEES	

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														

DEVELOPER
MONTHLY INVOICING REPORT

Developer: _____

Prime Contractor: _____

Submitted By: _____

Project Title: _____

Contact Person and Phone Number: _____

Contract Value To-Date: _____

Current Reporting Month: _____ 200____

Work Order No: _____

NOFA Project No: _____

Original Contract Amt: _____

SUBCONTRACTORS/SUPPLIERS: List Names of all Subcontractors/Suppliers:	*DBE or DVBE	Anticipated Start Date	Date of Last Inv.	Dollar Amount Paid This Month	Total Dollar Amount Invoiced To Date	CUMULATIVE AMOUNTS Paid To Date		ORIGINAL AMOUNTS LISTED IN BID		Change Order Paid this Month
						Dollar Amount	%	Dollar Amount	%	
SUBCONTRACTORS:										
SUPPLIERS:										
TOTAL DBE Subcontractors/Suppliers										
TOTAL DVBE Subcontractors/Suppliers										
TOTAL NON-DBE/DVBE Subcontractors/suppliers										
TOTAL AMOUNT PAID TO PRIME										
TOTAL CHANGE ORDERS TO DATE										

Use this table for federal or federally funded projects:

TOTAL MBE Subcontractors/Suppliers:								
TOTAL WBE Subcontractors/Suppliers:								

*On federal or federally funded projects indicate whether DBE is an MBE

I certify under penalty of perjury that the foregoing information is true and correct: _____

MONTHLY EMPLOYMENT REPORT

Contractor:_____ Employer I.D. Number:_____

Project Title: _____ Work Order Number: _____

Reporting Period: From:_____ To:_____ NOFA Project No: _____

	Employee List Last Name, First Name, Middle Initial	Social Security #	Male or Female	1 Ethnic Symbol	Craft	2 Employee Source	Number of Hours Worked
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							

1 Ethnic Symbol	
Black, African American	BL
Mexican American, Hispanic, Latino, Puerto Rican	MA
Native American, American Indian, Eskimo	NA
Asian, Pacific Islander	AP
Filipino	FI
Caucasian	CA
Other Ethnicity (not defined above)	OTH

2 Employee Source	
Apprenticeship Program	A
Employment Agency	E
Training Program	T
Union Hiring Hall	U
Other	O

I certify under penalty of perjury that the foregoing information is true and correct:

_____ _____ _____

Authorized Signature ***Printed Name / Title*** ***Date Prepared***

ATTACHMENT NO. 17

CHECK LIST FOR UNIVERSAL DESIGN FEATURES

1. Stepless front entrance or other primary entrance.

2. Stacked closets for elevator lift space (the center floor would be framed to allow for the shared ceiling/floor to be knocked out for future elevator); or a bedroom on first floor.

3. Full bath on first floor.

4. (a) Clear floor space in bathroom and kitchen to provide a 60" turning circle or a 30" x 48" parallel use/work space in front of each fixture or appliance;

   (b) 48" clear floor space in front of toilet and parallel to bathtub; and

   (c) 36" clear width for toilet fixture.

5. Wall framing reinforcement around toilet and bath fixtures to allow for the future installation of a grab bar feature.

6. 36" wide exterior door(s) and 34" interior passage doors on the ground floor. Include 30" x 48" space clear of any door swing.

7. 40" wide hall width.

8. Space for adaptable kitchen cabinets to allow for 48" clear width, clear space below sink, cabinets below counter.

9. 30" wide accessible counter work space at 34" usable height; or two (2) bread boards permanently installed at 34" height in kitchen.

10. Light switches, electrical receptacles, and environmental controls at an accessible height.

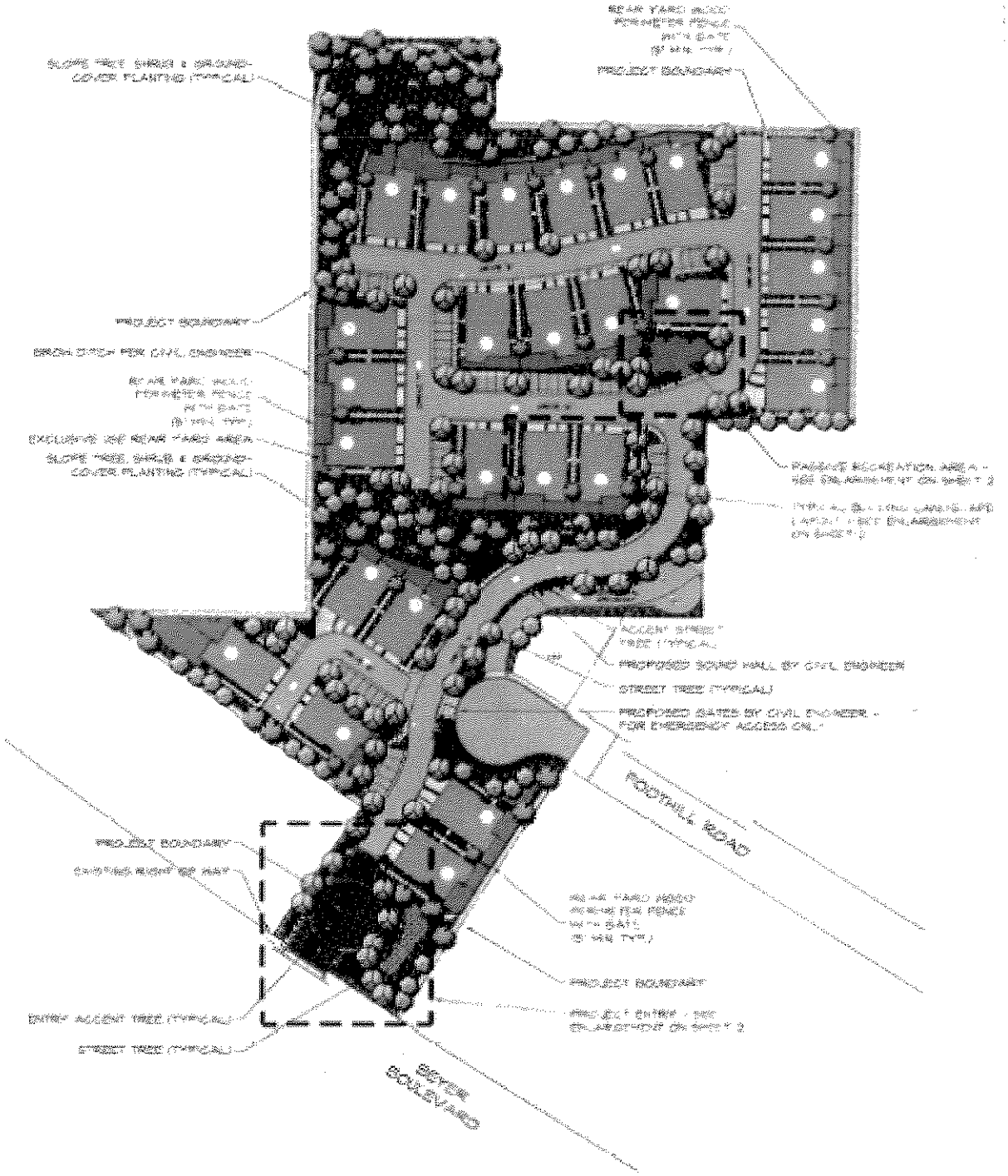
11. Accessible route of travel connecting the kitchen, bathroom, and other primary function space on the ground floor.

Attachment 2
Site Map
[Behind this Page]

Verbena Project - Site Map

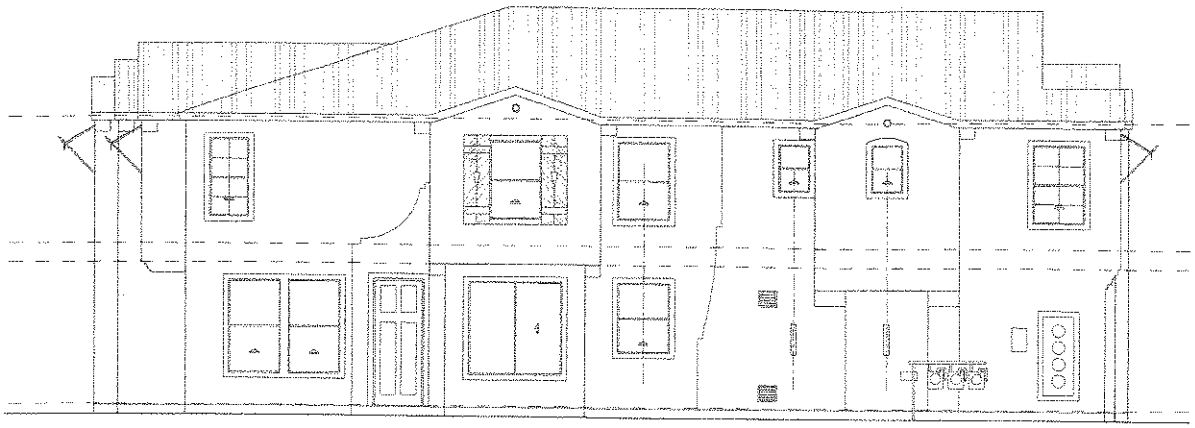
Attachment 3
Site Plan
[Behind this Page]

Verbena Project – Site Plan

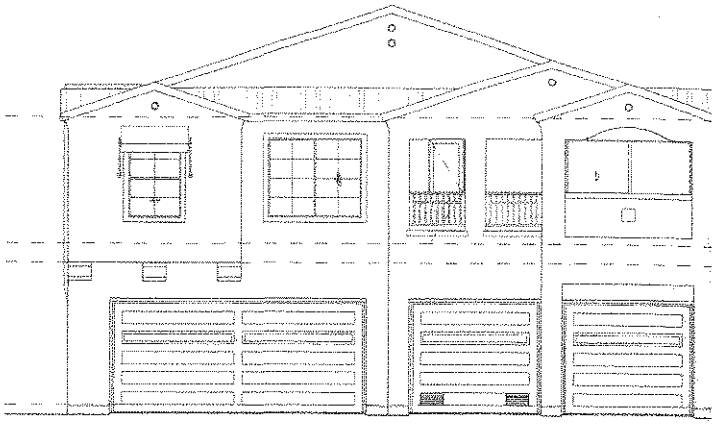


Attachment 4
Basic Concept Drawings
[Behind this Page]

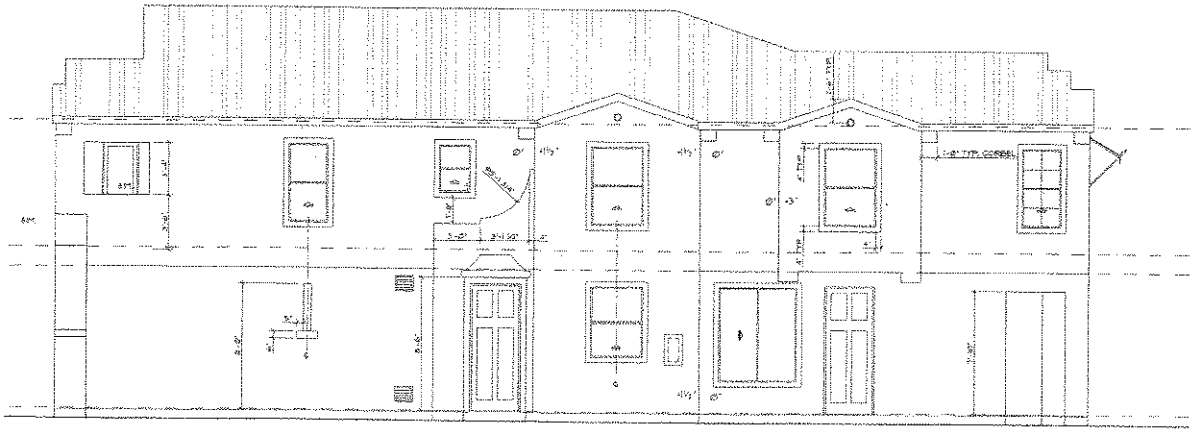
Verbena Project – Concept Drawing



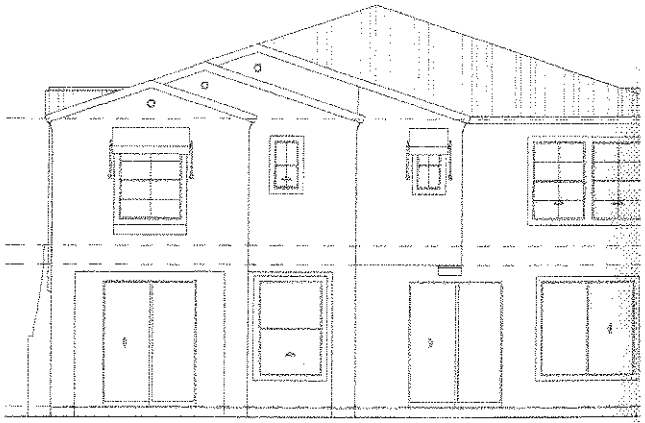
'A' - LEFT SIDE ELEVATION



3 'A' - FRONT ELEVATION



'A' - RIGHT SIDE ELEVATION



4 'A' - REAR ELEVATION

Attachment 5
Project Budget
[Behind this Page]

VERBENA PROJECT

PROJECT BUDGET

18-Jun-07

SOURCES:		
Construction Sources:		
Construction Loan		$ 13,502,000
Developer Fee - deferred during construction		$ 700,000
Low Income Housing Tax Credit (LIHTC) - 9%		$ 9,073,000
Agency Residual Receipts Loan		$ 5,586,000
		$ 28,861,000
PERMANENT SOURCES:		
Permanent Loan		$ 4,301,000
LIHTC - 9%		$ 18,693,000
Deferred Developer Fee		$ 281,000
Affordable Housing Program[1]		$ 400,000
Agency Residual Receipts Loan		$ 5,186,000
		$ 28,861,000
USES:		
Land:		$ 8,257,000
Direct Costs:		
Off-site Improvements	$ -	
On-Sites/Landscaping	$ 4,530,000	
Parking	$ -	
Shell Construction	$ 9,161,000	
FF&E/Amenities	$ 20,000	
Contingency	$ 682,000	$ 14,393,000
Indirect Costs:		
Architecture & Engineering	$ 981,000	
Permits and Fees	$ 1,721,000	
Legal & Accounting	$ 192,000	
Taxes & Insurance	$ 100,000	
Developer Fee	$ 1,400,000	
Marketing/Lease-Up	$ 52,000	
Contingency	$ 140,000	$ 4,586,000
Financing Costs:		
Loan Fees	$ 236,000	
Interest During Construction	$ 699,000	
Interest During Lease-up	$ 503,000	
TCAC/Syndication Fees	$ 121,000	
Operating Lease-Up/Reserves	$ 175,000	
(Less) Income During Lease-Up	$ (109,000)	$ 1,625,000
		$ 28,861,000

(1) Agency funds will cover the shortfall in case AHP funds are not received in full.

Attachment 6
Findings of Benefit
[Behind this Page]

Findings of Benefit Summary – City Heights Redevelopment Project Area

Verbena Project

It is proposed that funds from the City Heights Low and Moderate Income Housing Funds (Housing Funds) be used outside of the City Heights Redevelopment Project Area (Project Area) to assist in the development of an 80 unit affordable housing project called the Verbena Project (the Project). The Verbena Project site is located at 3774 Beyer Boulevard, within the San Ysidro Redevelopment Project Area. The Verbena Project would provide two- and three-bedroom units at rents affordable to families earning between 30% and 60% of the Area Median Income. The use of Housing Funds for the Project will be of benefit to the Project Area, in that:

- The use of Housing Funds for the Project will enable the Redevelopment Agency to increase and improve the supply of very low and low income housing within the City of San Diego.

- The use of the Housing Funds for the Project will assist in the development of a total of 79 affordable units, with 8 of the units to be made affordable for tenants earning no more than 30% of the Area Median Income, 8 of the units to be made affordable for tenants earning no more than 40% of the Area Median Income, 40 of the units to be made affordable for tenants earning no more than 50% of Area Median Income and 23 of the units to be made affordable for tenants earning no more than 60% of the Area Median Income.

- Credit for the production of affordable units is given annually to agencies by the California Housing and Community Development Department, in accordance with State Law. If tax increment funds are used for the development of affordable units outside of the source project area, a maximum of one-half credit for every unit produced may be awarded to the source project area. The benefit to the Project Area is the potential to have a maximum credit of 40 units for funding affordable housing outside of the Project Area.

- The Project is located within two blocks of public transit, both bus and trolley, which will provide means for residents of the Project to commute to jobs in the Project Area.

Findings of Benefit Summary – North Bay Redevelopment Project Area

Verbena Project

It is proposed that funds from the North Bay Low and Moderate Income Housing Funds (Housing Funds) be used outside of the North Bay Redevelopment Project Area (Project Area) to assist in the development of an 80 unit affordable housing project called the Verbena Project (the Project). The Verbena Project site is located at 3774 Beyer Boulevard, within the San Ysidro Redevelopment Project Area. The Verbena Project would provide two- and three-bedroom units at rents affordable to families earning between 30% and 60% of the Area Median Income. The use of Housing Funds for the Project will be of benefit to the Project Area, in that:

- The use of Housing Funds for the Project will enable the Redevelopment Agency to increase and improve the supply of very low and low income housing within the City of San Diego.

- The use of the Housing Funds for the Project will assist in the development of a total of 79 affordable units, with 8 of the units to be made affordable for tenants earning no more than 30% of the Area Median Income, 8 of the units to be made affordable for tenants earning no more than 40% of the Area Median Income, 40 of the units to be made affordable for tenants earning no more than 50% of Area Median Income and 23 of the units to be made affordable for tenants earning no more than 60% of the Area Median Income.

- Credit for the production of affordable units is given annually to agencies by the California Housing and Community Development Department, in accordance with State Law. If tax increment funds are used for the development of affordable units outside of the source project area, a maximum of one-half credit for every unit produced may be awarded to the source project area. The benefit to the Project Area is the potential to have a maximum credit of 40 units for funding affordable housing outside of the Project Area.

- The Project is located within two blocks of public transit, both bus and trolley, which will provide means for residents of the Project to commute to jobs in the Project Area.

Findings of Benefit Summary – North Park Redevelopment Project Area

Verbena Project

It is proposed that funds from the North Park Low and Moderate Income Housing Funds (Housing Funds) be used outside of the North Park Redevelopment Project Area (Project Area) to assist in the development of an 80 unit affordable housing project called the Verbena Project (the Project). The Verbena Project site is located at 3774 Beyer Boulevard, within the San Ysidro Redevelopment Project Area. The Verbena Project would provide two- and three-bedroom units at rents affordable to families earning between 30% and 60% of the Area Median Income. The use of Housing Funds for the Project will be of benefit to the Project Area, in that:

- The use of Housing Funds for the Project will enable the Redevelopment Agency to increase and improve the supply of very low and low income housing within the City of San Diego.

- The use of the Housing Funds for the Project will assist in the development of a total of 79 affordable units, with 8 of the units to be made affordable for tenants earning no more than 30% of the Area Median Income, 8 of the units to be made affordable for tenants earning no more than 40% of the Area Median Income, 40 of the units to be made affordable for tenants earning no more than 50% of Area Median Income and 23 of the units to be made affordable for tenants earning no more than 60% of the Area Median Income.

- Credit for the production of affordable units is given annually to agencies by the California Housing and Community Development Department, in accordance with State Law. If tax increment funds are used for the development of affordable units outside of the source project area, a maximum of one-half credit for every unit produced may be awarded to the source project area. The benefit to the Project Area is the potential to have a maximum credit of 40 units for funding affordable housing outside of the Project Area.

- The Project is located within two blocks of public transit, both bus and trolley, which will provide means for residents of the Project to commute to jobs in the Project Area.

Findings of Benefit Summary – Naval Training Center Redevelopment Project Area

Verbena Project

It is proposed that funds from the Naval Training Center Low and Moderate Income Housing Funds (Housing Funds) be used outside of the Naval Training Center Redevelopment Project Area (Project Area) to assist in the development of an 80 unit affordable housing project called the Verbena Project (the Project). The Verbena Project site is located at 3774 Beyer Boulevard, within the San Ysidro Redevelopment Project Area. The Verbena Project would provide two- and three-bedroom units at rents affordable to families earning between 30% and 60% of the Area Median Income. The use of Housing Funds for the Project will be of benefit to the Project Area, in that:

- The use of Housing Funds for the Project will enable the Redevelopment Agency to increase and improve the supply of very low and low income housing within the City of San Diego.

- The use of the Housing Funds for the Project will assist in the development of a total of 79 affordable units, with 8 of the units to be made affordable for tenants earning no more than 30% of the Area Median Income, 8 of the units to be made affordable for tenants earning no more than 40% of the Area Median Income, 40 of the units to be made affordable for tenants earning no more than 50% of Area Median Income and 23 of the units to be made affordable for tenants earning no more than 60% of the Area Median Income.

- Credit for the production of affordable units is given annually to agencies by the California Housing and Community Development Department, in accordance with State Law. If tax increment funds are used for the development of affordable units outside of the source project area, a maximum of one-half credit for every unit produced may be awarded to the source project area. Because of completed, current and planned redevelopment of the Project Area, there is no viable land area that is available for development of very low, low and moderate income housing at NTC. The benefit to the Project Area is the potential to have a maximum credit of 40 units for funding affordable housing outside of the Project Area.

- The Project is located within two blocks of public transit, both bus and trolley, which will provide means for residents of the Project to commute to jobs in the Project Area.

Attachment 7
Mitigated Negative Declaration
[Behind this Page]

City of San Diego

Development Services

Land Development
Review Division
(619) 446-5460

Mitigated Negative Declaration

Project No. 41718
SCH No. 2004111075

SUBJECT: Beyer Property. PLANNED DEVELOPMENT PERMIT and SITE DEVELOPMENT PERMIT No. 41718 and PUBLIC-RIGHT-OF-WAY VACATION / TENTATIVE MAP to demolish two single-family dwellings and one detached garage; consolidate seven parcels into one lot to construct 27 two-story residential condominium triplex structures on a consolidated 6.47-acre site; and create an 0.12-acre remnant lot containing an existing single-family residence. The proposed project site is located at 3774 Beyer Boulevard, between Del Sur Boulevard and Smythe Avenue, within the San Ysidro Community Planning Area (APNs: 638-010-33, 638-010-37, 638-041-03, 638-041-04, 638-041-05, 638-041-06, and 638-041-07). Applicant: Marker Foothill, LLC.

UPDATE: Section 15073.5(c)(4) of the California Environmental Quality Act Guidelines states that recirculation of the Mitigated Negative Declaration is not required when new information is added to the declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration. Minor revisions have been made to the Initial Study. These revisions do not affect the conclusions of the environmental document. All changes and additions are shown in ~~strikeout~~/underline format.

I. PROJECT DESCRIPTION: See attached Initial Study.

II. ENVIRONMENTAL SETTING: See attached Initial Study.

III. DETERMINATION:

The City of San Diego conducted an Initial Study which determined that the proposed project could have a significant environmental effect in the following areas: **Biological Resources, Noise,** and **Paleontological Resources**. Subsequent revisions in the project proposal create the specific mitigation identified in Section V of this Mitigated Negative Declaration. The project as revised now avoids or mitigates the potentially significant environmental effects previously identified, and the preparation of an Environmental Impact Report will not be required.

IV. DOCUMENTATION:

The attached Initial Study documents the reasons to support the above Determination.

V. MITIGATION, MONITORING AND REPORTING PROGRAM:

Biological Resources

1. Prior to the issuance of the first grading permit, the Environmental Review Manager (ERM) of the Land Development Review Division (LDR) shall verify that the owner/permittee has contributed $72,600.00 to the City's Habitat Acquisition Fund (No. 10571) for acquisition of in-tire habitat within the Multi-Habitat Planning Area (MHPA) for impacts to 0.59-acre of Tier I disturbed maritime succulent scrub habitat (1:1 mitigation ratio, $25,000 per acre, plus a 10% administration fee) and 4.10-acres of Tier IV non-native grassland habitat (0.5:1 mitigation ration, $25,000 per acre, plus a 10% administration fee).

Noise

1. Prior to issuance of any building permit, an acoustical report shall be submitted to the Acoustical Plan Check Section (APCS) to include measures which ensure that interior noise levels for any unit facing Beyer Boulevard within Building #1 is below 45 dBA CNEL. Construction measures needed to reduce noise levels shall be called out on plans as "Environmental Mitigation Measures." The APCS shall review all building plans to ensure that interior noise levels in any unit facing Beyer Boulevard within Building #1 will not exceed 45 dBA CNEL. The Environmental Analysis Section (EAS) of the Land Development Review (LDR) Division shall not approve any final building plans until EAS, in conjunction with the APCS has reviewed the plans to determine conformance.

2. While construction noise levels are not projected to exceed the City's noise ordinance standard at adjacent residences and daycare center the following measures shall be noted on the grading plans:

   - Locate noise equipment as far as possible from adjacent noise sensitive areas.
   - Install stationary equipment in enclosures.
   - Equip all construction equipment, fixed or mobile, with properly operating and maintained muffler exhaust systems.
   - Locate stockpile and vehicle staging areas as far as practical from residences.
   - Use quieter (i.e., typically smaller) pieces of equipment while working immediately adjacent to the residences situated along the southwestern boundary of the site.
   - When construction [or demolition] activities occur adjacent to the single-family residences, daycare center, and church, the contractor shall limit construction activities to the hours of 8 a.m. to 3 p.m. Also, letters shall be sent to inform the adjacent residences, daycare center, and church of the construction times, duration, and person to contact for questions or concerns. If noise concerns are received, the City's Noise Abatement Officer shall conduct noise surveys of the construction activities. If the noise measurements indicate that the construction noise level exceeds the City's construction noise criteria, the Noise Abatement Officer shall require the contractor to utilize quieter and typically smaller construction equipment, and possibly further reduce the number of construction hours per day. If these modifications do not result in compliance with the City's construction noise criteria, then construction activities shall be temporarily suspended and temporary 12-foot high noise barriers shall be constructed along the backyards of the residences, daycare center, and/or church located along the eastern portion of the site with the concurrence of the impacted residents, daycare center, and/or church. The barrier shall be constructed of minimum 3/4-inch thick plywood or other material having a Sound Transmission Class (STC) rating of 25 or higher.

Paleontological Resources

Prior to preconstruction (precon) meeting

1. Land Development Review (LDR) Plan Check
   Prior to the issuance of a Notice to Proceed (NTP) or any permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, the Environmental Review Manager (ERM) of LDR shall verify that the requirements for Paleontological Monitoring have been noted on the appropriate construction documents.

2. Letters of Qualification have been Submitted to ERM
   Prior to the recordation of the first final map, NTP, and/or, including but not limited to, issuance of a Grading Permit, Demolition Permit or Building Permit, the applicant shall provide a letter of verification to the ERM of LDR stating that a qualified Archaeologist, as defined in the City of San Diego Paleontological Guidelines, has been retained to implement the monitoring program.

3. Second Letter Containing Names of Monitors has been sent to Mitigation Monitoring Coordination (MMC).
   a. At least thirty days prior to the Precon Meeting, a second letter shall be submitted to MMC which shall include the name of the Principal Investigator (PI) and the names of all persons involved in the Paleontological Monitoring of the project.
   b. MMC will provide Plan Check with a copy of both the first and second letter.

4. Records Search Prior to Precon Meeting
   At least thirty days prior to the Precon meeting, the qualified Paleontologist shall verify that a records search has been completed, and updated as necessary, and be prepared to introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities. Verification includes, but is not limited to, a copy of a confirmation letter from the San Diego Natural History Museum, other institution, or, if the record search was in-house, a letter of verification from the PI stating that the search was completed.

Precon Meeting

1. Monitor Shall Attend Precon Meetings
   a. Prior to beginning of any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the Paleontologist, Construction Manager and/or Grading Contractor, Resident Engineer (RE), Building inspector (BI), and MMC. The qualified Paleontologist shall attend any grading related Precon Meetings to make comments and/or suggestions concerning the Paleontological Monitoring Program with the Construction Manager and/or Grading Contractor.
   b. If the Monitor is not able to attend the Precon Meeting, the RE, or BI as appropriate, will schedule a focused Precon Meeting for MMC, Monitors, Construction Manager and appropriate Contractor's representatives to meet and review the job on-site prior to start of any work that requires monitoring.

2. Identify Areas to be Monitored
At the Precon Meeting, the Paleontologist shall submit to MMC a copy of the site/grading plan (reduced to 11x17) that identifies areas to be monitored.

3. When Monitoring Will Occur
Prior to the start of work, the Paleontologist also shall submit a construction schedule to MMC through the RE, or BI, as appropriate, indicating when and where monitoring is to begin and shall notify MMC of the start date for monitoring.

During Construction

1. Monitor Shall be Present During Grading/Excavation
   a. The qualified Paleontologist shall be present full-time during the initial cutting of previously undisturbed formations with high and moderate resource sensitivity, and shall document activity via the Consultant Site Visit Record (form). This record shall be faxed to the RE, or BI as appropriate, and MMC each month.

2. Discoveries
   a. Minor Paleontological Discovery
   In the event of a minor Paleontological discovery (small pieces of broken common shell fragments or other scattered common fossils) the Paleontologist shall notify the RE, or BI as appropriate, that a minor discovery has been made. The determination of significance shall be at the discretion of the qualified Paleontologist. The Paleontologist will continue to monitor the area and immediately notify the RE, or BI as appropriate, if a potential significant discovery emerges.
   b. Significant Paleontological Discovery
   In the event of a significant Paleontological discovery, and when requested by the Paleontologist, the city RE, or BI as appropriate, shall be notified and shall divert, direct, or temporarily halt construction activities in the area of discovery to allow recovery of fossil remains. The determination of significance shall be at the discretion of the qualified Paleontologist. The Paleontologist with Principal Investigator (PI) level evaluation responsibilities shall also immediately notify MMC staff of such finding at the time of discovery. MMC staff will coordinate with appropriate LDR staff.

3. Night Work
   a. If night work is included in the contract
      (1) When night work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
      (2) The following procedures shall be followed:
         (a) No Discoveries
         In the event that nothing was found during the night work, The PI will record the information on the Site Visit Record Form.
         (b) Minor Discoveries
            (1) All Minor Discoveries will be processed and documented using the existing procedures under **During Construction** 2.a., with

the exception that the RE will contact MMC by 9 A.M. the following morning.

(c) Potentially Significant Discoveries

(1) If the PI determines that a potentially significant discovery has been made, the procedures under **During Construction** 2.b., will be followed, with the exception that the RE will contact MMC by 8 A.M. the following morning to report and discuss the findings.

b. If night work becomes necessary during the course of construction

(1) The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.

(2) The RE, or BI, as appropriate, will notify MMC immediately.

c. All other procedures described above will apply, as appropriate.

4. Notification of Completion
The Paleontologist shall notify MMC and the RE, or BI as appropriate, of the end date of monitoring.

Post Construction

The Paleontologist shall be responsible for preparation of fossils to a point of curation as defined by the City of San Diego Paleontological Guidelines.

1. Submit Letter of Acceptance from Local Qualified Curation Facility.
The Paleontologist shall be responsible for submittal of a letter of acceptance to ERM of LDR from a local qualified curation facility. A copy of this letter shall be forwarded to MMC.

2. If Fossil Collection is not Accepted, Contact LDR for Alternatives
If the fossil collection is not accepted by a local qualified curation facility for reasons other than inadequate preparation of specimens, the project Paleontologist shall contact LDR, to suggest an alternative disposition of the collection. MMC shall be notified in writing of the situation and resolution.

3. Recording Sites with San Diego Natural History Museum
The Paleontologist shall be responsible for the recordation of any discovered fossil sites at the San Diego Natural History Museum.

4. Final Results Report

a. Prior to the release of the grading bond, two copies of the Final Results Report (even if negative), which describes the results, analysis, and conclusions of the above Paleontological Monitoring Program (with appropriate graphics) shall be submitted to MMC for approval by the ERM of LDR.

b. MMC shall notify the RE or BI, as appropriate, of receipt of the Final Results Report.

VI. PUBLIC REVIEW DISTRIBUTION:

Draft copies or notice of this Mitigated Negative Declaration were distributed to:

U.S. Federal Government

U.S. Environmental Protection Agency (19)
U.S. Fish & Wildlife Service (23)
U.S. Army Corps of Engineers (26)

State of California

Caltrans, District 11 (31)
California Department of Fish & Game (32)
California Regional Water Quality Control Board (44)

City of San Diego

Councilmember Inzunza, District 8
Development Services Department
Planning Department – MSCP (5A)
Library Department (81)
Historical Resources Board (87)
Wetlands Advisory Board (91A)

Other

Sierra Club (165/165A)
Audubon Society (167)
California Native Plant Society (170)
Center for Biological Diversity (176)
Endangered Habitats League (182)
Jerry Schaefer, Ph.D. (209)
South Coastal Information Center @ San Diego State University (210)
San Diego Historical Society (211)
San Diego Archaeological Center (212)
Save Our Heritage Organisation (214)
Ron Christman (215)
Louie Guassac (215A)
San Diego County Archaeological Society (218)
Kumeyaay Cultural Repatriation Committee (225)
Native American Distribution (PUBLIC NOTICE ONLY 225A-R)
San Ysidro Planning and Development Group (433)
San Ysidro Community Service Center (435)
Marker Foothill, LLC (Applicant)

VII. RESULTS OF PUBLIC REVIEW:

( ) No comments were received during the public input period.

(X) Comments were received but did not address the draft Mitigated Negative Declaration finding or the accuracy/completeness of the Initial Study. No response is necessary. The letters are attached.

( ) Comments addressing the findings of the draft Mitigated Negative Declaration and/or accuracy or completeness of the Initial Study were received during the public input period. The letters and responses follow.

Copies of the draft Mitigated Negative Declaration, the Mitigation, Monitoring and Reporting Program and any Initial Study material are available in the office of the Land Development Review Division for review, or for purchase at the cost of reproduction.

Kenneth Teasley, Senior Planner
Development Services Department

November 12, 2004
Date of Draft Report

December 15, 2004
Date of Final Report

Analyst: Jakubauskas